

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240001238

APPLICANT REQUESTS: through counsel:

- expungement of his name and all personally identifiable information from the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), December 2018; Defense Central Index of Investigations (DCII); National Crime Information Center (NCIC); and U.S. Army Crime Records Center (CRC) databases
- removal of his name, fingerprints, and identifying information from the subject block of Military Police Report (MPR), 8 August 2013, and his Interstate Identification Index (III) Criminal History Data
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Petition in Support of Application for Correction of Records, 30 October 2023, with enclosures –
  - 1 – Power of Attorney, 17 September 2020
  - 2 – CID/CRC Letter, 4 January 2022
  - 3 – CID Form 94 (Agent's Investigative Report), LER, 17 December 2018
  - 4 – Statement for Inspector General (IG), 16 September 2020
  - 5 – CID Form 94, 9 April 2020
  - 6 – CID Form 94, 17 January 2019
  - 7 – CID Form 94, 31 December 2019
  - 8 – Jacksonville Sheriff's Office Incident (Offense) Report, 8 December 2018
  - 9 – Second Copy of CID Form 94, 9 April 2019
  - 10 – Sprint Forensic Investigation Report, 12 December 2018
  - 11 – four Character References, 11-13 July 2020
  - 12 – Various Awards and Certificates
  - 13 – DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 8 August 2013 (listed as MPR (Redacted) for 2013 Incident)

FACTS:

1. The applicant defers to counsel.

2. Counsel states:

a. Allegations against the applicant are without merit, as demonstrated by a lack of credible evidence and the State's refusal to pursue charges. The investigation revealed the alleged victim made statements that could not be verified by credible evidence or were inconsistent with the evidence uncovered. Law enforcement agencies did not uncover sexually explicit messages or nude photographs exchanged between the applicant and the alleged victim, despite the victim's claims to have exchanged photographs.

b. Additional discrepancies include a failure to authenticate the alleged Facebook messages between the applicant and his accuser, the alleged victim's actions after the purported sexual assault were inconsistent with behavior expected of someone who had just been sexually assaulted, and the alleged victim made false accusations that could not be supported by evidence on record.

c. The applicant was never criminally charged or convicted, but his name remains in the CID LER. CRC unjustly denied the applicant's request to remove his name from the LER on 4 January 2022 (see enclosure 2). The applicant has exhausted his administrative remedies and the CRC denial was within the last 3 years.

d. Counsel lists the following as facts related to his first request:

(1) On 7 December 2018, the National Center for Missing and Exploited Children forwarded information to the CID Office alleging the applicant was having sexually explicit conversations with a potential Army recruit (see enclosure 3). Detectives with the Jacksonville Sheriff's Office interviewed the applicant and he denied any wrongdoing (see enclosures 3 and 4).

(2) On 10 December 2018, CID Special Agents (SAs) interviewed the alleged victim who provided a verbal statement (see enclosure 3). She made allegations that the applicant contacted her via Facebook and "friend requested" her around November 2018 to see if she was interested in joining the Army. She alleged they started exchanging messages and the applicant started to "escalate his friendliness using suggestive emoji's" and inquiring about her personal life, such as relationship status. She stated the applicant asked her for nude photographs, which she provided, and he sent her nude photographs of himself in exchange.

(3) The alleged victim indicated the applicant met her at her high school to pick up enlistment paperwork. At that time the applicant allegedly approached her from behind, placed his hand down the front of her pants and underwear, and digitally penetrated her. She also relayed to investigators that the applicant asked her to perform oral sex on him. Further, she told investigators that she "deleted all photographs and text messages" from her cell phone because she felt disgusted with herself.

(4) The investigative report indicates the alleged victim's phone was examined on 10 December 2018 and revealed "negative results." The report also indicated a "recent message trail between the applicant and [the alleged victim is] without evidentiary value" (see enclosures 3 and 5). An investigative note stated "Jacksonville Sheriff's Office detectives arrived at the conclusion that there was not enough to obtain a warrant for the applicant's arrest at this time" (see enclosure 3).

(5) Around 8 December 2018, a subpoena was issued allowing federal law enforcement officials to examine the applicant's cell phone records. On 17 December 2018, Sprint submitted documentation responsive to the subpoena, which indicated that "no records were found for this target during the requested time period" (see enclosure 10).

