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FY2020 National Defense Authorization Act: Selected Military Personnel Issues

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SUMMARY

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FY2020 National Defense Authorization Act: Selected Military Personnel Issues

Each year, the National Defense Authorization Act (NDAA) provides authorization of appropriations for a range of Department of Defense (DOD) and national security programs and related activities. New or clarified defense policies, organizational reform, and directed reports to Congress are often included. For FY2020, the House-passed (H.R. 2500) and Senate-passed (S. 1790) NDAA bills address or attempt to resolve high-profile military personnel issues. Some are required annual authorizations, such as end-strengths; some are updates or modifications to existing programs; and some are issues identified in certain military personnel programs.

In the House-passed and Senate-passed FY2020 NDAA bills, both houses consider authorized end-strengths identical to the Administration's FY2020 budget proposal. Compared to FY2019, both bills would increase active duty end-strength by <1% to 1,339,500. The authorized Selected Reserves end-strength would decrease by 2% to 807,800. With regard to military pay, the House bill would direct a 3.1% increase in basic pay, which is equal to the automatic adjustment amount directed by statutory formula (37 U.S.C. §1009). Because the Senate bill lacks a similar provision, it would allow the automatic adjustment amount directed by statutory formula (3.1%) to go into effect in calendar year 2020.

Congress is considering modifications to several existing personnel programs, including

- extension of DOD Morale, Welfare, and Recreation (MWR) privileges to Foreign Service Officers on mandatory home leave;
- repeal of the Survivor Benefit Plan (SPB) and Veterans Affairs' Dependency and Indemnity Compensation (DIC) offset requirement (i.e., the *widows' tax*);
- modification of DOD workplace and command climate surveys to include questions relating to experiences with supremacist activity, extremist activity, or racism;
- expansion of Special Victim Counsel services for victims of domestic violence;
- prohibition of gender-segregated Marine Corps recruit training;
- expansion of spouse employment and education programs, including reimbursement for relicensing costs associated with military relocations;
- clarified roles and responsibilities for senior military medical leaders assigned to the Defense Health Agency or a service medical department; and
- expansion of TRICARE coverage for certain reproductive health services.

As part of the oversight process, Congress is also considering several provisions to address selected congressional items of interest, such as

- DOD review of service records of certain World War I veterans for potential eligibility for a posthumously awarded Medal of Honor;
- a new DOD advisory committee to oversee the Board of Correction of Military Records and the Discharge Review Board;
- a feasibility study on the creation of a database to track domestic violence military protective orders and reporting to the National Instant Criminal Background Check System;
- transparency on military medical malpractice, including the ability for servicemembers to file certain tort claims against the United States; and
- limitations on the reductions of military medical personnel.

Contents

Introduction 1
*Active Component End-Strength 1
*Selected Reserve End-Strength 3
Access to Reproductive Health Services 5
*Administration of the Military Health System 8
Boards of Correction of Military Records & Discharge Review Board Matters 12
*Defense Commissary System 17
Diversity and Inclusion 18
*Domestic Violence and Child Abuse 21
*Medal of Honor 24
Military Family Issues 26
Military Medical Malpractice 28
*Military Pay Raise 30
Military Retirement and Survivor Benefits 30
*Military Sexual Assault and Sexual Harassment 32
Screening and Testing for Environmental and Occupational Exposures 39

Figures

Figure 1. Comparison of FY2019 Enacted Active Duty End-Strength with Potential FY2020 End-Strength in H.R. 2500 and S. 1790 2
Figure 2. Comparison of FY2019 Enacted Selected Reserve End-Strength with FY2020 End-Strength in H.R. 2500 and S. 1790 4

Contacts

Author Information 43

Introduction

Each year, the House and Senate armed services committees take up national defense authorization bills. The House of Representatives passed its version of the National Defense Authorization Act for Fiscal Year 2020 (NDAA; H.R. 2500) on July 12, 2019. The Senate passed its version of the NDAA (S. 1790) on June 27, 2019. These bills contain numerous provisions that affect military personnel, retirees, and their family members. Provisions in one version sometimes are not included in the other, are treated differently, or are identical in both versions. Following passage of each chamber's bill, a conference committee typically convenes to resolve the differences between the respective chambers' versions of the bill. A conference report is to be issued and considered by each chamber. Upon passage in both chambers, the final bill would be transmitted to the President.

This report highlights selected personnel-related issues that may generate high levels of congressional and constituent interest. CRS will update this report to reflect enacted legislation. Related CRS products are identified in each section to provide more detailed background information and analysis of the issues. For each issue, a CRS analyst is identified.

Some issues discussed in this report were previously addressed in the FY2019 NDAA (P.L. 115-232) and discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al., or other reports. Issues that were considered previously are designated with an asterisk in the relevant section titles of this report.

*Active Component End-Strength

Background: The authorized active duty end-strengths for FY2001, enacted in the year prior to the September 11 terrorist attacks, were as follows: Army (480,000), Navy (372,642), Marine Corps (172,600), and Air Force (357,000).[1] Over the next decade, in response to the demands of wars in Afghanistan and Iraq, Congress substantially increased the authorized personnel strength of the Army and Marine Corps. Congress began reversing those increases in light of the withdrawal of most U.S. forces from Iraq in 2011, the drawdown of U.S. forces in Afghanistan beginning in 2012, and budgetary constraints. Congress halted further reductions in Army and Marine Corps end-strength in FY2017, providing slight end-strength increases for both Services that year. In FY2018 and FY2019, Congress again provided slight end-strength increases for the Marine Corps, while providing a more substantial increase for the Army. However, the Army did not reach its authorized end-strength of 483,500 in FY2018 or its authorized end-strength of 487,500 in FY2019, primarily due to missing enlisted recruiting goals. End-strength for the Air Force generally declined from 2004 to 2015, but increased from 2016 to 2019. End-strength for the Navy declined from 2002 to 2012, increased in 2013 and remained essentially stable through 2017; it increased again in 2018 and 2019.

Authorized end-strengths for FY2019 and the end-strengths that would be authorized for FY2020 under H.R. 2500 and S. 1790 are shown in **Figure 1**.

[1] The term *end-strength* refers to the authorized strength of a specified branch of the military at the end of a given fiscal year. The term *authorized strength*, as described in 10 U.S.C. §101(b)(11), means "the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces." As such, end-strengths are maximum strength levels. Congress also sets minimum strength levels for the active component, which may be identical to or lower than the end-strength.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 401 would authorize a total FY2020 active duty end-strength of 1,339,500 including 480,000 for the Army 340,500 for the Navy 186,200 for the Marine Corps 332,800 for the Air Force	**Sec. 401** would authorize a total FY2020 active duty end-strength of 1,339,500 including 480,000 for the Army 340,500 for the Navy 186,200 for the Marine Corps 332,800 for the Air Force

Discussion: Both the House and Senate bills would authorize active duty end-strength levels identical to the Administration's request. In comparison to FY2019 authorized end-strengths, the Administration's FY2020 budget proposed a decrease for the Army (-7,500) and increases for the Navy (+5,100), Marine Corps (+100) and Air Force (+3,700). The proposed decrease for the Army reflects the challenges the Army is facing in recruiting a sufficient number of new enlisted personnel to expand its force. As stated in the Army's military personnel budget justification document, "Given the FY 2018 end strength outcome and a challenging labor market for military recruiting, the Army Active Component has decided to pursue a new end strength growth ramp. The Army has shifted to a more modest end strength growth ramp of 2,000 Soldiers per year, with end strength targets of 478,000 in FY 2019 and 480,000 in FY 2020. Beyond FY 2019, the steady 2,000 Solider per year growth increases Active Army end strength while maintaining existing high quality standards."[2]

Figure 1. Comparison of FY2019 Enacted Active Duty End-Strength with Potential FY2020 End-Strength in H.R. 2500 and S. 1790

	FY2019 Enacted	House-Passed FY2020			Senate-Passed FY2020		
		Number		Change from FY2019	Number		Change from FY2019
Army	487,500	480,000	↓	-7,500	480,000	↓	-7,500
Navy	335,400	340,500	↑	5,100	340,500	↑	5,100
Marine Corps	186,100	186,200	↑	100	186,200	↑	100
Air Force	329,100	332,800	↑	3,700	332,800	↑	3,700
Total Active Duty End-Strength	**1,338,100**	**1,339,500**	↑	**1,400**	**1,339,500**	↑	**1,400**

Note: Up arrows indicate potential increases from the FY2019 authorization.

References: Previously discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al. and similar reports from earlier years. Enacted figures found in P.L. 115-232.

CRS Point of Contact: Lawrence Kapp.

[2] Department of the Army, *Fiscal Year 2020 Budget Estimates, Military Personnel, Army, Justification Book*, Washington, DC, March 2019, p. 5, https://www.asafm.army.mil/Portals/72/Documents/BudgetMaterial/2020/Base%20Budget/Military%20Personnel/01%20Military%20Personnel%20Army.pdf.

*Selected Reserve End-Strength

Background: The authorized Selected Reserve[3] end-strengths for FY2001, enacted the year prior to the September 11 terrorist attacks, were: Army National Guard (350,526), Army Reserve (205,300), Navy Reserve (88,900), Marine Corps Reserve (39,558), Air National Guard (108,022), Air Force Reserve (74,358), and Coast Guard Reserve (8,000).[4] The overall authorized end-strength of the Selected Reserves has declined by about 6% over the past 18 years (874,664 in FY2001 versus 824,700 in FY2019). During this period, the overall decline is mostly attributed to reductions in Navy Reserve strength (-29,800). There were also smaller reductions in the authorized strength for the Army National Guard (-7,026), Army Reserve (-5,800), Marine Corps Reserve (-1,058), Air National Guard (-922), Air Force Reserve (-4,358), and Coast Guard Reserve (-1,000).

Authorized end-strengths for FY2019 and the end-strengths that would be authorized by H.R. 2500 and S. 1790 for FY2020 are shown in **Figure 2**.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 411 would authorize a total FY2020 Selected Reserve end- strength of 807,800 including:	**Sec. 411** would authorize a total FY2020 Selected Reserve end- strength of 807,800 including:
Army National Guard: 336,000 Army Reserve: 189,500 Navy Reserve: 59,000 Marine Corps Reserve: 38,500 Air National Guard: 107,700 Air Force Reserve: 70,100 Coast Guard Reserve: 7,000	Army National Guard: 336,000 Army Reserve: 189,500 Navy Reserve: 59,000 Marine Corps Reserve: 38,500 Air National Guard: 107,700 Air Force Reserve: 70,100 Coast Guard Reserve: 7,000

Discussion: Both the House and Senate bills would authorize Selected Reserve end-strength levels identical to the Administration's request. Relative to FY2019 authorized end-strengths, the Administration's FY2020 budget proposed decreases in the Army National Guard (-7,500), Army Reserve (-10,000), and Navy Reserve (-100), increases for the Air National Guard (+600) and Air Force Reserve (+100), and no change for the Marine Corps Reserve and Coast Guard Reserve. The Administration's proposed decrease for the Army National Guard and the Army Reserve reflected the challenges those reserve components have had in meeting their authorized strength. According to the Army National Guard (ARNG) FY2020 military personnel budget justification document:

> The ARNG fell short of the FY 2018 National Defense Authorization Act (NDAA) Congressionally authorized End Strength 343,500 by 8,296 Soldiers due to recruiting challenges, too few accessions, and to cover increased attrition losses in FY2018…The ARNG began addressing these issues and challenges in FY 2018 by ramping up the recruiting force, incentives programs, bonuses, and marketing efforts. While these efforts are expected to result in additional accessions in FY 2019, they will not be enough to meet the FY 2019 NDAA authorized End Strength of 343,500. The newly hired force will reach

[3] The Selected Reserves encompass those units and individuals designated as so essential to initial wartime missions that they have priority over all other Reserves. Members of the Selected Reserve are generally required to perform one weekend of training each month and two weeks of training each year, for which they receive pay and benefits. Some members of the Selected Reserve perform considerably more military duty than this, while others may only be required to perform the two weeks of annual training each year or other combinations of time. Members of the Selected Reserve can be involuntarily ordered to active duty under all of the principal statutes for reserve activation.

[4] P.L. 106-398 §411.

> full production levels by end of the FY 2019 in order to meet the required accessions mission and a projected end strength of 336,000 in FY 2020 and continue the projected ramp to an end strength of 338,000 by the end of FY 2024.[5]

Similarly, the Army Reserve FY2020 Military Personnel budget justification document stated:

> In FY 2018, the Army Reserve fell short of its end strength objective by 10,689 Soldiers due to a challenging recruiting and retention environment…Prior to the FY 2020 President's Budget request, the Army Reserve recognized it would not meet its FY 2019 end strength goal of 199,500 and subsequently reduced its goal to a more achievable end strength of 189,250. The Army Reserve continues to set conditions for a successful and productive recruiting and retention environment in support of achieving an end strength of 189,250 by the end of FY 2019 and sustaining that level through FY 2020.[6]

Figure 2. Comparison of FY2019 Enacted Selected Reserve End-Strength with FY2020 End-Strength in H.R. 2500 and S. 1790

	FY2019 Enacted	House-Passed FY2020			Senate-Passed FY2020		
		Number		Change from FY2019	Number		Change from FY2019
Army National Guard	343,500	336,000	↓	-7,500	336,000	↓	-7,500
Army Reserve	199,500	189,500	↓	-10,000	189,500	↓	-10,000
Navy Reserve	59,100	59,000	↓	-100	59,000	↓	-100
Marine Corps Reserve	38,500	38,500	↑	0	38,500	↑	0
Air National Guard	107,100	107,700	↑	600	107,700	↑	600
Air Force Reserve	70,000	70,100	↑	100	70,100	↑	100
Coast Guard Reserve	7,000	7,000	↑	0	7,000	↑	0
Total Reserve End-Strength	**824,700**	**807,800**	↓	**-16,900**	**807,800**	↓	**-16,900**

Note: Up arrows indicate increases from the FY2019 authorization.

References: Previously discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al. and similar reports from earlier years. For more on the Reserve Component see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon, and CRS In Focus IF10540, *Defense Primer: Reserve Forces*, by Lawrence Kapp

CRS Point of Contact: Lawrence Kapp.

[5] Department of the Army, *Fiscal Year 2020 Budget Estimates, National Guard Personnel, Army, Justification Book*, Washington, DC, March 2019, p. 7, https://www.asafm.army.mil/Portals/72/Documents/BudgetMaterial/2020/Base%20Budget/Military%20Personnel/National%20Guard%20Personnel%20Army.pdf.

[6] Department of the Army, *Fiscal Year 2020 Budget Estimates, Reserve Personnel, Army, Justification Book*, Washington, DC, March 2019, p. 7, https://www.asafm.army.mil/Portals/72/Documents/BudgetMaterial/2020/Base%20Budget/Military%20Personnel/02%20Reserve%20Personnel%20Army.pdf. The planned Army Reserve end-strength for FY2020 in the budget justification book is 189,500 in the accompanying table, not 189,250 as indicated in the text.

Access to Reproductive Health Services

Background: In general, the Department of Defense (DOD) offers certain reproductive health services in DOD-operated hospitals and clinics—known as *military treatment facilities* (MTFs)—or through civilian health care providers participating in TRICARE.[7] Reproductive health services typically include counseling, therapy, or treatment for male or female conditions affecting "fertility, overall health, and a person's ability to enjoy a sexual relationship."[8]

With regard to contraceptive services, DOD policy requires that all eligible beneficiaries have access to "comprehensive contraceptive counseling and the full range of contraceptive methods."[9] The policy also requires that contraceptive services be provided when "feasible and medically appropriate," such as during:

- a health care visit before or during deployment;
- enlisted or officer training;
- annual well woman exams and reproductive health screenings;
- physical exams; or
- when referred after a periodic health assessment.[10]

With regard to fertility services, DOD offers:

- diagnostic services (e.g., hormone evaluation and semen analysis);
- diagnosis and treatment of illness or injury to the male or female reproductive system;
- care for physically caused erectile dysfunction;[11]
- genetic testing;[12]
- certain prescription fertility drugs;[13] and
- certain assisted reproductive services for "seriously or severely ill/injured" active duty servicemembers.[14]

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[7] The Department of Defense (DOD) administers certain health entitlements under chapter 55 of Title 10, U.S. Code, through its *TRICARE* program. For more on TRICARE, see CRS In Focus IF10530, *Defense Primer: Military Health System*, by Bryce H. P. Mendez.

