

FOIA MARKER

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Gays in the Military Policies

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grounds for separation from the military services. Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts ² such as a statement by the member that he or she is a homosexual ² is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages or will engage in homosexual acts.

b. A member shall be separated under this section if one or more of the following approved findings is made:

(1) ~~During a period of military service~~ The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

(a) Such acts are a departure from the member's usual and customary behavior;

(b) Such acts under all the circumstances are unlikely to recur;

(c) Such acts were not accomplished by use of force, coercion, or intimidation;

(d) Under the particular circumstances of the case, the member's continued presence in the Armed Forces is consistent with the interest of the Armed Forces in proper discipline, good order, and morale; and

(e) The member does not have a propensity or intent to engage in homosexual acts.

~~(2) Before entering military service, the member engaged in a homosexual act or acts, and the act or acts demonstrate a current propensity or intent to engage in homosexual acts.~~

he or she is a homosexual or bisexual or words to that effect,

(3) The member has made a statement that demonstrates that the member engages in or has a propensity or intent to engage in homosexual acts, unless there is a further approved finding that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(a) A statement by a Service member that he or she is homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the Service member is engaging in homosexual acts or has a propensity or intent to do so. The Service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages or will engage in homosexual acts. In determining whether a member has successfully rebutted the presumption that he or she engages in or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

or, in the case of preservice acts, are remote in time

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PROPOSED REVISIONS TO ACCESSIONS POLICY

1 Current

Refer to Tab B-1, pages 2-5 and 2-6

Section 8.b (1):

An applicant shall be rejected for entry into the Armed Forces if, in the course of the accession process, evidence is received demonstrating that the applicant engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there is a further determination that (a) such acts are a departure from the applicant's usual and customary behavior, (b) such acts, under all the circumstances, are unlikely to recur, (c) such acts were not accomplished by use of force, coercion, or intimidation, and (d) the applicant does not have a propensity or intent to engage in homosexual acts. Such a determination shall be based solely upon the evidence obtained in the normal accession process.

Note: This language is derived from the statutory language (pertaining to separation policy) and from our separation directives. The last sentence means simply that we are not setting up a new administrative procedure to handle these cases. The determination of whether an applicant has demonstrated that he does not engage in acts, etc., will probably be made by a regional accession authority (as would be prescribed in Service regulations).

Section 8.b(2):

An applicant shall be rejected for entry if he or she makes a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further determination that the applicant has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. Such a determination will be based solely upon the evidence obtained through normal accession processing.

Note: This language is derived from the statutory language. It does not effect a substantive change from our existing language, but eliminates the guidance on what factors to consider in determining whether the applicant has demonstrated that he does not engage in acts, etc.

Section 8.b(3):

An applicant shall be rejected for entry if, in the course of the accession process, evidence is received demonstrating that

an applicant has married or attempted to marry a person known to be of the same biological sex.

Note: This language is derived from the statute. The Services (and apparently Congress) feel that a person who engages in a homosexual marriage or attempted marriage certainly must have a propensity to engage in acts, and so any exceptions or a rebuttable presumption are not warranted. Identical changes would be made to the separation provisions on marriages.