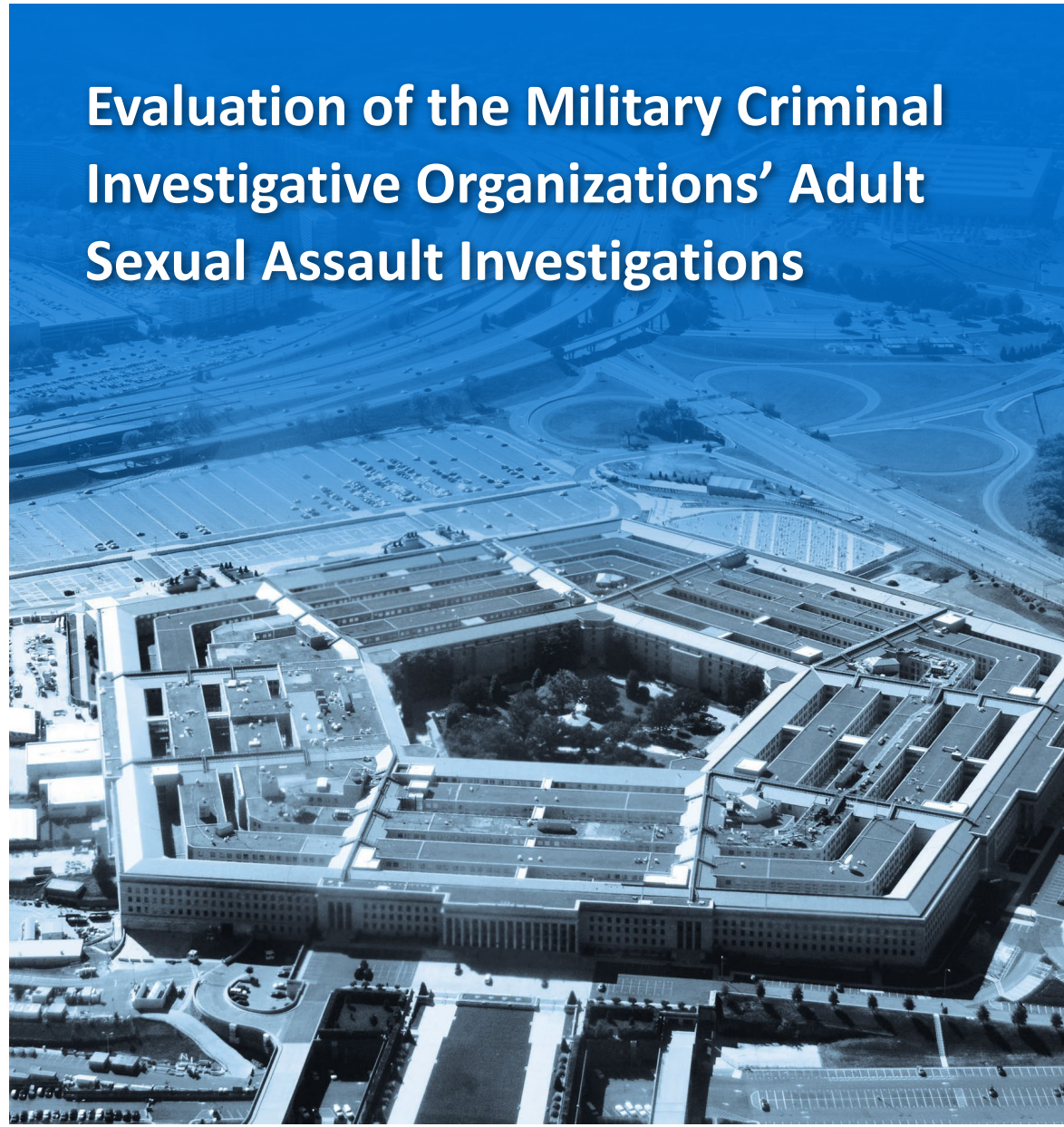




# INSPECTOR GENERAL

*U.S. Department of Defense*

SEPTEMBER 25, 2023



## Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





# Results in Brief

## *Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations*

September 25, 2023

### Objective

The objective of this evaluation was to determine whether the Military Criminal Investigative Organizations (MCIOs) investigated reports of sexual assault with adult victims, as required by DoD, Service, and MCIO policy. The MCIOs are the U.S. Army Criminal Investigation Division, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

The objective of a special interest item in this evaluation was to determine whether the MCIOs had untested sexual assault forensic examination (SAFE) kits held as evidence that should have been submitted to a forensic laboratory for testing.

### Background

**Sexual Assault Investigations.** This evaluation is the fourth in a series of evaluations of the MCIOs' adult sexual assault investigations (see Appendix B for a list of prior reports). DoD instructions establish policy, assign responsibilities, and provide procedures for adult sexual assault investigations, and direct the DoD Office of Inspector General (DoD OIG) to develop policy, and procedures, and provide oversight for MCIO adult sexual assault investigations. The MCIOs are responsible for investigating all reported adult sexual assault offenses that occur within their jurisdiction.

**Sexual Assault Forensic Examination Kit Testing.** DoD instructions define a SAFE kit as the medical and forensic examination of a sexual assault victim to ensure bodily specimens and evidence collection, and establish requirements and responsibilities for collecting and preserving SAFE kits.

### Findings

We determined that MCIO agents generally investigated reports of sexual assault in accordance with DoD, Service, and MCIO policy. We determined that Air Force Office of Special Investigations (AFOSI) units did not conduct supervisory reviews for closed investigations, as required by the AFOSI Manual (AFOSIMAN). This resulted in administrative deficiencies in 107 of the 116 evaluated AFOSI investigations. These deficiencies did not affect the outcome or require the reopening of the investigations. However, failure to perform supervisory reviews may lead to investigations with inadequate evidence, incomplete investigative leads, and incomplete investigative documentation that could affect the outcome of the investigation.

