

Calendar No. 318

117TH CONGRESS
2^D SESSION**S. 816**

To amend the Diplomatic Security Act of 1986 to provide for improved serious security incident investigations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, MARCH 16), 2021

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

APRIL 4 (legislative day, MARCH 31), 2022

Reported by Mr. MENENDEZ, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Diplomatic Security Act of 1986 to provide for improved serious security incident investigations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Diplomatic Support
5 and Security Act of 2021”.

1 **SEC. 2. INVESTIGATION OF SERIOUS SECURITY INCIDENTS.**

2 Section 301 of the Diplomatic Security Act of 1986
3 (~~22~~ U.S.C. 4831) is amended—

4 (1) in the section heading, by striking “**AC-**
5 **COUNTABILITY REVIEW BOARDS**” and inserting
6 “**INVESTIGATION OF SERIOUS SECURITY INCI-**
7 **DENTS**”;

8 (2) in subsection (a)—

9 (A) by amending paragraph (1) to read as
10 follows:

11 “(1) **CONVENING THE SERIOUS SECURITY INCI-**
12 **IDENT INVESTIGATION PERMANENT COORDINATING**
13 **COMMITTEE PROCESS.**—

14 “(A) **IN GENERAL.**—In any case of a seri-
15 ous security incident involving loss of life, seri-
16 ous injury, or significant destruction of prop-
17 erty at, or related to, a United States Govern-
18 ment (USG) diplomatic mission abroad, and in
19 any case of a serious breach of security involv-
20 ing intelligence activities of a foreign govern-
21 ment directed at a USG mission abroad, a Seri-
22 ous Security Incident Investigation (SSII) into
23 the event shall be convened by the Department
24 of State and a report produced for the Sec-
25 retary providing a full account of what oc-
26 curred, including—

1 “(i) whether security provisions perti-
 2 nent to the incident were in place and
 3 functioning;

4 “(ii) whether any malfeasance or
 5 breach of duty took place that materially
 6 contributed to the outcome of the incident;
 7 and

8 “(iii) any recommendations of relevant
 9 security improvements or follow-up meas-
 10 ures.

11 “(B) EXCEPTION.—A Serious Security In-
 12 cident Investigation need not be convened where
 13 the Secretary determines that a case clearly in-
 14 volves only causes unrelated to security.”;

15 (B) in paragraph (2), by striking “Board”
 16 and inserting “Serious Security Incident Inves-
 17 tigation”; and

18 (C) by striking paragraph (3);

19 (3) in subsection (b)—

20 (A) in paragraph (1)—

21 (i) by striking “Except as” and all
 22 that follows through “Board” and insert-
 23 ing “The Secretary of State shall convene
 24 a Serious Security Incident Investigation
 25 and the subsequent Permanent Coordi-

1 nating Committee process (SSH/PCC”;

2 and

3 (ii) by striking “for the convening of

4 the Board”; and

5 (B) in paragraph (2), by striking “Board”

6 each place it appears and inserting “SSH/

7 PCC”; and

8 (4) in subsection (c)—

9 (A) by striking “Board” and inserting

10 “Serious Security Incident Investigation and

11 begins the SSH/PCC process”;

12 (B) by adding “and ranking member”

13 after “chairman”; and

14 (C) by striking “Speaker” and all that fol-

15 lows through the period at the end of para-

16 graph (3) and inserting “chairman and ranking

17 member of the Committee of Foreign Affairs of

18 the House of Representatives.”.

19 **SEC. 3. SERIOUS SECURITY INCIDENT INVESTIGATION PER-**

20 **MANENT COORDINATING COMMITTEE.**

21 Section 302 of the Diplomatic Security Act of 1986

22 (22 U.S.C. 4832) is amended to read as follows:

1 **“SEC. 302. SERIOUS SECURITY INCIDENT INVESTIGATION**
 2 **PERMANENT COORDINATING COMMITTEE.**

3 **“(a) BUREAU OF DIPLOMATIC SECURITY RESPONSIBILITY FOR INVESTIGATIONS.—**The Bureau of Diplomatic
 4 Security shall be responsible for carrying out investigations of serious security incidents, utilizing such investiga-
 5 tive personnel and other resources as may be necessary.

