

103D CONGRESS
1ST SESSION

S. 816

To amend title 10, United States Code, to establish within the Office of the Secretary of Defense the position of Director of Special Investigations; and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 19), 1993

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to establish within the Office of the Secretary of Defense the position of Director of Special Investigations; and for other purposes.

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

3 **SECTION 1. DIRECTOR OF CRIMINAL INVESTIGATIONS.**

4 (a) ESTABLISHMENT.—Chapter 4 of title 10, United
5 States Code, is amended by adding at the end the follow-
6 ing new section:

1 **“§ 142. Director of Criminal Investigations**

2 “(a) APPOINTMENT.—There is a Director of Criminal
3 Investigations who is appointed by the Secretary of De-
4 fense from among civilians who have a significant level of
5 experience in criminal investigations. The Director reports
6 directly to the Secretary of Defense.

7 “(b) SENIOR EXECUTIVE SERVICE POSITION.—The
8 position of Director of Criminal Investigations is a Senior
9 Executive Service position. The Secretary shall designate
10 the position as a career reserved position under section
11 3132(b) of title 5.

12 “(c) DUTIES.—Subject to the authority, direction,
13 and control of the Secretary of Defense, the Director of
14 Criminal Investigations shall perform the duties set forth
15 in this section and such other related duties as the Sec-
16 retary may prescribe.

17 “(d) DATA COMPILATION AND REPORTING.—(1) The
18 Director shall obtain, compile, store, monitor, and (in ac-
19 cordance with this section) report information on each al-
20 legation of sexual misconduct of a member of the armed
21 forces or of a dependent of a member of the armed forces
22 against a member of the armed forces or against a depend-
23 ent of a member of the armed forces that is received by
24 a member of the armed forces or an officer or employee
25 of the Department of Defense in the official capacity of
26 that member, officer, or employee.

1 “(2) The information compiled pursuant to para-
2 graph (1) shall include the following:

3 “(A) The number of complaints containing an
4 allegation referred to in paragraph (1) that are re-
5 ceived as described in that paragraph.

6 “(B) The number of such complaints that are
7 investigated.

8 “(C) In the case of each complaint—

9 “(i) the organization that investigated the
10 complaint (if investigated);

11 “(ii) the disposition of the complaint upon
12 completion or other termination of the inves-
13 tigation; and

14 “(iii) the status or results of any judicial
15 action, nonjudicial disciplinary action, or other
16 adverse action taken.

17 “(D) The number of complaints that were dis-
18 posed of by formal adjudication in a judicial pro-
19 ceeding, including—

20 “(i) the number disposed of in a court-
21 martial;

22 “(ii) the number disposed of in a court of
23 the United States;

24 “(iii) the number disposed of in a court of
25 a State or territory of the United States or in

1 a court of a political subdivision of a State or
2 territory of the United States;

3 “(iv) the number disposed of by a plea of
4 guilty;

5 “(v) the number disposed of by trial on a
6 contested basis; and

7 “(vi) the number disposed of on any other
8 basis.

9 “(E) The number of complaints that were dis-
10 posed of by formal adjudication in an administrative
11 proceeding.

12 “(3) The Director shall make the information ob-
13 tained and compiled under this subsection available to the
14 Secretary of Defense, the Secretaries of the military de-
15 partments, Congress, any law enforcement agency con-
16 cerned, and any court concerned.

17 “(e) DIRECT INVESTIGATIONS.—The Director shall
18 investigate each allegation of sexual misconduct referred
19 to in subsection (d) that—

20 “(1) is made directly, or referred, to the Direc-
21 tor, including such an allegation that is made or re-
22 ferred to the Director by—

23 “(A) a commander of a member of the
24 armed forces alleged to have engaged in the

1 sexual misconduct or to have been the victim of
2 the sexual misconduct;

3 “(B) an investigative organization of the
4 Department of Defense; or

5 “(C) a victim of the alleged misconduct
6 who is a member of the armed forces or a de-
7 pendent of a member of the armed forces; or

8 “(2) the Secretary directs the Director to inves-
9 tigate.

10 “(f) OVERSIGHT AND QUALITY CONTROL OF OTHER
11 INVESTIGATIONS.—(1) The Director shall monitor the
12 conduct of investigations by units, offices, agencies, and
13 other organizations within the Department of Defense re-
14 garding allegations of sexual misconduct.

