

MARKUP OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

TUESDAY, JUNE 11, 2013

U.S. SENATE,
SUBCOMMITTEE ON PERSONNEL,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m. in room SD-G50, Dirksen Senate Office Building, Senator Kirsten Gillibrand (chairman of the subcommittee) presiding.

Committee members present: Senators Gillibrand, Hagan, Blumenthal, Kaine, King, Graham, Ayotte, and Blunt.

Committee staff members present: Peter K. Levine, staff director; Travis E. Smith, chief clerk; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Jonathan D. Clark, counsel; Gabriella E. Fahrner, counsel; and Gerald J. Leeling, counsel.

Minority staff members present: Steven M. Barney, minority counsel; William S. Castle, minority general counsel; Samantha L. Clark, minority associate counsel; and Allen M. Edwards, professional staff member.

Staff assistant present: Jennifer R. Knowles.

Committee members' assistants present: Jason Rauch, assistant to Senator McCaskill; Christopher Cannon, assistant to Senator Hagan; Patrick Day and Chad Kreikemeier, assistants to Senator Shaheen; Moran Banai, Brook Gesser, Brooke Jamison, and Kathryn Parker, assistants to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Karen Courington and Mary Naylor, assistants to Senator Kaine; Steve Smith, assistant to Senator King; Todd Harmer, assistant to Senator Chambliss; Brad Bowman, assistant to Senator Ayotte; Craig Abele, assistant to Senator Graham; Charles Prosch, assistant to Senator Blunt; and Robert Moore, assistant to Senator Lee.

OPENING STATEMENT OF SENATOR KIRSTEN GILLIBRAND, CHAIRMAN

Senator GILLIBRAND. Good afternoon. The Personnel Subcommittee will come to order. In prior years, the Personnel Subcommittee markup has been held in closed session, and I am pleased that this markup, my first as the chairwoman of the Personnel Subcommittee, will be held in an open session. I am confident that we can conduct our business in public without any disclosure of classified information or any adverse impact on the process. In this regard, I will ask that any senator wishing to offer an

amendment or raise an issue of a classified nature defer that to the full committee's consideration. Please note also that while the subcommittee meeting is in open session, the entire contents of the markup book are subject to amendment throughout its consideration by the Armed Services Committee, and are, therefore, embargoed until passage by the full committee and reported to the Senate. This markup is consistent with Chairman Levin's guidelines for the markup to, first, sustain the quality of life of the men and women of the all-volunteer force—active duty, national guard, and Reserve, and their families—as well as Department of Defense civilian personnel through fair pay policies and benefits, and address the needs of the wounded, ill, and injured servicemembers and their families. And, second, to ensure the future capability, viability, and fiscal sustainability of an All-Volunteer Force.

We have before us today a markup package that contains 62 legislative provisions, seven items of special interest, and four budget items. The details of these proposals were briefed to the staffs of committee members last week, so I will limit my comments to the highlights. The total funding authorized for military personnel and health care in the base budget would be \$170.1 billion, a \$1.7 billion increase than what Congress authorized last year and in line with the President's request. The mark also authorizes a pay raise of 1 percent for all members of the uniform services, which is consistent with the President's request. The mark would authorize a number of bonus and special pay authorities to encourage enlistment, re-enlistment, and continued service by active duty and Reserve component personnel. The mark does not include administration proposals to establish or increase TRICARE fees, deductibles, and co-payments for certain military retirees and their families. The mark would authorize the fiscal year 2014 active duty end strength requested by the Department of Defense—\$520,000 for the Army, \$323,600 for the Navy, \$190,200 for the Marine Corps, and \$327,600 for the Air Force. This represents a reduction in active duty end strength of over 40,000 servicemembers from this year's authorized levels. The mark would authorize Reserve component end strength in line with the President's request. The mark would authorize the payment of the survivor benefit annuity to a special needs trust for the sole benefit of disabled dependent children incapable of self-support because of mental or physical incapacity. The mark would authorize a total of \$30 million for supplemental impact aid, which includes \$25 million for heavily impacted schools and \$5 million for schools with military children with severe disabilities. The mark would make various enhancements to DOD credentialing programs for servicemembers to help them take advantage of their military training and experience as they transition back to civilian life. The mark would allow for service credit for cyber space experience or advanced education for newly-commissioned officers. The mark would direct the Secretary of Defense to submit a report to Congress on current capabilities and feasibility of tracking suicides amongst military dependents in both the Active and Reserve components.

