

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
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**

Be it enacted by the People of the State of Maine as follows:

PART A

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

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

PART B

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).

Sec. B-2. 17-A MRSA §506-A, sub-§1, ¶A, as amended by PL 2009, c. 246, §1, is further amended by amending subparagraph (1), division (b) to read:

(b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007; ~~or~~

Sec. B-3. 17-A MRSA §506-A, sub-§1, ¶A, as amended by PL 2009, c. 246, §1, is further amended by amending subparagraph (2) to read:

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees; or

Sec. B-4. 17-A MRSA §506-A, sub-§1, ¶A, as amended by PL 2009, c. 246, §1, is further amended by enacting a new subparagraph (3) to read:

(3) After having been notified, in writing or otherwise, while the person was a member of the National Guard, not to engage in such conduct by a commanding officer. A person violates this subparagraph regardless of whether the person is a member of the National Guard when the person engages in the conduct and regardless of where the conduct occurs. The notification not to engage in such conduct expires one year from the date of issuance.

Sec. B-5. 17-A MRSA §506-A, sub-§3, as enacted by PL 1991, c. 566, §3, is amended to read:

3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent, "National Guard" has the same meaning as in Title 37-B, section 102, subsection 1 and "commanding officer" has the same meaning as in Title 37-B, section 402, subsection 4.

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;

Sec. B-7. 19-A MRSA §4013, sub-§1, ¶A, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (15) to read:

(15) One member, appointed by the Governor, who is a representative of a tribal court; ~~and~~

Sec. B-8. 19-A MRSA §4013, sub-§1, ¶A, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (16) to read:

(16) One member, appointed by the Governor, who is a representative of tribal government; ~~and~~

Sec. B-9. 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.

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 (24) to read:

(24) The Adjutant General shall provide current and former members of the National Guard who were the victims of sexual assault or sexual harassment while members of the National Guard and who are involved in administrative or Maine Code of Military Justice proceedings related to the sexual assault or sexual harassment with financial assistance to fully cover the expenses of traveling to and from and participating in those proceedings.

Sec. B-11. 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 information is not prohibited by federal law or federal regulation and can be presented in a way that does not identify, and that cannot be used with other information to identify, any victim of sexual assault or sexual harassment. If necessary to protect the identity of victims of sexual assault or sexual harassment, the Adjutant General may submit a summary of specific items of data or information required to be included in the report;

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

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

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

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

Sec. B-12. 37-B MRSA §463 is enacted to read:

§463. Harassment

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

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

Sec. B-13. Maine Commission on Domestic and Sexual Abuse; transition.

Notwithstanding the Maine Revised Statutes, Title 19-A, section 4013, subsection 1, paragraph A, the members of the Maine Commission on Domestic and Sexual Abuse serving immediately prior to the effective date of this Act continue to serve as members of the commission for the terms for which they were appointed until the Governor appoints their successors.

Sec. B-14. Report by Adjutant General. The Adjutant General shall include in the report required by the Maine Revised Statutes, Title 37-B, section 3, subsection 1, paragraph D, subparagraph (25) due February 15, 2023 the following additional information:

1. A copy of any report prepared by the United States National Guard Bureau, Office of Complex Investigations regarding any evaluation of the Maine National Guard's policies and procedures with respect to sexual assault prevention and response, sexual assault investigations and sexual harassment and equal opportunity programs or, if no report is available, an update on the progress of any related evaluation in the process of being conducted by the Office of Complex Investigations; and

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