

FY2022 NDAA: Extremism in the Military

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Background

Government agencies and other experts have warned of an increasing threat of [domestic violent extremism](#) in the United States, efforts by supremacist and anti-government extremist groups to recruit those with military experience, and evidence of military-affiliated personnel membership and [participation](#) in these groups' activities. [Extremist](#) and [supremacist](#) activity among military-affiliated personnel has been the subject of several congressional hearings and legislative proposals over the past few years. This issue received further attention following [revelations](#) that several alleged perpetrators of crimes at the U.S. Capitol on January 6, 2021, had military backgrounds.

In response, the Department of Defense (DOD) increased efforts to address these issues. In February 2021, [Defense Secretary Lloyd J. Austin III issued an order](#) for a 60-day DOD-wide stand down to address and discuss issues related to extremism followed on April 9 by the establishment of a working group to counter extremism. DOD released the [Countering Extremist Activity Working Group \(CEAWG\)](#) report in December 2021, along with an updated DOD instruction on [Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces](#) that defines both “extremist activities” and “active participation.” Other federal government initiatives are detailed in the National Security Council’s June 2021 [National Strategy for Combatting Domestic Terrorism](#).

Several provisions in the National Defense Authorization Act for Fiscal Year 2022 (FY2022 NDAA), enacted on December 27, 2021, seek to enhance oversight, awareness, and disciplinary authorities related to servicemember support for or participation in extremist activities (see [Table 1](#)).

Table 1. FY2022 NDAA Legislative Proposals

House-passed H.R. 4350	Senate Armed Services Committee-passed S. 2792	Enacted Legislation
Section 525 would add a punitive article to the Uniform Code of Military Justice (UCMJ) on violent extremism.	Section 527 would require a DOD report on whether to establish a separate punitive article in the UCMJ on violent extremism.	Section 549M adopts the Senate provision.

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House-passed H.R. 4350	Senate Armed Services Committee-passed S. 2792	Enacted Legislation
<p>Section 529A would:</p> <ul style="list-style-type: none"> Prohibit servicemembers from participation in extremist activities and organizations, Establish a DOD oversight office with responsibility for countering extremism policies, Require training on extremist insider threats, media literacy, and whistleblower protections, Require data collection and reporting on extremist activities, Provide authority to utilize online extremist content as cause for servicemember separation. 	No similar provision.	Not adopted.
<p>Section 518 would prohibit DOD from disciplining a servicemember for social media posts or online activity based on the output of an automated algorithmic, mathematical, or other analytic tool, unless an imminent threat of physical violence exists.</p> <p>Section 519 would prohibit DOD from taking disciplinary action against a servicemember for online speech regarding a political matter.</p>	No similar provisions.	Not adopted; however, the Joint Explanatory Statement to accompany the bill directs the Secretary of Defense to provide a briefing to the Armed Services Committees on any analytical tool DOD uses, or plans to use, to monitor the social media activities of servicemembers.

Source: CRS analysis of legislation.

Discussion

[DOD policy](#), updated on December 20, 2021, defines “extremist activities” and prohibits servicemembers from actively participating in these activities. Those in [violation of such orders](#) may be subject to administrative action or prosecution under the [military justice system](#).

Section 525 of the House-passed bill would have created a separate punitive article in the [Uniform Code of Military Justice \(UCMJ\)](#) criminalizing “violent extremism.” The enacted legislation adopts a provision from the Senate bill requiring DOD to make recommendations to Congress on whether to add such a punitive article. “Violent extremism” is not defined in military law or policy. Other violent and destructive actions (e.g., [assault](#), [rioting](#), [threats](#)) are punishable under the UCMJ. The proposed UCMJ article would have tied these actions to intent to “intimidate or coerce any person or class of people,” or “influence, affect, or retaliate against the policy or conduct of the Government of the United States or any State.”

Section 529A of the House-passed bill, which was not enacted, would have added a new chapter to Title 10, United States Code on “Countering Extremism.” The Senate bill did not include a similar proposal. Among other changes, the House provision would have, 1) established a new *Office of Countering Extremism* within the Office of the Secretary of Defense, for oversight and programming, to counter extremism within the military and 2) required DOD to implement a counter extremism training program for recruiters, new recruits, officers, and enlisted members prior to promotion to certain grades and for

those transitioning out of the military. DOD’s December 2021 [CEAWG report](#) recommended the development of a “comprehensive training and education plan that provides regular training on prohibited extremist activity to [DOD] personnel, including those advancing to leadership positions.”

Other provisions in Section 529A of the House bill would have authorized DOD to utilize online content expressing support for extremist activity that is “knowingly shared, disseminated, or otherwise made available” as a cause for involuntary separation from the Armed Forces. While Sections 518 and 519 of the House bill did not mention extremism, these provisions would have sought to protect servicemembers from disciplinary actions related to online activity. A 2020 [congressionally mandated report](#) on screening enlistees for extremist or gang-related activity noted DOD was, “exploring the use of social media information in the conduct of background checks,” and cautioned against “complete reliance on data-driven solutions” due to potential vulnerabilities. The enacted FY2022 NDAA did not adopt these provisions. However, the [Joint Explanatory Statement](#) to accompany the bill directs the Secretary of Defense to provide a briefing within 180 days to the Armed Services Committees on any analytical tool DOD uses, or plans to use, to monitor the social media activities of servicemembers.

For more, see CRS Insight IN10299, *Sifting Domestic Terrorism from Hate Crime and Homegrown Violent Extremism*, CRS Report R45713, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, and CRS Legal Sidebar LSB10570, *Unrest at the Capitol: Potential Violations of the Uniform Code of Military Justice*

Author Information

Kristy N. Kamarck
Specialist in Military Manpower

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