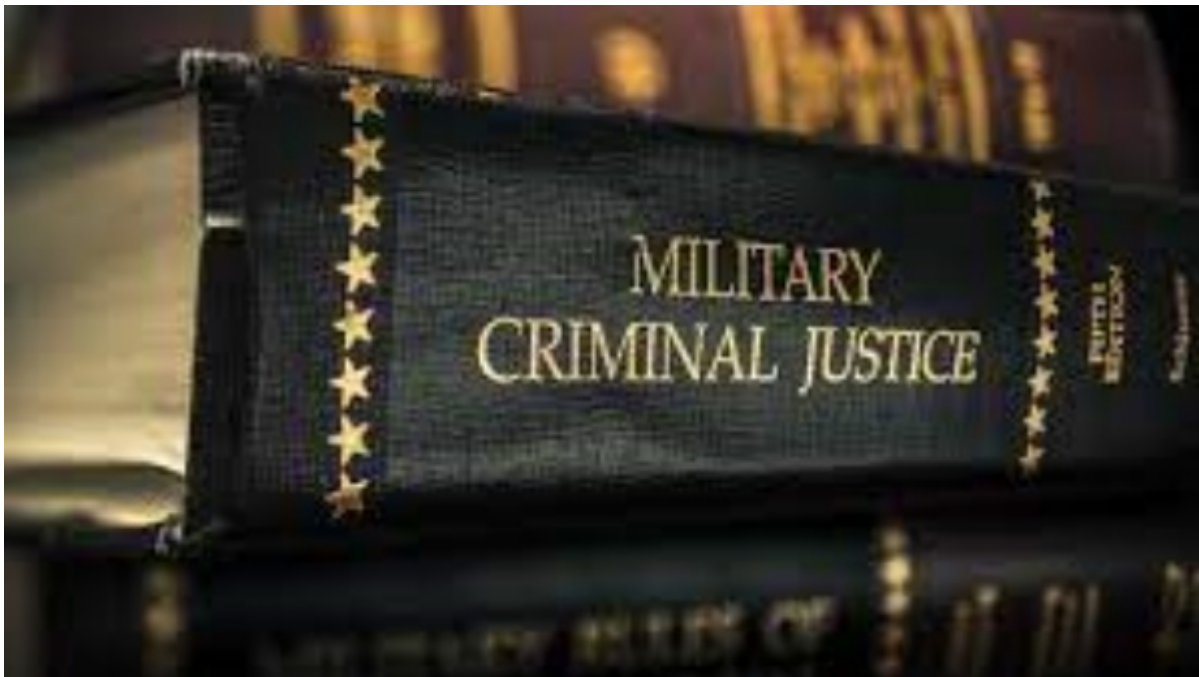


# Actual justice for sexual crime in the military – a better way

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By Sam . . . While the NDAA (National Defense Authorization Act) is massive, Senator Kirsten Gillibrand's bill to reform the military justice system is pretty straightforward. I have read it in its entirety and, at least as it is written, this bill increases protections for the accused and helps bring back some semblance of due process in the military. Ideally, the military would disentangle itself from the prosecution of these (and other) crimes all together and allow true professionals – civilian law enforcement – to handle them, but barring that, this is the next best thing.

Senator Gillibrand is correct in stating that the prosecution of sexually violent crimes needs to be removed from the chain-of-command and given to neutral officers who are legally trained, although she came to this understanding incorrectly. Her bill is premised on the motion that commanders were not vigorously pursuing prosecution of sexually violent crimes but

rather were sweeping accusations under the proverbial rug in order to protect themselves and/or the accused or due to alleged victims who said they feared "retributions" if they reported. Any such "sweeping" or attempts at retribution are literally not possible in the current military system. Furthermore, there's no factual evidence to suggest that this is happening. All that does exist is anecdotal statements by women that they were not taken seriously when they made a report, which is the logical equivalent of declaring a neighborhood to be a high crime area based on unreported robberies. The truth is that the military prosecutes and incarcerates at a higher rate than civilians. The reason that many accusations never see trial is not because a coverup exists but rather because they are weak or baseless. As for protecting the accused, units cut ties with the "rotten apple" in their midst as quickly as they can.

As for why the bill is good, it is self-evident that legal professionals should be in charge of determining whether or not a case will proceed to trial. As an example, during my preliminary hearing, which is known as an Article 32 hearing, similar to a grand jury, an impartial lawyer called a preliminary hearing officer (PHO) found no probable cause and therefore recommended that my case not proceed to court martial. The recommendation is not binding, however, and it was overridden by my chain-of-command, a colonel with no legal background whatsoever. The PHO was concerned about due process and fairness; my colonel was concerned about bad PR for the unit and someday making general.

If Senator Gillibrand's bill had been law, my case would have never made it to the preliminary hearing stage, and I would be home right now wrapping gifts instead of in prison. Her bill requires a legal professional in the rank of O-6 (colonel in the Army, Marines, and Air Force and captain in the Navy), ranks which require experience and ability to achieve. This officer will determine whether or not the charges should be

pursued. Here is the key: Under the senator's bill, this officer needs to be outside the chain-of-command of the accused and the accuser. Without the numerous biases with which untrained commanders have to deal, weak cases and cases lacking in merit are less likely to proceed to court martial.

I believe Senator Gillibrand's bill will have the effect of lowering the number of wrongful convictions in the military, and it will help shine light on the frivolousness of the cases in the first place. This will of course lead to consternation for many who want to see convictions rise in lieu of real justice, which is what has led us to the problematic position we are in now. Of course, there are potential problems with the bill. For example, it remains to be seen whether or not the aforementioned legal professionals will be appropriately promoted, but, absent any evidence of this right now, I count this bill as a positive one and quite possibly a major one.

***Sam is a member of the U.S. Army and is currently incarcerated at the Midwest Joint Regional Correctional Facility at Ft. Leavenworth, Kansas.***