The Heritage Foundation

BACKGROUNDER

No. 2888 | MARCH 6, 2014

Military Sexual Assault Reform: Real Change Takes Time

Charles D. Stimson

Abstract

Signed into law by President Barack Obama in December 2013, the 2014 National Defense Authorization Act (NDAA) contains reforms aimed at preventing and reducing sexual assault in the military. Considered in their totality, these reforms represent the most comprehensive rewriting of the military justice system in decades. Yet reforming a complex criminal justice system takes time, and demonstrating the positive results of such change takes even longer. Combating sexual assault both within and outside of the military is an important public policy goal. Therefore, these specific reforms, many of which will not be implemented for months, must be given time to effect positive, measurable results. Ultimately, these reforms will improve the military criminal justice system and empower those charged with combating sexual assault.

Signed into law by President Barack Obama in December 2013, the 2014 National Defense Authorization Act (NDAA) contains reforms aimed at preventing and reducing sexual assault in the military. Prudent and comprehensive, these reforms in the military justice system will take months, or even years, to bear fruit.

Considered in their totality, these reforms represent the most comprehensive rewriting of the military justice system in decades. Fortunately, Congress and a key subcommittee of the Response Systems Panel,[1] established by the Secretary of Defense,[2] agreed with The Heritage Foundation's recommendation that convening authorities should retain the power to refer sexual assault offenses to court-martial.[3]

This paper, in its entirety, can be found at **http://report.heritage.org/bg2888**

Produced by the Kathryn and Shelby Cullom Davis Institute for International Studies

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Key Points

- Signed into law by President Obama last December, the 2014 National Defense Authorization Act (NDAA) includes reforms that are aimed at preventing and reducing sexual assault in the military.
- Considered in their totality, these reforms represent the most comprehensive rewriting of the military justice system in decades.
- Most of these reforms echo the modest, prudent changes advocated by The Heritage Foundation in a November 2013 *Special Report*.
- Reforming a complex criminal justice system takes time; demonstrating the positive results of such change takes even longer.
- Combating sexual assault both within and outside of the military is an important public policy goal, and these specific reforms, many of which will not be implemented for months, must be given time to effect positive, measurable results.

Shortly after he signed the NDAA, President Obama instructed the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to:

> report back to me, with a full-scale review of their progress, by December 1, 2014. If I do not see the kind of progress I expect, then we will consider additional reforms that may be required to eliminate this crime from our military ranks and protect our brave service members who stand guard for us every day at home and around the world.[4]

What kind of "progress" the President expects is anyone's guess; what "additional reforms" he may be considering now or in the future is equally amorphous. Furthermore, no set of reforms will ever completely eliminate sexual assault from the military—or anywhere else, for that matter—and those who championed these reforms never claimed that they would.

However, what is clear is that many of this new law's most sweeping reforms do not take effect for six or 12 months from the date of enactment. These changes, discussed below, will take time to effect positive change in a complex system of justice. Thus, those who are looking for quick fixes to the problem of sexual assault, in or outside of the military, are going to be disappointed.

Additionally, both Congress and the President have established panels of experts to study various aspects of sexual assault in the military. Most of those expert panels, set up over a number of years, are yet to report their findings and recommendations. Presumably, the panels were designed to assist Congress and the President in making changes that will alleviate the problem of sexual assault in the military.

These major policy changes and those that may yet come from expert recommendations will not instantly transform the military criminal justice system. While some of the new policies will have an immediate and visible effect, others will not be implemented for a year or more. Some reforms may be challenged in court, and some of those challenged in court may be struck down in whole or in part. Thus, a verdict on how these prudent, measured reforms will affect the system as a whole, and victims' and defendants alike, is years away.

Congress and the Obama Administration would be wise to give these changes time to take root and then, and only then, make any necessary additional changes.

