

MAINE STATE LEGISLATURE

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L.D. 2029

Date: 4-11-22

(Filing No. H-974)

VETERANS AND LEGAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1511, L.D. 2029, "An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard"

Amend the bill in Part A by striking out all of section 1 and inserting the following:

'Sec. A-1. Review; report. The Attorney General shall review the manner in which law enforcement agencies and prosecutors within the State investigated and prosecuted allegations of sexual assault or the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A, section 506-A, by members of the Maine National Guard against other members of the Maine National Guard during the 5-year period ending on March 31, 2022. For purposes of this section, "Maine National Guard" includes both the Maine Air National Guard and the Maine Army National Guard. At a minimum, the review must include an examination of:

1. The nature of each allegation, including information that was available and unavailable to the law enforcement agency at the outset of and during the course of investigation;

2. Whether the allegation was adequately and properly investigated by the law enforcement agency;

3. Whether the results of the law enforcement agency's investigation were communicated to the appropriate prosecutorial office and whether appropriate action was taken by that prosecutorial office; and

4. Whether the results of the law enforcement agency's investigation and the prosecution, if any, were communicated to the relevant officials within the Maine National Guard, if requested and appropriate.

By February 15, 2023, the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over veterans affairs summarizing the results of the review and including recommendations for improving the process by which law enforcement agencies and prosecutors investigate and prosecute allegations of sexual assault and the crime of harassment between members of the Maine National Guard in the

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future. The committee may report out legislation regarding the subject matter of the report to the 131st Legislature in 2023.'

Amend the bill in Part B by striking out all of section 1 and inserting the following:

'Sec. B-1. 5 MRSA §4653, sub-§1, ¶B, as amended by PL 2019, c. 359, §1, is further amended to read:

B. If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C or is not related to an allegation of domestic violence, violence against a dating partner, sexual assault, stalking or harassment as described in Title 17-A, section 506, subsection 1, paragraph A-1 or A-2, a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or subparagraph (3) or a statement of good cause why such a notice was not sought or obtained. The court has discretion, based on the nature of the allegations as well as any further inquiry that the court may make of the plaintiff, to issue an order even if notice to stop harassing the plaintiff has not been issued to the defendant as described in Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or subparagraph (3).'

Amend the bill in Part B by inserting after section 5 the following:

'Sec. B-6. 19-A MRSA §4013, sub-§1, ¶A, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (10) to read:

(10) Up to 4 3 members-at-large, appointed by the Governor;'

Amend the bill in Part B by striking out all of section 8 and inserting the following:

'Sec. B-8. 19-A MRSA §4013, sub-§1, ¶A, as amended by PL 2021, c. 174, §9, is further amended by enacting a new subparagraph (17) to read:

(17) One member, appointed by the Governor, who is a member of the military community with experience in sexual assault response.'

Amend the bill in Part B in section 9 in subparagraph (24) in the 3rd and 4th lines (page 2, lines 33 and 34 in L.D.) by striking out the following: "state criminal or civil court proceedings or proceedings under the Maine Code of Military Justice" and inserting the following: 'administrative or Maine Code of Military Justice proceedings'

Amend the bill in Part B by striking out all of sections 10, 11 and 12 and inserting the following:

'Sec. B-10. 37-B MRSA §3, sub-§1, ¶D, as repealed and replaced by PL 2017, c. 475, Pt. A, §63 and amended by PL 2019, c. 377, §6, is further amended by enacting a new subparagraph (25) to read:

(25) By February 15, 2023 and annually thereafter, the Adjutant General shall submit a report to the joint standing committee of the Legislature having jurisdiction over veterans affairs containing:

(a) Data regarding all reported incidents of sexual assault and sexual harassment within the National Guard in each of the preceding 10 years, including information on the current duty status of victims and the outcome of any state or federal criminal or Maine Code of Military Justice proceedings arising out of such incidents, to the extent that the sharing of such data and

1 information is not prohibited by federal law or federal regulation and can be
2 presented in a way that does not identify, and that cannot be used with other
3 information to identify, any victim of sexual assault or sexual harassment. If
4 necessary to protect the identity of victims of sexual assault or sexual
5 harassment, the Adjutant General may submit a summary of specific items of
6 data or information required to be included in the report;

7 (b) A description of all sexual assault and sexual harassment prevention
8 training provided to members of the National Guard in the preceding year;

9 (c) A description of the current practices and procedures for the prevention of
10 sexual assault and sexual harassment and investigation of and disciplinary
11 actions taken in response to reports of sexual assault and sexual harassment in
12 the National Guard; and

13 (d) A summary of the activities during the preceding year of any advisory
14 council or special study group convened by the Governor or the department or
15 in which officials of the department have been asked to participate whose
16 duties involve, at least in part, examining or making recommendations
17 regarding the prevention of or the response to sexual assault and sexual
18 harassment in the National Guard or, if no advisory council or special study
19 group with such duties engaged in activities during the preceding year, a
20 statement to that effect.

21 After reviewing the report, the committee may report out legislation related to the
22 report.

23 **Sec. B-11. 37-B MRSA §463 is enacted to read:**

24 **§463. Harassment**

25 **1. Prohibition; criminal harassment.** Any person subject to this Code who commits
26 an offense prohibited under Title 17-A, section 506-A is guilty of that offense under this
27 Code.

