



INSPECTOR GENERAL

U.S. Department of Defense

Statement of Glenn A. Fine

Department of Defense

Principal Deputy Inspector General,

Performing the Duties of the Inspector General

for a hearing on

**“Firearm Accessory Regulation and
Enforcing Federal and State Reporting to
the National Instant Criminal Background
Check System (NICS)”**

**Before the
Senate Judiciary Committee**

December 6, 2017

Chairman Grassley, Ranking Member Feinstein, and Members of the Committee:

Thank you for inviting me to appear at this hearing today to discuss the Department of Defense Office of Inspector General's (DoD OIG) evaluations regarding the DoD's submission of fingerprints and final disposition reports for entry into Federal Bureau of Investigation (FBI) databases.

I have appeared before this committee many times in a prior capacity, as the Inspector General of the Department of Justice for 11 years, from 2000 to 2011. I appreciate the opportunity to appear before you again in a different capacity, this time as the head of the DoD OIG, which I have led since January 2016.

Unfortunately, this hearing arises, in part, from the tragic events on November 5, 2017, when a former Air Force member, Devin Kelley, shot and killed many people at the First Baptist Church in Sutherland Springs, Texas. Kelley was able to purchase a firearm even though he had a disqualifying conviction while in the Air Force. He was discharged from the Air Force in 2014 after being convicted of assault. As a result of that conviction, the Air Force should have sent his fingerprints and final disposition report to the FBI, which should have prevented him from legally buying a gun. However, the Air Force did not submit his fingerprints or a final disposition report of his conviction to the FBI for inclusion in its criminal history databases.

At the request of the Secretary of Defense, the OIG agreed to investigate what happened with regard to Mr. Kelley's records, and also to review more broadly the policies, practices, and procedures regarding when appropriate information is submitted by the DoD law enforcement agencies for entry into FBI databases. The OIG has begun that investigation and review.

However, the DoD OIG has previously performed several reviews that found deficiencies in the DoD's submission of required criminal history information to the FBI. Our first review was in 1997, where we found significant deficiencies in the Military Services' compliance with the requirement to submit criminal history data to the FBI. We also conducted reviews of specific types of criminal investigations by the Military Service law enforcement organizations, which also found problems with inconsistent submission of criminal history data.

In 2015, the DoD OIG issued another evaluation, again focusing specifically on the Military Services' submission of fingerprint cards and final disposition reports to the FBI. This review found non-compliance across the Military Services.

In February 2017, we began another evaluation to follow up on the 2015 review and to determine the Services' compliance with these requirements. Yesterday, we released the findings of that evaluation, in a report entitled, "Evaluation of Fingerprint Card and Final Disposition Report Submissions by Military Service Law Enforcement Organizations." That review found continued, significant deficiencies in submitting fingerprints and final disposition reports for convicted offenders across the Military Services.

In my testimony today, I will briefly summarize the requirements for submission of criminal history information by the DoD to the FBI. I will then discuss the results of our prior reviews. Next, I will detail the results of the report we issued yesterday. Finally, I will discuss the scope of the ongoing investigation and review that we recently began.

DoD Requirements

The United States Code, Title 28, Section 534, states that the Attorney General shall “acquire, collect, classify and preserve” criminal history information and shall “exchange such records and information” with other law enforcement officials. The FBI’s Criminal Justice Information Services (CJIS) Division is responsible for compiling and disseminating this criminal history record information, based upon reports from other federal, state, and local law enforcement organizations. The procedures for reporting criminal history information are described in the Code of Federal Regulations (CFR), at 28 CFR §§ 20.30 - 20.38.

Agencies use two forms to submit information to the FBI’s CJIS Division:

- 1) Federal Document FD-249, an “Arrest and Institution Fingerprint Card”; and
- 2) Department of Justice Form R-84, a “Final Disposition Report.”