Major Reforms in the NDAA: Article 60 and Article 32

Arguably, the most significant reform in the military justice system is contained in Section 1702, which revamps both Article 60 and Article 32 of the Uniform Code of Military Justice (UCMJ). Yet the change in Article 32 hearings—touted as one of the NDAA's key reforms—does not take effect until a year after enactment.[5]

The New UCMJ Article 60. The new Article 60 eliminates commanders' (convening authorities) ability to modify sentences for serious offenses by overturning a guilty verdict or reducing the finding of guilty to that of a lesser included offense. The Department of Defense must implement this reform by June 24, 2014.[6]

Once the new rules come into force, commanders retain the ability to modify sentences for certain minor offenses if trial counsel recommends that the sentence be modified due to the accused's substantial assistance or pursuant to a pre-trial agreement. Any modifications to a sentence will have to be made in writing.

This new Article 60 is a significant reform that balances the need for speedy clemency proceedings

1. Memorandum from Barbara S. Jones, Chair, Role of Commander Subcomm., Response Sys. to Adult Sexual Assault Crimes Panel to Members of the Response Sys. Panel (Jan. 29, 2014), http://responsesystemspanel.whs.mil/Public/docs/meetings/20140130/RoC_Assessment_Removal_CC_as_CA_FINAL.pdf.
2. Response Sys. to Adult Sexual Assault Crimes Panel, http://responsesystemspanel.whs.mil/ (last visited Feb. 28, 2014).
3. Charles Stimson, *Sexual Assault in the Military: Understanding the Problem and How to Fix It*, The Heritage Foundation *Special Report* No. 149, Nov. 6, 2013, http://www.heritage.org/research/reports/2013/11/sexual-assault-in-the-military-understanding-the-problem-and-how-to-fix-it.
4. American Forces Press Service, *Obama Directs Review of Sexual Assault Prevention Progress*, Am. Forces Press Service, U.S. Dep't of Def., Dec. 20, 2013, http://www.defense.gov/news/newsarticle.aspx?id=121378.
5. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1702(d)(1) (2013), *available at* http://beta.congress.gov/113/bills/hr3304/BILLS-113hr3304enr.pdf.
6. *Id.* at § 1702(d)(2).

in minor disciplinary offenses with the recognition that the creation of intermediate appellate courts has diminished the necessity for Article 60 in cases involving serious crimes. Although the number of guilty findings that were set aside by convening authorities per year is miniscule (less than approximately 10 cases per year[7]), the change gives victims and the public more confidence in the system as a whole, which is important in and of itself.

The New UCMJ Article 32 (Preliminary Hearing). The extended cross-examination of the alleged victim in the Naval Academy rape case last year shocked both victims' advocates and Members of Congress. Legislators expressed outrage at the questions defense attorneys asked the alleged victim even though Congress enacted the very rules that allowed for such questions. Aggressive, thorough cross-examination of government witnesses in courts-martial, including victims, has been standard procedure for years; Congress simply has not been paying attention.

As a result of that headline-grabbing cross-examination, however, Congress crafted key modifications to Article 32, reforms that do not take effect until December 26, 2014—25 days after the President's self-imposed deadline for progress. In order to understand the impact of these reforms, it is important first to review Article 32's history, as well as its purpose.

An Article 32 hearing—often mistakenly compared to a civilian grand jury proceeding by the media—is actually akin to a civilian preliminary hearing. In both a civilian preliminary hearing and an Article 32 hearing, the accused is present, represented by counsel, and may cross-examine government witnesses and call witnesses on his own behalf. The government, in both settings, must put on enough evidence to establish probable cause to believe that the defendant committed the alleged crimes.

In a civilian preliminary hearing, a judge rules on whether the government has met the probable cause standard and, if it has, binds the case over for trial. In an Article 32 hearing, an Investigating Officer (IO) hears the evidence and then prepares a written recommendation to the Convening Authority as to whether probable cause exists to believe that the accused committed the crimes with which he is charged and, if such cause exists, opines on the charges. Investigating Officers are Judge Advocates, but not necessarily military trial judges. The Convening Authority may act on the IO's recommendations but is not required to do so.

