

National Guard
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Cap Times/Journal Sentinel investigation sparks Congressional hearings on sexual assault in National Guard

By Katelyn Ferral, Milwaukee Journal Sentinel

Responding to an investigation by the Cap Times and Milwaukee Journal Sentinel, a key Congressional leader says she will hold hearings this summer to address the chronic problem of sexual assault in the National Guard.

“I am very troubled by the fact that we don’t have any

oversight of the National Guard when U.S. taxpayer money is being spent, and we have women in the National Guard who are being physically, sexually abused,” said U.S. Rep. Jackie Speier, a California Democrat and chair of the personnel subcommittee of the House Armed Services Committee.

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Meanwhile, Sen. Tammy Baldwin, a Democrat from Wisconsin, said in an interview this week she will push for a variety of initiatives, including expanding military whistleblower protections for Guard members and boosting funding for federal investigations of state Guard sexual assault cases. She also called on Wisconsin lawmakers to update the state's military laws.

"Your reporting as well as other sources make it clear to me that it is a nationwide problem, and so we've got to think about making sure there are sufficient resources," she told a Cap Times reporter.

A Cap Times/Journal Sentinel investigation in March revealed a decadeslong pattern of Guard units in states nationwide burying sexual harassment and assault allegations, withholding crucial documents from victims and retaliating against women who have come forward.

It is unclear when the hearings would be held, the scope and who might be called as

witnesses. But Speier said men and women should be free from sexual assault and harassment no matter what military branch in which they serve.

Sexual assault reports in the National Guard have tripled over the last decade, but the federal National Guard Bureau, the administrative agency that oversees the Guard, investigates only about 30% of them. The National Guard Bureau has said that it is working to improve its sexual assault response, including adding investigators to its staff.

Retaliation is a particular problem in the Guard, which is composed of militias from 50 states, three U.S. territories and the District of Columbia.

Members often stay in one location for longer periods than those who serve in full-time military branches, such as the Marines, Navy and Air Force. Leadership also turns over less frequently.

"It's so nepotistic because they all know each other. It's the ultimate good-old-boy

network,” said Ellen Haring, a research fellow and former CEO of the Service Women’s Action Network, which works on military sexual assault issues. The Department of Defense “doesn’t provide oversight of the Guard relative to sexual harassment and assault. They just assume the states take care of it by themselves.”

Unlike other military members, those in the National Guard have not been protected by a 1988 military whistleblower law aimed at shielding those who report wrongdoing from reprisal.

The Department of Defense said it received 240 whistleblower complaints from military members in the last fiscal year, including 16 from the National Guard, according to a letter the department sent to Baldwin’s office last month. The department declined to investigate all of those 16 cases.

It said after recent internal discussions it will now include most National Guard members in its interpretation of

the whistleblower law, though some on certain duty statuses would continue to be excluded.

But Baldwin is pushing to eliminate all restrictions on protections for Guard members.

“National Guard members work under many different duty statuses, and I think they have earned the same whistleblower protections that their active-duty counterparts have,” she said.

Andrea Pfeifer, who serves in the Wisconsin Army National Guard, said the change would have made a difference in her case. According to records, she was retaliated against for reporting her superior for sexual assault and harassment in 2014.

“In the Guard, we are largely at the mercy of our state’s adjutant general,” Pfeifer said. “When the adjutant general is the problem, we need to be able to appeal to a higher authority. In my case, I found myself caught in an administrative game of kick-the-can with all agencies claiming, ‘Not it.’”

Her sexual assault allegation was substantiated by the

National Guard Bureau, but the Department of Defense declined to investigate her whistleblower complaint in 2017 because she was a Guard member on state duty at the time. A 2019 investigation by the National Guard Bureau confirmed several of her concerns.

“In popular culture, we see the military as a cut-and-dry institution with clear regulations. In the Guard, policy is an art,” Pfeifer said.

Because the National Guard is primarily controlled by state leaders, many federal reforms, including New York Democrat Sen. Kirsten Gillibrand’s bipartisan military justice reform bill, would not apply to it.

Her bill, which would remove military commanders from overseeing the prosecution of sexual assault cases, could be a good model for state-based reform of the Guard, Baldwin said.

Each state Guard has its own military justice laws, some of which vary widely and do not follow the Uniform Code of Military Justice used by full-time

military branches.

But state-level change in Wisconsin has been slow.

More than a year after a federal investigation recommended changes to how Wisconsin’s military law handles sexual assault, state legislators have done little.

