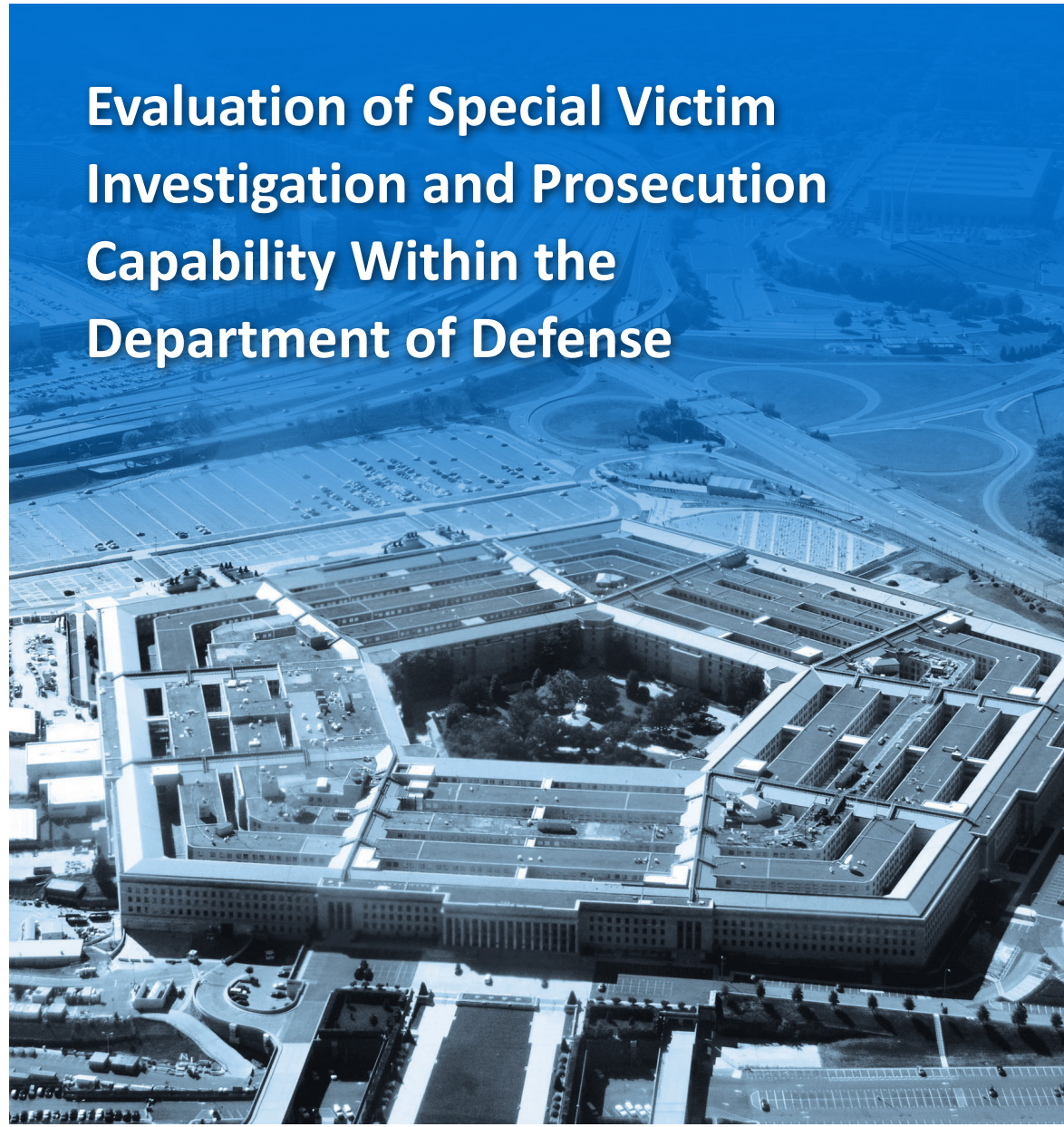




# INSPECTOR GENERAL

*U.S. Department of Defense*

NOVEMBER 10, 2021



## Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





# Results in Brief

## *Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense*

November 10, 2021

### Objective

The objective of this evaluation was to determine whether the Department of Defense (DoD) and Military Services complied with Federal law and DoD policy when providing Special Victim Investigation and Prosecution (SVIP) services to victims in response to incidents of covered special victim offenses.<sup>1</sup> We evaluated whether the DoD and Military Services, in response to incidents involving covered offenses:

- assigned SVIP certified lead investigators,
- notified victims of available resources,
- made the required 24- and 48-hour SVIP member notifications,
- consulted monthly with respective SVIP members,
- assigned specially trained prosecutors, and
- provided victims with certified victim advocates.<sup>2</sup>

### Background

Section 573 of Public Law 112-239 requires each Military Service to establish a special victim capability comprised of specially trained Military Criminal Investigative Organization (MCIO) investigators, judge

<sup>1</sup> DoDI 5505.19 defines covered offenses as special victim offenses including: a) adult sexual assault, b) domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, or c) child abuse involving child sexual assault and/or aggravated assault with grievous bodily harm. Victims eligible to receive services include, but are not limited to, military members, their families, and certain DoD civilians.

<sup>2</sup> Our evaluation of certified victim advocates focused on adult sexual assaults only; the remainder of the report includes all covered offenses.

### Background (cont'd)

advocates, paralegals, and victim witness assistance personnel to support victims of covered offenses.<sup>3</sup> The law defines special victim capabilities as “a distinct, recognizable group of appropriately skilled professionals who work collaboratively” to “investigat[e] and prosecut[e] allegations of child abuse, serious domestic violence, or sexual offenses[,] and . . . provide support for the victims of such offenses.”

### Findings

Based on our evaluation, we made the following determinations.

- The MCIOs did not consistently assign certified lead investigators for investigations of covered offenses. The NCIS and OSI representatives told us this was because they did not have enough certified investigators to assign to all investigations of covered offenses.
- MCIOs generally provided victims of covered offenses with information on available advocacy resources.
- MCIO investigators did not consistently document communications (notifications and consultations) with SVIP members about covered offenses.<sup>4</sup> The CID representative told us communications were not properly documented because its case management system did not prompt investigators to document all required information. The NCIS representative told us that the reason for a case agent not conducting or not documenting the monthly communications is “usually due to oversight on the NCIS agent’s part.” The OSI representative told us this would be the result of agent oversight.
- Services did not consistently assign specially trained prosecutors to cases involving covered offenses. Service representatives told us SVIP-certified prosecutors

<sup>3</sup> The MCIOs include the U.S. Army Criminal Investigation Division (CID), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (OSI). On September 17, 2021, the Commander, U.S. Army Criminal Investigation Command transitioned authority to the Director of the newly re-designated Criminal Investigation Division (CID).

<sup>4</sup> Lead investigators are required to notify SVIP members within 24 hours, collaborate within 48 hours with SVIP members to integrate SVIP member services and consult with SVIP members monthly to assess the progress of the investigation and prosecution and help ensure all aspects of the victim’s needs are being met.



# Results in Brief

## *Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense*

### **Findings (cont'd)**

were assigned to cases to litigate and assist in prosecutions. However, we found that during our evaluation period, SVIP-certified prosecutors did not consistently participate in SVIP notifications, collaborations, and consultations. Also, as of September 2, 2020, the SVIP prosecutors are no longer required to participate in SVIP notifications, collaborations, and consultations.

- Services provided victims with certified advocates.

### **Recommendations**

We recommend that the Army Criminal Investigation Division (CID) Director, Naval Criminal Investigative Service (NCIS) Director, and Office of Special Investigations (OSI) Commander conduct reviews to determine the resource requirements to train, certify, and assign additional criminal investigators to serve as lead investigators in investigations of covered offenses. The reviews should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

We recommend that the CID Director, NCIS Director, and OSI Commander develop procedures to standardize how their investigators document communications with SVIP members to ensure the documentation includes the SVIP member's name, position, organization, and date of communication.

We recommend that the Under Secretary of Defense for Personnel and Readiness, in conjunction with the Judge Advocates General of the Army, Navy, and Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps, conduct a review to determine whether to reestablish the Department of Defense requirement that Special Victim Investigation and Prosecution-certified prosecutors participate in SVIP notifications, collaborations, and consultations that was disestablished with the issuance of DoDI 1030.02.

### **Management Comments and Our Response**

The Commander, U.S. Army Criminal Investigation Command (USACIDC) agreed with the recommendation, but did not address the resource review. Therefore, the recommendation is unresolved. We request that the CID Director provide comments on the final report.

The NCIS Director and OSI Commander agreed with the recommendation and recently completed resource reviews. NCIS is scheduled to receive additional personnel and funding in FY 2022 and OSI has requested additional personnel. Therefore, this recommendation is resolved and closed.

The USACIDC Commander agreed with the recommendation and recently issued policy specifying how investigators will document communications with SVIP members. Therefore, the recommendation is resolved and closed.

The NCIS Director recently published sexual assault investigation policy specifying how to document communications with SVIP members. NCIS is scheduled to publish revised domestic violence investigation policy with similar guidance in December 2021. Therefore, the recommendation is resolved and open.

The OSI Commander agreed with the recommendation and is currently updating OSI policy to specify how to document communications with SVIP members. Therefore, the recommendation is resolved and open.

We revised a recommendation that the Under Secretary of Defense for Personnel and Readiness (USD [P&R]), in conjunction with the Service Judge Advocates General of the Army, Navy, and Air Force and Staff Judge Advocate to the Commandant of the Marine Corps, consider re-establishing the DoD requirement that SVIP-certified



# Results in Brief

## *Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense*

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

prosecutors participate in SVIP notifications, collaborations, and consultations. The Military Deputy Director of the Office of Legal Policy in the Office of the Under Secretary of Defense for Personnel and Readiness told us that his office is currently reviewing the requirements in DoDI 1030.02 and will consider revisions.

Please see the Recommendations Table on the next page for the status of recommendations.

## Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Under Secretary of Defense for Personnel and Readiness	3 (revised)		
Director, U.S. Army Criminal Investigation Division	1.a.		2.a.
Director, Naval Criminal Investigative Service		2.b.	1.b.
Commander, Office of Special Investigations		2.c.	1.c.

Please provide Management Comments by December 10, 2021.

**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** – OIG verified that the agreed upon corrective actions were implemented.



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

November 10, 2021

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR PERSONNEL  
AND READINESS**

**JUDGE ADVOCATE GENERAL OF THE ARMY  
JUDGE ADVOCATE OF THE NAVY  
JUDGE ADVOCATE OF THE AIR FORCE  
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE  
MARINE CORPS  
DIRECTOR, U.S. ARMY CRIMINAL INVESTIGATION DIVISION  
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE  
COMMANDER, OFFICE OF SPECIAL INVESTIGATIONS**

**SUBJECT: Evaluation of Special Victim Investigation and Prosecution Capability  
within the Department of Defense (Report No. DODIG-2022-035)**

This final report provides the results of the DoD Office of Inspector General's evaluation. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains one recommendation that is considered partially resolved and closed and partially unresolved. As described in the Recommendations, Management Comments, and Our Response section of this report, we will consider the recommendation resolved when you provide a plan to conduct a resource review. We will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations.

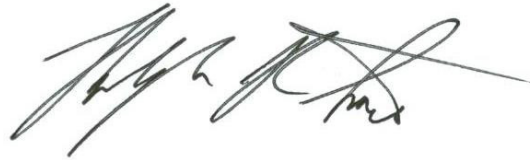
[REDACTED]

This report contains one recommendation that is considered partially resolved and open. As described in the Recommendations, Management Comments, and Our Response section of this report, we will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendations. Send your response to either

[REDACTED]

This report contains one recommendation that was revised; the requirement no longer exists but should be considered for reestablishment. We will consider the recommendation resolved when you provide management comments reflecting a plan of action. We will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Send your response to [REDACTED]

We appreciate the cooperation and assistance received during the evaluation. If you have any questions, please contact [REDACTED]

A handwritten signature in black ink, appearing to read 'R. Stone', with a stylized flourish extending from the end.

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

# Contents

---

## Introduction

Objective .....	1
Background .....	1

## Findings

Finding A. MCIOs Did Not Consistently Assign Certified Lead Investigators for	
Investigations of Covered Offenses .....	6
DoD and Services Are Required to Provide Certified Lead Investigators .....	7
MCIOs Did Not Consistently Assign Certified Lead Investigators in Response	
to Covered Offenses .....	8
Certified Lead Investigators Were Not Available to Conduct All Investigations .....	9
Non-Certified Lead Investigators May Not Conduct the Best Investigation .....	11
Recommendations, Management Comments, and Our Response .....	11
Finding B. MCIOs Generally Provided Victims of Covered Offenses with	
Information on Available Advocacy Resources .....	14
DoD and Services Are Required to Provide Advocacy Resources Information .....	14
MCIOs Provided Advocacy Resource Information to Victims .....	16
MCIOs Used Case Management Systems to Track Victim Resource	
Information Issuance .....	17
Victims Were Made Aware of Available Resources .....	18
Conclusion .....	18
Finding C. MCIO Investigators Did Not Consistently Document Communications	
with SVIP Members about Covered Offenses .....	19
Lead Investigators Are Required to Have Communications with	
SVIP Members .....	20
MCIO Investigators Did Not Consistently Document Communications	
with SVIP Members about Covered Offenses .....	21
MCIO Investigators Overlooked Communication Requirements .....	25
Recommendations, Management Comments, and Our Response .....	26
Finding D. Services Did Not Consistently Assign Specially Trained Prosecutors	
to Cases Involving Covered Offenses .....	28
Services Did Not Consistently Assign Specially Trained Prosecutors to Cases	
Involving Covered Offenses .....	31

## Contents (cont'd)

---

The Services Lack a Sufficient Number of Specially Trained Prosecutors .....	33
Not Assigning Specially Trained Prosecutors May Affect the Investigative Phase .....	34
Recommendation, Management Comments, and Our Response .....	35
Finding E. Services Assigned Certified Victim Advocates to Cases of Covered Offenses .....	36
DoD and Services Are Required to Assign Certified Victim Advocates in Response to Covered Offenses .....	36
Services Assigned Certified Victim Advocates to Cases of Covered Offenses .....	38
Certified Victim Advocates Were Assigned to Cases of Covered Offenses .....	39
Conclusion .....	39

## Appendixes

Appendix A. Scope and Methodology .....	40
Use of Computer-Processed Data .....	42
Use of Technical Assistance .....	43
Appendix B. Prior Coverage .....	44

## Management Comments

Army Judge Advocate General .....	49
Navy Judge Advocate General .....	51
Air Force Judge Advocate General .....	53
Staff Judge Advocate to the Commandant of the Marine Corps .....	56
Commander, U.S. Army Criminal Investigation Command .....	59
Director, Naval Criminal Investigative Service .....	62
Commander, Office of Special Investigations .....	64

Acronyms and Abbreviations .....	66
----------------------------------	----

# Introduction

---

## Objective

The objective of this evaluation was to determine whether the Department of Defense (DoD) and Military Services (Services) complied with Federal law and DoD policy when providing Special Victim Investigation and Prosecution (SVIP) services to victims in response to incidents of covered special victim offenses.<sup>5</sup> We evaluated whether the DoD and Military Services, in response to incidents involving covered offenses:

- assigned SVIP certified lead investigators,
- notified victims of available resources,
- made the required 24- and 48-hour SVIP member notifications,
- consulted monthly with respective SVIP members,
- assigned specially trained prosecutors, and
- provided victims with certified victim advocates.

## Background

### ***Federal Law***

Section 573 of Public Law 112-239, “Establishment of Special Victim Capabilities within the Military Departments to Respond to Allegations of Certain Special Victim Crimes,” requires each Military Service to establish a special victim capability comprised of specially trained investigators from the Army Criminal Investigative [sic] Command, now known as the Army Criminal Investigation Division (CID), Naval Criminal Investigative Service (NCIS), or Air Force Office of Special Investigations (OSI), collectively referred to as Military Criminal Investigative Organizations (MCIOs); judge advocates; paralegals; and victim witness assistance personnel to support victims of covered offenses.<sup>6</sup> In addition, Section 573 of Public Law 112-239 defines special victim capabilities as “a distinct, recognizable group of appropriately skilled professionals who work collaboratively” to “investigat[e] and prosecut[e] allegations of child abuse, serious domestic violence, or sexual offenses[,] and ... provide support for the victims of such offenses.”

---

<sup>5</sup> DoDI 5505.19 defines covered offenses as special victim offenses including: a) adult sexual assault, b) domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, or c) child abuse involving child sexual assault and/or aggravated assault with grievous bodily harm. Victims eligible to receive services include military members, their families, and certain DoD civilians.

<sup>6</sup> Section 573, “Establishment of Special Victim Capabilities within the Military Departments to Respond to Allegations of Certain Special Victim Offenses,” of Public Law 112-239, “National Defense Authorization Act for Fiscal Year 2013,” January 2, 2013.

On September 17, 2021, the U.S. Army Criminal Investigation Command was re-designated as the Army Criminal Investigation Division (CID).

## **DoD Policy**

### **DoD Instruction 5505.19**

DoD Instruction (DoDI) 5505.19, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs),” describes the requirements for SVIP teams.<sup>7</sup> DoDI 5505.19 establishes a group of appropriately skilled, specially trained and selected MCIO investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel who work collaboratively to investigate allegations of covered offenses.<sup>8</sup> Covered offenses include allegations of adult sexual assault, child abuse involving child sexual assault or aggravated assault with grievous bodily harm, and domestic violence involving sexual assault or aggravated assault with grievous bodily harm.