Congress drafted Article 32 of the UCMJ with a specific purpose: to provide for a factual forum where the government could attempt to establish probable cause.[8] Although there was some discussion at the time about the use of Article 32 as a defense discovery tool, taken as a whole, the initial hearings on the issue demonstrate that Congress intended to create a process to determine the existence of probable cause; defense discovery was a byproduct of this process.[9]

It is apparent, however, that despite whatever Congress may have intended when the UCMJ was implemented, Article 32 investigations serve as an important discovery tool for the defense and for a long time have been recognized as such.[10] In line with this thinking, it is understood that today, the defense discovery purpose of Article 32 investigations is implied by the Manual for Courts-Martial.[11]

The new Article 32 is limited to the following objectives: a determination of probable cause and jurisdiction, a consideration of the form of charges, and a recommendation regarding the disposition

7. There were a combined 2,483 courts-martial across the Army, Navy/Marine Corps, and Air Force in 2012 and 2,658 courts-martial in 2011.
8. For an alternative view on the original purpose of Article 32 pretrial investigation, see Zachary D. Spilman, *2013 Changes to the UCMJ—Part 4: Article 32*, Blog-CAAFLOG, (Jan. 9, 2014), http://www.caaflog.com/2014/01/09/2013-changes-to-the-ucmj-part-4-article-32/.
9. Major Larry A. Gaydos, *A Comprehensive Guide to the Military Pretrial Investigation*, 111 Mil. L. Rev. 49, 51 n.13 (1986) ("Because the defense discovery purpose is not mentioned anywhere else in the legislative history, or in Article 32 itself, the better view is probably that defense discovery was intended only to be a collateral consequence of the investigation.").
10. *See, e.g.*, Discussion, R.C.M. 405(a) ("The investigation also serves as a means of discovery."); United States v. Samuels, 27 C.M.R. 280, 286 (C.M.A. 1959) ("It is apparent that [Article 32] serves a twofold purpose. It operates as a discovery proceeding for the accused and stands as a bulwark against baseless charges."); Mark Cremin, *Use of Article 32 Testimony at Trial—A New Peril for Defense Counsel*, Army Law., Jan. 1991, at 35, 35 ("Fourth, and most important to the defense, [the Article 32 investigation] afforded wide ranging discovery of the government's case and other evidence useful to the defense at trial.");Gary L. Hausken, *Article 32(c): A Forgotten Provision Can Assist the Prosecutor*, Army Law., Apr. 1988, at 39, 40 n.17 ("Defense discovery has been recognized as a proper purpose of the Article 32(b) investigation.").
11. John Maloney, *Litigating Article 32 Errors After United States v. Davis*, Army Law., Sept. 2011, at 4, 5.

of the case.[12] The accused is still allowed to submit evidence and cross-examine witnesses, but the victim does not have to testify. If the victim does elect to testify, the cross-examination is restricted to the limited purpose of the hearing.[13] This limitation on the scope of the hearing and the ability of the victim to declare his or herself unavailable for purposes of the hearing alleviates some of the current concern surrounding Article 32 hearings.

Nevertheless, some military prosecutors, just as in the civilian bar, may decide to put the alleged victim on the stand in an Article 32 hearing to bolster their case, show the defense the strength of their case, or other tactical reasons. Sophisticated defense counsel will always find ways to unearth discovery and seed the record with helpful testimony under the new Article 32.

