

## INFORMATION PAPER

DAJA-AL  
1 September 2005

SUBJECT: The Department of Defense Homosexual Conduct Policy

1. Purpose. To provide information about the Department of Defense Homosexual Conduct Policy.
2. References.
  - a. 10 U.S.C. § 654, Policy Concerning Homosexuality in the Armed Forces
  - b. DoDD 1332.14, Enlisted Administrative Separations, 21 December 1993, incorporating Change 1, 4 March 1994 (certified current as of 21 November 2003)
  - c. AR 350-1, Army Training and Education, 9 April 2003
  - d. AR 600-8-24, Officer Transfers and Discharges, 30 July 2004
  - e. AR 600-20, Army Command Policy, 13 May 2002
  - f. AR 635-200, Active Duty Enlisted Administrative Separations, 15 July 2004
  - g. Message, Office of the Deputy Chief of Staff for Personnel, 101700Z, 10 January 2000, subject: Homosexual Conduct Policy
  - h. Message, Office of the Judge Advocate General, 191425Z, 19 May 1994, subject: Homosexual Conduct Policy
  - i. Memorandum, Under Secretary of Defense (Personnel and Readiness), 12 August 1999, subject: Guidelines for Investigating Threats Against or Harassment of Service Members Based on Alleged Homosexuality
  - j. Memorandum, Under Secretary of Defense (Personnel and Readiness), 12 August 1999, subject: Implementation of Recommendations Concerning Homosexual Conduct Policy
  - k. Memorandum, Under Secretary of Defense (Personnel and Readiness), 21 July 2000, subject: Approval and Implementation of the Action Plan Submitted in Response to DoD Inspector General's Report on the Military Environment with Respect to the Homosexual Conduct Policy.

DAJA-AL

SUBJECT: The Department of Defense Homosexual Conduct Policy

l. Memorandum, The Judge Advocate General, 16 March 2000, subject: Judge Advocate Consultation Requirement for Homosexual Conduct Investigations

m. Memorandum, Deputy Secretary of Defense, 8 April 2005, subject: Repayment of Unearned Portions of Bonuses, Special Pay, and Educational Benefits or Stipends.

3. Facts.

a. *General.*

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

(2) The Department of Defense Homosexual Conduct Policy, as defined by a 1993 DOD policy memorandum, implements 10 U.S.C. § 654. The Homosexual Conduct Policy is implemented by the Army in AR 600-20. Homosexual conduct is grounds for separation from the Army. A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct in the manner described above.

(3) A commander may initiate a fact-finding inquiry regarding homosexual conduct UP AR 600-20 only when the commander has received credible information that there is a basis for discharge. If a commander has credible evidence of possible criminal conduct, the commander should follow the procedures outlined in the Manual for Court-Martial or refer the matter to law enforcement officials, as appropriate. Investigations or inquiries will not be initiated solely to determine whether a member is heterosexual, homosexual, or bisexual.

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

(5) The fact that a service member reports being threatened or harassed because he or she is said or is perceived to be a homosexual shall not by itself constitute credible information justifying the initiation of an investigation of the threatened or harassed servicemember. The report of a threat or harassment should result in the prompt investigation of the threat or

DAJA-AL

SUBJECT: The Department of Defense Homosexual Conduct Policy

harassment itself, without soliciting information concerning the sexual orientation or homosexual conduct of the threatened person. If, during the course of an investigation into such threats or harassment, information is received that the threatened or harassed servicemember has engaged in homosexual conduct, commanders shall carefully consider the credibility of such information.

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

(a) Commanders or appointed inquiry officers shall not ask, and soldiers shall not be required to reveal, whether a soldier is a heterosexual, homosexual, or bisexual. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask soldiers if they engaged in such conduct. The soldier may also be asked about any information provided by the soldier in the course of the fact-finding inquiry. The soldier should first be advised of the Homosexual Conduct Policy and his or her rights under Article 31, UCMJ, if applicable.

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

b. *Substantial Investigations.*

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

(2) A substantial investigation may be appropriate when a member is believed to have made a statement of homosexual orientation for the purpose of seeking separation from the service. Only the Assistant Secretary of the Army (Manpower and Reserve Affairs) can authorize a substantial investigation under this circumstance.

(3) IAW guidance from The Judge Advocate General, installation level judge advocates are required to consult with the staff judge advocate at the MACOM level prior to advising a commander to initiate a substantial investigation. MACOM-level staff judge advocates may

DAJA-AL

SUBJECT: The Department of Defense Homosexual Conduct Policy

authorize consultation with staff judge advocates serving a subordinate organization commanded by a lieutenant general.

*c. OTJAG Reporting Requirement.*

(1) The 19 May 1994 message from The Judge Advocate General requires offices to report the initiation and disposition of all administrative separation actions concerning officers or enlisted soldiers in which the Homosexual Conduct Policy forms all or part of the basis for the separation action.

(2) Reports will be sent directly to the Office of The Judge Advocate General, Administrative Law Division (DAJA-AL, ATTN: MAJ Cook) in the format listed in the message. Reports may be transmitted by fax (COM 703-588-0155 or DSN 425-0155) or by e-mail (harper.cook@hqda.army.mil). Reporting offices will also provide respective MACOMS with an information copy.

*d. Training.*

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

(2) The current AR 350-1, paragraph 1-7c(3), specifies that all soldiers will receive annual training on the Homosexual Conduct Policy.

4. *Change to DoD Recoupment Policy.* On 8 April 2005, the Deputy Secretary of Defense issued a new policy regarding repayment of unearned bonuses, special pay, and educational benefits or stipends. (Reference m). The policy supersedes the former policy<sup>1</sup> which limited recoupment to certain classes of homosexual conduct cases. The new policy permits recoupment in homosexual conduct separation cases without an additional finding that the service member made an admission to seek separation. There is no requirement to conduct a substantial investigation, or to obtain Army secretariat-level approval to pursue recoupment in these cases.

MAJ Cook/(703) 588-6789

---

<sup>1</sup> Memorandum, Deputy Secretary of Defense, 17 May 1994, subject: Recoupment of Education Assistance Funds, Bonuses and Special Pay from Persons Disenrolled or Separated on the Basis of Homosexual Conduct (Deutch Memo).