DoDI 5505.19 describes the lead MCIO:

The lead MCIO investigator assigned to conduct an investigation of a covered offense will be specially trained to respond to and investigate such offenses. Selection and certification of MCIO investigators for the SVIP capability is contingent on the completion of basic training at the respective federal law enforcement training institution (including military training schools). In addition to basic training, the lead MCIO investigator for an SVIP covered offense must have received specialized training. . . . Upon completion of all identified training, the MCIO will select and certify those investigators who will serve as lead investigators for SVIP covered offenses.<sup>9</sup>

Specialized training includes legal jurisdiction, elements of proof for crimes associated with covered offenses, crime scene management, rights of crime victims, risk factors associated with child abuse and domestic violence, and working with the Family Advocacy Program and Domestic Abuse Victim Advocate staffs.

Specifically, DoDI 5505.19 requires the lead investigator to notify SVIP members within 24 hours and collaborate within 48 hours after determining that an allegation meets the criteria of a covered offense.

---

<sup>7</sup> DoDI 5505.19, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs),” February 3, 2015, (Incorporating Change 2, March 23, 2017). According to DoDI 5505.19, individuals involved in the DoD SVIP capability will be referred to as “SVIP members.” SVIP members are defined as investigators, judge advocates, victim witness assistance personnel (Sexual Assault Response Coordinators, Sexual Assault Prevention and Response victim advocates, and Family Advocacy Program managers and domestic abuse victim advocates) and administrative paralegal support personnel.

<sup>8</sup> We will refer to this distinct group of recognizable professionals as the “SVIP members,” de-conflicting with the names of Special Victim Counsel (SVC), Special Victim Capability (SVC), or Victim Legal Counsel (VLC) used in other issuances.

<sup>9</sup> We will refer to these specially trained investigators as “certified lead investigators.”

DoD 5505.19 directs that after the initial collaboration, the MCIO lead investigator must consult with respective SVIP members monthly and document the name, position and organization, and the date of the consultation. DoDI 5505.19 explains that the monthly consultations are to assess the progress of the investigation and prosecution of a covered offense and to ensure all aspects of the victim's needs are met.

### ***DoD Instruction 1030.2***

DoDI 1030.2, "Victim and Witness Assistance Procedures," required that investigators issue a DD Form 2701, "Initial Information for Victims and Witnesses of Crime," and record the issuance as "evidence the officer notified the victim or witness of his or her statutory rights."<sup>10</sup> The DD Form 2701 is a form that provides victims and witnesses to a crime with information on the military justice process, a list of victim resources, and contact information if more assistance is needed.

### ***DoD Instruction 5505.18***

DoDI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," requires the investigator assigned to conduct the adult sexual assault investigation to provide and explain the DD Form 2701 to the victim and any appropriate witnesses if they were not previously issued the form.<sup>11</sup> DoDI 5505.18 requires the investigator assigned as the lead investigator to an adult sexual assault investigation to notify each SVIP member about each covered offense allegation. Additionally, DoDI 5505.18 requires that all adult sexual assault investigations assumed by an MCIO will be investigated thoroughly and in compliance with DoDI 5505.19.

### ***DoD Directive 6495.01***

DoD Directive (DoDD) 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," requires the Sexual Assault Response Coordinator (SARC) to coordinate sexual assault victim care and sexual assault response when a sexual assault is reported and the Sexual Assault Prevention and Response Victim Advocate (SAPR VA) to provide non-clinical crisis intervention and on-going support.<sup>12</sup> Victim services include comprehensive medical and mental health treatment, prioritized emergency care treatment, and sexual assault forensic examination.

<sup>10</sup> DoDI 1030.2, "Victim and Witness Assistance Procedures," June 4, 2004. This DoDI was canceled and incorporated in DoDI 1030.02 on September 2, 2020.

DD Form 2701, "Initial Information for Victims and Witnesses of Crime."

<sup>11</sup> DoDI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," March 22, 2017, (Incorporating Change 2, January 31, 2019).

<sup>12</sup> DoDD 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, (Incorporating Change 3, April 11, 2017). This Directive, in effect during our evaluation, was canceled and incorporated into Change 4 on September 11, 2020.

### ***DoD Instruction 6495.03***

DoDI 6495.03, “Defense Sexual Assault Advocate Certification Program (D-SAACP),” requires that a specially trained SARC or SAPR VA be assigned in response to covered offense allegations involving sexual assault.<sup>13</sup> DoDI 6495.03 defines Defense Sexual Assault Advocate Certification Program (D-SAACP) certification requirements for SARCs and SAPR VAs.

### ***Directive-Type Memorandum 14-003***

Directive-Type Memorandum (DTM) 14-003, “DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support,” established the common criteria for Special Victim Investigation and Prosecution (SVIP) legal teams and defined qualifications for specially trained prosecutors.<sup>14</sup> DTM 14-003 required the Secretaries of the Military Departments to establish a special victim capability that “will provide specially trained prosecutors, victim witness assistance personnel, paralegals, and administrative legal support personnel who will work collaboratively with specially trained MCIO investigators.” DTM 14-003 also required the Services to establish certification standards for SVIP prosecutors. The DTM also required that the Military Departments (Services) will:

Establish policies and procedures to establish SVC. At a minimum, these Service-level policies and procedures will include provisions regarding, as applicable:

[sub-paragraph removed] Activation protocol and procedures to ensure that the MCIO will notify the responsible legal office and other appropriate individuals within 24 hours of determining that an allegation meets the criteria of a special victim offense. The SVC legal representative will promptly meet or consult with MCIO SVC members within 48 hours after the designation of an investigation as meeting SVC requirements. The SVC legal representative will meet or consult with MCIO SVC members at least monthly to assess progress in the investigation or prosecution of a covered offense, including ensuring any matter raised by the victim or a person designated to assist or represent the victim is properly addressed.

---

<sup>13</sup> DoDI 6495.03, “Defense Sexual Assault Advocate Certification Program (D-SAACP),” September 10, 2015.

<sup>14</sup> Directive-type Memorandum (DTM) 14-003, “DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support,” February 12, 2014, Incorporating Change 6, August 15, 2019. This DTM, in effect during our evaluation, was canceled with the issuance of DoDI 1030.02 on September 2, 2020.

***DoD Instruction 1030.02***

DoDI 1030.02, "Victim and Witness Assistance," incorporated and canceled DoDI 1030.2 and canceled DTM 14-003. DoDI 1030.02 continues to require investigators to issue a DD Form 2701 to victims of covered offenses. DoDI 1030.02 also requires the Services to establish certification standards of SVIP prosecutors, but no longer requires the Services to ensure SVIP-certified prosecutors participate in notifications, collaborations, and consultations.<sup>15</sup>

---

<sup>15</sup> DoDI 1030.02, "Victim and Witness Assistance," September 2, 2020.

## Finding A

---

### **MCIOs Did Not Consistently Assign Certified Lead Investigators for Investigations of Covered Offenses**

The MCIOs did not consistently assign certified lead investigators in investigations of covered offenses as required by DoDI 5505.19. From June 1, 2018, through May 31, 2020, the MCIOs were required to assign certified lead investigators in the 447 investigations of covered offenses we reviewed. The 447 investigations consisted of 154 CID investigations, 179 NCIS investigations, and 114 OSI investigations.

Specifically, we determined that CID did not assign certified lead investigators in 14 of 154 (9 percent) investigations of covered offenses. However, we found that in the 14 investigations in which CID did not assign certified investigators, the lead investigator was supervised by a certified Special Victim Unit (SVU) agent in accordance with CID Regulation (CIDR) 195-1. We also determined that NCIS did not assign certified lead investigators in 29 of 179 (16 percent) investigations of covered offenses, and OSI did not assign certified lead investigators in 75 of 114 (66 percent) investigations of covered offenses. This occurred because the number of certified lead investigators has not kept pace with the increased number of special victim investigations. The MCIOs have experienced a significant increase in special victim investigations, including sexual assault and domestic violence offenses. However, the MCIO representatives told us that the Military Services have not provided the MCIOs an increase in resources and manpower to address the increased workload.

As a result, the MCIOs conducted investigations of covered offenses in a manner that was inconsistent with federal law and DoD policy, which required lead investigators be certified to investigate covered offenses. An uncertified lead investigator may not understand how to effectively communicate with, and obtain cooperation from, a sexual assault or domestic violence victim, or how to communicate properly with SVIP specially trained prosecutors and victim advocates. Finally, if the MCIOs do not consistently assign a certified lead investigator to an investigation of a covered offense, they increase their risk that the lead investigator is not trained in specific material, such as sexual assault offense elements of proof related to evidence collection and may not produce the best possible report of investigation for commanders to make disposition decisions.

## DoD and Services Are Required to Provide Certified Lead Investigators

DoDI 5505.19 requires that a specially trained and certified lead investigator be assigned in response to every allegation involving a covered offense. DoDI 5505.19 and DoDI 5505.18 define qualifications for SVIP members, with particular attention to investigators.

Specifically, the policies require investigators assigned to the SVIP capability to complete specialized training in a range of topics including legal jurisdiction, elements of proof for crimes associated with covered offenses, crime scene management, rights of crime victims, risk factors associated with child abuse and domestic violence, and working with the Family Advocacy Program and Domestic Abuse Victim Advocate staffs.

The DoDI 5505.19 requires the MCIOs to select and certify investigators to serve as lead investigators for covered offenses, and the lead investigators assigned to conduct investigations of covered offenses will be specially trained to respond to and investigate such offenses. Furthermore, the MCIOs issued additional policy that builds on the DoD policies.

CID Regulation (CIDR) 195-1, “Criminal Investigation Operational Procedures,” describes criteria for certified SVIP investigators and supervision and documentation required when an SVIP-certified investigator is not available.<sup>16</sup> CIDR 195-1 specifically requires SVIP investigators complete probation, remain in good standing and have at least three years’ experience in general crimes investigation.

NCIS Manual 3, Chapter 34, “Sex Offenses (Category 8),” requires that investigators will be certified as required by DoDI 5505.19.<sup>17</sup> NCIS Manual 3, Chapter 34 mandates investigators must maintain currency with formal training requirements that have been incorporated in the Advanced Sexual Assault Training Program.

Air Force OSI Manual (AFOSIMAN) 71-122, Volume 1, “Criminal Investigations,” requires OSI to establish an SVIP team with investigators trained to standards identified in DoDI 5505.18 and DoDI 5505.19 and describes the specific and advanced training required for investigators identified to conduct sexual assault cases.<sup>18</sup> For example, AFOSIMAN 71-122, Volume 1, requires investigators to attend the OSI Sexual Crimes Investigations Training Program course to conduct sexual assault cases.

<sup>16</sup> CID Regulation 195-1, “Criminal Investigation Operational Procedures,” January 3, 2019.

<sup>17</sup> NCIS Manual 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017.

<sup>18</sup> AFOSIMAN 71-122, Volume 1, “Criminal Investigations,” September 28, 2012, (incorporates all changes through change 6, February 16, 2017).

## MCIOs Did Not Consistently Assign Certified Lead Investigators in Response to Covered Offenses

The MCIOs opened and closed 3,498 investigations of covered offenses between June 1, 2018, and May 31, 2020. We evaluated a randomly selected statistical sample amounting to 447 of 3,498 investigations of covered offenses. The 447 investigations consisted of 154 CID investigations, 179 NCIS investigations, and 114 OSI investigations. DoDI 5505.19 required the MCIOs to assign certified lead investigators in 447 investigations of covered offenses. We reviewed the 447 investigations, identified the lead investigators for each investigation, and verified whether the lead investigator was SVIP-certified by the MCIO.<sup>19</sup> We determined that the MCIOs did not assign certified lead investigators in 118 of 447 (26 percent) investigations of covered offenses. Finally, we determined that the MCIOs assigned certified lead investigators in 329 of 447 (74 percent) investigations of covered offenses.

Specifically, we determined that CID did not assign certified lead investigators in 14 of 154 (9 percent) investigations of covered offenses and assigned certified lead investigators in 140 of 154 (91 percent) investigations of covered offenses. However, we found that in the 14 investigations in which CID did not assign certified investigators, the lead investigator was supervised by a certified SVU agent in accordance with CIDR 195-1. We also determined NCIS did not assign certified lead investigators in 29 of 179 (16 percent) investigations of covered offenses and assigned certified lead investigators in 150 of 179 (84 percent) investigations of covered offenses. Furthermore, OSI did not assign certified lead investigators in 75 of 114 (66 percent) investigations of covered offenses and assigned certified lead investigators in 39 of 114 (34 percent) investigations of covered offenses.

Table 1 shows the number of investigations we reviewed and the compliance rates by MCIO for assigning certified investigators as the lead investigator.

---

<sup>19</sup> Each MCIO provided a list of its investigators certified to investigate covered offenses. CID had 976, NCIS had 989, and OSI had 479 certified investigators. Because investigators may rotate to other assignments, not all certified investigators are currently in a position to be assigned as a lead investigator of a covered offense. We did not validate training attendance or MCIO documentation for investigators on the lists.

Table 1. Investigations with Certified Lead Investigators

MCIO	Investigations	Certified Lead Investigators		Non-Certified Lead Investigators	
CID	154	140	91%	14	9%
NCIS	179	150	84%	29	16%
OSI	114	39	34%	75	66%
<b>Total</b>	<b>447</b>	<b>329</b>	<b>74%</b>	<b>118</b>	<b>26%</b>

Source: CID, NCIS, and OSI Investigation Case Files.

## Certified Lead Investigators Were Not Available to Conduct All Investigations

The investigation case files did not indicate why certified lead investigators were not assigned in the investigations we identified. We asked the MCIO representatives why certified lead investigators were not assigned in all investigations of covered offenses.

The CID Chief of Policy told us:

Every agent receives sexual assault, victim interview, suspect/subject interview and interrogation, and crime scene training in the CID Special Agent Course at the U.S. Army Military Police School. The special agents may not be certified but they have received training and meet the training requirements established in DoDI 5505.18. DoDI 5505.18 indicates that DoD law enforcement may assist CID while CID investigates offenses of adult sexual; therefore, CID has established that trained CID special agent could also assist as long as they are supervised by certified special agents.

CIDR 195-1 states that if no SVIP certified investigator is present in a CID field element, investigations of covered offenses must be closely supervised by a certified SVU [Sexual Victim Unit] member identified by the responsible CID battalion. The supervision will be documented in the case activity summary (CAS) of each case file in the CID Army Law Enforcement Reporting and Tracking System (ALERTS). We determined that CIDR 195-1 conflicts with DoDI 5505.19, which requires the MCIOs to assign certified investigators as the lead investigator in investigations of covered offenses.

We found that in the 14 investigations in which CID did not assign certified investigators, the lead investigator was supervised by a certified SVU agent in accordance with CIDR 195-1.

We acknowledge that CID recognizes that it does not yet have sufficient certified investigators to assign to each allegation of a covered offense and implemented policy requiring certified investigator oversight of non-certified investigators, reducing the risks inherent with the limited number of certified investigators. We are not recommending that CID immediately change their policy to comply with DoDI 5505.19, recognizing compliance is not possible until additional investigators are trained and certified to investigate covered offenses.

The NCIS Family and Sexual Violence Division Chief told us:

Occasionally, a non-certified Agent who has not yet attended the requisite training may be on call after hours and take the initial report of information. After the initial intake, the case should be transferred to a certified Agent to act as the lead Agent. All new NCIS agents participate in the Field Training Evaluation Program (FTEP) where they are assigned to a senior training agent and work with that agent. This should be a rare event as all NCIS Agents hired after January 2019 have been provided the required training as part of their onboarding training and NCIS continues to provide the training to Agents that were hired before then that have not already been certified. The trainee often writes the reports for activities conducted jointly with their training agent during this period to get exposure to the NCIS report writing and case management system. Since 2019, all new NCIS agents received the DoDI required pre-requisite training at FLETC.<sup>20</sup> However, prior to 2019, agents out of FLETC had to attend the training at a later date. During their FTEP rotation, these non-trained agents may have been assigned as the lead for a SVIP case for the purposes of documenting the investigation they worked under the guidance of a trained SVIP agent.

The OSI Director of Law Enforcement told us that a non-certified agent would be assigned a covered offense because:

OSI, like the other MCIO's, has seen a significant increase in abusive sexual contact, sexual assault, and domestic violence cases due to the changes implemented by Congress over the past 8 years regarding jurisdiction over these offenses. However, we have not had a corresponding increase in resources and manpower to address the additional workload. With only 21 specialized billets and not all field agents being SVIP trained, this presents a significant challenge for the command. As a stop-gap measure and in order to ensure timely action in SVIP investigations, in the case that a field agent is not SVIP trained, OSI guidance is to have them assist on SVIP cases under the supervision of more experienced agents to ensure the investigation is sufficient, thorough, and timely.

---

<sup>20</sup> The Federal Law Enforcement Training Center, located in Glynco, GA, prepares the federal law enforcement community to safeguard the American people, our homeland, and our values. See <https://www.fletc.gov/>.

Overall, the MCIO representatives told us their failure to assign certified lead investigators to every special victim investigation occurred because the number of certified investigators has not kept pace with the increase in the number of special victim investigations. The MCIOs have experienced a significant increase in special victim investigations, including sexual assault and domestic violence offenses. For example, from FY 2011 through FY 2019, the number of unrestricted reports of sexual assault in all the Services more than doubled; the cases increased from 2,640 in FY 2011 to 5,699 reported cases in FY 2019.<sup>21</sup> However, the Services have not provided a corresponding increase in resources and manpower to address the increased workload.