Increased Accountability Through Procedural Requirements

In addition to reforming Articles 32 and 60, the new law, through enhanced procedural requirements, also increases commanders' accountability. Under the new law, a commanding officer is required to refer a reported sexual assault to the appropriate investigative service immediately.[14] It also requires the submission of a report, within eight days of the receipt of an unrestricted report of sexual assault, to the installation commander and the first O-6 and flag or general officer in both the accused and victim's chains of command.[15]

If, after an investigation, a commander decides not to refer charges in a sexual assault case, the law requires that a superior review the case file.[16] If the commander decided not to refer charges against the advice of his or her staff judge advocate, the law requires that the case file be forwarded to the Secretary of the service. If the commander decided not to refer charges with the advice of his or her staff judge advocate, the case file would be forwarded to the next officer in the chain of command with general court-martial authority.

Although there is no direct civilian equivalent to this process, it is akin to a line deputy district attorney or Assistant United States Attorney deciding not to prosecute a case and then preparing a declination memo for his or her supervisor. That supervisor, in turn, has the duty to review the declination memo and can agree or disagree with the decision not to prosecute. If the supervisor disagrees with the decision not to prosecute, he or she can require a reversal and the prosecution commences.

This supervisory discretion is a substantial change from the status quo. Until this specific reform was passed, the Convening Authorities' decision on whether to file charges was essentially the final word. This reform, in and of itself, will have the most meaningful effect on the disposition of sexual assault cases in the military, as cases will now be subjected to increased transparency and multiple levels of evaluation and scrutiny.

The new law also requires the tracking of a commander's compliance in conducting climate assessments.[17] These concrete requirements will help to increase the accountability of commanders and will provide a written record that superiors can use to assess independently the judgments of more junior officers.

Whether these reforms will result in more cases being referred to court-martial or fewer cases remains to be seen. Furthermore, it is too early to tell how many cases per year will be reviewed by the service Secretary or what the overall effect of this reform will be on the system as a whole.

Will this procedural reform give future victims confidence in the system and encourage them to file unrestricted reports? Will those accused of sexual assault in the military fare better or worse than the status quo? Will more cases be referred to court-martial, and if they are, will the conviction rate be higher, be lower, or remain the same as today? These and many other questions need to be asked and answered, backed up by data, before assessing whether this procedural change improves the system for everyone.

12. 2014 National Defense Authorization Act § 1702.
13. *Id.*
14. *Id.* at § 1742.
15. *Id.* at § 1743.
16. *Id.* at § 1744.
17. *Id.* at § 1721.

Mandatory Minimum Sentences

There is a common misperception that criminal sentences in the military are more draconian and harsh than their civilian counterparts. There are, however, several facts that disprove this notion.

First, military personnel do not have criminal records and thus come to the court with a clean record and often with impressive service records. On the other hand, many defendants before civilian criminal courts are recidivists and have long criminal records. As many states allow or require for increased punishment for recidivists, once convicted, those defendants often face long prison sentences.

Second, Congress has not established mandatory minimum sentences for most crimes in the military, including rape, child abuse, child sexual abuse, aggravated assault, or other serious crimes. The list of crimes that have mandatory minimum sentences is short.

Instead, Congress has established maximum allowable sentences for most military crimes. As structured, the possible punishment for most military crimes ranges from no punishment at the low end to the statutory maximum, which includes a term of years of confinement and discharge from the service with either a bad conduct discharge (BCD) or a dishonorable discharge (DD), or anything in between.

For example, an enlisted Marine convicted of wrongful distribution of cocaine faces a maximum possible sentence of confinement up to 15 years, a dishonorable discharge from the Marine Corps, total forfeiture of his pay, and reduction to the rank of the first enlisted rank (private in the Marine Corps). The judge has the flexibility to sentence the accused to from no punishment up to the statutory maximum. Rarely is an accused in the military given the statutory maximum.

Such flexibility may come as a surprise to the public and Members of Congress. Congress decides the rules for the military justice system, yet Members feign outrage when they "find out" that it is possible that a person convicted of sexual assault in the military is not thrown in the brig or discharged from the military.

