



## Criminal Justice Information Reporting (CJIR) Update

### *Background*

The Marine Corps has a responsibility to ensure certain information is included in the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC) database and National Instant Criminal Background Check System (NICS) Indices. The advisory below outlines recent changes to criminal justice information reporting (CJIR) requirements, discusses current Marine Corps policy, and describes emerging CJIR obligations. Ensuring timely and accurate information is provided to NCIC and NICS Indices is critical to ensuring civilian law enforcement agencies nationwide have access to required information. Further, proper reporting of CJIR ensures compliance with statutory obligations to identify persons ineligible to purchase, carry, or own firearms and ammunition under the Gun Control Act, 18 U.S.C. §§ 921 et seq. While key changes in policy are outlined below, judge advocates should review each reference in their entirety.

### *DoD Instruction 5505.11 (Fingerprint Reporting Requirements)*

On 31 October 2019, the Office of the Inspector General of the DoD published an updated version of DoD Instruction 5505.11 (Fingerprint Reporting Requirements). A full copy of DoDI 5505.11 can be downloaded from the DoD Issuances website: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550511p.pdf>. The most notable changes in this policy are:

- Defense Criminal Investigative Organizations (DCIO), and other DoD Law Enforcement Agencies (LEA) are now required to submit fingerprints and criminal history record information (CHRI) from accused service members being investigated into NCIC provided there is probable cause to believe there was a crime “punishable by imprisonment.” This is a broader requirement than existed in previous versions which contained a list of specific UCMJ articles that justified obtaining fingerprints. Note, the probable cause determination is now made by the DCIO or other DoD LEA alone, without advice of a judge advocate.
- In a limited exception to the above rule, DCIOs and other DoD LEA will comply with Part 20.32(b) of Title 28, Code of Federal Regulations concerning offenses excluded from fingerprint collection. These exclusions include non-serious offenses such as drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run).
- When a DCIO or other DoD LEA submits fingerprints and CHRI to NCIC, commanders are required to provide the DCIO or other DoD LEA notice anytime a military judicial proceeding (summary, special, or general court-martial) is initiated or a member of their command comes under investigation by a foreign government. When a final disposition has been reached in any case, commanders must notify the applicable DCIO or DoD LEA within 5 business days of the disposition. “Final disposition” includes the results of any administrative, non-judicial punishment, judicial action, or decision to take no action that occurred as a result of a DCIO or DoD LEA criminal investigation. Note, if a commander-directed inquiry is not being investigated by a DCIO or DoD LEA, CHRI is not reported unless charges are preferred to court-martial (including SCM).

### *Marine Corps Bulletin (MCBul) 5810 (CJIR Requirements and Guidance)*

On 1 November 2019, the expiration date for MCBul 5810 was extended to 1 November 2020. Until it expires, MCBul 5810 constitutes the primary Marine Corps policy governing the implementation of CJIR. MCBul 5810 continues to contain specific guidance on the obligations of CJIR for commanders, law enforcement personnel, officers-in-charge of the Legal

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Support Services Sections, and individual Marines. Judge advocates should review MCBul 5810 prior to advising commands or law enforcement concerning either CJIR obligations. **Note, reference (a) to MCBul 5810 is the 2017 version of DoDI 5505.11 (discussed above). The 31 Oct 19 version of DoDI 5505.11 is the proper reference (a), as it replaced the 2017 version.** An electronic copy of MCBul 5810 can be downloaded at <https://www.marines.mil/portals/1/Publications/MCBUL%205810.pdf?ver=2018-08-30-132131-503>.

### ***NAVADMIN 252/19***

On 12 November 2019, the Chief of Naval Operations published NAVADMIN 252/19, Procedures for Notifying Civilian Law Enforcement of Issuance of a Military Protective Order (MPO). This NAVADMIN ensures that the Navy is complying with its requirement to notify the appropriate civilian authorities when an MPO is issued. Key provisions within the NAVADMIN about which judge advocates should be aware include:

- Requires, with limited exceptions for deployed, underway, and overseas commands, MPOs to be forwarded to Naval Criminal Investigative Service (NCIS) for inclusion into the Protection Order File of the FBI's NCIC database.
- Entry into NCIC creates a record available to law enforcement agencies nationwide and that police officers and other entities conducting background checks use to determine a person's criminal history.
- MPOs cannot be indefinite and must include an expiration date. MPOs will remain in the Protection Order File of NCIC until their expiration date. Once expired, NCIC will indicate the MPO has expired, but the MPO will remain in NCIC until NCIS affirmatively removes it from the database. NCIS will remove expired MPOs from NCIC no later than the end of the month in which the MPO expires.

A MARADMIN containing similar guidance covering MPOs issued by Marine Corps commanding officers is currently being staffed and coordinated with the FBI. Staff Judge Advocates should ensure commanding officers are aware that MPOs are no longer internal to the Marine Corps and may impact background checks an individual undergoes for employment, volunteer opportunities, or purchasing a weapon. Prior to issuing an MPO, commanding officers should be advised to consider the purpose of MPOs<sup>1</sup> as well as the collateral consequences. If an incident does not require protection of a person, but the commander seeks to keep parties from having contact or communications, an order from the commander directing no contact between parties should be issued as opposed to an MPO. Further, SJAs should advise commanding officers that issuing an MPO to an alleged victim without sufficient reason, as a matter of routine response to their reporting a criminal offense, may be a form of retaliation under Article 132, UCMJ, or MCO 5354.1E.

### ***Marine Corps Law Enforcement Order***

The Law Enforcement and Corrections Branch (PSL) of Marine Corps Plans, Policies, & Operations (PP&O) is drafting a Marine Corps Order covering law enforcement, including procedures that relate to CJIR. Once published, the Marine Corps law enforcement order will be the primary source document for CJIR related regulations. JMJ remains in coordination with PSL to ensure the guidance contained in this order is both accurate and comprehensive, and will continue to publish updates related to this order as more information becomes available.

### ***Points of Contact***

Direct any questions about this Practice Advisory to the JMJ Branch Head at (703) 693-9005, the JMJ Deputy Branch Head at (703) 693-8901, or Trial Counsel Assistance Training Program (TCAP) at (703) 693-9299.

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<sup>1</sup> Pursuant to DoDI 6400.06 (21 Aug 07, Incorporating Change 4, 26 May 2017) commanders shall issue an MPO when necessary to "safeguard a victim, quell a disturbance, and maintain good order and discipline while a victim has time to pursue a protection order through a civilian court, or to support an existing CPO." Further, MPOs may be issued "only to prohibit the member from contacting or communicating with the protected person or members of the protected person's family or household and to direct the member to take specific actions that support, or are in furtherance of, the prohibition."