



DEPARTMENT OF DEFENSE

ISSUE: DEFINITION OF STATEMENT, ACT, AND MARRIAGE UNDER THE HOMOSEXUAL CONDUCT POLICY (HCP), COLLOQUIALLY KNOWN AS “DON’T ASK, DON’T TELL (DADT).

POLICY DESCRIPTION: Currently, a service member may be discharged for homosexual conduct (defined as a statement, act or marriage or attempted marriage) that occurred before he or she became a service member. While neither the statute nor the directives require that pre-service conduct be considered, they have been interpreted to encompass this earlier time frame.

The implementing regulations currently state: A member shall be discharged under this section if one or more of the following approved findings is made: “[t]he member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts [t]he member has made a statement that he or she is a homosexual or bisexual, or words to that effect [or] [t]he member has married or attempted to marry a person of the same sex.”

This language can be found in DoD Directive 1332.14 ¶ E3.A1.1.8.1.2, ¶ E3.A1.1.8.1.2.1, ¶ E3.A1.1.8.1.2.2, ¶ E3.A1.1.8.1.2.2, ¶ E3.A1.1.8.1.2.3, ¶ E3.A4.3.2.1, ¶ E3.A4.3.2.2, ¶ E3.A4.3.2.3 and analogous language can be found in DoD Directive 1332.40 ¶ E2.3.1, ¶ E2.3.1.1, ¶ E2.3.1.2, and ¶ E2.3.1.3 .

The current interpretation of the statute and above implementing directives mandates discharge for conduct that occurred outside of the military context. For example:

- SLDN has had clients whose parents have tried to out them. Even if “Sally” comes out to her dad in elementary school, her dad may out Sally 15 years later when she’s serving in the military. As the regulations are currently interpreted, the military would still consider Sally to have engaged in homosexual conduct that would be grounds for discharge under DADT.

RECOMMENDATION FOR CHANGE: To ensure that the implementing regulations and directives are clear about the temporal scope, the directives should be amended to state:



A member shall be discharged under this section if one or more of the following approved findings is made: [t]he member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts *after entering military service*. . . . [t]he member has made a statement that he or she is a homosexual or bisexual, or words to that effect *after entering military service*. . . . [or]] [t]he member has married or attempted to marry a person of the same sex *after entering military service* [emphasis added].

The change will narrow the circumstances under which a member may be discharged from service. In addition, limiting the basis for discharge to conduct that occurred during service is consistent with the military's policy to not inquire about homosexual conduct at the time of enlistment or induction. It is also consistent with the Department's original policy guidelines which stated a temporal limit: "*From the time a member joins the service until discharge* the servicemember's duty and commitment to the unit is a 24 hour a day, seven day a week obligation. Military members are required to comply with both the UCMJ, which is federal law, and military regulations" (Emphasis added)

PROCESS FOR CHANGE: DoD is responsible for the directives implementing the requirements of 10 U.S.C. § 654. The Secretary of Defense can either issue the necessary directives or delegate that authority to persons within the Department. The Secretary of each military department, Army, Navy, Marines, and Air Force, is required to ensure that the mandates are followed by his or her respective branch although commanding officers are primarily responsible for the implementation of the proscribed instructions.