



**Stand Alone Common Core**

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**TRAINING SUPPORT PACKAGE (TSP)**

<b>TSP Number / Title</b>	L334 / THE ARMY HOMOSEXUAL POLICY
<b>Effective Date</b>	01 Oct 2004
<b>Supersedes TSP(s) / Lesson(s)</b>	L334, The Army Homosexual Policy, Oct 03
<b>TSP Users</b>	600-BNCOC, Basic Noncommissioned Officer Course
<b>Proponent</b>	The proponent for this document is the Sergeants Major Academy.
<b>Improvement Comments</b>	<p>Users are invited to send comments and suggested improvements on DA Form 2028, <i>Recommended Changes to Publications and Blank Forms</i>. Completed forms, or equivalent response, will be mailed or attached to electronic e-mail and transmitted to:</p> <p style="text-align: center;">COMDT USASMA ATTN ATSS DC BLDG 11291 BIGGS FIELD FT BLISS TX 79918-8002</p> <p style="text-align: center;">Telephone (Comm) (915) 568-8875 Telephone (DSN) 978-8875</p> <p style="text-align: center;">E-mail: <a href="mailto:atss-dcd@bliss.army.mil">atss-dcd@bliss.army.mil</a></p>
<b>Security Clearance / Access</b>	Unclassified
<b>Foreign Disclosure Restrictions</b>	FD5. This product/publication has been reviewed by the product developers in coordination with the USASMA foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

**PREFACE**

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**Purpose**

This Training Support Package provides the instructor with a standardized lesson plan for presenting instruction for:

**Task Number****Task Title**

181-301-0001

Identify the Legal Implications of the Homosexual Conduct Policy

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This TSP  
Contains

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**THE ARMY HOMOSEXUAL POLICY  
L334 / Version 1  
01 Oct 2004**

**SECTION I. ADMINISTRATIVE DATA****All Courses Including This Lesson**

<u>Course Number</u>	<u>Version</u>	<u>Course Title</u>
600-BNCOC	1	Basic Noncommissioned Officer Course

**Task(s) Taught(\*) or Supported**

<u>Task Number</u>	<u>Task Title</u>
181-301-0001	Identify the Legal Implications of the Homosexual Conduct Policy

**Reinforced Task(s)**

<u>Task Number</u>	<u>Task Title</u>
None	

**Academic Hours**

The academic hours required to teach this lesson are as follows:

	<u>Resident Hours/Methods</u>
	1 hr /Conference / Discussion
Test	0 hrs
Test Review	0 hrs
<b>Total Hours:</b>	<b>1 hr</b>

**Test Lesson Number**

	<u>Hours</u>	<u>Lesson No.</u>
Testing (to include test review)		N/A

**Prerequisite Lesson(s)**

<u>Lesson Number</u>	<u>Lesson Title</u>
L327	ENFORCE THE EQUAL OPPORTUNITY PROGRAM

**Clearance Access**

Security Level: Unclassified  
Requirements: There are no clearance or access requirements for the lesson.

**Foreign Disclosure Restrictions**

FD5. This product/publication has been reviewed by the product developers in coordination with the USASMA foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

**References**

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
AR 600-20	ARMY COMMAND POLICY	13 May 2002	

**Student Study Assignments**

Before class--

- Read Student Handouts 2, 3, and 4.

During class--

- Participate in classroom discussion.

After class--

- Turn in recoverable materials.

**Instructor Requirements**

1:16, BNCOC graduate, served as a squad leader, ITC, SGITC qualified

**Additional Support Personnel Requirements**

<u>Name</u>	<u>Stu Ratio</u>	<u>Qty</u>	<u>Man Hours</u>
None			

**Equipment Required for Instruction**

<u>Id Name</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt</u>	<u>Qty</u>	<u>Exp</u>
441-06 LCD PROJECTION SYSTEM	1:16	1:1	No	1	No
559359 SCREEN PROJECTION	1:16	1:1	No	1	No
673000T101700 PROJECTOR, OVERHEAD, 3M	1:16	1:1	No	1	No
702101T134520 DELL CPU, MONITOR, MOUSE, KEYBOARD	1:16	1:1	No	1	No
7110-00-T81-1805 DRY ERASE BOARD	1:16	1:1	No	1	No
7510-01-424-4867 EASEL, (STAND ALONE) WITH PAPER	1:16	1:1	No	1	No

\* Before Id indicates a TADSS

**Materials Required****Instructor Materials:**

- VGTs: 9.
- TSP.
- AR 600-20.

**Student Materials:**

- Pen or pencil and writing paper.
- Student Handouts 2 thru 5.

**Classroom, Training Area, and Range Requirements**

GEN INSTRUCT BLDG (CLASSROOM SIZE 40X40 PER 16 STU)

**Ammunition Requirements**

<u>Id</u>	<u>Name</u>	<u>Exp</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt Qty</u>
	None				

**Instructional  
Guidance**


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**NOTE:** Before presenting this lesson, instructors must thoroughly prepare by studying this lesson and identified reference material.

Before class--

- Issue TSP to student discussion leader three days before class.
- Read and study all TSP material and be ready to conduct the class.
- Conduct the class in accordance with this TSP.

During class--

- Facilitate the small group process.
- Ensure all the students participate during the discussion.