[8] Military Health System, "Women's Health," accessed July 29, 2019, https://www.health.mil/Military-Health-Topics/Operation-Live-Well/Preventive-Health/Womens-Health.

[9] Defense Health Agency (DHA) Procedural Instruction 6200.02, *Comprehensive Contraceptive Counseling and Access to the Full Range of Methods of Contraception*, May 13, 2019, https://www.health.mil/Reference-Center/Policies/2019/05/13/Comprehensive-Contraceptive-Counseling.

[10] Ibid, p. 10. The *periodic health assessment* is an annual health assessment used to monitor the health status of servicemembers and "provide timely, evidence-based preventive health care, information, counseling, treatment, or testing as appropriate." For more information, see Health Affairs Policy 06-006, *Periodic Health Assessment Policy for Active Duty and Selected Reserve Members*, February 16, 2006, https://health.mil/Reference-Center/Policies/2006/02/16/Periodic-Health-Assessment-Policy-for-Active-Duty-and-Selected-Reserve-Members.

[11] DHA, "Assisted Reproductive Services," accessed November 20, 2019, https://www.tricare.mil/CoveredServices/IsItCovered/AssistedReproductiveServices.

[12] TRICARE Policy Manual 6010.60-M, *Genetic Testing and Counseling*, Chapter 6, Section 3.1, updated February 21, 2018, https://manuals.health.mil/pages/DisplayManualHtmlFile/TP15/55/AsOf/TP15/C6S3_1.html.

[13] 32 C.F.R. §199.4(e) authorizes these services when medically necessary.

[14] DOD policy authorizes certain assisted reproductive services, such as in-vitro fertilization, artificial insemination, or

Active duty military personnel generally incur no out-of-pocket costs for DOD health care services.[15] If a servicemember receives reproductive health services that are not directly provided, referred by a DOD or TRICARE provider, or otherwise covered by DOD, then they may be required to pay for those services.[16] Other DOD beneficiaries may be subject to cost-sharing based on their TRICARE health plan, beneficiary category, and type of medical service received.[17]

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 701 would amend 10 U.S.C. §1074d to mandate TRICARE coverage of "all methods of contraception approved by the Food and Drug Administration" (FDA) for female servicemembers and retirees. Beneficiaries enrolled in TRICARE Prime or TRICARE Select would have no cost-sharing requirements.	**Sec. 701** is a similar provision to House Sec. 701. Coverage requirements would take effect on January 1, 2020. **Sec. 5701** would revise Section 701 of the bill, providing TRICARE program coverage of "all methods of contraception approved by the [FDA]," to instead take effect on January 1, 2030.
Sec. 702 would require DOD to provide written and oral information on "all methods of emergency contraception approved by the [FDA]" to all sexual assault survivors presenting at a military treatment facility. DOD would also be required to provide emergency contraception, upon request of a sexual assault survivor.	No similar provision.
Sec. 709 would allow DOD to offer assisted reproductive services to active duty servicemembers or their spouses with no cost share.	No similar provision.
Sec. 722 would direct the Secretary of Defense to conduct a pilot program that allows for cryopreservation and storage of sperm and eggs of active duty servicemembers deploying to a combat zone.	No similar provision.
Sec. 728 would require DOD to conduct a study on infertility among active duty servicemembers.	No similar provision.
Sec. 734 would require DOD, in consultation with the Department of Homeland Security (with respect to the U.S. Coast Guard), to establish a standardized family planning education program for servicemembers during the first year of service and at other times deemed appropriate.	No similar provision.

cryopreservation and storage of embryos, for servicemembers seriously or severely ill/injured on active duty. For more on these services, see https://www.tricare.mil/CoveredServices/IsItCovered/AssistedReproductiveServices and Assistant Secretary of Defense for Health Affairs memorandum, "Policy for Assisted Reproductive Services for the Benefit of Seriously or Severely Ill/Injured (Category II or III) Active Duty Services Members," April 3, 2012.

[15] 10 U.S.C. §1075a(a)(1). Members of the Reserve Component who are enrolled in TRICARE Reserve Select, a premium-based health plan available for Selected Reservists, may be subject to certain out of pocket costs. For more information on TRICARE Reserve Select, see https://tricare.mil/trs.

[16] This scenario generally includes military personnel who seek health care services from a private health care provider and do not file a claim for TRICARE reimbursement, or are seeking non-FDA approved reproductive health services.

[17] An overview of the 2019 cost-sharing features (including pharmacy co-pays) can be found at https://tricare.mil/-/media/Files/TRICARE/Publications/Misc/Costs_Sheet_2019.pdf.

Discussion: Provisions considered in the House and Senate bills would expand TRICARE coverage of specific reproductive health services to certain eligible beneficiaries. Currently, DOD offers comprehensive contraceptive counseling and a range of contraceptive methods. However, non-active duty beneficiaries may be subject to certain cost-sharing requirements depending on the type of contraceptive service rendered, accompanying procedures or follow-up evaluations that may be clinically necessary, or if the health care provider does not participate in the TRICARE network. Other reproductive health services, such as cryopreservation of human gametes (i.e., sperm or eggs), are generally not offered or covered by TRICARE unless meeting narrow criteria for eligibility.[18]

Section 701 of the House and Senate bills would codify (in 10 U.S.C §1074d) DOD's current practice of making available all FDA-approved methods of contraception (and counseling on such methods) to all beneficiaries. These sections would also remove any cost-sharing requirements for contraceptive services, regardless of beneficiary category, enrollment status, or where the services are received (i.e., network vs. non-network provider). The House bill would require contraception coverage upon enactment, while the Senate bill would take effect on January 1, 2030.

Section 702 of the House bill would require DOD to provide written and oral information on all FDA-approved methods of emergency contraception to sexual assault victims presenting for care at an MTF. DOD policy currently lists a similar requirement for MTF health care providers to consult with sexual assault victims, once clinically stable, on the "risk of pregnancy, options for emergency contraception, and any follow-up care and referral services to the extent authorized by law."[19]

Generally, DOD does not offer family planning education as a standard training requirement for new military recruits. Rather, servicemembers must request the service from MTF staff, TRICARE providers, or military medical personnel embedded in certain units. Section 734 of the House bill would require DOD, in consultation with the Department of Homeland Security (with regard to the U.S. Coast Guard), to establish a standardized family planning curriculum and education programs for all members of the armed forces. All servicemembers would be required to receive family planning education during their first year of military service and when indicated by a respective Secretary of a military department.

Sections 709, 722, and 728 of the House bill would allow DOD to provide and study certain services (also referred to as *assisted reproductive technologies* or ART) to treat infertility among servicemembers.[20] In general, DOD considers these services as "elective in nature" and excludes ART from TRICARE coverage.[21] Section 709 would authorize, but not require, the Secretary of Defense to offer ART, ART counseling, reversal of surgical sterilization (i.e., tubal ligation or vasectomy), and cryopreservation of human gametes to servicemembers or their spouses. The provision would also prohibit any cost sharing for such services.

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[18] See footnote 14.

[19] DOD Instruction 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, updated May 24, 2017, p. 71, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf.

[20] 42 U.S.C. §236a-7 defines *Assisted Reproductive Technology* as "all treatments or procedures which include the handling of human oocytes or embryos, including in vitro fertilization, gamete intrafallopian transfer, and such other specific technologies as the Secretary [of Health and Human Services] may include in this definition, after making public any proposed definition in such manner as to facilitate comment from any period (including any Federal or other public agency)." For more on ART, see https://www.cdc.gov/art/index.html.

[21] DOD, *Report to Congress Efforts to Treat Infertility of Military Families*, December 2015, p. 2, https://health.mil/Reference-Center/Reports/2016/02/26/Report-on-Efforts-to-Treat-Infertility-of-Military-Families.

Section 722 would require DOD to conduct a pilot program that allows active duty servicemembers deploying to a combat zone to cryopreserve and store their gametes. The program would allow a servicemember to store their gametes up to one year after retiring or separating from military service, and at no cost to the participant. Section 728 would require a DOD report to Congress on the incidence of infertility among servicemembers, including a comparison to the general U.S. population, access to infertility services, and the potentiality of service-connected infertility.

References: CRS In Focus IF11109, *Defense Health Primer: Contraceptive Services*, by Bryce H. P. Mendez.

CRS Point of Contact: Bryce H.P. Mendez.

*Administration of the Military Health System

Background: DOD operates a health care delivery system that serves approximately 9.5 million beneficiaries.[22] The Military Health System (MHS) administers the TRICARE program, which offers health care services at military treatment facilities (MTFs) or through participating civilian health care providers.[23] Historically, the military services have administered the MTFs, while the Defense Health Agency (DHA) administered the private sector care program of TRICARE. DHA is a combat support agency that enables the Army, Navy, and Air Force medical services to provide a *medically ready force* and *ready medical force* to combatant commands in both peacetime and wartime.[24]

In 2016, Congress found that the organizational structure of the MHS could be streamlined to sustain the "medical readiness of the Armed Forces, improve beneficiaries' access to care and the experience of care, improve health outcomes, and lower the total management cost."[25] Section 702 of the FY2017 NDAA (P.L. 114-328) directed significant reform to the MHS and administration of MTFs by October 1, 2018. Reforms include:

- transfer of administration and management of MTFs from each respective service surgeon general to the DHA Director;
- reorganization of DHA's internal structure; and
- redesignation of the service surgeons general as principal advisors for their respective military service, and as service chief medical advisor to the DHA.

In June 2018, DOD submitted its implementation plan to Congress. The implementation plan details how DOD is to reform the MHS to a "streamlined organizational model that standardizes the delivery of care across the MHS with less overhead, more timely policymaking, and a transparent process for oversight and measurement of performance."[26] Congress later revised the MHS reform mandate by further clarifying certain tasks relating to the transfer of MTFs, the roles and responsibilities of the DHA and the service surgeons general, and by extending the deadline

[22] DOD, *Evaluation of the TRICARE Program: Fiscal Year 2019 Report to Congress*, April 8, 2019, p. 19.

[23] For more on TRICARE, see CRS In Focus IF10530, *Defense Primer: Military Health System*, by Bryce H. P. Mendez.

[24] For more on the DHA, see https://health.mil/About-MHS/OASDHA/Defense-Health-Agency.

[25] H.Rept. 114-840, p. 1066.

[26] DOD, *Report to the Armed Services Committees of the Senate and House of Representatives, Final Plan to Implement Section 1073c of Title 10, United States Code*, June 30, 2018, p. 4, https://health.mil/Reference-Center/Congressional-Testimonies/2018/06/28/Reform-of-Administration-of-the-Defense-Health-Agency-and-Military-MTFs.

for implementing reform efforts to September 30, 2021. DOD later revised its plan to accelerate certain tasks.

On October 1, 2019, the military services transferred the administration and management of their U.S.-based MTFs to the DHA. The military services are to continue to administer their overseas MTFs until transfer to the DHA in 2020–2021.

House-Passed H.R. 2500	Senate-Passed S. 1790
Organizational Management	***Organizational Management***
No similar provision	**Sec. 711** would amend 10 U.S.C. §1073c by inserting additional responsibilities for the DHA Director in administering the MTFs, revising the qualifications for the DHA Assistant Director for Health Care Administration, clarifying the responsibilities for certain DHA Deputy Assistant Directors, and further defining an MTF.
No similar provision.	**Sec. 712** would amend Section 712 of the FY2019 NDAA (P.L. 115-232) to further clarify the role of the service surgeons general in supporting medical requirements of combatant commands and the role of the Military Departments in maintaining administrative control of military personnel assigned to MTFs.
No similar provision.	**Sec. 713** would establish a four-year minimum requirement for the tour of duty as an MTF commander or director.
No similar provision.	**Sec. 715** would require DOD to establish up to four "regional medical hubs" to support combatant command operational medical requirements.
No similar provision.	**Sec. 5703** would require the Secretary of Defense to preserve the resources assigned to the Army Medical Research and Materiel Command, notwithstanding its administrative and mission realignments to the Army Futures Command and the Defense Health Agency.
Military Medical Workforce	***Military Medical Workforce***
Sec. 718 would limit certain changes to military medical end-strength.	No similar provision.
Sec. 749 would require the Secretary of Defense to provide a report to Congress on operational medical and dental personnel requirements.	No similar provision.
Civilian Partnerships	***Civilian Partnerships***
Sec. 726 would require DOD to study the use of "military-civilian integrated health delivery systems" and provide a report to Congress no later than 180 days after enactment.	No similar provision.
Sec. 751 would require DOD to partner with academic health centers and establish a "University Affiliated Research Center" that would focus on care for wounded servicemembers.	No similar provision.
No similar provision.	**Sec. 727** would allow DOD to conduct a pilot program using military-civilian partnerships to enhance interoperability and medical surge capabilities of the National Disaster Medical System.

Discussion: The House and Senate bills include a number of provisions that would clarify certain responsibilities for DHA and other medical entities with service-specific responsibilities, such as administering and managing MTFs, providing health service support to combatant commanders, performing medical research, and recruiting and retaining medical personnel.

Organizational Management. Section 711 of the Senate bill would amend 10 U.S.C. §1073c to clarify the qualifications of the DHA assistant director and would add the following to DHA's roles and responsibilities:

- provision of health care;
- clinical privileging and quality of care programs;[27]
- MTF capacities to support clinical currency and readiness standards;[28] and
- coordination with the military services for joint staffing.

Section 712 of the Senate bill clarifies the roles and responsibilities of the service surgeons general, including:

- support to combatant commanders for operational and deployment requirements;
- support to DHA by assigning military medical personnel to MTFs;
- development of combat medical capabilities; and
- medical readiness of the armed forces.

Generally, there is no statutory minimum or maximum length for the tour of duty as an MTF commander or director. Historically, a service surgeon general selected an MTF commander to serve a two- or three-year tour of duty. Since the enactment of recent MHS reforms, the service surgeons general nominate and recommend candidates to the DHA for MTF commander or director positions.[29] DHA selects individuals and determines the length for the tour of duty. Section 713 of the Senate bill would require DOD to establish a minimum length for the tour of duty for MTF commanders or directors, which must be no shorter than four years.

Section 715 would require DOD to designate no more than four MTFs as regional referral centers for specialized care or "regional medical hubs" by October 1, 2020. A general or flag officer would lead each regional medical hub and would be responsible for providing specialty care to patients referred from other MTFs, TRICARE providers, or VA medical facilities.

In 2018, Congress directed DOD to consolidate most of its medical research programs under the DHA.[30] While the military services are to retain certain medical research responsibilities, the DHA is to be responsible for coordinating all research, development, test, and evaluation (RDT&E) funds appropriated to the defense health program (DHP), including the congressionally directed medical research programs (CDMRP).[31] The U.S. Army Medical Research and Materiel

[27] DOD defines *clinical privileging* as the "granting of permission and responsibility of a healthcare provider to independently provide specified or delineated healthcare within the scope of his or her license, certification, or registration." MHS, "Clinical Privileging," accessed December 6, 2019, https://health.mil/Reference-Center/Glossary-Terms/2013/10/29/Clinical-Privileging.

[28] P.L. 114-328 §725(b) directed DOD to establish *clinical currency and readiness standards*. DOD and the military services identified core competencies that certain military medical providers are required to maintain as critical wartime medical readiness skills.

