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Department of Defense DIRECTIVE

December 21, 1993
NUMBER 1332.14

ASD(P&R)

SUBJECT: Enlisted Administrative Separations

- References:
- (a) DoD Directive 1332.14, subject as above, January 28, 1982 (hereby canceled)
 - (b) Section 977 of title 10, United States Code (Denial of Certain Benefits to Persons Who Fail to Complete at Least Two Years of an Original Enlistment)
 - (c) Pub. L. No. 97-66, "The Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments Act of 1981", October 17, 1981, (95 Stat. 1035)
 - (d) Sections 801-940 of title 10, United States Code (Uniform Code of Military Justice, Articles 1-140)
 - (e) through (y), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and updates policy, responsibilities, and procedures governing the administrative separation of enlisted members from the Military Services.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense and the Military Departments (including their Reserve components). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force and the Marine Corps.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. It is DoD policy to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

- a. Judge the suitability of persons to serve in the Armed Forces on the basis of their conduct.
- b. Ensure that the Military Services are served by individuals capable of meeting required standards of duty performance and discipline;
- c. Maintain standards of performance and conduct through

characterization of service in a system that emphasized the importance of honorable service;

d. Achieve authorized force levels and grade distributions; and

e. Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

2. DoD separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

a. The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the Service, and one's fellow citizens and Service members to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

b. Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Armed Forces. It is DoD policy to provide Service members with the training, motivation, and professional leadership that inspires the dedicated enlisted member to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

c. The Military Services make a substantial investment in training, time, equipment, and related expenses when persons are enlisted or inducted into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Armed Forces. Reasonable efforts should be made to identify enlisted members who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation before initiation of separation proceedings. Enlisted members who do not demonstrate potential for further military service should be separated to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance that are associated with retention of enlisted members who do not conform to required standards of discipline and performance despite efforts at counseling, retraining, or rehabilitation.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness may supplement the enclosures to this Directive, and may delegate the authority to establish reporting requirements for the reasons for separation (Part 1, enclosure 3) to a Deputy Assistant Secretary.

2. The Secretaries of the Military Departments shall prescribe implementing documents to ensure that the policies, standards, and procedures in this Directive are administered in a manner that provides consistency in separation policy to the extent practicable in a system that is based on command discretion. The implementing documents also shall address the following matters:

a. Processing Goals. The Secretary concerned shall establish processing time goals for the types of administrative separations authorized

by this Directive. Such goals shall be designed to further the efficient administration of the Armed Forces and shall be measured from the date of notification to the date of separation. Normally such goals should not exceed 15 working days for the notification procedure (Part 3, section B., enclosure 3) and 50 working days for the administrative board procedure (Part 3, section C., enclosure 3). Goals for shorter processing times are encouraged, particularly for cases in which expeditious action is likely. Variations may be established for complex cases or cases in which the separation authority is not located on the same facility as the respondent. The goals, and a program for monitoring effectiveness, shall be in the implementing document of the Military Department. Failure to process an administrative separation within the prescribed goal for processing times shall not create a bar to separation or characterization.

b. Periodic Explanations. The Secretary concerned shall prescribe appropriate internal procedures for periodic explanation to enlisted members of the types of separations, the basis for their issuance, the possible effects of various actions upon reenlistment, civilian employment, veterans' benefits, and related matters, and the effects of 10 U.S.C. 977 (reference (b)) and Pub. L. No. 97-66 (1981) (reference (c)) concerning denial of certain benefits to members who fail to complete at least 2 years of an original enlistment. Such explanation may be provided in the form of a written fact sheet or similar document. The periodic explanation shall take place at least each time the provisions of the Uniform Code of Military Justice (UCMJ) are explained under Article 137 of the UCMJ (reference (d)). The requirement that the effects of the various types of separations be explained to enlisted members is a command responsibility, not a procedural entitlement. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

c. Provision of Information During Separation Processing. The Secretary concerned shall ensure that information concerning the purpose and authority of the Discharge Review Board and the Board for Correction of Military/Naval Records, established under 10 U.S.C. 1552 and 1553 (reference (e)) and DoD Directive 1332.28 (reference (f)) is provided during the separation processing of all members, except when the separation is for an immediate reenlistment. Specific counseling is required under 38 U.S.C. 3103(a) (reference (g)) which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

F. PROCEDURES

Procedures and standards for implementing the policy in section D., above, are in enclosure 3.

G. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective February 5, 1994.

2. This Directive applies only to administrative separation proceedings initiated on or after February 5, 1994 unless the Secretary of the Service concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. Forward two copies of proposed implementing documents to the Assistant Secretary of Defense for Personnel and Readiness within 30 days of the signature date.

A handwritten signature in black ink, appearing to read "J. A. Spivey". The signature is stylized with a large, looped initial "J" and a distinct "A".

Enclosures - 4

1. References
2. Definitions
3. Standards and Procedures
4. Guidelines for Fact-Finding Inquiries into Homosexual Conduct

REFERENCES, continued

- (e) Section 1552 of title 10, United States Code (Correction of Military Records) and Section 1553 (Review of Discharge or Dismissal)
- (f) DoD Directive 1332.28, "Discharge Review Board (DRB) Procedures and Standards," August 11, 1982
- (g) Section 3103 of title 38, United States Code (Certain Bars to Benefits (Veterans Administration))
- (h) DoD Directive 1205.5, "Transfer of Members Between Reserve Components of the Military Services," May 16, 1980
- (i) DoD Instruction 1332.15, "Early Release of Military Enlisted Personnel for College or Vocational/Technical School Enrollment," June 1, 1976
- (j) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990
- (k) DoD Directive 1300.6, "Conscientious Objectors," August 20, 1971
- (l) DoD Directive 1315.14, "Special Assignment and Discharge Policies for Family Members," July 15, 1974
- (m) Section on Mental Disorders, International Classification of Diseases and Injuries - 8, Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, 3rd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1978
- (n) Chapter 61 of title 10, United States Code (Retirement or Separation for Physical Disability)
- (o) Section 1170 of title 10, United States Code (Regular Enlisted Members: Minority Discharge)
- (p) DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," June 30, 1979
- (q) Manual for Courts-Martial, 1969 (Revised Edition), as amended
- (r) DoD 5200.2-R, "DoD Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, May 6, 1992
- (s) DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty," January 6, 1989
- (t) DoD Directive 1010.1, "Drug Abuse Testing Program," December 28, 1984
- (u) Section 1163 of title 10, United States Code (Reserve Components: Members; Limitations on Separations)
- (v) Section 504 of title 10, United States Code (Persons Not Qualified for Enlistment)
- (w) Section 505 of title 10, United States Code (Regular Components: Qualifications, Terms, Grade)
- (x) Section 266 of title 10, United States Code (Boards for Appointment, Promotion, and Certain Other Purposes:
- (y) Section 654 of title 10, United States Code (Policy concerning homosexuality in the Armed Forces)

DEFINITIONS

- A. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
- B. Convening Authority. (1) The Separation Authority or (2) a commanding officer who has been authorized by the Secretary concerned to process the case except for final action and who otherwise has the qualifications to act as a Separation Authority.
- C. Discharge. Complete severance from all military status gained by the enlistment or induction concerned.
- D. Entry-Level Status. Upon enlistment, a member qualifies for entry-level status during (1) the first 180 days of continuous active military service or (2) the first 180 days of continuous active service after a service break of more than 92 days of active service. A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates as follows: (a) 180 days after beginning training if the member is ordered to active duty for training for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of active duty training if the member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the member's status is determined by the date of notification as to the initiation of separation proceedings.
- E. 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.
- F. Homosexual Act
1. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
 2. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subsection F.1., above.
- G. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
- H. Member. An enlisted member of a Military Service.
- I. Military Record. An individual's overall performance while a member of a Military Service, including personal conduct and performance of duty.
- J. Propensity. 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 in or will engage in homosexual acts.
- K. Release from Active Duty. Termination of active duty status and transfer or revision to a Reserve component not on active duty, including transfer to the Individual Ready Reserve (IRR).

L. Respondent. A member of a Military Service who has been notified that action has been initiated to separate the member.

M. Separation. A general term that includes discharge, release from active duty, release from custody and control of the Armed Forces, transfer to the IRR, and similar changes in Active or Reserve status.

N. Separation Authority. An official authorized by the Secretary concerned to take final action with respect to a specified type of separation.

O. Sexual Orientation. A sexual attraction to individuals of a particular sex.

STANDARDS AND PROCEDURES

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PART 1

REASONS FOR SEPARATION

A. Expiration of Service Obligation

1. Basis. A member may be separated upon expiration of enlistment or fulfillment of service obligation. This includes separation authorized by the Secretary concerned when the member is within 30 days of the date of expiration of term of service under the following circumstances:

a. The member is serving outside the continental United States (CONUS); or

b. The member is a resident of a State, territory, or possession outside CONUS and is serving outside the member's State, territory, or possession of residence.

2. Characterization or Description. Honorable, unless:

a. An Entry-Level Separation is required under subsection C.3. of Part 2;

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2 on the basis of numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis; or

c. Another characterization is warranted upon discharge from the IRR under section E. of Part 3.

B. Selected Changes in Service Obligations

1. Basis. A member may be separated for the following reasons:

a. General demobilization or reduction in authorized strength.

b. Early separation of personnel under a program established by the Secretary concerned. A copy of the document authorizing such program shall be forwarded to the Assistant Secretary of Defense for Personnel and Readiness (ASD(P&R)) on or before the date of implementation.

c. Acceptance of an active duty commission or appointment, or acceptance into a program leading to such commission or appointment in any branch of the Military Services.

d. Immediate enlistment or reenlistment

e. Interservice transfer of inactive reserves in accordance with DoD Directive 1205.5 (reference (h)).

2. Characterization or description. Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2;

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2 on the basis of numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis; or

c. Another characterization is warranted upon discharge from the IRR under section E. of Part 3.

C. Convenience of the Government

1. Basis. A member may be separated for convenience of the government for the reasons set forth in subsection C.4., below.

2. Characterization or description. Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2; or

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2.

3. Procedures. Procedural requirements may be established by the Secretary concerned, subject to procedures established in subsection C.4., below. Prior to characterization of service as General (under honorable conditions), the member shall be notified of the specific factors in the service record that warrant such a characterization, and the Notification Procedure (section B. of Part 3) shall be used. Such notice and procedure is not required, however, when characterization of service as General (under honorable conditions) is based upon numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis.

4. Reasons

a. Early release to further education. A member may be separated under DoD Directive 1332.15 (reference (i)) to attend a college, university, vocational school, or technical school.

b. Early release to accept public office. A member may be separated to accept public office only under circumstances authorized by the Military Department concerned and consistent with DoD Directive 1344.10 (reference (j)).

c. Dependency or hardship

(1) Upon request of the member and concurrence of the government, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the member has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to Military Service.

d. Pregnancy or childbirth. A female member may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interests of the Service under section A. of Part 2 and guidance established by Military Department concerned.

e. Parenthood. A member may be separated by reason of parenthood if as a result thereof it is determined under the guidance set forth in section A. of Part 2 that the member is unable satisfactorily to perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

f. Conscientious objection. A member may be separated if authorized under DoD Directive 1300.6 (reference (k)).

g. Surviving family member. A member may be separated if authorized under DoD Directive 1315.14 (reference (l)).

h. Other designated physical or mental conditions.

(1) The Secretary concerned may authorize separation on the basis of other designated physical or mental conditions, not amounting to Disability (section D., below),

that potentially interfere with assignment to or performance of duty under the guidance set forth in section A. of Part 2. Such conditions may include but are not limited to chronic seasickness or airsickness, enuresis, and personality disorder.¹

(2) Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(3) Separation on the basis of personality disorder is authorized only if a diagnosis by a psychiatrist or psychologist, completed in accordance with procedures established by the Military Department concerned, concludes that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired.

(4) Separation for personality disorder is not appropriate when separation is warranted under sections A. through N. or section P. of this Part. For example, if separation is warranted on the basis of unsatisfactory performance (section G.) or misconduct (section K.), the member should not be separated under this section regardless of the existence of a personality disorder.

(5) Nothing in this provision precludes separation of a member who has such a condition under any other basis set forth under this section (Convenience of the Government) or for any other reason authorized by this Directive.

(6) Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used.

(7) The reasons designated by the Secretary concerned shall be separately reported.

i. Additional grounds. The Secretary concerned may provide additional grounds for separation for the convenience of the government. A copy of the document authorizing such grounds shall be forwarded to the ASD(P&R) on or before the date of implementation.

D. Disability

1. Basis. A member may be separated for disability under the provisions of 10 U.S.C., chapter 61 (reference (n)).

¹Personality disorders are described in the Diagnostic and Statistical Manual (DSM-III) of Mental Disorders (reference m)).

2. Characterization or description. Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2; or

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2.

3. Procedures. Procedural requirements for separation may be established by the Military Departments consistent with chapter 61 (reference (n)). If separation is recommended, the following requirements apply prior to characterization of service as General (under honorable conditions): the member shall be notified of the specific factors in the service record that warrant such a characterization, and the Notification Procedure (section B. of Part 3) shall be used. Such notice and procedure is not required, however, when characterization of service as General (under honorable conditions) is based upon numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis.

E. Defective Enlistments and Inductions

1. Minority

a. Basis

(1) Under age 17. If a member is under the age of 17, the enlistment of the member is void, and the member shall be separated.

(2) Age 17. A member shall be separated under 10 U.S.C. §1170 (reference (o)) in the following circumstances except when the member is retained for the purpose of trial by court-martial:

(a) There is evidence satisfactory to the Secretary concerned that the member is under 18 years of age;

(b) The member enlisted without the written consent of the member's parent or guardian; and

(c) An application for the member's separation is submitted to the Secretary concerned by the parent or guardian within 90 days of the member's enlistment.

b. Description of separation. A member separated under subparagraph E.1.a.(1), above, shall receive an order of release from the custody and control of the armed forces (by reason of void enlistment or induction). The separation of a member under subparagraph E.1.a.(2), above, shall be described as an Entry Level Separation.

c. Procedure. The Notification Procedure (section B. of Part 3) shall be used.

2. Erroneous

a. Basis. A member may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment under the guidance set forth in section A. of Part 2. An enlistment, induction, or extension of enlistment is erroneous in the following circumstances, if:

(1) It would not have occurred had the relevant facts been known by the government or had appropriate directives been followed;

(2) It was not the result of fraudulent conduct on the part of the member; and

(3) The defect is unchanged in material respects.

b. Characterization or description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the Military Services (by reason of void enlistment or induction) is required under section C. of Part 2.

c. Procedure

(1) If the command recommends that the individual be retained in military service, the initiation of separation processing is not required in the following circumstances:

(a) The defect is no longer present; or

(b) The defect is waivable and a waiver is obtained from appropriate authority.

(2) If separation processing is initiated, the Notification Procedure (section B. of Part 3) shall be used.

3. Defective enlistment agreements

a. Basis. A defective enlistment agreement exists in the following circumstances:

(1) As a result of a material misrepresentation by recruiting personnel, upon which the member reasonably relied, the member was induced to enlist with a commitment for which the member was not qualified;

(2) The member received a written enlistment commitment from recruiting personnel for which the member was qualified, but which cannot be fulfilled by the Military Service; or

(3) The enlistment was involuntary. See 10 U.S.C. 802 (reference (d)).

b. Characterization or Description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the Military Services (by reason of void enlistment) is required under section C. of Part 2.

c. Procedures. This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(1) The member did not knowingly participate in creation of the defective enlistment;

(2) The member brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by the member;

(3) The member requests separation instead of other authorized corrective action; and

(4) The requests otherwise meets such criteria as may be established by the Secretary concerned.

4. Fraudulent Entry Into the Military Service

a. Basis. A member may be separated under guidance in section A. of Part 2 on the basis of procurement of a fraudulent enlistment, induction, or period of military service through any deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment, induction, or entry onto a period of military service might have resulted in rejection.

b. Characterization or Description. Characterization of service or description of separation shall be in accordance with section C. of Part 2. If the fraud involves concealment of a prior separation in which service was not characterized as Honorable, characterization normally shall be Under Other Than Honorable Conditions.

c. Procedures. The Notification Procedure (section B. of Part 3) shall be used except as follows:

(1) Characterization of service Under Other Than Honorable Conditions may not be issued unless the Administrative Board Procedure (section C. of Part 3) is used.

(2) When the sole reason for separation is fraudulent entry, suspension of separation (section B. of Part 2) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

(a) A waiver of the fraudulent entry is approved; and

(b) The suspension pertains to reasons for separation other than the fraudulent entry.

(3) If the command recommends that the member be retained in military service, the initiation of separation processing is unnecessary in the following circumstances:

(a) The defect is no longer present; or

(b) The defect is waivable and a waiver is obtained from appropriate authority.

(4) If the material misrepresentation includes preservice or prior service homosexual conduct (subsection H.1. of this enclosure, below), the standards of paragraph H.1.b. and procedures of subsection H.3. below, shall be applied in processing a separation under this section. In such a case, the characterization or description of the separation shall be determined under paragraph E.4.b., above.

5. Separation from the Delayed Entry Program

a. Basis. A person who is in the Delayed Entry Program may be separated because of ineligibility for enlistment under standards prescribed by the Secretary concerned or upon his or her request when authorized by the Secretary concerned.

b. Description of Separation. Entry level separation.

c. Procedure. The person shall be notified of the proposed separation and the reasons therefor. The member shall be given the opportunity to submit to the separation authority a statement in rebuttal by a specified date (not less than 30 days from the date of delivery). The notice shall be delivered personally or sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available by the U.S. mail at an address outside the United States). If the person fails to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see DoD Directive 1215.13, reference (p)) that shall be inserted in the file along with postal Service Form 3800.

F. Entry Level Performance and Conduct

1. Basis

a. A member may be separated while in entry level status (section I. of enclosure 2) when it is determined under the guidance in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment, or minor disciplinary infractions.

b. When separation of a member in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the member normally should be separated under this section. Nothing in this provision precludes separation under another provision of this Directive when such separation is authorized and warranted by the circumstances of the case.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning those deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are important with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when this is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. Description of Separation. Entry-Level Separation.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

G. Unsatisfactory Performance

1. Basis. A member may be separated when it is determined under the guidance in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance. This reason shall not be used if the member is in entry-level status (section I. of enclosure 2).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. Characterization or Description. The service shall be characterized as Honorable or General (under honorable conditions) in accordance with section C. of Part 2.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

H. Homosexual Conduct

1. Basis

a. Homosexual conduct is 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 is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

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

(1) 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) The member has made a statement that he or she is a homosexual or bisexual, or words to that effect, 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 statement by a Service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the Service member engages 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 in 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:

- (a) Whether the member has engaged in homosexual acts;
- (b) The member's credibility;
- (c) Testimony from others about the member's past conduct, character, and credibility;
- (d) The nature and circumstances of the member's statement;
- (e) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

2. Burden of Proof. See paragraphs H.4.e. and f., below, for guidance as to the burden of proof and when a finding regarding retention is required.

3. Characterization or Description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2. When the sole basis for separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

- a. By using force, coercion, or intimidation;
- b. With a person under 16 years of age;
- c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- d. Openly in public view;
- e. For compensation;

f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under paragraph H.1.b., above. Fact-finding procedures for inquiries into homosexual conduct are in enclosure 4.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.b., above, is supported by the evidence, the Board shall recommend separation unless the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O. of this Part).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1 There is insufficient evidence to support the finding; or

2 Retention is warranted under the limited circumstances described in paragraph H.1.b., above.

(3) If there has been a waiver of Board proceedings, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.b., above, the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The member shall bear the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraph H.1.b. except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

f. Findings regarding whether or not retention is warranted under the limited circumstances of paragraph H.1.b. are required if the member clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with this Directive;

(2) Requires that a member be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

(a) The member engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service; and

(b) Separation of the member would not be in the best interest of the Armed Forces.

(3) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(4) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(5) Precludes separation in appropriate circumstances for another reason in this Directive; or

(6) Precludes trial by court-martial in appropriate cases.

I. Drug Abuse Rehabilitation Failure

1. Basis

a. A member who has been referred to a program of rehabilitation for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service;
or

(2) Long-term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a member who has been referred to such a program under any other provision of this Directive in appropriate cases.

c. Drug abuse rehabilitation failures shall be reported separately from alcohol abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting requirements.

2. Characterization or Description. When a member is separated under this provision, characterization of service as Honorable or General (under honorable conditions) is authorized except when an Entry-Level Separation is required under section C. of Part 2. The relationship between voluntary submission for treatment and the evidence that may be considered on the issue of characterization is set forth in subparagraph C.2.c. (6) of Part 2. The relationship between mandatory urinalysis and the evidence that may be considered on the issue of characterization is in paragraph C.2.c. (7) of Part 2.

3. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

J. Alcohol Abuse Rehabilitation Failure

1. Basis

a. A member who has been referred to a program of rehabilitation for drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service;
or

(2) Long term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a member who has been referred to such a program under any other provision of this Directive in appropriate cases.

c. Alcohol abuse rehabilitation failures shall be reported separately from drug abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting purposes.

2. Characterization or Description. When a member is separated under this provision, characterization of service as Honorable or General (under honorable conditions) is authorized except when an Entry-Level Separation is required under section C. of Part 2.

3. Procedures. The Notification Procedures (section B. of Part 3) shall be used.

K. Misconduct

1. Basis

a. Reasons. A member may be separated for misconduct when it is determined under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service by reason of one or more of the following circumstances:

(1) Minor Disciplinary Infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a member in entry-level status is warranted solely by reason of minor

disciplinary infractions, the action should be processed under Entry-Level Performance and Conduct (section F. of this enclosure, above).

(2) A pattern of Misconduct. A pattern of misconduct consisting of (a) discreditable involvement with civil or military authorities or (b) conduct prejudicial to good order and discipline.

(3) Commission of a Serious Offense. Commission of a serious military or civilian offense if in the following circumstances:

(a) The specific circumstances of the offense warrant separation; and

(b) A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (q)).

(4) Civilian Conviction

(a) Conviction by civilian authorities or action taken that is tantamount to a finding of guilty, including similar adjudications in juvenile proceedings, when the specific circumstances of the offense warrant separation, and the following conditions are present:

1 A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (q)); or

2 The sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

(b) Separation processing may be initiated whether or not a member has filed an appeal of a civilian conviction or has stated an intention to do so. Execution of an approved separation should be withheld pending outcome of the appeal or until the time for appeal has passed, but the member may be separated before final action on the appeal upon request of the member or upon direction of the Secretary concerned.

b. Reporting. The Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy), Office of the ASD(P&R), shall require separate reports under each subparagraph in paragraph K.1.a. for misconduct by reason of drug abuse, unauthorized absence, and such other categories as may be appropriate.

c. Related Separations. Homosexual conduct shall be processed under section H. Misconduct involving a fraudulent enlistment is considered under subsection E.4., above.

2. Counseling and Rehabilitation. Separation processing for a pattern of misconduct (subparagraph K.1.a. (1) and (2) of this enclosure, above) may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. If the sole basis of separation is a single offense (subparagraph K.1.a. (3)) or a civilian conviction or a similar juvenile adjudication (subparagraph K.1.a. (4)), the counseling and rehabilitation requirements are not applicable.

3. Characterization or Description. Characterization of service normally shall be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in section C. of Part 2. For respondents who have completed entry-level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate. In such cases, separations for

misconduct with an Honorable characterization shall be approved by a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned. (As an exception, the Secretary concerned may authorize general court-martial convening authorities to delegate authority to the special court-martial convening authorities to approve separations with service characterized as Honorable when the sole evidence of misconduct is command-directed urinalysis results, which cannot be used for characterization of service, or when an administrative discharge board has recommended separation with an Honorable discharge.) When characterization of service Under Other than Honorable Conditions is not warranted for a member in entry-level status under section C. of Part 2, the separation shall be described as an Entry-Level Separation.

4. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used; however, use of the Notification Procedure (section B. of Part 3) is authorized if characterization of service Under Other Than Honorable Conditions is not warranted under section C. of Part 2.

L. Separation in Lieu of Trial by Court-Martial

1. Basis. A member may be separated upon request of trial by court-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized and it is determined that the member is unqualified for further military service under the guidance set forth in section A. of Part 2. This provision may not be used when section B. of paragraph 127c of the Manual for Courts-Martial (reference (q)) provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge.

2. Characterization or Description. Characterization of service normally shall be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in section C. of Part 2. For respondents who have completed entry-level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate. When characterization of service Under Other Than Honorable Conditions is not warranted for a member in entry level status under section C. of Part 2, the separation shall be described as an Entry Level Separation.

3. Procedures

a. The request for discharge must be submitted in writing and signed by the member.

b. The member shall be afforded opportunity to consult with counsel qualified under Article 27(b)(1) of the UCMJ (reference (d)). If the member refuses to do so, counsel shall prepare a statement to this effect, which shall be attached to the file, and the member shall state that he or she has waived the right to consult with counsel.

c. Except when the member has waived the right to counsel, the request shall be signed by counsel.

d. In the written request, the member shall state that he or she understands the following:

- (1) The elements of the offense or offenses charged;
- (2) That characterization of service Under Other Than Honorable Conditions is authorized; and
- (3) The adverse nature of such a characterization and possible consequences thereof.

e. The Secretary concerned shall also require that one or both of the following matters be included in the request:

(1) An acknowledgment of guilt of one or more of the offenses or any lesser included offenses for which a punitive discharge is authorized; or

(2) A summary of the evidence or list of documents (or copies thereof) provided to the member pertaining to the offenses for which a punitive discharge is authorized.

f. The Separation Authority shall be a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned. (As an exception, the Secretary concerned may authorize general court-martial convening authorities to delegate authority to the special court-martial convening authorities to approve requests for discharge in the case of enlisted members who have been absent without leave for more than 30 days, have been dropped from the rolls of their units as absent in desertion, have been returned to military control, are assigned to a regional personnel control/separation processing facility, and are charged only with being absent without leave for more than 30 days.)

g. Statements by the member or the member's counsel submitted in connection with a request under this subsection are not admissible against the member in a court-martial except as authorized under Military Rule of Evidence 410, Manual for Courts-Martial (reference (q)).

M. Security

1. Basis. When retention is clearly inconsistent with the interest of national security, a member may be separated by reason of security and under conditions and procedures established by the Secretary of Defense in DoD 5200.2-R (reference (r)).

2. Characterization or Description. Characterization of service or description of a separation shall be in accordance with section C. of Part 2.

N. Unsatisfactory Participation in the Ready Reserve

1. Basis. A member may be separated for unsatisfactory participation in the Ready Reserve under criteria established by the Secretary concerned under DoD Directive 1215.13 (reference (p)).

2. Characterization or Description. Characterization of service or description of a separation shall be in accordance with section C. of Part 2 and DoD Directive 1215.13 (reference (p)).

3. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used, except that the Notification Procedure (section B. of Part 3) may be used if characterization of service Under Other Than Honorable Conditions is not warranted under section C. of Part 2.

O. Secretarial Plenary Authority

1. Basis. Notwithstanding any limitation on separations provided in this Directive, the Secretary concerned may direct the separation of any member prior to expiration of term of service after determining it to be in the best interests of the Service.

2. Characterization or Description. Honorable or General (under honorable conditions) as warranted under section C. of Part 2 unless an Entry Level Separation is required under section C. of Part 2.

3. Procedures. Prior to involuntary separation, the Notification Procedure (section B. of Part 3) shall be used, except the procedure for requesting an Administrative Board (paragraph B.I.g. of Part 3) is not applicable.

P. Reasons Established by the Military Departments

1. Basis. The Military Departments may establish additional reasons for separation for circumstances not otherwise provided for in this Directive to meet their specific requirements, subject to approval by the ASD(P&R).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records except when the Military Department concerned provides in its implementing document that counseling and rehabilitation requirements are not applicable for the specific reason for separation.

3. Characterization or Description. Characterization of service or description of a separation shall be in accordance with section C. of Part 2.

4. Procedures. The procedures established by the Military Departments shall be consistent with the procedures contained in this Directive insofar as practicable.

Q. Weight Control Failure

1. Basis. A member may be separated for failure to meet the weight control standards established under DoD Directive 1308.1, when it is determined that the member is unqualified for further military service and meets both of the following conditions:

a. The member is not medically diagnosed with a medical condition that precludes or interferes with weight control. Members with a medically diagnosed condition that precludes or interferes with weight control may be separated either through medical channels, if appropriate, or under the guidance in paragraph C.4.h. of this enclosure, above.

b. The member fails to meet weight control standards, and the sole reason for separation is failure to meet the weight control standard.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Characterization or Description. Honorable, unless characterization of service as General (under honorable conditions) is warranted under section C. of Part 2 on the basis of numerical scores accumulated in a formal, service-wide rating system that evaluated conduct and performance on a regular basis, or when an entry level separation is required under section C. of Part 2.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

PART 2

GUIDELINES ON SEPARATION AND CHARACTERIZATION

A. Separation

1. Scope

This general guidance applies when referenced in Part 1. Further guidance is set forth under the specific reasons for separation in Part 1.

2. Guidance

a. There is a substantial investment in the training of persons enlisted or inducted into the Military Services. As a general matter, reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings.

b. Unless separation is mandatory, the potential for rehabilitation and further useful military service shall be considered by the Separation Authority and, where applicable, the Administrative Board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

c. Counseling and rehabilitation efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under specific requirements for separation in Part 1. An alleged or established inadequacy in previous rehabilitative efforts does not provide a legal bar to separation.

d. The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(1) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the member's continued retention on military discipline, good order, and morale.

(2) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(3) The likelihood that the member will be a disruptive or undesirable influence in present or future duty assignments.

(4) The ability of the member to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(5) The member's rehabilitative potential.

(6) The member's entire military record.

(a) This may include:

1 Past contributions to the Service, assignments, awards and decorations, evaluation ratings, and letters of commendation;

2 Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities; and

3 Any other matter deemed relevant by the Board, if any, or the Separation Authority, based upon the specialized training, duties, and experience of persons entrusted by this Directive with recommendations and decisions on the issue of separation or retention.

(b) The following guidance applies to consideration of matter under subparagraph A.2.d.(6)(a):

1 Adverse matter from a prior enlistment or period of military service, such as records of nonjudicial punishment and convictions by courts-martial, may be considered only when such records would have a direct and strong probative value in determining whether separation is appropriate. The use of such records ordinarily shall be limited to those cases involving patterns of conduct manifested over an extended period of time.

2 Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

3. Limitations on separation actions. A member may not be separated on the basis of the following:

a. Conduct that has been the subject of judicial proceedings resulting in the acquittal or action having the effect thereof except in the following circumstances:

(1) When such action is based upon a judicial determination not going to the guilt or innocence of the respondent; or

(2) When the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary concerned; or

(3) When the acquittal from the judicial proceedings was based on a finding of not guilty only by reason of lack of mental responsibility. Members in this category normally shall be separated under Secretarial plenary authority (Enclosure 3, Part 1, Section O) unless separation for disability (Enclosure 3, Part 1, Section D) is appropriate.

b. Conduct that has been the subject of a prior Administrative Board in which the Board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion; or

c. Conduct that has been the subject of an administrative separation proceeding resulting in a final determination by a Separation Authority that the member should be retained, except in the following circumstances:

(1) When there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding;

(2) When there is new or newly discovered evidence that was not reasonably available at the time of the prior proceeding; or

(3) When the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

B. Suspension of Separation

1. Suspension

a. Unless prohibited by this Directive, a separation may be suspended for a specified period of not more than 12 months by the Separation Authority or higher authority if the circumstances of the case indicate a reasonable likelihood of rehabilitation.

b. During the period of suspension, the member shall be afforded an opportunity to meet appropriate standards of conduct and duty performance.

c. Unless sooner vacated or remitted, execution of the approved separation shall be remitted upon completion of the probationary period, upon termination of the member's enlistment or period of obligated service, or upon decision of the Separation Authority that the goal of rehabilitation has been achieved.

