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MARINE CORPS BULLETIN 5810

From: Commandant of the Marine Corps
To: Distribution List

Subj: CRIMINAL JUSTICE INFORMATION REPORTING REQUIREMENTS AND
GUIDANCE

Ref: See enclosure (1)

Encl: (1) References
(2) Guidance for Commanding Officers (CO)
(3) Guidance for Law Enforcement Personnel
(4) Guidance for Officers In-Charge (OIC) and Legal
Support Services Sections (LSSS)
(5) Requirements for Individual Marines
(6) Definitions

1. Situation

a. The purpose of this Bulletin is to ensure criminal justice information (CJI) collected during investigations and resulting dispositions is reported to the Federal Bureau of Investigation (FBI), which maintains databases, including the National Instant Criminal Background Check System (NICS) utilized during the firearm purchase process.

b. Commanding Officers (CO), the Naval Criminal Investigative Service (NCIS), Marine Corps Law Enforcement Agencies (LEA), LEAs in support of Marine Corps units, and Marine Corps correctional facilities all have roles in the collection and reporting of CJI. To ensure CJI is provided to the FBI, this Bulletin:

(1) Establishes Marine Corps policy for the reporting of CJI by COs;

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(2) Reinforces the requirement for LEAs and Marine Corps correctional facilities to collect and report CJI in accordance with Department of Defense (DoD) and Department of the Navy (DON) regulations;

(3) Requires individual Marines to report domestic violence convictions and qualifying restraining orders (see enclosure (6)).

2. Cancellation. This Bulletin cancels MARADMIN 209/04 and MARADMIN 186/03.

3. Mission. All Marine Corps commands, LEAs, and correctional facilities collect and report CJI in accordance with this Bulletin in order to prevent the unlawful purchase or possession of firearms and ammunition.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent. Criminal justice information is reported to the FBI to facilitate identification of persons prohibited by law and regulation from purchasing or possessing firearms or ammunition.

(2) Concept of Operations. A coordinated effort between COs, their Staff Judge Advocates (SJA), Legal Services Support Sections (LSSS), and LEAs is utilized throughout the investigative and disposition process to determine whether a Service Member is prohibited by law and regulation from possessing firearms or ammunition (hereinafter: prohibited person). Once a Service Member is identified as a prohibited person, coordination between the command and the appropriate LEA continues in order to ensure initial entry of CJI into appropriate law enforcement systems. Upon disposition of offenses, COs shall forward associated documentation to the appropriate LEA to ensure a complete record is provided to the FBI and information is accurately reflected in NICS.

b. Tasks

(1) Deputy Commandant, Plans, Policies, and Operations (DC PP&O)

(a) Provide Headquarters, U.S. Marine Corps (HQMC) oversight of CJI reporting to the FBI, pursuant to enclosures

(2)-(4), including appointment of a Criminal Justice Information Services (CJIS) Division Systems Officer (CDSO) and other appropriate representatives for submitting CJI to the FBI.

(b) In conjunction with Commanding General, Marine Corps Combat Development Command (CG MCCDC), review and update training on CJI reporting provided to Marine Corps LEAs and corrections personnel during initial and follow-on training.

(c) Develop and incorporate CJI reporting into current Functional Area Checklists for use during Inspector General of the Marine Corps (IGMC) inspections.

(2) CG MCCDC

(a) In conjunction with DC PP&O, review and update training on CJI reporting provided to Marine Corps LEAs and corrections personnel during initial and follow-on training.

(b) Review and update training on CJI reporting provided to Commanders and unit administrative personnel as appropriate.

(3) Commanding General, Marine Corps Systems Command (CG MCSC). Support Marine Corps Installations Command (MCICOM) actions to electronically submit CJI to the FBI for all Marine Corps LEAs and Marine Corps correctional facilities.

(4) Commander, Marine Corps Installations Command (COMMCICOM)

(a) Ensure installation LEAs and corrections personnel forward CJI to the FBI in accordance with references (a) and (b), and enclosure (3) of this Bulletin.

(b) Ensure Officers-In-Charge (OIC) of LSSSs forward CJI to the servicing LEA in accordance with enclosure (4) of this Bulletin.

(5) Commander, Marine Forces Reserve (COMMARFORRES). Ensure installation LEAs forward CJI to the FBI in accordance with references (a) and (b), and enclosure (3) of this Bulletin.