The mark also comprehensively addresses the issue of sexual assaults in the military. This subcommittee held a hearing on the topic, my first as chairwoman, in March, and just last week the full

committee held an all-day hearing on the same topic with over 20 witnesses, including all the service chiefs. The mark provides—the mark includes provisions from various bills that have been filed on this subject, including from my bill, the Military Justice Improvement Act, provisions that would establish new JAG 06 disposition authority and new separate convening authority for serious offenses, except for specified military unique offenses, removes character of the accused from Rule 306 of Rules for Court Martial as a factor a commander can consider in deciding how to dispose of an offense, and require commanders to report allegations of sexual-related offenses to criminal investigation organizations for investigation. From the Military Justice Improvement Act in a bill offered by Senator McCaskill, a provision that would amend Article 60 of the UCMJ to prohibit convening authorities from changing findings for certain serious offenses and require written explanations for changes in sentences.

From a bill offered by Senators Klobuchar and Murkowski, provisions that would express the sense of the Senate that rape, sexual assault, and forcible sodomy offenses should be tried by court martial, require that disposition of substantiated sexual-related offenses be noted in personnel records of the offenders, and require the retention of forms regarding both restricted and unrestricted reports for 50 years. From a bill offered by Senators Murray, Blumenthal, and Ayotte, provisions that would require all military departments to establish special victims counsel, enhance responsibilities for DOD Sexual Assault Prevention Response Office, require the Secretary of Defense to submit proposed legislation to prohibit sexual acts and contacts between military instructors and trainees, and ensure the availability of sexual assault response coordinators for members of the National Guard and Reserve. From a bill offered by Senators McCaskill and Klobuchar, a provision that would require the comprehensive review of training, qualifications, and experience of individuals responsible for sexual assault prevention and response programs. Finally, the mark includes a provision that would amend the military whistleblower protection statute to require inspectors general to investigate allegations of reprisals for reporting sexual assault. These are only a few highlights of the legislative package we present for markup. As I indicated earlier, your staffs have had full briefings on the provisions contained in the package. Senator Graham, would you like to give an opening statement?

STATEMENT OF SENATOR LINDSEY GRAHAM

Senator GRAHAM. Very briefly. Thank you. I have enjoyed working with you and your staff. We have done a lot together. I think we have cleared 30 amendments, and a lot of good reforms around the UCMJ and the military court martial process about sexual assault. We have tried to be more friendly to families when it comes to their quality of life, given a sequestration world. So I am really pleased that 90 percent we agree on. The 10 percent we do not, we will just take to the full committee. And the areas of disagreement are on taking the chain of command out of sexual assault cases. I think we have got a bipartisan solution that would allow the chain of command to be held accountable. I do not think you can quite

ever solve a problem in the military without the chain of command buying into it and being held more accountable. So there is an effort there, and we will take that up in full committee. And on the abortion front in DOD facilities, right now there is—no abortions are allowed except in the case of life of the mother, rape, and incest. There is a provision here that would allow elective abortions, but without government funding. I will be opposing that at full committee. But TRICARE fee increases, we did not adopt them. To our members, I know it is tough to go to veterans organizations and talk about increasing co-payments and fees, but TRICARE is, quite frankly, unsustainable. It is going to be up to 18 to 20 percent of the DOD's budget, just like Medicare and Medicaid is an entitlement that is just growing. Retiree benefits have to be looked at prospectively. If you retire at 38, you get half of your pay for the rest of your life. We are going to have to sort of think outside the box, but that is not in the proposal here. But I would say, Madam Chairman, that when it comes to TRICARE, that it is just unsustainable without reform. We have not increased premiums since 1995 but once, and it is really putting the military between health care benefits, retirees, and funding the force that exists today, and arming them, and buying the equipment. And I just would hope that we could at full committee look at adopting some of the Administration's proposals on co-payments and enrollment fees to make the program more sustainable. I think the Administration has a good proposal, and I would like to support it in full committee.

Senator GILLIBRAND. Thank you, Senator Graham, for your leadership. Do any other senators wish to make an opening statement?

Senator HAGAN. Sure.

Senator GILLIBRAND. Senator Hagan?

