

AMENDED IN SENATE APRIL 8, 2021

SENATE BILL

No. 352

Introduced by Senator Eggman

(Principal coauthor: Assembly Member Cristina Garcia)

(Coauthor: Senator Newman)

February 9, 2021

An act to amend Sections 58 and 392 of, and to add Section 475 to, the Military and Veterans Code, relating to the military.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as amended, Eggman. The military: sexual harassment.

Existing law makes a member of the active militia who, when subject to the Uniform Code of Military Justice, commits a sexual assault crime, as defined, subject to prosecution by the office of the district attorney or other equivalent civilian prosecutorial authority with appropriate jurisdiction, and authorizes the Military Department or California National Guard to claim jurisdiction only if the district attorney, or other equivalent civilian prosecutorial authority, refuses to pursue a criminal prosecution of that member. Existing law requires a member of the active militia recommended for court-martial, as specified, for a sexual assault offense to be tried by general court-martial.

The bill would additionally make a member of the active militia who has been lawfully ordered to any type of state duty and who commits sexual harassment punishable by specified military proceedings or by a court-martial. The bill would also state that these provisions do not preclude any other military or civilian authority from exercising its jurisdiction over any act or omission that violates any local, state, or federal law.

Existing law requires the Military Department, on or before July 1 of each year, to report specified information to the Governor, the Legislature, the Senate Committee on Veterans Affairs, the Assembly Committee on Veterans Affairs, the Attorney General, and the United States Attorney for each district in California, including, among other things, statistical data relating to incidents of sexual assault against service members and plans for the prevention of, and response to, sexual assault involving service members.

This bill would require that information to also include statistical data relating to incidents of sexual harassment against service members and plans for the prevention of, and response to, sexual harassment involving service members. The bill would also require the department to make that information available on the department's internet website in the form of aggregated statistical data, as specified.

Existing law states that members of the militia in active service shall not be liable civilly or criminally for any act done by them in the performance of their duty.

This bill would clarify that this exemption does not apply to any act or acts by members of the militia in the active service of the state done by them outside the performance of their military duty, including, but not limited to, sexual assault or sexual harassment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Sexual harassment is detrimental to good order and discipline
- 4 within our military, erodes operational readiness, and is in direct
- 5 conflict with the core values of the Department of Defense: duty,
- 6 integrity, ethics, honor, courage, and loyalty.
- 7 (b) The Department of Defense's 2019 Sexual Assault
- 8 Accountability and Investigation Task Force recognized that sexual
- 9 harassment often is precursor behavior to sexual assault.
- 10 (c) Creating a standalone offense of sexual harassment within
- 11 the military justice system provides commanders with the tools
- 12 needed to send a strong message that this immoral behavior will
- 13 not be tolerated within California's military ranks.

1 (d) Eradicating sexual harassment within our military forces is
2 the next step in ensuring that California remains the leader in
3 providing unparalleled protections to members of the military.

4 (e) The California Military Department is among the best in the
5 nation at implementing a robust Sexual Assault Prevention and
6 Response program. Making sexual harassment a standalone offense
7 will allow Commanders in the California National Guard to lead
8 the nation in proactive sexual assault prevention by giving them
9 a tool to discipline or remove from the ranks service members
10 guilty of sexual harassment before their misconduct can escalate
11 to sexual assault.

12 SEC. 2. Section 58 of the Military and Veterans Code is
13 amended to read:

14 58. (a) Notwithstanding Sections 9795 and 10231.5 of the
15 Government Code, on or before July 1 of each year, the department
16 shall report the following information to the Governor, the
17 Legislature, the Senate Committee on Veterans Affairs, and the
18 Assembly Committee on Veterans Affairs, the Attorney General,
19 and the United States Attorney for each district in California:

20 (1) For the previous federal fiscal year:

21 (A) The policies, procedures, and processes in place or
22 implemented by the Sexual Assault Prevention and Response
23 (SAPR) Program during that federal fiscal year in response to
24 incidents of sexual assault and sexual harassment.

25 (B) An assessment of the implementation of the policies and
26 procedures on the prevention, response, and oversight of sexual
27 assaults and sexual harassment in the military to determine the
28 effectiveness of SAPR policies and programs, including an
29 assessment of how service efforts executed federal Department of
30 Defense SAPR priorities.