15 “(2) In carrying out paragraph (1), the Director may
16 inspect any investigation conducted or being conducted by
17 any other organization within the Department of Defense,
18 review the records of an investigation, and observe the
19 conduct of an ongoing investigation.

20 “(3) The Director may report to the Secretary on any
21 investigation monitored pursuant to in paragraph (1). The
22 report may include the status of the investigation, an eval-
23 uation of the conduct of the investigation, and an evalua-
24 tion of each investigator and the investigative organization
25 involved in the investigation.

1 “(g) POWERS.—In the performance of the duties set
2 forth or authorized in this section, the Director shall have
3 the following powers:

4 “(1) To have access to all records, reports, au-
5 dits, reviews, documents, papers, recommendations,
6 or other material available in the Department of De-
7 fense which relate to the duties of the Director.

8 “(2) To request such information or assistance
9 as may be necessary for carrying out the Director’s
10 duties from any Federal, State, or local govern-
11 mental agency or unit thereof.

12 “(3) To require by subpoena the production of
13 all information, documents, reports, answers,
14 records, accounts, papers, and other data and docu-
15 mentary evidence necessary in the performance of
16 the Director’s duties, which subpoena, in the case of
17 contumacy or refusal to obey, shall be enforceable by
18 order of any appropriate United States district
19 court.

20 “(4) To serve subpoenas, summons, and any ju-
21 dicial process related to the performance of any of
22 the Director’s duties.

23 “(5) To administer to or take from any person
24 an oath, affirmation, or affidavit whenever necessary
25 in the performance of the Director’s duties, which

1 oath, affirmation, or affidavit when administered or
2 taken by or before an employee designated by the
3 Director shall have the same force and effect as if
4 administered or taken by or before an officer having
5 a seal.

6 “(6) To have direct and prompt access to the
7 Secretary of Defense, the Secretary of a military de-
8 partment, and any commander when necessary for
9 any purpose pertaining to the performance of the
10 Director’s duties.

11 “(7) To obtain for any victim of sexual mis-
12 conduct referred to in subsection (d)(1), from any
13 facility of the uniformed services or any other health
14 care facility of the Federal Government or, by con-
15 tract, from any other source, medical services and
16 counseling and other mental health services appro-
17 priate for treating or investigating—

18 “(A) injuries resulting from the sexual
19 misconduct; and

20 “(B) other mental and physiological results
21 of the sexual misconduct.

22 “(h) REFERRALS FOR PROSECUTION.—(1) The Di-
23 rector may refer any case of sexual misconduct described
24 in subsection (d)(1) to—

1 “(A) a United States Attorney, or another ap-
2 propriate official in the Department of Justice, for
3 prosecution; or

4 “(B) to an appropriate commander within the
5 armed forces for action under chapter 47 of this title
6 (the Uniform Code of Military Justice) or other ap-
7 propriate action.

8 “(2) The Director shall report each such referral to
9 the Secretary of Defense.

10 “(i) STAFF.—(1) The Director shall have—

11 “(A) a staff of investigators who have extensive
12 experience in criminal investigations;

13 “(B) a staff of attorneys sufficient to provide
14 the Director, the criminal investigators, and the Di-
15 rector’s other staff personnel with legal counsel nec-
16 essary for the performance of the duties of the Di-
17 rector;

18 “(C) a staff of counseling referral specialists;
19 and

20 “(D) such other staff as is necessary for the
21 performance of the Director’s duties.

22 “(2) To the maximum extent practicable, the staff
23 of the Director shall be generally representative of the
24 population of the United States with regard to race, gen-
25 der, and cultural diversity.

1 “(j) REPORTS TO DIRECTOR.—Each Member of the
 2 Armed Forces and each officer or employee of the Depart-
 3 ment of Defense who, in the official capacity of that mem-
 4 ber, officer, or employee, receives an allegation of sexual
 5 misconduct shall submit to the Director a notification of
 6 that allegation together with such information as the Di-
 7 rector may require for the purpose of carrying out the Di-
 8 rector’s duties.

9 “(k) ANNUAL REPORT ON SEXUAL MISCONDUCT.—
 10 The Secretary of Defense shall submit to Congress an an-
 11 nual report on the number and disposition of cases of sex-
 12 ual misconduct by members of the Armed Forces and offi-
 13 cers and employees of the Department of Defense.