Senator HAGAN. Chairman Gillibrand, I just want to thank you for including the Disabled Military Child Protection Act. This provision will enable military retirees to do exactly what the public can do right now. They can invest in the survivor benefit plan to transfer their benefit to a special needs trust that would provide long-term care for their disabled child, while continuing to allow them to receive social security disability, and insurance, and Medicaid, because that is exactly what is allowable right now in the—to everybody else in the general public. To me, it is a common sense provision to ensure that our military families who are currently sacrificing so much can help take care of their loved ones on a long-term basis. As we know, sexual assault is a crisis that has plagued our military for far too long. I am glad to see that a spotlight is being turned on this ugly issue. We know tens of thousands of sexual assault cases go unreported each year. As a senator from North Carolina, the third largest military population in the country, far too many of my fellow North Carolinians have been affected by this tragedy, and these brave servicemembers, who put so much on the line, should never have to worry about their personal safety in this way. I think the committee also took strong action to reduce this problem in last year's NDAA, and I think it is certainly—we know that there is a lot more to be done through legislation and leadership. Many of the provisions in this mark concerning sexual assault are things that we can all agree on that will help address

the problem. While there definitely is a difference on some others, including what role the chain of command should have in prosecuting offenses like sexual assault, all members of this committee, I know, share the goal of eradicating this horrific crime. So I, too, look forward to a vigorous debate on these matters at full committee, and will continue to work to protect the men and women who sacrifice so much for us each and every day. Thank you.

Senator GILLIBRAND. Any other opening statements?

Senator AYOTTE. I want to thank the chair and ranking member. I would just say I want to thank both of you for including the—most of the components of a bill that I have with Patty Murray dealing with sexual assaults in the military, including providing special victims counsel, which is now within the Air Force, to victims of sexual assault. And I want to echo what my colleague, Senator Hagan, just said, that, you know, I know that we are going to have a much more rigorous debate on addressing sexual assault in the military. But one thing I do know is that we will come up with a resolution on a bipartisan basis to make sure that this is addressed, that we have a—we convey to our commanders that there is a zero tolerance policy, and that victims of sexual assault in the military know that they will be supported, and that we will be supporting them in making sure that there is the most—the best environment for them to come forward to report, and also that they will get the support and services that they need, and that those that commit these sexual assaults will be held accountable, and they will be taken out of our military and, of course, prosecuted as well. So I thank the chairman.

Senator GILLIBRAND. Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Madam Chairman. I want to thank you and Senator Graham for your leadership of the subcommittee. And also to thank you for including a number of the amendments that I have offered on the sexual assault issue, most particularly Blumenthal Amendment 119, and ask that Senator Fischer be added as a co-sponsor. She would like to be a co-sponsor.

Senator GILLIBRAND. Without objection.

Senator BLUMENTHAL. And just to say we will have a vigorous debate, but I think there is a strong consensus that we need better reporter—better reporting, stronger and more reliable punishment so that trust and credibility are restored on this issue. Thank you.

Senator GILLIBRAND. Thank you. Senator Kaine?

Senator KAINE. Madam Chair, thank you and Ranking Member Graham and my fellow colleagues. My microphone is broken, but you can hear me I know. I also want to commend the chair and the ranking for the work on the mark, and especially clearing through so many amendments. These are important amendments, and we will have a vigorous tomorrow. I am proud to support reporting it forward. I also on the sexual assault issue was just stunned by the testimony. I am glad that the chairwoman held her first hearing as a committee chair on this issue in March, and then the hearing last week additionally laid out the need to solve this problem in a vigorous way. We will talk about a number of the proposals. The chairwoman has done a good job of summarizing those. I also have some concerns about the issue of the reporting in the—within chain of command or setting up a separate mechanism, both

in terms of the mechanism it might send to the chain of command, but also in terms of whether we want to explore removing from the chain of command issues that are not sexual misconduct related, given that all the testimony has really been focused on that. But we do have to tackle it in a vigorous way. I think the chairwoman's leadership has been important. I think it has been important to compelling a recognition among all of us that, you know, we need to have this discussion in open at the full committee hearing, which we will do over the course of the next couple of days. I think that is positive, and I will look forward to working with my committee members in that full forum to find the right solution.

Senator GILLIBRAND. Anyone else? [No response.]

Senator GILLIBRAND. Traditionally, the markup has used the chairman's mark as a markup vehicle, subject to amendment. Without objection, we will use the chairman's mark as the markup vehicle, subject to amendment. It has been the practice of the Senate Armed Services Committee that any amendment to add funding must be accompanied by an offset. The total funding level for military personnel and defense health program authorized by this subcommittee mark are consistent with the President's budget request. Accordingly, if any senator proposes an amendment that would increase spending, it must also identify an offset to pay for it. We have received 29 amendments to the chairman's mark that have been cleared by both sides. This package has been provided to all members. The package is in front of you. I'll just refer to the amendment number and the basic subject matter.

