

1 Title: To reform the disposition of charges and convening of courts-martial for certain offenses
2 under the Uniform Code of Military Justice and increase the prevention of sexual assaults and
3 other crimes in the military.
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6 Be it enacted by the Senate and House of Representatives of the United States of America in
7 Congress assembled,

8 SECTION 1. SHORT TITLE.

9 This Act may be cited as the “Military Justice Improvement and Increasing Prevention Act of
10 2021”.

11 SEC. 2. IMPROVEMENT OF DETERMINATIONS ON 12 DISPOSITION OF CHARGES FOR CERTAIN OFFENSES 13 UNDER UCMJ WITH AUTHORIZED MAXIMUM 14 SENTENCE OF CONFINEMENT OF MORE THAN ONE 15 YEAR.

16 (a) Improvement of Determinations.—

17 (1) **MILITARY DEPARTMENTS.**—With respect to charges under chapter 47 of title 10,
18 United States Code (the Uniform Code of Military Justice), that allege an offense specified
19 in subsection (b) and not excluded under subsection (c), the Secretary of Defense shall
20 require the Secretaries of the military departments to provide as described in subsection (d)
21 for the determinations as follows:

22 (A) Determinations under section 830 of such chapter (article 30 of the Uniform
23 Code of Military Justice) on the preferral of charges.

24 (B) Determinations under section 830 of such chapter (article 30 of the Uniform
25 Code of Military Justice) on the disposition of charges.

26 (C) Determinations under section 834 of such chapter (article 34 of the Uniform
27 Code of Military Justice) on the referral of charges.

28 (2) **HOMELAND SECURITY.**—With respect to charges under chapter 47 of title 10, United
29 States Code (the Uniform Code of Military Justice), that allege an offense specified in
30 subsection (b) and not excluded under subsection (c) against a member of the Coast Guard
31 (when it is not operating as a service in the Navy), the Secretary of Homeland Security shall
32 provide as described in subsection (d) for the determinations as follows:

33 (A) Determinations under section 830 of such chapter (article 30 of the Uniform
34 Code of Military Justice) on the preferral of charges.

35 (B) Determinations under section 830 of such chapter (article 30 of the Uniform
36 Code of Military Justice) on the disposition of charges.

37 (C) Determinations under section 834 of such chapter (article 34 of the Uniform
38 Code of Military Justice) on the referral of charges.

1 (3) RULE OF CONSTRUCTION.—This section shall not be construed to terminate or
2 otherwise alter the authorities enumerated in any articles of the Uniform Code of Military
3 Justice other than articles 30 and 34 (10 U.S.C. 830, 834).

4 (b) Covered Offenses.—An offense specified in this subsection is an offense as follows:

5 (1)(A) Offenses under the following sections of chapter 47 of title 10, United States Code
6 (the Uniform Code of Military Justice), for which the maximum punishment authorized
7 under that chapter includes confinement for more than one year: sections 893a, 917a, 918,
8 919, 919a, 919b, 920, 920a, 920b, 920c, 921, 921a, 921b, 922, 924, 924a, 924b, 925, 926,
9 927, 928(b) and (c), 928a, 928b, 930, 931, 931a, 931b, 931c, 931d, 931e, 931f, 931g, and
10 932 (articles 93a, 117a, 118, 119, 119a, 119b, 120, 120a, 120b, 120c, 121, 121a, 121b, 122,
11 124, 124a, 124b, 125, 126, 127, 128(b) and (c), 128a, 128b, 1230, 131, 131a, 131b, 131c,
12 131d, 131e, 131f, 131g, and 132, respectively, of the Uniform Code of Military Justice).

13 (B) The offenses of child pornography, negligent homicide, indecent conduct, indecent
14 language communicated to any child under the age of 16 years, and pandering and
15 prostitution, as punishable under the general punitive article in 934 of such title (article 134
16 of the Uniform Code of Military Justice).

17 (2) A conspiracy to commit an offense specified in paragraph (1) as punishable under
18 section 881 of title 10, United States Code (article 81 of the Uniform Code of Military
19 Justice).

