

1 **SEC. 529B. STUDY AND REPORT ON ADMINISTRATIVE SEPA-**  
2 **RATION BOARDS.**

3 (a) IN GENERAL.—The Comptroller General of the  
4 United States shall conduct a study on the use of adminis-  
5 trative separation boards within the Armed Forces.

6 (b) ELEMENTS.—The study under subsection (a)  
7 shall evaluate—

8 (1) the process each Armed Force uses to con-  
9 vene administrative separation boards, including the  
10 process used to select the board president, the re-  
11 corder, the legal advisor, and board members; and

12 (2) the effectiveness of the operations of such  
13 boards.

14 (c) REPORT.—Not later than one year after the date  
15 of the enactment of this Act, the Comptroller General shall  
16 submit to the Committees on Armed Services of the Sen-  
17 ate and the House of Representatives a report on the re-  
18 sults of the study conducted under subsection (a).

19 **Subtitle D—Military Justice**  
20 **Reform**

21 **PART 1—SPECIAL TRIAL COUNSEL**

22 **SEC. 531. SPECIAL TRIAL COUNSEL.**

23 (a) IN GENERAL.—Subchapter V of chapter 47 of  
24 title 10, United States Code, is amended by inserting after  
25 section 824 (article 24 of the Uniform Code of Military  
26 Justice) the following new section:

1 **“§ 824a. Art 24a. Special trial counsel**

2 “(a) **DETAIL OF SPECIAL TRIAL COUNSEL.**—Each  
3 Secretary concerned shall promulgate regulations for the  
4 detail of commissioned officers to serve as special trial  
5 counsel.

6 “(b) **QUALIFICATIONS.**—A special trial counsel shall  
7 be a commissioned officer who—

8 “(1)(A) is a member of the bar of a Federal  
9 court or a member of the bar of the highest court  
10 of a State; and

11 “(B) is certified to be qualified, by reason of  
12 education, training, experience, and temperament,  
13 for duty as a special trial counsel by—

14 “(i) the Judge Advocate General of the  
15 armed force of which the officer is a member;  
16 or

17 “(ii) in the case of the Marine Corps, the  
18 Staff Judge Advocate to the Commandant of  
19 the Marine Corps; and

20 “(2) in the case of a lead special trial counsel  
21 appointed pursuant to section 1044f(a)(2) of this  
22 title, is in a grade no lower than O-7.

23 “(c) **DUTIES AND AUTHORITIES.**—

24 “(1) **IN GENERAL.**—Special trial counsel shall  
25 carry out the duties described in this chapter and

1 any other duties prescribed by the Secretary con-  
2 cerned, by regulation.

3 “(2) DETERMINATION OF COVERED OFFENSE;  
4 RELATED CHARGES.—

5 “(A) AUTHORITY.—A special trial counsel  
6 shall have exclusive authority to determine if a  
7 reported offense is a covered offense and shall  
8 exercise authority over any such offense in ac-  
9 cordance with this chapter. Any determination  
10 to prefer or refer charges shall not act to dis-  
11 qualify the special trial counsel as an accuser.

12 “(B) KNOWN AND RELATED OFFENSES.—  
13 If a special trial counsel determines that a re-  
14 ported offense is a covered offense, the special  
15 trial counsel may also exercise authority over  
16 any offense that the special trial counsel deter-  
17 mines to be related to the covered offense and  
18 any other offense alleged to have been com-  
19 mitted by a person alleged to have committed  
20 the covered offense.

21 “(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—  
22 Subject to paragraph (4), with respect to charges  
23 and specifications alleging any offense over which a  
24 special trial counsel exercises authority, a special

1 trial counsel shall have exclusive authority to, in ac-  
2 cordance with this chapter—

3 “(A) on behalf of the Government, with-  
4 draw or dismiss the charges and specifications  
5 or make a motion to withdraw or dismiss the  
6 charges and specifications;

7 “(B) refer the charges and specifications  
8 for trial by a special or general court-martial;

9 “(C) enter into a plea agreement; and

10 “(D) determine if an ordered rehearing is  
11 impracticable.

12 “(4) BINDING DETERMINATION.—The deter-  
13 mination of a special trial counsel to refer charges  
14 and specifications to a court-martial for trial shall  
15 be binding on any applicable convening authority for  
16 the referral of such charges and specifications.

17 “(5) DEFERRAL TO COMMANDER OR CON-  
18 VENING AUTHORITY.—If a special trial counsel exer-  
19 cises authority over an offense and elects not to pre-  
20 fer charges and specifications for such offense or,  
21 with respect to charges and specifications for such  
22 offense preferred by a person other than a special  
23 trial counsel, elects not to refer such charges and  
24 specifications, a commander or convening authority  
25 may exercise any of the authorities of such com-

1       mander or convening authority under this chapter  
2       with respect to such offense, except that such com-  
3       mander or convening authority may not refer  
4       charges and specifications for a covered offense for  
5       trial by special or general court-martial.”.

6       (b) TABLE OF SECTIONS AMENDMENT.—The table of  
7       sections at the beginning of subchapter V of chapter 47  
8       of title 10, United States Code (the Uniform Code of Mili-  
9       tary Justice), is amended by inserting after the item relat-  
10      ing to section 824 (article 24) the following new item:

    “824a. Art 24a. Special trial counsel.”.

11      (c) REPORT REQUIRED.—

12           (1) IN GENERAL.—Not later than one year  
13      after the date of the enactment of this Act, each  
14      Secretary concerned shall submit to the Committees  
15      on Armed Services of the Senate and the House of  
16      Representatives a report setting forth the plan of  
17      the Secretary for detailing officers to serve as special  
18      trial counsel pursuant to section 824a of title 10,  
19      United States Code (article 24a of the Uniform  
20      Code of Military Justice) (as added by subsection  
21      (a) of this section).

22           (2) ELEMENTS.—Each report under paragraph  
23      (1) shall include the following—

24           (A) The plan of the Secretary concerned—

25           (i) for staffing billets for—

1 (I) special trial counsel who meet  
2 the requirements set forth in section  
3 824a of title 10, United States Code  
4 (article 24a of the Uniform Code of  
5 Military Justice) (as added by sub-  
6 section (a) of this section); and

7 (II) defense counsel for cases in-  
8 volving covered offenses; and

9 (ii) for supporting and ensuring the  
10 continuing professional development of  
11 military justice practitioners.

12 (B) An estimate of the resources needed to  
13 implement such section 824a (article 24a).

14 (C) An explanation of other staffing re-  
15 quired to implement such section 824a (article  
16 24a), including staffing levels required for mili-  
17 tary judges, military magistrates, military de-  
18 fense attorneys, and paralegals and other sup-  
19 port staff.

20 (D) A description of how the use of special  
21 trial counsel will affect the military justice sys-  
22 tem as a whole.

23 (E) A description of how the Secretary  
24 concerned plans to place appropriate emphasis  
25 and value on litigation experience for judge ad-

1           vocates in order to ensure judge advocates are  
2           experienced, prepared, and qualified to handle  
3           covered offenses, both as special trial counsel  
4           and as defense counsel. Such a description shall  
5           address promotion considerations and explain  
6           how the Secretary concerned plans to instruct  
7           promotion boards to value litigation experience.

8           (F) Any additional resources, authorities,  
9           or information that each Secretary concerned  
10          deems relevant or important to the implementa-  
11          tion of the requirements of this title.

12          (3) DEFINITIONS.—In this subsection—

13                (A) The term “Secretary concerned” has  
14                the meaning given that term in section 101(a)  
15                of title 10, United States Code.

16                (B) The term “covered offense” has the  
17                meaning given that term in section 801(17) of  
18                title 10, United States Code (as added by sec-  
19                tion 533 of this part).

