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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 NDAA (P.L. 116-92) addresses or attempts to resolve high-profile military personnel issues. Some are required annual authorizations (e.g., end-strengths); some are updates or modifications to existing programs; and some are issues identified in certain military personnel programs.

In the FY2020 NDAA, Congress authorized end-strengths identical to the Administration's FY2020 budget proposal. The authorized active duty end-strength increased by about 1% to 1,339,500. The authorized Selected Reserves end-strength decreased by about 2% to 807,800. A 3.1% increase in basic military pay took effect on January 1, 2020. This increase is identical to the Administration's FY2020 budget proposal and equal to the automatic annual adjustment amount directed by statutory formula (37 U.S.C. §1009).

Congress also directed 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 (SBP) 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
- medical documentation and tracking requirements for servicemembers or family members exposed to certain environmental or occupational hazards (e.g., lead, open air burn pits, blast pressure).

As part of the oversight process, several provisions address selected congressional items of interest, including

- DOD review of service records of certain World War I veterans for potential eligibility for a posthumously awarded Medal of Honor;
- a process for former servicemembers to appeal decisions issued by a Board of Correction of Military Records or a 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 administrative claims against the United States; and
- limitations on the reduction of military medical personnel.

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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 may not be included in the other, may be treated differently, or may be identical to those in the other 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. The House passed the FY2020 NDAA conference report on December 11, 2019, and the Senate passed the report on December 17, 2019. On December 20, 2019, President Donald J. Trump signed the bill into law (P.L. 116-92).

This report highlights selected personnel-related issues that may generate high levels of congressional and constituent interest. 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 FY2020 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	Enacted Bill P.L. 116-92
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	**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: 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 administration's 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]

Section 401 of the enacted bill approved end-strengths identical to the Administration request.

Figure 1. Comparison of FY2019 Enacted Active Duty End-Strength, FY2020 President's Budget, and FY2020 Enacted Active Duty End-Strength

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

Note: Up and down arrows indicate increases and decreases, respectively, from the FY2019 enacted 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 FY2020 are shown in **Figure 2**.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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:	**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	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: 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 full production levels by end of the FY 2019 in order to meet the required accessions

[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.

> 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]

Section 411 of the enacted bill approved end-strengths identical to the Administration request.

Figure 2. Comparison of FY2019 Enacted Selected Reserve End-Strength, FY2020 President's Budget and FY2020 Enacted Selected Reserve End-Strength

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

Note: Up and down arrows indicate increases and decreases, respectively, from the FY2019 enacted 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 DOD provide contraceptive services 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	Enacted Bill P.L. 116-92
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.	Not adopted.
	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.	Not adopted.
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.	Not adopted.
Sec. 709 would allow DOD to offer assisted reproductive services to active duty servicemembers or their spouses with no cost share.	No similar provision.	Not adopted.
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.	Not adopted.
Sec. 728 would require DOD to conduct a study on infertility among active duty servicemembers.	No similar provision.	Not adopted.

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.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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.	Not adopted.

Discussion: 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, the accompanying procedures or follow-up evaluations that may be clinically necessary, or health care provider nonparticipation 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 narrow criteria are met.[18]

While there are no provisions in the enacted bill relating to access to reproductive health services, the committee report (S.Rept. 116-48) accompanying the Senate bill (S. 1790) includes a similar reporting requirement as House Section 728.[19] The committee report directs DOD to "conduct a study on the incidence of infertility among members of the Armed Forces" and provide a report to the House and Senate armed services committees by June 1, 2020.[20] The study is to include the following elements:

- number of servicemembers diagnosed with a common cause of infertility;
- number of servicemembers whose infertility has no known cause;
- incidence of miscarriage among female servicemembers;
- infertility rates of female servicemembers, as compared to their civilian counterparts;
- demographic information on infertile servicemembers and potential hazardous environmental exposures during service;
- availability of infertility services for servicemembers who desire such treatment, including waitlist times at MTFs offering reproductive health services;
- criteria used by the military services to determine service-connection for infertility; and
- DOD policies for ensuring geographic stability for servicemembers receiving treatment for infertility.[21]

Not adopted were provisions to expand TRICARE coverage of specific reproductive health services to certain eligible beneficiaries.

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

[18] See footnote 14.

[19] See p. 211 of S.Rept. 116-48.

[20] Ibid.

[21] Ibid.

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 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.

[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.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Organizational Management No similar provision	***Organizational Management*** **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.	***Organizational Management*** **Sec. 711** adopts Senate Sec. 711 with an amendment that allows the Secretary of Defense to reassign a civil service employee from a DOD component to a military department, or vice-versa.
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.	**Sec. 712** adopts Senate Sec. 712 with an amendment that further clarifies MHS support to the combatant commanders' medical requirements.
No similar provision.	**Sec. 713** would establish a four-year minimum requirement for the tour of duty as an MTF commander or director.	Not adopted.
No similar provision.	**Sec. 715** would require DOD to establish up to four "regional medical hubs" to support combatant command operational medical requirements.	Not adopted.
No similar provision.	**Sec. 5703** would require the Secretary of Defense to preserve the resources assigned to the Army Medical Research and Materiel Command (USAMRMC), notwithstanding its administrative and mission realignments to the Army Futures Command and the Defense Health Agency.	**Sec. 737** adopts Senate Sec. 5703 with an amendment that requires the Secretary of Defense to preserve USAMRMC resources at a certain baseline level through September 30, 2022, and maintain the Command's designation as a "Center of Excellence for Joint Biomedical Research, Development and Acquisition Management."
Military Medical Workforce **Sec. 718** would limit certain changes to military medical end-strength.	***Military Medical Workforce*** No similar provision.	***Military Medical Workforce*** **Sec. 719** adopts House Sec. 718 with an amendment that provides certain exceptions to allow for military medical end-strength reductions.
Sec. 749 would require the Secretary of Defense to provide a report to Congress on operational medical and dental personnel requirements.	No similar provision.	Not adopted.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Civilian Partnerships	***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. 743** adopts House Sec. 726 with an amendment that requires DOD to include a plan for further development on military-civilian integrated health delivery systems.
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.	Not adopted.
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.	**Sec. 740** adopts Senate Sec. 727 with an amendment that expands the locations where a pilot program can take place.

Discussion: The enacted bill includes a number of provisions clarifying 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, recruiting and retaining medical personnel, and establishing military-civilian partnerships.

Organizational Management. Section 711 of the enacted bill amends 10 U.S.C. §1073c to clarify the qualifications of the DHA assistant director and the deputy assistant directors, and allow DOD to reassign certain civil service employees from a military department to a DOD component, or vice-versa. The provision also adds the following to DHA's existing 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 enacted bill clarifies the roles and responsibilities of the service surgeons general, to include

- support to combatant commanders for operational and deployment requirements;
- support to DHA by assigning military medical personnel to MTFs;

[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.

- development of combat medical capabilities; and
- medical readiness of the Armed Forces.

In 2018, Congress directed DOD to consolidate most of its medical research programs under the DHA.[29] 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).[30] The U.S. Army Medical Research and Materiel 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.[31] 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 737 of the enacted bill directs the Secretary of Defense to retain certain manpower and funding resources with USAMRMC. The provision requires USAMRMC manpower and funding to be at a baseline of no less than "the level of such resources as of the date of the enactment of this Act until September 30, 2022."[35] On October 1, 2022, DOD is to: (1) transfer USAMRMC resources programmed to the Army's research, development, test, and evaluation account to the DHP; and (2) maintain USAMRMC as a "Center of Excellence for Biomedical Research, Development and Acquisition Management."

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."[36] Compared to FY2019 levels, the Army would have the largest reduction in medical forces (-16%), followed by the Air

[29] P.L. 114-328 §711.

[30] For more on the Congressionally Directed Medical Research Programs (CDMRP), see CRS In Focus IF10349, *Congressionally Directed Medical Research Programs Funding for FY2020*, by Bryce H. P. Mendez.

[31] On May 31, 2019, the Department of the Army redesignated the U.S. Army Medical Research and Materiel Command (USAMRMC) to the U.S. Army Medical Research and Development Command (USAMRDC). Ramin A. Khalili, "Same Goal, Same Mission: Town Hall Marks USAMRMC Redesignation to USAMRDC," *U.S. Army*, May 31, 2019, https://go.usa.gov/xdxnn.

[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] The FY2020 NDAA was enacted on December 22, 2019.