(6) Around 24 December 2018, SA A\_\_\_\_\_ interviewed five individuals who were recruited or interacted with members of the applicant's recruiting station. SA A\_\_\_\_\_ questioned them about any inappropriate contact or conversations with the recruiters, including the applicant (see enclosure 6). The interviews indicated none of the individuals had negative interactions during the recruitment process or had anything negative to say about the applicant.

(7) Around February 2019, SA A\_\_\_\_\_ interviewed an additional service member recruited by the applicant or at his recruiting station. The interview indicated the Soldier "had nothing negative to report about [her interaction with the applicant], or his demeanor."

(8) On 27 September 2019, SA A\_\_\_\_\_ spoke with Lieutenant (LT) W\_\_\_\_\_, State Attorney's Office, "who related the extraction of the victim's phone determined there were some photographs of naked males. However, no one was associated to the subject."

(9) Also, around 27 September 2019, the Jacksonville Sheriff's Office Computer Forensic Investigations Unit examined the applicant's cell phone. A forensic examination of the applicant's phone revealed 127 messages between the applicant and the alleged victim, and "the majority of the observed messages were military related" (see enclosure 8).

(10) In March 2020, a note entered into the investigative report indicated the Assistant State Attorney General for Florida indicated they were not pursuing criminal charges against the applicant due to a "lack of copies of the actual messages [the applicant] sent to the victim, and the inability of Facebook to authenticate the conversations listed on the NMEC [National Center for Missing and Exploited Children] report" (see enclosure 5).

e. There is no justifiable reason to believe the applicant committed the offenses for which he was titled and indexed. All evidence suggests the applicant was the victim of maliciously false accusations made by a potential recruit. There were 127 messages between the alleged victim and the applicant, but none were inappropriate or unlawful. The applicant consistently stated his innocence, there were no messages asking for nude photographs, no nude photographs of the applicant, and no evidentiary value in the messages collected. The alleged victim lacked truthfulness in her allegations and was not forthcoming with pertinent information to the investigation.

f. After the incident, the alleged victim's mother indicated the alleged victim started showing an increased interest in the Army. The alleged victim's increased interest in the Army after allegedly being sexually assaulted by an Army recruiter raises serious concerns regarding the veracity of the allegations. It is irrational to believe an individual who was supposedly sexually assaulted by a recruiter would subsequently show an increased interest in joining the same branch as her alleged assaulter.

g. Facebook was unable to produce a copy of the claimed messages between the applicant and the alleged victim. The inability of Facebook to authenticate messages supposedly sent using its own messenger services creates a strong presumption that a third party was responsible for the sending the allegedly inappropriate messages or the applicant was wrongfully identified. Also consider that multiple service members/potential recruits were questioned regarding their interactions with members of the applicant's recruiting station and the applicant himself. None of these individuals had anything negative to say about the applicant nor accused him of misconduct, suggesting the accusations are without merit.

h. His second request is related to a July 2013 traffic incident that occurred in Germany. The MPR shows the applicant was accused of two traffic infractions, when he was driving a military truck with a trailer and witnesses claimed he struck a traffic light. Upon questioning, the applicant denied the offense. His commander imposed a discretionary 30-day suspension of driving privileges and assessed six traffic points (see enclosure 13). There was no credible information to believe the applicant committed criminal offenses under the Uniform Code of Military Justice (UCMJ), nor did he receive any UCMJ action or criminal conviction for these allegations. The military police officers accused him of non-criminal offenses and made them into crimes for purposes of titling, fingerprinting, and swabbing for deoxyribonucleic acid (DNA).

(1) The first offense alleged fleeing the scene of a traffic accident in violation of Article 134, UCMJ. However, according to the 2012 Manual for Courts-Martial, the offense required that a driver had knowledge that the vehicle he was driving had been involved in an accident. Article 134 offenses also require criminal misconduct that must be prejudicial to good order and discipline or of a nature to bring discredit upon the Armed Forces. The MPR describes no evidence that the applicant knew he had struck a traffic light or that he committed a criminal offense that discredited the military or prejudiced good order and discipline (see enclosure 13).