20   **SEC. 532. POLICIES WITH RESPECT TO SPECIAL TRIAL**  
21                               **COUNSEL.**

22          (a) IN GENERAL.—Chapter 53 of title 10, United  
23          States Code, is amended by inserting after section 1044e  
24          the following new section:

1 **“§ 1044f. Policies with respect to special trial counsel**

2 “(a) POLICIES REQUIRED.—The Secretary of De-  
3 fense shall establish policies with respect to the appro-  
4 priate mechanisms and procedures that the Secretaries of  
5 the military departments shall establish relating to the ac-  
6 tivities of special trial counsel, including expected mile-  
7 stones for such Secretaries to fully implement such mecha-  
8 nisms and procedures. The policies shall—

9 “(1) provide for the establishment of a dedi-  
10 cated office within each military service from which  
11 office the activities of the special trial counsel of the  
12 military service concerned shall be supervised and  
13 overseen;

14 “(2) provide for the appointment of one lead  
15 special trial counsel, who shall—

16 “(A) be a judge advocate of that service in  
17 a grade no lower than O-7, with significant ex-  
18 perience in military justice;

19 “(B) be responsible for the overall super-  
20 vision and oversight of the activities of the spe-  
21 cial trial counsel of that service; and

22 “(C) report directly to the Secretary con-  
23 cerned, without intervening authority;

24 “(3) ensure that within each office created pur-  
25 suant to paragraph (1), the special trial counsel and  
26 other personnel assigned or detailed to the office—



1           “(A) are independent of the military chains  
2 of command of both the victims and those ac-  
3 cused of covered offenses and any other of-  
4 fenses over which a special trial counsel at any  
5 time exercises authority in accordance with sec-  
6 tion 824a of this title (article 24a); and

7           “(B) conduct assigned activities free from  
8 unlawful or unauthorized influence or coercion;

9           “(4) provide that special trial counsel shall be  
10 well-trained, experienced, highly skilled, and com-  
11 petent in handling cases involving covered offenses;  
12 and

13           “(5) provide that commanders of the victim and  
14 the accused in a case involving a covered offense  
15 shall have the opportunity to provide input to the  
16 special trial counsel regarding case disposition, but  
17 that the input is not binding on the special trial  
18 counsel.

19           “(b) UNIFORMITY.—The Secretary of Defense shall  
20 ensure that any lack of uniformity in the implementation  
21 of policies, mechanisms, and procedures established under  
22 subsection (a) does not render unconstitutional any such  
23 policy, mechanism, or procedure.

1           “(c) **MILITARY SERVICE DEFINED.**—In this section,  
2 the term ‘military service’ means the Army, Navy, Air  
3 Force, Marine Corps, and Space Force.”.

4           (b) **CLERICAL AMENDMENT.**—The table of sections  
5 at the beginning of chapter 53 of title 10, United States  
6 Code, is amended by inserting after the item relating to  
7 section 1044e the following new item:

          “1044f. Policies with respect to special trial counsel.”.

8           (c) **QUARTERLY BRIEFING.**—Beginning not later  
9 than 180 days after the date of the enactment of this Act,  
10 and at the beginning of each fiscal quarter thereafter until  
11 the policies established pursuant to section 1044f(a) of  
12 title 10, United States Code (as added by subsection (a))  
13 and the mechanisms and procedures to which they apply  
14 are fully implemented and operational, the Secretary of  
15 Defense and the Secretaries of the military departments  
16 shall jointly provide to the Committee on Armed Services  
17 of the Senate and the Committee on Armed Services of  
18 the House of Representatives a briefing detailing the ac-  
19 tions taken and progress made by the Office of the Sec-  
20 retary of Defense and each of the military departments  
21 in meeting the milestones established as required by such  
22 section.

1 **SEC. 533. DEFINITION OF MILITARY MAGISTRATE, COV-**  
2 **ERED OFFENSE, AND SPECIAL TRIAL COUN-**  
3 **SEL.**

4 Section 801 of title 10, United States Code (article  
5 1 of the Uniform Code of Military Justice), is amended—

6 (1) by inserting after paragraph (10) the fol-  
7 lowing new paragraph:

8 “(11) The term ‘military magistrate’ means a  
9 commissioned officer certified for duty as a military  
10 magistrate in accordance with section 826a of this  
11 title (article 26a).”; and

12 (2) by adding at the end the following new  
13 paragraphs:

14 “(17) The term ‘covered offense’ means—

15 “(A) an offense under section 917a (article  
16 117a), section 918 (article 118), section 919  
17 (article 119), section 920 (article 120), section  
18 920b (article 120b), section 920c (article 120c),  
19 section 925 (article 125), section 928b (article  
20 128b), section 930 (article 130), section 932  
21 (article 132), or the standalone offense of child  
22 pornography punishable under section 934 (ar-  
23 ticle 134) of this title;

24 “(B) a conspiracy to commit an offense  
25 specified in subparagraph (A) as punishable  
26 under section 881 of this title (article 81);

1           “(C) a solicitation to commit an offense  
2           specified in subparagraph (A) as punishable  
3           under section 882 of this title (article 82); or

4           “(D) an attempt to commit an offense  
5           specified in subparagraph (A), (B), or (C) as  
6           punishable under section 880 of this title (arti-  
7           cle 80).

8           “(18) The term ‘special trial counsel’ means a  
9           judge advocate detailed as a special trial counsel in  
10          accordance with section 824a of this title (article  
11          24a) and includes a judge advocate appointed as a  
12          lead special trial counsel pursuant to section  
13          1044f(a)(2) of this title.”.

14 **SEC. 534. CLARIFICATION RELATING TO WHO MAY CON-**  
15 **VENE COURTS-MARTIAL.**

16          (a) **GENERAL COURTS-MARTIAL.**—Section 822(b) of  
17 title 10, United States Code (article 22(b) of the Uniform  
18 Code of Military Justice), is amended—

19           (1) by striking “If any” and inserting “(1) If  
20           any”; and

21           (2) by adding at the end the following new  
22           paragraph:

23           “(2) A commanding officer shall not be considered  
24           an accuser solely due to the role of the commanding officer  
25           in convening a general court-martial to which charges and

1 specifications were referred by a special trial counsel in  
2 accordance with this chapter.”.

3 (b) SPECIAL COURTS-MARTIAL.—Section 823(b) of  
4 title 10, United States Code (article 23(b) of the Uniform  
5 Code of Military Justice), is amended—

6 (1) by striking “If any” and inserting “(1) If  
7 any”; and

8 (2) by adding at the end the following new  
9 paragraph:

10 “(2) A commanding officer shall not be considered  
11 an accuser solely due to the role of the commanding officer  
12 in convening a special court-martial to which charges and  
13 specifications were referred by a special trial counsel in  
14 accordance with this chapter.”.

15 **SEC. 535. DETAIL OF TRIAL COUNSEL.**

16 Section 827 of title 10, United States Code (article  
17 27 of the Uniform Code of Military Justice), is amended  
18 by adding at the end the following new subsection:

19 “(e) For each general and special court-martial for  
20 which charges and specifications were referred by a special  
21 trial counsel—

22 “(1) a special trial counsel shall be detailed as  
23 trial counsel; and

24 “(2) a special trial counsel may detail other  
25 trial counsel as necessary who are judge advocates.”.