[36] The net reduction reflects DOD's proposal to reduce the active duty medical force assigned to the Military Health System by 22% (17,991 personnel), while concurrently increasing the active duty medical force assigned to deployable or warfighting units, military service headquarters, or combatant commands by 10% (3,284 personnel). For more on this proposal, see CRS Insight IN11115, *DOD's Proposal to Reduce Military Medical End Strength*, by Bryce H. P. Mendez; and DOD, Defense Budget Overview, March 2019, p. 2-5, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_Overview_Book.pdf.

Force (-15%), and the Navy (-7%).[37] 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.[38]

Section 719 of the enacted bill limits DOD actions to reduce or realign its active duty medical force until certain internal reviews, analyses, measurements, and outreach actions are conducted within 180 days of enactment and at least 90 days after a report to the House and Senate armed services committee on such actions have been provided. The report is to include also the department's plan to reduce or realign its military medical force. In addition, the provision contains certain exceptions that allow DOD to proceed with reducing or realigning certain positions. The exceptions are

- administrative billets assigned to a service medical department that has been vacant since at least October 1, 2018;
- nonclinical billets that were identified in the President's FY2020 budget submission and not to exceed a total of 1,700; and
- service medical department billets solely assigned to a headquarters office and not dually assigned to support a deployable medical unit.[39]

Civilian Partnerships. The MHS states that its "success depends on building strong partnerships with the civilian health care sector."[40] 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.[41] Section 740 of the enacted bill authorizes 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.[42] If exercised by the Secretary of Defense, pilot program sites are to be located "in the vicinity of major aeromedical and other transport hubs and logistics centers of the Department of Defense."

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[37] 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.

[38] 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.

[39] A service medical department may assign individual personnel to multiple billets. For example, a military physician could be placed in a billet assigned to an administrative setting, such as a headquarters office, and be assigned to a deployable medical unit. Personnel in this type of assignment primarily work in an administrative setting, unless otherwise training or mobilizing with their deployable medical unit.

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

[41] Ibid.

[42] 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.

Section 751 of the enacted bill directs DOD to study existing military-civilian integrated health delivery systems and the activities conducted that promote value-based care, measurable health outcomes, patient safety, access to care, critical wartime readiness skills, and cost. The provision requires DOD to submit a report to the House and Senate armed services committees, within 180 days of enactment, on the study's findings and a plan for further development of military-civilian health partnerships.

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.

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Separation, Discharge, and Discharge Review

Background: Each Military Department and the Department of Homeland Security has a board for correction of military records (BCMR) and a discharge review board (DRB).[43] An application to change a reason for separation or a service characterization is typically made to a DRB.

A BCMR has general authority to correct an error in, or remove an injustice from, an individual's service record.[44] It provides an administrative process for a current or former servicemember to request a record correction, or present a monetary claim associated with the correction.[45] Each BCMR is composed of at least three members. A request for record correction must be made within *three years* of discovering an alleged error or injustice.[46]

A DRB has specific authority to change an individual's reason for separation or service characterization.[47] It provides an administrative process for a former active duty servicemember to request a discharge review regarding a reason for separation or a service characterization, however, a DRB may not review a discharge ordered by a general court-martial.[48] Each DRB is composed of at least three members.[49] A request for discharge review must be made within *fifteen years* of the discharge.[50]

Administrative Separation – Enlisted Personnel. A separation is an administrative process that transitions a servicemember to former servicemember status or from active to reserve status. It

[43] 10 U.S.C. §1552 (BCMR); 10 U.S.C. §1553 (DRB).

[44] 32 C.F.R. §581.3 (Army BCMR); 32 C.F.R. Pt. 723 (Naval BCNR); 32 C.F.R. Pt. 865, Sub-Pt. A (Air Force BCMR); 33 C.F.R. Pt. 52 (Coast Guard BCMR).

[45] A Federal court may compel the Coast Guard BCMR to act under 5 U.S.C. §706(1) when requested to do so by a BCMR applicant who has not obtained a decision within ten months (14 U.S.C. §2507 (BCMR Deadline)).

[46] 10 U.S.C. §1552(b) allows BCMRs to waive the three-year time limit in the "interest of justice" or for good cause.

[47] 32 C.F.R. §581.2 (Army DRB); 32 C.F.R. Pt. 724 (Naval DRB); 32 C.F.R. Pt. 865 Sub-Pt. B (Air Force DRB); 33 C.F.R. Pt. 51 (Coast Guard DRB).

[48] A favorable review under 10 U.S.C. §1553 supersedes a bar to veterans' benefits if it complies with the requirements of 38 U.S.C. §5303(e)(1).

[49] The minimum number of DRB members was reduced from five to three by the FY 2020 NDAA (P.L. 116-93, §522).

[50] 10 U.S.C. §1553(a). If a DRB application is not timely, the servicemember may apply to a BCMR because it may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice (footnote 46).

may be voluntary (servicemember-initiated) or involuntary (Military Service-initiated) and it must be based on an authorized reason.

Separation Reasons – DOD Enlisted Personnel. There are 16 reasons authorized by DOD for enlisted servicemember voluntary and involuntary separations.[51] A Military Department may authorize additional reasons.

DOD Enlisted Personnel Voluntary and Involuntary Separation Reasons		
Expiration of service obligation	Unsatisfactory performance	Unsatisfactory reserve participation
Change in service obligations	Drug abuse rehabilitation failure	Secretarial plenary authority
Convenience of the Government	Alcohol abuse rehabilitation failure	Military Department reasons
Disability	Misconduct	Weight control failure
Defective enlistments and induction	Separate in lieu of court-martial	—
Entry-level conduct/performance	Security	—

Separation Reasons – Coast Guard Enlisted Personnel. There are 14 reasons authorized by the Coast Guard for enlisted servicemember voluntary and involuntary separations, which are largely similar to the DOD reasons, but they are distinguishable in some instances.[52]

Coast Guard Enlisted Personnel Voluntary and Involuntary Separation Reasons	
Enlistment expires	Security
Service obligation fulfilled	Misconduct
Convenience of the Government	Court-martial sentence
Dependency or hardship	Entry-level separation
Minority (age)	For the good of the Service
Disability	Care of Newborn Children
Unsuitability	Temporary separation

Service Characterization – Enlisted Personnel. The administrative characterization of service that occurs after an administrative separation from a Military Service may affect eligibility for veterans' benefits, employment opportunities, and some government programs.[53] A voluntary or an involuntary separation process results in a service characterization, which includes:

- *Honorable.* This service characterization is made after a voluntary or an involuntary separation when the quality of service has met acceptable conduct and performance standards. The decision is based on a pattern of behavior, not isolated incidents.
- *General (Under Honorable Conditions)*. This service characterization is made after an involuntary separation when the quality of service is satisfactory, but lacking in merit. A Military Service is required to inform an individual in writing that this service characterization may result in ineligibility for veterans' education benefits and civil service retirement credit for time spent on active duty, and that

[51] DOD, *Instruction 1332.14, Enlisted Administrative Separations*, April 12, 2019, pp. 9-24.

[52] Coast Guard Commandant, *Instruction M1000.4, Military Separations*, August 2018, p. 1-59.

[53] Ibid, *Enlisted Administrative Separations*, pp. 26-29. Basic eligibility for VA benefits depends upon, among other matters, the character of service. Service characterized as honorable satisfies basic eligibility (38 C.F.R. §3.12).

it may result in substantial prejudice in civilian life. Additionally, some states may not pay unemployment compensation based on this service characterization.

- *Under Other Than Honorable (OTH) Conditions*. This service characterization is made after an involuntary separation when the quality of service establishes a pattern of behavior that is a significant departure from the conduct required. A Military Service is required to inform an individual in writing that this service characterization may result in ineligibility for many or all veterans' benefits under both Federal and State laws, and that it may result in substantial prejudice in civilian life. Since 2017, there is also a requirement to inform the individual that he or she may however petition the Department of Veterans Affairs (VA) to receive specific benefits.[54]
- *Uncharacterized Service*. A period of service can also be designated as uncharacterized, which typically occurs following a separation for a void enlistment or unsatisfactory entry-level conduct or performance (first 180 days). A servicemember who is absent without leave for more than 30 days, dropped from the rolls of a unit, and declared a deserter will also have such a designation after separation and upon discharge.[55]

Administrative Separation – Commissioned Officers. The reasons for voluntary and involuntary separations of officer personnel in DOD and the Coast Guard are generally the same.[56] The specific authorities to separate commissioned officers from a Military Service are authorized by statute.[57] The reasons for involuntary separation of an officer include:

- substandard performance of duty;
- misconduct or moral or professional dereliction;
- retention not clearly consistent with national security interests;
- sentence by court-martial; and
- dropping from the rolls (DFR).[58]

Service Characterization – Commissioned Officers. When an officer is administratively separated for misconduct, moral or professional dereliction, or in the interest of national security, the administrative characterization of service will be honorable, general (under honorable conditions), or under other than honorable conditions.[59] The characterization of service is based on a pattern of behavior and an officer's entire duty performance rather than an isolated incident. However, there are limited circumstances in which conduct reflected by a single incident may

[54] P.L. 115-91, §528.