(6) Commanding Officers (CO) (O-5 and above). Take action as directed in enclosure (2) of this Bulletin.

5. Administration and Logistics

a. Records Management. Records created as a result of this Order shall be managed according to National Archives and Records Administration approved dispositions, per references (c) and (d), to ensure proper maintenance, use, accessibility and preservation, regardless of format or medium. Refer to reference (e) for Marine Corps management policy and procedures.

b. Privacy Act. Any misuse or unauthorized disclosure of Personally Identifiable Information (PII) may result in both civil and criminal penalties. The DON recognizes that the privacy of an individual is a personal and fundamental right that shall be respected and protected. The DON's need to collect, use, maintain, or disseminate PII about individuals for purposes of discharging its statutory responsibilities will be balanced against the individuals' right to be protected against unwarranted invasion of privacy. All collection, use, maintenance, or dissemination of PII will be in accordance with the Privacy Act of 1974, as amended (reference (f)) and implemented per reference (g).

c. Forms Management. The official website for DoD Forms is located at: <http://www.esd.whs.mil/Directives/forms/>.

d. PP&O (PSL) is the proponent of this Bulletin.

6. Command and Signal

a. Command

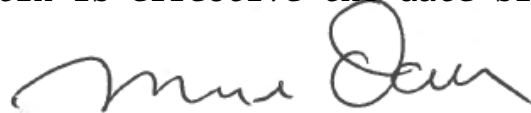
(1) Violations of the requirements in enclosure (5) are punishable under the Uniform Code of Military Justice (UCMJ) (reference (h)), and may result in disciplinary or adverse administrative action.

(2) Nothing in this Bulletin creates a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or instrumentalities, its officers or employees, or any other person.

(3) This Bulletin is applicable to the Marine Corps Total Force.

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b. Signal. This Bulletin is effective the date signed.

A handwritten signature in dark ink, appearing to read "M. G. Dana". The signature is fluid and cursive, with a large loop at the end.

M. G. Dana
Director, Marine Corps Staff

Distribution: PCN 10209160200

References

- (a) DoDI 5505.11 CH-2, "Fingerprint Card and Final Disposition Report Submission Requirements," March 30, 2017
- (b) DoDI 5505.14 CH-1, "Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders," March 9, 2017
- (c) SECNAV M-5210.1 W/CH-1
- (d) SECNAVNOTE 5210 29 MAY 2018
- (e) MCO 5210.11F
- (f) SECNAVINST 5211.5E
- (g) 5 U.S.C. § 552a
- (h) Uniform Code of Military Justice
- (i) DoDI 5505.17 CH-1, "Collection, Maintenance, Use, and Dissemination of Personally-Identifiable Information and Law Enforcement Information by DoD Law Enforcement Activities," November 29, 2016
- (j) 18 U.S.C. §§ 921 et seq.
- (k) Manual for Courts-Martial
- (l) DoDI 6400.06 CH-4, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," May 26, 2017
- (m) MCO 5580.2B W/CH-2
- (n) 21 U.S.C. § 812
- (o) 25 CFR Part 11

Guidance for Commanding Officers (CO)

1. General. COs are responsible for ensuring information related to prohibited persons within their command is reported to the supporting LEA to enable that agency to enter the offender's CJI into the appropriate LE database.

a. The Gun Control Act (reference (j)) prohibits possession of a firearm or ammunition by a person who:

(1) Has been convicted at a General Court-Martial (GCM) of any offense punishable by more than one year of confinement, regardless of the amount of confinement actually awarded or imposed;

(2) Is a fugitive from justice (see enclosure (6));

(3) Is an unlawful user of or addicted to any controlled substance (see enclosure (6));

(4) Is found incompetent to stand trial or found not guilty by reason of lack of mental responsibility at trial by Special Court-Martial (SPCM) or GCM under references (h) and (j);

(5) Has received either a dishonorable discharge or dismissal (for officers) at a GCM;

(6) Is subject to a civilian court-issued restraining order (see enclosure (6)); or

(7) Has been convicted at SPCM, GCM, or in a civilian court of a crime of domestic violence (see enclosure (6)).

b. Referral to a GCM. When charges are referred to a GCM and at least one of the charges is punishable by more than one year of confinement, reference (j) prohibits the Service Member from receiving, shipping, or transporting firearms or ammunition. This temporary prohibition remains in effect until the charges are dismissed or adjudicated, and reported to the servicing LEA for appropriate action. The Service Member may retain possession of firearms or ammunition already in the Service Member's possession. Only after a conviction will there be a requirement to prevent the accused from retaining firearms or ammunition already in their possession.