6 **“(b) SERIOUS SECURITY INCIDENT PERMANENT COORDINATING COMMITTEE.—**

7 **“(1) IN GENERAL.—**The Serious Security Incident Investigation Permanent Coordinating Com-
 8 mittee (SSH/PCC) shall be convened to review each serious security incident. The SSH/PCC shall review
 9 the Report of Investigation prepared under section 303(b) and any other available reporting and evi-
 10 dence, including video recordings, and shall prepare the SSH/PCC Report under section 304(b).

11 **“(2) COMPOSITION.—**The SSH/PCC shall be primarily composed of Assistant Secretary-level personnel in the Department of State, and shall at a
 12 minimum include the following personnel:

13 **“(A) A representative of the Under Secretary of State for Management, who shall**
 14 **serve as chair of the SSH/PCC.**

15 **“(B) The Assistant Secretary responsible for the region where the incident occurred.**

1 “(C) The Assistant Secretary for Diplo-
2 matic Security.

3 “(D) The Assistant Secretary for the Bu-
4 reau of Intelligence and Research.

5 “(E) An Assistant Secretary-level rep-
6 resentative from any involved United States
7 Government department or agency.

8 “(F) Other personnel as determined nec-
9 essary or appropriate.

10 “(3) REPORT.—The SSH/PCC shall, upon com-
11 pleting review of the Report of Investigation, submit
12 to the Secretary of State a report on the incident
13 and outcomes, including any recommendations re-
14 lated to preventing or responding to similar inci-
15 dents.”.

16 **SEC. 4. SERIOUS SECURITY INCIDENT INVESTIGATION**
17 **PROCESS.**

18 Section 303 of the Diplomatic Security Act of 1986
19 (22 U.S.C. 4833) is amended to read as follows:

20 **“SEC. 303. SERIOUS SECURITY INCIDENT INVESTIGATION**
21 **PROCESS.**

22 “(a) INVESTIGATION PROCESS.—

23 “(1) INITIATION.—The Serious Security Inci-
24 dent Investigation process begins when a United
25 States mission reports a serious security incident at

1 the mission, including detailed information about the
2 incident, within three days after it occurred.

3 “(2) INVESTIGATION.—The Diplomatic Security
4 Service shall assemble an investigative team to carry
5 out the investigation of an incident reported under
6 paragraph (1). The investigation shall cover the fol-
7 lowing matters:

8 “(A) An assessment of what occurred, who
9 perpetrated or is suspected of having per-
10 petrated the attack, and whether applicable se-
11 curity procedures were followed.

12 “(B) In the event the security incident was
13 an attack on a United States diplomatic com-
14 pound, motorcade, residence, or other facility, a
15 determination whether adequate security coun-
16 termeasures were in effect.

17 “(C) If the incident was an attack on an
18 individual or group of officers, employees, or
19 family members under chief of mission author-
20 ity conducting approved operations or move-
21 ments outside the United States mission, a de-
22 termination whether proper security briefings
23 and procedures were in place and whether ade-
24 quate consideration of threat and weighing of
25 risk of the operation or movement took place.

1 ~~“(D) An assessment of whether any offi-~~
 2 ~~cials’ or employees’ failure to follow procedures~~
 3 ~~or perform their duties contributed to the secu-~~
 4 ~~rity incident.~~

5 ~~“(b) REPORT OF INVESTIGATION.—The investigative~~
 6 ~~team shall prepare a Report of Investigation at the conclu-~~
 7 ~~sion of the Serious Security Incident Investigation and~~
 8 ~~submit the report to the Serious Security Incident Inves-~~
 9 ~~tigation Permanent Coordinating Committee (SSII/PCC).~~
 10 ~~The report shall include the following elements:~~