After class--

- Report lesson discrepancies to the senior instructor.
  - Collect all recoverable materials for this lesson.
- 

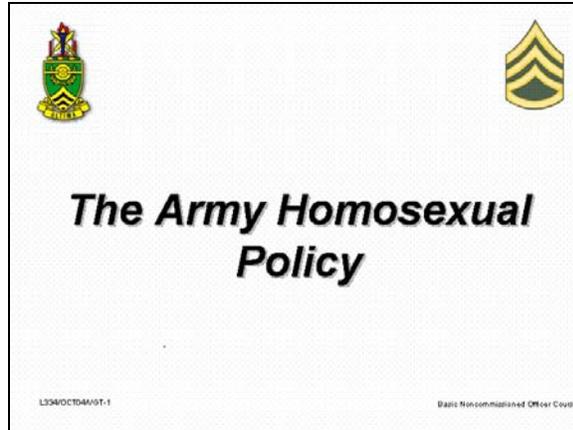
**Proponent  
Lesson Plan  
Approvals**

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
Colyer, Donald J.	GS09	Training Specialist	
King, Phillip W.	GS11	Course Manager, B/ANCOC	
Bennett-Green, Agnes D.	SGM	Chief, B/ANCOC	
Lemon, Marion	SGM	Chief, CDDD	

**SECTION II. INTRODUCTION**

Method of Instruction: Conference / Discussion  
Technique of Delivery: Small Group Instruction (SGI)  
Instructor to Student Ratio is: 1:16  
Time of Instruction: 5 mins  
Media: VGT-1

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**Motivator****SHOW VGT-1, TITLE SLIDE**

You must understand the Army's policy on homosexuals and realize the impact their conduct has on your unit's morale and discipline. In the Army, all soldiers will be treated with dignity and respect, no matter what their personal background is. As the first line supervisor for the soldiers in your squad, you have a duty to enforce and live by the values of the Army and safeguard all of your soldiers, no matter what their behaviors are.

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**Terminal Learning Objective**

**NOTE:** Inform the students of the following Terminal Learning Objective requirements.

At the completion of this lesson, you [the student] will:

<b>Action:</b>	Determine the Army's Policy on Homosexual Conduct.
<b>Conditions:</b>	As a small unit leader in a company or battalion level unit, given extracts from AR 600-20, HQDA message 101800ZJAN00, and student handouts.
<b>Standards:</b>	Determined the Army's Policy on Homosexual Conduct by-- <ul style="list-style-type: none"> <li>• Identifying the DOD and Army homosexual conduct policy,</li> <li>• Defining what constitutes homosexual conduct,</li> <li>• Identifying the rights of the soldier being harassed or threatened based on perceived sexual orientation,</li> <li>• Identifying the commander's responsibilities when conducting inquiries,</li> </ul> IAW AR 600-20.

**Safety Requirements**

None

**Risk Assessment Level**

Low

**Environmental Considerations**

**NOTE:** It is the responsibility of all soldiers and DA civilians to protect the environment from damage.

None

**Evaluation**

None

**Instructional  
Lead-In**

---

You learned during your Equal Opportunity class that people are different and that the Army, just like our society, has many diverse cultures and backgrounds. If questionable sexual behaviors of some soldiers are exposed, it has to be handled quickly, and as discretely as possible. During this class we will discuss the DOD and Army policies concerning homosexuality, understanding the rights of soldiers being harassed and/or threatened, and what the commander's responsibilities are when conducting inquiries.

**REMOVE VGT-1**

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**SECTION III. PRESENTATION**

## 1. Learning Step / Activity 1. Identify the DOD and Army homosexual policies

Method of Instruction: Conference / Discussion

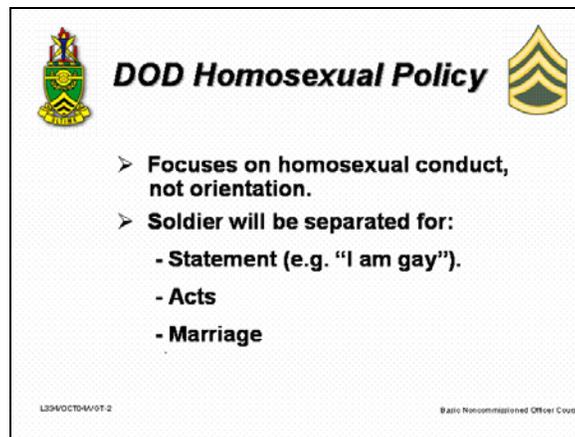
Technique of Delivery: Small Group Instruction (SGI)

Instructor to Student Ratio: 1:16

Time of Instruction: 10 mins

Media: VGT-2 and VGT-3

**NOTE:** Explain to the students that much of the material in this lesson contains passive voice and possibly other items that do not follow the Army Writing Style. The JAG School prohibits any rewriting due to legal jargon and possibly changing the intended meaning of the message.

**SHOW VGT-2, DOD HOMOSEXUAL POLICY**

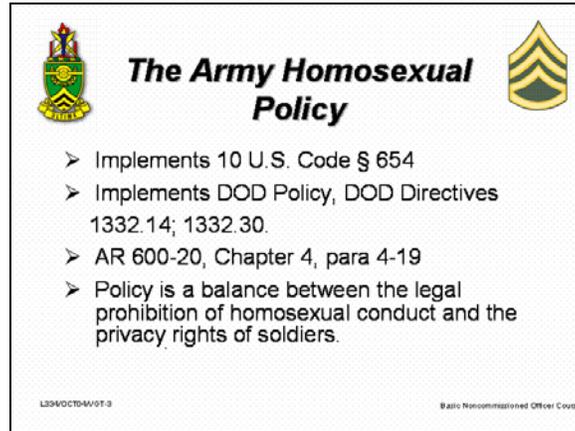
In the early 1990's, congress debated the issue of homosexuality in the military. Congress fully understood that life in the military is far different than that of mainstream America, and that homosexuality can greatly impact the morale, good order and discipline, and unit cohesion. After much debate, congress made some decisions concerning the sexual orientations of soldiers in the military, one of which is that soldiers will not be asked about their sexual orientation when entering any branch of the service. Based on what congress decided, the DOD further clarified what constituted homosexual conduct. The DOD policy focuses on the conduct of the soldier, through their statements, acts, and marriage, not their orientation.

**REMOVE VGT-2**

AR 600-20, Chapter 4, para 4-19, Army Command Policy, explains the Army's policy on homosexuality. The regulation defines in detail what constitutes homosexual behavior using the acronym "SAM" (statements, acts, and marriage).

The use of this acronym will greatly assist you in determining what is or isn't homosexual conduct. Use the Army's "Don't Ask, Don't Tell" Trifold (SH-4) as a future reference to assist you with possible homosexual conduct issues.

