

3.1.4.2. Results of mandatory urinalysis testing for controlled substances as part of:

3.1.4.2.1. A command-directed examination as defined in AFI 36-2701.

3.1.4.2.2. A specified member's referral for a medical purpose when the case involves a reasonable suspicion of drug abuse.

3.1.4.2.3. An examination of a specified member participating in a drug treatment and rehabilitation program.

3.1.4.3. Information provided by the officer in response to questions about intoxicated driving offenses if the officer's statements conform with the provisions on screening members as specified in AFI 36-2701.

3.1.4.4. The limitations in paragraphs 3.1.4.2.2., and 3.1.4.3. don't apply to:

3.1.4.4.1. Evidence introduced to impeach or rebut evidence introduced by the officer.

3.1.4.4.2. The results of urinalysis testing in circumstances other than that specifically excluded in the above paragraphs.

3.1.4.5. The SCA consults with the local SJA in deciding how to use urinalysis evidence. **NOTE:** If the SCA or BOI considered any of the above and recommended a discharge under honorable conditions (general) or a discharge UOTHC, the SCA or BOI will specify which evidence warranted the less than fully honorable discharge recommendation.

3.1.5. A discharge more severe than the one recommended by a BOI may not be approved.

3.2. Misconduct or Moral or Professional Dereliction. The procedures in this AFI are administrative. Commanders must not use them as a substitute for punitive or disciplinary action under the Uniform Code of Military Justice (UCMJ).

3.2.1. Wing or comparable commanders may take administrative action when evidence of misconduct and moral or professional dereliction raises doubts about an officer's suitability for continued service, regardless of whether the officer has already received judicial or nonjudicial punishment. Disciplinary action should normally be completed prior to initiation of administrative separation action but pending disciplinary action does not preclude initiation of administrative discharge action.

3.2.2. The SCA should not normally initiate action based solely on the same allegation(s) which resulted in an acquittal (or equivalent action) in a military or civilian court. However, a wing commander or other authority may initiate action based on substantive information not available or admitted at trial, or if the court action was terminated for reasons not related to the guilt or innocence of the officer.

3.3. Homosexual Conduct.

3.3.1. Congress has determined that the policy on homosexual conduct in the armed forces is based upon the following findings, which are codified at section 654 of Title 10, United States Code:

3.3.1.1. Section 8 of Article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation for the land and naval forces.

3.3.1.2. There is no constitutional right to serve in the armed forces.

3.3.1.3. Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

3.3.1.4. The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

3.3.1.5. The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

3.3.1.6. Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

3.3.1.7. One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

3.3.1.8. Military life is fundamentally different from civilian life in that (a) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and (b) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

3.3.1.9. The standards of conduct for members of the armed forces regulate a member's life 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

3.3.1.10. Those standards of conduct, including the Uniformed Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

3.3.1.11. The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

3.3.1.12. The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

3.3.1.13. The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service.

3.3.1.14. The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.1.15. The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

3.3.2. Homosexual conduct is grounds for separation from the military services under the terms set forth in paragraph 3.3.3. 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 unless manifested by homosexual conduct in the manner described in paragraph 3.3.3.

3.3.3. A member will be separated if one or more of the following approved findings is made:

3.3.3.1. 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 the member has demonstrated that all of the following are true:

3.3.3.1.1. Such acts are a departure from the member's usual and customary behavior.

3.3.3.1.2. Such acts under all the circumstances are unlikely to recur.

3.3.3.1.3. Such acts were not accomplished by use of force, coercion, or intimidation.

3.3.3.1.4. Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in proper discipline, good order, and morale.

3.3.3.1.5. The member does not have a propensity or intent to engage in homosexual acts.

3.3.3.2. 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, attempts to engage in, has a propensity to engage in, or intends 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:

3.3.3.2.1. Whether the member has engaged in homosexual acts.

3.3.3.2.2. The member's credibility.

3.3.3.2.3. Testimony from others about the member's past conduct, character, and credibility.

3.3.3.2.4. The nature and circumstances of the member's statement.

3.3.3.2.5. Any other evidence relevant to whether the member is likely to engage in homosexual acts. **NOTE:** This list is not exhaustive; any other relevant evidence may also be considered.

