



# Center for Military Readiness

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Elaine Donnelly  
President

The Honorable James Inhofe  
Ranking Member, Senate Armed Services Committee  
228 Russell Senate Office Bldg.  
Washington, D.C. 20510

May 12, 2021

Dear Senator Inhofe,

I am writing to express concern about Sen. Kirsten Gillibrand's previously-failed "Military Justice Improvement Act," which she hopes to include in the [National Defense Authorization Act \(NDAA\) for 2022](#).

Sexual assaults in the military are a huge problem but the bill is no more acceptable now than it was when Sen. Gillibrand first offered it in 2013.

For many good reasons, the Judge Advocate Generals of the Military services have strongly opposed the legislation, which would transfer decision-making power in military sexual assault and other non-military cases from commanders and convening authorities to civilian prosecutors outside the chain of command.

Contrary to some claims, nothing in the Gillibrand bill would protect anyone's daughters or sons from the pain of harassment or assault. Nor would military women or men seeking justice benefit from this legislation, which would destroy the sound principle that military commanders must be held accountable for *everything* that happens in their area of responsibility.

[Charles D. \("Cully"\) Stimson](#), a former military prosecutor, defense counsel, and Deputy Chief Judge of the Navy-Marine Corps Trial Judiciary, analyzed the Gillibrand legislation in a detailed Heritage Foundation [Special Report](#). Wrote Stimson, "*Taking [decision-making] power away from commanding officers eliminates an indispensable authority that cannot be delegated or transferred to another if we are to demand accountability from commanders for prosecuting and preventing sexual assaults and other serious crimes.*"

Sen. Gillibrand worries about women's fear of filing complaints when abusers are in their own chain of command. But assigning cases to prosecutors elsewhere would not guarantee confidentiality or result in speedy prosecutions or justified convictions, especially in cases lacking convincing evidence.

On matters of sexual assault, military women deserve support, competent legal representation, and justice, not emotion and radical action that will weaken the Uniform Code of Military Justice (UCMJ) — especially since research shows that [the military is doing a better job](#) prosecuting sexual assaults, and providing support to victims, than colleges do.

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Some civilian attorneys who do not have and do not want responsibility for command may be even less inclined to prosecute sexual assault cases that may be lacking evidence needed to support convictions. Furthermore, it would not be right to hold commanders responsible for decisions they are no longer empowered to make.

I understand why some members of the Senate are inclined to act out of sheer frustration. The Pentagon's annual **Sexual Assault Prevention and Response Office (SAPRO)** reports indicate that actual cases of sexual assault in the military have relentlessly increased, year after year, with no end in sight.

The CMR Policy Analysis linked [here](#) includes a Defense Department graph that is reproduced on the attached page, marked **Figure 1**. As you can see, completed cases of sexual assaults, including non-service members, climbed from **6,769 in FY 2017** to **7,623 in FY 2018** – up **13%** in one year and a **168%** increase since the **2,846** actual cases that SAPRO reported in **FY 2007**.

The lower part of **Figure 2**, which tracks completed cases filed by service members-only, shows that total numbers rose from **5,277 in FY 2017** to **6,053 in FY 2018** – a **15%** hike in one year and a **146%** increase since the **2,454** service-member cases reported by SAPRO in **FY 2007**.

It is a disgrace that in a single year (**FY 2018**), over **6,000** military men and women found it necessary to report sexual assaults through a confidential system (Restricted) or on the public record as part of legal action (Unrestricted).

Having said that – it is important to separate data based on actual completed cases from much higher “virtual numbers” generated by a bi-annual RAND online “prevalence” survey called the “Workplace and Gender Relations Survey of Active-Duty Personnel” (WGRA).

Contrary to some news reports, the military did not report “nearly 21,000 cases of assault” in one year. That number reflects RAND'S *estimate* for FY 2018, based on an online survey. Virtual numbers such as this float up and down on the DoD SAPRO graph; they are not tied to actual cases. (**See Figure 2**)

The CMR Policy Analysis linked [here](#) highlights another serious problem that should be considered objectively. According to figures published in annual SAPRO reports and tracked in the attached **Figure 3**, from **FY 2009** through **FY 2018**, unsubstantiated reports in completed cases more than doubled, from **13%** to **28%**.