**SHOW VGT-3, THE ARMY HOMOSEXUAL POLICY**



QUESTION: What does the acronym SAM mean?

ANSWER: Statements, Acts, and Marriage.

Ref: SH-2, p 2-2, para 4-19a(3)(a)(b) and (c)

**REMOVE VGT-3**

2. Learning Step / Activity 2. Define what constitutes homosexual conduct

Method of Instruction: Conference / Discussion

Technique of Delivery: Small Group Instruction (SGI)

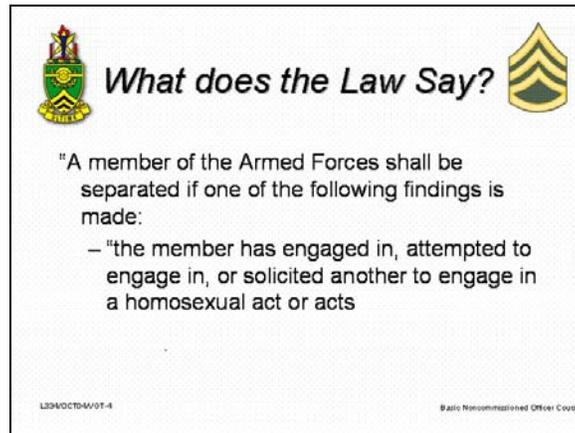
Instructor to Student Ratio: 1:16

Time of Instruction: 10 mins

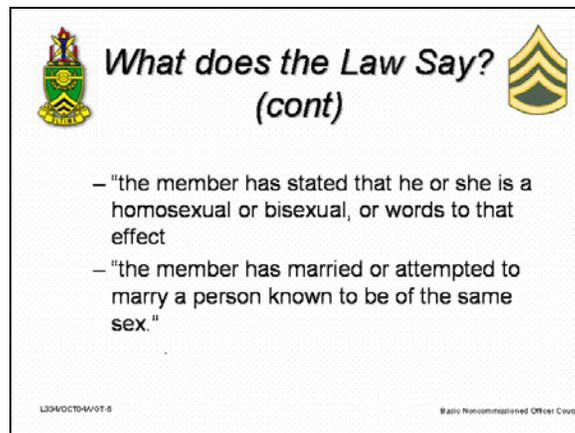
Media: VGT-4 and VGT-5

**NOTE:** Uncover the bullets on VGT-4 and VGT-5 one at a time.

**NOTE:** Briefly discuss each bullet on VGT-4 and VGT-5.

**SHOW VGT-4, WHAT DOES THE LAW SAY?**

Let's look at and discuss the acronym SAM. People who observe what a soldier says or does may construe those statements and actions to be indicators of homosexual behavior. For example, if you see two people of the same sex holding hands, slow dancing, or kissing, you could determine that the acts demonstrate homosexual or bisexual behaviors. Now keeping that in mind, just because you see two people of the same sex hugging, that doesn't necessarily mean they are engaging in homosexual acts.

**REMOVE VGT-4****SHOW VGT-5, WHAT DOES THE LAW SAY? (cont)**

Hearing such statements as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," or words to that effect could lead you to

reasonably believe that the person making those statements engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

Marriage or the attempted marriage to another person of the same sex clearly indicates the sexual orientation of both people.

**REMOVE VGT-5**

QUESTION: Can the Army separate a soldier from the Army for openly saying, "I am a homosexual"?

ANSWER: Yes.

Ref: SH-2, p 2-3, para 4-19c

QUESTION: Can you take a soldier to the commander for homosexual conduct because you saw him or her going into a gay establishment?

ANSWER: No

Ref: SH-2, p 2-3, para 4-19d(3)(d)

3. Learning Step / Activity 3. Identify the rights of the soldier being harassed or threatened based on perceived sexual orientation

Method of Instruction: Conference / Discussion  
 Technique of Delivery: Small Group Instruction (SGI)  
 Instructor to Student Ratio: 1:16  
 Time of Instruction: 10 mins  
 Media: VGT-6 thru VGT-8

All soldiers have the right to be protected if they are being harassed or threatened. If a soldier approaches you and says he/she is being harassed and/or threatened, it is your duty as an NCO to protect them by using the chain of command. Remember the Department of the Army's message (SH-3) on dignity and respect to all soldiers.

**SHOW VGT-6, WHAT IS HARASSMENT?**

**NOTE:** Briefly discuss the possible types of harassment.

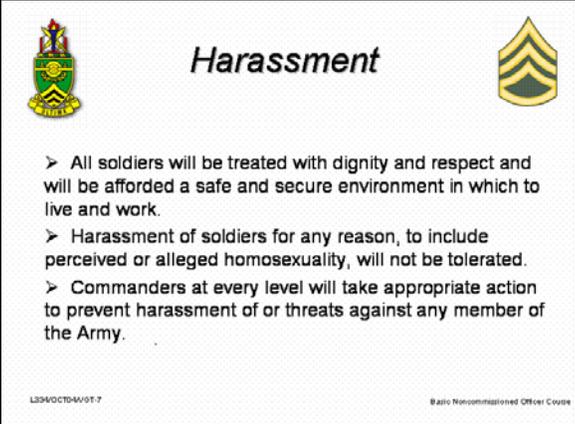


**What is Harassment?**

- **Definition:** Derogatory, abusive, threatening or annoying behavior directed toward an individual or group.
- **Possible types of harassment**
  - Verbal (on or off duty)
  - Jody calls regarding homosexuals
  - Derogatory, abusive, threatening or annoying language or references about homosexuals
  - Graffiti in latrines, bulletin boards, etc.
  - Anonymous threats; telephonic, electronic, etc.

L334/OCT04/VGT-6 Ratio Noncommissioned Officer Course

The Department of the Army's message on dignity and respect is for all soldiers. We all have the right to be protected from harassment or threats. As a NCO, it is your duty to protect any soldier that approaches you because they are being harassed and/or threatened.

