

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
ARMY CORRECTIONS COMMAND (ACC)  
AND  
U.S. ARMY CRIMINAL INVESTIGATION COMMAND (CID)

SUBJECT: Investigation of PREA Incidents within Army Correctional Facilities

1. References:

- a. Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 STAT. 972.
- b. Prison Rape Elimination Act Prison and Jail Standards, United States Department of Justice Final Rule, 28 C.F.R. Part 115.
- c. Presidential Memorandum, 17 May 2012, subject: Implementing the Prison Rape Elimination Act.
- d. AR 190-47 (The Army Corrections System), 15 June 2006.
- e. AR 190-45 (Law Enforcement Reporting), 30 March 2007.
- f. AR 195-2 (Criminal Investigation Activities), 9 June 2014.
- g. AR 195-5 (Evidence Procedures), 22 February 2013.
- h. Department of Defense Instruction (DODI) 6495.02 (Sexual Assault Prevention and Response (SAPR) Program Procedures), 12 February 2014.
- i. Directive-type Memorandum (DTM) 13-002, 10 February 2013, with change 1 effective 19 September 2013, (Department of Defense Implementation of the Prison Rape Elimination ACT (PREA)).

2. PURPOSE: This Memorandum outlines the basic responsibilities of ACC and CID regarding the investigation, reporting and training requirements as outlined in the National PREA Standards.

3. Scope: This agreement applies to all Army Corrections System (ACS) facilities and the designated CID office assigned to cover each specific facility (Leavenworth, Northwestern Joint Regional Correctional Facility-JBLM, U.S Regional Correctional Facility-Germany and U.S. Army Regional Correctional Facility-Korea).

4. Roles and Responsibilities:

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a. CID Responsibilities:

(1) Shall ensure investigating special agents are trained in techniques for interviewing sexual assault victims, proper use of applicable rights advisement (Article 32, Miranda or Garrity warnings), sexual assault evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. CID shall maintain documentation that agency special agents have completed this training.

(2) Investigations shall follow a uniform evidence protocol IAW AR 195-5. Sexual assault medical forensic examinations will be conducted IAW DODI 6495.02.

(3) A protocol will be based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women Publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" or similarly comprehensive protocol developed after 2011.

(4) If available at the medical facility, ensure forensic medical examinations are conducted by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), and grant access to victim advocate individuals and special victim counsel (SVC), if requested by the victim.

(5) Have a policy governing how sexual assault investigations are conducted.

(6) Special agents shall gather and preserve direct and circumstantial evidence, including any available physical evidence, DNA evidence, and any available electronic monitoring data; shall interview alleged victims, suspect/subject, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspect/subject.

(7) The credibility of an alleged victim, suspect/subject, or witness shall be assessed on an individual basis, not on a person's status as prisoner or staff. Polygraph examinations will only be conducted on a suspect/subject.

(8) Special agents will document, in a written report, a thorough descriptions of physical, testimonial, and documentary evidence and attached copies of all documentary evidence where feasible.

(9) The facility commander will be kept informed of the status and provided a copy of the report referenced in paragraph (8).

(10) The following will be used to determine findings of cases.

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(a) Founded. A determination made by CID, in conjunction with the appropriate prosecution or legal representative, that probable cause exists to believe a criminal offense has been committed. The determination that a founded offense exists is a decision independent of any judicial/court finding opinion or disciplinary action taken or not taken. This has the same meaning as the PREA term "Substantiated allegation."

(b) Unfounded. A determination made by CID, in conjunction with the appropriate prosecution or legal representative, that a criminal offense did not occur. In accordance with the definition in the Department of Justice's Uniform Crime Report system, unfounded means baseless or false. A lack of evidence to support a complaint, or questioning of certain elements of a complaint, is not sufficient to categorize an incident as unfounded. This has the same meaning as the PREA term "unfounded."

(c) Insufficient evidence: (1) The inability of the investigation to determine that a reported or alleged criminal offense did or did not occur (2) Prior to a determination of insufficient evidence the criteria in paragraph a(10)(a) must not be met. This has the same meaning as the PREA term "Unsubstantiated Allegation."

b. ACC Facility Responsibilities:

- (1) Notify CID immediately upon learning of any suspected sexual assault.
- (2) Separate the alleged victim and suspect/subject.
- (3) Preserve and protect the crime scene and any evidence until special agents arrive.
- (4) If the incident occurred within a period of time that allows for the collection of physical evidence, ACS facilities will request that the alleged victim/suspect/subject not take any actions that could destroy physical evidence, including, washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating.
- (5) Allow forensic medical examinations by SAFEs, SANEs or medical doctor, and allow access to victim advocate individuals and SVC, if requested by the victim.
- (6) A DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) will be completed and provided to CID IAW AR 190-45.

5. Review of MOU: This MOU will be reviewed every two years from the date of the last signature for updates and changes in policy.

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6. Effective Date: This MOU is effective immediately from the date of the last signature and may be terminated by mutual consent of these signatures.

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GREGORY J. STROEBEL  
Acting Deputy Director  
Army Corrections Command

2 October 2014

(Date)

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