

National Guard Bureau Overview of DoD Policy on Homosexual Conduct 4 February 2000

- Session Purpose: To apprise leaders and members of current DoD policy on homosexual conduct “Don’t ask, don’t tell, don’t harass”
- At the conclusion of the session, you will be able to:
 - State basic points of DoD policy
 - Define sexual orientation
 - Define homosexual conduct
 - State commander’s responsibilities
 - Describe characteristics of credible information
 - List staff resources who can provide assistance
- Agenda for session:
 - Briefing
 - Questions and answers
 - Discussion of policy-related scenarios
 - Participation evaluation
 - Summary
- The suitability of persons to serve in the Armed Forces is based on their conduct and their ability to meet required standards of duty performance and discipline
- Homosexual conduct is grounds for barring entry into the Armed Forces and for separation from the Armed Forces
- Sexual orientation is NOT a bar to enlistment or to continued service
- Definitions are key to understanding
 - Sexual orientation:
 - Is a private/personal matter
 - Is defined as “an abstract sexual preference for persons of a particular sex as distinct from a propensity or intent to engage in sexual acts.”
 - Propensity – A propensity to engage in homosexual acts indicates a likelihood that a person engages in or will engage in homosexual acts.
 - Homosexual – A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
- What constitutes Homosexual Conduct:
 - Statement
 - Act

- Marriage between same sex
- Statement:
 - Can be conveyed through language or behavior
 - Indicates a propensity or intent to engage in homosexual acts
 - Is rebuttable
- Acts – any bodily contact that
 - Actively undertaken or passively permitted, between persons of the same sex for the purpose of satisfying sexual desires

AND

 - That a reasonable person would understand to demonstrate propensity or intent to engage in act described above
- What behaviors are NOT homosexual acts as defined by DoD Policy?
 - Associating with known homosexuals
 - Marching in a gay rights rally in civilian clothes
 - Possessing or reading homosexual publications
 - Going to a gay bar
- Summary of DoD Policy:
 - Sexual orientation is a personal/private matter
 - Conduct determines suitability
 - Homosexual Conduct (statement, act, marriage between same sexes (SAM)) is justification for administrative separation
- DoD Policy on Homosexual Conduct affects:
 - Accessions
 - Separations
 - Criminal Investigations
 - Security Investigations
 - Military training
- Accessions:
 - Individuals will NOT be asked to reveal whether they are heterosexual, homosexual or bisexual
 - Sexual orientation ALONE is NOT a bar to entry into service
 - All applicants will be informed of the policy concerning homosexual conduct
- Separations:
 - Suitability for service is based on CONDUCT
 - DoD directs three bases for separation SAM
 - Discharge for engaging in homosexual conduct will normally be characterized as “Honorable” or “Under Honorable Conditions”

- Administrative Discharge “Under Other than Honorable Conditions” or Court-Martial MAY be appropriate if member attempted, solicited, or committed a homosexual act:
 - By using force
 - With a person under 16 years of age
 - With a subordinate
 - Openly in public view
 - For compensation
 - Aboard a military vessel or aircraft
 - In a location under military control
- Criminal Investigations:
 - No Defense Criminal Investigative or other DoD law enforcement organization will conduct investigations solely to determine a soldier’s sexual orientation
 - Such organizations normally will NOT initiate criminal investigations into adult, private, consensual sexual misconduct where such misconduct is the ONLY offense involved
 - In absence of aggravating circumstances, allegations of sexual misconduct will be referred to the members Commander
 - If Commander is uncertain about any aspects of investigating alleged homosexual conduct, he/she should seek advice from local SJA
- Personnel Security:
 - No investigations or inquiries solely to determine a soldier’s sexual orientation
 - No questions about sexual orientation on Personnel Security Questionnaires
 - Only sexual CONDUCT may be questioned during investigations
 - No information about homosexual orientation or conduct obtained during security clearance investigations will be used for separation proceeding
- Military Training:
 - Members to be informed of laws and regulations governing sexual conduct, including policies on homosexual conduct
 - New training plan for DoD Policy on homosexual conduct designed for commanders and personnel involved in recruiting, accession processing, criminal investigations, and administrative separations
- Commander’s responsibilities
 - Insure members are briefed on DoD Policy on homosexual conduct

- Insure refresher and optional individual training in military justice
- How should a Commander respond to allegations of homosexual conduct?
 - Determine if CONDUCT fits DoD definition of homosexual conduct
 - Verify that information about alleged homosexual CONDUCT is credible
 - Initiate informal fact-finding inquiry ONLY if CREDIBLE information exists
- What is “Credible Information?”
 - Comes from a reliable person
 - Is an observation (sight or sound) of conduct
 - Would lead to a reasonable person to believe the member making the described act intended to convey the fact that he/she engages in or has propensity to engage in homosexual conduct
- What resources are available to the Commander who is dealing with an allegation of homosexual conduct?
 - Local SJA
 - Local IG
- How should a Commander carry out in inquiry?
 - Confine all inquiries to alleged homosexual conduct (NOT orientation)
 - Verify that information obtained is credible
 - Seek legal advice as needed
- What should a Commander do if, during the course of the inquiry, he/she discovers possible conduct?
 - Contact SJA or IG
- What should a Commander do if the inquiry fails to verify that a member engaged in homosexual conduct?
 - Terminate the inquiry
- What should a Commander do if the inquiry verifies that a member did engage in act(s) of homosexual conduct?
 - Seek legal advice on initiating administrative separation proceedings
- Summary:
 - Basic points of DoD Policy on homosexual conduct
 - Definition of terms
 - Responsibilities of Commander
 - Sources of assistance available