

59. (ALL) What are the current terms and definitions used by MCIOs and/or Commanders when referring to a sexual assault case as (un)substantiated and/or (un)founded?

DOD	<p>There currently is no DoD definition for unsubstantiated, founded, and unfounded, as they specifically related to sexual assault investigations. The term substantiated is currently defined in DoDI 5505.18 as, “An Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration and action, and found to have sufficient evidence to support the command’s action against the subject. Actions against the subject include court-martial charge preferral, Article 15 UCMJ punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or other associated misconduct (e.g., adultery, housebreaking, etc.).”</p>
USA	<p>The U.S. Army Criminal Investigations Command (CID) uses the terms of founded and unfounded when referring to a sexual assault. The definitions are as noted above. The U.S. Army Criminal Investigations Command (CID) uses the DOD definition of substantiated and unsubstantiated (as noted in DODI 6495.02) when preparing input for the annual sexual assault report Congress.</p> <p><i>a. Substantiated Reports. Dispositions in this category come from Unrestricted Reports that have been investigated and found to have sufficient evidence to provide to command for consideration of action to take some form of punitive, corrective, or discharge action against an offender.</i></p> <p><i>(1) Substantiated Reports Against Service Member Subjects. A substantiated report of sexual assault is an Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command’s action against the subject. Actions against the subject may include initiation of a court-martial, nonjudicial punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or associated misconduct (e.g., adultery, housebreaking, false official statement).</i></p> <p><i>(2) Substantiated Reports by Service Member Victims. A substantiated report of a sexual assault victim’s Unrestricted Report that was investigated by an MCIO, and provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command’s action against the subject. However, there are instances where an Unrestricted Report of sexual assault by a Service member victim may be substantiated but the command is not able to take action against the person who is the subject of the investigation. These categories include the following: the subject of the investigation could not be identified; the subject died or deserted from the Service before action could be taken; the subject was a civilian or foreign national not subject to the UCMJ; or the subject was a Service member being prosecuted by a civilian or foreign authority.</i></p> <p><i>b. Substantiated Report Disposition Descriptions. In the event of several types of</i></p>

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	<p><i>action a commander takes against the same offender, only the most serious action taken is reported, as provided for in the following list, in descending order of seriousness. For each offender, any court-martial sentence and non-judicial punishment administered by commanders pursuant to Article 15 of the UCMJ is reported annually to the DoD in the case synopses or via DSAID. Further additional actions of a less serious nature in the descending list should also be included in the case synopses reported to the Department. Reference (k) requires the reporting of the number of victims associated with each of the following disposition categories.</i></p>
USAF	See AFOSI's answer to question 39.
USN	<p>The terms (un)substantiated and/or (un)founded are not used by NCIS investigators. These terms are used at the OSD SAPRO level and do not appear in NCIS reports.</p> <p>Since 2005, the DoD has been required to report case dispositions to Congress in its Annual Report on Sexual Assault in the Military. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 required the DoD establish a consistent definition of "substantiated" to support future annual reporting requirements. The DoD definition of "substantiated" is an Unrestricted Report of sexual assault investigated by a military criminal investigative organization, provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject.</p> <p>Similarly, NCIS does not use the term "unfounded." Commanders, in completing the Sexual Assault Disposition Report (SADR) at the end of each case, are required to indicate the basis for disposition of the case. The definition used for "unfounded" by the commander is: "[t]he subject's commander, in consultation with the servicing staff judge advocate, determined that the allegations, as made against the alleged offender, do not meet all the legal elements of any of the SAPR sexual assault offenses. These cases are either false or baseless." This is the same definition of unfounded as it appears in the Annual Report on Sexual Assault in the Military.</p>
USMC	<p>The terms (un)substantiated and/or (un)founded are not used by NCIS investigators. These terms are used at the OSD SAPRO level and do not appear in NCIS reports. Since 2005, the DoD has been required to report case dispositions to Congress in its Annual Report on Sexual Assault in the Military. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 required the DoD establish a consistent definition of substantiated to support future annual reporting requirements. The DoD definition of substantiated is an Unrestricted Report of sexual assault investigated by a military criminal investigative organization, provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject. Similarly, NCIS does not use the term "unfounded." Commanders, in completing the sexual assault disposition report (SADR) at the end of each case, are required to indicate the basis for disposition of the case. The definition used for "unfounded" by the commander is: "[t]he subject's commander, in consultation with the servicing staff judge advocate, determined that the allegations, as made against the alleged offender, do not meet all the legal elements of any of the SAPR</p>

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USCG	Please see the response to question #58.

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