In addition, we determined that MCIO agents generally submitted SAFE kits to a forensic laboratory for analysis when appropriate. Army Criminal Investigation Division (CID) and AFOSI personnel complied with SAFE kit testing requirements for each investigation (11 CID and 22 AFOSI) we evaluated. However, after a detailed analysis of the Naval Criminal Investigative Service (NCIS) investigations with untested SAFE kits, we determined that one SAFE kit associated with those investigations should be submitted to a forensic laboratory for testing.

### Recommendations

We recommend that the AFOSI Commander update AFOSI's information and investigation management system to prevent case closure until all required supervisory reviews are documented, as required by the AFOSIMAN.

We recommend that the NCIS Director reopen one investigation, collect an exclusionary DNA sample, and submit the untested SAFE kit to a forensic laboratory for testing.

### Management Comments and Our Response

The AFOSI Commander non-concurred with the recommendation to update AFOSI's case management system. The Commander stated that doing so could drive undesirable documentation habits such as backdating of reviews, and would not address the problem of documenting monthly case reviews.



# Results in Brief

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## *Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations*

### **Comments (cont'd)**

While we do not agree with the basis cited by the AFOSI Commander for non-concurring with our recommendation, the alternative actions taken to add an administrative function in the system, and change agency case review policy, met the intent of the recommendation; therefore, the recommendation is resolved, but will remain open. We will close this recommendation once we verify that the actions the AFOSI Commander takes fully address the recommendation.

The NCIS Executive Assistant Director, responding for the Director, agreed with the recommendation to reopen the investigation to collect the exclusionary DNA sample and submit the SAFE kit for testing; therefore, the recommendation is resolved but will remain open. We will close this recommendation once we obtain and review the results of the reopened investigation.

## Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Naval Criminal Investigative Service Director	None	B.1	None
Air Force Office of Special Investigations Commander	None	A.1	None

Please provide Management Comments by October 27, 2023.

**Note:** The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – DoD OIG verified that the agreed upon corrective actions were implemented.





**OFFICE OF INSPECTOR GENERAL**  
**DEPARTMENT OF DEFENSE**  
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September 25, 2023

MEMORANDUM FOR DIRECTOR, U.S. ARMY CRIMINAL INVESTIGATION DIVISION  
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE  
COMMANDER, AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

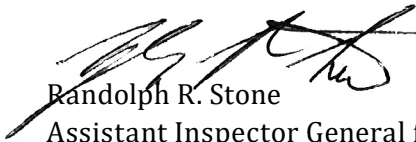
SUBJECT: Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations (Report No. DODIG-2023-124)

This final report provides the results of DoD Office of Inspector General's review. We provided a draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. We included management's comments in this report.

The Air Force Office of Special Investigations (AFOSI) Commander non-concurred with our recommendation and provided two alternate courses of action. While the Commander non-concurred, the agency took actions that met the intent of the recommendation; therefore, the recommendation is resolved and open. As described in AFOSI Comments and Our Response section of this report, we will close the recommendation once we verify that the AFOSI Commander's actions fully addressed the recommendation. The Naval Criminal Investigative Service (NCIS) Executive Assistant Director agreed with our recommendation; therefore, the recommendation is resolved and open. As described in the NCIS Comments and Our Response section of this report, we will close the recommendation after we obtain and review the results of the reopened investigation.

Please provide us your response within 90 days concerning specific actions in process or completed on the recommendations. Send your response to [REDACTED]. If you have any questions, or would like to meet to discuss the evaluation, please contact [REDACTED]. We appreciate your staff's professional and continuous cooperation during the review.

FOR THE INSPECTOR GENERAL:

  
Randolph R. Stone  
Assistant Inspector General for Evaluations  
Space, Intelligence, Engineering, and Oversight

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# Introduction

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## Objective

The objective of this evaluation was to determine whether the Military Criminal Investigative Organizations (MCIOs) investigated reports of sexual assault with adult victims, as required by DoD, Service, and MCIO policy.

The objective of a special interest item in this evaluation was to determine whether MCIOs had untested sexual assault forensic examination (SAFE) kits held as evidence that should have been submitted to a forensic laboratory for testing.

## Background

This evaluation is the fourth in a series of evaluations of the MCIOs' adult sexual assault investigations.<sup>1</sup>

### ***DoD Policy and Requirements***

The MCIOs provide a trained response capability to investigate reported sexual assaults in all locations. DoDD 6495.01 states:

“An immediate, trained sexual assault response capability . . . [must] be available for each report of sexual assault in all locations, including in deployed locations. The response time may be affected by operational necessities, but will reflect that sexual assault victims [must] be treated as emergency cases.

DoDD 6495.01 and DoD Instruction (DoDI) 6495.02 specify the DoD Office of Inspector General's (DoD OIG) responsibilities on sexual assault investigations.<sup>2</sup> This guidance directs the DoD OIG to oversee the criminal investigations of sexual assault.

DoDI 5505.18 establishes policy, assigns responsibilities, and provides procedures for the investigation of sexual assault with adult victims within the DoD. DoDI 5505.18 further directs the DoD IG to develop policy and

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<sup>1</sup> Report No. DODIG-2013-091, “Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations,” July 9, 2013.

Report No. DODIG-2015-094, “Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations,” March 24, 2015.

Report No. DODIG-2017-054, “Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations,” February 14, 2017.

<sup>2</sup> DoDD 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” January 23, 2012, (Incorporating Change 3, effective April 11, 2017, and Change 4, effective September 11, 2020).

DoDI 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures,” March 28, 2013, (Incorporating Change 3, May 24, 2017).

procedures for MCIO adult sexual assault investigations and to provide oversight.<sup>3</sup> Within the DoD, the MCIOs are responsible for investigating all reported adult sexual assault offenses that occur within their jurisdiction, regardless of the severity of the allegations. The MCIOs are also responsible for training special agents assigned to conduct sexual assault investigations.

DoDI 6495.02 establishes requirements and responsibilities for DoD Components—including the DoD Sexual Assault Prevention and Response Office, the DoD IG, and the Secretaries of the Military Departments—relating to DoD’s response to sexual assault incidents. The Instruction designates the MCIO criminal investigators, among others, as DoD sexual assault first responders.