Many states, on the other hand, have established mandatory minimum sentences, or tiered sentences, for a host of crimes. For example, under California law, a person convicted of rape is punishable by imprisonment in the state prison for three, six, or eight years.[18] The judge's choices of punishment are limited to three, six, or eight years. Similarly, under California law, a person convicted of raping a child who is under 14 years of age shall be punished by imprisonment in state prison for nine, 11, or 13 years.[19]

In the military, prior to the newest reforms, a person convicted of raping a child faced a sentencing range from no punishment at all to life without the possibility of parole—a wide range of possible punishment written into law by Congress, not the U.S. military.[20] The new law contains provisions regarding the treatment of those individuals who are convicted of sexual assault. It provides a mandatory minimum punishment of dismissal or dishonorable discharge upon conviction of certain sexual assault offenses.[21]

Additionally, the law now allows for the temporary reassignment or removal of an individual accused of a sexual assault for the purpose of maintaining good order and discipline in the unit.[22] Previously, situations have arisen where the victim and the accused have remained in the same unit after a report was made. This provision provides the commander with the statutory authority to take action and separate them.

Furthermore, Section 1701 provides, in legislation, specific rights to sexual assault victims. Although many of these "rights" are already common prac-

18. Cal. Penal Code § 264(a).
19. Cal. Penal Code § 264(c)(1).
20. There is an open question as to whether a military defendant convicted of the rape of a child can be sentenced to death. In 2008, the United States Supreme Court held in *Kennedy v. Louisiana*, 554 U.S. 407, that the Eighth Amendment's Cruel and Unusual Punishment Clause did not permit a state to punish the crime of child rape with the death penalty. The Court inadvertently overlooked the fact that the statutory maximum punishment for child rape in the military was death. Once the omission was brought to the Court's attention, the Court requested briefs from all parties but then decided not to revisit the majority opinion. Efforts in the Congress to bring clarity to whether the death sentence is available for military child rapists failed.
21. 2014 National Defense Authorization Act § 1705.
22. *Id.* at § 1713.

tices in the military, their application has at times been uneven. Codifying common practices into legal mandates enhances the credibility of the system while increasing victims' confidence that their rights will be protected. However, these new rights do not provide victims with any cause of action if the mandates are not followed.[23]

Likewise, the prohibition against retaliation against anyone who reports a crime is an important reform.[24] Retaliation against those who report crimes is prejudicial to good order and discipline, undermines the rule of law, and creates a climate in which victims are less inclined to report assaults. It is too early, however, to assess how this new law will be implemented, and thus too early to say whether it will be a useful reform.

Over time, these positive reforms, along with others, will improve the military justice system and increase victims' confidence in that system if they decide to report the crimes perpetrated against them.

Well-Intentioned Reforms with Little Practical Impact

Other provisions in the bill are well-intentioned but arguably will have little practical effect on sexual assault in the military.

For example, Section 1711 prohibits the military from giving a commission or enlisting an individual who is a convicted sex offender[25] under state or federal law.[26] This new law will have little to no practical effect because the military does not typically recruit criminals.

Section 1708 prohibits a convening authority from taking into consideration the "character and military service of the accused" when deciding whether or not to charge the accused with a crime.[27] There are little objective data to show a pattern or practice of convening authorities not charging personnel with a crime merely because they have a good service record. This change will have little actual effect on sexual assault prosecutions. That being said, it may go a long way toward appeasing those who, rightly or wrongly, believe that the military is still a "good ole boy system" and stacked against victims.

Additionally, it must be noted that under the applicable military rules of evidence, which generally track the language of the federal rules of evidence used in civilian courts, the defense will still be able to introduce the good military character of the accused at trial or a pertinent character trait during the trial.[28]

At least four of the provisions increase the Defense Department's already bloated bureaucratic reporting and review requirements on the issue of sexual assault.[29] These studies most likely will have little direct effect on combating sexual assault. Indeed, they serve no purpose other than to assuage critics who believe that an increased number of review and reporting requirements constitutes reform—no matter how little these requirements accomplish.