**REMOVE VGT-6****SHOW VGT-7, HARASSMENT**


**Harassment**

- All soldiers will be treated with dignity and respect and will be afforded a safe and secure environment in which to live and work.
- Harassment of soldiers for any reason, to include perceived or alleged homosexuality, will not be tolerated.
- Commanders at every level will take appropriate action to prevent harassment of or threats against any member of the Army.

L334/OCT04/VGT-7 Ratio Noncommissioned Officer Course

**NOTE:** Briefly discuss each bullet on VGT-7.

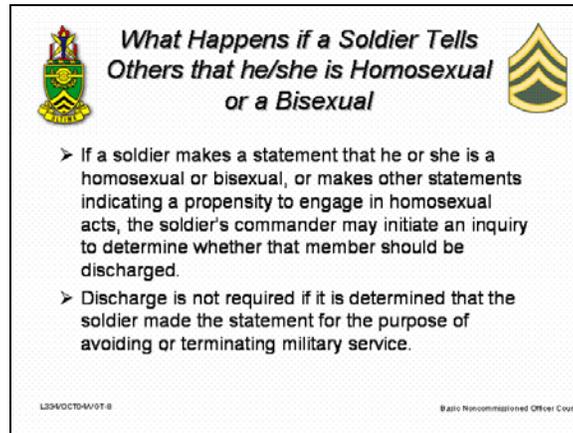
For some people, dealing with homosexuality can become a problem because of their personal values. As a NCO and a soldier in the Army, you have to keep your personal biases separate when dealing with this issue. Remember that perceptions

are not always reality, and giving a soldier a safe and secure environment, free from harassment is your responsibility.

Ref: HQDA message 101800ZJAN00, para 5

**REMOVE VGT-7**

**SHOW VGT-8, WHAT HAPPENS IF . . . ?**



You have a limited role if a soldier confides in you, or others, that he/she is homosexual or bisexual. You immediately need to ensure the soldier's protection and refer him/her to the commander. After doing this, keep the rumor mill about the soldier closed.

**REMOVE VGT-8**

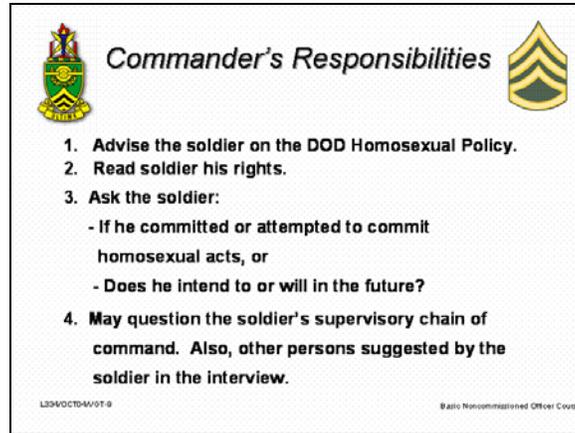
4. Learning Step / Activity 4. Identify the commander's responsibilities when conducting inquiries

Method of Instruction: Conference / Discussion  
 Technique of Delivery: Small Group Instruction (SGI)  
 Instructor to Student Ratio: 1:16  
 Time of Instruction: 10 mins  
 Media: VGT-9

The commander is the only one who can initiate an informal inquiry on the soldier. First, the commander has to determine if the evidence is or isn't credible information and if there is a basis for a discharge. Commanders have to consider the sensitivity of the situation and the circumstances surrounding the allegation. It requires a determination based on articulable facts, not just a belief or suspicion. Your commander has a duty to protect the soldier and determine if an inquiry is

needed. If the commander determines that he needs to conduct an inquiry, he or she will take the following steps:

### **SHOW VGT-9, COMMANDER'S RESPONSIBILITIES**



The commander will not investigate any soldier based solely on rumors. If there isn't credible evidence against a soldier(s), they will not be required to answer any questions concerning their sexual orientation. Remember Don't Ask, Don't Tell."

### **REMOVE VGT-9**

#### **CHECK ON LEARNING:**

QUESTION: In addition to the chain of command, who else can a soldier turn to address either harassment or threats because of perceived sexual orientation?

ANSWER: The chaplain, IG, or Army Community Service (ACS).

Ref: SH-4, p 4-3, center column

QUESTION: Who is the only person that can initiate a fact-finding inquiry into an allegation of homosexual conduct?

ANSWER: The Commander

Ref: SH-2, p 2-3, para 4-19d(1)(a)

QUESTION: Can the Army separate a soldier from the Army for stating he or she is gay or lesbian?

ANSWER: Yes.

Ref: SH-2, p 2-3, para 4-19c

**SECTION IV. SUMMARY**

Method of Instruction: <u>Conference / Discussion</u>
Technique of Delivery: <u>Small Group Instruction (SGI)</u>
Instructor to Student Ratio is: <u>1:16</u>
Time of Instruction: <u>5 mins</u>
Media: <u>None</u>

**Check on Learning**

None

**Review / Summarize Lesson**


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The Army relies on the good morals and values of its members to maintain good order and discipline within its units. You have many responsibilities to the soldiers you lead, and knowing how to handle homosexual conduct, if you confront it, is just one more way you will ensure the Army's values remain intact in your soldiers and your unit.

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**SECTION V. STUDENT EVALUATION**

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**Testing  
Requirements**

**NOTE:** Describe how the student must demonstrate accomplishment of the TLO. Refer student to the Student Evaluation Plan.

None

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**Feedback  
Requirements**

**NOTE:** Feedback is essential to effective learning. Schedule and provide feedback on the evaluation and any information to help answer students' questions about the test. Provide remedial training as needed.

None

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**Appendix A - Viewgraph Masters**

**VIEWGRAPHS FOR LESSON 1: L334 version 1**

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Terminal Learning Objective

VGT-1, Title Slide



***The Army Homosexual Policy***

L334/OCT04/VGT-1 Basic Noncommissioned Officer Course

## Learning Step 1

## VGT-2, DOD Homosexual Conduct Policy



## ***DOD Homosexual Policy***



- **Focuses on homosexual conduct, not orientation.**
- **Soldier will be separated for:**
  - **Statement (e.g. "I am gay").**
  - **Acts**
  - **Marriage**

## VGT-3, Army Homosexual Conduct Policy



## ***The Army Homosexual Policy***



- Implements 10 U.S. Code § 654
- Implements DOD Policy, DOD Directives 1332.14; 1332.30.
- AR 600-20, Chapter 4, para 4-19
- Policy is a balance between the legal prohibition of homosexual conduct and the privacy rights of soldiers.

