

**Questions for the Record
for Secretary of the United States Air Force Heather Wilson
Submitted by Senator Mazie Hirono
December 13, 2017**

1. At the hearing, you stated that the criminal record for Devin Kelley, the shooter in the Sutherland Springs, Texas mass shooting, should have been reported to the National Instant Criminal Background Check System (NICS), but it was not.

- a. Where was the breakdown in the reporting process that led to the failure to report Kelley's criminal history data?

We failed to submit criminal history data to the FBI when probable cause existed in the Air Force Office of Special Investigations and Air Force Security Forces investigations on Kelley, after Kelley's court-martial conviction, and also upon his post-trial confinement at Holloman AFB.

- b. What steps have been taken to address specifically that breakdown in the reporting process?

OSI implemented a three-tier review process at the detachment, regional, and agency headquarters levels which will greatly reduce the risk of human error. Also, OSI now requires verification in every case file that information was uploaded, received and appropriately captured. OSI has also secured the ability to directly upload necessary data to federal law enforcement databases which will further reduce the likelihood of mistakes.

Security Forces are accelerating the transition to digital fingerprinting which will significantly enhance compliance with reporting requirements. Security Forces have also issued updated policy requiring closer collaboration with Judge Advocates to enhance probable cause determinations throughout the duration of cases. Probable cause determinations are one of several thresholds for sharing data with civilian law enforcement. Lastly, to correct training and compliance deficiencies, the Deputy Chief of Staff for Logistics, Engineering and Force Protection issued more robust training requirements.

All implemented corrective measures will be assessed by the Inspector General (IG). In addition, the Air Force Audit Agency will conduct an audit of case files to ensure compliance.

2. You testified at the hearing that the Air Force has incorporated additional checks in the reporting process, updated training requirements, and taken other steps to resolve failures in reporting criminal history data to the FBI. But one of the underlying problems with respect to reporting domestic violence convictions is that there is currently no separate charge for domestic violence offenses.

- a. Who determines whether a conviction constitutes a domestic violence offense that must be reported to the FBI?

A "crime of domestic violence" is defined by Title 18, United States Code, Section 921, and this definition is repeated in Air Force Instruction 51-201, Administration of Military Justice. Judge Advocates responsible for prosecuting the case make the determination whether the member was convicted of a domestic violence offense as defined by federal law.

- b.** What is the process by which a determination is made that a conviction involves a domestic violence offense for reporting purposes?

The Judge Advocates responsible for prosecuting the case determine whether an offense constitutes a crime of domestic violence based on the facts of the case using the definition noted above. If the offense constitutes a crime of domestic violence, in accordance with procedures set forth in Air Force Instruction 51-201, the Judge Advocate responsible for prosecuting the case annotates on the report of result of trial that the member was convicted of a domestic violence offense. A representative of the servicing Staff Judge Advocate distributes a copy of the report of result of trial to the appropriate military investigating agency (i.e., Security Forces or the Air Force Office of Special Investigations).

- c.** Since there is no separate domestic violence charge, how does the Air Force currently confirm that all convictions related to domestic violence are being fully and accurately reported?

While the UCMJ has no charge for domestic violence, the Air Force ensures those convicted of associated charges, such as physical and sexual assault, are properly indexed in criminal history databases. To help further differentiate these cases in the future, we are adding identification and search features on criminal investigation databases.

3. At the hearing, you referenced a report that will detail accountability and disciplinary actions you have taken to address failures in reporting criminal history data to the FBI. When will that report be made publicly available?

The AF Report of Inquiry will feed into the broader DoD IG investigation. We will be fully transparent with our accountability and disciplinary actions. Both investigations are still ongoing. When we have all the facts, commanders with the advice of counsel will make the appropriate decisions regarding accountability.

4. You also testified that reporting system currently in place is largely manual and labor intensive, involving numerous databases. What steps have you taken to streamline the system to prevent omissions in reporting criminal history data?

We are exploring options to enhance data sharing both within the Air Force and DoD and with civilian law enforcement. Within the Air Force, I've directed the AF Chief Data Officer to provide recommendations on how to enhance data management and sharing to further reduce the risk of process failure and enhance efficiency. I'm expecting to receive the initial assessment by 15 Jan 18.

**Questions for the Record
for Secretary of the United States Air Force Heather Wilson
Submitted by Senator Richard Blumenthal
December 13, 2017**

1. Is anyone in your service being held accountable for the serious, dangerous, and destructive lapses in the reporting of qualifying court-martial convictions and administrative determinations to the FBI background check database?

Investigations are underway. When we have all the facts, commanders with the advice of their staff judge advocate will make the appropriate decisions regarding accountability. The Chief and I must be careful not to prejudge the facts in a way that would amount to unlawful command influence and impede the fair administration of justice.

2. Will you commit to working with me as a partner to develop and establish a new article under the Uniform Code of Military Justice for domestic violence?

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We are always willing to work with you. As I mentioned at the hearing, there are some concerns with the creation of a new article, which I promised to share with you. I am advised that all potential assault charges, including domestic assault, are already fully encompassed by Article 128, UCMJ, Assault. Those more experienced with the administration of justice fear I am concerned that the current Article 128 is a long-standing legislative proscription and its maturity provides it with a well-defined body of military case law to both interpret it and inoculate it from appellate challenge. Additionally, there is concern that creating a stand-alone article and adding further elements of proof places an additional prosecutorial burden on the government and it may make it more difficult to prove such offenses thereby creating unintended loopholes for offenders. Rather than proposing a change to Article 128, the Defense Department has proposed a punishment enhancement to the President; if approved, it would go into effect on 1 Jan 19. Punishment enhancement holds domestic assault offenders appropriately accountable without increasing the litigation risk in domestic assault cases by adding an additional element of proof.

**Questions for the Record
for Secretary of the United States Air Force Heather Wilson
Submitted by Senator Dianne Feinstein
December 13, 2017**

1. Secretary Wilson, the Sutherland Springs shooter appears to be one of a significant number of individuals from the Air Force to not be included in the FBI NICS Database.

- How are you remedying this significant problem for the Air Force?

OSI implemented a three-tier review process at the detachment, regional, and agency headquarters levels which will greatly reduce the risk of human error. In addition, OSI now requires verification in every case file that information was uploaded, received and appropriately captured. OSI has also secured the ability to directly upload necessary data to federal law enforcement databases which will further reduce the likelihood of mistakes. Security Forces are accelerating the transition to digital fingerprinting which will significantly enhance compliance with reporting requirements. Security Forces have also issued updated policy requiring closer collaboration with Judge Advocates to enhance probable cause determinations throughout the duration of cases. Probable cause determinations are one of several thresholds for sharing data with civilian law enforcement. To correct training and compliance deficiencies, the Deputy Chief of Staff for Logistics, Engineering and Force Protection issued more robust training requirements. All implemented corrective measures will be assessed by SAF/IG to ensure compliance. The Air Force AAG will also conduct an audit of case files to validate compliance.

The Air Force is actively reviewing cases to find and fix other situations where data should have been reported but wasn't.

- When do you anticipate being able to fully certify that all relevant records have been supplied to the FBI for its NICS Database?

We expect the ongoing retroactive scrub of cases going back to 2002 to take four to five months.

2. I understand that when a military service such as the Air Force fails to comply with the Inspector General's recommendations with respect to policy, that there are no consequences for these failures unless Congress does oversight. But otherwise, there are no remedies to sufficiently make sure that the Air Force will comply with an Inspector General's recommendations.

- Do you think this is a problem – the lack of enforceability of an Inspector General's recommendations? Please explain.

All previous IG recommendations should have been implemented, but weren't. I am committed to ensuring all SAF-IG and DOD-IG recommendations are implemented.

- How will you ensure that you follow the guidance and recommendations from the Inspector General to fix how you are supplying records to NICS?

The Air Force IG is monitoring the status of corrective action identified in the Department of Defense IG's recent audit. In addition, the Air Force IG's ongoing inquiry is currently assessing

compliance with all reporting requirements to a variety of DoD and Interagency databases. The Air Force Audit Agency will conduct an audit of records later this year to ensure compliance.

- What is the Air Force (or the DOD) doing to encourage victims of domestic violence to report violence to authorities?

The Department of Defense and the Air Force have policies that establish a Family Advocacy Program (FAP) at each military treatment facility. FAP is staffed with social workers and domestic abuse victim advocates who respond, 24 hours a day, to victims of domestic abuse and offer risk assessments, safety planning, crisis intervention and advocacy services and, when indicated, clinical treatment services to offenders and victims to stop the use of violence and increase safety of all family members. FAP services are widely advertised across the installation targeting both active duty service members and their spouses or intimate partners. One avenue of outreach to active duty Service members and spouses occurs at the mandatory Wing newcomer's brief where FAP staff provides information on the identification and reporting of child maltreatment and domestic abuse.

In all domestic abuse cases, victims are educated on the reporting processes. In high-risk situations, victims may be eligible for the threatened-person program that operates much like a witness protection program to relocate the victim (and children) for safety purposes. Family Advocacy will activate the High Risk for Violence Response Team in high-risk situations to bring installation first responders together to craft an effective safety plan. Domestic Abuse Victim Advocates (DAVA) assist victims in securing military and civilian orders of protection, accompany victims to investigative interviews, and medical and court/legal appointments.

- What are you doing to make sure commanders, chiefs, first sergeants, and frontline supervisors who receive allegations of domestic violence know how to refer the allegations to the appropriate investigative agency?

As a practical matter, it is uncommon for commanders, chiefs, first sergeants, and frontline supervisors to become aware of such incidents prior to law enforcement. However, these individuals are provided training on reporting requirements on several different occasions. The Air Force Family Advocacy outreach managers at each installation are required to brief each commander and first sergeant within 90 days of their assuming their new duty position at a base and on a recurring annual basis. This training advises commanders and first sergeants of the requirement to report domestic abuse or child maltreatment cases to Family Advocacy and military law enforcement (i.e., Security Forces or the Air Force Office of Special Investigations). Additionally, the servicing legal offices underscore the requirement to report suspected criminal activity to the appropriate law enforcement agencies during command and first sergeant workshops conducted on an ad hoc basis.

Family Advocacy installation outreach managers also brief the requirement to report child maltreatment and domestic abuse regularly at "newcomers briefings" and other meetings attended by the base population conducted throughout the year.