(2) The second offense cited "Traffic Accident Failure to Judge Proper Clearance" and references U.S. Army Europe Regulation 190-1 (Driver and Vehicle Requirements and the Installation Traffic Code for the U.S. Forces in Germany), which is not a criminal law or statute. It is a regulation that "prescribes policy and procedures for licensing drivers of privately owned vehicles (POVs), inspecting and registering POVs, and operating POVs and other wheeled recreational equipment on U.S. Forces installations in Germany."

i. The purported victim fabricated conversations between the applicant and herself. The investigation showed there was no evidence to assume the applicant was guilty of a crime or a sexual relationship. The evidence shows the applicant was targeted, since he never engaged in the accused actions. The logical conclusion is that probable cause does not exist to justify the applicant's titling and indexing. The 3 July 2013 incident did not involve criminal offenses. Calling his alleged traffic infractions "crimes" perpetuates overcriminalization and indiscriminate titling and indexing of service members for matters that do not result in UCMJ action or court-martial conviction. Law enforcement officials turned a minor traffic incident into a major criminal investigation, complete with fingerprinting, DNA collecting, and titling.

3. The portion of counsel's request for removal of the applicant's name, fingerprints, and identifying information from the subject block of MPR, 8 August 2013, and his III Criminal History Data is premature and will not be addressed in this record of proceedings. A review of the documents provided indicates the applicant has not submitted a request to CID for amendment of their records in the CRC database. The applicant is advised to submit his request to the Commander, U.S. Army Criminal Investigation Command, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134, with supporting evidence in accordance with Army Regulation 190-45 (Law Enforcement Reporting), paragraph 3-6 (Amendment of Records).

4. Following prior enlisted service in the Puerto Rico Army National Guard, the applicant enlisted in the Regular Army in the rank/grade of specialist/E-4 on 24 May 2007.

5. The applicant was serving in the Regular Army in the rank of rank/grade of sergeant first class/E-7 when he became the subject of a 2018 CID LER for allegedly engaging in sexually explicit conduct with an underage potential recruit.

6. The Jacksonville Sheriff's Office Incident (Offense) Report, 8 December 2018, shows the applicant was suspected of sexual battery of victim over 12 but less than 18 years of age, and solicitation of a child via computer to engage in sexual conduct. The investigation revealed a National Center for Missing and Exploited Children report indicated the applicant was soliciting the victim to engage in sexual activity via Facebook. The victim was interviewed and disclosed the applicant, a 33-year-old Army recruiter, digitally penetrated her vagina against her will during a meeting at Frank H. Peterson High School (see enclosure 8).

7. The CID Form 94, 17 December 2018, stated the Lakeland CID Office was notified by the Fort Benning CID Battalion Assistant Operations Officer with a report from the National Center for Missing and Exploited Children indicating the applicant may have engaged in sexually explicit conduct with a potential recruit, Miss S\_\_\_\_ R\_\_\_\_. The investigation further shows:

a. The National Center for Missing and Exploited Children Cyber-Tip Line Report, Priority Level 1, 7 December 2018, indicated current or imminent risk to an individual. and showed the content of the report was provided by Facebook. It claimed that a 33-year-old individual claiming to be in a position of trust in the military, maybe a recruiter, was engaging in sexually explicit conversations with a child who was claiming to be a 17-year-old. The report revealed they met during school hours on 6 December 2018. The report identified the parties involved; their Facebook usernames, profiles, internet protocol addresses, additional online subscriber information; and an excerpt of the conversations. A review of the conversations revealed a portion of the conversation was sexual in nature, mainly a solicitation for sexual acts.

b. On 9 December 2018, SA A\_\_\_\_ coordinated with Lieutenant Colonel D\_\_\_\_ F. H\_\_\_\_, Commander, Jacksonville Recruiting Battalion, who related they found a future Soldier's name who was the potential victim listed as Miss S\_\_\_\_ R\_\_\_\_.

c. On 10 December 2018:

(1) SA O\_\_\_\_ and SA A\_\_\_\_ interviewed Miss R\_\_\_\_ who provided a verbal statement wherein she stated the applicant approached her several months prior regarding joining the Army; however, at that time, she stated she was not interested. A month prior, the applicant contacted her via Facebook requesting her to "friendship" and continue a conversation about the Army; she did it. Miss R\_\_\_\_ stated in the last couple of weeks the applicant started escalating his friendliness, using suggestive emojis and more personal language, starting to ask her personal information such as if she was in a

relationship. Miss R\_\_\_\_ stated the applicant asked for nude pictures of her, which she provided, and he sent her back some of him; she sent one or two photographs. Miss R\_\_\_\_ was unable to provide more details due to her emotional state during the interview. Miss R\_\_\_\_ stated that during the last week, perhaps Wednesday or Thursday, the applicant arrived at the school in order to obtain some paperwork from her; they met at the media center. After completing the paperwork behind closed doors and while leaving, the applicant approached her from behind and introduced his hand under the frontal area of her pants and underwear and digitally penetrated her. Miss R\_\_\_\_ stated she turned back and while facing the applicant, he requested her to perform oral sex on him, which she declined and left the room. Miss R\_\_\_\_ stated she deleted all photographs and text messages from her cellular phone due to her feeling disgusted with herself. Miss R\_\_\_\_ provided the contact information of her parents and identified the exact location of the incident.

(2) SA O\_\_\_\_ and SA A\_\_\_\_ interviewed Mrs. J\_\_\_\_ R\_\_\_\_, the mother of the victim, who provided written consent for the interview of Miss R\_\_\_\_, received a brief on the incident, completed a Sexual Assault Data Sheet, provided consent for the collection of Miss R\_\_\_\_'s cellphone, provided consent to search the same device, completed a disposition form, and received a DD Form 2701 (Initial Contact) on behalf of Miss R\_\_\_\_. Mrs. R\_\_\_\_ stated she noticed a change in Miss R\_\_\_\_'s behavior in the last few days. Mrs. R\_\_\_\_ stated Miss R\_\_\_\_ stayed in her bedroom, was more quiet than normal, heard her crying a couple of times, and became more interested in the Army than before. Miss R\_\_\_\_ stated she did not sustain any physical injury during the incident.

(3) SA A\_\_\_\_ requested the Government's phone device assigned to the applicant from Captain (CPT) K\_\_\_\_ L. P\_\_\_\_, Commander, Jacksonville Recruiting Company. CPT P\_\_\_\_ related she observed the applicant provided the device to his wife during the day. CPT P\_\_\_\_ left the room to talk to the applicant's wife, and later reported the phone was at home. The same information was provided to SA O\_\_\_\_.

(4) Officer C\_\_\_\_ detained the applicant and transported him to the Jacksonville Sheriff's Office.

(5) Detective J\_\_\_\_ O\_\_\_\_, Jacksonville Sheriff's Office, formally interviewed of Miss R\_\_\_\_ and determined the offenses of sexual battery and transmission of child pornography (Florida State Statute) were applicable for this investigation. He related that Miss R\_\_\_\_ provided the same information provided to the Lakeland CID Office and positively identified the applicant in a photographic lineup as the perpetrator.

(6) Detective T\_\_\_\_ J. K\_\_\_\_, Jacksonville Sheriff's Office, conducted a preliminary review of the photographs and text messages on Miss R\_\_\_\_'s phone with negative results. However, there was a recent message trail between the applicant and

Miss R\_\_\_\_ without evidentiary value. The same trail revealed the applicant was using at least two phone numbers to contact Miss R\_\_\_\_, personal and Government cellphone numbers.

(7) Jacksonville Sheriff's Office detectives conducted an audio/video recorded interview of the applicant who denied any wrongdoing and invoked his legal rights, requesting a lawyer; the detectives ended the interview. The detectives concluded there was not enough to obtain a warrant for the applicant's arrest at this time. However, they would remain the lead agency, would request all warrants for information, would conduct digital examinations of all phones of the applicant and Miss R\_\_\_\_, and would present the case to State prosecution.

8. On 17 December 2018, Sprint responded to the subpoena to allow federal law enforcement officials an opportunity to examine the cell phone records of the applicant. The provided documentation indicates that "no records were found for this target during the requested time period" (see enclosure 10).

9. The CID Form 94, 17 January 2019, shows SA A\_\_\_\_ conducted canvass interviews of several individuals recruited by or interacting with members of the applicant's recruiting station from 24 December 2018 through 17 January 2019. The inquiry indicated no inappropriate contact or conversations with any of the recruiters (see enclosure 6).

10. The Jacksonville Sheriff's Office Incident (Offense) Report, 8 December 2018, shows an arrest warrant for the applicant was issued by the Florida State Attorney's Office on 26 November 2019 (see enclosure 8).

