

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 3196

To enhance the policies, procedures, and training for midshipmen at the United States Merchant Marine Academy, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. WICKER

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Improving Protections
5 for Midshipmen Act".

6 **SEC. 2. SUSPENSION OR REVOCATION OF MERCHANT MAR-**
7 **INER CREDENTIALS FOR PERPETRATORS OF**
8 **SEXUAL HARASSMENT OR SEXUAL ASSAULT.**

9 (a) IN GENERAL.—Chapter 77 of title 46, United
10 States Code, is amended by inserting after section 7704
11 the following:

1 **“§ 7704a. Sexual harassment or sexual assault as**
2 **grounds for suspension or revocation**

3 “(a) SEXUAL HARASSMENT.—If it is shown at a
4 hearing under this chapter that a holder of a license, cer-
5 tificate of registry, or merchant mariner’s document
6 issued under this part, within 10 years before the begin-
7 ning of the suspension and revocation proceedings, is the
8 subject of a substantiated claim of sexual harassment,
9 then the license, certificate of registry, or merchant mari-
10 ner’s document shall be suspended or revoked.

11 “(b) SEXUAL ASSAULT.—If it is shown at a hearing
12 under this chapter that a holder of a license, certificate
13 of registry, or merchant mariner’s document issued under
14 this part, within 20 years before the beginning of the sus-
15 pension and revocation proceedings, is the subject of a
16 substantiated claim of sexual assault, then the license, cer-
17 tificate of registry, or merchant mariner’s document shall
18 be revoked.

19 “(c) SUBSTANTIATED CLAIM.—

20 “(1) IN GENERAL.—The term ‘substantiated
21 claim’ means—

22 “(A) a ^{final} ~~legal proceeding or~~ agency action in
23 any administrative ^{or legal} proceeding that ~~determines~~
24 the individual committed sexual harassment or
25 sexual assault in violation of any Federal,
26 State, local, or Tribal law or regulation, and for

1 which all appeals³ have been exhausted, as appli-
2 cable; or

3 “(B) a determination after an investigation
4 by the Coast Guard that it is more likely than
5 not the individual committed sexual harassment
6 or sexual assault as defined in subsection (d),
7 if the determination affords appropriate due
8 process rights to the subject of the investiga-
9 tion.

10 “(2) INVESTIGATION BY THE COAST GUARD.—
11 An investigation by the Coast Guard under para-
12 graph (1)(B) shall include evaluation of the fol-
13 lowing materials that shall be provided to the Coast
14 Guard:

15 “(A) Any inquiry or determination made
16 by the employer of the individual as to whether
17 the individual committed sexual harassment or
18 sexual assault.

19 “(B) Upon request from the Coast Guard,
20 any investigative materials, documents, records,
21 or files in the possession of an employer or
22 former employer of the individual that are re-
23 lated to the claim of sexual harassment or sex-
24 ual assault by the individual.

1 “(III) such conduct has the pur-
2 pose or effect of unreasonably inter-
3 fering with an individual’s work per-
4 formance or creates an intimidating,
5 hostile, or offensive working environ-
6 ment; or

7 “(IV) conduct may have been by
8 a person’s supervisor, a supervisor in
9 another area, a co-worker, or another
10 credentialed mariner; and

11 “(ii) is so severe or pervasive that a
12 reasonable person would perceive, and the
13 victim does perceive, the environment as
14 hostile or offensive.

15 “(B) Any use or condonation, by any per-
16 son in a supervisory or command position, of
17 any form of sexual behavior to control, influ-
18 ence, or affect the career, pay, or job of a sub-
19 ordinate.

20 “(C) Any deliberate or repeated unwelcome
21 verbal comment or gesture of a sexual nature
22 by any fellow employee of the complainant.

23 “(2) SEXUAL ASSAULT.—The term ‘sexual as-
24 sault’ means any form of abuse or contact as defined
25 in chapter 109A of title 18.