The fact that 3-in-4 cases are substantiated and punished accordingly should not diminish concerns for the 1-in-4 persons who are falsely accused. Sen. Gillibrand, however, seems unconcerned about rights of due process and justice for both the accuser and the accused.

In 2018, Sen. Gillibrand assumed that [even the most bizarre accusations against Judge Brett Kavanaugh were true](#), and that his nomination to the Supreme Court should be withdrawn.

For decades, feminists, social justice warriors, and high-level Pentagon officials confidently predicted that close combat assignments for women would increase respect for women and reduce sexual assaults. Instead, Defense Department reports and data indicate that the opposite has happened.

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Sen. Gillibrand's claims today are no more credible than previous assurances about women in the infantry and unworkable "gender-neutral" standards in the Army's new Combat Fitness Test (ACFT), which have become an unworkable fiasco.

In June 2014, an independent commission called the Response Systems to Adult Sexual Assault Crimes Panel, which Defense Secretary Chuck Hagel established during the Obama Administration, opposed the Gillibrand bill for sound reasons that remain valid today.

Among other things, the panel's [Final Report](#) recommended that "***Congress not adopt . . . the Military Justice Improvement Act to modify the authority vested in convening authorities to refer sexual assault charges to courts-martial.***" (Recommendation #36, p. 22, emphasis added)

The panel's report also stated, "***The evidence does not support a conclusion that removing authority to convene courts-martial from senior commanders will reduce the incidence of sexual assault . . . [or] improve the quality of investigations and prosecutions or increase the conviction rate in these cases.***" (Recommendation #37, p. 22, emphasis added)

There are better ways to address the issue, starting with the clear intent to provide justice for both the accuser and the accused. The services, for example, should strengthen legal training programs for defense judge advocates, prosecutors, and crime investigators, ensuring competent legal representatives who are fully prepared for court proceedings.

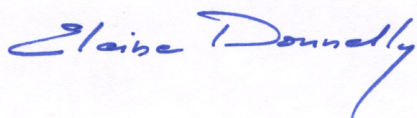
Commanders, who are advised by legal professionals at every step of the decision-making process, should make sure that both the accuser and the accused have even-handed access to witnesses, investigators, and evidence. Accusers deserve support and protection, but anyone filing false accusations should be held accountable.

All personnel should be expected to avoid the appearance of impropriety in professional relationships, and recruiters and drill instructors should not be alone with prospective recruits or trainees. Defense Department officials should support commonsense policies that respect human sexuality and desires for privacy in facilities and berthing areas reserved for women.

The Pentagon also should encourage discipline rather than indiscipline by reinforcing the principle that personal conduct regulations in the military apply 24/7, on-base and off-base, for as long as a person remains in service.

I hope that you will reject Senator Gillibrand's problematic bill and instead lend support to sound policies that will reinforce discipline, respect, and justice for all.