[29] Military Health System (MHS) reforms applicable to the military treatment facility (MTF) commander or director selection process include P.L. 114-328 §702, P.L. 115-91 §713, and P.L. 115-232 §711.

[30] P.L. 114-328 §711.

[31] For more on the Congressionally Directed Medical Research Programs (CDMRP), see CRS In Focus IF10349,

Command (USAMRMC) administers the CDMRP and executes a variety of RDT&E funds appropriated to the Department of the Army, DHP, and other DOD-wide operation and maintenance accounts. USAMRMC executes most of the annual DHP RDT&E. In FY2017, USAMRMC executed approximately 76% ($377.5 million) of the total DHP RDT&E funds.[32] As of June 1, 2019, USAMRMC restructured and realigned its responsibilities under two separate DOD entities: the DHA and Army Futures Command.[33] Depending on the research mission (DHP requirements vs. service-specific requirements), USAMRMC resources were also reallocated accordingly.[34] Section 5703 would direct the Secretary of Defense to retain certain manpower and funding resources with USAMRMC.

Military Medical Personnel. DOD's budget request for FY2020 includes a proposal to reduce its active duty medical force by 13% (14,707 personnel) in order to maintain a workforce that is "appropriately sized and shaped to meet the National Defense Strategy requirements and allow the MHS to optimize operational training and beneficiary care delivery."[35] Compared to FY2019 levels, the Army would have the largest reduction in medical forces (-16%), followed by the Air Force (-15%), and the Navy (-7%).[36] DOD's initial plan to implement these reductions include: (1) transferring positions (also known as billets) from the MHS to new health service support positions in deployable or warfighting units, military service headquarters, or combatant commands; (2) transferring billets from the MHS to the military departments for repurposing as nonmedical assets; and (3) converting certain military billets to civilian billets.[37]

Section 718 of the House bill would limit DOD actions to reduce or realign its active duty medical force until certain internal reviews, analyses, measurements, and outreach actions are completed within 180 days of enactment, and at least 90 days after a report to Congress on such actions have been provided. The provision does allow DOD to reduce or realign certain positions (also referred to as *billets*) that have been unfilled since at least October 1, 2018. Section 749 would require a DOD report to Congress on how military medical and dental personnel requirements are identified, including joint planning assumptions and additional factors considered in the analysis.[38]

Congressionally Directed Medical Research Programs Funding for FY2019, by Bryce H. P. Mendez.

[32] Department of the Army, U.S. Army Medical Research and Material Command, "Command Overview" brief, p. 8, October 18, 2018.

[33] C.J. Lovelace, "Army Logistics Leaders Focus on Medical Materiel's Role in Readiness," *Army Medical Logistics Command*, September 10, 2019, https://amlc.army.afpims.mil/News/Article/1956385/army-logistics-leaders-focus-on-medical-materiels-role-in-readiness/. For more on the *Army Futures Command*, see CRS Insight IN10889, *Army Futures Command (AFC)*, by Andrew Feickert.

[34] Ibid.

[35] CRS Insight IN11115, *DOD's Proposal to Reduce Military Medical End Strength*, by Bryce H. P. Mendez; DOD, Defense Budget Overview, March 2019, p. 2-5, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_Overview_Book.pdf .

[36] DOD, *Defense Health Program Fiscal Year (FY) 2020 Budget Estimates*, March 2019, p. DHP-1, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/budget_justification/pdfs/09_Defense_Health_Program/Vol_I_Sec_9_PB-11A_Personnel_Summary_DHP_PB20.pdf.

[37] U.S. Congress, House Committee on Appropriations, Subcommittee on Defense, *Defense Health Programs*, prepared by Mr. Tom McCaffery, Principal Deputy Assistant Secretary of Defense (Health Affairs) and Vice Admiral Bono, Director, Defense Health Agency, 116th Cong., 1st sess., April 3, 2019 (Washington: GPO, 2019), p. 8, https://docs.house.gov/meetings/AP/AP02/20190403/109223/HHRG-116-AP02-Wstate-BonoR-20190403.PDF.

[38] DOD defines *joint planning assumptions* as "suppositions about the current situation or future course of events, presumed to be true in the absence of facts." Assumptions are developed and utilized during the military planning process and informs an operational commander's decisions for action (or inaction.) Department of Defense, "Joint

Civilian Partnerships. The MHS states that its "success depends on building strong partnerships with the civilian health care sector."[39] As a high-priority initiative, the MHS maintains numerous partnerships with civilian health care organizations, academic institutions, and research entities to enhance or supplement military medical readiness and deliver the health entitlements authorized in chapter 55 of Title 10, U.S. Code.[40] Both bills include provisions that would direct DOD to use its authority to partner with civilian entities to enrich certain medical care capabilities. Section 751 of the House bill would require DOD partnerships with academic health centers to focus on biomedical research for wounded servicemembers. Section 727 of the Senate bill would authorize DOD to conduct a pilot program to improve medical surge capabilities of the National Disaster Medical System and interoperability with certain civilian health care organizations and other federal agencies.[41]

References: Previously discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al.; CRS In Focus IF11273, *Military Health System Reform*, by Bryce H. P. Mendez; CRS Report WPD00010, *Military Health System Reform*, by Bryce H. P. Mendez; CRS Insight IN11115, *DOD's Proposal to Reduce Military Medical End Strength*, by Bryce H. P. Mendez; and CRS Report R45399, *Military Medical Care: Frequently Asked Questions*, by Bryce H. P. Mendez.

CRS Point of Contact: Bryce H.P. Mendez.

Boards of Correction of Military Records & Discharge Review Board Matters

Background: The characterization of a servicemember's discharge, as well as certain awards, and amount of time on active duty, may affect eligibility for certain veteran benefits. If a servicemember believes that information in his or her military records is incorrect or alleges an injustice, two statutorily established mechanisms exist for correcting these records: a board of correction of military records (BCMR) and a discharge review board (DRB). A BCMR provides an administrative process for military personnel to request record corrections and payment of monetary claims associated with a record correction.[42] An applicant must request a record correction within three years of discovering an alleged error or injustice.[43]

Planning," Joint Publication 5-0, June 16, 2017, p. V-8, https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp5_0_20171606.pdf.

[39] MHS, "Initiatives and Areas of Impact," accessed October 15, 2019, https://www.health.mil/About-MHS/MHS-Initiatives.

[40] Ibid.

[41] The *National Medical Disaster System* (NDMS) is a coordinated effort between certain federal, state, and local government entities, and civilian health care organizations that provide health and other social services during certain declared emergencies. The NDMS is authorized under 42 U.S.C. §300hh-1 and administered by the Secretary of Health and Human Services. For more on the NDMS, see https://www.phe.gov/Preparedness/responders/ndms/Pages/default.aspx.

[42] 10 U.S.C. §1552 authorizes each military department to establish a board of correction of military records (BCMR). For more on BCMRs, see DOD Directive 1332.41, *Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)*, Mar 8, 2004; Army Regulation 15-185, *Army Board for Correction of Military Records*, Mar 31, 2006; Secretary of the Navy Instruction 5420.193, *Board for Correction of Naval Records*, Nov 19, 1997; Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records*, Mar 5, 2012; and 33 C.F.R §§52.1-52.81.

[43] 10 U.S.C. §1552(b) allows BCMRs to waive the three-year time limit in the "interest of justice" or for good cause.

A DRB provides an administrative process for former servicemembers to request changes to the character of discharge or reason for discharge, but any monetary claim associated with a discharge change must be presented to a BCMR. An application for review must be made within 15 years of the applicant's discharge or dismissal.[44] A subsequent change in policy has no effect on a preceding discharge unless the new policy is retroactive or materially different in a way that would substantially enhance a servicemember's rights and likely invalidate the discharge.

Statute requires a DRB to give *liberal consideration* to an application in which post-traumatic stress syndrome (PTSD), traumatic brain injury (TBI), or mental health conditions typically associated with combat operations may have been a factor in the discharge decision.[45] The *liberal consideration* requirement equally applies to discharge reviews in which sexual assault or harassment caused PTSD, TBI, or mental health conditions may have been a factor in the basis for the discharge decision.[46]

House-Passed H.R. 2500	Senate-Passed S. 1790
Oversight and Operations	***Oversight and Operations***
Sec. 521 would require a DOD discharge appeals board to consider appeals of DRB denials and an annual appeals data report to be published online.	No similar provision.
Sec. 522 would extend the restriction on reducing personnel assigned to a service review agency, remove the option to unilaterally reduce service review agency personnel under certain conditions, and require a report by each Service Secretary on a plan to reduce application backlogs and maintain resources at the Services' review agency.	No similar provision.
Sec. 523 would establish a four-year defense advisory committee to oversee BCMR and DRB activities and publish an annual observations and recommendations report.	No similar provision.
No similar provision.	**Sec. 546** would repeal the requirement to apply for a discharge review within 15 years of a discharge or dismissal.
No similar provision.	**Sec. 547** would reduce the minimum number of members required for a DRB from five to three.

[44] 10 U.S.C. §1553(a) authorizes each military department to establish a discharge review board (DRB). For more on DRBs, see DOD Directive 1332.41; DOD Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, Apr 4, 2004; Army Regulation 15-180, *Army Discharge Review Board*, Mar 20, 1998; Secretary of the Navy Instruction 5420.174D, *Naval Discharge Review Board Procedures and Standards*, Dec 22, 2004; 32 C.F.R §§865.100-126, *Air Force Discharge Review Board*; and 33 C.F.R §§51.1-51.11, *Coast Guard Discharge Review Board*).

[45] 10 USC §§1552(h)(2)(B), 1553(d); Department of Defense memorandum, *Supplemental Guidance Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder*, Sep 3, 2014; *Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)*, Feb 24, 2016. Some mental health conditions like PTSD have been found to be correlated with misconduct or problematic behaviors (e.g., alcohol or drug abuse). See, for example, https://www.ptsd.va.gov/understand/related/problem_alcohol_use.asp.

[46] DOD Memorandum, *Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, Aug 25, 2017, https://dod.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf.

House-Passed H.R. 2500	Senate-Passed S. 1790
PTSD, TBI, or Other Trauma Mental Health Conditions	***PTSD, TBI, or Other Trauma Mental Health Conditions***
No similar provision.	**Sec. 548** would require a BCMR or DRB to consider previously issued opinions by a social worker (with training on PTSD, TBI, or other trauma mental health conditions for cases that are related to combat or sexual trauma, intimate partner violence, or spousal abuse).
No similar provision.	**Sec. 549** would expand BCMR and DRB subject matter jurisdiction to include sexual trauma, intimate partner violence, or spousal abuse that serves as all or part of the justification for an application based on PTSD, TBI, or other trauma mental health conditions; and would repeal the term "military sexual trauma."
Sec. 530D would require a BCMR or DRB reviewing a case based on PTSD, TBI, or other trauma, to seek advice and counsel from a psychiatrist, psychologist, or social worker with training on mental health issues associated with these conditions, as well as other related experts.	**Sec. 550** is a similar provision to House Sec. 530D.
Sec. 530E would require the training curriculum for BCMR and DRB members include topics on sexual trauma, intimate partner violence, spousal abuse, and the various responses of individuals to trauma.	**Sec. 551** is a similar provision to House Sec. 530E.
No similar provision.	**Sec. 552** would require the diagnosis assigned to a separating servicemember who has a mental condition as a result of being a victim of a sex-related, intimate partner violence-related, or spousal abuse-related offense, be corroborated by a competent mental health care professional at or above the level of the healthcare professional rendering the diagnosis and endorsed by the respective service surgeon general. The provision would also prohibit DOD from using the term "disability" as a reason for discharge or in a discharge narrative.
No similar provision.	**Sec. 553** would require a BCMR and DRB to review, "with liberal consideration," all evidence and information submitted relating to PTSD, TBI, or other trauma, or a case based on sexual trauma, intimate partner violence, or spousal abuse, (including information produced by the VA or a civilian healthcare provider).
Separations for Homosexual Conduct	***Separations for Homosexual Conduct***
Sec. 530H would require a DRB, when requested by a former servicemember, or other designated individuals, to review a discharge and separation based on sexual orientation, and upgrade the discharge to honorable, or remove any reference to sexual orientation on a DD-214 if the discharge was honorable, if the DRB finds such action is appropriate.	No similar provision.
Nullification Provisions	***Nullification Provisions***
No similar provision.	**Sec. 5546** would nullify sections 546–553 and declare these sections as having "no force or effect."

Oversight and Operations. House Sections 521 and 523 have a common purpose—increased oversight of BCMRs and DRBs. Section 521 would create a new capacity and entity for discharge review appeals and reporting requirements for discharge review appeals data. While DOD has a complaint process for DRB denial decisions, there is no adjudicatory and independent appeals process for discharge reviews.[47] Section 523 would create a defense advisory committee for a term of four years to oversee BCMR and DRB structure, practice, and procedure. The committee would publish an annual report for the Secretary of Defense and congressional defense committees with observations and recommendations regarding board operations and efficacy, among other things.

House Section 522 would amend 10 U.S.C. §1559 to extend previously authorized restrictions on reducing personnel levels at service review agencies until December 31, 2025. The provision would require each Service Secretary to report to Congress his or her plan to reduce application backlogs and maintain resources at the Services' review agencies. This section would also repeal the authority of the Secretary of Defense to reduce personnel at service review agencies.

Senate Section 546 would eliminate the time limits to file a discharge review application. Under 10 U.S.C.§1553(a), a servicemember, deceased servicemember's next of kin, or legal representative of either, are allowed to submit an application to a DRB up to 15 years after the discharge or dismissal. Removing the 15-year limit would create a perpetual capacity for these individuals to apply for a discharge review.

Senate Section 547 would reduce the number of required DRB members from five to three. If overall service review agency personnel requirements remain unchanged, reducing the number of DRB members and reallocating the previously required fourth and fifth members to new DRBs could presumably increase the number of DRBs available.

Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or Other Trauma Mental Health Conditions. Senate Sections 548 through 553 are a series of provisions that have a common purpose with regard to military discharges and military records—addressing the effects of PTSD, TBI, or other trauma mental health conditions related to combat or sexual trauma, intimate partner violence, or spousal abuse. Consistent with this purpose, Section 549 affects all other sections in this series because it would repeal the term "military sexual trauma" where it appears in the laws that authorize a BCMR and DRB by replacing it with the terms "sexual trauma, intimate partner violence, or spousal abuse." Additionally, Section 551 would amend current statutorily mandated training for BCMR and DRB members to include curricula on sexual trauma, intimate partner violence, and spousal abuse, and the various responses to these events. House Section 530E is a similar requirement.

Senate Section 552 would require DOD to take certain actions prior to separating a servicemember based on a mental health condition that is not classified as a disability and if the member was a victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense. First, a mental health care professional at a peer or higher level to the diagnosing health care professional must corroborate the condition. Second, the service surgeon general must endorse the diagnosis and corroboration. This section further requires that any separation for a mental health condition that is not classified as a disability will use the term "condition," not the term "disability," as the narrative reason for the separation on the member's certificate of release or discharge from active duty (also known as the DD-214). In addition, it

[47] Ibid; DOD Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, April 4, 2004, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133228p.pdf.

would prohibit the term "Secretarial authority" from being used as the narrative reason for separation.[48]

When reviewing an application in which mental health conditions related to combat or sexual trauma, intimate partner violence, or spousal abuse are in part, or in whole, a basis for the correction or discharge, Senate Section 548 would require a BCMR or DRB to also consider any opinion issued by a social worker with training on PTSD, TBI, or other trauma. A BCMR or DRB would be required to consider an issued opinion that is (1) already included in a service record as part of a diagnosis of an applicant while serving in the armed forces, and (2) provided or submitted by the applicant.