On August 14, 2013, the Secretary of Defense requested that the DoD IG “evaluate the adequacy of closed sexual assault investigations on a recurring basis” to ensure investigative quality.

### ***SAFE Kit Testing***

DoDD 6495.01 and DoDI 6495.02 establish the requirements and responsibilities for collecting and preserving SAFE kits. The MCIOs derive investigative requirements from DoDD 6495.01 and DoDI 6495.02, as well as other DoD and Service policies, and then incorporate those requirements and standards into agency policy. We reviewed current and historical agency policies within the timeframe for each collected SAFE kit.

CID Regulation (CIDR) 195-1 specifies that the U.S. Army Criminal Investigations Laboratory (USACIL) “...provides forensic laboratory services worldwide to [DoD Criminal Investigative Organizations (DCIOs)] and other federal law enforcement agencies.” CIDR 195-1 further specifies that USACIL’s capabilities include examining trace evidence, drug chemistry, DNA (managing the Combined DNA Index System [CODIS]), latent prints, forensic documents, digital evidence, and firearms and tool marks.

### ***Evidence Processing at USACIL***

In 2005, due to increased DNA testing time, CID published Operational Memorandum (OPMEMO) 001-05 and set guidelines for DNA examinations. One of the guidelines pertained to investigations of rape and other sex crimes involving adults. OPMEMO 001-05 directed CID units to “... not submit evidence to USACIL for DNA examination when the only issue is whether there was consent or not.” The rationale of not testing disputes of consent was that “... examination

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<sup>3</sup> DoDI 5505.18, “Investigation of Adult Sexual Assault in the Department of Defense,” March 22, 2017 (Incorporating Change 2, effective January 31, 2019).

cannot determine whether or not there was consent or if force was used ... [and] cannot determine the time and/or date that sexual contact occurred ....” OPMEMO 001-05 detailed exceptions to the guideline which included situations when a: “... suspect recants his statement[;]... suspect’s confession/admission is anticipated to become inadmissible”; and when “trial counsel ... requests that the examination be conducted and is needed for trial” after preferring charges. OPMEMO 001-05 also authorized USACIL personnel to “... cancel or modify laboratory requests deemed unnecessary or inappropriate ....”

In an email dated June 30, 2022, the CID Deputy Director told us that USACIL complied with the CID regulations and policies detailed in OPMEMO 001-05. The Deputy Director indicated that for investigations involving an issue of consent, SAFE kits “were likely not submitted” to USACIL for testing, and this practice applied to all MCIOs. All CID Memorandum (ALCID) 014-16 later modified policy pertaining to SAFE kit testing and directed CID field elements to “... coordinate with USACIL before sending the collected evidence for examination.”<sup>4</sup>

Currently, USACIL’s Forensic Case Management Branch (FCMB) triages incoming evidence and answers investigative questions. Before the FCMB accepts evidence for forensic analysis, FCMB personnel ensure they have appropriate investigative jurisdiction through the following methodology in Table 1.

*Table 1. USACIL Forensic Case Management Branch Triage*

Incident Location	Jurisdiction	Does USACIL Accept Evidence?
On Military Installation	MCIO Exclusive/Concurrent	Yes—regardless of subject’s or victim’s military status
Off Military Installation	Joint (Military Subject)	Yes—regardless of victim’s military status
Off Military Installation	Joint (Military Victim)	Yes—unknown subject
Off Military Installation	Joint (Known Civilian Subject/Victim)	No—regardless of MCIO involvement
Off Military Installation	Joint (Military Victim, Known Civilian Subject)	No—typically decline (case by case determination)
Off Military Installation	Joint (Military Victim, Known Civilian Subject)	No—typically decline (case by case determination)

Source: USACIL Form Forensic Case Management 200 Case Triage.

<sup>4</sup> CID leadership uses ALCID Memorandums to distribute policy changes to field elements.

SAFE kits pass through jurisdictional triage before moving to the appropriate branch within USACIL including, but not limited to, Serology/DNA, Drug Chemistry, and Trace Evidence. The DNA branch's acceptance policy details the following evidence testing guidelines for incoming sexual assault evidence: processing the most intimate evidence (such as body orifice swabs and condoms), testing SAFE kits collected within 120 hours (5 days) of an incident, analyzing DNA evidence from digital penetration cases collected within 36 hours of an incident, and testing mouth and oral swabs collected within 24 hours of an incident. For investigations involving a consent dispute, USACIL's DNA branch does "not routinely exhaust the evidence" of those investigations and rather relies on other best investigative evidence to answer questions.<sup>5</sup> For DNA on clothing, the DNA branch generally limits testing "... to undergarments or the inside of outer clothing ... depending ..." on an investigation's fact-pattern. The DNA branch will not routinely process high-traffic items (such as doorknobs), condom wrappers, latent fingerprint lifts, or hotel bedding.

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<sup>5</sup> Operational Memorandum 001-05, dated February 3, 2005, explains the 'Best Evidence Rule' as "[e]xamining all the evidence to redundantly establish the same fact or identity is not always needed ..." and authorizes USACIL "... to examine the evidence from the most probative to the least probative, and to cease examining the evidence once a fact has been determined ... ."

## Finding A

### **MCIO Agents Generally Investigated Reports of Sexual Assault, in Accordance with DoD, Service, and MCIO Policy**

We determined that none of the 374 MCIO investigations we evaluated contained a significant deficiency. However, we noted that 129 (34.5 percent) of 374 investigations contained at least one minor or administrative deficiency. Instances of minor or administrative deficiencies could include not examining personnel records, not documenting a victim's declination to cooperate with the investigation, or not conducting supervisory reviews. These deficiencies did not affect the outcome of the investigations. For example, AFOSI field units did not conduct supervisory reviews for closed investigations as required by the AFOSI Manual (AFOSIMAN), resulting in administrative deficiencies in 107 of the 116 AFOSI investigations we reviewed. These deficiencies did not affect the outcome of the investigations or require the reopening of the investigations. Failure to perform supervisory reviews may lead to investigations with inadequate evidence, incomplete investigative leads, and incomplete investigative documentation that could affect the outcome of the investigation.

