

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20230003874

APPLICANT REQUESTS:

- In effect, removal of his name and personal information from the titling block of a military police report (MPR) and the Defense Central Index of Investigations (DCII)
- Permission to appear personally before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he believes information listed about him in the DCII and the MPR requires correction.

a. The DCII currently shows the MPR titled him for the following crimes:

- Missouri Revised Statute (RSMO) Section 571.030 – Unlawful Use of Weapon
- RSMO Section 565.074 – 3rd Degree Domestic Assault
- Article 81, Uniform Code of Military Justice (UCMJ) – Conspiracy
- Article 128, UCMJ – Aggravated Assault using a Handgun
- RSMO Section 571.015 – Armed Criminal Action
- Article 134, UCMJ – Drunk and Disorderly
- RSMO Section 577.010 – Driving While Intoxicated

b. The applicant continues, on 25 January 2023, he filed a "Privacy Act Request to Change Record," and the U.S. Army Crime Records Center (USACRC) assigned a control number. USACRC subsequently denied his request, citing Section

545 (Removal of Personally Identifying and Other Information of Certain Person from Investigative Reports, the DCII, and Other Records and Databases), found in Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021).

(1) The applicant points out, "PL 116-283 required the Secretary of Defense to establish and maintain a policy and process for a person to request their Department of Defense (DOD) law enforcement record be amended, corrected, expunged, or otherwise removed when it is determined probable cause did not or does not exist to believe that the individual committed the alleged criminal offense(s)."

(a) "(As of March 2023), DOD has not published implementation guidance; however, in November 2022, the Secretary of the Army directed the Department of the Army Criminal Investigation Division to adopt the probable cause standard for review of amendment requests, as prescribed in Section 545 of Public Law 116-283.

(b) "...although fully qualified for her position, (the) Secretary of the Army C___ W___ is not an attorney nor an expert on the legal system. Her directive to adopt probable cause as the determining factor for amendment requests is borderline unconstitutional. There is no other law enforcement entity in the world that uses 'probable cause' as a method of determining whether a charge, not a conviction, shall be removed from someone's criminal record."

(c) "Furthermore, if I had filed this request just three months prior, these charges would have been removed. Due to poor timing, which falls entirely on my shoulders, I now have to defend myself and my actions which I do begrudgingly as this incident constitutes one of the worst days of my life. I must now go and relive and recount something that occurred over twelve years ago that resulted in a ruined military career."

(2) "Probable cause is universally described as, when a reasonable person would believe that a crime was in the process of being committed, had been committed, or was going to be committed. My first argument relies on that there is nothing in the MPR or witness statements that prove probable cause for a majority of the crimes I have been titled with."

(a) "First and foremost, RSMO 565-074, 3rd Degree Domestic Assault, requires the perpetrator to attempt to cause physical pain or illness to a domestic victim. According to RSMO Section 455.010 (Definitions), a domestic victim is 'spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time.' Up to and including the date of the incident, I had no

idea who the "domestic victim" was. I still to this day have no idea who she is, other than what was told to me by the other defendant."

(b) "Although I may have driven to the location where the incident happened, I had no prior knowledge of what was going to occur or who's home we were driving to. Using the same logic, there is no reason to believe I committed any actions related to Article 128 (Assault) of the UCMJ. Personally, I never held a firearm at any point during this incident. Article 128 requires a person to attempt or offer with unlawful force or violence to do bodily harm to another person whether or not the attempt or offer is consummated, commit an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm or, commit an assault and intentionally inflict grievous bodily harm with or without a weapon, is guilty of assault."

(c) The applicant goes on to note that, while the above-named offenses would have warranted trial by court-martial, his chain of command never pursued judicial action; he argues that this fact "helps to prove that these charges have no veracity or ability to be prosecuted." The crimes of domestic assault and aggravated assault using a handgun are "two of the most heinous criminal charges I am titled with, and I believe the requirement of 'probable cause' is not apparent in either charge. If it were, I believe prosecution would have been imminent."

