

**BY ORDER OF THE COMMANDER
AIR FORCE OFFICE OF
SPECIAL INVESTIGATIONS**



**DEPARTMENT OF THE AIR FORCE
INSTRUCTION 51-201**

**DEPARTMENT OF THE AIR FORCE
AIR FORCE OFFICE OF
SPECIAL INVESTIGATIONS**

Supplement

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COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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DAFI 51-201, 14 April 2022, is supplemented as follows:

(Added)(AFOSI) This supplement provides Air Force Office of Special Investigations (AFOSI) specific guidance for Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*. Refer to **Attachment 1** for a listing of references, abbreviations, acronyms, and terms used in this supplement. The information contained in this supplement is for the information and guidance for all AFOSI personnel. Waivers to this supplement will not be granted. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and are disposed IAW Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. Refer recommended changes to this supplement to the office of primary responsibility (OPR) using the Department of the Air Force (DAF) Form 847, *Recommendation for Change of Publication*, routed through your chain of command to AFOSI/ERP.

(Added)(AFOSI) This publication provides guidance for the internal operation of a Department of Defense (DoD) agency, but it is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law against the United States, DoD, or the DAF or its officers, employees, contractors, or agents. For purposes of disciplinary or punitive action against individuals whose actions are governed by this publication, nothing in the previous sentence will be interpreted as affecting the requirement for mandatory compliance with this publication or any other applicable laws, regulations, or policies by those to whom it applies.

SUMMARY OF CHANGES

(Added)(AFOSI) This supplement is substantially revised and must be completely reviewed. This revision provides guidance on the handling of child pornography, the provision of defense investigative support, the reporting of findings and sentence information to law enforcement, and the release authority for AFOSI records. This supplement adopts the use of Air Force (AF) Form 178, *Affidavit for Apprehension/Arrest*, when making probable cause determinations in accordance with DoD Instruction (DoDI) 5505.11, *Fingerprint Reporting Requirements* and DoDI 5505.14, *DNA Collection and Submission Requirements for Law Enforcement*. It also adopts the use of AFOSI Form 22, *Accountability of Child Pornography Media*, when documenting the transfer of material containing child pornography.

1.1. **(Added)(AFOSI) Overview.** This supplement provides additional guidance on AFOSI support for the administration of military justice in the DAF.

8.3.1. **(Added)(AFOSI)** IAW 18 USC § 3509(m)(1), *Child Victims' and Child Witnesses' Rights*, in any criminal proceeding, any property or material that constitutes child pornography shall remain in the care, custody, and control of either the government or the court. Property or material that constitutes child pornography may be released by AFOSI to other government employees, (e.g., trial counsel, designated paralegals, or contractors hired as agents of the government, or to the court) at which point the release will be annotated on chain of custody documentation. Any transfer of material containing child pornography will be documented on AFOSI Form 22. IAW 18 USC § 3509(m)(2), property or material that constitutes child pornography shall be deemed to be reasonably available to the defense if defense counsel and expert consultants are provided ample opportunity for inspection, viewing, and examination of the property or material at a government facility. Property or material that constitutes child pornography may not be released directly to defense counsel or expert consultants unless access control and transportation arrangements are made such that the child pornography does not leave the care, custody, and control of the government and the child pornography cannot reasonably be copied or duplicated. These restrictions apply to any forensically created duplicates or working copies of original evidence of child pornography.

8.3.2. **(Added)(AFOSI)** Any property or material that constitutes child pornography to which any member of the defense requires access may only be transported by a government actor, such as an AFOSI agent, trial counsel, or designated paralegal.

8.3.3. **(Added)(AFOSI)** IAW 18 USC § 3509(m)(3), in any criminal proceeding, a victim, as defined under 18 USC § 2259(c)(4), *Mandatory Restitution*, shall have reasonable access to any property or material that constitutes child pornography depicting the victim, for inspection, viewing, and examination at a Government facility or court, by the victim, his or her attorney, and any individual the victim may seek to qualify to furnish expert testimony. Under no circumstances may such child pornography be copied, photographed, duplicated, or otherwise reproduced. IAW

18 USC § 2259(c)(4), a “victim” means the individual harmed as a result of the commission of a crime involving child pornography and, if the victim is under 18 years of age, incompetent, incapacitated, or deceased, includes the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court.

