

Congress of the United States  
Washington, DC 20515

April 7, 2021

The Honorable Denis McDonough  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Ave NW  
Washington, DC 20571

Dear Secretary McDonough,

We are writing to request an update on the U.S. Department of Veterans Affairs implementation of Section 5303 of the Deborah Sampson Act (P.L. 116-315), which requires VA to implement a comprehensive anti-harassment and anti-sexual assault policy.

We are deeply concerned about the sexual harassment of women veterans and employees at the Department of Veterans Affairs, and we firmly believe that VA must take swift action to implement Section 5303. As you know, in 2018, the VA found that one in four women veterans and VA employees reported experiencing sexual harassment or assault at the VA, and a 2020 GAO report identified “inconsistent and incomplete” workplace sexual harassment policies at the VA. While there are policies and reporting mechanisms in place for VA employees reporting sexual harassment from other employees, there were no comparable policies, centralized reporting mechanisms, or resources for VA beneficiaries who are sexually harassed or assaulted by VA employees or on VA property.

The lack of consistent policies has led to deeply troubling incidences of sexual harassment, including a recent incident in Massachusetts where a woman veteran was intimidated and sexually harassed by a supervisor from the VA’s National Call Center. Using personal information that he improperly collected from her VA medical records, this VA supervisor called the female veteran via FaceTime from his personal phone. On the call, the employee commented on her appearance, asked about sexual preferences, and made abhorrent, threatening remarks while urinating on camera. After the call, the veteran was unable to identify any centralized mechanism to report the sexual harassment. Additionally, the veteran continues to be completely in the dark regarding the safety and the security of her private information, as the VA employee had transferred her private information to his personal devices. As alarming as this story is, it is sadly not an isolated incident.

It is absolutely critical for VA to move forward with implementation of Section 5303, creating a centralized reporting mechanism for VA beneficiaries and to designate sexual harassment and assault prevention coordinators, so that veterans know where to turn when subjected to degrading treatment when accessing care and benefits. Without a centralized system, not only will our veterans’ safety continue to be jeopardized, but we will not have the necessary data to help identify and address where and how this unacceptable problem is occurring in the VA system.

We are also concerned about the potential for retaliation, specifically as it relates to the broad access that VA employees are given to the medical records of veterans in the VA system without a demonstrated need to know. As noted in a troubling VAOIG report from December 2020, a woman veteran was subjected to retaliation for reporting that she was sexually assaulted by a VA-contracted employee at the DC VA hospital. Although the report suggests VA officials sought damaging information about the

veteran—who is also a congressional staffer working on VA issues—the OIG was unable to determine whether anyone had accessed her medical record because her record hadn't been sensitized to log this information.

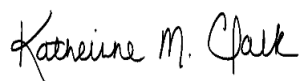
Accordingly, we have several questions:

- What protocols are in place to prevent unauthorized access to veterans' protected and purportedly private personal information, such as mental health records, medical imaging, disability claim information, and other personal data?
- Which employees can access VHA mental health and medical records? For example, can a scheduler access personal medical and mental health records at will without cause?
- What resources are required for the VA to develop a centralized data supporting system cataloging sexual harassment and assault complaint data pursuant to Section 5303 of the Deborah Sampson Act?
- How does the VA cooperate with local law enforcement if and when a possible crime is committed and their jurisdiction ends?
- How does the VA's system log when an employee accesses someone's medical records and what specific record they accessed?
- How does the VA's system require the employee to identify why they need to access a record, as the Department of Defense does for mental health progress notes, before allowing entry?
- Why isn't access logging turned on for everyone's records?
- How are veterans' personal information classified and protected?

We owe our veterans a great debt of gratitude. The persistence of any conditions which leave veterans at risk of intimidation, sexual harassment, and assault falls far below the standard of care we expect from the VA. We commend you for your comments during your confirmation hearing that you would “try to set a culture that underscores that such activity will not be tolerated,” and we trust that you will work urgently to address the longstanding systemic and cultural problems at the VA.

Thank you for your attention to this important issue. We look forward to working with you to end the culture of sexual harassment and assault at VA facilities.

Sincerely,



Katherine M. Clark  
Member of Congress



Mark Takano  
Member of Congress



Julia Brownley  
Member of Congress



Susie Lee  
Member of Congress



Frank Mrvan  
Member of Congress

Jake Auchincloss  
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