



## DoD INSTRUCTION 5505.10

### CRIMINAL INVESTIGATIONS OF NONCOMBAT DEATHS

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<b>Approved by:</b>	Robert P. Storch, Inspector General of the Department of Defense

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**Purpose:** In accordance with the authority in DoD Directive 5106.01, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures for the investigation of noncombat deaths within the DoD.
- Implements Public Law 117-164 (also known as and referred to in this issuance as the "Homicide Victims' Families' Rights Act of 2021") for the Military Criminal Investigative Organizations (MCIOs).

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## SECTION 1: GENERAL ISSUANCE INFORMATION

### 1.1. APPLICABILITY.

This issuance:

a. Applies to:

(1) OSD, the Military Departments, and the Office of Inspector General of the Department of Defense (IG DoD).

(2) Noncombat deaths under MCIO investigative jurisdiction.

b. Does not apply to:

(1) A noncombat death under circumstances that clearly indicate an accident rather than possible homicide, suicide, or undetermined death, requiring specialized investigative techniques to rule out the possibility of criminality (e.g., traffic accidents that are investigated by responsible traffic law enforcement authorities or aircraft crashes investigated by responsible air safety officials).

(2) A death that occurs on a military installation solely because the decedent was transported to or treated at a military medical facility emergency room due to geographic proximity. If events causing such a death occurred in another jurisdiction with no DoD interest, other law enforcement authorities have investigative responsibility and jurisdiction.

c. Nothing in this instruction will infringe on the IG DoD's statutory independence and authority in accordance with the Inspector General Act of 1978, as amended and as specified in the Chapter 4 to Title 5, United States Code. In the event of any conflict between this instruction and the IG DoD's statutory independence and authority, the Inspector General Act of 1978 takes precedence.

### 1.2. POLICY.

a. MCIOs will investigate noncombat deaths under their investigative jurisdiction when:

(1) The death involves an active duty Service member.

(2) The death involves a non-active duty decedent and occurs:

(a) On a military installation within the United States, and no other Federal, State, or local law enforcement agency assumes lead agency status to investigate the death;

(b) In an overseas location, and the United States exercises jurisdiction in accordance with the status-of-forces agreement or other agreement covering U.S. presence in that country; or

- (c) In a time of declared war or a contingency operation, and the decedent was serving with or accompanying an armed force in the field.
- b. All other noncombat deaths of investigative interest to the DoD will be considered in accordance with the procedures in DoD Instruction (DoDI) 5505.03 to determine whether an MCIO will initiate a death investigation.
- c. The scope of MCIO investigations must, given available resources and the circumstances of each investigation, be sufficient to:
  - (1) Provide DoD authorities with the information necessary to determine whether the death may have been caused by the commission of a criminal offense.
  - (2) Allow for the commander or prosecuting authority concerned to determine whether criminal or administrative actions should be taken against the alleged perpetrator(s).
  - (3) Provide information to support DoD and command programs relating to analysis and prevention of military deaths.
- d. All MCIO agents assigned to supervise, review, or conduct death investigations must be properly trained in conducting such investigations. The minimum training required is specified in Paragraph 3.1.
- e. An MCIO completed noncombat death investigation of an active duty Service member in which a determination of the manner of death is made by an authority other than the Armed Forces Medical Examiner System must be:
  - (1) Reviewed by an MCIO headquarters-assigned agent or designated forensic science consultant to ensure the MCIO completed all logical investigative or forensic steps that could impact the cause and manner of death determination.
  - (2) Submitted to the Armed Forces Medical Examiner System for a consultation opinion on the thoroughness and completeness of the investigation as it relates to the external determination of cause and manner of death.
- f. While it is the role of the Armed Forces Medical Examiner System or an equivalent authority to establish a medicolegal cause of death, an MCIO retains the authority to conduct investigative activities to reveal the circumstances surrounding the death and assist the determination of manner of death.
- g. A family liaison program must be established by each MCIO for use in all death investigations involving a deceased active duty Service member. In any death investigation for which an MCIO is the lead agency that pertains to deceased civilian personnel, the MCIO must refer to the procedures for assisting the family of victims as specified in DoDI 1030.02.
- h. Any public release of information regarding a noncombatant death under criminal investigation must follow the procedures in this instruction.

i. MCIO personnel must document all related investigative activity in the corresponding investigation reports or files. MCIO records management and information systems must be automated and comply with:

(1) The Federal Bureau of Investigation's National Incident-Based Reporting System and National Data Exchange and the Law Enforcement Defense Data Exchange compatibility.