1 **SEC. 536. PRELIMINARY HEARING.**

2 (a) **DETAIL OF HEARING OFFICER; WAIVER.**—Sub-  
3 section (a)(1) of section 832 of title 10, United States  
4 Code (article 32 of the Uniform Code of Military Justice),  
5 is amended—

6 (1) in subparagraph (A), by striking “hearing  
7 officer” and all that follows through the period at  
8 the end and inserting “hearing officer detailed in ac-  
9 cordance with subparagraph (C).”;

10 (2) in subparagraph (B), by striking “written  
11 waiver” and all that follows through the period at  
12 the end and inserting the following: “written waiver  
13 to—

14 “(i) except as provided in clause (ii), the  
15 convening authority and the convening author-  
16 ity determines that a hearing is not required;  
17 and

18 “(ii) with respect to charges and specifica-  
19 tions over which the special trial counsel is ex-  
20 ercising authority in accordance with section  
21 824a of this title (article 24a), the special trial  
22 counsel and the special trial counsel determines  
23 that a hearing is not required.”; and

24 (3) by adding at the end the following new sub-  
25 paragraph:

1           “(C)(i) Except as provided in clause (ii), the  
2 convening authority shall detail a hearing officer.

3           “(ii) If a special trial counsel is exercising au-  
4 thority over the charges and specifications subject to  
5 a preliminary hearing under this section (article),  
6 the special trial counsel shall request a hearing offi-  
7 cer and a hearing officer shall be provided by the  
8 convening authority, in accordance with regulations  
9 prescribed by the President.”.

10       (b) REPORT OF PRELIMINARY HEARING OFFICER.—  
11 Subsection (c) of such section is amended—

12           (1) in the heading, by inserting “OR SPECIAL  
13 TRIAL COUNSEL” after “CONVENING AUTHORITY”;  
14 and

15           (2) in the matter preceding paragraph (1) by  
16 striking “to the convening authority” and inserting  
17 “to the convening authority or, in the case of a pre-  
18 liminary hearing in which the hearing officer is pro-  
19 vided at the request of a special trial counsel to the  
20 special trial counsel,”.

21 **SEC. 537. ADVICE TO CONVENING AUTHORITY BEFORE RE-**  
22 **FERRAL FOR TRIAL.**

23       Section 834 of title 10, United States Code (article  
24 34 of the Uniform Code of Military Justice), is amended—

1           (1) in subsection (a)(1), by striking “Before re-  
2       ferral” and inserting “Subject to subsection (c), be-  
3       fore referral”

4           (2) in subsection (b), by striking “Before refer-  
5       ral” and inserting “Subject to subsection (c), before  
6       referral”;

7           (3) by redesignating subsections (c) and (d) as  
8       subsections (d) and (e) respectively;

9           (4) by inserting after subsection (b) the fol-  
10       lowing new subsection:

11       “(c) COVERED OFFENSES.—A referral to a general  
12       or special court-martial for trial of charges and specifica-  
13       tions over which a special trial counsel exercises authority  
14       may only be made—

15           “(1) by a special trial counsel, subject to a spe-  
16       cial trial counsel’s written determination accom-  
17       panying the referral that—

18           “(A) each specification under a charge al-  
19       leges an offense under this chapter;

20           “(B) there is probable cause to believe that  
21       the accused committed the offense charged; and

22           “(C) a court-martial would have jurisdic-  
23       tion over the accused and the offense; or

24           “(2) in the case of charges and specifications  
25       that do not allege a covered offense and as to which



1 a special trial counsel declines to prefer or, in the  
2 case of charges and specifications preferred by a  
3 person other than a special trial counsel, refer  
4 charges, by the convening authority in accordance  
5 with this section.”; and

6 (5) in subsection (e), as so redesignated, by in-  
7 serting “or, with respect to charges and specifica-  
8 tions over which a special trial counsel exercises au-  
9 thority in accordance with section 824a of this title  
10 (article 24a), a special trial counsel,” after “con-  
11 vening authority”.

12 **SEC. 538. FORMER JEOPARDY.**

13 Section 844(c) of title 10, United States Code (article  
14 44(c) of the Uniform Code of Military Justice), is amend-  
15 ed by inserting “or the special trial counsel” after “the  
16 convening authority” each place it appears.

17 **SEC. 539. PLEA AGREEMENTS.**

18 (a) **AUTHORITY TO ENTER INTO AGREEMENTS.—**  
19 Subsection (a) of section 853a of title 10, United States  
20 Code (article 53a of the Uniform Code of Military Jus-  
21 tice), is amended—

22 (1) in paragraph (1), by striking “At any time”  
23 and inserting “Subject to paragraph (3), at any  
24 time”; and



1           (2) by striking “impractical” and inserting “im-  
2           practicable”; and

3           (3) by adding at the end the following new  
4           clause:

5                   “(ii) CASES REFERRED BY SPECIAL TRIAL  
6           COUNSEL.—If a case was referred to trial by  
7           a special trial counsel, a special trial counsel  
8           shall determine if a rehearing is impracticable  
9           and shall dismiss the charges if the special trial  
10          counsel so determines.”.

11          (b) COURTS OF CRIMINAL APPEALS.—Section  
12          866(f)(1)(C) of title 10, United States Code (article  
13          66(f)(1)(C) of the Uniform Code of Military Justice), is  
14          amended—

15               (1) by striking “IMPRACTICABLE.—If the Court  
16          of Criminal Appeals” and inserting the following:  
17          “IMPRACTICABLE.—

18                   “(i) IN GENERAL.—Subject to clause (ii),  
19          if the Court of Criminal Appeals”; and

20               (2) by adding at the end the following new  
21          clause:

22                   “(ii) CASES REFERRED BY SPECIAL TRIAL  
23          COUNSEL.—If a case was referred to trial by a  
24          special trial counsel, a special trial counsel shall  
25          determine if a rehearing is impracticable and

1           shall dismiss the charges if the special trial  
2           counsel so determines.”.

3           (e) REVIEW BY THE COURT OF APPEALS FOR THE  
4 ARMED FORCES.—Section 867(e) of title 10, United  
5 States Code (article 67(e) of the Uniform Code of Military  
6 Justice), is amended by adding at the end the following  
7 new sentence: “Notwithstanding the preceding sentence,  
8 if a case was referred to trial by a special trial counsel,  
9 a special trial counsel shall determine if a rehearing is im-  
10 practicable and shall dismiss the charges if the special  
11 trial counsel so determines.”.

12          (d) REVIEW BY JUDGE ADVOCATE GENERAL.—Sec-  
13 tion 869(c)(1)(D) of title 10, United States Code (article  
14 69(c)(1)(D) of the Uniform Code of Military Justice), is  
15 amended—

16           (1) by striking “If the Judge Advocate Gen-  
17 eral” and inserting “(i) Subject to clause (ii), if the  
18 Judge Advocate General”;

19           (2) by striking “impractical” and inserting “im-  
20 practicable”; and

21           (3) by adding at the end the following new  
22 clause:

23           “(ii) If a case was referred to trial by a special trial  
24 counsel, a special trial counsel shall determine if a rehear-

1 ing is impracticable and shall dismiss the charges if the  
2 special trial counsel so determines.”.

3 **SEC. 539B. APPLICABILITY TO THE UNITED STATES COAST**  
4 **GUARD.**

5 The Secretary of Defense shall consult and enter into  
6 an agreement with the Secretary of Homeland Security  
7 to apply the provisions of this part and the amendments  
8 made by this part, and the policies, mechanisms, and proc-  
9 esses established pursuant to such provisions, to the  
10 United States Coast Guard when it is operating as a serv-  
11 ice in the Department of Homeland Security.

12 **SEC. 539C. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection  
14 (b), the amendments made by this part shall take effect  
15 on the date that is two years after the date of the enact-  
16 ment of this Act and shall apply with respect to offenses  
17 that occur after that date.

18 (b) REGULATIONS.—

19 (1) REQUIREMENT.—The President shall pre-  
20 scribe regulations to carry out this part not later  
21 than two years after the date of the enactment of  
22 this Act.