### **MCIO Agents Generally Investigated Adult Sexual Assault Investigations According to Policy**

We determined that none of the 374 MCIO investigations we evaluated contained a significant deficiency. However, we noted that 129 (34.5 percent) of the 374 investigations contained at least one minor or administrative deficiency. These deficiencies did not affect the outcome of the investigations.

The scope of this evaluation included investigations opened on or after January 1, 2019, and closed (completed and adjudicated) on or before December 31, 2020. We selected a statistical sample of 374 of 4,701 MCIO adult sexual assault investigations as follows:

- 131 of 2,417 Army CID investigations;
- 127 of 1,581 NCIS investigations; and
- 116 of 703 AFOSI investigations.

We defined investigative requirements as those functions and processes applicable to all cases that enable an agency to find facts in a timely manner. These requirements are divided into two categories: probative and administrative.<sup>6</sup> Probative requirements are those investigative steps necessary to develop facts to objectively prove or disprove an allegation, and include activities such as interviews, document reviews, and crime scene examinations. We further defined probative deficiencies into two categories of investigative deficiencies for this evaluation: minor and significant.

- **Minor Investigative Deficiency.** A minor investigative deficiency is a task or investigative step the MCIO agents either did not perform, or did not perform in compliance with DoD, Service, or MCIO policies and procedures. A minor investigative deficiency is not likely to affect an investigation's outcome.
- **Significant Investigative Deficiency.** A significant investigative deficiency is one or more deficiencies, or a series of minor deficiencies, resulting from a failure in the execution of elements of DoD, Service, or MCIO policies and standards of investigations. A significant investigative deficiency indicates a breakdown in practices, programs, or policies. A significant investigative deficiency has an adverse effect on, or has a high probability of adversely affecting an investigation's outcome.

Administrative requirements directly apply to managing probative requirements and include activities such as case reviews, filling in required forms, and legal compliance. Additionally, we defined investigative shortfalls with the following definition:

- **Administrative Deficiency.** An administrative task or step the MCIO agents did not perform in compliance with DoD, Service, or MCIO policies and procedures. An administrative deficiency is not likely to affect an investigation's outcome.

Examples of minor and administrative deficiencies included case agents not examining personnel records, failing to obtain a victim's written declination to cooperate with an investigation, or failing to conduct and document supervisory case reviews.

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<sup>6</sup> The Cornell Law School, Legal Information Institute defines probative value as "... the probability of evidence to reach its proof purpose of a relevant fact in issue. It is one of the main elements of admitting evidence, as the admitted evidence must be relevant, tending to make the fact in issue more likely or less likely to happen, no matter how slight its probability is."

We identified minor and administrative deficiencies in 129 (34.5 percent) of the 374 investigations evaluated. Table 2 depicts a breakdown by MCIO of the number of investigations with no deficiencies, minor investigative deficiencies, administrative deficiencies, and both minor and administrative deficiencies.

*Table 2. Investigations with No Deficiencies or Minor Deficiencies*

Investigative Deficiencies	CID	NCIS	AFOSI	Total
None	127	109	9	245
Minor*	4	11	3	18
Administrative	0	7	104	111
<b>Total</b>	<b>131</b>	<b>127</b>	<b>116</b>	<b>374</b>

\* We also found administrative deficiencies in 4 (1 NCIS and 3 AFOSI) of the 18 investigations with minor investigative deficiencies.

Source: The DoD OIG.

## AFOSI Agents Did Not Comply with Supervisory Review Policy

We determined that AFOSI supervisors did not conduct supervisory reviews for 107 (92.2 percent) of 116 closed investigations that we evaluated.<sup>7</sup> Specifically, AFOSIMAN 71-121 directs that AFOSI supervisors review investigative case files monthly to ensure investigative efficiency.<sup>8</sup> The policy also requires AFOSI special agents to enter all investigative information, notifications, and coordination into AFOSI’s electronic system of records, the Investigative Information Management System (I2MS).

Furthermore, the policy states that AFOSI investigations are closed when all “... final criminal, civil, and administrative actions are complete ... ” and all pertinent documentation is uploaded in I2MS.<sup>9</sup> Currently, no I2MS system control or functionality enforces requirements for unit leaders to review cases before closing investigations. Failure to perform supervisory reviews may lead to investigations with inadequate evidence, incomplete investigative leads, and incomplete investigative documentation that could affect the outcome of the investigation.

<sup>7</sup> AFI 71-101, Volume 1, “Criminal Investigations Program,” dated December 7, 2017, specifies AFOSI field units as Squadrons, Detachments, and Operating Locations.

<sup>8</sup> AFOSI twice updated AFOSIMAN 71-121 over the evaluation timeframe and retained the same monthly review requirement.

<sup>9</sup> Per AFOSIMAN 71-121, an investigation’s status “... may be Open, Investigatively Closed, or Closed” (often referred to as Final Closed). The case file status investigatively closed describes a case in which an AFOSI field unit published a report of investigation and referred it for command action.

During our case file reviews, we assessed the cases for investigative sufficiency to identify deficiencies that affected the outcome of the investigation, or did not meet DoD, Service, or AFOSI policy requirements. We identified any failures to conduct supervisory reviews as administrative deficiencies.<sup>10</sup> Lastly, we determined that based on our investigative case file review and analysis, the administrative deficiencies did not affect the outcome, or require reopening the investigations.

## Management Comments on the Finding and Our Response

### *Army Criminal Investigation Division Comments*

Although not required to comment, the CID Assistant Director concurred with no comments and thanked the DoD OIG for the opportunity to comment.

### *Our Response*

We acknowledge the CID Assistant Director's comments.