[55] Dropping from the unit rolls is an administrative procedure used to remove a servicemember from the unit of assignment, but it does not end the servicemember's military status. Whereas, a dropping from the rolls separation does end such status.

[56] DOD, *Instruction 1332.30, Commissioned Officer Administrative Separations*, May 22, 2020, pp. 7-8; Coast Guard Commandant, *Instruction M1000.4, Military Separations*, August 2018, pp. 1-1; 1-19-1-23.

[57] 10 U.S.C. §§1181-1186; 14 U.S.C. §§2158-2163.

[58] Ibid, *Commissioned Officer Administrative Separations*, p. 25. A DFR separation for an officer is an administrative action that is taken in limited circumstances and it terminates a commissioned officer's military status along with any rights, benefits, and pay to which he or she may have otherwise been entitled because of that status.

[59] Ibid, p. 18.

provide the basis for the characterization of service. The service of an officer who is dropped from the rolls of the military service will be uncharacterized.[60]

Punitive Separation. A court-martial conviction can result in a punitive service characterization if the sentence imposed by the court includes a *Dismissal, Dishonorable Discharge, or Bad Conduct Discharge*.[61] A *Dismissal* applies only to commissioned officers, commissioned warrant officers, cadets, and midshipmen and may be adjudged only by a general court-martial.[62] A *Dishonorable Discharge* applies only to enlisted personnel and warrant officers who are not commissioned and may be adjudged only by a general court-martial. A *Bad-Conduct Discharge* applies only to enlisted personnel and may be adjudged by a general court-martial and by a special court-martial. A *Dismissal* or *Dishonorable Discharge* bars VA benefits.[63]

Discharge. A discharge is a specific administrative procedure that completes the separation process. It represents the expiration or termination of a service obligation and manifests severance from military service. The two main elements of a discharge are the reason for separation and the service characterization. In addition to a discharge order issued to the servicemember, a discharge from active military service authorized under title 10 of the U.S. Code is commonly memorialized in all Military Services, including the Coast Guard, with a Defense Department Form (DD) 214 (*Certificate of Release or Discharge from Active Duty*). Uncharacterized service is documented only by the discharge order.[64]

Discharge Review. The administrative remedy available to an individual for evaluating the separation reason, separation procedures, and service characterization regarding former service is a discharge review by the relevant Service's DRB.[65] However, a 2020 Harvard Law School study suggests that such changes are infrequent and it reported that the upgrade rates in fiscal year 2018 were 13 percent in the Army, 11 percent in the Navy (includes Marine Corps), and 8 percent in the Air Force.[66]

Objective of Discharge Review. The objective of a discharge review is to examine the propriety and equity of the applicant's discharge.[67] It is supposed to evaluate whether the Military Service that separated and discharged the servicemember complied with its relevant policies, standards, and procedures in relation to the:

- separation reason;
- separation procedures; and
- service characterization.

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[60] Ibid.

[61] 10 USC §856 (Art. 56, Uniform Code of Military Justice (UCMJ));

[62] Manual for Courts-Martial United States (MCM), 2019; Rules for Courts-Martial (RCM) 1003(b)(8).

[63] 38 U.S.C. §5303(a).

[64] DOD, *Directive 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*, January 23, 2019. A discharge from military service in the National Guard that is authorized under title 32 of the U.S. Code is commonly memorialized with a National Guard Bureau (NGB) Form 22 (*National Guard Report of Separation and Record of Service*) (National Guard, *Regulation 600-200, Enlisted Personnel Management*, July 31, 2009, §6-17).

[65] DOD, *Directive 1332.41, Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)*, April 23, 2007, pp. 2-3.

[66] Legal Services Center of Harvard Law School, *Turned Away, How VA Unlawfully Denies Health Care to Veterans with Bad Paper Discharges*, 2020, p. 8.

[67] DOD, *Instruction 1332.28, Discharge Review Board (DRB) Procedures and Standards*, April 4, 2004, §E4.1.

A board's prior discharge review decisions have no precedential effect and do not bind the review of subsequent cases.

Scope of Discharge Review. Under the DOD standard of review, the scope of a discharge review is limited largely to confirming a presumption of administrative regularity, unless there is *substantial evidence* that shows the decision for the separation reason or the service characterization was arbitrary or clearly wrong.[68] The Coast Guard standard of review is generally the same as the DOD standard, but it is distinguishable in one instance.[69] Among other matters, an applicant for a discharge review related to traumatic brain injury (TBI) or post-traumatic stress disorder (PTSD) may present medical evidence provided by VA, DOD, and civilian health care providers.

Propriety Standard of Discharge Review. A discharge shall be deemed proper unless, *based on substantial evidence*, in the course of the discharge review, it is determined that:

- An error of fact, law, procedure, or discretion exists associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is *substantial doubt* that the discharge would have remained the same if the error had not been made); or
- A change in policy by the Military Service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.[70]

Equity Standard of Discharge Review. A discharge shall be deemed to be equitable unless, based on substantial evidence:

- In a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from those currently applicable on a Service-wide basis to discharges of the type under consideration provided that:
  - Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and
  - There is *substantial doubt* that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.
- At the time of issuance, the discharge was inconsistent with standards of discipline in the Military Service of which the applicant was a member.

[68] Ibid, §E3.2.12.6. The *substantial evidence* standard of review applied to a discharge review by a DRB in DOD to rebut the administrative regularity presumption is distinguishable from the *preponderance of evidence* standard of review applied to a record correction by a BCMR in the Military Services to rebut such a presumption, except the Navy, which uses the *substantial evidence* standard of review for naval record corrections, which includes the Marnie Corps (See 32 C.F.R. §§581.3(e), 865.4, 723.3(e), and 33 C.F.R. §52.24(b)).

[69] The standard of review for propriety in the Coast Guard differs from the standard in DOD because the Coast Guard standard does not include the language: "such error shall constitute prejudicial error if there is *substantial doubt* that the discharge would have remained the same if the error had not been made" (33 C.F.R. §51.6). This omission suggests that the Coast Guard applies a DRB standard of review other than *substantial evidence* to rebut the administrative regularity presumption, possibly a *preponderance of evidence*. The DOD and Coast Guard standards of review for equity are the same.

[70] Ibid, *Discharge Review Board (DRB) Procedures and Standards*, §E4.2.

- In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance.[71]

Special Procedures for Discharge Review. A DRB must expedite any discharge review related to TBI or PTSD and ensure that such review is accorded sufficient priority.[72] This review must also consider any medical information from a VA or civilian health care provider presented by the servicemember as evidence. Additionally, expedited discharge reviews must be conducted with a liberal consideration for how the TBI or PTSD may have contributed to the reason for the separation or the service characterization.[73]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Oversight, Process, Procedure, and Training		
No similar provision.	**Sec. 547.** *Reduction in Required Number of Members of Discharge Review Boards.* Amends 10 U.S.C. §1553 to reduce the minimum number of members comprising a DRB from five to three.	**Sec. 522.** *Reduction in required number of members of discharge review boards*. Amends 10 U.S.C. §1553 to reduce the minimum number of members comprising a DRB from five to three.
Sec. 522. *Prohibition on reduction in the number of personnel assigned to duty with a service review agency*. Amends 10 U.S.C. §1559(a) to extend the prohibition on reducing the number of military and civilian personnel assigned to duty with the service review agency until December 31, 2025.	No similar provision	**Sec 524** *Prohibition on reduction in the number of personnel assigned to duty with a service review agency.* Amends 10 U.S.C. §1559(a) to extend the prohibition on reducing the number of military and civilian personnel assigned to duty with the service review agency until December 31, 2025.
Sec. 530E. *Training of members of boards for correction of military records and discharge review boards on sexual trauma, intimate partner violence, spousal abuse, and related matters.* Requires the curriculum of training for BCMR and DRB members include training on sexual trauma, intimate partner violence, spousal abuse, and the various responses of individuals to trauma.	**Sec. 551.** *Training of members of boards for correction of military records and discharge review boards on sexual trauma, intimate partner violence, spousal abuse, and related matters.* Requires the curriculum of training for BCMR and DRB members include training on sexual trauma, intimate partner violence, spousal abuse, and the various responses of individuals to trauma.	**Sec. 525.** *Training of members of boards for correction of military records and discharge review boards on sexual trauma, intimate partner violence, spousal abuse, and related matters.* Requires the curriculum of training for BCMR and DRB members include training on sexual trauma, intimate partner violence, spousal abuse, and the various responses of individuals to trauma.
No similar provision.	**Sec. 546.** *Repeal of 15-year statute of limitations on motions or requests for review of discharge or dismissal from the Armed Forces*. Would eliminate the 15-year statute of limitations on requests for review by a DRB.	Not adopted.

