

POLICY GUIDELINES ON HOMOSEXUAL CONDUCT
IN THE ARMED FORCES

Summary of Policy

• Accession Policy

- Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual, but applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct.

• Discharge Policy

- Sexual orientation will not be a bar to service unless manifested by homosexual conduct. The military will discharge members who engage in homosexual conduct, which is defined as a homosexual act, a statement that the member is homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender.

• Investigations Policy

- No investigations or inquiries will be conducted solely to determine a servicemember's sexual orientation. Commanders will initiate inquiries or investigations when there is credible information that a basis for discharge or disciplinary action exists. Sexual orientation, absent credible information that a crime has been committed, will not be the subject of a criminal investigation. An allegation or statement by another that a servicemember is a homosexual, alone, is not grounds for either a criminal investigation or a commander's inquiry.

Activities

- Bodily contact between servicemembers of the same sex that a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts (e.g., handholding or kissing in most circumstances) will be sufficient to initiate separation.
- Activities such as association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications, or marching in a gay rights rally in civilian clothes will not, in and of themselves, constitute credible information that would provide a

basis for initiating an investigation or serve as the basis for an administrative discharge under this policy.

- The listing by a servicemember of someone of the same gender as the person to be contacted in case of emergency, as an insurance beneficiary or in a similar context, does not provide a basis for separation or further investigation.
- Speech within the context of priest-penitent, husband-wife or attorney-client communications remains privileged.

Off-Base Conduct

- No distinction will be made between off-base and on-base conduct.
- From the time a member joins the service until discharge, the servicemember's duty and commitment to the unit is a 24 hour-a-day, seven-day-a-week obligation. Military members are required to comply with both the UCMJ, which is federal law, and military regulations at all times and in all places. Unacceptable conduct, homosexual or heterosexual, is not excused because the servicemember is not "at work."

Investigations and Inquiries

- Neither investigations nor inquiries will be conducted solely to determine an individual's sexual orientation.
- Commanders can initiate investigations into alleged homosexual conduct when there is credible information of homosexual acts, prohibited statements or homosexual marriage.
- Commanders will exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a servicemember has engaged in proscribed homosexual conduct. Commanders, not investigators, determine when sufficient credible information exists to justify a detail of investigative resources to look into allegations.

Credible Information

- Credible information of homosexual conduct exists when the information, considered in light of its source and all attendant circumstances, supports a reasonable belief that a servicemember has engaged in such conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

Security Clearances

- Questions pertaining to an individual's sexual orientation are not asked on personnel security questionnaires. An individual's sexual conduct, whether homosexual or heterosexual, is a legitimate security concern only if it could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability, or good judgment that is required of anyone with access to classified information.

The Threat of Extortion

- As long as servicemembers continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy reduces the risk to homosexuals by making certain categories of information largely immaterial to the military's initiation of investigations.
- Only credible information that a servicemember engaged in homosexual conduct will form the basis for initiating an inquiry or investigation of a servicemember; suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry or action.
- Extortion is a criminal offense, under both the UCMJ and United States Code, and offenders will be prosecuted. A servicemember convicted of extortion risks dishonorable discharge and up to three years confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a \$2000 fine and one-year imprisonment. The risk of blackmail will be addressed by educating all servicemembers on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

Discipline

- A mere allegation or statement by another that a servicemember is a homosexual is not grounds for official action. Commanders will not take official action against members based on rumor, suspicion or capricious allegations.
- However, if a third party provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take non-judicial or administrative action or recommend judicial action, as appropriate.
- Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the Service investigative agency or a commander inquiry is warranted, or if no action should be taken.

Harassment

- Commanders are responsible for maintaining good order and discipline.
- All servicemembers will be treated with dignity and respect. Hostile treatment or violence against a servicemember based on a perception of his or her sexual orientation will not be tolerated.