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

3.3.4. 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 paragraph [3.3.3.1.](#) or [3.3.3.2.](#)

3.3.5. Nothing in this AFI requires a member's discharge when a determination is made by the commander that:

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

3.3.5.2. Separation of the member would not be in the best interest of the Air Force.

3.3.6. Commanders must refer to the guidelines for fact-finding inquiries into homosexual conduct when determining whether to initiate an inquiry into the alleged homosexual conduct. See [Attachment 2](#) of this AFI.

3.3.7. If an officer being separated for homosexual conduct received education assistance, special pay, or bonus money, recoupment may be appropriate. See paragraph [4.33.](#) for rules regarding recoupment.

3.4. Fear of Flying. The Air Force considers professed fear of flying as professional dereliction. The unit commander initiates action on a rated officer suspended from aviation service under paragraph 3.7.1.3 of AFI 11-402, *Aviation and Parachutist Service, Aeronautical Ratings and Badges*, because of professed fear of flying, and who has been found physically qualified for flying duties. The unit commander includes a copy of the suspension from aviation service in the case file.

3.4.1. The BOI may retain a respondent who meets the criteria for discharge for fear of flying only if the respondent has nonflying skills critical to the needs of the Air Force.

3.5. Human Immunodeficiency Virus (HIV) Related Reason.

3.5.1. Officers may be discharged in accordance with paragraph [3.6.11.](#) when officers don't follow lawfully ordered preventive medicine procedures for individual patients to prevent transmission of HIV infection. However, an officer may not be discharged solely on serologic evidence of HIV infection.

3.5.2. A SCA may not initiate action by using any information that the officer discloses during or as a result of an acquired immune deficiency syndrome (AIDS) epidemiological assessment interview. **EXCEPTION:** The SCA may take action on evidence first introduced by the officer during proceedings on drug abuse or sexual misconduct or evidence derived independent of the epidemiological assessment interview.

3.6. When Action Is Proper. The SCA initiates action by citing one or more of these paragraphs:

3.6.1. Failure to meet financial obligations.

3.6.2. Intentional or discreditable mismanagement of personal affairs.

3.6.3. Drug abuse as defined in AFI 36-2701. See paragraph [3.1.4.](#)

Attachment 2

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A2.1. Responsibility.

A2.1.1. Only a commander in the member's chain of command 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.

A2.1.2. In every case, prior to initiating an inquiry, a commander must consult through the chain of command with a commander possessing general court-martial convening authority (GCMCA) and the servicing staff judge advocate of the initiating commander must consult with the servicing staff judge advocate of the GCMCA. A single base GCMCA, NAF or higher level GCMCA is not required to consult a higher headquarters prior to initiation of an inquiry, but may do so at his or her discretion.

A2.1.3. In addition to the requirement of [A2.1.2.](#), a commander desiring to initiate a substantial inquiry to determine whether or not a statement of homosexuality was made for the purpose of seeking separation from military service, as defined in [A2.2.6.](#), must submit a request for approval through the chain of command and the Vice Chief of Staff of the Air Force (AF/CV) to the Undersecretary of the Air Force (SAF/US). The request must explain why there is a clear interest in conducting the substantial inquiry, why it is expected that the expanded inquiry will result in additional relevant evidence and why the Air Force benefit in expanding the inquiry outweighs any foreseeable disadvantage of expanded inquiry. Any commander in the chain of command, AF/CV or SAF/US can disapprove the request and return it to the initiating commander. SAF/US approval of a request shall be communicated back through the chain of command to the initiating commander.

A2.1.4. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. Subject to the restrictions on substantial inquiries in homosexual statements cases, it may consist of an examination of the information reported or a more extensive investigation, as necessary.

A2.1.5. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquires shall be limited to the factual circumstances directly relevant to the specific allegations. A member who makes a voluntarily statement acknowledging his or her homosexuality may, but will not be required to, provide the names of other individuals to be interviewed relevant to his or her statement. The fact that an individual is identified to be interviewed, does not, standing alone, provide credible evidence sufficient to initiate an inquiry of that individual. Should the alleged homosexuality of members other than the subject arise in the course of the substantial inquiry, they will not be inquired into further without the approval of the appropriate command authority or, when required, the Under Secretary of the Air Force. See [A2.1.1.](#) and [A2.1.3.](#)

A2.1.6. If a commander has credible evidence of possible criminal conduct, he or she may follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretary of the Air Force.