## Recommendations, Management Comments, and Our Response

### **Recommendation A.1**

**We recommend that the Air Force Office of Special Investigations Commander update the Air Force Office of Special Investigations Investigative Information Management System to prevent case closure until all required supervisory reviews are documented as required by Air Force Office of Special Investigations Manual 71-121.**

### *Air Force Office of Special Investigations Comments*

The Air Force Office of Special Investigations Commander non-concurred with the recommendation and stated that the recommended course of action could drive undesirable documentation habits such as backdating of reviews, and would not address the problem of documenting monthly case reviews. The Commander offered, and is implementing, two alternative corrective actions. The first action is an administrative function that alerts supervisors when monthly case file reviews are due. AFOSI partially deployed the new function on July 28, 2023, and will fully deploy it by October 2023. The second action is a change to the

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<sup>10</sup> An administrative deficiency is an administrative task or step the MCI/O agents either did not perform or did not perform in compliance with DoD, Service, or MCI/O policies and procedures. An administrative deficiency is not likely to affect the outcome of an investigation.



case review policy, on April 13, 2023, to only require monthly reviews from case opening to case investigative closure, and to remove the monthly review requirement until case final closure.

### ***Our Response***

While we do not agree with the basis cited by the AFOSI Commander for non-concurring with our recommendation, the alternative actions taken to add an administrative function in the system, and change agency case review policy, met the intent of the recommendation; therefore, the recommendation is resolved, but will remain open. We will close this recommendation once we verify that the actions the AFOSI Commander takes fully address the recommendation.

## Finding B

### **MCIO Agents Generally Submitted Sexual Assault Forensic Examination Kits to a Forensic Laboratory for Analysis When Appropriate**

We evaluated a separate set of 180 MCIO investigations (11 CID, 147 NCIS, and 22 AFOSI) of unrestricted sexual assaults with unknown subjects or unclear reasons for not submitting SAFE kits for forensic examination. MCIO agents complied with agency investigative requirements in 95.6 percent (172 of 180) of the investigations, and submitted SAFE kits to a forensic laboratory for analysis when appropriate.

CID and AFOSI personnel complied with requirements for SAFE kit testing for each investigation (11 CID and 22 AFOSI) we evaluated. However, 8 of 147 NCIS investigations where SAFE kits should have been submitted to a forensic laboratory for testing were not submitted. NCIS agents did not submit the 8 SAFE kits for forensic examination due to unit supervisors' insufficient oversight of investigative activities and incomplete investigative documentation. Incomplete investigative activity and documentation can result in lost evidence and investigative leads.

### **MCIO Agents Complied with Requirements in More Than 95 Percent of Examined Investigations**

MCIO agents generally complied with agency investigative requirements in 95.6 percent (172 of the 180) investigations we reviewed. MCIO agents submitted SAFE kits to forensic laboratories for examination when probative and supported by the investigation's facts.

We evaluated a sample of 180 investigations pertaining to unrestricted sexual assault investigations with unknown subjects or unclear reasons for not testing forensic examination kits, using the applicable DoD, Service, and respective MCIO investigative policies and procedures.<sup>11</sup> The scope of this evaluation included investigations that the MCIOs opened and closed from February 25, 2005, through March 28, 2022. The 180 investigations were distributed as follows:

- 11 CID investigations;
- 147 NCIS investigations; and
- 22 AFOSI investigations.

<sup>11</sup> We requested a listing of all untested SAFE kits currently maintained in MCIO evidence inventory. This listing of SAFE kits corresponded to reports of investigation that were independent of the cases we requested for Finding A.

We determined that CID and AFOSI personnel complied with requirements for SAFE Kit testing for each investigation (11 CID and 22 AFOSI) we evaluated. However, we identified 8 of 147 NCIS investigations where SAFE kits should have been submitted to a forensic laboratory for testing but were not. NCIS policy, N3-Chapter 34, requires agents to submit all SAFE kits pertaining to unrestricted reported sexual assault incidents to USACIL for testing.<sup>12</sup> Furthermore, NCIS policy, N1-Chapter 45, directs supervisors to identify and prioritize steps necessary to meet investigative objectives, review cases, focus on investigative/operational steps, ensure “ ... case agents have a clear understanding of appropriate direction of the investigation ... ,” and follow up on the investigative progress.<sup>13</sup>

N1-Chapter 45 further directs unit leadership to review all closed case files to ensure “... all required and logical investigative steps have been completed and appropriately documented.” However, we determined that in 8 of 147 NCIS investigations, NCIS field-unit supervisors did not ensure adequate investigative activity. For example, in an investigation with an unknown subject, NCIS agents did not submit a SAFE kit for testing although the victim provided a SAFE kit less than 24 hours after the incident, and medical personnel noting findings, and collecting swabs, on victim’s abdomen and thighs. Incomplete investigative activity can result in lost evidence and lost investigative leads.

Lastly, we determined the 8 investigations did not represent a systemic problem within NCIS since these cases were only 8 (5.4 percent) of 147 of the evaluated NCIS investigations without testing or adequate justification, and spanned approximately 16 years.

On September 27, 2022, NCIS agents reopened the eight investigations with untested SAFE kits during our ongoing evaluation. On May 3, 2023, we evaluated the eight reopened investigations and determined that seven now complied with policy. We returned one investigation for additional investigative activity that included collecting an exclusionary DNA sample from the victim’s spouse and submitting the sample and victim’s untested SAFE kit to the forensic laboratory for analysis.

<sup>12</sup> NCIS-3, Chapter 34, Sex Offenses (Category 8); December 4, 2017 (NCIS personnel replaced this policy on September 17, 2020, and validated that policy on November 17, 2021). We reviewed all available NCIS policy covering the evaluation timeframe and noted that the language differs throughout the evaluation timeframe; however, the laboratory testing requirement did not differ across the evaluation timeframe.

<sup>13</sup> NCIS-1, Chapter 45, Managing Investigations and Operations; October 2010 (NCIS personnel validated policy on November 17, 2021).

