



DEPARTMENT OF THE NAVY  
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WASHINGTON DC 20350-3000

May 17, 2021

Mr. James M. Inhofe  
United States Senate  
Committee on Armed Services  
Washington DC 20510-6050

Dear Senator Inhofe:

SUBJECT: Response to Questions Regarding the Military Justice Improvement and Increasing Prevention Act of 2021

Thank you for your letter of April 30, 2021, in which you requested my personal views and best military advice on the subject bill and its likely effects on the Marine Corps. I appreciate your outreach, as I consider these matters to be of utmost importance. This bill raises a number of potential challenges, but I remain committed to addressing these issues.

The bill shifts commanders' current authorities to convene courts-martial for specified offenses to a centralized Marine Corps "Office of the Chief of Staff on Courts-Martial," who will be bound by the disposition determination of an independent O-6 judge advocate. The bill also requires enhanced and specialized training for prosecutors, increased in-person training on military sexual assault for officers and enlisted personnel, and modifications to physical security on military installations. These changes are required within 180 days of enactment of the bill using the service Secretaries' personnel, funds, and resources "otherwise authorized by law."

Readiness. Difficult decisions must be made when new requirements arise without corresponding resources. I have spent nearly two years leading the Marine Corps through modernization efforts to meet evolving threats and to become a more lethal fighting force. These efforts have come at great cost, as the Marine Corps draws down in units, manpower, and equipment to purchase greater capabilities elsewhere. If directed to create a new military justice structure and process without a corresponding increase in resources, I would be forced to reduce funding and structure elsewhere in our military legal system. These vital services support individuals, units, and the Marine Corps as a whole; reducing them would have far-reaching adverse impacts. As a result, I consider this bill a significant risk to readiness and mission accomplishment if not appropriately resourced.

Good order and discipline. The Marine Corps charges its commanders with tremendous responsibility to carry out the mission and to ensure the well-being of their troops. Transferring responsibility to a third party outside the chain of command for enforcing the discipline of a commander's Marines would be a fundamental and unprecedented change. Prior to implementation, we must address the practical questions of who bears responsibility for resourcing courts-martial, for providing members, and for dealing with numerous litigation-related issues. We would also need to carefully consider the impact to good order and discipline when cases are returned to commanders for disposition. This would seem to lengthen the process, limit flexibility, and potentially reduce confidence among victims. Thinking through these practical aspects in advance is essential or we risk potentially solving one problem while creating another.

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Justice. It is unclear to me whether or not the bill would promote the interests of justice by increasing accountability for perpetrators of sexual assault. It appears to create a more complex system that could potentially slow the military justice process and cause confusion among commanders about their roles. We should also weigh the risk that fewer allegations of sexual assault are prosecuted because O-6 judge advocates would assess based on burden of proof requirements before referring cases to court-martial – and their recommendations would be binding. The approach in this bill could result in more effective investigations and prosecutions, but only if adequate time and resources are available.

Leader-led relationships. Marine Corps commanders bear responsibility for many decisions related to the well-being of their Marines and their units, including operations, maintenance, logistics, administration, strategic planning, and safety. If decisions related to Marines accused of certain offenses are taken from the commander and put with another person, there is a concern that the commander will lose interest in the case and that Marine's welfare. I do not share these concerns. I expect commanders to always bear responsibility for their Marines; changes like those in the bill will never relieve commanders of their duty to care for and lead their Marines, including when certain military justice processes are removed from their control.

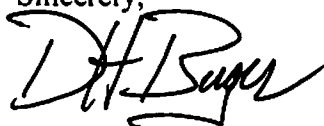
Battlefield command. The bill would challenge the timely administration of military justice in combat and forward-deployed environments by creating delays and procedural uncertainty, distracting commanders from their combat mission. We should guard against that outcome.

Other matters. The bill requires execution within 180 days. This is not nearly enough time to reconfigure a military justice system that has been in place for over seven decades. Notably, the Military Justice Improvement Act of 2016 provided a two-year period for implementation. I recommend a similar timeline to enable the services to build a proper framework.

I am also concerned that the focus on sexual assault could be diminished by unnecessarily expanding the number of covered offenses in this bill. We should remain focused on the primary issue, and not dilute the impact of any changes this bill might direct.

No matter what changes are made, commanders must remain connected to the military justice process. I am opposed to creating an environment where commanders believe that any particular class of offenses is "the lawyer's problem." Quoting the Preamble of the Manual for Courts-Martial, if the Uniform Code of Military Justice does not adequately "promote justice" or "assist in maintaining good order and discipline," then it must change. I look forward to working with leaders in the Department of Defense and the Congress to do so.

Sincerely,



David H. Berger  
General, U.S. Marine Corps  
Commandant of the Marine Corps