Shaheen Amendment Number 7, requiring an independent panel on sexual assaults in the military to report in a year instead of 18 months;

Ayotte Amendment Number 10, requiring the report of the status of the search for Army Sergeant Bowe Bergdahl;

Reed Amendment Number 12, granting enforcement authority over the Military Lending Act to the Department of Justice;

Shaheen, Fischer, and Udall Amendment 13, as modified, improving requirements for selection and assignment of the SAPR billets;

McCaskill Amendment 22, assigning additional issues for consideration by the Independent Panel on Sexual Assault in the Military;

Manchin Amendment 23, expressing the committee's concern over unemployment of veterans;

Manchin Amendment 29, requiring that governors be notified of a decision by the Secretary of Defense to cancel certain Reserve component deployments;

Chambliss Amendment 38, recommending the Secretary of Defense to develop a plan for the adjustment of the number of general and flag office billets;

Chambliss Amendment 40, as modified, expressing the committee's expectation that DOD continue to assist eligible autistic beneficiaries to receive effective evidence-based intervention and treatment approaches, and to ensure the provision of these services for dependents living in rural and underserved communities;

Chambliss Amendment 41, requiring the Secretary of Defense to conduct a pilot program to assess the feasibility of using enhanced recovery practices for medical payment and collection;

Gillibrand 42, expressing committee support for DOD investment in further infectious disease research, including through initiatives such as the ribonucleic acid- based research;

Donnelly Amendment 49, inserting report language relating to the cancellation of deployment of Indiana National Guard units;

Kaine Amendment 50, as modified, improving DOD education assistance standards;

Nelson 52, authorizing the Award of Distinguished Service Cross for Sergeant First Class Patrick N. Watkins, Jr.;

Graham Number 60, modifying eligibility for appointment of judges on the United States Court of Appeals for the Armed Forces;

Inhofe 72, as modified, requiring the Secretary of Defense to report actions DOD is taking to correct the education and training challenges faced in TRICARE acquisition work force;

Ayotte Number 76, expressing the sense of the Senate on the consideration of military deployments in child custody cases;

Donnelly, Blumenthal, and Wicker Amendment 85, requiring the Secretary of Defense to assess the feasibility of utilizing innovative tools to screen servicemembers for mental health conditions and risk for suicide;

Hirono Number 30, regarding training for sexual assault first responders;

Hirono Amendment Number 91, requiring a report detailing the Department's progress in implementing recommendations of the Military Leadership Diversity Commission;

Manchin 93, requiring a report on retention of career progression and promotion opportunities for female servicemembers;

Inhofe 110, authorizing Uniform Services University of Health Sciences to support undergraduate and certification training programs for military medical personnel;

Inhofe 115, requiring a report on availability of violent crime offenders group treatment programs;

Udall 116, modifying Article 125 of the UCMJ to remove the offense of consensual sodomy;

Blumenthal Amendment 117, encouraging DOD to expedite, wherever practical, the transition to human-based medical training methods and replacement of live animals in combat trauma training courses where appropriate;

Blumenthal 118, requiring the Independent Panel on Judicial Proceedings under the UCMJ to address victim compensation;

Blumenthal 119, extending the crime victims' rights to victims of offenses under UCMJ;

Udall 153, as modified, expressing the sense of the Senate regarding discharges in lieu of court martial for sex offenses;

Inhofe 156, expressing the sense of the Senate supporting the Troops to Teachers Program.

Without objection, these amendments to the chairman's mark will be adopted by the subcommittee.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator GILLIBRAND. Without objection, the recommendations of the subcommittee will be reported to the full committee, and the staff will be authorized to draft a bill and report language implementing agreements reached today, to make necessary technical and conforming changes.

Senator KAINE. Madam Chair?

Senator GILLIBRAND. Yeah?

Senator KAINE. In my comment time, I neglected to add one additional thank you, which is the chairman's mark includes a number of provisions from my first go of true talent in dealing with the unemployment rate in the case of vets. And I wanted to thank you, Mary. I'm glad to see credentialed cabinet folks, and I appreciate the support.

Senator GILLIBRAND. I want to recognize Senator Graham, for your work as ranking member of this subcommittee, and express my appreciation for our partnership. This subcommittee has always set the standard of bipartisanship and cooperation, and I believe we have done so again. All in favor of moving the mark forward, say aye? [A chorus of ayes.]

All opposed, nay? [A chorus of noes.]

Ayes have it. The mark will move forward. Thank you.

The subcommittee mark is adjourned.

[Whereupon, at 2:26 p.m., the subcommittee adjourned.]