[71] Ibid, §E4.3.

[72] 10 U.S.C. §1553(d).

[73] Ibid.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
No similar provision.	**Sec. 548.** *Enhancement of personnel on boards for the correction of military records and discharge review boards.* Would expand the types of health care professionals who can provide medical evidence or diagnosis of PTSD, TBI, or another mental health disorder and to be considered by a BCMR or DRB.	Not adopted.
No similar provision.	**Sec. 549.** *Inclusion of intimate partner violence and spousal abuse among supporting rationales for certain claims for corrections of military records and discharge review.* Would expand the types of cases in which a BCMR or DRB must accord liberal consideration to evidence for PTSD or TBI related to sexual trauma, intimate partner violence, spousal abuse, or combat.	Not adopted.
No similar provision.	**Sec. 552.** *Limitations and requirements in connection with separations for members of the Armed Forces who suffer from mental health conditions in connection with a sex-related, intimate partner violence-related, or spousal-abuse offense.* Would require that a mental health care professional corroborate a mental health condition not amounting to a disability that is based on being a victim of a sex-related, intimate partner violence-related, or spousal abuse-related.	Not adopted.
No similar provision.	**Sec. 553.** *Liberal consideration of evidence in certain claims by boards for the correction of military records and discharge review boards.* Would require all claims based on certain conditions relating to a claimant's discharge or dismissal to be reviewed with liberal consideration.	Not adopted.
Sec. 523. *Advisory committee on record and service review boards.* Would establish a Defense Advisory Committee on Record and Upgrade Review Boards to advise the Secretary of Defense on the best structure, practice, and procedures.	No similar provision.	Not adopted.
Secretary of Defense Review		

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Sec. 521. *Establishment of board of appeals regarding denied requests for upgraded discharges and dismissals*. Would require the Secretary of Defense to establish a board of discharge appeals to hear appeals of requests for upgraded discharges and dismissals that had been denied by the service review agencies.	No similar provision.	**Sec. 523.** *Establishment of process to review a request for upgrade of discharge or dismissal.* Requires a process for Secretary of Defense final review of a Military Department DRB decision that uses existing resources and personnel (new process, but not a new entity).
DRB and BCMR Special Advisors		
Sec. 530D. *Advice and counsel of trauma experts in review by boards for correction of military records and discharge review boards of certain claims.* Requires a DRB or BCMR review based in whole or in part on TBI or PTSD related to combat or sexual trauma to seek advice from designated specialists.	**Sec. 550.** *Advice and counsel of trauma experts in review by boards for correction of military records and discharge review boards of certain claims.* Requires a DRB or BCMR review based in whole or in part on TBI or PTSD related to combat or sexual trauma to seek advice from designated specialists.	**Sec. 521.** *Advice and counsel of trauma experts in review by boards for correction of military records and discharge review boards of certain claims.* Requires a DRB or BCMR review based in whole or in part on TBI or PTSD related to combat or sexual trauma to seek advice from designated specialists.
Sexual Orientation Discharge Review		
Sec. 530H. *Review of discharge characterization*. If requested by a former servicemember, would require a discharge review of a separation based on sexual orientation without applying the presumption of administrative regularity that requires substantial evidence to show that a separation or characterization decision was not proper and correct.	No similar provision.	**Sec. 527.** *Correction of certain discharge characterizations.* Allows servicemembers whose reason for separation was based on sexual orientation to seek a discharge review without the presumption of administrative regularity that a reason for separation or service characterization decision was proper and correct.

Discussion: The enacted bill includes six out of fourteen proposed discharge review or military record correction provisions: three addressing oversight, process, procedure, or training; one addressing a DOD process to review Military Department discharge review decisions; one addressing DRB special advisors; and one addressing separations based on sexual orientation.[74]

Oversight, Process, Procedure, and Training. Section 522 of the enacted bill reduces the number of required DRB members from five to three, which was already the typical minimum number of required BCMR members. 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. Section 524 of the enacted bill amends 10 U.S.C. §1559 to extend previously authorized restrictions on reducing personnel levels at service review agencies until December 31, 2025. The provision also requires each Service Secretary to provide Congress a service review agency plan for reducing application backlogs and maintaining personnel resources therein. Section 525 of the enacted bill amends currently mandated training for DRB and BCMR members to include

[74] Section 5546 of S. 1790 would have nullified the bill's DRB and BCMR related provisions ("Part III of subtitle D of title V, and the amendments made by that part, shall have no force or effect."), but it was not adopted.

curricula on sexual trauma, spousal abuse, intimate partner violence, and the various responses to these events.[75]

Secretary of Defense Review. Section 523 of the enacted bill requires a process for Secretary of Defense final review of a Military Department discharge review decision if requested by a former servicemember who has exhausted all other administrative remedies for discharge review. If determined to be appropriate, the Secretary of Defense may recommend that the Secretary of the relevant Military Department change a servicemember's reason for separation or service characterization. This review process is to be established with existing resources not later than January 1, 2021. Section 523 did not contain a concomitant process for the Secretary of Homeland Security to conduct such a review of a Coast Guard discharge review decision.

DRB and BCMR Special Advisors. Section 521 of the enacted bill requires a DRB or BCMR to seek advice and counsel from a psychiatrist, psychologist, or social worker with specialized training for cases involving TBI or PTSD as a result of combat, sexual trauma, intimate partner violence, or spousal abuse.

Sexual Orientation Discharge Review. Under Section 527 of the enacted bill, the presumption of administrative regularity that a previous reason for separation or a service characterization was correct and proper no longer applies to a discharge based on sexual orientation. This change relieves the former servicemember of the burden to show by substantial evidence that a discharge was not proper or correct.

CRS Point of Contact: Alan Ott.

*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.[76] 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."[77] Opponents of consolidation maintain that DOD is moving forward without considering the risk

[75] 10 U.S.C. §1552 note.

[76] 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.

[77] Ibid., p. 3.

that consolidation could cost more than anticipated and fail to result in projected savings in operational costs.[78] 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).[79]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Sec. 631 would require a Government Accountability Office (GAO) review of the defense resale optimization study.	No similar provision.	**Sec. 633** adopts House Sec. 631 requiring GAO review of the defense resale optimization study and submit to Congress by April 1, 2020.
Sec. 632 would require the Secretary of Defense to submit a report to Congress on the management of commissaries and exchanges.	No similar provision.	Not adopted.
Sec. 634 would require an extension of certain morale, welfare, and recreation privileges to Foreign Service officers on mandatory home leave.	No similar provision.	**Sec. 641** adopts House Sec. 634 extending certain MWR privileges to Foreign Service Officers on mandatory home leave.
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.	**Sec. 631** adopts Senate Sec. 641.
No similar provision.	**Sec. 642** would require treatment of fees on services provided as supplemental funds for commissary operations.	Not adopted.
No similar provision.	**Sec. 643** would require procurement by commissary stores of certain locally sourced products.	**Sec. 632** adopts Senate Sec. 643 requiring that the dairy products and fruits and vegetables to be procured locally, to the extent practicable, for commissary stores while maintaining mandated patron savings.

Discussion: Section 633 of the enacted bill adopts House Section 631. The enacted provision requires 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 is to include data on the

[78] 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/.

[79] 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/.

financial viability of a single defense resale entity and the ability of commissaries and exchanges to support MWR programs after consolidation. The enacted provision directs that GAO provide an interim report no later than March 1, 2020, and a final report no later than June 1, 2020. The Senate-passed bill had no similar provision.

Section 632 of the House-passed bill would have required a report to Congress by the Defense Secretary regarding the management practices of military commissaries and exchanges no later than 180 days after enactment. This report would have included "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. The Senate-passed bill had no similar provision. Section 632 was not adopted in the enacted bill.

Section 641 of the enacted bill adopts House Section 634. The enacted provision amends section 1065 of Title 10, U.S. Code, to extend MWR privileges to Foreign Service Officers on mandatory home leave by permitting the use of military lodging effective January 1, 2020. The Senate-passed bill had no similar provision.