Furthermore, two of the new provisions could be problematic and lead to an increase in unnecessary litigation.

First, Section 1704 limits the ability of defense counsel to prepare for trial by restricting counsel's access to the victim. The provision states that all requests to interview the victim have to be made

23. *Id.* at § 1701.
24. *Id.* at § 1709.
25. The term "sex offender" encompasses a wider range of offenses than the new law. The new law prohibits only those individuals convicted of rape, sexual assault, forcible sodomy, incest, or attempt of any of those offenses from serving in the military. *Id.* at § 1711. Thus, some of the crimes covered under the Adam Walsh Act, Pub. L. No. 109-248, 120 Stat. 587 (2006) (codified at 42 U.S.C. § 16911 et seq.), would fall outside of Congress's explicit prohibition. However, a convicted sex offender of any kind is unlikely to serve in the military because the military does not recruit individuals with criminal backgrounds.
26. 2014 National Defense Authorization Act § 1711.
27. *Id.* at § 1708; *see* R.C.M. 306.
28. Mil. R. Evid. 404–405.
29. 2014 National Defense Authorization Act § 1726 (increasing responsibilities of Sexual Assault Prevention and Response Office); *id.* at § 1731 (requiring a review of the UCMJ and judicial proceedings of sexual assault cases by the Response Systems Panel and Judicial Proceedings Panel); *id.* at § 1733 (requiring a review of the sexual assault training provided to servicemembers); *id.* at § 1734 (requiring a report on the policy regarding the retention of and access to evidence and records relating to sexual assaults); *id.* at § 1735 (requiring a review of the role of the Office of Diversity Management and Equal Opportunity in sexual harassment cases).

through trial counsel and that the trial counsel, a Sexual Assault Victim Advocate, or the victim's counsel must be present during the interview. Essentially, Congress has created two artificial structural barriers around victims: (1) giving them an attorney in the form of a Special Victim's Counsel (SVC) and (2) not allowing defense counsel to interview them without their SVC or prosecutor present.

Second, Section 1714 amends the statute designed to prohibit retaliation using overbroad language that is ripe for abuse. The current statute prohibits an individual from retaliating against a servicemember for "making or preparing" a statement to Congress or an inspector general.[30] The amendment would expand the current language to include "being perceived as making or preparing" a statement. The "perceived as making or preparing" language is so broad that in application, enforcing this provision will be difficult.

Response Systems Panel Subcommittee Agrees with The Heritage Foundation

Section 1731, in part, assigns more responsibility to the Response Systems Panel created by last year's NDAA. The response system panel was created to "conduct an independent review and assessment of the systems used to investigate, prosecute and adjudicate [sexual assault crimes] ... for the purpose of developing recommendations regarding how to improve the effectiveness of such systems."[31] The full panel has yet to release any recommendations regarding these issues.

In this year's NDAA, not only did Congress give the Response Systems Panel additional responsibilities, but it also assigned the panel less time to submit its report. In its original charter, the panel had 18 months to complete its study and submit its report;[32] Congress gave the panel only 12 months to complete the new reports.[33] Consequently, during the first six months of the year, the Response Systems Panel will be required to finish the work it was mandated to do last year—in addition to making genuine progress on its considerable new responsibilities.

Specifically, this year, Congress asked the panel to assess the following:

- Whether removing the convening authority from commanders would affect reporting and prosecution of sexual assaults,
- Whether the role of Special Victim's Counsel should be expanded to include legal standing in a sexual assault proceeding,
- Whether it was feasible to extend certain civilian victims' rights to the UCMJ,
- How a database of offender information from restricted reports could be compiled,
- What the state of current clemency proceedings is in the military,
- Whether clemency could be reserved for the end of the appeals process, and
- Whether the Department of Defense should promulgate a formal statement of the rights and responsibilities of servicemembers with regard to sexual assault.[34]

