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While the National Institute of Military Justice approves the basic direction of various measures enacted today when President Biden signed the [FY22 National Defense Authorization Act](#) (NDAA) into law – measures to bolster the legitimacy and fairness of the military justice system – we are disappointed in the legislation’s overall failure to achieve critical comprehensive reform. In that vein, we call on Congress to afford the [Military Justice Improvement and Increasing Prevention Act](#) a stand-alone vote soonest.

Fundamentally, the FY22 NDAA represents a missed opportunity to create a modern, fair, and credible court-martial system. First, the legislation removes only eleven serious offenses from military commander's disposition authority. For example, maiming and child endangerment remain within commanders’ discretion, along with many other offenses for which more than one-year confinement is authorized. In line with core principles of criminal law and procedure, we remain steadfast in our [conviction](#) that the disposition of all such crimes should be left to prosecutors independent of the chain of command.

Second, the FY22 NDAA’s structural changes are deficient, with the new special trial counsel lacking full independence from the chain of command in the court-martial process. The result is that commanders retain influence over significant aspects of a court-martial, including the power to select the jury. The fact that the FY22 NDAA leaves with the accused’s commander the extraordinary ability to shape the court-martial jury, perhaps for a desired result, is indefensible. This command jury selection power has long been one of the Uniform Code of Military Justice’s greatest defects, and must be remedied by mandating that court-martial jury pools be randomly selected by a neutral court-martial administrator.

Third, the FY22 NDAA fails to repair numerous other flaws in the military justice system, such as: non-unanimous verdicts are still allowed for conviction (the only U.S. criminal jurisdiction to so allow); there remains no requirement

that sufficient admissible evidence for conviction exist at charging, unlike the federal and most state criminal jurisdictions; and many military defendants remain without direct access to the U.S. Supreme Court (detainees at Guantanamo Bay, Cuba have greater access to the nation's highest court than convicted U.S. service personnel).

Hence while the FY22 NDAA's modest steps to wrest control of the military justice system from commanders and to modernize its sentencing processes are in the right direction, far more remains to be done to provide U.S. service members with a criminal justice system worthy of their sacrifices.

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National Institute of Military Justice