

AYOTTE/GILLIBRAND “FAMILIES SERVE, TOO, MILITARY JUSTICE REFORM ACT OF 2015”

Why is this legislation needed?

- Currently, a military spouse can endure twenty or more years of PCS moves, deployments, and remote duty stations as (s)he helps his or her spouse earn retirement benefits, and then watch as a jury takes those benefits away because the active duty service member commits misconduct the spouse is innocent of.
- Conversely, military juries—when sentencing a retirement-eligible service member—must decide whether to soften a just sentence to spare the member’s dependents from losing the retirement benefits they helped their spouse to earn.
- This legislation addresses both of these problems by allowing innocent dependents of retirement eligible service members to access transitional compensation and receive ongoing benefits in accordance with a court order if their spouse’s benefits are taken due to misconduct. This legislation is a material way to make good on the Department of Defense’s promise to “keep faith” with military families.
- The legislation also removes a disincentive to reporting misconduct currently imposed on dependents of retirement eligible members by removing the fear that such a report would forfeit benefits the family member is counting on.

Will this legislation change the sentencing process in courts-martial?

- Yes, but only in cases where the person who committed the misconduct is retirement eligible. In those cases, the jury will no longer have to consider the family’s loss of benefits when determining a just sentence, because this legislation will preserve the family’s access to those benefits. The jury will consider only the crime committed and the appropriate punishment for that crime.

Does this legislation force DoD to indemnify family members against the criminal behavior of service members?

- This legislation does not indemnify family members, it separates benefits the family would be entitled to in a divorce settlement from the benefits a military jury can take away from a member who commits misconduct. Civilian criminal courts do not take already vested retirement benefits away from individuals who commit crimes. This legislation keeps intact the military jury’s ability to strip a member of benefits, but it allows the innocent family members to access their share of those benefits.
- The proposed changes to the military retirement system do not include any mechanism to recoup the government’s contribution to the Thrift Savings Plans of members who are punitively separated after two years or more of service. It seems incongruous to allow members who commit misconduct to keep this money, and resist providing dependents who serve for 20 plus years alongside their spouse access to the share of a defined benefit they were counting on.

Are the two draft amendments the same?

- No. One allows dependents to access their share of a military member’s retirement benefits as if the member were receiving them. The other provides temporary benefits to dependents that are intended to bridge the gap between a sentence that takes benefits away and a divorce settlement that would allow that dependent long-term access to benefits. The legislation is drafted to ensure that beneficiaries may not claim more than one benefit at a time.