14 “(l) DEFINITIONS.—In this section:

15 “(1) The term ‘sexual misconduct’ includes the
 16 following:

17 “(A) Sexual harassment, including any
 18 conduct involving sexual harassment that—

19 “(i) in the case of conduct of a person
 20 who is subject to the provisions of chapter
 21 47 of this title (the Uniform Code of Mili-
 22 tary Justice), comprises a violation of a
 23 provision of subchapter X of such chapter
 24 (relating to the punitive articles of such
 25 Code) or an applicable regulation, direc-

tive, or guideline regarding sexual harassment that is prescribed by the Secretary of Defense or the Secretary of a military department; and

“(ii) in the case of an employee of the Department of Defense or a dependent subject to the jurisdiction of the Secretary of Defense or of the Secretary of a military department, comprises a violation of a regulation, directive, or guideline referred to in clause (i) that is applicable to such employee or dependent.

“(B) Rape.

“(C) Sexual assault.

“(D) Sexual battery.

“(2) The term ‘complaint’, with respect to an allegation of sexual misconduct, includes a report of such allegation.”.

(b) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 4 of such title is amended by adding at the end the following:

“142. Director of Special Investigations.”.

**SEC. 2. CRIMINAL FAILURE TO REPORT SEXUAL MIS-
CONDUCT.**

(a) OFFENSES.—Chapter 109A of title 18, United States Code, is amended—

1 (1) by redesignating section 2245 as section
2 2246;

3 (2) by inserting after section 2244 the following
4 new section:

5 **“§ 2245. Failure to report sexual misconduct**

6 “(a) FAILURE TO ACT ON ALLEGATION OF CRIMINAL
7 SEXUAL MISCONDUCT.—An officer or employee of the De-
8 partment of Defense or a member of the Armed Forces
9 of the United States who, in the official capacity of the
10 officer, employee, or member—

11 “(1) receives an allegation of criminal sexual
12 misconduct of a member of the Armed Forces of the
13 United States or of a dependent of a member of the
14 Armed Forces of the United States against a mem-
15 ber of the Armed Forces of the United States or
16 against a dependent of a member of the Armed
17 Forces of the United States;

18 “(2) is required by law to initiate an investiga-
19 tion of, or to determine whether to take disciplinary
20 action in the case of, the allegation; and

21 “(3) fails to submit a notification of the allega-
22 tion to the Director of Criminal Investigations of the
23 Department of Defense and to the immediate em-
24 ployment supervisor or immediate commander, as
25 the case may be, of the alleged offender,

1 shall be imprisoned not more than 10 years, fined under
2 this title, or both.

3 “(b) FAILURE TO ACT ON ALLEGATION OF CIVIL
4 SEXUAL MISCONDUCT.—An officer or employee of the De-
5 partment of Defense or a member of the Armed Forces
6 of the United States who, in the official capacity of the
7 officer, employee, or member—

8 “(1) receives an allegation of civil sexual mis-
9 conduct of a member of the Armed Forces of the
10 United States or of a dependent of a member of the
11 Armed Forces of the United States against a mem-
12 ber of the Armed Forces of the United States or
13 against a dependent of a member of the Armed
14 Forces of the United States;

15 “(2) is required by law to initiate an investiga-
16 tion of, or to determine whether to take disciplinary
17 action in the case of, the allegation; and

18 “(3) fails to submit a notification of the allega-
19 tion to the Director of Criminal Investigations of the
20 Department of Defense and to the immediate em-
21 ployment supervisor or immediate commander, as
22 the case may be, of the alleged offender,

23 shall be imprisoned not more than 1 year, fined under this
24 title, or both.”; and

1 (3) in section 2246, as redesignated by para-
2 graph (1)—

3 (A) by striking “and” at the end of para-
4 graph (2);

5 (B) by striking the period at the end of
6 paragraph (5) and inserting a semicolon; and

7 (C) by adding at the end the following new
8 paragraphs:

9 “(6) the term ‘criminal sexual misconduct’
10 means engaging in a sexual act or sexual contact in
11 circumstances such that the act or conduct con-
12 stitutes a criminal offense under this chapter, other
13 Federal law, or State law; and

14 “(7) the term ‘civil sexual misconduct’ means
15 engaging in a sexual act, sexual conduct, or other
16 activity of a sexual nature in violation of a statute,
17 rule, order, or other lawful authority that prohibits
18 the activity but does not authorize imposition of a
19 sentence of imprisonment for a violation.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of such chapter is amended by striking
22 the item relating to section 2245 and inserting the follow-
23 ing:

“2245. Failure to report sexual misconduct.