Section 631 of the enacted bill adopts Senate Section 641. The enacted provision requires 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. This provision also requires a DOD executive resale board to advise the USD(P&R) on the implementation of sustainable, complementary operations of the defense commissary system and the exchange stores system. The enacted provision also requires DOD to "field new technologies and best business practices for information technology for the defense resale system" and "implement cutting-edge marketing and advertising opportunities." This provision also amends Section 2483(b) of Title 10, U.S. Code, to allow DOD to include advertising commissary sales on materials available within commissary stores and at other on-base locations in the operating expenses of defense commissaries.

Section 642 of the Senate-passed bill would have amended section 2483(c) of Title 10, U.S. Code, to authorize fees collected by DeCA on services provided to secondary patron groups (like DOD contactors) to offset commissary operating costs. The enacted bill did not adopt this provision.

Section 632 of the enacted bill adopts Senate Section 643. The enacted provision requires commissary stores to procure locally sourced products such as dairy products, fruits, and vegetables as available while maintaining mandated patron savings. The House-passed bill had no similar provision.

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. DOD and Congress have established some of these criteria through policy and law 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	Enacted Bill P.L. 116-92
Sec. 526 would require the Secretary of Defense to update and implement the DOD Diversity and Inclusion Strategic Plan.	No similar provision.	**Sec. 529** adopts House Sec. 526 with an amendment requiring the plan to be implemented within one year of enactment.
Sec. 594 would require certain surveys to ask respondents about whether they have ever experienced supremacist activity, extremist activity, or racism.	No similar provision.	**Sec. 593** adopts House Sec. 594 with amendment requiring questions about whether a survey respondent witnessed, experienced, or reported extremist activity.
Sec. 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. 596** adopts House Sec. 597 with an amendment clarifying required data elements and protecting personally identifiable and protected health information.
Sec. 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.	Not adopted.
Sec. 561 would prohibit gender-segregated Marine Corps recruit training.	No similar provision.	**Sec. 565** adopts House Sec. 561.
Sec. 1099I would require each component to share lessons learned and best practices on progress of gender integration implementation.	No similar provision.	Not adopted.
Sec. 1099J would require the military departments to examine strategies to recruit and retain women.	No similar provision.	Not adopted.

Discussion: In the FY2009 NDAA (P.L. 110-417), Congress authorized the creation of the Military Leadership Diversity Commission (MLDC).[80] Following that effort, in 2012, DOD developed and issued a five-year *Diversity and Inclusion Strategic Plan*.[81] 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.[82] The House bill includes several provisions that would

[80] P.L. 110-417 §596.

[81] 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.

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

address diversity and inclusion, while the Senate bill has none. Section 526 of the 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.[83] Section 529 of the enacted bill adopts the House provision and requires DOD to implement the new strategic plan within one year of enactment.

Existing law requires DOD to conduct surveys on racial and gender issues.[84] 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. A modified provision was adopted in the enacted bill, which requires questions be included in appropriate surveys on whether respondents experienced, witnessed, or reported extremist activity.[85] The enacted provision does not define extremist activity or specify the frequency for such survey questions.

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.[86] 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.[87] 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."[88] 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 have required DOD to submit an annual report on the number of servicemembers who sought a waiver prior to accession or while in service on the basis of a transgender-related condition. Section 596 of the enacted bill adopts the House provision and includes clarifying language as to how data elements should be reported. It also requires DOD to protect personally identifiable and health information of members. This reporting requirement expires in 2023. In addition, the conference report accompanying the enacted bill states

[83] 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.

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

[85] 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." 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.

[86] DOD Defense-type Memorandum 19-004, *Military Service by Transgender Persons and Persons with Gender Dysphoria*, March 12, 2019.

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

[88] Ibid., p. 2.

> In determining whether an applicant with a disqualifying diagnosis of gender dysphoria or history of gender transition treatment or surgery merits a waiver to permit his or her service in the military, the conferees encourage Service-designated waiver authorities to consider such a waiver under the same circumstances as they would for an applicant who is not transgender, but has been diagnosed with analogous conditions or received analogous treatments, presuming the individual meets all other standards for accession.[89]

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.[90] 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."[91] This provision was not adopted.

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.[92] 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.[93] Section 561 of the House bill would prohibit gender segregated Marine Corps recruit training at Marine Corps Recruit Depot Parris Island no later than five years after the date of enactment, and at Marine Corps Recruit Depot San Diego no later than eight years after the date of enactment. Section 565 of the enacted bill adopts this provision.

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).[94] 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. The final bill did not adopt either of these provisions (sections 1099I and 1099J).

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,

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[89] H.Rept. 116-333, p. 1247.

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

[91] *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."

[92] 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/.

[93] 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.

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

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.

*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."[95] As required by law, the FAP provides an annual report to Congress on child abuse and neglect and domestic abuse in military families.[96] Approximately half of military servicemembers are married and there are approximately 1.6 million dependent children across the active and reserve components.[97] 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.[98] 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 the FY2017 rate of 24.5 per 1,000 couples – with 13 spouse abuse fatalities recorded.[99] 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.[100]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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. 548** adopts Senate Sec. 541 and requires a report to Congress (within 120 days of enactment) on planned implementation and resource needs and changes to legislation required to carry out this program.
Sec. 621 would remove delays in the commencement of transitional compensation for certain eligible military dependents. H.Rept. 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.	**Sec. 621** adopts this provision.
No similar provision.	**Sec. 581** would require a briefing to the House and Senate armed	Not adopted. However, the conference report directs a DOD

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

[96] P.L. 114-328 §574.

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

[98] 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.

[99] Ibid., p. 8.

[100] 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.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
	services committees on ways the Family Advocacy Program (FAP) could be used/enhanced to prevent and respond to domestic violence.	briefing to House and Senate armed services committees within 180 days of enactment.
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. 543** adopts House Sec. 543 with an amendment that requires annual reports to begin on March 1, 2021 through 2025.
Sec. 544 would require Secretary of Defense to enact policies and procedures to register civilian protection orders on military bases.	**Sec. 556** is an identical provision to House section 544.	**Sec. 550A** adopts this provision.
Sec. 550F would require reports to the 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.	**Sec. 550E** adopts House Sec. 550F with an amendment that expands the matters to be explored in the feasibility report; however does not amend the NICS Improvement Amendments Act of 2007 to require DOD reports.

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.[101] 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."[102] The enacted bill adopts the Senate provision with an amendment that would require counsel to receive specialized domestic violence legal training, serve for a minimum of two years, and be supported by sufficiently trained paralegals. DOD is required to provide a report on planned implementation no later than 120 days after enactment.

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

[101] 10 U.S.C. §§1044, 1044e, and 1565b.

[102] Executive Office of the President (EOP), Office of Management and Budget (OMB), *Statement of Administrative Policy*, H.R. 2500, National Defense Authorization Act for Fiscal Year 2020, July 9, 2019, p. 9, https://www.whitehouse.gov/wp-content/uploads/2019/07/SAP_HR-2500.pdf.

more than 36 months at the same rate as dependency and indemnity compensation (DIC).[103] 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.[104] 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.[105] Section 621 of the enacted bill adopts this provision.

When a servicemember has allegedly committed an act of domestic violence, a commander can issue a military protective order (MPO)[106] to a servicemember that prohibits contact between the alleged offender and the domestic violence victim.[107] 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.[108] 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 authorities annually. Section 543 of the enacted bill adopts the House provision and requires annual reports through 2025.

While MPOs are typically not enforceable by civilian authorities, a civil protection order (CPO), by law, has full force and effect on military installations.[109] House Section 544 and Senate Section 556 would require DOD to establish policies and procedures for registering CPOs with military installation authorities. Section 550A of the enacted bill adopts this provision.

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[103] 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.

[104] 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.

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

[106] 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*.

[107] 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*. 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).

[108] 10 U.S.C. §1567a.

[109] 10 U.S.C. §1561a.

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.[110] 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. Section 550E of the enacted bill adopts the House provision, but removes the section that would amend the National Instant Criminal Background Check System Improvement Amendments Act of 2007 (34 U.S.C. §40911(b)) with respect to DOD reporting. It also expands the matters to be explored in the feasibility report.

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.[111]

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.[112] 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.[113] 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.[114] This included review of the timeliness of the MoH process and review by all the military departments of the Distinguished

[110] 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).

[111] 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.

[112] 10 U.S.C. §§7271, 8291, and 9271.

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

[114] 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/.

