

**Senator Kirsten Gillibrand (D-NY)
Senate Armed Services Committee**

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Moderator: Senator, it's a great honor to have you. Your staff said you're on a very tight timeline, so we'll go ahead and jump in, if that's okay.

You've been active across a broad agenda of military and national security issues, most recently working on important burn pit legislation and equally so on a resolution to reform the War Powers. But I do want to open obviously with the issue you've been pressing for more than a decade, reforming the UCMJ. And you've certainly gained attention and a lot of traction in recent months.

The SecDef, Chairman and others are supporting you but not fully in the way you want to reform UCMJ. So the question is, given your successes, ma'am, what's the way ahead? Where does your initiative go from here? What are your next steps?

Senator Gillibrand: Where we are today is we've proposed that to reform the military justice system that we draw a very bright line of serious crimes that have more than one year of punishment associated with them, for three reasons.

The first reason is the data on sexual assault in the military is extremely troubling. Unfortunately despite insistence that they have this and they [inaudible] sexual assault, the rate of cases going to trial is declining; the rate of cases with convictions is declining; but the rate of sexual assault is persistent and about 20,000 a year with retaliation rates stuck at about 64 percent. And only one case ending in conviction for retaliation over the last few years. So we are not in a good place. So for that reason we want to professionalize how we deal with the military justice system with better trained prosecutors making the decision about whether to go to trial. Two, to take out the bias in the system. We see that there's just not enough support for survivors of sexual assault. Often it's he said/she said. The predator or the assailant is believed, not the survivor. So that's the reason why.

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The bright line is because when we started writing this bill legal experts and experts in military justice, people like Jean [Sidel], people who run Protect Our Defenders, people who have been looking at this issue for a very long time said you don't want to just take one crime attitude stance because if you do then it's going to look like they're getting special treatment. We have a report from the commission that just looked at this issue and they said women are already being marginalized, already feel like they're being ostracized and to have another layer of getting special treatment will further undermine their position within the military.

Second, our allies have already looked at the issue of how you professionalize the military and they chose a bright line of serious crimes too. So the UK, Israel, Canada, Australia, Netherlands, Germany, they all did a bright line a [inaudible] or [inaudible] equivalents because they wanted to support defendant's rights. They believed that if you have more than one year of jail time then you should have a trained military prosecutor make the decision not somebody who's biased within their chain of command.

Last, we now have a lot of data that shows that if you are a black or brown service member you are disproportionately punished at a rate of about two times white service members. In the Marines, for example, you are 2.61 times more likely to be given a general court martial which tend to be given for more serious crimes with harsher punishment. And if you look at capital offenses, again, disproportionately black service members are getting capital punishment.

So these are things that we've fought long and hard about and we think that based on these three reasons that the bright line is preferable. Our allies when they did do it they said no diminution in command and control, so we also have their track record to know. And we think it's the best way to professionalize the system.

The Secretary of Defense agrees with the Commission's recommendations to take sexual assault and all related crimes out of the chain of command. He does not believe that will undermine good order and discipline, and he does not believe that will result in less command and control. So have others stated the same, whether it's Admiral Mullen, whether it's General Miller.

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They all support this one change.

The commission did not look at other serious crimes. They only looked at sexual assault and related crimes such as child abuse, domestic violence and sexual harassment.

So we're going to proceed to the defense markup next week and we hope to have these reforms voted in favor of and move it out in the NDAA.

The House is going to have their own hearing and markup on my bill next week. We hope that they will look at that, though, approve the bill and send it out of committee as well.

We're still fighting very hard for the bright line. We think it's preferable to just one set of crimes coming out for both plaintiff and defendant's rights issues, and because we have a track record that it doesn't undermine command and control from our allies.

Moderator: Thank you so much.

The first question goes to Phil Stewart from Reuters.

DWG: Thank you. Senator, if you could just respond to [Inaudible] yesterday that your support was weakening because of the attempt to draw that bright line. I'm wondering if you're seeing that or whether you believe also that the administration is trying to narrow the scope, that they were fully aware of your legislation when they came out with the more [inaudible] recommendation to just focus on sexual assault. Do you think they would be able to accept the legislation as it was, or do you think they'll try and fight back? Thanks.

Senator Gillibrand: I do not think we are in opposition to the administration at all. In fact I think the commission's work is excellent. I think President Biden has really led on this. And as you know, President Biden when asked on the campaign trail whether he would take out rape and murder and other serious crimes out of the chain of command he said yes, yes, yes. I would take them all out.

