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DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20350-1000

SECNAVINST 5527.2

NO9N

25 April 1994

SECNAV INSTRUCTION 5527.2

From: Secretary of the Navy
To: All Ships and Stations

Subj: INVESTIGATIONS OF SEXUAL MISCONDUCT WITHIN THE DEPARTMENT
OF THE NAVY

Ref: (a) SECNAVINST 5520.3B
(b) Title 10, United States Code, Chapter 47, "Uniform
Code of Military Justice," Sections 801-940

Encl: (1) DoD Instruction 5505.8, "Investigations of Sexual
Misconduct by the Defense Criminal Investigative
Organizations and Other DoD Law Enforcement
Organizations" of 28 Feb 94

1. Purpose. To implement enclosure (1) and clarify responsibilities for criminal investigations within the Department of the Navy (DON) delineated in reference (a).
2. Discussion. Enclosure (1) implements the Department of Defense policy regarding the initiation of criminal investigations into certain types of sexual misconduct. Enclosure (1) prohibits any investigation solely to determine whether a service member is a heterosexual, a homosexual, or a bisexual and defines the authority of the Naval Criminal Investigative Service (NCIS) to initiate criminal investigations into adult, private, consensual sexual misconduct. Enclosure (1) provides that investigations by NCIS shall be conducted in an even-handed manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct. It also provides that investigations shall be limited to the factual circumstances directly relevant to the specific allegations.
3. Definition. Sexual misconduct is defined in enclosure (1) as: a sexual act or acts in violation of Chapter 47 of Title 10, U.S.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.



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4. Responsibilities

a. Naval Criminal Investigative Service

(1) Within the DoN, NCIS is primarily responsible for investigating actual, suspected or alleged major criminal offenses committed against a person, the United States Government, or private property, including the attempts or conspiracies to commit such offenses. A major criminal offense (felony) is defined as one punishable under the Uniform Code of Military Justice by confinement for a term of more than 1 year, or similarly framed federal statutes, state, local or foreign laws or regulations.

(2) Adult, private, consensual sexual misconduct, as defined, may constitute a major criminal offense. However, adult, private, consensual sexual misconduct, where such misconduct is the only offense involved, normally shall be referred to the commander of the service member concerned and shall not be investigated by NCIS, with the following two exceptions:

(a) Upon request of a commander under procedures detailed in paragraph F2 of enclosure (1); or

(b) Absent a request from a commander, the Director or Assistant Director for Criminal Investigations of NCIS may initiate a criminal investigation into adult, private, consensual sexual misconduct upon the determination that there is credible information of adult, private, consensual sexual misconduct and that such an investigation is an appropriate use of investigative resources.

(3) The Director, NCIS shall designate those managers and supervisors within NCIS with the authority to make the determinations required by paragraph F2 of enclosure (1).

(a) If a commander requests that NCIS initiate a criminal investigation into adult, private, consensual sexual misconduct, the Director of the NCIS, and those managers or supervisors designated 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 NCIS 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.

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(4) With the exception of adult, private, consensual sexual misconduct, all major criminal offenses shall be investigated under reference (a).

b. Commanders

(1) A commander may request a criminal investigation by NCIS under the procedures detailed in paragraph F2 of enclosure (1). In particular, upon 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 NCIS or command investigators.

(2) Under reference (a), use of command investigators for criminal and security investigations is limited to minor criminal offenses, except when NCIS declines jurisdiction. Navy and Marine Corps commands may use command investigators to investigate adult, private, consensual sexual misconduct under paragraphs F1 and F2 of enclosure (1). A declination of jurisdiction by NCIS is not required to initiate such an investigation, unless the commander requests that NCIS conduct an investigation. If the commander requests an NCIS investigation, then NCIS must decline before the commander initiates an investigation.



JOHN H. DALTON

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Department of Defense INSTRUCTION

SECNAVINST 5527.2
25 APR 1994

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 (1)

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.