23 (2) IMPACT OF DELAY OF ISSUANCE.—If the  
24 President does not prescribe the regulations nec-  
25 essary to carry out this part before the date that is

1 two years after the date of the enactment of this  
2 Act, the amendments made by this part shall take  
3 effect on the date on which such regulations are pre-  
4 scribed and shall apply with respect to offenses that  
5 occur on or after that date.

6 **PART 2—SEXUAL HARASSMENT; SENTENCING**  
7 **REFORM**

8 **SEC. 539D. INCLUSION OF SEXUAL HARASSMENT AS GEN-**  
9 **ERAL PUNITIVE ARTICLE.**

10 (a) IN GENERAL.—Not later than 30 days after the  
11 date of the enactment of this Act, the President shall—

12 (1) prescribe regulations establishing sexual  
13 harassment, as described in this section, as an of-  
14 fense punishable under section 934 of title 10,  
15 United States Code (article 134 of the Uniform  
16 Code of Military Justice); and

17 (2) revise the Manual for Courts-Martial to in-  
18 clude such offense.

19 (b) ELEMENTS OF OFFENSE.—The regulations and  
20 the revisions to the Manual for Courts-Martial required  
21 under subsection (a) shall provide that the required ele-  
22 ments constituting the offense of sexual harassment are—

23 (1) that the accused knowingly made sexual ad-  
24 vances, demands or requests for sexual favors, or

1 knowingly engaged in other conduct of a sexual na-  
2 ture;

3 (2) that such conduct was unwelcome;

4 (3) that, under the circumstances, such con-  
5 duct—

6 (A) would cause a reasonable person to be-  
7 lieve, and a certain person did believe, that sub-  
8 mission to such conduct would be made, either  
9 explicitly or implicitly, a term or condition of  
10 that person’s job, pay, career, benefits, or enti-  
11 tlements;

12 (B) would cause a reasonable person to be-  
13 lieve, and a certain person did believe, that sub-  
14 mission to, or rejection of, such conduct would  
15 be used as a basis for decisions affecting that  
16 person’s job, pay, career, benefits, or entitle-  
17 ments; or

18 (C) was so severe, repetitive, or pervasive  
19 that a reasonable person would perceive, and a  
20 certain person did perceive, an intimidating,  
21 hostile, or offensive working environment; and

22 (4) that, under the circumstances, the conduct  
23 of the accused was—

24 (A) to the prejudice of good order and dis-  
25 cipline in the armed forces;

1 (B) of a nature to bring discredit upon the  
2 armed forces; or

3 (C) to the prejudice of good order and dis-  
4 cipline in the armed forces and of a nature to  
5 bring discredit upon the armed forces.

6 **SEC. 539E. SENTENCING REFORM.**

7 (a) ARTICLE 53; FINDINGS AND SENTENCING.—Sec-  
8 tion 853 of title 10, United States Code (article 53 of the  
9 Uniform Code of Military Justice), is amended—

10 (1) in subsection (b), by amending paragraph  
11 (1) to read as follows:

12 “(1) GENERAL AND SPECIAL COURTS-MAR-  
13 TIAL.—Except as provided in subsection (e) for cap-  
14 ital offenses, if the accused is convicted of an offense  
15 in a trial by general or special court-martial, the  
16 military judge shall sentence the accused. The sen-  
17 tence determined by the military judge constitutes  
18 the sentence of the court-martial.”; and

19 (2) in subsection (c)—

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

22 “(1) IN GENERAL.—In a capital case, if the ac-  
23 cused is convicted of an offense for which the court-  
24 martial may sentence the accused to death—

25 “(A) the members shall determine—



1           “(i) whether the sentence for that of-  
2           fense shall be death or life in prison with-  
3           out eligibility for parole; or

4           “(ii) whether the matter shall be re-  
5           turned to the military judge for determina-  
6           tion of a lesser punishment; and

7           “(B) the military judge shall sentence the  
8           accused for that offense in accordance with the  
9           determination of the members under subpara-  
10          graph (A).”; and

11          (B) in paragraph (2), by striking “the  
12          court-martial” and inserting “the military  
13          judge”.

14          (b) ARTICLE 53A; PLEA AGREEMENTS.—Section  
15          853a of title 10, United States Code (article 53a of the  
16          Uniform Code of Military Justice), as amended by section  
17          539 of this Act, is further amended—

18                 (1) by redesignating subsections (b), (c), and  
19                 (d), as subsections (c), (d), and (e), respectively; and

20                 (2) by inserting after subsection (a) the fol-  
21          lowing new subsection:

22          “(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject  
23          to subsection (c), the military judge of a general or special  
24          court-martial shall accept a plea agreement submitted by  
25          the parties, except that—

1           “(1) in the case of an offense with a sentencing  
2           parameter set forth in regulations prescribed by the  
3           President pursuant to section 539E(e) of the Na-  
4           tional Defense Authorization Act for Fiscal Year  
5           2022, the military judge may reject a plea agree-  
6           ment that proposes a sentence that is outside the  
7           sentencing parameter if the military judge deter-  
8           mines that the proposed sentence is plainly unrea-  
9           sonable; and

10           “(2) in the case of an offense for which the  
11           President has not established a sentencing param-  
12           eter pursuant to section 539E(e) of the National  
13           Defense Authorization Act for Fiscal Year 2022, the  
14           military judge may reject a plea agreement that pro-  
15           poses a sentence if the military judge determines  
16           that the proposed sentence is plainly unreasonable.”.

17           (c) ARTICLE 56; SENTENCING.—Section 856 of title  
18 10, United States Code (article 56 of the Uniform Code  
19 of Military Justice), is amended—

20           (1) in subsection (c)—

21           (A) in paragraph (1)—

22           (i) in subparagraph (C)(vii), by strik-  
23           ing “and” at the end;

1 (ii) in subparagraph (D), by striking  
2 the period at the end and inserting “;  
3 and”; and

4 (iii) by adding at the end the fol-  
5 lowing new subparagraph:

6 “(E) the applicable sentencing parameters  
7 or sentencing criteria set forth in regulations  
8 prescribed by the President pursuant to section  
9 539E(e) of the National Defense Authorization  
10 Act for Fiscal Year 2022.”; and

11 (B) by striking paragraphs (2) through (4)  
12 and inserting the following new paragraphs:

13 “(2) APPLICATION OF SENTENCING PARAM-  
14 ETERS IN GENERAL AND SPECIAL COURTS-MAR-  
15 TIAL.—

16 “(A) REQUIREMENT TO SENTENCE WITHIN  
17 PARAMETERS.—Except as provided in subpara-  
18 graph (B), in a general or special court-martial  
19 in which the accused is convicted of an offense  
20 for which the President has established a sen-  
21 tencing parameter pursuant to section 539E(e)  
22 of the National Defense Authorization Act for  
23 Fiscal Year 2022, the military judge shall sen-  
24 tence the accused for that offense within the  
25 applicable parameter.

1           “(B) EXCEPTION.—The military judge  
2           may impose a sentence outside a sentencing pa-  
3           rameter upon finding specific facts that warrant  
4           such a sentence. If the military judge imposes  
5           a sentence outside a sentencing parameter  
6           under this subparagraph, the military judge  
7           shall include in the record a written statement  
8           of the factual basis for the sentence.

9           “(3) USE OF SENTENCING CRITERIA IN GEN-  
10          ERAL AND SPECIAL COURTS-MARTIAL.—In a general  
11          or special court-martial in which the accused is con-  
12          victed of an offense for which the President has es-  
13          tablished sentencing criteria pursuant to section  
14          539E(e) of the National Defense Authorization Act  
15          for Fiscal Year 2022, the military judge shall con-  
16          sider the applicable sentencing criteria in deter-  
17          mining the sentence for that offense.

