

**United States Coast
Guard's Reporting of
Uniform Code of Military
Justice Violations to the
Federal Bureau of
Investigation**






OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

February 21, 2019

MEMORANDUM FOR: The Honorable Admiral Karl L. Schultz
Commandant
United States Coast Guard

FROM: John V. Kelly 
Acting Inspector General

SUBJECT: *United States Coast Guard's Reporting of Uniform Code
of Military Justice Violations to the Federal Bureau of
Investigation*

Attached for your action is our final report, *United States Coast Guard's Reporting of Uniform Code of Military Justice Violations to the Federal Bureau of Investigation*. We incorporated the formal comments provided by your office.

The report contains eight recommendations aimed at improving the U.S. Coast Guard's reporting of prohibited individuals to the Federal Bureau of Investigation. Your office concurred with all recommendations. Based on information provided in your response to the draft report, we consider seven recommendations resolved and open and one recommendation closed. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGSREFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Jennifer L. Costello, Deputy Inspector General, or Erika Lang, Chief Inspector, at (202) 981-6000.



DHS OIG HIGHLIGHTS

United States Coast Guard's Reporting of Uniform Code of Military Justice Violations to the Federal Bureau of Investigation

February 21, 2019

Why We Did This Inspection

On November 6, 2017, Devin Patrick Kelley, a former Air Force service member, killed 26 people in Sutherland Springs, Texas. He was able to purchase firearms because the Air Force failed to enter him into the FBI's National Instant Criminal Background Check System (NICS) database as required, based on a previous conviction. In light of this event, we reviewed whether the United States Coast Guard properly reported service members to the FBI.

What We Recommend

We made eight recommendations to enhance Coast Guard's policies and strengthen internal controls.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

We intended to verify whether Coast Guard is properly reporting service members who are prohibited from possessing a firearm ("prohibited individuals") to the Federal Bureau of Investigation (FBI). However, in comparing relevant databases with data in NICS, we identified several issues that led us to question the reliability of Coast Guard's data. First, the databases do not track whether a violation or outcome of a case falls under one of the prohibited categories or whether investigators actually followed through on reporting prohibited individuals to the FBI. Second, Coast Guard's Law Manager database, in part used to track military justice cases, does not contain complete information, including sentence or verdict information, which hindered our ability to determine whether service members were guilty of a crime that would make them prohibited individuals. Finally, we identified NICS entries that did not have matching information in Law Manager, leading to concerns that other cases were not properly recorded. As a result, we could not determine the full scope of prohibited individuals or verify that Coast Guard properly reported prohibited individuals.

Despite our concerns about the quality of Coast Guard's data, we identified 210 service members who committed offenses that made them prohibited individuals. Of these 210, Coast Guard did not enter 16 service members (8 percent) into NICS. This underreporting occurred because Coast Guard policy did not include a requirement to inform the Coast Guard Investigative Service (CGIS) about all individuals referred for trial by general court martial, and because CGIS's current reporting process does not allow investigators in field offices to have direct access to NICS. Coast Guard has since updated its *Military Justice Manual* in March 2018 so that Coast Guard attorneys must provide information to CGIS investigators at the time an individual is referred for trial by general court martial. Coast Guard is also considering procuring a distributed network of "booking stations" to allow field investigators to access NICS, but had not done so as of October 2018.

U.S. Coast Guard Response

Coast Guard concurred with all of our recommendations and described the corrective actions it has taken and plans to take. We consider seven recommendations resolved and open and one recommendation closed.



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Background

In November 2017, Devin Patrick Kelley, a former Air Force service member, killed 26 people in Sutherland Springs, Texas, using a semiautomatic rifle. Mr. Kelley was court-martialed and convicted of assaulting his spouse and infant child in 2012, which should have precluded him from being able to purchase a firearm. However, the Air Force failed to report Mr. Kelley's conviction to the Federal Bureau of Investigation (FBI) as required, and therefore, his name was not listed as a "prohibited individual"¹ in the National Instant Criminal Background Check System (NICS), the system through which firearms vendors request criminal background checks on potential purchasers.

