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CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, D.C. 20318-9999

19 MAY 2021

The Honorable James M. Inhofe
United States Senate
Washington, DC 20515/20510

Dear Senator Inhofe:

Thank you for your continued support and sincere interest in assessing the impact of proposed legislation on the Armed Forces. As I understand the scope of the "Military Justice Improvement and Increasing Prevention Act of 2021," the draft bill would remove the commander from decisions for all non-military offenses and felony cases punishable by one year or more, including the following: prohibited activities with military recruits or trainees by a person in position of special trust; wrongful broadcast or distribution of intimate visual images; murder; manslaughter; death or injury of an unborn child; child endangerment; rape and sexual assault; mails: deposit of obscene matter; rape and sexual assault of a child; other sexual misconduct; larceny and wrongful appropriation; fraudulent use of credit cards, debit cards, and other access devices; false pretenses to obtain services; robbery; frauds against the United States; bribery; graft; kidnapping; arson, burning property with intent to defraud; extortion; aggravated assault; assault with intent to commit murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, or kidnapping; maiming; domestic violence; stalking; perjury; subordination of perjury; obstructing justice; misprision of serious offense; wrongful refusal to testify; prevention of authorized seizure of property; noncompliance with procedural rules; wrongful interference with adverse administrative proceeding; and retaliation.

The Uniform Code of Military Justice exists to provide justice and to maintain good order and discipline, both of which directly contribute to unit cohesion and U.S. military effectiveness in combat. The military is unique in that commanders must maintain good order and discipline in order to successfully perform on the battlefield under the most intense of circumstances. Commanders' orders must have the force of law, and all within his or her unit must acknowledge this authority. With this responsibility to enforce the rule of law comes accountability.

It is my professional opinion that removing commanders from prosecution decisions, process, and accountability may have an adverse effect on readiness, mission accomplishment, good order and discipline, justice, unit cohesion, trust, and loyalty between commanders and those they lead. However, in the specific and limited circumstance of sexual assault, I remain open-minded to all solutions. This is a complex and difficult issue. I urge caution to ensure any changes to commander authority to enforce discipline be rigorously analyzed, evidence-based, and narrow in scope, limited only to sexual assault and related offenses.

As I am sure you are aware, the Secretary of Defense established the Independent Review Commission on Sexual Assault in the Military on February 26, 2021, chartered to address the multiple aspects and factors of this issue. It is my belief we have not made sufficient progress in

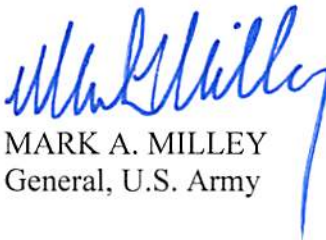
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recent years to eliminate sexual assault, and we have consequently lost the trust and confidence of many Soldiers, Sailors, Airmen, Marines, and Guardians in the chain of command's ability to adjudicate these serious crimes. I intend to reserve judgement until I have an opportunity to review the final recommendations of the Independent Review Commission to determine the merits of any such recommendations vis-à-vis proposed legislation currently in the Senate and House of Representatives.

I remain committed to providing you my candid personal views and will do so after I have reviewed the recommendations of the Commission. I look forward to providing you my personal assessment on this matter in the near future.

Sincerely,



MARK A. MILLEY
General, U.S. Army

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NATIONAL GUARD BUREAU
1636 DEFENSE PENTAGON
WASHINGTON DC 20301-1636

MAY 18 2021

The Honorable James M. Inhofe
United States Senate
205 Russell Senate Office Building
Washington, DC 20510-0001

Dear Senator Inhofe:

Thank you for your letter of April 30, 2021, in reference to S.1520, the Military Justice Improvement and Increasing Prevention Act of 2021 (MJIIPA). The issue of comprehensively addressing sexual assault/harassment in the National Guard is very important to me, and I appreciate the opportunity to provide you my personal views on this proposed legislation's potential impact on the National Guard.

As Chief of the National Guard Bureau, it is my responsibility to work collaboratively with the Adjutants General to provide leadership in eliminating sexual harassment/assault in the National Guard and we have been working very diligently to that end. Although we continue to improve our prevention efforts and processes, I fully recognize the need to be open and receptive to new and additional ways to help eliminate sexual assault/harassment in the National Guard and to restore National Guard members' confidence in our processes. I welcome the discussion of initiatives of this nature.