A2.1.7. The guidelines in this attachment do not apply to activities of the Defense Criminal Investigative Organizations (DCIO) and other DoD law enforcement organizations, which are governed by DoD Instruction 5505.8.

A2.2. Definitions.

A2.2.1. 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.

A2.2.2. Commander. A commissioned officer who occupies a position of command.

A2.2.3. 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.

A2.2.4. 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.

A2.2.4.1. 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.

A2.2.4.2. A "statement that a member 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 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.

A2.2.4.3. 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.

A2.2.4.4. "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.

A2.2.5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

A2.2.6. Substantial Inquiry to Determine Whether a Statement was Made for the Purpose of Seeking Separation from Military Service. A substantial inquiry to determine whether a statement was made for the purpose of seeking separation from military service is an inquiry that extends beyond questioning the member who made the statement, and/or a third party who reports that a member made a statement, individuals suggested by the member for interview and the member's immediate supervisory chain of command.

A2.2.7. "Threats" and "harassment," as used in paragraphs [A2.3.3.4.](#) and [A2.4.3.](#), are not technical terms and are used in the commonly understood sense. "Harassment" includes the use of derogatory or demeaning words, gestures or actions in regard to the sexual orientation of another or others.

A2.3. Basis for Conducting Inquiries.

A2.3.1. 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 circumstances, 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.

A2.3.2. A Basis for Discharge Exists if:

A2.3.2.1. The member has engaged in a homosexual act.

A2.3.2.2. 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.

A2.3.2.3. The member has married or attempted to marry a person of the same sex.

A2.3.3. Credible information does not exist, for example, when:

A2.3.3.1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion.

A2.3.3.2. The only information is the opinions of others that a member is homosexual. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation.

A2.3.3.3. 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.

A2.3.3.4. A member reports being threatened or harassed because he or she is labeled or perceived to be a homosexual. Such information, standing alone, does not constitute credible information justifying the initiation of an inquiry into alleged homosexual conduct by the member reporting the threats or harassment.

A2.3.4. Credible information exists, for example, when:

A2.3.4.1. 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.

A2.3.4.2. 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, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.3.4.3. A reliable person states that he or she observed behavior that amounts to a nonverbal 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.

A2.4. Procedures.

A2.4.1. 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.

A2.4.2. Commanders must exercise sound discretion regarding when credible information exists. They must examine the information and decide whether an inquiry is warranted, whether an inquiry is necessary in light of the facts reported or whether no action should be taken.

A2.4.3. If a member reports threats or harassment based on being labeled or perceived to be a homosexual, the alleged threat or harassment must be addressed promptly by inquiry or investigation, as appropriate based on the surrounding facts. Assuring the physical safety of the complainant will be a primary consideration in any such case. A report of threats or harassment based on being labeled or perceived to be a homosexual does not constitute credible information justifying initiation of an inquiry or investigation of the complainant. Persons conducting an investigation or inquiry into the threats or harassment should not solicit allegations about the sexuality or possible homosexual conduct of the complainant. If information regarding alleged homosexual conduct by the complainant arises during an inquiry or investigation into threats or harassment, commanders must carefully consider the source of the information, and the circumstances under which it was provided, in assessing its credibility. The receipt of information alleging homosexual conduct on the part of the complainant does not negate the need to inquire into or investigate the facts and circumstances surrounding the original complaint of threats or harassment.

A2.4.4. Commanders or appointed inquiry officials must not ask, and members may 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 must first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). If the member chooses not to discuss the matter further, the commander may 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 such evidence, including a statement by the member in any proceeding.

A2.4.5. 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.

A2.4.6. 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 must be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or intends to engage in, homosexual acts.

A2.4.6.1. The Service member bears the burden of proving, throughout the proceedings, 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.

A2.5. Legal Effect. The procedures set forth in this attachment create no substantive or procedural rights, such as excluding evidence from an administrative proceedings or court-martial. Command authorities must take appropriate action against any military member or civilian employee who violates these procedures.