2. Action during the period of suspension

a. During the period of suspension, if there are further grounds for separation under Part 1, one or more of the following actions may be taken:

(1) Disciplinary action;

(2) New administrative action; or

(3) Vacation of the suspension accompanied by execution of the separation if the member engages in conduct similar to that for which separation was approved (but suspended) or otherwise fails to meet appropriate standards of conduct and duty performance.

b. Prior to vacation of a suspension, the member shall be notified in writing of the basis for the action and shall be afforded the opportunity to consult with counsel (as provided in paragraph B.1.f. of Part 3) and to submit a statement in writing to the Separation Authority. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. If the respondent identifies specific legal issues for consideration by the Separation Authority, the matter shall be reviewed by a judge advocate or civilian lawyer employed by the government prior to final action by the Separation Authority.

C. Characterization of Service or Description of Separation

1. Types of characterization or description

a. At separation, the following types of characterization of service or description of separation are authorized under this Directive:

(1) Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.

(2) Entry Level Separation.

(3) Order of release from the custody and control of the Military Services by reason of void enlistment or induction.

(4) Separation by being dropped from the rolls of the Service.

b. Any of the types of separation listed in this section may be used in appropriate circumstances unless a limitation is set forth in this section or in Part 1 (Reasons for Separation).

2. Characterization of service

a. General considerations

(1) Characterization at separation shall be based upon the quality of the member's service, including the reason for separation and guidance in paragraph C.2.b., below, subject to the limitations set forth under various reasons for separation in Part 1. The quality of service

will be determined in accordance with standards of acceptable personal conduct and performance of duty for military personnel. These standards are found in the UCMJ (reference (d)), directives and regulations issued by the Department of Defense and the Military Departments, and the time-honored customs and traditions of military service.

(2) The quality of service of a member on active duty or active duty for training is affected adversely by conduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline, regardless of whether the conduct is subject to UCMJ jurisdiction. Characterization may be based on conduct in the civilian community, and the burden is on the respondent to demonstrate that such conduct did not adversely affect the respondent's service.

(3) The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior rather than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(4) Due consideration shall be given to the member's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

b. Types of characterization

(1) Honorable. The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. In the case of an Honorable Discharge, an Honorable Discharge Certificate (DD Form 256) will be awarded and a notation will be made on the appropriate copies of the DD Form 214/5 in accordance with DoD Directive 1336.1 (reference (s)).

(2) General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's

conduct or performance of duty outweigh positive aspects of the member's military record.

(3) Under Other Than Honorable Conditions.

(a) This characterization may be issued in the following circumstances:

1 When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.

2 When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Services, and deliberate acts or omissions that seriously endanger the health and safety of other persons.

(b) This characterization is authorized only if the member has been afforded the opportunity to request an Administrative Board, except as provided in section L. of Part 1 (Separation in Lieu of Trial by Courts-Martial).

c. Limitations on characterization. Except as otherwise provided in this paragraph, characterization will be determined solely by the member's military record during the current enlistment or period of service to which the separation pertains, plus any extensions thereof prescribed by law or regulation or effected with the consent of the member.

(1) Prior service activities, including records of conviction by courts-martial, records of absence without leave, or commission of other offenses for which punishment was not imposed shall not be considered on the issue of characterization. To the extent that such matters are considered on the issue of retention or separation (subsection A.2. of this Part), the record of proceedings may reflect express direction that such information shall not be considered on the issue of characterization.

(2) Preservice activities may not be considered on the issue of characterization except as follows: in a proceeding concerning fraudulent entry into military service

(subsection E.4. of Part 1), evidence of preservice misrepresentations about matters that would have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction may be considered on the issue of characterization.

(3) The limitations in subsection A.3. of this Part, above, as to matters that may be considered on the issue of separation are applicable to matters that may be considered on the issue of characterization.

(4) When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial that did not impose a punitive discharge, the member's service may not be characterized Under Other Than Honorable Conditions unless such characterization is approved by the Secretary concerned.

(5) Conduct in the civilian community of a member of a Reserve component who is not on active duty or active duty for training may form the basis for characterization Under Other Than Honorable Conditions only if such conduct affects directly the performance of military duties. Such conduct may form the basis of characterization as General (under honorable conditions) only if such conduct has an adverse impact on the overall effectiveness of the service, including military morale and efficiency.

(6) A member's voluntary submission to a DoD treatment and rehabilitation program and voluntarily disclosed evidence of prior personal drug use by the member as part of a course of treatment in such a program may not be used against the member on the issue of characterization. This limitation does not apply to:

(a) The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been introduced first by the member.

(b) Taking action based on independently derived evidence, including evidence of continued drug abuse after initial entry into the a treatment and rehabilitation program.

(7) The results of mandatory urinalysis may be used on the issue of characterization except as provided in DoD Directive 1010.1 (reference (t)).

3. Uncharacterized Separation

a. Entry-Level Separation

(1) A separation shall be described as an Entry-Level Separation if separation processing is initiated while a member is in entry-level status, except in the following circumstances:

(a) When characterization Under Other than Honorable Conditions is authorized under the reason for separation (Part 1) and is warranted by the circumstances of the case; or

(b) The Secretary concerned, on a case-by-case basis, determines that characterization of service as Honorable is clearly warranted by the presence of unusual military duty. The characterization is authorized when the member is separated under Part 1 by reason of selected changes in service obligation (section B.), Convenience of the Government (section C.), Disability (section D.), Secretarial Plenary Authority (section O.), or an approved reason established by the Military Department (section P.).

(2) In time of mobilization or in other appropriate circumstances, the ASD(P&R) may authorize the Secretary concerned to delegate the authority in subparagraph C.3.a.(1) (b), above, (concerning the Honorable Characterization) to a general court-martial convening authority with respect to members serving in operational units.

(3) With respect to administrative matters outside this Directive that require a characterization as Honorable or General, an Entry-Level Separation shall be treated as the required characterization. This provision does not apply to administrative matters that expressly require different treatment of an Entry-level Separation except as provided in subparagraph C.3.a.(4), below.

(4) In accordance with 10 U.S.C. 1163 (reference (u)), an Entry-Level Separation for a member of a Reserve component separated from the Delayed Entry Program is "under honorable conditions."

b. Void Enlistments or Inductions. A member shall not receive a discharge, characterization of service at separation, or an Entry-Level Separation of the enlistment or induction is void except when a constructive enlistment arises and such action is required under subparagraph C.3.b.(3), below. If characterization or an Entry-Level Separation is not required, the separation shall be described as an order of release from custody or control of the Military Services.

(1) An enlistment is void in the following circumstances:

(a) If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the Military Services, including enlistment of a person who is intoxicated or insane at the time of enlistment. 10 U.S.C. §504 (reference (v)); Article 2(b), UCMJ (reference (d)).

(b) If the person is under 17 years of age. 10 U.S.C. §505 (reference (w)).

(c) If the person is a deserter from another Military Service. 10 U.S.C. §504 (reference (v)).

(2) Although an enlistment may be void at its inception, a constructive enlistment shall arise in the case of a person serving with a Military Service who:

(a) Submitted voluntarily to military authority;

(b) Met the mental competency and minimum 10 U.S.C. age qualifications of Sections 504 and 505 of (references (v) and (w)), at the time of voluntary submission to military authority;

(c) Received military pay or allowances; and

(d) Performed military duties.

(3) If an enlistment that is void at its inception is followed by a constructive enlistment within the same term of service, characterization of service or description of separation shall be in accordance with subsection C.2. or paragraph C.3.a. of this Part, as appropriate; however, if the enlistment was void by reason of desertion from another Military Service, the member shall be separated by an order of release from the custody and control of the Service regardless of any subsequent constructive enlistment. The occurrence of such a constructive enlistment does not preclude the Military Departments, in appropriate cases, from either retaining the member or separating the member under section E. of Part 1 on the basis of the circumstances that occasioned the original void enlistment or upon any other basis for separation provided in this Directive.

c. Dropping from the rolls. A member may be dropped from the rolls of the Service when such action is authorized by the Military Department concerned and a characterization of service or other description of separation is not authorized or warranted.

PART 3

PROCEDURES FOR SEPARATION

A. Scope

1. The supplementary procedures in this Part are applicable only when required under a specific reason for separation (Part 1). These procedures are subject to the requirements set forth in Part 1 with respect to specific reasons for separation.

2. When a member is processed on the basis of multiple reasons for separation, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

a. The requirements for each reason will be applied to the extent practicable.

b. If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board Procedure (section C., below), the entire matter shall be processed under section C.

c. If more than one reason for separation is approved, the guidance on characterization that provides the greatest latitude may be applied.

d. When there is any other clear conflict between a specific requirement applicable to one reason and a general requirement applicable to another reason, the specific requirement shall be applied.

e. If a conflict in procedures cannot be resolved on the basis of the foregoing principles, the procedure most favorable to the respondent shall be used.

B. Notification Procedure

1. Notice: If the Notification Procedure is initiated under Part 1, the respondent shall be notified in writing of the matter set forth in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and a reference to the applicable provisions of the Military Department's implementing regulation.

b. Whether the proposed separation could result in discharge, release from active duty to a reserve component, transfer from the Selected Reserve to the IRR, release from custody or control of the Military Services, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The right to obtain copies of documents that will be forwarded to the Separation Authority supporting the basis of the proposed separation. Classified documents may be summarized.

e. The respondent's right to submit statements.

f. The respondent's right to consult with counsel qualified under Article 27(b)(1) of the UCMJ (reference (d)). Nonlawyer counsel may be appointed when the respondent is deployed aboard a vessel or in similar circumstances of separation from sufficient judge advocate resources as determined under standards and procedures specified by the Secretary concerned. The respondent also may consult with civilian counsel retained at the member's own expense.

g. If the respondent has 6 or more years of total active and reserve military service, the right to request an Administrative Board (section C.).

h. The right to waive paragraphs d., e., f. or g., above, after being afforded a reasonable opportunity to consult with counsel, and that failure to respond shall constitute a waiver of the right.

2. Additional notice requirements

a. If separation processing is initiated on the basis of more than one reason under Part 1, the requirements of paragraph B.1.a. apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRR, the relevant notification procedures in sections D., E., or F. of this Part apply.

c. Additional notification requirements are set forth in Part 1, sections C. and D., when characterization of service as General (under honorable conditions) is authorized and the member is processed for separation by reason of Convenience of the Government or Disability.

3. **Response.** The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in paragraphs B.1.d. through g., above, and applicable provisions referenced in subsection 2. shall be recorded and signed by the respondent and counsel, subject to the following limitations:

a. If notice by mail is authorized under sections D., E., or F. of this Part and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. Separation Authority

a. The Separation Authority for actions initiated under the Notification Procedure shall be a special court-martial convening authority or higher authority. Also, subject to approval by the ASD(P&R), the Secretary concerned also may authorize a commanding officer in grade O-5 or above, or a commanding officer in the grade of O-4 who is on an approved recommended list for promotion to O-5 and who is assigned to command a unit authorized a commanding officer in the grade of O-5 or above, with a judge advocate or legal advisor available to the command, to act as a Separation Authority for a specified reason for separation. If the case was initiated under the Administrative Board Procedure and the member waived the right to a hearing under subsection C.4., below, the Separation Authority shall be an official designated under subsection C.6., below.

b. The action of the Separation Authority shall be recorded.

c. The Separation Authority shall determine whether there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If an allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation.

d. If there is a sufficient factual basis for separation, the Separation Authority shall determine whether separation is warranted under the guidance in sections A. and B. of Part 2. On the basis of that guidance, the Separation Authority shall direct one of the following actions:

(1) Retention;

(2) Separation for a specific reason under Part 1;

(3) Suspended separation in accordance with the guidance in section B. of Part 2.

e. If the Separation Authority directs separation or suspended separation on the basis of more than one reason under Part 1, the Separation Authority shall designate the most appropriate basis as the primary reason for reporting purposes.

f. If separation or a suspended separation is directed, the Separation Authority shall assign a characterization or description in accordance with section C. of Part 2.

g. Except when characterization Under Other Than Honorable Conditions is directed or the member is separated on the basis of homosexual conduct or a void enlistment or induction, the Secretary concerned may authorize the Separation Authority or higher authority to make a recommendation or determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies in cases involving separation from active duty or from the Selected Reserve. Section E. of this Part is applicable if such action is approved.

C. Administrative Board Procedure

1. **Notice.** If an Administrative Board is required, the respondent shall be notified in writing of the matters in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and reference to the application provisions of the Military Department's implementing regulation.

b. Whether the proposed separation could result in discharge, release from active duty to a Reserve component, transfer from the Selected Reserve to the IRR, release from the custody or control of the Military Services, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The respondent's right to consult with counsel as prescribed in paragraph B.1.f. of this Part. However, nonlawyer counsel may not represent a respondent before an Administrative Board unless (1) the respondent expressly declines appointment of counsel qualified under Article 27(b)(1) of the UCMJ (reference (d)) and requests a specific nonlawyer counsel; or (2) the Separation Authority assigns nonlawyer counsel as assistant counsel.

e. The right to obtain copies of documents that will be forwarded to the Separation Authority supporting the basis of the proposed separation. Classified documents may be summarized.

f. The respondent's right to request a hearing before an Administrative Board.

g. The respondent's right to present written statements instead of board proceedings.

h. The respondent's right to representation at the Administrative Board either by military counsel appointed by the Convening Authority or by military counsel of the respondent's own choice (if counsel of choice is determined to be reasonably available under regulations of the Secretary concerned) but not both.

i. The right to representation at the Administrative Board by civilian counsel at the respondent's own expense.

j. The right to waive the rights in paragraphs d. through i., above.

k. That failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraphs d. through i., above.

l. Failure to appear without good cause at a hearing constitutes waiver of the right to be present at the hearing.

2. Additional notice requirements

a. If separation processing is initiated on the basis of more than one reason under Part 1, the requirements of paragraph C.1.a. apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRR, the relevant notification procedures in sections D., E., or F. of this Part apply.

c. Additional notification requirements are set forth in sections C. and D., Part 1, when characterization of service as General (under honorable conditions) is authorized and the member is processed for separation by reason of Convenience of the Government or Disability.

3. Response. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in paragraphs 1.d. through 1.i., above, and applicable provisions referenced in subsection 2., above, shall be recorded and signed by the respondent and counsel, subject to the following limitations:

a. If notice by mail is authorized under sections D., E., or F. of this Part and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. Waiver.

a. If the right to a hearing before an Administrative Board is waived, the case will be processed under subsection B.4. of this Part (Notification Procedure), but the Separation Authority in such cases shall be an official designated under subsection C.6.

b. When authorized by the Secretary concerned, a respondent entitled to an Administrative Board may exercise a conditional waiver after a reasonable opportunity to consult with counsel under paragraph C.1.d. A conditional waiver is a statement initiated by a respondent waiving the right to a board proceeding contingent upon receiving a characterization of service or description of separation higher than the least favorable characterization or description authorized for the basis of separation set forth in the notice to the respondent.

5. Hearing procedure. If a respondent requests a hearing before an Administrative Board, the following procedures are applicable:

a. Composition

(1) The Convening Authority shall appoint to the Administrative Board at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted personnel appointed to the Board shall be in grade E-7 or above, and shall be senior to the respondent. At least one member of the Board shall be serving in the grade of O-4 or higher, and a majority shall be commissioned or warrant officers. The senior member shall be the president of the board. The Convening Authority also may appoint to the Board a nonvoting recorder. A nonvoting legal advisor may be appointed to assist the Board if authorized by the Secretary concerned.

(2) If the respondent is an enlisted member of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the Board shall include at least one Reserve officer as a voting member. Additionally, all Board members will be commissioned officers if an Under Other Than Honorable Characterization (UOTHC) from the Reserve component is authorized to be issued. (See 10 U.S.C., Section 1163 (reference (u))). Voting members shall be senior to the respondent's reserve grade (See 10 U.S.C. Section 266 (reference (x))).

(3) The Convening Authority shall insure that the opportunity to serve on Administrative Boards is given to women and minorities. The mere appointment or failure to appoint a member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

(4) The respondent may challenge a voting member of the Board or the legal advisor, if any, for cause only.

b. Presiding Officer. The president shall preside and rule finally on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of evidence and challenges except challenges to him or herself.

c. Witnesses

(1) The respondent may request the attendance of witnesses in accordance with the implementing instructions of the Military Department concerned.

(2) In accordance with such instructions, the respondent may submit a written request for temporary duty (TDY) or invitational travel orders for witnesses. Such a request shall obtain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(3) The Convening Authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) determines that:

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and

(e) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(4) If the Convening Authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued if necessary to permit the attendance of the witness.

(5) The hearing shall be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required;

(b) When the commanding officer of a military witness determines that military necessity precluded the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

(6) Subparagraph C.5.c., above, does not authorize a Federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

d. Record of Proceedings. In cases where the Board recommends separation, the record of the proceedings shall be kept in summarized form unless a verbatim record is required by the Secretary concerned. In cases where the Board recommends retention, a record of the proceedings is optional unless required by the Secretary concerned. However, a summarized or verbatim record shall be prepared in any case where the board recommends retention and the Separation Authority elects to forward the matter to the Secretary concerned under subparagraph C.6.d.(2)(b), below. The Board reporter shall retain all materials necessary to prepare a transcript should the Separation Authority elect to forward the case to the Secretary. In all cases, the findings and recommendations of the Board shall be in verbatim form.

e. Presentation of Evidence. The rules of evidence for courts-martial and other judicial proceedings are not applicable before an Administrative Board. Reasonable restriction shall be observed, however, concerning relevancy and competency of evidence.

f. Rights of the Respondent

(1) The respondent may testify in his or her own behalf, subject to the provisions of Article 31(a), UMCJ (reference (d)).

(2) At any time during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the Board.

(3) The respondent or counsel may call witnesses in his or her behalf.

(4) The respondent or counsel may question any witness who appears before the Board.

(5) The respondent or counsel may present argument prior to when the Board closes the case for deliberation on findings and recommendations.

g. Findings and Recommendations

(1) The Board shall determine its findings and recommendations in closed sessions. Only voting members of the board shall be present.

(2) The Board shall determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence.

(3) The Board shall then determine under the guidance in section A. of Part 2 whether the findings warrant separation with respect to the reason for separation set forth in the Notice. If more than one reason was contained in the Notice, there shall be a separate determination for each reason.

(4) The Board shall make recommendations on the following:

(a) Retention or Separation. The Board shall recommend retention or separation.

(b) Suspension of Separation. If the Board recommends separation, it may recommend that the separation be suspended in accordance with section B. of Part 2, but the recommendation of the Board as to suspension is not binding on the Separation Authority.

(c) Characterization of Service or Description of Separation. If separation or suspended separation is recommended, the Board shall recommend a characterization of service or description of separation as authorized in Part 1 (Reasons for Separation) in accordance with the guidance in section C. of Part 2.

(d) Transfer to the Ready Reserve. Except when the Board has recommended separation on the basis of homosexual conduct or has recommended characterization of service Under Other Than Honorable Conditions, the Secretary concerned may authorize the Board to make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies to cases involving separation from active duty or from the Selected Reserve. Section E. of this Part is applicable if the action is approved.

6. Separation Authority

a. The Separation Authority for actions initiated under the Administrative Board Procedure shall be a general court-martial convening authority or higher authority. The Secretary concerned also may authorize a commanding officer in grade O-7 or above with a judge advocate or legal advisor available to his command to act as a separation authority in specified circumstances. When an Administrative Board recommends characterization of service as Honorable or General

(under honorable conditions), the Separation Authority may be exercised by an officer designated under subsection B.4. When the case has been initiated under the Notification Procedure and the hearing is a result of a request under paragraph B.1.g., the Separation Authority shall be as designated in subsection B.4.

b. In every case in which characterization of service Under Other Than Honorable Conditions is recommended, the record of the Board's proceedings will be reviewed by a judge advocate or civilian attorney employed by the Military Department prior to action by the Separation Authority. Such review is not required when another characterization is recommended unless the respondent identifies specific legal issues for consideration by the Separation Authority.

c. The respondent will be provided with a copy of the Board's statement of facts and recommendations.

d. The Separation Authority shall take action in accordance with this subparagraph, the requirements of Part 1 with respect to the reason for separation, and the guidance in Part 2 on separation and characterization.

(1) If the Separation Authority approves the recommendations of the Board on the issue of separation or characterization (or both) this constitutes approval of the Board's findings and recommendations under paragraph C.5.g. unless the Separation Authority expressly modifies such findings or recommendations.

(2) If the Board recommends retention, the Separation Authority may take one the following actions:

(a) Approve the recommendation.

(b) Forward the matter to the Secretary concerned with a recommendation for separation based upon the circumstances of the case. In such a case, the Secretary may direct retention or separation. If the Secretary approves separation, the characterization of service or description of separation will be Honorable, General (under honorable conditions) or an Entry Level Separation under the guidance in section C. of Part 2.

(3) If the Board recommends separation, the Separation Authority may:

(a) Approve the Board's recommendation;

(b) Approve the Board's recommendations, but modify the recommendations by one or more of the following actions when appropriate:

1 Approve the separation but suspend execution as provided in section B. of Part 2.

2 Change the character of service or description of separation to a more favorable characterization or description.

3 Change the Board's recommendation, if any, concerning transfer to the IRR.

(c) Disapprove the Board's recommendation and retain the respondent.

(4) If the Separation Authority approves the Board's findings and recommendations in whole or in part with respect to more than one reason under Part 1, the Separation Authority shall designate the most appropriate basis as the primary reason for reporting purposes.

(5) If the Separation Authority finds legal prejudice to a substantial right of the respondent or determines that the findings of the Board have been obtained by fraud or collusion, the case may be referred to a new board. No member of the new board shall have served on a prior board that considered the case. The Separation Authority may not approve findings and recommendations less favorable to the respondent than those rendered by the previous board unless the Separation Authority finds that fraud or collusion in the previous board is attributable to the respondent or an individual acting on the respondent's behalf.

D. Additional Provisions Concerning Members Confined by Civil Authorities

1. If proceedings under this Part have been initiated against a respondent confined by civil authorities, the case may be processed in the absence of the respondent. Paragraph C.5.e. of this Part is not applicable except insofar as such rights can be exercised by counsel on behalf of the respondent.

2. The following requirements apply:

a. The notice shall contain the matter set forth in subsection B.1. of this Part or subsection C.1. (Notice in the Administrative Board Procedure), as appropriate. The notice shall be delivered personally to the respondent or sent by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available for delivery by U.S. mail at an address outside the United States. If the member refuses to acknowledge receipt of notice, the individual who mails the notification

shall prepare a Sworn Affidavit of Service by Mail (see DoD Directive 1215.13, (reference (r)) which will be inserted in the member's personnel file together with PS Form 3800.

b. If delivered personally, receipt shall be acknowledged in writing by the respondent. If the respondent does not acknowledge receipt, the notice shall be sent by mail as provided in paragraph 2.a., above.

c. The notice shall state that the action has been suspended until a specific date (not less than 30 days from the date of delivery) in order to give the respondent the opportunity to exercise the rights set forth in the notice. If respondent does not reply by such date, the separation authority shall take appropriate action under subsection B.4. of this Part.

d. The name and address of the military counsel for appointed consultation shall be specified in the notice.

e. If the case involves entitlement to an Administrative Board, the respondent shall be notified that the board will proceed in the respondent's absence and that the case may be presented on respondent's behalf by counsel for the respondent.

E. Additional Requirements for Certain Members of Reserve Components

1. Members of reserve components not on active duty

a. If proceedings under this Chapter have been initiated against a member of a reserve component not on active duty, the case may be processed in the absence of the member in the following circumstances:

(1) At the request of the member;

(2) If the member does not respond to the notice of proceedings on or before the suspense date provided therein; or

(3) If the member fails to appear at a hearing as provided in paragraph C.1.1..

b. The notice shall contain the matter set forth in subsections B.1. or C.1. of this Part, as appropriate.

c. If the action involves a transfer to the IRR under circumstances in which the procedures in this enclosure are applicable, the member will be notified that the character of service upon transfer to the IRR also will constitute the

character of service upon discharge at the completion of the military service obligation unless specified conditions established by the Secretary concerned are met.

2. Transfer to the IRR. Upon transfer to the IRR, the member will be notified of the following:

a. The character of service upon transfer from active duty or the Selected Reserve to the IRR, and that the character of service upon completion of the military service obligation will be the same unless specified conditions established by the Secretary concerned are met.

b. The date upon which the military service obligation will expire.

c. The date by which the member must submit evidence of satisfactory completion of the specified conditions.

3. If the member submits evidence of completion of the specified conditions but the Military Department proposes to issue a discharge other than an Honorable Discharge, the Notification Procedure shall be used. An Administrative Board is not required at this point notwithstanding the member's years of service.

4. If the member does not submit such information on or before the date specified in the notice, no further proceedings are required. The character of discharge at the completion of the military service obligation shall be the same as the character of service upon transfer from the Selected Reserve to the IRR.

5. The following requirements apply to the notices required by subsections E.1. and 2. of this Part.

a. Reasonable effort should be made to furnish copies of the notice to the member through personal contact by a representative of the command. In such a case, a written acknowledgment of the notice shall be obtained.

b. If the member cannot be contacted or refuses to acknowledge receipt of the notice, the notice shall be sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the most recent address furnished by the member as an address for receipt or forwarding of official mail. The individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see DoD Directive 1215.13 (reference (r))), which will be inserted in the member's personnel file together with PS Form 3800.

F. Additional Requirements for Members Beyond Military Control by Reason of Unauthorized Absence

1. Determination of applicability. If the general court-martial convening authority or higher authority determines that separation is otherwise appropriate under this Directive, a member may be separated without return to military control in one or more of the the following circumstances:

a. Absence without authority after receiving notice of initiation of separation processing.

b. When prosecution of a member who is absent without authority appears to be barred by the statute of limitations, Article 43, UCMJ (reference (d)).

c. When a member who is an alien is absent without leave and appears to have gone to a foreign country where the United States has no authority to apprehend the member under a treaty or other agreement.

2. Notice. Prior to execution of the separation under paragraphs 1.b. or 1.c., the member will be notified of the imminent action by registered mail or certified mail, return receipt requested (or by an equivalent form of Notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the member's last known address or to the next of kin under regulations prescribed by the Military Department concerned. The notice shall contain the matter set forth in subsections B.1. or C.1., as appropriate, and shall specify that the action has been suspended until a specific date (not less than 30 days from the date of mailing) in order to give the respondent the opportunity to return to military control. If the respondent does not return to military control by such date, the separation authority shall take appropriate action under subsection B.4. of this Part.

3. Members of reserve components. See 10 U.S.C. §1163 (reference (x)) with respect to limitations on separation of members of reserve components.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.
2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.
3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.
4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned (reference (y)).

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."
3. Credible Information. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a Service member has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.
4. 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.
5. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
 - a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.
 - b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person would believe (3) intends to convey the statement (4) that a person engages in or has a propensity or intent to engage in homosexual acts. This includes statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

6. Sexual Orientation. A sexual attraction to individuals of a particular sex.

C. BASIS FOR CONDUCTING INQUIRIES

A commander will initiate an inquiry only if he or she has credible information that a basis for discharge exists. A basis for discharge exists if:

1. The member has engaged in a homosexual act.
2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
3. The member has married or attempted to marry a person of the same sex.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.
2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.
3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member should first be advised of the DoD policy on homosexual conduct. Should the member choose not to discuss the matter further, the commander should consider other available information.
4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.
5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in homosexual acts or has a propensity or intent to do so. The Service member shall be given the opportunity to present evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.
6. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, has a propensity to engage in, or intends to engage in homosexual acts.

E. CREDIBLE INFORMATION DOES NOT EXIST, FOR EXAMPLE, WHEN:

1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion; or
2. The only information is the opinions of others that a member is homosexual; or
3. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or
4. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

F. CREDIBLE INFORMATION EXISTS, FOR EXAMPLE, WHEN:

1. A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or
2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in or has a propensity or intent to engage in homosexual acts; or
3. A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe intended to convey the statement that the member engages in or has a propensity or intent to engage in homosexual acts.

G. LEGAL EFFECT

The procedures set forth in this enclosure create no substantive or procedural rights.

Basic Directives and Memo
with latest changes



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301-1600

28 FEB 1994

FILE: *Guys in Military*

MEMORANDUM FOR DIRECTOR OF ADMINISTRATION AND MANAGEMENT

SUBJECT: Page and Pen Changes to DoD Directive 1332.30, "Separation of Regular Commissioned Officers", DoD Directive 1332.14, "Enlisted Administrative Separations", and DoD Directive 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction"

Please issue a SD 106-1, "DoD Directives System Transmittal," incorporating the following page and pen changes:

DoDD 1332.30 PAGE CHANGES

Remove: Pages 1, 2, 1-1 and 1-2 (Definitions), 2-1 through 2-3, 6-1, and 8-1 through 8-3.

Insert: Attached replacement pages

DoDD 1332.30 PEN CHANGE

Page 3, Section G., Subsections 1 and 2. Change "February 5, 1994" to "February 28, 1994."

Page 2, Section E., Subsection 2. Change paragraph "b." to "c." and add the following paragraph b:

"b. Ensure, through his or her military commanders, that the policies, standards and procedures of this directive are applied consistently, that fact-finding inquiries are conducted properly, that no abuse of authority occurs, and that failure to follow the provisions of this directive results in appropriate corrective action."

DoDD 1332.14 PAGE CHANGES

Remove: Pages 1, 2, 3, 1-1 (References) 2-1 and 2-2 (Definitions), 1-3, 1-4, 1-9 through 1-10 and 4-1 through 4-3.

Insert: Attached replacement pages

DoDD 1332.14 PEN CHANGES

Page 4, Section G., Subsections 1 and 2. Change "February 5, 1994" to "February 28, 1994."

DoDD 1304.26 PAGE CHANGES

Remove: Pages 1-5 and 1-6

Insert: Attached replacement pages

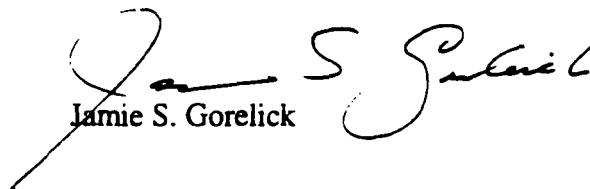
DoDD 1304.26 PEN CHANGES

Page 4, Section G., line 1. Change "February 5, 1994" to "February 28, 1994."

Changes appear on pages 1, 2, 1-2, 2-1, 2-2, 2-3, 6-1, 8-1, 8-2, and 8-3 of DoDD 1332.30; pages 1, 2, 3, 1-1, 2-2, 1-3, 1-4, 1-9, 1-10, 1-12, 4-1, 4-2, and 4-3 of DoDD 1332.14; and pages 1-5 and 1-6 of DoDD 1304.26 and are indicated by marginal asterisks. Include the following statement on the SD Form 106-1:

"The above changes are effective February 28, 1994. Forward one copy of revised implementing documents to Office of the Assistant Secretary of Defense for Personnel and Readiness within 120 days."

The attached replacement pages are at TABs A, B and C. The changes have been informally coordinated with relevant DoD Components. All concurred.


