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**To:** Barbara Jones

**Cc:** Ham, Patricia, COL, DoD GC; Elizabeth Holtzman

**Subject:** An Escalating Fight Over Military Justice - NYTimes.com

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Editorial

An Escalating Fight Over Military Justice

By THE EDITORIAL BOARD <<http://www.nytimes.com/interactive/opinion/editorialboard.html>>

Published: July 29, 2013

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Despite powerful evidence that the military's approach to sexual assault needs an overhaul, the resistance to change among military brass and their enablers on Capitol Hill remains fierce.

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In June, Senator Carl Levin, the Michigan Democrat who is chairman of the Senate Armed Services Committee, won committee approval for a 2014 defense authorization bill that includes a few helpful reforms but omits the boldest fix offered so far: a bipartisan measure offered by Senator Kirsten Gillibrand, a New York Democrat, that would give independent military prosecutors, rather than commanders, the power to decide which sexual assault crimes to try. This would correct a major flaw in the military justice system that deters victims from reporting attacks and results in an abysmally low prosecution rate.

Ms. Gillibrand plans to offer her proposal as an amendment when the defense bill reaches the Senate floor, possibly in September. Support for her idea is growing, including from retired military leaders. One of these, Martha Rainville, a retired Air Force major general, succinctly stated the case for reform: When

“allegations of serious criminal misconduct have been made,” she said, “the decision whether to prosecute should be made by a trained legal professional” based on “evidence and facts, independent of pre-existing command relationships.”

In the last two weeks, five more senators have added their names to the roster of supporters: Michael Bennet, a Colorado Democrat; and Republicans Rand Paul of Kentucky, Ted Cruz of Texas, David Vitter of Louisiana, and Mark Kirk of Illinois. That brings the total number of Senate endorsers to 44.

Counterattacking, Mr. Levin says that the military’s sexual assault epidemic is best addressed by the military commanders themselves. Last week, he presented skimpy evidence consisting mainly of Pentagon statistics showing that military commanders have investigated and prosecuted 93 sexual assault cases over

the past two years after civilian authorities declined to pursue them, resulting in 52 convictions. It is not clear how many of these cases were voluntarily given over by local law enforcement, as often happens. Moreover, the numbers say nothing about what would have occurred if the independent trial counsel

system Ms. Gillibrand envisions were in place.

Meanwhile, the top Republican on the committee, James Inhofe of Oklahoma has warned G.O.P. colleagues that removing the power of commanders to decide whether to prosecute military sexual assault cases would be a “grave mistake.”

The Gillibrand approach is no cure-all, and enacting it remains an uphill struggle. Should it win a vote in the full Senate, it would still have to survive negotiations with the Republican-led House, which did not even allow comparable measures to be debated.

Still, this is an important fight. Americans appalled by the estimated 26,000 episodes of unwanted sexual contact in the military last year and fed up with the broken promises of zero tolerance for such behavior over way too many years should be rooting for Ms. Gillibrand and her bipartisan coalition to succeed. We

are still waiting for President Obama and his secretary of defense, Chuck Hagel, to endorse their effort

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A version of this editorial appeared in print on July 30, 2013, on page A18 of the New York edition with the headline: An Escalating Fight Over Military Justice.

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