



Department of Defense **INSTRUCTION**

NUMBER 5505.18

January 25, 2013

IG DoD

SUBJECT: Investigation of Adult Sexual Assault in the Department of Defense

References: See Enclosure 1

1. **PURPOSE.** This instruction establishes policy, assigns responsibilities, and provides procedures for the investigation of adult sexual assault within the DoD in accordance with the authority in Appendix 3 of Title 5, United States Code (U.S.C.) (Reference (a)) and DoD Directive (DoDD) 5106.01 (Reference (b)).

2. **APPLICABILITY.** This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

3. **POLICY.** It is DoD policy that:

a. Military criminal investigative organizations (MCIOs) will initiate investigations of all offenses of adult sexual assault of which they become aware, as listed in the Glossary, that occur within their jurisdiction regardless of the severity of the allegation. All criminal investigative files will be maintained in accordance with DoD privacy policies in DoD Directive 5400.11 and DoD 5400.11-R (References (c) and (d)).

b. Nothing in this instruction is intended to impinge on the authority of the IG DoD.

c. All Unrestricted Reports of sexual assault (and attempts) against adults will be immediately reported to the MCIO, regardless of the severity of the allegation.

(1) If the alleged assault occurred on a military installation and the accused and/or victim is not a military member or dependent, the Federal Bureau of Investigation must be notified pursuant to the Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (Reference (e)).

(2) If the alleged assault has occurred on a military installation and there is a reasonable basis to believe that it has been committed by a person or persons, some or all of whom are **not** subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of Title 10, U.S.C. (Reference (f))), the DoD investigative agency will immediately notify the appropriate DOJ investigative agency unless the DOJ has relieved the DoD of the reporting requirement for that type or class of crime pursuant to Reference (e).

(3) If the location is subject to concurrent jurisdiction, the local police department must be notified and may accept investigative responsibility if the MCIO declines; or the investigation may be worked jointly between the local law enforcement agency and the MCIO. If the location is subject to exclusive State jurisdiction, the State has investigative authority with the MCIO providing assistance as requested or deemed appropriate.

(4) If the incident occurred at the Pentagon, which is exclusive federal jurisdiction, and involves any military affiliation, the appropriate MCIO must be notified and assume the investigation; although it may be conducted jointly with the Pentagon Force Protection Agency with the MCIO serving as the lead agency.

d. All adult sexual assault investigations assumed by an MCIO will be investigated thoroughly and in compliance with DoD Instructions 5505.03, 5505.07, 5505.11, and 5505.14 (References (g) through (j)).

(1) When an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, to include minor physical assaults and damage to property.

(2) If an adult sexual assault allegation is referred to another agency, the reason must be fully documented in an investigative report that identifies the agency and states whether the MCIO will be involved in either a joint investigation or monitoring capacity.

4. RESPONSIBILITIES

a. IG DoD. The IG DoD will develop policy and procedures for MCIO adult sexual assault investigations and oversee their implementation pursuant to Reference (b).

b. The OSD and DoD Component Heads. The OSD and DoD Component heads will:

(1) Ensure Component compliance with this instruction and prescribe additional procedures as necessary to implement its policy.

(2) Ensure Component commanders (see Glossary) at all levels immediately report to the appropriate MCIO all adult sexual assault allegations of which they become aware involving persons affiliated with the DoD, including active duty personnel and their dependents, DoD contractors, and DoD civilian employees.

(3) Ensure Component procedures exist that allow a victim who is eligible for and requests it, to instead have the allegation handled as a Restricted Report in accordance with DoDD 6495.01 (Reference (k)).

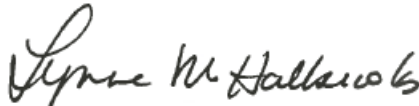
5. PROCEDURES. See Enclosure 2.

6. RELEASABILITY. **Unlimited**. This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction:

a. Is effective January 25, 2013.

b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DoD Instruction 5025.01 (Reference (l)). If not, it will expire effective January 25, 2023 and be removed from the DoD Issuances Website.