11. The CID Form 94, 31 December 2019, shows:

a. On 26 February 2019, SA A\_\_\_\_ conducted an additional canvass interview of a Soldier recruited by or interacting with members of the applicant's recruiting station. The inquiry indicated she had nothing negative to report about their interaction or the applicant's demeanor (see enclosure 7).

b. On 27 September 2019, SA A\_\_\_\_ coordinated with LT W\_\_\_\_, Jacksonville Sheriff's Office, who related the extraction of the victim's phone determined there were some photographs of naked males. However, no one was associated to the applicant.

c. On 3 December 2019, SA A\_\_\_\_ conducted a review of the report he received from LT W\_\_\_\_, Jacksonville Sheriff's Office, the substantive portions were:

(1) The victim and the applicant were in contact via telephonic, short message service, and social media.



(2) The applicant initially denied he contacted the victim via social media but was confronted with the National Center for Missing and Exploited Children report (which identified both subject and victim accounts) and changed his response, admitting he used social media to contact her but denied authoring the thread documented by the agency.

(3) There was evidence of deleted entries on the applicant's personal phone.

(4) The victim's phone contained images of potential child exploitation.

(5) The report provided by the victim to CID and to the Jacksonville Sheriff's Office contained the same information.

12. The CID Form 94, 9 April 2020 shows:

a. On 10 March 20, SA A\_\_\_\_ coordinated with LT W\_\_\_\_, Jacksonville Sheriff's Office, and Ms. J\_\_\_\_ H\_\_\_\_, Assistant State Attorney, Jacksonville, FL. Ms. H\_\_\_\_ related the problem facing her office was the lack of copies of the actual messages the applicant sent to the victim and the inability of Facebook to authentic the conversations listed in the National Center for Missing and Exploited Children report.

b. On 26 March 2020, Ms. H\_\_\_\_, Assistant State Attorney, Jacksonville, FL, opined there was probable cause to believe the applicant committed the offenses of sexual battery and transmission of pornography by electronic device or equipment but declined to prosecute.

13. The U.S. Army 2d Recruiting Brigade memorandum (Preponderance of the Evidence Decision for (Applicant)), 24 April 2020, states the preponderance of the evidence supports a finding that the applicant committed the offense of prohibited activities with a subject of recruiting efforts, future Soldier, or initial entry trainee that falls under Department of Defense (DOD) Instruction (DODI) 1304.33, and the applicant committed the offense of extramarital sexual conduct, Article 134, UCMJ.

14. On 15 September 2020, the applicant submitted a statement and timeline to the IG, explaining the details surrounding his investigation.

15. The Commanding General, U.S. Army Recruiting Command, reprimanded the applicant in writing on 29 October 2020 wherein he stated:

On 7 December 2018, the Lakeland CID office was notified by the National Center for Missing and Exploited Children (NCMEC) that you had been reported as having sexually explicit conversations with a future soldier. During a Facebook conversation you told Ms. S.R. that you wanted to perform oral sex on her and

kiss her neck. You told her she was "pretty", "sexy" and had a nice body. You told Ms. S.R. that you were "horny" and talked about masturbating. You also admitted to Ms. S.R. that you were married and that the two of you could keep your sexual activities a secret from your wife. While meeting with Ms. S.R. at her high school, to complete enlistment paperwork, you placed your hands down the front of her pants and digitally penetrated her vagina with your fingers and asked for oral sex, against her will. Your misconduct is in violation of DoD Instruction 1304-33, Encl[osure] 3, para[graph] 1(a-c), and Article 134, UCMJ.

You are reprimanded. As a noncommissioned officer (NCO), you are charged with the responsibility of setting the example for subordinates to emulate. Clearly, your actions fell below the standards expected of a[n] NCO in the US Army. You have completely failed in these responsibilities and discredited yourself and the US Army. I seriously question your judgment and potential for further military service. Your actions have embarrassed and disappointed your chain of command.

This is an administrative reprimand imposed under the provisions of AR [Army Regulation] 600-37 and not as punishment under the UCMJ. You are advised that in accordance with AR 600-37, paragraph 3-5c, I am considering whether to direct this reprimand be filed permanently in your AMHRR [Army Military Human Resource Record]. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal.

You will be provided, by separate cover, a redacted copy of the evidence which forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within 14 calendar days, using the format prescribed in AR 600-37, paragraph 3-7.