11 ~~“(1) A detailed description of the matters set~~
 12 ~~forth in subparagraphs (A) through (D) of sub-~~
 13 ~~section (a)(2), including all related findings.~~

14 ~~“(2) An accurate account of the casualties, in-~~
 15 ~~jured, and damage resulting from the incident.~~

16 ~~“(3) A review of security procedures and direc-~~
 17 ~~tives in place at the time of the incident.~~

18 ~~“(c) CONFIDENTIALITY.—The investigative team~~
 19 ~~shall adopt such procedures with respect to confidentiality~~
 20 ~~as determined necessary, including procedures relating to~~
 21 ~~the conduct of closed proceedings or the submission and~~
 22 ~~use of evidence in camera, to ensure in particular the pro-~~
 23 ~~tection of classified information relating to national de-~~
 24 ~~fense, foreign policy, or intelligence matters. The Director~~
 25 ~~of National Intelligence shall establish the level of protec-~~

tion required for intelligence information and for information relating to intelligence personnel included in the report under subsection (b). The SSI/PCC shall determine the level of classification of the final report prepared under section 304(b), but shall incorporate the same confidentiality measures in such report to the maximum extent practicable.”.

SEC. 5. FINDINGS AND RECOMMENDATIONS BY THE SERIOUS SECURITY INCIDENT INVESTIGATION PERMANENT COORDINATING COMMITTEE.

Section 304 of the Diplomatic Security Act of 1986 (22 U.S.C. 4834) is amended to read as follows:

“SEC. 304. SERIOUS SECURITY INCIDENT INVESTIGATION PERMANENT COORDINATING COMMITTEE FINDINGS AND REPORT.

“(a) FINDINGS.—The Serious Security Incident Investigation Permanent Coordinating Committee (SSI/PCC) shall review the Report of Investigation prepared under section 303(b), all other evidence, reporting, and relevant information relating to a serious security incident at a United States mission abroad, including an examination of the facts and circumstances surrounding any serious injuries, loss of life, or significant destruction of property resulting from the incident and shall make the following written findings:

1 “(1) Whether the incident abroad was security
2 related and constituted a serious security incident.

3 “(2) If the incident involved a diplomatic com-
4 pound, motorcade, residence, or other mission facil-
5 ity, whether the security systems, security counter-
6 measures, and security procedures operated as in-
7 tended, and whether such systems worked to materi-
8 ally mitigate the attack or were found to be inad-
9 equate to mitigate the threat and attack.

10 “(3) If the incident involved an individual or
11 group of officers conducting an approved operation
12 outside the mission, a determination whether a valid
13 process was followed in evaluating the requested op-
14 eration and weighing the risk of the operation. Such
15 determination shall not seek to assign accountability
16 for the incident unless the SSH/PCC determines
17 that an official breached their duty.

18 “(4) An assessment of the impact of intelligence
19 and information availability, and whether the mis-
20 sion was aware of the general operating threat envi-
21 ronment or any more specific threat intelligence or
22 information and took that into account in ongoing
23 and specific operations.

1 “(5) Such other facts and circumstances that
2 may be relevant to the appropriate security manage-
3 ment of United States missions abroad.

4 “(b) SSH/PCC REPORT.—Not later than 30 days
5 after receiving the Report of Investigation prepared under
6 section 303(b), the SSH/PCC shall submit a report to the
7 Secretary of State including the findings under subsection
8 (a) and any related recommendations. Not later than 90
9 days after receiving the report, the Secretary of State shall
10 submit the report to the Committee on Foreign Relations
11 of the Senate and the Committee on Foreign Affairs of
12 the House of Representatives.

13 “(c) PERSONNEL RECOMMENDATIONS.—If in the
14 course of conducting an investigation under section 303,
15 the investigative team finds reasonable cause to believe
16 any individual described in section 303(a)(2)(D) has
17 breached the duty of that individual or finds lesser failures
18 on the part of an individual in the performance of his or
19 her duties related to the incident, it shall be reported to
20 the SSH/PCC. If the SSH/PCC find reasonable cause to
21 support the determination, it shall be reported to the Di-
22 rector General of the Foreign Service for appropriate ac-
23 tion.”.