## Non-Certified Lead Investigators May Not Conduct the Best Investigation

As a result, the MCIOs conducted investigations of covered offenses in a manner that was inconsistent with federal law and DoD policy, which required lead investigators to be certified to investigate covered offenses. Finally, if the MCIOs do not consistently assign a certified lead investigator to an investigation of a covered offense, they increase the risk that the investigation may be insufficient because the lead investigator is not trained in specific material, such as sexual assault offense elements of proof related to evidence collection and may not produce the best possible report of investigation for commanders to make disposition decisions.

## Recommendations, Management Comments, and Our Response

### ***Recommendation 1***

**We recommend that the U.S. Army Criminal Investigation Division Director, Naval Criminal Investigative Service Director, and Office of Special Investigations Commander, conduct a review to determine the resource requirements to train, certify, and assign additional criminal investigators to serve as lead investigators in investigations of covered offenses. The review should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.**

<sup>21</sup> "Department of Defense Annual Report on Sexual Assault in the Military Fiscal Year 2019 ", Appendix B, April 17, 2020.

### ***Criminal Investigation Division Comments***

The Commander of U.S. Army Criminal Investigation Command (USACIDC) agreed and published Operational Memorandum 009-21, “Sexual Assault Investigations – Special Victim Investigation and Prosecution (SVIP) Capability,” to specify how investigators will document communications with SVIP members.<sup>22</sup> The Commander also stated that as of August 13, 2021, CID has trained and certified over 1,000 special agents to investigate the covered offenses, and the reconstruction of CID will provide additional resources.

### ***Our Response***

Comments from the Commander partially addressed the recommendation; however, the comments did not address a resource review. Therefore, this recommendation is unresolved and will remain open. We request that the Director provide comments to the final report that describe how CID will conduct a resource review in conjunction with its Service Secretary to evaluate the need for additional resources.

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

The NCIS Assistant Director, responding for the NCIS Director, agreed and stated that NCIS continues to conduct internal reviews, has consistently requested the appropriate resources through formal Secretariat Review Board/Program Objective Memorandum submissions, and collaboration with the Secretary of the Navy is ongoing. The NCIS Assistant Director stated that NCIS is scheduled to receive additional personnel and funding in FY 2022. Additionally, in January 2019, NCIS incorporated advanced sexual assault training into the Special Agent Basic Training Program ensuring all NCIS Special Agents have the required training to investigate adult sexual assaults. NCIS also established advanced in-person and virtual training to investigate domestic violence, child abuse and child sexual assault.

### ***Our Response***

Comments from the Assistant Director addressed the specifics of our recommendation, and no further comments or actions are required. This recommendation is closed.

### ***Office of Special Investigations Comments***

The Air Force Deputy Inspector General, responding for the OSI Commander, agreed and stated that the OSI is working with the Air Force Inspector General to secure additional billets. The additional billet plus-up is part of the FY 2023 Program

---

<sup>22</sup> The USACIDC Commander transferred authority to the incoming Director of the Criminal Investigation Division on September 17, 2021, in conjunction with an organizational name change from U.S. Army Criminal Investigation Command to Army Criminal Investigation Division (CID).

Objective Memorandum and has a validated requirement to reach full health status in the Special Victim Investigation and Prosecution agent cadre. In addition, the OSI Academy Sex Crimes Investigations Training Program trained over 678 agents, 265 of which are still working at the installation level providing investigative support to the Department of the Air Force.

In FY 2021, the OSI held four Sex Crimes Investigator Training Program courses, training 106 agents in adult sex crimes investigations. The OSI Academy is on track to implement a vigorous SVIP training plan for FY 2022. Also, the OSI is in the process of identifying requirements to create an additional course, or add to the existing course, leading to certification. The first iteration of the course is projected in FY 2023.

### ***Our Response***

The comments from the Deputy Inspector General addressed the specifics of our recommendation, therefore, the recommendation is closed.

## Finding B

### **MCIOs Generally Provided Victims of Covered Offenses with Information on Available Advocacy Resources**

MCIOs generally provided victims of covered offenses with information on available advocacy resources as required by DoDI 1030.2. The DD Form 2701, “Initial Information for Victims and Witnesses of Crime,” is a standardized form that provides victims of a crime with information on the military justice process, a list of victim resources, and contact information if more assistance is needed. From June 1, 2018, through May 31, 2020, the MCIOs were required to issue DD Form 2701 to 500 victims for the 447 investigations of covered offenses we reviewed. This included 179 victims in CID cases, 189 victims in NCIS cases, and 132 victims in OSI cases. The MCIOs issued 488 of 500 (98 percent) victims a DD Form 2701.

Specifically, we determined that CID issued 179 of 179 (100 percent), NCIS issued 186 of 189 (98 percent), and OSI issued 123 of 132 (93 percent) victims a DD Form 2701. This occurred because the MCIOs have included mandatory fields in their case management systems to track the issuance of DD Forms 2701 or used management oversight reviews and case closure checklists as best practices. As a result, victims of covered offenses generally received information to better understand the military justice process, a list of victim resources, and contact information if more assistance was needed.

### **DoD and Services Are Required to Provide Advocacy Resources Information**

DoDI 1030.2, “Victim and Witness Assistance Procedures,” required that investigators issue a DD Form 2701, “Initial Information for Victims and Witnesses of Crime,” and record the issuance as “evidence the officer notified the victim or witness of his or her statutory rights.”<sup>23</sup> The DD Form 2701 is a standardized form that provides victims and witnesses to a crime with information on the military justice process, a list of victim resources, and contact information if more assistance is needed. DoDI 5505.18 requires the investigator assigned to conduct the adult sexual assault investigation to provide and explain the DD Form 2701 to

<sup>23</sup> DoDI 1030.2, “Victim and Witness Assistance Procedures,” June 4, 2004. This DoDI was canceled and incorporated in DoDI 1030.02 on September 2, 2020.

DD Form 2701, “Initial Information for Victims and Witnesses of Crime.”

the victim and any appropriate witnesses if they were not previously issued the form. Furthermore, the Services and MCIOs issued additional policy that builds on the DoD policies.

Army Regulation (AR) 27-10, "Military Justice," requires that at the earliest opportunity after the detection of a crime, and where it may be done without interfering with an investigation, the law enforcement official responsible for the investigation will inform the victims of their right to receive services using a DD Form 2701.<sup>24</sup>

Furthermore, CIDR 195-1 requires that investigators provide a DD Form 2701 to all victims and witnesses at the earliest appropriate time, if not previously provided. The policy directs that the issuance of the DD Form 2701 and explanation of victim rights be fully documented in the case activity summary.

Secretary of the Navy Instruction (SECNAVINST) 1752.4C, "Sexual Assault Prevention and Response Program Procedures," requires that the completed DD Form 2701 be distributed to the victims as required by DoDI 1030.2.<sup>25</sup> Also, Office of Naval Operations Instruction (OPNAVINST) 5800.7A directs that investigative staff will provide victims with DD Form 2701, complete with contact information listed on the back of the form.<sup>26</sup>

Furthermore, NCIS Manual 3, Chapter 6, "Investigative Theory and Procedures," requires that investigators provide a DD Form 2701 to all victims and witnesses and should annotate their investigation notes in some manner to document their provision of crime victim assistance information to that victim.<sup>27</sup>

AFI 51-201, "Administration of Military Justice," requires that at the earliest opportunity after identification of a crime, and when appropriate, law enforcement and investigative personnel provide to each victim or witness a DD Form 2701 and annotate on incident reports the date the investigator provided the form.<sup>28</sup> Also, when circumstances dictate, investigative personnel will promptly inform victims about the availability of emergency medical care and applicable social services.

Furthermore, AFOSIMAN 71-118-O, Volume 4, "General Investigative Methods," requires investigators to provide a DD Form 2701 to all victims and witnesses.<sup>29</sup> The manual directs investigators to document the actions of the victim with

<sup>24</sup> AR 27-10, "Military Justice," May 11, 2016.

<sup>25</sup> SECNAVINST 1752.4C, "Sexual Assault Prevention and Response Program Procedures," August 10, 2018.

<sup>26</sup> OPNAVINST 5800.7A, "Victim and Witness Assistance Program (VWAP)," March 4, 2008.

<sup>27</sup> NCIS Manual 3, Chapter 6, "Investigative Theory and Procedures," December 2006.

<sup>28</sup> AFI 51-201, "Administration of Military Justice," December 8, 2017.

<sup>29</sup> AFOSIMAN 71-118-O, Volume 4, "General Investigative Methods," April 30, 2009 (certified current January 13, 2015, incorporating all changes through change 8, July 7, 2016).

regards to the DD Form 2701 within the electronic interview activity Details tab in the Investigative Information Management System (I2MS). The manual also requires investigators to document the names of the victims who declined the DD Form 2701 and the reason for the declination as an Internal Data Page note in I2MS.

Additionally, AFOSIMAN 71-121, "Processing and Reporting Investigative Matters," and 71-122, Volume 1, require investigators provide a DD Form 2701 to all victims and witnesses and document the actions of the victim with regards to the DD Form 2701 as "Accepted," "Declined," or "Previously Accepted" within the electronic interview activity Details tab in I2MS.<sup>30</sup>

## **MCIOs Provided Advocacy Resource Information to Victims**

The MCIOs opened and closed 3,498 investigations of covered offenses from June 1, 2018, through May 31, 2020. We evaluated a randomly selected statistical sample amounting to 447 of 3,498 investigations of covered offenses. The 447 investigations consisted of 154 CID investigations, 179 NCIS investigations, and 114 OSI investigations. We determined that in these 447 investigations, DoDI 1030.2 required the investigators to issue DD Form 2701 to 500 victims.<sup>31</sup> We reviewed the 447 investigations of covered offenses and identified 500 victims within those investigations. We determined the MCIOs generally issued victims a DD Form 2701. Specifically, we determined that CID investigators issued 179 of 179 (100 percent) victims a DD Form 2701. We determined that NCIS investigators issued 186 of 189 (98 percent) victims a DD Form 2701. We also determined that OSI investigators issued 123 of 132 (93 percent) victims a DD Form. We found no correlation between assignment of non-certified lead investigators and the noncompliance with DD Form 2701 issuance requirements.

Table 2 shows the number of victims identified in the investigations reviewed and compliance rates for the issuance of DD Forms 2701 to victims of covered offenses.

---

<sup>30</sup> AFOSI Guidance Memorandum to AFOSI Manual 71-121, "Processing and Reporting Investigative Matters," March 23, 2018.

<sup>31</sup> A single investigation could include allegations of offenses with more than one victim.

Table 2. MCIO DD Form 2701 Issuance Data

MCIO	Victims	DD Form 2701 Issued		DD Form 2701 Not Issued	
CID	179	179	100%	0	0%
NCIS	189	186	98%	3	2%
OSI	132	123	93%	9	7%
<b>Total</b>	<b>500</b>	<b>488</b>	<b>98%</b>	<b>12</b>	<b>2%</b>

Source: CID, NCIS, and OSI Investigation Case Files.

The DD Form 2701 provides victims with information on the military justice process and available resources for additional assistance. Victims who are not issued DD Forms 2701 may not understand or cooperate with the military justice process, may be unaware of additional resources, may not ask for or receive available treatment, and may not have contact information for additional assistance.

## MCIOs Used Case Management Systems to Track Victim Resource Information Issuance

We found that CID created mandatory fields within the Army Law Enforcement Reporting and Tracking System (ALERTS) to track the issuance of the DD Form 2701. The CID Chief of Policy told us that trained agents issue DD Forms 2701 to “each victim/witness with all the applicable information and documents the activity in ALERTS.” The CID Chief of Policy also told us that investigators cannot close an investigation in ALERTS if the investigator does not document that information. Further, the CID Chief of Policy told us the issuance of the DD Form 2701, “is emphasized during reviews by the team chief and special agent-in-charge and by the Battalion, Group, and Command inspections.” We believe that the mandatory fields may have attributed to CID’s 100 percent compliance rate and that similar features within NCIS and OSI’s case management systems could improve their compliance rates.

Furthermore, the NCIS Family and Sexual Violence Division Chief told us “all NCIS agents provide the DD Form 2701 to victims in cases where a victim (including SVIP cases) has been identified. In the cases of minors, the DD Form 2701 may be presented to a parent/guardian.” The NCIS Family and Sexual Violence Division Chief also told us that NCIS investigators’ issuance of DD Form 2701 is documented within the NCIS case management system Consolidated Law Enforcement Operation Center (CLEOC). The NCIS Family and Sexual Violence Division Chief also told us that in sexual assault ROIs, investigators document the DD Form 2701 issuance to the victim in the NCIS ROI Open if NCIS met with victim before the publishing of

the NCIS ROI Open.<sup>32</sup> Furthermore, the NCIS Family and Sexual Violence Division Chief told us that “[t]he issuance of the DD Form 2701 is emphasized during the pendency of the case by the SSA [Supervisory Special Agent] when reviewing the case and during case review.” An NCIS Management Analyst within the NCIS Family and Sexual Violence Division also told us that the three instances where investigators did not document the issuance of a DD Form 2701 was due to “an oversight on the agent’s part.”

Finally, the OSI Director of Law Enforcement told us that “[a]gents must provide a DD Form 2701 to all victims and document the action of the victim with regards to the DD Form 2701 as ‘Accepted,’ ‘Declined,’ or ‘Previously Accepted’ within the electronic interview activity in I2MS [Investigative Information Management System].” The OSI Director of Law Enforcement also told us that “[t]he names of the victims who declined the DD Form 2701 and reason for declination are documented as an Internal Data Page (IDP) note, also within I2MS.” The OSI Director of Law Enforcement told us that “[t]he requirement to issue a DD Form 2701 is emphasized in the case closure checklist, AFOSIMAN 71-118, Volume 4 and AFOSIMAN 71-122, Volume 1,” so if investigators did not document an issuance of a DD Form 2701, it “could be a result of agent oversight.”<sup>33</sup>

## Victims Were Made Aware of Available Resources

Overall, the MCIOs generally provided advocacy resource information to victims. This occurred because the MCIOs have included mandatory fields in their case management systems to track the issuance of DD Forms 2701 or used management oversight reviews and case closure checklists as best practices. As a result, victims of covered offenses generally received information to better understand the military justice process, a list of victim resources, and contact information if more assistance was needed.

## Conclusion

We found that the MCIOs generally provided victims of covered offenses with information on available advocacy resources. We attributed this compliance rate with their current use of case management systems to track victim resource information issuance. Therefore, we are not making any recommendations.

---

<sup>32</sup> The first Report of Investigation, submitted to report investigation initiation, is designated with status code of OPEN.

<sup>33</sup> AFOSI Manual 71-118, Volume 4, “General Investigative Methods,” April 30, 2009, (Certified Current January 13, 2015, Incorporating All Changes Through Change 8, July 7, 2016).

AFOSI Manual 71-122, Volume 1, “Criminal Investigations,” September 28, 2012, (Certified Current July 30, 2015, Incorporates All Changes Through Change 6, February 16, 2017).

## Finding C

### **MCIO Investigators Did Not Consistently Document Communications with SVIP Members about Covered Offenses**

MCIO investigators did not consistently document communications with SVIP members about covered offenses as required by DoD Instructions 5505.18 and 5505.19. From June 1, 2018, through May 31, 2020, in the 447 investigations of covered offenses we reviewed, the MCIOs were required to:

- notify and collaborate with the judge advocates and victim advocates within 24 and 48 hours of determining that an allegation met the criteria of a covered offense to integrate SVIP services,
- consult monthly with the judge advocates and victim advocates to assess the progress of the investigation and prosecution and to help ensure all aspects of the victim's needs are being met, and
- document the communications in the investigation case file.

The 447 investigations of covered offenses we reviewed consisted of 154 CID investigations, 179 NCIS investigations, and 114 OSI investigations.

We determined that the CID and OSI investigators did not consistently notify and collaborate (or properly document the notification and collaboration) with the judge advocates and victim advocates within 24 and 48 hours of determining an allegation was a covered offense to integrate victim services. Also, the CID, NCIS, and OSI investigators did not consult monthly (or properly document the consult) with SVIP members to assess the progress of the investigation and prosecution. This occurred because the MCIO investigators either overlooked the requirement to communicate with SVIP members, or did not properly document their communication with SVIP members in the investigation case file.

As a result, MCIO investigators conducted investigations of covered offenses in a manner that was inconsistent with DoD policy, which required lead investigators to communicate with SVIP members to ensure system accountability and collaboration. Finally, if the MCIO investigators do not consistently communicate with the SVIP members in an investigation of a covered offense, they increase the risk that victims may not receive the services available to them, such as mental health counseling.

## Lead Investigators Are Required to Have Communications with SVIP Members

DoDI 5505.19 requires that the lead investigator notify SVIP members within 24 hours and collaborate within 48 hours after determining that an allegation meets the criteria of a covered offense, and then consult with SVIP members monthly. DoDI 5505.19 also requires the lead investigator to document in the investigation case file the date, name, position, and organization for each communication. Furthermore, the MCIOs issued policy that builds on the DoD policies.

CIDR 195-1 requires the case investigators or CID SVIP representative to notify each SVIP member — within 24 hours (immediately for SARC notifications) and collaborate with each SVIP member — within 48 hours, after determining that an allegation meets the criteria of a covered offense, and then meet or consult with SVIP members at least monthly. According to the CIDR, all SVIP notifications, meetings, and consultations are to be documented in the case activity summary in the appropriate investigation case file. The documentation is required to include the name, position, and organization of the persons involved in the consultation and the date of the consultation.