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.[115]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
Sec. 583 would require a review of World War I valor medals.	No similar provision.	**Sec.** 584 adopts House Sec. 583.
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	Not adopted.
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.	Not adopted.
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.	**Sec. 583** adopts Senate Sec. 585.

Discussion: Section 583 of the House-passed 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.[116] 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.[117] Section 584 of the enacted bill adopts this section. If a Secretary concerned determines, based upon the review under that the award of the MoH to a certain World War I veteran is warranted, such Secretary shall

[115] 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/.

[116] P.L. 113-291 §572.

[117] 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/H.R. 2500.pdf.

submit to the President a recommendation that the President award the MoH to that veteran. This review shall terminate not later than five years after the date of the enactment of this Act.

Section 584 of the House-passed bill would have waived 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 caught fire. Cashe's actions saved the lives of six of his soldiers. He later succumbed to his wounds. This provision was not adopted in the enacted bill.

Section 1099L of the House-passed bill would have allowed 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. This provision was not adopted in the enacted bill.

Section 585 of the Senate-passed bill would have waived the time limitation in section 7274 of title 10, United States Code, 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. Section 583 in the enacted bill adopts this section waiving the time limitation so that the President may award the Medal of Honor under section 7271 of title 10 U.S. Code to John J. Duffy for the acts of valor in Vietnam.

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).[118] Slightly over 40% of servicemembers have children and approximately 50% are married.[119] 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	Enacted Bill P.L. 116-92
Spouse Employment and Education **Sec. 628** would increase the maximum reimbursement to spouses for relicensing costs associated with a relocation.	***Spouse Employment and Education*** **Sec. 576** would extend the authority to reimburse some relicensing costs associated with a military relocation.	***Spouse Employment and Education*** **Sec. 577** adopts House Sec. 628.

[118] 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.

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

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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. 575** adopts House Sec. 624 and includes the Senate requirements for the Secretary of Defense with respect to cooperative agreements with the Council of State Governments.
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. 576** adopts House Sec. 623 and includes report language encouraging DOD to improve the data collection for military spouse education and employment programs, to establish a better understanding of utilization and completion of the programs.
Sec. 580B would expand the types of associate degrees and certifications covered by MyCAA.	No similar provision.	**Sec. 580F** adopts House Sec. 580B and allows eligible spouses to receive financial assistance for the pursuit of a license, certification, or associate's degree in any career field or occupation.
Sec. 580C would expand MyCAA eligibility to Coast Guard spouses and spouses of enlisted servicemembers of all grades.	No similar provision.	**Sec. 580G** adopts House Sec. 580C and requires the Coast Guard to reimburse DOD.
Parents and Children	***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.	**Sec. 624** adopts House Sec. 625 with an amendment to authorize the benefit for members of the Armed Forces who die in combat-related incidents in the line of duty.
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.	**Sec. 579** would clarify direct hiring authority for DOD child development centers.	**Sec. 580** adopts House Sec. 629 with clarifying language with respect to the direct hire authority for DOD childcare development centers.

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.[120] Section 628 of the House bill would have raised 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 have raised the maximum reimbursement amount; however, it would extend the

[120] 37 U.S.C. §476.

authority to December 31, 2024. Section 577 of the enacted bill adopts the House provision and extends the authorization for this benefit to December 31, 2024.

Both bills also had similar provisions (House Section 524 and Senate Section 577) that sought to improve interstate license portability through DOD funding support for the development of interstate compacts. Both bills would have capped funding support for each compact at $1 million, while the Senate bill would have capped the total program funding at $4 million. Section 575 of the enacted bill adopts the House provision with an amendment that 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.[121]

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.[122] 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. 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, 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.

Section 623 of the House bill would have allowed continued eligibility for spouses when the member is promoted above those pay grades after the spouse has begun a course of instruction. Section 580B of the House bill would have expanded the qualifying degrees and certifications to include *non-portable* career fields and occupations. Finally, Section 580C would have expanded the eligible population to *all* enlisted spouses and would also have provided eligibility for Coast Guard spouses to participate in the DOD program.[123] The enacted bill adopts all three of these House provisions, expanding eligibility for more military spouses and a broader range of certifications.

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.[124] 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 have specifically authorized 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

[121] The Council of State Governments was formed in 1933 as a forum for states to exchange policy ideas and practice. See https://www.csg.org/.

[122] 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.

[123] 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.

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

incident."[125] Section 624 of the enacted bill amends the House provision to only authorize fee assistance for survivors of those who die "in combat-related incidents in the line of duty."

Section 629 of the House bill and Section 578 of the Senate bill would have expanded and attempted to clarify hiring authorities for military childcare workers. The House provision would also have required 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 sought 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. Section 580 of the enacted bill adopts the House provision and includes language clarifying the direct hire authority for DOD childcare development centers to include family childcare coordinator services and school age childcare coordinator services.

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.[126] 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.[127] However, in 1950, the U.S. 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."[128] 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.

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

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

[126] 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.

[127] 28 U.S.C. §§1346(b)(1), 2401(b), and 2671-2680. For more on the Federal Tort Claims Act, see CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Kevin M. Lewis.

[128] Feres v. United States, 340 U.S. 146 (1950). For more information, see CRS In Focus IF11102, *Military Medical Malpractice and the Feres Doctrine*, by Bryce H. P. Mendez and Kevin M. Lewis.

States.[129] Congress has also considered several proposals to amend the FTCA to allow these tort claims.[130]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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 (MTF) that resulted in personal injury or death of a servicemember.	No similar provision.	**Sec. 731** adopts House Sec. 729 with an amendment that establishes a statutory authority for the Secretary of Defense to consider, settle, and pay claims against the United States for negligent, wrongful, or omitted health care services at an MTF that resulted in personal injury or death of a servicemember. The provision does not amend the Federal Tort Claims Act, nor allow servicemembers to pursue medical malpractice litigation against the United States.
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.	**Sec. 747** adopts House Sec. 744 with an amendment that directs GAO to: (1) assess the effectiveness of DOD's quality assurance program and monitoring of the National Practitioner Data Bank, and (2) analyze clinical and compensation outcomes of patients who may be eligible or ineligible to file claims against the United States for "negligence or malpractice." The provision also requires GAO to provide its findings in a report to the House and Senate armed services committees by January 1, 2021.

Discussion: The enacted bill does not abrogate the *Feres* doctrine, nor does it amend the FTCA to provide servicemembers the ability to litigate certain medical malpractice claims against the United States. Instead, enacted provisions focus on establishing an administrative claims process to compensate injured servicemembers and on conducting oversight of the Defense Department's clinical quality assurance program.

Section 731 of the enacted bill authorizes the Secretary of Defense to "allow, settle, and pay a claim against the United States for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of the Department of Defense health care provider."[131] Under the provision, the Defense Secretary may establish an

[129] 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.

[130] 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).

[131] P.L. 116-92 §731 is codified in 10 U.S.C. §2733a.

administrative claims process for servicemembers who have been injured or died as a result of medical malpractice committed by an MTF provider.

Only an injured servicemember, or an authorized representative of a deceased or incapacitated servicemember, may file a claim within two years after a malpractice incident (three years if filed in calendar year 2020). For a substantiated claim, DOD may issue financial compensation, up to $100,000. If referred by the Defense Secretary, the Secretary of the Treasury may issue additional compensation in excess of $100,000. Within 180 days after enactment, the Defense Secretary is required to brief the House and Senate armed services committees on the status of developing and implementing the regulations for this authority.

Typically, DOD conducts prospective, ongoing, and retrospective monitoring and assessment of its health care services through its Medical Quality Assurance (MQA) programs and clinical quality management activities. The Defense Health Agency and the Service medical departments administer these programs and activities, which are intended to "ensure quality in healthcare throughout the MHS."[132] Section 747 of the enacted bill directs GAO to assess the effectiveness of DOD's quality assurance program, including the use and monitoring of the National Practitioner Data Bank when hiring, retaining, and documenting adverse actions taken against DOD health care providers.[133] GAO is to report their findings to the House and Senate armed services committees no later than January 1, 2021.

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.

*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.

[132] DOD Instruction 3025.13, *Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS)*, updated October 2, 2013, p. 2, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/602513p.pdf. For more on DOD's quality assurance programs and clinical quality management activities, see https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Quality-And-Safety-of-Healthcare/Clinical-Quality-Management.

[133] The *National Practitioner Data Bank* (NPDB) is a web-based "repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and supplies." For more on the NPDB, see https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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. 609** adopts House Sec. 606.
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).	Not adopted.

