



DoD INSTRUCTION 5505.03

INITIATION OF INVESTIGATIONS BY DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS

Originating Component:	Office of Inspector General of the Department of Defense
Effective:	August 2, 2023
Releasability:	Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD/ .
Reissues and Cancels:	DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011, as amended
Approved by:	Robert P. Storch, Inspector General of the Department of Defense

Purpose: In accordance with the authority in DoD Directive (DoDD) 5106.01, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures to ensure the independence, objectivity, and effectiveness of the Defense Criminal Investigative Organizations (DCIOs).
- Pursuant to Section 1732(b) of Public Law 113-66, establishes a uniform process to record the results of DCIO investigations of alleged violations of the Chapter 47 of Title 10, United States Code, also known and referred to in this issuance as the "Uniform Code of Military Justice."
- Requires DCIOs to identify a DoD nexus when initiating a criminal or civil investigation or conducting investigative activities.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance 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 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 issuance as the “DoD Components”).

b. Nothing in this issuance will infringe on the IG DoD’s or the Defense Intelligence Component Inspectors General’s statutory independence and authority in accordance with Chapter 4 of Title 5, United States Code, also known and referred to in this issuance as the “Inspector General Act of 1978,” as amended. In the event of any conflict between this issuance and the IG DoD or the Defense Intelligence Component Inspectors General’s statutory independence and authority, the Inspector General Act of 1978 takes precedence.

1.2. POLICY.

a. The DCIOs will initiate investigations in accordance with law and governing regulations. Commanders and other leaders not assigned to the DCIOs must not impede or interfere with investigations or investigative techniques deemed appropriate by the DCIOs.

(1) The Defense Criminal Investigative Service (DCIS) operates under the direction and control of the IG DoD and the Deputy Inspector General for Investigations.

(2) The Military Criminal Investigative Organizations (MCIOs) operate under the direction and control of the Secretary of the Military Department concerned and the MCIO’s director or commander.

b. Investigations initiated by the DCIOs have primacy over collateral investigations conducted by commanders, safety investigators, and other organizational entities. Collateral investigations will not interfere with or otherwise hinder DCIO investigations.

c. DCIO investigation reports will be fact-based and impartial for prosecutorial, civil, administrative, or other appropriate action.

d. DCIOs may initiate a criminal or civil investigation or conduct investigative activities when the DCIO is first able to identify a DoD nexus. The requirement for a DoD nexus to investigate may differ from jurisdiction to prosecute by appropriate Federal or military authorities. Examples of DoD nexus include a reasonable likelihood of one of the following:

(1) The crime occurred on or against a DoD installation, facility, aircraft, vehicle, or vessel.

(2) DoD resources, equipment, programs, or operations were used in the commission of the crime or affected by the commission of the crime.

(3) A DoD entity, DoD civilian employee, Service member, or dependent was the victim of the crime when the offense falls within the DCIO's investigative jurisdiction.

(4) The subject or the target of the investigation is currently affiliated with the DoD, was affiliated with the DoD at the time of the offense, or is subject to the Uniform Code of Military Justice.

(5) The investigation actions were authorized by Paragraph 1.b. of Enclosure 3 of DoD Instruction (DoDI) 3025.21.

(6) With concurrence of the applicable DCIO:

(a) When the senior mission commander or battle space commander requests a criminal or civil investigation to support the DoD mission for contingency operations; or

(b) When there is a need to investigate crimes committed against a DoD entity, DoD civilian employee, Service member, or dependent or by a person or persons or other entities that are subject to the Uniform Code of Military Justice or Chapter 212 of Title 18, United States Code, also known as the "Military Extraterritorial Jurisdiction Act of 2000."

1.3. INFORMATION COLLECTIONS.

a. All DCIOs will maintain an automated records management and information system that is compliant with the Federal Bureau of Investigation's National Incident-Based Reporting System and National Data Exchange and the Law Enforcement Defense Data Exchange compatibility.

b. The automated records management system will be compliant with records management requirements specified in DoDIs 5015.02 and 5525.16.

c. The criminal and civil investigation reporting, referred to throughout this issuance, does not require licensing with a report control symbol in accordance with Paragraphs 1.b.(6) and 1.b.(7) of Enclosure 3 of Volume 1 of DoD Manual 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. IG DOD.

The IG DoD monitors and evaluates compliance of DoD Components with this issuance.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS.

In addition to the responsibilities in Paragraph 2.3., the Secretaries of the Military Departments:

- a. Establish policy and procedures to implement this issuance.
- b. Resolve subordinate commander objections to DCIO initiation of criminal or civil investigations.
- c. Direct subordinate commanders not to impede DCIO criminal or civil investigations.