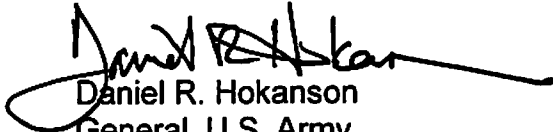
In response to your questions, any approach or change to the federal military justice system should consider the impact these changes would have on the non-federalized National Guard due to our unique operating environment and authority structure. State National Guards operate 95% of the time in a non-federalized status and most States rely on civilian law enforcement and local civilian prosecutorial offices to investigate and address issues of serious misconduct, such as sexual assault, occurring in a non-federalized status.

Our National Guard commanders and judge advocates must be knowledgeable and proficient in both the non-federalized military justice processes and the Uniform Code of Military Justice (UCMJ). It appears to me that these proposed legislative changes to the UCMJ would make the federal military justice practice more complex and specialized, further increasing the distinctions between the federalized and non-federalized processes. This will also increase training requirements for our commanders and judge advocates to ensure their readiness to conduct military justice when mobilized for federal duties.

As a Nation, we place a large amount of responsibility in the hands of our military commanders. We entrust them to administer military justice in a manner that ensures good order and discipline, enhances combat readiness, and is perceived by all to be fair and equitable. This responsibility is an essential element of command authority and serves to distinguish military command from civilian employment/managerial authority. I am concerned that the scope of the proposed changes in the legislation goes beyond the military commander's authority to address military sexual assaults to a much broader set of offenses. Such a significant change in scale could have serious adverse impacts on a commander's authority to execute the military justice responsibilities inherent in military command.

I believe any changes to the military justice system that help build trust between commanders and victims, and increase reporting, will continue to advance the Department's efforts towards eradicating sexual assault/harassment in the ranks.

Sincerely,



Daniel R. Hokanson
General, U.S. Army
Chief, National Guard Bureau

Enclosure:
As stated



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES SPACE FORCE

The Honorable James M. Inhofe
United States Senator
205 Russell Senate Office Building
Washington, DC 20510

Dear Senator Inhofe:

This letter is in response to your letter dated April 30, 2021, requesting my personal views and military advice on the draft "Military Justice Improvement and Increasing Prevention Act of 2021" (MJIIPA), and the likely effects on the United States Space Force if enacted as drafted in law.

Over 37 years of service in the military and eight opportunities to command, I have witnessed the devastating impact of sexual assault and sexual harassment on our force; these behaviors are completely unacceptable and undermine readiness. The Space Force and its leaders are deeply committed to combatting sexual assault and sexual harassment through a holistic approach of prevention, response, and accountability. Unfortunately, our efforts to date have not made substantial progress in reducing rates of sexual assault, and although I do not take any changes to command authority lightly, I believe the time has come to consider changes. I thank you for the opportunity to share my views on the MJIIPA as one such proposal for change.

Readiness and its Relationship to Good Order and Discipline. We hold commanders responsible for maintaining the readiness of their units to perform effectively in combat; this is a solemn responsibility in the gravest of all human endeavors. It means that among other tasks, commanders must set and enforce standards and foster a culture of cohesion and esprit de corps within their units. This requires the ability to operate across a continuum of discipline, addressing misconduct swiftly and fairly. At the same time, consistency and accountability in the administration of discipline are required to ensure service members' trust in their commanders and the system of justice. A lack of trust is detrimental to good order and discipline and, ultimately, unit readiness.

Sexual Assault, Sexual Harassment, and the Interests of Justice. While I have trust in our Space Force commanders when it comes to readiness and the general administration of discipline, sexual assault and sexual harassment are complex cases that require higher levels of expertise and specialized training. I recognize that some victims do not have confidence that their commanders can handle these cases appropriately, which may be preventing them from reporting, getting the care they need, and identifying perpetrators. Lack of trust and reluctance to seek justice are, in themselves, readiness issues. Therefore, I am open to structural changes, including the possibly removing these cases from the chain of command. While I am not convinced the number of sexual assaults will decrease in the short term, in the longer term would-be perpetrators may be less likely to commit offenses if they know they are more likely to be held accountable through higher conviction rates. At the same time, a victim's voice matters and any structural changes must continue to take into account each victim's vision of justice.

Relationship between Commanders and Guardians They Lead. If the ability to enforce discipline in sexual assault and sexual harassment cases is to be removed from the chain of command, there is a risk that commanders may not display the same level of focus on prevention efforts. If these changes are enacted, I will be vigilant to ensure that commanders stay focused on preventing sexual assault and sexual harassment, and setting an appropriate tone and climate in their units.