Immediately following the Sutherland Springs incident, Congress asked the United States Coast Guard (Coast Guard) whether it had reported all court-martialed service members to the FBI. In response, Coast Guard noted that it had failed to report 13 of 80 (16 percent) individuals with court martial convictions from 2012 to 2017, but that it had corrected these discrepancies and reported all court-martialed service members to the FBI as of November 2017. Given the significant public interest in keeping guns away from individuals with a high risk of committing violence, we initiated this review to verify whether Coast Guard is properly reporting all applicable categories of prohibited service members.

Since 2008, Federal agencies, including Coast Guard, have been required to provide relevant information to the FBI on 10 categories of prohibited individuals.² Of these 10 categories of individuals, Coast Guard is responsible for reporting 7,³ including any individual who:

1. is an unlawful user of or addicted to any controlled substance;
2. is under indictment for a crime punishable by imprisonment exceeding 1 year (i.e., a felony);
3. was convicted of a crime punishable by imprisonment exceeding 1 year;

¹ The *Brady Handgun Violence Prevention Act of 1993 (Brady Act)* prohibits certain individuals from possessing or receiving a firearm (18 United States Code (U.S.C.) § 922(g)(1)–(9), 922(n)).

² Pub. L. No. 110–180, I, § 101, 121 Stat. 2559, 2561 (2008). When queried, NICS checks three databases (National Crime Information Center (NCIC), Interstate Identification Index (III), and NICS Index) for individuals who may fall into the categories of prohibited individuals. If an individual is identified as prohibited in any of the three databases, then NICS notifies the firearms vendor. U.S. DEPT OF JUSTICE, FED. BUREAU OF INV., CRIMINAL JUSTICE INFO. SERV. DIV., NAT'L INSTANT CRIMINAL BACKGROUND CHECK SYS. (NICS) OPERATIONS, 1 (2016).

³ The other three categories of prohibited individuals are those who (1) are illegal or unlawful aliens; (2) have renounced U.S. citizenship; or (3) are subject to a restraining order for harassment, stalking, or threatening an intimate partner or child of intimate partner. Agencies other than Coast Guard report these individuals to the FBI.



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4. was discharged from the Armed Forces under dishonorable conditions;⁴
5. is a fugitive from justice (i.e., escaped confinement);
6. was adjudicated mental defective or committed to a mental institution; or
7. was convicted of a misdemeanor crime of domestic violence.⁵

Because Coast Guard is a branch of the armed forces, its service members are subject to the Uniform Code of Military Justice (UCMJ), which is the basis of United States military law. UCMJ violations include common law crimes, such as robbery, as well as crimes specific to the military, like desertion and conduct unbecoming an officer. The Coast Guard Investigative Service (CGIS) investigates service members who are accused of committing such violations, and Coast Guard attorneys and the Office of Military Justice (OMJ) are then responsible for overseeing military judicial action taken in response to the findings of an investigation.⁶

CGIS investigators and Coast Guard attorneys track their activities through separate databases. CGIS investigators use a case management system called the Field Activity Case Tracking System (FACTS) to track their investigations from intake to final resolution. FACTS includes subject information, when the UCMJ violation occurred, the type of violation, and the date the violation was reported. Attorneys use an internal database called Law Manager to track individual cases through the military justice process, capturing information such as the charges, the verdict, and the punishment. Once Coast Guard attorneys inform CGIS investigators about such determinations, the investigators are responsible for entering information into NICS on prohibited individuals, such as name, date of birth, gender, race, social security number, and the reason for their prohibition. CGIS investigators can enter information during the course of an investigation if they determine a service member unlawfully used or was addicted to a controlled substance, or was a fugitive from justice.

This report addresses (1) data reliability issues that impeded identification of prohibited individuals and (2) Coast Guard's underreporting of prohibited individuals to the FBI. See appendix A for information on our scope and methodology.