(2) Records management requirements specified in DoDIs 5015.02 and 5525.16.

### **1.3. INFORMATION COLLECTIONS.**

The criminal investigation reporting referred to throughout this issuance does not require licensing with a report control symbol in accordance with Paragraph 1.b.(6) of Enclosure 3 of Volume 1 of DoD Manual 8910.01.

## **SECTION 2: RESPONSIBILITIES**

### **2.1. IG DOD.**

The IG DoD monitors and evaluates Military Department and MCIO compliance with this issuance.

### **2.2. ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS.**

The Assistant to the Secretary of Defense for Public Affairs prescribes and monitors procedures to implement the requirements of this instruction regarding public release of information about MCIO investigations of noncombat deaths.

### **2.3. SECRETARIES OF THE MILITARY DEPARTMENTS.**

The Secretaries of the Military Departments prescribe and monitor procedures to implement the requirements of this instruction by all MCIO agents.

## **SECTION 3: CRIMINAL INVESTIGATIONS OF NONCOMBAT DEATHS**

### **3.1. TRAINING.**

Appropriate training provided to MCIO agents assigned to supervise, review, or conduct death investigations must include, at a minimum:

- a. Jurisdiction for conducting criminal investigations.
- b. The elements of criminal offenses related to deaths.
- c. Preliminary investigative procedures, including receiving and responding to a death notification, assigning an investigative team, and initially locating and interviewing witnesses.
- d. Preserving and processing the crime scene.
- e. Searching for, locating, identifying, collecting, preserving, and transporting evidence.
- f. Submitting evidence for medical and forensic analysis.
- g. Identifying possible criminal offenders.
- h. Preparing reports and maintaining investigation files to assist or support appropriate authorities in determining the cause and manner of death and preparing for possible prosecution of any person(s) believed to be criminally responsible for the death.

### **3.2. FAMILY LIAISON.**

- a. Each MCIO must establish a family liaison program and:
  - (1) Designate at least one representative to provide information and appropriate assistance to the family of a deceased active duty Service member.
  - (2) Provide representatives assigned to family liaison duties with the training necessary to perform such responsibilities in relevant areas involving victim and witness assistance issues. The MCIO must coordinate the representative's family liaison duties with other officials who have direct responsibility for providing family notification and assistance, determining and arranging survivor benefits, and performing information redactions in accordance with DoD Directive 5400.07.
  - (3) Provide to the family of the deceased, if requested and to the extent that such reports may be furnished in accordance with DoD Directive 5400.07 and Part 286 of Title 32, Code of Federal Regulation, a copy of any completed investigative report for which an MCIO is the lead investigative agency and any completed fatality report in accordance with the requirements of Section 1072 of Public Law 102-484, codified as a note in Section 113 of Title 10, United States



Code. In any investigation where the lead investigating agency is not the MCIO itself, the MCIO will not divulge any investigation results without the consent of the lead agency.

(4) Pursuant to Section 566 of Public Law 109-364 and DoDI 1300.18, immediately notify the appropriate Service Casualty Office when an investigation is initiated into the cause or circumstances surrounding the death of a military member or DoD civilian employee. At a minimum, provide the Service Casualty Office with written confirmation containing:

- (a) The name of the DoD organization conducting the investigation.
- (b) The type of investigation being conducted.
- (c) The existence of any reports by the investigating organization that have been or will be issued as a result of the investigation.
- (d) A point of contact within the investigating organization that can provide information on the status of the completion of any investigative reports.
- (e) The procedures for family members to obtain a copy of the completed report(s), to the extent such reports may be furnished consistent with Sections 552 and 552a of Title 5, United States Code, and to obtain assistance in obtaining a copy of the completed report(s).
- (f) The procedures for family members to obtain answers to their questions on the completed investigation from a fully qualified representative.

