

116TH CONGRESS
1ST SESSION

S. _____

To amend title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. TESTER (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, 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 “Servicemembers and
5 Veterans Empowerment and Support Act of 2019”.

6 **SEC. 2. TECHNOLOGICAL ABUSE DEFINED.**

7 Section 101 of title 38, United States Code, is
8 amended by adding at the end the following new para-
9 graph:

1 “(37) The term ‘technological abuse’ means be-
2 havior intended to harm, threaten, intimidate, con-
3 trol, stalk, harass, impersonate, or monitor another
4 person, except as otherwise permitted by law, that
5 occurs via the Internet, social networking sites, com-
6 puters, mobile devices, cellular telephones, apps, lo-
7 cation tracking devices, instant messages, text mes-
8 sages, or other forms of technology. Technological
9 abuse may include—

10 “(A) unwanted, repeated telephone calls,
11 text messages, instant messages, or social
12 media posts;

13 “(B) non-consensual access of e-mail ac-
14 counts, texts or instant messaging accounts, so-
15 cial networking accounts, or cellular telephone
16 logs;

17 “(C) attempting to control or restrict a
18 person’s ability to access technology with the in-
19 tent to isolate them from support and social
20 connection;

21 “(D) using tracking devices or location
22 tracking software for the purpose of monitoring
23 or stalking another person’s location;

24 “(E) impersonation of a person with the
25 intent to deceive or cause harm through the use

1 of spoofing technology or the creation of fake
2 email or social media accounts; or

3 “(F) pressuring for or sharing of another
4 person’s private information, photographs, or
5 videos without their consent.”.

6 **SEC. 3. EXPANSION OF COVERAGE BY THE DEPARTMENT**
7 **OF VETERANS AFFAIRS OF COUNSELING AND**
8 **TREATMENT FOR SEXUAL TRAUMA TO IN-**
9 **CLUDE TECHNOLOGICAL ABUSE OF A SEX-**
10 **UAL NATURE.**

11 Section 1720D(a)(1) of title 38, United States Code,
12 is amended by inserting “technological abuse of a sexual
13 nature,” after “battery of a sexual nature,”.

14 **SEC. 4. STANDARD OF PROOF FOR SERVICE-CONNECTION**
15 **OF MENTAL HEALTH CONDITIONS RELATED**
16 **TO MILITARY SEXUAL TRAUMA.**

17 (a) STANDARD OF PROOF.—Section 1154 of title 38,
18 United States Code, is amended by adding at the end the
19 following new subsection:

20 “(c)(1) In the case of any veteran who claims that
21 a covered mental health condition was incurred in or ag-
22 gravated by military sexual trauma during active military,
23 naval, or air service, the Secretary shall accept as suffi-
24 cient proof of service-connection a diagnosis of such men-
25 tal health condition by a mental health professional to-

1 gether with satisfactory lay or other evidence of such trau-
2 ma and an opinion by the mental health professional that
3 such covered mental health condition is related to such
4 military sexual trauma, if consistent with the facts of such
5 service, notwithstanding the fact that there is no official
6 record of such incurrence or aggravation in such service,
7 and, to that end, shall resolve every reasonable doubt in
8 favor of the veteran. Service-connection of such covered
9 mental health condition may be rebutted by clear and con-
10 vincing evidence to the contrary. The reasons for granting
11 or denying service-connection in each case shall be re-
12 corded in full.

13 “(2) In this subsection:

14 “(A) The term ‘covered mental health condi-
15 tion’ means post-traumatic stress disorder, anxiety,
16 depression, or other mental health diagnosis de-
17 scribed in the current version of the Diagnostic and
18 Statistical Manual of Mental Disorders published by
19 the American Psychiatric Association that the Sec-
20 retary determines to be related to military sexual
21 trauma.

22 “(B) The term ‘military sexual trauma’ means,
23 with respect to a veteran, a physical assault of a sex-
24 ual nature, battery of a sexual nature, technological

1 abuse of a sexual nature, or sexual harassment in
2 line of duty.”.

