

## Substitute Amendment

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.****S. 816**

To amend the Diplomatic Security Act of 1986 to provide for improved serious security incident investigations, 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. RISCH (for himself and Mr. MURPHY)

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Diplomatic Support

5 and Security Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) A robust overseas diplomatic presence is

9 part of an effective foreign policy, particularly in

10 volatile environments where a flexible and timely

1 diplomatic response can be decisive in preventing  
2 and addressing conflict.

3 (2) Diplomats routinely put themselves and  
4 their families at great personal risk to serve their  
5 country overseas where they face threats related to  
6 international terrorism, violent conflict, and public  
7 health, among others.

8 (3) The Department of State has a remarkable  
9 record of protecting personnel while enabling an  
10 enormous amount of global diplomatic activity, often  
11 in unsecure and remote places and facing a variety  
12 of evolving risks and threats. With support from  
13 Congress, the Department of State has revised pol-  
14 icy, improved physical security through retrofitting  
15 and replacing old facilities, deployed additional secu-  
16 rity personnel and armored vehicles, and greatly en-  
17 hanced training requirements and facilities, includ-  
18 ing the new Foreign Affairs Security Training Cen-  
19 ter in Blackstone, Virginia.

20 (4) Diplomatic missions rely on robust staffing  
21 and ambitious external engagement to advance  
22 United States interests as diverse as competing with  
23 China's malign influence around the world, fighting  
24 terrorism and transnational organized crime, pre-  
25 venting and addressing violent conflict and humani-

1        tarian disasters, promoting United States businesses  
2        and trade, protecting the rights of marginalized  
3        groups, addressing climate change, and preventing  
4        pandemic disease.

5            (5) However, efforts to protect personnel over-  
6        seas have often resulted in inhibiting diplomatic ac-  
7        tivity and limiting engagement between embassy per-  
8        sonnel and local governments and populations.

9            (6) Given that Congress currently provides an-  
10        nual appropriations in excess of \$1,900,000,000 for  
11        embassy security, construction, and maintenance,  
12        the Department of State should be able ensure a ro-  
13        bust overseas presence without inhibiting the ability  
14        of diplomats to—

15            (A) meet outside United States secured fa-  
16        cilities with foreign leaders to explain, defend,  
17        and advance United States priorities;

18            (B) understand and report on foreign po-  
19        litical, social, and economic conditions through  
20        meeting and interacting with community offi-  
21        cials outside of United States facilities;

22            (C) provide United States citizen services;  
23        and

24            (D) collaborate and, at times, compete  
25        with other diplomatic missions, particularly

1           those, such as the People’s Republic of China,  
2           that do not restrictions on meeting locations.

3           (7) Given these stakes, Congress has a respon-  
4           sibility to empower, support, and hold the Depart-  
5           ment of State accountable for implementing an ag-  
6           gressive strategy to ensure a robust overseas pres-  
7           ence that mitigates potential risks and adequately  
8           considers the myriad direct and indirect con-  
9           sequences of a lack of diplomatic presence.

10 **SEC. 3. ENCOURAGING EXPEDITIONARY DIPLOMACY.**

11           (a) PURPOSE.—Subsection (b) of section 102 of the  
12 Diplomatic Security Act (22 U.S.C. 4801(b)) is amend-  
13 ed—

14           (1) by amending paragraph (3) to read as fol-  
15 lows:

16           “(3) to promote strengthened security meas-  
17 ures, institutionalize a culture of learning, and, in  
18 the case of apparent gross negligence or breach of  
19 duty, recommend that the Secretary investigate ac-  
20 countability for United States Government personnel  
21 with security-related responsibilities;”;

22           (2) by redesignating paragraphs (4) and (5) as  
23 paragraphs (5) and (6), respectively; and

24           (3) by inserting after paragraph (3) the fol-  
25 lowing new paragraph:

1           “(4) to support a culture of risk management,  
2           instead of risk avoidance, that enables the Depart-  
3           ment of State to pursue its vital goals with full  
4           knowledge that it is not desirable nor possible for  
5           the Department to avoid all risks;”.

6           (b) BRIEFINGS ON EMBASSY SECURITY.—Section  
7           105(a) of the Diplomatic Security Act (22 U.S.C.  
8           4804(a)) is amended in paragraph (1)—

9           (1) by striking “any plans to open or reopen a  
10          high risk, high threat post” and inserting “progress  
11          towards opening or reopening high risk, high threat  
12          post, and the risk to national security of the contin-  
13          ued closure or any suspension of operations and re-  
14          maining barriers to doing so”;

15          (2) in subparagraph (A), by inserting “the risk  
16          to United States national security of the post’s con-  
17          tinued closure or suspension of operations,” after  
18          “national security of the United States,”; and

19          (3) in subparagraph (C), by inserting “the type  
20          and level of security threats such post could encoun-  
21          ter, and” before “security ‘tripwires’”.