On March 25, 1987, the DoD OIG first issued guidance for law enforcement organizations within the DoD to report criminal history information to the FBI. The guidance memorandum was Criminal Investigations Policy Memorandum Number 10, “Criminal History Data Reporting Requirements.” This memorandum required DoD criminal investigative organizations to submit to the FBI criminal history data for all military service members investigated for commission of any of listed offenses enumerated and who were the subjects of any resultant judicial or non-judicial military proceeding.

The DoD OIG updated this policy memorandum with DoD Instruction (DoDI) 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” issued on December 1, 1998. The instruction has been updated regularly since then; the most recent version was issued March 30, 2017.

DoDI 5505.11 provides specific guidance for DoD law enforcement organizations to report offender criminal history data to the CJIS Division for inclusion in the FBI’s criminal history database.

Among other things, the Instruction requires that DoD law enforcement organizations submit data to the FBI for all members of the Military Services investigated by DoD law enforcement organizations for qualifying offenses. These qualifying offenses are listed in Enclosure 2 of DoDI 5505.11 – they include assault, the offense that Kelley was convicted of in the Air Force on November 7, 2012.

Specifically, DoD law enforcement organizations are required to complete and submit an FD-249, “Arrest and Institution Fingerprint Card,” from subjects under investigation for qualifying offenses, such as assault. In addition, final dispositions are required to be subsequently recorded and submitted to the FBI, either on a FD-249, “Arrest and Institution Fingerprint Card,” or on an R-84, “Final Disposition Report.”

Previous DoD OIG Reviews

1997 Report. The DoD OIG first reviewed the Military Services' compliance with these requirements in a report issued on February 10, 1997, entitled "Evaluation of Department of Defense Compliance with Criminal History Data Reporting Requirements." This review found a high level of noncompliance by the DoD law enforcement organizations in submitting required fingerprint cards and final disposition reports to the FBI.

Specifically, based on the results of statistical sampling, the DoD OIG review determined that:

- the Army failed to submit fingerprint cards to the FBI in approximately 82 percent of its cases, and did not submit final disposition reports in 79 percent of its cases;
- the Navy did not submit fingerprint cards in 83 percent of its cases and did not submit final disposition reports in 94 percent of its cases; and
- the Air Force did not submit fingerprint cards in 38 percent of its cases and did not submit final disposition reports in 50 percent of its cases.

The report noted that complete and consistent reporting by all DoD law enforcement organizations was essential to nationwide law enforcement efforts.

2015 DoD OIG Evaluation

In February 2015, the DoD OIG issued another report describing deficiencies in the DoD's compliance with the requirement to submit fingerprint cards and final disposition reports to the FBI for inclusion in its criminal history databases. We were not able to review the Army's record because of problems with its data. However, we did review the Navy, Air Force, and Marine Corps records and found significant deficiencies.

Our evaluation determined whether fingerprint cards and final disposition reports were submitted to the FBI for a total of 1,102 Military Service members convicted of qualifying offenses during our sample period (between June 1, 2010, and October 31, 2012). Overall, we found that 304 of 1,102 (28 percent) fingerprint cards and 334 of 1,102 (30 percent) final disposition reports were missing.

With regard to the specific Military Services:

- The Navy failed to submit 68 of 317 (21 percent) of the required fingerprint cards and 80 of 317 (25 percent) of the required final disposition reports;
- The Marine Corps failed to submit 126 of 427 (30 percent) of the required fingerprint cards and 141 of 427 (33 percent) of the required final disposition reports;

- The Air Force failed to submit 110 of 358 (31 percent) required fingerprint cards and 113 of 358 (32 percent) required disposition reports.

This report can be found online on the DoD OIG website at

<https://media.defense.gov/2015/Feb/12/2001713470/-1/-1/1/DODIG-2015-081.pdf>.

Other DoD OIG Reports

In addition, other previous DoD OIG evaluations examined the handling of specific types of investigations by the Military Service law enforcement organizations, such as sexual assault investigations, or the handling of specific types of evidence, such as DNA. In these reports, the DoD OIG found that the Military Services were not consistently or uniformly submitting required data from criminal investigations for inclusion in the FBI's databases.