## Learning Step 2

## VGT-4, What Does the Law Say?



## *What does the Law Say?*



“A member of the Armed Forces shall be separated if one of the following findings is made:

- “the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts

## VGT-5, What Does the Law Say? (cont)



## *What does the Law Say? (cont)*



- “the member has stated that he or she is a homosexual or bisexual, or words to that effect
- “the member has married or attempted to marry a person known to be of the same sex.”

## Learning Step 3

VGT-6, What is Harassment?



## *What is Harassment?*



- **Definition:** Derogatory, abusive, threatening or annoying behavior directed toward an individual or group.
- **Possible types of harassment**
  - **Verbal (on or off duty)**
  - **Jody calls regarding homosexuals**
  - **Derogatory, abusive, threatening or annoying language or references about homosexuals**
  - **Graffiti in latrines, bulletin boards, etc.**
  - **Anonymous threats; telephonic, electronic, etc.**

L334/OCT04/VGT-6

Basic Noncommissioned Officer Course

## VGT-7, Harassment



# *Harassment*



- All soldiers will be treated with dignity and respect and will be afforded a safe and secure environment in which to live and work.
- Harassment of soldiers for any reason, to include perceived or alleged homosexuality, will not be tolerated.
- Commanders at every level will take appropriate action to prevent harassment of or threats against any member of the Army.

VGT-8, What Happens if. . .



## *What Happens if a Soldier Tells Others that he/she is Homosexual or a Bisexual*



- If a soldier makes a statement that he or she is a homosexual or bisexual, or makes other statements indicating a propensity to engage in homosexual acts, the soldier's commander may initiate an inquiry to determine whether that member should be discharged.
- Discharge is not required if it is determined that the soldier made the statement for the purpose of avoiding or terminating military service.

L334/OCT04/VGT-8

Basic Noncommissioned Officer Course

## Learning Step 4

## VGT-9, Commander's Responsibilities



## *Commander's Responsibilities*



- 1. Advise the soldier on the DOD Homosexual Policy.**
- 2. Read soldier his rights.**
- 3. Ask the soldier:**
  - If he committed or attempted to commit homosexual acts, or**
  - Does he intend to or will in the future?**
- 4. May question the soldier's supervisory chain of command. Also, other persons suggested by the soldier in the interview.**

L334/OCT04/VGT-9

Basic Noncommissioned Officer Course

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**Appendix B - Test(s) and Test Solution(s) (N/A)**

**Appendix C - Practical Exercises and Solutions (N/A)**

## Appendix D

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**HANDOUTS FOR LESSON 1: L334 version 1**

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This appendix contains the items listed in this table--

<b>Title/Synopsis</b>	<b>Pages</b>
SH-1, Advance Sheet	SH-1-1
SH-2, Extract AR 600-20	SH-2-1 thru SH-2-5
SH-3, HQDA Message 101800ZJAN00	SH-3-1 thru SH-3-3
SH-4, The Army's Homosexual Conduct Policy (Trifold)	SH-4-1 thru SH-4-3
SH-5, Student Notes	SH-5-1 thru SH-5-4

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## Student Handout 1

### Advance Sheet for L334

**Lesson Hours** This is a one-hour lesson.

**Overview** This lesson provides an overview of what you need to know to identify and determine the Army homosexual policy.

**Learning Objectives** Terminal Learning Objective (TLO).

<b>Action:</b>	Determine the Army's Policy on Homosexual Conduct.
<b>Conditions:</b>	As a small unit leader in a company or battalion level unit, given extracts from AR 600-20, HQDA message, and student handouts.
<b>Standard:</b>	Determined the Army's Policy on Homosexual Conduct by-- <ul style="list-style-type: none"> <li>• Identifying the DoD and Army homosexual conduct policy,</li> <li>• Defining what constitutes homosexual conduct,</li> <li>• Identifying the rights of the soldier being harassed or threatened based on perceived sexual orientation,</li> <li>• Identifying the commander's responsibilities when conducting inquiries,</li> </ul> IAW AR 600-20.

Learning Steps/Activities (LS/As).

- LS/A 1** Identify the DoD and Army homosexual conduct policy.  
**LS/A 2** Define what constitutes homosexual conduct.  
**LS/A 3** Identify the rights of the soldier being harassed or threatened based on perceived sexual orientation.  
**LS/A 4** Identify the commander's responsibilities when conducting inquiries.

**Assignment** The student assignments for this lesson are:

- Read SH-2, Extract of AR 600-20 and SH-3, HQDA Message 101800ZJAN00.

**Additional Subject Area Resources** None

**Bring to Class** Student Handouts 1 thru 5.

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## Student Handout 2

### Extract from AR 600-20, Army Command Policy

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This student handout contains 4 pages of extracted material from the following publication:

AR 600-20, Army Command Policy, 13 Jun 02

<u>Description</u>	<u>Paragraph Number</u>
Chapter 4	4-19

Disclaimer: The developer downloaded this extract from the U.S. Army Publishing Agency Home Page. The text may contain passive voice, misspelling, grammatical errors, etc., and may not be in compliance with the Army Writing Style Program.

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### RECOVERABLE PUBLICATION

YOU RECEIVED THIS DOCUMENT IN A DAMAGE-FREE CONDITION. DAMAGE IN ANY WAY, TO INCLUDE HIGHLIGHTING, PENCIL MARKS, OR MISSING PAGES WILL SUBJECT YOU TO PECUNIARY LIABILITY (STATEMENT OF CHARGES, CASH COLLECTION, ETC.) TO RECOVER PRINTING COST.

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## 4-19. Homosexual conduct policy

The DCS, G-1 is responsible for the U.S. Army Homosexual Conduct Policy.