Jamie S. Gorelick

Attachment:
as stated



Department of Defense DIRECTIVE

NUMBER

SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," February 12, 1986 (hereby canceled)
 - (b) Chapter 60 and Sections 618, 630, 654, 827, and 831 of title 10, United States Code
 - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
 - (d) DoD 5200.2-R, "DoD Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, May 6, 1992
 - (e) Sections 801-940 of title 10, United States Code, "Uniform Code of Military Justice"
 - * (f) DoD Instruction 5505.8, "Investigations of Sexual *
* Misconduct by the Defense Criminal Investigative *
* Organizations and Other DoD Law Enforcement Organizations," *
* February 28, 1994 *

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a)
2. Implements Chapter 60 and Section 630 of reference (b) to update policy, responsibilities, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.
3. Implements Chapter 60 and Section 630 of reference (b) on the discharge of regular commissioned officers with less than 5 years active commissioned service in certain circumstances.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD) and to the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.
2. Applies to regular commissioned officers of the Military Services.
3. Does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

1. It is DoD policy to:

a. Promote the readiness of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

b. Judge the suitability of persons to serve in the Armed Forces on the basis of their conduct and their ability to meet required standards of duty performance and discipline. *

c. Separate from Military Service those commissioned officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

(1) Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

(2) Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

2. Notwithstanding any other provision of this Directive, the Secretaries of the Military Departments concerned may discharge regular commissioned officers with less than 5 years active commissioned service from a Military Service when there is a need to reduce the number of officers in that Service to meet budgetary or force size requirements. The provisions of Enclosure 6 do not apply to the discharge of probationary officers under this authority. *

3. The Assistant Secretary of Defense for Personnel and Readiness (ASD(P&R)), in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition to civilian life.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness shall supplement this Directive, as needed.

2. The Secretaries of the Military Departments shall:

a. Prescribe regulations consistent with the policy and procedures contained in this Directive.

DEFINITIONS

1. Active Commissioned Service. Service on active duty as a commissioned officer in a grade above warrant officer, W-4.
2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
3. Commissioned Officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, other than a commissioned warrant officer or retired commissioned officer.
4. Convening Authority. The Secretary of the Military Department concerned who may delegate this responsibility as appropriate.
5. Counsel. A lawyer qualified under 10 U.S.C. 827 (b)(1) (reference (b)) or a civilian lawyer retained at the commissioned officer's expense.
6. Drug Abuse. As defined in DoD Directive 1010.4 (reference (c)).
7. 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.
8. Homosexual Act
 - a. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
 - b. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in paragraph 8.a., above.
9. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
10. Legal Advisor. A judge advocate qualified under 10 U.S.C. 827 (b)(1) (reference (b)) and appointed to assist a Board of Inquiry.
11. Nonprobationary Commissioned Officer. A commissioned officer other than a probationary commissioned officer.
12. Probationary Commissioned Officer. A Commissioned officer with less than 5 years of active commissioned service; however, a regular commissioned officer serving on active duty on September 14, 1981, shall be a probationary commissioned officer for a period of 3 years from the date of his or her appointment as a regular commissioned officer.
13. Propensity. 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 in or will engage in homosexual acts.
14. Respondent. A commissioned officer required to show cause for retention on active duty.
15. Separation. Discharge, retirement, or resignation.

* 16. Sexual Orientation. An abstract sexual preference for persons of *
* a particular sex, as distinct from a propensity or intent to engage in *
* sexual acts. *

17. Show-Cause Authority. Any of the following as determined by the
Secretary of the Military Department concerned:

a. Commanders exercising General Court Martial authority and all
general or flag rank officers in command who have a judge advocate or
legal advisor available.

b. The Secretary of the Military Department concerned or officers
(not below the grade of major general or rear admiral) designated by the
Secretaries of the Military Departments to determine, based on a record
review, that an officer shall be required to show cause for retention on
active duty.

* 18. Statement that a Member Is a Homosexual or Bisexual or Words to *
* That Effect. Language or behavior that a reasonable person would *
* believe was intended to convey the statement that a person engages in, *
* attempts to engage in, or has a propensity or intent to engage in *
* homosexual acts. *

REASONS FOR SEPARATION

A. SUBSTANDARD PERFORMANCE OF DUTY

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when, as compared to other commissioned officers of his or her grade and experience, he or she is found to be substandard in any of the following respects:

1. Performance of duty.
2. Efficiency.
3. Leadership.
4. Lack of response to training, in that performance of duties in the officer's assigned speciality is precluded or impaired to the degree of being unsatisfactory.
5. Attitude or character.

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from the Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

1. Serious or recurring wrongdoing, punishable by military or civilian authorities.
2. Intentional or discreditable mismanagement of personal affairs, including financial affairs.
3. Drug abuse.
4. Intentional neglect of, or failure to perform, assigned duties or complete required training.
5. Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties.
6. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.

C. HOMOSEXUAL CONDUCT

- Homosexual conduct is grounds for separation from the Military Services
- * under the terms set forth in paragraph C.1.b., below. 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 is grounds for separation *
 - * not because it reflects the member's sexual orientation, but because the *
 - * statement indicates a likelihood that the member engages in or will engage in *
 - * homosexual acts. A member's sexual orientation is considered a personal *
 - * and private matter, and is not a bar to continued service under this *
 - * section unless manifested by homosexual conduct in the manner described in *
 - * section C.1. *

1. A commissioned officer shall be separated under this provision if one or more of the following approved findings is made:

a. The officer 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 the officer has demonstrated that:

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

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

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

(4) Under the particular circumstances of the case, the officer's continued presence in the Armed Forces is consistent with the interests of the Armed Forces in proper discipline, good order, and morale of the Service; and,

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

b. The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the officer 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 statement by an officer that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable
* presumption that the officer engages in, attempts to engage in, has a *
* propensity to engage in, or intends to engage in homosexual acts. The *
officer shall be advised of this presumption and given the opportunity to
* rebut the presumption by presenting evidence demonstrating that he or she *
* does not engage in, attempt to engage in, have a propensity to engage in or *
* intend to engage in homosexual acts. 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 in or will engage in
homosexual acts. In determining whether an officer has successfully rebutted
* the presumption that he or she engages in, attempts to engage in, or has a *
propensity or intent to engage in homosexual acts, some or all of the
following may be considered:

(1) Whether the officer has engaged in homosexual acts;

(2) The officer's credibility;

(3) Testimony from others about the officer's past conduct, character, and credibility;

(4) The nature and circumstances of the officer's statement;

(5) Any other evidence relevant to whether the officer is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved).

* 2. The commissioned officer shall bear the burden of proving
* throughout the proceedings, by a preponderance of the evidence, that
* retention is warranted under the limited circumstances described in
* paragraphs C.1.a. and C.1.b. of this enclosure, above.

3. Nothing in this Directive or the Service implementing regulations requires that an officer be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

a. The officer engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding military service; and

b. Separation of the officer would not be in the best interest of the Armed Forces.

D. RETENTION IS NOT CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY

Under DoD 5200.2-R (reference (d)), a commissioned officer may be separated from a Military Service when it is determined that the commissioned officer's retention is clearly inconsistent with the interest of national security.

E. MULTIPLE REASONS

A commissioned officer may be considered for separation under all the reasons in sections A., B., C., and D. of this enclosure above; however, separate findings under each applicable section shall be required as to the reasons for separation.

* PROCEDURES FOR CERTAIN PROBATIONARY COMMISSIONED OFFICERS

A. INITIATION OF ACTION

The SCA may initiate action for any of the reasons stated in enclosure 2 of this Directive, or for such other reasons as the Secretary of the Military Department concerned may prescribe by regulation. Prior to forwarding the record to the Secretary of the Military Department concerned, the commissioned officer shall be advised in writing of the following:

1. The reason action was initiated and the character of discharge recommended.
2. That he or she may tender a resignation.
3. That he or she may submit a rebuttal or declination statement instead of a resignation.
4. That he or she may confer with appointed or retained counsel.

The officer shall be permitted a reasonable period of time to prepare his or her response.

B. PROCESSING

1. If submitted, the resignation, with the record, shall be forwarded to the authority designated to take final action.
2. If the officer does not tender a voluntary resignation, or if voluntary resignation is not accepted by the Departmental Secretary, the case shall be returned to the SCA for action. If, under regulations of the Secretary concerned, the SCA determines the officer shall be separated with a general discharge, the SCA may refer the case to a Board of Officers or a Board of Inquiry, as determined appropriate, or submit the case to the Secretary concerned who will take a final action. If the SCA determines the officer should be separated with an Other Than Honorable Discharge, the SCA shall refer the case directly to a Board of Inquiry in accordance with Sections C, D, and E of enclosure 3.
3. If the commissioned officer does not tender a resignation statement, and an "Honorable" discharge is recommended by a Board of Inquiry, the record and any rebuttal shall be submitted to the Secretary of the Military Department concerned for final decision.
4. The Secretary of the Military Department concerned may direct referral of the record to a Board of Inquiry whenever the Secretary considers such action appropriate, and the case shall be processed in accordance with sections C., D., and E. of enclosure 3.

C. FINAL DETERMINATION

The Secretary of the Military Department concerned may direct:

1. Retention.
2. Discharge.

The action of the Secretary is final.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned.

* 5. The guidelines in this enclosure do not apply to activities of *
* Defense Criminal Investigative Organizations and other DoD law enforcement *
* organizations, which are governed by DoD Instruction 5505.8 (reference (f)). *

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

* 3. 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. 8

* 4. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a *
statement by the member that demonstrates a propensity or intent to engage in *
homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person *
* would believe (3) was intended to convey the statement (4) that a person *
* engages in, attempts to engage in, or has a propensity or intent to engage in *
* homosexual acts. This may include statements such as "I am a homosexual," "I *
am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

* 5. Sexual Orientation. An abstract sexual preference for persons of *
* a particular sex, as distinct from a propensity or intent to engage in *
* sexual acts. *

* C. BASES FOR CONDUCTING INQUIRIES *

* 1. A commander will initiate an inquiry only if he or she has credible *
* information that there is a basis for discharge. Credible information exists *
* when the information, considering its source and the surrounding circum- *
* stances, supports a reasonable belief that there is a basis for discharge. *
* It requires a determination based on articulable facts, not just a belief or *
* suspicion. *

* 2. A basis for discharge exists if: *

* a. The member has engaged in a homosexual act. *

* b. The member has said that he or she is a homosexual or bisexual, *
or made some other statement that indicates a propensity or intent to engage
in homosexual acts; or

* c. The member has married or attempted to marry a person of the same *
sex.

* 3. Credible information does not exist, for example, when: *

* a. The individual is suspected of engaging in homosexual conduct, *
but there is no credible information, as described, to support that suspicion;
or

* b. The only information is the opinions of others that a member is *
homosexual; or

* c. The inquiry would be based on rumor, suspicion, or capricious *
claims concerning a member's sexual orientation; or

* d. The only information known is an associational activity such as *
going to a gay bar, possessing or reading homosexual publications, associating
with known homosexuals, or marching in a gay rights rally in civilian clothes.
Such activity, in and of itself, does not provide evidence of homosexual
conduct.

* 4. Credible information exists, for example, when: *

* a. A reliable person states that he or she observed or heard *
a Service member engaging in homosexual acts, or saying that he or she is a
homosexual or bisexual or is married to a member of the same sex; or

* b. A reliable person states that he or she heard, observed, or *
discovered a member make a spoken or written statement that a reasonable
person would believe was intended to convey the fact that he or she engages
in, attempts to engage in, or has a propensity or intent to engage in *
homosexual acts; or

* c. A reliable person states that he or she observed behavior that *
amounts to a non-verbal statement by a member that he or she is a homosexual
or bisexual; i.e., behavior that a reasonable person would believe was *
intended to convey the statement that the member engages in, attempts to *
engage in, or has a propensity or intent to engage in homosexual acts. *

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in section C., above) commanders or appointed inquiry officials may ask members if they engaged in such conduct. But the member should first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). Should the member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding, nor does it provide the member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the member, in any proceeding.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

6. The Service member bears the burden of proving, by a preponderance of the evidence, 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.

* E. LEGAL EFFECT

The procedures in this enclosure create no substantive or procedural rights.



Department of Defense DIRECTIVE

NUMBER

SUBJECT: Enlisted Administrative Separations

- References:
- (a) DoD Directive 1332.14, subject as above, January 28, 1982 (hereby canceled)
 - (b) Section 977 of title 10, United States Code (Denial of Certain Benefits to Persons Who Fail to Complete at Least Two Years of an Original Enlistment)
 - (c) Pub. L. No. 97-66, "The Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments Act of 1981", October 17, 1981, (95 Stat. 1035)
 - (d) Sections 801-940 of title 10, United States Code (Uniform Code of Military Justice, Articles 1-140)
 - (e) through (z), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and updates policy, responsibilities, and procedures governing the administrative separation of enlisted members from the Military Services.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense and the Military Departments (including their Reserve components). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force and the Marine Corps.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. It is DoD policy to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

- a. Judge the suitability of persons to serve in the Armed Forces on the basis of their conduct and their ability to meet required standards of duty performance and discipline;
- b. Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service;

- * c. Achieve authorized force levels and grade distributions; and
- * d. Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

2. DoD separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

a. The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the Service, and one's fellow citizens and Service members to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

b. Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Armed Forces. It is DoD policy to provide Service members with the training, motivation, and professional leadership that inspires the dedicated enlisted member to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

c. The Military Services make a substantial investment in training, time, equipment, and related expenses when persons are enlisted or inducted into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Armed Forces. Reasonable efforts should be made to identify enlisted members who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation before initiation of separation proceedings. Enlisted members who do not demonstrate potential for further military service should be separated to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance that are associated with retention of enlisted members who do not conform to required standards of discipline and performance despite efforts at counseling, retraining, or rehabilitation.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness may supplement the enclosures to this Directive, and may delegate the authority to establish reporting requirements for the reasons for separation (Part 1, enclosure 3) to a Deputy Assistant Secretary.

2. The Secretaries of the Military Departments shall prescribe implementing documents to ensure that the policies, standards, and procedures in this Directive are administered in a manner that provides consistency in separation policy to the extent practicable in a system that is based on command discretion. The implementing documents also shall address the following matters:

- * a. Commander Responsibilities. The Secretary concerned, acting *
 * through his or her military commanders, shall ensure that the policies, *
 * standards and procedures of this directive are applied consistently, that *
 * fact-finding inquiries are conducted properly, that no abuse of authority *
 * occurs, and that failure to follow the provisions of this directive results *
 * in appropriate corrective action. *

* b. Processing Goals. The Secretary concerned shall establish processing time goals for the types of administrative separations authorized by this Directive. Such goals shall be designed to further the efficient administration of the Armed Forces and shall be measured from the date of notification to the date of separation. Normally such goals should not exceed 15 working days for the notification procedure (Part 3, section B., enclosure 3) and 50 working days for the administrative board procedure (Part 3, section C., enclosure 3). Goals for shorter processing times are encouraged, particularly for cases in which expeditious action is likely. Variations may be established for complex cases or cases in which the separation authority is not located on the same facility as the respondent. The goals, and a program for monitoring effectiveness, shall be in the implementing document of the Military Department. Failure to process an administrative separation within the prescribed goal for processing times shall not create a bar to separation or characterization.

c. Periodic Explanations. The Secretary concerned shall prescribe appropriate internal procedures for periodic explanation to enlisted members of the types of separations, the basis for their issuance, the possible effects of various actions upon reenlistment, civilian employment, veterans' benefits, and related matters, and the effects of 10 U.S.C. 977 (reference (b)) and Pub. L. No. 97-66 (1981) (reference (c)) concerning denial of certain benefits to members who fail to complete at least 2 years of an original enlistment. Such explanation may be provided in the form of a written fact sheet or similar document. The periodic explanation shall take place at least each time the provisions of the Uniform Code of Military Justice (UCMJ) are explained under Article 137 of the UCMJ (reference (d)). The requirement that the effects of the various types of separations be explained to enlisted members is a command responsibility, not a procedural entitlement. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

d. Provision of Information During Separation Processing. The Secretary concerned shall ensure that information concerning the purpose and authority of the Discharge Review Board and the Board for Correction of Military/Naval Records, established under 10 U.S.C. 1552 and 1553 (reference (e)) and DoD Directive 1332.28 (reference (f)) is provided during the separation processing of all members, except when the separation is for an immediate reenlistment. Specific counseling is required under 38 U.S.C. 3103(a) (reference (g)) which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

F. PROCEDURES

Procedures and standards for implementing the policy in section D., above, are in enclosure 3.

REFERENCES, continued

- (e) Section 1552 of title 10, United States Code (Correction of Military Records) and Section 1553 (Review of Discharge or Dismissal)
- (f) DoD Directive 1332.28, "Discharge Review Board (DRB) Procedures and Standards," August 11, 1982
- (g) Section 3103 of title 38, United States Code (Certain Bars to Benefits (Veterans Administration))
- (h) DoD Directive 1205.5, "Transfer of Members Between Reserve Components of the Military Services," May 16, 1980
- (i) DoD Instruction 1332.15, "Early Release of Military Enlisted Personnel for College or Vocational/Technical School Enrollment," June 1, 1976
- (j) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990
- (k) DoD Directive 1300.6, "Conscientious Objectors," August 20, 1971
- * (l) DoD Directive 1315.15, "Special Separation Policies for Survivorship," *
- * September 26, 1988 *
- (m) Section on Mental Disorders, International Classification of Diseases and Injuries - 8, Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, 3rd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1978
- (n) Chapter 61 of title 10, United States Code (Retirement or Separation for Physical Disability)
- (o) Section 1170 of title 10, United States Code (Regular Enlisted Members: Minority Discharge)
- (p) DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," June 30, 1979
- (q) Manual for Courts-Martial, 1969 (Revised Edition), as amended
- (r) DoD 5200.2-R, "DoD Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, May 6, 1992
- (s) DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty," January 6, 1989
- (t) DoD Directive 1010.1, "Drug Abuse Testing Program," December 28, 1984
- (u) Section 1163 of title 10, United States Code (Reserve Components: Members; Limitations on Separations)
- (v) Section 504 of title 10, United States Code (Persons Not Qualified for Enlistment)
- (w) Section 505 of title 10, United States Code (Regular Components: Qualifications, Terms, Grade)
- (x) Section 266 of title 10, United States Code (Boards for Appointment, Promotion, and Certain Other Purposes:
- (y) Section 654 of title 10, United States Code (Policy concerning homosexuality in the Armed Forces)
- * (z) DoD Instruction 5505.8, "Investigations of Sexual Misconduct by the *
- * Defense Criminal Investigative Organizations and Other DoD Law *
- * Enforcement Organizations," February 28, 1994 *

DEFINITIONS

- A. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
- B. Convening Authority. (1) The Separation Authority or (2) a commanding officer who has been authorized by the Secretary concerned to process the case except for final action and who otherwise has the qualifications to act as a Separation Authority.
- C. Discharge. Complete severance from all military status gained by the enlistment or induction concerned.
- D. Entry-Level Status. Upon enlistment, a member qualifies for entry-level status during (1) the first 180 days of continuous active military service or (2) the first 180 days of continuous active service after a service break of more than 92 days of active service. A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates as follows: (a) 180 days after beginning training if the member is ordered to active duty for training for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of active duty training if the member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the member's status is determined by the date of notification as to the initiation of separation proceedings.
- E. 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.
- F. Homosexual Act
1. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
 2. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subsection F.1., above.
- G. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
- H. Member. An enlisted member of a Military Service.
- I. Military Record. An individual's overall performance while a member of a Military Service, including personal conduct and performance of duty.
- J. Propensity. 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 in or will engage in homosexual acts.
- K. Release from Active Duty. Termination of active duty status and transfer or revision to a Reserve component not on active duty, including transfer to the Individual Ready Reserve (IRR).

1. Respondent. A member of a Military Service who has been notified that action has been initiated to separate the member.
2. Separation. A general term that includes discharge, release from active duty, release from custody and control of the Armed Forces, transfer to the RR, and similar changes in Active or Reserve status.
3. Separation Authority. An official authorized by the Secretary concerned to take final action with respect to a specified type of separation.
4. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts. *
5. Statement that a Member Is a Homosexual or Bisexual or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts. *

c. Dependency or hardship.

(1) Upon request of the member and concurrence of the government, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the member has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to Military Service.

d. Pregnancy or childbirth. A female member may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interests of the service under section A. of Part 2 and guidance established by the Military Department concerned.

e. Parenthood. A member may be separated by reason of parenthood if as a result thereof it is determined under the guidance set forth in section A. of Part 2 that the member is unable satisfactorily to perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

f. Conscientious objection. A member may be separated if authorized under DoD Directive 1300.6 (reference (k)).

g. Surviving family member. A member may be separated if * authorized under DoD Directive 1315.15 (reference (l)). *

h. Other designated physical or mental conditions.

(1) The Secretary concerned may authorize separation on the basis of other designated physical or mental conditions, not amounting to Disability (section D., below), that potentially interfere with assignment to or performance of duty under the guidance set forth in section A. of Part 2. Such conditions may include but are not limited to chronic seasickness or airsickness,

enuresis, and personality disorder.¹

(2) Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(3) Separation on the basis of personality disorder is authorized only if a diagnosis by a psychiatrist or psychologist, completed in accordance with procedures established by the Military Department concerned, concludes that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired.

(4) Separation for personality disorder is not appropriate when separation is warranted under sections A. through N. or section P. of this Part. For example, if separation is warranted on the basis of unsatisfactory performance (section G.) or misconduct (section K.), the member should not be separated under this section regardless of the existence of a personality disorder.

(5) Nothing in this provision precludes separation of a member who has such a condition under any other basis set forth under this section (Convenience of the Government) or for any other reason authorized by this Directive.

(6) Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used.

(7) The reasons designated by the Secretary concerned shall be separately reported.

i. Additional grounds. The Secretary concerned may provide additional grounds for separation for the convenience of the government. A copy of the document authorizing such grounds shall be forwarded to the ASD(P&R) on or before the date of implementation.

D. Disability.

1. Basis. A member may be separated for disability under the provisions of 10 U.S.C., chapter 61 (reference (n)).

¹Personality disorders are described in the Diagnostic and Statistical Manual (DSM-III) of Mental Disorders (reference m)).

1. Basis. A member may be separated when it is determined under the guidance in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance. This reason shall not be used if the member is in entry-level status (section I. of enclosure 2).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. Characterization or Description. The service shall be characterized as Honorable or General (under honorable conditions) in accordance with section C. of Part 2.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

H. Homosexual Conduct

1. Basis

a. Homosexual conduct is grounds for separation from the Military Services under the terms set forth in paragraph H.1.b., below. 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 is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service under this section unless manifested by homosexual conduct in the manner described in paragraph H.1.b..

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

(1) 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) The member has made a statement that he or she is a homosexual or bisexual, or words to that effect, 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 statement by a Service member that he or she is a homosexual or bisexual, or words to that effect, creates

- * a rebuttable presumption that the Service member engages in, attempts to
- * engage in, has a propensity to engage in, or intends to engage in homosexual
- * acts. The Service member shall be advised of this presumption and given the
- * opportunity to rebut the presumption by presenting evidence demonstrating
- * that he or she does not engage in, attempt to engage in, have a propensity to
- * engage in, or intend to engage in homosexual acts. 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 in or will
- * engage in homosexual acts. In determining whether a member has successfully
- * rebutted the presumption that he or she engages in, attempts to engage in, or
- * has a propensity or intent to engage in homosexual acts, some or all of the

following may be considered:

- (a) Whether the member has engaged in homosexual acts;
- (b) The member's credibility;
- (c) Testimony from others about the member's past conduct, character, and credibility;
- (d) The nature and circumstances of the member's statement;
- (e) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

2. Burden of Proof. See paragraphs H.4.e. and f., below, for guidance as to the burden of proof and when a finding regarding retention is required.

3. Characterization or Description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2. When the sole basis for separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

- a. By using force, coercion, or intimidation;
- b. With a person under 16 years of age;
- c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- d. Openly in public view;
- e. For compensation;
- f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under paragraph H.1.b., above. Fact-finding procedures for inquiries into homosexual conduct are in enclosure 4.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.b., above, is supported by the evidence, the Board shall recommend separation unless the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O. of this Part).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1 There is insufficient evidence to support the finding; or

2 Retention is warranted under the limited circumstances described in paragraph H.1.b., above.

(3) If there has been a waiver of Board proceedings, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.b., above, the

Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

* e. The member shall bear the burden of proving throughout the *
* proceeding, by a preponderance of the evidence, that retention is warranted *
* under the limited circumstances described in subparagraphs H.1.b.(1) and *
* H.1.b.(2). *

f. Findings regarding whether or not retention is warranted under the limited circumstances of paragraph H.1.b. are required if the member clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with this Directive;

(2) Requires that a member be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

(a) The member engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service; and

(b) Separation of the member would not be in the best interest of the Armed Forces.

(3) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(4) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(5) Precludes separation in appropriate circumstances for another reason in this Directive; or

(6) Precludes trial by court-martial in appropriate cases.

I. Drug Abuse Rehabilitation Failure

1. Basis

a. A member who has been referred to a program of rehabilitation for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, corporate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service;
or

(2) Long-term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned (reference (y)).

* 5. The guidelines in this enclosure do not apply to activities of *
* Defense Criminal Investigative Organizations and other DoD law enforcement *
* organizations, which are governed by DoD Instruction 5505.8 (reference (z)). *

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

* 3. 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.

* 4. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a *
statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person *
* would believe (3) was intended to convey the statement (4) that a person *
* engages in, attempts to engage in, or has a propensity or intent to engage in *
* homosexual acts. This may include statements such as "I am a homosexual," "I *
am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

* 5. Sexual Orientation. An abstract sexual preference for persons of
* a particular sex, as distinct from a propensity or intent to engage in
* sexual acts.

* C. BASES FOR CONDUCTING INQUIRIES

* 1. A commander will initiate an inquiry only if he or she has credible
* information that there is a basis for discharge. Credible information exists
* when the information, considering its source and the surrounding circum-
* stances, supports a reasonable belief that there is a basis for discharge.
* It requires a determination based on articulable facts, not just a belief or
* suspicion.

* 2. A basis for discharge exists if:

* a. The member has engaged in a homosexual act.

* b. The member has said that he or she is a homosexual or bisexual,
* or made some other statement that indicates a propensity or intent to engage
* in homosexual acts; or

* c. The member has married or attempted to marry a person of the same
* sex.

* 3. Credible information does not exist, for example, when:

* a. The individual is suspected of engaging in homosexual conduct,
* but there is no credible information, as described, to support that suspicion;
* or

* b. The only information is the opinions of others that a member is
* homosexual; or

* c. The inquiry would be based on rumor, suspicion, or capricious
* claims concerning a member's sexual orientation; or

* d. The only information known is an associational activity such as
* going to a gay bar, possessing or reading homosexual publications, associating
* with known homosexuals, or marching in a gay rights rally in civilian clothes.
* Such activity, in and of itself, does not provide evidence of homosexual
* conduct.

* 4. Credible information exists, for example, when:

* a. A reliable person states that he or she observed or heard
* a Service member engaging in homosexual acts, or saying that he or she is a
* homosexual or bisexual or is married to a member of the same sex; or

* b. A reliable person states that he or she heard, observed, or
* discovered a member make a spoken or written statement that a reasonable
* person would believe was intended to convey the fact that he or she engages
* in, attempts to engage in, or has a propensity or intent to engage in
* homosexual acts; or

* c. A reliable person states that he or she observed behavior that
* amounts to a non-verbal statement by a member that he or she is a homosexual
* or bisexual; i.e., behavior that a reasonable person would believe was
* intended to convey the statement that the member engages in, attempts to
* engage in, or has a propensity or intent to engage in homosexual acts.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in section C., above) commanders or appointed inquiry officials may ask members if they engaged in such conduct. But the member should first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). Should the member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding, nor does it provide the member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the member, in any proceeding.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

6. The Service member bears the burden of proving, by a preponderance of the evidence, 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.

* E. LEGAL EFFECT

The procedures in this enclosure create no substantive or procedural rights.

(2) In processing waiver requests, the Military Services shall require information about the "who, what, when, where, and why" of the offense in question; and a number of letters of recommendation attesting to the applicant's character or suitability for enlistment. Such letters must be from responsible community leaders such as school officials, ministers, and law enforcement officials.

c. Those who have been previously separated from the Military Services under conditions other than honorable or for the good of the Service.

d. Those who have exhibited antisocial behavior or other traits of character that would render them unfit to associate with military personnel.

8. Provisions Related to Homosexual Conduct

* a. A person's sexual orientation is considered a *
* personal and private matter, and is not a bar to service entry *
* or continued service unless manifested by homosexual conduct *
* in the manner described in paragraph B.8.b., below. Applicants *
* for enlistment, appointment, or induction shall not be asked or *
* required to reveal whether they are heterosexual, homosexual or *
* bisexual. Applicants also will not be asked or required to *
* reveal whether they have engaged in homosexual conduct, unless *
* independent evidence is received indicating that an applicant *
* engaged in such conduct or unless the applicant volunteers a *
* statement that he or she is a homosexual or bisexual, or words to *
* that effect.

* b. Homosexual conduct is grounds for barring entry into *
* the Armed Forces, except as otherwise provided in this section. *
* Homosexual conduct is a homosexual act, a statement by the *
* applicant that demonstrates a propensity or intent to engage in *
* homosexual acts, or a homosexual marriage or attempted marriage. *
* 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 in or will engage in *
* homosexual acts.

(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 will be made in the course of the normal accession process. A homosexual act means (1) Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and (2) Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph B.8.b.(1)(d)1, above.

(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 made in the course of the normal accession process.

(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 (as evidenced by the external anatomy of the persons involved).

* c. Applicants will be informed of separation policy *
* (Section 654 of 10 U.S.C. (reference (a))). Failure to receive *
* such information shall not constitute a defense in any *
* administrative or disciplinary proceeding. *

* d. Nothing in these procedures requires rejection for *
entry into the Armed Forces when the relevant Military Service
Command authority determines:

(1) That an applicant or inductee made a statement, engaged in acts, or married or attempted to marry a person of the same sex for the purpose of avoiding military service, and

(2) Rejection of the applicant or inductee would not be in the best interest of the Armed Forces.



Department of Defense DIRECTIVE

December 21, 1993
NUMBER 1332.30

ASD(P&R)

SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," February 12, 1986 (hereby canceled)
 - (b) Chapter 60 and Sections 618, 630, 654, 827, and 831 of title 10, United States Code
 - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
 - (d) DoD 5200.2-R, "DoD Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, May 6, 1992
 - (e) Sections 801-940 of title 10, United States Code, "Uniform Code of Military Justice"

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a)
2. Implements Chapter 60 and Section 630 of reference (b) to update policy, responsibilities, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.
3. Implements Chapter 60 and Section 630 of reference (b) on the discharge of regular commissioned officers with less than 5 years active commissioned service in certain circumstances.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD) and to the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.
2. Applies to regular commissioned officers of the Military Services.
3. Does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

1. It is DoD policy to:

a. Promote the readiness of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

b. Judge the suitability of persons to serve in the Armed Forces on the basis of their conduct.

c. Separate from Military Service those commissioned officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

(1) Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

(2) Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

2. Notwithstanding any other provision of this Directive, the Secretaries of the Military Departments concerned may discharge regular commissioned officers with less than 5 years active commissioned service from a Military Service when there is a need to reduce the number of officers in that Service to meet budgetary or force size requirements. Enclosure 6 applies to the discharge of probationary officers under this authority.

3. The Assistant Secretary of Defense for Personnel and Readiness (ASD(P&R)), in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition to civilian life.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness shall supplement this Directive, as needed.

2. The Secretaries of the Military Departments shall:

a. Prescribe regulations consistent with the policy and procedures contained in this Directive.

b. Address any recommendations for policy changes in this Directive to the ASD(P&R).

F. PROCEDURES

Procedures and standards for implementation of the policy in section D., above, are in enclosures 2 through 8.

G. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective February 5, 1994.

2. This Directive applies only to administrative separation proceedings initiated on or after February 5, 1994, unless the Secretary of the Service concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. Forward two copies of proposed implementing documents to the Assistant Secretary of Defense for Personnel and Readiness within 30 days of the signature date.