For example, in Report No. DoDIG-2013-091, "Evaluation of Military Criminal Investigative Organizations' Sexual Assault Investigations," July 9, 2013, the DoD OIG evaluated a sample of 501 Army, Navy, Air Force, and Marine Corps subjects investigated of sexual assault between February 2012 and September 2012 that were required to have their fingerprints collected and submitted to the FBI. The DoD OIG determined that 101 of 501 (20 percent) fingerprints were not collected, or were collected but were not submitted to the FBI.

In another example, in Report No. DoDIG-2014-105, "Evaluation of Military Criminal Investigative Organizations' Child Sexual Assault Investigations," September 9, 2014, the DoD OIG evaluated a sample of 153 Army, Navy, Air Force, and Marine Corps subjects who were investigated for the sexual assault of children between April 2013 and July 2013, and were required to have their fingerprints collected and submitted to the FBI. The DoD OIG determined that 24 of 153 (16 percent) fingerprints were not collected, or were collected but were not submitted to the FBI.

In another example, in Report No. DoDIG-2015-011, "Evaluation of the Defense Criminal Investigative Organizations' Defense Incident-Based Reporting System (DIBRS) and Reporting Accuracy," October 29, 2014, the DoD OIG determined that the DoD was not reporting criminal incident data, such as the nature and types of specific offenses committed during the identified incident, characteristics of the victims, and information regarding the offenders and any other suspects arrested in connection with the incident, to the FBI for inclusion in the statistics for the FBI's annual Uniform Crime Reports, as required by Federal law.

Also, in Report No. DoDIG-2014-029, "Review of Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations," February, 27, 2014, the DoD OIG determined that the DoD and the U.S. Coast Guard did not submit 282 of 3,536 (8 percent) required DNA samples to the United States Army Criminal Investigation Laboratory for inclusion in the Combined DNA Index System during our evaluation sample period from June 1, 2010, through October 31, 2012.

2017 DoD OIG Evaluation

In February 2017, the OIG opened a follow-up review to evaluate again whether the Military Services were submitting fingerprint cards and final disposition reports for Military Service members convicted of qualifying offenses, as required by DoD instruction. We reviewed these submissions for the period from January 1, 2015, to December 31, 2016.

In our report, which we issued yesterday, we determined that the Military Services still did not consistently submit fingerprint cards and final disposition reports as required. The report can be found at <https://media.defense.gov/2017/Dec/05/2001852278/-1/-1/1/DODIG-2018-035.PDF>.

Overall, of the 2,502 fingerprint cards required to be submitted, 601 (24 percent) were not submitted. Of the 2,502 final disposition reports required to be submitted, 780 (31 percent) were not submitted.

The results differed by Military Service. As shown in the following table from the report, the Army, Navy, and Marine Corps failed to submit many such fingerprint cards and final disposition reports. The Air Force performed better, but still had missing fingerprint cards and final disposition reports.

Table 1. The Army, Navy, Air Force, and Marines Fingerprint Cards and Final Disposition Reports Submissions

Service	LEO	Convictions	Fingerprint Card Submissions				Final Disposition Report			
			Submitted		Not Submitted		Submitted		Not Submitted	
Army		948	686	72%	262	28%	563	59%	385	41%
USACIDC		768	609	79%	159	21%	504	66%	264	34%
IMCOM		180	77	43%	103	57%	59	33%	121	67%
Navy		682	485	71%	197	29%	439	64%	243	36%
NCIS		631	472	75%	159	25%	428	68%	203	32%
CNIC		51	13	25%	38	75%	11	22%	40	78%
Air Force		743	638	86%	105	14%	637	86%	106	14%
AFOSI		588	576	98%	12	2%	575	98%	13	2%
Air Force SF		155	62	40%	93	60%	62	40%	93	60%
USMC		129	92	71%	37	29%	83	64%	46	36%
Total		2,502	1,901	76%	601	24%	1,722	69%	780	31%

Source: Service JAGs, FBI CJIS, and Service LEOs.

