

November 12, 2013

Dear Senator:

I am writing to express the National Women's Law Center's strong support for the Military Justice Improvement Act, bipartisan legislation that would remove the prosecution of military cases involving serious crimes, including sexual assault, from the chain of command. NWLC urges you to vote for the MJIA when it is offered as an amendment to the FY 2014 National Defense Authorization Act (NDAA).

Although this legislation responds to the critical need to address the rising number of sexual assaults in the military, its provisions are long overdue reforms that would both improve our nation's military justice system and strengthen – not weaken – the role of commanders in today's military.

The military's efforts to address sexual assault have emphasized training and survivor assistance, which are important but insufficient to prevent what has been a persistent problem for decades – from the Navy's notorious Tailhook Convention in 1991 to the Army's intermediate training problems at Aberdeen in 1996 to the Air Force's recruit training problems at Lackland Air Force Base in 2012 to the many incidents at the military academies. As the Defense Department's own statistics show, the problem is getting worse, not better. According to the FY 2012 report of the Sexual Assault Prevention and Response Office (SAPRO), an estimated 26,000 service members experienced some kind of sexual assault in FY 2012, a 35% increase from FY 2010. Yet there were only 3,374 reports of sexual assault in the military in FY 2012.

Why the disparity between the number of occurrences and the number of reports of sexual assault? Survivors of sexual assault in the military tell us they lack confidence in the system. They believe their complaints will not get a fair hearing, that the perpetrator will not be held accountable and that they will suffer reprisals. We have personally heard of far too many instances in which their fears have been justified. To cite just one statistic: in 2012, 62 percent of the women who reported to a military authority that they had been sexually assaulted suffered some form of retaliation.

An independent, objective and non-biased system of military justice is essential to prevent sexual assault and other crimes. Research has shown that the decision to commit sexual assault is influenced by the perpetrator's calculation of possible "costs," including legal consequences. Until perpetrators see that they will be held accountable for their acts, there is little chance that the number of sexual assaults will decrease. Until survivors of sexual assault have confidence in the military justice system, there is little chance that the number of reports of sexual assault will increase.

The proposed 2014 NDAA contains some provisions to improve the military justice system, including by limiting the authority of commanders to overturn court martial convictions. But these provisions do not go far enough. Commanders would still have nearly complete authority over how these often-complicated cases are handled in circumstances in which they may have both the victim and the perpetrator in their command. Nowhere else in our system of justice does one individual – particularly one with an inherent conflict of interest – have this authority.

The Military Justice Improvement Act would reform the military justice system by moving the decision-making on whether and how to prosecute serious offenses, like sexual assault, out of the chain of command and give these decisions to trained, experienced military prosecutors. It would also move outside of the chain of command and into a specialized office the authority to convene courts-martial, empanel juries and choose judges to hear these cases; set deadlines for referring cases to prosecutors and

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convening courts martial; require decision-makers to provide written justification for their decisions; and prohibit the nullification of court martial guilty verdicts.

These changes would strengthen, not weaken, the authority of commanders. Although commanders typically receive advice from judge advocates under the current system, they do not typically have legal training themselves. But the system requires them to make legal judgments, with potentially adverse consequences for all concerned if they make the wrong judgments. This is like asking a commander without flight training to fly a fighter jet or a commander without medical training to perform surgery. It is hard to see how putting a commander in such a position enhances the respect and authority the commander seeks and is due from those in his or her command.

Similarly, it is hard to see how requiring that legal decisions be made by individuals with legal training undercuts a commander's authority in other realms. Equally important, particularly when it comes to sexual assault, there are critical areas in which a commander has expertise that can and should be brought to bear. Separating military justice decision-making from the chain of command will make it possible for commanders to concentrate on improving the climate in their commands to help prevent sexual assaults. They can model the behavior they expect from those they command. This is the leadership job that commanders should be called upon to do and the job for which they have particular expertise.

The changes in the MJIA are not radical. They are carefully crafted and have earned the support of many former military officers and organizations with expertise on military issues. In September, the Defense Advisory Committee on Women in the Services recommended that DoD "support legislation to remove from the chain of command the prosecution of military cases involving serious crimes, except crimes that are uniquely military in nature," and place [that responsibility] in the hands of "military personnel with legal expertise and experience...who are outside the chain of command of the victim and the accused." This Committee was established 62 years ago to advise the Secretary of Defense on issues affecting women in the Armed Services and has a long and distinguished history of recommendations that have resulted in important changes in military law and policy.

To ensure a strong military justice system that is essential to preventing sexual assault and other serious crimes and make decision-making in the military justice system more independent and impartial, the National Women's Law Center urges you to vote to include the reforms of the Military Justice Improvement Act in the FY 2014 NDAA.

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Sincerely,



Nancy Duff Campbell
Co-President