## **Recommendations, Management Comments, and Our Response**

### ***Recommendation B.1***

**We recommend that the Naval Criminal Investigative Service Director reopen one investigation, collect an exclusionary DNA sample, and submit the untested sexual assault forensic examination kit to a forensic laboratory for testing.**

### ***Naval Criminal Investigative Service Comments***

The NCIS Executive Assistant Director, responding for the Director, agreed to reopen the investigation to collect the exclusionary DNA sample and submit the SAFE kit for testing. The Executive Assistant Director further stated that if DNA collection is unsuccessful, then NCIS personnel will readdress testing the SAFE kit with USACIL.

### ***Our Response***

Comments from the NCIS Executive Assistant Director addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close this recommendation once we obtain and review the results of the reopened investigation.

## Appendix A

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### Scope and Methodology

We conducted this evaluation from November 2021 through July 2023 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that objectives are met and that we perform the evaluation to obtain sufficient, competent, and relevant evidence to support the findings, conclusions, and recommendations. We believe that the evidence obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings, conclusions, and recommendations.

#### *Scope*

We reviewed investigations opened on or after January 1, 2019, and closed (completed and adjudicated) on or before December 31, 2020. We selected a statistical sample of 374 of 4,701 MCIO adult sexual assault investigations as follows:

- 131 of 2,417 CID investigations;
- 127 of 1,581 NCIS investigations; and
- 116 of 703 AFOSI investigations.

To develop our sample, we worked with the DoD Office of Inspector General (DoD OIG) Quantitative Methods Division (QMD) and identified a random sample of investigations, stratified by MCIO, based on a desired level of reliability. QMD personnel determined the sample size from the population using a 90-percent confidence level, 50-percent probability of occurrence, and a 7-percent precision level. We evaluated the sample of 374 investigations for compliance with DoD, Service, and MCIO policy requirements effective at the time of each investigation. We excluded investigations that the MCIOs jointly investigated with other law enforcement agencies to afford a more accurate assessment of MCIO performance.

For victim safe kits, we evaluated all investigations opened on or after February 25, 2005, and closed (completed and adjudicated) on March 28, 2022. Specifically, we requested that the MCIOs provide us investigations pertaining to unrestricted sexual assaults with untested, victim safe kits, and unknown subjects, or unclear reasons for not submitting victim safe kits for forensic examination.

The MCIOs provided 180 investigations that met our criteria described above, distributed as follows:

- 11 CID investigations;
- 147 NCIS investigations; and
- 22 AFOSI investigations.

Given the limited number of investigations, we decided to review all 180 investigations.

The Uniform Code of Military Justice (UCMJ), Article 120 (2019 Edition), defines offenses pertaining to this evaluation of adult sexual assault investigations. DoDI 5505.18 defines an “adult” as “a person who has attained the age of 16 years or older.”

*Table 3. Article 120 Sexual Assault Offenses – UCMJ*

Offense/Manual for Courts-Martial
Rape (Article 120(a))
Sexual Assault (Article 120(b))
Aggravated Sexual Contact (Article 120(c))
Abusive Sexual Contact (Article 120(d))

Source: Manual for Courts-Martial (2019 Edition)

We reviewed each MCIO’s adult sexual assault investigative policies and ensured they followed DoD and Service level guidance. We also addressed expected investigative activity for adult sexual assault allegations.

### **Methodology**

We sent a data call memorandum to each MCIO requesting a list of the sexual assault investigations with adult victims opened on or after January 1, 2019, and closed (completed and adjudicated) on or before December 31, 2020. The MCIO personnel provided investigation numbers, dates, associated subject and victim information, primary criminal offense, and the MCIO responsible office or detachment.

We developed an adult sexual assault investigation evaluation protocol based on DoD, Service, and each MCIO’s investigative policies and procedures in effect during the life of the investigations. The evaluation protocol addressed the essential investigative steps required for a thorough, adult sexual assault

investigation. Using the protocol as a foundation, we created a relational database encompassing all areas of the protocols. We input information into the database during each case evaluation. We collectively evaluated at least the first two investigations at the start of each MCIO evaluation to assist “norming.” This norming process tested the investigation evaluation protocol, formed a consistent baseline for the evaluations. We documented observations, administrative deficiencies, minor deficiencies, and significant deficiencies, found in each investigation.

We also evaluated investigations with untested SAFE kits pertaining to unknown subjects, investigations with unclear reasons, or no documented reasons, for not testing the SAFE kits. We examined applicable investigations using the Department, Service, and Agency policies active during each investigation. Each evaluator independently agreed or disagreed with the provided response and authored a justification for concurrence or non-concurrence. The program manager or team leader independently assessed each evaluator’s conclusion. If the program manager or team leader disagreed with an evaluator’s conclusion, another independent party (a program manager or team leader) would review the investigation and settle the dispute. The program director made all final recommendations to reopen investigations based on input from the project manager, team leader, and evaluation team.

## Quality Assurance for Case Reviews

To ensure consistent application of evaluation methodology, we performed quality assurance reviews on 33 random case files in our statistical sample of 374. We worked with the DoD OIG QMD and identified a random sample of investigations, stratified by MCIO, based on a desired level of reliability. QMD personnel determined the sample size from the population using a 90-percent confidence level, 50-percent probability of occurrence, and a 7-percent precision level. We requested QMD personnel identify a sample size for quality assurance case reviews. QMD personnel recommended 33 of the 374 case files to ensure consistent application of the evaluation protocols.

## Deficiencies Analysis of Case Reviews

At the conclusion of the evaluation phase, we analyzed the case review data stored in our database with numerous queries, identified investigative deficiencies, and aggregated the totals of each.

### ***Pre-draft Results Coordination with MCIOs***

After the evaluation, we notified each MCIO about investigations with identified minor deficiencies and requested that each MCIO validate or refute our assessments and provide comments. Additionally, we drafted a Pre-draft Results Memorandum pertaining to the SAFE kit evaluation and sent the memorandum to NCIS. After the MCIOs responded, we updated the protocol database to reflect the final analysis of each evaluation.

### **Use of Computer-Processed Data**

We did not use computer-processed data for this evaluation.

### **Use of Technical Assistance**

We worked with the DoD OIG QMD to identify a simple random sample of investigations, stratified by MCIO, as described above.