Enclosures - 8

1. Definitions
2. Reasons for Separation
3. Procedures for Nonprobationary Commissioned Officers
4. Composition of Boards
5. Board of Inquiry Procedures
6. Procedures for Certain Probationary Commissioned Officers
7. Character of Discharge
8. Guidelines for Fact-Finding Inquires into Homosexual Conduct

DEFINITIONS

1. Active Commissioned Service. Service on active duty as a commissioned officer in a grade above warrant officer, W-4.
2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
3. Commissioned Officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, other than a commissioned warrant officer or retired commissioned officer.
4. Convening Authority. The Secretary of the Military Department concerned who may delegate this responsibility as appropriate.
5. Counsel. A lawyer qualified under 10 U.S.C. 827 (b)(1) (reference (b)) or a civilian lawyer retained at the commissioned officer's expense.
6. Drug Abuse. As defined in DoD Directive 1010.4 (reference (c)).
7. 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.
8. Homosexual Act
 - a. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
 - b. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in paragraph 8.a., above.
9. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
10. Legal Advisor. A judge advocate qualified under 10 U.S.C. 827 (b)(1) (reference (b)) and appointed to assist a Board of Inquiry.
11. Nonprobationary Commissioned Officer. A commissioned officer other than a probationary commissioned officer.
12. Probationary Commissioned Officer. A Commissioned officer with less than 5 years of active commissioned service; however, a regular commissioned officer serving on active duty on September 14, 1981, shall be a probationary commissioned officer for a period of 3 years from the date of his or her appointment as a regular commissioned officer.
13. Propensity. 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 in or will engage in homosexual acts.
14. Respondent. A commissioned officer required to show cause for retention on active duty.
15. Separation. Discharge, retirement, or resignation.

16. Sexual Orientation. A sexual attraction to individuals of a particular sex.

17. Show-Cause Authority. Any of the following as determined by the Secretary of the Military Department concerned:

a. Commanders exercising General Court Martial authority and all general or flag rank officers in command who have a judge advocate or legal advisor available.

b. The Secretary of the Military Department concerned or officers (not below the grade of major general or rear admiral) designated by the Secretaries of the Military Departments to determine, based on a record review, that an officer shall be required to show cause for retention on active duty.

REASONS FOR SEPARATION

A. SUBSTANDARD PERFORMANCE OF DUTY

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when, as compared to other commissioned officers of his or her grade and experience, he or she is found to be substandard in any of the following respects:

1. Performance of duty.
2. Efficiency.
3. Leadership.

4. Lack of response to training, in that performance of duties in the officer's assigned speciality is precluded or impaired to the degree of being unsatisfactory.

5. Attitude or character.

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from the Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

1. Serious or recurring wrongdoing, punishable by military or civilian authorities.
2. Intentional or discreditable mismanagement of personal affairs, including financial affairs.
3. Drug abuse.
4. Intentional neglect of, or failure to perform, assigned duties or complete required training.
5. Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties.
6. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.

C. HOMOSEXUAL CONDUCT

Homosexual conduct is 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 is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

1. A commissioned officer shall be separated under this provision if one or more of the following approved findings is made:

a. The officer 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 the officer has demonstrated that:

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

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

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

(4) Under the particular circumstances of the case, the officer's continued presence in the Armed Forces is consistent with the interests of the Armed Forces in proper discipline, good order, and morale of the Service; and,

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

b. The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the officer 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 statement by an officer that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in homosexual acts or has a propensity or intent to do so. The officer 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 in or will engage in homosexual acts. In determining whether an officer 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:

(1) Whether the officer has engaged in homosexual acts;

(2) The officer's credibility;

(3) Testimony from others about the officer's past conduct, character, and credibility;

(4) The nature and circumstances of the officer's statement;

(5) Any other evidence relevant to whether the officer is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved).

2. The commissioned officer shall bear the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraphs C.1.a. and C.1.b. of this enclosure, above, except in cases where the officer's conduct was solely the result of a desire to avoid or terminate military service.

3. Nothing in this Directive or the Service implementing regulations requires that an officer be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

a. The officer engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding military service; and

b. Separation of the officer would not be in the best interest of the Armed Forces.

D. RETENTION IS NOT CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY

Under DoD 5200.2-R (reference (d)), a commissioned officer may be separated from a Military Service when it is determined that the commissioned officer's retention is clearly inconsistent with the interest of national security.

E. MULTIPLE REASONS

A commissioned officer may be considered for separation under all the reasons in sections A., B., C., and D. of this enclosure above; however, separate findings under each applicable section shall be required as to the reasons for separation.

PROCEDURES FOR NONPROBATIONARY COMMISSIONED OFFICERS

A. INITIATION OF ACTION

The Secretary of each Military Department shall prescribe procedures for the initiation of separation recommendations.

B. SHOW-CAUSE AUTHORITY

1. The show-cause authority will determine whether an officer shall be required to show cause for retention on active duty for one or more of the reasons listed in enclosure 2, and as further defined by the Secretary of the Military Department concerned.

2. The show-cause authority shall:

a. Evaluate all information presented concerning the case under consideration.

b. Determine whether the record is sufficient to require the officer to show cause for retention on active duty.

c. Under regulations prescribed by the Secretary concerned, close the case if the authority determines that the officer should not be required to show cause for retention on active duty.

d. Report the matter for referral to a Board of Inquiry if the authority determines that the officer should be required to show cause for retention on active duty. The reasons for making such a determination shall be provided to the officer in writing.

e. Refer the case to a Board of Inquiry if the record supports a finding of homosexual conduct under enclosure 2.

f. Consider the initiation of separation action if the record supports a finding of drug abuse under enclosure 2.

3. As provided in 10 U.S.C. 618(b)(2) (reference (b)), the Secretary concerned may require an officer to show cause for retention on active duty based upon the recommendation of a promotion selection board.

C. BOARD OF INQUIRY

1. Composition. See enclosure 4.

2. Convening. A Board of Inquiry shall be convened under such regulations as may be prescribed by the Secretary of the Military Department concerned.

3. Function. A Board of Inquiry shall give a fair and impartial hearing to a respondent. The Board of Inquiry is an administrative board that shall consider all relevant and material evidence pertaining to the case and shall

function under rules and procedures established by the Secretary of the Military Department concerned. The Board of Inquiry shall make findings of fact and a recommendation as to whether a respondent should be retained on active duty. The board also shall recommend the character of discharge in accordance with regulations prescribed by the Secretary of the Military Department concerned, if it recommends discharge. Its findings must be supported by a preponderance of the evidence. The proceedings and hearing before a Board of Inquiry are intended to give the officer an opportunity to respond to, and rebut, the basis for the contemplated change of status, after having been informed of the contemplated change and the reasons therefor. The hearing shall provide a forum for why the officer concerned thinks the contemplated action should not be taken.

4. Determinations

a. If a Board of Inquiry determines that the respondent's retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2.

b. If a Board of Inquiry determines that the respondent's retention on active duty is not warranted, it shall report the matter to a Board of Review, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent.

D. BOARD OF REVIEW

1. Composition. See enclosure 4.

2. Convening. A Board of Review shall be convened under such regulations prescribed by the Secretary of the Military Department concerned.

3. Function. After a Board of Inquiry has determined a respondent has failed to establish that retention on active duty is warranted, the Board of Review shall review the record for the purpose of examining the grounds for such determination.

4. Determinations

a. If a Board of Review determines that the respondent has established that retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2.

b. If a Board of Review determines that the respondent has failed to establish that retention on active duty is warranted, the Board of Review shall recommend to the Secretary of the Military Department concerned that the respondent should be separated, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent.

E. ACTION BY THE SECRETARY OF THE MILITARY DEPARTMENT CONCERNED UPON
RECOMMENDATION OF THE BOARD OF REVIEW

If the Board of Review recommends that the respondent not be retained on active duty, the Secretary of the Military Department concerned may direct:

1. Separation.
2. Retention.

The action of the Secretary is final.

F. RETIREMENT OR DISCHARGE

1. Retirement. A commissioned officer separated from active duty in accordance with this Directive, if eligible for voluntary retirement under any provisions of law on the date of such separation, shall be retired in the grade and with the retired pay for which eligible if retired under such provision.

2. Discharge. A commissioned officer separated from active duty in accordance with this Directive, if ineligible for retirement under any provision of law on the date of such separation, shall be:

a. Honorably discharged in the grade then held if separated only for substandard performance of duty; or

b. Discharged in the grade then held if separated for misconduct, for moral or professional dereliction, homosexual conduct, or in the interest of national security. The character of discharge shall be determined by the Secretary of the Military Department concerned but in no case shall it be more severe than that recommended by the Board of Inquiry.

G. APPLICATION FOR RETIREMENT OR DISCHARGE

At any time before final action in the case, the Secretary of the Military Department concerned may grant a request by the commissioned officer concerned for:

1. Voluntary retirement.
2. Discharge.

The action of the Secretary is final.

H. LIMITATIONS

1. A commissioned officer required to show cause for retention on active duty because of substandard performance of duty and who is retained on active duty by a Board of Inquiry or a Board of Review may not again be required to show cause for retention for the same reasons within the one-year period beginning on the date of the determination to retain.

2. Subject to paragraph H.3., below, a commissioned officer required to show cause for retention on active duty because of misconduct, moral or professional dereliction, homosexual conduct, or in the interest of national security, and who is retained on active duty by a Board of Inquiry or a Board of Review may again be required to show cause for retention at any time.

3. A commissioned officer may not again be required to show cause for retention on active duty solely because of conduct that was the subject of the previous proceedings, unless the findings and recommendations of the

Board of Inquiry or Board of Review that considered the case are determined to have been the result of fraud or collusion.

COMPOSITION OF BOARDS

A. COMPOSITION

Each board convened in accordance with this Directive shall be composed of at least three commissioned officers having the qualifications prescribed by section B. of this enclosure. The senior member shall be the President of the Board. A nonvoting legal advisor may also be appointed to assist the Board of Inquiry.

B. OFFICERS ELIGIBLE TO SERVE ON BOARDS

1. Each commissioned officer who serves on a board must be an officer on the active duty list of the same Military Service as the respondent.

2. A commissioned officer may not serve on a board unless he or she is serving on active duty in a grade above lieutenant colonel or commander, and is senior in grade and rank to any respondent being considered by the board.

3. If qualified commissioned officers from the active duty list are not available in sufficient numbers to comprise a board, the Secretary of the Military Department concerned shall complete the membership of the board by appointing retired regular commissioned officers of the same Military Service. The retired grade of such officers must be above lieutenant colonel or commander and must be senior to the grade held by any respondent being considered by the board.

4. No person shall be a member of more than one board convened under this Directive to consider the same respondent.

BOARD OF INQUIRY PROCEDURES

A. CHALLENGES

Under regulations prescribed by the Secretary of the Military Department concerned, board members are subject to challenge for cause only. In the event the membership of the board is reduced to less than three officers, the convening authority shall appoint additional members.

B. LEGAL ADVISOR

The legal advisor, if appointed, shall perform such functions as the Secretary of the Military Department concerned may prescribe except that the legal advisor has no authority to dismiss any allegation against the respondent or to terminate the proceedings.

C. RECORDER

The Government may be represented before the board by a recorder whose duties shall be prescribed by the Secretary of the Military Department concerned.

D. RIGHTS OF A RESPONDENT REQUIRED TO SHOW CAUSE FOR RETENTION BEFORE A BOARD OF INQUIRY

1. When the case is referred to a Board of Inquiry, the respondent shall be notified in writing, at least 30 days before the hearing, of the reasons for which he or she shall be required to show cause for retention on active duty and of the least favorable characterization of discharge for which the officer may be recommended.

2. The respondent shall be allowed a reasonable period of time, as determined by the Board of Inquiry, to prepare his or her showing of cause for retention on active duty.

3. The respondent may appear in person at all proceedings of the Board of Inquiry.

4. The respondent may be represented either by military counsel appointed by the convening authority or by military counsel of the respondent's own choice (if the counsel of choice is determined to be reasonably available under regulations prescribed by the Secretary of the Military Department concerned), but not by both. The respondent may employ civilian counsel, at no expense to the Government, in which case no military counsel shall be assigned, if so provided by regulations of the Secretary of the Military Department concerned.

5. The respondent shall be allowed full access to, and be furnished copies of, records relevant to the case; however, the Board of Inquiry shall be assigned, if so provided by regulations of the Secretary of the Military Department concerned.

5. The respondent shall be allowed full access to, and be furnished copies of, records relevant to the case; however, the Board of Inquiry shall withhold any records that the Secretary of the Military Department concerned determines should be withheld in the interest of national security. When any records are withheld, the respondent shall be furnished, to the extent practicable, a summary of the records so withheld.

6. The respondent may request the appearance before the board of any witness whose testimony is considered to be pertinent to his or her case. A determination on the availability of the witness or whether the witness shall

be required to appear, and the materiality of the witness, shall be made pursuant to regulations of the Secretary of the Military Department concerned. Witnesses not on active duty must appear voluntarily and at no expense to the Government, except as otherwise authorized by the Secretary of the Military Department concerned.

7. Subject to regulations prescribed by the Secretary of the Military Department concerned, the respondent may submit, at any time before the board convenes or during the proceedings, documents from his or her record of service, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. These documents may include depositions of witnesses not deemed to be reasonably available or of witnesses unwilling to appear voluntarily.

8. The respondent may testify in his or her behalf subject to the provisions of 10 U.S.C. 831 (Article 31 of the Uniform Code of Military Justice) (reference (b)).

9. The respondent and his or her counsel may question any witness who appears before the board.

10. The respondent or counsel for the respondent may present oral or written argument, or both, on the matter to the board.

11. The respondent may, under regulations prescribed by the Secretary of the Military Department concerned, request a continuance, when necessary, for the preparation of his or her case before the board.

E. BOARD DETERMINATION

The Board of Inquiry shall decide the case on the evidence received or developed during open hearings. Voting shall be conducted in closed session with only voting members of the board in attendance. All findings and recommendations shall be determined by a majority vote.

F. REPORT OF PROCEEDINGS

The record of proceedings shall be kept in summarized form unless a verbatim record is required by the Show Cause Authority (SCA) or the Secretary of the Military Department concerned. In all cases, the findings and recommendations of the Board of Inquiry shall be stated in clear and concise language and shall be signed by all members concurring. Those members not concurring in the findings or recommendations, or both, may file a statement of nonconcurrence, and the reasons therefor, for inclusion in the record. The respondent shall be provided a copy of the report of the proceedings and the findings and recommendation of the board and shall be provided an opportunity to submit written comments for consideration by the Board of Review. When the Board of Inquiry determines that retention on active duty is warranted, and the case is closed, a summarized report of the proceedings may be prepared pursuant to regulations prescribed by the Secretary of the Military Department concerned.

PROCEDURES FOR PROBATIONARY COMMISSIONED OFFICERS

A. INITIATION OF ACTION

The SCA may initiate action for any of the reasons stated in enclosure 2 of this Directive, or for such other reasons as the Secretary of the Military Department concerned may prescribe by regulation. Prior to forwarding the record to the Secretary of the Military Department concerned, the commissioned officer shall be advised in writing of the following:

1. The reason action was initiated and the character of discharge recommended.
2. That he or she may tender a resignation.
3. That he or she may submit a rebuttal or declination statement instead of a resignation.
4. That he or she may confer with appointed or retained counsel.

The officer shall be permitted a reasonable period of time to prepare his or her response.

B. PROCESSING

1. If submitted, the resignation, with the record, shall be forwarded to the authority designated to take final action.
2. If the officer does not tender a voluntary resignation, or if voluntary resignation is not accepted by the Departmental Secretary, the case shall be returned to the SCA for action. If, under regulations of the Secretary concerned, the SCA determines the officer shall be separated with a general discharge, the SCA may refer the case to a Board of Officers or a Board of Inquiry, as determined appropriate, or submit the case to the Secretary concerned who will take a final action. If the SCA determines the officer should be separated with an Other Than Honorable Discharge, the SCA shall refer the case directly to a Board of Inquiry in accordance with Sections C, D, and E of enclosure 3.
3. If the commissioned officer does not tender a resignation statement, and an "Honorable" discharge is recommended by a Board of Inquiry, the record and any rebuttal shall be submitted to the Secretary of the Military Department concerned for final decision.
4. The Secretary of the Military Department concerned may direct referral of the record to a Board of Inquiry whenever the Secretary considers such action appropriate, and the case shall be processed in accordance with sections C., D., and E. of enclosure 3.

C. FINAL DETERMINATION

The Secretary of the Military Department concerned may direct:

1. Retention.
2. Discharge.

The action of the Secretary is final.

CHARACTER OF DISCHARGE

A. DISCHARGE FOR SUBSTANDARD PERFORMANCE OF DUTY

A discharge shall be characterized as "honorable" when substandard performance of duty is the sole basis for the discharge.

B. DISCHARGE FOR MISCONDUCT, OR FOR MORAL OR PROFESSIONAL DERELICTION, OR HOMOSEXUAL CONDUCT, OR IN THE INTERESTS OF NATIONAL SECURITY

A discharge shall be characterized as "Honorable," "General (Under Honorable Conditions)", or "Under Other Than Honorable Conditions."

1. Consideration. The character of a discharge shall be predicated on the commissioned officer's behavior and performance of duty while a member of a Military Service. Characterization normally shall be based on a pattern of behavior and duty performance rather than an isolated incident. There are circumstances, however, in which conduct reflected by a single incident may provide the basis for characterization.

2. Exceptions

a. A discharge shall be characterized as "Honorable" when the grounds for discharge are based solely on pre-Service activities, other than intentional misrepresentation, or omission of facts, in obtaining an appointment or in official statements or records.

b. A discharge shall be characterized as "Honorable" or "Under Honorable Conditions" when the sole basis for separation is homosexual conduct unless aggravated acts are included in the findings. A separation "Under Other Than Honorable Conditions" may be issued if there is a finding that the officer attempted, solicited, or committed a homosexual act:

- (1) By using force, coercion, or intimidation.
- (2) With a person under 16 years of age.
- (3) With a subordinate in circumstances that violate the customary military superior-subordinate relationship.
- (4) Openly in public view.
- (5) For compensation.
- (6) Aboard a military vessel or aircraft.
- (7) In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned.

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

3. Credible Information. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a Service member has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

4. 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.

5. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person would believe (3) intends to convey the statement (4) that a person engages in or has a propensity or intent to engage in homosexual acts. This includes statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

6. Sexual Orientation. A sexual attraction to individuals of a particular sex.

C. BASIS FOR CONDUCTING INQUIRIES

A commander will initiate an inquiry only if he or she has credible information that a basis for discharge exists. A basis for discharge exists if:

1. The member has engaged in a homosexual act.
2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
3. The member has married or attempted to marry a person of the same sex.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member should first be advised of the DoD policy on homosexual conduct. Should the member choose not to discuss the matter further, the commander should consider other available information.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in homosexual acts or has a propensity or intent to do so. The Service member shall be given the opportunity to present evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.

6. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, has a propensity to engage in, or intends to engage in homosexual acts.

E. CREDIBLE INFORMATION DOES NOT EXIST, FOR EXAMPLE, WHEN:

1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion; or
2. The only information is the opinions of others that a member is homosexual; or
3. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or
4. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

F. CREDIBLE INFORMATION EXISTS, FOR EXAMPLE, WHEN:

1. A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or
2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in or has a propensity or intent to engage in homosexual acts; or
3. A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe intended to convey the statement that the member engages in or has a propensity or intent to engage in homosexual acts.

G. LEGAL EFFECT

The procedures in this enclosure create no substantive or procedural rights.

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THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

21 DEC 1993

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
COMPTROLLER
GENERAL COUNSEL
INSPECTOR GENERAL
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Implementation of DoD Policy on Homosexual Conduct in the Armed Forces

The purpose of this memorandum is to provide guidance and announce changes to DoD directives relating to the issue of homosexual conduct in the Armed Forces. As I discussed in my July 19, 1993 memorandum, these changes reflect DoD policy that the suitability of persons to serve in the Armed Forces will be judged on the basis of conduct.

Accession policy is provided in a new DoDD 1304.26, "Qualification Standards for Enlistment, Appointment, and Induction." The directive makes clear that no one will be asked about his or her sexual orientation as part of the accession process, although homosexual conduct may be a basis for rejection for enlistment, appointment and induction. All applicants will be briefed on all of the grounds for administrative separation.

Revisions have been made to the policy pertaining to separation for homosexual conduct reflected in DoDD 1332.14, "Enlisted Administrative Separations," and DoDD 1332.30, "Separations of Regular Officers," to emphasize that DoD judges the suitability of persons to serve in the Armed Forces on the basis of conduct; to distinguish sexual orientation, which is personal and private, from homosexual acts and from statements that reflect an intent or propensity to engage in homosexual acts; and to make clear the procedural rights of a servicemember proposed for separation as a result of a statement that he or she is a homosexual. Corresponding changes should be made by the Military Departments with regard to Reserve Officers, Warrant Officers, and Service Academy and ROTC cadets. A new enclosure on the proper use of commander-directed fact-finding inquiries is added to clarify how commanders should respond to allegations of homosexual conduct.

Criminal investigations policy is reflected in the addition of DoDI 5505.8, "Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and other DoD Law Enforcement Organizations." This instruction establishes policy regarding the initiation of criminal investigations of certain sexual conduct; prohibits criminal investigations solely to determine sexual orientation; establishes a requirement that there be credible information that a criminal violation has occurred before any investigation may be conducted; and specifies that the information must be deemed credible by the relevant Defense Criminal Investigative Organization commander or director as well as by the servicemember's commander. It also provides that criminal investigative resources will not normally be devoted to the investigation of consensual adult private sexual misconduct where such misconduct is the only offense involved in the absence of aggravating factors or a specific request by the commander of the servicemember as to whom an allegation of such misconduct has been made. Finally, this instruction provides that investigations into sexual misconduct will be conducted in an evenhanded manner, without regard to whether the alleged misconduct involves homosexual or heterosexual conduct.

Personnel security policy is clarified via a memorandum from the Deputy Secretary of Defense and a revision to DIS Manual 20-1, "Manual For Personnel Security Investigations." The changes narrow the nature and scope of the areas of inquiry to be pursued by a DIS investigator when confronted with credible information of homosexual conduct to ensure that inquiries are directed only to those issues necessary to evaluate a potential security concern. The changes also make clear that the purpose of such inquiries is to assess security concerns, not to evaluate suitability to serve.

Finally, DoDD 1322.18, "Military Training," has been revised to add a requirement for individual training that explains the conduct that is necessary to maintain high standards of combat effectiveness and unit cohesion, and to brief servicemembers on applicable laws and regulations governing sexual conduct by members of the Armed Forces. A training plan designed for personnel involved in policy implementation and administration, with detailed hypotheticals, is also provided.

These policy changes are effective February 5, 1994. However, DoDD Directive 1332.14, January 28, 1982, and DoDD Directive 1332.30, February 12, 1986, will continue to be used for administrative separation proceedings initiated before February 5, 1994 unless the Secretary of the Service concerned determines that the new separation procedures should be applied in a particular case in which proceedings were initiated before that date. The interim procedural guidance in my February 3, 1993, memorandum is hereby canceled effective February 5, 1994.

Secretaries of the Military Departments shall, within 30 days, submit appropriate implementing documents to the Assistant Secretary of Defense for Personnel & Readiness for review and coordination within the Office of the Secretary of Defense.

cc: Secretary of Transportation

US ASPIN

Changes to Accession Policy

- 0 Establishes new DoD Directive 1304.26 containing basic entrance qualification standards for enlistment, appointment and induction into the Armed Forces.
- 0 Augments physical standards promulgated in DoD Directive 6130.3, "Physical Standards for Enlistment, Appointment, and Induction."
 - 00 Revised DoDD 6130.3 deleting reference to homosexual behavior is awaiting release.
- 0 Implements SecDef policy on homosexual conduct in the Armed Forces.
 - 00 Establishes homosexual conduct, and not sexual orientation, as a cause for rejection for military service.
 - 00 States that applicants will not be asked or required to reveal their sexual orientation.
 - 00 Requires that applicants be informed of separation policy before enlistment.
- 0 Requires that personal conduct policy and bases for administrative separation be set forth in the documents used to effectuate enlistment and appointment of members in the Armed Forces.
- 0 Reflects in entry standards and documents the separation policy established by section 654 of Title 10, U.S. Code.



Department of Defense DIRECTIVE

NUMBER 1304.26

SUBJECT: Qualification Standards for Enlistment, Appointment,
and Induction

- References:
- (a) Title 10, United States Code
 - (b) DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical and Dental Registrants," September 27, 1960
 - (c) Title 32, United States Code
 - (d) Compact of Free Association between the United States and the Government of the Federated States of Micronesia and the Government of the Marshall Islands, 99 Stat. 1770 (1986) (reprinted as amended at 48 U.S.C.A. 1681 note)
 - (e) through (f), see enclosure 1

A. PURPOSE

This Directive:

1. Establishes basic entrance qualification standards for enlistment, appointment, and induction into the Armed Forces in accordance with Section 113 of reference (a) and delegates the authority to specify certain of those standards to the Secretaries of the Military Departments.
2. Establishes the age, citizenship, education, aptitude, physical fitness, dependency status, moral character, and other disqualifying conditions that are causes for rejection for military service. Other standards may be prescribed in the event of mobilization or national emergency.
3. Sets standards designed to ensure that individuals under consideration for enlistment, appointment, or induction are able to perform military duties successfully, and to select those who are the most trainable and adaptable to Service life.

B. APPLICABILITY AND SCOPE

This Directive applies to:

1. The Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, the Coast

Guard (by agreement with the Secretary of Transportation when it is not operating as a Military Service in the Navy) and their National Guard and Reserve Components.

2. Applicants for initial enlistment into the Regular Armed Forces and the Reserve components.

3. Applicants for appointment as commissioned or warrant officers in the Active and Reserve components.

4. Applicants for reenlistment following release from active duty into subsequent Active or Reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) after a period of more than 6 months has elapsed since discharge.

5. Applicants for the Scholarship or Advanced Course Reserve Officers Training Corps (ROTC), and all other Armed Forces special officer personnel procurement programs, including the Military Service Academies.

6. All individuals being inducted into the Armed Forces.

C. DEFINITION

Reserve components. Includes the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve.

D. POLICY

It is DoD policy to:

1. Encourage to the maximum extent practical the use of common entrance qualification standards.

2. Avoid inconsistencies and inequities based on gender, race, religion, or ethnicity in the application of these standards by the Military Services.

3. Judge the suitability of persons to serve in the Armed Forces on the basis of their adaptability, potential to perform, and conduct.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness shall:

a. Review, coordinate, approve, and issue modifications to the standards in enclosure 2.

b. Ensure that the U.S. Military Entrance Processing Command assists the Services in implementing these standards.

2. The Assistant Secretary of Defense for Health Affairs shall act as an advisor to the ASD(P&R) concerning the physical and medical aspects of these standards.

3. The Assistant Secretary of Defense (Reserve Affairs) shall act as an advisor to the ASD(P&R) concerning the Reserve enlistment and appointment standards.

4. The Secretaries of the Military Departments:

a. Shall ensure conformance with this Directive.

b. Shall recommend to the ASD(P&R) suggested changes to this Directive.

c. Shall review all standards on an annual basis.

d. Shall establish procedures to grant waivers to the standards in individual cases for appropriate reasons.

e. Shall establish other standards as necessary to implement this Directive.

f. May issue generalized exceptions to these standards as permitted by law, with approval from the ASD(P&R).

F. PROCEDURES

The standards in enclosure 2 shall be used to determine the entrance qualifications for all individuals being enlisted, appointed, or inducted into any component of the Military Services.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective February 5, 1994. Forward one copy of the implementing documents to the ASD(P&R) within 30 days.

Enclosures - 2

1. References
2. Qualification Standards for Enlistment, Appointment, and induction

REFERENCES, continued

- (e) DoD Directive 1145.1, "Qualitative Distribution of Military Manpower," January 22, 1986
- (f) DoD Directive 6130.3, "Physical Standards for Enlistment, Appointment, and Induction," March 31, 1986

Qualification Standards for Enlistment
Appointment, and Induction

A. GENERAL ELIGIBILITY CRITERIA

1. Entrance Considerations. Accession of qualified individuals shall be a priority when processing applicants for the Military Services.

2. Eligibility. Eligibility shall be determined by the applicant's ability to meet all requirements of this Directive, to include obtaining waivers. Applicants shall not be enlisted, appointed, or inducted unless fully qualified.

B. BASIC ELIGIBILITY CRITERIA

1. Age

a. For service in the Active and Reserve components, the minimum age for enlistment is 17 years and the maximum age is 35 years (See 10 U.S.C., 510, reference (a)).) The maximum age for a prior service enlistee is determined by adding the individual's years of prior service to 35. The Secretaries of the Military Departments concerned shall establish age standards for enlistment in the Reserve components (10 U.S.C., 510, reference (a)).

b. Age limitations for appointment as a commissioned or warrant officer normally depend on the Service concerned. In prescribing the age qualification for appointment as a Reserve officer, the Secretary of the Military Department concerned may not prescribe a maximum standard of less than 47 years for the initial appointment of a person who will serve as a medical, dental, or nurse officer in a specialty designated by the Secretary concerned as critically needed in wartime. (see DoD Instruction 1205.1 (reference (b)).)

c. By law (10 U.S.C. 532, reference (a)), persons appointed as commissioned officers must be able to complete 20 years of active commissioned service before their 55th birthday in order to receive a Regular commission. The Secretary of the Military Department concerned may defer the retirement for certain health profession officers on a case-by-case basis (10 U.S.C., 1251 reference (a)).

2. Citizenship

a. To be eligible for enlistment in the Regular Army or Air Force, an individual must be an American citizen, or lawfully admitted to the United States for permanent residence (10 U.S.C. 3253 and 8253, reference (a)). There is no equivalent statute limiting enlistment in the Regular Navy and Marine Corps, but they usually apply the same citizenship requirements as those required for the Army and Air Force.

b. To be eligible for enlistment in the Reserve components, an individual must be a citizen of the United States or lawfully admitted to the United States for permanent residence (10 U.S.C., 510, reference (a)).

c. To be eligible for appointment as a commissioned or warrant officer, U.S. citizenship is required except for Reserve appointment where an individual must be lawfully admitted to the United States for permanent residence (Sections 532 and 591 of reference (a)). For regular appointment, when tendered, U.S. citizenship is required. Law requires National Guard officers to be U.S. citizens (32 U.S.C., 313, reference (c)).

d. Citizens of the Federated States of Micronesia or the Republic of the Marshall Islands also are eligible for enlistment in the Active and Reserve components (see the Compact of Free Association (reference (d))).

3. Education

a. Possession of a high school diploma is desirable, although not mandatory, for enlistment in any component of the Military Services. Section 520 of reference (a) states, "A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the Armed Forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements." Alternative credential holders (i.e., General Education Development certificates and certificates of attendance and completion) and nongraduates may be assigned lower enlistment priority based on their first-term attrition rates.

b. Educational requirements for appointment as a commissioned or warrant officer are determined by each Military Service. Generally, a bachelors degree is a required prerequisite for a commission or appointment. In addition, special occupations (e.g., physician, chaplain) may require additional vocational

credentials, which are determined by the Secretary of the Military Department concerned.

4. Aptitude

a. Overall aptitude requirements for enlistment and induction are based on applicant scores on the Armed Forces Qualification Test (AFQT) derived from the Armed Services Vocational Aptitude Battery. Applicant scores are grouped into percentile categories. Persons who score in AFQT Category V (percentiles 1-9) are, by law (10 U.S.C., 520 and DoD Directive 1145.1 (references (a) and (e))), ineligible to enlist. By law (10 U.S.C., 520, reference (a)), the number of persons who enlist during any fiscal year who score in AFQT Category IV (percentiles 10 to 30) may not exceed 20 percent of the total number of persons enlisted. The Secretary of Defense delegates to the Secretaries of the Military Departments the authority to specify more restrictive aptitude standards for enlistment.

b. Generally, for officers and warrant officers, no single test or instrument is used as an aptitude requirement for appointment.