Lynne M. Halbrooks
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Performing the Duties of the
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Enclosures

1. References
2. Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) Appendix 3 of Title 5, United States Code (also known as the “Inspector General Act of 1978,” as amended)
- (b) DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012
- (c) DoD Directive 5400.11, “DoD Privacy Program,” May 8, 2007, as amended
- (d) DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- (e) Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes, August 1984
- (f) Title 10, United States Code (Chapter 47 is also known as “The Uniform Code of Military Justice”)
- (g) DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011
- (h) DoD Instruction 5505.07, “Titling and Indexing Subjects of Criminal Investigations in the Department of Defense,” January 27, 2012
- (i) DoD Instruction 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” July 9, 2010, as amended
- (j) DoD Instruction 5505.14, “Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations,” May 27, 2010, as amended
- (k) DoD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” January 23, 2012
- (l) DoD Instruction 5025.01, “DoD Directives Program,” September 26, 2012
- (m) Public Law 108-375, “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004
- (n) Section 563 of Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008
- (o) Sections 581, 585, 586 of Public Law 112-81, “National Defense Authorization Act for Fiscal Year 2012,” December 31, 2011
- (p) DoD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006, as amended
- (q) Military Rules of Evidence (Section III of the Manual for Courts-Martial), 2012 edition
- (r) Section 1631 of Public Law 111-383, “Ike Skelton National Defense Authorization Act for Fiscal Year 2011,” January 7, 2011

ENCLOSURE 2

PROCEDURES

1. In accordance with Reference (k), the MCIO investigator assigned to an adult sexual assault investigation will ensure a Sexual Assault Response Coordinator (SARC) has been notified as soon as possible, to ensure system accountability and victim access to services as needed.
2. The MCIO investigator assigned to conduct the adult sexual assault investigation will ensure the victim has received a completed Department of Defense (DD) Form 2701, "Initial Information for Victims and Witnesses of Crime," containing the local point of contact information. If the victim has not yet received a DD Form 2701, the investigator must provide one to the victim and explain the information in the form. (All DD Forms referred to in this instruction may be found at <http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>.)
3. Adult sexual assault allegations, as listed in the Glossary, of which an MCIO becomes aware, will be investigated regardless of the sexual orientation of either the victim or the subject of the investigation (hereinafter referred to as the "subject"). Unless pertinent and significant to the investigation, the sexual orientation of a subject, victim, or any individual associated with the investigation:
 - a. Will not be addressed during the course of the investigation.
 - b. Will only be documented if it is an essential part of the investigation.
 - c. Must not be disclosed to anyone except those with an official need to know.
4. Commander(s) of the Service member(s) who is a subject of investigation must provide the MCIO, in writing, all disposition data, to include any administrative, non-judicial punishment or judicial action taken as a result of the investigation.
5. MCIOs may not close an adult sexual assault investigation in which they are the lead investigative agency without the written disposition data documented in the final investigative report or database. When MCIOs are not the lead investigative agency, disposition data must be obtained from the lead investigative agency and archived in the final investigative report or database in accordance with section 577(b) 8 and 9 of Public Law 108-375 (Reference (m)) and Public Law 110-417 (Reference (n)).
6. The primary MCIO investigator assigned to conduct an investigation of adult sexual assault must be properly trained in conducting such investigations. In accordance with section 585 of Public Law 112-81 (Reference (o)), training for MCIO investigators assigned to investigate adult sexual assault will, at a minimum, include:
 - a. Legal jurisdiction for conducting criminal investigations.

- b. The elements of proof for criminal offenses connected with sexual assault.
- c. Preliminary investigative procedures, including receiving and responding to notification of a sexual assault.
- d. Crime scene management.
- e. Searching for, locating, identifying, preserving, obtaining, and transporting evidence.
- f. Sensitivities associated with sexual assault victims, including, but not limited to:
 - (1) Specific effects of trauma and stress on the sexual assault victim.
 - (2) Balancing investigative priorities with victim needs.
 - (3) The provision that sexual assault victims may have a SARC, Sexual Assault Prevention and Response Victim Advocate (SAPR VA), or a support person present during interviews.
 - (4) The various methods used in the practice of interviewing sexual assault victims in DoD.
- g. Sexual assault forensic examination collection and submission.
- h. Deoxyribonucleic acid (DNA) collection.
- i. Comprehensive instruction in sexual assault prevention and response (SAPR) policy in accordance with training standards in DoD Instruction 6495.02 (Reference (p)), to specifically include:
 - (1) Differences between Unrestricted and Restricted Reporting.
 - (2) SARC and SAPR VA roles, responsibilities, and limitations.
 - (3) SAPR Case Management Group responsibilities for MCIOs and DoD law enforcement.
- j. Victim Witness Assistance Program.
- k. Military protective orders and expedited transfers.
- l. Military Rules of Evidence (MRE) privileges, in particular the MRE 514, “Victim Advocate – Victim Privilege” in the MRE section of the Manual for Courts-Martial (Reference (q)). MRE 514 affords a victim a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim

advocate, in a case arising under the UCMJ, if such communication was made to facilitate advice or supportive assistance to the victim.

m. Legal assistance for victims of sexual assault in accordance with section 1044 of Reference (f) and section 581 of Reference (o).

n. Digital evidence.

o. Handling false reports and official statements.

7. In accordance with Public Law 111-383 (Reference (r)), Services will use the standard definition of “substantiated” in adult sexual assault investigations (see Glossary).

8. MCIOs must include the DD Form 2911, “DoD Sexual Assault Forensic Examination Report,” or reports from civilian sexual assault forensic exams conducted at civilian healthcare facilities (when DoD retains jurisdiction) as part of the archived file. If creating digital records, the DD Form 2911 will be uploaded as part of the archived file.

9. All MCIO adult sexual assault investigative reports will be retained for a period of 50 years. If the investigation was referred to another agency, the MCIO must obtain disposition and final investigative reports and retain them for 50 years.

10. In accordance with section 586 of Reference (o), in all investigations relating to sexual assaults involving members of the Armed Forces; as defined in the Glossary, all physical and forensic evidence must be retained for a period of at least 5 years from the date of the seizure of the evidence. However, items gathered as evidence may be returned to their rightful owner prior to the 5-year period only after written evidence disposition is obtained from the convening authority when:

a. It is determined that the allegation is unfounded, i.e., the crime did not occur and/or it was a false allegation;

b. The subject is acquitted and the appeal process has been exhausted; or

c. The evidence is taken from a suspect who is later deemed to be the wrong person, i.e., mistaken identity.

11. Pursuant to section 581 of Reference (o), the MCIO investigator assigned to conduct an adult sexual assault investigation must inform the victim of a sexual assault (defined as a member of the Armed Forces or a dependent) of the availability of legal assistance and the services of a SARC or a SAPR VA. The member or dependent must also be informed that the legal assistance and the services of a SARC or a SAPR VA are optional and may be declined, in whole or in part, at any time.

12. All MCIOs will make available unrestricted sexual assault data elements, including the investigative case number, for incorporation into the Defense Sexual Assault Incident Database, in support of requirements specified in References (k), (p), and (q).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DD	Department of Defense (form)
DoDD	DoD Directive
DNA	deoxyribonucleic acid
IG DoD	Inspector General of the Department of Defense
MCIO	military criminal investigative organization
MRE	military rules of evidence
SAPR	sexual assault prevention and response
SAPR VA	sexual assault prevention and response victim advocate
SARC	sexual assault response coordinator
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

adult. A person who is an Active Duty Service member or is 18 years old.

Armed Forces. The Army, Navy, Air Force, Marine Corps, and Coast Guard.

commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. All references to “commander” also include the military and civilian heads of DoD organizations that are not part of a MCIO and are authorized to request an investigation or act on the results of an investigation by a MCIO.

Defense Sexual Assault Incident Database. Defined in Reference (o).

MCIO. U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

Restricted Reporting. Defined in Reference (k).

SARC. Defined in Reference (k).

sexual assault. An intentional sexual contact characterized by the use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. The term “sexual assault” includes the following offenses under the UCMJ:

Rape, in violation of Article 120.

Sexual assault, in violation of Article 120.

Aggravated sexual contact, in violation of Article 120.

Abusive sexual contact, in violation of Article 120.

Forcible sodomy (oral or anal sex), in violation of Article 125.

Attempts to commit any of the above offenses, in violation of Article 80.

Between 2007 and 2012, amendments to the UCMJ changed the Article 120 offenses in name and character. Depending upon the date the alleged offense was committed, investigators must refer to the name and character of the offense applicable to the UCMJ provisions in effect at that time.

substantiated. An Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration and action, and found to have sufficient evidence to support the command’s action against the subject. Actions against the subject include court-martial charge preferral, Article 15 UCMJ punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or other associated misconduct (e.g., adultery, housebreaking, etc.).

Unrestricted Reporting. Defined in Reference (k).