18          “(4) OFFENSE-BASED SENTENCING IN GEN-  
19          ERAL AND SPECIAL COURTS-MARTIAL.—In announc-  
20          ing the sentence under section 853 of this title (arti-  
21          cle 53) in a general or special court-martial, the  
22          military judge shall, with respect to each offense of  
23          which the accused is found guilty, specify the term  
24          of confinement, if any, and the amount of the fine,  
25          if any. If the accused is sentenced to confinement

1 for more than one offense, the military judge shall  
2 specify whether the terms of confinement are to run  
3 consecutively or concurrently.

4 “(5) INAPPLICABILITY TO DEATH PENALTY.—  
5 Sentencing parameters and sentencing criteria shall  
6 not apply to a determination of whether an offense  
7 should be punished by death.

8 “(6) SENTENCE OF CONFINEMENT FOR LIFE  
9 WITHOUT ELIGIBILITY FOR PAROLE.—

10 “(A) IN GENERAL.—If an offense is sub-  
11 ject to a sentence of confinement for life, a  
12 court-martial may impose a sentence of confine-  
13 ment for life without eligibility for parole.

14 “(B) TERM OF CONFINEMENT.—An ac-  
15 cused who is sentenced to confinement for life  
16 without eligibility for parole shall be confined  
17 for the remainder of the accused’s life unless—

18 “(i) the sentence is set aside or other-  
19 wise modified as a result of—

20 “(I) action taken by the con-  
21 vening authority or the Secretary con-  
22 cerned; or

23 “(II) any other action taken dur-  
24 ing post-trial procedure or review

1 under any other provision of sub-  
2 chapter IX of this chapter;

3 “(ii) the sentence is set aside or other-  
4 wise modified as a result of action taken  
5 by a court of competent jurisdiction; or

6 “(iii) the accused receives a pardon or  
7 another form of Executive clemency.”; and

8 (4) in subsection (d)(1)—

9 (A) in subparagraph (A), by striking “or”  
10 at the end;

11 (B) by redesignating subparagraph (B) as  
12 subparagraph (C);

13 (C) by inserting after subparagraph (A)  
14 the following new subparagraph:

15 “(B) in the case of a sentence for an of-  
16 fense for which the President has established a  
17 sentencing parameter pursuant to section  
18 539E(e) of the National Defense Authorization  
19 Act for Fiscal Year 2022, the sentence is a re-  
20 sult of an incorrect application of the param-  
21 eter; or”; and

22 (D) in subparagraph (C), as redesignated  
23 by subparagraph (B) of this paragraph, by  
24 striking “, as determined in accordance with

1 standards and procedures prescribed by the  
2 President”.

3 (d) ARTICLE 66; COURTS OF CRIMINAL APPEALS.—  
4 Section 866 of title 10, United States Code (article 66  
5 of the Uniform Code of Military Justice), as amended by  
6 section 539A of this Act, is further amended—

7 (1) in subsection (d)(1)(A), by striking the  
8 third sentence; and

9 (2) by amending subsection (e) to read as fol-  
10 lows:

11 “(e) CONSIDERATION OF SENTENCE.—

12 “(1) IN GENERAL.—In considering a sentence  
13 on appeal, other than as provided in section 856(d)  
14 of this title (article 56(d)), the Court of Criminal  
15 Appeals may consider—

16 “(A) whether the sentence violates the law;

17 “(B) whether the sentence is inappropri-  
18 ately severe—

19 “(i) if the sentence is for an offense  
20 for which the President has not established  
21 a sentencing parameter pursuant to section  
22 539E(e) of the National Defense Author-  
23 ization Act for Fiscal Year 2022; or

24 “(ii) in the case of an offense for  
25 which the President has established a sen-

1           tencing parameter pursuant to section  
2           539E(e) of the National Defense Author-  
3           ization Act for Fiscal Year 2022, if the  
4           sentence is above the upper range of such  
5           sentencing parameter;

6           “(C) in the case of a sentence for an of-  
7           fense for which the President has established a  
8           sentencing parameter pursuant to section  
9           539E(e) of the National Defense Authorization  
10          Act for Fiscal Year 2022, whether the sentence  
11          is a result of an incorrect application of the pa-  
12          rameter;

13          “(D) whether the sentence is plainly un-  
14          reasonable; and

15          “(E) in review of a sentence to death or to  
16          life in prison without eligibility for parole deter-  
17          mined by the members in a capital case under  
18          section 853(c) of this title (article 53(c)),  
19          whether the sentence is otherwise appropriate,  
20          under rules prescribed by the President.

21          “(2) RECORD ON APPEAL.—In an appeal under  
22          this subsection or section 856(d) of this title (article  
23          56(d)), other than review under subsection (b)(2) of  
24          this section, the record on appeal shall consist of—



1           “(A) any portion of the record in the case  
2           that is designated as pertinent by any party;

3           “(B) the information submitted during the  
4           sentencing proceeding; and

5           “(C) any information required by rule or  
6           order of the Court of Criminal Appeals.”.

7           (e) ESTABLISHMENT OF SENTENCING PARAMETERS  
8           AND SENTENCING CRITERIA.—

9           (1) IN GENERAL.—Not later than two years  
10          after the date of the enactment of this Act, the  
11          President shall prescribe regulations establishing  
12          sentencing parameters and sentencing criteria re-  
13          lated to offenses under chapter 47 of title 10,  
14          United States Code (the Uniform Code of Military  
15          Justice), in accordance with this subsection. Such  
16          parameters and criteria—

17                 (A) shall cover sentences of confinement;  
18                 and

19                 (B) may cover lesser punishments, as the  
20          President determines appropriate.

21          (2) SENTENCING PARAMETERS.—Sentencing  
22          parameters established under paragraph (1) shall—

23                 (A) identify a delineated sentencing range  
24          for an offense that is appropriate for a typical

1 violation of the offense, taking into consider-  
2 ation—

3 (i) the severity of the offense;

4 (ii) the guideline or offense category  
5 that would apply to the offense if the of-  
6 fense were tried in a United States district  
7 court;

8 (iii) any military-specific sentencing  
9 factors;

10 (iv) the need for the sentencing pa-  
11 rameter to be sufficiently broad to allow  
12 for individualized consideration of the of-  
13 fense and the accused; and

14 (v) any other relevant sentencing  
15 guideline.

16 (B) include no fewer than 5 and no more  
17 than 12 offense categories;

18 (C) assign such offense under this chapter  
19 to an offense category unless the offense is  
20 identified as unsuitable for sentencing param-  
21 eters under paragraph (4)(F)(ii); and

22 (D) delineate the confinement range for  
23 each offense category by setting an upper con-  
24 finement limit and a lower confinement limit.

1           (3) SENTENCING CRITERIA.—Sentencing cri-  
2           teria established under paragraph (1) shall identify  
3           offense-specific factors the military judge should  
4           consider and any collateral effects of available pun-  
5           ishments that may aid the military judge in deter-  
6           mining an appropriate sentence when there is no ap-  
7           plicable sentencing parameter for a specific offense.

8           (4) MILITARY SENTENCING PARAMETERS AND  
9           CRITERIA BOARD.—

10           (A) IN GENERAL.—There is established  
11           within the Department of Defense a board, to  
12           be known as the “Military Sentencing Param-  
13           eters and Criteria Board” (referred to in this  
14           subsection as the “Board”).

