

ENCLOSURE 5:

REPORT ON DEPARTMENT OF DEFENSE POLICY REQUIRED BY SECTION 578, FY2013 NDAA



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Report on Department of Defense Policy Required by Section 578, Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013

Executive Summary

The Department appreciates the opportunity to report to the Committees on Armed Services of the Senate and House of Representatives the policy changes the Department intends to make to implement Section 578 of Public Law 112-239, Fiscal National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. Section 578 requires the Secretary of Defense to submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the policy developed to require general or flag officer (G/FO) review prior to involuntarily separating a Service member from the Armed Forces within one year of the Service member making an unrestricted report of sexual assault if the Service member requests the review on the grounds the recommendation for his or her involuntary separation was initiated in retaliation for making the report.

The Department of Defense is in the process of developing policy to implement Section 578. The policy will provide for a general officer or flag officer (G/FO) of the Armed Forces to review the circumstances of, and grounds for, the proposed involuntary separation of any member of the Armed Forces who made an Unrestricted Report of a sexual assault and within at least one year after making the Unrestricted Report of a sexual assault is recommended for involuntary separation from the Armed Forces, and who requests the review on the grounds that the member believes the recommendation for involuntary separation from the Armed Forces was initiated in retaliation for making the report.

The Secretary of Defense will continue to update the Committees on Armed Services of the Senate and the House of Representatives on the progress of policy development to comply with Section 578. This is an initial response to meet Congressional Reporting Requirements due July 2, 2013 and we will provide finalized copies of the policies promulgated upon completion of the policy coordination and issuance process.

Specific Public Law 112-239 language:

SEC. 578. GENERAL OR FLAG OFFICER REVIEW OF AND CONCURRENCE IN SEPARATION OF MEMBERS OF THE ARMED FORCES MAKING AN UNRESTRICTED REPORT OF SEXUAL ASSAULT.

(a) REVIEW REQUIRED.—The Secretary of Defense shall develop a policy to require a general officer or flag officer of the Armed Forces to review the circumstances of, and grounds for, the proposed involuntary separation of any member of the Armed Forces who—

(1) made an Unrestricted Report of a sexual assault;

(2) within one year after making the Unrestricted Report of a sexual assault, is recommended for involuntary separation from the Armed Forces; and

(3) requests the review on the grounds that the member believes the recommendation for involuntary separation from the Armed Forces was initiated in retaliation for making the report.

(b) CONCURRENCE REQUIRED.—If a review is requested by a member of the Armed Forces as authorized by subsection (a), the concurrence of the general officer or flag officer conducting the review of the proposed involuntary separation of the member is required in order to separate the member.

(c) SUBMISSION OF POLICY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the policy developed under subsection (a).

(d) APPLICATION OF POLICY.—The policy developed under subsection (a) shall take effect on the date of the submission of the policy to Congress under subsection (c) and apply to members of the Armed Forces described in subsection (a) who are proposed to be involuntarily separated from the Armed Forces on or after that date.

DoD Policy Changes

To implement Section 578 requirements, the Department will reissue three Department of Defense Instructions (DoDIs), which will contain new policy as discussed above:

DoDI 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*

DoDI 1332.14, *Enlisted Administrative Separations*

DoDI 1332.30, *Separation of Regular and Reserve Commissioned Officers*

Conclusion

The Department of Defense is committed to ensuring Service members who are sexually assaulted receive appropriate protections in the adjudication of administrative separations. The policy changes implemented by the Department will comply with Section 578 of Public Law 112-239. The Department appreciates the concern expressed by the Committees on Armed Services of the Senate and House of Representatives for victims of sexual assault.