22   **SEC. 4. SECURITY REVIEW COMMITTEES.**

23          (a) IN GENERAL.—Section 301 of the Diplomatic Se-  
24          curity Act of 1986 (22 U.S.C. 4831) is amended—

1           (1) in the section heading, by striking “**AC-**  
2           **COUNTABILITY REVIEW BOARDS**” and inserting  
3           “**SECURITY REVIEW COMMITTEES**”;

4           (2) in subsection (a)—

5                 (A) by amending paragraph (1) to read as  
6           follows:

7                 “(1) CONVENING THE SECURITY REVIEW COM-  
8           MITTEE.—In any case of a serious security incident  
9           involving loss of life, serious injury, or significant  
10          destruction of property at, or related to, a United  
11          States Government diplomatic mission abroad (a  
12          ‘Serious Security Incident’), and in any case of a se-  
13          rious breach of security involving intelligence activi-  
14          ties of a foreign government directed at a United  
15          States Government mission abroad, the Secretary of  
16          State shall convene a Security Review Committee  
17          (SRC), which shall issue a report providing a full ac-  
18          count of what occurred, consistent with section  
19          304.”;

20                 (B) by redesignating paragraphs (2) and  
21          (3) as paragraphs (3) and (4), respectively;

22                 (C) by inserting after paragraph (1) the  
23          following new paragraph:

24                 “(2) COMMITTEE COMPOSITION.—The Sec-  
25          retary shall designate a Chairperson and may des-

1        designate additional personnel of commensurate senior-  
2        ity to serve on the SRC. Members of the SRC shall,  
3        at a minimum, include the following personnel:

4                “(A) The Director of the Office of Man-  
5                agement Strategy and Solutions (M/SS).

6                “(B) The Assistant Secretary responsible  
7                for the region where the incident occurred.

8                “(C) The Assistant Secretary for Diplo-  
9                matic Security.

10               “(D) The Assistant Secretary for the Bu-  
11               reau of Intelligence and Research.

12               “(E) An Assistant Secretary-level rep-  
13               resentative from any involved United States  
14               Government department or agency.

15               “(F) Other personnel as determined nec-  
16               essary or appropriate.”;

17               (D) in paragraph (3), as redesignated by  
18               subparagraph (B)—

19                    (i) in the paragraph heading, by strik-  
20                    ing “DEPARTMENT OF DEFENSE FACILI-  
21                    TIES AND PERSONNEL” and inserting “EX-  
22                    CEPTIONS TO CONVENING AN SRC”;

23                    (ii) by striking “The Secretary of  
24                    State” and all that follows through “con-

1           vene a Board in the case” and inserting  
2           the following:

3           “(A) IN GENERAL.—The Secretary of  
4           State is not required to convene an SRC—

5                   “(i) if the Secretary determines that  
6                   the incident involves only causes unrelated  
7                   to security, such as when the security at  
8                   issue is outside of the scope of the Sec-  
9                   retary of State’s security responsibility as  
10                  defined in section 103;

11                   “(ii) in a case where operational con-  
12                   trol of overseas security functions has been  
13                   delegated to another agency consistent  
14                   with section 106;

15                   “(iii) if the incident is a cybersecurity  
16                   incident and is covered by other review  
17                   mechanisms; or

18                   “(iv) in the case”; and

19                   (iii) by striking “In any such case”  
20                   and inserting the following:

21                   “(B) DEPARTMENT OF DEFENSE INVES-  
22                   TIGATIONS.—In the case of an incident de-  
23                   scribed in subparagraph (A)(iv)”; and

24                   (E) by adding at the end the following new  
25                   paragraph:



1           “(5) REGULATIONS.—The Secretary of State  
2 shall promulgate regulations defining the member-  
3 ship and operating procedures for the SRC and pro-  
4 vide such guidance to the Chairmen and ranking  
5 members of the Committee on Foreign Relations of  
6 the Senate and the Committee on Foreign Affairs of  
7 the House of Representatives.”;

8           (3) in subsection (b)—

9           (A) in the subsection heading, by striking  
10 “BOARDS” and inserting “SRCs”; and

