

(PCF) per AR 600–62 and AR 630–10. The soldier’s MPRJ and DA Form 201 will be forwarded to the commander of the PCF.

### **Section III Acts or Patterns of Misconduct**

#### **14–12. Conditions which subject soldiers to discharge**

Soldiers are subject to separation per this section for the following:

*a. Minor disciplinary infractions.* A pattern of misconduct consisting solely of minor military disciplinary infractions. If separation of a soldier in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Status Performance and Conduct (chap 11).

*b. A pattern of misconduct.* A pattern of misconduct consisting of—

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

*c. Commission of a serious offense.* Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the MCM.

(1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See paragraph 1–45 for civil offenses under investigation by foreign authorities.)

(2) Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

*(a) First-time drug offenders.* Soldiers in the grade of sergeant and above, and all soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.

*(b) Second-time drug offenders.* All soldiers must be processed for separation after a second offense.

*(c) Medically-diagnosed drug dependent soldiers.* All soldiers will be processed for separation upon completion of actions required by AR 600–85.

#### **14–13. Procedures**

The administrative board procedures (chap 2, sec III) will be used; however, the use of the notification procedure (chap 2, sec II) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7 *c*.

#### **14–14. Separation authority**

Commanders specified in paragraph 1–21 are authorized to convene boards and order separation under this chapter.

#### **14–15. Commanding officer’s report**

When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, he or she will report the fact. It will be reported in letter form (fig 2–6) to the separation authority specified in paragraph 1–21 through the intermediate commander.

#### **14–16. Action by intermediate commanders**

Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs .

*a.* Disapprove the recommendation and direct reassignment of the soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer’s report will be sent to the new organization commander for information.

*b.* Approve the commanding officer’s recommendation and send the report to the separation authority. Recommendation will be made as to characterization of service (see para 2–2 or 2–4).

*c.* Recommend separation for unsatisfactory performance, if the reason for separation is determined to be a pattern of misconduct

and it is caused by the conditions in paragraph 13–2 *a*, and unsatisfactory performance was stated as a basis for separation in the initial letter of notification. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

#### **14–17. Action by the separation authority**

On receiving a recommendation for separation for misconduct, the separation authority may take one of the following actions:

*a.* Disapprove the recommendation and direct reassignment of the soldier to another organization. In case of reassignment, the commanding officer’s report will be forwarded to the new organization commander for information.

*b.* Disapprove the recommendation and return the case to the originator for disposition by other means. Include the reasons for considering separation for misconduct inappropriate, or in the alternative, take other appropriate action under this regulation.

*c.* Disapprove the recommendation relating to misconduct and take action himself or herself. The case can be referred to the appropriate separation authority (para 1–21 *c* or *d*) to determine whether the soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2 *a* and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate. Unless unsatisfactory performance was stated as a basis for separation in the initial letter of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

*d.* Convene a board of officers as prescribed in chapter 2, section III, to determine whether the soldier should be separated for misconduct.

*e.* When the board hearing has been properly and effectively waived, direct separation of the soldier for misconduct.

*f.* When the board hearing has been waived approve separation of the soldier for misconduct and suspend execution of the separation (para 1–20).

*g.* Direct that the case be processed through medical channels, if appropriate when the provisions of paragraph 1–35 have been complied with.

## **Chapter 15 Discharge for Homosexual Conduct**

### **Section I Policy**

#### **15–1. General Policy**

AR 600–20 contains general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and commander guidelines for fact-finding inquiries. AR 195–2 provides guidance on criminal investigation of sexual misconduct. AR 380–67 offers guidance on personal security and clearance matters related to homosexual conduct.

#### **15–2. Discharge Policy**

*a.* Homosexual conduct is grounds for separation from the Army under the criteria set forth in paragraph 15–3. This includes pre-service, prior service, or current service homosexual conduct. The term homosexual conduct includes homosexual acts, a statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the soldier’s sexual orientation, but because the statement indicates a likelihood that the soldier engages in or will engage in homosexual acts. A soldier’s sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as described in paragraph 15–3.

*b.* The foregoing does not preclude—

(1) Retention of the soldier in the Army when it is determined that the purpose of the soldier's homosexual conduct is to avoid or terminate military service.

(2) Trial by court-martial in appropriate cases. Conviction by a court-martial which did not impose a punitive discharge does not prevent initiation of administrative discharge proceedings under this chapter.

(3) Separation, in appropriate circumstances, for another reason specified in this regulation.

(4) When discharge under this chapter has been approved, retention of the soldier for a limited period of time in the interests of national security. In such cases the separation authority will submit a request for retention, with full particulars and rationale, to HQDA (TAPC-PDT-S), Alexandria, VA 22331-0479. Retention approved under this paragraph does not constitute suspension of separation as described in paragraph 1-20.