5. Physical Fitness

a. DoD Directive 6130.3 (reference (f)) establishes the standards for entrance under the authority of 10 U.S.C. (reference (a)).

b. The pre-accession screening process should be structured to identify individuals with any medical condition that disqualifies an applicant for military service. Specifically, each applicant shall be independently evaluated by an authorized physician or a physician at a Military Entrance Processing Station to ensure the applicant is:

- (1) Free of contagious or infectious diseases;
- (2) Free of medical conditions or physical defects that would require excessive time lost from duty or would likely result in separation from the Service for medical unfitness;
- (3) Medically capable of satisfactorily completing required training;
- (4) Medically adaptable to the military environment;
- (5) Medically capable of performing duties without aggravation of existing physical defects or medical conditions.

6. Dependency Status

a. Title 10 U.S.C. (reference (a)) does not specifically address eligibility requirements for single parents.

b. The Military Services may not enlist married individuals with more than two dependents under the age of 18 or unmarried individuals with custody of any dependents under the age of 18. However, the Secretary of the Military Department concerned may grant a waiver for particularly promising entrants.

c. The Military Services shall specify the circumstances under which individuals who have dependents may become commissioned officers or warrant officers; variations in policy are affected by the commissioning source (e.g., Service Academy vs. ROTC or Officer Candidate School; ROTC scholarship status, etc.).

7. Moral Character. Persons entering the Armed Forces should be of good moral character. The underlying purpose of moral character enlistment standards is to minimize entrance of persons who are likely to become disciplinary cases or security risks or who disrupt good order, morale, and discipline. The Military Services also have a responsibility to parents who expect that their sons and daughters will not be placed into close association with persons who have committed serious offenses or whose records show ingrained delinquency behavior patterns. The Military Services are responsible for the defense of the nation and should not be viewed as a source of rehabilitation for those who have not subscribed to the legal and moral standards of society at large. Moral standards of acceptability for service are designed to disqualify the following kinds of persons:

a. Individuals under any form of judicial restraint (bond, probation, imprisonment, or parole).

b. Those with significant criminal records. Section 504 of 10 U.S.C. (reference (a)) states that, "no person...who has been convicted of a felony, may be enlisted in an Armed Force. However, the Secretary concerned may authorize exceptions in meritorious cases, for the enlistment of...persons convicted of felonies."

(1) Persons convicted of felonies may request a waiver to permit their enlistment. The waiver procedure is not automatic, and approval is based on each individual case. One of the considerations in determining whether a waiver will be granted is the individual's ability to adjust successfully to civilian life for a period of time following his or her release from

judicial control.

(2) In processing waiver requests, the Military Services shall require information about the "who, what, when, where, and why" of the offense in question; and a number of letters of recommendation attesting to the applicant's character or suitability for enlistment. Such letters must be from responsible community leaders such as school officials, ministers, and law enforcement officials.

c. Those who have been previously separated from the Military Services under conditions other than honorable or for the good of the Service.

d. Those who have exhibited antisocial behavior or other traits of character that would render them unfit to associate with military personnel.

8. Provisions Related to Homosexual Conduct

a. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct. Applicants for enlistment, appointment, or induction shall not be asked or required to reveal their sexual orientation. Applicants also will not be asked or required to reveal whether they have engaged in homosexual conduct, unless independent evidence is received indicating that an applicant engaged in such conduct or unless the applicant volunteers a statement that he or she is a homosexual or bisexual, or words to that effect. Applicants will be informed of separation policy. (Section 654 of reference (a)).

b. Homosexual conduct may be grounds for barring entry into the Armed Forces. Homosexual conduct is a homosexual act, a statement by the applicant that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. 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 in or will engage in homosexual acts.

(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 will be made in the course of the normal accession process. A homosexual act means (i) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and (ii) any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (i).

(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 made in the course of the normal accession process.

(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 (as evidenced by the external anatomy of the persons involved).

c. Nothing in these procedures requires rejection for entry into the Armed Forces when the relevant Military Service Command authority determines:

(1) That an applicant or inductee made a statement, engaged in acts, or married or attempted to marry a person of the same sex for the purpose of avoiding military service, and

(2) Rejection of the applicant or inductee would not be in the best interest of the Armed Forces.

Applicant Briefing Item on Separation Policy

As military members, you occupy a unique position in society. You represent the military establishment. This special status brings with it the responsibility to uphold and maintain the dignity and high standards of the U.S. Armed Forces at all times and in all places. The Armed Forces must also be ready at all times for world-wide deployment. This fact carries with it the requirement for military units and their members to possess high standards of morale, good order and discipline, and cohesion. As a result, military laws, rules, customs and traditions include restrictions on your personal behavior that may be different from civilian life. Members of the Armed Forces may be involuntarily separated before their enlistment or term of service ends for various reasons established by law and military regulations. Some unacceptable conduct may be grounds for involuntary separation, such as:

You establish a pattern of disciplinary infractions, discreditable involvement with civil or military authorities or you cause dissent, or disrupt or degrade the mission of your unit. This may also include conduct of any nature that would bring discredit on the Armed Forces in the view of the civilian community.

Because of parental responsibilities, you are unable to perform your duties satisfactorily or you are unavailable for worldwide assignment or deployment.

You fail to meet the weight control standards.

Although we have not and will not ask you about your sexual orientation, you should be aware that homosexual conduct is grounds for discharge from the Armed Forces. This means that if you do one of the following, you could be involuntarily separated before your term of service ends:

- (1) Homosexual acts. You engage in, attempt to engage in, or solicit another to engage in a homosexual act or acts. A "homosexual act" means touching a person of your same sex or allowing such a person to touch you for the purpose of satisfying sexual desires. (For example, hand-holding or kissing, or other physical contact of a sexual nature.)
- (2) Homosexual statements. You make a statement that demonstrates a propensity or intent to engage in homosexual acts. This may include language or behavior that a reasonable person would believe intends to convey the statement that you are a homosexual or bisexual.
- (3) Homosexual marriage. You marry or attempt to marry a person of your same sex.

You may not be discharged if you do or say these things solely to end your military service.

The Armed Forces do not tolerate harassment or violence against any servicemember, for any reason.

RESTRICTIONS ON PERSONAL CONDUCT IN THE ARMED FORCES

(For use of this form, see USMEPCOM Reg 601-23)

1. Military life is fundamentally different from civilian life. The military has its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society. These are necessary because military units and personnel must maintain the high standards of morale, good order and discipline, and unit cohesion that are essential for combat effectiveness.

2. The Armed Forces must be ready at all times for world-wide deployment. Military law and regulations, including the Uniform Code of Military Justice, apply to servicemembers at all times, both on base or off base, from the time the member enters the Service until the member is discharged or otherwise separated from the Armed Forces.

3. Members of the Armed Forces may be involuntarily separated before their term of service ends for various reasons established by law and military regulations, such as:

a. A member may be separated for a pattern of disciplinary infractions, a pattern of misconduct, commission of a serious offense, or civilian conviction.

b. A member who has been referred to a rehabilitation program for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program.

c. A member may be discharged by reason of parenthood, if it is determined the member because of parental responsibilities, is unable to perform his or her duties satisfactorily or is unavailable for worldwide assignment or deployment.

d. A member may be separated for violation of laws or regulations regarding sexual conduct of members of the Armed Forces, for example, engaging or attempting to engage in a homosexual act or soliciting another to engage in such an act; for stating that he or she is a homosexual or bisexual, or words to that effect; or for marrying or attempting to marry an individual of the same sex.

e. A member may be separated for failure to meet Service weight control standards.

f. A member may be separated for harassment or violence against any servicemember.

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ASSISTANT SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON DC 20301-4000



MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER
AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER
AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,
RESERVE AFFAIRS, INSTALLATIONS, & ENVIRONMENT)
COMMANDER, U.S. MILITARY ENTRANCE PROCESSING
COMMAND

SUBJECT: Briefing Armed Forces Applicants

Reference: (a) DoDD 1304.26, Qualification Standards for Enlistment, Appointment, and Induction
(b) Deputy Assistant Secretary of Defense (Military Manpower & Personnel) Memorandum, "Armed Forces Applicant Screening and Periodic Briefing on Military Justice--Policy Guidance," February 3, 1993
(c) SecDef Memorandum, "Policy on Homosexual Conduct in the Armed Forces," July 19, 1993

This memorandum forwards an applicant briefing item on separation policy and an annex to be used as part of the documents that effectuate the enlistment and appointment of members in the Armed Forces. These items shall be used to brief prospective entrants to the military in accordance with reference (a) and to document those restrictions.

Interview briefings provided to officer and enlisted program applicants must be expanded to include the attached information effective immediately. These briefings shall specifically include a discussion of the restrictions outlined in the attached briefing item and form, and must be presented on the following occasions:

- Enlisted and Officer Accessions: For those who enlist through a Military Entrance Processing Station (MEPS), the briefing shall be presented by the MEPS staff in accordance with USMEPCOM Regulation 601-23, "Enlistment Documents." The briefing shall be presented prior to the oath of enlistment during the Preenlistment Interview (PEI) and/or Preaccession Interview (PAI).
- To implement this change, USMEPCOM Regulation 601-23, Chapter 4, "Preenlistment Interview (PEI) and Preaccession Interview (PAI)", paragraphs 4-6, 4-10, and 4-12 a. (1) shall be written to include a requirement for an interview briefing regarding separation policy and restrictions on personal conduct in the Armed Forces. In addition, Tables 4-1 and 4-2 must include the following question: "Have you been briefed on, and do you understand the separation policy and the restrictions on personal conduct in the Armed Forces?"



- Officer Accessions: The briefings shall be presented as follows:
 - Reserve Officers Training Corps (ROTC): Prior to administration of oaths, students shall be briefed as part of their processing for initial membership in the ROTC program.
 - Service Academies: During the initial 72 hours of reception activities, briefings shall be presented to new cadets or midshipmen.
 - Officer Candidate School (OCS)-Type Programs: Although many officer candidates might have been briefed either at a MEPS as specified earlier, or at their military units (for in-service entrants), the orientation should be repeated as a part of reception activities, within 72 hours of commencement of inprocessing.
 - Direct Appointment Programs: The briefings shall be presented prior to the administration of oaths of appointment. If group presentations are not feasible, individual orientations shall be provided by the person administering the oath. Service policies may specify another briefer, as appropriate.

Secretaries of the Military Departments and USMEPCOM may adopt procedures to fit circumstances not specifically addressed herein, provided the timing conforms as closely as possible, and that the briefings are comprehensive, uniformly presented, and afford the opportunity for an exchange of questions and answers sufficient to ensure that the content of the briefing is understood by those entering the Armed Forces.

Edwin Dorn

Attachments
As stated

cc:
Assistant Secretary of Defense (Reserve Affairs)
Director, Joint Staff
Chief, Office of Personnel and Training
Department of Transportation

Applicant Briefing Item on Separation Policy

As military members, you occupy a unique position in society. You represent the military establishment. This special status brings with it the responsibility to uphold and maintain the dignity and high standards of the U.S. Armed Forces at all times and in all places. The Armed Forces must also be ready at all times for world-wide deployment. This fact carries with it the requirement for military units and their members to possess high standards of morale, good order and discipline, and cohesion. As a result, military laws, rules, customs and traditions include restrictions on your personal behavior that may be different from civilian life. Members of the Armed Forces may be involuntarily separated before their enlistment or term of service ends for various reasons established by law and military regulations. Some unacceptable conduct may be grounds for involuntary separation, such as:

You establish a pattern of disciplinary infractions, discreditable involvement with civil or military authorities or you cause dissent, or disrupt or degrade the mission of your unit. This may also include conduct of any nature that would bring discredit on the Armed Forces in the view of the civilian community.

Because of parental responsibilities, you are unable to perform your duties satisfactorily or you are unavailable for worldwide assignment or deployment.

You fail to meet the weight control standards.

Although we have not and will not ask you about your sexual orientation, you should be aware that homosexual conduct is grounds for discharge from the Armed Forces. This means that if you do one of the following, you could be involuntarily separated before your term of service ends:

(1) Homosexual acts. You engage in, attempt to engage in, or solicit another to engage in a homosexual act or acts. A "homosexual act" means touching a person of your same sex or allowing such a person to touch you for the purpose of satisfying sexual desires. (For example, hand-holding or kissing, or other physical contact of a sexual nature.)

(2) Homosexual statements. You make a statement that demonstrates a propensity or intent to engage in homosexual acts. This may include language or behavior that a reasonable person would believe intends to convey the statement that you are a homosexual or bisexual.

(3) Homosexual marriage. You marry or attempt to marry a person of your same sex.

You may not be discharged if you do or say these things solely to end your military service.

The Armed Forces do not tolerate harassment or violence against any servicemember, for any reason.

RESTRICTIONS ON PERSONAL CONDUCT IN THE ARMED FORCES

(For use of this form, see USMEPCOM Reg 601-23)

1. Military life is fundamentally different from civilian life. The military has its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society. These are necessary because military units and personnel must maintain the high standards of morale, good order and discipline, and unit cohesion that are essential for combat effectiveness.

2. The Armed Forces must be ready at all times for world-wide deployment. Military law and regulations, including the Uniform Code of Military Justice, apply to servicemembers at all times, both on base or off base, from the time the member enters the Service until the member is discharged or otherwise separated from the Armed Forces.

3. Members of the Armed Forces may be involuntarily separated before their term of service ends for various reasons established by law and military regulations, such as:

a. A member may be separated for a pattern of disciplinary infractions, a pattern of misconduct, commission of a serious offense, or civilian conviction.

b. A member who has been referred to a rehabilitation program for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program.

c. A member may be discharged by reason of parenthood, if it is determined the member because of parental responsibilities, is unable to perform his or her duties satisfactorily or is unavailable for worldwide assignment or deployment.

d. A member may be separated for violation of laws or regulations regarding sexual conduct of members of the Armed Forces, for example, engaging or attempting to engage in a homosexual act or soliciting another to engage in such an act; for stating that he or she is a homosexual or bisexual, or words to that effect; or for marrying or attempting to marry an individual of the same sex.

e. A member may be separated for failure to meet Service weight control standards.

f. A member may be separated for harassment or violence against any servicemember.

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Changes to Administrative Separation Policy

- 0 Implements SecDef policy regarding administrative separation for homosexual conduct with changes to DODD 1332.14, "Enlisted Administrative Separations" and DoDD 1332.30, "Separations of Regular Officers."
- 0 Provides revised standards and procedures for separation of servicemembers for homosexual conduct effective February 5, 1994.
- 0 Amends the policy paragraph of the directive and the introductory language in paragraph H of enclosure 3 in DoDD 1332.14 to emphasize that it is DoD policy to judge the suitability of persons to serve in the armed forces on the basis of their conduct and to provide that homosexual conduct, not homosexual orientation, is the basis for separation. To maintain consistency among officer and enlisted directives, this paragraph is added to DoDD 1332.30.
- 0 Defines homosexual conduct as including homosexual acts, statements by the servicemember that demonstrate a propensity or intent to engage in homosexual acts, and homosexual marriages or attempted marriages.
- 0 Replaces the previous terminology of "desires to engage in" homosexual acts with "a propensity to engage in" homosexual acts. Makes clear the distinction between status and conduct. Makes clear that a servicemember who has stated that he or she is a homosexual has the opportunity to prove that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.
- 0 Adds a new enclosure on the proper use of fact-finding inquiries, as a practical guide for the commander.



Department of Defense DIRECTIVE

NUMBER 1332.14

SUBJECT: Enlisted Administrative Separations

References: (a) DoD Directive 1332.14, subject as above,
December 29, 1976 (canceled on October 1, 1982; see
section F., below)

(b) through (y), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and establishes policies, standards, and procedures governing the administrative separation of enlisted members from the Military Services.

B. APPLICABILITY AND SCOPE

The provisions of this Directive apply to Office of the Secretary of Defense and the Military Departments (including their reserve components). The term "Military Services," as used herein, refers to the Army, Navy, Air Force and Marine Corps.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. It is the policy of the Department of Defense to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

* a. Judge the suitability of persons to serve in the Armed *
* Forces on the basis of their conduct. *

b. Ensure that the Military Services are served by
individuals capable of meeting required standards of duty performance
and discipline;

c. Maintain standards of performance and conduct through
characterization of service in a system that emphasized the
importance of honorable service;

d. Achieve authorized force levels and grade distributions;
and

e. Provide for the orderly administrative separation of
enlisted personnel in a variety of circumstances.

which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

* 2. The Assistant Secretary of Defense for Personnel and Readiness *
may modify or supplement the enclosures to this Directive, and may delegate the authority to establish reporting requirements for the reasons for separation (Part 1, enclosure 3) to a Deputy Assistant Secretary.

F. EFFECTIVE DATE AND IMPLEMENTATION

* 1. This Directive is effective February 5, 1994. *

* 2. This Directive applies only to administrative separation *
proceedings initiated on or after February 5, 1994 unless the Secretary *
of the Service concerned determines that it should be applied in a *
particular case in which proceedings were initiated before that *
date. *

* 3. Forward two copies of proposed implementing documents to the *
ASD(P&R) within 30 days.

Enclosures - 4

1. References
2. Definitions
3. Standards and Procedures
- * 4. Guidelines for Fact-Finding Inquiries into Homosexual Conduct *

REFERENCES, continued

- (b) Title 10, United States Code, Section 977 (Denial of Certain Benefits to Persons Who Fail to Complete at Least Two Years of an Original Enlistment)
- (c) Act of October 17, 1981, Pub. L. No. 97-66, 95 Stat. 1035
- (d) Title 10, United States Code, Sections 801-940 (Uniform Code of Military Justice, Articles 1-140)
- (e) Title 10, United States Code, Section 1552 (Correction of Military Records) and Section 1553 (Review of Discharge or Dismissal)
- (f) DoD Directive 1332.28, "Discharge Review Board (DRB) Procedures and Standards," August 11, 1982
- (g) Title 38, United States Code, Section 3103 (Certain Bars to Benefits (Veterans Administration))
- (h) DoD Directive 1205.5, "Transfer of Members Between Reserve Components of the Military Services," May 16, 1980
- (i) DoD Instruction 1332.15, "Early Release of Military Enlisted Personnel for College or Vocational/Technical School Enrollment," June 1, 1976
- (j) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces," September 23, 1969
- (k) DoD Directive 1300.6, "Conscientious Objectors," August 20, 1971
- (l) DoD Directive 1315.14, "Special Assignment and Discharge Policies for Family Members," July 15, 1974
- (m) Section on Mental Disorders, International Classification of Diseases and Injuries - 8, Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, 3rd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1978
- (n) Title 10, United States Code, Chapter 61 (Retirement or Separation for Physical Disability)
- (o) Title 10, United States Code, Section 1170 (Regular Enlisted Members: Minority Discharge)
- (p) Manual for Courts-Martial, 1969 (Revised Edition), as amended
- (q) DoD 5200.2-R, "DoD Personnel Security Program," December 1979, authorized by DoD Directive 5200.2 "DoD Personnel Security Program," December 20, 1979
- (r) DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," June 30, 1979
- (s) DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty," December 14, 1978
- (t) DoD Directive 1010.1, "Drug Abuse Testing Program," March 16, 1983
- (u) Title 10, United States Code, Section 1163 (Reserve Components: Members; Limitations on Separations)
- (v) Title 10, United States Code. Section 504 (Persons Not Qualified for Enlistment)
- (w) Title 10, United States Code, Section 505 (Regular Components: Qualifications, Terms, Grade)
- (x) Title 10, United States Code, Section 266 (Boards for Appointment, Promotion, and Certain Other Purposes:
- (y) Title 10, United States Code, Section 654 (Policy concerning homosexuality in the Armed Forces)

DEFINITIONS

* A. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage
* in, or intends to engage in homosexual and heterosexual acts. *

B. Convening Authority. (1) The Separation Authority or (2) a commanding officer who
has been authorized by the Secretary concerned to process the case except for final action
and who otherwise has the qualifications to act as a Separation Authority.

C. Discharge. Complete severance from all military status gained by the enlistment or
induction concerned.

* D. Entry Level Status. Upon enlistment, a member qualifies for entry level status during
* (1) the first 180 days of continuous active military service or (2) the first 180 days of
* continuous active service after a service break of more than 92 days of active service. A
* member of a reserve component who is not on active duty or who is serving under a call
* or order to active duty for 180 days or less begins entry level status upon enlistment in a
* reserve component. Entry level status for such a member of a Reserve Component
* terminates as follows: (a) 180 days after beginning training if the member is ordered to
* active duty for training for one continuous period of 180 days or more; or (b) 90 days after
* the beginning of the second period of active duty training if the member is ordered to
* active duty for training under a program that splits the training into two or more separate
* periods of active duty. For the purposes of characterization of service or description of
* separation, the member's status is determined by the date of notification as to the initiation of
separation proceedings.

* E. 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. *

* F. Homosexual Act. *

* (1) Any bodily contact, actively undertaken or passively permitted,
* between members of the same sex for the purpose of satisfying sexual desires, and *

* (2) Any bodily contact that a reasonable person would understand to demonstrate a
* propensity or intent to engage in an act described in subparagraph (1). *

* G. Homosexual Conduct. A homosexual act, a statement by the Service member that
* demonstrates a propensity or intent to engage in homosexual acts, or a homosexual
* marriage or attempted marriage. *

H. Member. An enlisted member of a Military Service.

I. Military Record. An individual's overall performance while a member of a Military Service, including personal conduct and performance of duty.

* J. Propensity. 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 in or will engage in homosexual acts.

K. Release from Active Duty. Termination of active duty status and transfer or revision to a reserve component not on active duty, including transfer to the Individual Ready Reserve (IRR).

L. Respondent. A member of a Military Service who has been notified that action has been initiated to separate the member.

M. Separation. A general term which includes discharge, release from active duty, release from custody and control of the armed forces, transfer to the IRR, and similar changes in active or reserve status.

N. Separation Authority. An official authorized by the Secretary concerned to take final action with respect to a specified type of separation.

* O. Sexual Orientation. A sexual attraction to individuals of a particular sex.

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separation. Because military service is a calling different from any civilian occupation, a member should not be separated when this is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. Description of separation. Entry Level Separation.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

G. Unsatisfactory Performance.

1. Basis. A member may be separated when it is determined under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance. This reason shall not be used if the member is in entry level status (section I. of enclosure 2).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. Characterization or description. The service shall be characterized as Honorable or General (under honorable conditions) in accordance with section C. of Part 2.

4. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

H. Homosexual Conduct.

1. Basis.

a. Homosexual conduct is 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 is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

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

(1) 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) The member has made a statement that he or she is a homosexual or bisexual, or words to
* that effect, 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 statement by a Service member that he or she is a homosexual or bisexual,
* or words to that effect, creates a rebuttable presumption that the Service member engages 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 in 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: *

* (a) whether the member has engaged in homosexual acts; *

* (b) the member's credibility; *

* (c) testimony from others about the member's past conduct, character, and credibility; *

* (d) the nature and circumstances of the member's statement; *

* (e) any other evidence relevant to whether the member is likely to engage in homosexual
* acts. *

* This list is not exhaustive; any other relevant evidence may also be considered. *

(3) The member has married or attempted to marry a person known to be of the same
biological sex (as evidenced by the external anatomy of the persons involved).

* 2. Burden of Proof. See paragraphs H.4.e. and f. below for guidance as to the burden of proof
* and when a finding regarding retention is required. *

* 3. Characterization or description. Characterization of service or description of separation
shall be in accordance with the guidance in section C. of Part 2. When the sole basis for
* separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may *

be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

- a. By using force, coercion, or intimidation;
- b. With a person under 16 years of age;
- c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- d. Openly in public view;
- e. For compensation;
- f. Aboard a military vessel or aircraft; or
- g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

* a. Separation processing shall be initiated if there is probable cause to believe
* separation is warranted under paragraph H.1.b. above. Fact-finding procedures for inquiries into
* homosexual conduct are in enclosure 4. *

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

* (1) If the Board finds that one or more of the circumstances authorizing
* separation under paragraph H.1.b., above, is supported by the evidence, the Board shall
* recommend separation unless the Board finds that retention is warranted under the limited
* circumstances described in that paragraph. *

* (2) If the Board does not find that there is sufficient evidence that one or more of
* the circumstances authorizing separation under paragraph H.1.b. has occurred, the Board shall
* recommend retention unless the case involves another basis for separation of which the member has
* been duly notified. *

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O. of this Part).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1 There is insufficient evidence to support the finding; or

2 Retention is warranted under the limited circumstances described in paragraph H.1.b., above.

(3) If there has been a waiver of Board proceedings, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.b., the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The member shall bear the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraph H.1.b. except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

f. Findings regarding whether or not retention is warranted under the limited circumstances of paragraph H.1.b. are required if the member clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with the provisions of this Directive;

(2) Requires that a member be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

(a) The member engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service;

* and *

* (b) Separation of the member would not be in the best interest of the Armed *
Forces. *

(3) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(4) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(5) Precludes separation in appropriate circumstances for another reason set forth in this Directive; or

(6) Precludes trial by court-martial in appropriate cases.

I. Drug Abuse Rehabilitation Failure.

1. Basis.

a. A member who has been referred to a program of rehabilitation for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service; or

(2) Long-term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a member who has been referred to such a program under any other provision of this Directive in appropriate cases.

c. Drug abuse rehabilitation failures shall be reported separately from alcohol abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting requirements.

2. Characterization or description. When a member is separated under this provision, characterization of service as Honorable or General (under honorable conditions) is authorized except when an Entry Level Separation is required under section C. of Part 2. The relationship between voluntary submission for treatment and the evidence that may be considered on the issue of characterization is set forth in subparagraph C.2.c. (6) of Part 2. The relationship between mandatory urinalysis and the evidence that may be considered on the issue of characterization is set forth in paragraph C.2.c. (7) of Part 2.

3. Procedures. The Notification Procedure (section B. of Part 3) shall be used.

J. Alcohol Abuse Rehabilitation Failure.

1. Basis.

d. If there is a sufficient factual basis for separation, the Separation Authority shall determine whether separation is warranted under the guidance in section A. and B. of Part 2. On the basis of that guidance, the Separation Authority shall direct one of the following actions:

- (1) Retention;
- (2) Separation for a specific reason under Part 1;
- (3) Suspended separation in accordance with the guidance in section B. of Part 2.

e. If the Separation Authority directs separation or suspended separation on the basis of more than one reason under Part 1, the Separation Authority shall designate the most appropriate basis as the primary reason for reporting purposes.

f. If separation or a suspended separation is directed, the Separation Authority shall assign a characterization or description in accordance with section C. of Part 2.

* g. Except when characterization Under Other Than Honorable Conditions is directed or the member is separated on the basis of homosexual conduct or a void enlistment or induction, the Secretary concerned may authorize the Separation Authority or higher authority to make a recommendation or determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies in cases involving separation from active duty or from the Selected Reserve. Section E. of this Part is applicable if such action is approved. *

C. Administrative Board Procedure

1. Notice. If an Administrative Board is required, the respondent shall be notified in writing of the matters set forth in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and reference to the application provisions of the Military Department's implementing regulation.

b. Whether the proposed separation could result in discharge, release from active duty to a reserve component, transfer from the Selected Reserve to the IRR, release from the custody or control of the Military Services, or other form of separation.

(2) The Board shall determine whether each allegation set forth in the notice of proposed separation is supported by a preponderance of the evidence.

(3) The Board shall then determine under the guidance in section A. of Part 2 whether the findings warrant separation with respect to the reason for separation set forth in the Notice. If more than one reason was contained in the Notice, there shall be a separate determination for each reason.

(4) The Board shall make recommendations on the following:

(a) Retention or separation. The Board shall recommend retention or separation.

(b) Suspension of separation. If the Board recommends separation, it may recommend that the separation be suspended in accordance with section B. of Part 2, but the recommendation of the Board as to suspension is not binding on the Separation Authority.

(c) Characterization of service or description of separation. If separation or suspended separation is recommended, the Board shall recommend a characterization of service or description of separation as authorized in Part 1 (Reasons for Separation) in accordance with the guidance in section C. of Part 2.

* (d) Transfer to the Ready Reserve. Except when the Board has recommended separation on the basis of homosexual conduct or has recommended characterization of service Under Other Than Honorable Conditions, the Secretary concerned may authorize the Board to make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies to cases involving separation from active duty or from the Selected Reserve. Section E. of this Part is applicable if the action is approved. *

6. Separation Authority

a. The Separation Authority for actions initiated under the Administrative Board Procedure shall be a general court-martial convening authority or higher authority. The Secretary concerned also may authorize a commanding officer in grade O-7 or above with a judge advocate or legal advisor available to his command to act as a separation authority in specified circumstances. When an Administrative Board recommends characterization of service as Honorable or General



Department of Defense DIRECTIVE

1332.30

NUMBER

SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," October 15, 1981 (hereby canceled)
 - (b) Title 10, United States Code, Chapter 60 and Sections 618, 630, 654, 827, 831
 - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
 - (d) DoD 5200.2-R, "DoD Personnel Security Program," December 1979, authorized by DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
 - (e) Title 10, United States Code, Sections 801-940, (Uniform Code of Military Justice)

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a)
2. Implements Chapter 60 and Section 630 of reference (b) to establish policies, standards, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.

3. Implements Chapter 60 and Section 630 of reference (b) with respect to discharge of regular commissioned officers with less than five years active commissioned service in certain circumstances.

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD) and to the Military Departments and covers regular commissioned officers of the Military Services. The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. This Directive does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

It is the policy of the Department of Defense:

1. To promote the readiness of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

* 2. To judge the suitability of persons to serve in the *
* Armed Forces on the basis of their conduct. *

* 3. To separate from Military Service those commissioned *
* officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

a. Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

b. Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

* 4. Notwithstanding any other provision of this directive, the *
* Secretary of the Military Departments concerned may discharge regular commissioned officers with less than five years active commissioned service from a Military Service when there is a need to reduce the number of officers in that Service to meet budgetary or force size requirements. The provisions of Enclosure 6 apply to the discharge of probationary officers under this authority.

* 5. The Assistant Secretary of Defense for Personnel and *
* Readiness, in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition to civilian life. *

E. STANDARDS AND PROCEDURES

* Standards and procedures for implementation of these
* policies are set forth in enclosures 2 through 8. *

F. RESPONSIBILITIES

* 1. The Assistant Secretary of Defense for Personnel and *
* Readiness shall modify or supplement this Directive, as needed. *

2. The Secretaries of the Military Departments shall:

a. Prescribe regulations consistent with the policy and
procedures contained in this Directive.

* b. Address any recommendations for policy changes in this *
* Directive to the ASD(P&R). *

G. EFFECTIVE DATE AND IMPLEMENTATION

* 1. This Directive is effective February 5, 1994. *

* 2. This Directive applies only to administrative separation *
* proceedings initiated on or after February 5, 1994, unless the *
* Secretary of the Service concerned determines that it should be *
* applied in a particular case in which proceedings were initiated *
* before that date. *

* 3. Forward two copies of proposed implementing documents to the *
* ASD(P&R) within 30 days. *

* Enclosures - 8 *

1. Definitions
2. Reasons for Separation
3. Procedures for Nonprobationary Commissioned Officers
4. Composition of Boards
5. Board of Inquiry Procedures
6. Procedures for Certain Probationary Commissioned Officers
7. Character of Discharge
8. Guidelines for Fact-Finding Inquires into Homosexual Conduct *

DEFINITIONS

1. Active Commissioned Service. Service on active duty as a commissioned officer in a grade above warrant officer, W-4.

* 2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends *
* to engage in homosexual and heterosexual acts. *

* 3. Commissioned Officer. An officer in any of the Military Services who holds a grade and office *
under a commission signed by the President, other than a commissioned warrant officer or retired
commissioned officer.

* 4. Convening Authority. The Secretary of the Military Department concerned who may delegate *
this responsibility as appropriate.

* 5. Counsel. A lawyer qualified under 10 U.S.C. 827 (b)(1) (reference (b)) or a civilian lawyer *
retained at the commissioned officer's expense.

