

105TH CONGRESS
1ST SESSION

H. R. 1072

To establish a commission to investigate certain policies and procedures with respect to the military justice system, including policies and procedures with respect to the investigation of reports of sexual misconduct, sexual harassment, and unlawful gender discrimination.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on National Security

A BILL

To establish a commission to investigate certain policies and procedures with respect to the military justice system, including policies and procedures with respect to the investigation of reports of sexual misconduct, sexual harassment, and unlawful gender discrimination.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commission on Mili-
5 tary Justice and Fairness Act”.

1 **SEC. 2. ESTABLISHMENT OF COMMISSION.**

2 (a) ESTABLISHMENT.—There is established a com-
3 mission to be known as the “Commission on Military Jus-
4 tice and Fairness” (in this Act referred to as the “Com-
5 mission”).

6 (b) COMPOSITION.—The Commission shall be com-
7 posed of 15 members appointed as follows:

8 (1) Five members appointed by the President,
9 of whom one shall be chosen after consultation with
10 the Attorney General and one shall be chosen after
11 consultation with the Chief Justice of the United
12 States and not more than three of whom may be a
13 member of the Armed Forces on active duty or in
14 a retired status or a member of a reserve compo-
15 nent.

16 (2) Three members appointed by the majority
17 leader of the House of Representatives, not more
18 than one of whom may be a member of the Armed
19 Forces on active duty or in a retired status or a
20 member of a reserve component.

21 (3) Two members appointed by the minority
22 leader of the House of Representatives, not more
23 than one of whom may be a member of the Armed
24 Forces on active duty or in a retired status or a
25 member of a reserve component.

1 (4) Three members appointed by the majority
2 leader of the Senate, not more than one of whom
3 may be a member of the Armed Forces on active
4 duty or in a retired status or a member of a reserve
5 component.

6 (5) Two members appointed by the minority
7 leader of the Senate, not more than one of whom
8 may be a member of the Armed Forces on active
9 duty or in a retired status or a member of a reserve
10 component.

11 (c) INITIAL APPOINTMENTS.—Each member of the
12 Commission shall be appointed to the Commission not
13 later than 90 days after the date of the enactment of this
14 Act.

15 (d) CHAIRMAN.—There shall be a Chairman of the
16 Commission who shall be designated by the President at
17 the time of the appointment.

18 (e) PERIOD OF APPOINTMENT.—Each member shall
19 be appointed for the life of the Commission.

20 (f) VACANCIES.—Any vacancy shall be filled in the
21 same manner as the original appointment of a member
22 of the Commission.

23 (g) SECURITY CLEARANCES.—The Secretary of De-
24 fense shall provide expedited processing of security clear-
25 ances requested for members.

1 **SEC. 3. FUNCTIONS OF COMMISSION.**

2 The Commission shall investigate and make rec-
3 ommendations on the following:

4 (1) The existence of adequate safeguards for
5 members of the Armed Forces who report incidents
6 of sexual misconduct, sexual harassment, or unlaw-
7 ful gender discrimination, and whether adequate
8 protection from retribution is afforded to members
9 of the Armed Forces who report such incidents.

10 (2) The existence of adequate mechanisms for
11 investigating sexual misconduct, sexual harassment,
12 and unlawful gender discrimination in the Armed
13 Forces, including the existence of investigative mech-
14 anisms outside of the chain of command of a mem-
15 ber reporting allegations of such conduct.

16 (3) Whether investigating officers and trial
17 counsel in the Armed Forces are trained, and pos-
18 sess the resources and independence necessary, to
19 conduct fair and thorough investigations of allega-
20 tions of sexual misconduct, sexual harassment, and
21 unlawful gender discrimination.

22 (4) The number of incidents involving allega-
23 tions of sexual assault by members of the Armed
24 Forces that have been referred by a commanding of-
25 ficer for resolution through an administrative hear-

1 ing rather than court-martial proceedings, and the
2 reasons for such referrals.

3 (5) The availability of adequate mechanisms in
4 the Armed Forces for satisfactory resolution of com-
5 plaints of sexual misconduct, sexual harassment, or
6 unlawful gender discrimination, and whether the
7 award of damages and attorneys fees should be a
8 remedy available to military personnel who are vic-
9 tims of sexual misconduct, sexual harassment, or un-
10 lawful gender discrimination.