### 15-3. Criteria for discharge

Except as indicated, a soldier will be discharged if one or more of the following findings have been made and are approved by the separation authority:

*a.* The soldier has engaged in, attempted to engage in, or solicited another person to engage in a homosexual act or acts unless there are further approved findings that—

(1) Such acts are a departure from the soldier's usual and customary behavior.

(2) Such acts under all the circumstances are unlikely to recur.

(3) Such acts are not accomplished by the use of force, coercion, or intimidation.

(4) Under the particular circumstances of the case, the soldier's continued presence in the Army is consistent with the interest of the Army in maintaining proper discipline, good order, morale.

(5) The soldier does not have a propensity or intent to engage in homosexual acts, or intend to engage in homosexual acts. In determining whether retention is appropriate, separation boards/authorities must ensure that all of the foregoing limited conditions are met. Additionally a determination as to whether retention is warranted under the limited circumstances is required if the soldier clearly and specifically raises such limited circumstances. However, the soldier bears the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances.

*b.* The soldier 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 soldier 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 the soldier that he or she is a homosexual or bisexual, or words to that effect, 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 advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that demonstrates he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. The soldier bears the burden of rebutting the presumption. In determining whether a soldier has successfully rebutted the presumption, some or all of the following may be considered:

(1) Whether the soldier has engaged in homosexual acts.

(2) The soldier's credibility.

(3) Testimony from other about the soldier's past conduct, character and credibility.

(4) The nature and circumstances of the soldier's statement.

(5) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

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

### 15-4. Characterization of descriptive of service

*a.* When the sole basis for separation is homosexual conduct, a

discharge under other than honorable conditions may be issued only if such characterization is warranted in accordance with chapter 3, section III, and if there is a finding that during the current term of service the soldier attempted, solicited, or committed a homosexual act—

(1) By using force, coercion, or intimidation.

(2) With a person under 16 years of age.

(3) With a subordinate in circumstances that violate customary military superior-subordinate relationships.

(4) Openly in public view.

(5) For compensation.

(6) Aboard a military vessel or aircraft.

(7) In another location subject to military control under aggravating conditions noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

*b.* In all other cases, the type of discharge will reflect the character of the soldier's service (chap 3, sec III).

### 15-5. Separation authority

*a.* Commanders specified in paragraph 1-21 are authorized to order discharge for homosexual conduct.

*b.* HQDA approval is required before soldiers who have completed 18 or more years of active Federal service may be discharged. See paragraph 1-21f.

## Section II Procedures

### 15-6. Action by unit or immediate commander

*a.* If the unit/immediate commander, or another commander in the soldier's chain of command, receives credible information that there is a basis for discharge for homosexual conduct, the commander will cause a fact-finding inquiry to be conducted in accordance with AR 600-20.

*b.* If the unit/immediate commander determines, based on the fact-finding inquiry, that a basis for discharge exists, he/she will—

(1) Submit a report, in memorandum format (fig 2-6), through any intermediate commander(s) to the separation authority.

(2) Take action required by the administrative board procedure (chap 2, sec III). In the case of a soldier who has made a statement that he or she is a homosexual or bisexual, or words to that effect, the memorandum for notification of discharge (fig 2-4) will specifically advise the soldier of the rebuttable presumption provisions of paragraph 15-3b.

(3) Ensure that a medical examination and mental status evaluation are conducted as prescribed by paragraph 1-34.

### 15-7. Action by intermediate commanders

Intermediate commanders will take one of the following actions:

*a.* Disapprove the unit/immediate commander's recommendation when there is insufficient evidence that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred.

*b.* Approve the unit/immediate commander's recommendations and forward it to the separation authority, with a recommendation for characterization or description of service (para 2-4h(4)).

### 15-8. Action by separation authority

On receipt of a recommendation for discharge for homosexual conduct, the separation authority may take one of the following actions:

*a.* Disapprove the recommendation when there is insufficient evidence that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred.

*b.* Disapprove the recommendation for discharge for homosexual conduct, and take other appropriate action, under this regulation, to determine whether the soldier should be separated for another reason of which the soldier has been duly notified.

*c.* Convene an administrative separation board, as prescribed in chapter 2, section III, to determine whether the soldier should be discharged for homosexual conduct.

d. When the soldier has waived the right to a hearing by an administrative separation board—

(1) Direct retention of the soldier if the separation authority determines that there is insufficient evidence to support discharge for homosexual conduct, unless there is another basis for separation of which the soldier has been duly notified.

(2) Direct discharge of the soldier if the separation authority determines that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred, unless retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

e. Process the case through medical channels when the conditions of paragraph 1-35 have been met.

### 15-9. Administrative separation board

The board will follow the procedures outlined in chapter 2, section III, except as follows:

a. The board will make no inquiry nor finding concerning sexual orientation.

b. If the board finds that one or more of the circumstances authorizing discharge under paragraph 15-3 is supported by the evidence, *the board will recommend discharge* unless the board finds that retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

c. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing discharge (para 15-3) has occurred, the board will recommend retention unless the case involves another basis for separation of which the soldier has been duly notified.