Discussion: The House bill would have included two provisions that would address the military pay raise. Section 606 would have directed a 3.1% increase in basic pay. Section 607 would have directed 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; it would have left the 3.1% automatic adjustment provided by 37 U.S.C. §1009 in place. Section 609 of P.L. 116-92 specified a 3.1% increase in basic pay.

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).[134] 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 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.

[134] 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.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
No similar provision.	**Sec. 631** would modify how payments to the military retirement fund are calculated.	**Sec. 655** does not adopt the change, but instead requires DOD to report how the Senate provision would be implemented.
Sec. 630A would repeal the Survivor Benefit Plan–Dependency Indemnity Compensation offset.	No similar provision.	**Sec. 622** adopts House Sec. 630A with an amendment requiring a 3-year phase-out of the offset.

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.[135] 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.[136] 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."[137] 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 have changed how military retirement contributions are calculated, by requiring separate NCPs for each of the Services and components.[138] 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.[139] On the other hand, the GAO report notes that military service officials stated that their "workforce decision making processes would not change."[140] Section 655 of the enacted bill does not change the funding process, but requires the Secretary of Defense to deliver an implementation plan to the House and Senate armed services committees by April 1, 2020. DOD's plan would assume that the change in funding process would commence in FY2025.

[135] 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.

[136] 10 U.S.C. §1465.

[137] 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.

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

[139] 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.

[140] 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.[141] This offset has sometimes been referred to as a *widows' tax*. The FY2018 NDAA (P.L. 115-91) permanently authorized a payment 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 have repealed the offset as well as the authority to provide the annuity to dependent children. Surviving spouses who had transferred the benefit would not have been 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.[142] Approximately 65,000 surviving beneficiaries are eligible to receive both SBP and DIC.[143] Section 622 of the enacted bill phases out the requirement for an SBP-DIC offset over a period of three years, and repeals the optional SBP annuity for dependent children.

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, *FY2020 NDAA Analysis: Elimination of Benefits Offset for Surviving Spouses and Related Legal Issues*, by Mainon A. Schwartz.

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*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.[144] 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.[145] These

[141] 10 U.S.C. §1450(c).

[142] 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.

[143] 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.

[144] 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.

[145] 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%.[146]

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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.	***Reporting and Accountability*** **Sec. 533** would extend the term of the DAC-IPAD.	***Reporting and Accountability*** **Sec. 535** adopts Senate Sec. 533, extending the term of DAC-IPAD for 5 years and requests an expanded scope of review.
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. 540I** adopts House Sec. 540A.
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. 550B** adopts House Sec. 549.
Sec. 592 would modify requirements for gender relations surveys.	No similar provision.	**Sec. 591** adopts the House Sec. 592 with an amendment clarifying that the term "assault" should include "unwanted sexual contact."
No similar provision.	**Sec. 537** would require a GAO report on implementation of statutory requirements for sexual assault for FY2004–FY2019.	**Sec. 540M** adopts Senate Sec. 537.
Prevention and Response No similar provision.	***Prevention and Response*** **Sec. 521** would require enhanced policies and programs to prevent sexual assault.	***Prevention and Response*** **Sec. 540D** adopts the Senate provision.
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.	**Sec. 530** adopts Senate Sec. 530.
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.	***Victim Services and Support*** **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.	***Victim Services and Support*** **Sec. 548** adopts Senate Sec. 541and includes an amendment requiring specialized training in domestic violence for specified legal counsel and a report to Congress on resources needed to carry out the program**.**

[146] 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	Enacted Bill P.L. 116-92
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.	**Sec. 541** adopts Senate Sec. 542 with an amendment that removes the responsibility for the SVC to solicit victim preference for prosecution venue and removes reporting requirements. (These requirements are adopted in other provisions.)
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.	Not adopted; however the conference report directs a briefing from DOD on proposals to enhance the integration and synchronization of Special Victim Investigation and Prosecution personnel with the activities of military criminal investigative organizations in investigations.
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.	**Sec. 542** adopts Senate Sec. 543.
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. 550C** adopts House Sec. 550C and adds "protective orders" to the list of topics for training.
Sec. 535 would increase investigative personnel and Victim Witness Assistance Program liaisons.	No similar provision.	**Sec. 540** adopts House Sec. 535 and establishes a goal of 6 months for completion of sex assault investigations.
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.	Not adopted.
No similar provision.	**Sec. 528** would require a report to Congress on expansion of the Air Force's *safe to report* initiative.	**Sec. 540H** adopts Senate Sec. 528.
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. 555** adopts House Sec. 558 and includes an amendment expanding options available to include enrolment in a Senior Reserve Officer Training Corps (SROTC) program.
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*.	**Sec. 540K** adopts Senate Sec. 531.
Military Justice and Investigations **Sec. 540** would require training on the withholding of sexual assault disposition authorities.	***Military Justice and Investigations*** **Sec. 523** is a similar provision to House Sec. 540	***Military Justice and Investigations*** **Sec. 540A** adopts House Sec. 540.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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. 540B** adopts Senate Sec. 525.
Sec. 539 would require timely disposition of non-prosecutable sex-related offenses.	No similar provision.	**Sec. 540C** adopts House Sec. 539 with an amendment.
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.	**Sec. 540E** adopts Senate Sec. 529.
Sec. 538 would require a pilot program on prosecution of sex-related offenses committed against cadets or midshipmen at the service academies.	**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.	Not adopted.
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 an identical provision to House Sec. 550B.	**Sec. 549** adopts this provision.
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. 524** is a similar provision to House Sec. 534 and 547.	**Sec. 538** adopts House Sec. 534 and Sec. 547 requiring implementation no later than 180 days after enactment.
Sec. 547 would require documentation of consultation with a victim on preference for prosecution venue (civilian or military court).		

Discussion: The following discussion is split into four topic areas:

- Reporting and Accountability;
- Prevention and Response;
- Victim Services and Support; and
- Military Justice and Investigations.[147]

[147] 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.

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).[148] 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 have offered support to 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).[149] The committee was established in 2016 and has since produced several studies.[150] Section 548 of the House bill and Section 533 of the Senate bill would have extended the term of the DAC-IPAD for an additional five years. The House provision would have also expanded the scope of the committee's research to include exploring the feasibility of incorporating restorative justice models into the UCMJ.[151] Section 535 of the enacted bill adopts the Senate provision and expands the scope of research as proposed in the House bill.

Section 535 of the Senate bill would have required 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."[152] GAO also reported that differences in how the Services record information on race and ethnicity make it difficult to identify disparities.[153] Section 540A of the House bill would have required 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). Section 540I of the enacted bill adopts the House provision and requires the DAC-IPAD to conduct the review for each fiscal year in which the committee assesses completed court-martial cases.

Both bills (House Section 549 and Senate Section 534) would have required 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.*[154] This provision was adopted in the enacted bill. Section 540M of the enacted bill adopts a Senate provision requiring 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 have required 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

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[148] 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.

[149] P.L. 113-291 §546.

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

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

[152] 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.

[153] 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.

[154] 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.

policy would include (1) education and training on the prevention of sexual assault; (2) promoting healthy relationships; (3) empowering and enhancing the role of noncommissioned 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. The enacted bill adopts this provision.

Senate Section 530 and House Section 550O would have ensured that *Catch a Serial Offender* (CATCH) Program information is not subject to Freedom of Information Act (FOIA) requests.[155] 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."[156] 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. Section 530 of the enacted bill adopts the Senate provision.

Victim Services and Support. Both bills included provisions that would have expanded or enhanced the Special Victim Counsel (SVC) program. An SVC is a judge advocate or civilian attorney who meets special training requirements and provides legal assistance to victims of sexual assault throughout the military justice process.[157] 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. Sections 541 and 548 of the enacted bill adopt the Senate provisions and includes an amendment requiring specialized training in domestic violence for specified legal counsel and a report to Congress on resources needed to carry out the program.

Both House and Senate bills would have also ensured 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). Section 542 of the enacted bill adopts the Senate provision for a 72-hour window. Finally, similar provisions in both bills (House Section 550C and Senate Section 544) would have required SVC training on state-specific criminal justice matters. Section 550C of the enacted bill adopts the House provision and adds "protective orders" to the list of topics for training.

Another aspect of victim protection and support that appeared 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

[155] 5 U.S.C. §552.

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

[157] 10 U.S.C. §§1044, 1044e, and 1565b.

that might be uncovered during an investigation.[158] In response to the House provision, the 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."[159] 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."[160] The final bill did not adopt the *safe to report* provision.