15           (B) VOTING MEMBERS.—The Board shall  
16           have 5 voting members, as follows:

17           (i) The 4 chief trial judges designated  
18           under section 826(g) of title 10, United  
19           States Code (article 26(g) of the Uniform  
20           Code of Military Justice), except that, if  
21           the chief trial judge of the Coast Guard is  
22           not available, the Judge Advocate General  
23           of the Coast Guard may designate as a  
24           voting member a judge advocate of the

1 Coast Guard with substantial military jus-  
2 tice experience.

3 (ii) A trial judge of the Navy, des-  
4 ignated under regulations prescribed by  
5 the President, if the chief trial judges des-  
6 ignated under section 826(g) of title 10,  
7 United States Code (article 26(g) of the  
8 Uniform Code of Military Justice), do not  
9 include a trial judge of the Navy.

10 (iii) A trial judge of the Marine  
11 Corps, designated under regulations pre-  
12 scribed by the President, if the chief trial  
13 judges designated under section 826(g) of  
14 title 10, United States Code (article 26(g)  
15 of the Uniform Code of Military Justice),  
16 do not include a trial judge of the Marine  
17 Corps.

18 (C) NONVOTING MEMBERS.—The Chief  
19 Judge of the Court of Appeals for the Armed  
20 Forces, the Chairman of the Joint Chiefs of  
21 Staff, and the General Counsel of the Depart-  
22 ment of Defense shall each designate one non-  
23 voting member of the Board. The Secretary of  
24 Defense may appoint one additional nonvoting

1 member of the Board at the Secretary's discre-  
2 tion.

3 (D) CHAIR AND VICE-CHAIR.—The Sec-  
4 retary of Defense shall designate one voting  
5 member as chair of the Board and one voting  
6 member as vice-chair.

7 (E) VOTING REQUIREMENT.—An affirma-  
8 tive vote of at least three members is required  
9 for any action of the Board under this sub-  
10 section.

11 (F) DUTIES OF BOARD.—The Board shall  
12 have the following duties:

13 (i) As directed by the Secretary of De-  
14 fense, the Board shall submit to the Presi-  
15 dent for approval—

16 (I) sentencing parameters for all  
17 offenses under chapter 47 of title 10,  
18 United States Code (the Uniform  
19 Code of Military Justice) (other than  
20 offenses that the Board identifies as  
21 unsuitable for sentencing parameters  
22 in accordance with clause (ii)); and

23 (II) sentencing criteria to be used  
24 by military judges in determining ap-  
25 propriate sentences for offenses that

1                   are identified as unsuitable for sen-  
2                   tencing parameters in accordance with  
3                   clause (ii).

4                   (ii) Identify each offense under chap-  
5                   ter 47 of title 10, United States Code (the  
6                   Uniform Code of Military Justice), that is  
7                   unsuitable for sentencing parameters. The  
8                   Board shall identify an offense as unsuit-  
9                   able for sentencing parameters if—

10                   (I) the nature of the offense is  
11                   indeterminate and unsuitable for cat-  
12                   egorization; and

13                   (II) there is no similar criminal  
14                   offense under the laws of the United  
15                   States or the laws of the District of  
16                   Columbia.

17                   (iii) In developing sentencing param-  
18                   eters and criteria, the Board shall consider  
19                   the sentencing data collected by the Mili-  
20                   tary Justice Review Panel pursuant to sec-  
21                   tion 946(f)(2) of title 10, United States  
22                   Code (article 146(f)(2) of the Uniform  
23                   Code of Military Justice).

24                   (iv) In addition to establishing param-  
25                   eters for sentences of confinement under

1 clause (i)(I), the Board shall consider the  
2 appropriateness of establishing sentencing  
3 parameters for punitive discharges, fines,  
4 reductions, forfeitures, and other lesser  
5 punishments authorized under chapter 47  
6 of title 10, United States Code (the Uni-  
7 form Code of Military Justice).

8 (v) The Board shall regularly—

9 (I) review, and propose revision  
10 to, in consideration of comments and  
11 data coming to the Board's attention,  
12 the sentencing parameters and sen-  
13 tencing criteria prescribed under para-  
14 graph (1); and

15 (II) submit to the President,  
16 through the Secretary of Defense,  
17 proposed amendments to the sen-  
18 tencing parameters and sentencing  
19 criteria, together with statements ex-  
20 plaining the basis for the proposed  
21 amendments.

22 (vi) The Board shall develop means of  
23 measuring the degree to which applicable  
24 sentencing, penal, and correctional prac-  
25 tices are effective with respect to the sen-

1 sentencing factors and policies set forth in  
2 this section.

3 (vii) In fulfilling its duties and in ex-  
4 exercising its powers, the Board shall consult  
5 authorities on, and individual and institu-  
6 tional representatives of, various aspects of  
7 the military criminal justice system. The  
8 Board may establish separate advisory  
9 groups consisting of individuals with cur-  
10 rent or recent experience in command and  
11 in senior enlisted positions, individuals  
12 with experience in the trial of courts-mar-  
13 tial, and such other groups as the Board  
14 deems appropriate.

15 (viii) The Board shall submit to the  
16 President, through the Secretary of De-  
17 fense, proposed amendments to the rules  
18 for courts-martial with respect to sen-  
19 tencing proceedings and maximum punish-  
20 ments, together with statements explaining  
21 the basis for the proposed amendments.

22 (f) EFFECTIVE DATE.—The amendments made by  
23 this section shall take effect on the date that is two years  
24 after the date of the enactment of this Act and shall apply  
25 to sentences adjudged in cases in which all findings of



1 guilty are for offenses that occurred after the date that  
2 is two years after the date of the enactment of this Act.

3 (g) REPEAL OF SECRETARIAL GUIDELINES ON SEN-  
4 TENCES FOR OFFENSES COMMITTED UNDER THE UNI-  
5 FORM CODE OF MILITARY JUSTICE.—Section 537 of the  
6 National Defense Authorization Act for Fiscal Year 2020  
7 (Public Law 116–92; 133 Stat. 1363; 10 U.S.C. 856 note)  
8 is repealed.

9 **PART 3—REPORTS AND OTHER MATTERS**

10 **SEC. 539F. BRIEFING AND REPORT ON RESOURCING RE-**  
11 **QUIRED FOR IMPLEMENTATION.**

12 (a) BRIEFING AND REPORT REQUIRED.—

13 (1) BRIEFING.—Not later than March 1, 2022,  
14 each Secretary concerned shall provide to the appro-  
15 priate congressional committees a briefing that de-  
16 tails the resourcing necessary to implement this sub-  
17 title and the amendments made by this subtitle.

18 (2) REPORT.—On a date occurring after the  
19 briefing under paragraph (1), but not later than one  
20 year after the date of the enactment of this Act,  
21 each Secretary concerned shall submit to the appro-  
22 priate congressional committees a report that details  
23 the resourcing necessary to implement this subtitle  
24 and the amendments made by this subtitle.

1           (3) FORM OF BRIEFING AND REPORT.—Each  
2       Secretary concerned may provide the briefing and  
3       report required under paragraphs (1) and (2) joint-  
4       ly, or separately, as determined appropriate by such  
5       Secretaries

6       (b) ELEMENTS.—The briefing and report required  
7       under subsection (a) shall address the following:

8           (1) The number of additional personnel and  
9       personnel authorizations (military and civilian) re-  
10      quired by the Armed Forces to implement and exe-  
11      cute the provisions of this subtitle and the amend-  
12      ments made by this subtitle by the effective date  
13      specified in section 539C.

14          (2) The basis for the number provided pursuant  
15      to paragraph (1), including the following:

16           (A) A description of the organizational  
17      structure in which such personnel or groups of  
18      personnel are or will be aligned.

19           (B) The nature of the duties and functions  
20      to be performed by any such personnel or  
21      groups of personnel across the domains of pol-  
22      icy-making, execution, assessment, and over-  
23      sight.