1 “(e) REGULATIONS.—The Secretary of the depart-
2 ment in which the Coast Guard is operating may issue
3 further regulations as necessary to update the definitions
4 in this section, consistent with descriptions of sexual har-
5 assment and sexual assault addressed in titles 10 and title
6 18, and any other relevant Federal laws, to implement this
7 section.”.

8 (b) CLERICAL AMENDMENT.—The chapter analysis
9 of chapter 77 of title 46, United States Code, is amended
10 by inserting after the item relating to section 7704 the
11 following:

“7704a. Sexual harassment or sexual assault as grounds for suspension or rev-
ocation.”.

12 **SEC. 3. SUPPORTING THE UNITED STATES MERCHANT MA-**
13 **RINE ACADEMY.**

14 (a) IN GENERAL.—Chapter 513 of title 46, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

17 **“§ 51323. Sexual assault and sexual harassment pre-**
18 **vention information management system**

19 “(a) INFORMATION MANAGEMENT SYSTEM.—

20 “(1) IN GENERAL.—Not later than January 1,
21 2023, the Maritime Administrator shall establish an
22 information management system to track and main-
23 tain, in such a manner that patterns can be reason-
24 ably identified, information regarding claims and in-

1 incidents involving cadets that are reportable pursuant
2 to subsection (d) of section 51318 of this chapter.

3 “(2) INFORMATION MAINTAINED IN THE SYS-
4 TEM.—Information maintained in the system shall
5 include the following information, to the extent that
6 information is available:

7 “(A) The overall number of sexual assault
8 or sexual harassment incidents per fiscal year.

9 “(B) The location of each such incident,
10 including vessel name and the name of the com-
11 pany operating the vessel, if applicable.

12 “(C) The names and ranks of the individ-
13 uals involved in each such incident.

14 “(D) The general nature of each such inci-
15 dent, to include copies of any associated reports
16 completed on the incidents.

17 “(E) The type of inquiry made into each
18 such incident.

19 “(F) A determination as to whether each
20 such incident is substantiated.

21 “(G) Any informal and formal account-
22 ability measures taken for misconduct related to
23 the incident, including decisions on whether to
24 prosecute the case.

1 “(3) PAST INFORMATION INCLUDED.—The in-
2 formation management system under this section
3 shall include the relevant data listed in this sub-
4 section related to sexual assault and sexual harass-
5 ment that the Maritime Administrator possesses,
6 and shall not be limited to data collected after Janu-
7 ary 1, 2023.

8 “(4) PRIVACY PROTECTIONS.—The Maritime
9 Administrator and the Department of Transpor-
10 tation Chief Information Officer shall coordinate to
11 ensure that the information management system
12 under this section shall be established and main-
13 tained in a secure fashion to ensure the protection
14 of the privacy of any individuals whose information
15 is entered in such system.

16 “(5) CYBERSECURITY AUDIT.—Ninety days
17 after the implementation of the information manage-
18 ment system, the Office of Inspector General of the
19 Department of Transportation shall commence an
20 audit of the cybersecurity of the system and shall
21 submit a report containing the results of that audit
22 to the Committee on Commerce, Science, and Trans-
23 portation of the Senate and the Committee on
24 Transportation and Infrastructure of the House of
25 Representatives.

1 chant Marine Academy who are enrolled at the Merchant
2 Marine Academy at the time of the appointment, including
3 not fewer than 3 cadets from each class.

4 “(c) APPOINTMENT; TERM.—Midshipmen shall serve
5 on the Advisory Board pursuant to appointment by the
6 Maritime Administrator. Appointments shall be made not
7 later than 60 days after the date of the swearing in of
8 a new class of midshipmen at the Academy. The term of
9 membership of a midshipmen on the Advisory Board shall
10 be 1 academic year.