Operational Memorandum 009-21, “Sexual Assault Investigations – Special Victim Investigation and Prosecution (SVIP) Capability,” requires the CID field element to ensure the lead investigator notifies each SVIP member within 24 and 48 hours of determining that an allegation meets the criteria of a covered offense, consults with SVIP members monthly, and documents the communication in the investigation case file. The memorandum also specifies how investigators will document communications with SVIP members.<sup>34</sup>

NCIS Manual 3, Chapter 34, requires the assigned investigator to notify each member of the SVIP within 24 hours and collaborate with all members of the SVIP within 48 hours. The 24 and 48 hour collaboration occurs after determining that an allegation meets the criteria of a covered offense, and then the assigned investigator is required to meet or consult with SVIP members at least monthly. According to the manual, all SVIP member notifications, meetings, and consultations are to be documented in the appropriate NCIS investigation case file. The documentation is required to include the name, position, organization, and dates of notification and collaboration.

---

<sup>34</sup> Operational Memorandum 009-21, “Sexual Assault Investigations – Special Victim Investigation and Prosecution (SVIP) Capability,” September 10, 2021.

NCIS updated NCIS Manual 3, Chapter 34, which required notification and collaboration with SVIP members to be documented in the Interim Report of Investigation and to include the names of the SVIP members, positions, organizations, and dates of notification or collaboration.<sup>35</sup>

AFOSIMAN 71-122, Volume 1, requires the investigators to notify each SVIP member, as appropriate, within 24 hours and collaborate with all SVIP members, as appropriate, within 48 hours, after determining that an allegation meets the criteria of a covered offense, and then meet with SVIP members at least monthly.<sup>36</sup> According to the manual, all SVIP notifications, meetings, and consultations are to be documented by the MCIO lead investigator in the appropriate investigation case file. The documentation is required to include the name, position, and organization of the persons involved in the consultation and the date of the consultation. The policy further requires the investigator to annotate in I2MS if the notifications were accomplished or not accomplished within the appropriate timeline.

## **MCIO Investigators Did Not Consistently Document Communications with SVIP Members about Covered Offenses**

The MCIOs opened and closed 3,498 investigations of covered offenses from June 1, 2018, through May 31, 2020. We evaluated a randomly selected statistical sample amounting to 447 of 3,498 investigations of covered offenses. The 447 investigations consisted of 154 CID investigations, 179 NCIS investigations, and 114 OSI investigations. DoD Instructions 5505.18 and 5505.19 required the MCIOs to notify SVIP members within 24 hours of an investigation after determining that an allegation met the criteria of a covered offense. DoD policy also required that MCIOs collaborate within 48 hours with SVIP members to integrate SVIP member services. Additionally, DoD policy requires that SVIP members be consulted monthly to assess the progress of the investigation and prosecution and help ensure all aspects of the victim's needs are being met. We reviewed 447 investigations to determine if the MCIOs communicated with the SVIP members within 24 and 48 hours of determining that an allegation met the criteria of a covered offense and whether the MCIOs consulted with the SVIP members at least monthly. Specifically, we verified whether the MCIOs documented the communication to include the name, position, and organization of the person involved in the communication.

<sup>35</sup> NCIS Manual 3, Chapter 34, "Sex Offenses (Category 8)," September 17, 2020. This policy superseded NCIS Manual 3, Chapter 34, "Sex Offense (Category 8)," December 4, 2017.

<sup>36</sup> The language "as appropriate" refers to collaborating with the appropriate personnel for that case. For example, if the case involved domestic violence, a domestic violence victim advocate would be the appropriate person, whereas if the case involved a sexual crime, the SARC would be the appropriate person.

Table 3 shows the number of investigations reviewed and MCIO compliance with requirements to document their 24- and 48-hour communications and monthly consultations with SVIP members. We found no correlation between assignment of non-certified lead investigators and the noncompliance with communication documentation requirements.

*Table 3. MCIO 24- and 48-hour Communications and Monthly Consultations Documented*

MCIO	24- and 48-hour Communications Documented		Monthly Consultations Documented	
CID (154 investigations)				
Judge Advocate	115	75%	106	69%
Victim Advocate	122	79%	40	26%
NCIS (179 investigations)				
Judge Advocate	174	97%	82	46%
Victim Advocate	173	97%	55	31%
OSI (114 investigations)				
Judge Advocate	94	82%	54	47%
Victim Advocate	92	81%	55	48%
Total for MCIOs (447 investigations)				
Judge Advocate	383	86%	242	54%
Victim Advocate	387	87%	150	34%

Source: CID, NCIS and OSI Investigation Case Files.

These sections discuss the communication rates for each of the MCIOs, followed by a section that describes the impact for all of the MCIOs.

### ***CID Investigators Did Not Consistently Communicate with SVIP Members about Covered Offenses***

We determined that CID investigators did not consistently document in the investigation case file that they notified and collaborated with SVIP members within 24 and 48 hours. Specifically, CID investigators did not document that they notified and collaborated with the judge advocates within 24 and 48 hours in 39 of 154 (25 percent) investigations and with the victim advocates in 32 of 154 (21 percent) investigations of covered offenses. Further, we determined that CID did not document monthly consults with the judge advocates in 48 of 154 (31 percent) investigations and with the victim advocates in 114 of 154 (74 percent) investigations of covered offenses.

### ***Investigators Did Not Adequately Document Communication***

The investigation case files did not indicate why the CID investigators did not communicate with SVIP members. We asked a CID representative why their investigators either did not communicate with or document their communication with SVIP members.

The CID Chief of Policy told us the reason an investigator would not properly document 24- and 48-hour notification is because ALERTS does not require the investigators to add the names of the members contacted. The CID Chief of Policy also told us that “CID is currently working with the developers [of] ALERTS to coincide the ‘SVIP members notified in 24 hours’ and ‘Collaboration with SVIP member within 48 hours’ check blocks to include the names of the members into an automatic CAS entry.” Additionally, the CID Chief of Policy told us, “Some of the offices and installations have consolidated the SVIP with the CMG [Case Management Group] meetings and documented the monthly coordination in separate files.”<sup>37</sup> This conflicts with DoD and CID policy, which requires the lead investigator to document the coordination in the investigation case file.

Nevertheless, we found that when CID investigators documented SVIP notification within 24 hours, as well as collaboration within 48 hours, they most commonly did so via an entry in the case activity summary. However, many of the investigation case files stated simply that “SVIP members were notified” or “collaboration with SVIP members occurred,” without identifying the specific SVIP members who received the notifications or who were included in collaboration. For the investigations where the SVIP members’ name and position were not documented, the DoD OIG did not consider this to have met the requirements as DoD and CID policy requires the documentation to include the name, position, organization, and dates of notification or collaboration in the investigation case file.

### ***NCIS Investigators Generally Notified and Collaborated but Did Not Consistently Consult Monthly with SVIP Members about Covered Offenses***

We determined that NCIS investigators generally documented in the investigation case files that they notified and collaborated with the SVIP members within 24 and 48 hours. Specifically, NCIS investigators recorded in the case file that they notified judge advocates within the 24 and 48 hours in 174 of 179 (97 percent) investigations and with the victim advocates in 173 of 179 (97 percent) investigations of covered

<sup>37</sup> The Case Management Group (CMG) meets monthly with base entities to “provide a well synchronized response” to allegations of sexual assault involving service members. Memorandum from the Under Secretary of Defense for Personnel and Readiness dated November 13, 2019. [https://www.sapr.mil/sites/default/files/Updates%20to%20CMG%20Process\\_13%20NOV%202019\\_UPR001180-19%20SIGNED.pdf](https://www.sapr.mil/sites/default/files/Updates%20to%20CMG%20Process_13%20NOV%202019_UPR001180-19%20SIGNED.pdf).

offenses. However, NCIS investigators did not document monthly consults with the judge advocates in 97 of 179 (54 percent) investigations and with the victim advocates in 124 of 179 (69 percent) investigations of covered offenses.

### ***Investigators Used Checklists and Standardized Documentation Which Contributed to the 24- and 48-Hour Notification and Collaboration Compliance***

We found two NCIS practices that likely contributed to the high compliance rate for the 24- and 48-hour notifications. First, in adult sexual assault investigations, NCIS investigators often used an “investigative plan” worksheet, that included designated spaces for the investigator to record the names and contact information for the SVIP members and to indicate if 24-hour notifications and 48-hour consultations were completed. Second, for all categories of covered offenses, the final report of investigation usually included a standardized paragraph identifying by name the SVIP members notified within 24 hours and collaborated within 48 hours. The use of checklists and format standardization for documenting compliance were best practices that likely contributed to NCIS’s high compliance rate for the 24- and 48-hour notifications.

### ***Investigators Did Not Adequately Document Monthly Communications***

The investigation case files did not indicate why NCIS investigators did not document monthly consults with SVIP members. We asked an NCIS representative why their investigators either did not communicate with or document their communication with SVIP members. The NCIS representative told us that the reason for a case agent either not conducting and or not documenting the monthly communications is “usually due to oversight on the NCIS agent’s part.” We found no correlation between the assignment of non-certified lead investigators and the noncompliance with communication documentation requirements.

### ***OSI Investigators Did Not Consistently Document Communication with SVIP Members about Covered Offenses***

We determined that OSI investigators did not consistently document in the investigation case file that they notified and collaborated with SVIP members within 24 and 48 hours. Specifically, OSI investigators did not document that they notified and collaborated with the judge advocates within 24 and 48 hours in 20 of 114 (18 percent) investigations and with the victim advocates in 22 of 114 (19 percent) investigations of covered offenses. Further, we determined that OSI investigators

did not document monthly consults with the judge advocates in 60 of 114 (53 percent) investigations and with victim advocates in 59 of 114 (52 percent) investigations of covered offenses.

### ***Investigators Did Not Have a Standardized Process to Document Communication***

The investigation case files did not indicate why OSI investigators did not communicate with SVIP members. We asked an OSI representative why their investigators either did not communicate with or document their communication with SVIP members.

The OSI Director of Law Enforcement told us that “there are no specified reasons for a case agent not to communicate with or document the 24/48 hour and monthly communications. This could be a result of agent oversight.”

No standardized process existed within OSI for documenting notifications and collaborations. We found that some OSI investigators documented 24-hour notifications and 48-hour collaborations in the report of investigation. However, other OSI investigators entered the 24-hour notifications and 48-hour collaborations on an “internal data page” within the computerized investigation case file. Although either practice is acceptable, choosing a standardized procedure for documenting SVIP member contacts could help improve compliance. We also observed that some OSI investigators notified a special victims’ counsel (SVC)—that is, an attorney representing the victim—but did not notify one or more required SVIP members. This may indicate that OSI investigators did not understand the respective roles of the SVC and SVIP members. We found no correlation between assignment of non-certified lead investigators and the noncompliance with communication documentation requirements.

### **MCIO Investigators Overlooked Communication Requirements**

The factors that contributed to the MCIO investigators not making the required notifications and consultations, or were not documenting them, with SVIP members about covered offenses were that MCIO investigators either overlooked the requirement to communicate with SVIP members or did not properly document their communication with SVIP members. As a result, MCIO investigators conducted investigations of covered offenses in a manner that was inconsistent with DoD policy, which required lead investigators to communicate with SVIP members to ensure system accountability and collaboration. Finally, if the MCIO

investigators do not consistently communicate with the SVIP members to an investigation of a covered offense, they increase the risk that victims may not receive the services available to them, such as mental health counseling.

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

### ***Recommendation 2***

**We recommend that the Army Criminal Investigation Division Director, Naval Criminal Investigative Service Director, and Office of Special Investigations Commander develop procedures to standardize how their investigators document the communications with Special Victim Investigation and Prosecution team members so the documentation includes the member's name, position, organization, and the date of communication.**

### ***U.S. Army Criminal Investigation Division Comments***

The USACIDC Commander agreed and published Operational Memorandum 009-21, "Sexual Assault Investigations – Special Victim Investigation and Prosecution (SVIP) Capability," specifying how investigators will document communications with SVIP members. The Commander also stated that the Army Law Enforcement Reporting and Tracking System (ALERTS) was modified to collect information associated with SVIP member communications. Specifically, CID modified ALERTS to require the name, position, and organization to be entered.

### ***Our Response***

The comments from the Commander addressed the specifics of our recommendation. Therefore, this recommendation is closed.

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

The NCIS Assistant Director, responding for the NCIS Director, agreed and stated that NCIS updated NCIS Manual 3, Chapter 34, "Sex Offenses," requiring notification and collaboration with SVIP members to be documented in the Interim Report of Investigation and include the names of the SVIP members, positions, organizations, and dates of notification or collaboration. Additionally, in December 2021, NCIS plans to publish NCIS Manual 3, Chapter 29, "Assault," with similar documentation requirements for other SVIP covered investigations.

### ***Our Response***

The comments from the Assistant Director addressed the specifics of our recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when we verify that NCIS has published the revised NCIS Manual 3, Chapter 29.

### ***Office of Special Investigations Comments***

The Air Force Deputy Inspector General, responding for the OSI Commander, agreed and stated that OSI is currently updating AFOSI Manual 71-121, "Reporting Investigative Matters," which will mandate documentation of all SVIP notifications and coordinations within the Internal Data Page of the case file. The updated manual will go out for official coordination by October 31, 2021. Additionally, OSI is developing a new case management system that will automate reminders for the 24-hour notifications, the 48-hour coordinations, and the monthly consultations for all SVIP investigations. Implementation of the new case management system is expected to begin in summer of FY 2022.

### ***Our Response***

The comments from the Deputy Inspector General addressed the specifics of our recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when we verify that OSI has published the revised policy.

## Finding D

### Services Did Not Consistently Assign Specially Trained Prosecutors to Cases Involving Covered Offenses

From June 1, 2018, through May 31, 2020, the Judge Advocate Generals (TJAGs) of the Army, Navy, and Air Force, and the Staff Judge Advocate to the Commandant of the Marine Corps (SJACMC) were required to assign specially trained prosecutors and to ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in each of the 447 cases involving covered offenses that we reviewed.<sup>38</sup> The 447 cases consisted of 154 Army cases, 113 Navy cases, 114 Air Force cases, and 66 Marine Corps cases. TJAGs and SJACMC did not consistently ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in cases involving covered offenses as required by DTM 14-003, "DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support."

Specifically, we determined that the Army did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 77 of 154 (50 percent) cases; the Navy did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 67 of 113 (59 percent) cases; the Air Force did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 107 of 114 (94 percent) cases; and the Marine Corps did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 7 of 66 (11 percent) cases. Further, the prosecutors assigned to handle the cases we reviewed were generally junior in grade, less experienced, and lacking specialized training specific to special victim cases. This occurred because the number of available specially trained special victim prosecutors has not kept pace with the increased number of special victim investigations. The Services have experienced a significant increase in special victim investigations, including sexual assault and domestic violence offenses. However, the Services have not been provided with an increase in resources and manpower to address the increased workload. As a result, by using prosecutors who are not specifically trained to handle cases involving covered offenses, the Services increased the risk that MCIO investigators and commanders did not receive the best legal advice with respect to critical investigative steps and case adjudication decisions.

<sup>38</sup> Directive-type Memorandum (DTM) 14-003, "DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support," February 12, 2014, Interim Change- 6, August 15, 2019.

## DoD and Services Are Required to Assign Specially Trained Prosecutors to Cases Involving Covered Offenses

Public Law 112-239 requires the Services to establish a special victim capability comprised of specially trained prosecutors for cases involving covered offenses.<sup>39</sup>

DTM 14-003 required the Services to “establish a distinct, recognizable group of professionals to provide effective, timely, and responsive worldwide victim support, and a capability to support the investigation and prosecution of special victim offenses[.]” At a minimum, this capability had to include “specially trained prosecutors ... who will work collaboratively with specially trained MCIO investigators.” Specially trained prosecutors were required to “possess the requisite litigation skills, professionalism, and leadership to provide the highest quality of legal representation for the government and support to victims in SVC cases, in accordance with established Service certification standards.”

These prosecutors had to “be capable of supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to responsible legal offices in SVC cases.” DTM 14-003 also directed the specially trained prosecutors to “work with military criminal investigative organizations (MCIOs) to provide advice, guidance, and support during the investigatory and military justice process of all reported criminal cases involving [covered offenses].” They were further directed to collaborate with SARCs, Family Advocacy Program managers, and victim advocates “during all stages of the investigative and military justice process to ensure an integrated capability, to the greatest extent possible.” Furthermore, DTM 14-003 required the Services to establish standards certification of SVIP prosecutors.

Finally, the Services were required:

to ensure that the MCIO will notify the responsible legal office and other appropriate individuals within 24 hours of determining that an allegation meets the criteria of a special victim offense. The SVC legal representative will promptly meet or consult with MCIO SVC members within 48 hours after the designation of an investigation as meeting SVC requirements. The SVC legal representative will meet or consult with MCIO SVC members at least monthly to assess

<sup>39</sup> Since judge advocates are required to support investigations and prosecutions, we will refer to their participation in “cases.” For consistency, we have used the term and acronym, Special Victim Investigation and Prosecution (SVIP) throughout this report. However, when quoting DTM verbiage, we will retain its term and acronym, Special Victim Capability (SVC).

progress in the investigation or prosecution of a covered offense, including ensuring any matter raised by the victim or a person designated to assist or represent the victim is properly addressed.

DoDI 1030.02, "Victim and Witness Assistance," incorporated and canceled DoDI 1030.2 and DTM 14-003. DoDI 1030.02 requires the Services to establish certification standards of SVIP prosecutors, but no longer requires the Services to ensure SVIP-certified prosecutors participate in notifications, collaborations, and consultations.

DoDI 5505.19 requires MCIO investigators to "collaborate with assigned specially trained judge advocates during all stages of the investigative and military justice process for covered offenses." Furthermore, the Services issued additional policy that built on the DoD policies.