(5) Coordinate and provide updates to the appropriate Service Casualty Office at least every 30 days until all investigative activity is completed or the investigation is closed.

(6) Ensure:

- (a) Sufficient efforts are made to address the family's questions.
- (b) Issues raised by the family of the deceased are addressed in a timely manner or as soon as release of the requested information will no longer pose investigative, operational, or legal concerns.

b. In any investigation of a noncombat death of civilian personnel for which an MCIO is the lead investigating agency, the MCIO must refer to the procedures for assisting the family of deceased victims, as specified in DoDI 1030.02 and Part 114 of Title 32, Code of Federal Regulation, from initial contact through investigation, prosecution, and confinement.

(1) If the prosecuting authority for any alleged perpetrator of a crime stemming from the death is civilian, the MCIO will coordinate these procedures with the prosecution.

(2) An MCIO under these circumstances will consult the Attorney General Guidelines for Victim and Witness Assistance that serves as a model for guidelines on the fair treatment of crime victims and witnesses for non-Department of Justice Federal law enforcement agencies.

c. Death notifications to the primary next of kin (PNOK) of active duty Service members and DoD civilian personnel are not an MCIO responsibility. The notifications will be delivered as prescribed in DoDI 1300.18. If the MCIO is investigating a death where there is no existing DoD notification procedure and no other law enforcement agency is involved in notifying the decedent's PNOK of the death, then the MCIO will coordinate with the affected chain of command, local law enforcement, Department of State, or other relevant agencies.

### **3.3. JURISDICTION.**

a. If noncombat death occurs on a military installation subject to exclusive Federal jurisdiction and no other law enforcement agency will assume lead agency status:

(1) In accordance with the provisions in DoDI 5525.07 regarding crimes committed on military installations, the crime will be investigated by a DoD investigative agency if the perpetrator is unknown. The DoD will provide immediate notice to the Department of Justice of significant investigations in which the subject or victim is not a Service member or dependent.

(2) If there is reasonable basis to believe that the death was caused by a person or persons not subject to Chapter 47 of Title 10, United States Code (also known as "The Uniform Code of Military Justice"), the DoD investigative agency will provide immediate notice of the matter to the appropriate Department of Justice investigative agency.

b. If an MCIO is not the lead investigative agency into the cause and manner of a noncombat death of interest to the DoD, the MCIO will maintain liaison with the law enforcement organization that is conducting the investigation.

(1) The MCIO family liaison representative, if designated in accordance with Paragraph 3.2.a., will help the family of the deceased establish initial communication with the responsible lead law enforcement organization.

(2) The MCIO will, as permitted by the lead law enforcement organization, get and provide a copy of the investigation report to the appropriate military authorities, including any forensic or autopsy results.

### **3.4. PUBLIC AFFAIRS.**

a. The decedent's family must be notified before any public information release.

b. Public release of information regarding a noncombat death under criminal investigation must not speculate about the cause or manner of death. Until an official determination of the cause of death has been made by a medical examiner, information releases must state that the cause and manner of death are pending medical examiner determination. After the official determination has been made, public releases may provide that information.

c. All public information releases must be coordinated in advance among the cognizant MCIO, any other joint investigative agency, the casualty assistance officer, and the responsible judge advocate or prosecuting attorney.

## SECTION 4: COLD CASE MURDER INVESTIGATIONS

### 4.1. HOMICIDE VICTIMS' FAMILIES' RIGHTS ACT OF 2021.

This section implements the Homicide Victim's Families' Rights Act of 2021 into DoD policy as a specific noncombat death category.

