

Congress of the United States
Washington, DC 20515

September 14, 2020

The Honorable Adam Smith
Chairman
House Armed Services Committee
2216 Rayburn Office Building
Washington, D.C. 20515

The Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
2216 Rayburn Office Building
Washington, D.C. 20515

The Honorable Jim Inhofe
Chairman
Senate Armed Services Committee
205 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Smith, Ranking Member Thornberry, Chairman Inhofe, and Ranking Member Reed:

We write to urge you to retain House-passed provisions to address military sexual assault, sexual harassment, and intimate-partner violence in the conference report for the Fiscal Year (FY) 2021 National Defense Authorization Act. As you are all aware, despite numerous efforts by Congress and the Department of Defense (DoD), sexual and domestic violence remain persistent problems in the Armed Forces.

Sexual assault and sexual harassment are experienced by tens of thousands of servicemembers, and most do not come forward to report it. In FY 2018, the most recent data available, 6.2% of servicewomen (about 13,000 women) and 0.7% of servicemen (about 7,500 men) indicated that they experienced a sexual assault in the year prior to being surveyed.¹ Only 5,805 filed unrestricted reports that are investigated.² In the same year, an estimated 24.2% of servicewomen experienced sexual harassment, as did 6.3% of servicemen.³ In total, roughly 120,000 servicemembers experienced sexual harassment, but only 932 formal reports were filed, a reporting rate of less than 1%.⁴

The numbers for the military service academies are even worse. In 2018, 28.5% of academy women and 5.8% of academy men indicated that they had experienced unwanted sexual contact since entering the academy—up from 21.6% and 3.3%, respectively, in 2016.⁵ DoD estimates a reporting rate—which includes restricted and unrestricted reports—of 12%.⁶ DoD also surveyed

¹ Sexual Assault Prevention and Response Office (SAPRO), *Annual Report on Sexual Assault in the Military: Fiscal Year 2018* (DoD, Washington, DC: April 9, 2019), 3.

² SAPRO, *Annual Report on Sexual Assault in the Military: FY 2018*, 6.

³ Office of People Analytics, *2018 Workplace and Gender Relations Survey of Active Duty Members* (DoD, Washington, D.C.: May 2019), ix.

⁴ SAPRO, *Annual Report on Sexual Assault in the Military: FY 2018*, Appendix F, 2.

⁵ SAPRO, *Annual Report on Sexual Harassment and Violence at the Military Service Academies: Academic Program Year 2018 – 2019* (DoD, Washington, DC: January 2020), 13.

⁶ SAPRO, *Annual Report on Sexual Harassment and Violence at the Military Service Academies: APY 2018-19*, 16.

cadets and midshipmen about the prevalence of sexual harassment. In Academic Program Year (APY) 2017-18, 51% of academy women and 16% of academy men experienced sexual harassment.⁷ Despite this high prevalence, no cadet or midshipman filed any formal sexual harassment complaints.⁸

Domestic violence is an especially challenging issue for the military community. We have heard from survivors of intimate-partner violence and their counsels about the difficulties they face in getting the help and support they need. Survivors are endangered by ineffective military protective orders that are not respected in civilian jurisdictions. In rare cases where perpetrators are held accountable, survivors face Catch-22 situations where the punishment to the abuser also punishes the family through loss of income and benefits. Further frustrating efforts to address intimate-partner violence is a lack of data on prevalence and reporting comparable to the data provided in the annual SAPRO reports and biennial Workforce and Gender Relations Survey.

Given this lack of progress, we must take action to advance new approaches to address these challenges. We urge you to retain the following provisions from Division A of H.R.6395 in any FY 2021 NDAA conference agreement:

Sec. 538 – Military-civilian task force on domestic violence. This task force will leverage expertise from the military, government agencies, experts, and providers of services to survivors of intimate-partner violence to review and recommend ways to improve the military’s efforts to prevent and respond to domestic violence. Additionally, this provision would require the military to begin collecting and reporting data on the prevalence of intimate-partner violence.