### a. *General.*

(1) This policy implements section 654 of Title 10, United States Code. Department of Defense has stated that the suitability of persons to serve in the Army is based on their conduct and their ability to meet required standards of duty performance and discipline.

(2) Definitions are as follows:

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

(b) *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 as further described in (3) below.

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

(3) *Homosexual conduct.* "Homosexual conduct" is a homosexual act, a statement by a soldier that demonstrates a propensity or intent to engage in homosexual acts, the solicitation of another to engage in homosexual act or 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, slow dancing, or kissing) that a reasonable person would understand to demonstrate a propensity or intent to engage in such bodily contact.

(b) A "statement by a person that he or she is a homosexual or bisexual or words to that effect" means language or behavior that a reasonable person would believe intends to convey the statement that a person engages in, attempts to engage in, has a propensity to engage in, or intends 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 person has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the person involved).

b. *Accession policy.* A person's sexual orientation is considered a personal and private matter and is not a bar to entry or continued service unless manifested by homosexual conduct in a manner described in a(3). Applicants for enlistment, appointment, or induction into the Army will not be asked or required to reveal whether they are heterosexual, homosexual or bisexual. Applicants also will not be required to reveal whether they have engaged in homosexual conduct unless independent evidence is received indicating that the 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 is grounds for barring entry into the army, except as

provided in AR 601-210. Applicants will be informed of the laws and regulations governing sexual conduct in the armed services, including homosexual conduct as defined in a(3). AR 601-210 and NGBR 600-200 governs the Army accession policy.

c. *Separation policy.* Homosexual conduct is grounds for separation from the army under the terms set forth in paragraph a(3). AR 635-100, AR 635-200, AR 135-175, and 135-178, govern Army separation policies.

d. *Guidelines for command-directed fact-finding inquiries into homosexual conduct.*

(1) *Responsibilities.*

(a) Only a soldier'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 a basis for discharge. Commanders are accountable for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

(b) 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.

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

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

(e) These guidelines do not apply to activities of CID and other DOD law enforcement organizations that are governed by AR 195-2.

(2) *Basis for conducting inquiries.*

(a) 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 circumstances, supports a reasonable belief that a soldier has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.

(b) A basis for discharge exists if-

(1) The soldier has engaged in a homosexual act.

(2) The soldier 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 soldier 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 that supports the suspicion.

(b) The only information is the opinion of others that a soldier is a homosexual.

(c) The inquiry would be based on rumor, suspicion, or capricious claims concerning a soldier's sexual orientation.

(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 the evidence of homosexual conduct.

- (4) Credible information exists, for example, when-
  - (a) A reliable person states that he or she observed or heard a soldier 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.
  - (b) A reliable person states that he or she heard, observed or discovered a soldier 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 the propensity or intent to engage in homosexual acts.
  - (c) A reliable person states that he or she observed behavior that amounts to a nonverbal statement by a soldier 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 soldier engages in, attempts to engage in, or has the propensity or intent to engage in homosexual acts.
- (5) *Procedures.*
  - (a) 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.
  - (b) 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.
  - (c) 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, (as described in a(3)) commanders or appointed inquiry officials may ask soldiers if they engaged in such conduct. The soldier should first be advised of the DOD policy on homosexual conduct (and rights under Article 31(b), UCMJ, if applicable). Should the soldier choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a soldier about any information provided by the soldier in the course of the fact-finding inquiry or any related proceedings. Nor does it provide the soldier with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the soldier in any proceeding.
  - (d) At any given point in the inquiry, the commander or appointed inquiry official must be able to clearly and specifically explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.
  - (e) A statement by a soldier that he or she is a homosexual or bisexual creates a rebuttable presumption that the soldier engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The soldier shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or has a propensity or intent to engage in homosexual acts.

(f) The soldier bears the burden of proving, by a preponderance of 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.

(6) *Legal effect.* The procedures set forth in this paragraph create no substantive or procedural rights.

e. *Investigation policy.* Investigations or inquiries will not be initiated solely to determine whether a member is a heterosexual, homosexual, or bisexual. There must be credible information that a basis for disciplinary action or discharge exists. The information that constitutes the basis of the investigation must be deemed credible by the criminal investigation organization commander as well as the soldier's commander in most cases. AR 195-2, Criminal Investigating Activities, provides guidance on the investigation of sexual misconduct.

f. *Security.* Individuals will not be asked or required to reveal on personnel security questionnaires whether they are heterosexual, homosexual, or bisexual. An individual's sexual conduct, whether homosexual or heterosexual, is a legitimate security concern only if it could make an individual vulnerable to exploitation or coercion, or indicate a lack of trustworthiness, reliability or good judgment that is required of anyone with access to classified information. AR 380-67 provides additional guidance.

g. *Training.*

(1) All officers and enlisted personnel of the Active Army and Reserve Components will receive briefings upon entry and periodically thereafter with a detailed explanation of regulations governing sexual conduct by members of the Armed Forces. Briefings will include policies on homosexual conduct and applicable laws in accordance with section 654 of Title 10, United States Code and Article 137, Uniform Code of Military Justice (UCMJ).

(2) The Army uses the DoD Homosexual Conduct Policy Training Plan as a guide in training 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.

### **Student Handout 3**

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This Student Handout contains 2 pages of the HQDA Message on Dignity and Respect for all soldiers.