CID – Army Criminal Investigation Command
 MP – Military Police
 NCIS – Naval Criminal Investigative Service
 Investigations Division
 Navy SF – Navy Security Forces

AFOSI – Air Force Office of Special Investigations
 Air Force SF – Air Force Security Forces
 Marine Corps – Military Police and Criminal

As shown in this table, the Army had 262 (28 percent) missing fingerprint cards and 385 (41 percent) missing final disposition reports. The Navy had 197 (29 percent) missing fingerprint cards and 243 (36 percent) missing final disposition reports. The Marine Corps had 37 (29 percent) missing fingerprint cards and 46 (36 percent) missing final disposition reports. The Air Force had 105 (14 percent) missing fingerprint cards and 106 (14 percent) missing final disposition reports.

Our report made a series of specific recommendations to address these serious deficiencies. First, we recommended that the Secretaries of the Army, Navy, and Air Force ensure that all fingerprint cards and final disposition reports that we identified as not submitted during the period of our review, from 2015 through 2016, be promptly submitted to the FBI CJIS Division.

More broadly, we recommended that the Secretaries, the Under Secretary of Defense for Intelligence, and the Deputy Chief Management Officer immediately perform a comprehensive review of their criminal investigative databases and files to ensure that all required fingerprint cards and final disposition reports for qualifying offenses at least to 1998 have been submitted to the FBI CJIS Division in compliance with DoD and FBI requirements. We recognize that all these records may not be available, but we recommended the reviews determine what information can and should be submitted.

We further recommended that the Secretaries, the Under Secretary of Defense for Intelligence, and the Deputy Chief Management Officer take prompt action to institute command, supervisory, and management oversight controls to verify compliance with fingerprint card and final disposition report submission requirements, in the past and in the future, and also ensure that such compliance is included as a special interest item in Military Service Inspector General inspections.

In determining what controls and processes are needed to ensure the required submissions are made, our report recommended that the DoD and the Military Services should consider some potential best practices, such as more widely using LiveScan equipment to capture fingerprints, which can help prevent inked fingerprint cards from being rejected because of poor quality; requiring supervisory certification of the required submission before a case can be closed; mandating specific training on collecting and submitting fingerprint cards and final disposition reports to the FBI; and requiring in the case management database a completed field showing that fingerprint cards and final disposition reports have been submitted before the case can be closed in the database.

In addition, we recommended that the Secretaries, the Under Secretary of Defense for Intelligence, and the Deputy Chief Management Officer conduct a comprehensive review of their criminal history reporting programs to ensure fingerprinting and final disposition report submission policy, training, and processes are consistent with DoDI 5505.11, the DoD policy covering the submission of fingerprints and final disposition reports, and are being implemented.

Finally, we recommended that the Secretaries, the Under Secretary of Defense for Intelligence, and the Deputy Chief Management Officer also ensure that other required investigative and criminal history information, such as criminal incident data and DNA samples, has been submitted for inclusion in FBI databases.

The Secretaries of the Army, Navy, and Air Force, the Deputy Chief Management Officer, and the Undersecretary of Defense for Intelligence all concurred with our recommendations. They also described actions they have begun taking and steps they intend to take to fully implement the recommendations.

For example, the Army stated that it is coordinating with officials at the FBI to submit automated data regarding felony convictions, including drug offenders and convicted domestic violence offenders; actively reviewing data; submitting final disposition reports; and assisting affected Army commands to identify and address resourcing needs for submission of automated fingerprint cards via LiveScan technology. The Army's projected timeline for completion of this effort is no later than the 3rd Quarter of Fiscal Year 2018. Additionally, the Army stated that it is reviewing its law enforcement database to ensure missing fingerprint cards and final disposition reports are reported to the FBI in compliance with statutory, DoD, and FBI requirements. According to the Army, this review will also identify and address gaps and shortcomings in policy, resources, and manning, as well as address shortfalls identified in the submission of DNA to Federal databases. In addition, the Army is developing a tracking system that compares offenders against LiveScan submissions to ensure that fingerprint cards and final disposition reports are submitted Army-wide. Furthermore, the Army stated that it will ensure that the Army IG assesses compliance with DoDI 5505.11 requirements.