Senate Section 550 would require that when a BCMR or DRB obtains a medical opinion on two types of cases it must include opinions from specified healthcare professionals. First, for cases based in whole or in part on PTSD or TBI related to combat, a BCMR or DRB would be required to seek advice and counsel from a psychiatrist, psychologist, or social worker with post-traumatic stress disorder or traumatic brain injury or other trauma training. Second, for cases based in whole or in part on PTSD or TBI related to sexual trauma, intimate partner violence, or spousal abuse, a DRB would be required to seek advice and counsel from a psychiatrist, psychologist, or social worker with post-traumatic stress disorder or traumatic brain injury or other trauma training for these types of cases and a BCMR would be required to seek advice and counsel from an expert in trauma specific to sexual assault, intimate partner violence, or spousal abuse, for these types of cases. House Section 503D would impose a similar requirement.

Senate Section 553 would require a BCMR or DRB to review all evidence and information provided by an applicant, including lay evidence or medical evidence provided by the VA or civilian health care providers. This provision would also require liberal consideration when reviewing evidence for a record correction or discharge review based in whole or in part on PTSD or TBI- related to combat or sexual trauma, intimate partner violence, or spousal abuse.

Separations for Homosexual Conduct. If a discharge was based on sexual orientation, House Section 530H would remove the DRB presumption of administrative regularity that a discharge was correct and proper. Eliminating this presumption relieves the applicant of the burden to show by substantial evidence that a discharge was not correct and proper. This provision would allow a DRB to review and change, upon request and if found appropriate, the discharge characterization of a servicemember originally discharged based on sexual orientation. If an application for review of a discharge based on sexual orientation is denied, the provision would establish a discretionary appeal process consistent with existing DRB procedures by the applicant.[49]

S. 1790 Nullification Amendment. Senate Section 5546 is an amendment to the bill that reads "Part III of subtitle D of Title V, and the amendments made by the part, shall have no force or effect." This section would nullify Senate sections 546 through 553.

References: CRS Report R43928, *Veterans' Benefits: The Impact of Military Discharges on Basic Eligibility*, by Sidath Viranga Panangala**.**

CRS Point of Contact: Alan Ott.

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[48] *Secretarial authority* allows a Service Secretary to direct the separation of any enlisted servicemember prior to expiration of his or her term of service after determining it to be in the best interest of the service, notwithstanding any limitation on separations in DOD policy.

[49] For more on existing DRB procedures, see DOD Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, April 4, 2004, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133228p.pdf.

*Defense Commissary System

Background: Over the past several decades, Congress has been concerned with improving the Defense Commissary Agency (DeCA) system, mandating 12 reports or studies between 1989 and 2015 that considered the idea of consolidating the three military exchanges and the commissary agency.[50] Recent reform proposals have sought to reduce DeCA's reliance on appropriated funds without compromising patrons' commissary benefits or reducing the revenue generated by DOD's military exchanges, which are nonappropriated fund (NAF) entities that fund morale, welfare, and recreation (MWR) facilities on military installations. However, 10 U.S.C. §2482 prohibits the Defense Department from undertaking consolidation without new legislation. Section 627 of the FY2019 NDAA (P.L. 115-232) required the Secretary of Defense to conduct a study to determine the feasibility of consolidating commissaries and military exchange entities into a single defense resale system. The study, *The Department of Defense Report on the Development of a Single Defense Resale System*, April 29, 2019, concluded that the benefits of consolidating DeCA and the military exchanges into one defense resale entity far outweighed the costs. This DOD study "projected net savings of approximately $700M–$1.3B of combined appropriated and nonappropriated funding over a five-year span, and recurring annual savings between $400M-$700M thereafter."[51] Opponents of consolidation maintain that DOD is moving forward without considering the risk that consolidation could cost more than anticipated and fail to result in projected savings in operational costs.[52] This could result in higher prices for patrons and curtail support for MWR programs. In the FY2019 NDAA, Congress authorized $1.3 billion for DeCA to operate 236 commissary stores on military installations worldwide, employing a workforce of over 12,500 civilian full-time equivalents (FTE).[53]

House-Passed H.R. 2500	Senate-Passed S.1790
Sec. 631 would require a Government Accountability Office (GAO) review of the defense resale optimization study.	No similar provision.
Sec. 632 would require the Secretary of Defense to submit a report to Congress on the management of commissaries and exchanges.	No similar provision.
Sec. 634 would require an extension of certain morale, welfare, and recreation privileges to Foreign Service officers on mandatory home leave.	No similar provision.
No similar provision.	**Sec. 641** would authorize a single Defense Resale System and would require the Under Secretary of Defense for Personnel and Readiness to coordinate with the DOD Chief Management Officer to maintain oversight of business transformation efforts and other matters.

[50] The three military exchanges are the *Army and Air Force Exchange* (AAFES), *Marine Corps Exchange* (MCX), and *Navy Exchange* (NEX). DOD, *The Department of Defense Report on the Development of a Single Defense Resale System*, April 29, 2019, p. 2, https://go.usa.gov/xpreX.

[51] Ibid, p. 3.

[52] Karen Jowers, "Is DoD Moving Too Quickly to Merge Commissaries and Exchanges?" *Military Times*, August 22, 2019, at https://www.militarytimes.com/pay-benefits/2019/08/22/is-dod-moving-too-quickly-to-merge-commissaries-and-exchanges/ .

[53] DOD Office of the Under Secretary of Defense (Comptroller) Chief Financial Officer, *Defense Budget Overview Fiscal Year 2020 Budget Request*, March 2019, p. 2-7 (PDF p.28) and Figure 2.2 Military Family Support Programs p. 2-8 (PDF p.29) at https://comptroller.defense.gov/Budget-Materials/Budget2020/.

House-Passed H.R. 2500	Senate-Passed S.1790
No similar provision.	**Sec. 642** would require treatment of fees on services provided as supplemental funds for commissary operations.
No similar provision.	**Sec. 643** would require procurement by commissary stores of certain locally sourced products.

Discussion: The House bill includes three sections relating to the DeCA. Section 631 of the House bill would require the Government Accountability Office (GAO) to review DOD's business case analysis (pricing, sales, measuring customer savings, timetable for consolidation, etc.) before merging the various resale entities into a single entity. Elements of the GAO report would include data on the financial viability of a single defense resale entity and the ability of commissaries and exchanges to support MWR programs after consolidation.

Section 632 would require a report to Congress by the Defense Secretary regarding the management practices of military commissaries and exchanges no later than 180 days after enactment. The report would include "a cost-benefit analysis with the goals of reducing the costs of operating military commissaries and exchanges by $2,000,000,000 during fiscal years 2020 through 2024" while not raising costs for patrons.

Section 634 would amend section 1065 of Title 10, U.S. Code, to extend MWR privileges to Foreign Service Officers on mandatory home leave effective January 1, 2020.

The Senate bill also includes three sections relating to DeCA; however, they differ from the House provisions. Section 641 would provide approval for a single Defense Resale System. This section would require the Under Secretary of Defense for Personnel and Readiness (USD [P&R]) to coordinate with the DOD Chief Management Officer to maintain oversight of the business transformation efforts to ensure: "(1) the development of a business strategy that maximizes efficiencies and results in a viable defense resale system in the future; (2) Preservation of patron savings and satisfaction from and in the defense commissary system and exchange stores system; and (3) Sustainment of financial support of the defense commissary and exchange systems for MWR services." This provision would also allow the merger to commence with no further GAO study.

Section 642 would require treatment of fees on services provided as supplemental funds for commissary operations. This would amend section 2483(c) of Title 10, U.S. Code, to authorize retention of fees collected by DeCA on services provided to secondary patron groups, such as DOD contractors living overseas, to offset commissary operating costs.

Section 643 would require commissary stores to procure locally sourced products such as dairy products, fruits, and vegetables as available.

References: CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, section on "Defense Commissary System" and similar reports from earlier years; and CRS In Focus IF11089, *Defense Primer: Military Commissaries and Exchanges*, by Kristy N. Kamarck and Barbara Salazar Torreon.

CRS Point of Contact: Barbara Salazar Torreon.

Diversity and Inclusion

Background: Throughout the history of the Armed Forces, Congress has used its constitutional authority to establish criteria and standards for individuals to be recruited, advance through

promotion, and be separated or retired from military service. Congress has established some of these criteria based on demographic characteristics such as race, sex, and sexual orientation. In the past few decades there have been rapid changes to certain laws and policies regarding diversity, inclusion, and equal opportunity – in particular authorizing women to serve in combat arms occupational specialties and the inclusion of lesbian, gay, bisexual, and transgender (LGBT) individuals. Some of these changes remain contentious and face continuing legal challenges.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 526 would require the Secretary of Defense to update and implement the DOD Diversity and Inclusion Strategic Plan.	No similar provision.
Sec. 594 would require certain surveys to ask respondents about whether they have ever experienced supremacist activity, extremist activity, or racism.	No similar provision.
Section 530B would direct that eligibility requirements for entering military service account only for the ability of an individual to meet gender-neutral occupational standards without regard race, color, national origin, religion, and sex (including gender identity and sexual orientation).	No similar provision.
Section 597 would require DOD to submit a report on the number of waivers denied on the basis of a transgender-related condition.	No similar provision.
Sec. 561 would prohibit gender-segregated Marine Corps recruit training.	No similar provision.
Sec. 1099I would require each component to share lessons learned and best practices on progress of gender integration implementation.	No similar provision.
Sec. 1099J would require the military departments to examine strategies to recruit and retain women.	No similar provision.

Discussion: In the FY2009 NDAA (P.L. 110-417), Congress authorized the creation of the Military Leadership Diversity Commission (MLDC).[54] Following that effort, in 2012 DOD developed and issued a five-year *Diversity and Inclusion Strategic Plan*.[55] In 2013, as part of the FY2013 NDAA (P.L. 112-239), Congress required DOD to develop and implement a plan regarding diversity in military leadership.[56] The House bill includes several provisions that would address diversity and inclusion, while the Senate bill has none. Section 526 of the current House bill would require DOD to design and implement a five-year strategic plan that is consistent with the 2018 National Military Strategy beginning on January 1, 2020.[57]

[54] P.L. 110-417 §596.

[55] DOD, *Diversity and Inclusion Strategic Plan*, 2012-2017, https://diversity.defense.gov/Portals/51/Documents/DoD_Diversity_Strategic_Plan_%20final_as%20of%2019%20Apr%2012%5B1%5D.pdf.

[56] P.L. 112-239 §519 was codified in 10 U.S.C. §656.

[57] For more on the 2018 National Military Strategy, see https://www.jcs.mil/Portals/36/Documents/Publications/UNCLASS_2018_National_Military_Strategy_Description.pdf and https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf.

Existing law requires DOD to conduct surveys on racial and gender issues.[58] Section 594 of the House bill would require that workplace and equal opportunity, command climate, and workplace and gender relations (WGR) surveys ask respondents whether they have ever experienced supremacist activity, extremist activity, racism, or anti-Semitism. DOD policy prohibits members from individually advocating for, or participating in, organizations that advocate for "supremacist, extremist, or criminal gang doctrine, ideology, or causes, including those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights."[59]

Entry into the Armed Forces by enlistment or appointment (officers) requires applicants to meet certain physical, medical, mental, and moral standards. While some of these standards are specified in law (e.g., 10 U.S.C. §504), DOD and the Services generally establish these standards through policy and regulation. The Services may require additional qualification standards for entry into certain military occupational specialties (e.g., pilots, special operations forces). By law, qualification standards for military career designators are required to be gender-neutral.[60] Section 530B would require that service entry standards account only for the ability of an individual to meet gender-neutral occupational standards and could not include any criteria relating to the "race, color, national origin, religion, or sex (including gender identity or sexual orientation) of an individual."[61]

DOD has recently initiated a number of shifts in policy with regard to individuals who identify as transgender. Current policy, which went into effect on April 12, 2019, disqualifies any individual from appointment, enlistment, or induction into the service if they have a history of cross-sex hormone therapy or sex reassignment or genital reconstruction surgery.[62] The policy also disqualifies individuals with a history of gender dysphoria unless they were stable in their biological sex for 36 consecutive months prior to applying for admission into the Armed Forces.[63] However, the policy allows for transgender persons to "seek waivers or exceptions to these or any other standards, requirements, or policies on the same terms as any other person."[64] Those individuals in the service who initially seek military medical care after the effective date of the policy may receive counseling for gender dysphoria and may be retained without a waiver if (1) a military medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and (2) the member is willing and able to adhere to all applicable standards associated with his or her biological sex. Section 597 of the House bill would require DOD to submit a report on the number of waivers denied on the basis of a transgender-related condition.

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[58] These surveys are required by 10 U.S.C. §481 and 10 U.S.C. §1561 note.

[59] DOD Instruction 1325.06, *Handling Dissident and Protest Activities Among Members of the Armed Forces*, February 22, 2012, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132506p.pdf.

[60] P.L. 103-160 §543, as amended by P.L. 113-66 §523; 10 U.S.C. 113 note.

[61] *Gender identity* as defined in this provision is the "gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth."

[62] DOD Defense-type Memorandum 19-004, *Military Service by Transgender Persons and Persons with Gender Dysphoria*, March 12, 2019, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-19-004.pdf?ver=2019-03-13-103259-670.

[63] DOD defines biological sex as, "a person's biological status as male or female based on chromosomes, gonads, hormones, and genitals." Ibid., p. 14.

[64] Ibid, p. 2.

Women were historically prohibited from serving in certain combat roles by law and policy until December 3, 2015, when the Secretary of Defense opened all combat roles to women who can meet gender-neutral standards.[65] Entry level and occupational-specific training has been gender integrated across the military services, with the exception of Marine Corps basic training (boot camp). In 2019, the Marines graduated the first gender-integrated boot camp class at Marine Recruit Depot Parris Island in South Carolina. In a statement to Congress, Lieutenant General David Berger noted that there were no significant variations in the performance of gender-integrated units relative to gender-segregated units.[66] Section 561 of the House bill would prohibit gender segregated Marine Corps recruit training. In addition, section 1099I would require the Armed Forces components to share lessons learned and best practices on the progress of their gender integration implementation plans as recommended by the Defense Advisory Committee on Women in the Services (DACOWITS).[67] Finally, section 1099J would require the military departments to examine successful strategies for recruitment and retention of women in foreign militaries, as recommended by DACOWITS.

References: CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*, by Kristy N. Kamarck**,** and CRS Insight IN11086, *Military Personnel and Extremism: Law, Policy, and Considerations for Congress*, by Kristy N. Kamarck. CRS In Focus IF11147, *Defense Primer: Active Duty Enlisted Recruiting*, by Lawrence Kapp.

CRS Points of Contact: Kristy N. Kamarck and Lawrence Kapp.

*Domestic Violence and Child Abuse

Background: The Family Advocacy Program (FAP) is the congressionally-mandated program within DOD devoted to "clinical assessment, supportive services, and treatment in response to domestic abuse and child abuse and neglect in military families."[68] As required by law, the FAP provides an annual report to Congress on child abuse and neglect and domestic abuse in military families.[69] Approximately half of military servicemembers are married and there are approximately 1.6 million dependent children across the active and reserve components.[70] According to DOD statistics, in FY2018, the rate of reported child abuse or neglect in military homes was 13.9 per 1,000 children, an increase from the previous year's rate of 13.7 per 1,000 children.[71] There were 26 child abuse-related fatalities, relative to 17 fatalities in FY2017. The rate of reported spousal abuse in FY2018 was 24.3 per 1,000 military couples, a decrease from

[65] DOD, "Carter Opens All Military Occupations, Positions to Women," press release, December 3, 2015, https://www.defense.gov/Newsroom/News/Article/Article/632536/carter-opens-all-military-occupations-positions-to-women/.

[66] U.S. Congress, Senate Committee on Armed Services, *Hearing to Consider the Nomination of Lieutenant General David H. Berger to be Commandant of the Marine Corps*, 116th Cong., 1st sess., April 30, 2019.