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UNCLASSIFIED  
ROUTINE  
R 101700ZJAN 00  
FM HQDA WASHINGTON DC//DAPE-HR-L//  
TO ALARACT  
INFO HQDA WASHINGTON DC//DAPE-HR-L//

SUBJECT: HOMOSEXUAL CONDUCT POLICY

1. REFERENCE SECRETARY OF THE ARMY AND CHIEF OF STAFF, ARMY MESSAGE DATED 101800ZJAN00, SUBJECT: DIGNITY AND RESPECT FOR ALL.
2. THIS MESSAGE PROVIDES THE ARMY'S GUIDANCE ON THE IMPLEMENTATION OF THE AUGUST 12, 1999 OFFICE OF THE SECRETARY OF DEFENSE ADDITIONAL GUIDANCE ON THE HOMOSEXUAL CONDUCT POLICY IN THE ARMED FORCES.
3. THE SECRETARY AND THE CHIEF OF STAFF AFFIRM THAT TREATING SOLDIERS WITH DIGNITY AND RESPECT IS A BEDROCK VALUE FOR THE ARMY. WE DECLARE THAT THERE IS NO ROOM FOR HARASSMENT OR THREATS TO ANY SOLDIER IN OUR ARMY FOR ANY REASON. THEREFORE, AS THE SENIOR LEADERS OF THE ARMY WE ARE DETERMINED TO CONTINUE TO IMPLEMENT THE DOD HOMOSEXUAL CONDUCT POLICY WITH EQUITY AND FAIRNESS TO ALL OF OUR SOLDIERS.
4. THE ESSENTIAL ELEMENTS OF THE DEPARTMENT OF DEFENSE POLICY REGARDING HOMOSEXUAL CONDUCT ARE BASED ON TITLE 10, UNITED STATES CODE, AND ARE UNCHANGED. HOWEVER, IN ORDER TO PROTECT FULLY THE RIGHTS OF ALL PERSONNEL, THE FOLLOWING ADDITIONAL GUIDANCE IS PROVIDED.
  - 1A. ALL SOLDIERS WILL RECEIVE REFRESHER TRAINING ON HOMOSEXUAL CONDUCT POLICY WITHIN 90 DAYS OF THE DATE OF THIS MESSAGE. THE DEPUTY CHIEF OF STAFF FOR PERSONNEL WILL ESTABLISH A WORLD-WIDE-WEB PAGE WITH RESOURCE MATERIAL AND PUBLISH TRAINING MATERIALS TO BE USED IN THIS TRAINING. THESE TRAINING MATERIALS ARE AVAILABLE AT THAT WEBSITE: WWW.ODCSPER.ARMY.MIL.
  - 1B. TRADOC HAS BEEN DIRECTED TO INCORPORATE INSTITUTIONAL TRAINING ON HOMOSEXUAL CONDUCT POLICIES INTO ALL STAGES OF THE PROFESSIONAL MILITARY EDUCATION (PME) SYSTEM WITHIN 90 DAYS OF THE DATE OF THIS MESSAGE.
  - 1C. THE ARMY INSPECTOR GENERAL HAS BEEN CHARGED TO SPECIFICALLY INSPECT HOMOSEXUAL CONDUCT POLICY TRAINING THROUGHOUT THE ARMY AND THE RESERVE COMPONENTS BEGINNING FEBRUARY 11, 2000.
  - 1D. THE ARMY JUDGE ADVOCATE GENERAL HAS BEEN TASKED TO CREATE PROCEDURES FOR INSTALLATION-LEVEL STAFF JUDGE ADVOCATES TO USE WHEN CONSULTING WITH SENIOR LEGAL OFFICERS ON CASES INVOLVING HOMOSEXUAL CONDUCT.
  - 1E. VERBAL ADMISSION OF HOMOSEXUALITY MAY BE GROUNDS FOR DISCHARGE. COMMANDERS MUST, HOWEVER, DETERMINE WHETHER ADMISSIONS ARE CREDIBLE. IN MOST CASES OF HOMOSEXUAL ADMISSION, NO INVESTIGATION IS REQUIRED. HOWEVER, IN INSTANCES WHERE THE COMMANDER FEELS THAT THE ADMISSION MAY NOT BE CREDIBLE, AN INQUIRY MAY BE APPROPRIATE AND WILL BE CONDUCTED PURSUANT TO AR 600-20. THE INITIATION OF ANY SUBSTANTIAL INVESTIGATION INTO WHETHER AN ADMISSION OF HOMOSEXUALITY WAS MADE FOR THE PURPOSE OF SEEKING SEPARATION FROM THE ARMY AND/OR WHETHER RECOUPMENT OF FINANCIAL BENEFITS IS WARRANTED MUST BE APPROVED AT THE ARMY SECRETARIAT LEVEL. A "SUBSTANTIAL INVESTIGATION" IS DEFINED AS ONE THAT EXTENDS BEYOND QUESTIONING THE MEMBER, INDIVIDUALS SUGGESTED BY THE MEMBER FOR INTERVIEW, AND THE MEMBER'S IMMEDIATE SUPERVISORY CHAIN OF COMMAND. THE SECRETARY HAS DESIGNATED THE ASSISTANT SECRETARY OF THE ARMY FOR MANPOWER AND RESERVE AFFAIRS (ASA M&RA) AS THE

APPROVAL AUTHORITY FOR INITIATION OF SUBSTANTIAL INVESTIGATIONS. REQUESTS FOR APPROVAL WILL BE FORWARDED THROUGH COMMAND CHANNELS TO THE ASA (M&RA). NO FURTHER ACTION WILL BE TAKEN, INCLUDING PROCESSING THE SOLDIER FOR DISCHARGE, UNTIL EITHER PERMISSION FOR INITIATING THE INVESTIGATION IS DENIED OR PERMISSION IS GRANTED AND THE INVESTIGATION IS CONCLUDED. IF ALL APPLICABLE ARMY REGULATIONS WILL BE REVISED AS QUICKLY AS POSSIBLE TO REFLECT THIS GUIDANCE. THE DEPUTY CHIEFS OF STAFF FOR OPERATIONS AND PERSONNEL WILL WORK TO REVISE AR 350-1 AND MANDATE ANNUAL TRAINING ON THE HOMOSEXUAL CONDUCT POLICY.

