



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

JUL 16 2024

GENERAL COUNSEL

The Honorable Karla Smith
Chair
Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in
the Armed Forces (DAC-IPAD)
One Liberty Center
875 N. Randolph Street, Suite 150
Arlington, VA 22203

Dear Judge Smith:

Thank you for your letter of July 1, 2024, (“July 1st Letter”) providing preliminary assessments based on DAC-IPAD members’ site visits. I greatly value the work of the DAC-IPAD and the important contributions you are making to the modernization and professionalization of the military justice system.

Your letter raised the issue of assessing the historic reforms to the military justice system that took effect at the end of 2023. I write now to provide an interim response, noting efforts that the Department of Defense (DoD) is already taking to assess implementation of those reforms as well as our engagement with the Military Departments in order to more comprehensively respond to your letter.

In December 2023, pursuant to Section 547 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022, Pub. L. No. 117-81, 135 Stat. 1541, 1712 (2021), I issued a plan to address the manner in which DoD will analyze the effects of recent changes in law and policy on the disposition of offenses over which special trial counsel exercise authority in accordance with Article 24a, Uniform Code of Military Justice. The performance measures and data collection categories required by this plan will generate information DoD will use to determine whether special trial counsel, trial defense counsel, and victims’ counsel are resourced and staffed to function at optimal levels. This information will also be used to prepare the report required by Section 541(f) of the James F. Inhofe NDAA for FY 2023, Pub. L. No. 117-263, 136 Stat. 2395, 2581 (2022). Following submission of this report to the House and Senate Armed Services Committees, I will provide a copy to the DAC-IPAD.

In December 2023, following receipt of the Study Team Report on Independent Review Commission on Sexual Assault in the Military Recommendation 1.8, Optimal Timelines for Covered Offenses, I directed the Military Departments to collect data for use in assessing the pace at which each alleged covered offense moves through the stages of the military justice process. The Military Departments will collect data through the end of FY 2024 and provide it to my office no later than November 1, 2024. That information will be particularly important in

assessing whether the OSTCs and other military justice entities are staffed appropriately and, if not, target the stages in the military justice process most in need of additional resources.

There are also existing statutory requirements for the Military Departments to provide periodic briefings concerning personnel, funding, and optimal caseload for special trial counsel, defense counsel, victims' counsel, and Military Criminal Investigative Organization (MCIO) personnel. These briefings, required by Section 549A of the James F. Inhofe NDAA for FY 2023, Pub. L. No. 117-263, 136 Stat. 2395, 2588 (2022), will be provided to the House and Senate Armed Services Committees in August and December 2024. Following those briefings, I will provide the briefing materials to the DAC-IPAD.

In addition to this ongoing work, I have asked the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps to provide me with their views regarding the concerns raised in the July 1st Letter. Their input is particularly important concerning trial defense counsel and victims' counsel, who fall under their supervision. I have also invited the Lead Special Trial Counsel to provide me with their thoughts in response to your letter. Finally, because the letter notes concern regarding resourcing for MCIO personnel, I have also provided a copy to the DoD Inspector General, who is responsible for criminal investigation policy, evaluation, and guidance, and to the Under Secretary of Defense for Intelligence and Security, who is the Principal Staff Assistant for Law Enforcement. I encourage you to engage them regarding the observations raised in your letter concerning the MCIOs, as well as with any matters the DAC-IPAD addresses in the future regarding criminal investigations.

I am grateful to the DAC-IPAD members for alerting me to issues identified during your site visits to military installations and for your continued efforts to assist the DoD in improving our sexual assault response systems.

Sincerely,



Caroline Krass
General Counsel