



Department of Defense **INSTRUCTION**

NUMBER 5505.03

March 24, 2011

Incorporating Change 2, February 13, 2017

IG DoD

SUBJECT: Initiation of Investigations by Defense Criminal Investigative Organizations

References: See Enclosure 1

1. **PURPOSE.** This instruction:

a. In accordance with the authority in DoD Directive (DoDD) 5106.01 (Reference (a)), reissues DoD Instruction (DoDI) 5505.3 (Reference (b)), changes the subject title, and establishes policy and updates the responsibilities and procedures to ensure the independence, objectivity, and effectiveness of the Defense Criminal Investigative Organizations (DCIOs).

b. Implements section 1732(b) of Public Law 113-66 (Reference (c)) for DCIOs.

c. Establishes policy that requires DCIOs to identify a DoD nexus before initiating a criminal investigation or operation.

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 DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the "DoD Components").

3. **DEFINITIONS.** See Glossary.

4. **POLICY**

a. Pursuant to Reference (a), it is DoD policy that DCIOs shall initiate investigations in accordance with law and governing regulations, but do not require approval from any authority outside of the DCIO. Commanders not assigned to the DCIOs shall not impede or interfere with investigations or investigative techniques deemed appropriate by the DCIOs.

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

c. DCIO investigative reports will provide commanders fact based, unbiased investigative findings that reflect impartiality.

d. DCIOs will identify a DoD nexus before making a determination to initiate any criminal investigation or operation except as authorized by Enclosure 2, Paragraph 1.c. A DoD nexus requires a reasonable likelihood of one of the following elements:

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

(2) DoD resources or equipment were utilized in the commission of the crime.

(3) A DoD entity, DoD civilian employee, Service member, or military dependent was the victim of the crime.

(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 Chapter 47 of Title 10 U.S.C. (also known and referred to in this issuance as “the Uniform Code of Military Justice (UCMJ)”) (Reference (d)).

(5) The actions were authorized by Enclosure 3, Paragraph 1.b of DoDI 3025.21 (Reference (e)).

(6) In contingency operations, there is a need to investigate crimes committed by or against members subject to the UCMJ or Chapter 212 of Title 18 U.S.C (also referred to as “the Military Extraterritorial Jurisdiction Act”) (Reference (f)), and DoD nexus can be expanded when the senior mission commander or battle space commander requests an investigation to support the DoD mission.

5. RESPONSIBILITIES

a. DoD Inspector General (IG). The DoD IG shall develop policy, procedures, and necessary oversight for DCIO initiation of investigations pursuant to Reference (a) and within the guidelines of DoDI 5505.02 (Reference (g)).

b. Heads of the DoD Components. The Heads of the DoD Components shall ensure compliance with this Instruction and prescribe additional Component procedures as necessary to implement its policy.

c. Commanders. Commanders at all levels shall 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.

6. PROCEDURES. See Enclosure 2

7. INFORMATION REQUIREMENTS.

a. All DCIOs shall maintain an automated records management and information system that is compliant with the FBI National Law Enforcement Data Exchange (N-DEx) and the Defense Incident-Based Reporting System (DIBRS).

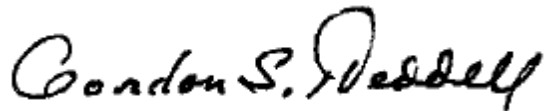
b. The automated records management system shall be capable of providing data to Law Enforcement Defense Data Exchange (D-DEx) and be compliant with records management requirements listed in DoDI 5015.02 (Reference (h)).

c. The investigative reporting, referred to throughout this Instruction, does not require licensing with a report control symbol in accordance with paragraphs 1b(6) and 1b(7) of Enclosure 3, of Volume 1 of DoD Manual 8910.01 (Reference (i)).

8. RELEASABILITY. **Cleared for public release.**—This Instruction is available on the Internet from the DoD Issuances Website at <http://www.esd.whs.mil/DD/>.

9. SUMMARY OF CHANGE 2. Establishes policy pertaining to the need for Defense Criminal Investigative Organizations to identify a DoD nexus before initiating a criminal investigation or operation.

10. EFFECTIVE DATE. This Instruction is effective March 24, 2011.



Gordon S. Heddell
Inspector General of the Department of Defense

Enclosures

1. References
2. Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 20, 2012, as amended
- (b) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," June 21, 2002 (hereby cancelled)
- (c) Section 1732 of Public Law 113-66, "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013
- (d) Chapter 47 of Title 10, United States Code (also known as the "Uniform Code of Military Justice (UCMJ)")
- (e) DoD Instruction 3025.21, "Defense Support of Civilian Law Enforcement Agencies," February 27, 2013
- (f) Chapter 212 of Title 18, United States Code (also known as the "Military Extraterritorial Jurisdiction Act")
- (g) DoD Instruction 5505.02, "Criminal Investigations of Fraud Offenses, August 29, 2013, as amended
- (h) DoD Instruction 5015.02, "DoD Records Management Program," February 24, 2015
- (i) DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended
- (j) DoD Instruction 5505.08, "Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct," April 17, 2013
- (k) DoD Directive 5505.06, "Investigations of Allegations Against Senior DoD Officials," June 6, 2013
- (l) DoD Instruction 7730.47, "Defense Incident-Based Reporting System (DIBRS)," January 23, 2014
- (m) DoD 7730.47-M, Volume 1, "Defense Incident-Based Reporting System (DIBRS): Data Segments and Elements," December 7, 2010