⁴ Discharges under dishonorable conditions include dishonorable discharges of enlisted persons and noncommissioned warrant officers, and dismissals of commissioned officers and warrant officers, cadets, or midshipmen. The *Brady Act* prohibition does not apply to any other punitive discharge or separation from the armed forces, such as bad conduct discharges (*Rules for Courts-Martial*, § 1003(b)(8) (2016)).

⁵ The application of these categories to members of the armed forces is specified in 62 Fed. Reg. 34634 (June 27, 1997).

⁶ In this report, "Coast Guard attorneys" refers to trial counsel who prosecute courts-martial.



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Coast Guard Data Reliability Issues Impede Identification of Prohibited Individuals

We intended to verify whether Coast Guard is properly reporting all categories of prohibited individuals to the FBI, by comparing data on prohibited individuals from FACTS and Law Manager with data from NICS for the period from January 2014 to March 2018.⁷ However, we identified a number of issues that led us to question the reliability of Coast Guard's data. Such issues include Coast Guard not tracking all relevant information regarding prohibited individuals, missing and incomplete information on the outcome of each case in Law Manager, and NICS entries lacking correspondence with entries in Law Manager. As a result, we could not determine the full scope of prohibited individuals or verify that Coast Guard properly reported prohibited individuals to the FBI and to Congress.

In response to our request for UCMJ violation and adjudication data, Coast Guard provided us with electronic spreadsheets containing information from the two databases related to 2,268 Coast Guard service members who were subject to investigative or military justice proceedings during the specified timeframe. However, even though the CGIS investigators are ultimately responsible for reporting prohibited individuals to the FBI, the investigators are not required to record in their database whether they followed through on this reporting requirement. Further, the data does not capture whether the violation or outcome of a case falls under one of the prohibited categories. For example, misdemeanor crimes of domestic violence is not a specific UCMJ violation so we could not easily search the data to find service members who committed this offense. Instead, we had to review evidence for cases involving the use of physical force, the attempted use of physical force, or the threatened use of a deadly weapon, and also determine whether the cases involved a domestic relationship. As a result, to determine whether all prohibited individuals were properly reported, we had to review underlying case file information for relevant service members, conduct multiple follow-up discussions with Coast Guard and FBI officials, and manually compare data in Coast Guard and FBI databases, an extremely time-consuming process. Coast Guard officials who prepared the November 2017 response to Congress confirmed this assessment: it took four individuals about 1 week to complete the response, and they reported having to rely on their own knowledge of the cases that they worked on to establish what they considered a complete list of prohibited individuals.

We also found that Law Manager did not contain complete information on the outcome of each case. In many instances the verdict, sentence, or both were

⁷ We requested database information from calendar year (CY) 2014 through the first quarter of CY 2018. While Law Manager data was available for the entire period, CGIS did not begin using FACTS until July 2014. Therefore, we were only able to review FACTS data from July 2014 to March 2018.



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missing from the Law Manager data. The lack of the final verdict hindered our ability to determine whether service members were guilty of a crime that would make them prohibited individuals. Without the sentencing information, we could not determine whether the service member was dishonorably discharged or dismissed, which would also make the service member a prohibited individual. For example, we identified 16 service members in Law Manager who were potentially reportable based on their court martial offenses, but the verdict information for these individuals was missing. We were only able to determine that Coast Guard properly reported the appropriate individuals to the FBI after extensive rounds of conversations and cross-referencing of data with Coast Guard and FBI officials. Coast Guard officials confirmed to us that they do not regularly audit Law Manager for accuracy or completeness of information.

Finally, we identified entries in NICS that did not have corresponding information in Law Manager, leading us to further question the accuracy of information in Coast Guard databases. For example, NICS contained entries on 15 service members who had been dismissed or dishonorably discharged. However, eight of these individuals were not recorded in Law Manager; the only reason we knew these individuals were dishonorably discharged is that we found them in the FBI's data. The fact that Coast Guard did not record dishonorable discharges in its own database leads to concerns that other cases were not properly captured.

