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OPINION

Prosecution of sex assaults needs to change

BY

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Years of delay, delay, delay has been the story of doing anything about sexual assault in the military, but new developments show that real progress may happen soon. However, there are no guarantees.

The latest Defense Department's fiscal report found that over 20,000 service members experienced some form of sexual assault annually, a 38% increase from 2016.

We've repeatedly heard defense of the current internal adjudication process from the secretaries of the services and many members of Congress. However, on June 22, Secretary of Defense Lloyd Austin endorsed changes to the way the military handles sexual assault following recommendations from a Pentagon commission he assembled.

"We will work with Congress to amend the Uniform Code of Military Justice, removing the prosecution of sexual assaults and related crimes from the military chain of command," Austin said in a statement. Austin also supports the inclusion of other special victims' crimes, including domestic violence, in the independent prosecution system.

On June 23, Sen. Kirsten Gillibrand, D-N.Y., House Speaker Nancy Pelosi, and Senate Majority Leader Chuck Schumer were among lawmakers who announced introduction of the Vanessa Guillen Military Justice Improvement and Increasing Prevention Act, which would allow an independent military prosecutor to decide whether to pursue trial in all serious cases, including rape and murder. The bill has bipartisan support from 66 senators and over 100 House sponsors of similar legislation.

President Joe Biden has the ability to fix this issue with an executive order. President Harry Truman signed an executive order that abolished discrimination on the basis of race, color, religion or natural origin in the U.S. Armed Forces. President Bill Clinton signed an order that called for safe and effective vaccines, antidotes and treatments to negate or minimize the effects of chemical, biological and radiological weapons.

Biden himself signed an executive order that allowed all qualified Americans to serve in the Armed Forces regardless of gender identity. Similarly, he has the power to defend victims and survivors of sexual assault in the military through an executive order, at least until Congress can pass a bill that protects those members. Permanent legislative action is the best solution.

Gillibrand has been working to eradicate this problem since 2013 with the Military Justice Improvement and Increasing Prevention Act.

The bill removes the decision over whether to prosecute serious crimes, including sexual assault, from the chain of command to “independent, trained, professional military prosecutors.” Crimes that are “uniquely military in nature” and ones that are punishable by less than one year of confinement will remain within the chain of command.

The current system allows military leaders to protect the individuals who do not need or deserve such protections.

Research found that two common reasons individuals do not report sexual assault are lack of confidence that something will be done and because the person that they had to report to was the perpetrator or a friend of the perpetrator.

Military leaders inside the services are skeptical about shifting prosecution decisions on sexual assault and other major crimes to independent judge advocates, according to The Associated Press. They believe the shift could even decrease the number of prosecutions. Gillibrand is skeptical.

In 2016, 7 out of 10 service members reported their assault in a “restricted” manner, meaning they would confidentially disclose the details of the assault and receive medical and counseling services without starting an official investigative process. The number of victims who report in a restricted manner show the lack of confidence they have in the system’s ability to treat them fairly during an investigation.

Out of the 30% of individuals who make an “unrestricted” report, 60% said they experienced some form of retaliation for reporting. Retaliation can include anything from demotion, salary reduction and firing to ostracism and maltreatment of a victim. It can serve as a way to intimidate sexual assault victims out of reporting.

Pentagon records also show that prosecution and conviction rates are falling while sexual assaults are not. Despite the service leaders’ concerns, all statistics point to the fact that service members are not receiving the help they need nor are they being treated fairly with the current system.

Changing the way the military prosecutes sexual assault can be a game changer in fixing this persistent problem, potentially building confidence within the system and encouraging victims to come forward unrestricted.

“We haven’t moved the needle,” said U.S. Army Gen. Mark Milley, Chairman of the Joint Chiefs of Staff. “That’s the bottom line. We haven’t resolved the issue.” Milley and Austin could cause the individual services to come aboard needed changes.

A study by the Rand Corp. found that sexual assault doubles the odds that a service member will leave the military within 28 months. Assaults potentially contributed to 2,000 more members leaving the military than expected, and sexual harassment contributed to the departure of an additional 8,000 service members according to the American Homefront Project.

The time for legislation for accountability and punishment has more than come, as in the Vanessa Guillen Military Justice Improvement Act, with bipartisan support. Pelosi and Schumer have promised votes soon.

They should be encouraged. Delay, delay, delay is no longer an option.

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Backed by other family members and attorney Natalie Khawam, right, Spc. Vanessa Guillen's sister, Lupe, speaks at a news conference marking the first anniversary of the Fort Hood soldier's killing, April 22, 2021, at the Navy Memorial in Washington, D.C. (Stars and Stripes)