24           (C) The optimum caseload goal assigned to  
25      the following categories of personnel who are or

1 will participate in the military justice process:  
2 criminal investigators of different levels and ex-  
3 pertise, laboratory personnel, defense counsel,  
4 special trial counsel, military defense counsel,  
5 military judges, and military magistrates.

6 (D) Any required increase in the number  
7 of personnel currently authorized in law to be  
8 assigned to the Armed Force concerned.

9 (3) The nature and scope of any contract re-  
10 quired by the Armed Force concerned to implement  
11 and execute the provisions of this subtitle and the  
12 amendments made by this subtitle by the effective  
13 date specified in section 539C.

14 (4) The amount and types of additional funding  
15 required by the Armed Force concerned to imple-  
16 ment the provisions of this subtitle and the amend-  
17 ments made by this subtitle by the effective date  
18 specified in section 539C.

19 (5) Any additional authorities required to im-  
20 plement the provisions of this subtitle and the  
21 amendments made by this subtitle by the effective  
22 date specified in section 539C.

23 (6) Any additional information the Secretary  
24 concerned determines is necessary to ensure the  
25 manning, equipping, and resourcing of the Armed

1 Forces to implement and execute the provisions of  
2 this subtitle and the amendments made by this sub-  
3 title.

4 (c) DEFINITIONS.—In this section:

5 (1) The term “appropriate congressional com-  
6 mittees” means—

7 (A) the Committee on Armed Services and  
8 the Committee on Commerce, Science, and  
9 Transportation of the Senate; and

10 (B) the Committee on Armed Services and  
11 the Committee on Transportation and Infra-  
12 structure of the House of Representatives.

13 (2) The term “Secretary concerned” has the  
14 meaning given that term in section 101(a) of title  
15 10, United States Code.

16 **SEC. 539G. BRIEFING ON IMPLEMENTATION OF CERTAIN**  
17 **RECOMMENDATIONS OF THE INDEPENDENT**  
18 **REVIEW COMMISSION ON SEXUAL ASSAULT**  
19 **IN THE MILITARY.**

20 (a) BRIEFING REQUIRED.—Not later than 180 days  
21 after the date of the enactment of this Act, the Secretary  
22 of Defense shall provide to the Committees on Armed  
23 Services of the Senate and the House of Representatives  
24 a briefing on the status of the implementation of the rec-  
25 ommendations set forth in the report of the Independent

1 Review Commission on Sexual Assault in the Military ti-  
2 tled “Hard Truths and the Duty to Change: Recommenda-  
3 tions from the Independent Review Commission on Sexual  
4 Assault in the Military”, and dated July 2, 2021.

5 (b) ELEMENTS.—The briefing under subsection (a)  
6 shall address the following:

7 (1) The status of the implementation of each  
8 recommendation, including—

9 (A) whether, how, and to what extent the  
10 recommendation has been implemented; and

11 (B) any rules, regulations, policies, or  
12 other guidance that have been issued, revised,  
13 changed, or cancelled as a result of the imple-  
14 mentation of the recommendation.

15 (2) For each recommendation that has not been  
16 fully implemented or superseded by statute as of the  
17 date of the briefing, a description of any plan for the  
18 implementation of the recommendation, including  
19 identification of—

20 (A) intermediate actions, milestone dates,  
21 and any expected completion date for imple-  
22 mentation of the recommendation; and

23 (B) any rules, regulations, policies, or  
24 other guidance that are expected to be issued,

1 revised, changed, or cancelled as a result of the  
2 implementation of the recommendation.

3 **Subtitle E—Other Military Justice**  
4 **and Legal Matters**

5 **SEC. 541. RIGHTS OF THE VICTIM OF AN OFFENSE UNDER**  
6 **THE UNIFORM CODE OF MILITARY JUSTICE.**

7 Section 806b(a) of title 10, United States Code (arti-  
8 cle 6b(a) of the Uniform Code of Military Justice), is  
9 amended—

10 (1) by redesignating paragraph (8) as para-  
11 graph (9); and

12 (2) by inserting after paragraph (7) the fol-  
13 lowing new paragraph:

14 “(8) The right to be informed in a timely man-  
15 ner of any plea agreement, separation-in-lieu-of-trial  
16 agreement, or non-prosecution agreement relating to  
17 the offense, unless providing such information would  
18 jeopardize a law enforcement proceeding or would  
19 violate the privacy concerns of an individual other  
20 than the accused.”.

21 **SEC. 542. CONDUCT UNBECOMING AN OFFICER.**

22 (a) IN GENERAL.—Section 933 of title 10, United  
23 States Code (article 133 of the Uniform Code of Military  
24 Justice) is amended—

1 (1) in the section heading, by striking “**and a**  
2 **gentleman**”; and

3 (2) by striking “and a gentleman”.

4 (b) CLERICAL AMENDMENT.—The table of sections  
5 at the beginning of subchapter X of chapter 47 of such  
6 title is amended by striking the item relating to section  
7 933 (article 133) and inserting the following new item:  
“933. 133. Conduct unbecoming an officer.”.

8 **SEC. 543. INDEPENDENT INVESTIGATION OF COMPLAINTS**  
9 **OF SEXUAL HARASSMENT.**

10 (a) IN GENERAL.—Section 1561 of title 10, United  
11 States Code, is amended to read as follows:

12 “**§ 1561. Complaints of sexual harassment: inde-**  
13 **pendent investigation**

14 “(a) ACTION ON COMPLAINTS ALLEGING SEXUAL  
15 HARASSMENT.—A commanding officer or officer in charge  
16 of a unit, vessel, facility, or area of the Army, Navy, Air  
17 Force, Marine Corps, or Space Force who receives from  
18 a member of the command or a civilian employee under  
19 the supervision of the officer a formal complaint alleging  
20 a claim of sexual harassment by a member of the armed  
21 forces or a civilian employee of the Department of Defense  
22 shall, to the extent practicable, direct that an independent  
23 investigation of the matter be carried out in accordance  
24 with this section.

1       “(b) COMMENCEMENT OF INVESTIGATION.—To the  
2 extent practicable, a commanding officer or officer in  
3 charge receiving such a formal complaint shall forward  
4 such complaint to an independent investigator within 72  
5 hours after receipt of the complaint, and shall further—

6           “(1) forward the formal complaint or a detailed  
7 description of the allegation to the next superior of-  
8 ficer in the chain of command who is authorized to  
9 convene a general court-martial; and

10          “(2) advise the complainant of the commence-  
11 ment of the investigation.

12       “(c) DURATION OF INVESTIGATION.—To the extent  
13 practicable, a commanding officer or officer in charge shall  
14 ensure that an independent investigator receiving a formal  
15 complaint of sexual harassment under this section com-  
16 pletes the investigation of the complaint not later than 14  
17 days after the date on which the investigation is com-  
18 menced, and that the findings of the investigation are for-  
19 warded to the commanding officer or officer in charge  
20 specified in subsection (a) for action as appropriate.

21       “(d) REPORT ON INVESTIGATION.—To the extent  
22 practicable, a commanding officer or officer in charge  
23 shall—

24           “(1) submit a final report on the results of the  
25 independent investigation, including any action



1 taken as a result of the investigation, to the next su-  
2 perior officer referred to in subsection (b)(1) within  
3 20 days after the date on which the investigation is  
4 commenced; or

5 “(2) submit a report on the progress made in  
6 completing the investigation to the next superior of-  
7 ficer referred to in subsection (b)(1) within 20 days  
8 after the date on which the investigation is com-  
9 menced and every 14 days thereafter until the inves-  
10 tigation is completed and, upon completion of the in-  
11 vestigation, then submit a final report on the results  
12 of the investigation, including any action taken as a  
13 result of the investigation, to that next superior offi-  
14 cer.