Army Judge Advocate General Policy Memorandum 17-05, "Special Victim Prosecution Program," refers to specially trained prosecutors as Special Victim Prosecutors (SVP).<sup>40</sup> According to the memorandum, the SVP's primary mission is to develop and litigate special victim cases, including providing advice to other attorneys on all special victim investigations and cases. The policy requires installation or unit Staff Judge Advocates to immediately notify the SVP of any allegation of sexual assault or family violence. The SVPs then review sexual assault and family violence charges. Also, SVPs prosecute the special victim cases unless the SJA determines that unit-level prosecutors are sufficiently proficient to effectively prosecute the case. In these cases, the SVP will consult and provide leadership and guidance. This policy memorandum does not address 24-hour notifications, 48-hour collaborations or monthly consultations with other SVIP members.

Commander, Navy Legal Services Command Instruction (CNLSCINST) 5817.2, "Special Victim Investigation and Prosecution Policy," refers to specially trained prosecutors as "SVIP-certified trial counsel."<sup>41</sup> The instruction states that specially trained prosecutors are "normally" detailed to courts-martial involving covered offenses. When an SVIP-certified trial counsel is not assigned to a case, an SVIP-certified trial counsel will be made available to support the detailed trial counsel throughout all stages of the court-martial. This instruction defines SVIP capability as "a distinct, recognizable group of appropriately skilled professionals, including investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel who work collaboratively together to investigate and prosecute allegations of covered offenses." This policy does not address 24-hour notifications, 48-hour collaborations or monthly consultations with other SVIP members.

---

<sup>40</sup> Army Judge Advocate General Policy Memorandum 17-05, "Special Victim Prosecution Program," December 1, 2017.

<sup>41</sup> CNLSCINST 5817.2, "Special Victim Investigation and Prosecution Policy," May 22, 2019.

AFI 51-201 refers to specially trained prosecutors as “Special Victims Unit-Circuit Trial Counsel.” The instruction states that senior legal leaders may detail Special Victims Unit-Circuit Trial Counsel to cases involving covered offenses. If a determination is made that the case does not warrant detailing a Special Victims Unit-Circuit Trial Counsel, a Special Victims Unit-Circuit Trial Counsel is available to consult and provide litigation support to the local prosecutor remotely. AFI 51-201 states that the SJA will ensure that the legal office is notified within 24 hours of a reported covered offense; moreover, the SJA will designate the prosecutor to serve on the SVIP team for that case. The prosecutor will meet or consult with the OSI case agent within 48 hours. Then, the prosecutor will consult with the assigned case agent at least bi-weekly to assess progress in the investigation or prosecution, including ensuring any matter raised by the victim or their advocates is properly addressed.

MCO [Marine Corps Order] 5800.16, Volume 16, “Legal Support and Administration Manual,” refers to specially trained prosecutors as “Special Victim Qualified Trial Counsel (SVIP TC).”<sup>42</sup> The policy directs that the Regional Trial Counsel ensures an SVIP TC is detailed to the case on notification by NCIS of an SVIP investigation. Additionally, the policy directs that “[j]unior counsel not yet certified as an SVIP TC may participate in the preliminary review... [of a case] under the supervision of an SVIP TC.” This order directs that SVIP qualified trial counsels meet or consult with the NCIS SVIP members within 48 hours after notification and consult with NCIS at least monthly to assess the progress of investigations and prosecutions.

## Services Did Not Consistently Assign Specially Trained Prosecutors to Cases Involving Covered Offenses

The MCIOs opened and closed 3,498 investigations of covered offenses between June 1, 2018, and May 31, 2020. We evaluated a randomly selected statistical sample amounting to 447 of 3,498 investigations of covered offenses. DTM 14-003 defined specially trained prosecutors as “[e]xperienced judge advocates detailed by Military Department TJAGs, the SJA to the CMC, or other appropriate authority to litigate or assist with the prosecution of special victim cases and provide advisory support to MCIO investigators and responsible legal offices.” DTM 14-003 also required TJAGs of the Army, Navy, and Air Force, and the SJACMC to assign specially trained prosecutors and to ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in all 447 cases we reviewed involving covered offenses. The 447 cases consisted of 154 Army cases, 113 Navy

<sup>42</sup> MCO 5800.16, Volume 16, “Legal Support and Administration Manual,” June 19, 2020. This policy superseded Military Justice Bulletin 5800, “Military Justice Requirements and Implementation Guidance,” May 25, 2017. The requirements for qualification and assignment of SVIP remained substantially identical.

cases, 114 Air Force cases, and 66 Marine Corps cases.<sup>43</sup> Service representatives told us SVIP-certified prosecutors were assigned to cases to litigate and assist in prosecutions.

However, we reviewed 447 cases to determine if at least one specially trained prosecutor participated in SVIP notifications, collaborations, and consultations. We identified participating prosecutors by reviewing investigation case files. We then compared the names of these prosecutors with lists (provided by the Services) of their specially trained prosecutors.<sup>44</sup> We determined that TJAGs and SJACMC did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 258 of 447 (58 percent) cases involving covered offenses. Specifically, we determined that the Army did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 77 of 154 (50 percent) cases; the Navy did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 67 of 113 (59 percent) cases; the Air Force did not ensure SVIP-certified prosecutors participated in SVIP notifications, collaborations, and consultations in 107 of 114 (94 percent) cases; and the Marine Corps did not assign specially trained prosecutors in 7 of 66 (11 percent) cases. The Marine Corps representative told us that in their seven remaining cases, two assigned prosecutors were trained and experienced, but not administratively certified. Subsequently, the Marine Corps has retroactively certified them, effective through our evaluation period.

Table 4 shows the number of cases reviewed and compliance with requirements for SVIP-certified prosecutor participating in SVIP notifications, collaborations, and consultations.

---

<sup>43</sup> Based on the draft report, the Army JAG and SJACMC provided additional information about SVIP-certified prosecutors. We reviewed the updated information and revised our reporting on Army, Navy, and Marine Corps cases and prosecutor assignments.

<sup>44</sup> Each Service provided a list of its prosecutors specially trained for covered offenses. The Army had 29, the Navy had 24, and the Air Force had 35 prosecutors assigned to field duty, and the Marine Corps had a total of 95 specially trained prosecutors. Because prosecutors may rotate to other assignments, not all specially trained prosecutors are currently in a position to be detailed to a covered offense. We did not validate training attendance or Service documentation for prosecutors on the lists.

*Table 4. Cases With at Least One SVIP-Certified Prosecutor Participating in SVIP Notification, Collaborations, and Consultations*

Service	Cases	Specially Trained Prosecutor Assigned		Specially Trained Prosecutor Not Assigned	
Army	154	77	50%	77	50%
Navy	113	46	41%	66	59%
Air Force	114	7	6%	107	94%
Marine Corps	66	59	89%	7	11%
<b>Total</b>	<b>447</b>	<b>189</b>	<b>42%</b>	<b>258</b>	<b>58%</b>

Source: CID, NCIS, and OSI Investigation Case Files and Service prosecution programs.

## The Services Lack a Sufficient Number of Specially Trained Prosecutors

In the decade since Congress enacted Public Law 112-239, the Services have experienced a significant increase in special victim investigations and prosecutions. For example, from FY 2011 through FY 2019, the number of unrestricted reports of sexual assault in all the Services more than doubled; the cases increased from 2,640 in FY 2011 to 5,699 reported cases in FY 2019.<sup>45</sup> However, the Services did not receive an increase in judge advocates sufficient enough to keep pace with the increased caseload. For example, in FY 2011, the Air Force had 1,241 judge advocates on active duty.<sup>46</sup> As of FY 2019, that number was 1,304 (an increase of approximately 5 percent).<sup>47</sup> Because the number of cases doubled while the number of lawyers available for potential assignment to prosecute those cases increased by only 5 percent, a significant strain was placed on service prosecutorial resources.

Two other factors limited the number of available specially trained prosecutors. First, the Service legal communities had other mandatory responsibilities (such as defense counsel and victim's legal counsel programs) that limited their ability to reassign personnel to the SVIP capability.<sup>48</sup> Second, we found that DTM 14-003 directed that specially trained prosecutors must not only receive training, but must also be "experienced judge advocates." Also, based on career progression models, we concluded that many experienced litigators were assigned to supervisory positions and did not work directly with SVIP teams. This limited the Services, which did not have a sufficient number of experienced judge advocates to certify as SVIP prosecutors.

<sup>45</sup> "Department of Defense Annual Report on Sexual Assault in the Military Fiscal Year 2019 ", Appendix B, April 17, 2020.

<sup>46</sup> "Report of the Judge Advocate General of the Air Force, October 1 2010, to September 30, 2011."

<sup>47</sup> "Air Force Report on the State of Military Justice for Fiscal Year 2019 ", December 31, 2019.

<sup>48</sup> See, e.g., 10 USC Section § 827 (requiring detailed defense counsel for general and special courts-martial); 10 USC § 1044e (requiring the Services to designate Special Victims' Counsel to represent victims of sex-related offenses).

We determined that because of the experience requirement, the Services could not immediately create more specially trained prosecutors because experience takes time to develop. Additionally, because specially trained prosecutors were a scarce resource, the Services generally prioritized their assignment to more complex cases and to those cases likely to result in a court-martial. For example, the chief of military justice for an Army division told us that a brigade-level military justice advisor monitored special victim cases during CID investigations; a specially trained prosecutor was then detailed to “most” cases likely to result in court-martial, but not to “less complicated cases” or cases resolved by a guilty plea.<sup>49</sup> A Navy senior trial counsel (who was also a specially trained prosecutor) told us that he usually assigned “core trial counsel” or first-tour judge advocates to new cases; however, he would immediately assign himself to a case “if warranted based on the allegations.” Finally, an Air Force wing-level staff judge advocate told us that prosecutors were assigned to special victim cases based on caseload and requisite qualifications.<sup>50</sup> However, as there was no specially trained prosecutor assigned to the wing, a Circuit Trial Counsel was notified and detailed “by default” to each special victim case because he was the only specially trained prosecutor in the region.

## **Not Assigning Specially Trained Prosecutors May Affect the Investigative Phase**

As a result, during many of the MCIO investigations we reviewed, the assigned prosecutor was an inexperienced, junior prosecutor without specialized training in special victim cases. The investigative phase of a case may include critical decisions, such as whether to seek a search authorization and the prosecutor’s opinion as to whether probable cause exists to support charges. A discussion about protective orders could benefit commanders, victims, and victim advocates. Failure to assign specially trained and certified prosecutors during the initial phase of a case increased the risk that MCIO investigators and commanders may not have received the best legal advice with respect to critical investigative steps and case adjudication decisions.

DTM 14-003 was canceled when DoDI 1030.02 was published in September 2020, but its requirement for SVIP-certified prosecutors to participate in SVIP notifications, collaborations, and consultations was not carried forward into the Instruction.

---

<sup>49</sup> According to the “DOD Dictionary of Military and Associated Terms,” a brigade, or brigade combat team, is “A combined arms team that forms the basic building block of the Army’s tactical formations.”

<sup>50</sup> According to the “DOD Dictionary of Military and Associated Terms,” a wing is, “An Air Force unit composed normally of one primary mission group and the necessary support organizations.”

## Recommendation, Management Comments, and Our Response

### ***Revised Recommendation***

As a result of management comments from the Judge Advocates General of the Army, Navy, and Air Force, and the Staff Judge Advocate to the Commandant of the Marine Corps, we revised Recommendation 3 from our draft report that the Judge Advocates General of the Army, Navy, and Air Force, and the Staff Judge Advocate to the Commandant of the Marine Corps, conduct a review to determine the resource requirements to train, certify, and assign additional specially trained prosecutors to all phases of the military justice process for covered offenses.

During our evaluation, prosecutor participation in notifications, collaborations, and consultations with the SVIP team were no longer required by DoD policy; therefore a review of the resource requirements to conduct those actions is not applicable. DTM 14-003 required the Services to ensure SVIP prosecutors participated in 24-hour notification, 48-hour collaboration and monthly consultations with SVIP members. During our evaluation, the DTM was cancelled by DoDI 1030.02, which does not require SVIP prosecutors to participate in notifications, collaborations, and consultations.

Therefore, we revised Recommendation 3 to recommend that the Under Secretary of Defense for Personnel and Readiness, in conjunction with the Judge Advocates General of the Army, Navy, and Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps, conduct a review to determine whether to reestablish the DoD requirement that SVIP-certified prosecutors participate in SVIP notifications, collaborations, and consultations.

We coordinated this revised recommendation with the Military Deputy Director of the Office of Legal Policy in the Office of the Under Secretary of Defense for Personnel and Readiness, who told us that his office is currently reviewing the requirements in DoDI 1030.02 and will consider revisions. We request that the Under Secretary of Defense for Personnel and Readiness provide comments to the final report on revised Recommendation 3.

### ***Recommendation 3***

**We recommend that the Under Secretary of Defense for Personnel and Readiness, in conjunction with the Judge Advocates General of the Army, Navy, and Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps, conduct a review to determine whether to reestablish the Department of Defense requirement, that Special Victim Investigation and Prosecution-certified prosecutors participate in SVIP notifications, collaborations, and consultations, that was disestablished with the issuance of DoDI 1030.02.**

## Finding E

### Services Assigned Certified Victim Advocates to Cases of Covered Offenses

The Services assigned certified victim advocates to cases of covered offenses as required by DoDI 6495.03. From June 1, 2018, through May 31, 2020, the Services were required to assign certified Sexual Assault Response Coordinators (SARCs) or Sexual Assault Prevention and Response (SAPR VAs) to 227 cases (associated with 447 investigations we reviewed).<sup>51</sup>

Specifically, we determined that out of the 227 cases, there were 75 Army cases, 58 Navy cases, 66 Air Force cases, and 28 Marine Corps cases. Moreover, we found that the Army assigned Defense Sexual Assault Advocate Certification Program (D-SAACP) certified victim advocates in 75 of 75 (100 percent) cases; the Navy assigned certified victim advocates in 58 of 58 (100 percent) cases; the Air Force assigned certified victim advocates in 66 of 66 (100 percent) cases; and the Marine Corps assigned certified victim advocates in 28 of 28 (100 percent) cases.

This occurred because the Services established multi-layered approval, review, and program inspections to manage victim advocate D-SAACP applications, renewals, and verification milestones. In addition, the DoD Sexual Assault Prevention and Response Office disseminated weekly D-SAACP certification status rosters to enable program managers to reduce any lapses in D-SAACP certification. Collectively, these measures ensured that only certified SARCs or SAPR VAs were assigned to cases of covered offenses. As a result, in the 227 cases we reviewed, the Services assigned certified SARCs and SAPR VAs to covered offense cases to ensure all aspects of the victims' needs were met.

### DoD and Services Are Required to Assign Certified Victim Advocates in Response to Covered Offenses

DoDI 6495.03 requires that a specially trained Sexual Assault Response Coordinator (SARC) or Sexual Assault Prevention and Response Victim Advocate (SAPR VA) be assigned in response to covered offense allegations involving sexual assault. DoDI 6495.03 defines certification requirements for SARCs and SAPR VAs.

<sup>51</sup> MCIO investigators are not required to notify SARCs and SAPR VAs on child abuse and domestic violence investigations. Of the 447 investigations, 227 were adult sexual assault cases in which the MCIO investigators were required to notify SARCs or SAPR VAs.

Specifically, DoDI 6495.03 requires SARCs and SAPR VAs assigned to the SVIP function to complete specialized victim advocacy training.

According to DoDI 6495.03, individuals who perform the duties of SAPR Program Managers with direct access to victims, SARCs, and SAPR VAs must undergo a background investigation and complete the Defense Sexual Assault Advocate Certification Program (D-SAACP) certification. In addition, to maintain their certification, victim advocates must show proof of continuing education training for re-certification. DoDI 6495.03 establishes training requirements for SARCs and SAPR VAs. DoDI 6495.03 also establishes the DoD Sexual Assault Prevention and Response Office as the oversight of the SARC and SAPR VA certification process. Additionally, the policy directs the Services to track the training and certification of their personnel. Furthermore, the Services issued additional policy that builds on the DoD policies.

AR 614-200, "Enlisted Assignments and Utilization Management," states that victim advocates must possess a current certification issued and approved by D-SAACP.<sup>52</sup>

OPNAVINST 1752.1C, "Navy Sexual Assault Prevention and Response (SAPR) Program," directs that the Commander, Navy Installations Command, is responsible for ensuring SARCs have, at a minimum, a favorable national agency check, do not have a conviction of a sexual assault offense, are not registered as a sex offender, and have completed the required SAPR training and D-SAACP certification.<sup>53</sup> Additionally, victim advocates must complete 40 hours of initial SAPR victim advocate training.

AFI 90-6001, "Sexual Assault Prevention and Response (SAPR) Program," states that Major Command SARCs are responsible for ensuring all installation victim advocates obtain D-SAACP credentialing and maintain bi-annual training.<sup>54</sup>

MCO 1752.5B, "Sexual Assault Prevention and Response (SAPR) Program," requires that the commanders appoint SARCs upon completion of all prerequisite training and D-SAACP certification.<sup>55</sup> Additionally, the order require SARCs to complete annual training and bi-annual D-SAACP recertification.

<sup>52</sup> AR 614-200, "Enlisted Assignments and Utilization Management," January 25, 2019.

<sup>53</sup> OPNAVINST 1752.1C, "Navy Sexual Assault Prevention and Response (SAPR) Program," August 13, 2015.

<sup>54</sup> AFI 90-6001, "Sexual Assault Prevention and Response (SAPR) Program," May 21, 2015, (Incorporating change 1, March 18, 2016; as amended by Air Force Guidance Memorandum (AFGM) 2017-01, October 12, 2017; AFGM 2018-01, October 11, 2018; and AFGM 2019-01, October 9, 2019).