(3) The applicant concludes, "...even if I were to be found guilty of any of the crimes I was titled with, which for clarification, I was not found guilty of any single crime listed, the period to file for expungement has been met. According to the State of Missouri, I would have been eligible to file for expungement after three years. It has now been over twelve years, and I am again looking to have charges, not convictions, removed from my record. I have not engaged in a single violent offense since this day, but as I seek new employment, these charges populate and continue to make me look like a violent, unstable person. I would like to move past this period in my life, but without someone taking a hard look at the facts of this request, it will not be possible."

3. A review of the applicant's service record shows the following:

a. On 18 October 2006, the applicant enlisted into the Regular Army for 5 years; upon completion of initial entry training and the award of military occupational specialty 31B (Military Police), orders assigned him to Fort Leonard Wood, MO, and he arrived at his new unit, on or about 25 March 2008.

b. On 17 April 2008, the applicant graduated as the Distinguished Honor Graduate in his Warrior Leader Course. On 25 June 2008, the applicant deployed to Iraq; he redeployed, on 2 September 2009. Effective 1 March 2009, the applicant's leadership promoted him to specialist (SPC)/E-4.

c. DA Form 3975 (MPR), dated 22 November 2009, listed the applicant as subject number 2.

(1) The report indicates the MPs charged the applicant with the following criminal offenses:

- Wrongful use of a weapon
- Domestic assault
- Aggravated assault
- Conspiracy
- Armed criminal action
- Drunk and Disorderly
- Driving under the influence and Driving with an excessive blood alcohol concentration (BAC)

(2) The redacted narrative states:

(a) "At 1133 hrs, 22 Nov 09, ___ notified the Military Police Station of an assault with a deadly weapon at (an on base single Soldier's apartment). Investigation revealed that between the above times and on the above date ___ and (Subject Number 1) were involved in a verbal altercation outside the residence when (Subject Number 1) pulled a pistol from his waistband and demanded ___ summon ___ from inside the residence. (Subject Number 1) stated that he was going to kill ___; ___ refused and (Subject Number 1) gave the pistol to [applicant] and instructed him to wait in the car and keep a round chambered in case ___ came outside. ___ did not come outside, so (Subject Number 1) and [applicant] left the scene."

(b) After receiving descriptions of Subject Number 1, the applicant, and the vehicle they were driving, the MPs located the vehicle and conducted a "Felony Traffic Stop." The MPs observed that the applicant was operating the vehicle and Subject Number 1 was in the front passenger seat. After conducting an initial search of the vehicle, the MPs found a box containing 39 rounds of .40 caliber pistol ammunition; the MPs then detained both Subject Number 1 and the applicant; both denied any knowledge of a weapon. The MPs continued their search of the vehicle and discovered a Walther PPS (Police Pistol Slim) .40 caliber pistol holding a magazine containing five rounds and a round in the chamber; (the Walther PPS is a German made semi-automatic pistol designed for concealed carry).

(c) Both the applicant and Subject Number 1 provided breath samples and the results showed the applicant had a BAC of .088. Subsequently, the applicant and Subject Number 1 invoked their rights and declined to make any statements. After titling the applicant, the MPs released him to his unit and finalized the MP report.

d. On 15 April 2010, the acting Commanding General, U.S. Army Maneuver Support Center of Excellence, Fort Leonard Wood, MO issued the applicant a general officer memorandum of reprimand (GOMOR).

(1) The CG stated, "On 22 November 2009, at 1133 hours, you were stopped by a Military Police Officer after they responded to a call for assault with a deadly weapon. The Military Police found that you and your passenger were hiding a Walther PPS .40 caliber pistol in the glove compartment and thirty nine .40 caliber rounds in the front passenger area."