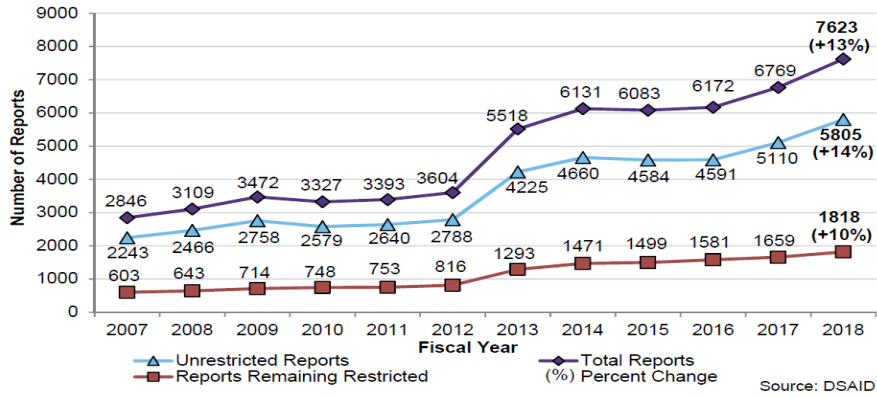
Sincerely,



Elaine Donnelly  
President, Center for Military Readiness

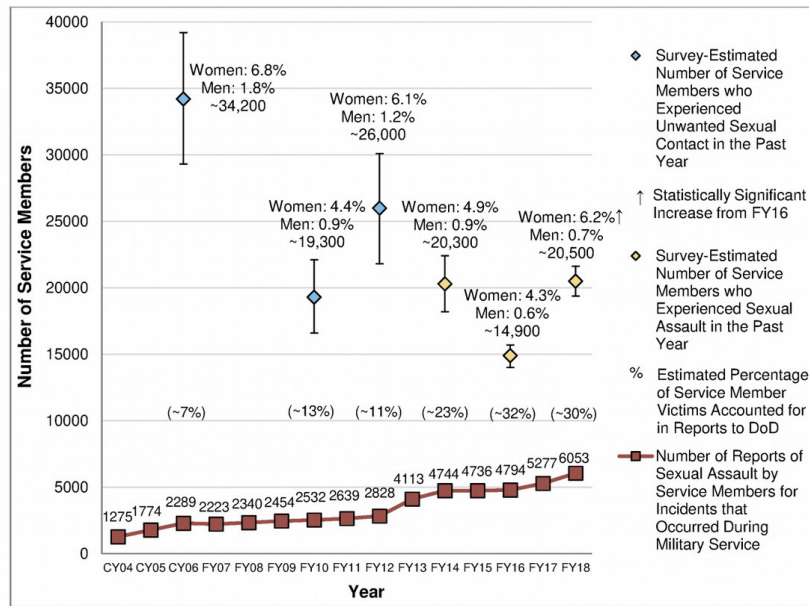
Enclosure

## DoD Data Reveal Problems with Sexual Assault Cases and Unfounded Accusations



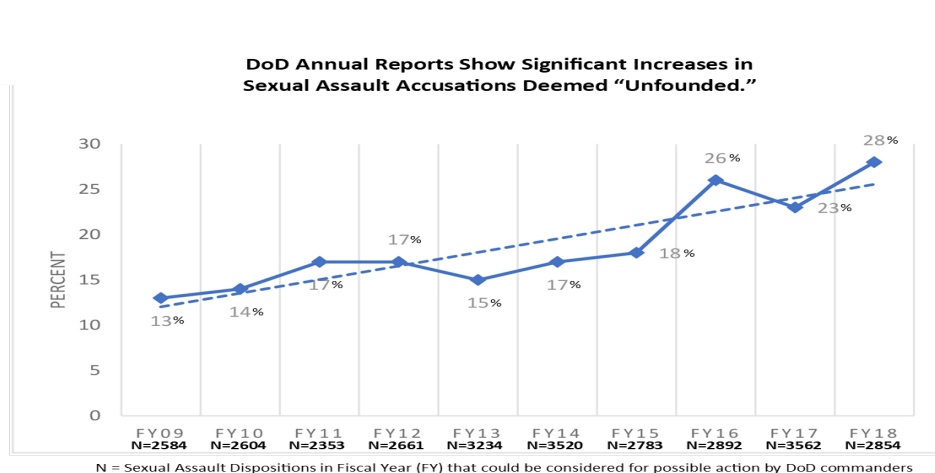
**Figure 1: Reports of Sexual Assault Made to the Department of Defense, FY07 - FY18**

Source: SAPRO Report for FY 2018, p.15 and Appendix B: Statistical Data on Sexual Assault, p. 8, Figure 1, and p.9, Table 1 and Figure 2.



**Figure 2: Estimated Prevalence and Actual Reporting Rates for Service Members, 2004-2018**

Source: SAPRO Report for FY 2018, Figure 2, p. 9. Every two years, RAND and other contractors for SAPRO have conducted the Workplace and Gender Relations Survey of Active-Duty Personnel (WGRA) survey to measure the “prevalence” of sexual assaults with anonymous reports of “under-reported” crimes. Survey-generated “virtual numbers,” which are much higher than completed cases, often are misrepresented in exaggerated reports; e.g. “There were 20,000 sexual assaults in FY 2018.”



**Figure 3: Significant Increases in Sexual Assault Accusations Deemed “Unfounded”**

Source: Annual SAPRO Reports, FY 2009 through FY 2018. This graph prepared by the Center for Military Readiness (CMR).