31 (C) Matrices for restricted and unrestricted reports of the number
32 of sexual assaults and sexual harassment involving service
33 members, that includes case synopses, and disciplinary actions
34 taken in substantiated cases and relevant information. Reporting
35 on restricted cases shall be limited to aggregated statistical data
36 so that the privacy of victims is protected. Reporting on unrestricted
37 cases shall be limited to aggregated statistical data, but shall
38 include, at a minimum, the following subcategories:

39 (i) Types of crimes.

40 (ii) Types of victims.

- 1 (iii) Status of investigations.
- 2 (iv) Status of prosecutions.
- 3 (v) Status of department administrative actions.

4 (D) Analyses of the matrices of the number of sexual assaults
 5 and sexual harassment allegations involving service members. The
 6 analyses shall include analysis of data and trends in comparison
 7 to state data from previous years and, to the degree possible,
 8 comparisons of state data and trends and data and trends from other
 9 branches and components of the United States Armed Forces,
 10 including both active and reserve components, including the
 11 National Guard of other states and territories.

12 (2) For the current federal fiscal year, any plans for the
 13 prevention of and response to sexual assault and sexual harassment,
 14 specifically in the areas of advocacy, healthcare provider and
 15 medical response, mental health, counseling, investigative services,
 16 legal services, and chaplain response.

17 (b) The department shall also make the information described
 18 in subdivision (a) available on its public internet website in the
 19 form of aggregated statistical data. In order to protect victims’
 20 privacy, this information shall not include case synopses.

21 SEC. 3. Section 392 of the Military and Veterans Code is
 22 amended to read:

23 392. (a) Members of the militia in the active service of the
 24 state shall not be liable civilly or criminally for any act or acts
 25 done by them in the performance of their duty.

26 (b) Subdivision (a) shall not apply to any act or acts by members
 27 of the militia in the active service of the state done by them outside
 28 the performance of their military duty, including, but not limited
 29 to, sexual assault, as defined in Section 470.5, and sexual
 30 harassment, as defined in Section 475.

31 SEC. 4. Section 475 is added to the Military and Veterans
 32 Code, to read:

33 475. (a) Any person described in subdivision (b) who is guilty
 34 of sexual harassment may be punished pursuant to Section 450.1
 35 or as a court-martial may direct.

36 (b) (1) This section applies to all members of the active militia
 37 who have been lawfully ordered to any type of state duty pursuant
 38 to this code or any type of duty pursuant to Title 32 of the United
 39 States Code. For purposes of jurisdiction of this section, receipt
 40 of a lawful verbal or written order to report shall constitute

1 sufficient evidence for purposes of establishing jurisdiction,
2 however, jurisdiction may be contested as provided in the Manual
3 for Courts-Martial, United States, or the Manual for Courts-Martial,
4 California.

5 (2) This section does not apply to offenses committed by
6 members of the active militia who were not in a duty status or not
7 ordered to a duty status at the time of the offense or omission,
8 unless it is alleged that the member engaged in an affirmative act
9 or omission that established a connection between the offense and
10 service in the active militia. Jurisdiction shall exist in all
11 circumstances regardless of where the offense was committed.

12 (3) Nothing in this section precludes any other military or
13 civilian authority from exercising its jurisdiction over any act or
14 omission that violates any local, state, or federal law. Pursuant to
15 Sections 100, 101, 102, and 103, and Article 36 of the Uniform
16 Code of Military Justice, the Governor as Commander-in-Chief
17 of the State Militia may promulgate regulations for this section,
18 which may include guidance similar to that which is provided for
19 the punitive articles of the Uniform Code of Military Justice in
20 Part IV of the Manual for Courts-Martial, United States. Unless
21 otherwise specified, the statute of limitations for the offenses in
22 this section is as provided for in Section 843(b)(1) of the Uniform
23 Code of Military Justice.

24 (c) For purposes of this section, “sexual harassment” means
25 conduct that involves an unwelcome sexual advance, a request for
26 sexual favors, or deliberate or repeated offensive comments or
27 gestures of a sexual nature, towards, from, or in the presence of
28 any person or persons, if any of the following apply:

29 (1) Submission to the conduct was made either explicitly or
30 implicitly a term condition of a person’s job, pay, or career.

31 (2) Submission to or rejection of the conduct by a person was
32 used, or threatened to be used, as a basis for career or employment
33 decisions affecting that person.

34 (3) The conduct had the purpose or effect of unreasonably
35 interfering with any person’s work performance or created an
36 intimidating, hostile, or offensive working environment for any
37 person, and was so severe or pervasive that a reasonable person

- 1 *or a reasonable victim* would have perceived that the work
- 2 environment was hostile or offensive.

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