



Department of Defense INSTRUCTION

NUMBER 5505.8
January 24, 2005

IG DoD

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

- References:
- (a) DoD Instruction 5505.8, "Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations," June 6, 2000 (hereby canceled)
 - (b) DoD Directive 5106.1, "Inspector General of the Department of Defense (IG, DoD)," January 4, 2001
 - (c) Chapter 37 of title 10, United States Code
 - (d) Secretary of Defense Memorandum, "Combating Trafficking in Persons," September 16, 2004
 - (e) through (i), see enclosure 1

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. Updates reference (a) to identify reference (c) as a basis for this policy.

1.3. Implements reference (d) and the Deputy Secretary of Defense Memorandum (reference (e)) concerning the use of law enforcement tools to pursue indicators of trafficking in persons.

1.4. Provides that, as a matter of investigative priorities and resource limitations, Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations shall normally refer allegations involving only adult private consensual sexual misconduct to the commander(s) of the Service member(s) for appropriate disposition.

1.5. 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, the Commander, or the 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.

1.6. Should not be construed to limit or preclude the investigation of criminal activity associated with sex trafficking or severe forms of trafficking in persons proscribed by references (d) and (e); Chapter 77 of title 18, United States Code (U.S.C.); and Chapter 78 of title 22, U.S.C. (references (f) and (g)).

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 in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy that the DCIOs or other DoD law enforcement organizations shall not conduct an investigation solely to determine a Service member’s sexual orientation (heterosexual, homosexual, or 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

5.1. The Inspector General of the Department of Defense shall develop policy for, provide assistance to, and oversee investigations by the DCIOs.

5.2. 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 shall normally be referred to the commander(s) of the

Service member(s) concerned, unless the Commander, the Director, or the Principal Deputy of a DCIO initiates an investigation under paragraph 6.3. of this Instruction.

6.2. On 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, the Director, or the Principal Deputy of the DCIO, or those managers or supervisors approved by the Commander, the Director, or the Principal Deputy to do so, shall independently evaluate and determine if the request is based on credible information of adult private consensual sexual misconduct before 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 shall be returned to the commander, without action, for appropriate disposition.

6.3. DoD Instruction 5505.3 (reference (h)) 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 if the Commander, the Director, or the Principal Deputy of the DCIO determines 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.



Joseph E. Schmitz
Inspector General
Department of Defense

Enclosures - 2

E1. References, continued

E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Deputy Secretary of Defense Memorandum, "Combating Trafficking in Persons in the Department of Defense," January 30, 2004
- (f) Chapter 77 of title 18, United States Code
- (g) Chapter 78 of title 22, United States Code
- (h) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," June 21, 2002
- (i) Chapter 47 of title 10, United States Code

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Adult Private Consensual Sexual Misconduct. A sexual act or acts in violation of reference (c) or Chapter 47 of title 10, U.S.C. (reference (i)), that occur(s) 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.

E2.1.2. 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 DCIO and is authorized to request an investigation or act on the results of an investigation by a DCIO.

E2.1.3. Commercial Sex Act. Any sex on account of which anything of value is given or received by any person (reference (g)).

E2.1.4. 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.

E2.1.5. Defense Criminal Investigative Organizations (DCIOs). 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.

E2.1.6. Other DoD Law Enforcement Organizations. Those elements of the DoD Components, other than the DCIOs, that are authorized to investigate violations of reference (i).

E2.1.7. Severe Forms of Trafficking in Persons. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not become 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (reference (g)).

E2.1.8. Sex Trafficking. The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (reference (g)).

E2.1.9. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.