2. Reporting Requirements. COs shall provide supporting documentation (e.g., report of investigation, Unit Punishment Book) and direct a Service Member under their authority to report to the servicing LEA (e.g., NCIS, installation Provost Marshal's Office (PMO)) when a Service Member:

a. Domestic Violence. Is subject to a civilian court-issued restraining order; or is convicted at SPCM, GCM, or in a civilian court of a crime of domestic violence (see enclosure (6)).

b. Wrongful Drug Use. Is determined, via a finding at a Non-Judicial Punishment (NJP), administrative separation proceeding, Summary Court-Martial (SCM), or SPCM, to have wrongfully used any controlled substance in violation of Article 112a, UCMJ (which will result in a 12 month prohibition on weapons possession from the date of adjudication).

c. Court-Martial

(1) Is subject to charges referred to GCM (see paragraph 1b of this enclosure);

(2) Is convicted by GCM of any offense punishable by more than one year of confinement, regardless of the amount of confinement actually awarded or imposed;

(3) Is found incompetent to stand trial or found not guilty by reason of lack of mental responsibility at trial by SPCM or GCM under references (h) and (j); or

(4) Enters an unauthorized absence or deserter status following preferral of charges.

d. Returns from deserter status.

3. Timing and Method

a. COs of units aboard Marine Corps installations with a servicing LEA shall notify the servicing LEA and/or correctional facility of the disposition or adjudication of any cases meeting the criteria of paragraph 2 of this enclosure. Notice shall be made in writing within five working days of the disposition.

b. COs of units not located aboard a Marine Corps installation with a servicing LEA shall notify the Marine Corps Criminal Investigation Division (CID) of the disposition or

adjudication of any cases meeting the criteria of paragraph 2 of this enclosure. Notice shall be made via email to the CID organizational email address at usmccid@ncis.navy.mil, with the email subject "REQUEST FOR NICS ENTRY". Notice shall be made within five working days of the disposition.

4. In cases where conduct occurs in a deployed environment that triggers reporting requirements in paragraph 2 of this enclosure, COs shall direct the Service Member to the servicing LEA as soon as possible after redeployment.

5. Weapons Access

a. Privately-Owned Firearms. COs shall not permit access by a prohibited person to privately owned firearms stored in unit armories.

b. Government Use Exception. COs may issue government weapons and ammunition for government use (e.g., rifle qualification) to Service Members otherwise subject to the prohibitions in paragraphs 1a and 1b of this enclosure. However, this exception does not apply to and commanders shall not issue government weapons or ammunition to Service Members who have been convicted of a domestic violence offense (see enclosure (6)).

6. Disposition of Personally-Owned Firearms and Ammunition

a. When a CO determines, after consulting with the servicing SJA, that an individual is a prohibited person, as outlined in paragraph 1 of this enclosure, the Commander shall:

(1) Counsel the individual in writing to abide by Federal law pertaining to restricted access to personally-owned firearms and ammunition and to make arrangements to dispose of all such items.

(a) Permanent Prohibition on Possession of Firearms. The Commander shall advise the individual to dispose of their privately-owned firearms and ammunition lawfully.

(b) Temporary Prohibitions on Possession of Firearms (restraining order; wrongful drug use). The Commander may (but is not required to) offer the individual temporary storage (without access) in unit armories.

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(2) Coordinate with the PMO to provide an escort for the Service Member to remove all personally-owned firearms and ammunition to and from the place of transfer.

b. In cases involving firearms or ammunition not stored or located within an area under Marine Corps jurisdiction, coordinate with civilian LEAs via PMO and the servicing SJA. COs are not authorized to inspect or authorize the search of places not located within an area under Marine Corps jurisdiction.

7. Mandatory Self-Reporting by Service Members

a. Reference (1) requires Service Members to report to their command if they have been convicted of a crime of domestic violence. When making such a report, Service Members shall use DD 2760, "Qualification to Possess Firearms or Ammunition." COs shall also direct Service Members to complete DD 2760 if they reasonably believe the Service Member has such a conviction. If a Service Member self-reports that they have been convicted of a crime of domestic violence, the CO shall forward the completed DD 2760 to the servicing LEA.

b. Where an individual self-reports the imposition of a restraining order imposed by a civilian court, COs shall, in consultation with the servicing SJA, direct the individual to provide a copy of the restraining order. COs shall forward the restraining order to the servicing LEA.