So it's not as if the Commander-in-Chief is against this reform, but the commission was very specific in looking only at one set of crimes.

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Our Vice President Harris was a cosponsor of this legislation and we now have 66 cosponsors of the legislation.

I thought Jennifer Steinhauer's piece was excellent and it did lay out sort of what people's views are.

I haven't talked to Senator Collins this year about the bill, but she has been a cosponsor from the beginning and the bill has been written this way from the beginning. So I look forward to talking to her about why keeping how we treat rape and murder the same, because there's a lot of cases that are domestic violence cases, harassment cases and assault cases that may never be reported that turn into murder cases. And they deserve, such as Vanessa Guillen, deserve the ability for that kind of case to be taken out of chain of command.

There was a recent article in Military Times that was pretty disturbing. I think it was published yesterday. "Soldier quietly reassigned after killing man, hitting wife finally faces murder charges" by Davis Winkie. It's a pretty startling piece about a service member who was committing domestic violence against his wife and a neighbor tried to intervene and he shot the neighbor and killed the neighbor. Instead of that murder investigation going forward and ending in a conviction, he was simply reassigned. When the wife came forward eventually to argue domestic violence and fear for her life, the record did not reflect that he's already murdered a neighbor and that he'd been committing domestic violence earlier.

So there's no evidence that I can see that the military has a great deal of success in prosecuting murder cases and doesn't necessarily do the investigation necessary that would lead investigators to understand that many of these cases are a direct result of toxic climate such as a domestic abuse case.

Last, I think that a lot of our colleagues beyond the 66 who are already cosponsors, don't necessarily recognize how few serious crimes are tried every year. It's approximately 800 across all services are tried a year. And there are thousands of lawyers already in the services ready to try them so it's not a question of resources.

Then murder convictions alone, there's just so few cases. In 2016 the total number of cases was 21. 2017 - 21. 2018 - 22.

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And 2019 - 25. So it's not like if you did the bright line that all felonies or serious crimes that you would be overwhelming the system. You would just be professionalizing the whole system for plaintiff's rights and defendant's right across the board.

DWG: A quick follow-up, one of the things I was wondering when the administration came out with this plan and adopting the commission's recommendation, there was an implementation period that ran all the way out to 2023. I was wondering what your thoughts were on that. Their argument was that the system would be overwhelmed and we needed to kind of create mechanisms to get the prosecution teams ready and get the victims [inaudible] ready. I'm wondering what do you think about the timeline?

Senator Gillibrand: I think it's unnecessary to be implemented over such a long period of time. If you did the bright line at felonies, you're talking about a current caseload of 800 cases that go to trial. For the lawyers, we have in the military today 4,479 JAGs. We have over 2000 military justice billets. We have 157 special litigators. And if you only want senior people to try these cases, you have 379 O6 JAGs. So you'd basically have every lawyer taking two cases a year. It's not hard. A DA's office, San Diego County DA, the population's three million people, they have 300 prosecutors, they have 40,000 cases. They take 13,000 special victims cases a month - 300 prosecutors. So under no circumstances does the bright line solution not have the resources to do it.

I think perhaps that the planning and the depth of training and the concerns about bandwidth have to do more with the commission's recommendations. The commission takes a different tack. They bring in non-felonies, they bring in harassment charges, they bring in a lot of requests for specialized training, specialized development of seniority, and those things will take time. But for my bill, it's a very light touch.

First of all, only three percent commanders today have convening authority for general court martial and that three percent of commanders is similar to the number of O6 JAGs. It's something like 350. It's not a lot of senior commanders that have currently preferred general court martial charges. Not a lot.

So only their job changes a little bit. And let me tell you the little bit of change. After the investigation is completed by military police, the case file will go rest on these O6 JAG desks

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who are already in existence. They would look at it. They'd decide is there a crime here, enough evidence to prosecute. If not, it goes right back to the commander's desk.

So this is an extremely light touch. It just changes where the case file goes first. I think that's extremely helpful because it's just one small change.

Second, it changes everything from the perspective of the plaintiff and defendant. A survivor of sexual assault will now say the decision-maker is trained and unbiased and not my chain of command. For a defendant who's worried about getting a raw deal - and we have all the data that DoD has created over the last three years about black and brown service members who believe they will not get a fair shake, and that white service members are given the benefit of the doubt. And they are not.

So we have the same bias in those cases. They will now see an independent, highly trained person who can be held accountable. JAGs can be held accountable. They can be highly trained and held accountable.