11           (B) by amending paragraph (1) to read as  
12 follows:

13           “(1) IN GENERAL.—The Secretary of State  
14 shall convene an SRC not later than 60 days after  
15 the occurrence of an incident described in subsection  
16 (a)(1), or 60 days after the Department first be-  
17 comes aware of such an incident, whichever is ear-  
18 lier, except that the 60-day period for convening an  
19 SRC may be extended for one additional 60-day pe-  
20 riod if the Secretary determines that the additional  
21 period is necessary.”; and

22           (4) in subsection (c)—

23           (A) by striking “convenes a Board” and  
24 inserting “convenes an SRC”;

1 (B) by inserting “and ranking member”  
2 after “chairman”; and

3 (C) by striking “Speaker” and all that fol-  
4 lows through the period at the end of para-  
5 graph (3) and inserting “chairman and ranking  
6 member of the Committee of Foreign Affairs of  
7 the House of Representatives.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
9 Section 302 of the Diplomatic Security Act (22 U.S.C.  
10 4832) is amended—

11 (1) in the section heading, by striking “**AC-**  
12 **COUNTABILITY REVIEW BOARD**” and inserting  
13 “**SECURITY REVIEW COMMITTEE**”; and

14 (2) by striking “a Board” each place it appears  
15 and inserting “an SRC”.

16 **SEC. 5. SERIOUS SECURITY INCIDENT INVESTIGATION**  
17 **PROCESS.**

18 Section 303 of the Diplomatic Security Act of 1986  
19 (22 U.S.C. 4833) is amended to read as follows:

20 **“SEC. 303. SERIOUS SECURITY INCIDENT INVESTIGATION**  
21 **PROCESS.**

22 “(a) INVESTIGATION PROCESS.—

23 “(1) INITIATION UPON REPORTED INCIDENT.—

24 An investigation of a Serious Security Incident, as  
25 described in section 301(a)(1), shall begin when a

1 United States mission reports a Serious Security In-  
2 cident at the mission. Such a report shall include an  
3 initial report of the incident and shall be made with-  
4 in three days of the incident, when feasible.

5 “(2) INVESTIGATION.—Not later than 10 days  
6 following a report under paragraph (1), the Sec-  
7 retary shall direct the Diplomatic Security Service to  
8 assemble an investigative team to investigate the in-  
9 cident and independently establish what occurred.  
10 The investigation shall cover—

11 “(A) an assessment of what occurred, who  
12 perpetrated or is suspected of having per-  
13 petrated the serious security incident, and  
14 whether applicable security procedures were fol-  
15 lowed;

16 “(B) in the event the Serious Security In-  
17 cident involved a United States diplomatic com-  
18 pound, motorcade, residence, or other facility,  
19 an assessment of whether adequate security  
20 countermeasures were in effect based on known  
21 threat at the time of the incident;

22 “(C) if the incident involved an individual  
23 or group of officers, employees, or family mem-  
24 bers under chief of mission security responsi-  
25 bility conducting approved operations or move-

1           ments outside the United States mission, an as-  
2           sessment of whether proper security briefings  
3           and procedures were in place and weighing of  
4           risk of the operation or movement took place;  
5           and

6           “(D) an assessment of whether the failure  
7           of any officials or employees to follow proce-  
8           dures or perform their duties contributed to the  
9           security incident.

10          “(3) INVESTIGATIVE TEAM.—The investigative  
11          team shall consist of individuals from the Diplomatic  
12          Security Service who shall provide an independent  
13          examination of the facts surrounding the incident  
14          and what occurred. The Secretary or the Secretary’s  
15          designee shall review the makeup of the investigative  
16          team for a conflict, appearance of conflict, or lack of  
17          independence that could undermine the results of  
18          the investigation and may remove or replace any  
19          members of the team to avoid such an outcome.

20          “(b) REPORT OF INVESTIGATION.—The investigative  
21          team shall prepare a Report of Investigation at the conclu-  
22          sion of the investigation and submit the report to the SRC  
23          no later than 90 days after the occurrence of a Serious  
24          Security Incident. The report shall include the following  
25          elements:

1           “(1) A detailed description of the matters set  
2           forth in subparagraphs (A) through (D) of sub-  
3           section (a)(2), including all related findings.

4           “(2) A complete and an accurate account of the  
5           casualties, injuries, and damage resulting from the  
6           incident.

7           “(3) A review of security procedures and direc-  
8           tives in place at the time of the incident.