### 4.2. INVESTIGATION FILE REVIEW.

#### a. In General.

The MCIO commander or director must review a relevant cold case murder investigation file upon written application by one designated person (as defined in Section 12(1) of the Homicide Victims' Families' Rights Act of 2021 and referred to throughout this section as "the designated person") to determine whether a full reinvestigation within the limits of the MCIO's investigative jurisdiction would result in the identification of substantiating investigative leads or a likely perpetrator.

#### b. Review.

The review must include an:

- (1) Analysis of what investigative steps or follow-up steps may have been missed in the initial investigation.
- (2) Assessment of whether witnesses should be interviewed or re-interviewed.
- (3) Examination of physical evidence to determine whether all appropriate forensic testing and analysis was performed in the first instance or whether additional testing might produce information relevant to the investigation.
- (4) Update of the investigation file using the most current investigative standards as of the date of the review to the extent it would help develop substantiating investigative leads.

#### c. Certification in Lieu of Reinvestigation or Further Review.

In any case in which the MCIO receives a written application for review in accordance with the Homicide Victims' Families' Rights Act of 2021, the MCIO review will be unnecessary if the case does not satisfy the criteria for a cold case murder. In such a case, the MCIO commander or director must issue a written certification, with a copy provided to the designated person, stating that reinvestigation or further review is not necessary because the MCIO exhausted all substantiating investigative leads or the MCIO will not be able to identify a likely perpetrator.

**d. Reviewer.**

The required review must not be conducted by the person(s) who previously investigated the death at issue.

**e. Acknowledgement.**

The MCIO must provide a written response to the applicant as soon as reasonably possible that includes:

- (1) Confirmation of the MCIO's receipt of the application.
- (2) Notice of the applicant's rights under the Homicide Victims' Families' Rights Act of 2021.

**f. Prohibition on Multiple Concurrent Reviews.**

Only one investigation review will be undertaken at any one time with respect to the same cold case murder victim.

**g. Time Limit.**

Not later than 6 months after the receipt of the written application, the MCIO must conclude its investigation file review and reach a conclusion about whether a full reinvestigation, in accordance with Paragraph 4.4., is warranted.

**h. Extensions.**

**(1) In General.**

The agency may extend the time limit set in Paragraph 4.2.g. once for a period not to exceed 6 months if the MCIO makes a finding that the number of investigation files to be reviewed make it impracticable to comply with such limit without unreasonably taking resources from other law enforcement activities.

**(2) Actions Subsequent to Waiver.**

For investigations for which the time limit in Paragraph 4.2.g. is extended, the MCIO must provide notice and an explanation of its reasoning to the designated person.

**4.3. APPLICATION.**

Each MCIO must develop a written application and submission procedure to be used for designated persons to request a cold case murder investigation file review.

#### **4.4. FULL REINVESTIGATION.**

##### **a. In General.**

The MCIO must conduct a full reinvestigation of the cold case murder at issue if the investigation file review conducted in accordance with Paragraph 4.2. concludes that a full reinvestigation would result in substantiating investigative leads.

##### **b. Reinvestigation.**

A full reinvestigation within the limits of the MCIO's investigative jurisdiction must include analyzing all evidence regarding the cold case murder at issue for the purpose of developing substantiating investigative leads or a likely perpetrator.

##### **c. Investigators.**

A full reinvestigation required under Paragraph 4.4.a. must not be conducted by persons who previously investigated the death at issue.

##### **d. Prohibition on Multiple Concurrent Investigations.**

Only one full reinvestigation will be undertaken at any one time with respect to the same cold case murder victim.

#### **4.5. CONSULTATIONS.**

##### **a. Initial Consultation and Updates.**

The MCIO must consult with the designated person and provide them with periodic updates during the investigation file review and, if conducted, full reinvestigation.

##### **b. Explanation of Final Determination.**

At the conclusion of the investigation file review when the MCIO determines no reinvestigation is warranted, the MCIO must meet with the designated person and discuss the evidence to explain its declination to engage in a full reinvestigation. If a full reinvestigation is conducted, the MCIO must meet with the designated person and discuss the results of the reinvestigation.

