

## INFORMATION PAPER

DAJA-AL  
7 March 2001

SUBJECT: The Department of Defense Homosexual Conduct Policy

1. Purpose. To provide information on the Department of Defense Homosexual Conduct Policy.

2. Facts.

a. General.

(1) With certain limited exceptions, 10 U.S.C. § 654 requires a member of the armed forces to be separated upon findings that the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act; that the member has stated that he or she is a homosexual; or that the member has married or attempted to marry a person of the same sex. Each of these acts constitutes **homosexual conduct**.

(2) The Department of Defense Homosexual Conduct Policy, as implemented by a 1993 DOD policy memorandum, is further defined in AR 600-20. As explained above, homosexual conduct is grounds for separation from the service. A member who has a homosexual orientation but does not have a propensity to engage in homosexual conduct may not be separated from the service.

(3) A commander may initiate a fact-finding inquiry regarding homosexual conduct only when the commander has received credible information that there is a basis for discharge. Investigations or inquiries will not be initiated solely to determine whether a member is heterosexual, homosexual, or bisexual. There must be credible information that a basis for disciplinary action or discharge exists.

(4) Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a soldier has engaged in homosexual conduct. A mere belief or suspicion of homosexual conduct that is based upon rumor, conjecture, or mere associational activity, such as going to a gay bar or associating with known homosexuals, is insufficient to initiate an inquiry. Commanders are encouraged to coordinate with a judge advocate prior to making credibility determinations.

(5) The fact that a service member reports being threatened or harassed because he or she is said or is perceived to be a homosexual shall not by itself constitute credible information justifying the initiation of an investigation into the sexual conduct of the threatened or harassed servicemember. The report of a threat or harassment should result in the prompt investigation of the threat or harassment itself, without soliciting information concerning the sexual orientation or homosexual conduct of the threatened person. If, during the course of an investigation into such

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threats or harassment, information is received that the threatened or harassed servicemember has engaged in homosexual conduct, commanders shall carefully consider the credibility of such information.

(6) The fact-finding inquiry may be conducted by the commander personally or by someone he or she appoints. However, only a soldier's commander may initiate such an inquiry. First sergeants, platoon sergeants, or other supervisory personnel are not authorized to initiate an inquiry into alleged homosexual conduct

(a) Commanders or appointed inquiry officers shall not ask, and soldiers shall not be required to reveal whether soldiers are heterosexual, homosexual, or bisexual. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask soldiers if they engaged in such conduct.

(b) When someone other than the commander asks questions concerning a soldier's sexual orientation without the commander's authorization to conduct an inquiry, the individual facts should be examined to determine whether a violation of the homosexual conduct policy has occurred.

b. Special Procedures for Investigating Statement Cases.

(1) IAW Message, ODCSPER, DAPE-HR-L, 101700Z, January 2000, subject: Homosexual Conduct Policy, no investigation is required in most cases of homosexual statements. However, a commander may conduct a "non-substantial investigation" UP AR 600-20 into a soldier's statement of homosexual orientation when a commander feels that the statement is not credible. A non-substantial investigation is limited to questioning the soldier, individuals suggested by the soldier for interview, and the soldier's immediate supervisory chain of command

(2) An inquiry that extends beyond questioning the soldier, individuals suggested by the soldier for interview, and the soldier's immediate supervisory chain of command is a "substantial investigation" that must be authorized as set forth in subparagraphs (3) thru (5) below. A substantial investigation may be required when a member is believed to have made a statement of homosexual orientation for the purpose of seeking separation from the service or in those instances where the recoupment of financial benefits is warranted.

(3) Only the Assistant Secretary of the Army (Manpower and Reserve Affairs) can authorize a "substantial investigation" to determine whether a soldier is making a statement of homosexual orientation for the purpose of seeking separation from the service or to avoid recoupment obligations.

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(4) On 12 August 1999, the Under Secretary of Defense (Personnel and Readiness) issued supplemental guidance on the Department of Defense Homosexual Conduct Policy to the Service Secretaries designed to ensure proper application and enforcement of the Policy. Included within this supplemental guidance was a recommendation to have installation-level judge advocates consult with higher headquarters legal officers before initiation of investigations into allegations of homosexual conduct.

(5) IAW TJAG guidance, installation level judge advocates are required to consult with the staff judge advocate at the MACOM level prior to advising a commander to initiate a substantial investigation into homosexual conduct or to request permission from the ASA (M&RA) to initiate a substantial investigation. The MACOM level SJA may authorize consultation with a staff judge advocate serving a subordinate organization commanded by a lieutenant general.

(6) If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in AR 27-10 and AR 195-2.

c. Training.

(1) 10 U.S.C. § 654(d) requires that all members of the armed forces, upon entry into the service and periodically thereafter, shall be provided training on the applicable laws and regulations governing sexual conduct by members of the armed forces (to include policies regarding homosexuality).

(2) The Under Secretary of Defense (Personnel and Readiness) issued supplemental guidance regarding homosexual conduct policy training and anti-harassment training to the Service Secretaries on 21 July 2000. This training must be tailored to the grade and responsibility levels of their audiences and must address the Department of Defense overarching principle<sup>1</sup> of "dignity and respect."

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<sup>1</sup>Treatment of all individuals with dignity and respect is essential to good order and discipline. Mistreatment, harassment, and inappropriate comments or gestures undermine this principle and have no place in our armed forces. Commanders and leaders must develop and maintain a climate that fosters unit cohesion, esprit de corps, and mutual respect for all members of the command or organization.