So I think the two-year delay is something that might be more necessary for some of the commission's recommendations. It's certainly not for my proposal. It's very simple, and all the lawyers you need are already in existence. You're just going to change perhaps where they sit and who they report to.

Moderator: Thanks so much.

Rebecca Kheel from The Hill.

DWG: Thank you for doing this.

I wanted to ask you, you briefly brought up President Biden's remarks on the campaign trail where he supported taking all major crimes out of the chain of command, but I was wondering if you have talked to him lately about your bill, and if he supports your actual bill, and if so, if you think it would be helpful if he came out and got involved beyond the statement he put out supporting the IRC recommendations.

Senator Gillibrand: I do believe he does support this bill. I spoke to President Biden. I'm not going to say what he said, because that would be inappropriate of me to relay that

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conversation. But it was essentially a congratulatory call when I got 66 cosponsors and there was indication that he would love to sign that into law.

So I believe that the President 110 percent supports what we're doing.

I think for the military and the commission to come this far is outstanding. The fact that we have a Secretary of Defense who says we should take sexual assault and other related crimes out of the chain of command and that it does not affect good order and discipline and does not affect the ability of command and control is revolutionary and groundbreaking. I just wanted to do it in the right way because again, I don't want to further marginalize female service members.

We had a hearing today and Joni Ernst made such a strong point which you can ask her for if you want, but she reiterated the point of marginalizing women and creating pink courts. Because even though there are plenty of male sexual assault survivors who come forward, the perception is this is a problem for women, and the perception will be that women are getting special treatment. I think that is valid, as someone who has served as a combat veteran and a survivor of sexual assault, she does not want to marginalize women which is why she supports this bill.

DWG: Very briefly, following up on your strategy for the NDAA, are you going to offer this as an amendment in the committee markup? Or are you going to wait until the floor? Do you know how you're going to play it yet?

Senator Gillibrand: We're certainly going to debate all of these ideas in the committee, and I will hopefully get votes on everything within the committee but I also hope to get a floor vote.

I have a concern that even if we win in committee and get the things we want in this bill that it will be taken out in conference. So I think it is necessary to have a floor vote no matter what because I have lived through the challenge of passing something in the Senate Armed Services Committee, passing the same exact same legislation in the House Armed Services Committee, and having it still be taken out in conference because the DoD does not approve of it.

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So I don't believe that our bill won't be watered down, reduced or modified inappropriately in conference.

Moderator: Next question is Abraham Mahshie from Air Force Magazine.

Senator Gillibrand: Oh, I have the data - I misspoke. So authorized convening authority today across all services is 222. So my bill changes the job of 222 people. Even less that actually use the convening authority - 115. So in fact my bill changes the job of 115 people. It is not an earth-shattering, difficult to enact idea. It's simple, it's elegant, it's discreet, but it has a huge impact on the perception of survivors and defendants.

I do think the DoD typically merges all ideas into one idea and then talks about why they're all terrible without precision because that is how they muddy the water and that is how they find people to not support the legislation. I think that's probably what's happened in a couple of cases of quotes that Jennifer was able to get. I think the water has been muddied. And I think if I had the opportunity to talk to those individuals they will be right back where they were, which is supporting the legislation as the right approach.

DWG: Thank you so much for taking my question, Senator.

I wonder if you can update us on the status of your toxic chemicals bill and the urgency of helping K2 veterans and others who were exposed to toxic chemicals almost 20 years ago and as the United States fully withdraws from Afghanistan, before these veterans [inaudible].

Senator Gillibrand: The House Chairman, Takano, just put out a bill that includes a lot of my bill in it and they're going to have their markup next week. So I'm excited to see if they can keep our whole legislation in this larger toxic exposure package. Our lead in the House is Congressman Ruiz and we had an extraordinary press conference bipartisan, bicameral with a lot of advocates supporting it.

I'm optimistic that we can keep our bill intact. If it is reduced in size in terms of the number of diseases that are covered, that's something that we can handle over time. It's what happened initially with the 9/11 health bill. We understood

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that people didn't know how many diseases would be covered and were uncertain, so we used the first five years to actually do the epidemiology and prove all the disease relations. We will do the same thing with burn pit if necessary and we will make sure that all diseases are covered.

But I'm optimistic with the strong bipartisan support that we have, we will get a vote on our bill and it will pass. And I think it will pass in this Congress.