ENCLOSURE 2

PROCEDURES

1. INITIATING A CRIMINAL INVESTIGATION

a. Any commander or the DoD IG may request that a DCIO initiate a criminal investigation. However, the DCIO Commanders are not required to, nor shall they, solicit from commanders or any other authority outside the DCIO authorizations to initiate investigations. This does not prevent DCIOs from discussing the initiation of a criminal investigation with commanders. In each case, the decision to initiate a criminal investigation remains solely with the DCIO.

b. When a commander not assigned to the DCIO objects to the initiation of a criminal investigation for any reason, that commander shall report the circumstances immediately through their chain of command to the Secretary of the Military Department concerned or the DoD IG. Intermediate commanders may resolve those matters that were the basis for the objection and, thereby, negate the need to notify the Secretary of the Military Department or the DoD IG.

c. Criminal investigations and operations will have a DoD nexus when initiated. When it cannot be determined if there is a DoD nexus, DCIO investigative activities will be limited to those actions needed to gain sufficient information to assess a nexus. When a DoD nexus cannot be identified, DCIO agents will cease active participation in direct investigative activities and refer the allegation to the appropriate law enforcement agency.

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

2. DELAYING, SUSPENDING, OR TERMINATING A CRIMINAL INVESTIGATION

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

b. Only the DoD IG may direct an MCIO to delay, suspend, or terminate an ongoing investigation being conducted at the direction of the DoD IG. Only the DoD IG may direct the Defense Criminal Investigative Service (DCIS) to delay, suspend, or terminate an ongoing investigation.

(1) When there is a request to delay, suspend, or terminate an ongoing investigation initiated by an MCIO, the Secretary of the Military Department concerned shall decide promptly whether the investigation shall be discontinued. No investigation shall be delayed or suspended while this process is ongoing, except by decision of the Secretary of the Military Department concerned. The Secretaries of the Military Departments shall promptly report to the DoD IG the facts in all cases brought to them for resolution and their decision in each instance.

(2) When a request to delay, suspend, or terminate an ongoing investigation initiated by DCIS is raised to the Secretary of a Military Department, that request shall promptly be referred to the DoD IG. The DoD IG shall make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

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

3. IMPEDING A CRIMINAL INVESTIGATION

a. Commanders shall 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 Commanders shall promptly report through their chain of command to the Secretary of the Military Department concerned or the DoD IG 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 techniques by a DCIO:

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

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

(3) The DoD IG and the Secretary of the Military Department concerned shall resolve those matters.

4. SEXUAL MISCONDUCT INVESTIGATIONS. In accordance with DoDI 5505.08 (Reference (j)) an investigation into adult private consensual sexual misconduct may be initiated by an MCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the DCIO or Principal Deputy that there is credible information of adult private consensual sexual misconduct and that such an investigation is an appropriate use of investigative resources.

5. SENIOR OFFICIAL INVESTIGATIONS. In accordance with DoDD 5505.06 (Reference (k)), allegations of misconduct against senior officials shall be promptly reported to the DoD IG at the time such allegations are received by another DoD Component. Except in unusual circumstances, the DoD IG shall promptly notify the Head of the appropriate DoD Component or

Components when an allegation is received. Allegations of criminal misconduct against senior officials shall be investigated by the appropriate DCIO.

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, shall be coordinated through normal command and resource processes for approval of the commander having responsibility for the requested resources.

7. INVESTIGATIVE CONCLUSION

a. In accordance with Section 1732(b) of Reference (c), at the conclusion of the investigation the DCIOs will only report and document final investigative facts. To avoid the appearance of investigative bias, DCIOs will not formulate or document investigative conclusions (e.g., founded or unfounded) in investigative reports. However, DCIOs will continue to clear their investigations and report the clearance codes in accordance with DoDI 7730.47 (Reference (l)) and Volume 1 of DoD 7730.47-M (Reference (m)).

b. DCIOs will document legal coordination from supporting legal counsel or Staff Judge Advocate in final investigative reports.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DCIO Defense Criminal Investigative Organizations
DCIS Defense Criminal Investigative Service
D-DEx Law Enforcement Defense Data Exchange
DIBRS Defense Incident-Based Reporting System
DoDD DoD Directive
DoDI DoD Instruction

IG Inspector General

MCIO Military Criminal Investigative Organizations

N-DEx FBI National Law Enforcement Data Exchange

PART II. DEFINITIONS

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

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. For purposes of this Instruction, 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.

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

D-DEx. DoD system for reporting criminal incident information to the N-DEx. D-DEx is 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.

DoD nexus. A connection to DoD in accordance with parameters outlined in Paragraph 4.d. of the policy of this instruction.

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

reasonable likelihood. Denotes a standard that is less than the “more likely than not” standard, but more than merely a remote, outlandish, or simply hypothetical possibility.