[67] DACOWITS reports, meeting notes, and recommendations can be found here: https://dacowits.defense.gov/Reports-Meetings/.

[68] DOD, *Fiscal Year 2017 Annual Report on Sexual Assault in the Military*, Appendix G: Domestic Abuse Related Sexual Assault, May 2018.

[69] P.L. 114-328 §574.

[70] DOD, *2017 Demographics: Profile of the Military Community*, 2017, pp. 123, https://download.militaryonesource.mil/12038/MOS/Reports/2017-demographics-report.pdf.

[71] DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p. 7, https://download.militaryonesource.mil/12038/MOS/Reports/fap-fy18-dod-report.pdf.

the FY2017 rate of 24.5 per 1,000 couples – with 13 spouse abuse fatalities recorded.[72] Since FY2006, DOD has been collecting data on *unmarried intimate partner* abuse. In FY2018, there were 1,024 incidents of intimate partner abuse that met criteria involving 822 victims and 2 fatalities.[73]

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 542 would expand Special Victim Counsel (SVC) services for victims of domestic violence, establish minimum SVC staffing levels, would create a position for SVC paralegals, and would require a report to Congress on SVC staffing.	**Sec. 541** would allow the service secretaries to extend SVC services to certain military and military-affiliated civilian personnel who are alleged victims of domestic violence or a sex-related offense.
Sec. 621 would remove delays in the commencement of transitional compensation for certain eligible military dependents. **H. Report 116-120** Directs DOD to provide a comprehensive review and assessment of the transitional compensation program (p, 153).	**Sec. 601** is a similar provision to House Sec. 621.
No similar provision.	**Sec. 581** would require a briefing to the Armed Services committees on ways the Family Advocacy Program (FAP) could be used/enhanced to prevent and respond to domestic violence.
Sec. 543 would require notification of civilian authorities, and receiving units (in the case of a personnel transfer) when a member with a military protective order (MPO) against them is transferred to that unit, and would require annual reports to Congress on the number of MPOs reported to civilian authorities.	No similar provision.
Sec. 544 would require Secretary of Defense to enact policies and procedures to register civilian protection orders on military bases.	No similar provision.
Sec. 550F would require reports to National Instant Criminal Background Check System (NICS) for servicemembers who are prohibited from purchasing firearms and would require a study on the feasibility of creating a database for tracking domestic violence MPOs and reporting to NICS.	No similar provision.

Discussion: A special victim counsel (SVC) is a judge advocate or civilian attorney who satisfies special training requirements and provides legal assistance to victims of sexual assault throughout the military justice process.[74] Section 542 of the House bill and Section 541 of the Senate bill would expand SVC staffing and authorize SVC services for military-connected victims of domestic violence. The Administration has opposed this measure, stating that it would "decrease access for sexual assault victims to Special Victims' Counsels (SVCs)/Victims' Legal Counsels (VLCs), exacerbate already high caseloads for SVC/VLCs, and impose an unfunded mandate."[75]

[72] Ibid, p. 8.

[73] Ibid, p. 9. A rate per thousand of intimate partner abuse incidents and/or victims cannot be established, as DOD does not have data on the number of unmarried individuals involved in intimate partner relationships.

[74] 10 U.S.C. §§1044, 1044e, and 1565b.

[75] Executive Office of the President (EOP), Office of Management and Budget (OMB), *Statement of Administrative*

Transitional compensation is a monetary benefit authorized under 10 U.S.C §1059 for dependent family members of servicemembers or of former servicemembers who are separated from the military due to dependent-abuse offenses. One of the motivating arguments for establishing the transitional compensation benefit is that it provides a measure of financial security to spouses or former spouses. Eligible recipients receive monthly payments for no less than 12 months and no more than 36 months at the same rate as dependency and indemnity compensation (DIC).[76] While in receipt of transitional compensation, dependents are also entitled to military commissary and exchange benefits, and may receive dental and medical care, including mental health services, through military facilities as TRICARE beneficiaries.[77] Section 621 of the House bill and Section 601 of the Senate bill are similar provisions that would expand the authority of the Secretary concerned to grant *exceptional* transitional compensation in an expedited fashion. This would allow dependents who are victims of abuse to start receiving compensation while the offending servicemember is still on active duty and as early as the date that an administrative separation is initiated by a commander. In addition, the House Report directs DOD to provide a comprehensive review and assessment of the transitional compensation program.[78]

When a servicemember has allegedly committed an act of domestic violence, a commander can issue a military protective order (MPO)[79] to a servicemember that prohibits contact between the alleged offender and the domestic violence victim.[80] A servicemember must obey an MPO at all times, whether inside or outside a military installation, or may be subject to court martial or other punitive measures. By law, a military installation commander is required to notify civilian authorities when an MPO is issued, changed, and terminated with respect to individuals who live outside of the installation.[81] House Section 543 would amend 10 U.S.C. §1567a to require notification of civilian authorities no later than seven days after issuing an order, regardless of whether the member resides on the installation. The provision would also require commanders to notify the receiving command in the case of a transfer of an individual who has been issued an MPO. DOD would also be required to track and report the number of orders reported to civilian

Policy, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2020, p. 9, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

[76] Dependency and indemnity compensation (DIC) rates are specified in 38 U.S.C. 1311(a). For more information on DIC, see CRS Report R40757, *Veterans' Benefits: Dependency and Indemnity Compensation (DIC) for Survivors*, by Scott D. Szymendera.

[77] Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services will be limited to the health care prescribed by 10 U.S.C. § 1077, and subject to the availability of space, facilities, and the capabilities of the medical and dental staff.

[78] See p. 153 of H.Rept. 116-120.

[79] 10 U.S.C. §1567 provides military commanders authority to issue a military protective order (MPO). An MPO is a written lawful order that remain in effect until terminated by a military commander, or by a replacement order. For more on MPOs, see 32 C.F.R. §635.19(a);DOD Instruction 6400.06, *Domestic Abuse Involving DoD Miltiary and Certain Affiliated Personnel*, updated May 26, 2017, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf; and DD Form 2873, *Military Protective Order*, https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2873.pdf.

[80] 10 U.S.C. §1567 provides military commanders authority to issue a military protective order (MPO). An MPO is a written lawful order that remain in effect until terminated by a military commander, or by a replacement order. For more on MPOs, see 32 C.F.R. §635.19(a); DOD Instruction 6400.06, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, updated May 26, 2017, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf; and DD Form 2873, *Military Protective Order*, https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2873.pdf. 32 C.F.R. §635.19(c). Before an MPO is issued, a commander can immediately issue as a first step a *No Contact Order*, which is analogous to a temporary restraining order (See Army Regulation 608-18, Family Advocacy Program, September 13, 2011).

[81] 10 U.S.C. §1567a.

authorities annually. While MPOs are typically not enforceable by civilian authorities, a civil protection order (CPO), by law, has full force and effect on military installations.[82] House Section 544 would require DOD to establish policies and procedures for registering CPOs with military installation authorities.

House Section 550F would codify an existing DOD policy to report to the National Instant Criminal Background Check System (NICS) servicemembers who are prohibited from purchasing firearms due to a domestic violence conviction in a military court.[83] This section would also require DOD to study the feasibility of creating a database of military protective orders issued in response to domestic violence and the feasibility for reporting such MPOs to NICS.

References: For information on Special Victims' Counsel and Military Protective Orders, see CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon.[84]

CRS Point of Contact: Kristy N. Kamarck and Alan Ott.

*Medal of Honor

Background: The Medal of Honor (MoH) is the highest award for valor "above and beyond the call of duty" that may be bestowed on a U.S. servicemember.[85] In recent years, the MoH review process has been criticized by some as being lengthy and bureaucratic, which may have led to some records being lost and conclusions drawn based on competing eyewitness and forensic evidence.[86] Reluctance on the part of reviewing officials to award the MoH retroactively or to upgrade other awards is generally based on concern for maintaining the integrity of the award and the awards process. This reluctance has led many observers to believe that the system of awarding the MoH is overly restrictive and that certain individuals are denied earned medals. As a result, DOD periodically reviews inquiries by Members of Congress and reevaluates its historical records. Systematic reviews began in the 1990s for World War II records when African-American units remained segregated and whose valorous unit and individuals' actions, along with others, may have been overlooked. That effort resulted in more than 100 soldiers receiving the MoH, the majority of which were posthumously awarded. On January 6, 2016, DOD announced the results of its year-long review of military awards and decorations.[87] This included review of the

[82] 10 U.S.C. §1561a.

[83] DOD Instruction 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, updated March 29, 2017, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550511p.pdf. 18 U.S.C. §922 prohibits firearm or ammunition transfer to or receipt by a person convicted of a *misdemeanor crime of domestic violence* or subject to a *domestic violence protection order*. A misdemeanor crime of domestic violence as an offense that is a misdemeanor under federal, state, or tribal law with a domestic violence element (18 U.S.C. §921). Punishment by special court-martial in the military is considered a misdemeanor because the court cannot impose confinement that exceeds one year (10 U.S.C. §819).

[84] For background on military reporting to federal databases, see Inspector General of the U.S Department of Defense, *Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation*, December 6, 2018, https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030_REDACTED.PDF.

[85] 10 U.S.C. §§7271, 8291, and 9271.

[86] See "Medal of Honor (MoH) Process" in CRS Report R43647, *FY2015 National Defense Authorization Act: Selected Military Personnel Issues*, coordinated by Barbara Salazar Torreon.

[87] DOD, "Defense Department Announces Results of Military Decorations and Awards Review," press release, January 7, 2016, https://www.defense.gov/Newsroom/Releases/Release/Article/641775/defense-department-announces-results-of-military-decorations-and-awards-review/.

timeliness of the MoH process and review by all the military departments of the Distinguished Service Cross, Navy Cross, Air Force Cross, and Silver Star Medal recommendations since September 11, 2001, for actions in Iraq and Afghanistan. Subsequently, the MoH was awarded to the first living recipient from the Iraq War, Army Staff Sgt. David Bellavia, on June 25, 2019.[88]

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 583 would require a review of World War I valor medals.	No similar provision.
Sec. 584 would authorize the President of the United States to award the Medal of Honor (MoH) to Alwyn Cashe for acts of valor during Operation Iraqi Freedom.	No similar provision
Sec. 1099L would authorize the last surviving MoH recipient of Second World War, upon their death, to lay in state in the U.S. Capitol rotunda.	No similar provision.
No similar provision.	**Sec. 585** would authorize the President of the United States to award the MoH to John J. Duffy for acts of valor in Vietnam.

Discussion: Section 583 of the House bill would require DOD to review the service records of certain servicemembers who fought in World War I (WWI) to determine whether they should be posthumously awarded the MoH. Specifically, the provision would require record reviews of certain African-American, Asian-American, Hispanic-American, Jewish-American, and Native-American veterans who were recommended for the MoH or who were the recipients of the Distinguished Service Cross, Navy Cross, or French Croix de Guerre with Palm. Four soldiers, one Hispanic-American (Private David Barkley Cantu) and three Jewish-American veterans (First Sergeant Sydney Gumpertz, First Sergeant Benjamin Kaufman, and Sergeant William Sawelson), were awarded Medals of Honor at the conclusion of WWI.

In 1991, President George H.W. Bush awarded the MoH posthumously to Corporal Freddie Stowers, who became the first African-American recipient from WWI after the Army's review of his military records. Later, the FY2015 NDAA (P.L. 113-291) authorized posthumous award of the MoH to Private Henry Johnson, an African-American veteran, and Sgt. William Shemin, a Jewish-American veteran, for valor during WWI.[89] Proponents of the Pentagon review in Section 583 point to similar reviews for minority groups who served in other conflicts from World War II to the present. Some were later awarded the MoH, the majority of which were posthumously awarded. According to the Congressional Budget Office (CBO), "a remote possibility exists" that one of the veterans honored under Section 583 could have a surviving widow who could potentially receive expanded health benefits or increased survivor benefits.[90]

Section 584 would waive the time limitation and authorize the posthumous award of the MoH to Army Sergeant First Class (SFC) Alwyn Cashe for acts of valor in Samarra, Iraq, during Operation Iraqi Freedom. SFC Cashe led recovery efforts and refused medical treatment until his men were evacuated to safety after an improvised explosive device struck their vehicle and

[88] Meghan Myers, "President Donald Trump bestows Medal of Honor on David Bellavia, the first living Iraq War recipient," *Army Times*, June 25, 2019, at https://www.armytimes.com/news/your-army/2019/06/25/president-donald-trump-bestows-medal-of-honor-on-david-bellavia-the-first-living-iraq-war-recipient/.

[89] P.L. 113-291 §572.

[90] CBO, *Cost Estimates for H.R. 2500, National Defense Authorization Act for Fiscal Year 2020*, June 19, 2019, p. 14, https://www.cbo.gov/system/files/2019-06/hr2500.pdf.

caught fire. Cashe's actions saved the lives of six of his soldiers. He later succumbed to his wounds.

Section 1099L would allow the nation to honor the last surviving MoH recipient of WWII by permitting the individual to lie in honor in the Capitol rotunda upon death.

Section 585 of the Senate bill would waive the time limitation and authorize the award of the MoH to Army Major John J. Duffy for acts of valor in Vietnam on April 14 and 15, 1972, for which he was previously awarded the Distinguished Service Cross.

References: Previously discussed in the "Medal of Honor" section of CRS Report R44577, *FY2017 National Defense Authorization Act: Selected Military Personnel Issues*, by Kristy N. Kamarck et al. and similar reports from earlier years; CRS Report 95-519, *Medal of Honor: History and Issues*, by Barbara Salazar Torreon; and the Congressional Budget Office, *Cost Estimates for H.R. 2500*, National Defense Authorization Act for Fiscal Year 2020, June 19, 2019.

CRS Point of Contact: Barbara Salazar Torreon.

Military Family Issues

Background: Approximately 2.1 million members of the Armed Forces across the active and reserve components have an additional 2.7 million "dependent" family members (spouses and/or children).[91] Slightly over 40% of servicemembers have children and approximately 50% are married.[92] The military provides a number of *quality of life* programs and services for military families as part of a servicemember's total compensation and benefit package. These include family life, career, and financial counseling, childcare services and support, and other MWR activities. The general motivation for providing these benefits is to improve the recruitment, retention, and readiness of military servicemembers.

House-Passed H.R. 2500	Senate-Passed S. 1790
Spouse Employment and Education	***Spouse Employment and Education***
Sec. 628 would increase the maximum reimbursement to spouses for relicensing costs associated with a relocation.	**Sec. 576** would extend the authority to reimburse some relicensing costs associated with a military relocation.
Sec. 624 would seek to improve portability of licenses for military spouses by allowing DOD to provide support for development of interstate compacts.	**Sec. 577** would require the Secretary of Defense to enter into a cooperative agreement with the Council of State Governments to assist with the funding and development of interstate compacts on licensed occupations.
Sec. 623 would allow continued eligibility for the My Career Advancement Account Scholarship Program (MyCAA) program following the promotion of the sponsor.	No similar provision.
Sec. 580B would expand the types of associate degrees and certifications covered by MyCAA.	No similar provision.

[91] Department of Defense, *Demographics: Profile of the Military Community*, 2016, pp. 120, 123, & 145, http://download.militaryonesource.mil/12038/MOS/Reports/2016-Demographics-Report.pdf.

[92] Ibid. These figures have not changed substantially over the past two decades.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 580C would expand MyCAA eligibility to Coast Guard spouses and spouses of enlisted servicemembers of all grades.	No similar provision.
Parents and Children	***Parents and Children***
Sec. 625 would amend 10 U.S.C. §1798 to authorize fee assistance for civilian childcare providers for survivors of members of the armed forces who die on active duty.	No similar provision.
No similar provision.	**Sec. 579** would clarify direct hiring authority for DOD child development centers.
Sec. 629 would require an assessment of childcare costs, capacity, and website accessibility, enhance portability of provider background investigations, and expand direct hiring authority for childcare providers.	No similar provision.