(2) "You and your passenger were apprehended and escorted to the police station where you submitted to a chemical breath test which indicated a blood alcohol content level of .088. You were cited for driving while intoxicated. You were additionally titled with wrongful use of a weapon, domestic assault, aggravated assault, conspiracy, armed criminal action, and drunk and disorderly."

e. On 16 April 2010, the applicant acknowledged receipt of the GOMOR and indicated his intent to submit written matters; (the applicant's available service record is void of any matters the applicant may have submitted).

f. On 12 May 2010, the applicant's command reduced him to private (PV1)/E-1; his available record is void of any documentation for this demotion. On 14 May 2010, the GOMOR imposing official directed the GOMOR's permanent placement in the applicant's official military personnel file.

g. At some point prior to 9 September 2010, the applicant's commander advised him he was initiating separation action against the applicant, under the provisions of paragraph 14-12b (A Pattern of Misconduct), Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations); (the commander's notification memorandum is unavailable for review).

h. On 10 September 2010, after consulting with counsel, the applicant affirmed counsel had advised him of the basis for his pending separation action, its effects of the rights available to him and the impact of waiving those rights. The applicant checked a block, acknowledging, "I understand that I am not entitled to have my case considered by an administrative separation Board," and then indicated he was demanding to have his case considered by an administrative separation board. The applicant additionally indicated his intent to submit statements in his own behalf, but any statements provided are unavailable. (Per AR 635-200, an administrative separation board is not required when a discharge under other than honorable conditions is not warranted, or when the Soldier has less than 6 years of total active and reserve service).

i. On 1 November 2010, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions; on 23 November 2010, orders separated the applicant accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 1 month, and 6 days of his 5-year enlistment contract. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one bronze service star
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge with Mechanic Component Bar

j. On 18 April 2011, the Magistrate Court Clerk on Fort Leonard Wood completed a DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) pertaining to the 22 November 2009 incident.

(1) Under "Action Taken," the clerk noted a civilian criminal/magistrate had addressed the drunken driving and driving with excessive BAC charges. While not showing the date of the action, the clerk reported that the applicant had appeared before a U.S. Magistrate Court, and, in accordance with a plea agreement, the applicant had pleaded guilty to an amended charge of careless and imprudent driving; the driving with excessive BAC charge was dismissed.

(2) The court sentenced the applicant to pay a fine and court costs, totaling \$250. The form did not include any action taken by the applicant's command.

k. On 30 September 2013, the applicant petitioned the Army Discharge Review Board, requesting an upgrade to an honorable character of service.

(1) The applicant explained, when he entered the Army, he was "totally absorbed by the military, and he achieved some significant accomplishments, to include being named Distinguished Honor Graduate for his Warrior Leader Course. However, after his September 2009 redeployment from Iraq, he had trouble adjusting and turned to alcohol as a way of self-medicating. The applicant felt the treatment he had undergone since his separation had helped him to conquer his post-traumatic stress disorder.

(2) On 26 September 2014, after conducting a records review, the ADRB denied the applicant's request.

I. On 21 January 2021, the applicant requested a personal appearance before the ADRB; on 13 December 2021, in a hearing wherein the applicant testified via telephone, the ADRB voted to upgrade the applicant to an honorable character of service. The ADRB concluded that the applicant's PTSD mitigated the applicant's driving while intoxicated charge and outweighed the remaining offenses of wrongful use of a weapon, domestic assault, aggravated assault, conspiracy, armed criminal action. In April 2022, the Army Review Boards Agency issued the applicant a revised DD Form 214.

4. On 9 February 2023, the USACRC responded to the applicant's 25 January 2023 request to amend an MPR, which listed the applicant in the titling block and pertained to the 22 November 2009 incident. The response stated, "After a review of the MPR was completed in accordance with Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021), section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, The DCII, and Other Records and Databases), it has been concluded that your amendment request is denied."

5. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant law enforcement officials were called to investigate an incident involving the applicant. The investigation determined there was probable cause to title the applicant for wrongful use of a weapon, domestic assault, aggravated assault, conspiracy, armed criminal action, being drunk and disorderly, and driving under the influence and driving with an excessive blood alcohol concentration (BAC). The applicant appeared before the court and pled guilty to careless and imprudent driving (vice DWI) and was sentenced to a fine. The command gave him a GOMOR and separated him for a pattern of misconduct with a general discharge. The ADRB upgraded his discharge to honorable.

a. The Board first considered whether probable cause did or did not (when titled) exist to believe the offense occurred or the person committed the offense. One of the offenses for which the applicant was titled is conspiracy, which is normally an agreement to commit an unlawful act. The agreement itself is the crime, but at least one co-conspirator must take an overt act in furtherance of the conspiracy. In this case, (Subject Number 1) was involved in a verbal altercation outside the residence when (Subject Number 1) pulled a pistol from his waistband and sated he was going to kill a person. When the person did not come outside, (Subject Number 1) gave the pistol to [applicant] and instructed him to wait in the car and keep a round chambered in case ___ came outside. ___ did not come outside, so (Subject Number 1) and [applicant] left the scene. As the applicant and Subject Number 1 conspired, there clear was probably cause to title the applicant (and Subject Number 1). The Board found no error or injustice in the titling action. Based on this

b. The Board also considered whether probable cause does or does not (now) exist to believe the offense occurred or the person committed the offense. The CID Report provides clear corroborating evidence of what transpire don that date. As a result of this incident, the command reprimanded the applicant via a GOMOR and also initiated separation action against him for the misconduct. Aside from his self-reporting of the events that occurred then, the applicant does not provide evidence of a convincing nature that the titling action should be removed.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.2.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Department of Defense Instruction (DODI) 5505.07 (Titling and Indexing in Criminal Investigations), in effect at the time, prescribed policies for titling individuals in criminal investigative reports and outlined procedures for a review of such actions.

a. Paragraph 1.2 (Policy).

(1) Subparagraph 1.2a. DOD Components authorized to conduct criminal investigations will title and index subjects of criminal investigations as soon as the investigation determines there is credible information that the subject committed a criminal offense

(2) The DODI's glossary defines "credible information" as, "Information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume the fact or facts in question are true."

(3) Subparagraph 1.2d. Once the person is indexed in the Defense Central Index of Investigations (DCII), he/she will remain, even if the person is found not guilty of the investigated offense, with the following exceptions:

- Cases of mistaken identity
- Subsequent determination finds no credible information existed at the time of titling and indexing
- Judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation

b. Paragraph 3.3 (Correction and Expungement Procedures). When reviewing the appropriateness of a titling and indexing decision, the reviewing official will only consider the investigative information available at the time of the initial titling and indexing decision to determine whether the decision to determine if the decision was made in accordance with paragraph 1.2a above.

3. DODI 5505.07, dated 8 August 2023 and currently in effect, establishes policy, assigns responsibilities and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity reports (LEA) and

indexing him in the DCII. Pursuant to Section 522 of Public Law 106-398 (Fiscal Year 2001 National Defense Authorization Act) and Section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, The Department of Defense Central Index of Investigations, and Other Records and Databases) of Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021), codified as a note in Section 1552 (Correction of Military Records: Claims Incident To) of Title 10 (Armed Forces), U.S. Code, establishes procedures for DOD personnel through which: covered persons titled in DOD LEA report or indexed in DCII may request a review of the titling or indexing decision and may request their information be corrected, expunged, or otherwise removed from DOD LEA report, the DCII, and related records, databases, or repositories.

a. Section 3 (Correction and Expungement Procedures) prescribes current correction and expungement procedures for persons titled in a DoD Law Enforcement Activity (LEA) report or indexed in the DCII. Per paragraph 1.2a, the initial decision to title and index an individual remains based on a credible information standard.