* 6. Drug Abuse. As defined in DoD Directive 1010.4 (reference (c)). *

* 7. 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. *

* 8. Homosexual Act. *

* a. Any bodily contact, actively undertaken or passively permitted, between members of the *
* same sex for the purpose of satisfying sexual desires, and *

* b. Any bodily contact that a reasonable person would understand to demonstrate a propensity *
* or intent to engage in an act described in subparagraph (a). *

* 9. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a *
propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

* 10. Legal Advisor. A judge advocate qualified under 10 U.S.C. 827 (b)(1), (reference (b)), and *
appointed to assist a Board of Inquiry.

* 11. Nonprobationary Commissioned Officer. A commissioned officer other than a probationary *
commissioned officer.

* 12. Probationary Commissioned Officer. A Commissioned officer with less than 5 years of active commissioned service; however, a regular commissioned officer serving on active duty on September 14, 1981, shall be a probationary commissioned officer for a period of 3 years from the date of his appointment as a regular commissioned officer. *

* 13. Propensity. 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 in or will engage in *
* homosexual acts. *

14. Respondent. A commissioned officer required to show cause for retention on active duty.

15. Separation. Discharge, retirement, or resignation.

* 16. Sexual Orientation. A sexual attraction to individuals of a particular sex. *

17. Show -Cause Authority. Any of the following as determined by the Secretary of the Military Department concerned.

a. Commanders exercising General Court Martial (GCM) authority and all general or flag rank officers in command who have a judge advocate or legal advisor available.

b. The Secretary or officers (not below the grade of major general or rear admiral) designated by the Secretaries of the Military Departments to determine, based on a record review, that an officer shall be required to show case for retention on active duty.

REASONS FOR SEPARATION

A. SUBSTANDARD PERFORMANCE OF DUTY

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when, as compared to other commissioned officers of his or her grade and experience, he or she is found to be substandard in any of the following respects:

1. Performance of duty.
2. Efficiency.
3. Leadership.
4. Lack of response to training, in that performance of duties in the officer's assigned speciality is precluded or impaired to the degree of being unsatisfactory.
5. Attitude or character.

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from the Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

1. Serious or recurring wrongdoing, punishable by military or civilian authorities.
2. Intentional or discreditable mismanagement of personal affairs, including financial affairs.
3. Drug abuse.
- * 4. Intentional neglect of, or failure to perform, assigned duties or complete required training. *
- * 5. Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties. *
- * 6. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records. *

C. HOMOSEXUAL CONDUCT

Homosexual conduct is 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 is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

1. A commissioned officer shall be separated under this provision if one or more of the following approved findings is made:

a. The officer 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 the officer has demonstrated that:

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

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

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

(4) Under the particular circumstances of the case, the officer's continued presence in the Armed Forces is consistent with the interests of the Armed Forces in proper discipline, good order, and morale of the Service; and,

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

b. The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the officer 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 statement by an officer that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in homosexual acts or has a propensity or intent to do so. The officer 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 in or will engage in homosexual acts. In determining whether an officer 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:

(1) whether the officer has engaged in homosexual acts;

(2) the officer's credibility;

(3) testimony from others about the officer's past conduct, character, and credibility;

(4) the nature and circumstances of the officer's statement;

(5) any other evidence relevant to whether the officer is likely to engage in homosexual acts.

This list is not exhaustive; any other relevant evidence may also be considered.

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved).

2. The commissioned officer shall bear the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraphs C.1.a. and C.1.b., except in cases where the officer's conduct was solely the result of a desire to avoid or terminate Military Service.

3. Nothing in these regulations requires that an officer be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

a. The officer engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding military service; and

b. Separation of the officer would not be in the best interest of the Armed Forces.

D. RETENTION IS NOT CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY

Under DoD 5200.2-R (reference (d)), a commissioned officer may be separated from a Military Service when it is determined that the commissioned officer's retention is clearly inconsistent with the interest of national security.

E. MULTIPLE REASONS

A commissioned officer may be considered for separation under all the reasons set forth in sections A., B., C., and D. above; however, separate findings under each applicable section shall be required as to the reasons for separation.

PROCEDURES FOR NONPROBATIONARY COMMISSIONED OFFICERS

A. INITIATION OF ACTION

The Secretary of each Military Department shall prescribe procedures for the initiation of separation recommendations.

B. SHOW-CAUSE AUTHORITY

1. The show-cause authority will determine whether an officer shall be required to show cause for retention on active duty for one or more of the reasons listed in enclosure 2 of this Directive, and as further defined by the Secretary of the Military Department concerned.

2. The show-cause authority shall:

- a. Evaluate all information presented concerning the case under consideration.
- b. Determine whether the record is sufficient to require the officer to show cause for retention on active duty.
- c. Under regulations prescribed by the Secretary concerned, close the case if the authority determines that the officer should not be required to show cause for retention on active duty.
- d. Report the matter for referral to a Board of Inquiry if the authority determines that the officer should be required to show cause for retention on active duty. The reasons for making such a determination shall be provided to the officer in writing.

* e. Refer the case to a Board of Inquiry if the record supports a finding of homosexual conduct under enclosure 2 of this Directive. *

f. Consider the initiation of separation action if the record supports a finding of drug abuse under enclosure 2 of this Directive.

3. As provided in 10 U.S.C. 618(b)(2), (reference (b)), the Secretary concerned may require an officer to show cause for retention on active duty based upon the recommendation of a promotion selection board.

C. BOARD OF INQUIRY

1. Composition. See enclosure 4.

2. Convening. A Board of Inquiry shall be convened under such regulations as may be prescribed by the Secretary of the Military Department concerned.

3. Function. A Board of Inquiry shall give a fair and impartial hearing to a respondent. The Board of Inquiry is an administrative board that shall consider all relevant and material evidence pertaining to the case and shall function under rules and procedures established by the Secretary

of the Military Department concerned. The Board of Inquiry shall make findings of fact and a recommendation as to whether a respondent should be retained on active duty. The board also shall recommend the character of discharge in accordance with regulations prescribed by the Secretary of the Military Department concerned, if it recommends discharge. Its findings must be supported by a preponderance of the evidence. The proceedings and hearing before a Board of Inquiry are intended to give the officer an opportunity to respond to, and rebut, the basis for the contemplated change of status, after having been informed of the contemplated change and the reasons therefor. The hearing shall provide a forum for why the officer concerned thinks the contemplated action should not be taken.

4. Determinations

* a. If a Board of Inquiry determines that the respondent's retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2 of this Directive. *

* b. If a Board of Inquiry determines that the respondent's retention on active duty is not warranted, it shall report the matter to a Board of Review, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent. *

D. BOARD OF REVIEW

1. Composition. See enclosure 4.

2. Convening. A Board of Review shall be convened under such regulations prescribed by the Secretary of the Military Department concerned.

3. Function. After a Board of Inquiry has determined a respondent has failed to establish that retention on active duty is warranted, the Board of Review shall review the record for the purpose of examining the grounds for such determination.

4. Determinations

* a. If a Board of Review determines that the respondent has established that retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2 of this Directive. *

* b. If a Board of Review determines that the respondent has failed to establish that retention on active duty is warranted, the Board of Review shall recommend to the Secretary of the Military Department concerned that the respondent should be separated, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent. *

**E. ACTION BY THE SECRETARY OF THE MILITARY DEPARTMENT
CONCERNED UPON RECOMMENDATION OF THE BOARD OF REVIEW**

If the Board of Review recommends that the respondent not be retained on active duty, the Secretary of the Military Department concerned may direct:

1. Separation.
2. Retention.

The action of the Secretary is final.

F. RETIREMENT OR DISCHARGE

1. Retirement. A commissioned officer separated from active duty in accordance with this Directive, if eligible for voluntary retirement under any provisions of law on the date of such separation, shall be retired in the grade and with the retired pay for which eligible if retired under such provision.

2. Discharge. A commissioned officer separated from active duty in accordance with this Directive, if ineligible for retirement under any provision of law on the date of such separation, shall be:

a. Honorably discharged in the grade then held if separated only for substandard performance of duty; or

* b. Discharged in the grade then held if separated for misconduct, for moral or professional dereliction, homosexual conduct, or in the interest of national security. The character of discharge shall be determined by the Secretary of the Military Department concerned but in no case shall it be more severe than that recommended by the Board of Inquiry. *

G. APPLICATION FOR RETIREMENT OR DISCHARGE

At any time before final action in the case, the Secretary of the Military Department concerned may grant a request by the commissioned officer concerned for:

1. Voluntary retirement.
2. Discharge.

The action of the Secretary is final.

H. LIMITATIONS

1. A commissioned officer required to show cause for retention on active duty because of substandard performance of duty and who is retained on active duty by a Board of Inquiry or a Board of Review may not again be required to show cause for retention for the same reasons within the one-year period beginning on the date of the determination to retain.

2. Subject to paragraph H.2.a., below, a commissioned officer required to show cause for retention on active duty because of misconduct, moral or professional dereliction, homosexual conduct, or in the interest of national security, and who is retained on active duty by a Board of Inquiry or a Board of Review may again be required to show cause for retention at any time.

a. A commissioned officer may not again be required to show cause for retention on active duty solely because of conduct that was the subject of the previous proceedings, unless the findings and recommendations of the Board of Inquiry or Board of Review that considered the case are determined to have been the result of fraud or collusion.

CHARACTER OF DISCHARGE

A. DISCHARGE FOR SUBSTANDARD PERFORMANCE OF DUTY

A discharge shall be characterized as "honorable" when substandard performance of duty is the sole basis for the discharge.

B. DISCHARGE FOR MISCONDUCT, OR FOR MORAL OR PROFESSIONAL DERELICTION, OR HOMOSEXUAL CONDUCT, OR IN THE INTERESTS OF NATIONAL SECURITY

A discharge shall be characterized as "Honorable," "General (Under Honorable Conditions)," or "Under Other Than Honorable Conditions."

1. Consideration. The character of a discharge shall be predicated on the commissioned officer's behavior and performance of duty while a member of a Military Service. Characterization normally shall be based on a pattern of behavior and duty performance rather than an isolated incident. There are circumstances, however, in which conduct reflected by a single incident may provide the basis for characterization.

2. Exceptions.

a. A discharge shall be characterized as "Honorable" when the grounds for discharge are based solely on preservice activities, other than intentional misrepresentation, or omission of facts, in obtaining an appointment or in official statements or records.

b. A discharge shall be characterized as "Honorable" or "Under Honorable Conditions" when the sole basis for separation is homosexual conduct unless aggravated acts are included in the findings. A separation "Under Other Than Honorable Conditions" may be issued if there is a finding that the officer attempted, solicited, or committed a homosexual act:

- (1) By using force, coercion, or intimidation.
- (2) With a person under 16 years of age.
- (3) With a subordinate in circumstances that violate the customary military superior-subordinate relationship.
- (4) Openly in public view.
- (5) For compensation.
- (6) Aboard a military vessel or aircraft.
- (7) In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

This document (**Guidelines for Fact-Finding Inquiries into Homosexual Conduct**) is Enclosure 4 to DoDD 1332.14, Enlisted Administrative Separations and Enclosure 8 to DoDD 1332.30, Separations of Regular Commissioned Officers. The documents hereinafter are identical except for page number identifications.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial, (reference (d)) and implementing regulations issued by the Secretaries of the Military Departments concerned.

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

3. Credible Information. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a Service member has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

4. 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.

5. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person would believe (3) intends to convey the statement (4) that a person engages in or has a propensity or intent to engage in homosexual acts. This includes statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

6. Sexual Orientation. A sexual attraction to individuals of a particular sex.

C. BASIS FOR CONDUCTING INQUIRIES

A commander will initiate an inquiry only if he or she has credible information that a basis for discharge exists. A basis for discharge exists if:

1. The member has engaged in a homosexual act.
2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
3. The member has married or attempted to marry a person of the same sex.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member should first be advised of the DoD policy on homosexual conduct. Should the member choose not to discuss the matter further, the commander should consider other available information.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in homosexual acts or has a propensity or intent to do so. The Service member shall be given the opportunity to present evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.

6. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, has a propensity to engage in, or intends to engage in homosexual acts.

E. CREDIBLE INFORMATION DOES NOT EXIST. FOR EXAMPLE, WHEN:

1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion; or

2. The only information is the opinions of others that a member is homosexual;
or

3. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or

4. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

F. CREDIBLE INFORMATION EXISTS, FOR EXAMPLE, WHEN:

1. A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or

2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in or has a propensity or intent to engage in homosexual acts; or

3. A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual -- i.e., behavior that a reasonable person would believe intended to convey the statement that the member engages in or has a propensity or intent to engage in homosexual acts.

G. LEGAL EFFECT

The procedures set forth in this enclosure create no substantive or procedural rights.

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation as necessary.

3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial, (reference (d)) and implementing regulations issued by the Secretaries of the Military Departments concerned.

B. DEFINITIONS

1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

2. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command."

3. Credible Information. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a Service member has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

4. 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.

5. Homosexual Conduct. "Homosexual conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

a. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

b. A "statement that a member is a homosexual or bisexual, or words to that effect," means (1) language or behavior that (2) a reasonable person would believe (3) intends to convey the statement (4) that a person engages in or has a propensity or intent to engage in homosexual acts. This includes statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

c. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

d. "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 in or will engage in homosexual acts.

6. Sexual Orientation. A sexual attraction to individuals of a particular sex.

C. BASIS FOR CONDUCTING INQUIRIES

A commander will initiate an inquiry only if he or she has credible information that a basis for discharge exists. A basis for discharge exists if:

1. The member has engaged in a homosexual act.
2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
3. The member has married or attempted to marry a person of the same sex.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member should first be advised of the DoD policy on homosexual conduct. Should the member choose not to discuss the matter further, the commander should consider other available information.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in homosexual acts or has a propensity or intent to do so. The Service member shall be given the opportunity to present evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.

6. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, has a propensity to engage in, or intends to engage in homosexual acts.

E. CREDIBLE INFORMATION DOES NOT EXIST, FOR EXAMPLE, WHEN:

1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion; or

2. The only information is the opinions of others that a member is homosexual;
or

3. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or

4. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

F. CREDIBLE INFORMATION EXISTS, FOR EXAMPLE, WHEN:

1. A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or

2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in or has a propensity or intent to engage in homosexual acts; or

3. A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual -- i.e., behavior that a reasonable person would believe intended to convey the statement that the member engages in or has a propensity or intent to engage in homosexual acts.

G. LEGAL EFFECT

The procedures set forth in this enclosure create no substantive or procedural rights.

**Investigations of Sexual Misconduct by the Defense Criminal
Investigative Organizations and Other DoD Law Enforcement Organizations**

- 0 Applies to all criminal investigations of sexual misconduct conducted by DoD Components including all Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations.
- 0 Prohibits DCIOs and other DoD law enforcement organizations from conducting investigations solely to determine a servicemember's sexual orientation.
- 0 Provides that investigations of sexual misconduct will be conducted in an evenhanded manner, without regard to whether the misconduct involved homosexual or heterosexual conduct.
- 0 Provides that allegations of consensual adult private sexual conduct that violates the UCMJ will normally be referred to the commander(s) of the servicemember(s) involved for appropriate action.
- 0 Authorizes commanders, upon their determination that they have credible information of violations of the UCMJ, to request an investigation by the DCIO, or other DoD law enforcement organization, as appropriate.
- 0 Restates authority of Commanders and Directors of DCIOs, or the supervisors and managers they designate, to decline to open a case upon referral from a servicemember's commander if, after their independent evaluation, they determine that the request lacks credible information that a violation of the UCMJ has occurred.
- 0 Provides that Commanders and Directors of the DCIOs, or their Principal Deputies, may independently initiate an investigation based upon credible information without a referral by a commander of a DoD Component when the DCIO believes that such an investigation is an appropriate use of investigative resources.
- 0 Provides guidelines for criminal investigations by DCIOs of adult private consensual misconduct and clarifies policy and rationale for deferring responsibility for investigation of such cases to military commanders.

SYNOPSIS OF PROCEDURES FOR CRIMINAL INVESTIGATIONS OF ADULT PRIVATE CONSENSUAL SEXUAL MISCONDUCT

Defense Criminal Investigative Organizations are authorized to investigate allegations of violations of the Uniform Code of Military Justice and other criminal offenses over which the Armed Forces have jurisdiction. Under law and Department of Defense regulations, these organizations have primary investigative jurisdiction within their respective DoD components. To ensure their independence, objectivity, and effectiveness, Defense Criminal Investigative Organizations are authorized independently to initiate criminal investigations.

Defense Criminal Investigative Organizations may, however, as a matter of investigative priorities or resource limitations, refer less serious offenses to commanders for disposition. Consistent with this policy, the Defense Criminal Investigative Organization that would otherwise have primary jurisdiction will normally refer allegations involving only adult private consensual sexual misconduct to the subject's commander for appropriate investigation or other disposition.

Upon receipt of information that a member of the command is accused of committing an offense triable by a court-martial, the member's commander shall make a preliminary inquiry. A preliminary inquiry is usually informal. It may consist of an examination of the information reported or a more extensive investigation as necessary. The commander may conduct the investigation personally or use members of the command. In serious or complex cases, the commander should consider seeking the assistance of law enforcement personnel or the appropriate Defense Criminal Investigative Organization. Investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

Each commander has discretion to dispose of offenses by members of that command. A commander may decide to take no action, to take administrative action in addition to or instead of other disciplinary action, to consider the matter pursuant to Article 15, UCMJ, nonjudicial punishment, or to forward the charges to superior authority for disposition. In deciding how an offense should be disposed of, the commander should consider, to the extent they are known, the character and service of the accused, the nature and extent of harm caused by the offense, the appropriateness of the punishment to the particular accused, possible improper motives of the accuser, whether the victim will testify, and other relevant factors.

Defense Criminal Investigative Organizations may conduct preliminary investigations as required to determine appropriate action regarding any information received by them. The Director or Commander, or Principal Deputy, of a Defense Criminal Investigative Organization may independently initiate a criminal investigation when, in his or her judgment, there is credible information that an offense has been committed and that it is an appropriate use of investigative resources to initiate an investigation.



Department of Defense INSTRUCTION

NUMBER 5505.8

SUBJECT: Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations

- References:
- (a) DoD Directive 5106.1 "Inspector General of the Department of Defense, " March 14, 1983
 - (b) Secretary of Defense Memorandum, "Policy on Homosexual Conduct in the Armed Forces," July 19, 1993
 - (c) Title 10, United States Code, Chapter 47, Uniform Code of Military Justice," Sections 801-940
 - (d) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986

A. PURPOSE

This Instruction, issued under the authority of reference (a), implements reference (b) regarding the initiation of criminal investigations into certain types of sexual misconduct, as defined in this Instruction. It provides that, as a matter of investigative priorities and resource limitations, Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations will normally refer allegations involving only adult private consensual sexual misconduct to the Service member's commander for appropriate disposition. To ensure their independence, objectivity, and effectiveness, however, DCIOs are authorized to initiate investigations into sexual misconduct without obtaining a referral from the member's commander; they may do so, however, only if the Director or Commander, or Principal Deputy, of the DCIO determines that there is credible information that an offense has been committed and that the expenditure of investigative resources is appropriate.

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

C. DEFINITION

Sexual Misconduct. A sexual act or acts in violation of reference (c) that occur between consenting adults, in private, whether on or off a military installation. It does not include any sexual act or acts that involve allegations of force, coercion, or intimidation; abuse of position or rank; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information. Other terms used in this Instruction are defined in enclosure 1.

D. POLICY

1. No DCIO or other DoD law enforcement organization shall conduct an investigation solely to determine a Service member's sexual orientation.

2. Except pursuant to subsections F.2. and F. 3., below, a DCIO or other DoD law enforcement organization shall not initiate a criminal investigation into sexual misconduct where such misconduct is the only offense involved.

3. Investigations by DCIOs and other DoD law enforcement organizations shall be conducted in an even-handed manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct.

E. RESPONSIBILITIES

The Secretaries of the Military Departments and the Heads of the DoD Components shall issue regulations implementing this Instruction.

F. PROCEDURES

1. Allegations of sexual misconduct received by a DCIO or other DoD law enforcement organization normally shall be referred to the commander(s) of the Service member(s) concerned, unless the Commander, Director, or Principal Deputy of a DCIO initiates an investigation under F.3. below.

2. Upon the receipt of any allegation of sexual misconduct, the commander shall review the allegation. If the commander determines that there is credible information of sexual misconduct, the commander may request a criminal investigation by the DCIO or other DoD law enforcement organization, as appropriate.

a. If a commander requests that a DCIO initiate a criminal investigation into sexual misconduct, the Commander or Director of the DCIO, and those managers or supervisors approved by them to do so, shall independently evaluate and make a determination whether the request is based on credible

information of sexual misconduct prior to initiating a criminal investigation.

b. If a DCIO determines that a request from a commander lacks credible information of sexual misconduct, or is not in keeping with established policy, the matter will be returned to the commander, without action, for appropriate disposition.

3. DoD Instruction 5505.3 (reference (d)) shall apply with respect to investigations of sexual misconduct, except that an investigation into sexual misconduct may be initiated by a DCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the DCIO or Principal Deputy, that there is credible information of sexual misconduct and that such an investigation is an appropriate use of investigative resources.

4. Investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective February 5, 1994. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 30 days.

Enclosure
Definitions

DEFINITIONS

1. Commander. Any commanding officer, installation commander, or other appropriate command authority, or civilian supervisor in a comparable position who is outside a Defense Criminal Investigative Organization and is authorized to request an investigation or act on the results of an investigation by a Defense Criminal Investigative Organization.

2. Credible Information. Information, considered in light of its source and all attendant circumstances, that supports a reasonable belief that a Service member has engaged in sexual misconduct. Credible information consists of articulable facts, not just a belief or suspicion.

3. Defense Criminal Investigative Organizations. The Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

4. Other DoD Law Enforcement Organizations. Those elements of the DoD Components, other than the Defense Criminal Investigative Organizations, that are authorized to investigate violations of the Uniform Code Military Justice or the United States Code.

5 Sexual Orientation. A sexual attraction to individuals of a particular sex.

Changes to Personnel Security Policy

- 0 **Amends Defense Investigative Service Manual 20-1 to clarify circumstances in which inquiry into areas of sexual conduct is proper and emphasize strict limits on questions relating to sexual orientation.**

- 0 **Issues policy memorandum for security clearance, special access program and SCI access to clarify these aspects of new policy, including limitations on investigations and use of information revealed in security investigations for other purposes.**



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE FOR COMMAND,
CONTROL, COMMUNICATIONS AND INTELLIGENCE
SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, DEFENSE INVESTIGATIVE SERVICE

SUBJECT: Implementation of "Policy Guidelines on Homosexual
Conduct in the Armed Forces" in Personnel Security
Investigation and Adjudication

The Policy Guidelines on Homosexual Conduct in the Armed
Forces, issued by the Secretary of Defense on July 19, 1993,
contain a paragraph of guidance on 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.

To supplement these guidelines, the following additional
guidance must be implemented by the Military Departments and all
agencies that investigate or adjudicate personnel security
matters.

1. Limitations on Investigations

An individual's sexual orientation is not, in itself, a
security concern. However, sexual conduct may be a security
concern under some circumstances. Conduct may be of concern when
it raises an issue under the applicable security standards--
normally the standards stated in 5200.2-R, Personnel Security
Program. Such conduct may consist of sexual conduct or
concealment of sexual orientation or conduct.

If information about sexual conduct or concealment arises
during a personnel security investigation, the investigation will
focus on that conduct only if it relates directly to applicable
security standards. Even then, further inquiry should be limited
to what is necessary to establish whether the conduct occurred
and whether the requisite nexus with a security concern exists.

Thus, an allegation about sexual conduct will not be pursued unless the specific conduct alleged raises a security concern under the applicable standards. Under those circumstances, inquiry into the conduct may proceed, but should be confined to those aspects that implicate applicable standards.

An allegation about concealment of sexual orientation or conduct will be handled much the same: in order to investigate, the nature of the alleged concealment must be such as to raise a security concern under the applicable standards. Any further inquiry should focus on the efforts of the individual to conceal and the potential vulnerability as a result, rather than the sexual orientation of the individual or the sexual conduct itself. An individual's efforts to follow DoD policy on homosexual conduct in the Armed Forces by not openly acknowledging his or her homosexual orientation do not constitute concealment.

2. Questions about Sexual Orientation and Conduct

Questions directed to the subject of a security clearance investigation, whether in person or on a questionnaire, will be neutral as to the individual's sexual orientation, insofar as possible. Questions directed to references will also be neutral as to orientation, insofar as possible.

No questions relating to sexual orientation will be asked of any subject unless there is information about sexual conduct or concealment that raises an issue under the applicable security standards.

3. Evenhanded Application

Security investigations and adjudications will be conducted without regard to the sexual orientation of the individual involved, unless the individual's sexual conduct or concealment of sexual conduct or orientation raises issues of security concern. In all security investigations and adjudications, the applicable security standards will be applied consistently and evenhandedly.

4. Use of Personnel Security Information

Paragraph 10-100 of DoD 5200.2-R provides, in part:

Personnel security investigative reports may be used only for the purposes of determining eligibility of DoD military and civilian personnel, contractor employees and other persons affiliated with the Department of Defense, for access to classified information, assignment or retention in sensitive duties or other specifically designated duties requiring such investigation, or for law enforcement and counterintelligence investigations. Other uses are

subject to the specific written authorization of the
Deputy Secretary of Defense for Policy.

Information about sexual orientation or conduct obtained during security clearance investigations will not be used other than as permitted by this provision. In particular, information about homosexual orientation or conduct by military personnel will not be used by the military departments in separation proceedings.

Changes to Military Training

- 0 Implements SecDef's directive to inform all members of the armed forces of their specific responsibilities in carrying out this new policy.
- 0 Adds two new sections to DoD Directive 1322.18, Military Training, which establishes DoD policy, provides procedures, and assigns responsibilities for the training of military personnel and military units.
 - The individual training section contains a new requirement to include an understanding of the conduct necessary to maintain high standards of combat effectiveness and unit cohesion.
 - The requirement for initial entry and subsequent periodic training under Section 937 of Title 10 (Article 137 of the UCMJ) now incorporates a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the Armed Forces, including policies on homosexual conduct.
- 0 Provides training guidance and a training plan that is designed to inform personnel with specific responsibilities in policy implementation and personnel administration. These individuals may include personnel involved in recruiting, accession processing, commander's inquiries, investigations and separation processing. It answers questions related to associated definitions and gives hypothetical scenarios with recommended courses of action.

REFERENCES, continued

- (e) DoD Directive 5124.2, "Assistant Secretary of Defense (Force Management and Personnel)," July 5, 1985
- (f) DoD Directive 5129.1, "Under Secretary of Defense for Research and Engineering," November 19, 1985
- (g) DoD Directive 5128.2, "Assistant Secretary of Defense (Acquisition and Logistics)," November 19, 1985
- (h) DoD Directive 5137.1, "Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)," April 2, 1985
- (i) DoD Directive 5160.41, "Defense Language Program (DLP)," August 2, 1977
- (j) DoD Directive 5125.1, "Assistant Secretary of Defense (Reserve Affairs)," January 12, 1984
- (k) DoD Directive 5136.1, "Assistant Secretary of Defense (Health Affairs)," October 5, 1984
- (l) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
- (m) DoD Directive 3305.2, "DoD General Intelligence Training," July 20, 1984
- (n) DoD Directive 2055.3, "Manning of Security Assistance Organizations and the Selection and Training of Security Assistance Personnel," March 11, 1985
- (o) DoD Directive 5210.70 "DoD Cryptologic Training," November 3, 1980
- (p) Sections 801-940 of title 10, United States Code, "Uniform Code of Military Justice" *
*

f. Application of Technology to Reserve Component Training. The use of technology shall be emphasized in developing solutions to the unique training problems of the Reserve components that are related to geographical location and to limited time and training facilities.

g. Allocation of Training Munitions. Service ammunition, including missiles, used for training shall be conserved by:

(1) Establishment of training munition allocations for each weapon system and ammunition type at the minimum level consistent with the required level of operator or crew proficiency.

(2) Use of simulation, laser firing devices, and less expensive training rounds or subcaliber devices and ammunition where applicable.

(3) Maximum feasible use of test and lot verification firing to satisfy training requirements.

(4) Development and use of effective targets and hit-sensing systems to improve the training value of live firing.

h. Use of Contract Support. Contract services shall be used to support and/or conduct instruction in military training programs when applicable under the criteria in DoD Directive 4100.15 (reference (d)).

2. Individual Training

a. Training Requirements and Utilization. All training of military members shall be based on requirements for knowledge and skills needed for specific military jobs or, as applicable on requirements for broader military skills, such as leadership. Required knowledge includes an understanding of the conduct necessary to maintain high standards of combat effectiveness and unit cohesion.

(1) The number of members to be trained shall be based on the number of job positions in the approved force structure, the projected inventory of qualified members, and projected gains and losses in each skill and skill level.

(2) To avoid unnecessary training, assignment policies for each job skill be aimed at fully utilizing qualified members with relevant previous training.

(3) Because of the high cost for each flight training graduate, computations of aviator requirements, utilization of inventories of qualified members, and determination of aviator training rates shall be managed closely. The DoD goal is for aviator training rates to support total force aviator requirements (grade O-5 and below) without significant shortfalls or excesses. Aviators shall be assigned to operational flying positions throughout their periods of initial obligated service, or for at least the first 72 months of that service, unless unusual circumstances justify an exception to this policy.

b. Procedures for Structuring Training Programs. A systematic set of procedures shall be used to design, conduct, evaluate, and revise individual training programs. Unless relevant prior experience makes one or more of those procedures unnecessary, the process shall include the following steps:

(1) Identify training requirements for tasks to be performed on the job and the knowledge and skills required to perform those tasks.

(2) Determine the proper allocation of training tasks between institutional training and OJT in operational units.

(3) Choose the most cost-effective methods of instruction and identify training equipment and other media requirements.

(4) Investigate methods of tailoring training to the more restricted time available to members of the Reserve components and develop curricula to meet their needs.

(5) Develop programs of instruction, including exportable instructional packages to support OJT in units.

(6) Develop methods based on performance objectives for evaluating student progress and success.

(7) Develop procedures, including feedback from operational units, for evaluating training programs to provide a basis for revisions and to verify that the programs meet training requirements at an acceptable cost.

c. Other Related Considerations

(1) Since military trainees and students must be paid and supported and are unavailable to operational units while they are in school, institutional training courses shall be no longer than required to fulfill course objectives as identified through a systematic needs analysis. Teaching methods such as individualized instruction, which satisfy course objectives and compress time in training status, shall be considered for use when determined to be effective and economical and when student capabilities make these teaching methods feasible. Minimal time shall be spent awaiting training or awaiting reassignment after training.

(2) The satisfactory performance of identified learning tasks, when feasible, shall be the criterion for graduating from school courses.

(3) The ability of operational units to conduct effective OJT shall be considered when dividing responsibility for teaching tasks between schools and operational units during the development of training programs. Where significant differences exist between active and Reserve component units, these differences also shall be considered.

(4) Computer-based instruction shall be considered as a medium for delivery or management of instruction when front-end analysis determines that its use is effective and efficient.

d. Training of New Military Personnel. All new officer and enlisted personnel of the active and Reserve components shall be given fundamental

* instruction for transitioning to the military environment, instilling
* discipline, and teaching military skills required of all or most
* members of the Military Service concerned. This training shall
* include briefings upon entry and periodically thereafter required
* under Section 937 of 10 U.S.C. (Article 137 of the Uniform Code of
* Military Justice) (reference (p)) with a detailed explanation of
* the applicable laws and regulations governing sexual conduct by
* members of the Armed Forces, including policies on homosexual
* conduct. In addition, new personnel shall receive training in
* occupational specialties through institutional training courses or
* OJT. Such institutional training normally shall be limited to the
* skills required in the initial period of service, i.e., the first
* enlistment period for enlisted personnel and the initial term of
* obligated service for officers.

e. Training of Noncommissioned Officers (NCOs). Each Military Service shall maintain military training programs, including institutional courses and OJT which, with job experience, provide for the continued development of NCOs as leaders and skilled technicians.

f. Training of Officers. A structure of training programs for officers shall be maintained to provide a foundation for progressively more demanding leadership, managerial, and technical responsibilities and subsequent professional military education.

g. Inter-Service Training Cooperation. The Military Services shall work together to determine effective and affordable solutions to common training problems. Inter-Service consolidation or collocation of training shall be considered when applicable.

h. DoD Schools. When skills with a high degree of commonality are required in more than one Military Service, consideration shall be given to establishing a single DoD school, if cost effective, to provide the required training.

i. Capability for Mobilization Expansion. Each Military Service shall review periodically its requirement for trained military manpower under mobilization conditions and its capacity in facilities, equipment, and training staff for meeting this requirement. Verified deficiencies shall be considered for phased correction.