#### **4.6. SUBSEQUENT REVIEWS.**

##### **a. Investigation File Review.**

If an investigation file review regarding a cold case murder is conducted and a conclusion is reached not to conduct a full reinvestigation, no additional investigation file review will be required for that cold case murder for a period of 5 years, unless there is newly discovered, materially significant evidence.

#### **b. Full Reinvestigation.**

If a full reinvestigation of a cold case murder is completed and a suspect is not identified at its conclusion, no additional investigation file review or full reinvestigation will be required for that cold case murder for a period of 5 years beginning on the date of the conclusion of the reinvestigation, unless there is newly discovered, materially significant evidence.

#### **4.7. DATA COLLECTION.**

MCIO commanders and directors must be prepared to provide annual cold case murder statistical data to the Director of the National Institute of Justice upon request. The data must include, at a minimum, the number of cold case murders being managed by the MCIO, the circumstances of the cold case murders, and classification of the offenses.

#### **4.8. PROCEDURES TO PROMOTE COMPLIANCE.**

Not later than August 3, 2023, the MCIO commander or director must establish procedures that comply with the requirements of this issuance to enforce the right of a designated person to request a review in accordance with the Homicide Victims' Families' Rights Act of 2021. The procedures must:

- a. Designate an administrative authority within the MCIO to receive and investigate complaints relating to a review initiated in accordance with Paragraph 4.2. or a reinvestigation initiated in accordance with Paragraph 4.4.
- b. Require a course of training for appropriate employees and officers within the MCIO regarding procedures, responsibilities, and obligations required in accordance with the Homicide Victims' Families' Rights Act of 2021 and this section.
- c. Contain disciplinary sanctions, which may include suspension or termination from employment, for MCIO employees who are shown to have willfully or wantonly failed to comply with the Homicide Victims' Families' Rights Act of 2021 and this section.
- d. Provide a procedure for the resolution of complaints filed by the designated person concerning the MCIO's handling of a cold case murder investigation or the investigation file review.
- e. State that the MCIO commander or director is the final arbiter of the complaint, and that there must be no judicial review of the final decision of the MCIO commander or director by a complainant.

#### **4.9. WITHHOLDING INFORMATION.**

Nothing in the Homicide Victims' Families' Rights Act of 2021 or this issuance will require an agency to provide information that would endanger the safety of any person, unreasonably

impede an ongoing investigation, violate a court order, or violate legal obligations regarding privacy.

#### **4.10. MULTIPLE AGENCIES.**

In the case that more than one agency conducted the initial investigation of a cold case murder, each agency must coordinate their investigation file review or full reinvestigation such that there is only one joint investigation file review or full reinvestigation occurring at a time in compliance with Paragraphs 4.2.f. or 4.4.d., as applicable.

##### **a. MCIO Lead Initial Joint Investigations.**

An MCIO that was the lead agency in an initial joint investigation with a State or local law enforcement agency will:

- (1) Complete the MCIO's investigation file review and full reinvestigation within the MCIO's investigative jurisdiction.
- (2) Contact the participating State or local law enforcement agency and request completion of any probative steps that are outside the MCIO's investigative jurisdiction.
- (3) Consult with the designated person as described in Paragraph 4.5.

##### **b. Other Agency Lead Initial Joint Investigations.**

An MCIO that was **not** the lead agency in an initial joint investigation with a State or local law enforcement agency will:

- (1) Complete the MCIO's investigation file review and, if conducted, full reinvestigation within the MCIO's investigative jurisdiction.
- (2) Notify the lead investigative agency of the requested cold case murder investigation file review and, if conducted, full reinvestigation. The MCIO will seek the lead agency's support to complete probative steps that are outside the MCIO's investigative jurisdiction.
- (3) Consult with the designated person as described in Paragraph 4.5.

#### **4.11. APPLICABILITY.**

The Homicide Victims' Families' Rights Act of 2021 and this issuance apply in the investigation of any cold case murder occurring on or after January 1, 1970.