2.3. DOD COMPONENT HEADS.

The DoD Component heads ensure compliance with this issuance and prescribe additional Component procedures as necessary to implement its policy.

SECTION 3: PROCEDURES

3.1. INITIATING A CRIMINAL OR CIVIL INVESTIGATION.

Commanders at all levels must ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the DoD or any property or programs under their control or authority are referred to the appropriate DCIO or law enforcement organization as soon as possible.

a. Any commander or the IG DoD may request that a DCIO initiate a criminal or civil investigation. However, the DCIO directors and commanders are not required to and will not solicit authorizations to initiate investigations from commanders or any other authority outside the DCIO. In each case, the decision to initiate an investigation remains solely with the DCIO and the DCIO's directing and controlling authority. DCIOs can discuss the initiation of an investigation with the Secretary of Defense or the Secretary of the Military Department concerned, IG DoD, or commanders.

b. When a commander not assigned to the DCIO objects to the initiation of a criminal or civil investigation for any reason and wishes to stop the investigation, that commander will need to promptly report the circumstances through their chain of command to the Secretary of the Military Department concerned or the IG DoD, as appropriate. Delegated subordinate commanders may resolve those matters that were the basis for the objection, thereby negating the need to notify the Secretary of the Military Department concerned or the IG DoD.

c. Criminal and civil investigations and operations must have a DoD nexus when initiated. In cases where a DoD nexus cannot immediately be identified, DCIO investigative activities will be limited to steps intended to develop sufficient information to assess whether a nexus exists. When a DoD nexus cannot be identified, DCIO agents must discontinue investigative activities and refer allegations to the appropriate civilian law enforcement agency.

d. For specific jurisdictional questions, DCIOs will consult with appropriate legal counsel.

3.2. DELAYING, SUSPENDING, OR TERMINATING A CRIMINAL OR CIVIL INVESTIGATION.

a. Only the Secretary of Defense or Secretary of a Military Department may direct an MCIO to delay, suspend, or terminate an ongoing investigation other than an investigation being conducted at the request of the IG DoD.

b. Except for the Secretary of Defense operating in accordance with Section 408 of the Inspector General Act of 1978, only the IG DoD may direct a DCIO to delay, suspend, or terminate an ongoing investigation being conducted at the direction of the IG DoD.

c. When there is a request to delay, suspend, or terminate an ongoing MCIO investigation, the Secretary of the Military Department concerned will promptly decide whether the investigation will be discontinued. No investigation will be delayed or suspended while a review

of the request is ongoing, except by decision of the Secretary of the Military Department concerned. The Secretaries of the Military Departments will promptly report to the IG DoD the facts in all cases brought to them for resolution and their decision in each instance.

d. When a request to delay, suspend, or terminate an ongoing DCIS investigation is raised to the Secretary of a Military Department, that request will promptly be referred to the IG DoD. When appropriate, the IG DoD will make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

e. When there is a request to delay, suspend, or terminate an ongoing DCIO investigation that was initiated at the direction of the IG DoD, the Secretary of the Military Department concerned will promptly refer that request to the IG DoD. The IG DoD will make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

3.3. IMPEDING AN INVESTIGATION.

a. Commanders will not impede an investigation or the use of investigative techniques that a DCIO considers necessary and that are permissible in accordance with law or regulation. DCIO directors or commanders will promptly report through their chain of command to the Secretary of the Military Department concerned or the IG DoD, as appropriate, the facts in all situations where attempts are made to impede an investigation or the use of investigative techniques.

b. When attempts are made to impede an investigation or the use of investigative procedures or techniques by a DCIO:

(1) And the investigation has been initiated by a DCIO, the Secretary of the Military Department concerned will promptly resolve those situations and provide the IG DoD with a copy of the report and the resolution of all such impediments brought to the Secretary of the Military Department concerned.

(2) And the investigation has been initiated by or at the direction of the IG DoD, the Secretary of the Military Department concerned will promptly provide a copy of the report to the IG DoD. The IG DoD and the Secretary of the Military Department concerned will resolve those matters.

3.4. ADULT, PRIVATE, CONSENSUAL SEXUAL MISCONDUCT INVESTIGATIONS.

An MCIO may initiate an investigation into adult, private, consensual sexual misconduct (e.g., extramarital sexual conduct) with or without a request from the Service member's commander. The MCIO will only initiate an adult, private, consensual sexual misconduct investigation when the MCIO commander, director, or deputy director determines there is credible information a crime was committed and the investigation will be an appropriate use of investigative resources.