(1) Paragraph 3.1 (Basis for Correction or Expungement). A covered person who was titled in a DoD LEA report or indexed in DCII may submit a written request to the responsible DoD LEA head or designated expungement officials to review the inclusion of their information in the DoD LEA report, DCII, and other related records systems, databases, or repositories in accordance with Section 545 of Public Law 116-283.

(2) Paragraph 3.2 (Considerations).

(a) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DoD LEA report, DCII, and any other record maintained in connection with the DoD LEA report when:

- Probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred
- Probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense
- Such other circumstances as the DoD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in Paragraphs 3.2.a.(1) and (2)

(b) In accordance with Section 545 of Public Law 116-283, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DoD LEA head or designated expungement official will also consider:

- The extent or lack of corroborating evidence against the covered person with respect to the offense
- Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense
- The type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense

4. Army Regulation (AR) 195-2 (Criminal Investigation Activities), in effect at the time, established policies and procedures for criminal investigative activities within the Department of the Army. The Commanding General (CG), U.S. Army Criminal Investigation Command (USACIDC) was responsible for prescribing policies and procedures for the release of information from, and the amendment of, criminal investigation records and reports of investigations.

a. Paragraph 4-4 (Individual Requests for Access to, or Amendment of, USACIDC Reports).

(1) "Requests for amendment will be considered only under the provisions of this regulation. Requests to amend or unfound offenses in USACIDC ROIs (reports of investigation) will be granted only if the individual submits new, relevant, and material facts that are determined to warrant revision of the report. The burden of proof to substantiate the request rests with the individual."

(2) "Requests to delete a person's name from the title block will be granted, if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject at the time the investigation was initiated, or the wrong person's name has been entered as a result of mistaken identity."

b. The regulation's glossary:

(1) Credible Information – "Information disclosed to or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to indicate that criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred."

(2) Founded Offense – "An offense adequately substantiated by police investigation as a violation of the UCMJ, the U.S. Code, state and local codes, foreign law, international law or treaty, regulation, or other competent policy. Determination that an offense is founded is a law enforcement decision based on probable cause supported by corroborating evidence and is not dependent on final adjudication."

5. AR 190-45 (Law Enforcement Reporting), currently in effect, prescribes policies and procedures for the preparation, reporting, use, retention, and disposition of Department of the Army (DA) forms and documents related to law enforcement (LE) activities.

a. Paragraph 3-2 (Guidelines for Disclosure within the Department of Defense).

(1) "Criminal record information contained in MP documents will not be disseminated unless there is a clearly demonstrated, official, need to know. A demonstrated, official, need to know exists when the record is necessary to accomplish a function that is within the responsibility of the requesting activity or individual, is prescribed by statute, DOD directive, regulation, or instruction, or by Army regulation."

(2) "Criminal record information related to subjects of criminal justice disposition will be released when required for security clearance procedures."

b. Paragraph 3-6 (Amendment of Records).

(1) Subparagraph 3-6a (Policy).

(a) "An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. Requests to amend reports will be granted only if the individual submits new, relevant, and material facts that are determined to warrant their inclusion in or revision of the police report. The burden of proof is on the individual to substantiate the request."

(b) "Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a police report is an investigative determination that is independent of whether or not subsequent judicial, nonjudicial or administrative action is taken against the individual. In compliance with DOD policy, an individual will still remain entered in the DCII to track all reports of investigation."

(2) Subparagraph 3-6b (Procedures). Individual Provost Marshals (PM) will review amendment requests for records that are 5 or fewer years old; the installation

PM either approves the request or forwards the request to the CG, USACIDC with his/her rationale for disapproval. The CG, USACIDC is the sole access and amendment authority for criminal investigation reports and LERs.

c. Paragraph 4-3 (Identifying Criminal Incidents and Subjects of Investigation).