1 **SEC. 6. RELATION TO OTHER PROCEEDINGS.**

2 Section 305 of the Diplomatic Security Act of 1986
3 (~~22 U.S.C. 4835~~) is amended—

4 (1) by inserting “(a) NO EFFECT ON EXISTING
5 REMEDIES OR DEFENSES.—” before “Nothing in
6 this title”; and

7 (2) by adding at the end the following new sub-
8 section:

9 “(b) FUTURE INQUIRIES.—Nothing in this title shall
10 be construed to preclude the Secretary of State from con-
11 vening a follow-up public board of inquiry to investigate
12 any security incident if the incident was of such magnitude
13 or significance that an internal process is deemed insuffi-
14 cient to understand and investigate the incident. All mate-
15 rials gathered during the procedures provided under this
16 title shall be provided to any related board of inquiry con-
17 vened by the Secretary.”.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Diplomatic Support and*
20 *Security Act of 2022”.*

21 **SEC. 2. FINDINGS.**

22 *Congress makes the following findings:*

23 (1) *A robust overseas diplomatic presence is part*
24 *of an effective foreign policy, particularly in volatile*
25 *environments where a flexible and timely diplomatic*

1 *response can be decisive in preventing and addressing*
2 *conflict.*

3 *(2) Diplomats routinely put themselves and their*
4 *families at great personal risk to serve their country*
5 *overseas where they face threats related to inter-*
6 *national terrorism, violent conflict, and public health,*
7 *among others.*

8 *(3) The Department of State has a remarkable*
9 *record of protecting personnel while enabling an enor-*
10 *mous amount of global diplomatic activity, often in*
11 *insecure and remote places and facing a variety of*
12 *evolving risks and threats. With support from Con-*
13 *gress, the Department of State has revised policy, im-*
14 *proved physical security through retrofitting and re-*
15 *placing old facilities, deployed additional security*
16 *personnel and armored vehicles, and greatly enhanced*
17 *training requirements and facilities, including the*
18 *new Foreign Affairs Security Training Center in*
19 *Blackstone, Virginia.*

20 *(4) Diplomatic missions rely on robust staffing*
21 *and ambitious external engagement to advance*
22 *United States interests as diverse as competing with*
23 *China's malign influence around the world, fighting*
24 *terrorism and transnational organized crime, pre-*
25 *venting and addressing violent conflict and humani-*

1 *tarian disasters, promoting United States businesses*
2 *and trade, protecting the rights of marginalized*
3 *groups, addressing climate change, and preventing*
4 *pandemic disease.*

5 *(5) However, efforts to protect personnel overseas*
6 *have often resulted in inhibiting diplomatic activity*
7 *and limiting engagement between embassy personnel*
8 *and local governments and populations.*

9 *(6) Given that Congress currently provides an-*
10 *ual appropriations in excess of \$1,900,000,000 for*
11 *embassy security, construction, and maintenance, the*
12 *Department of State should be able ensure a robust*
13 *overseas presence without inhibiting the ability of*
14 *diplomats to—*

15 *(A) meet outside United States secured fa-*
16 *cilities with foreign leaders to explain, defend,*
17 *and advance United States priorities;*

18 *(B) understand and report on foreign polit-*
19 *ical, social, and economic conditions through*
20 *meeting and interacting with community offi-*
21 *cials outside of United States facilities;*

22 *(C) provide United States citizen services;*
23 *and*

24 *(D) collaborate and, at times, compete with*
25 *other diplomatic missions, particularly those,*

1 *such as the People’s Republic of China, that do*
2 *not restrictions on meeting locations.*

3 *(7) Given these stakes, Congress has a responsi-*
4 *bility to empower, support, and hold the Department*
5 *of State accountable for implementing an aggressive*
6 *strategy to ensure a robust overseas presence that*
7 *mitigates potential risks and adequately considers the*
8 *myriad direct and indirect consequences of a lack of*
9 *diplomatic presence.*