9           “(c) CONFIDENTIALITY.—The investigative team  
10          shall adopt such procedures with respect to confidentiality  
11          as determined necessary, including procedures relating to  
12          the conduct of closed proceedings or the submission and  
13          use of evidence in camera, to ensure in particular the pro-  
14          tection of classified information relating to national de-  
15          fense, foreign policy, or intelligence matters. The Director  
16          of National Intelligence shall establish the level of protec-  
17          tion required for intelligence information and for informa-  
18          tion relating to intelligence personnel included in the re-  
19          port under subsection (b). The SRC shall determine the  
20          level of classification of the final report prepared under  
21          section 304(b), but shall incorporate the same confiden-  
22          tiality measures in such report to the maximum extent  
23          practicable.”.

1 **SEC. 6. FINDINGS AND RECOMMENDATIONS BY THE SECUR-**  
2 **RITY REVIEW COMMITTEE.**

3 Section 304 of the Diplomatic Security Act of 1986  
4 (22 U.S.C. 4834) is amended to read as follows:

5 **“SEC. 304. SECURITY REVIEW COMMITTEE FINDINGS AND**  
6 **REPORT.**

7 “(a) FINDINGS.—The Security Review Committee  
8 shall review the Report of Investigation prepared under  
9 section 303(b), all other evidence, reporting, and relevant  
10 information relating to a serious security incident at a  
11 United States mission abroad, including an examination  
12 of the facts and circumstances surrounding any serious  
13 injuries, loss of life, or significant destruction of property  
14 resulting from the incident and shall make the following  
15 written findings:

16 “(1) Whether the incident was security related  
17 and constituted a serious security incident.

18 “(2) If the incident involved a diplomatic com-  
19 pound, motorcade, residence, or other mission facil-  
20 ity, whether the security systems, security counter-  
21 measures, and security procedures operated as in-  
22 tended, and whether such systems worked to materi-  
23 ally mitigate the attack or were found to be inad-  
24 equate to mitigate the threat and attack.

25 “(3) If the incident involved an individual or  
26 group of officers conducting an approved operation

1 outside the mission, a determination whether a valid  
2 process was followed in evaluating the requested op-  
3 eration and weighing the risk of the operation. Such  
4 determination shall not seek to assign accountability  
5 for the incident unless the SRC determines that an  
6 official breached their duty.

7 “(4) An assessment of the impact of intelligence  
8 and information availability, and whether the mis-  
9 sion was aware of the general operating threat envi-  
10 ronment or any more specific threat intelligence or  
11 information and took that into account in ongoing  
12 and specific operations.

13 “(5) Such other facts and circumstances that  
14 may be relevant to the appropriate security manage-  
15 ment of United States missions abroad.

16 “(b) SRC REPORT.—Not later than 60 days after re-  
17 ceiving the Report of Investigation prepared under section  
18 303(b), the SRC shall submit a report to the Secretary  
19 of State including the findings under subsection (a) and  
20 any related recommendations. Not later than 90 days  
21 after receiving the report, the Secretary of State shall sub-  
22 mit the report to the Committee on Foreign Relations of  
23 the Senate and the Committee on Foreign Affairs of the  
24 House of Representatives.

1           “(c) PERSONNEL RECOMMENDATIONS.—If in the  
2 course of conducting an investigation under section 303,  
3 the investigative team finds reasonable cause to believe  
4 any individual described in section 303(a)(2)(D) has  
5 breached the duty of that individual or finds lesser failures  
6 on the part of an individual in the performance of his or  
7 her duties related to the incident, it shall be reported to  
8 the SRC. If the SRC find reasonable cause to support the  
9 determination, it shall be reported to the Secretary for ap-  
10 propriate action.”.

11 **SEC. 7. RELATION TO OTHER PROCEEDINGS.**

12           Section 305 of the Diplomatic Security Act of 1986  
13 (22 U.S.C. 4835) is amended—

14           (1) by inserting “(a) NO EFFECT ON EXISTING  
15 REMEDIES OR DEFENSES.—” before “Nothing in  
16 this title”; and

17           (2) by adding at the end the following new sub-  
18 section:

19           “(b) FUTURE INQUIRIES.—Nothing in this title shall  
20 be construed to preclude the Secretary of State from con-  
21 vening a follow-up public board of inquiry to investigate  
22 any security incident if the incident was of such magnitude  
23 or significance that an internal process is deemed insuffi-  
24 cient to understand and investigate the incident. All mate-  
25 rials gathered during the procedures provided under this



- 1 title shall be provided to any related board of inquiry con-
- 2 vened by the Secretary.”.