3. Collective Training

a. Requirements for Collective Training. Collective training shall serve to achieve standards of unit proficiency required to accomplish wartime missions.

b. Realism. Subject to such constraints as safety requirements and limits on space and training, all collective training shall be conducted under conditions and rates of activity closely approximating those that the units being trained may encounter in combat.

(1) When constraints limit the use of realistic training conditions, then simulation and other products of training technology shall be used as applicable to enhance realism.

(2) Collective training, to the degree feasible, shall include electronic warfare activity; nuclear, biological, and chemical defense activity; and the periodic use of opposing forces trained in the tactics of potential adversaries.

(3) All collective training exercises shall emphasize realistic performance of the functions of individual personnel in the exercising units.

(4) Support units shall be integrated into exercises for realistic training in their wartime supporting roles.

c. Joint and Combined Exercises.

(1) Units from two or more Military Services that might operate together in wartime shall conduct joint exercises periodically to maintain a high standard of coordination and joint control.

(2) Combined exercises with allied forces shall be conducted for establishing and maintaining a capability to cooperate effectively in wartime.

d. Shared Use of Training Facilities. To ensure effective and efficient utilization of training facilities:

(1) Each of the Military Services, as applicable, shall coordinate with the other Military Services the shared use of training ranges, maneuver areas, devices, and other training resources under its control.

(2) Each DoD Component having under its control ranges, maneuver areas, and other facilities and devices that have training potential but are maintained primarily for supporting research, development, test, and evaluation or other non-training functions shall make them available as applicable for shared training use.

e. Operational Activities and Training. To the extent feasible, participation in operational missions shall be used to meet the collective training requirements of the units involved.

f. Reserve Component Collective Training. Reserve component units shall be integrated into applicable exercises with the active forces. Reserve component units shall conduct other collective training as required to develop and maintain military capability.

g. Evaluation. All collective training and exercises shall be evaluated against established standards of mission proficiency for identifying and correcting deficiencies.

F. RESPONSIBILITIES

- * 1. The Assistant Secretary of Defense for Personnel and Readiness *
under DoD Directive 5124.2 (reference (e)), shall be responsible for overall policy and program review of training programs for military personnel and programs for the collective training of military units.



ASSISTANT SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON DC 20301-4000



MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE ARMY (MANPOWER
RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER
AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,
RESERVE AFFAIRS, INSTALLATIONS, & ENVIRONMENT)

SUBJECT: Training Guidance For DoD Policy On Homosexual Conduct in the Armed Forces

On 19 July 1993 the Secretary of Defense issued a memorandum concerning homosexual conduct in the Armed Forces. The memorandum directs the Secretaries of the Military Departments to ensure that all members of the Armed Forces are aware of their specific responsibilities in carrying out this new policy. Of particular concern are personnel involved in recruiting, accession processing, commander's inquiries, criminal investigations, and administrative separations.

To assist you in meeting this requirement, the attached training plan is offered as an approach to the education of your personnel on the new policy. It is intended to provide a starting point. Each Service will ensure that those responsible for policy implementation and administration are aware of their responsibilities under the new policy.

Although this briefing is designed for personnel involved in policy implementation and personnel administration, it is evident that information regarding the policy will continue to be of interest to all members of the Armed Forces. The policy must be explained clearly and precisely to ensure that the policy is fully and consistently effectuated.

Edwin Dorn

Attachment:
as stated

cc:
Assistant Secretary of Defense (Reserve Affairs)
Director, Joint Staff
Chief, Office of Personnel and Training
Department of Transportation



DoD

POLICY ON HOMOSEXUAL CONDUCT

TRAINING PLAN

BACKGROUND

On 29 January 1993, the President directed the Secretary of Defense to develop a policy "ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces of the United States." The President further directed that the policy be implemented in a manner that is "practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain."

On 5 April 1993, the Secretary of Defense directed that a Military Working Group (MWG) be formed to develop and assess alternative policy options to meet the President's requirements. Fairness and objectivity were major aims of the MWG's process. In pursuit of those aims, the MWG met with individuals and groups holding a broad spectrum of views on the subject. This included meetings with uniformed and civilian experts from inside and outside the Department of Defense (DoD), including the Service members, Service members, Service members, Service members, and Coast Guardsmen who would be most affected by the policy. To broaden understanding of the issue, the MWG also compared experiences of the militaries of other countries, researched available literature, and performed statistical analyses of military separation data obtained from the Services.

Also in April 1993, the Secretary of Defense commissioned RAND's National Defense Research Institute to provide information and analysis that would be useful in helping formulate the draft policy. A multidisciplinary team of researchers was drawn from a number of departments at RAND. Their research and analysis was provided to the Secretary of Defense prior to the decision announced by the Secretary and the President on July 19, 1993.

After comprehensive study and with the concurrence of the Joint Chiefs of Staff, the Secretary of Defense has established a policy determined to be in the best interest of the United States Armed Forces. The provisions of the National Defense Authorization Act for Fiscal Year 1994 related to this issue are fully consistent with this new policy.

Although this briefing is designed for personnel involved in policy implementation and personnel administration, it is evident that information regarding the policy will continue to be of interest to all members of the Armed Forces. The policy must be explained clearly and precisely to ensure that the policy is fully and consistently effectuated.

This training plan is offered to assist all Services in accomplishing that goal.

THE POLICY

It is the policy of the Department of Defense to judge the suitability of persons to serve in the Armed Forces on the basis of their conduct. Sexual orientation is considered a personal and private matter and homosexual orientation is not a bar to service entry or continued service. Homosexual conduct, however, is grounds for separation from the Military Services.

This policy must be well understood by all personnel with specific responsibilities for its implementation and administration. Of particular concern are those personnel involved in recruiting, accession processing, commanders' inquiries, criminal investigations, and administrative separations. Terminology is particularly important to the dialogue.

A. Key Policy Features:

1. Sexual orientation is a personal and private matter. Officials of the Armed Forces will not ask and Service members will not be required to reveal their sexual orientation.

2. Homosexual orientation alone is not a bar to service entry or continued service unless manifested by homosexual conduct.

3. When a member engages in homosexual conduct, he or she is subject to administrative separation. Homosexual conduct includes a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

4. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts -- such as a statement by the member that he or she is a homosexual -- is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts.

5. Neither commanders' inquiries (for administrative reasons or for minor offenses) nor military criminal law enforcement investigations (for criminal violations) will be conducted absent credible information of homosexual conduct.

6. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a Service member has engaged in homosexual conduct. Credible information consists of articulable facts, not just a belief or suspicion.

7. Service members may be discharged if they are found to have engaged in homosexual conduct.

B. Accessions Policy:

Applicants for service in the Armed Forces will not be required to disclose their sexual orientation or answer questions about their orientation. They will be briefed on departmental policies governing separation policy for members of the Armed Forces.

C. Commander's Inquiry and Investigative Policy:

Commanders may initiate inquiries or investigations into homosexual conduct as defined by DoD policy. However, no inquiries or investigations will be conducted solely to establish an individual's sexual orientation, nor will Service members be asked or required to answer questions concerning their sexual orientation. The informal fact-finding inquiry is the preferred method of addressing homosexual conduct. If there is credible information of possible criminal conduct, commanders should consider seeking the assistance of law enforcement or the appropriate Defense Criminal Investigative Organization. A statement by a member that he or she is a homosexual continues to be a basis for initiating an informal fact-finding inquiry. No inquiries or investigations will be conducted absent credible information of conduct that would be the basis for discharge or for a court-martial. Inquiries and investigations will not go beyond establishing the elements of the offense or basis for discharge. Inquiries and investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

D. Separation Policy:

Service members may be discharged if they engage in homosexual conduct. Homosexual conduct is any act involving bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of sexual gratification, or any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts, and attempts or solicitations to engage in such acts; a statement by the member that he or she is a homosexual or bisexual or that otherwise demonstrates a propensity or intent to engage in homosexual acts; or a homosexual marriage or attempted homosexual marriage. Normally, administrative separations involving homosexual conduct will be under honorable conditions, unless there are aggravating circumstances, such as force, coercion or acts with a minor.

BRIEFING PLAN

Title of Briefing: DoD Policy on Homosexual Conduct

Briefer: Commander, commanding officer or officer-in-charge

Instructional Materials: Background Fact Sheet
 Policy Fact Sheet
 Hypothetical Teaching Scenarios
 Service Regulations

Briefing Goals:

- (1) To inform personnel responsible for policy implementation and personnel administration about the DoD Policy. Of particular concern are personnel involved in recruiting, accession processing, commander's inquiries, criminal investigations, and administrative separations.
- (2) To clarify the policy and its implementation, and answer questions related to associated definitions and hypothetical scenarios.

Teaching Approach:

- (1) Tailor the briefing to your audience. Do not change the message while tailoring it. The requirement is that each audience member knows and understands the policy.
- (2) Introduce the topic and define the briefing goals.
- (3) Hand out the Policy Fact Sheet.
- (4) Conduct the briefing, and guide a discussion informing the audience of their specific area of responsibility in implementing this policy.
- (5) Discuss selected policy-related scenarios.
- (6) Conduct a Q & A session.
- (7) Conclude briefing by summarizing your expectations related to each member's role in properly implementing this policy.

BRIEFER'S GUIDANCE SHEET

Conduct a briefing to train personnel involved in policy implementation and personnel administration within your organization about this policy.

- You may consult with the legal office, the chaplain, the Inspector General, and military criminal investigation agencies prior to giving the briefing.
- Encourage a legal office representative to attend and respond to questions.

Realize that effective implementation and compliance with this policy is directly related to the professionalism of your presentation.

- The briefing IS informational, IS a clarification of policy, and IS factual.
- The briefing IS NOT sensitivity training, IS NOT a forum to debate the policy, IS NOT a "gripe" session, and IS NOT intended to discuss personal values or beliefs.

Divide your audience into appropriate groups where practical.

Learn the key policy features and refer back to them in any discussion.

HYPOTHETICAL TEACHING SCENARIOS FOR COMMANDERS AND PERSONNEL INVOLVED IN RECRUITING, ACCESSION PROCESSING, CRIMINAL INVESTIGATIONS, AND ADMINISTRATIVE SEPARATIONS

The following hypothetical scenarios are for training purposes only. They are not meant to prescribe "correct" outcomes, but to illustrate how relevant personnel should approach issues that may arise under the DoD policy on homosexual conduct in the Armed Forces. The scenarios do not establish any evidentiary standards or create any substantive or procedural rights.

1. Situation: During a commander's "open-door" period, a young Service member comes into the commander's office and states that he believes he may be homosexual. The commander advises the Service member of the military's policy on homosexual conduct, and the Service member replies, "Maybe I shouldn't say anything else." The commander advises him he might wish to discuss the matter with the chaplain.

Issues: The commander wonders whether he should initiate separation action on the basis of the Service member's statement that he believes he may be a homosexual. Should he refer the case to a Military Criminal Investigative Organization (MCIO) for an investigation to determine if the Service member has committed any homosexual acts since entering the service? Should he initiate a commander's inquiry to determine if grounds for administrative separation exist?

Discussion: While the Service member's commander may initiate a commander's inquiry based on the Service member's statement that he believes he may be a homosexual, he probably would not at this time. The statement, by itself, is ambiguous and quite possibly could indicate a young Service member's confusion over some aspect of his sexual identity. It is not at all clear that the Service member intended to make a statement that he is homosexual.

Since the Service member has not indicated that he has committed any criminal act, this case should not be referred to any military law enforcement agency. Had the Service member stated he had engaged in a homosexual act or acts, the commander would also advise the Service member of his rights under Article 31b of the UCMJ.

2. Situation: An officer observes two male junior enlisted Service members walking and holding hands while off-duty and on liberty. The Service members are wearing civilian clothes and are in an isolated wooded public park and, except for the officer, they are alone. He reports the incident to the commanding officer (CO) and adds that he is surprised to find out they appear to be homosexuals. He asks the CO what he proposes to do about the incident. The CO decides he will call the two Service members into his office, separately, and ask them about the officer's observations.

Issue: Was the CO's action appropriate? If not, what action should he have taken?

Discussion: The officer's observation of the two enlisted Service members walking and holding hands in the park constitutes credible information of homosexual conduct if the officer is someone the CO otherwise trusts and believes. The two Service members' hand-holding in these circumstances indicates a homosexual act and therefore the commanding officer may follow-up and inquire further. Probably, the extent of the inquiry will be two confidential one-on-one conferences between the CO and the two Service members to inquire into the incident.

Before the Service members are asked to discuss or explain the incident, the CO should advise them of the military's policy on homosexual conduct. Should they decline to discuss the matter, the questioning should stop. At that point, the CO may consider other relevant information and decide whether to initiate administrative separation actions based on the information he possesses.

3. Situation: A Service member has been observed entering, leaving, and generally "hanging around" a downtown gay bar. The commander is notified of the observations but isn't sure what action, if any, she should take.

Issues: What should the commander do? Can the commander administratively discharge the Service member for going to a gay bar? Should she conduct a commander's inquiry?

Discussion: Given the absence of any information, credible or otherwise, of the occurrence of either a crime or otherwise proscribed conduct, the commander should not begin an inquiry into this matter. Going to a gay bar is not a crime, nor does it, in itself, constitute a "nonverbal statement" by the Service member that he is a homosexual. A commander may begin an inquiry, however, if a member engages in behavior that a reasonable person would believe is intended to convey the statement that the member is a homosexual or bisexual. The commander in this case may wish to point out to her subordinate that his favorite club is known to be an establishment catering to homosexuals.

4. Situation: A Service member tells his commanding officer (CO) that he is a homosexual. Based on the Service member's statement of his homosexuality, his CO begins immediately to process the Service member for separation from the service. Three days later, the Service member complains that he has been receiving both written and spoken threats from unidentified Service members who are apparently aware of his homosexuality, and who have stated they are going to beat him up.

Issue: What actions should the Service member's CO take?

Discussion: The CO should ask for investigative assistance from the Military Criminal Investigative Organization with respect to the threat and take all reasonable means to protect the safety of the Service member, as he would any other Service member under his command. The CO should initiate a criminal investigation into the threats received by the Service member.

The Service member's statement that he is a homosexual should not be investigated by the MCIO because a statement that a member is a homosexual does not, by itself, constitute credible information of a crime. The CO is appropriately initiating action under the Service's administrative separation procedures.

The CO may consider transferring the Service member to another location. His final decision on this matter would depend on the nature of the threats and the investigative findings.

5. Situation: A metropolitan area publication, oriented to the activities and interests of the area's homosexual community, prints a story under the headline, "Gays in Government," purporting to list government workers believed to be homosexuals. The story contains the names of two enlisted Service members stationed at a nearby military installation. The Service members' commander receives an anonymous letter containing a copy of the article "Gays in Government" and after reading it wonders whether he should conduct an inquiry into the matter or begin administrative separation action on the two Service members for homosexuality. He has never before seen a copy of the publication that printed the article and the story gives no supporting documentation for why any of the individuals listed were believed to be homosexual.

Issue: What action should the commander take in regard to the purported "outing" of the two enlisted Service members?

Discussion: The commander should not initiate any inquiry based on the article. The article purports to identify the two Service members as homosexuals, but does not allege any criminal or otherwise proscribed homosexual conduct. A commander should begin an inquiry only if he has credible information indicating proscribed homosexual conduct.

The commander might call the two Service members into his office separately, advise them of the article, and remind them of the DoD policy regarding homosexual conduct. He should advise them that he is conducting no further inquiry into the matter at this time and will consider the matter closed, unless he receives credible information of proscribed homosexual conduct.

6. Situation: A noncommissioned officer (NCO) is watching the local TV news coverage of the gay rights parade when he notices a female Service member assigned to his unit marching in the parade in civilian clothes, carrying a handmade placard. As the television camera zooms in on the Service member's sign, the NCO can clearly read the handwritten words "Lesbians in the military say, 'Lift the Ban!'" The next morning, the NCO reports the incident to his commander.

Issue: Should the commander inquire into what meaning his Service member had intended to convey by carrying that particular sign in the gay rights parade?

Discussion: A Service member's carrying of a banner or sign in a gay rights activity would not in and of itself constitute credible information indicating proscribed homosexual conduct. In this case, however, the Service member chose to carry a sign that could reasonably be interpreted as making a statement that she is a homosexual. It would be reasonable for her commander to inquire whether the Service member's actions were intended to inform the public that she was a "lesbian Service member."

A Service member's statement that he or she is a homosexual, or words to that effect, is evidence that the Service member engages in homosexual acts or has an intent or propensity to do so. Therefore, the commander may inquire into the incident further. Before questioning his subordinate about the incident, the commander should advise her of the military's policy on homosexual conduct. Should the Service member choose not to discuss the matter further, the discussion should end. The commander would then decide whether to initiate administrative discharge procedures based on the information provided by the NCO.

Recommended for Investigators and Commanders

7. Situation: The commander of a military installation calls up his Military Criminal Investigative Organization commander and requests that he stop by to discuss a "problem." In the nearby civilian community, a new social club has recently opened and is known to be frequented almost exclusively by homosexuals. Thursday nights are advertised as "military night," with Service members being offered free admission and reduced price on alcoholic beverages. The commander wants his military law enforcement agents to coordinate with the local police to conduct surveillance of the gay bar on "military night" and compile a list of all Service members frequenting the club. He proposes that military law enforcement agents trace license numbers of all vehicles parking in the club's parking lot that display DoD identification stickers.

Issue: Is this type of "stake-out" permitted under the new policy?

Discussion: No. The installation commander does not have credible information that a specific crime has been committed. Even if the commander had received reports that numerous military members had been observed entering and exiting the purported gay bar, absent evidence of a crime, there would be no basis to conduct a surveillance operation as requested by the installation commander.

The MCIO commander reminds the installation commander that military law enforcement agents currently receive copies of all arrest documents relating to lewd and lascivious behavior or other criminal conduct occurring in the local community, which is punishable under the UCMJ.

Note: This exemplifies a key change to the DoD policy on investigations. Even though the military authorities have information of an off-post gay bar frequented by Service members, they may not conduct an investigation absent a specific allegation of a criminal act. Frequenting a gay bar is not a criminal act.

There is no legal impediment to either local civilian or military law enforcement activities investigating alleged criminal activity at public locations. In this case, however, where no specific criminal activity is alleged, surveillance would have had the singular purpose of actively seeking out possible homosexuals. This is contrary to the DoD Policy on Investigations of Sexual Misconduct, which specifically precludes any investigation solely to establish an individual's sexual orientation. In addition, a fact-finding inquiry by the commander for purposes of administrative separation would not be appropriate, as going to a gay bar does not constitute credible information of proscribed homosexual conduct.

Recommended for Investigators and Commanders

8. Situation: A Service member walks into his barracks room and observes two other enlisted men engaging in an act of sodomy. He notifies his supervisor and the military law enforcement agents. The military law enforcement agents respond to the barracks where the two suspects are placed under apprehension and advised of their rights. During the course of the apprehension, the military law enforcement agents find, in plain view, photographs of one of the suspects engaging in anal sodomy with other Service members, some of whom are known to the supervisor. They also find a personal letter from the same suspect, addressed to another man and signed "All my love, Sugar." These items are taken as evidence. The enlisted men's commander calls the Military Criminal Investigative Organization and advises that the two enlisted men have admitted, under rights advisement, to committing an act of sodomy.

The commander wants the MCIO to continue the investigation by scouring every photograph and the letter to attempt to compile a list of other possible homosexual Service members. Once the list is compiled, the commander wants the MCIO to question both suspects in detail concerning whether they know if anyone on the list is a homosexual or has committed homosexual acts. The commander says he wants the MCIO to hunt out any and all homosexuals within his unit.

Issues: Should the MCIO continue the investigation after the suspects have admitted to the offense of sodomy? If yes, how should the investigation proceed? Should the MCIO comply with the commander's direction to ferret out any homosexuals in the unit?

Discussion: The MCIO would not normally initiate an investigation of consensual adult private sexual conduct. However, in this case the act of sodomy occurred not in private but in a shared barracks room, and therefore may be investigated. Even so, under the new policy, the MCIO should continue its investigation into alleged homosexual conduct only so long as necessary to develop the relevant facts and circumstances surrounding the offense. In cases of consensual sodomy in which the Service members involved in the sexual act admit to the crime, the case will usually be closed and further investigation halted. The Service members would not be asked about other partners with whom they may have had sex, absent evidence of other criminal activity.

In this case, in the routine course of investigating the act of sodomy, the MCIO has discovered credible information of additional alleged criminal acts -- the photographs. The MCIO should investigate the facts surrounding the acts depicted in the photos. This would include questioning the suspect depicted in the photos concerning his sexual partners shown in the photographs engaging in criminal activity. Other Service members in the pictures who are identified by the suspect may be questioned regarding the activities at issue.

(Situation 8 continued)

As to the letter, the fact that it is written to another man and signed, "All my love, Sugar" may indicate another homosexual relationship involving one of two Service members found committing sodomy. Furthermore, if the MCIO were to follow the commander's instructions and proceed to "hunt" for any and all homosexuals, they would probably scrutinize the letter closely to compile a list of other names referenced therein. This way they could question each and every possible homosexual and, in turn, compile additional lists of other homosexuals. Such an approach to investigating possible incidents of homosexuality is expressly prohibited. At any given point in a criminal investigation involving homosexuality, the investigating agents must be able clearly and specifically to explain which criminal acts they are investigating and how the investigation relates to those criminal acts. No criminal investigations should be made into whether a person is homosexual, but only to investigate criminally proscribed acts. In this case, unless the letter has evidentiary value relating to one of the suspects, the MCIO should give the letter to the commander and not use it to launch investigations of any other persons. The commander may evaluate it for credible information and possible grounds for administrative discharge.

Recommended for Investigators and Commanders

9. Situation: While investigating a fraud case involving "E-Mail" transmissions between two officers, the Military Criminal Investigative Organization obtains the commander's authorization to search one of the suspect's computer files stored on his personal computer at home. During the search of the computer, the MCIO agent notices that the suspect subscribes to a computer information service apparently catering to a homosexual and bisexual clientele. The agent scrolls through the directory and notes that the computer service has a directory entitled "Gay Military Service Members" and lists the names, ranks and addresses of approximately 400 persons. The agent contacts his supervisor and asks whether, based on this list which purports to identify approximately 400 homosexuals in the military, the MCIO should investigate any or all of the names listed for sodomy or other crimes involving homosexual acts.

Issues: Should the MCIO investigate anybody on the list for crimes involving homosexual acts? What should the MCIO do with the list?

Discussion: The MCIO should not initiate an investigation of any of the names listed on the computer file. There is no alleged crime to investigate. Names on a list are not credible information of any crimes. Not only do the files disclose nothing more than the names of purported homosexuals, as opposed to information of alleged homosexual acts, but the information is not "credible information" because nothing is known about how the information came to be stored in the computer file or the reliability of the information. The information is also not a basis for administrative separation and should not be referred to the individual's commander. The MCIO should leave the file alone and not take further action.

Recommended for Investigators and Commanders

10. Situation: A Military Criminal Investigative Organization office has received several complaints from both military and civilian personnel concerning homosexual acts occurring in a restroom at one of the gymnasiums on a military installation. Several different witnesses have provided names of Service members and civilians who have been seen numerous times in the restroom performing primarily oral sodomy, but in several incidents anal intercourse. In addition to naming individuals, Service members working out at the gym have provided specific times during the day that appear to be the "busy times" for homosexual activity. The agent in charge of the MCIO office decides to send a covert MCIO agent into the restroom to investigate and develop further information concerning the allegations.

Issue: Can the MCIO investigate alleged acts of sodomy using undercover techniques?

Discussion: Yes. The eyewitness accounts of frequent incidents of criminal activity on the military installation warrants an investigation. Once they have credible information to establish that criminal acts are being committed, MCIOs may utilize any reasonable investigative technique to prove the elements of the crime.

In this case, the MCIO has knowledge of repeated and frequent acts of sodomy occurring at specific times at one of the installation gymnasiums. Use of an undercover agent would be appropriate in this instance. Care must be taken in authorizing the use of surveillance techniques, such as hidden audio and video surveillance, but in the circumstances recited here, such techniques would be permitted.

11. **Situation:** An enlisted member sees an officer known to him walk into a well-known homosexual bar. A couple of days later, the enlisted member sees the officer walking closely with another man late at night in a park. The enlisted member tells the officer that he knows he is a homosexual and that if the officer does not pay him \$10,000, he will report him to the Military Criminal Investigative Organization. The officer does not say anything, and immediately goes to the MCIO to report that the enlisted member is trying to blackmail him. The MCIO does not ask if the officer is a homosexual because, under these circumstances, it would be improper for the MCIO to question him about his sexual orientation. However, the MCIO begins an investigation of the enlisted member's alleged extortion of the officer.

Issues: Was the MCIO's action proper? Should they have investigated the officer for being a homosexual?

Discussion: The officer provided credible information of alleged extortion by the enlisted member. There is no credible information that the officer has committed any homosexual act, let alone any criminal act. Therefore, the MCIO's approach to the investigation -- investigating alleged criminal activity of the enlisted member, but not inquiring further into the sexual orientation of the officer -- is proper.

Scenarios 12 and 13 are recommended for personnel that deal with administrative separations. These scenarios illustrate the operation of the "rebuttable presumption" that arises when a Service member states that he or she is a homosexual. The scenarios are examples of how Administrative Discharge Boards might treat cases in which a Service member attempts to rebut the presumption; they do not establish any evidentiary standards or create any substantive or procedural rights.

12. Situation: An enlisted Service member states to his commanding officer that he is a homosexual. He also tells this to several other enlisted members. An Administrative Discharge Board is convened. At the Board hearing, the member does not dispute that he stated on several occasions that he is a homosexual. He promises, however, that he will not engage in any homosexual acts during the remainder of his term of enlistment. The member presents no other evidence.

Issue: How should the Board consider whether the Service member has successfully rebutted the presumption?

Discussion: A statement by a Service member that he or she is a homosexual creates a rebuttable presumption that the member engages in or has a propensity or intent to engage in homosexual acts. This means that the statement itself is evidence that the member engages in or is likely to engage in homosexual acts. If the member fails to demonstrate that he or she in fact does not engage in homosexual acts and is not likely to do so, he or she may be discharged.

In determining whether a Service member has successfully rebutted the presumption, a Board may consider, among other things: whether the member has engaged in homosexual acts; the member's credibility; testimony from others about the member's past conduct, character, and credibility; the nature and circumstances of the statement; and any other evidence relevant to whether the member is likely to engage in homosexual acts.

If the only evidence that the member presented was his promise that he would not engage in any homosexual acts during the remainder of his term of enlistment, the Board would determine whether that promise, in light of the Board's assessment of the member's credibility and the nature and circumstances of his statements that he was a homosexual, was sufficient to demonstrate that he does not engage in homosexual acts and is not likely to do so. If the Board determines that the member's evidence is insufficient to demonstrate that he does not engage in homosexual acts and is not likely to do so, it would recommend that the member be separated. If, however, the Board determines that the member's evidence is sufficient to demonstrate that he does not engage in homosexual acts and is not likely to do so, it would recommend that the member be retained.

13. Situation. An officer tells his best friend, another officer, that he has recently come to terms with his sexuality and has decided that he is a homosexual. He says, however, that he has not engaged in any homosexual acts during his six years of military service, and that he will continue to refrain from such acts. Although the officer asks his friend not to tell anyone else about their conversation, the friend tells the commanding officer (CO). Having determined that the friend's account of the officer's statement constitutes credible evidence of homosexual conduct, the CO then asks the officer whether he told his friend that he is a homosexual. The officer answers, "Yes."

At a Board of Inquiry hearing, the Service presents the testimony of the officer's friend and the CO about the officer's statements to them. There is no evidence that the officer engaged in any homosexual acts.

The officer presents testimony from several fellow officers and subordinate enlisted persons, all males. Those individuals testify that the officer has never stated or suggested to them that he is a homosexual and has never made any sexual advances or engaged in sexual innuendo toward them or anyone they know. They also state that the officer is an outstanding leader, that he is always truthful and conscientious, and that they believe he is fully capable of abiding by all Service regulations, including its restrictions on homosexual conduct. Finally, the officer himself testifies that, although he considers himself a homosexual, he has not engaged in any homosexual acts during his six years of service and that he intends to continue to refrain from such acts during the remainder of his term of service.

Issue: How should the Board consider whether the officer has successfully rebutted the presumption?

Discussion: The officer's statement to his friend that he is a homosexual created a rebuttable presumption that the officer engages in or has the propensity or intent to engage in homosexual acts. The question for the Board is whether the officer's evidence succeeded in rebutting that presumption by demonstrating that the officer in fact does not engage in homosexual acts and is unlikely to do so. In making that determination, the Board could consider, among other things: the evidence that the officer had not engaged in any homosexual acts; the officer's credibility; the testimony from other Service members about the officer's past conduct, character, and credibility; and the nature and circumstances of the officer's statements to his friend and commanding officer. If the Board determines that this evidence demonstrated that the officer did not engage in homosexual acts and was not likely to do so, it would find that the officer had rebutted the presumption and would recommend that he be retained. If, however, in weighing all the evidence, the Board determines that the officer had not rebutted the presumption, it would recommend separation.

Scenario 14 is recommended for personnel involved in the accession process.

14. **Situation:** An applicant comes into a recruiting station and says that he would like to enlist. Although, in accordance with DoD policy, the recruiter does not ask any questions about the applicant's sexual orientation or sexual conduct, the applicant states, of his own accord: "I am a homosexual."

Issue: What should the recruiter do after hearing the applicant's statement?

Discussion: Applicants will not be asked or required to reveal their sexual orientation during the accession process. In addition, applicants will not be asked whether they have engaged in homosexual conduct unless independent evidence is received indicating that an applicant has engaged in such conduct or unless the applicant volunteers a statement that he is a homosexual or bisexual, or words to that effect.

If an applicant nevertheless comes into a recruiting office and volunteers a statement that he is a homosexual, that applicant will be rejected, unless he can demonstrate that he does not engage in homosexual acts and does not have an intent or propensity to do so. In this scenario, once the applicant said "I am a homosexual," the recruiter could tell him that the Service assumes that the applicant's statement means that he engages in homosexual acts or has a propensity or intent to do so. The recruiter could then ask the applicant if this is what he meant. If the applicant answers "Yes," the applicant could be rejected.

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WHouse	Leon Furth	VPress	OEOB/298	395-4213
State	Mike McCurry	PA	6800	647-6607
NSC	William Itoh (for distr)	WWH	SITROOM	456-2225
CIA	Kent Harrington	PAS	7C35	482-7677
NSC	BOB BELL		RM 386	(202)395-1185
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REMARKS:

John J. Freitas, Lt Col, USAF

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CLASSIFICATION

DoD News Briefing
Tuesday, March 1, 1994 - 1:00 p.m.
Ms. Kathleen M. deLaski, ATSD (PA)

Ms. deLaski: Good afternoon.