16.6.1. **(Added)(AFOSI)** Once evidence of child pornography has been admitted as an exhibit at a court-martial, it must be properly maintained as part of the Record of Trial (ROT) IAW DAF Manual (DAFMAN) 51-203, *Records of Trial*. AFOSI agents will not take possession of exhibits containing child pornography that have been admitted during a court-martial.

16.8.4. **(Added)(AFOSI)** AFOSI agents providing defense investigative support do not have access to AFOSI law enforcement or case management databases. As a result, they cannot utilize their AFOSI badges and credentials for any official purpose, to include gaining entry to DAF installations or off-limits areas and accessing DAF records, property, and people; and they cannot carry their AFOSI-issued weapons or personally owned weapons approved for official use.

29.11.3. **(Added)(AFOSI)** Probable cause determinations are made by AFOSI special agents, following coordination with servicing legal offices. The AFOSI special agent should document the probable cause determination on an AF Form 178. The probable cause determination for submission of fingerprints and criminal history data IAW DoDI 5505.11 and DNA IAW DoDI 5505.14 is offense specific. Consult Air Force Manual (AFMAN) 71-102, *Air Force Criminal Indexing*, to determine whether the offense is subject to indexing.

34.3.1.1. **(Added)(AFOSI)** AFOSI ROT. AFOSI Field Support Squadron, Information Release (AFOSI FSS/MSII) is the release authority for documents created by AFOSI which are part of the ROT and determines whether such documents, or any portions thereof, are releasable IAW with the Privacy Act and Freedom of Information Act.

34.3.5.1. **(Added)(AFOSI)** Release of Other AFOSI Documents and Records. AFOSI FSS/MSII is the release authority for documents created by AFOSI that are in the possession of the Air Force Military Justice Law and Policy Division (AF/JAJM) and determines whether such documents, or any portions thereof, are releasable IAW the Privacy Act and Freedom of Information Act.

AMY S. BUMGARNER, Colonel, USAF
Commander
Air Force Office of Special Investigations

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

(Added)(AFOSI) 18 USC § 2259, *Mandatory Restitution*, 3 January 2016

18 USC § 3509, *Child Victims' and Child Witnesses' Rights*, 1 December 2009

DoDI 5505.11, *Fingerprint Reporting Requirements*, 31 October 2019

DoDI 5505.14, *DNA Collection and Submission Requirements for Law Enforcement*, 5 April 2022

(Added)(AFOSI) AFI 33-322, *Records Management and Information Governance Program*, 10 March 2020

(Added)(AFOSI) DAFI 51-201, *Administration of Military Justice*

DAFMAN 51-203, *Records of Trial*, 21 April 2021

AFMAN 71-102, *Air Force Criminal Indexing*, 21 July 2020

Prescribed Forms

(Added)(AFOSI) None

Adopted Forms

(Added)(AFOSI) AF Form 178, *Affidavit for Apprehension/Arrest*

DAF Form 847, *Recommendation for Change of Publication*

(Added)(AFOSI) AFOSI Form 22, *Accountability of Child Pornography Media*

Abbreviations and Acronyms

(Added)(AFOSI) AF—Air Force

AFI—Air Force Instruction

(Added)(AFOSI) AFOSI—Air Force Office of Special Investigations

AFMAN—Air Force Manual

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DAFMAN—Department of the Air Force Manual

DoD—Department of Defense

DoDI—Department of Defense Instruction

EoJ—Entry of Judgment

(Added)(AFOSI) IAW—in accordance with

(Added)(AFOSI) OPR—Office of Primary Responsibility

ROT—Record of Trial

STR—Statement of Trial Results

Office Symbols

(Added)(AFOSI) AF/JAJM—Air Force Military Justice Law and Policy Division

(Added)(AFOSI) AFOSI/ER—Enterprise Management and Resources Directorate

(Added)(AFOSI) AFOSI/ERP—AFOSI/ER Policy and Publications Division

(Added)(AFOSI) AFOSI FSS/MSII—AFOSI Field Support Squadron Information Release

(Added)(AFOSI) DAF-CJIC—Department of the Air Force Criminal Justice Information Cell