Sec. 540J - Qualifications of judges and standard of review for Courts of Criminal Appeals. Military appellate courts have unprecedented power to review the factual sufficiency of a conviction, to second-guess a jury’s determination of guilt. As it stands, a military defendant must twice be found guilty beyond a reasonable doubt before the conviction can stand—first at trial and again on appeal. This uniquely strict failsafe is a relic of another era and is no longer justified in the modern military system. It has also disproportionately affected sexual assault, child abuse, and domestic violence cases where appellate courts are measuring the credibility of witnesses based only on a written transcript. This bipartisan provision, similar to a provision in the Senate version of the NDAA, implements a recommendation of the Military Justice Review Group and would allow military appellate courts to maintain their power to review the factual sufficiency of a case—but only overturn convictions if clearly convinced that the decision was against the weight of the evidence. Further, it would require en banc review of cases overturned on factual sufficiency grounds.

Sec. 542 – Authority of military judges and military magistrates to issue military court protective orders. Command-issued protective orders are an important tool but have significant limitations, namely their lack of enforceability in other jurisdictions. This provision would preserve command-issued orders and offer victims an additional option of seeking a military

⁷ SAPRO, *Annual Report on Sexual Harassment and Violence at the Military Service Academies: APY 2017-18* (DoD, Washington, DC: January 2019), Appendix D, 20.

⁸ SAPRO, *Annual Report on Sexual Harassment and Violence at the Military Service Academies: APY 2017-18*, Appendix D, 19.

court protective order compliant with the full faith and credit provision of the Violence Against Women Act. These new court protective orders would be more portable and enforceable and would offer stronger due process protections for both victims and the accused.

Sec. 546 – Coordination of support for survivors of sexual trauma. This provision would ensure an effective handoff for survivors when relocating between stations within the military or when separating from the military and transferring from service providers within DoD to resources within the Department of Veterans Affairs.

Sec. 548 – Safe-to-report policy applicable across the Armed Forces. Recent DoD focus groups reinforced what we have heard for years—that fear of punishment for minor collateral misconduct, such as drinking, deters survivors from reporting sexual assault.⁹ This provision would require DoD to establish military-wide policies that send a clear message to survivors—they will not be punished for minor infractions when reporting a sexual assault.

Sec. 549 – Question in workplace and gender relations surveys regarding prosecutions of sexual assault. This provision would add a question to this existing biennial survey on whether survivors of sexual assault would be more likely to report if prosecution decisions were made outside of the chain of command.

Sec. 550 – Pilot program on prosecution of special victim offenses committed by attendees of military service academies. As the statistics indicate, sexual assault is an epidemic at the military service academies—and getting worse. This provision would establish a 4-year pilot program at the service academies to test moving charging recommendations for special victim offenses like sexual assault to an impartial Office of the Chief Prosecutor and to improve fairness in the court-martial process by testing randomized jury selection. This temporary pilot program would provide military leaders and policymakers with data about whether this approach would increase the willingness of survivors to report sexual assault and increase the likelihood that assailants are held accountable. Because the service academies are nonoperational and populated by cadets and midshipmen at the highest-risk age for sexual assault, this is an appropriate environment to test this approach, which if successful, could offer an important breakthrough after many frustrating years of failure to change the trajectory of sexual assault in the military.

Sec. 550A, 550B, and 550C: These provisions would require DoD to report to Congress when investigations for sexual assault take longer than 6 months and the reasons for the delay, require reporting to Congress of sexual abuse and harassment that occur during the medical examination process that precedes entry into the Armed Forces, and establish a new, confidential reporting option for sexual harassment. This confidential reporting option would allow victims to report harassment to a party outside of the chain of command of the victim or accused, such as a Sexual Assault Response Coordinator, and would allow the victim to submit information to the military's Catch A Serial Offender database and learn if others have also reported the alleged harasser. Victims who file a confidential report could convert to a formal report at any time.

⁹ SAPRO, *Annual Report on Sexual Assault in the Military: FY 2019* (DoD, Washington, DC: April 17, 2020), 7.

Sexual and intimate-partner violence has no place in our military. It is not only a moral wrong, but also undermines recruitment and retention efforts, hurts morale, and jeopardizes our national security. The lack of progress made necessitates bold action. We ask for your support and advocacy to retain these important provisions in the final version of the FY 2021 NDAA.

Sincerely,



Jackie Speier
Member of Congress



Veronica Escobar
Member of Congress



Anthony G. Brown
Member of Congress



Deb Haaland
Member of Congress



Gilbert R. Cisneros, Jr.
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