

2000 hereafter referred to as “the Report Accompanying the Act”). While the U.S. could impose administrative discipline for such actions, the Act and this part are intended to address the jurisdictional gap with respect to criminal sanctions.

(d) Nothing in this part may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or the law of war may be tried by court-martial, military commission, provost court, or other military tribunal (Section 3261(c) of title 18). In some cases, conduct that violates section 3261(a) of the Act may also violate the UCMJ, or the law of war generally. Therefore, for military personnel, military authorities would have concurrent jurisdiction with a U.S. District Court to try the offense. The Act was not intended to divest the military of jurisdiction and recognizes the predominant interest of the military in disciplining its service members, while still allowing for the prosecution of members of the Armed Forces with non-military co-defendants in a U.S. District Court under section 3261(d) of the Act.

(e) This part, including its enclosures, is intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and of the United States Coast Guard by agreement with the Department of Homeland Security. Nothing contained herein creates or extends any right, privilege, or benefit to any person or entity. See *United States v. Caceres*, 440 U.S. 741 (1979).

§ 153.3 Definitions.

Accompanying the Armed Forces Outside the United States. As defined in section 3267 of the Act, the dependent of:

- (1) A member of the Armed Forces; or
- (2) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or
- (3) A DoD contractor (including a subcontractor at any tier); or
- (4) An employee of a DoD contractor (including a subcontractor at any tier); and

(5) Residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(6) Not a national of or ordinarily resident in the host nation.

Active Duty. Full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. See section 101(d)(1) of title 10, United States Code.

Armed Forces. The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard. See section 101(a)(4) of title 10, United States Code.

Arrest. To be taken into physical custody by law enforcement officials.

Charged. As used in the Act and this part, this term is defined as an indictment or the filing of information against a person under the Federal Rules of Criminal Procedure. See the analysis to Section 3264 of the Report Accompanying the Act.

Civilian Component. A person or persons employed by the Armed Forces outside the United States, as defined in this section and section 3267(a)(1), as amended, of the Act. A term used in Status of Forces Agreements.

Dependent. A person for whom a member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier) has legal responsibility while that person is residing outside the United States with or accompanying that member of the Armed Forces, civilian employee, contractor (or subcontractor at any tier), and while that responsible person is so assigned, employed or obligated to perform a contractual obligation to the Department of Defense. For purposes of this part, a person’s “command sponsorship” status while outside the United States is not to be considered in determining whether the person is a dependent within the meaning of this part, except that there shall be a rebuttable presumption that a command-sponsored individual is a dependent.

Designated Commanding Officer (DCO). A single military commander in each foreign country where U.S. Forces are

stationed and as contemplated by DoD Directive 5525.1, Status of Forces Policy and Information.

Detention. To be taken into custody by law enforcement officials and placed under physical restraint.

District. A District Court of the United States.

Employed by the Armed Forces Outside the United States. Any person employed as:

(1) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or

(2) A civilian employee of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

(3) A contractor (including a subcontractor at any tier) of the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense); or

(4) A contractor (including a subcontractor at any tier) of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

(5) An employee of a contractor (including a subcontractor at any tier) of the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense); or

(6) An employee of a contractor (including a subcontractor at any tier) of any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; and, when the person:

(i) Is present or resides outside the United States in connection with such employment; and

(ii) Is not a national of or ordinarily resident in the host nation.

Federal Magistrate Judge. As used in the Act and this part, this term includes both Judges of the United States and U.S. Magistrate Judges, titles that, in general, should be given their respective meanings found in the Federal Rules of Criminal Procedure. (See footnote 32 of the Report Accompanying the Act) The term does not include Military Magistrates or Military

Judges, as prescribed by the UCMJ, or regulations of the Military Departments or the Department of Defense.

Felony Offense. Conduct that is an offense punishable by imprisonment for more than one year if the conduct had been engaged in the special maritime and territorial jurisdiction of the United States. See sections 3261 of the Act and 18 U.S.C. 7. Although the Act, uses the conditional phrase “if committed within the special maritime and territorial jurisdiction of the United States,” acts that would be a Federal crime regardless of where they are committed in the U.S., such as drug crimes contained in chapter 13 of title 21, United States Code, also fall within the scope of section 3261(a) of the Act. See the analysis to section 3261 of the Report Accompanying the Act.