<sup>55</sup> MCO 1752.5B, "Sexual Assault Prevention and Response (SAPR) Program," March 1, 2013, (re-issued as MCO 1752.5C on June 3, 2019).

## Services Assigned Certified Victim Advocates to Cases of Covered Offenses

The MCIOs opened and closed 3,498 investigations of covered offenses from June 1, 2018, through May 31, 2020. We evaluated a randomly selected statistical sample amounting to 447 of 3,498 investigations of covered offenses. Of the 447 investigations, 227 were sexual assault cases in which the MCIO investigators notified SARCs or SAPR VAs.<sup>56</sup> DoDI 6405.03 required the Services to assign D-SAACP certified SARCs or SAPR VAs to the 227 adult sexual assault cases. To be certified, SARCs and SAPR VAs must complete 40 hours of D-SAACP-approved training (and continued education training), verify experience, and sign a Code of Ethics form.

We reviewed the 227 cases to determine if at least one certified victim advocate participated. We identified the SARCs and SAPR VAs who provided services for each investigation, and verified whether the Service's certified victim advocates list contained the SARCs and SAPR VAs.<sup>57</sup> The 227 cases consisted of 75 Army cases, 58 Navy cases, 66 Air Force cases, and 28 Marine Corps cases. Specifically, we determined that the Army assigned a certified SARC or SAPR VA in 75 of 75 (100 percent) cases; the Navy assigned a certified SARC or SAPR VA in 58 of 58 (100 percent) cases; the Air Force assigned a certified SARC or SAPR VA in 66 of 66 (100 percent) cases; and the Marine Corps assigned a certified SARC or SAPR VA in 28 of 28 (100 percent) cases of covered offenses.

Table 5 shows the number of cases in which DoDI 6495.03 required a SARC or SAPR VA and their compliance with certification requirements.

---

<sup>56</sup> The remaining cases involved intimate partner abuse or the victims were under 18 years of age. In these cases, MCIO investigators were required to notify Family Advocacy Program managers or Domestic Abuse Victim Advocates, who are each required to be trained and professionally certified as an employment requirement. Because of this integral employment requirement, we did not include these cases in this Finding section.

<sup>57</sup> Each Service or the DoD Sexual Assault Prevention and Response Office provided the OIG team with a list of its SARCs and SAPR VAs, in addition to their D-SAACP certification data. The Army had 39,926, the Navy had 161, the Air Force had 222, and the Marine Corps had 4,227 victim advocates. We did not validate training attendance or Service documentation for SARCs or SAPR VAs on the lists.

Table 5. Cases with Certified SARCs or SAPR VAs

Service	Cases	Certified SARC or SAPR VA Assigned	
Army	75	75	100%
Navy	58	58	100%
Air Force	66	66	100%
Marine Corps	28	28	100%
Total	227	227	100%

Source: CID, NCIS, and OSI Investigation Case Files and Army SHARP, Navy SAPR, Air Force SAPR, and USMC SAPR Office records.

### Certified Victim Advocates Were Assigned to Cases of Covered Offenses

The Services are responsible for assigning the appropriate certified victim advocate to all cases of adult sexual assault. The Services assigned certified SARCs or SAPR VAs in all cases of adult sexual assault in which the MCIO investigators notified SARCs or SAPR VAs. This occurred because the Services established multi-layered approval, review, and program inspections to manage victim advocate D-SAACP applications, renewals, and verification milestones. In addition, the DoD Sexual Assault Prevention and Response Office disseminated weekly D-SAACP certification status rosters to enable program managers to actively reduce any lapses in D-SAACP certification. Collectively, these measures ensured that only certified SARCs or SAPR VAs were assigned to cases of covered offenses. As a result, in the 227 cases in which the MCIO investigators notified them, the Services assigned certified SARCs and SAPR VAs to covered offense cases to ensure all aspects of the victims’ needs were met.

### Conclusion

The Services assigned certified victim advocates to cases of covered offenses. Therefore, we are not making any recommendations.

## Appendix A

---

### Scope and Methodology

We conducted this evaluation from August 2020 through May 2021 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 and revised in December 2020 by the Council of 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.

#### ***Evaluation of MCIO Law Enforcement Services (Investigations)***

To determine whether the MCIOs investigated reports of covered offenses according to policy, we identified the specific criteria for MCIO investigators to comply with DoD, Service, and MCIO-specific regulations. Specifically, DoDI 5505.19 directs the MCIOs to select and certify investigators who will serve as the lead investigator for investigations of covered offenses and requires the MCIO investigators to notify, collaborate and consult with SVIP members within established timelines. In addition, the MCIO must provide a DD Form 2701 to all victims identified in a covered offense.

We requested the MCIOs provide a list of criminal investigations of covered offenses opened on or after June 1, 2018, and closed on or before May 31, 2020, to determine compliance with DoD, Service, and MCIO regulations in effect at the time of the investigations.<sup>58</sup> The MCIOs submitted lists totaling 3,498 covered offense investigations. To better assess MCIO investigator activities, we excluded the following investigations.

- We excluded investigations that have been worked exclusively by, or jointly with, other Federal law enforcement agencies, or investigations in which the Military Service organization did not conduct investigative activity. Eliminating these investigations from the review allowed a more accurate assessment of the MCIOs’ performance in their investigations.
- We excluded investigations conducted at the Military Service Academies to avoid conflict with previous and ongoing DoD OIG evaluations.

---

<sup>58</sup> “Completed” means that the MCIOs have completed investigative activity, referred the investigation for command action, and received a completed report of command action or declination.

- We excluded investigations that did not meet the criteria for our evaluation. For example, we excluded investigations where action taken against a subject was not completed by May 31, 2020.

In addition to requesting the list of criminal investigations, we asked the MCIOs to provide a list of investigators certified to lead investigations of covered offenses. We did not validate the training attendance or MCIO documentation for listed investigators.

DoD OIG Quantitative Methods Division (QMD) reviewed the list of covered offense investigations and identified a stratified random sample of 447 investigations to evaluate, based on a desired level of reliability. We requested a 90-percent confidence level, a 50-percent probability of occurrence, and a 9-percent precision level. We provided the QMD-generated case list to the MCIOs and requested that they produce the 447 specified investigations for review.

We developed an evaluation protocol based on DoD, Service, and MCIO regulations. These protocol questions were related to SVIP capabilities and evaluation objectives.

For data collection efficiency and standardization, a relational database was created with the protocol questions that we used to review each of the 447 investigations of covered offenses. Our team collectively reviewed an investigation case file to assist normalization of the review process. We also performed quality control reviews of 103 investigation case file evaluations to safeguard the integrity of our testing. These reviews ensured the functionality of the evaluation protocol, formed a baseline for the review team, and set a standard for a consistent application of procedures among the evaluators.

We reviewed 447 investigation case files identified between June 1, 2018, and May 31, 2020. At the conclusion of the case review, we analyzed the data collected and stored in our case assessment database by developing Microsoft Access queries to identify investigative tasks and steps that were not completed. The queries revealed the investigative tasks or steps involved with each deficiency and the number of instances of each.

Lastly, we used the database to generate results of our evaluations to establish sufficient evidence to support our findings.

### ***Evaluation of Service Prosecutors***

For the same set of cases identified by QMD, we asked the Judge Advocates Generals (TJAGs) of the Army, Navy, and Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps (SJACMC) to provide a list of prosecutors specially trained for covered offenses. We did not validate the training attendance or Service documentation for the listed prosecutors. We reviewed the 447 cases to determine if at least one specially trained prosecutor participated in SVIP notifications, collaborations, and consultations. We identified participating prosecutors by reviewing the investigation case files. Then, we compared the names of these prosecutors with the lists (provided by the Services) of their specially trained prosecutors. Based on the draft report, the Army JAG and SJACMC provided additional information about SVIP-certified prosecutors. We reviewed the updated information and revised our reporting on Army, Navy, and Marine Corps cases and prosecutor assignments.

### ***Evaluation of Service SARC and SAPR VA***

From the same set of cases identified by QMD, we asked the Services' SAPR Offices to provide a list of their certified SARCs and SAPR VAs. In addition, we asked the Services to provide the associated Department of Defense Sexual Assault Advocate Certification Program (D-SAACP) certification status of their victim advocates. We did not validate training attendance or Service documentation for the listed victim advocates. Next, we documented all victim advocates that were notified by investigating MCIOs in 447 sample investigation case files. Of the 447 investigations, 227 were adult sexual assault cases in which the MCIO investigators notified SARCs or SAPR VAs. We reviewed the 227 cases to determine if at least one certified victim advocate participated. We identified the SARC and SAPR VAs who provided services for each investigation, and verified whether the Service's certified victim advocate list contained the SARC and SAPR VAs.

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

We used computer-processed data to perform this evaluation. Each of the Service TJAGs provided data from the respective military justice systems. We did not verify the reliability of the following Army, Navy, and Marine Corps, and Air Force TJAG data systems.

- Army Courts-Martial Information System (ACMIS)
- Navy and Marine Corps Case Management System (CMS)
- Air Force Automated Military Justice Administration and Management System (AMJAMS)

Each of the military LEOs used its respective reporting systems to retrieve information about the lead investigators, 24-hour notifications, 48-hour collaborations, and monthly consultations. We did not verify the reliability of the LEO data systems.

- Army Law Enforcement Reporting and Tracking System (ALERTS)
- Navy Consolidated Law Enforcement Operations Center (CLEOC)
- Air Force Investigative Information Management System (I2MS)

The DoD SAPRO or Services provided us certification lists compiled by the National Organization for Victim Assistance (NOVA), contracted by the DoD SAPRO to administer the D-SAACP. We did not verify the reliability of the NOVA data system.

## Use of Technical Assistance

We used technical assistance from the Quantitative Methods Division, as previously described.

## Appendix B

---

### Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the DoD, the DoD Office of Inspector General (DoD OIG), and the United States Air Force issued 17 reports discussing SVIP and victim treatment.

#### **GAO**

Report No. GAO 21-113, “Sexual Harassment and Assault: Guidance Needed to Ensure Consistent Tracking, Response and Training for DOD Civilians,” February 9, 2021

The GAO reviewed policies and guidance and analyzed program data from FY year 2015 through FY 2019. The GAO recommended that the Secretary of the Navy should clarify guidance regarding the responsibilities, if any, of Sexual Assault Prevention and Response personnel in notifying military criminal investigative organizations of unrestricted reports of sexual assault in accordance with DoDI 6495.02 to ensure immediacy of these reports.

Report No. GAO 20-110, “Child Welfare: Increased Guidance and Collaboration Needed to Improve DOD’s Tracking and Response to Child Abuse,” February 12, 2020

The GAO analyzed child abuse reporting data for FY 2014 to FY 2018 for the services’ Family Advocacy Programs, the MCIOs, and DoDEA, and the agency concluded that the DOD needed to improve and standardize reporting requirements and tracking mechanisms for child abuse incidents.

Report No. GAO 17-99, “Military Personnel: DoD Has Processes for Operating and Managing Its Sexual Assault Incident Database,” January 10, 2017

The GAO studied the DoD’s Defense Sexual Assault Incident Database (DSAID) to determine the current status of its implementation and steps the DoD has taken to help standardize DSAID’s use. The GAO found that the DoD took “several steps to standardize DSAID’s use through the development of (1) policies, processes, and procedures for using the system; (2) training for system users; and (3) processes for monitoring the completeness of data.” DoD officials planned to spend approximately \$8.5 million to implement modifications to DSAID in FYs 2017 and 2018 to address these challenges. Additionally, the GAO found that the DoD had management controls in place to make changes to the database.

**DoD**

“Sexual Assault Accountability and Investigation Task Force,” April 30, 2019

This report discussed the establishment of the Sexual Assault Accountability and Investigation Task Force (SAAITF) that is responsible for identifying, evaluating, and recommending immediate and significant actions to improve the accountability process specific to the investigation and disposition of cases involving victims of sexual assault. The report recommended the Military Services conduct a compliance review of the SVIP capability, modify applicable instructions to incorporate the SVIP capability within the investigative process, and enhance training and education for all practitioners within the SVIP.

**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 evaluated the United States Naval Academy (USNA) Sexual Assault and Prevention and Response (SAPR) Office, NCIS agents, and the Under Secretary of Defense for Personnel and Readiness to determine whether these organizations complied with their respective responsibilities for investigating, reporting, and providing victim advocacy to victims who reported sexual assault from June 1, 2017, through May 31, 2020. The DoD OIG determined that USNA SAPR personnel do not have a process or system to document “contacts and consults” with midshipmen-victims who chose not to make an official report of sexual assault or a means to document any resulting referrals to victim support services.

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

The DoD OIG evaluated all United States Military Academy cadet-victim sexual assault investigations opened on or after January 1, 2016, and completed on or before December 31, 2018. The DoD OIG determined the USMA SHARP personnel provided SHARP services to cadet-victims of sexual assault and victim support services were available to cadet-victims. In addition, CID agents generally responded to and investigated 47 reports of sexual assault in accordance with policy.

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 evaluated all United States Air Force Academy (USAFA) cadet-victim sexual assault investigations opened on or after January 1, 2015, and completed on or before December 31, 2017. The DoD OIG determined that the USAFA SAPR personnel provided SAPR services to cadet-victims at the USAFA as required by policy. In addition, AFOSI agents generally responded to and investigated reports of sexual assault in accordance with policy.

Report No. DODIG-2019-075, “Evaluation of Military Services’ Law Enforcement Responses to Domestic Violence Incidents,” April 19, 2019

The DoD OIG evaluated nonsexual domestic violence incidents with adult victims for the period of October 1, 2014, to September 30, 2016. The Military Service law enforcement organizations did not consistently comply with DoD policies when responding to nonsexual domestic violence incidents with adult victims. Specifically, Military Service law enforcement organizations did not consistently process crime scenes (62 of 219), conduct thorough interviews (148 of 219), or notify Family Advocacy Program staff of domestic violence incidents (49 of 219).

Report No. DODIG-2019-064, “Audit of DoD Efforts to Consult with Victims of Sexual Assault Committed by Military Personnel in the United States Regarding the Victim’s Preference for Prosecution,” March 20, 2019

The DoD OIG evaluated alleged adult sexual assaults or an attempt to commit adult sexual assault by Military Personnel in the United States between October 1, 2016, and June 30, 2018. In 77 of the 82 cases reviewed, officials at Fort Hood, Naval Station Norfolk, Joint Base San Antonio, and Marine Corps Base Camp Pendleton either did not ask or did not document that they asked victims of sexual assault about their preference for prosecution.

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

The DoD OIG evaluated covered adult sexual assault investigations opened on or before January 1, 2014, and completed on or before December 31, 2015. The DoD OIG determined that 156 of 378 cases had administrative deficiencies, including failure to issue victims a DD Form 2701, “Initial Information for Victims and Witnesses of a Crime,” and missing briefs to victims on the status of the investigation.

## ***DoD SAPR Office***

Report No. Fiscal Year 2019, "Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2019," April 9, 2020

The Ike Skelton National Defense Authorization Act (NDAA) of 2011 (Pub. L. 111-383) requires the Secretary of Defense to submit to the congressional Armed Service Committees an annual report on sexual assaults involving members of the armed forces during the preceding year, including reports from each of the military departments. This was the report for FY 2019. The Services received 6,236 restricted and unrestricted sexual assault reports in FY 2019.

Report No. APY 2018-2019, "Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2018-2019," January 2020

The John Warner National Defense Authorization Act (NDAA) for FY 2007 (Pub. L. 109-364) requires the Secretary of Defense to annually assess the Military Service academies' programs that address sexual assault and sexual harassment. This was the report for the academic year 2018-2019.

"Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2018," April 9, 2019

The 2011 NDAA requires the Secretary of Defense to submit to the congressional Armed Service Committees an annual report on sexual assaults involving members of the armed forces during the preceding year, including reports from each of the military departments. This was the report for FY 2018.

Report No. APY 2017-2018, "Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2017-2018," January 17, 2019

The 2007 NDAA requires the Secretary of Defense to annually assess the military service academies' programs that address sexual assault and sexual harassment. This was the report for the academic year 2017-2018.

"Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2017," March 19, 2018 as revised May 4, 2018

The 2011 NDAA requires the Secretary of Defense to submit to the congressional Armed Service Committees an annual report on sexual assaults involving members of the armed forces during the preceding year, including reports from each of the Military Departments. This was the report for FY 2017.

Report No. APY 2016-2017, "Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2016-2017," January 22, 2018

The DoD SAPRO reported that although USAFA leaders "demonstrated commitment to meeting victim response, healthcare, investigative, and military justice requirements identified in policy and law," USAFA was not in compliance with the DoD's SAPR strategic goal of "Advocacy and Victim Assistance." Specifically, the DoD SAPRO found that "a commander directed investigation disclosed significant evidence of mismanagement and unprofessionalism that negatively affected victim advocacy and assistance rendered to a number of cadets."

## ***Air Force***

Air Force Audit Agency Audit Report F2020-0004-O40000, "Sexual Assault Response," January 29, 2020

The Air Force's Director of Integrated Resilience, Deputy Chief of Staff, Manpower, Personnel, and Services requested this audit to determine whether personnel processed sexual assault reports in accordance with requirements. The Air Force Audit Agency reviewed report processing at nine locations and concluded that personnel at all nine locations, including SARCs and commanders, failed to properly process some reports of sexual assault. Errors included failure to promptly notify AFOSI upon changing a restricted report to an unrestricted report; failure to notify victims of available services, including special victims' counsel and mental health services; and failure to enter reports into DSAID.