DWG: Is it urgent that it be done now before all troops are out of Afghanistan and while Afghanistan is highlighted --

Senator Gillibrand: The sooner the better. I think, the data was, how many people have registered? 200,000 people have registered - yeah, 238,000 vets have registered under the burn pits registry and almost all of them are denied basic healthcare and coverage.

So we are in an urgent crisis with people who are dying of cancer, not getting coverage by the VA. And as a consequence, they have to use their own money and are going into bankruptcy and losing their homes and going into other financial ruin, just to protect the health and well being of these service members and to protect them from dying.

So every Congress is too long of waiting. It has to be done this Congress and it needs to be done as soon as possible.

Moderator: We have a lot of questions queuing, up. The Senator has a hard stop at 4:10, so if we can just have one question per reporter, it would help everybody get more questions in.

Haley Britzky of Task & Purpose.

DWG: Thanks so much, and Senator, thank you for doing this.

I know the majority of your work with your legislation has been done on the prosecution of assault, but I'm wondering if you have any thoughts you could share about the prevention side which is something that military leaders obviously speak about regularly. Whether or not they are working on that is another question.

But do you have any ideas you might be able to share or things that you believe they need to prioritize in order to deal with

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assault before it even gets to the prosecution state?

Senator Gillibrand: Our bill, the bill that Joni and I wrote, has several provisions on prevention and we want all of them included. In addition to that, the IRC made recommendations for eight ideas with regard to prevention. I am hopefully going to include all of them in the NDAA.

But do not underestimate the power of locking up rapists as people who will commit more rapes. Because most rapists are recidivist and if you can actually prosecute the first rape case you're not going to have several other rape cases in the weeks and months and years thereafter. We have one case where because we didn't prosecute a rape case he wound up raping his 14 year old daughter, and had several victims between the first and the last before he was actually prosecuted. So locking up rapists prevents sexual assault. And sends a message that it's actually illegal and you have to stop. So I think - and some of the, for example the commission ideas are increased training for leadership. We have that in our bill. Independent [inaudible]. I have a bill to do that with Josh Holly. Tailored community-driven training prevention strategies, of course. Modernize training to contemporary standards. Of course. These are simple recommendations that the DoD should be doing already that we're going to try to codify in this NDAA.

Moderator: John Donnelly, CQ Roll Call. You're up next.

We'll come back to you. Dan Sagalyn of PBS News Hour.

DWG: Thanks, I think my question has been asked. I was going to ask about if you're going to put into law all the other recommendations that Lynn Rosenthal - you just said you would, so I'm good.

Senator Gillibrand: Yes. That's my intention and I'm going to introduce them to try to get a vote on it during the NDAA.

Moderator: John Donnelly?

DWG: Sorry about that.

Senator, thank you very much for being here. I want to be clear on the NDAA. You're going to try to get it into the SASC NDAA and it looks like you have the votes there, and you're also going

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to try to get it in a freestanding bill.

Senator Gillibrand: Correct.

DWG: Why hasn't that happened yet? We know we've had objections from Jack Reed and others, but I would think if Chuck Schumer wanted to allow a vote on it he would have had a cloture vote on it. Where does he stand on it? Is he helping you out on this?

Senator Gillibrand: Yes. He supports the measure and has voted for it in the past and he has told me he will give me a vote.

The reason why we haven't had a vote yet is because we have two more urgent things that we have to do and it consumes a lot of time without consent. Because Jack Reed has objected to a consent agreement, we just had two hours of debate equally divided, and do it up and down in one day. It would take, if you literally used every bit of time, it could take two weeks and right now we are trying to deal with COVID relief, infrastructure and the Biden family plan. So we have a lot of work that has more urgency so we will probably have our vote on this in the fall.

Moderator: Roxana Tiron of Bloomberg Government, please.

DWG: John just asked my question so I'm going to let someone else ask their question. Thank you.

Moderator: John Harper, National Defense Magazine.

DWG: Thanks for doing this call, Senator. I wanted to shift gears a little bit and ask you about the legislative calendar.

Obviously President Biden submitted his budget request pretty late in the year and I think there's kind of a widespread assumption that the next fiscal year will begin with a CR. So I just wanted to ask you when you anticipate that we might see a final NDAA and a final Defense Appropriations Bill pass Congress for FY22.

Senator Gillibrand: December. Our NDAA will be voted on and out of committee before the August break but I don't know that we'll have a vote on the NDAA before the August break. That might even be pushed to the fall. And the House won't even start the NDAA until the fall. So we won't have a House and Senate version at

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least until probably October. Then Appropriations always have their own timeline. So all tied up, December. But I don't know. It could be faster, but it's definitely not much faster.

