



Department of Defense **INSTRUCTION**

NUMBER 5505.08

April 17, 2013

IG DoD

SUBJECT: Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct

References: See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Instruction (DoDI) 5505.8 (Reference (a)) in accordance with the authority in DoD Directive 5106.01 (Reference (b)) to establish policy, assign responsibilities, and provide procedures for the initiation of criminal investigations into adult, private, consensual sexual misconduct, as defined in this instruction.

b. Incorporates the repeal of “Don’t Ask, Don’t Tell” policy in accordance with Public Law 111-321 (Reference (c)).

2. APPLICABILITY. This instruction:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the “DoD Components”).

b. Should not be construed to limit or preclude the investigation of criminal activity associated with commercial sex acts, sex trafficking, and severe forms of trafficking in persons involving sex trafficking in accordance with DoDI 2200.01 (Reference (d)).

c. Does not apply to a sexual misconduct situation if there is any allegation of sexual assault involved, regardless of the magnitude, merit, or source of the allegation. Allegations of this nature must be immediately reported to an MCIO for investigation.

3. POLICY. It is DoD policy that:

a. Allegations of adult, private, consensual sexual misconduct by members of the Military Services must be properly investigated and addressed by the MCIOs only in accordance with Enclosure 2. 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.

b. Investigations of adult, private, consensual sexual misconduct within the DoD will be independent, objective, and effective.

c. Nothing in this instruction is intended to impinge on the authority of the IG DoD.

4. RESPONSIBILITIES

a. IG DoD. The IG DoD establishes policy, monitors and evaluates program performance, and provides guidance with respect to all DoD activities relating to criminal investigation and law enforcement programs.

b. DoD Component Heads. The DoD Component heads direct compliance with and prescribe procedures to implement this instruction.

c. MCIO Directors and Commanders. MCIO directors and commanders ensure that allegations received by their MCIO of adult, private, consensual sexual misconduct by Service members in violation of chapter 47 of Title 10, U.S.C., also known and referred to in this instruction as “The Uniform Code of Military Justice (UCMJ)” (Reference (e)), will be referred to the commander(s) of the Service member(s) concerned in accordance with Enclosure 2, except under the circumstances described in that enclosure when the MCIO may immediately investigate the allegations.


5. PROCEDURES. See Enclosure 2.

6. RELEASABILITY. **Unlimited**. This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction:

a. Is effective April 17, 2013.

b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DoD Instruction 5025.01 (Reference (f)). If not it will expire effective April 17, 2023 and be removed from the DoD Issuances Website.



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Department of Defense
Performing the Duties of the
Inspector General of the
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Enclosures

1. References
2. Adult, Private, Consensual Sexual Misconduct

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Instruction 5505.8, "Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations Investigations of Sexual Misconduct," January 24, 2005 (hereby cancelled)
- (b) DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012
- (c) Public Law 111-321, "Don't Ask, Don't Tell Repeal Act of 2010," December 22, 2010
- (d) DoD Instruction 2200.01, "Combating Trafficking in Persons (CTIP)," September 15, 2010
- (e) Chapter 47 of Title 10, United States Code (also known as "The Uniform Code of Military Justice (UCMJ)")
- (f) DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012
- (g) DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011

ENCLOSURE 2

ADULT, PRIVATE,
CONSENSUAL SEXUAL MISCONDUCT

DoD law enforcement organizations, including the MCIOs, will not investigate allegations of misconduct in violation of the UCMJ involving only adult, private, consensual sexual acts against any personnel under their investigative jurisdiction, except under the circumstances described below.

a. Service members whose alleged acts are in violation of the UCMJ must be referred by an MCIO to the commander(s) of the Service member(s) concerned, unless the MCIO director, commander, or his or her principal deputy initiates an investigation pursuant to DoDI 5505.03 (Reference (g)).

b. On receipt of any allegations of adult, private, consensual sexual misconduct by Service members that are in violation of the UCMJ, the commander of the Service member concerned will review the allegations. If the commander determines that there is credible information of adult, private, consensual sexual misconduct, he or she may request a criminal investigation by an MCIO.

(1) If a commander requests that an MCIO initiate a criminal investigation, the MCIO director, commander, or his or her principal deputy will independently evaluate and determine if the request is based on credible information of adult, private, consensual sexual misconduct before initiating a criminal investigation in accordance with Reference (g). Normally, such an investigation will be undertaken by an MCIO only if the:

(a) Adult, private, consensual sexual misconduct involves other criminal activity that is under the investigative jurisdiction of the MCIO.

(b) Investigation requires special investigative skills or resources.

(c) Allegation has a detrimental impact on the mission.

(2) If an MCIO determines that no MCIO action will occur following a request from a commander to investigate adult, private, consensual sexual misconduct, then the matter will be returned to the commander for appropriate resolution.

(3) MCIOs may, in accordance with Reference (g), initiate investigations into adult, private, consensual sexual misconduct without obtaining a referral from the commander(s) of the Service member(s). However, they may do so only if the MCIO director, commander, or his or her principal deputy determines that:

(a) There is credible information that an offense has been committed.

(b) The adult, private, consensual sexual misconduct involves other criminal activity that is under the investigative jurisdiction of the MCIO.

(c) The investigation requires special investigative skills or resources.

(d) The allegation has a detrimental impact on the mission.

c. Misconduct allegations brought against DoD civilian personnel only involving adult, private, consensual sexual acts will not be investigated by DoD law enforcement organizations. The DoD law enforcement organizations will, instead, refer the allegations to the supervisor chain of the DoD civilian personnel for appropriate resolution.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DoDI	DoD Instruction
IG DoD	Inspector General of the Department of Defense
MCIO	Military Criminal Investigative Organization
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this instruction.

adult, private, consensual sexual misconduct. A sexual act or acts in violation of the UCMJ, that occur(s) in private between consenting adults, whether on or off a military installation. It does not include any sexual act or acts that involve allegations by any party of force, coercion, intimidation, unconsciousness or incapacitation; 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.

commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. For purposes of this instruction, all references to “commander” also include the military and civilian heads of DoD organizations that are not part of a MCIO, and are authorized to request an investigation or act on the results of an investigation by a MCIO.

credible information. Information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume that the fact or facts in question are true.

MCIOs. The U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

other DoD law enforcement organizations. Those elements of the DoD Components, other than the MCIOs, that are authorized to investigate violations of the UCMJ.