## Appendix B

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### Prior Coverage

Over the last 5 years, the GAO and DoD OIG issued four reports about sexual assault investigations in the DoD. Access unrestricted GAO at <http://www.gao.gov>. Access unrestricted DoD OIG reports at <https://www.dodig.mil/reports.html/>.

#### **GAO**

Report No. GAO-22-104673, “Sexual Harassment and Assault: The Army Should Take Steps to Enhance Program Oversight, Evaluate Effectiveness, and Identify Reporting Barriers,” May 27, 2022

The GAO reviewed the Army’s Sexual Harassment/Assault Response and Prevention (SHARP) program due to a rise in sexual harassment reports. The GAO report examined the (1) implemented policies and programs to prevent, respond to, and resolve incidents of sexual harassment and assault; and (2) mechanisms in place to oversee the SHARP program and determine its effectiveness. The GAO found that none of the SHARP program’s performance measures were complete and the Army did not evaluate the SHARP program for effectiveness.

#### **DoD OIG**

Report No. DODIG-2021-085, “Evaluation of the Department of Defense’s Handling of Incidents of Sexual Assault Against (or Involving) Midshipmen at the United States Naval Academy,” May 17, 2021

The DoD OIG found that Sexual Assault Prevention and Response Office personnel provided SAPR services to sexual assault victims but did not have a process to document consults. The DoD OIG also found that NCIS agents responded to and investigated sexual assault allegations, and United States Naval Academy commanders did not retaliate against separated midshipmen-victims.

Report No. DODIG-2020-073, “Evaluation of the DoD’s Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Military Academy,” March 24, 2020

The DoD OIG found that U.S. Military Academy SHARP personnel provided SHARP services to sexual assault victims; however, U.S. Military Academy SHARP personnel did not have a process to document consults with cadet

victims. The DoD OIG also found that CID agents investigated sexual assault allegations, and U.S. Military Academy commanders did not retaliate against separated cadet-victims.

Report No. DODIG-2019-125, “Evaluation of the DoD’s Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Air Force Academy,” September 30, 2019

The DoD OIG found that U.S. Air Force Academy SAPR personnel provided SAPR services to sexual assault victims; however, the U.S. Air Force Academy SARC did not have a process to document consults with cadet-victims. The DoD OIG also found that AFOSI agents investigated sexual assault allegations, and U.S. Air Force Academy commanders did not retaliate against separated cadet-victims. The DoD OIG identified 24 sexual assaults incidents unreported to Congress.

### ***Historical Coverage***

Before 2017, the GAO and DoD OIG issued seven reports about sexual assault investigations in the DoD. Access unrestricted GAO reports at <http://www.gao.gov>. Access unrestricted DoD OIG reports at <https://www.dodig.mil/reports.html/>.

### ***GAO***

Report No. GAO-11-579, “Military Justice: Oversight and Better Collaboration Needed for Sexual Assault and Adjudications,” June 22, 2011

The GAO found no evidence of Military Service Inspector General oversight for any of the 2,594 sexual assault investigations the DoD reported in 2010. The GAO also found that the Military Service, legal, and investigative organizations were not fully leveraging expertise and limited resources. The GAO recommended the “DoD develop policy and provide oversight for sexual assault investigations and related training.”

### ***DoD OIG***

Report No. DODIG-2017-054, “Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations,” February 14, 2017

The DoD OIG “evaluated 378 MCIO adult sexual assault investigations opened on or after January 1, 2014, and completed on or before December 31, 2015....” The DoD OIG “found that only 2 of the 378 investigations (0.5 percent) ... had significant deficiencies....”

Report No. DODIG-2016-006, "Evaluation of United States Army Criminal Investigation Command Sexual Assault Investigation," November 10, 2015

United States Army Criminal Investigation Command (USACIDC) did not complete an investigation into an alleged sexual assault as required by guiding policies. DoD OIG recommended that the Commander, USACIDC, "ensure that agents conducting sexual assault investigations: [p]roperly report non-[USA]CID[C] purview offenses ... for command action ... [:] [b]rief victims on the status of investigations as required"; and "[b]rief commanders on investigations and report results as required." DoD OIG further recommended USACIDC investigate victim's sexual assault allegation.

Report No. DODIG-2015-094, "Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations," March 24, 2015

The DoD OIG "evaluated 536 ... MCIO investigations of sexual assault with adult victims ... to determine whether the MCIOs completed investigations as required by DoD, Military Service, and MCIO guidance. A total of 532 of 536 MCIO investigations (99 percent) met investigative standards." The DoD OIG returned "4 of 536 cases (1 percent) with significant deficiencies to the MCIOs for corrective action."

Report No. DODIG-2014-108, "Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigation Policies," September 16, 2014

The DoD OIG "evaluated the MCIOs' adult sexual assault investigation policies" and found that "policies generally align with DoD and Service requirements for adult sexual assault investigations." The report also found NCIS and AFOSI investigative policies "do not address what investigators should do when encountering victim collateral misconduct."

Report No. DODIG-2014-105, "Evaluation of the Military Criminal Investigative Organizations' Child Sexual Assault Investigations," September 9, 2014

The DoD OIG found "153 of the 163 MCIO investigations" of sexual assault of children "(94 percent) met investigative standards. A total of 10 of 163 MCIO investigations (6 percent) had significant deficiencies" and were returned for corrective action.

Report No. DODIG-2013-091, "Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations," July 9, 2013

The DoD OIG found that 89 percent of investigations "met or exceeded the investigative standards." The DoD OIG returned 11 percent "with significant deficiencies to the MCIOs for corrective action." The DoD OIG also found MCIO policy issues related to collecting subject's clothing, contacting servicing staff judge advocates, and conducting records checks in a timely manner.