10 **SEC. 3. ENCOURAGING EXPEDITIONARY DIPLOMACY.**

11 *(a) PURPOSE.—Subsection (b) of section 102 of the*
12 *Diplomatic Security Act (22 U.S.C. 4801(b)) is amended—*

13 *(1) by amending paragraph (3) to read as fol-*
14 *lows:*

15 *“(3) to promote strengthened security measures,*
16 *institutionalize a culture of learning, and, in the case*
17 *of apparent gross negligence or breach of duty, rec-*
18 *ommend that the Secretary investigate accountability*
19 *for United States Government personnel with secu-*
20 *rity-related responsibilities;”;*

21 *(2) by redesignating paragraphs (4) and (5) as*
22 *paragraphs (5) and (6), respectively; and*

23 *(3) by inserting after paragraph (3) the fol-*
24 *lowing new paragraph:*

1 “(4) to support a culture of risk management,
 2 instead of risk avoidance, that enables the Depart-
 3 ment of State to pursue its vital goals with full
 4 knowledge that it is not desirable nor possible for the
 5 Department to avoid all risks;”.

6 (b) *BRIEFINGS ON EMBASSY SECURITY*.—Section
 7 105(a) of the Diplomatic Security Act (22 U.S.C. 4804(a))
 8 is amended in paragraph (1)—

9 (1) by striking “any plans to open or reopen a
 10 high risk, high threat post” and inserting “progress
 11 towards opening or reopening high risk, high threat
 12 post, and the risk to national security of the contin-
 13 ued closure or any suspension of operations and re-
 14 maining barriers to doing so”;

15 (2) in subparagraph (A), by inserting “the risk
 16 to United States national security of the post’s con-
 17 tinued closure or suspension of operations,” after “na-
 18 tional security of the United States,”; and

19 (3) in subparagraph (C), by inserting “the type
 20 and level of security threats such post could encoun-
 21 ter, and” before “security ‘tripwires’”.

22 **SEC. 4. SECURITY REVIEW COMMITTEES.**

23 (a) *IN GENERAL*.—Section 301 of the Diplomatic Se-
 24 curity Act of 1986 (22 U.S.C. 4831) is amended—

(1) in the section heading, by striking “**ACCOUNTABILITY REVIEW BOARDS**” and inserting “**SECURITY REVIEW COMMITTEES**”;

(2) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) *CONVENING THE SECURITY REVIEW COMMITTEE.—In any case of a serious security incident involving loss of life, serious injury, or significant destruction of property at, or related to, a United States Government diplomatic mission abroad (a ‘Serious Security Incident’), and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad, the Secretary of State shall convene a Security Review Committee (SRC), which shall issue a report providing a full account of what occurred, consistent with section 304.’*”;

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

“(2) *COMMITTEE COMPOSITION.—The Secretary shall designate a Chairperson and may designate additional personnel of commensurate seniority to serve*

1 *on the SRC. Members of the SRC shall, at a min-*
 2 *imum, include the following personnel:*

3 *“(A) The Director of the Office of Manage-*
 4 *ment Strategy and Solutions (M/SS).*

5 *“(B) The Assistant Secretary responsible for*
 6 *the region where the incident occurred.*

7 *“(C) The Assistant Secretary for Diplo-*
 8 *matic Security.*

9 *“(D) The Assistant Secretary for the Bu-*
 10 *reau of Intelligence and Research.*

11 *“(E) An Assistant Secretary-level represent-*
 12 *ative from any involved United States Govern-*
 13 *ment department or agency.*

14 *“(F) Other personnel as determined nec-*
 15 *essary or appropriate.”;*

16 *(D) in paragraph (3), as redesignated by*
 17 *subparagraph (B)—*

18 *(i) in the paragraph heading, by strik-*
 19 *ing “DEPARTMENT OF DEFENSE FACILITIES*
 20 *AND PERSONNEL” and inserting “EXCEP-*
 21 *TIONS TO CONVENING AN SRC”;*