Discussion: ***Spouse Employment and Education.*** Section 1784 of Title 10, U.S. Code**,** requires the President to order such measures as necessary to increase employment opportunities for military spouses. Active duty servicemembers conduct frequent moves to military installations across the globe. For working spouses, this sometimes requires them to establish employment in a new state that has different occupational licensing requirements than their previous state. The FY2018 NDAA (P.L. 115-91 §556) authorized the reimbursement of certain relicensing costs up to $500 for military spouses following a permanent change of station from one state to another with an end date of December 31, 2022.[93] Section 628 of the House bill would raise the maximum reimbursement to $1,000 and would require the Secretary of Defense to perform an analysis of whether that amount is sufficient to cover average costs. Section 576 of the Senate bill would not raise the maximum reimbursement amount; however it would extend the authority to December 31, 2024. Both bills also have similar provisions (House Section 524 and Senate Section 577) that would seek to improve interstate license portability through DOD funding support for the development of interstate compacts. Both bills cap funding support for each compact at $1 million, while the Senate bill caps the total program funding at $4 million.

DOD's *My Career Advancement Account Scholarship Program* (MyCAA), launched in 2007, currently provides eligible military spouses up to $4,000 in financial assistance to pursue a license, certification, or associate's degree in a *portable* career field.[94] Eligible spouses are those married to military servicemembers on active duty in pay grades E-1 to E-5, W-1 to W-2 and O-1 to O-2. Section 623 of the House bill would allow continued eligibility for spouses when the member is promoted above those pay grades after the spouse has begun a course of instruction. Section 580B would expand the qualifying degrees and certifications to include *non-portable* career fields and occupations. Finally, Section 580C would expand the eligible population to *all* enlisted spouses and would also provide eligibility for Coast Guard spouses to participate in the DOD program. During the pilot phase of the program, the benefit was offered to all spouses and funds were also available for a broader range of degrees and certifications, including bachelor's and advanced degrees. However, due to concerns about rising costs and enrollment requests,

[93] 37 U.S.C. §476.

[94] See for on the *My Career Advancement Account Scholarship Program* (MyCAA), see https://mycaa.militaryonesource.mil/mycaa. DOD relies on the Department of Labor's database of in-demand occupations to identify portable careers eligible for MyCAA tuition assistance.

DOD has since reduced the maximum benefit amount (from $6,000 to $4000), limited eligibility to spouses of junior servicemembers, and restricted the types of degrees and career fields that were eligible for funding.[95]

Parents and Children. DOD operates the largest employer-sponsored childcare program in the United States, serving approximately 200,000 children of uniformed servicemembers and DOD civilians, and employing over 23,000 childcare workers.[96] DOD offers subsidized programs on and off military installations for children from birth through 12 years, including care on a full-day, part-day, short-term, or intermittent basis. Title 10 U.S.C. §1798 authorizes fee assistance for civilian childcare services. Section 625 of the House bill would specifically authorize fee assistance for survivors of members of the Armed Forces who die "in line of duty while on active duty, active duty for training, or inactive duty for training." DOD policy currently authorizes childcare for "surviving spouses of military members who died from a combat related incident."[97]

Section 629 of the House bill and Section 578 of the Senate bill would expand and clarify hiring authorities for military childcare workers. The House provision would also require an assessment and report from DOD on the adequacy of the maximum fee assistance subsidy, the accessibility of childcare and spouse employment websites, and the capacity needs of installation-based childcare facilities. Finally, the same section would seek to improve portability of background checks for childcare workers. It is common for military spouses to be employed as childcare workers, and frequent moves may require them to reapply and resubmit background check material at a new facility.

References: CRS Report R45288, *Military Child Development Program: Background and Issues*, by Kristy N. Kamarck.

CRS Points of Contact: Kristy N. Kamarck.

Military Medical Malpractice

Background: DOD employs physicians and other medical personnel to deliver health care services to servicemembers in military treatment facilities (MTFs). Occasionally, however, *patient safety events* do occur and providers commit medical malpractice by rendering health care in a negligent fashion, resulting in the servicemember's injury or death.[98] In the civilian health care market, a victim of medical malpractice may potentially obtain recourse by pursuing litigation against the negligent provider and/or his employer. A servicemember injured as a result of malpractice committed by an MTF health care provider, however, may encounter significant obstacles if attempting to sue the United States.

In general, the Federal Tort Claims Act (FTCA) permits private parties to pursue certain tort claims (e.g., medical malpractice) against the United States.[99] However, in 1950, the U.S.

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[95] U.S. Government Accountability Office (GAO), *Military Spouse Employment Programs; DOD can Improve Guidance and Performance Monitoring*, GAO-13-60, December 2012, pp. 7-8, https://www.gao.gov/assets/660/650867.pdf.

[96] CRS Report R45288, *Military Child Development Program: Background and Issues*, by Kristy N. Kamarck.

[97] DOD Instruction 6060.02, *Child Development Programs (CDPs)*, August 5, 2014, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/606002p.pdf.

[98] A *patient safety event* is "an event, incident, or condition that could have resulted or did result in harm to a patient." The Joint Commission, *Comprehensive Accreditation Manual for Health*, updated January 2, 2016, p. SE-4, https://www.jointcommission.org/assets/1/6/CAMH_24_SE_all_CURRENT.pdf.

[99] 28 U.S.C. §§1346(b)(1), 2401(b), and 2671-2680. For more on the Federal Tort Claims Act, see CRS Report

Supreme Court in the case of *Feres v. United States* recognized an implicit exception to the FTCA–that the federal government is immunized from liability "for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service."[100] This exception to tort liability is known as the *Feres* doctrine. Many lower federal courts have concluded that *Feres* generally prohibits military servicemembers from asserting malpractice claims against the United States based on the negligent actions of health care providers employed by the military.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 729 would amend the Federal Tort Claims Act (28 U.S.C. §2681) to allow certain claims against the United States for negligent, wrongful, or omitted health care services at a military treatment facility that resulted in personal injury or death of a servicemember.	No similar provision.
Sec. 744 would require the Secretary of Defense to report to Congress the number of medical providers who "lost medical malpractice insurance coverage" prior to their employment with DOD.	No similar provision.

Discussion: Over the past decade, Congress has held multiple hearings to assess whether to modify the *Feres* doctrine to allow servicemembers to pursue medical malpractice litigation against the United States.[101] Congress has also considered several proposals to amend the FTCA to allow these tort claims.[102] Section 729 of the House bill would amend the FTCA to allow servicemembers to pursue tort claims against the United States for medical malpractice committed by an MTF provider. The provision would also institute a three-year statute of limitations for a servicemember to file a claim, based on the date the malpractice was discovered and would clarify that any malpractice claims filed would not impact certain monetary compensation provided through the Servicemembers' Group Life Insurance.[103]

References: CRS In Focus IF11102, *Military Medical Malpractice and the Feres Doctrine*, by Bryce H. P. Mendez and Kevin M. Lewis; and CRS Legal Sidebar LSB10305, *The Feres Doctrine: Congress, the Courts, and Military Servicemember Lawsuits Against the United States*, by Kevin M. Lewis.

CRS Point of Contact: Bryce H.P. Mendez.

R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Kevin M. Lewis.

[100] *Feres v. United States*, 340 U.S. 146 (1950).

[101] See U.S. Congress, House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, *Carmelo Rodriguez Military Medical Accountability Act of 2009*, hearing on H.R. 1478, 111th Cong., 1st sess., March 24, 2009 (Washington: GPO, 2009); and U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Feres Doctrine - A Policy in Need of Reform?*, 116th Cong., 1st sess., April 30, 2019.

[102] See the *Carmelo Rodriguez Military Medical Accountability Act* as introduced in the 110th and 111th Congress (H.R. 6093, H.R. 1478, S. 1347) or the *SFC Richard Stayskal Military Medical Accountability Act of 2019* as introduced in the 116th Congress (H.R. 2422 and S. 2451).

[103] The *Servicemembers' Group Life Insurance* (SGLI) provides financial compensation, up to $400,000, to military families in the event of a servicemember's death. DOD offers SGLI to all servicemembers as a premium-based life insurance policy. For more on SGLI, see CRS Report R41435, *Veterans' Benefits: Current Life Insurance Programs*, by William R. Morton.

*Military Pay Raise

Background: Congress has a long-standing congressional interest in military pay raises, as they relate to the overall cost of military personnel and to recruitment and retention of high-quality personnel to serve in the all-volunteer military. Section 1009 of Title 37, U.S. Code, codifies the formula for an automatic annual increase in basic pay that is indexed to the annual increase in the Employment Cost Index (ECI). The statutory formula stipulates that the increase in basic pay for 2020 will be 3.1% unless either (1) Congress passes a law to provide otherwise; or (2) the President specifies an alternative pay adjustment under subsection (e) of 37 U.S.C. §1009. Increases in basic pay are typically effective at the start of the calendar year, rather than the fiscal year.

The FY2020 President's Budget requested a 3.1% military pay raise, equal to the statutory formula.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 606 specifies that basic pay will increase by 3.1% on January 1, 2020.	No similar provision (leaving in place the automatic adjustment).
Sec. 607 specifies that the automatic increase in basic pay under the statutory formula of 37 U.S.C. §1009 shall take effect, "notwithstanding any determination made by the President under subsection (e) of such section with respect to an alternative pay adjustment..."	No similar provision (leaving in place the automatic adjustment).

Discussion: The House bill includes two provisions that would address the military pay raise. Section 606 would direct a 3.1% increase in basic pay. Section 607 would direct that the statutory formula of 37 U.S.C. §1009 go into effect, also resulting in a 3.1% increase in basic pay, even if the President were to specify an alternate adjustment. The Senate bill did not contain a provision specifying an increase in basic pay, thereby leaving the 3.1% automatic adjustment provided by 37 U.S.C. §1009 in place.

References: For an explanation of the pay raise process and historical increases, see CRS In Focus IF10260, *Defense Primer: Military Pay Raise*, by Lawrence Kapp. Previously discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al. and similar reports from earlier years.

CRS Point of Contact: Lawrence Kapp.

Military Retirement and Survivor Benefits

Background: The military retirement system is a funded, noncontributory system that provides a monthly annuity after 20 qualifying years of service, or upon qualifying for a disability retirement. As of January 1, 2018, those joining the military and those who opted into the Blended Retirement System also receive a defined contribution from the federal government into the Thrift Savings Plan (TSP).[104] Military retirees and their dependents are also eligible for other DOD benefits, including commissary and exchange shopping privileges, medical benefits, and space-available travel on military aircraft. Surviving spouses and other eligible beneficiaries may be eligible to receive a portion of the servicemember's retired pay after the member's death in

[104] For more on the Thrift Savings Plan, see CRS Report RL30387, *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*, by Katelin P. Isaacs.

retirement (if enrolled) or while on active duty (automatic eligibility). This benefit is called the Survivor Benefit Plan (SBP). In addition, military retirees and their dependents may be eligible for benefits from the VA, including Dependency and Indemnity Compensation (DIC), a monthly payment to beneficiaries whose spouse's death was related to a service-connected injury or condition.

House-Passed H.R. 2500	Senate-Passed S. 1790
No similar provision.	**Sec. 631** would modify how payments to the military retirement fund are calculated.
Sec. 630A would repeal the Survivor Benefit Plan–Dependency Indemnity Compensation offset.	No similar provision.

Discussion: Military retirees are paid from the Military Retirement Fund (MRF). Under the accrual accounting system, the DOD budget for each fiscal year includes a contribution to the MRF as a percentage of basic pay in the amount needed to cover future retirement costs.[105] This percentage–called the *normal cost percentage (NCP)*–is determined by an independent, presidentially appointed, DOD Retirement Board of Actuaries. Estimated future retirement costs are modeled based on the past rates at which active duty military personnel stayed in the service until retirement and on assumptions regarding the overall U.S. economy, including interest rates, inflation rates, and military pay levels.

Currently, the DOD Actuary calculates separate NCPs for the active and reserve components; however, by law the Actuary applies a single NCP across all of the military services.[106] The conference report (H.Rept. 115-404) accompanying FY2018 NDAA (P.L. 115-91) contained a provision asking the GAO to evaluate whether the current method used to calculate DOD retirement contributions reflects estimated service retirement costs, and what effects, if any may result from calculating a separate NCP for each of the Services. The GAO's December 2018 report found that, due to differing continuation rates among the Services, "the mandated single, aggregate contribution rate does not reflect service specific retirement costs."[107] In particular, the analysis found that the probability of reaching 20 years of service was more than 3 times higher for the Air Force than the Marine Corps.

Section 631 of the Senate bill, would change how military retirement contributions are calculated, by requiring separate NCPs for each of the Services and components.[108] Some analysts who have studied the issue have argued that this change would improve resource allocation efficiency, manpower decision-making, and accuracy in budget estimates at the service level.[109] On the other hand, the GAO report notes that military service officials stated that their "workforce decision making processes would not change."[110]

[105] Other sources of fund income are U.S. Treasury payments, to make up for the unfunded liability when the accounting system was changed in 1984, and interest income.

[106] 10 U.S.C. §1465.

[107] GAO, *Military Retirement: Service Contributions Do Not Reflect Service Specific Estimated*, GAO-19-195R, 2018, p. 6, https://www.gao.gov/assets/700/695789.pdf.

[108] A similar provision was included in the Senate-passed version of the FY2018 NDAA (S. 1519 §1002); however the provision was not adopted.

[109] DOD's Office of Cost Assessment and Program Evaluation (CAPE) led an assessment of the current retirement contribution method as part of a larger effort. See also, Hosek, James, Beth J. Asch, and Michael Mattock, *Toward Efficient Military Retirement Accrual Charges*, RAND Corporation, Santa Monica, CA, 2017.

[110] Ibid. p. 9.

Following the death of a servicemember, certain beneficiaries may be eligible for survivor benefits from both DOD (SBP) and the VA (DIC). However, by law, surviving spouses who receive both annuities must have their SBP payments reduced by the amount of DIC they receive.[111] This offset has sometimes been referred to as a *widows' tax*. The FY2018 NDAA (P.L. 115-91) permanently authorized a payment called the called the Special Survivor Indemnity Allowance (SSIA) to such surviving spouses, to offset that reduction. The SSIA payment is adjusted annually to account for cost-of-living increases. In the past, to avoid the offset, some survivors have used the authority under 10 U.S.C. §1448(d)(2) to transfer the SBP benefit to dependent children. Section 630A of the House bill would repeal the offset as well as the authority to provide the annuity to dependent children. Surviving spouses who had transferred the benefit would be able to have their eligibility for the benefit restored. Retroactive payments would not be authorized under this provision. SBP is also paid from the MRF. CBO estimates that the repeal would increase federal spending by $5.7 billion over a period of 10 years.[112] Approximately 65,000 surviving beneficiaries are eligible to receive both SBP and DIC.[113]

References: CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck**.** CRS Report R45325, *Military Survivor Benefit Plan: Background and Issues for Congress*, by Kristy N. Kamarck and Barbara Salazar Torreon**,** CRS Insight IN11112, *The Kiddie Tax and Military Survivors' Benefits*, by Sean Lowry and Kristy N. Kamarck**,** CRS Report R40757, *Veterans' Benefits: Dependency and Indemnity Compensation (DIC) for Survivors*, by Scott D. Szymendera. CRS Legal Sidebar LSB10316, *Eliminating the SBP-DIC Offset for Surviving Spouses of Military Servicemembers: Current Proposals and Related Issues*, by Mainon A. Schwartz.

CRS Point of Contact: Kristy N. Kamarck.