11 “(d) REAPPOINTMENT.—The Maritime Adminis-
12 trator may reappoint not more than 6 cadets from the pre-
13 vious term to serve on the Advisory Board for an addi-
14 tional academic year if the Maritime Administrator deter-
15 mines such reappointment to be in the best interests of
16 the Merchant Marine Academy.

17 “(e) MEETINGS.—The Advisory Board shall meet
18 with the Secretary of Transportation not less than once
19 each academic year to discuss the activities of the Advisory
20 Board. The Advisory Board shall meet in person with the
21 Maritime Administrator not less than 2 times each aca-
22 demic year to discuss the activities of the Advisory Board.

23 “(f) DUTIES.—The Advisory Board shall—

24 “(1) identify health and wellbeing, diversity,
25 and sexual assault and harassment challenges and

1 other topics considered important by the Advisory
2 Board facing midshipmen at the Merchant Marine
3 Academy, off campus, and while aboard ships during
4 Sea Year or other training opportunities;

5 “(2) discuss and propose possible solutions, in-
6 cluding improvements to culture and leadership de-
7 velopment at the Merchant Marine Academy; and

8 “(3) periodically review the efficacy of the pro-
9 gram in section 51323(b), as appropriate, and pro-
10 vide recommendations to the Maritime Adminis-
11 trator for improvement.

12 “(g) WORKING GROUPS.—The Advisory Board may
13 establish one or more working groups to assist the Advi-
14 sory Board in carrying out its duties, including working
15 groups composed in part of midshipmen at the Merchant
16 Marine Academy who are not current members of the Ad-
17 visory Board.

18 “(h) REPORTS AND BRIEFINGS.—The Advisory
19 Board shall regularly provide the Secretary of Transpor-
20 tation and the Maritime Administrator reports and brief-
21 ings on the results of its duties, including recommenda-
22 tions for actions to be taken in light of such results. Such
23 reports and briefings may be provided in writing, in per-
24 son, or both.

1 **“§ 51325. Sexual Assault Advisory Council**

2 “(a) ESTABLISHMENT.—The Secretary of Transpor-
3 tation shall establish a Sexual Assault Advisory Council
4 (in this section referred to as the ‘Council’).

5 “(b) MEMBERSHIP.—

6 “(1) IN GENERAL.—The Council shall be com-
7 posed of not fewer than 8 and not more than 14 in-
8 dividuals selected by the Secretary of Transportation
9 who are alumni that have graduated within the last
10 4 years or current midshipmen of the United States
11 Merchant Marine Academy (including midshipmen
12 or alumni who were victims of sexual assault and
13 midshipmen or alumni who were not victims of sex-
14 ual assault) and governmental and nongovernmental
15 experts and professionals in the sexual assault field.

16 “(2) EXPERTS INCLUDED.—The Council shall
17 include—

18 “(A) not less than 1 member who is li-
19 censed in the field of mental health and has
20 prior experience working as a counselor or ther-
21 apist providing mental health care to survivors
22 of sexual assault in a victim services agency or
23 organization; and

24 “(B) not less than 1 member who has
25 prior experience developing or implementing

1 sexual assault or sexual harassment prevention
2 and response policies in an academic setting.

3 “(3) RULES REGARDING MEMBERSHIP.—No
4 employee of the Department of Transportation shall
5 be a member of the Council. The number of govern-
6 mental experts appointed to the Council shall not ex-
7 ceed the number of nongovernmental experts.

8 “(c) DUTIES; AUTHORIZED ACTIVITIES.—

9 “(1) IN GENERAL.—The Council shall meet not
10 less often than semiannually to—

11 “(A) review—

12 “(i) the policies on sexual harassment,
13 dating violence, domestic violence, sexual
14 assault, and stalking under section 51318
15 of this title; and

16 “(ii) related matters the Council views
17 as appropriate; and

18 “(B) develop recommendations designed to
19 ensure that such policies and such matters con-
20 form, to the extent practicable, to best practices
21 in the field of sexual assault and sexual harass-
22 ment response and prevention.

