

# Why Senator Gillibrand is right about military sexual assault

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**By Patrick J. Murphy**

The sexual assault problem is a cancer on the military. It's time to make our military justice system independent from the chain of command in felony cases: this will give confidence to those service members assaulted to come forward in search of justice.

The Pentagon estimates that 26,000 sexual assaults occurred in the military last year, a 34% increase from 2010. What's worse, the percentage of victims who actually reported the crime dropped to just 9.8%. If these numbers tell us anything, it's that the sexual assault problem is getting worse, while service members have lost faith in the military criminal justice system.

We need to systemically change the way the military handles sexual assault cases. This can be done by reforming of Article 60 of the Uniform Code of Military Justice to make the military justice system independent at the felony level, as Senator Gillibrand has proposed.

Under the current system, commanders have the discretion whether or not to prosecute a service member accused of sexual assault. They also have the ability to lessen or overturn a judge or jury's conviction, as demonstrated by the recent controversy in the Air Force when Lt. Gen. Craig Franklin reinstated an officer who'd been convicted by a jury of felony sexual assault.

Last year, less than 3% of estimated attacks were prosecuted. This sends the message to military members that victims of sexual assault will never see justice. It's clear that the system of allowing commanders the authority to decline to prosecute and to ignore convictions of rapists is not working. In fact, reporting an assault may even have a negative impact on the victim's career; nearly half of those who chose not to report crimes did so because they feared retaliation from within their own units.

The system is broken. Both Secretary Hagel and the Senate Armed Services Committee have proposed changes to Article 60 that would address potential bias in the chain of command in sexual assault cases. But systemic changes also need to be made—specifically, an independent military justice system.

Unfortunately, Sen. Levin, chairman of the Senate Armed Services Committee, derailed this effort by stripping one of the most important provisions aimed at fixing the problem from the FY2014 National Defense Authorization Act last week.

Senator Gillibrand's measure, which had 28 co-sponsors including 4 Republicans, would have given military prosecutors—instead of commanders—the independence to decide whether or not a case goes to trial. Taking the discretion to prosecute out of the chain of command will encourage victims to report by ensuring that commanders wouldn't throw out their cases with the flick of a pen or retaliate against them for coming forward. Under Senator Gillibrand's proposal, in non-felonies, commanders would still retain the authority to ensure good order and discipline at the non-judicial or administrative level, often via Article 15.

It's time for real, commonsense changes. District attorneys and attorneys general don't have to get permission from mayors or governors to prosecute cases because they're independent. At the felony level, military judge advocates should be independent too.

Many of our closest allies—including Canada, the United Kingdom, and Israel—have taken prosecutorial authority out of the chain of command for sexual assault cases. As a former Army JAG officer, I can tell you that this change would have a great impact.

In a piece this weekend, the Washington Post Editorial Board highlighted the need for fundamental changes to the military justice system, as Sen. Gillibrand has proposed. When less than 10% of sexual assault cases are reported, there is a perception problem within the ranks that the military justice system is not independent. If this allows one service member to come forward in search for justice, it will be a success.

Sen. Levin's proposal protects the status quo by merely requiring senior officers to review sexual assault cases that aren't prosecuted. This will do little to assure victims that they can trust the criminal justice system. Conversely, Sen. Patrick Leahy has gone too far in the other direction by suggesting that moving all sexual assault cases into the civilian court system, which would completely undermine the military's ability to prosecute sexual assault cases.

By taking sexual assault cases out of the chain of command and handing them to an independent, unbiased military prosecutor, we can curb the rising rates of sexual assault and simultaneously restore faith in the military criminal justice system.

Every day we ask our men and women in uniform to make incredible sacrifices. Dealing with sexual assault on their own shouldn't be one of them. We owe them better.

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