Coast Guard Underreported Prohibited Individuals to FBI as a Result of Policy and Process Gaps

Despite our concerns about the quality of Coast Guard's data, of the 2,268 service members in FACTS and Law Manager who were subject to investigation and/or adjudication of a UCMJ violation, we identified 210 service members who committed offenses that placed them in 1 of the 7 categories of prohibited individuals. Of these 210, Coast Guard did not enter 16 service members (8 percent) into NICS. As described further in this section, this underreporting occurred because Coast Guard policy did not include a requirement to inform CGIS about all individuals referred for trial by general court martial, and because CGIS's current reporting process does not allow investigators in field offices to have direct access to NICS.



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Coast Guard Lacked Policy on Reporting Individuals Referred for a General Court Martial

One of the categories of prohibited individuals includes those under indictment for a crime punishable by imprisonment exceeding 1 year (i.e., a felony). In the Coast Guard, OMJ referrals are similar to a civilian indictment — the finding that there is enough evidence for a case to go to trial. Individuals are referred for a specific type of court martial, called a general court martial, when the UCMJ violations are punishable by imprisonment exceeding 1 year. Therefore, service members referred to general court martial for certain offenses punishable by imprisonment exceeding 1 year are considered to be prohibited individuals.⁸ Our analysis determined that Coast Guard referred five service members for a general court martial but did not inform CGIS about these referrals. Notification to CGIS is important because, as previously discussed, CGIS is responsible for entering prohibited individuals into NICS.

Coast Guard referred the five service members in question for a general court martial for a variety of offenses, including drug use and possession, committing a sexual act without consent, unlawfully touching a service member who was asleep, and making video recordings of private areas without consent and distributing the recordings to other service members. CGIS had already notified the FBI about four of these individuals for previous criminal behavior, but not for their general court martial referrals. The remaining service member was never entered into NICS. The FBI confirmed in October 2018 that Coast Guard had not reported this service member to the FBI even though he was still under referral for a general court martial. We made Coast Guard aware of this discrepancy; as a result, Coast Guard reported the individual to the FBI, and he is now prohibited from possessing a firearm.

OMJ officials told us that it was their “existing practice” to notify CGIS investigators about referrals, but they determined that the attorneys were not consistently doing so. As a result, Coast Guard updated its *Military Justice Manual* in March 2018 so that Coast Guard attorneys must provide information to CGIS investigators at the time an individual is referred for trial by general court martial.⁹ Specifically, the updated manual now states:

Trial counsel will forward a copy of the charge sheet in any case where a convening authority refers charges for trial by a general

⁸ However, certain military-specific offenses, while punishable by imprisonment exceeding 1 year, do not require entry of the service member into NICS as a prohibited individual. Compare U.S. Department of Defense Instruction No. 5505.11 (July 21, 2014) (for the list of UCMJ offenses reportable to the FBI, which does not include offenses such as absence without leave or failure to obey order) with *Manual for Courts-Martial United States*, §§ 10(e)(2)(d), 16(e)(1) (2016) (for the maximum punishment for the same offenses).

⁹ U.S. DEPT OF HOMELAND SECURITY, U.S. COAST GUARD, COMDTINST M5810.1F, *MILITARY JUSTICE MANUAL*, 20.N.1 (2018).



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court-martial to the servicing CGIS office ... for entry in the National Instant Background Check System (NICS). The copy must be sent as soon as practicable after referral.