8. Actions Following a Self-Report. COs considering disciplinary action against a Service Member who has self-reported should consult with their SJA.

Guidance for Law Enforcement Personnel

1. General. The Marine Corps reports CJI to the FBI in order to comply with Federal law and regulations and protect public safety.

2. Collection of Fingerprints. Marine Corps LEAs shall:

a. Obtain and submit to the FBI criminal fingerprints in any case involving a law enforcement investigation of an offense listed in enclosure (2) of reference (a);

b. Obtain and submit to the FBI criminal fingerprints when COs direct Service Members to report to the LEA as detailed in enclosure (2) of this Bulletin;

c. Verify submitted criminal fingerprints and case dispositions have been entered in the appropriate FBI database;

d. Not collect fingerprints in any case directed to the LEA by a CO pursuant to this Bulletin where the disposition of that case is administrative in nature (NJP, administrative separation, or SCM), or in cases involving a restraining order issued by a civilian court (see enclosure (6)), unless an independent requirement for collecting fingerprints exists.

3. Entry and Removal of Data in the NICS Indices

a. The CJIS Systems Officer (CSO) at HQMC PP&O, or an individual designated by the CSO in writing, are the only persons authorized to enter or remove offender information from the NICS Indices.

b. The CSO shall enter an individual's data into the NICS Indices when:

(1) The Service Member is the subject of charges which have been referred for trial by GCM, where any charge referred is punishable by more than 12 months of confinement.

(2) The Service Member is subject to a finding of wrongful use of a controlled substance in violation of Article 112a, UCMJ, pursuant to NJP, administrative separation proceeding, SCM, or SPCM.

(3) The Service Member is found incompetent to stand trial, or not guilty by reason of lack of mental capacity, by a military judge during the course of a SPCM or GCM.

(4) The individual is the subject of a restraining order (see enclosure (6)).

(5) The Service Member is found guilty at trial by SPCM or GCM of any offense of domestic violence as defined under this Bulletin, regardless of the punishment awarded;

(6) The Service Member is convicted at a GCM of any offense punishable by more than one year of confinement, regardless of the punishment awarded.

c. The requirement for the CSO to upload offender information into the NICS Indices is in addition to all other requirements related to CJI.

d. In cases where conduct which occurs while deployed triggers a prohibition under enclosure (2) of this Bulletin, the servicing LEA shall forward Service Member information to the CSO via law enforcement channels for immediate upload into the NICS Indices, and complete other CJI requirements as soon as practicable after redeployment.

e. The CSO shall remove Service Member information from the NICS Indices only when:

(1) The Service Member is found not guilty at court-martial of the offense underlying the purpose for which offender data was originally entered;

(2) An administrative separation board does not substantiate the conduct for which data was originally entered, and there is no other administrative or judicial finding to the contrary;

(3) The time during which the specific prohibition applicable to that Service Member has elapsed;

(4) Upon receipt of an order issued by a court of competent jurisdiction directing the removal of the offender information from the NICS Indices;

(5) A qualifying conviction at SPCM, GCM, or in a civilian court is overturned or set aside by a court of competent jurisdiction; or

f. The CSO or designee shall enter and remove offender information into the NICS Indices in accordance with CJIS policy and procedure.

4. Collection of Deoxyribonucleic Acid (DNA) Samples

a. Marine Corps LEAs shall collect DNA samples from subjects when probable cause exists to believe that the person has committed an offense listed in enclosure 3 of reference (b).

b. Prior to collecting DNA from a Service Member, the LEA must consult with the servicing SJA and document that coordination in the investigative file. Where an installation SJA is unavailable, the SJA advising the commander who directed a Service Member to report to the LEA pursuant to enclosure 2 of this Bulletin shall act as legal advisor.