22 *(ii) by striking “The Secretary of*
 23 *State” and all that follows through “con-*
 24 *vene a Board in the case” and inserting the*
 25 *following:*

1 “(A) *IN GENERAL.*—*The Secretary of State*
 2 *is not required to convene an SRC—*

3 “(i) *if the Secretary determines that*
 4 *the incident involves only causes unrelated*
 5 *to security, such as when the security at*
 6 *issue is outside of the scope of the Secretary*
 7 *of State’s security responsibility as defined*
 8 *in section 103;*

9 “(ii) *in a case where operational con-*
 10 *trol of overseas security functions has been*
 11 *delegated to another agency consistent with*
 12 *section 106;*

13 “(iii) *if the incident is a cybersecurity*
 14 *incident and is covered by other review*
 15 *mechanisms; or*

16 “(iv) *in the case*”; and
 17 (iii) *by striking “In any such case”*
 18 *and inserting the following:*

19 “(B) *DEPARTMENT OF DEFENSE INVESTIGA-*
 20 *TIONS.—In the case of an incident described in*
 21 *subparagraph (A)(iv)*”; and

22 (E) *by adding at the end the following new*
 23 *paragraph:*

24 “(5) *REGULATIONS.*—*The Secretary of State*
 25 *shall promulgate regulations defining the membership*

1 *and operating procedures for the SRC and provide*
 2 *such guidance to the Chairmen and ranking members*
 3 *of the Committee on Foreign Relations of the Senate*
 4 *and the Committee on Foreign Affairs of the House*
 5 *of Representatives.”;*

6 *(3) in subsection (b)—*

7 *(A) in the subsection heading, by striking*
 8 *“BOARDS” and inserting “SRCs”; and*

9 *(B) by amending paragraph (1) to read as*
 10 *follows:*

11 *“(1) IN GENERAL.—The Secretary of State shall*
 12 *convene an SRC not later than 60 days after the oc-*
 13 *currence of an incident described in subsection (a)(1),*
 14 *or 60 days after the Department first becomes aware*
 15 *of such an incident, whichever is earlier, except that*
 16 *the 60-day period for convening an SRC may be ex-*
 17 *tended for one additional 60-day period if the Sec-*
 18 *retary determines that the additional period is nec-*
 19 *essary.”; and*

20 *(4) in subsection (c)—*

21 *(A) by striking “convenes a Board” and in-*
 22 *serting “convenes an SRC”;*

23 *(B) by inserting “and ranking member”*
 24 *after “chairman”; and*

1 (C) by striking “Speaker” and all that fol-
 2 lows through the period at the end of paragraph
 3 (3) and inserting “chairman and ranking mem-
 4 ber of the Committee of Foreign Affairs of the
 5 House of Representatives.”.

6 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—
 7 Section 302 of the Diplomatic Security Act (22 U.S.C.
 8 4832) is amended—

9 (1) in the section heading, by striking “**AC-**
 10 **COUNTABILITY REVIEW BOARD**” and inserting
 11 “**SECURITY REVIEW COMMITTEE**”; and

12 (2) by striking “a Board” each place it appears
 13 and inserting “an SRC”.

14 **SEC. 5. SERIOUS SECURITY INCIDENT INVESTIGATION**
 15 **PROCESS.**

16 Section 303 of the Diplomatic Security Act of 1986
 17 (22 U.S.C. 4833) is amended to read as follows:

18 **“SEC. 303. SERIOUS SECURITY INCIDENT INVESTIGATION**
 19 **PROCESS.**

20 “(a) *INVESTIGATION PROCESS.*—

21 “(1) *INITIATION UPON REPORTED INCIDENT.*—

22 *An investigation of a Serious Security Incident, as*
 23 *described in section 301(a)(1), shall begin when a*
 24 *United States mission reports a Serious Security In-*
 25 *cident at the mission. Such a report shall include an*