20 (3) A solicitation to commit an offense specified in paragraph (1) as punishable under
21 section 882 of title 10, United States Code (article 82 of the Uniform Code of Military
22 Justice).

23 (4) An attempt to commit an offense specified in paragraph (1) as punishable under
24 section 880 of title 10, United States Code (article 80 of the Uniform Code of Military
25 Justice).

26 (c) Excluded Offenses.—Subsection (a) does not apply to an offense as follows:

27 (1) An offense under sections 883 through 917 of title 10, United States Code (articles 83
28 through 117 of the Uniform Code of Military Justice), but not an offense under section 893a
29 of such title (article 93a of the Uniform Code of Military Justice).

30 (2) An offense under section 922a, 923, 923a, or 928(a) of title 10, United States Code
31 (articles 122a, 123, 123a, and 128(a) of the Uniform Code of Military Justice).

32 (3) An offense under section 933 or 934 of title 10, United States Code (articles 133 and
33 134 of the Uniform Code of Military Justice), but not the offense of child pornography,
34 negligent homicide, indecent conduct, indecent language communicated to any child under
35 the age of 16 years, or pandering and prostitution as punishable under the general punitive
36 article in section 934 of such title (article 134 of the Uniform Code of Military Justice).

37 (4) A conspiracy to commit an offense specified in paragraphs (1) through (3) as
38 punishable under section 881 of title 10, United States Code (article 81 of the Uniform Code
39 of Military Justice).

40 (5) A solicitation to commit an offense specified in paragraphs (1) through (3) as
41 punishable under section 882 of title 10, United States Code (article 82 of the Uniform Code

1 of Military Justice).

2 (6) An attempt to commit an offense specified in paragraphs (1) through (3) as punishable
3 under section 880 of title 10, United States Code (article 80 of the Uniform Code of
4 Military Justice).

5 (d) Requirements and Limitations.—The disposition of charges covered by subsection (a) shall
6 be subject to the following:

7 (1) The determination whether to cause charges to be preferred or refer such charges to a
8 court-martial for trial, as applicable, shall be made by a commissioned officer of the Armed
9 Forces designated as a court-martial convening authority in accordance with regulations
10 prescribed for purposes of this subsection from among commissioned officers of the Armed
11 Forces in grade O–6 or higher who—

12 (A) are available for detail as trial counsel under section 827 of title 10, United
13 States Code (article 27 of the Uniform Code of Military Justice);

14 (B) have significant experience in trials by general or special court-martial; and

15 (C) are outside the chain of command of the member subject to such charges.

16 (2) Upon a determination under paragraph (1) to refer charges to a court-martial for trial,
17 the officer making that determination shall determine whether to refer such charges for trial
18 by a general court-martial convened under section 822 of title 10, United States Code
19 (article 22 of the Uniform Code of Military Justice), or a special court-martial convened
20 under section 823 of title 10, United States Code (article 23 of the Uniform Code of
21 Military Justice).

22 (3) A determination under paragraph (1) to cause charges to be preferred or refer charges
23 to a court-martial for trial, as applicable, shall cover all known offenses, including lesser
24 included offenses.

25 (4) The determination to cause charges to be preferred or refer charges to a court-martial
26 for trial, as applicable, under paragraph (1), and the type of court-martial to which to refer
27 under paragraph (2), shall be binding on any applicable convening authority for the referral
28 of such charges.

29 (5) The actions of an officer described in paragraph (1) in determining under that
30 paragraph whether or not to cause charges to be preferred or refer charges to a court-martial
31 for trial, as applicable, shall be free of unlawful or unauthorized influence or coercion.

32 (6) The determination under paragraph (1) not to refer charges to a general or special
33 court-martial for trial shall not operate to terminate or otherwise alter the authority of
34 commanding officers to refer charges for trial by special court-martial under section 823 of
35 title 10, United States Code (article 23 of the Uniform Code of Military Justice) or summary
36 court-martial convened under section 824 of title 10, United States Code (article 24 of the
37 Uniform Code of Military Justice), or to impose non-judicial punishment in connection with
38 the conduct covered by such charges as authorized by section 815 of title 10, United States
39 Code (article 15 of the Uniform Code of Military Justice).