On January 29, 2014, Barbara S. Jones, chairman of the Subcommittee on the Role of the Commander, issued an initial assessment of whether senior commanders should retain authority to refer cases of sexual assault to courts-martial.[35] The subcommittee's conclusions tracked those reached in a recent *Special Report* published by The Heritage Foundation.[36] Among other things, the subcommittee concluded that removing authority to convene courts-martial from senior commanders will:

30. 10 U.S.C. § 1034.
31. Response Sys. to Adult Sexual Assault Crimes Panel, http://responsesystemspanel.whs.mil/ (last visited Feb. 10, 2014).
32. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 576, 126 Stat. 1759, 1768–62 (2013).
33. 2014 National Defense Authorization Act § 1722.
34. *Id.* at § 1731.
35. Memorandum from Barbara S. Jones to Adult Sexual Assault Crimes Panel to Members of the Response Sys. Panel, *supra* note 1.
36. Stimson, *supra* note 3.

- Not reduce the incidence of sexual assault or increase reporting of sexual assaults in the armed forces,
- Not improve the quality of investigations,
- Not increase the quality of prosecutions,
- Not increase the conviction rate in sexual assault cases,
- Not increase confidence among victims of sexual assault about the fairness of the military justice system, and
- Not reduce victim's concerns about possible reprisals for making reports of sexual assault.[37]

To support its conclusions, the subcommittee also made specific findings, each of which mirrors the points made by Heritage in its *Special Report*:

- Convening authorities do not face an inherent conflict of interest when they convene courts-martial.
- There is no "evidentiary basis at this time supporting a conclusion that removing senior commanders as convening authorities will reduce the incidence of sexual assault or increase sexual assault reporting."
- Sexual assault victims have "numerous channels outside the chain of command to report incidents of sexual assault."
- "Under current law and practice, sexual assault allegations must be referred to, and investigated by, military criminal investigative organizations that are independent of the chain of command."
- Senior commanders must receive advice from judge advocates before determining appropriate resolution of sexual assault allegations.
- U.S. allies who eliminated the role of convening authorities and placed prosecution decisions with military or civilian prosecutors "still face many of the same issues in preventing and responding to sexual assaults as the United States," and the change did not positively affect the reporting of sexual assaults.

The subcommittee concluded that "Commanders must play a central role in preventing sexual assault by establishing command climates that ensure subordinates are trained in and embrace their moral and legal obligations, and by emphasizing the role of accountability at all levels of the organization."[38]

Conclusion

On the whole, this package of reforms is significant and represents a step forward in the fight to reduce the number of sexual assaults in the military. Most of these reforms echo the modest, prudent changes that Heritage advocated in its November 2013 *Special Report*.

Reforming a complex criminal justice system takes time; demonstrating the positive results of such change takes even longer. Combating sexual assault both within and outside of the military is an important public policy goal, and these specific reforms, many of which will not be implemented for months, must be given time to effect positive, measurable results.

The President should therefore adjust his self-imposed timeline and give these meaningful reforms time to take root. Congress should also refrain from making any further major alterations in a strong, proud, unique system of justice that has yet to absorb this latest round of changes.

Ultimately, these reforms will improve the military criminal justice system and empower those who are charged with combating sexual assault. They just need the opportunity to do so.

*—**Charles D. Stimson** is Manager of the National Security Law Program and Senior Legal Fellow in the Kathryn and Shelby Cullom Davis Institute for International Studies at The Heritage Foundation. He served as Deputy Assistant Secretary of Defense for*

37. Memorandum from Barbara S. Jones to Adult Sexual Assault Crimes Panel to Members of the Response Sys. Panel, *supra* note 1.
38. *Id.*

Detainee Affairs (2006–2007) and was a local, state, federal, and military prosecutor; a defense attorney; and a military judge in the United States Navy JAG Corps. The author is grateful to Alyssa Hazelwood, a member of the Young Leaders Program at The Heritage Foundation, for her assistance in preparing this paper.