

In the fight to curb sexual assault in the military, significant progress has been made.

And while there's more work to do, stripping commanders of their ability to pursue courts-martial isn't the answer.

The military justice system has been overhauled by Congress.

Nearly 100 changes to how the military justice system handles sexual assault have been made in recent years, with many currently being implemented. Historic reforms include:

- ✓ Commanders were stripped of the ability to overturn convictions & are held accountable with rigorous new standards.
- ✓ Every survivor who reports a sexual assault now [gets their own independent lawyer](#) to protect their rights and fight for their interests—a reform that has no parallel in the civilian justice system.
- ✓ Civilian review is now required if a commander decides against a prosecution against a staff judge advocate's advice.
- ✓ Dishonorable discharge is now a required minimum sentence for anyone convicted of a sexual assault.
- ✓ The pre-trial "Article 32" process has been reformed to better protect survivors.
- ✓ The statute of limitations has been eliminated, an important development in a sustained battle against sexual assaults.
- ✓ The "good soldier" defense for servicemembers accused of sexual assault [has been eliminated](#) in most circumstances.
- ✓ Survivors are now allowed formal input on whether their case is tried in military or civilian court.
- ✓ Sexual assault survivors are now allowed to challenge their discharge or separation from service.

"... a victory for the estimated tens of thousands of troops who have been sexually abused in recent years, as well as a triumph for the growing number of women serving in Congress..."
- [Washington Post: Congress approves reforms to address sexual assault, rape in military](#)

With more reforms on the way in this year's defense bill—specifically the bipartisan [Military Retaliation Prevention Act](#): a bill by Senator Claire McCaskill (a former prosecutor of sex crimes), and Senator Joni Ernst (the first female combat veteran to serve in the U.S. Senate) to curb stubbornly high rates of retaliation against victims by their peers.

These reforms have begun to [show concrete progress](#):

- ✓ **Incidents of violence [are down](#)**, dropping by 29 percent from 2012 to 2014.
- ✓ **The number of victims with the confidence to come forward [is up](#)**, with the total number of reports (restricted and unrestricted) up 69 percent from FY12. About 1 out of 4 survivors reported in FY14, up significantly from 1 out of 10 survivors reporting in FY12. Increased reporting has occurred in all categories—unrestricted reports, restricted reports, and reports that survivors converted from restricted to unrestricted.
- ✓ **And victims themselves are expressing more confidence in the system.** In 2015, 77 percent of survivors surveyed said they would recommend that other sexual assault victims file a report.

"The percentage of military personnel who said they were victims of sexual assault dropped dramatically over the past two years..." - [CNN: Sharp decrease of sexual assault in military, study finds](#)

What about retaliation against survivors?

Even while incidents have dropped and reporting by victims has gone up, rates of retaliation carried out against survivors remain stubbornly high. That's why McCaskill and Ernst have proposed the bipartisan [Military Retaliation Prevention Act](#). The bill—which has been included as part of the defense bill being debated by the U.S. Senate—would:

- **Strengthen the military response** by making retaliation its own unique offense under the Uniform Code of Military Justice (where retaliation is currently punishable under Article 92, a broader article to punish failure to obey an order or regulation)
- **Increase transparency** by requiring victims be notified of how their complaint was decided—and requiring the Pentagon collect and publish data on retaliation complaints
- **Require specific training for investigators**, including all military criminal investigators, IG investigators, or any personnel assigned by commanders to investigate the complaints
- **Ensure each of the services adopt best practices** by establishing metrics for measuring the outcomes of their efforts to prevent and respond to instances of retaliation

What about stripping commanders of their ability to pursue courts-martial?

- **No evidence has been offered that commanders are systemically sweeping cases under the rug, refusing to prosecute, or that commanders having this ability is a roadblock for curbing assaults.** Thanks to recent reforms, if a commander does reject legal advice in favor of a court-martial, that decision is elevated to civilian leadership. And a recent review demonstrated that since the Fiscal Year 2014 *National Defense Authorization Act* was enacted, there have been no instances in which a commander has rejected the advice of a staff judge advocate who recommended a court-martial in a sexual assault case. On the contrary, the review cites instances in which a commander did pursue a court-martial even when a staff judge advocate recommended against one, underscoring the critical role commanders play in this process.
- **Independent policy experts have rejected this proposal.** The Response Systems Panel was an [independent commission](#) created by Congress—majority-civilian and majority-women—to study these issues and recommend action. It took testimony from hundreds of witnesses and spent months on an extensive investigation, and no other group has conducted such rigorous work on the issue. The Panel [decisively rejected this proposal](#).
 - [Former U.S. Representative Elizabeth Holtzman, author of the federal Rape Shield law](#): *“I have spent a good deal of my professional life involved in fighting sexual assault, as a member of Congress, as a district attorney... I started out with the view that Senator Gillibrand is a very bright and intelligent and committed person for whom I have great amount of respect, and I thought her proposal sounded right. I’ve changed my mind, because I was just listening to what we heard. I started out... thinking, why not change it and now I am saying, why change it... Just turning it over to prosecutors doesn’t mean you are going to get the results you are looking for...”*
 - [Mai Fernandez, Executive Director of the National Center for Victims of Crime](#): *“I went into this thinking [stripping commanders of the ability to pursue courts-martial] made sense... But when you hear the facts, it doesn’t hold up... the evidence just doesn’t hold up... Problems are solved with facts... I was a former prosecutor, I like the independence of a prosecutor. When you hear it at first blush, you go, yeah I want to go with that, but when you hear the facts, like you would in a case, it just doesn’t hold up. If there is evidence out there I would like to see it...”*
 - [Former Federal District Judge Barbara Jones, author of a judicial opinion striking down DOMA](#): *“I have not been persuaded that the removal of a commander as the convening authority is going to have a positive impact. There is no empirical evidence that reporting is going to increase. There is no empirical evidence that prosecutions will be better handled, that investigations even before prosecutions will be better handled. . . . There is no evidence that removing the convening authority is going to improve any of those parts of the system as they exist now. If I were persuaded that removing the convening authority would encourage victims to report then this would be a different story, but I am not persuaded of that...”*
- **It’s a risky proposal that could exacerbate retaliation against victims**—since most victims in military cases are enlisted, their “chain of command” will include a large number of people, almost none of whom have anything to do with deciding how a case is handled. A servicemember’s first-line supervisor is often another junior enlisted member who has no input on the case. So stripping commanders of their ability to pursue courts-martial should not be seen as having any positive effect on retaliation—on the contrary, retaining senior commanders in this process would help ensure servicemembers in their formations are treating a victim appropriately, much more so than relegating this power to an outside prosecutor.