# Management Comments

## Army Judge Advocate General



DEPARTMENT OF THE ARMY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
2200 ARMY PENTAGON  
WASHINGTON DC 20310-2200

DAJA-ZA

### MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Army Response to Draft Report of Evaluation of Special Victim Investigation and Prosecution Capability within the Department of Defense (Proj. No. D2020-DEVOSV-0151.000)

1. I non-concur with DRAFT Finding D and the follow-on recommendation.
2. DRAFT Finding D. This finding determined the Army did not consistently assign specially trained prosecutors to cases involving covered offenses. As a result of the extension provided by the investigative team, the Army identified the specific specially trained prosecutor, an Army Special Victim Prosecutor (SVP), that directly supported 142 of the 154 Army cases reviewed. This results in 92% of the inspected cases having been directly supported by an identified SVP. For the remaining 12 cases (8% of the sample), while we did not identify a specific Army SVP who supported each case, all Offices of the Staff Judge Advocate were able to seek assistance and consultation on any of their cases from specially trained prosecutors, SVPs, and civilian Special Victim Litigation Experts at our Trial Counsel Assistance Program.
3. Upon review of the initial report the Army assessed the investigative team might have misunderstood DTM 14-003's requirements resulting in data requests and production that did not accurately reflect the actual circumstances. After engagement with the investigative team, the Army was provided two weeks to produce additional data. We hope review of this data results in a revised finding and recommendation.
4. My non-concurrence focuses on the specific following issues.
  - a. The report notes DTM 14-003 required service TJAGs to "assign" specially trained prosecutors to the 154 Army cases reviewed. The verbatim language from DTM 14-003 states, "*Based upon the severity of the cases, as determined by supervisory attorneys, SVC*" prosecutors will be assigned to litigate or assist in the prosecution of SVC cases...." (Para. 1.d. of Att 3, change 6 to DTM 14-003, dtd Aug 15, 2019 (emphasis added)).
  - b. Based upon this understanding of DTM 14-003, the inspection team requested a list of "assigned trial counsel and paralegals" for each of the 154 Army cases. The Army responded to this request with the "assigned trial counsel and paralegal" for each case. The Army was not asked to provide the name of the SVP that supported each of the 154 cases. With additional time, the Army was able to identify the SVP who assisted on the investigative efforts and prosecutorial decisions for 92% of these cases.

\*SVC stands for Special Victim Capabilities. The Army's Special Victim Capability prosecutors are called Special Victim Prosecutors.

## Army Judge Advocate General (cont'd)

DAJA

SUBJECT: Army Response to Draft Report of Evaluation of Special Victim Investigation and Prosecution Capability within the Department of Defense (Proj. No. D2020-DEVOSV-0151.000)

c. Depending on the circumstances, SVPs may not be formally detailed to a case before the law enforcement investigation is closed. As a result, the investigative team's review of the law enforcement case files might produce mixed results. The SVP may consult directly with the lead investigator, or through the assigned trial counsel, and these touch points may not be reflected in the law enforcement file. Additionally, the severity and intricacy of the case impacts the level of involvement by an individual SVP.

5. Footnote 38 seems to imply the Army only has 29 judge advocates specially trained for covered offenses. There are currently 29 SVPs assigned to field duty in direct support of investigations and prosecutions. However, the Army has specially trained hundreds of judge advocates to support special victim investigations and prosecutions since the inception of the Special Victim Prosecutor Program.

6. The Army remains committed to the pursuit of justice for victims of covered offenses. Pursuant to TJAG Policy Memorandum 17-05 and consistent with DODI 1030.02 (which superseded DTM 14.003), at the onset of every investigation into a covered offense, the SVP is notified of the investigation to assist, mentor and guide the locally detailed trial counsel or military justice advisor, law enforcement investigation team, and the command. Throughout this process the SVP is routinely involved in shaping the investigation and in any probable cause or prosecution decision on covered offenses. Once a prosecution decision is made, the supervisory attorneys make a decision on whether the facts and circumstances of this case warrants detailing of a SVP.

7. Recommendation. At this time, directing a review to determine the appropriate level of resource requirements to train, certify and assign additional specially trained prosecutors to all phases of the military justice process for covered offenses might be unnecessary. There currently are multiple pending National Defense Authorization Act proposals that inform this issue.

8. The point of contact for this memorandum is [REDACTED]

FOR THE JUDGE ADVOCATE GENERAL:

MENDELSON  
.DAVID.ERIC.  
[REDACTED]  
DAVID E. MENDELSON  
Brigadier General, USA  
Assistant Judge Advocate General for  
Military Law and Operations

Digitally signed by  
MENDELSON.DAVID.E  
R1C [REDACTED]  
Date: 2021.09.17  
15:13:33 -04'00'

## Navy Judge Advocate General



**DEPARTMENT OF THE NAVY**  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE, SUITE 3000  
WASHINGTON NAVY YARD DC 20374-5066

5800  
Ser 00/0203  
**SEP 17 2021**

From: Judge Advocate General  
To: Inspector General, Department of Defense

Subj: RESPONSE TO PROPOSED REPORT ON EVALUATION OF SPECIAL VICTIM  
INVESTIGATION AND PROSECUTION CAPABILITY WITHIN THE  
DEPARTMENT OF DEFENSE

Ref: (a) DoD IG Proposed report, Evaluation of Special Victim Investigation and Prosecution  
Capability Within the Department of Defense dtd 24 Aug 21  
(b) DTM 14-003, February 12, 2014, Interim Change-6, August 15, 2019  
(c) DoDI 1030.02  
(d) DoDI 5505.19  
(e) OPNAVINST 1752.1C  
(f) JAG/CNLSCINST 5817.2

1. Thank you for the opportunity to review and provide comments on your proposed report, reference (a), which was provided to our office on 24 August 2021. For the reasons set forth below, I do not concur with Finding D and the related Recommendation 3 pertaining to the availability and assignment of specially trained prosecutors to cases involving covered offenses.

2. The Navy Judge Advocate General's (JAG) Corps complies with DoD and DON policy to assign specially trained prosecutors to "litigate or assist in the prosecution of [special victim capability] cases," as required in references (b) through (e). Furthermore, as discussed below, the JAG Corps ensures that specially trained prosecutors, who are designated as SVIP-certified, provide support to military criminal investigative organization investigators at all phases of the investigation. JAG/CNLSCINST 5817.2, Special Victim Investigation and Prosecution Policy, reference (f), provides that normally, an SVIP-certified trial counsel will be detailed to courts-martial involving special victim cases. However, when such detailing is not possible, the cognizant Region Legal Service Office (RLSO) Commanding Officer, or their detailing authority designee, shall evaluate all relevant factors when making the detailing decision: SVIP-certification, experience, aptitude, maturity, caseload, complexity of caseload, and the nature of the case in controversy. Importantly, the instruction requires that an SVIP-certified trial counsel be made available to support throughout all stages of the court-martial.

3. The proposed report undercounts the number of cases in which specially trained prosecutors meaningfully participated in Navy cases.

a. The report's methodology did not account for the fact that formal documentation of SVIP certification did not exist in the Navy prior to the publication of the JAG/CNLSCINST 5817.2 in May 2019, whereas the cases analyzed spanned from 2018 to 2020. Prior to May 2019, many

## Navy Judge Advocate General (cont'd)

Subj: RESPONSE TO PROPOSED REPORT ON EVALUATION OF SPECIAL VICTIM INVESTIGATION AND PROSECUTION CAPABILITY WITHIN THE DEPARTMENT OF DEFENSE

cases were supported and/or prosecuted by counsel who possessed the requisite experience and training to prosecute SVIP cases, but no system of documentation existed to capture that fact.

b. The report did not credit the significant supervisory involvement of SVIP-qualified prosecutors, particularly in the pre-preferral phases, including the investigative phase. Navy prosecution offices are organized into teams, which are led by SVIP-qualified Senior Trial Counsel with the support of experienced Assistant Senior Trial Counsel (who are also often SVIP-qualified). Additionally, 25 of 58 Navy core prosecutors were SVIP certified as of February 2021, and we expect approximately 23 more to be certified by the end of 2021.

c. The approach described above ensures appropriately experienced and qualified counsel are assigned to all cases or directly supervising those who are assigned in all phases. In the investigation phase, this ensures recommendations are made, supported, or ratified by SVIP-qualified counsel, even if those SVIP-qualified counsel are not formally detailed to the case. We believe this meets the DoD SVIP requirements for specially trained prosecutors.

4. Because reference (a) underreports Navy JAGC compliance with SVIP requirements, I recommend the drafters adjust their methodology and revise the finding and recommendation accordingly.

5. I encourage you to reach out to my point of contact for this matter. [REDACTED]

*D.E. Crandall*  
D. E. CRANDALL

## Air Force Judge Advocate General



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON, DC

17 September 2021

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: HQ USAF/JA  
1120 Air Force Pentagon Suite 4E252  
Washington, DC 20330

SUBJECT: Air Force Response to DoD Office of Inspector General Draft Report, "Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense" (Project No. D2020-DEV0SV-0151.000)

1. This is the Department of the Air Force response to the DoD OIG Draft Report, "Evaluation of Special Victim Investigation and Prosecution Capability within the Department of Defense" (Project No. D2020-DEV0SV-0151.000). AF/JA partially concurs with the report with respect to Recommendation 3; although it agrees with the Recommendation, it disagrees with the findings which formed the basis for that recommendation.
2. AF/JA has corrected issues identified in this report, and will develop and implement a plan to conduct the review outlined in the following recommendations:

**RECOMMENDATION 3:** The DoD OIG recommends that the Air Force conduct a review to determine the resource requirements to train, certify, and assign additional specially trained prosecutors to all phases of the military justice process for covered offenses. The review should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

**AIR FORCE RESPONSE:** The Air Force concurs with the recommendation to conduct a review to determine the resource requirements to train, certify, and assign additional specially trained prosecutors to all phases of the military justice process for covered offenses.

The Air Force disagrees with the findings which formed the basis for Recommendation 3 in the DoD OIG Report. Specifically, the DoD OIG found that the Air Force did not assign specially trained prosecutors, as defined in Directive Type Memorandum 14-003, in 94% of the cases it reviewed.

DTM 14-003 defined specially trained prosecutors as "[e]xperienced judge advocates detailed by Military Department TJAGs, the SJA to the CMC, or other appropriate authority to litigate or assist with the prosecution of special victim cases and provide advisory support to MCIO (Military Criminal Investigative Offices) investigators and responsible legal offices." Directive Type Memorandum 14-003 requires these specially trained prosecutors to "be capable of

## Air Force Judge Advocate General (cont'd)

2

supervising, mentoring, and training junior counsel while providing candid, independent legal advice and expert prosecutorial support to responsible legal offices in SVC cases.” As applied to the Air Force, the DoD OIG considered a “specially trained prosecutor” to be a Special Victims Unit – Circuit Trial Counsel<sup>1</sup>.

This is consistent with the version of AFI 51-201 in effect at the time, which refers to specially trained prosecutors as “Special Victims Unit-Circuit Trial Counsel.” The instruction states that senior legal leaders may detail Special Victims Unit-Circuit Trial Counsel to cases involving covered offenses. If a determination is made that the case does not warrant detailing a Special Victims Unit-Circuit Trial Counsel, a Special Victims Unit-Circuit Trial Counsel is available to consult and provide litigation support to the local prosecutor remotely.

Having reviewed the 114 cases identified by DoD OIG to assess compliance, it is unclear how the DoD OIG calculated the Air Force’s rate of compliance. According to its draft report, DoD OIG excluded cases that did not meet criteria for evaluation. However, in our review it appears that 16 of the 114 cases on the list the DoD OIG considered were cases in which the military lacked jurisdiction, civilian authorities handled disposition, or the offenses did not meet Special Victims Investigation and Prosecution criteria, such as cases involving assault consummated by a battery. According to the DoD OIG methodology, these 16 cases also should have been excluded from its analysis of Special Victim Counsel – Circuit Trial Counsel support. In the remaining 98 cases, the Air Force was able to find substantive information that Special Victim Counsel – Circuit Trial Counsel were involved in 22 of those cases<sup>2</sup>, thereby complying with Directive-type Memorandum 14-003 in those cases. While this makes the Air Force’s rate of compliance notably higher, we recognize the need to continue to develop and train these experienced prosecutors and ensure they are appropriately engaged in covered offenses.

Finally, it should be noted, during the time these cases were being processed, installation legal offices did not typically document a Circuit Trial Counsel’s participation using the case management system unless and until the case was referred to trial.<sup>3</sup> For example, of the 114 Air Force cases DoD OIG considered, 85 cases did not specifically identify anyone assigned to the

<sup>1</sup> Special Victims unit – Circuit Trial Counsel are the Air Force’s most experienced prosecutors for crimes involving felony level sexual assault. Air Force policy requires Special Victims Unit – Circuit Trial Counsel to “have completed one year as either Circuit Trial Counsel or Circuit Defense Counsel, attended two or more advanced litigation skills courses, received specialized training in prosecuting or defending sexual assaults, and demonstrated an ability to prosecute or defend a variety of sexual assault and/or complex cases.” In practice, judge advocates are designated Special Victims Unit – Circuit Trial Counsel only after having litigated 20 or more sexual assault cases.

<sup>2</sup> It is important to note that of the remaining 76 cases, 11 of those cases were covered by designated Circuit Trial Counsel. Circuit Trial Counsel are selected for their position based on demonstrated excellence in prosecutions, experience, and specialized training. They are a select group of AF trial counsel who are expected to have the experience to prepare and try felony level crimes as well as lead teams of personnel engaged in the effort to try these types of crimes. A portion of these counsel later become Special Victim Counsel – Circuit Trial Counsel.

<sup>3</sup> On 18 May 2020, the Air Force remedied this gap by introducing a requirement for installation legal offices to properly identify Special Victim Investigation and Prosecution team members, to include the Circuit Trial Counsel, in the case management system.

## Air Force Judge Advocate General (cont'd)

3

case or identified only a “Base POC.”<sup>4</sup> Since the majority of the remaining cases examined were disposed of with administrative action or closed without action, this lack of data entry makes it difficult to determine if a Special Victim Counsel – Circuit Trial Counsel was appropriately engaged in the collaborative effort for that particular case. As noted, this issue has been identified and addressed.

3. The AF/JA point of contact is [REDACTED]

PLUMMER.CHARLES.L  
LES.L [REDACTED]  
Digitally signed by PLUMMER CHARLES L.  
[REDACTED]  
DN: cn=PLUMMER CHARLES L., o=USAF, ou=AF, email=PLUMMER.CHARLES.L@USAF.MIL, c=US, date=2021.09.17 13:06:02 -0400

CHARLES L. PLUMMER  
Major General, USAF  
Deputy Judge Advocate General

---

<sup>4</sup> A Base POC is generally an individual assigned to the installation-level legal office who is designated as the primary point of contact to answer inquiries that may arise from Air Force JAG Corps leadership (e.g., the local Chief of Military Justice).

## Staff Judge Advocate to the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3000 MARINE CORPS PENTAGON  
WASHINGTON, DC 20350-3000

IN REPLY REFER TO  
5041  
JA

SEP 16 2021

From: Staff Judge Advocate to the Commandant of the Marine Corps  
To: Department of Defense Inspector General (Attn: [REDACTED])  
Via: Director, Marine Corps Staff

Subj: EVALUATION OF SPECIAL VICTIM INVESTIGATION AND PROSECUTION CAPABILITY  
WITHIN THE DEPARTMENT OF DEFENSE

Encl: (1) U.S. Marine Corps Comments on DODIG Draft Report dated  
August 24, 2021 Project No. D2020-DEV0SV-0151.000

1. Thank you for the opportunity to review and comment on the report  
regarding the Marine Corps legal community's role in the investigation and  
prosecution of Special Victim offenses, see enclosure (1).

2. My POC is [REDACTED]

  
DAVID J. BLIGH

## Staff Judge Advocate to the Commandant of the Marine Corps (cont'd)

**DODIG DRAFT REPORT DATED AUGUST 24, 2021  
PROJECT NO. D2020-DEV0SV-0151.000**

**“EVALUATION OF SPECIAL VICTIM INVESTIGATION AND PROSECUTION  
CAPABILITY WITHIN THE DEPARTMENT OF DEFENSE”**

**UNITED STATES MARINE CORPS COMMENTS  
TO THE DODIG RECOMMENDATION**

**RECOMMENDATION 3:** DODIG recommends that the Judge Advocates General of the Army, Navy, and Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps conduct a review to determine the resource requirements to train, certify, and assign additional specially trained prosecutors to all phases of the military justice process for covered offenses. The review should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

**USMC RESPONSE:** Thank you for the opportunity to review and comment on the report prior to publication.

1. Regarding Recommendation 3, this office is currently coordinating with Headquarters, U.S. Marine Corps and the Navy Judge Advocate General to evaluate the impacts of the anticipated changes to the military justice system that may result from the recommendations of the Independent Review Commission, draft legislation proposed by the Department of Defense, as well as the legislative changes drafted by Congress. Once those changes are directed, we will conduct a thorough review to determine the resource requirements to ensure that specially trained and certified personnel are detailed to participate from the earliest stages of the investigative phase.
2. Of note, in response to recommendations of the Sexual Assault Accountability and Investigation Task Force report of April 2019, and the Secretary of the Navy-directed Comprehensive Review of the Navy Judge Advocate General's Corps (JAG Corps) and Marine Corps Judge Advocate Communities of May 2020, this office worked closely with Headquarters, U.S. Marine Corps and the Navy Judge Advocate General to revise the Naval Justice School Basic Lawyer Course. Specifically, in April 2021, the Navy and Marine Corps established the Military Justice Orientation Course (MJOC) in coordination with the Naval Justice School and each services' Trial and Defense Counsel Assistance Programs (TCAP and DCAP, respectively). The MJOC, with three course offerings throughout the year taught by seasoned judge advocates and civilian litigation attorney advisors (LAA) possessing decades of complex litigation experience, focuses on skill and knowledge development for new military justice practitioners during an intensive two-week long course. New Marine Corps judge advocates will take the course immediately following their graduation of the Basic Lawyer Course.
3. During the MJOC, students are placed in either the trial or defense student groups and receive training in trial preparation during the first week of the course. During the second week of the course, all students participate in various stages of trial litigation and presentation in an

## Staff Judge Advocate to the Commandant of the Marine Corps (cont'd)

adversarial setting. The combined learning objectives from the first week of the course are demonstrated for all students during the second week to serve as a collective learning experience.

