

ENCLOSURE D-C

SJS 2557/633-00

18 March 1994

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SECRETARY, JOINT STAFF DIRECTIVE

on

DOD INSTRUCTION 5505.8, INVESTIGATIONS OF SEXUAL MISCONDUCT
BY THE DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS AND
OTHER DOD LAW ENFORCEMENT ORGANIZATIONS

1. The attached is referred to DIRM for direct reply.
2. The suspense for this action is 18 April 1994, unless an extension is coordinated with the Secretary, Joint Staff.

Joint Secretariat

164 (24 APR 1994)

SJS 2557/633-00

ENCLOSURE D-C



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Department of Defense
INSTRUCTION

February 28, 1994
NUMBER 5505.8

IG, DoD

SUBJECT: Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations

- References:**
- (a) DoD Instruction 5505.8, subject as above, December 22, 1993 (hereby canceled)
 - (b) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
 - (c) Title 10, United States Code, Chapter 47, Uniform Code of Military Justice," Sections 801-940
 - (d) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986

A. REISSUANCE AND PURPOSE

This Instruction reissues reference (a) under the authority of reference (b) and updates DoD policy regarding the initiation of criminal investigations into certain types of sexual misconduct, as defined in this Instruction. It provides that, as a matter of investigative priorities and resource limitations, Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations will normally refer allegations involving only adult private consensual sexual misconduct to the Service member's commander for appropriate disposition. To ensure their independence, objectivity, and effectiveness, however, DCIOs are authorized to initiate investigations into adult private consensual sexual misconduct without obtaining a referral from the member's commander; they may do so, however, only if the Director or Commander, or Principal Deputy, of the DCIO determines that there is credible information that an offense has been committed and that the expenditure of investigative resources is appropriate.

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

ENCLOSURE D-C

ENCLOSURE D-C

C. DEFINITION

Sexual Misconduct. A sexual act or acts in violation of Chapter 47 of title 10 U.S.C. (reference (c)) that occur between consenting adults, in private, whether on or off a military installation. It does not include any sexual act or acts that involve allegations of force, coercion, or intimidation; abuse of position or rank; fraternization; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information. Other terms used in this Instruction are defined in enclosure 1.

D. POLICY

1. No DCIO or other DoD law enforcement organization shall conduct an investigation solely to determine whether a Service member is a heterosexual, a homosexual, or a bisexual.

2. Except pursuant to subsections F.2. and F. 3., below, a DCIO or other DoD law enforcement organization shall not initiate a criminal investigation into adult private consensual sexual misconduct where such misconduct is the only offense involved.

3. Investigations by DCIOs and other DoD law enforcement organizations shall be conducted in an even-handed manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct.

4. The provisions of this Instruction do not provide a basis for challenging the validity of any administrative or criminal proceeding or for excluding the use of any evidence in such proceeding.

E. RESPONSIBILITIES

The Secretaries of the Military Departments and the Heads of the DoD Components shall issue regulations implementing this Instruction.

F. PROCEDURES

1. Allegations of adult private consensual sexual misconduct received by a DCIO or other DoD law enforcement organization normally shall be referred to the commander(s) of the Service member(s) concerned, unless the Commander, Director, or Principal Deputy of a DCIO initiates an investigation under F.3. below.

2. Upon the receipt of any allegation of adult private consensual sexual misconduct, the commander shall review the allegation. If the commander determines that there is credible information of adult private consensual sexual misconduct, the

commander may request a criminal investigation by the DCIO or other DoD law enforcement organization, as appropriate.

a. If a commander requests that a DCIO initiate a criminal investigation into adult private consensual sexual misconduct, the Commander or Director of the DCIO, and those managers or supervisors approved by them to do so, shall independently evaluate and make a determination whether the request is based on credible information of adult private consensual sexual misconduct prior to initiating a criminal investigation.

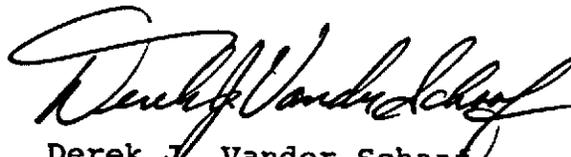
b. If a DCIO determines that a request from a commander lacks credible information of adult private consensual sexual misconduct, or is not in keeping with established policy, the matter will be returned to the commander, without action, for appropriate disposition.

3. DoD Instruction 5505.3 (reference (d)) shall apply with respect to investigations of adult private consensual sexual misconduct, except that an investigation into adult private consensual sexual misconduct may be initiated by a DCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the DCIO or Principal Deputy that there is credible information of adult private consensual sexual misconduct and that such an investigation is an appropriate use of investigative resources.

4. Investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective February 28, 1994. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 30 days.



Derek J. Vander Schaaf
Deputy Inspector General

Enclosure
Definitions

DEFINITIONS

1. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command," or a civilian supervisor in a comparable position who is outside a Defense Criminal Investigative Organization and is authorized to request an investigation or act on the results of an investigation by a Defense Criminal Investigative Organization.
2. Credible Information. Information, considered in light of its source and the surrounding circumstances, that supports a reasonable belief that a Service member has engaged in adult private consensual sexual misconduct. Credible information consists of articulable facts, not just a belief or suspicion.
3. Defense Criminal Investigative Organizations. The Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.
4. Other DoD Law Enforcement Organizations. Those elements of the DoD Components, other than the Defense Criminal Investigative Organizations, that are authorized to investigate violations of the Uniform Code Military Justice or the United States Code.
5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.