40 (7) The determination under paragraph (1) to refer charges to a general or special court-
41 martial shall not be subject to section 834 of title 10, United States Code (article 34 of the

1 Uniform Code of Military Justice), provided that the officer making the determination
2 determines that—

3 (A) the specification alleges an offense under the Uniform Code of Military Justice;

4 (B) there is probable cause to believe that the accused committed the offense
5 charged; and

6 (C) a court-martial would have jurisdiction over the accused and the offense.

7 (e) Construction With Charges on Other Offenses.—Nothing in this section shall be construed
8 to alter or affect the preferral, disposition, or referral authority of charges under chapter 47 of
9 title 10, United States Code (the Uniform Code of Military Justice), that allege an offense for
10 which the maximum punishment authorized under that chapter includes confinement for one year
11 or less, except for the offenses of child pornography, negligent homicide, indecent conduct,
12 indecent language communicated to any child under the age of 16 years, and pandering and
13 prostitution as punishable under the general punitive article in section 934 of such title (article
14 134 of the Uniform Code of Military Justice).

15 (f) Policies and Procedures.—

16 (1) IN GENERAL.—The Secretaries of the military departments and the Secretary of
17 Homeland Security (with respect to the Coast Guard when it is not operating as a service in
18 the Navy) shall revise policies and procedures as necessary to comply with this section.

19 (2) UNIFORMITY.—The General Counsel of the Department of Defense and the General
20 Counsel of the Department of Homeland Security shall jointly review the policies and
21 procedures revised under this subsection in order to ensure that any lack of uniformity in
22 policies and procedures, as so revised, among the military departments and the Department
23 of Homeland Security does not render unconstitutional any policy or procedure, as so
24 revised.

25 (g) Manual for Courts-Martial.—The Secretary of Defense shall recommend such changes to
26 the Manual for Courts-Martial as are necessary to ensure compliance with this section.

27 (h) Improved Specialization of Criminal Investigators.—The Secretary of Defense shall revise
28 policies and procedures as necessary to improve specialization of criminal investigators to help
29 increase the efficiency and effectiveness of sexual assault and domestic violence investigations.

30 **SEC. 3. MODIFICATION OF OFFICERS AUTHORIZED TO**
31 **CONVENE GENERAL AND SPECIAL COURTS-MARTIAL**
32 **FOR CERTAIN OFFENSES UNDER UCMJ WITH**
33 **AUTHORIZED MAXIMUM SENTENCE OF**
34 **CONFINEMENT OF MORE THAN ONE YEAR.**

35 (a) In General.—Subsection (a) of section 822 of title 10, United States Code (article 22 of the
36 Uniform Code of Military Justice), is amended—

37 (1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

38 (2) by inserting after paragraph (7) the following new paragraph (8):

1 “(8) with respect to offenses to which section 2(a) of the Military Justice Improvement
2 and Increasing Prevention Act of 2021 applies, the officers in the offices established
3 pursuant to section 3(c) of that Act or officers in the grade of O–6 or higher who are
4 assigned such responsibility by the Chief of Staff of the Army, the Chief of Naval
5 Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, or
6 the Commandant of the Coast Guard;”.

7 (b) No Exercise by Officers in Chain of Command of Accused or Victim.—Such section
8 (article) is further amended by adding at the end the following new subsection:

9 “(c) An officer specified in subsection (a)(8) may not convene a court-martial under this
10 section if the officer is in the chain of command of the accused or the victim.”.