11 (6) Whether court-martial jurisdiction should
12 exist over non-service related offenses committed by
13 members of the Armed Forces.

14 (7) The procedures in the Armed Forces for ap-
15 prehending and charging an accused and the scope
16 of the discretionary power of commanding officers
17 with respect to such procedures and the court-mar-
18 tial trial process.

19 (8) The adequacy of the procedures for selec-
20 tion of jurors in the military justice system in pro-
21 tecting such jurors and ensuring impartial court-
22 martial trials.

23 (9) Whether permanent, uniform mechanisms
24 should be established to insulate judge advocate de-
25 fense counsel from other elements of the military

1 legal structure and provide such counsel with re-
2 sources equivalent to those resources available to
3 military trial counsel.

4 (10) Whether military judges should be af-
5 farded increased independence and some form of
6 tenure to protect them from retribution in response
7 to their rulings during the court-martial trial pro-
8 cess.

9 (11) The need for increased uniformity in sen-
10 tencing in the military justice system and whether
11 sentencing guidelines should be instituted.

12 (12) The adequacy and effectiveness of judicial
13 review of decisions regarding military personnel, and
14 whether the same right to Supreme Court review
15 should exist for courts-martial as for criminal cases
16 in State and Federal courts.

17 (13) The necessity for, and effectiveness of, cor-
18 rectional programs designed to rehabilitate offenders
19 to continue service as members of the Armed Forces
20 after serving a court-martial sentence.

21 (14) The procedural protections for enlisted
22 members of the Armed Forces who are career mili-
23 tary personnel and the power of commanding offi-
24 cers to deny reenlistment to such personnel who
25 have not yet qualified for retired pay.

1 (15) Statistical data collection and analysis
2 with respect to crime and sexual misconduct, sexual
3 harassment, and unlawful gender discrimination in
4 the Armed Forces, and whether such data is regu-
5 larly reported to the Federal Bureau of Investiga-
6 tion.

7 (16) The ability to exchange criminal records of
8 members of the Armed Forces among military courts
9 and other courts in the United States, and whether
10 information with respect to the criminal records of
11 members of the Armed Forces should regularly be
12 reported to the National Crime Information Center.

13 (17) Whether rulemaking committees that in-
14 clude civilian members and perform functions that
15 are similar to the functions performed by the rule-
16 making committees of the Judicial Conference of the
17 United States should be established for the military
18 justice system.

19 **SEC. 4. REPORT.**

20 Not later than one year after the date that all the
21 original members are appointed, the Commission shall
22 submit to the President and the Congress a report con-
23 taining a detailed statement of the Commission's findings
24 and conclusions and the Commission's recommendations
25 for administrative and legislative action.

1 **SEC. 5. POWERS.**

2 (a) HEARINGS AND SESSIONS.—The Commission
3 may, for the purpose of carrying out this Act, hold such
4 hearings, sit and act at such times and places, take such
5 testimony, and receive such evidence as the Commission
6 considers appropriate. The Commission may administer
7 oaths to witnesses appearing before it.

8 (b) OBTAINING INFORMATION.—The Commission
9 may secure directly from any department or agency of the
10 United States information necessary to enable it to carry
11 out this Act. Upon request of the Chairman of the Com-
12 mission, the head of that department or agency shall fur-
13 nish that information to the Commission in a full and
14 timely manner.

15 (c) SUBPOENA POWER.—(1) The Commission may
16 issue a subpoena to require the attendance and testimony
17 of witnesses and the production of any evidence relating
18 to any matter under investigation by the Commission.

19 (2) If a person refuses to obey an order or subpoena
20 of the Commission that is issued in connection with a
21 Commission hearing, the Commission may apply to the
22 United States district court in the judicial district in which
23 the proceeding is held for an order requiring the person
24 to comply with the subpoena or order.

1 (d) IMMUNITY.—The Commission is an agency of the
2 United States for purposes of part V of title 18, United
3 States Code (relating to immunity of witnesses).

4 (e) CONTRACT AUTHORITY.—The Commission may
5 contract with and compensate government and private
6 agencies or persons for goods and services, without regard
7 to section 3709 of the Revised Statutes (41 U.S.C. 5).