### 15-10. Separation authority action after board hearings

The separation authority will follow the procedures specified in paragraph 2-6. Exceptions are shown below.

a. If the board recommends retention—

(1) Approve the finding and direct retention; or

(2) Forward the case to HQDA (TAPC-PDT-S), Alexandria, VA 22331-0479, when the board has recommended retention and the separation authority believes discharge is warranted and in the Army's best interest. HQDA may authorize separation per paragraph 5-3.

(3) Return the case to the board for compliance with this regulation if findings required by paragraph 15-3 have not been made.

b. If the board recommends discharge—

(1) Approve the finding and direct discharge; or

(2) Disapprove the finding on the basis that there is insufficient evidence to support the finding; or retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

Page 60. Paragraph 16-2b. Immediately after "baccalaureate degree." insert "Soldiers will not be separated under the provisions of this chapter to earn a subsequent baccalaureate or advance degree."

Page 60. Add paragraph 16-2b(1)(g) as follows:

(g) Unless a 4- or 3-year scholarship winner, have satisfactorily completed or received credit for at least 2 years of college work.'

### 15-11. Assignment action for personnel enroute to an overseas area

a. When action prescribed in this chapter has been initiated against a soldier assigned to an overseas replacement station, he or she will be transferred to the Army garrison at that or another installation to await final action on the case.

b. If the discharge authority disapproves the recommendation for separation, the soldier will again be assigned to the overseas replacement station for compliance with his or her original order.

## Chapter 16 Selected Changes in Service Obligations

### 16-1. Order to active duty as a commissioned or warrant officer or in a USAR enlisted status

a. Soldiers may be discharged for the purpose of—

(1) Being ordered to active duty as a commissioned or warrant officer in any branch of the Armed Forces.

(2) Being ordered to an Active Guard/Reserve (AGR) tour with the Army as a USAR commissioned or warrant officer. The soldier must agree to serve at least 1 year in AGR status to be eligible for separation under this paragraph.

(3) Being ordered to an AGR tour in a USAR enlisted status to meet special HQDA requirements as prescribed by AR 135-18, paragraph 6-3.

b. Before such discharge, the separation authority (para 1-21) must have documentary evidence from the proper authority. The evidence must prove that soldier *will* be ordered to AD if discharged from his or her enlisted status. Discharge will be effective the day preceding the date of entry on duty as a commissioned or warrant officer or in a USAR enlisted status.

c. The service of a soldier discharged per this paragraph will be characterized as honorable unless an entry level separation is required under chapter 3, section III.

### 16-2. Discharge for acceptance into a program leading to a commission or warrant officer appointment

a. Soldiers may be discharged for the purpose of acceptance into a program leading to a commission or warrant officer appointment in any branch of the Armed Forces. This includes Reserve Officer Training Corps (ROTC), Officer Candidate School (OCS), and other officer accession programs of the USN, USAF, and so forth that require enlistment in those branches of the Armed Forces. Discharge may be approved upon presentation of documentary evidence from the proper authority showing that the soldier has been accepted for an officer commissioning or appointment program, subject to discharge from his or her Army enlisted status. In addition, the soldier must meet the service requirements prescribed in b(1) (a), below. Discharge is contingent upon enlistment in the appropriate branch of the Armed Forces and entry into an officer accession program. Soldiers accepted for admission to any Service Academy or Academy Preparatory School are not eligible for discharge under this paragraph. (See AR 612-205.)

b. Soldiers may be discharged for the purpose of entry into Army Senior ROTC as a scholarship cadet or nonscholarship advanced course cadet, with a course of study leading to a baccalaureate degree.

(1) To qualify for discharge under this section, soldiers must—

(a) Have completed at least 2 years of AD for soldiers on their initial enlistment, as well as 3 months of AD for every 1 month of specialized training received (for example, MOS or language), as of the date of discharge. Soldiers on their second and subsequent enlistments must have completed 3 months of AD for every 1 month of the most recent specialized training received. Waiver of the service obligation for training may be granted by HQDA (TAPC-EPT), ALEX VA 22331-0457, on a case-by-case basis.

(b) Not be under suspension of favorable personnel actions per AR 600-8-2.

(c) Meet ROTC procurement medical fitness standards (AR 40-29 and AR 40-501), specified academic and administrative criteria (AR 145-1), and any other prerequisites for ROTC enrollment prescribed by AR 145-1 or established by the U.S. Army ROTC Cadet Command.

(d) Provide a statement from an admissions official of the school they desire to attend, indicating acceptance for enrollment and specifying the registration date for the pertinent school term.

(e) Provide a statement from the Professor of Military Science (PMS) at the school they desire to attend, indicating acceptance for ROTC participation. The PMS statement will also verify that the soldier is qualified for the ROTC program, and that academic and administrative waivers, if any, have been granted.