16. On 2 November 2020, the applicant acknowledged receipt of the GOMOR and elected to submit written matters within 14 days. The applicant's written matters are not available for review.

17. On 8 December 2020 after carefully considering the circumstances of the misconduct; the recommendations made by the applicant's chain of command; and all matters submitted by the applicant in defense, extenuation, or mitigation; the commanding general directed permanently filing the GOMOR in the applicant's Army Military Human Resource Record. He further directed that all enclosures would be forwarded with the reprimand for filing as appropriate.

18. The applicant was honorably discharged on 1 April 2021. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 13 years,

10 months, and 8 days of net active service during this period; 8 months and 12 days of prior active service; and 1 year, 3 months, and 20 days of prior inactive service.

19. On 10 August 2021 in Docket Number AR20210010838, the Department of the Army Suitability and Evaluation Board determined the evidence presented did not provide substantial evidence that the GOMOR had served its intended purpose or was untrue or unjust, and that its transfer or removal would be in the best interest of the Army.

20. The CID letter from the Chief, Freedom of Information Act/Privacy Act Division, 4 January 2022, informed the applicant that his amendment request was denied.

21. He provided four character references, 11-13 July 2020, attesting to his character and various military awards and certificates.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the Assistant State Attorney opining that probable cause existed for the time the applicant was originally titled and the primary justification provided by the applicant's counsel for removing the titling was based upon the applicant never being charged and convicted of the offenses, which is a different standard of proof, the Board concluded probable cause continues to exist that the applicant committed the offenses for which he was titled.

The Board noted the applicant's argument that searches of his and the alleged victim's phones failed to turn up corroborating evidence, that there were no allegations from other victims, and that he was never arrested or prosecuted. However, the Board also noted that the applicant initially lied about sending messages to the alleged victim via Facebook, that he had deleted messages on his phone, and that both a letter of reprimand and a legal memo quoted specific, sexually explicit messages from the applicant to the alleged victim. Finally, the Board acknowledged that adverse action was not pursued, but noted also that the standard for taking such action is higher than probable cause. Given the above, the Board did not find the applicant's arguments persuasive and ultimately determined that probable cause existed at the time of titling and continues to exist today. Therefore, the Board recommended denying the applicant's request.

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.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not

have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 600-20 (Army Command Policy), chapter 8 (Sexual Assault Prevention and Response Program), provides that sexual assault is a crime defined as intentional sexual contact, characterized by use of force, physical threat, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. "Consent" will not be deemed or construed to mean the failure by the victim to offer physical resistance.

3. DOD Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the DCII.

a. Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establish procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the 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 Public Law 116-283, section 545.

f. Considerations.

(1) 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:

(a) 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;

(b) 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; and

(c) 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).

(2) In accordance with Public Law 116-283, section 545, 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:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

4. DOD Instruction 5505.11 (Fingerprint Reporting Requirements), 31 October 2019, establishes policy, assigns responsibilities, and prescribes procedures for defense criminal investigative organizations and other DOD LEAs to submit fingerprints and

report disposition data to the Criminal Justice Information Services Division of the Federal Bureau of Investigation criminal history database.

a. CID and other DOD LEAs will collect fingerprints and criminal history record information upon determination of probable cause and will electronically submit to the Criminal Justice Information Services Division of the Federal Bureau of Investigation for all service members who are investigated for all offenses punishable by imprisonment listed in the punitive articles of Title 10, U.S. Code, chapter 47, also known and referred to in this issuance as the UCMJ, or elsewhere in the U.S. Code. Fingerprints and criminal history record information will be collected and submitted using either a Federal Document 249 (Arrest and Institution Fingerprint Card) or its electronic equivalent. When required, a Privacy Act statement will be provided to each individual whose personal data is collected, in accordance with Title 5, U.S. Code, section 5529, and DOD Instruction 5400.11-R.

b. CID and other DOD LEAs will comply with Title 28, Code of Federal Regulations, Part 20.32(b), 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).

5. The Interstate Identification Index (III) refers to a national database maintained by the Federal Bureau of Investigation that stores criminal history data and fingerprints from individuals arrested across different states, allowing law enforcement agencies to access criminal records from other jurisdictions through a system of pointers to state repositories, essentially enabling the sharing of criminal history information between states; it acts as a central index to access criminal records nationwide based on an individual's identifying information like name and date of birth.

//NOTHING FOLLOWS//