Internal Process Does Not Provide Field Offices with Access to NICS

Coast Guard's internal process for reporting prohibited individuals to the FBI only allows CGIS investigators in the Washington, D.C. field office to have direct access to NICS databases. Investigators in the regional and other field offices must submit requests through FACTS to the investigators in Washington, D.C., to enter prohibited individuals into NICS. We identified 15 cases—all controlled substance offenses—where a field investigator failed to make a request to the Washington, D.C. field office to enter the offense into NICS or the Washington, D.C. investigators simply did not follow through on the request to enter the offense into NICS. The investigators we spoke with acknowledged that these cases should have been entered into NICS and blamed the failure to do so on the lack of training. Specific cases include service members with fairly egregious drug abuse issues that would impede their ability to safely use a firearm. For instance, in one case, a seaman admitted to using heroin and methamphetamine and to falsifying previous urinalysis tests. After being released from a treatment facility, he immediately purchased illegal drugs. In another case, a seaman confessed to using cocaine, marijuana, ecstasy, and prescription drugs while on active duty. As of October 2018, the FBI confirmed to us that Coast Guard still had not reported 5 of the 15 prohibited service members; Coast Guard has since resolved the unreported cases. As a result of these reporting failures, CGIS has determined the current process of the field forwarding requests to the Washington, D.C. office is inefficient and is considering procuring a distributed network of “booking stations” to allow field office investigators to access NICS. However, a distributed network of booking stations will still require appropriate quality controls to ensure accurate entries. Coast Guard began researching the possibility of these booking stations in November 2017 but has not made any changes to its internal process as of October 2018.

Recommendations

We recommend the Director, Coast Guard Investigative Service:

Recommendation 1: Modify FACTS to allow CGIS investigators to (1) confirm they reported prohibited individuals to the FBI and (2) identify the specific category of prohibited individual.



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We recommend the Judge Advocate General, Coast Guard Office of Military Justice:

Recommendation 2: Provide additional training and guidance to attorneys regarding proper and complete data entry into Law Manager.¹⁰

Recommendation 3: Establish routine quality control audits of the Law Manager databases to ensure information is complete and updated.

Recommendation 4: Modify Law Manager to allow attorneys to confirm they notified CGIS investigators of prohibited individuals.

We recommend the Director, Coast Guard Investigative Service:

Recommendation 5: Ensure access to FBI databases for CGIS investigators in the field.

Recommendation 6: Provide additional training and guidance to CGIS investigators in the field regarding proper data entry into FBI databases.

Recommendation 7: Establish routine quality control audits of the FACTS database to ensure information is complete and updated.

We recommend the Director, Coast Guard Investigative Service and the Judge Advocate General, Coast Guard Office of Military Justice:

Recommendation 8: Immediately perform a comprehensive review of all criminal investigative and adjudicative databases and files to ensure all qualifying offenses have been reported to the FBI.

Management Comments and OIG Analysis

Coast Guard concurred with all of our recommendations and is taking steps to address them. Appendix B contains a copy of Coast Guard's management response in its entirety. We also received and incorporated technical comments as appropriate. We consider recommendations 1, 2, and 4 - 8 resolved and open. Recommendation 3 is closed. A summary of Coast Guard's responses and our analysis follows.

Coast Guard Response to Recommendation 1: Coast Guard concurred with the recommendation. CGIS will evaluate the potential for modifying FACTS based on the time and expense involved, no later than June 30, 2019. It will

¹⁰ The report previously incorrectly referred to "OMJ attorneys" in the recommendations, as reflected in Appendix B. We updated the language in the final report for accuracy.



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report the results, including potential alternative solutions at that time. Coast Guard anticipates completing this action by December 31, 2019.

OIG Analysis: We consider these planned actions responsive to recommendation 1. We will close this recommendation when Coast Guard implements a solution that amends FACTS or its use in such a way that allows CGIS to track its reporting and quickly identify errors and omissions.

Coast Guard Response to Recommendation 2: Coast Guard concurred with this recommendation. OMJ will provide training to Coast Guard attorneys (specifically, trial counsel who prosecute courts-martial) on the proper entry of information regarding prohibited persons in Law Manager. Coast Guard anticipates completing this action by June 30, 2019.

OIG Analysis: We consider this planned action responsive to recommendation 2. We will close this recommendation when we receive a copy of the training and verification that all trial counsel have received it.

Coast Guard Response to Recommendation 3: Coast Guard concurred with this recommendation. Coast Guard stated that OMJ has been conducting monthly reviews and semi-annual leadership reporting of the Law Manager database since June 2018. Coast Guard provided documentation describing this process, as well as examples of communication to all stakeholders starting in October 2018 that described errors found in the database and required corrective actions. Coast Guard requested the recommendation be closed.

OIG Analysis: Coast Guard's actions are responsive to recommendation 3; we consider the recommendation closed.