4. Finally, I would also like to address the information contained in draft Finding D, "Services Did Not Consistently Assign Specially Trained Prosecutors to Cases Involving Covered Offenses". Specifically, the final draft report should reflect that the Marine Corps assigned specially trained prosecutors to 100% of the 66 cases reviewed by the DoD IG.

5. Seven cases are in dispute. In all seven cases, the Regional Trial Counsel (RTC) was the counsel of record. In six cases, the RTC was a lieutenant colonel with over seven years of litigation experience. Besides having extensive special victim litigation training, the RTC had previously tried cases as Trial Counsel and Defense Counsel, followed by litigation billets of significant responsibility as Senior Defense Counsel, Senior Trial Counsel, Complex Trial Counsel, and finally as a Military Judge. Of note, as Military Judge, he presided over several special victim proceedings, including a contested general court-martial before members that was later affirmed in an opinion by the Navy-Marine Corps Court of Criminal Appeals.

6. In the remaining case, the RTC was another lieutenant colonel who also received extensive special victim litigation training prior to assuming duties as the RTC. Also like the previous RTC, he was selected for the billet based on his prior experience as a Trial Counsel, Defense Counsel, and Acting Senior Defense Counsel (personally litigating 27 contested courts-martial, including the prosecution of a general court-martial involving the indecent assault of a child). He subsequently built on his trial experience by holding numerous litigation billets of significant responsibility, including service as a military justice instructor at Naval Justice School, as a military judge, as an appellate military judge, and as a senior appellate military judge.

7. Unfortunately, due to administrative oversights, neither of these highly educated and experienced litigators was formally designated as Special Victims Counsel per Marine Corps Order 5800.16-V.16 by the Officer in Charge of the Legal Services Support Section. The newly appointed Chief Trial Counsel of the Marine Corps (CTC) rectified this oversight by formally designating both officers on 3 September 2021. Furthermore, the CTC has been expressly directed to ensure that all current and future RTCs are formally qualified to preclude similar oversights.

8. The CTC's formal qualification determinations demonstrate that despite the lack of formal designation during the relevant periods, both officers possessed "the requisite litigation skills, professionalism, and leadership to provide the highest quality of legal representation to the government and support victims in SVC cases", consistent with the requirements of Public Law 112-239 and DTM 14-003. Accordingly, I request that the final report reflect that the Marine Corps had specially trained prosecutors assigned to all 66 sample cases reviewed by the DoD IG.

## Commander, U.S. Army Criminal Investigation Command



DEPARTMENT OF THE ARMY  
U. S. ARMY CRIMINAL INVESTIGATION COMMAND  
27130 TELEGRAPH ROAD  
QUANTICO, VA 22134

CIOP-PO (195)

16 September 2021

MEMORANDUM FOR Office of Inspector General (Deputy Inspector General for Policy and Oversight), Department of Defense, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Evaluation of Special Victim Investigation and Prosecution (SVIP) Capability within the Department of Defense (Project No. D2020-DEV0SV-0151.000)

1. Reference Draft Report, 24 August 2021, subject as above.
2. Thank you for the opportunity to provide comments to the draft report. I acknowledge your detailed review of the U.S. Army Criminal Investigation Command (CID) policies and procedures associated with the special victim investigation and prosecution capability and whether CID complied with DoD policies.
3. I reviewed the draft report and recommendations and concur with the following comments.
  - a. Recommendation #1: We recommend that the Commander, U.S. Army Criminal Investigations Command; Director, Naval Criminal Investigative Service; and Commander, Office of Special Investigations, conduct reviews to determine the resource requirements to train, certify, and assign additional criminal investigators to serve as lead investigators in investigations of covered offenses. The reviews should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

CID Response to Recommendation #1: The CID is dedicated to the training, certification, and assignment of CID special agents as the lead investigators in investigations of the covered offenses. As of 13 August 2021, CID has trained and certified over 1,000 special agents to investigate the covered offenses and conducting a reconstruction of CID which will provide additional resources. The CID has diligently worked to ensure specially trained special agents are located at all CID field elements and available to conduct said investigations, but there were times based on resourcing and mission when this could not be accomplished. If the special agent or Army law enforcement personnel were unavailable as the lead investigator, the CID field elements took every effort to ensure the lead investigator was supervised by a certified and trained senior special agent at the field level or the battalion level. Department of Defense Instruction (DoDI) 5505.18 (Investigation of Adult Sexual Assault in the Department of Defense) allows for the untrained lead investigator to be supervised during the investigation. I published guidance to reiterate the importance of ensuring the lead investigator is certified, trained, and assigned to investigate covered offenses.

CUI

## Commander, U.S. Army Criminal Investigation Command (cont'd)

CIOPO-PO (195)

SUBJECT: Evaluation of Special Victim Investigation and Prosecution Capability within the Department of Defense (Project No. D2020-DEVOSV-0151.000)

b. Recommendation #2: We recommend that the Commander, U.S. Army Criminal Investigation Command; Director, Naval Criminal Investigative Service; and Commander, Office of Special Investigations develop procedures to standardize how their investigators document communications with SVIP members to ensure the documentation includes the SVIP member's name, position, organization, and date of communication.

CID Response to Recommendation #2: In order to provide requested information for data collection, CID's investigative database, the Army Law Enforcement Reporting and Tracking System (ALERTS), was modified for collection of information associated with communications with SVIP members and to assist in ensuring the documentation of the coordinations. The CID is continually modifying ALERTS and since the beginning of your evaluation, CID has already modified ALERTS to allow for the name, position, and organization (already included the date) to be input. I will ensure we adjust ALERTS until the required information is readily available and will publish guidance to reiterate the importance of the communication and documentation.

5. I would like to recommend that DoDI 5505.19 be revised to support the findings under Sexual Assault Accountability and Investigation Task Force (SAAITF) recommendation 2.1.1. in the two following areas:

a. There have been several reviews of the SVIP capabilities in multiple forums. I would like to restate our previous concerns with the current SVIP policy. This multidisciplinary team should not be Military Criminal Investigative Organizations (MCIOs) centric. The MCIOs are required to coordinate and meet with all the members of the SVIP, but the MCIOs have no authority to enforce the requirements if the other members do not want to participate. The DoDI 5505.19 should have been written more like those of generated by DoD SAPRO and FAP in which the installation or senior mission commander is responsible for a multi-disciplinary team (MDT) rather than a MCIO who is only a tenant and support agency on any installation.

b. Also, there are redundant requirements in DODI 5505.19 to provide notifications/briefings immediately, then at the 24 hour, 48 hour mark, and then monthly requirements to attorneys, SARCs/VAs and FAP. The monthly requirements are overly burdensome and unneeded, as there are already existing monthly briefing requirements to attorneys, SARCs/VAs and FAP in other DODIs for the Sexual Assault Review Board, the Case Management Group and Family Advocacy Program. I would recommend that at least the monthly requirements in DODI 5505.19 be eliminated to reduce unnecessary efforts and allow the investigators more time to actually investigate an allegation rather than briefing multiple people in multiple forums. Overall, the various redundancies associated with the DoD notification/briefing requirements should be reevaluated across all DoD

CUI

2

## Commander, U.S. Army Criminal Investigation Command (cont'd)

CIOP-PO (195)

SUBJECT: Evaluation of Special Victim Investigation and Prosecution Capability within the Department of Defense (Project No. D2020-DEVOSV-0151.000)

instructions and consolidated, in order for my special agents to focus and reserve our limited resources for the felony special victim investigations.

6. The guidance to CID field elements will reiterate your recommendations and will also include the findings of this draft report. The updated guidance was published on 10 September 2021.

7. The point of contact is [REDACTED]

MILLER, DUANE R. [REDACTED]  
OBERT [REDACTED]  
DUANE R. MILLER  
Brigadier General, USA  
Commanding

Digitally signed by  
MILLER, DUANE R. OBERT  
Date: 2021.09.16 09:41:11 -0400

CUI

3

## Director, Naval Criminal Investigative Service



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

5000  
23/21U042  
07 SEP 21

FOR: DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: Daniel W. Simpson, Assistant Director

SUBJECT: Request for response to DoDIG Results in Brief: "Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense" (Project No. D2020-DEV0SV-0151.000)

1. On August 25, 2021 NCIS received the DoDIG "Results in Brief: "Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense" (Project No. D2020-DEV0SV-0151.000) August 24, 2021. The following are the NCIS responses.

2. Recommendation 1: Recommend that the Director, Naval Criminal Investigative Service conduct reviews to determine the resource requirements to train, certify, and assign additional criminal investigators to serve as lead investigators in investigations of covered offenses. The reviews should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

a. NCIS Response: Concur. NCIS continues to conduct continual internal reviews through our Management Internal Control Program and Systemic Planning Accountability and Resourcing through Collaboration meetings. NCIS has consistently requested the appropriate resources through formal Secretariat Review Board/Program Objective Memorandum submissions and collaboration with the appropriate Service Secretary is ongoing. Through the aforementioned process, NCIS is scheduled to receive additional personnel and funding resources in FY22.

b. Additionally, In January 2019, NCIS incorporated advanced sexual assault training into the Special Agent Basic Training Program ensuring all NCIS Special Agents have the required training to investigate adult sexual assaults. Subsequently, the advanced training required to conduct domestic violence, child abuse and child sexual assault investigations is being offered in both in person and virtual training formats to ensure more NCIS Special Agents have the required training.

## Director, Naval Criminal Investigative Service (cont'd)

3. Recommendation 2: Recommend that the Director, Naval Criminal Investigative Service develop procedures to standardize how their investigators document the communications with SVIP members so the documentation includes the SVIP member's name, position, organization, and the date of communication.

a. NCIS Response: Concur. Subsequent to the initiation of many of the cases reviewed for this evaluation, NCIS updated its internal policy. NCIS 3, Chapter 34 (Sex Offenses) dated 17Sep20, requires notification and collaboration with SVIP members to be documented in the Interim Report of Investigation and include the names of the SVIP members, positions, organizations, and dates of notification and/or collaboration. Additionally, the pending version of NCIS 3, Chapter 29 (Assault) is being finalized and contains similar documentation requirements for other SVIP covered cases.

*Daniel W. Simpson*

DANIEL W. SIMPSON

## Commander, Office of Special Investigations



Office of the Secretary

### DEPARTMENT OF THE AIR FORCE WASHINGTON DC

20 September 2021

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: DAF/IG  
1140 Air Force Pentagon  
Washington, DC 20330-1140

SUBJECT: Secretary of the Air Force Inspector General Response to Department of Defense Inspector General Draft Report Project No. D2020-DEV0SV-0151.000

1. This is the Department of the Air Force Inspector General's (DAF/IG) response to the DoDIG Draft Report, Evaluation of Special Victim Investigation and Prosecution Capability Within the Department of Defense (Project No. D2020-DEV0SV-0151.000). DAF/IG, in coordination with the Office of Special Investigations (OSI), concurs with the Recommendations 1 & 2.
2. DAF/IG in coordination with OSI, will develop and implement a corrective action plan outlined in the following recommendations:

**RECOMMENDATION 1:** We recommend that the Commander, U.S. Army Criminal Investigation Command; Director, Naval Criminal Investigative Service; and Commander, Office of Special Investigations, conduct a review to determine the resource requirements to train, certify, and assign additional criminal investigators to serve as lead investigators in investigations of covered offenses. The review should be completed in conjunction with the Service Secretaries with the authority to provide additional resources.

**AIR FORCE RESPONSE:** The Air Force concurs with Recommendation 1. The Office of Special Investigations looks forward to working with the Department of the Air Force on manpower and funding requirements to develop a more robust Special Victim Investigation and Prosecution (SVIP) agent cadre. Currently, the Office of Special Investigations is working with the Air Force Inspector General to secure an initial billet plus-up as part of the 23 POM and has a validated total requirement to reach full health in this area.

The Office of Special Investigations' SVIP program is entering a formalized phase that builds on the organization's history of providing exceptional adult sex crimes investigations training through the Office of Special Investigations Academy's Sex Crimes Investigations Training Program (SCITP). SCITP has trained over 678 agents, 265 of which are still working at the installation level providing investigative support to the Department of the Air Force. Successful completion of this course will serve as certification for agents to serve as the lead agent for adult sexual assault investigations. The Office of Special Investigations is in the process of identifying requirements to create an additional course, or add to the existing course, which, upon graduation, would certify agents to lead investigations in domestic violence and child abuse. We are projecting to hold the first iteration of the course in Fiscal Year 2023.

## Commander, Office of Special Investigations (cont'd)

In Fiscal Year 2021, the Office of Special Investigations held four SCITP courses, training 106 agents in adult sex crimes investigations. The Office of Special Investigations Academy is on track to implement a vigorous SVIP training plan for Fiscal Year 2022.

The Office of Special Investigations will update internal policy to address the certification procedures and provide guidance on situations in which a certified agent is not available to serve as the lead agent.

**RECOMMENDATION 2:** We recommend that the Commander, U.S. Army Criminal Investigation Command, Director, Naval Criminal Investigative Service, and Commander, Office of Special Investigations, develop procedures to standardize how their investigators document the communications with SVIP members so the documentation includes the SVIP member's name, position, organization, and the date of communication.

**AIR FORCE RESPONSE:** The Air Force concurs with Recommendation 2. The Office of Special Investigations is currently developing a new case management system. This new system will automate reminders for the 24-hour notifications, the 48-hour coordinations, and the monthly consultations for all SVIP investigations. Implementation of the new case management system is expected to begin in summer of Fiscal Year 2022. Additionally, the Office of Special Investigations is currently updating AFOSI Manual 71-121, *Reporting Investigative Matters*, which will mandate documentation of all SVIP notifications and coordinations within the Internal Data Page of the case file. The updated manual will go out for official coordination by 31 October 2021.

3. The DAF/IG point of contact is [REDACTED]

WALKER, JOHN C. Digitally signed by  
WALKER, JOHN C.  
Date: 2021.09.20 09:10:07 -0400

JOHN C. WALKER  
Brigadier General, USAF  
Deputy Inspector General

## Acronyms and Abbreviations

---

<b>AFI</b>	Air Force Instruction
<b>AFOSIMAN</b>	Air Force Office of Special Investigation Manual
<b>ALERTS</b>	Army Law Enforcement Reporting and Tracking System
<b>AR</b>	Army Regulation
<b>CID</b>	[Army] Criminal Investigation Division
<b>CIDR</b>	CID Regulation
<b>DD FORM</b>	Department of Defense Form
<b>D-SAACP</b>	Defense Sexual Assault Advocate Certification Program
<b>DTM</b>	Directive-Type Memorandum
<b>GAO</b>	General Accounting Office
<b>I2MS</b>	Investigative Information Management System
<b>IG</b>	Inspector General
<b>MCIO</b>	Military Criminal Investigative Organization
<b>NCIS</b>	Naval Criminal Investigative Service
<b>OIG</b>	Office of Inspector General
<b>OPNAVINST</b>	Office of Naval Operations Instruction
<b>OSI</b>	Office of Special Investigations
<b>QMD</b>	Quantitative Methods Division
<b>SAPR</b>	Sexual Assault Prevention and Response
<b>SAPRO</b>	Sexual Assault Prevention and Response Office
<b>SARC</b>	Sexual Assault Response Coordinator
<b>SECNAVINST</b>	Secretary of the Navy Instruction
<b>SJA</b>	Staff Judge Advocate
<b>SJACMC</b>	Staff Judge Advocate to the Commandant of the Marine Corps
<b>SVC</b>	Special Victims' Counsel
<b>SVIP</b>	Special Victim Investigation and Prosecution
<b>TJAG</b>	The [Service] Judge Advocate General
<b>USACIDC</b>	United States Army Criminal Investigation Command
<b>VA</b>	Victim Advocate

# **Whistleblower Protection**

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

*Whistleblower Protection safeguards DoD employees against retaliation for protected disclosures that expose possible fraud, waste, and abuse in Government programs. For more information, please visit the Whistleblower webpage at <http://www.dodig.mil/Components/Administrative-Investigations/Whistleblower-Reprisal-Investigations/Whistleblower-Reprisal/> or contact the Whistleblower Protection Coordinator at [Whistleblowerprotectioncoordinator@dodig.mil](mailto:Whistleblowerprotectioncoordinator@dodig.mil)*

**For more information about DoD OIG  
reports or activities, please contact us:**

**Congressional Liaison**  
703.604.8324

**Media Contact**  
[public.affairs@dodig.mil](mailto:public.affairs@dodig.mil); 703.604.8324

**DoD OIG Mailing Lists**  
[www.dodig.mil/Mailing-Lists/](http://www.dodig.mil/Mailing-Lists/)

**Twitter**  
[www.twitter.com/DoD\\_IG](http://www.twitter.com/DoD_IG)

**DoD Hotline**  
[www.dodig.mil/hotline](http://www.dodig.mil/hotline)



DEPARTMENT OF DEFENSE | OFFICE OF INSPECTOR GENERAL

4800 Mark Center Drive  
Alexandria, Virginia 22350-1500  
[www.dodig.mil](http://www.dodig.mil)  
DoD Hotline 1.800.424.9098