Command and Mission Accomplishment. As I stated previously, the ability of commanders to set and enforce standards is fundamental to readiness and mission execution. As drafted, removing the responsibility to administer discipline for the full scope of offenses covered by MJIPA would greatly hamper that responsibility. The other offenses are not as complex and do not require specialized training. I do not have the same concern regarding commanders' ability to handle those offenses, and believe the administration of discipline for those offenses works effectively today. In addition, any military justice process must prioritize timely action; a process that removes so much of the administration of discipline from the chain of command also threatens to extend the time it takes to complete the process. If the MJIPA were enacted as written, covering a broad range of offenses, it would have the potential to adversely affect good order and discipline and weaken the readiness of our forces.

Other Matters. Any changes such as those proposed in the MJIPA must be properly resourced and implemented on a timeline that ensures trusted and effective administration of justice from the start. Further, the proposed changes add a layer of complexity that needs to be fully understood. For a change of this magnitude, we will need time to "table top" the proposed changes before implementation, with a focus on the seam between the independent judge advocate and the commander. Finally, any proposed legislation should be structured to provide the Chief of Space Operations the same authorities and responsibilities as the other service chiefs.

I hope you will find this response helpful, and I appreciate your support for the men and women of the United States Space Force.

Sincerely,


JOHN RAYMOND
General, USSF
Chief of Space Operations



CHIEF OF NAVAL OPERATIONS

May 18, 2021

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

Dear Senator Inhofe:

This letter is in response to your letter of April 30, 2021, requesting my personal views and advice regarding the draft “Military Justice Improvement and Increasing Prevention Act of 2021” (MJIIPA) and its potential effects on the U.S. Navy if the bill, as drafted, is enacted.

In my 36 years of service, including my tours in command, I have witnessed the devastating effects of sexual assault. There is no tolerance for sexual assault within our Navy. This criminal behavior is corrosive to good order and discipline, and leads to a force that is less capable and less ready to execute our critical missions. Finding solutions to end the scourge of sexual assault within our Navy remains among my top priorities.

For some years, the vast majority of general courts-martial within the Navy have been convened by our regional commanders ashore rather than operational commanders. The regional commanders have extensive command experience and the legal staffs required to accommodate this responsibility; I have confidence in the continuity and consistency of cases referred to courts-martial under this framework. Importantly, no operational commanders have reported to me that their ability to maintain good order and discipline has been adversely affected as a result.

However, despite this, I recognize a substantial number of Sailors have lost trust in our Navy’s ability to handle these cases appropriately. This lack of trust prevents some victims from reporting these crimes, depriving them of the care they need, and inhibiting due process for perpetrators who hurt them.

Therefore, I do not oppose thoughtful, evidence-based adjustments to our system that do not undermine the ability of leaders to handle misconduct rapidly and without fear or favor. Consistent with this theme, my view is that an effective military justice system must enable commanders to maintain good order and discipline; provide fair, transparent, and constitutionally-just processes that protect the fundamental rights of the accused; and ensure victims’ rights are respected throughout an impartial and unbiased search for the truth.

With respect to the draft legislation, any changes must be properly defined and resourced with adequate time allocated for extensive review prior to implementation. My first concern is with the broad scope of offenses that would be covered by an alternate judge advocate-run process. By removing commanders’ authority to effectively respond to many of the most serious threats to good order and discipline until they have been vetted by an alternate judge advocate


process, MJIIPA erodes the ability of commanders to create and maintain the environment necessary to effectively exercise mission command. Large scale removal of commanders' authority could cause Sailors to doubt the capabilities of their commanders or to believe that their commanders operate without the full trust of their superiors. Additionally, diverting nearly all serious offenses to judge advocates could be counterproductive to our prevention efforts, which emphasize the critical responsibility of senior leaders. If the real issue to be addressed is sexual assault, then any change must be focused on that problem. I have seen no evidence that there is a lack of trust among victims for *all* crimes for which the punishment exceeds one year of confinement, which is the range of offenses which MJIIPA seeks to cover.

I also have concerns with the MJIIPA implementation timeline. MJIIPA's amendments are substantial. They require thorough evaluation and revision of the Uniform Code of Military Justice, the Manual for Courts-Martial, and numerous Department of Defense (DoD) and service regulations and policies. This time-consuming process must be performed with care to minimize the risk of legal error. If MJIIPA goes into effect without careful implementation, there is significant risk that cases may be delayed during trial or overturned on appeal. This, in turn, would erode confidence in the system and re-victimize victims.