The Navy stated that it is developing a "Fingerprint Verification Plan" to correct previous fingerprint submission deficiencies and to prevent future submission failures. The plan includes a field office review of open cases and closed case files within the last 12 months to verify submission of fingerprint cards. In addition, the Navy stated that it will query all historical case files from January 1, 1998 to September 30, 2016 to determine which have fingerprints submitted to the NCIC, and will provide missing final disposition reports, if any. The estimated completion date for these efforts is December 8, 2017. The Navy will also review historical cases to identify cases in which the command took punitive action against the offender but failed to submit fingerprint cards. In addition, the Navy stated that, on November 9, 2017, it initiated a comprehensive review of its criminal history reporting program, including policy, training, fingerprint equipment, fingerprints, and final disposition report submission processes, to ensure compliance with DoDI 5505.11. It estimates completion of this review on December 30, 2017, and all corrective actions by June 30, 2018.

The Air Force stated that it has already taken steps to identify and obtain missing fingerprint cards and final disposition reports and will continue that effort. The Air Force stated that it has instituted a three-tier process for reviewing NCIC indexing compliance at the field, regional, and headquarters leadership levels. This process requires attaching an NCIC Criminal History Report to the case prior to closure along with leadership notes indicating the report accurately reflects the results of the investigation. According to the Air Force, headquarters reviews will now be conducted prior to case file acceptance for closure. In addition, according to the Air Force response, in October 2017 the Air Force IG began inspecting Air Force criminal indexing data as a special interest item during region unit effectiveness inspections. The Air Force IG will work with functional managers to establish a permanent inspection checklist related to this area. The Air Force also stated that it has initiated action to assess compliance with DNA sample submissions.

The Marine Corps stated that it has tasked all installation Provost Marshal's Offices and Criminal Investigation Division offices to review all incident reporting to determine if suspect fingerprint cards and final disposition reports were completed and submitted to the FBI. The Marine Corps also directed its Law Enforcement Branch to review and revise the Marine Corps Law Enforcement Training and Readiness Manual to ensure full compliance with DoDI 5505.11.

The Marine Corps also stated that it will update associated IG checklists for both the Military Police and the Criminal Investigation Division to ensure that DNA is collected, processed, and submitted for inclusion in FBI databases.

Ongoing Review

As noted above, at the request of the Secretary of Defense, we recently began another review to assess the policies, practices, and procedures to ensure that the DoD submits qualifying information to the FBI. This review will assess the remedial measures proposed and taken in response to our recommendations. It will also analyze whether policies need to be modified to ensure compliance. It will also examine best practices to improve the processes among the Military Services to ensure it submits criminal history information as required.

Additionally, we will investigate what happened in the Kelley case. In addition to the review that the Air Force Inspector General initially conducted to find out what had occurred, we will investigate more deeply the facts of this case, both in the Air Force and elsewhere, to determine more fully the deficiencies in the Kelley case, and why the qualifying information about Kelley was not provided to the FBI. We have received from the Air Force Inspector General its preliminary work, and we will investigate this matter thoroughly.

Conclusion

In conclusion, the DoD OIG has repeatedly found deficiencies with Military Services' submission of required fingerprints, final disposition reports, and other criminal history information to the FBI for inclusion in its databases. We intend to follow up on these issues to help ensure that the DoD fully complies with its obligation to submit to the FBI all required criminal history information.

That concludes my prepared statement, and I would be pleased to answer any questions.