#### **4.12. ANNUAL REPORT.**

##### **a. Submission Requirement.**

Each MCIO must submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate describing actions taken and results achieved in accordance with the Homicide Victims' Families' Rights Act of 2021 during the previous year by each Committee issued suspense date.

##### **b. Report Content.**

The annual report must, in accordance with the guidance in Paragraphs 4.2. and 4.4., include:

- (1) The number of written applications filed with the MCIO.
- (2) The number of extensions granted and an explanation of the reasons provided.
- (3) The number of full reinvestigations initiated and closed.
- (4) Statistics and individualized information on topics that include identified suspects, arrests or apprehensions, charges, and convictions for investigation file reviews and full reinvestigations.

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
DoDI	DoD instruction
IG DoD	Inspector General of the Department of Defense
MCIO	Military Criminal Investigative Organization
PNOK	primary next of kin

### G.2. DEFINITIONS.

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

TERM	DEFINITION
<b>active duty</b>	Defined in the DoD Dictionary of Military and Associated Terms
<b>cause of death</b>	The medical finding or findings that determine responsibility for the death.
<b>cold case murder</b>	Defined in Section 12(6) of the Homicide Victims' Families' Rights Act of 2021.
<b>cold case murder victim</b>	Defined in Section 12(3) of the Homicide Victims' Families' Rights Act of 2021.
<b>designated person</b>	Defined in Section 12(1) of the Homicide Victims' Families' Rights Act of 2021.
<b>immediate family member</b>	Defined in Section 12(2) of the Homicide Victims' Families' Rights Act of 2021.
<b>manner of death</b>	The legal classification of death, whether it be natural, unnatural, or undeterminable.
<b>MCIOs</b>	The U.S. Army Criminal Investigation Division, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

<b>TERM</b>	<b>DEFINITION</b>
<b>medicolegal</b>	Relating to both medicine and the law.
<b>murder</b>	Defined in Section 12(4) of the Homicide Victims' Families' Rights Act of 2021.
<b>noncombat death</b>	Death that results from a cause or manner other than direct or indirect action by an enemy, opposing military force, or insurgent personnel in a war or contingency operation environment. Types of non-combat deaths most likely to merit investigation include all suspected homicides and reported accidents, suicides, or undetermined deaths as necessary to reasonably rule out the possibility of criminality.
<b>PNOK</b>	Defined in DoDI 1300.18.
<b>status-of-forces agreement</b>	A bilateral or multilateral agreement that defines the legal position of a visiting military force deployed in the territory of a friendly state.
<b>unnatural death</b>	A death that results from an accident, homicide, undetermined, or suicide.

## REFERENCES

- Code of Federal Regulation, Title 32
- Department of Justice, “Attorney General Guidelines for Victim and Witness Assistance,” May 2012<sup>1</sup>
- DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- DoD Directive 5400.07, “DoD Freedom of Information Act (FOIA) Program,” April 5, 2019
- DoD Instruction 1030.02, “Victim and Witness Assistance,” September 2, 2020, as amended
- DoD Instruction 1300.18, “Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures,” January 8, 2008, as amended
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011, as amended
- DoD Instruction 5525.07, “Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes,” March 5, 2020
- DoD Instruction 5525.16, “Law Enforcement Defense Data Exchange (LE D-DEx),” August 29, 2013, as amended
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- Office of the Chairman of the Joint Chiefs of Staff, “DoD Dictionary of Military and Associated Terms,” current edition
- Public Law 102-484, Section 1072, “National Defense Authorization Act for Fiscal Year 1993,” October 23, 1992, codified as a note in Section 113 of Title 10, U.S.C.
- Public Law 109-364, “John Warner National Defense Authorization Act for Fiscal Year 2007,” October 17, 2006
- Public Law 117-164, “The Homicide Victims’ Families’ Rights Act of 2021,” August 3, 2022
- United States Code, Title 5, Chapter 4 and Sections 552 and 552a
- United States Code, Title 10

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<sup>1</sup> Available at [https://www.justice.gov/sites/default/files/olp/docs/ag\\_guidelines2012.pdf](https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf)