



# Department of Defense INSTRUCTION

NUMBER 5505.8

June 6, 2000

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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, February 28, 1994 (hereby canceled)
- (b) [DoD Directive 5106.1](#), "Inspector General of the Department of Defense," March 14, 1983
  - (c) [DoD Instruction 5505.3](#), "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986
  - (d) Chapter 47 of title 10, United States Code

## 1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues and updates reference (a) under the authority of reference (b) and updates DoD procedures regarding the initiation of criminal investigations into certain types of sexual misconduct, as defined in this Instruction.

1.2. 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 commander(s) of the Service member(s) for appropriate disposition.

1.3. Authorizes the DCIOs, to ensure their independence, objectivity, and effectiveness, to initiate investigations into adult private consensual sexual misconduct without obtaining a referral from the commander(s) of the Service member(s). 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.

## 2. APPLICABILITY

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

## 3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

## 4. POLICY

It is DoD policy that DCIOs or other DoD law enforcement organizations shall not conduct an investigation solely to determine whether a Service member is a heterosexual, a homosexual, or a bisexual. 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.

## 5. RESPONSIBILITIES

The Secretaries of the Military Departments and the Heads of the DoD Components shall implement this Instruction.

## 6. PROCEDURES

6.1. Allegations of adult private consensual sexual misconduct received by a DCIO or other DoD law enforcement organizations 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 paragraph 6.3. of this Instruction.

6.2. 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 organizations, as appropriate.

6.2.1. 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 the Commander or Director 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.

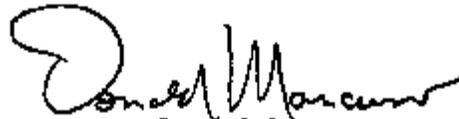
6.2.2. If a DCIO determines that a request from a commander lacks credible information of adult private consensual sexual misconduct, or is not in keeping with established policy, the matter will be returned to the commander, without action, for appropriate disposition.

6.3. DoD Instruction 5505.3 (reference (c)) 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.

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

7. EFFECTIVE DATE

This Instruction is effective immediately.

  
Donald Mancuso  
Deputy Inspector General

Enclosures - 1

E1. Definitions

## E1. ENCLOSURE 1

### DEFINITIONS

E1.1.1. 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.

E1.1.2. 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.

E1.1.3. 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.

E1.1.4. 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 of Military Justice (reference (d)) or the United States Code.

E1.1.5. Sexual Misconduct. A sexual act or acts in violation of Chapter 47 of title 10, United States Code (reference (d)) 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.

E1.1.6. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.