Coast Guard Response to Recommendation 4: Coast Guard concurred with this recommendation. It expects to implement a database update by March 31, 2019.

OIG Analysis: We consider this planned action responsive to recommendation 4. We will close this recommendation when we receive documentation verifying the Law Manager database has been updated to confirm CGIS notifications.

Coast Guard Response to Recommendation 5: Coast Guard concurred with this recommendation. CGIS will evaluate expanding field office access to FBI databases no later than June 30, 2019. It will report the results, including potential alternative solutions at that time. Coast Guard anticipates completing this action by December 31, 2019.

OIG Analysis: We consider this planned action responsive to recommendation 5. We will close this recommendation when Coast Guard implements a



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streamlined process for entering prohibited individuals identified by field investigators into FBI databases, as well as related quality control measures.

Coast Guard Response to Recommendation 6: Coast Guard concurred with this recommendation. It expects to train field investigators regarding proper data entry by June 30, 2019.

OIG Analysis: We consider this planned action responsive to recommendation 6. We will close this recommendation when we receive a copy of the training and verification that all field investigators have received it.

Coast Guard Response to Recommendation 7: Coast Guard concurred with this recommendation. It expects to establish routine audits of the FACTS database by June 30, 2019.

OIG Analysis: We consider this planned action responsive to recommendation 7. We will close this recommendation when we receive documentation confirming Coast Guard has established routine audits of the FACTS database.

Coast Guard Response to Recommendation 8: Coast Guard concurred with this recommendation. It expects to easily identify individuals who have been sentenced to a dismissal or dishonorable discharge since NICS was established in 1998. However, Coast Guard stated that in other prohibited categories, there will be information gaps that Coast Guard cannot overcome. Specifically, for misdemeanor crimes of domestic violence, Coast Guard will only be able to access records back to 1998 on special courts martial that resulted in a bad conduct discharge. Those records are maintained by the National Archives and Records Administration; Coast Guard would have to retrieve and analyze these records to confirm the individuals were properly reported. Cases involving domestic violence that did not result in a bad conduct discharge are not permanent records and would not be accessible as far back as 1998. Coast Guard anticipates providing an update to this analysis by June 30, 2019. However, it could not estimate a date for completion.

OIG Analysis: We consider these planned actions responsive to recommendation 8. We acknowledge that this will be a time-consuming process and that there may be gaps in information available to determine some individuals' prohibited status. We also acknowledge that some prohibitions, such as individuals under indictment and unlawful users of controlled substances, expire and Coast Guard would have no way to retroactively confirm whether the prohibitions were properly reported at the time. We will close this recommendation when Coast Guard provides documentation confirming all efforts were made to identify currently prohibited individuals and ensure they are appropriately entered in FBI databases.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of the inspection was to determine whether Coast Guard enters UCMJ violations into NICS appropriately.

To achieve our objective, we reviewed congressional laws and regulations, and reports from the Department of Defense, Government Accountability Office, and other government agencies. We also reviewed Coast Guard and Department of Justice policies and procedures for reporting UCMJ violations to NICS.

From Coast Guard, we requested all data contained in FACTS and Law Manager from calendar year 2014 through March 2018. Specifically, we asked for (1) FACTS records of all service members investigated for UCMJ violations and (2) for Law Manager records of all service members who were referred for a court martial (i.e., indicted) during our time period.¹¹ In total, we obtained investigative and adjudicative data related to 2,268 Coast Guard personnel. Combined, these databases provided summary information on service members who were subject to investigative or military justice proceedings, such as demographic data (i.e., name, date of birth, gender and race), charges, dates of offenses, the type of court martial proceedings, pleas, verdicts, sentences and final punishments (such as imprisonment or dishonorable discharges from the military).

As described in the body of the report, data reliability issues limited our ability to fully identify all prohibited individuals. However, we conducted an initial analysis of the database records for the 2,268 service members to determine whether they fit one of the categories of prohibited individuals based on particular criteria. For example, to identify individuals who would be prohibited under the category convicted of a crime punishable by imprisonment of more than 1 year, we searched for individuals who (1) had charges that had potential maximum sentences of more than 1 year, (2) were tried by general court martial, and (3) were found guilty. Based on this initial analysis, we determined 421 service members were most likely prohibited individuals based on our criteria.