“2246. Definitions for chapter.”.

1 **SEC. 3. PERSONNEL ADMINISTRATION MATTERS.**

2 (a) PERFORMANCE EVALUATIONS AND BENEFITS.—

3 (1) The Secretary of Defense shall prescribe in regulations
4 a requirement that the commitment of an officer or em-
5 ployee of the Department of Defense and a member of
6 the Armed Forces of the United States to the elimination
7 of sexual harassment in the officer's, employee's, or mem-
8 ber's place of work or duty and at installations and other
9 facilities of the Department of Defense be one of the fac-
10 tors considered in—

11 (A) the preparation of the evaluations of the of-
12 ficer's, employee's, or member's performance of work
13 or duties;

14 (B) the determination of the appropriateness of
15 a promotion of the officer, employee, or member;
16 and

17 (C) the determination of the appropriateness of
18 selecting the officer, employee, or member to receive
19 a financial award for performance of work or duties.

20 (2) The Secretary shall submit to Congress an annual
21 report on the implementation of the regulations required
22 by paragraph (1). The report shall contain an assessment
23 of the effects of the implementation of such regulations
24 on the number, extent, and seriousness of the cases of sex-
25 ual harassment in the Department of Defense. The annual
26 report under this paragraph shall be separate from the

1 annual report required by section 142(k) of title 10, Unit-
2 ed States Code, as added by section 1.

3 (b) ELIGIBILITY FOR PROMOTIONS AND AWARDS.—

4 The Secretary of Defense and the Secretary of the military
5 department concerned may not approve for presentation
6 of a financial award for performance of work or duties
7 or for promotion any officer or employee of the Depart-
8 ment of Defense or any member of the Armed Forces of
9 the United States who—

10 (1) has been convicted of a criminal offense in-
11 volving sexual misconduct; or

12 (2) has received any other disciplinary action or
13 adverse personnel action on the basis of having en-
14 gaged in sexual misconduct.

15 **SEC. 4. PROTECTION OF PERSONS REPORTING SEXUAL**
16 **HARASSMENT.**

17 (a) REGULATIONS OF THE SECRETARY OF DE-
18 FENSE.—The Secretary of Defense shall prescribe regula-
19 tions that prohibit officers and employees of the Depart-
20 ment of Defense from retaliating or taking any adverse
21 personnel action against any other officer or employee of
22 the Department of Defense or any member of the Armed
23 Forces of the United States for reporting sexual mis-
24 conduct by an officer or employee of the Department of
25 Defense or a member of the Armed Forces or for providing

1 information in an investigation, disciplinary action, or ad-
2 verse personnel action in the case of an allegation of sex-
3 ual misconduct by any other such officer, employee, or
4 member. The regulations shall include sanctions for viola-
5 tion of the regulations.

6 (b) REGULATIONS OF A SECRETARY OF A MILITARY
7 DEPARTMENT.—(1) The Secretary of each military de-
8 partment shall prescribe regulations that prohibit mem-
9 bers of the Armed Forces of the United States under the
10 jurisdiction of that Secretary from retaliating or taking
11 any adverse personnel action against any officer or em-
12 ployee of the Department of Defense or any member of
13 the Armed Forces of the United States for reporting sex-
14 ual misconduct by any other officer or employee of the
15 Department of Defense or any other member of the Armed
16 Forces or for providing information in an investigation,
17 disciplinary action, or adverse personnel action in the case
18 of an allegation of sexual misconduct by any other such
19 officer, employee, or member.

20 (2) A violation of the regulations prescribed pursuant
21 to paragraph (1) shall be punishable under section 892
22 of title 10, United States Code (article 92 of the Uniform
23 Code of Military Justice).

1 **SEC. 5. SEXUAL MISCONDUCT DEFINED.**

2 In this Act, the term “sexual misconduct” has the
3 meaning given that term in section 142(l) of title 10, Unit-
4 ed States Code, as added by section 1.

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S 816 IS——2