11 (c) Offices of Chiefs of Staff on Courts-Martial.—

12 (1) OFFICES REQUIRED.—Each Chief of Staff of the Armed Forces or Commandant
13 specified in paragraph (8) of section 822(a) of title 10, United States Code (article 22(a) of
14 the Uniform Code of Military Justice), as amended by subsection (a), shall establish an
15 office to do the following:

16 (A) To convene general and special courts-martial under sections 822 and 823 of
17 title 10, United States Code (articles 22 and 23 of the Uniform Code of Military
18 Justice), pursuant to paragraph (8) of section 822(a) of title 10, United States Code
19 (article 22(a) of the Uniform Code of Military Justice), as so amended, with respect to
20 offenses to which section 2(a) applies.

21 (B) To detail under section 825 of title 10, United States Code (article 25 of the
22 Uniform Code of Military Justice), members of courts-martial convened as described
23 in subparagraph (A).

24 (2) PERSONNEL.—The personnel of each office established under paragraph (1) shall
25 consist of such members of the Armed Forces and civilian personnel of the Department of
26 Defense, or such members of the Coast Guard or civilian personnel of the Department of
27 Homeland Security, as may be detailed or assigned to the office by the Chief of Staff or
28 Commandant concerned. The members and personnel so detailed or assigned, as the case
29 may be, shall be detailed or assigned from personnel billets in existence as of the effective
30 date for this Act specified in section 10.

31 SEC. 4. DISCHARGE USING OTHERWISE AUTHORIZED 32 PERSONNEL AND RESOURCES.

33 (a) In General.—The Secretaries of the military departments and the Secretary of Homeland
34 Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall
35 carry out sections 2 and 3 using personnel, funds, and resources otherwise authorized by law.

36 (b) No Authorization of Additional Personnel or Resources.—Sections 2 and 3 shall not be
37 construed as authorizations for personnel, personnel billets, or funds for the discharge of the
38 requirements in such sections.

39 SEC. 5. MONITORING AND ASSESSMENT OF 40 MODIFICATION OF AUTHORITIES BY DEFENSE

1 **ADVISORY COMMITTEE ON INVESTIGATION,**
2 **PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN**
3 **THE ARMED FORCES.**

4 Section 546(c) of the Carl Levin and Howard P. “Buck” McKeon National Defense
5 Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

6 (1) in paragraph (1)—

7 (A) by striking “on the investigation” and inserting “on the following:

8 “(A) The investigation”; and

9 (B) by adding at the end the following new subparagraph:

10 “(B) The implementation and efficacy of sections 2 through 4 of the Military Justice
11 Improvement and Increasing Prevention Act of 2021 and the amendments made by
12 such sections.”; and

13 (2) in paragraph (2), by striking “paragraph (1)” and inserting “paragraph (1)(A)”.

14 **SEC. 6. LIMITATION ON MODIFICATIONS TO SEXUAL**
15 **ASSAULT REPORTING PROCEDURES.**

16 (a) In General.—The Secretary of Defense may not amend section 4 of enclosure 4 of
17 Department of Defense Instruction (DoDI) 6495.02, relating to Sexual Assault Prevention and
18 Response (SAPR) Program Procedures, or otherwise prescribe any regulations or guidance
19 relating to the treatment and handling of unrestricted and restricted reports of sexual assault, until
20 30 days after notifying the congressional defense committees of the proposed amendment or
21 modification.

22 (b) Congressional Defense Committees Defined.—In this section, the term “congressional
23 defense committees” has the meaning given the term in section 101(a) of title 10, United States
24 Code.

25 **SEC. 7. PROFESSIONALIZATION OF MILITARY**
26 **PROSECUTORS.**

27 (a) In General.—The Secretary of Defense shall increase enhanced and specialized training to
28 certain prosecutors on the proper conduct, presentation, and handling of sexual assault and
29 domestic violence cases.

30 (b) Report.—Not later than 180 days after the date of the enactment of this Act, the Secretary
31 of Defense shall submit to the congressional defense committees a report on the program
32 implemented under subsection (a).

33 **SEC. 8. INCREASED TRAINING AND EDUCATION ON**
34 **MILITARY SEXUAL ASSAULT.**

35 (a) Uniformed Officers and Senior Enlisted Leaders.—

1 (1) UNIFORMED OFFICERS.—All uniformed officers of the military services shall be
2 required within 2 years of the date of the enactment of this Act to complete training on
3 military sexual assault prevention equivalent to that provided to Sexual Assault Prevention
4 and Response Victim Advocates before those officers may be considered for promotion to a
5 grade at or above O–5. A portion of this training shall be in-person, facilitated training.