15 “(e) SEXUAL HARASSMENT DEFINED.—In this sec-  
16 tion, the term ‘sexual harassment’ means conduct that  
17 constitutes the offense of sexual harassment as punishable  
18 under section 934 of this title (article 134) pursuant to  
19 the regulations prescribed by the Secretary of Defense for  
20 purposes of such section (article).”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of chapter 80 of title 10, United States  
23 Code, is amended by striking the item relating to section  
24 1561 and inserting the following new item:

“1561. Complaints of sexual harassment: independent investigation.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 subsections (a) and (b) shall—

3 (1) take effect on the date that is two years  
4 after the date of the enactment of this Act; and

5 (2) apply to any investigation of a formal com-  
6 plaint of sexual harassment (as defined in section  
7 1561 of title 10, United States Code, as amended by  
8 subsection (a)) made on or after that date.

9 (d) REGULATIONS.—Not later than 18 months after  
10 the date of the enactment of this Act the Secretary of De-  
11 fense shall prescribe regulations providing for the imple-  
12 mentation of section 1561 of title 10, United States Code,  
13 as amended by subsection (a).

14 (e) REPORT ON IMPLEMENTATION.—Not later than  
15 one year after the date of the enactment of this Act, the  
16 Secretary of Defense shall submit to the Committees on  
17 Armed Services of the Senate and the House of Represent-  
18 atives a report on the preparation of the Secretary to im-  
19 plement section 1561 of title 10, United States Code, as  
20 amended by subsection (a).

1 **SEC. 544. DEPARTMENT OF DEFENSE TRACKING OF ALLE-**  
2 **GATIONS OF RETALIATION BY VICTIMS OF**  
3 **SEXUAL ASSAULT OR SEXUAL HARASSMENT**  
4 **AND RELATED PERSONS.**

5 (a) IN GENERAL.—Chapter 80 of title 10, United  
6 States Code, is amended by inserting after section 1562  
7 the following new section:

8 **“§ 1562a. Complaints of retaliation by victims of sex-**  
9 **ual assault or sexual harassment and re-**  
10 **lated persons: tracking by Department of**  
11 **Defense**

12 “(a) DESIGNATION OF RESPONSIBLE COMPONENT.—  
13 The Secretary of Defense shall designate a component of  
14 the Office of the Secretary of Defense to be responsible  
15 for documenting and tracking all covered allegations of re-  
16 taliation and shall ensure that the Secretaries concerned  
17 and the Inspector General of the Department of Defense  
18 provide to such component the information required to be  
19 documented and tracked as described in subsection (b).

20 “(b) TRACKING OF ALLEGATIONS.—The head of the  
21 component designated by the Secretary under subsection  
22 (a) shall document and track each covered allegation of  
23 retaliation, including—

24 “(1) that such an allegation has been reported  
25 and by whom;

26 “(2) the date of the report;

1           “(3) the nature of the allegation and the name  
2           of the person or persons alleged to have engaged in  
3           such retaliation;

4           “(4) the Department of Defense component or  
5           other entity responsible for the investigation of or  
6           inquiry into the allegation;

7           “(5) the entry of findings;

8           “(6) referral of such findings to a decision-  
9           maker for review and action, as appropriate;

10          “(7) the outcome of final action; and

11          “(8) any other element of information per-  
12          taining to the allegation determined appropriate by  
13          the Secretary or the head of the component des-  
14          ignated by the Secretary.

15          “(c) COVERED ALLEGATION OF RETALIATION DE-  
16          FINED.—In this section, the term ‘covered allegation of  
17          retaliation’ means an allegation of retaliation—

18                 “(1) made by—

19                         “(A) an alleged victim of sexual assault or  
20                         sexual harassment;

21                         “(B) an individual charged with providing  
22                         services or support to an alleged victim of sex-  
23                         ual assault or sexual harassment;

24                         “(C) a witness or bystander to an alleged  
25                         sexual assault or sexual harassment; or

1           “(D) any other person associated with an  
2           alleged victim of a sexual assault or sexual har-  
3           assment; and

4           “(2) without regard to whether the allegation is  
5           reported to or investigated or inquired into by—

6           “(A) the Department of Defense Inspector  
7           General or any other inspector general;

8           “(B) a military criminal investigative orga-  
9           nization;

10           “(C) a commander or other person at the  
11           direction of the commander;

12           “(D) another military or civilian law en-  
13           forcement organization; or

14           “(E) any other organization, officer, or  
15           employee of the Department of Defense.”.

16           (b) CLERICAL AMENDMENT.—The table of sections  
17           at the beginning of chapter 80 of title 10, United States  
18           Code, is amended by inserting after the item relating to  
19           section 1562 the following new item:

          “1562a. Complaints of retaliation by victims of sexual assault or sexual harass-  
          ment and related persons: tracking by Department of De-  
          fense.”.

1 **SEC. 545. MODIFICATION OF NOTICE TO VICTIMS OF PEND-**  
2 **ENCY OF FURTHER ADMINISTRATIVE ACTION**  
3 **FOLLOWING A DETERMINATION NOT TO**  
4 **REFER TO TRIAL BY COURT-MARTIAL.**

5 Section 549 of the National Defense Authorization  
6 Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C.  
7 806b note) is amended—

8 (1) in the section heading, by striking “**AL-**  
9 **LEGED SEXUAL ASSAULT**” and inserting “**AL-**  
10 **LEGED SEX-RELATED OFFENSE**”;

11 (2) by striking “Under regulations” and insert-  
12 ing “Notwithstanding section 552a of title 5, United  
13 States Code, and under regulations”;

14 (3) by striking “alleged sexual assault” and in-  
15 serting “an alleged sex-related offense (as defined in  
16 section 1044e(h) of title 10, United States Code)”;  
17 and

18 (4) by adding at the end the following new sen-  
19 tence: “Upon such final determination, the com-  
20 mander shall notify the victim of the type of action  
21 taken on such case, the outcome of the action (in-  
22 cluding any punishments assigned or characteriza-  
23 tion of service, as applicable), and such other infor-  
24 mation as the commander determines to be rel-  
25 evant.”

1 **SEC. 546. CIVILIAN POSITIONS TO SUPPORT SPECIAL VIC-**  
2 **TIMS' COUNSEL.**

3 (a) CIVILIAN SUPPORT POSITIONS.—Each Secretary  
4 of a military department may establish one or more civil-  
5 ian positions within each office of the Special Victims'  
6 Counsel under the jurisdiction of such Secretary.

7 (b) DUTIES.—The duties of each position under sub-  
8 section (a) shall be—

9 (1) to provide support to Special Victims' Coun-  
10 sel, including legal, paralegal, and administrative  
11 support; and

12 (2) to ensure the continuity of legal services  
13 and the preservation of institutional knowledge in  
14 the provision of victim legal services notwithstanding  
15 transitions in the military personnel assigned to of-  
16 fices of the Special Victims' Counsel.

17 (c) SPECIAL VICTIMS' COUNSEL DEFINED.—In this  
18 section, the term “Special Victims' Counsel” means Spe-  
19 cial Victims' Counsel described in section 1044e of title  
20 10, United States Code, and in the case of the Navy and  
21 Marine Corps, includes counsel designated as “Victims'  
22 Legal Counsel”.

23 **SEC. 547. PLANS FOR UNIFORM DOCUMENT MANAGEMENT**  
24 **SYSTEM, TRACKING PRETRIAL INFORMA-**  
25 **TION, AND ASSESSING CHANGES IN LAW.**

26 (a) PLAN FOR DOCUMENT MANAGEMENT SYSTEM.—







































































































