¹¹ While Law Manager data was available for the entire time period, CGIS did not begin using FACTS as its investigative database until July 2014. Therefore, we were only able to review FACTS information from July 2014 to March 2018.



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We then requested information from the FBI about Coast Guard personnel contained in each of the three databases that make up NICS (NCIC, III, and NICS Index) to determine whether Coast Guard appropriately reported prohibited individuals. We also requested underlying case file information from Coast Guard, such as trial reports and allegation information, to confirm who should be reported.

From the FBI, we requested data from the NICS Index and NCIC for all Coast Guard personnel reported during our timeframe. We then cross-matched the 421 service members who we believed Coast Guard should have reported with these NICS Index and NCIC records. Based on this analysis, we determined that Coast Guard had appropriately reported 130 service members to the FBI. For the remaining 291 members who were not in the NICS Index or NCIC, we requested further case file information from Coast Guard, such as trial reports and allegation sheets, to confirm that they should have been reported. We then requested the FBI query the remaining database that makes up NICS, namely III, for those service members who were reportable but not in the NICS Index or NCIC data. Ultimately, we determined that Coast Guard should have reported 210 service members to the FBI.

We interviewed various Coast Guard officials from Coast Guard Investigative Services and Office of Military Justice. In addition, we interviewed Department of Justice personnel responsible for reporting violations to NICS.

We conducted this review between March and August 2018 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the Council of the Inspectors General on Integrity and Efficiency.

The Office of Special Reviews and Evaluations' major contributors to this report are Erika Lang, Chief Inspector; LaDana Crowell, Lead Inspector; Kimberley Lake de Pulla, Senior Inspector; John Miller, Inspector; and Carie Mellies, Independent Referencer.



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Appendix B
U.S. Coast Guard Comments to the Draft Report

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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7500

MEMORANDUM

From: T. G. Allan Jr., RDML
COMDT (CG-8)

TGAS
RDML
15 FEB 19

Reply to: Audit Liaison
Attn of: Megan Owens
(202) 372-3532

To: John V. Kelly
Senior Official Performing the Duties of the Inspector

Subj: DHS OIG DRAFT REPORT: "UNITED STATES COAST GUARD'S REPORTING
OF UNIFORM CODE OF MILITARY JUSTICE VIOLATIONS TO THE FEDERAL
BUREAU OF INVESTIGATION"

Ref: (a) OIG Project No. 18-061-ISP-USCG, of November 2018

1. Thank you for the opportunity to review and comment on this draft report. The Coast Guard appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report. This memorandum transmits the Coast Guard's response to the draft report identified in reference (a).
2. The Coast Guard concurs with all of the recommendations listed in the draft report. Our response in enclosure (1) demonstrates that the respective Coast Guard program offices have developed or will develop corrective measures to address OIG's recommendations which will further strengthen the identification of prohibited individuals and ensure complete reporting to the FBI.
3. If you have any questions, my point of contact is Ms. Megan Owens who can be reached at 202-372-3532.

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Enclosure: USCG Response to OIG Draft Report on UCMJ Violation Reporting to the FBI



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UNITED STATES COAST GUARD'S REPORTING OF UNIFORM CODE OF MILITARY JUSTICE VIOLATIONS TO THE FEDERAL BUREAU OF INVESTIGATION OIG Project No. 18-061-ISP-USCG

Recommendation 1: We recommend the Director, Coast Guard Investigative Service modify FACTS to allow CGIS investigators to (1) confirm they reported prohibited individuals to the FBI and (2) identify the specific category of prohibited individual.

Response: Concur. Since FACTS is commercial off the shelf software, its modification may not be feasible, both because of the time and the expense involved. CGIS will evaluate the potential of modifying FACTS no later than June 30, 2019 and report the results of that evaluation including whether an alternative solution will need to be pursued to include updating policy, as appropriate. Estimated Completion Date (ECD): December 31, 2019.