5. FINALLY, IN OUR ARMY WE EXPECT THAT ALL SOLDIERS WILL BE TREATED WITH DIGNITY AND RESPECT AT ALL TIMES, AND WILL BE AFFORDED A SAFE AND SECURE ENVIRONMENT IN WHICH TO LIVE AND WORK. HARASSMENT OF SOLDIERS FOR ANY REASON, TO INCLUDE PERCEIVED SEXUAL ORIENTATION, WILL NOT BE TOLERATED. WE EXPECT COMMANDERS AT EVERY LEVEL TO TAKE APPROPRIATE ACTION TO PREVENT HARASSMENT OF OR THREATS AGAINST ANY MEMBER OF OUR ARMY. ONCE AGAIN WE ARE DETERMINED TO CONTINUE TO IMPLEMENT THE DOD HOMOSEXUAL CONDUCT POLICY WITH FAIRNESS TO ALL BECAUSE THAT IS THE RIGHT THING TO DO FOR OUR SOLDIERS.

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**Student Handout 4**

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This Student Handout contains 2 pages of the "Don't Ask, Don't Tell"; give this handout to the students to keep for future reference.

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## In The Army...

Treating soldiers with dignity and respect is a bedrock value for the Army. There is no room for harassment or threats in the military. The Army is determined to implement the "Don't Ask, Don't Tell" Policy with fairness to all concerned. This policy must be clearly understood and fairly enforced.

### What Did the Congress Say?

In 1993, Congress made a finding that engaging in, attempting to engage in, or soliciting another to engage in homosexual acts is grounds for discharge from the military. Congress said that military service by those who have demonstrated a propensity to engage in homosexual acts creates an unacceptable risk to morale, good order and discipline, and unit cohesion. Therefore, the long-standing element of military law that prohibits homosexual conduct continues to be necessary in the unique circumstances of military service.

It was the sense of Congress that applicants should not be asked about homosexuality as part of the processing of individuals entering into the Armed Forces in the absence of a determination by the Secretary of Defense that such questions are necessary. Applicants for military service are no longer asked about their sexual orientation.

Army policy is a balance of the legal prohibition of homosexual conduct with the privacy rights of Soldiers.

### What Does the Law Say?

United States Code Title 10 addresses homosexuality in the armed services. The code recognizes that one of the most critical elements in combat capability is unit cohesion. The code affirms

that the armed forces must maintain personnel policies that exclude persons who would create an unacceptable risk to unit cohesion. Title 10 recognizes that military life is fundamentally different from civilian life and concludes that the presence of individuals in the armed forces who engage in homosexual acts creates an unacceptable risk to unit cohesion and standards of morale, good order and discipline.

### What Does “Don’t Ask” mean?

According to Department of Defense and Army policy, a person’s sexual orientation is considered a personal and private matter that is not a bar to military service unless manifested by homosexual conduct. Upon entry into the Army, applicants may not be asked nor required to reveal their sexual orientation. Applicants will not be asked if they have engaged in homosexual conduct. While on Active Duty soldiers will not be asked about their sexual orientation unless there is credible evidence of homosexual conduct.

### What does “Don’t Tell” mean?

“Don’t Tell” is the opposite side of the coin from “Don’t Ask”. It means simply that soldiers should not disclose or discuss their sexual orientation or conduct. If a soldier admits publicly to being a homosexual, the commander will start an informal inquiry or investigation to determine if credible evidence exists to warrant separation.

### What Is Not Credible Evidence?

- Rumors that a soldier is homosexual
- Others opinions that a soldier is homosexual
- Going to a homosexual bar, reading homosexual publications, associating with known

homosexuals or marching in homosexual rights rally in civilian clothes

- Reporting threats or accusations of being homosexual

### What Is Credible Evidence?

- A statement by a reliable person that the soldier has engaged in a homosexual act, heard the soldier state that he or she was homosexual or that the soldier had married or attempted to marry a member of the same sex
- A statement by a reliable person that they had observed or discovered a soldier saying or putting in writing a statement acknowledging a homosexual act or the intent to engage in a homosexual act

### What Is Considered Grounds for Investigation?

Commanders can only begin an investigation or fact-finding inquiry if credible evidence of possible homosexual conduct exists. This means that before an investigation begins, a commander must have a reasonable belief that a soldier has:

- engaged in a homosexual act;
- stated that he or she is a homosexual or otherwise indicate a propensity to engage in homosexual conduct; or
- married or attempted to marry a person of the same sex

In most cases, when a soldier freely admits to being a homosexual, investigations are not needed in order for a separation to occur.

## How Do Investigations Proceed?

When the commander has credible evidence, he or she initiates an inquiry. Commanders are required to consult with legal advisors prior to initiating any investigation into alleged homosexual conduct.

## What Can I do If I Am Threatened or Harassed?

A soldier who feels harassed or threatened for any reason should report the harassment or threat at once to his or her commander.

Under DoD and Army Policy, the fact that a person 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 soldier.

It is Army policy that soldiers can report threats, harassment or violence to the command, free of harm or reprisal. Commanders will take appropriate action to protect the safety of soldiers who report threats or harassment. Appropriate action should include prompt investigation of the threat or harassment itself.

Threats or harassment based on a soldier's perceived or alleged homosexuality does not, by themselves, constitute credible information justifying an inquiry about possible homosexual conduct by the harassed soldier.

## Who Can I Talk With in Confidentiality?

A soldier can discuss any topic regarding sexual orientation with a Legal Assistance Attorney or Chaplain because they are generally not required to disclose the contents of a privileged communication or take any actions, of which the soldier does not approve.

## Summary of Current Army Policy.

On 26 July 1999, the Secretary of the Army signed Army Regulation 600-20, entitled Army Command Policy. Chapter 4-19 defines the Army's homosexual conduct policy. The policy implements section 654 of Title 10, United States Code and states that suitability to serve in the Army is based on conduct and the ability to meet required standards of duty performance and discipline. Homosexual conduct is defined as an act or a statement by a soldier that demonstrates a propensity or intent to engage in homosexual acts, the solicitation of another to engage in a homosexual act or acts, or a homosexual marriage or attempted marriage.

**The challenge to all soldiers is to comply with the law that prohibits homosexual conduct while at the same time respecting the privacy and dignity of every soldier.**

# "Don't Ask"

# "Don't Tell"

## Questions and Answers

The U.S. Army's  
Homosexual Conduct Policy



## Student Handout 5

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This Student Handout contains 3 pages of the slides, three on a page, for students to use as note taking material.

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