DWG: Do you anticipate that the top line will end up being higher than the \$715 billion that President Biden requested? Or do you think that's probably what the number we'll be looking at roughly.

Senator Gillibrand: I'm not sure. We'd have to wait and see. But Congress typically spends what they want to spend. I don't think it will be lower because I don't think the Senate will put forward a lower number. The House might, but the Senate won't.

Moderator: Senator, I promised your staff I'd turn the floor back to you at 4:05 for a final comment, but I'll use my role as benevolent dictator here to ask you a question that's on my mind.

AS a long-time student of civ/mil relations there has been some rather explosive reporting about General Milley. I won't ask you to comment on that specifically, but as you look at civilian/military relations today, post Trump, in the Biden era, what kind of report card, how healthy is it? What would you tell us about that, ma'am?

Senator Gillibrand: What do you mean by --

Moderator: The Washington Post has reported that General Milley was taking some rather significant steps to make sure that there would be no Reichstag moment in January. Again, I'm not going to ask you to comment on any of the specifics, but as someone on the Armed Services Committee who's watched the military, who's watched civilian politicians through a peaceful passing of power, how would you describe the relations between the civilian leadership and the military today?

Senator Gillibrand: I think it's productive. I travel my state a lot and there's still enormous respect for our service members. There's enormous respect for the sacrifices that men and women have made over the last 20 years with the wars on terror. I think that has not diminished. I think what's happening now is a realization that tomorrow's wars are going to be very different than yesterday's wars and so I personally am working on how do we convince the next generation to be our cyber defenders and our cyber warriors of the future? How do we make sure that we can

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out-compete Russia and China and Iran? Understanding that warfare will be conducted within our own networks, within our own country and that you don't need to have invading forces to be successful at undermining the national security and stability of another nation.

I think the next few years is going to be a much robust conversation about authorities. For example, we had our elections hacked repeatedly and to have evidence of 2016 come forward and to have a DoD and the security and intelligence services say things like we don't have the authority to respond to that was outrageous. And they didn't. Because we do not see an attack on our election infrastructure the same as we see an attack on our subway, a bombing of some infrastructure in America. But it's the same thing from a cyber perspective.

So we worked on authorities in time for the 2018 election and in time for the 2020 election to make sure that our security could do the good and hard work of protecting our democracy.

That is not isolated to our democratic infrastructure. As you've seen, we've been attacked in our food supply chain, we've been attacked in our energy supply chain. And it's just a matter of time for everything in different supply chains across the country to be seriously undermine and impacted.

So one of the jobs that I see for myself on the Intel Committee and on the Armed Services Committee is to be a rational voice of assessing what authorities do we need? How do we implement them? How do we recruit the next generation of young people who have foreign language skills and have technical skills and computer skills that are the greatest in the country? How do we out-compete the private sector so that every bright young person doesn't go to Google or Facebook but will actually come and serve in the U.S. military or in our intelligence services or for the Department of Justice, the Department of Commerce, the Department of Treasury?

We have so much work to do and I think that dialogue is a unifying dialogue and a recognition that the men and women who sacrifice every day to keep us safe are not only essential to our well-being and our country and our democracy, but are some of our best and brightest. And I want to expand who is seen as our defenders. WE will do it through the Space Force, we will do it through our intelligence services and our cyber professionals,

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both civilian and military and I think we will have a more expansive view of how we can together keep the country safe and I think that will be a unifying conversation and we will continue to grow in our respect for our defenders and warfighters.

Moderator: That was a very thoughtful answer to an unexpected question. So thank you.

If you have any final thoughts, we'd welcome them. Otherwise we thank you so much for your time today.

Senator Gillibrand: I just want to thank everybody on this call. The work you do is essential. I don't know if you notice, but the people on this call are the ones who are constantly providing the oversight and accountability over the U.S. military and over decision-makers who do not necessarily want things to come to light. You are the voices for our men and women in the armed services who need you to tell the truth, to expose the truth, and to be defenders of the truth. So I just want to thank you from the bottom of my heart for all the hard work you've done certainly on my issues but on many issues I haven't even yet learned about or investigated or taken up.

I just think your role is essential and I'm extremely grateful.

Moderator: Thank you so much. It was a really terrific session. I believe this is your first time with the Defense Writers Group, we hope it will not be the last. So thank you so much for your time today.

Senator Gillibrand: I agree. Thank you so much. God bless.

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