I must emphasize the key to driving down the number of sexual assaults is effective prevention. Quite frankly, we will not prosecute our way to fewer cases. Rather, our efforts must begin far to the left of the crime and involve cultural transformation, education, and leadership, and accountability. The Navy has remained committed to expanding and improving our prevention efforts. Our Culture of Excellence initiative, which I lead, provides an integrated approach to prevention aimed at destructive behaviors, including sexual assault, and the Navy has forged relationships both within the DoD and in the private sector and academia to incorporate best practices and expertise. We are also eager to receive and incorporate ideas from the Defense Advisory Committee for the Prevention of Sexual Misconduct, which was established by section 550B of the FY-20 National Defense Authorization Act.

Thank you for the opportunity to provide my advice on the draft legislation. I welcome the opportunity for further discussion on the potential impact to the Navy from this proposed legislation, as well as other initiatives to improve our prevention efforts and our military justice system. I appreciate your support for the men and women of the U.S. Navy.

Sincerely,


M. M. GILDAY
Admiral, U.S. Navy
Chief of Naval Operations



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
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.

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

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.

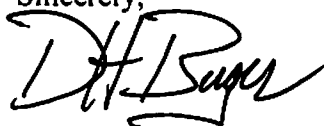
Battlefield command. The bill would challenge the timely administration of military justice in combat and forward-deployed environments by creating delays and procedural uncertainty, distracting commanders from their combat mission. We should guard against that outcome.

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,

A handwritten signature in black ink, appearing to read "D. H. Berger".

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



DEPARTMENT OF THE AIR FORCE

OFFICE OF THE CHIEF OF STAFF

UNITED STATES AIR FORCE

WASHINGTON DC 20330

USAF/CC
1670 Air Force Pentagon
Washington, DC 20330-1670

03/17/2021

The Honorable James M. Inhofe
United States Senator
205 Russell Senate Office Building
Washington, DC 20510

Dear Senator Inhofe:

Thank you for the opportunity to provide my military advice on the draft Military Justice Improvement and Increasing Prevention Act (MJIIPA). The Air Force remains fully committed to preventing and rooting out sexual assault and sexual harassment in our service. I know this requires accountability, and I am open to improving our processes that deliver justice. Climate, culture and prevention efforts are equally or more important to accountability in driving down the instances of these crimes. The combination of these efforts must continually grow trust and at the same time maintain good order and discipline. My views consider all these factors. But my objective remains to root this misconduct out of the Air Force with every tool available.

The linkages between prevention, deterrence, reporting, victim support, prosecution, and accountability are complex. I do not know if removing commanders' authority to act on certain offenses will affect the occurrence of sexual assault to the degree we all desire and need. I do know we must do more than just address prosecution and accountability. We must also address climate, culture, and prevention to create an environment where our Airmen can reach their full potential without fear of sexual assault or harassment.

The relationships of commander authority and accountability to readiness, mission accomplishment, and good order and discipline are also complex because the commander's responsibilities are woven through every question you pose. The Air Force places great trust and confidence in our commanders to maintain readiness while protecting our most valuable assets – our Airmen. Commanders serve a critical role by enforcing standards, and then bringing together all resources and support programs. Removing elements of authority will likely create some risk, particularly if poorly scoped, communicated, or implemented. That does not mean we should not try new measures if we believe they will increase accountability and reduce sexual assaults. However, supporting analysis associated with any proposed changes would be beneficial in determining the best approaches and the way forward on implementation. Regardless of the approach chosen, we should recognize the complexity of human behavior, measure meaningful results, and be ready to adjust as we inevitably learn.

If commanders' authority is removed as outlined in MJIIPA, I believe there are certain principles that will reduce risk in the questions you ask. The scope of the offenses covered should be specific to the sexual assault and harassment. The path should be clear and certain to an Airman

considering reporting. The path, from reporting to accountability, should also be timely and responsive. The changes should increase trust in the process and trust in those charged with its application. Implementation should reinforce commander's responsibilities in the process, not relieve them from it. Finally, we need accurate measures that match our service members' experiences, to be confident that we are driving down instances of sexual assault and sexual harassment.

We need Airmen to have trust in our accountability processes *and* their leadership. To build trust and reduce risk to readiness we must support the roles and responsibilities of the commander in our efforts to prevent and address offenses of sexual assault and harassment. Any changes must present both our Airmen and commanders with a clear sense of the accountability tools available, and a clear sense of the roles and responsibilities of the varied entities charged with enforcing accountability for crimes of sexual assault and harassment.

Thank you for the opportunity to provide this information, and we appreciate your support of the men and women of the United States Air Force.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Q. Brown, Jr.', with a stylized flourish at the end.

CHARLES Q. BROWN, JR.
General, USAF
Chief of Staff