5. Corrective Actions in Past Cases. Where a LEA discovers that any CJI requirement was not met in a case for which an investigation has already been commenced or concluded, or where the matter has already been adjudicated by administrative or judicial means, the cognizant LEA shall:

a. Inform the CO with authority over the individual, and request that CO provide information or documents relevant to a determination whether the collection of fingerprints or DNA was, at the time any investigation was originally commenced, required by law or regulation;

b. If collection of fingerprints or DNA was previously required but not accomplished, determine whether the original basis for the requirement to collect fingerprints or DNA was substantiated by the report of investigation, or by any administrative or judicial proceedings which were held as a result of that investigation; and

c. Where the report of investigation or the findings in subsequent proceedings establish probable cause to believe that an individual committed an offense which would require the collection of fingerprints or DNA pursuant to references (a) or (b), and this Bulletin, request the commander direct the Service Member to report to the servicing LEA.

6. Additional Processing Requirements

a. In the case of Marine Corps Provost Marshal Offices/Marine Corps Police Departments (PMO/MCPD), the Desk Sergeant shall be the primary coordination point of contact (POC) for commands to arrange fingerprinting and disposition reporting of their personnel.

b. Marine Corps LEAs shall open a case, assign a Case Control Number (CCN), and collect fingerprints and DNA in accordance with references (a), (b), and (1) when:

(1) The LEA is conducting an investigation into an actual, suspected, or alleged violation of law and determines, in consultation with the servicing SJA, that probable cause exists to believe either a subject has committed an offense listed in enclosure (2) of reference (a) or that a Service Member has become a prohibited person as outlined in paragraphs 1a and 1b of enclosure (2) of this Bulletin; and

(2) A CO directs a Service Member to report to the LEA in accordance with paragraph 2 of enclosure (2) of this Bulletin.

c. Marine Corps LEAs shall NOT open a case, assign a CCN, or collect fingerprints and DNA in cases directed to the LEA by a CO pursuant to this Bulletin where the disposition of that case is administrative in nature (NJP, administrative separation, or SCM), or in cases involving a restraining order issued by a civilian court (see enclosure (6)), unless an independent requirement for assignment of a CCN or collection of fingerprints and DNA exists.

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Guidance for Officers In-Charge (OIC) of Legal Support Services
Sections (LSSS)

1. At any phase of the court-martial process, ensure trial counsel forward any documents supporting a determination that a Service Member is subject to the prohibitions of paragraphs 1a and 1b of enclosure (2) of this Bulletin (e.g., referral to GCM; upon learning of a court-issued restraining order) to the servicing LEA.
2. At the conclusion of any court-martial, ensure a copy of the report of results of trial and convening authority's action (or statement of trial results and entry of judgement, as applicable) are forwarded to the servicing LEA to facilitate completion of CJI reporting requirements.

Requirements for Individual Marines

1. Self-reporting of convictions and restraining orders.

a. Pursuant to reference (1), Service Members have an "affirmative, continuing obligation to inform commanders . . . if they have, or later obtain, a qualifying conviction" for domestic violence.

b. In addition to the requirements of reference (1), Service Members have an affirmative, continuing obligation to inform their commander of the issuance by any civilian court of a civilian court-issued restraining order (see enclosure (6)).

2. Service Members subject to this Bulletin shall notify their CO within 24 hours of:

a. Being convicted in any civilian court of any offense of domestic violence (see enclosure (6)), regardless of the amount of punishment imposed, and provide copies of any related documents;

b. Being served with a civilian court-issued restraining order (see enclosure (6)) and provide the date the restraining order was issued, the specified terms of the restraining order, the date of any related hearings, the date the restraining order will cease to be in effect, and copies of any related documents then in their possession.

Definitions

Adjudicated as a mental defective. For the purposes of this Bulletin, a person has been adjudicated a mental defective where the person is found by a military judge or magistrate to be incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 76b of reference (1). The findings of administrative, medical, and other boards do not constitute an adjudication as a mental defective within the meaning of this Bulletin.

Ammunition. Ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes involuntary commitment to a mental institution for mental defectiveness, mental illness, or other reasons. However, commitment based only on the recommendation of a medical officer (without a finding by a court, board, commission, or other lawful authority) is insufficient to trigger the prohibitions imposed by this Bulletin. Within the Marine Corps, the term does not include a person in a mental institution for observation, a voluntary admission to a mental institution, or temporary referrals for mental health evaluation initiated by the individual or by command authorities.

Controlled substance. A drug or other substance, or immediate precursor, as defined under Schedules I through V in section 102 of the Controlled Substances Act of 1970 (reference (n)). The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs.