3 (b) USE OF EVIDENCE IN EVALUATING DISABILITY
4 CLAIMS INVOLVING MILITARY SEXUAL TRAUMA.—

5 (1) IN GENERAL.—subchapter VI of chapter 11
6 of such title is amended by adding at the end the
7 following new section:

8 **“§ 1164. Evaluation of claims involving military sex-**
9 **ual trauma**

10 “(a) NONMILITARY SOURCES OF EVIDENCE.—(1) In
11 carrying out section 1154(c) of this title, the Secretary
12 shall ensure that if a claim for compensation under this
13 chapter is received by the Secretary for a covered mental
14 health condition (as defined in such section) based on mili-
15 tary sexual trauma experienced by a veteran during active
16 military, naval, or air service, evidence from sources other
17 than official records of the Department of Defense regard-
18 ing the veteran’s service may corroborate the veteran’s ac-
19 count of the assault, battery, or harassment.

20 “(2) Examples of evidence described in paragraph (1)
21 include the following:

22 “(A) Records from law enforcement authorities,
23 rape crisis centers, mental health counseling centers,
24 hospitals, and physicians.

1 “(B) Pregnancy tests and tests for sexually
2 transmitted diseases.

3 “(C) Statements from family members, room-
4 mates, other members of the Armed Forces or vet-
5 erans, and clergy.

6 “(b) BEHAVIOR CHANGES CORROBORATING EVI-
7 DENCE.—(1) In carrying out section 1154(c) of this title,
8 the Secretary shall ensure that evidence of a behavior
9 change following military sexual trauma is one type of rel-
10 evant evidence that may be found in sources described in
11 such subsection.

12 “(2) Examples of behavior changes that may be rel-
13 evant evidence of military sexual trauma include the fol-
14 lowing:

15 “(A) A request for a transfer to another mili-
16 tary duty assignment.

17 “(B) Deterioration in work performance.

18 “(C) Substance abuse.

19 “(D) Episodes of depression, panic attacks, or
20 anxiety without an identifiable cause.

21 “(E) Unexplained economic or social behavior
22 changes.

23 “(c) NOTICE AND OPPORTUNITY TO SUPPLY EVI-
24 DENCE.—The Secretary may not deny a claim of a veteran
25 for compensation under this chapter for a covered mental

1 health condition that is based on military sexual trauma
2 without first—

3 “(1) advising the veteran that evidence de-
4 scribed in subsections (a) and (b) may constitute
5 credible corroborating evidence of the military sexual
6 trauma; and

7 “(2) allowing the veteran an opportunity to fur-
8 nish such corroborating evidence or advise the Sec-
9 retary of potential sources of such evidence.

10 “(d) REVIEW OF EVIDENCE.—In reviewing a claim
11 for compensation described in subsection (a)(1), for any
12 evidence received with such claim that is described in sub-
13 section (a) or (b), the Secretary may submit such evidence
14 to such medical or mental health professional as the Sec-
15 retary considers appropriate, including clinical and coun-
16 seling experts employed by the Department, to obtain a
17 credible opinion as to whether the evidence indicates that
18 military sexual trauma occurred.

19 “(e) POINT OF CONTACT.—The Secretary shall en-
20 sure that each document provided to a veteran relating
21 to a claim for compensation described in subsection (a)(1)
22 includes contact information for an appropriate point of
23 contact with the Department.

1 “(f) SPECIALIZED TEAMS.—(1) The Secretary shall
2 establish specialized teams to process claims for com-
3 pensation described in subsection (a)(1).

4 “(2) The Secretary shall ensure that members of
5 teams established under paragraph (1) are trained to iden-
6 tify markers indicating military sexual trauma.

7 “(3) In any case in which the Secretary obtains con-
8 flicting evidence relating to the substantiation of a claim
9 for compensation described in subsection (a)(1), the Sec-
10 retary shall give more credence to the evidence that is
11 more beneficial to the claimant.

12 “(g) DEFINITIONS.—In this section, the terms ‘cov-
13 ered mental health condition’ and ‘military sexual trauma’
14 has the meanings given such terms in section 1154(c) of
15 this title.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of such chapter is amended
18 by adding at the end the following new item:

“1164. Evaluation of claims involving military sexual trauma.”.