Host Country National. A person who is not a citizen of the United States, but who is a citizen of the foreign country in which that person is located.

Inactive Duty Training. Duty prescribed for Reservists by the Secretary of the Military Department concerned under section 206 of title 37, United States Code, or any other provision of law; and special additional duties authorized for Reservists by an authority designated by the Secretary of the Military Department concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Inactive Duty Training includes those duties performed by Reservists in their status as members of the National Guard while in Federal service. See section 101(d)(7) of title 10, United States Code.

Juvenile. A person who has not attained his or her eighteenth birthday, as defined in section 5031 of title 18, United States Code.

Military Department. The Department of the Army, the Department of the Navy, and the Department of the Air Force. See section 101(a)(8) of title 10, United States Code.

National of the United States. As defined in section 1101(a)(22), of title 8, United States Code.

Outside the United States. Those places that are not within the definition of “United States” below and, with the exception of subparagraph 7(9), those geographical areas and locations that are not within the special maritime and territorial jurisdiction of the United States, as defined in sections 7 of title 18, United States Code. The locations defined in subparagraph 7(9) of title 18, United States Code are to be considered “Outside the United States” for the purposes of this part. See 3261–3267 of title 18, United States Code.

Qualified Military Counsel. Judge advocates assigned to or employed by the Military Services and designated by the respective Judge Advocate General, or a designee, to be professionally qualified and trained to perform defense counsel responsibilities under the Act.

Staff Judge Advocate. A judge advocate so designated in the Army, the Air Force, the Marine Corps, or the Coast Guard; the principal legal advisor of a command in the Navy who is a judge advocate, regardless of job title. See Rule for Courts-Martial 103(17), Manual for Courts-Martial, United States (2002 Edition).

Third Country National. A person whose citizenship is that of a country other than the U.S. and the foreign country in which the person is located.

United States. As defined in section 5 of title 18, United States Code, this term, as used in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except for the Panama Canal Zone.

§ 153.4 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall provide initial coordination and liaison with the Departments of Justice and State, on behalf of the Military Departments, regarding a case for which investigation and/or Federal criminal prosecution under the Act is contemplated. This responsibility may be delegated entirely, or delegated for categories of cases, or delegated for individual cases. The General Counsel, or designee, shall advise the Domestic Security Section of the Criminal Division, Department of

Justice (DSS/DOJ), as soon as practicable, when DoD officials intend to recommend that the DOJ consider the prosecution of a person subject to the Act for offenses committed outside the United States. The Assistant Attorney General, Criminal Division, Department of Justice, has designated the Domestic Security Section (DSS/DOJ) as the Section responsible for the Act.

(b) The *Inspector General of the Department of Defense* shall:

(1) Pursuant to Section 4(d) of the Inspector General Act of 1978, as amended (5 U.S.C. App. 3), “report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.” This statutory responsibility is generally satisfied once an official/special agent of the Office of the Inspector General of the Department of Defense notifies either the cognizant Department of Justice representative or the Assistant Attorney General (Criminal Division) of the “reasonable grounds.”

(2) Pursuant to Section 8(c)(5) of the Inspector General Act of 1978, as amended (5 U.S.C. App. 3), and 10 U.S.C. 141(b), ensure the responsibilities described in DoD Directive 5525.7, “Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes,” January 22, 1985,¹ to “implement the investigative policies [m]onitor compliance by DoD criminal investigative organizations [, and p]rovide specific guidance regarding investigative matters, as appropriate” are satisfied relative to violations of the Military Extraterritorial Jurisdiction Act of 2000.

(c) The *Heads of Military Law Enforcement Organizations and Military Criminal Investigative Organizations, or their Designees*, shall:

(1) Advise the Commander and Staff Judge Advocate (or Legal Advisor) of the Combatant Command concerned, or designees, of an investigation of an alleged violation of the Act. Such notice

¹Available from Internet site <http://www.dtic.mil/whs/directives>.