Crime punishable by imprisonment for a term exceeding one year. Any Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any State offense classified by the laws of the

State as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Criminal Justice Information (CJI). Information collected by commanders and law enforcement agencies related to the commission, detection, investigation, prosecution, punishment, or other disposition of a criminal offense committed by a Service Member. For the purposes of this Bulletin, CJI includes information used to identify and distinguish suspects and offenders from other persons, all "offender criminal history data" as that term is used in reference (a), fingerprints, DNA, criminal history record information, and other data used to determine reporting requirements.

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a GCM. This prohibition applies upon final discharge from military service following completion of appellate review and includes dishonorable discharge or dismissal adjudged by a GCM once appeals are complete, but does not include separation from the U.S. Armed Forces resulting from any other discharge, such as a bad-conduct discharge or administrative discharges.

Fugitive from justice. Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

This includes a person who has fled from any state to avoid prosecution, who leaves the state to avoid giving testimony in any criminal proceeding, or knows that charges have been preferred or are otherwise pending before any civilian or military court against such person and leaves the state of prosecution without proper authority. Simple unauthorized

absence or desertion does not constitute being a fugitive from justice.

For the purpose of determining whether to make an appropriate entry into the NICS Indices, Service Members subject to the jurisdiction of Marine Corps commanders may be determined to be a fugitive from justice when the person:

a. Is the subject of an investigation into an actual, suspected, or alleged offense under the UCMJ or State law and, with knowledge that some investigation is being made into that offense, leaves the state in which that investigation is underway; or

b Is the subject of preferred charges (regardless of whether the charges have been referred), has been informed by a representative of the immediate commander of the preferred charges, and later leaves the state in which the case is pending without proper authority.

Indictment. Includes an indictment or information in any court, under which a crime punishable by imprisonment for a term exceeding one year (as defined in this section) may be prosecuted, or in military cases to any offense punishable by imprisonment for a term exceeding one year which has been referred to a GCM. An information is a formal accusation of a crime, differing from an indictment in that it is made by a prosecuting attorney and not a grand jury.

Intimate partner. With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.

Military Protective Order. An order issued by a CO in the grade of O-5 or above which directs a person subject to the commander's authority to: refrain from contacting or communicating with a protected person; remain at least a minimum coming distance from a protected person; vacating a residence shared with a protected person; occupy temporary military quarters at a specified location; attend counseling; dispose of personally-owned firearms stored aboard a military installation; and take other actions the commander determines necessary to preserve good order and discipline, quell disturbances, and safeguard persons subject to the Commander's authority. While Military Protective Orders (MPO) do not qualify as restraining orders for the purpose of this prohibition under reference (j),

commanders must forward all MPOs to the servicing LEA for inclusion in NCIC.

Misdemeanor crime of domestic violence

a. Is a Federal, State or local offense that:

(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence". The term includes all such misdemeanor convictions in Indian Courts established pursuant to reference (o));

(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

b. A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

(1) The person is considered to have been convicted by the jurisdiction in which the proceedings were held;

(2) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(3) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(a) The case was tried by a jury, or

(b) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

c. A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

d. This prohibition applies to all misdemeanor convictions in local, State, or Federal civilian courts. The prohibition applies to all SPCM and GCM convictions regardless of the amount of punishment awarded, but excludes convictions by summary court-martial.

Probable cause. A reasonable belief that a person has committed an offense punishable under the UCMJ. Probable cause may be based upon hearsay evidence in whole or in part, and a determination of probable cause may be based upon any or all of the following:

a. Written statements, reports, records, or other written instruments, whether in hard copy or transmitted electronically;

b. Oral statements communicated in person, via telephone, or by other appropriate means of communication; or

c. Such information as may be known by the commander or a law enforcement officer that would not preclude the officer from acting in an impartial fashion.

Restraining Order. A temporary or permanent order issued by a civilian court that restrains a person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that:

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a. Was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

b. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

c. By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm.

The Marine Corps interprets this provision to apply only after a finding of illegal use of a controlled substance at non-judicial punishment, an administrative separation proceeding, a SCM, a SPCM, or a GCM.

The question of whether a substance is lawful is determined by the definitions found in reference (n). The use of a substance which is lawful under state law is still unlawful if the substance in question is on any schedule under reference (n).

Use of a prescribed medication is unlawful if done for the purpose of intoxication, by a person for whom not prescribed, or for a purpose other than that for which the medication was prescribed, by a licensed physician.