19 (c) ANNUAL REPORTS.—

20 (1) IN GENERAL.—Subchapter VI of chapter 11
21 of title 38, United States Code, as amended by sub-
22 section (b), is further amended by adding at the end
23 the following new section:

1 **“§ 1165. Reports on claims for disabilities incurred or**
2 **aggravated by military sexual trauma**

3 “(a) REPORTS.—Not later than March 1, 2020, and
4 not less frequently than once each year thereafter through
5 2027, the Secretary shall submit to Congress a report on
6 covered claims submitted during the previous fiscal year
7 to identify and track the consistency of decisions across
8 regional offices.

9 “(b) ELEMENTS.—Each report under subsection (a)
10 shall include the following:

11 “(1) The number of covered claims submitted
12 to or considered by the Secretary during the fiscal
13 year covered by the report.

14 “(2) Of the covered claims listed under para-
15 graph (1), the number and percentage of such
16 claims—

17 “(A) submitted by each sex;

18 “(B) that were approved, including the
19 number and percentage of such approved claims
20 submitted by each sex; and

21 “(C) that were denied, including the num-
22 ber and percentage of such denied claims sub-
23 mitted by each sex.

24 “(3) Of the covered claims listed under para-
25 graph (1) that were approved, the number and per-

1 centage, disaggregated by sex, of claims assigned to
2 each rating percentage.

3 “(4) Of the covered claims listed under para-
4 graph (1) that were denied—

5 “(A) the three most common reasons given
6 by the Secretary under section 5104(b)(1) of
7 this title for such denials; and

8 “(B) the number of denials that were
9 based on the failure of a veteran to report for
10 a medical examination.

11 “(5) The number of covered claims that, as of
12 the end of the fiscal year covered by the report, are
13 pending and, separately, the number of such claims
14 on appeal.

15 “(6) For the fiscal year covered by the report,
16 the average number of days that covered claims take
17 to complete, beginning on the date on which the
18 claim is submitted.

19 “(7) A description of the training that the Sec-
20 retary provides to employees of the Veterans Bene-
21 fits Administration, or such contractors or other in-
22 dividuals as the Secretary considers appropriate,
23 specifically with respect to covered claims, including
24 the frequency, length, and content of such training.

25 “(c) DEFINITIONS.—In this section:

1 available to the Secretary, of the eligibility of such mem-
2 bers for services at the Department of Veterans Affairs.

3 (b) INFORMATION FROM SEXUAL ASSAULT RE-
4 SPONSE COORDINATORS.—The Secretary shall ensure that
5 Sexual Assault Response Coordinators of the Department
6 of Defense advise members of the Armed Forces who re-
7 port instances of military sexual trauma regarding the eli-
8 gibility of such members for services at the Department
9 of Veterans Affairs.

10 (c) MILITARY SEXUAL TRAUMA DEFINED.—In this
11 section, the term “military sexual trauma” means psycho-
12 logical trauma described in section 1720D(a)(1) of title
13 38, United States Code.

14 **SEC. 6. SENSE OF CONGRESS ON ACCESS TO DEPARTMENT**
15 **OF VETERANS AFFAIRS FACILITIES BY RE-**
16 **SERVISTS FOR COUNSELING AND TREAT-**
17 **MENT RELATING TO MILITARY SEXUAL TRAU-**
18 **MA.**

19 (a) IN GENERAL.—It is the sense of Congress that
20 members of the reserve components of the Armed Forces,
21 including members of the National Guard, should be able
22 to access all health care facilities of the Department of
23 Veterans Affairs to receive counseling and treatment relat-
24 ing to military sexual trauma and not just at Vet Centers.

25 (b) DEFINITIONS.—In this section:

1 (1) MILITARY SEXUAL TRAUMA.—The term
2 “military sexual trauma” means psychological trauma
3 described in section 1720D(a)(1) of title 38,
4 United States Code.

5 (2) VET CENTER.—The term “Vet Center” has
6 the meaning given that term in section 1712A(h) of
7 such title.