

Biden Overhauls Military Justice Code, Seeking to Curb Sexual Assault

The largest overhaul of the Uniform Code of Military Justice since its creation in 1950 removes commanders' authority over cases of sexual assault and a handful of other high-profile crimes.



By Michael D. Shear

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President Biden gave final approval on Friday to the biggest reshaping in generations of the country's Uniform Code of Military Justice, stripping commanders of their authority over cases of sexual assault, rape and murder to ensure prosecutions that are independent of the chain of command.

By signing a far-reaching executive order, Mr. Biden ushered in the most significant changes to the modern military legal system since it was created in 1950. The order follows two decades of pressure from lawmakers and advocates of sexual assault victims, who argued that victims in the military were too often denied justice, culminating in a bipartisan law mandating changes.

The White House called the changes to the military justice system “a turning point for survivors of gender-based violence in the military” and said they kept promises Mr. Biden made as a candidate.

“It is a monumental step,” said John Kirby, a spokesman for the National Security Council. “Any change to the Uniform Code of Military Justice is a big deal. This one is particularly important given the scourge of sexual assault and sexual harassment that the military still continues to wrestle with.”

The changes had for years been opposed by military commanders. But they were finally embraced by the Pentagon in 2021 and mandated by a law spearheaded by Senator Kirsten Gillibrand, Democrat of New York. Mr. Biden signed the landmark legislation into law two days after Christmas that year.

The law set up a two-year process for the Defense Department to create a cadre of special prosecutors to handle sexual assault and a handful of other high-profile crimes. The Offices of Special Trial Counsel, as they will be called, will be staffed by experienced military prosecutors who will report to the civilian leaders of the military’s branches.

The final step needed to change the Uniform Code of Military Justice under the law was a presidential executive order. Lawmakers directed Mr. Biden to issue it by December. White House officials said Mr. Biden did so Friday, five months ahead of the deadline.

Under the rules established by Mr. Biden’s order, commanders in the military will no longer have the authority to decide whether to pursue charges in cases of sexual abuse and a handful of other serious crimes. Instead, that decision will

fall to the new, specialized lawyers, White House officials said.

The decisions by those special prosecutors will be final and binding, and cannot be overridden by military commanders.

For years, advocates of sexual assault victims in the military complained that their cases were not taken seriously and were in many cases blocked by the commanders of the service members making the accusations. Over time, complaints grew — especially among young people — about the Pentagon’s tepid response to sexual assault cases.

“We’ve heard horrific cases of women being brutally, brutally assaulted and then disbelieved and retaliated against for coming forward,” Ms. Gillibrand said in an interview. “And so we needed to create a justice system that was worthy of the sacrifice they make every day. And that’s what these reforms are.”

Members of the top military brass were for years among the chief opponents of changing the code of justice for the armed forces. But that gradually changed. Defense Secretary Lloyd J. Austin III, a retired Army general, endorsed the changes in 2021. Gen. Mark A. Milley, the chairman of the Joint Chiefs of Staff, had long opposed them, but acknowledged that same year that younger enlisted troops no longer had confidence that sexual assault cases were being taken seriously by the military’s command.

The fading of the military resistance provided the opportunity for bipartisan negotiations, eventually leading to the law in 2021 and, on Friday, Mr. Biden’s executive order.

The move to change the military justice system was also galvanized by the 2020 case of Specialist Vanessa Guillen, whose burned and mutilated body was discovered after she had tried to report instances of sexual harassment by another soldier, who the Army said killed her and later himself.

That case and others were frequently cited by Ms. Gillibrand and other female lawmakers, including former Representative Jackie Speier, Democrat of California, and Senator Joni Ernst, an Iowa Republican who is a retired National Guard lieutenant colonel. Ms. Ernst said her own experience as a victim of sexual assault informed her views on the issue.

White House officials said that the military branches had already begun hiring for the Offices of Special Trial Counsel, which they expected to be fully operational by the end of the year. But they conceded that it would take years to measure how the changes affected the culture surrounding the prosecution of sexual assault and other serious crimes in the military.

Under the executive order, the special trial counsel offices will have their authority expanded in 2025 to include cases of sexual harassment.

Michael D. Shear is a veteran White House correspondent and two-time Pulitzer Prize winner who was a member of the team that won the Public Service Medal for Covid coverage in 2020. He is the co-author of "Border Wars: Inside Trump's Assault on Immigration." More about Michael D. Shear

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