*Military Sexual Assault and Sexual Harassment

Background: Over the past decade, the issues of sexual assault and sexual harassment in the military have generated sustained congressional and media attention. Congress has required additional study, data collection, and reporting to determine the scope of the issue, expand protections and support services for victims, make substantial changes to the military justice system, and take other actions to enhance sexual assault prevention and response. Sexual assault and related sex offenses are crimes under the Uniform Code of Military Justice (UCMJ) and are prosecutable by court-martial.[114] DOD's Sexual Assault Prevention and Response Office (SAPRO) oversees sexual assault policy and produces an annual report on sexual assault estimated prevalence rates and actual reporting. In FY2018, estimated sexual assault prevalence rates across DOD's active duty population were 6.2% for women and 0.7% for men.[115] These

[111] 10 U.S.C. §1450(c).

[112] CBO, *Cost Estimate for H.R. 553, Military Surviving Spouses Equity Act*, As introduced in the House of Representatives on January 15, 2019, June 25, 2019, https://www.cbo.gov/system/files/2019-06/hr553.pdf.

[113] DOD Office of the Actuary, *Military Retirees and Survivors by Congressional District*, December 31, 2018, https://actuary.defense.gov/Portals/15/Documents/CONGDIST%202018.pdf?ver=2019-02-22-003419-477.

[114] The *Uniform Code of Military Justice* (UCMJ; Chapter 47 of Title 10, U.S. Code) is the code of military criminal laws applicable to all U.S. military members worldwide.

[115] DOD SAPRO, *Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2018*, April 26, 2019, p. 3, https://www.sapr.mil/sites/default/files/DoD_Annual_Report_on_Sexual_Assault_in_the_Military.pdf.

estimated prevalence rates were higher for active duty women than the FY2016 of 4.3% while the rate for men remained close to the FY2016 rate of 0.6%.[116]

House-Passed H.R. 2500	Senate-Passed S. 1790
Reporting and Accountability	***Reporting and Accountability***
Sec. 548 would expand the scope of study and extend the authority of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) for 5 years.	**Sec. 533** would extend the term of the DAC-IPAD.
Sec. 540A would require DOD to review racial, ethnic, and gender disparities in the military justice system.	**Sec. 535** would require a DAC-IPAD review and assessment of the relationship between race and ethnicity and the investigation, prosecution, and defense of sexual assault.
Sec. 549 would require the Secretary of Defense to establish a "Defense Advisory Committee for the Prevention of Sexual Misconduct."	**Sec. 534** is a similar provision to House Sec. 549.
Sec. 592 would modify requirements for gender relations surveys.	No similar provision.
No similar provision.	**Sec. 537** would require a GAO report on implementation of statutory requirements for sexual assault for FY2004–FY2019.
Prevention and Response	***Prevention and Response***
No similar provision.	**Sec. 521** would require enhanced policies and programs to prevent sexual assault.
Sec. 550O would ensure that *Catch a Serial Offender* program information is not subject to Freedom of Information Act (FOIA) requests.	**Sec. 530** is a similar provision to House Sec. 550O.
Victim Services and Support	***Victim Services and Support***
Sec. 542 would expand special victim counsel (SVC) services for victims of domestic violence, establish minimum SVC staffing levels, create a position for SVC paralegals, and require a report to Congress on SVC staffing.	**Sec. 541** would allow the service secretaries to extend SVC services to certain military and military-affiliated civilian personnel who are alleged victims of domestic violence or a sex-related offense.
Sec. 542 includes similar language to Senate Sec. 542.	**Sec. 542** would expand SVC services to include assistance with retaliation claims, codify duty to determine victim preference for prosecution venue, and require a report on the expansion of eligibility for SVC services.
No similar provision.	**Sec. 536** would require a report on the integration and synchronization of activities of Special Victim Investigation and Prosecution personnel with activities of military criminal investigation organizations.
Sec. 550A would ensure an SVC or Special Victim Prosecutor is available within 48 hours of request by victim and a report on establishing new civilian positions to support SVCs.	**Sec. 543** would require availability of an SVC within 72 hours of request by victim, and a report on establishing new civilian positions to support SVCs.

[116] These estimates are based on biennial survey data for respondents who experienced behaviors consistent with the definition of sexual assault in the previous year. For additional data, see DOD SAPRO annual reports at https://www.sapr.mil/reports.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 550C would require state-specific training for SVCs on civilian criminal justice matters.	**Sec. 544** would require state-specific training for SVCs on civilian criminal justice matters.
Sec. 535 would increase investigative personnel and Victim Witness Assistance Program liaisons.	No similar provision.
Sec. 550 would require DOD to develop a *safe to report* policy for minor collateral misconduct uncovered in the course of a sexual assault investigation.	**Sec. 527** would require a *safe to report* policy for minor collateral misconduct associated uncovered in the course of a sexual assault investigation. **Sec. 528** would require a report to Congress on expansion of the Air Force's *safe to report* initiative.
Sec. 558 would require consideration for transfer of a military service academy student who is the victim of a sex-related offense to another service academy.	No similar provision.
Sec. 550P would preserve a victim's recourse to a *restricted report* in the event a sexual assault allegation was inadvertently disclosed or reported.	**Sec. 531** would require a report on whether sexual assault reports to certain third parties can remain *restricted*.
Military Justice and Investigations	***Military Justice and Investigations***
Sec. 538 would require a pilot program on prosecution of sex-related offenses committed against cadets or midshipmen at the service academies. **Sec. 539** would require timely disposition of non-prosecutable sex-related offenses.	**Sec. 522** would require the disposition authority for certain covered offenses to be withheld to an officer in the grade of O-6 or above; review of decision by a Staff Judge Advocate and advice to next senior commander, and training on the exercise of this authority.
Sec. 540 would require training on the withholding of sexual assault disposition authorities.	**Sec. 523** would require training on the withholding of sexual assault disposition authorities.
Sec. 540C would require enhanced training for commanders on their roles in the military justice process.	**Sec. 525** would require enhanced training for commanders on their roles in the military justice process.
Sec. 550B would require commanders to notify victims on a monthly basis on any further actions taken with respect to a case that *is not* referred to court-martial.	**Sec. 526** is a similar provision to House Sec. 550B.
Sec. 534 would require commanders to provide notification to victims regarding key military justice events and documentation of victim preference for prosecution venue (civilian or military court). **Sec. 547** would require documentation of consultation with a victim on preference for prosecution venue (civilian or military court).	**Sec. 524** is a similar provision to House Sections 534 and 547.
No similar provision.	**Sec. 529** would require a report on recommended actions with respect to adding a punitive Uniform Code of Military Justice (UCMJ) article for sexual harassment.

Discussion: As there are a large number of legislative provisions in the House and Senate bills for FY2020, the following discussion is split into four topic areas:

- Reporting and Accountability;
- Prevention and Response;
- Victim Services and Support; and

- Military Justice and Investigations.[117]

In March 2019, following a Senate Armed Services Committee hearing, the Acting Secretary of Defense established the Sexual Assault Accountability and Investigation Task Force (SAAITF).[118] This task force made several recommendations for legislative action, some of which are reflected in sections of the House and Senate bills.

Reporting and Accountability. Several provisions in the House and Senate bills would seek to support congressional oversight. In the FY2015 NDAA, Congress called for the establishment of a 20-member Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).[119] The committee was established in 2016 and has since produced several studies.[120] Section 548 of the House bill and Section 533 of the Senate bill would extend the term of the DAC-IPAD for an additional five years. The House provision would also expand the scope of the committee's research to include exploring the feasibility of incorporating restorative justice models into the UCMJ.[121] Section 535 of the Senate bill would require the committee to review and assess the relationship between race and ethnicity and the investigation, prosecution and defense of sexual assault. In May 2019, the GAO reported that "Blacks, Hispanics, and male servicemembers were more likely than Whites and female servicemembers to be the subjects of recorded investigations in all of the military services, and were more likely to be tried in general and special courts-martial."[122] GAO also reported that differences in how the Services record information on race and ethnicity make it difficult to identify disparities.[123] Section 540A of the House bill would require DOD to conduct a review of racial, ethnic, and gender disparities across the entire military justice system (See also the "Diversity and Inclusion" section of this report).

Both bills (House Section 549 and Senate Section 534) would require the Secretary of Defense to establish a 20-member "Defense Advisory Committee for the Prevention of Sexual Misconduct" with expertise in areas such as organizational culture, suicide prevention, implementation science, and the *continuum of harm.*[124] Section 537 would require a GAO report on Armed Forces implementation of statutory requirements for sexual assault for FY2004–FY2019.

Prevention and Response. Section 521 of the Senate bill would require the Secretary of Defense and Secretaries of the military departments to promulgate policies "to reinvigorate the prevention of sexual assault involving members of the Armed Forces." Elements of the required policy would include, (1) education and training on the prevention of sexual assault; (2) promoting

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[117] Included in this discussion are selected military justice provisions that have the most direct relationship with military sexual assault. As such, some military justice provisions under *Subtitle D* in the House bill and Senate bills are excluded from this report.

[118] DOD, *Sexual Assault Accountability and Investigation Task Force*, April 30, 2019, https://media.defense.gov/2019/May/02/2002127159/-1/-1/1/SAAITF_REPORT.PDF.

[119] P.L. 113-291 §546.

[120] See https://dacipad.whs.mil/.

[121] Restorative justice focuses on rehabilitation of offenders and reconciliation with the victims and community.

[122] GAO, *DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, GAO-19-344, May 30, 2019, p. 38, https://www.gao.gov/products/GAO-19-344.

[123] GAO, *DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, GAO-19-344, May 30, 2019, https://www.gao.gov/products/GAO-19-344.

[124] DOD defines *continuum of harm* as a range of interconnected, inappropriate behaviors that are connected to the occurrence of sexual assault and that support an environment that tolerates these behaviors. For more information, see, GAO, *Sexual Violence: Actions Needed to Improve DOD's Efforts to Address he Continuum of Unwanted Sexual Behaviors*, GAO-18-33, December 18, 2017, https://www.gao.gov/products/GAO-18-33.

healthy relationships; (3) empowering and enhancing the role of non-commissioned officers in the prevention of sexual assault (4) fostering social courage to promote interventions to prevent sexual assault; (5) addressing behaviors across the continuum of harm; (6) countering alcohol abuse, including binge drinking; and (7) other matters as the Secretary of Defense deems appropriate.

Senate Section 530 and House Section 550O would ensure that *Catch a Serial Offender* (CATCH) Program information is not subject to Freedom of Information Act (FOIA) requests.[125] According to SAPRO, "CATCH allows sexual assault victims (Service members and adult dependents) to discover if the suspect in their restricted report may have also assaulted another person (a "match" in the CATCH website), and, having that knowledge, decide whether to convert their restricted report to unrestricted to initiate an investigation of the serial offender suspect."[126] A sexual assault victim may submit a confidential *restricted report* and receive counseling and other services without notifying his or her commander or military investigative authorities. The report may later be converted to an *unrestricted report*, which does initiate an investigation. Section 530 would ensure that restricted reports to, or by the CATCH program, would not affect the report's status as restricted and thus would maintain victim confidentiality.

Victim Services and Support. Both bills include provisions that would expand or enhance the Special Victim Counsel (SVC) program. An SVC is a judge advocate or civilian attorney who satisfies special training requirements and provides legal assistance to victims of sexual assault throughout the military justice process.[127] Based on victim surveys, there is substantial confidence and satisfaction with SVC services and support. Sections 541 and 542 of the Senate bill would expand SVC services to include cases of retaliation and would authorize services for military-affiliated victims of domestic violence when resources are available. House Section 542 would also expand SVC services to victims of domestic violence, establish minimum staffing levels, and require the creation of SVC paralegal positions. Senate Section 543 would require a study on establishing new SVC support positions. The Administration has cautioned that expanding the eligible population under House Section 542, "would decrease access for sexual assault victims to Special Victims' Counsels (SVCs)/Victims' Legal Counsels (VLCs), exacerbate already high caseloads for SVC/VLCs, and impose an unfunded mandate."[128] This position suggests that expanding the eligible population would also require an expanded SVC workforce. Finally, similar provisions in both bills (House Section 550C and Senate Section 544) would require SVC training on state-specific criminal justice matters. Both bills would also ensure that an SVC would be made available to a requesting victim within a certain amount of time–48 hours in the House bill (Section 550A), and 72 hours in the Senate version (Section 543).

Another aspect of victim protection and support that appears in both bills is the requirement for development of a *safe to report* policy (House Section 550 and Senate Sections 527 and 528). This policy, which has been implemented in some form at the military service academies, is intended to remove disincentives for alleged victims to report sexual assault incidents by protecting cadets and midshipmen from punishment for minor collateral misconduct violations that might be uncovered during an investigation.[129] In response to the House provision, the

[125] 5 U.S.C. §552.

[126] DOD SAPRO, "Catch a Serial Offender (CATCH) Program," accessed October 31, 2019, https://www.sapr.mil/CATCH.

[127] 10 U.S.C. §§1044, 1044e, and 1565b.

[128] EOP, OMB, *Statement of Administrative Policy*, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2020, p. 9, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

[129] Minor collateral offenses are defined in Section 527 of the Senate bill as, "(1) Improper use and possession of

Administration stated that such a policy "would provide blanket immunity [to the alleged victim] and might have the effect of undermining the validity of a victim's allegations. Specifically, under this provision, victims might be subjected to allegations that the report was made merely to escape disciplinary or punitive action."[130] It is not clear from existing data how prevalent it is for misconduct investigations to lead to sexual assault allegations or vice versa. However, survey data suggests that collateral misconduct may reduce reporting of sexual assault. According to active duty survey data for 2018, 34% of women and 26% of men who experienced a sexual assault *did not* report the assault because they "thought they might get in trouble for something they had done or would get labeled a troublemaker."[131]

Section 558 of the House bill would require the Secretary of Defense to draft regulations on the consideration of a transfer of a military service academy student who is the victim of a sexual assault or related offense to another service academy.[132] Regular active duty members who are victims of sexual assault have the ability to request a permanent change of station, or a change of unit or duty assignment at the same installation; however, there are generally no regulations that provide for transfer to another service (e.g., from the Navy to the Army). Service academy cadets and midshipmen may be offered the opportunity to change units (i.e., companies or squadrons) within the same academy; however, cross-service transfers are rare. The military service academies all have similar entry requirements based on physical, mental and moral standards; however, there are certain curriculum and military education requirements that are specific to the individual academies for each academic year and summer training period.[133] As such, considerations for transfer may include the ability of the individual to qualify under another academy's standards and complete all requirements for commissioning within the four-year program, or if waivers would be necessary.

Finally, Section 550P in the House bill and Section 531 in the Senate bill would address continued confidentiality of restricted reports if a sexual assault allegation is inadvertently disclosed to a third party who would normally be a *mandatory reporter* (e.g., commanding officers, supervisors, and law enforcement). Mandatory reporters are individuals who, when they receive information that a sexual assault has occurred, must report that information to military criminal investigative services.

Military Justice and Investigations. Several provisions in the House and Senate bills would seek to make changes to how disposition decisions are made in sex-related cases. Section 538 of the House bill would require the Secretary of Defense to establish an *Office of the Chief Prosecutor*

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alcohol; (2) Consensual intimate behavior, including adultery or fraternization; (3) Presence in off-limits areas; and (4) Other misconduct specified in the regulations promulgated." The U.S. Air Force Academy began implementing the policy in Academic Program Year (APY) 2017-18 and modeled it after a similar Naval Academy policy. *Annual Report on Sexual Harassment and Violence at the Military Service Academies (MSAs) for Academic Program Year (APY) 2017-2018*, Appendix C: United States Air Force Academy, January 25, 2019, p. 4.

[130] EOP, OMB, *Statement of Administrative Policy*, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2020, p. 10, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

[131] DOD Office of People Analytics, *2018 Workplace and Gender Relations Survey of Active Duty Members*, Overview Report, May 2019, p. 36, https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report.pdf. CRS has not been able to find DOD data on the number of reports of sexual assault that occur following a misconduct offense.