23 “(2) AUTHORIZED ACTIVITIES.—To carry out
24 this subsection, the Council may—

1 “(A) conduct case reviews, as appropriate
2 and only with the consent of the victim of sex-
3 ual assault or harassment;

4 “(B) interview current and former mid-
5 shipmen of the United States Merchant Marine
6 Academy (to the extent that such midshipmen
7 provide the Department of Transportation ex-
8 press consent to be interviewed by the Council);
9 and

10 “(C) review—

11 “(i) exit interviews under section
12 51323(b) and surveys under section
13 51322(d);

14 “(ii) data collected from restricted re-
15 porting; and

16 “(iii) any other information necessary
17 to conduct such case reviews.

18 “(3) PERSONALLY IDENTIFIABLE INFORMA-
19 TION.—In carrying out this subsection, the Council
20 shall comply with the obligations of the Department
21 of Transportation to protect personally identifiable
22 information.

23 “(d) REPORTS.—On an annual basis for each of the
24 5 years after the date of enactment of this section, and
25 at the discretion of the Council thereafter, the Council

1 shall submit, to the President and the Committee on Com-
2 merce, Science, and Transportation and the Committee on
3 Appropriations of the Senate and the Committee on
4 Transportation and Infrastructure and the Committee on
5 Appropriations of the House of Representatives, a report
6 on the Council's findings based on the reviews conducted
7 pursuant to subsection (c) and related recommendations.

8 “(e) EMPLOYEE STATUS.—Members of the Council
9 shall not be considered employees of the United States
10 Government for any purpose and shall not receive com-
11 pensation other than reimbursement of travel expenses
12 and per diem allowance in accordance with section 5703
13 of title 5.

14 “(f) NONAPPLICABILITY OF FACCA.—The Federal
15 Advisory Committee Act (5 U.S.C. App.) shall not apply
16 to the Council.

17 “§ 51326. Student support

18 “The Maritime Administrator shall—

19 “(1) require a biannual survey of midshipmen,
20 faculty, and staff of the Academy assessing the in-
21 clusiveness of the environment of the Academy; and

22 “(2) require an annual survey of faculty and
23 staff of the Academy assessing the inclusiveness of
24 the environment of the Sea Year program.”.

1 (b) REPORT TO CONGRESS.—Not later than 30 days
2 after the date of enactment of this section, the Maritime
3 Administrator shall provide Congress with a briefing on
4 the resources necessary to properly implement section
5 51326 of title 46, United States Code, as added by this
6 section.

7 (c) CONFORMING AMENDMENTS.—The chapter anal-
8 ysis for chapter 513 of title 46, United States Code, is
9 amended by adding at the end the following:

“51323. Sexual assault and sexual harassment prevention information manage-
ment system.

“51324. Student advisory board at the United States Merchant Marine Acad-
emy.

“51325. Sexual Assault Advisory Council.

“51326. Student Support.”.

10 (d) UNITED STATES MERCHANT MARINE ACADEMY
11 STUDENT SUPPORT PLAN.—

12 (1) STUDENT SUPPORT PLAN.—Not later than
13 January 1, 2023, the Maritime Administrator shall
14 issue a Student Support Plan for the United States
15 Merchant Marine Academy, in consultation with rel-
16 evant mental health professionals in the Federal
17 Government or experienced with the maritime indus-
18 try or related industries. Such plan shall—

19 (A) address the mental health resources
20 available to midshipmen, both on-campus and
21 during Sea Year;

1 (B) establish a tracking system for suicidal
2 ideations and suicide attempts of midshipmen;

3 (C) create an option for midshipmen to ob-
4 tain assistance from a professional care pro-
5 vider virtually; and

6 (D) require an annual survey of faculty
7 and staff assessing the adequacy of mental
8 health resources for midshipmen of the Acad-
9 emy, both on campus and during Sea Year.