1 *initial report of the incident and shall be made with-*
2 *in three days of the incident, when feasible.*

3 “(2) *INVESTIGATION.*—*Not later than 10 days*
4 *following a report under paragraph (1), the Secretary*
5 *shall direct the Diplomatic Security Service to assem-*
6 *ble an investigative team to investigate the incident*
7 *and independently establish what occurred. The inves-*
8 *tigation shall cover—*

9 “(A) *an assessment of what occurred, who*
10 *perpetrated or is suspected of having perpetrated*
11 *the serious security incident, and whether appli-*
12 *cable security procedures were followed;*

13 “(B) *in the event the Serious Security Inci-*
14 *dent involved a United States diplomatic com-*
15 *pound, motorcade, residence, or other facility, an*
16 *assessment of whether adequate security counter-*
17 *measures were in effect based on known threat at*
18 *the time of the incident;*

19 “(C) *if the incident involved an individual*
20 *or group of officers, employees, or family mem-*
21 *bers under chief of mission security responsi-*
22 *bility conducting approved operations or move-*
23 *ments outside the United States mission, an as-*
24 *essment of whether proper security briefings and*

1 *procedures were in place and weighing of risk of*
2 *the operation or movement took place; and*

3 “(D) *an assessment of whether the failure of*
4 *any officials or employees to follow procedures or*
5 *perform their duties contributed to the security*
6 *incident.*

7 “(3) *INVESTIGATIVE TEAM.—The investigative*
8 *team shall consist of individuals from the Diplomatic*
9 *Security Service who shall provide an independent*
10 *examination of the facts surrounding the incident and*
11 *what occurred. The Secretary or the Secretary’s des-*
12 *ignee shall review the makeup of the investigative*
13 *team for a conflict, appearance of conflict, or lack of*
14 *independence that could undermine the results of the*
15 *investigation and may remove or replace any mem-*
16 *bers of the team to avoid such an outcome.*

17 “(b) *REPORT OF INVESTIGATION.—The investigative*
18 *team shall prepare a Report of Investigation at the conclu-*
19 *sion of the investigation and submit the report to the SRC*
20 *no later than 90 days after the occurrence of a Serious Secu-*
21 *rity Incident. The report shall include the following ele-*
22 *ments:*

23 “(1) *A detailed description of the matters set*
24 *forth in subparagraphs (A) through (D) of subsection*
25 *(a)(2), including all related findings.*

1 “(2) *A complete and an accurate account of the*
 2 *casualties, injuries, and damage resulting from the*
 3 *incident.*

4 “(3) *A review of security procedures and direc-*
 5 *tives in place at the time of the incident.*

6 “(c) *CONFIDENTIALITY.—The investigative team shall*
 7 *adopt such procedures with respect to confidentiality as de-*
 8 *termined necessary, including procedures relating to the*
 9 *conduct of closed proceedings or the submission and use of*
 10 *evidence in camera, to ensure in particular the protection*
 11 *of classified information relating to national defense, for-*
 12 *eign policy, or intelligence matters. The Director of Na-*
 13 *tional Intelligence shall establish the level of protection re-*
 14 *quired for intelligence information and for information re-*
 15 *lating to intelligence personnel included in the report under*
 16 *subsection (b). The SRC shall determine the level of classi-*
 17 *fication of the final report prepared under section 304(b),*
 18 *but shall incorporate the same confidentiality measures in*
 19 *such report to the maximum extent practicable.”.*

20 **SEC. 6. FINDINGS AND RECOMMENDATIONS BY THE SECU-**
 21 **RITY REVIEW COMMITTEE.**

22 *Section 304 of the Diplomatic Security Act of 1986*
 23 *(22 U.S.C. 4834) is amended to read as follows:*