[132] There are three Department of Defense service academies, the United States Naval Academy, United States Air Force Academy, and United States Military Academy (West Point). A similar provision was included in the House-passed version of the FY2019 NDAA (H.R. 5515 §542), but was not adopted.

[133] See CRS Report RL33213, *Congressional Nominations to U.S. Service Academies: An Overview and Resources for Outreach and Management*, by R. Eric Petersen and Sarah J. Eckman.

at the grade of O-7 or above, and would require a four-year pilot program at the military service academies for the independent review and disposition of certain sex-related (*special victim*) offenses. The Administration opposes this provision contending that it would, "outsource authority for discipline," and "undermines commander accountability and the chain of command relationship."[134] Those who argue for taking decision-making outside of the chain of command contend that independent prosecutors are better equipped to make disposition decisions and such an endeavor could improve victim confidence in the investigative and judicial process. For the 2017–2018 academic program year (APY), there were 67 unrestricted reports alleging sexual assault by or against cadets, midshipmen, or prep school students, and 55 investigations initiated during the APY.[135]

Since 2012, DOD policy has required that all unrestricted reports of adult sexual assault offenses be reviewed by a special court-martial convening authority (SPCMCA) for the initial disposition decision.[136] Section 522 of the Senate bill would codify the requirement that only a SPCMCA in the grade of O-6 or above may have disposition authority for certain sex-related offenses. In addition, it would require that only a SPCMCA or higher in the victim's chain of command may make disposition decisions with regard to any collateral misconduct by the victim. House Section 540 and Senate Section 523 are similar provisions that would require training for sexual assault disposition authorities on the exercise of such authority. Section 540C of the House bill and Section 525 of the Senate bill would require uniform training for commanders on their role in each stage of the military justice system with regard to sexual assault cases.

Section 539 of the House bill would require that commanders take timely disposition action on *nonprosecutable sex-related* offenses, following a determination that there is insufficient evidence to support prosecution for a sex-related offense in a general or special court-martial.[137] Under this provision, a commanding officer would receive the investigative materials within seven days of the nonprosecutable determination and would be required to take other judicial, nonjudicial, or administrative action on the case within 90 days. The Administration objects to this provision on the basis that it could be inconsistent with statutory requirements[138] for higher-level review of certain non-referral dispositions and that the 90-day deadline could potentially immunize misconduct if command action is not taken within that timeframe.[139]

Several provisions in the bills also address victim consultation and notifications during investigative and judicial processes. Section 550B of the House bill and Section 526 of the Senate bill would require commanders to notify victims on a monthly basis on any final determinations

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[134] EOP, OMB, *Statement of Administrative Policy*, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2020, p. 5, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

[135] Department of Defense, *Annual Report on Sexual Harassment and Violence at the Military Service Academies (MSAs) for Academic Program Year (APY) 2017-2018*, Appendix E, January 25, 2019, pp. 1-3, https://sapr.mil/sites/default/files/public/docs/reports/MSA/Appendix_E_APY%2017-18_Matrices_FINAL.pdf.

[136] The special court-martial convening authority (SPCMCA) is a senior military commander (typically in the grade of O-6—colonel or Navy captain). DOD, "Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases," April 20, 2012, https://go.usa.gov/xpgBK.

[137] There may be sufficient evidence to support prosecution of collateral offenses.

[138] P.L. 113-66 §1744, as amended by P.L. 113-281 §541 (10 U.S.C. 834 note), requires a process for Secretarial review of certain nonprosecution decisions in sex-related cases when a judge advocate recommends a case for trial, but the convening authority does not refer the case.

[139] EOP, OMB, *Statement of Administrative Policy*, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2020, p. 9, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

(i.e., administrative, non-judicial punishment, or no further action) made with respect to a case that is not referred to court-martial.

The FY2015 NDAA (P.L. 113-291 §524) required that DOD officials ask victims about their preference regarding the prosecution venue–whether they prefer prosecution by court-martial or in a civilian court of jurisdiction. A March 2019 report by the DOD Inspector General found that in approximately 27% of the cases reviewed, victims were denied the opportunity to state their preference. In the remaining cases there was insufficient documentation to ascertain whether the victims were consulted as required by law.[140] Sections 534 and 547 of the House bill and Section 524 of the Senate bill include provisions that would require documentation of the consultation with the victim on the prosecution venue.

An April 2019 report by DOD's SAAITF recommended making sexual harassment a criminal offense for uniformed personnel by adding a specific punitive article to the UCMJ, to "make a strong military-wide statement about the seriousness of these behaviors and the military's zero tolerance policy for them."[141] Section 529 of the Senate bill would require DOD to submit a report within 180 days of enactment on recommended legislative and administrative actions required to establish a separate punitive article for sexual harassment in the UCMJ.

References: See also CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon, Previously discussed in CRS Report R45343, *FY2019 National Defense Authorization Act: Selected Military Personnel Issues*, by Bryce H. P. Mendez et al. and similar reports from earlier years.

CRS Point of Contact: Kristy N. Kamarck and Alan Ott.

Screening and Testing for Environmental and Occupational Exposures

Background: In general, DOD policies require the protection of military and civilian personnel from accidental death, injury, or occupational illness.[142] DOD's occupational and environmental health programs typically require military and civilian personnel to receive occupation- or mission-specific exposure or injury prevention education, operational risk management training, personal protective equipment, exposure assessments, and medical prophylactics or treatment, if necessary.[143]

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[140] DOD Inspector General, *Audit of DoD Efforts to Consult with Victims of Sexual Assault Committed by Military Personnel in the United States Regarding the Victim's Preference for Prosecution* , March 20, 2019, https://media.defense.gov/2019/Mar/22/2002104649/-1/-1/1/DODIG-2019-064.PDF.

[141] DOD, *Sexual Assault Accountability and Investigation Task Force*, April 30, 2019, p. 6, https://media.defense.gov/2019/May/02/2002127159/-1/-1/1/SAAITF_REPORT.PDF.

[142] See DOD Instruction 6055.01, *DoD Safety and Occupational Health (SOH) Program*, updated August 31, 2018, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605501p.pdf?ver=2018-11-19-110543-180; DOD Instruction 6055.05, *Occupational and Environmental Health (OEH)*, updated August 31, 2018, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605505p.pdf?ver=2019-04-04-095234-197; DOD Directive 6200.04, *Force Health Protection*, updated April 23, 2007, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/620004p.pdf; and DOD Instruction 6055.12, *Hearing Conservation Program (HCP)*, August 14, 2019, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605512p.pdf?ver=2019-08-14-073309-537.

[143] Ibid.

DOD policies also require exposure assessments and screenings for certain hazardous substances or potentially harmful environments, such as lead, hexavalent chromium, cadmium, open air burn pits, radiation, blast pressure injuries, and noise.[144] DOD primarily documents exposures in the Defense Occupational and Environmental Health Readiness System (DOEHRS), an electronic "information management system for longitudinal exposure recordkeeping and reporting."[145] DOD epidemiologists, public health practitioners, and occupational safety experts use DOEHRS data to conduct medical surveillance, inform future prevention measures, and develop improved personnel protective equipment. DOD medical personnel can use DOEHRS data when evaluating, diagnosing, or treating patients exposed to a hazardous substance or environment. In addition to DOEHRS, DOD can also document certain exposures in legacy electronic health record systems, paper medical records, or the individual longitudinal exposure record (ILER).[146] The VA also utilizes DOD's exposure data when considering presumptive service connection for a veteran's claim for disability compensation, or providing ongoing medical care.[147]

While DOD's occupational and environmental health programs screen, document, and track servicemember or civilian employee exposure to certain substances, all potentially hazardous substances are not covered under these programs.

House-Passed H.R. 2500	Senate-Passed S. 1790
General Exposure Documentation & Tracking	***General Exposure Documentation & Tracking***
Sec. 706 would revise DOD's medical tracking system for deployed servicemembers to document "any exposure to occupational and environmental health risks." DOD and VA would be required to ensure their respective electronic health record systems are updated with information contained in the Burn Pit Registry. GAO would be required to evaluate and report to Congress on DOD's implementation of this section.	**Sec. 717** would revise DOD's medical tracking system for deployed servicemembers to document "any exposure to occupational and environmental health risks."
Lead Exposure	***Lead Exposure***
Sec. 704 would require DOD to make blood lead level testing available for eligible children at ages 12 and 24 months if, (1) the child lives in a house built before 1978, and (2) the child's parent or guardian has a military occupational specialty that poses an "elevated risk of lead exposure." DOD would also be required to conduct two lead exposure screenings on children not described above and make appropriate notifications to state health departments or the U.S. Centers for Disease Control and Prevention (CDC).	**Sec. 703** would require DOD to establish and disseminate clinical practice guidelines on screening, testing, and reporting of blood lead levels in children within one year after enactment. DOD would be required to make appropriate notifications to state health departments or the CDC, as well as follow CDC guidance for the treatment of children with lead poisoning.

[144] Ibid.

[145] DOD Instruction 6055.05, *Occupational and Environmental Health (OEH)*, updated August 31, 2018, p. 17, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605505p.pdf?ver=2019-04-04-095234-197. For more on DOEHRS, see https://www.health.mil/Military-Health-Topics/Technology/Clinical-Support/Centralized-Credentials-Quality-Assurance-System/Decision-Support/Defense-Occupational-and-Environmental-Health-Readiness-System-Industrial-Hygiene.

[146] The *individual longitudinal exposure record* (ILER) is a web-based application that displays consolidated occupational and environmental exposure data for servicemembers and veterans. When fully implemented, the ILER is intended to provide DOD and VA clinicians, claims adjudicators, and benefits advisors a single point of access to exposure-related records. For more on ILER, see https://health.mil/Reference-Center/Fact-Sheets/2019/03/15/ILER.

[147] For more on presumptive service connection and veterans disability compensation, see CRS Report R41405, *Veterans Affairs: Presumptive Service Connection and Disability Compensation*, by Sidath Viranga Panangala, Daniel T. Shedd, and Umar Moulta-Ali.

House-Passed H.R. 2500	Senate-Passed S. 1790
Sec. 710 authorizes an additional $5 million for the Defense Health Program for child lead screening and testing. The increase in funds would be offset by reductions to the *Wheeled and Tracked Combat Vehicles, Army* account (i.e., Bradley Program [Mod]).	No similar provision.
Burn Pit & Airborne Hazards Exposure	***Burn Pit & Airborne Hazards Exposure***
Sec. 705 would require DOD to assess servicemembers for exposure to open burn pits, toxic airborne chemicals, or other airborne contaminants, during periodic health assessments, separation health examinations, and deployment health assessments. Exposed servicemembers would be enrolled in the Airborne Hazards and Open Burn Pit Registry (i.e., Burn Pit Registry).	**Sec. 5702** is a similar provision to House Sec. 705.
Per- and Polyfluoroalkyl Substances Exposure	***Per- and Polyfluoroalkyl Substances Exposure***
Sec. 708 would require blood testing for per- and polyfluoroalkyl substances (PFAS) exposure as part of the annual physical examination for firefighters employed by DOD.	**Sec. 704** is a similar provision to House Sec. 708. Blood testing would begin on October 1, 2020.
Blast Pressure Exposure	***Blast Pressure Exposure***
Sec. 752 would require DOD to conduct a study on the feasibility and effectiveness of routine neuroimaging for certain blast pressure exposures by servicemembers.	No similar provision.
No similar provision.	**Sec. 728** would require DOD to update a congressionally directed longitudinal study on blast pressure exposure to assess the feasibility and advisability of uploading study data into DOEHRS or similar systems; and provide an annual status report to Congress.

Discussion: The House and Senate bills include provisions that address DOD's requirements and processes for documenting and conducting medical surveillance on certain at-risk individuals or those exposed to certain hazards.

General Exposure Documentation and Tracking. House Section 706 and Senate Section 717 would amend 10 U.S.C. §1074f to include additional requirements for DOD to "record any exposure to occupational and environmental health risks" during the course of a servicemembers' deployment and make such information available to other DOD health care providers conducting post-deployment medical examinations or reassessments. The House provision would also direct the GAO to evaluate and submit a report to Congress on DOD's implementation of the new requirements.

Lead Exposure. Both bills include provisions that would require DOD to offer lead level screening and testing to potentially exposed children. DOD would also be required to report to Congress the number of children screened, found to have elevated blood lead levels, and provided treatment for lead poisoning. Section 704 of the House bill specifies the ages in which potentially exposed children be tested and would require the GAO to report to Congress on the effectiveness of DOD's lead screening, testing, and treatment program for children. Section 703 of the Senate bill does not include specific ages for testing, but instead directs DOD to establish clinical

practice guidelines that take into account recommendations published by the U.S. Centers for Disease Control and Prevention on lead level screening and testing in children.[148]

Section 710 of the House bill also authorizes $5 million in the Defense Health Program account to fund lead level screening and testing for children.[149] The provision would also offset this authorization with a reduction to the Army procurement account for Wheeled and Tracked Combat Vehicles.[150]

Burn Pit & Airborne Hazards Exposure. Both bills include identical provisions (House Section 705 and Senate Section 5702) that would direct DOD to assess servicemembers for exposure to open burn pits or other toxic airborne hazards. The provisions would require exposure assessments during the annual periodic health assessment, separation history and physical examination, and deployment health assessments.[151] DOD would also be required to enroll exposed servicemembers in the Airborne and Open Burn Pit Registry and share its assessment findings with the VA.[152]

PFAS Exposure. Both bills include similar provisions (House Section 708 and Senate Section 704) that would direct DOD to assess its firefighters, during their annual physical examination, for exposure to PFAS. The House provision would require testing upon enactment, while the Senate provision would take effect on October 1, 2020.

Blast Pressure Exposure. Section 752 of the House bill would direct DOD to conduct a study and report to Congress on the feasibility of using routine neuroimaging to prevent, diagnose, and treat brain injury resulting from blast pressure exposure. Section 728 of the Senate bill would modify the requirements for a longitudinal medical study on blast pressure exposure in servicemembers, as directed by Section 734 of the FY2018 NDAA (P.L. 115-91). The modification would require DOD to assess the feasibility of uploading its blast pressure exposure data into DOEHRS or other tracking systems.

References: CRS Report R45793, *PFAS and Drinking Water: Selected EPA and Congressional Actions*, by Elena H. Humphreys and Mary Tiemann; and CRS Report RS21688, *Lead-Based Paint Poisoning Prevention: Summary of Federal Mandates and Financial Assistance for Reducing Hazards in Housing*, by Jerry H. Yen.

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[148] For more on the U.S. Centers for Disease Control and Prevention recommendations on lead level screening and testing in children, see https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm.

[149] See section 4501 of the House-passed FY2020 NDAA (H.R. 2500).

[150] See section 4101 of the House-passed FY2020 NDAA (H.R. 2500).

[151] The *periodic health assessment* (PHA) is an annual screening to determine the health status and medical readiness of servicemembers. For more the PHA, see https://www.pdhealth.mil/clinical-guidance/deployment-health/health-assessment-programs/periodic-health-assessment. The *separation history and physical examination* (SHPE) is a medical evaluation conducted on all separating, retiring, or deactivating servicemembers. For more on the SHPE, see https://health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Access-to-Healthcare/DoD-VA-Sharing-Initiatives/Separation-Health-Assessment. *Deployment health assessments* are conducted on all servicemembers before, during, and after deployment. For more on deployment health assessments, see https://www.pdhealth.mil/treatment-guidance/deployment-health-assessments.

[152] The Airborne and Open Burn Pit Registry was established by section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (P.L. 112-260) and is administered by the Department of Veterans Affairs. For more on the Registry, see https://www.publichealth.va.gov/exposures/burnpits/registry.asp.

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