10 (2) REPORT TO CONGRESS.—Not later than 30
11 days after the date of enactment of this section, the
12 Maritime Administrator shall provide Congress with
13 a report on the resources necessary to properly im-
14 plement this subsection.

15 (e) SPECIAL VICTIMS ADVISOR.—Section 51319 of
16 title 46, United States Code, is amended—

17 (1) by redesignating subsection (c) as sub-
18 section (d);

19 (2) by inserting after subsection (b) the fol-
20 lowing:

21 “(c) SPECIAL VICTIMS ADVISOR.—

22 “(1) IN GENERAL.—The Secretary shall des-
23 ignate an attorney (to be known as the ‘Special Vic-
24 tims Advisor’) for the purpose of providing legal as-
25 sistance to any cadet of the Academy who is the vic-

1 tim of an alleged sex-related offense regarding ad-
2 ministrative and criminal proceedings related to such
3 offense, regardless of whether the report of that of-
4 fense is restricted or unrestricted.

5 “(2) SPECIAL VICTIMS ADVISORY.—The Sec-
6 retary shall ensure that the attorney designated as
7 the Special Victims Advisor has knowledge of the
8 Uniform Code of Military Justice, as well as crimi-
9 nal and civil law.

10 “(3) PRIVILEGED COMMUNICATIONS.—Any
11 communications between a victim of an alleged sex-
12 related offense and the Special Victim Advisor, when
13 acting in their capacity as such, shall have the same
14 protection that applicable law provides for confiden-
15 tial attorney-client communications.”; and

16 (3) by adding at the end the following:

17 “(e) UNFILLED VACANCIES.—The Administrator of
18 the Maritime Administration may appoint qualified can-
19 didates to positions under subsections (a) and (d) of this
20 section without regard to sections 3309 through 3319 of
21 title 5.”.

22 (f) CATCH A SERIAL OFFENDER ASSESSMENT.—

23 (1) ASSESSMENT.—Not later than one year
24 after the date of enactment of this section, the Com-
25 mandant of the Coast Guard, in coordination with

1 the Maritime Administrator, shall conduct an assess-
2 ment of the feasibility and process necessary, and
3 appropriate responsible entities to establish a pro-
4 gram for the United States Merchant Marine Acad-
5 emy and United States Merchant Marine modeled on
6 the Catch a Serial Offender program of the Depart-
7 ment of Defense using the information management
8 system required under subsection (a) of section
9 51323 of title 46, United States Code, and the exit
10 interviews under subsection (b) of such section.

11 (2) LEGISLATIVE CHANGE PROPOSALS.—If, as
12 a result of the assessment required by paragraph
13 (1), the Commandant or the Administrator deter-
14 mines that additional authority is necessary to im-
15 plement the program described in paragraph (1), the
16 Commandant or the Administrator, as applicable,
17 shall provide appropriate legislative change proposals
18 to Congress.

19 (g) SHIPBOARD TRAINING.—Section 51322(a) of title
20 46, United States Code, is amended by adding at the end
21 the following:

22 “(3) TRAINING.—

23 “(A) IN GENERAL.—As part of training
24 that shall be provided not less than semiannu-
25 ally to all midshipmen of the Academy, pursu-

1 ant to section 51318, the Maritime Adminis-
2 trator shall develop and implement comprehen-
3 sive in-person sexual assault risk-reduction and
4 response training that, to the extent prac-
5 ticable, conforms to best practices in the sexual
6 assault prevention and response field and in-
7 cludes appropriate scenario-based training.

8 “(B) DEVELOPMENT AND CONSULTATION
9 WITH EXPERTS.—In developing the sexual as-
10 sault risk-reduction and response training
11 under subparagraph (A), the Maritime Admin-
12 istrator shall consult with and incorporate, as
13 appropriate, the recommendations and views of
14 experts in the sexual assault field.”.