First of all, we have a Blue Top available that's announcing the start up of the Troops to Teachers Program. This program will finance teacher certificate training for separated servicemembers and also for DoD and DOE civilian employees. They, in turn, will be placed as teachers, and teachers aides in schools that serve children from low-income families and schools that are experiencing teacher shortages. Teachers will not be in place immediately, they have to get their training first, so you probably won't see the teachers, and teachers aides in place until maybe late Spring or early Fall. But the funding has been released for this program now, and the applications are being accepted.

Secondly, last night DoD finished its coordination of the new homosexual policy. It has been forwarded to the services, and they are in the process of implementing the new policy, which is effective immediately. Copies of the DoD revision, the new directives, are available in DDI. We handed out the directive in its original form in December, and what we can offer you now are the changes to the DoD version. The services have their own implementing regs, which I understand are quite thick documents.

The Defense Department Advanced Research Projects Agency, ARPA, will launch the first Taurus Standard Small Launch Vehicle on Friday, March 4th, from Vandenberg Air Force Base in California. The launch window is from 8:30 to 9:30 p.m. That's Eastern Standard Time. Taurus will carry two DoD advanced technology satellites into polar circular orbits. The launch is open to media coverage. Also, at approximately 45 minutes following the launch, ARPA program manager Lt. Col. Lee Demitry will brief reporters and answer questions.

*Keith -
p/s get a copy
of DoD directives
and new changes
(I don't need
services'
implementing
regs)*

*Thanks -
Boh*

Finally, we have a general officer announcement. Secretary of Defense William Perry announced today that the President has nominated Major General Max Baratz of the U.S. Army Reserve for assignment as Chief of the Army Reserve, Washington, D.C. General Baratz is currently assigned as Deputy Commanding General, U.S. Army Reserve Command in Atlanta.

With that, I can take your questions.

Q: Bosnia. An update on the situation now?

A: There have been no developments, no significant activity since what we reported yesterday.

Q: No air violations?

A: None of the kind...I don't know whether there have been any helicopter violations. Those have been fairly regular. We see helicopters in the no-fly zone, but there have been no fixed wing aircraft violations.

Q: Shelling of Tuzla?

A: We have no reports of shelling of Tuzla today.

Q: Can you state, or has there been a determination made of whose aircraft were shot down yesterday?

A: We know that the airplanes in question, the Galebs, were in the Serbian inventory. That's as specific as we can get right now. We can't say, with all certainty, exactly where they came from.

Q: So, when you say where they came from, you're also referring to where they might have taken off from?

A: That's what I mean. We're still researching the issue of where they went to. The intelligence reports are being monitored to try to determine that for certain.

Q: The two that got away?

A: Yes.

Q: I wanted to ask about the gay policy. What are the major changes, and why were they needed?

A: As you know, the policy is "don't ask/don't tell/don't pursue." During the interim period, which has been for just about a year, the don't ask part was really being implemented already. In other words, servicemembers upon accession were not being asked about their sexual orientation and when they were applying for clearances they weren't being asked about their sexual orientation.

What is different, as of today, is that there are some other parts of this, particularly the don't pursue section of the policy, that are kicking into effect as of today, or as of last night, actually. Let me give you a few examples.

In the criminal investigations area, there's a new directive. It makes it clear that no defense criminal investigative organization, or other DoD law enforcement organization will conduct an investigation solely to determine a servicemember's sexual orientation.

Another thing that will happen is that there will be some training on the issue of what is the appropriate level of investigation, or when an investigation is appropriate, that will be for commanders and personnel involved in recruiting, accession processing, and administrative separations.

Also, upon entry and periodically thereafter, servicemembers will be informed of the policy so that it's clear to them. That's something that's spelled out in the new directive.

The other thing that's new is in terms of separations, there are two new directives -- one for officers, one for enlisted. They've been revised to emphasize that DoD judges the suitability of persons to serve in the armed forces on the basis of conduct, not sexual orientation.

Those are, generally speaking, the changes that you'll see.

Q: You said that criminal investigative agencies can only investigate a person, or could not investigate a person solely on the basis to determine their sexual orientation?

A: Right.

Q: What if someone is in a bar and says, "I'm gay." Then they cannot be investigated to show that they're gay. Is this only to determine whether or not they've committed homosexual acts as opposed to orientation?

A: I believe, and I may be a little rusty on this, but I believe a statement that you are gay would be grounds for an investigation. It's not to say that only reports of conduct will be investigated. A statement is something that could trigger an investigation.

Q: ...investigation on whether or not you had committed homosexual acts, as opposed to whether you had homosexual orientation.

A: Correct.

Q: How about a statement by a third party? The same situation, someone in a bar, but not saying "I'm gay." Someone else saying, "He's gay" or "She's gay"?

A: I think that's where it gets into...you probably need a legal mind to answer that question. That's a nuance that I'm not clear on. Let me find the answer to that. Let's take that one.

Q: You mentioned that services had their own guidance that you said was quite voluminous. What will be going, specifically, to commanders in the field? Will they get this extensive guidance, or will they get some sort of handbook, or a handy guide to enforcing the policy or something?

A: As you know, we handed out in December, in fact in large part, the "hypotheticals" which are scenarios much as the one you raised about what about a third person accusation. These hypotheticals went to the field already in December, and that's one way that commanders...it will help them understand. It is complicated. Obviously, it's a major change in the policy and we want it to be clear to everyone. So, there's a list of hypotheticals. There's also a training plan that will go to all commanders in the field to help them explain, and I think if there is any confusion on their part there can be more formal training.

Q: Just to be sure I'm clear, the hypotheticals that went to commanders in the field before were not affected by whatever last minute changes were made in the policy before it went into effect last night?

A: As we said, the clarifications that were made to the policy over the past six weeks, or so, have had no substantive effect on the policy in implementing the President's original plan.

Q: Why are you making these revisions? Was it viewed that the policy was too unclear, or too strict, or too soft? What was...

A: You know how these regulations work. You have a comment period. Normally it's 90 days. In this case we tried to shorten it. It ended up getting extended a bit because we think our time frame was a little too ambitious. But you have a comment period and you put out for comments and this is a very sensitive and emotionally charged issue. A lot of people had comments. We tried to incorporate them, maintaining the spirit of the regulations, which we absolutely have.

Q: Wasn't some of the wording changed to appease or please, or you pick the verb, members of Congress?

A: I don't want to use the verb "appease," certainly. I would say there were some requests to make some clarifications to some definitions.

I can give you an example, in fact, here. In the original version of the DoD directive, in December, it described sexual orientation. It says, "sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry," etcetera. What the revision says is, "a person's sexual orientation is considered a personal and private matter, and is not a bar to service entry." The difference is it took out the second reference to homosexual orientation. For some, that clarified it a little bit more. It doesn't change the meaning. But that's an example of the kind of change that we had.

Q: Korea. Can you give us any idea of when an announcement might come on the decision regarding Team Spirit?

A: We expect that there will be an announcement soon. I can't give you an exact date. I know there are some reports that there might be an announcement today. The key here is that any announcement to suspend Team Spirit, and let me stress the word "suspend", it's not canceled, would have to go hand-in-hand with, really, two things. One, the beginning of the IAEA inspections in North Korea, and secondly, the exchanging of envoys to begin the process of a North/South dialogue.

Q: Is that a foregone conclusion then, that if those two happen Team Spirit will be suspended?

A: I think a lot of officials around the government have been, certainly, suggesting that. I think, assuming those two things happen, a suspension is expected to happen.

Q: General Luck is in Washington today. He testified to Congress this morning. I understand he's to meet with Secretary Perry. Can you tell us anything at all about what requests for equipment, or personnel, or reinforcements he might have made for U.S. forces in South Korea?

A: You know about the Patriots certainly. If you're asking what else, I can't really go into detail.

Q: What's the status of his request for Patriot missiles?

A: There's been no change since Secretary Perry addressed the subject last week. The status of the request is that we're looking favorably on it. It is really now a matter of working out timing and method with the South Korean government.

Q: I'd like to revisit the homosexual issue. Do you have a number you can give us on the number of people that might be considered to still be in limbo or not out of limbo?

A: I'm not sure I'd say out of limbo. There are seven in the stand-by reserve that we know of. At least that's the count I was given today. Those people

will now be processed, or at least have the opportunity to be processed under the new policy. What that really means, cutting through to the wick, is that they would have the opportunity to try and use this rebuttable presumption clause to assert that they should maintain their place in the military.

Press: Thank you.

(END)

Original News Briefing and
latest briefing after revisions

NEWS BRIEFING



Office of the Assistant Secretary of Defense
(Public Affairs)

DoD News Briefing
Tuesday, March 1, 1994 - 1:00 p.m.
Ms. Kathleen M. deLaski, ATSD (PA)

Ms. deLaski: Good afternoon.

First of all, we have a Blue Top available that's announcing the start up of the Troops to Teachers Program. This program will finance teacher certificate training for separated servicemembers and also for DoD and DOE civilian employees. They, in turn, will be placed as teachers, and teachers aides in schools that serve children from low-income families and schools that are experiencing teacher shortages. Teachers will not be in place immediately, they have to get their training first, so you probably won't see the teachers, and teachers aides in place until maybe late Spring or early Fall. But the funding has been released for this program now, and the applications are being accepted.

Secondly, last night DoD finished its coordination of the new homosexual policy. It has been forwarded to the services, and they are in the process of implementing the new policy, which is effective immediately. Copies of the DoD revision, the new directives, are available in DDI. We handed out the directive in its original form in December, and what we can offer you now are the changes to the DoD version. The services have their own implementing regs, which I understand are quite thick documents.

The Defense Department Advanced Research Projects Agency, ARPA, will launch the first Taurus Standard Small Launch Vehicle on Friday, March 4th, from Vandenberg Air Force Base in California. The launch window is from 8:30 to 9:30 p.m. That's Eastern Standard Time. Taurus will carry two DoD advanced technology satellites into polar circular orbits. The launch is open to media coverage. Also, at approximately 45 minutes following the launch, ARPA program manager Lt. Col. Lee Demitry will brief reporters and answer questions.

Finally, we have a general officer announcement. Secretary of Defense William Perry announced today that the President has nominated Major General Max Baratz of the U.S. Army Reserve for assignment as Chief of the Army Reserve, Washington, D.C. General Baratz is currently assigned as Deputy Commanding General, U.S. Army Reserve Command in Atlanta.

With that, I can take your questions.

Q: Bosnia. An update on the situation now?

A: There have been no developments, no significant activity since what we reported yesterday.

Q: No air violations?

A: None of the kind...I don't know whether there have been any helicopter violations. Those have been fairly regular. We see helicopters in the no-fly zone, but there have been no fixed wing aircraft violations.

Q: Shelling of Tuzla?

A: We have no reports of shelling of Tuzla today.

Q: Can you state, or has there been a determination made of whose aircraft were shot down yesterday?

A: We know that the airplanes in question, the Galebs, were in the Serbian inventory. That's as specific as we can get right now. We can't say, with all certainty, exactly where they came from.

Q: So, when you say where they came from, you're also referring to where they might have taken off from?

A: That's what I mean. We're still researching the issue of where they went to. The intelligence reports are being monitored to try to determine that for certain.

Q: The two that got away?

A: Yes.

Q: I wanted to ask about the gay policy. What are the major changes, and why were they needed?

A: As you know, the policy is "don't ask/don't tell/don't pursue." During the interim period, which has been for just about a year, the don't ask part was really being implemented already. In other words, servicemembers upon accession were not being asked about their sexual orientation and when they were applying for clearances they weren't being asked about their sexual orientation.

What is different, as of today, is that there are some other parts of this, particularly the don't pursue section of the policy, that are kicking into effect as of today, or as of last night, actually. Let me give you a few examples.

In the criminal investigations area, there's a new directive. It makes it clear that no defense criminal investigative organization, or other DoD law enforcement organization will conduct an investigation solely to determine a servicemember's sexual orientation.

Another thing that will happen is that there will be some training on the issue of what is the appropriate level of investigation, or when an investigation is appropriate, that will be for commanders and personnel involved in recruiting, accession processing, and administrative separations.

Also, upon entry and periodically thereafter, servicemembers will be informed of the policy so that it's clear to them. That's something that's spelled out in the new directive.

The other thing that's new is in terms of separations, there are two new directives -- one for officers, one for enlisted. They've been revised to emphasize that DoD judges the suitability of persons to serve in the armed forces on the basis of conduct, not sexual orientation.

Those are, generally speaking, the changes that you'll see.

Q: You said that criminal investigative agencies can only investigate a person, or could not investigate a person solely on the basis to determine their sexual orientation?

A: Right.

Q: What if someone is in a bar and says, "I'm gay." Then they cannot be investigated to show that they're gay. Is this only to determine whether or not they've committed homosexual acts as opposed to orientation?

A: I believe, and I may be a little rusty on this, but I believe a statement that you are gay would be grounds for an investigation. It's not to say that only reports of conduct will be investigated. A statement is something that could trigger an investigation.

Q: ...investigation on whether or not you had committed homosexual acts, as opposed to whether you had homosexual orientation.

A: Correct.

Q: How about a statement by a third party? The same situation, someone in a bar, but not saying "I'm gay." Someone else saying, "He's gay" or "She's gay"?

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Press: Thank you.

(END)



NEWS RELEASE

**OFFICE OF ASSISTANT SECRETARY OF DEFENSE
(PUBLIC AFFAIRS)**
WASHINGTON, D.C. - 20301
PLEASE NOTE DATE

IMMEDIATE RELEASE

December 22, 1993

No. 605-93
(703)695-0192(media)
(703)697-3189(copies)
(703)697-5737(public/industry)

SECRETARY ASPIN RELEASES NEW REGULATIONS ON HOMOSEXUAL CONDUCT IN THE ARMED FORCES

Secretary of Defense Les Aspin released today the new Department of Defense regulations on homosexual conduct in the Armed Forces. The regulations implement the policy that was announced by President Clinton in July.

The new directives were prepared with the collaboration and coordination of all the military services and are fully consistent with the National Defense Authorization Act for Fiscal Year 1994.

Secretary Aspin said, "We are confident that the new policy will maintain unit cohesion and will maintain the readiness of the best-trained, best-equipped military in the world today."

The new policy covers five areas:

- **Accessions.** Accession policy has been revised so that no applicant will be asked about his or her sexual orientation as part of the accession process. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct.
- **Separations.** Separation policy has been revised to emphasize that DoD judges the suitability of persons to serve in the Armed Forces on the basis of conduct, not sexual orientation. The three bases for separation are homosexual acts, same sex marriages, and statements by an individual that he or she is a homosexual or bisexual. In the latter case, the individual has the opportunity to rebut the presumption of homosexual acts by demonstrating that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.

-MORE-

- **Criminal Investigations.** The new directive on criminal investigations of sexual misconduct makes clear that no Defense criminal investigative organization or other DoD law enforcement organization will conduct an investigation solely to determine a servicemember's sexual orientation. Investigations will be conducted in an evenhanded manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct.

- **Personnel Security.** Policy concerning personnel security investigations is also changed to provide that no investigation or inquiries will be conducted solely to determine a subject's sexual orientation and that questions pertaining to an individual's sexual orientation will not be asked on personnel security questionnaires. Information about homosexual orientation or conduct obtained during a security clearance investigation will not be used by the military departments in separation proceedings.

- **Military Training.** As part of the training that will occur upon entry and periodically thereafter, service members will be informed of the DoD policy on sexual conduct, including homosexual conduct. There is also a training plan on DoD policy on homosexual conduct designed for commanders and personnel involved in recruiting, accession processing, criminal investigations and administrative separations.

The next step, Aspin noted, is for the services to implement the new policy, a process expected to take about 45 days.

Attached is an overview of the directives implementing the new DoD policy. Also available for news media from the Directorate for Defense Information in Room 2E765 of the Pentagon are copies of those portions of the directives which pertain to the new policy on homosexual conduct in the Armed Forces.

-END-

DIRECTIVES IMPLEMENTING THE NEW DOD POLICY ON HOMOSEXUAL CONDUCT IN THE ARMED FORCES

OVERVIEW

On July 19, 1993, the President and Secretary of Defense announced a new DoD policy on homosexual conduct in the Armed Forces. DoD today is issuing new Directives implementing that policy. The new Directives are fully consistent with the National Defense Authorization Act for Fiscal Year 1994. These Directives have been prepared with the collaboration and coordination of all the Military Services and have the full concurrence of the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff and the Chiefs of each Service.

The new Directives implement the DoD policy in five areas:

I. ACCESSION

Accession policy is revised to make clear that no applicant will be asked about his or her sexual orientation as part of the accession process. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct. Applicants also will not be asked whether they have engaged in homosexual conduct, unless independent evidence is received indicating that an applicant engaged in such conduct or unless the applicant volunteers a statement that he or she is a homosexual or bisexual, or words to that effect.

Homosexual conduct will continue to be a basis for barring entry into the Armed Forces. Homosexual conduct is defined as a homosexual act, a statement by the applicant that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. Thus, if evidence is received indicating that an applicant engaged in homosexual acts or a homosexual marriage or attempted marriage, or if the applicant states of his or her own accord that he or she is a homosexual or bisexual, the applicant may be denied entry into the Armed Forces.

Finally, all applicants and inductees will be advised before enlistment that homosexual conduct is grounds for separation from the Armed Forces.

II. SEPARATIONS

Separation policy has been revised to emphasize that DoD judges the suitability of persons to serve in the Armed Forces on the basis of conduct, not sexual orientation. The DoD Directives set forth three bases for separation:

(1) Homosexual Acts. A Service member will be separated if he or she has engaged in, attempted to engage in, or solicited another to engage in homosexual acts, unless it is found that such acts are a departure from the member's usual and customary behavior, are unlikely to recur, and were not accomplished by the use of force, coercion, or intimidation; that the member's continued presence in the Service is consistent with the interest of the Armed Forces in proper discipline, good order, and morale; and that the member does not have a propensity or intent to engage in homosexual acts.

(2) Statements. A Service member may also be separated if he or she states that he or she is a homosexual or bisexual, or words to that effect. Such a statement creates a rebuttable presumption that the member engages in homosexual acts or has a propensity or intent to do so. The Service member will have the opportunity to rebut that presumption, however, by demonstrating that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.

(3) Marriages. A Service member will be separated if he or she has married or attempted to marry a person of the same sex.

If a Service member is discharged for engaging in homosexual conduct, the discharge normally will be characterized as "Honorable" or "Under Honorable Conditions." A member may be separated "Under Other Than Honorable Conditions," however, if he or she attempted, solicited, or committed a homosexual act: (1) by using force, coercion, or intimidation; (2) with a person under 16 years of age; (3) with a subordinate; (4) openly in public view; (5) for compensation; (6) aboard a military vessel or aircraft; or (7) in another location subject to military control and under aggravating circumstances.

In addition to clarifying the reasons for separation, the revised directives include a new enclosure that gives guidance to commanders on how to respond to allegations of homosexual conduct. This enclosure provides guidance for commanders; it does not create any substantive or procedural rights.

The enclosure provides that informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. Service members may be subject to disciplinary action or trial by court-martial, however, in appropriate circumstances.

The enclosure also specifies that Service members will not

be asked about or required to reveal their sexual orientation, but may be asked only about homosexual conduct. Commanders may initiate inquiries into alleged homosexual conduct only when credible information of such conduct exists.

The enclosure also states that credible information of homosexual conduct does not exist when the only information known concerns an associational activity (e.g., going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes). Credible information does exist, however, if a reliable person states that he or she observed a Service member engaging in homosexual acts or making a statement that the member is a homosexual or bisexual. Credible information also exists if a reliable person reports that he or she observed behavior that amounts to a non-verbal statement by the member that he or she is a homosexual or bisexual -- i.e., behavior that a reasonable person would believe intended to convey the statement that the member engages in or has a propensity or intent to engage in homosexual acts.

III. CRIMINAL INVESTIGATIONS

The new directive on criminal investigations of sexual misconduct makes clear that no Defense Criminal Investigative Organization or other DoD law enforcement organization will conduct an investigation solely to determine a Service member's sexual orientation.

The directive also provides that such organizations normally will not initiate a criminal investigation into sexual misconduct where such misconduct is the only offense involved. "Sexual misconduct" is defined as a sexual act in violation of the UCMJ that occurs between consenting adults in private. It does not include sexual acts involving force, coercion, or intimidation; abuse of position or rank; persons under the age of 16; or conduct that raises a security concern.

Absent aggravating circumstances, allegations of sexual misconduct will be referred to the Service member's commander. If the commander determines that there is credible information of sexual misconduct, he or she may request a criminal investigation by the appropriate investigative or law enforcement organization. That organization must then independently evaluate the information to determine whether it is credible before initiating a criminal investigation.

Investigative organizations may investigate allegations of sexual misconduct without any referral from the Service member's commander, however, if the organization's commander or director,

or principal deputy, determines that there is credible information of sexual misconduct and that such an investigation is an appropriate use of investigative resources.

Finally, the new directive provides that investigations into sexual misconduct will be conducted in an evenhanded manner, without regard to whether the sexual misconduct at issue involves homosexual or heterosexual conduct.

IV. PERSONNEL SECURITY

Policy concerning personnel security investigations is also changed to provide that no investigations or inquiries will be conducted solely to determine a subject's sexual orientation, and that questions pertaining to an individual's sexual orientation will not be asked on personnel security questionnaires. Investigations will be limited to questions concerning sexual conduct -- either homosexual or heterosexual -- or concerning the concealment of sexual conduct or orientation.

Investigations into allegations of sexual conduct or concealment will proceed only if the sexual conduct or concealment gives rise to a legitimate security concern under the applicable standards. Under those circumstances, inquiry into the conduct may proceed, but should be confined to those aspects that implicate the applicable standards. The new policy specifies that an individual's efforts to follow DoD policy on homosexual conduct in the Armed Forces by not openly acknowledging his or her homosexual orientation do not constitute concealment.

Finally, the new policy makes clear that information about homosexual orientation or conduct obtained during a security clearance investigation will not be used by the Military Departments in separation proceedings.

V. MILITARY TRAINING

The directive on military training has been revised to add a requirement that personnel be instructed on the conduct necessary to maintain high standards of combat effectiveness and unit cohesion. As part of this training, which will occur upon entry and periodically thereafter, Service members will be informed of the DoD policy on sexual conduct, including homosexual conduct.

The directive also will include a new training plan on DoD policy on homosexual conduct. This training plan is designed for commanders and personnel involved in recruiting, accession processing, criminal investigations, and administrative separations. The training plan includes detailed hypotheticals that illustrate how military personnel should approach specific,

concrete scenarios under the new DoD policy on homosexual conduct.

Basic Distinctions with copy
of 28 Feb Revision



Department of Defense INSTRUCTION

*in the field -
revision being printed*

December 22, 1993
NUMBER 5505.8

IG, DoD

SUBJECT: Investigations of Sexual Misconduct by the Defense
Criminal Investigative Organizations and Other DoD Law
Enforcement Organizations

- References:
- (a) DoD Directive 5106.1 "Inspector General of the Department of Defense, " March 14, 1983
 - (b) Secretary of Defense Memorandum, "Policy on Homosexual Conduct in the Armed Forces," July 19, 1993
 - (c) Title 10, United States Code, Chapter 47, Uniform Code of Military Justice," Sections 801-940
 - (d) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986

A. PURPOSE

This Instruction, issued under the authority of reference (a), implements reference (b) regarding the initiation of criminal investigations into certain types of sexual misconduct, as defined in this Instruction. It provides that, as a matter of investigative priorities and resource limitations, Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations will normally refer allegations involving only adult private consensual sexual misconduct to the Service member's commander for appropriate disposition. To ensure their independence, objectivity, and effectiveness, however, DCIOs are authorized to initiate investigations into sexual misconduct without obtaining a referral from the member's commander; they may do so, however, only if the Director or Commander, or Principal Deputy, of the DCIO determines that there is credible information that an offense has been committed and that the expenditure of investigative resources is appropriate.

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

C. DEFINITION

Sexual Misconduct. A sexual act or acts in violation of reference (c) that occur between consenting adults, in private, whether on or off a military installation. It does not include any sexual act or acts that involve allegations of force, coercion, or intimidation; abuse of position or rank; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information. Other terms used in this Instruction are defined in enclosure 1.

D. POLICY

1. No DCIO or other DoD law enforcement organization shall conduct an investigation solely to determine a Service member's sexual orientation.

2. Except pursuant to subsections F.2. and F. 3., below, a DCIO or other DoD law enforcement organization shall not initiate a criminal investigation into sexual misconduct where such misconduct is the only offense involved.

3. Investigations by DCIOs and other DoD law enforcement organizations shall be conducted in an even-handed manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct.

E. RESPONSIBILITIES

The Secretaries of the Military Departments and the Heads of the DoD Components shall issue regulations implementing this Instruction.

F. PROCEDURES

1. Allegations of sexual misconduct received by a DCIO or other DoD law enforcement organization normally shall be referred to the commander(s) of the Service member(s) concerned, unless the Commander, Director, or Principal Deputy of a DCIO initiates an investigation under F.3. below.

2. Upon the receipt of any allegation of sexual misconduct, the commander shall review the allegation. If the commander determines that there is credible information of sexual misconduct, the commander may request a criminal investigation by the DCIO or other DoD law enforcement organization, as appropriate.

a. If a commander requests that a DCIO initiate a criminal investigation into sexual misconduct, the Commander or Director of the DCIO, and those managers or supervisors approved by them to do so, shall independently evaluate and make a determination whether the request is based on credible

information of sexual misconduct prior to initiating a criminal investigation.

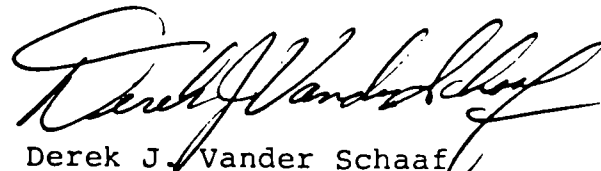
b. If a DCIO determines that a request from a commander lacks credible information of sexual misconduct, or is not in keeping with established policy, the matter will be returned to the commander, without action, for appropriate disposition.

3. DoD Instruction 5505.3 (reference (d)) shall apply with respect to investigations of sexual misconduct, except that an investigation into sexual misconduct may be initiated by a DCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the DCIO or Principal Deputy, that there is credible information of sexual misconduct and that such an investigation is an appropriate use of investigative resources.

4. Investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective February 5, 1994. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 30 days.



Derek J. Vander Schaaf
Deputy Inspector General

Enclosure
Definitions

DEFINITIONS

1. Commander. Any commanding officer, installation commander, or other appropriate command authority, or civilian supervisor in a comparable position who is outside a Defense Criminal Investigative Organization and is authorized to request an investigation or act on the results of an investigation by a Defense Criminal Investigative Organization.
2. Credible Information. Information, considered in light of its source and all attendant circumstances, that supports a reasonable belief that a Service member has engaged in sexual misconduct. Credible information consists of articulable facts, not just a belief or suspicion.
3. Defense Criminal Investigative Organizations. The Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.
4. Other DoD Law Enforcement Organizations. Those elements of the DoD Components, other than the Defense Criminal Investigative Organizations, that are authorized to investigate violations of the Uniform Code Military Justice or the United States Code.
- 5 Sexual Orientation. A sexual attraction to individuals of a particular sex.



Department of Defense
INSTRUCTION

*Being printed even as we
speak - Not in the
field yet*

February 28, 1994
NUMBER 5505.8

IG, DoD

SUBJECT: Investigations of Sexual Misconduct by the Defense
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Investigative Organizations," July 11, 1986

A. REISSUANCE AND PURPOSE

This Instruction reissues reference (a) under the authority of reference (b) and updates DoD policy regarding the initiation of criminal investigations into certain types of sexual misconduct, as defined in this Instruction. It provides that, as a matter of investigative priorities and resource limitations, Defense Criminal Investigative Organizations (DCIOs) and other DoD law enforcement organizations will normally refer allegations involving only adult private consensual sexual misconduct to the Service member's commander for appropriate disposition. To ensure their independence, objectivity, and effectiveness, however, DCIOs are authorized to initiate investigations into adult private consensual sexual misconduct without obtaining a referral from the member's commander; they may do so, however, only if the Director or Commander, or Principal Deputy, of the DCIO determines that there is credible information that an offense has been committed and that the expenditure of investigative resources is appropriate.

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

C. DEFINITION

Sexual Misconduct. A sexual act or acts in violation of Chapter 47 of title 10 U.S.C. (reference (c)) that occur between consenting adults, in private, whether on or off a military installation. It does not include any sexual act or acts that involve allegations of force, coercion, or intimidation; abuse of position or rank; fraternization; persons under the age of 16; or conduct that relates directly to applicable security standards for access to classified information. Other terms used in this Instruction are defined in enclosure 1.

D. POLICY

1. No DCIO or other DoD law enforcement organization shall conduct an investigation solely to determine whether a Service member is a heterosexual, a homosexual, or a bisexual.

2. Except pursuant to subsections F.2. and F. 3., below, a DCIO or other DoD law enforcement organization shall not initiate a criminal investigation into adult private consensual sexual misconduct where such misconduct is the only offense involved.

3. Investigations by DCIOs and other DoD law enforcement organizations shall be conducted in an even-handed manner, without regard to whether the alleged sexual misconduct involves homosexual or heterosexual conduct.

4. The provisions of this Instruction do not provide a basis for challenging the validity of any administrative or criminal proceeding or for excluding the use of any evidence in such proceeding.

E. RESPONSIBILITIES

The Secretaries of the Military Departments and the Heads of the DoD Components shall issue regulations implementing this Instruction.

F. PROCEDURES

1. Allegations of adult private consensual sexual misconduct received by a DCIO or other DoD law enforcement organization normally shall be referred to the commander(s) of the Service member(s) concerned, unless the Commander, Director, or Principal Deputy of a DCIO initiates an investigation under F.3. below.

2. Upon the receipt of any allegation of adult private consensual sexual misconduct, the commander shall review the allegation. If the commander determines that there is credible information of adult private consensual sexual misconduct, the

commander may request a criminal investigation by the DCIO or other DoD law enforcement organization, as appropriate.

a. If a commander requests that a DCIO initiate a criminal investigation into adult private consensual sexual misconduct, the Commander or Director of the DCIO, and those managers or supervisors approved by them to do so, shall independently evaluate and make a determination whether the request is based on credible information of adult private consensual sexual misconduct prior to initiating a criminal investigation.

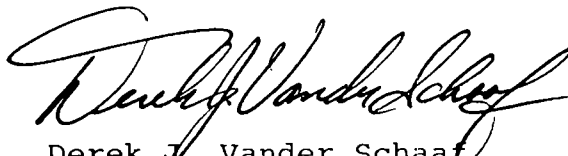
b. If a DCIO determines that a request from a commander lacks credible information of adult private consensual sexual misconduct, or is not in keeping with established policy, the matter will be returned to the commander, without action, for appropriate disposition.

3. DoD Instruction 5505.3 (reference (d)) shall apply with respect to investigations of adult private consensual sexual misconduct, except that an investigation into adult private consensual sexual misconduct may be initiated by a DCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the DCIO or Principal Deputy that there is credible information of adult private consensual sexual misconduct and that such an investigation is an appropriate use of investigative resources.

4. Investigations shall be limited to the factual circumstances directly relevant to the specific allegations.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective February 28, 1994. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 30 days.


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Enclosure
Definitions

DEFINITIONS

1. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command," or a civilian supervisor in a comparable position who is outside a Defense Criminal Investigative Organization and is authorized to request an investigation or act on the results of an investigation by a Defense Criminal Investigative Organization.

2. Credible Information. Information, considered in light of its source and the surrounding circumstances, that supports a reasonable belief that a Service member has engaged in adult private consensual sexual misconduct. Credible information consists of articulable facts, not just a belief or suspicion.

3. Defense Criminal Investigative Organizations. The Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

4. Other DoD Law Enforcement Organizations. Those elements of the DoD Components, other than the Defense Criminal Investigative Organizations, that are authorized to investigate violations of the Uniform Code Military Justice or the United States Code.

5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.



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