

NDAA Reforms

Historic Sexual Assault Reforms Currently in the National Defense Authorization Act

In June, the Senate Armed Services Committee adopted a host of historic reforms to improve the way reports of sexual assault are handled within the military. These reforms:

- Amend Article 60 of the Uniform Code of Military Justice to limit the authority of a commander to overturn a verdict for rape, sexual assault, forcible sodomy, and other serious offenses.
- For the first time, in every sexual assault case in which a commander declines to prosecute, there would be an automatic higher-level review. That review would be conducted by the service secretary in cases where the commander's legal adviser recommends prosecution but the commander decides not to do so.
- Require a Special Victims' Counsel to advise and assist service members who are victims of sexual assault. For the first time, they will have their own specially trained lawyer to fight for them.
- Make it a crime under the Uniform Code of Military Justice to retaliate against a victim who reports a crime – a provision that combats what may be our biggest hurdle, hesitance to report an assault because of fear of retaliation.
- Require defense counsel to make requests to interview complaining witnesses in court-martials through the trial counsel, and, if requested by the witness, requires that defense counsel interviews take place in the presence of the trial counsel, counsel for the witness, or outside counsel.
- Eliminate the element of the character of the accused from the factors a commander should consider in deciding how to dispose of an offense.
- Require commanding officers to immediately refer to the appropriate military criminal investigation organization reports of sexual-related offenses involving service members in the commander's chain of command.
- Express the sense of the Senate that charges of rape, sexual assault, forcible sodomy, or attempts to commit these offenses should be disposed of by court-martial rather than by non-judicial punishment or administrative action, and that the disposition authority should include in the case file a justification in any case where these charges are disposed of by non-judicial punishment or administrative action.
- Require that substantiated complaints of a sexual-related offense resulting in a court-martial conviction, non-judicial punishment, or administrative action be noted in the service record of the service member, regardless of the member's grade.
- Require the Secretary of Defense to ensure that forms relating to restricted reports and unrestricted reports of sexual assault are retained for at least 50 years.
- Enhance the responsibilities of the Sexual Assault Prevention and Response Office for DOD's sexual assault prevention and response program.
- Require the Secretary of Defense to report on whether legislative action is required to modify the Uniform Code of Military Justice to prohibit sexual contacts between military instructors and their trainees.

- Require the Secretary of Defense to conduct a comprehensive review of the adequacy of training for members of the armed forces on sexual assault prevention and response, and of the training, qualifications and experience of those assigned to sexual assault prevention and response duties.
- Require the DOD IG to review and investigate allegations of retaliatory personnel actions for making a protected communication regarding violations of law or regulation that prohibit rape, sexual assault or other sexual misconduct.
- Authorize service secretaries to provide guidelines for temporary reassignment of a member on active duty who is accused of committing a sexual assault offense.
- Require DOD to conduct a comprehensive review of civilian law enforcement best practices in sexual assault prevention and response.
- Eliminate the five-year statute of limitations on trial by court-martial for certain sexual-related offenses.
- Express the committee's concern with the use of imprecisely defined terms to present statistics on the number of incidents of rape, sexual assault, forcible sodomy, and other sexual misconduct in the military.
- Include the Coast Guard in the requirement to develop regulations to provide for the expedited transfer of sexual assault victims.
- Direct the Secretary of Defense to report on the prevalence of service members being convicted of sexual offenses in the civilian justice system without command knowledge.
- Direct the Secretary of Defense to submit a report outlining DOD's plan to ensure that health care providers are appropriately trained, accredited, and located as necessary to properly manage sexual assault victims' medical needs.
- Codify a prohibition on military service by individuals convicted of sexual offenses.
- Require the Independent Panel on Sexual Assaults in the military to report no later than one year from the first meeting of the panel.
- Improve requirements for selection and assignment to Sexual Assault Prevention and Response billets.
- Require a report on training for sexual assault first responders.
- Require the Secretary of Defense to recommend to the President modifications to the Manual for Courts-Martial and to prescribe regulations to enforce the rights of victims of military crimes.
- Require the Secretary of Defense to report on DOD efforts to comply with statutory requirements that prohibit sexually explicit material from being sold on DOD property.
- Put the Senate on the record as calling for commanders to be relieved of their command if they fail to maintain a climate in which victims can come forward without fear.
- Require service secretaries to ensure that each member of the National Guard or Reserve who is the victim of a sexual assault either during the performance of duties as a member of the National Guard or Reserves, or is a victim of a sexual assault by another member of the Guard or Reserve, has access to a Sexual Assault Response Coordinator not later than two business days following a request for such assistance.