

56. (ALL) DODI 5505.18, Para. 3a, dated Jan. 25, 2013, requires MCIOs to initiate an investigation of all offenses of adult sexual assault. In practice, does this include offenses such as fraternization, indecent exposure, and adultery, or other similar misconduct often associated with sexual assault cases?

DOD	<p>As stated, DoDI 5505.18 requires an investigation for every sexual assault allegation; the DoD definition of a sexual assault is contained in DoDD 6495.01, “Sexual Assault Prevention and Response (SAPR) Program” dated January 23, 2012, incorporating Change 1, April 30, 2013 and available at http://www.dtic.mil/whs/directives/corres/dir.html. The definition states that sexual assault is “[i]ntentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.” Allegations of fraternization, indecent exposure, and adultery are not necessarily included depending on the specific circumstances and if not, are not bound by the provision of DoDI 5505.18. DoDI 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations” dated March 24, 2011, authorizes the MCIO to initiate an investigation without a request by the Service member’s commander after it has been determined by the Commander or the Director of the DCIO or Principal Deputy that there is credible information of adult private consensual sexual misconduct and that an investigation is warranted. DoDI 5505.03 is authored by IPO and available at http://www.dtic.mil/whs/directives/corres/ins1.html. Additionally, DoDI 5505.08, “Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct” dated April 17, 2013, also authored by IPO and available at http://www.dtic.mil/whs/directives/corres/ins1.html addresses the investigation of consensual adultery.</p>
CJCS	<p>The MCIOs must investigate all suspected sexual assault offenses, regardless of severity, including attempts. The DODI does not require the MCIOs to investigate fraternization, indecent exposure, or adultery unless there is reason to suspect that a sexual assault havea sexual assault has occurred. If at any point during the investigation, it becomes apparent that a sexual offense, including attempts or contact offenses, is suspected, then the case would be referred to the MCIO for investigation. If there is an allegation of an Article 134 offense for which no contact or penetration offense is alleged, the MCIO is likely not the appropriate agency to be investigating the offense. Especially in cases of fraternization, investigators with more military experience, or perhaps even within the command are better poised to determine whether or not the terminal element (“prejudicial to good order and discipline” or “service discrediting”) is satisfied. This type of misconduct is best investigated with an eye to the effect on the command because of the nature of the alleged offense, and does not typically require the forensic tools that the MCIO brings to bear. However, nothing would preclude the MCIO from taking those cases whenever that is deemed appropriate.</p>

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

USA	<p>If the allegation of strictly unique military offense (e.g., fraternization) or adult private consensual sexual misconduct (APCSM) (e.g., adultery) supports or contradicts an allegation of sexual assault, then the allegation of misconduct will be investigated only to the extent necessary to develop the primary offense of sexual assault. Misconduct offenses will be referred to the commander, in writing, for action deemed appropriate. When the misconduct offenses, such as fraternization and adultery, are the only offenses involved, they are normally investigated by the unit commander. However, the CG, USACIDC, can approve the investigation of misconduct offenses on a case by case basis, if deemed appropriate.</p> <p>Indecent Exposure is not in the same category of offenses as fraternization or adultery. Indecent exposure incidents are handled by law enforcement. CID will investigate Indecent Exposure when it is committed in conjunction with another offense within the investigative responsibility of CID. The offense of Indecent Exposure, when committed by itself, is investigated by the installation law enforcement, usually the Military Police.</p>
USAF	<p>Generally, no; in accordance with Air Force Instruction 71-101, Volume 1, AFOSI does not routinely investigate fraternization, indecent exposure, and adultery, or other similar misconduct associated with sexual assault cases unless the subject or victim is determined to be an authority figure (defined below), then AFOSI will initiate a substantive investigation:</p> <p>Authority figures are defined as:</p> <ol style="list-style-type: none"> i. By rank - E9 and O-6 and above ii. First Sergeants/Command Chiefs/Squadron Commander/Superiors/Rating Officials/Supervisors with unit members iii. MTL/MTI with trainees iv. Official training/PME instructors/staff with students v. Recruiter with recruits vi. Cadets in position of authority over junior ranking cadets vii. Medical, psychological, pastoral, legal or other professionals with persons receiving their services. <p>However, in circumstances where fraternization, indecent exposure or adultery are pertinent to the sexual assault allegation, those matters will be included in the report of investigation.</p>
USN	<p>When UCMJ Article 120 was revised on 28 June 2012, many offenses previously identified as misdemeanors, such as indecent assault, were elevated to felony level crimes. Subsequently, DODI 5505.18 established policy for the investigation of adult sexual assault offenses included under UCMJ Article 120. In addition to rape, sexual assault, aggravated sexual contact and abusive sexual contact, Article 120 addresses other sexual misconduct such as indecent exposure, indecent viewing, indecent recording, indecent broadcasting and pandering. Since the additional offenses are included in Article 120, NCIS would investigate per DODI 5505.18.</p>

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	<p>Fraternization and adultery are normally investigated at either the command-level or by the Inspector General. As fraternization and adultery are not Article 120 offenses and are not punishable by confinement of 1 year or greater, NCIS would not typically initiate an investigation. However, the Director of NCIS has the discretion to initiate an investigation into any violation of the UCMJ consistent with SECNAVINST 5430.107, as appropriate.</p>
USMC	<p>When UCMJ Article 120 was revised on 28 June 2012, many offenses previously identified as misdemeanors, such as indecent assault, were elevated to felony level crimes. Subsequently, DoDI 5505.18 established policy for the investigation of adult sexual assault offenses included under UCMJ Article 120. In addition to rape, sexual assault, aggravated sexual contact and abusive sexual contact, Article 120 addresses other sexual misconduct such as indecent exposure, indecent viewing, indecent recording, indecent broadcasting and pandering. Since the additional offenses are included in Article 120, NCIS would investigate per DoDI 5505.18. Fraternization and adultery are not Article 120 offenses and are not punishable by confinement of 1 year or greater; therefore, NCIS would not typically initiate an investigation into these UCMJ article violations. However, the Director of NCIS has the discretion to initiate an investigation into any violation of the UCMJ consistent with SECNAVINST 5430.107, as appropriate.</p>
USCG	<p>Generally, CGIS does not investigate reports of fraternization or adultery unless a Command seeks investigative assistance (such as with those cases that involve very senior CG members). CGIS does typically investigate incidents involving indecent exposure when those reports are received and in accordance with COMDTINST 5520.5F, as that offense falls under UCMJ Article 120. There have been cases that have been reported as sexual assaults that investigation has revealed would more properly fall under the classification of fraternization/prohibited relationships.</p>

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