Section 558 of the House bill would have required 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.[161] Section 555 of the enacted bill adopts the House provision and includes an amendment expanding options available to include enrollment in a Senior Reserve Officer Training Corps (SROTC) program. 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.[162] 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 the necessity of waivers for certain requirements.

Finally, Section 550P in the House bill and Section 531 in the Senate bill would have addressed 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

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

[159] 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.

[160] 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.

[161] 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.

[162] 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.

receive information that a sexual assault has occurred, must report that information to military criminal investigative services. The enacted bill adopts the Senate provision.

Military Justice and Investigations. Several provisions in the House and Senate bills sought to make changes to how disposition decisions are made in sex-related cases for military service academies and the total force. Section 538 of the House bill would have established a four-year pilot program at the military service academies. This pilot would have required the Secretary of Defense to establish an *Office of the Chief Prosecutor,* at the grade of O-7 or above, for the independent review and disposition of certain sex-related (*special victim*) offenses. 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 that such an endeavor could improve victim confidence in the investigative and judicial process. For the 2017–2018 academic program year at the service academies, there were 67 unrestricted reports alleging sexual assault by or against cadets, midshipmen, or prep school students, and 55 investigations initiated during the APY.[163] The Administration opposed this pilot program contending that it would, "outsource authority for discipline," and "undermines commander accountability and the chain of command relationship."[164] The provision was not adopted.

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.[165] 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. This provision was not adopted.

House Section 540 and Senate Section 523 were similar provisions that would require training for those responsible for the disposition of sexual assault cases on the exercise of such authority. Section 540C of the House bill and Section 525 of the Senate bill would have required uniform training for commanders on their role in each stage of the military justice system with regard to sexual assault cases. The enacted bill adopted these provisions.

Section 539 of the House bill would have required 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.[166] 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[167]

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[163] 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.

[164] 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.

[165] 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.

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

[167] 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

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.[168] Section 540C of the enacted bill adopts the House provision with an amendment requiring a policy to ensure the timely disposition of alleged sex-related offenses that a court-martial convening authority has declined to refer for trial by a general or special court-martial, due to a determination that there is insufficient evidence to support prosecution.

Several provisions in the bills also addressed victim consultation and notifications during investigative and judicial processes. Section 550B of the House bill and Section 526 of the Senate bill were identical provisions that would have require commanders to notify victims on a monthly basis on any final determinations (i.e., administrative, nonjudicial punishment, or no further action) made with respect to a case that is not referred to court-martial. The enacted bill adopted this provision.

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.[169] Sections 534 and 547 of the House bill and Section 524 of the Senate bill included provisions that would have required documentation of the consultation with the victim on the prosecution venue. Section 538 of the enacted bill adopts House provision 534 and requires implementation no later than 180 days after enactment.

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."[170] Section 529 of the Senate bill would have 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. Section 540E of the enacted bill adopts the Senate provision.

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.

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the convening authority does not refer the case.

[168] 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.

[169] 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.

[170] 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.

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.[171] 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.[172]

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.[173] 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."[174] 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).[175] 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.[176]

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.

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[171] 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.

[172] Ibid.

[173] Ibid.

[174] 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.

[175] 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.

[176] 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	Enacted Bill P.L. 116-92
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.	***General Exposure Documentation & Tracking*** **Sec. 717** would revise DOD's medical tracking system for deployed servicemembers to document "any exposure to occupational and environmental health risks."	***General Exposure Documentation & Tracking*** **Sec. 705** adopts Senate Sec. 717.
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).	***Lead Exposure*** **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.	***Lead Exposure*** **Sec. 703** adopts Senate Sec. 703 with an amendment that requires the GAO to submit a report to Congress by January 1, 2022, on the effectiveness of DOD's screening and testing for lead exposure and elevated blood lead levels.
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.	Not adopted.
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).	***Burn Pit & Airborne Hazards Exposure*** **Sec. 5702** is a similar provision to House Sec. 705.	***Burn Pit & Airborne Hazards Exposure*** **Sec. 704** adopts House Sec. 705.

House-Passed H.R. 2500	Senate-Passed S. 1790	Enacted Bill P.L. 116-92
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.	***Per- and Polyfluoroalkyl Substances Exposure*** **Sec. 704** is a similar provision to House Sec. 708. Blood testing would begin on October 1, 2020.	***Per- and Polyfluoroalkyl Substances Exposure*** **Sec. 707** adopts Senate Sec. 704.
Blast Pressure Exposure **Sec. 716** would require DOD to document a servicemember's blast exposure history in their medical record, including the date, duration, and circumstances, of such exposure.	***Blast Pressure Exposure*** No similar provision.	***Blast Pressure Exposure*** **Sec. 717** adopts House Sec. 716 with an amendment that specifies when a blast pressure exposure is to be documented.
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.	Not adopted.
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.	**Sec. 742** adopts Senate Sec. 728 with an amendment that requires the study to include data interoperability with MHS Genesis. The amendment also defines how DOD shall collect information on blast exposure of servicemembers.

Discussion: The enacted bill 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. Section 705 of the enacted bill amends 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 bill also requires DOD health care providers to: (1) use standardized questions when assessing for deployment-related exposures, (2) include detailed *diagnosis codes*[177] in a servicemember's medical record, and (3) have access to information contained in the Airborne and Open Burn Pit Registry (i.e., Burn Pit Registry).[178]

Lead Exposure. Section 703 of the enacted bill adopts Senate Section 703, which requires DOD to offer lead level screening and testing to potentially exposed children. DOD is to implement this requirement by establishing clinical practice guidelines that take into account recommendations

[177] Detailed *diagnosis codes* refers to the "International Statistical Classification of Disease and Related Health Problems, 10th Revision (or any successor revision)," also known as the ICD-10. For more on this coding system, see https://www.who.int/classifications/icd/en/.

[178] 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.

published by the U.S. Centers for Disease Control and Prevention (CDC) on lead level screening and testing in children.[179] The provision directs the sharing of test results with the child's parent or guardian. Test results with "abnormal" or "elevated" blood lead levels are to be disclosed to the local health department, or the CDC and an "appropriate authority" of the host nation, if residing overseas.[180] DOD is required to report to Congress, by January 1, 2021, the number of children screened, found to have elevated blood lead levels, and provided treatment for lead poisoning. The provision also tasks GAO to report to Congress on the effectiveness of DOD's lead screening, testing, and treatment program for children.

Not adopted was House Section 710, which would have authorized $5 million in the Defense Health Program account to fund lead level screening and testing for children through an offset reduction to the Army procurement account for Wheeled and Tracked Combat Vehicles.[181]

Burn Pit & Airborne Hazards Exposure. Section 704 of the enacted bill directs DOD to assess servicemembers for exposure to open burn pits or other toxic airborne hazards. The provision requires exposure assessments during the annual periodic health assessment, separation history and physical examination, and deployment health assessments.[182] DOD is also required to enroll exposed servicemembers in the Burn Pit Registry and share its assessment findings with the VA.[183]

PFAS Exposure. Section 707 of the enacted bill directs DOD to assess its firefighters, during their annual physical examination, for exposure to PFAS. The assessment requirement is to take effect on October 1, 2020.

Blast Pressure Exposure. Section 717 of the enacted bill adopts House Section 716. The provision directs DOD to document in a servicemember's medical record, information on blast pressure exposure that results in a "concussive event or injury that requires a military acute concussive evaluation."[184] Section 742 of the enacted bill modifies the requirement 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 requires DOD to assess the feasibility

[179] 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.

[180] Section 703 clarifies that disclosed information to local health departments, the CDC, or a host nation is "notwithstanding any requirements for the confidentiality of health information under the Health Insurance Portability and Accountability Act of 1996," also known as HIPAA.

[181] See sections 4101 and 4501 of the House-passed FY2020 NDAA (H.R. 2500).

[182] 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.

[183] 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.

[184] A *military acute concussive evaluation*, or MACE-2, is screening tool to measure potential concussion signs or symptoms resulting from a traumatic brain injury. For more on the MACE-2, see https://health.mil/News/Articles/2019/03/15/Defense-and-Veterans-Brain-Injury-Center-releases-new-concussion-screening-tool.

of uploading its blast pressure exposure data into DOEHRS or other tracking systems, as well as data interoperability with MHS Genesis.[185]

References: CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*, coordinated by David M. Bearden, 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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[185] *MHS Genesis* is DOD's new electronic health record (EHR), which is to replace a variety of legacy EHR systems at all MTFs. For more on MHS Genesis, see CRS Report R45987, *MHS Genesis: Background and Issues for Congress*, by Bryce H. P. Mendez.