3.5. SENIOR OFFICIAL INVESTIGATIONS.

In accordance with DoDD 5505.06, allegations of misconduct against senior officials will be reported to the IG DoD within 5 workdays of receipt by a DoD Component. Except in unusual circumstances, the IG DoD will promptly notify the appropriate DoD Component head(s) when an allegation is received. The appropriate DCIO will investigate allegations of criminal misconduct against senior officials of which the DCIO becomes aware that occur within their jurisdiction.

3.6. RESOURCES.

DCIO requests for resources, personnel, or facilities not under the DCIO's command or control which the DCIO needs to accomplish its mission will be coordinated through normal command and resource processes for approval of the commander having responsibility for the requested resources.

3.7. INVESTIGATION REPORTS.

a. In accordance with Section 1732(b) of Public Law 113-66, at the conclusion of the investigation, the DCIOs will only report and document final investigative facts. To avoid the appearance of investigative bias, DCIOs must not convey or document investigative conclusions, whether founded or unfounded, in investigation reports.

b. DCIOs must document legal coordination from supporting legal counsel or staff judge advocates about an investigation in the final investigation report.

c. DCIOs must document all investigative activity relating to an investigation in the final investigation report or corresponding file.

d. DCIOs must ensure records and information created concerning investigations, allegations, suspected criminal allegations, misconduct, and resulting investigation reports are retained in accordance with DoDI 5015.02 and DoD Component records management disposition schedules, policies, procedures, and authorized retention disposition authorities.

e. In accordance with DoDD 5205.16 and DoDI 5505.17, DCIOs must provide law enforcement information to DoD Components that require the information to detect and mitigate insider threats and to make debarment, security clearance eligibility, special access suitability, and other administrative determinations.

f. DoD Components receiving investigation reports, as specified in Paragraph 3.7.e., must not make a law enforcement record a permanent part of its system of records without prior coordination with the originating law enforcement agency.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DoDD	DoD directive
DoDI	DoD instruction
IG DoD	Inspector General of the Department of Defense
MCIO	Military Criminal Investigative Organization

G.2. DEFINITIONS.

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

TERM	DEFINITION
adult, private, consensual sexual misconduct	A sexual act or acts in violation of the Uniform Code of Military Justice, that occur(s) in private between consenting adults, whether on or off a military installation. It does not include any sexual act or acts that involve allegations by any party of force, coercion, intimidation, unconsciousness, or incapacitation; abuse of position or rank; fraternization; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information.
commander	A commissioned officer or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. For purposes of this issuance, all references to “commander” also include the military and civilian heads of DoD organizations that are not part of a DCIO, and are authorized to request an investigation or act on the results of an investigation by a DCIO.
credible information	Defined in DoDI 5505.07.
DCIO	The Department of the Army Criminal Investigation Division, Naval Criminal Investigative Service, Air Force Office of Special Investigations, and DCIS.

TERM	DEFINITION
dependent	Defined in DoD 7000.14-R, Volume 7A.
DoD nexus	A connection to DoD in accordance with parameters outlined in Paragraph 1.2.d.
jurisdiction	Authority granted to a legal entity to make legal decisions or to an investigative entity to investigate criminal matters.
Law Enforcement Defense Data Exchange	DoD system for reporting criminal incident information to the National Data Exchange system. A database that shares criminal data between the DCIOs and other DoD law enforcement agencies and makes law enforcement data available to support non-law enforcement functions with a defined requirement and need for the information.
MCIO	The Department of the Army Criminal Investigation Division, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.
senior official	Defined in DoDD 5505.06.

REFERENCES

- DoD 7000.14-R, Volume 7A, “Department of Defense Financial Management Regulation (DoD FMR): Military Pay Policy – Active Duty and Reserve Pay,” date varies by chapter
- DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- DoD Directive 5205.16, “The DoD Insider Threat Program,” September 30, 2014, as amended
- DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013, as amended
- DoD Instruction 3025.21, “Defense Support of Civilian Law Enforcement Agencies,” February 27, 2013, as amended
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5505.17, “Collection, Maintenance, Use, and Dissemination of Personally Identifiable Information and Law Enforcement Information by DoD Law Enforcement Activities,” December 19, 2012, as amended
- DoD Instruction 5525.16, “Law Enforcement Defense Data Exchange (LE D-DEX),” August 29, 2013, as amended
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- Public Law 113-66, Section 1732(b) “National Defense Authorization Act for Fiscal Year 2014,” December 26, 2013
- United States Code, Title 5, Chapter 4 (also known as the “Inspector General Act of 1978,” as amended)
- United States Code, Title 10, Chapter 47 (also known as the “Uniform Code of Military Justice”)
- United States Code, Title 18, Chapter 212 (also known as the “Military Extraterritorial Jurisdiction Act of 2000”)