1 **“SEC. 304. SECURITY REVIEW COMMITTEE FINDINGS AND**
2 **REPORT.**

3 “(a) *FINDINGS.—The Security Review Committee*
4 *shall review the Report of Investigation prepared under sec-*
5 *tion 303(b), all other evidence, reporting, and relevant in-*
6 *formation relating to a serious security incident at a*
7 *United States mission abroad, including an examination*
8 *of the facts and circumstances surrounding any serious in-*
9 *juries, loss of life, or significant destruction of property re-*
10 *sulting from the incident and shall make the following writ-*
11 *ten findings:*

12 “(1) *Whether the incident was security related*
13 *and constituted a serious security incident.*

14 “(2) *If the incident involved a diplomatic com-*
15 *pound, motorcade, residence, or other mission facility,*
16 *whether the security systems, security counter-*
17 *measures, and security procedures operated as in-*
18 *tended, and whether such systems worked to materi-*
19 *ally mitigate the attack or were found to be inad-*
20 *equately to mitigate the threat and attack.*

21 “(3) *If the incident involved an individual or*
22 *group of officers conducting an approved operation*
23 *outside the mission, a determination whether a valid*
24 *process was followed in evaluating the requested oper-*
25 *ation and weighing the risk of the operation. Such de-*
26 *termination shall not seek to assign accountability for*

1 *the incident unless the SRC determines that an offi-*
 2 *cial breached their duty.*

3 *“(4) An assessment of the impact of intelligence*
 4 *and information availability, and whether the mis-*
 5 *sion was aware of the general operating threat envi-*
 6 *ronment or any more specific threat intelligence or*
 7 *information and took that into account in ongoing*
 8 *and specific operations.*

9 *“(5) Such other facts and circumstances that*
 10 *may be relevant to the appropriate security manage-*
 11 *ment of United States missions abroad.*

12 *“(b) SRC REPORT.—Not later than 60 days after re-*
 13 *ceiving the Report of Investigation prepared under section*
 14 *303(b), the SRC shall submit a report to the Secretary of*
 15 *State including the findings under subsection (a) and any*
 16 *related recommendations. Not later than 90 days after re-*
 17 *ceiving the report, the Secretary of State shall submit the*
 18 *report to the Committee on Foreign Relations of the Senate*
 19 *and the Committee on Foreign Affairs of the House of Rep-*
 20 *resentatives.*

21 *“(c) PERSONNEL RECOMMENDATIONS.—If in the*
 22 *course of conducting an investigation under section 303, the*
 23 *investigative team finds reasonable cause to believe any in-*
 24 *dividual described in section 303(a)(2)(D) has breached the*
 25 *duty of that individual or finds lesser failures on the part*

1 *of an individual in the performance of his or her duties*
 2 *related to the incident, it shall be reported to the SRC. If*
 3 *the SRC find reasonable cause to support the determina-*
 4 *tion, it shall be reported to the Secretary for appropriate*
 5 *action.”.*

6 **SEC. 7. RELATION TO OTHER PROCEEDINGS.**

7 *Section 305 of the Diplomatic Security Act of 1986*
 8 *(22 U.S.C. 4835) is amended—*

9 *(1) by inserting “(a) NO EFFECT ON EXISTING*
 10 *REMEDIES OR DEFENSES.—” before “Nothing in this*
 11 *title”; and*

12 *(2) by adding at the end the following new sub-*
 13 *section:*

14 *“(b) FUTURE INQUIRIES.—Nothing in this title shall*
 15 *be construed to preclude the Secretary of State from con-*
 16 *vening a follow-up public board of inquiry to investigate*
 17 *any security incident if the incident was of such magnitude*
 18 *or significance that an internal process is deemed insuffi-*
 19 *cient to understand and investigate the incident. All mate-*
 20 *rials gathered during the procedures provided under this*
 21 *title shall be provided to any related board of inquiry con-*
 22 *vened by the Secretary.”.*

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2D Session

S. 816

A BILL

To amend the Diplomatic Security Act of 1986 to provide for improved serious security incident investigations, and for other purposes.

APRIL 4 (legislative day, MARCH 31), 2022
Reported with an amendment