8 **SEC. 6. COMMISSION PROCEDURES.**

9 (a) MEETINGS.—The Commission shall meet at the
10 call of the Chairman or a majority of its members.

11 (b) QUORUM.—Eight members of the Commission
12 shall constitute a quorum, but a lesser number may hold
13 hearings.

14 (c) DELEGATION OF AUTHORITY.—Any member or
15 agent of the Commission may, if authorized by the Com-
16 mission, take any action that the Commission is author-
17 ized to take by this Act.

18 **SEC. 7. PERSONNEL MATTERS.**

19 (a) PAY OF MEMBERS.—Members shall not be paid
20 by reason of their service as members.

21 (b) TRAVEL EXPENSES.—Each member shall receive
22 travel expenses, including per diem in lieu of subsistence,
23 in accordance with sections 5702 and 5703 of title 5,
24 United States Code.

1 (c) STAFF.—(1) The Commission may, without re-
2 gard to the provisions of title 5, United States Code, gov-
3 erning appointments in the competitive service, appoint a
4 staff director and such additional personnel as may be
5 necessary to enable the Commission to perform its duties.

6 (2) The Commission may fix the pay of the staff di-
7 rector and other personnel without regard to the provi-
8 sions of chapter 51 and subchapter III of chapter 53 of
9 title 5, United States Code, relating to classification of
10 positions and General Schedule pay rates, except that the
11 rate of pay fixed under this paragraph for the staff direc-
12 tor may not exceed the rate payable for level V of the Ex-
13 ecutive Schedule under section 5316 of such title and the
14 rate of pay for other personnel may not exceed the maxi-
15 mum rate payable for grade GS-15 of the General Sched-
16 ule.

17 **SEC. 8. OTHER ADMINISTRATIVE PROVISIONS.**

18 (a) POSTAL AND PRINTING SERVICES.—The Com-
19 mission may use the United States mails and obtain print-
20 ing and binding services in the same manner and under
21 the same conditions as other departments and agencies of
22 the United States.

23 (b) MISCELLANEOUS ADMINISTRATIVE AND SUP-
24 PORT SERVICES.—The Secretary of Defense shall furnish
25 the Commission, on a reimbursable basis, any administra-

1 tive and support services necessary for the Commission to
2 carry out its duties under this Act.

3 (c) EXPERTS AND CONSULTANTS.—The Commission
4 may procure temporary and intermittent services under
5 section 3109(b) of title 5, United States Code.

6 (d) STAFF OF FEDERAL AGENCIES.—Upon request
7 of the Commission, the head of any Federal department
8 or agency may detail, on a reimbursable basis, any of the
9 personnel of that department or agency to the Commission
10 to assist it in carrying out its duties under this Act.

11 (e) GIFTS, BEQUESTS, AND DEVISES.—The Commis-
12 sion may accept, use, and dispose of gifts, bequests, or
13 devises of services or property, both real and personal, for
14 the purpose of aiding or facilitating the work of the Com-
15 mission. Gifts, bequests, or devises of money and proceeds
16 from sales of other property received as gifts, bequests,
17 or devises shall be deposited in the Treasury and shall be
18 available for disbursement upon order of the Commission.

19 **SEC. 9. PAYMENT OF COMMISSION EXPENSES.**

20 (a) PAYMENT OUT OF DEPARTMENT OF DEFENSE
21 FUNDS.—The travel expenses and per diem allowances of
22 members and employees of the Commission, and the com-
23 pensation of employees of the Commission, shall be paid
24 out of funds available to the Department of Defense for
25 the payment of compensation, travel allowances, and per

1 diem allowances, respectively, of civilian employees of the
2 Department of Defense. The other expenses of the Com-
3 mission shall be paid out of funds available to the Depart-
4 ment of Defense for the payment of similar expenses in-
5 curred by that Department.

6 (b) PROMPT TRANSFER OF FUNDS.—The Secretary
7 of Defense shall promptly transfer funds to the Commis-
8 sion for payment of expenses incurred by the Commission
9 upon submission to the Department of Defense of the
10 amount of funds requested for such payment by the Chair-
11 man of the Commission.

12 **SEC. 10. TERMINATION OF COMMISSION.**

13 The Commission shall terminate not later than 90
14 days after submitting its report to the President and the
15 Congress pursuant to section 4.

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