The Guard and Gov. Tony Evers say they support reforms to the state’s military law, called the Wisconsin Code of Military Justice, to align it with national standards for addressing sexual assault, victims’ rights and discrimination, and other crimes within the force.

Legislative Republican leaders have not responded to requests for comment about whether they support updating the law.

“Because of the unique status of the Guard, there is a really important oversight role for state leaders in updating standards to ensure all service members are protected and right now our Republican-controlled Legislature in Wisconsin needs to take action,” Baldwin said.

National Guard
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After years of failure, Defense Department moves to address sex assault in National Guard

By Katelyn Ferral, Milwaukee Journal Sentinel

For years, the Defense Department has failed to hold the National Guard accountable for its longstanding sexual assault problem.

But now, the agency is considering adopting broad reforms in how the Guard handles such cases.

Routine audits, prevention policies and more data are among the changes the agency

is considering and that were outlined in a Defense Department task force report in June.

The task force's report reflects the findings of a Journal Sentinel/Cap Times investigation earlier this year that found Guard units have buried sexual assault allegations and do not have basic data on such claims. The investigation also showed how the Guard's bureaucracy

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and complex state-federal structure is so impenetrable that it is difficult for victims to navigate and easy for commanders to weaponize.

The task force largely agreed, calling for distinct reforms for the Guard, which is different than full-time, active duty forces and the U.S. Reserves because the Guard is made up of militias in 54 U.S. states and territories and answers to the governor of each state rather than the federal government.

“Recent independent investigations of sexual harassment and sexual assault in the Guard and Reserve have surfaced troubling findings,” the task force report said. “These components face special jurisdictional challenges by their very nature that simply do not resonate with the Active Duty component.”

Dwight Stirling, an expert on the National Guard, called the task force recommendations “the most critical report and analysis that I’ve seen of how the National Guard deals with sexual assault.”

Stirling, an attorney in the California Guard and a law professor at the University of Southern California, said the recommendations should be “immediately implemented as of yesterday. They are woefully overdue.”

But because most cases of National Guard sexual assault occur when members are under the control of state commanders, and each state has its own military justice law, Stirling is skeptical change will come. He said part of the problem is that the National Guard Bureau, a federal administrative agency that polices the Guard but does not regulate it, needs more oversight authority.

“From the history and the track record of the National Guard Bureau and the various state Guards, one should have no confidence that these proposals will be put into action,” Stirling said.

The task force was comprised of 13 people outside the Department of Defense who were former military members

and experts in criminal justice, victim advocacy, sexual violence prevention and public health. It convened after President Joe Biden in January ordered a Defense Department review of the issue and in March pledged to end sexual assault in the military.

The National Guard Bureau said it was reviewing the task force findings and could not comment. But Guard spokesman Maj. Matt Murphy said in a statement to the Journal Sentinel that the force is committed to eliminating sexual assault “by instituting a comprehensive policy that focuses on increasing awareness through prevention and education, victim-centered support, intimidation-free reporting, thorough investigation, and accountability for those who commit sexual crimes.”

“Nothing will deter our efforts to encourage greater reporting and to stop sexual assault before it occurs,” he said.

Defense Secretary Lloyd Austin wrote in a July 2 memo to senior Pentagon leadership that he had a “strong bias towards accepting the (task force’s) recommendations wherever possible.” He said the agency would create a plan within 60 days to find ways to implement and fund any changes.

The Journal Sentinel/Cap Times investigation also prompted one congressional leader to promise to hold hearings on Capitol Hill later this year and led another to question in hearings how the Guard is being held accountable.

The task force also encouraged Congress to include the Guard in its military justice reforms. The most recent congressional reform bill, led by Sen. Kirsten Gillibrand, D-N.Y., would require independent prosecutors, as opposed to commanders, to handle sexual assault cases in the military. But the bill does not address most Guard members.

National Guard
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‘The tides are shifting’: National Guard Bureau vows broad reforms to combat sexual assault

By Katelyn Ferral, Milwaukee Journal Sentinel

WASHINGTON - Facing increased scrutiny over the rise of sexual assault in its ranks, top National Guard officials say they will implement broad reforms to better protect thousands across the force.

Better training, increased transparency, improved data collection, routine program reviews and more emphasis on prevention are among the

planned changes.

“Our goal is to eliminate sexual assaults by refocusing our efforts to prevention,” Major General Eric Little, personnel director at the National Guard Bureau, said in an interview.