6 (2) ENLISTED LEADERS.—All senior enlisted leaders of the military services will be
7 required within 2 years of the date of the enactment of this Act to complete a training on
8 military sexual assault prevention equivalent to that provided to the Sexual Assault
9 Prevention and Response Victim Advocates before enlisted service members may be
10 considered for promotion to a grade at or above E–9. A portion of this training shall be in-
11 person, facilitated training.

12 (b) Officer Candidates and ROTC.—

13 (1) IN GENERAL.—The United States Army Cadet Command, the Naval Education and
14 Training Command, the Air Education and Training Command, and the Coast Guard
15 Recruiting Command shall carry out a program for increasing training on the prevention of
16 military sexual assault within cadet ranks. A portion of this training shall be in-person,
17 facilitated training.

18 (2) REPORT ON DEVELOPMENT OF PLAN.—Not later than 180 days after the date of the
19 enactment of this Act, the United States Army Cadet Command, the Naval Education and
20 Training Command, the Air Education and Training Command, and the Coast Guard
21 Recruiting Command shall submit to the congressional defense committees a report on the
22 development of the program required under paragraph (1) and a plan for execution.

23 (3) REPORT ON IMPLEMENTATION.—Not later than 2 years after the date of the enactment
24 of this Act, the United States Army Cadet Command, the Naval Education and Training
25 Command, the Air Education and Training Command, and the Coast Guard Recruiting
26 Command shall submit to the congressional defense committees a report on the
27 implementation of the program required under paragraph (1).

28 (c) Military Service Academies.—

29 (1) IN GENERAL.—The Superintendents of the military service academies shall carry out
30 additional military sexual assault prevent training and education at the academies. A portion
31 of this training shall be in-person, facilitated training.

32 (2) REPORT.—The Secretary of Defense, in consultation with the Superintendents of the
33 military service academies, shall submit a report to the congressional defense committees
34 describing the additional training and education implemented pursuant to paragraph (1).

35 **SEC. 9. INCREASING THE PHYSICAL SECURITY OF**
36 **MILITARY INSTALLATIONS.**

37 (a) Survey.—Not later than 180 days after the date of the enactment of this Act, the Secretary
38 of Defense shall conduct a survey of all lodging and living spaces on military installations to
39 identify, replace, or repair locking mechanisms on points of entry, identify areas of installation of
40 closed-circuit television (CCTV) security cameras, and other passive security measures as
41 necessary to increase the prevention of crimes, including sexual assault, on military installations.

1 (b) Report.—Not later than 180 days after the date of the enactment of this Act, the Secretary
2 of Defense shall submit to the congressional defense committees a report on the results of the
3 survey conducted under subsection (a).

4 (c) Program.—Based on the results of the survey conducted under subsection (a), the
5 Secretary of Defense shall carry out a program for increasing the security of all lodging and
6 living spaces on military installations, including replacing or repairing locking mechanisms on
7 points of entry, installation of CCTV security cameras, and other passive security measures as
8 necessary to increase the prevention of crimes, including sexual assault, on military installations.

9 SEC. 10. EFFECTIVE DATE AND APPLICABILITY.

10 (a) Effective Date and Applicability.—This Act and the amendments made by this Act shall
11 take effect 180 days after the date of the enactment of this Act, and shall apply with respect to
12 any allegation of charges of an offense specified in subsection (b) of section 2, and not excluded
13 under subsection (c) of section 2, which offense occurs on or after such effective date.

14 (b) Revisions of Policies and Procedures.—Any revision of policies and procedures required
15 of the military departments or the Department of Homeland Security as a result of this part and
16 the amendments made by this part shall be completed so as to come into effect together with the
17 coming into effect of this Act and the amendments made by this Act in accordance with
18 subsection (a).