(1) Subparagraph 4-3a. "An incident will not be reported as a founded offense unless adequately substantiated by police investigation. A person or entity will be reported as the subject of an offense on the LER when credible information exists that the person or entity has committed a criminal offense. The decision to title a person is an operational, rather than a legal, determination. The act of titling and indexing does not, in and of itself, connote any degree of guilt or innocence, rather it ensures that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes. Judicial or adverse administrative actions will not be based solely on the listing of an individual or legal entity as a subject in the LER."

(2) Subparagraph 4-3d. "When investigative activity identifies a subject, all facts of the case must be considered. When a person, corporation, or other legal entity is entered in the "subject" block of the LER, their identity is recorded in DA automated systems and the DCII. Once entered into the DCII, the record can only be removed in cases of mistaken identity or if an error was made in applying the credible information standard at the time of listing the entity as a subject of the report. It is emphasized that the credible information error must occur at the time of listing the entity as the subject of the LER rather than subsequent investigation determining that the LER is unfounded. This policy is consistent with DOD reporting requirements. The Director, U.S. Army Crime Records Center (USACRC) enters individuals from the LER into the DCII."

d. The regulation's glossary defines an unfounded offense as, "A criminal complaint in which a determination is made that a criminal offense was not committed or did not occur. This determination is based on police investigation and not on court-martial findings, civil court verdicts, or command determinations."

6. The Manual for Courts-Martial, currently in effect, shows the following elements of proof for UCMJ Articles:

a. Article 81 (Conspiracy). Any person subject to the UCMJ who conspires with any other person to commit an offense shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(1) Elements include:

- The accused entered into an agreement with one or more persons to commit an offense under the UMCJ

- That, while the agreement continued to exist, and while the accused remained a party to that agreement, the accused, or at least one of the co-conspirators, performed an overt act to bring about the object of the conspiracy

(2) Each conspirator is liable for all offenses committed as long as the conspiracy continues and the accused remains a party to the conspiracy.

b. Article 128 (Assault). Any person subject to the UCMJ who, unlawfully and with force or violence, attempts to do bodily harm to another person, offers to do bodily harm to another person, or does bodily harm to another person, is guilty of assault and shall be punished as a court-martial may direct. Aggravated assault occurs when an accused uses a loaded firearm in the attempt, offer, or commission of bodily harm.

c. Article 134 (General Article – Disorderly Conduct – Drunkenness). A person subject to the UCMJ was drunk and disorderly under circumstances that were prejudicial to the good order and discipline in the Armed Forces or were of a nature to bring discredit upon the Armed Forces.

7. Missouri Revised Statute (RSMO), in effect at the time:

a. Title XXX (Domestic Relations), chapter 455 (Abuse – Adults and Children – Shelters and Protective Orders) section 455.010 (Definitions). "'Family' or 'household member', spouses, former spouses, adults related by blood or marriage, adults who are presently residing together or have resided together in the past, an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and adults who have a child in common regardless of whether they have been married or have resided together at any time."

b. Title XXXVIII (Crimes and Punishment; Peace Officers and Public Defenders), Chapter 565 (Offenses Against the Person), section 565.074 (Domestic Assault, Third Degree – Penalty). A person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMO, and the person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member.

c. Title XXXVIII (Crimes and Punishment; Peace Officers and Public Defenders), Chapter 571 (Weapons Offenses).

(1) Section 571.015 (Armed Criminal Action). Any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the crime of armed criminal

action and, upon conviction, shall be punished by imprisonment by the department of corrections and human resources for a term of not less than three years. The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon.

(2) Section 571.030 (Unlawful Use of Weapon). A person commits the crime of unlawful use of weapons when he or she knowingly carries concealed upon or about his or her person a firearm or any other weapon readily capable of lethal use, exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner or possesses or discharges a firearm or projectile weapon while intoxicated.

d. Title XXXVIII (Crimes and Punishment; Peace Officers and Public Defenders), Chapter 577 (Public Safety Offenses), section 577.010 (Driving while Intoxicated). A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

8. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//