The changes follow a Milwaukee Journal Sentinel and Cap Times investigation in March that found Guard units have buried sexual assault

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allegations, withheld crucial documents from victims and retaliated against women who have come forward. Reporting in 2019 found Wisconsin Guard officials were illegally investigating assaults internally. In 2020, the National Guard Bureau formed a task force to study the sexual assault issue nationwide.

Andrea Pfeifer, a Wisconsin Army Guard soldier who has called for reforms after being sexually assaulted by a supervisor, said she welcomed the changes.

“The tides are shifting in a good direction, and I hope it continues,” said Pfeifer, 44, of Sullivan, Wisconsin. “We’ll have to wait and see if this is an effective route to positive change or simply another layer of bureaucracy to navigate through.”

The 440,000-member National Guard is the oldest military force, dating back to the Massachusetts Bay Colony in 1636. It is made up of 54 independent militias that are controlled by the governors in

each state and U.S. territories. Unlike full-time members of the Army, Navy, Air Force and Marines, Guard members are primarily part-time, assigned to their home states.

The Guard Bureau is a federal administrative agency that oversees local units but does not directly regulate them.

Reports of sexual assault in the Guard have increased every year over the last nine years, more than tripling from 173 in 2009 to 634 in 2020.

For years, Guard officials say, the Defense Department and Congress have largely relied on a one-size-fits-all approach to combating sexual assault in the military, tailoring reforms to full-time active forces.

It’s become clear that approach has not worked for the Guard, with its distinct and complex structure.

“The National Guard gets added into what the active duty is doing, when we really need to be playing a different game,” said Brigadier General Charles Walker, chief of the Guard’s

Office of Complex Investigations, who also works as a federal bankruptcy judge for the Middle District of Tennessee.

In interviews last month at Andrews Air Force Base and the Army National Guard Readiness Center in Arlington, Virginia, Guard leaders spelled out several reforms.

The Guard Bureau says it will work with local units to hire staff to assess their sexual assault response programs, which are responsible for handling assault allegations. These assessments will take place at least once every three years.

The bureau said it would also create an office with experts in sexual assault, harassment, domestic violence and suicide to address those issues. The bureau said it hopes to create similar offices in all 54 states and territories.

Sexual assault response coordinators, who manage cases as they move through the system, will get Guard-specific training. The bureau says it also plans to do a better job

collecting state data and analyzing trends.

Data on the outcome of cases is especially lacking, said Eugene Fidell, an expert on military law at New York University's law school. "It's a really thorny set of problems in 54 jurisdictions," he said.

Guard leaders say some of their plans are contingent on getting sufficient funding and that their authority to carry out such plans only goes so far.

The agency can guide local units, not unilaterally regulate them. Although the units are primarily federally funded, the militias are wholly controlled by their governors. But bureau leaders say local units are generally supportive of federal guidance.

In interviews, Guard Bureau leaders emphasized they aim to stay in their lane and not overstep into a state Guard's affairs. The bureau will provide additional guidance and resources to help states combat sexual assault but will not be responsible for implementing changes,

Major General Little said.

The bureau, he said, is working on ways to better support local units so “we can address this sexual assault issue and find ways to better train and hold leaders and people accountable.”

Last year, the bureau reorganized its Office of Complex Investigations, which does administrative inquiries when requested by a state, into an independent entity reporting to senior Guard leadership rather than the bureau’s general counsel.

“We have our own voice for the first time,” said Brigadier General Walker, who leads the office.

General Daniel Hokanson, the head of the National Guard Bureau, said in a statement that he put Walker, a fellow general, at the helm of the investigations office to give it more influence within the military when asking for funding and resources.

“It clearly highlights how important and seriously we take investigating sexual assault

allegations and our goal of reducing sexual assaults within the National Guard,” Hokanson said.

Don Christensen, a retired Air Force colonel and former chief Air Force prosecutor and president of Protect Our Defenders, a national advocacy group providing legal help to victims of military sexual assault, agrees.

“Putting a general officer in there is a signal that (sexual assault) is being taken more seriously. It gives it more authority,” he said.

Over the last year, Walker said he and his team eliminated a backlog of cases though he has struggled to recruit and retain investigators. He said that’s because the Guard’s pool of candidates is limited, and the work requires a special skill-set.

Walker said the Office of Complex Investigations should only investigate a small percentage of cases because allegations should first go through local police. The office only investigates if law enforcement

declines. Last fiscal year, the office investigated about 30% of sexual assaults reported across 54 militias.

“We want local law

enforcement to do their job,” Walker said. “We don’t control that process, nor should we, nor do we want to. It is local law enforcement’s responsibility.”