# Management Comments

## Air Force Office of Special Investigations



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS  
QUANTICO VIRGINIA

9 August 2023

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: HQ AFOSI/CC  
27130 Telegraph Road  
Marine Corps Ground Installation Quantico, VA 22134

SUBJECT: Department of the Air Force Response to DoD Office of Inspector General Draft Report, "Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations" (Project No. D2022-DEV0SV-0028.000)

1. This is the Department of the Air Force response to the DoDIG Draft Report, "Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations" (Project No. D2022-DEV0SV-0028.000). The DAF non-concurs with Recommendation A.1, as an alternative course of action has already been implemented to effectively address the observation identified in the IG Report.

2. The SAF/IG will correct issues identified in this report, and develop and implement a corrective action plan outlined in the following recommendations:

**RECOMMENDATION A.1:** The DODIG recommends that the Air Force Office of Special Investigations Commander update Air Force Office of Special Investigations Investigative Information Management System to prevent case closure until all required supervisory reviews are documented as required by Air Force Office of Special Investigations Manual 71-121.

**DAF RESPONSE:** Non-concur (with explanatory comment).

*As written, this recommended course of action could unintentionally drive undesirable documentation habits, as missed supervisory reviews would only be prompted for correction at the time of case closure, resulting in the backdating of reviews. Forcing the documentation of monthly case reviews at the end of the investigation does not address the problem at hand, which is the need for contemporaneous documentation of monthly case reviews. AFOSI's proposed corrective action seeks to improve compliance with the documentation of reviews at the time of required completion.*

**Alternative Corrective Action:** AFOSI has already undertaken two measures to address this issue.

## Air Force Office of Special Investigations (cont'd)

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*(1) AFOSI has adjusted the new case management system (CMS), to include an "Admin Engine." This Admin Engine function will feature an alert to notify supervisors that a monthly case file review is due. This prompts the supervisor to conduct the review at the proper time and avoids the potential of retroactively backdating the task at case closure.*

**Implementation:** The new CMS is partially deployed as of 28 July 23; this measure is partially complete with expected full completion by October 2023.

*(2) Additionally, AFOSI recently clarified its policy outlining requirements for supervisory case reviews by revising and republishing AFOSIMAN 71-121, Reporting Investigative Matters. The updated policy clarifies the need for continuous monthly reviews ceases after the case file is Investigatively Closed (awaiting disposition). This will significantly reduce the number of monthly reviews required for each case as the reviews will only be conducted from case opening through investigative closure and remove the requirement to review monthly from investigative closure through final closure.*

**Implementation:** This measure was completed on 13 April 2023.

The AFOSI/XR point of contact is [REDACTED]

BUMGARNER.AM  
Y.S [REDACTED]  
AMY S. BUMGARNER, Col, USAF  
Commander, AFOSI

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## Naval Criminal Investigative Service



DEPARTMENT OF THE NAVY  
HEADQUARTERS  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

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FOR: DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: Kurt Thomas, Executive Assistant Director

SUBJECT: DODIG Draft Report, Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations (Project No. D2022-DEV0SV-0028.0001)

On July 25, 2023, NCIS received the DoDIG *Draft Report, Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations (Project No. D2022-DEV0SV-0028.0001)* dated July 25, 2023. The following is the NCIS response to the draft report open recommendation, Recommendation B.1.

***Recommendation B.1***

“We recommend that Naval Criminal Investigative Service Director reopen one investigation, collect an exclusionary DNA sample, and submit the untested sexual assault forensic examination kit to a forensic laboratory for testing.”

***NCIS Current Response: Concur***

NCIS agrees with the recommendation regarding NCIS case no. 16AUG09-MWTN-0107-8FMA. On July 26, 2023, the NCIS Marine West Field Office (MWFO) reopened the investigation in order to exhaust efforts to collect the exclusionary DNA sample and submit the SAFE kit for testing. If attempts are unsuccessful, then NCIS MWFO intends re-engage USACIL regarding testing of the SAFE kit without the exclusionary sample. Estimated completion date is September 30, 2023.

  
KURT THOMAS

## Army Criminal Investigation Division



DEPARTMENT OF THE ARMY  
CRIMINAL INVESTIGATION DIVISION  
27130 TELEGRAPH ROAD  
QUANTICO VA 22134-2253

CIOP-IOD

15 August 2023

MEMORANDUM FOR Office of Inspector General, Department of Defense, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Response to DoD Office of Inspector General Draft Report, "Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigations" (Project No. D2022-DEV0SV-0028.000)

1. Reference your Final Report, 25 July 2023, subject as above.
2. Thank you for the opportunity to provide any comments in your report detailing your review of the U.S. Army Criminal Investigation Command (CID) policies and procedures associated with Adult Sexual Assault Investigations.
3. I have reviewed the final report. CID was not required to provide any comments as there were no recommendations. CID concurs with no comment.
4. The point of contact for this memorandum is [REDACTED]

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PETER J. TOLENTINO  
Assistant Director



## Acronyms and Abbreviations

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<b>AFOSI</b>	Air Force Office of Special Investigations
<b>AFOSIMAN</b>	Air Force Office of Special Investigations Manual
<b>CID</b>	Criminal Investigation Division (Army; formerly USACIDC)
<b>DCIO</b>	DoD Criminal Investigative Organizations
<b>DD Form</b>	Department of Defense Form
<b>DNA</b>	Deoxyribonucleic Acid
<b>DoD OIG</b>	Department of Defense Office of Inspector General
<b>DoDD</b>	Department of Defense Directive
<b>DoDI</b>	Department of Defense Instruction
<b>I2MS</b>	Investigative Information Management System (AFOSI)
<b>IG</b>	Inspector General
<b>MCIO</b>	Military Criminal Investigative Organization
<b>NCIS</b>	Naval Criminal Investigative Service (Navy)
<b>OPMEMO</b>	Operational Memorandum (CID)
<b>AFOSI</b>	Office of Special Investigations (Air Force & Space Force)
<b>QMD</b>	Quantitative Methods Division (DoD OIG)
<b>SAFE</b>	Sexual Assault Forensic Examination
<b>USACIDC</b>	U.S. Army Criminal Investigation Command (currently CID)
<b>USACIL</b>	U.S. Army Criminal Investigation Laboratory (CID)



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## **U.S. DEPARTMENT OF DEFENSE**

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