

5. Under these procedures the Coast Guard retains these rights:
 - a. It may retain a member for a limited period of time in the interests of national security as authorized by the Secretary.
 - b. It may separate a member in appropriate circumstances for any other reason set forth in ~~12~~ Chapter 12.
 - c. It may court-martial a member in appropriate cases.
 - d. It may require the member to surrender his or her uniform.

12.E.7. Command Inquiries

1. Commanding officers may initiate fact-finding inquiries into alleged homosexual conduct only after receiving credible information a basis for discharge exists.
 - a. Credible information is that which, considering its source and the surrounding circumstances, supports a reasonable belief there is a basis for discharge. It requires a determination based on facts which can be articulated, not just a belief or suspicion.
 - b. A commanding officer personally or a person he or she appoints may conduct a fact-finding inquiry.
2. Credible information about homosexual conduct does not exist if 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. Such activity, in and of itself, does not provide evidence of homosexual conduct. Credible information does exist, however, if a reliable person states he or she:
 - a. observed a service member engaging in homosexual acts **or heard a service member state that** he or she is a homosexual or bisexual or is married to a person of the same sex;
 - b. heard, observed, or discovered a service member made an oral or written statement a reasonable person would believe intends to convey the fact the service member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or
 - c. has observed behavior that amounts to a non-verbal statement by a service member he or she is a homosexual or bisexual; i.e., behavior a reasonable person would believe is intended to convey the statement the Service member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

3. Service members will not be asked about or required to reveal whether they are heterosexual, homosexual, or bisexual. However, on receiving credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in such conduct. These officers first should advise the Service member of the policy on homosexual conduct and of his or her rights under Article 31, UCMJ, if applicable. Should the Service member choose not to discuss the matter further, the commander should consider other available information.
4. Commanders should gather all credible information that directly relates to the grounds for possible separation and limit inquiries to the factual circumstances directly related to the specific allegations. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. However, Service members may be subject to disciplinary action or trial by courts-martial in appropriate circumstances.
5. This provision allows a commander to question a Service member about any information he or she provided in the course of the fact-finding inquiry or any related proceeding. It does not give the member any basis to challenge the validity of any proceeding or the use of any evidence, including his or her statement, in any proceeding.

12.E.8. Criminal Investigations

1. Criminal investigations **will not be** conducted solely to determine whether a Service member is heterosexual, homosexual, or bisexual. **However, in cases which involve a Service member's admissions or other violations of this policy in regards to homosexual or bisexual activity, the commander may request that the Coast Guard Investigative Service (CGIS) initiate an investigation to determine the validity of allegations of homosexual or bisexual misconduct for use in any subsequent administrative or criminal proceedings.**
2. **Sexual orientation does not bar investigations into alleged adult consensual sexual misconduct (e.g., fraternization or adultery) or violations of law, regardless of whether they involve the question of sexual orientation.**
3. **In the course of an investigation, only credible information regarding sexual orientation may be investigated, only as far as it pertains to the original investigation.**
4. These provisions do not provide a basis to challenge the validity of any administrative or criminal proceeding or exclude the use of any evidence in such proceeding.