28 **2. Punishment.** Any person found guilty of an offense prohibited under Title 17-A,
29 section 506-A must be punished as a court-martial may direct.

30 **Sec. B-12. Maine Commission on Domestic and Sexual Abuse; transition.**
31 Notwithstanding the Maine Revised Statutes, Title 19-A, section 4013, subsection 1,
32 paragraph A, the members of the Maine Commission on Domestic and Sexual Abuse
33 serving immediately prior to the effective date of this Act continue to serve as members of
34 the commission for the terms for which they were appointed until the Governor appoints
35 their successors.

36 **Sec. B-13. Report by Adjutant General.** The Adjutant General shall include in
37 the report required by the Maine Revised Statutes, Title 37-B, section 3, subsection 1,
38 paragraph D, subparagraph (25) due February 15, 2023 the following additional
39 information:

40 1. A copy of any report prepared by the United States National Guard Bureau, Office
41 of Complex Investigations regarding any evaluation of the Maine National Guard's policies
42 and procedures with respect to sexual assault prevention and response, sexual assault
43 investigations and sexual harassment and equal opportunity programs or, if no report is

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1 available, an update on the progress of any related evaluation in the process of being
2 conducted by the Office of Complex Investigations; and

3 2. A copy of any report submitted to the Governor by the Advisory Council on Military
4 Sexual Trauma established by the Governor in Executive Order 1 FY 21/22.'

5 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
6 number to read consecutively.

7 SUMMARY

8 This amendment makes the following changes to the bill.

9 1. It removes the provision of the bill directing the Adjutant General to request that
10 the United States National Guard Bureau, Office of Complex Investigations conduct a
11 review of the manner in which reports of sexual assault are investigated, prosecuted and
12 adjudicated by the Maine National Guard and instead requires the Adjutant General to
13 submit a copy of any report prepared by the Office of Complex Investigations related to
14 sexual assault prevention and response, sexual assault investigations and sexual harassment
15 and equal opportunity programs to the joint standing committee of the Legislature having
16 jurisdiction over veterans affairs by February 15, 2023.

17 2. It directs the Attorney General to review the manner in which law enforcement
18 agencies and prosecutors within the State investigated and prosecuted allegations of sexual
19 assault or the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A,
20 section 506-A, by members of the Maine National Guard against other members of the
21 Maine National Guard during the 5-year period ending on March 31, 2022 and to submit a
22 report to the joint standing committee of the Legislature having jurisdiction over veterans
23 affairs summarizing the results of the review by February 15, 2023. The committee may
24 report out legislation regarding the subject matter of the report to the 131st Legislature in
25 2023.

26 3. It replaces the provision of the bill requiring the Adjutant General to appoint to the
27 Maine Commission on Domestic and Sexual Abuse a member of the Maine National Guard
28 with experience in sexual assault response with a provision requiring the Governor to
29 appoint to the commission a member of the military community with experience in sexual
30 assault response. It also reduces from 4 to 3 the number of at-large members appointed by
31 the Governor to serve on the commission, but provides that all currently appointed
32 commission members may continue to serve as members of the commission for the
33 remainder of their terms of appointment.

34 4. It provides that a cease harassment notice issued to a member of the Maine National
35 Guard by a commanding officer may, to the same extent as a cease harassment notice issued
36 by a law enforcement officer, satisfy the requirements for initiating a court proceeding for
37 protection from harassment.

38 5. It requires the Adjutant General to provide current and former members of the Maine
39 National Guard who were victims of sexual assault or sexual harassment while members
40 of the Maine National Guard with financial assistance to cover the expenses of traveling to
41 and from and participating in administrative or Maine Code of Military Justice proceedings
42 related to the sexual assault or sexual harassment. Under the bill, this financial assistance
43 would have also been provided to cover the expenses of traveling to and from and

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1 participating in state criminal or civil court proceedings related to the sexual assault or
2 sexual harassment.

3 6. It removes the provisions of the bill that require the Adjutant General to enter into
4 a cooperative agreement with a statewide coalition against sexual assault.

5 7. It removes the provisions of the bill establishing the Advisory Council on Sexual
6 Trauma in the Maine National Guard and requires the Adjutant General to submit by
7 February 15, 2023 to the joint standing committee of the Legislature having jurisdiction
8 over veterans affairs a copy of any report submitted to the Governor by the Advisory
9 Council on Military Sexual Trauma established by the Governor in Executive Order 1 FY
10 21/22.

11 8. It adds the crime of harassment, as defined in the Maine Revised Statutes, Title
12 17-A, section 506-A as a military offense for which discipline may be imposed under the
13 Maine Code of Military Justice.

14 **FISCAL NOTE REQUIRED**

15 (See attached)



130th MAINE LEGISLATURE

LD 2029

LR 2672(02)

An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

Fiscal Note for Bill as Amended by Committee Amendment *ACH-974*

Committee: Veterans and Legal Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional fines may increase General Fund or other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Defense, Veterans and Emergency Management associated with implementing this legislation can be absorbed within existing budgeted resources.