Recommendation 2: We recommend the Judge Advocate General, Coast Guard Office of Military Justice provide additional training and guidance to OMJ attorneys regarding proper and complete data entry into Law Manager.

Response: Concur. The Office of Military Justice will provide training to Coast Guard trial counsel on proper entry of information regarding prohibited persons into Law Manager. Of note, the attorneys who do the data entry are not attorneys assigned to the Office of Military Justice, but rather trial counsel (the term used in the UCMJ for prosecutors) in field legal offices throughout the Coast Guard. ECD: June 30, 2019.

Recommendation 3: We recommend the Judge Advocate General, Coast Guard Office of Military Justice establish routine quality control audits of the Law Manager databases to ensure information is complete and updated.

Response: Concur. The Office of Military Justice has been conducting semi-annual reviews of the Law Manager database since June 2018 and provides feedback to the Staff Judge Advocates in the field legal offices identifying requested corrective actions. Documentation describing this process has been forwarded to the OIG under separate cover. We request that OIG consider this recommendation resolved and closed as implemented.

Recommendation 4: We recommend the Judge Advocate General, Coast Guard Office of Military Justice modify Law Manager to allow OMJ attorneys to confirm they notified CGIS investigators of prohibited individuals.

Response: Concur. The Office of Military Justice will implement this database update. ECD: March 31, 2019.

Recommendation 5: We recommend the Director, Coast Guard Investigative Service ensure access to FBI databases for CGIS investigators in the field.

Response: Concur. CGIS will evaluate the potential of expanding field office access to FBI databases no later than June 30, 2019 and report the results of that evaluation including whether an alternative solution will need to be pursued to include updating policy, as appropriate to ensure all necessary entries are being made in a timely manner. ECD: December 31, 2019.

Enclosure (1)



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Recommendation 6: We recommend the Director, Coast Guard Investigative Service provide additional training and guidance to CGIS investigators in the field regarding proper data entry into FBI databases.

Response: Concur. CGIS will train field investigators regarding proper data entry into FBI databases. ECD: June 30, 2019.

Recommendation 7: We recommend the Director, Coast Guard Investigative Service establish routine quality control audits of the FACTS database to ensure information is complete and updated.

Response: Concur. CGIS will establish routine audits of the FACTS database to ensure information is complete and updated. ECD: June 30, 2019.

Recommendation 8: We recommend the Director, Coast Guard Investigative Service and the Judge Advocate General, Coast Guard Office of Military Justice immediately perform a comprehensive review of all criminal investigative and adjudicative databases and files to ensure all qualifying offenses have been reported to the FBI.

Response: Concur. Implementation will be administratively challenging and there will be a gap between databases and files that the Coast Guard cannot overcome. It will be relatively simple to identify all of those who have been sentenced to a dishonorable discharge or dismissal since the National Instant Criminal Background Check System (NICS) was implemented in 1998 and ensure those individuals are appropriately recorded in the NICS Indices. For misdemeanor crimes of domestic violence there will be a gap in the records the Coast Guard can search and as a result we will not be able to confirm that all such convictions have been appropriately recorded back to 1998. For those special court-martial cases that resulted in a conviction for offenses that involved a domestic violence offense, if the accused was sentenced to a bad conduct discharge, the National Archives and Records Administration (NARA) will have those records. The Coast Guard will need to retrieve records from NARA and review them to determine which ones might involve a misdemeanor crime of domestic violence. The names of individuals identified can then be run in NCIC, the interstate identification index and the NICS Indices. However, it is possible that some cases that involved domestic violence convictions at a special court-martial did not result in a sentence that included a bad conduct discharge. The records of trial for special courts-martial that do not result in a bad conduct discharge are not permanent records, and thus records back to 1998 do not exist; they would have been scheduled for destruction by NARA. The Coast Guard will provide an update on the preliminary results of this analysis by June 30, 2019. ECD: To Be Determined.

Enclosure (1)



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