



## NATIONAL GUARD BUREAU

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ARNG-HRH

DEC 13 2010

MEMORANDUM FOR The Adjutants General of all States, Puerto Rico, the US Virgin Islands, Guam, and the Commanding General of the District of Columbia

SUBJECT: Don't Ask, Don't Tell Guidance (ARNG-HRH Policy Memorandum #10-070)

1. References.

a. Memorandum, Department of Defense, OSD, 21 Oct 10, subject: Title 10, USC, § 654.

b. Memorandum, Department of Defense, USD (P&R), 21 Oct 10, subject: Don't Ask, Don't Tell Legal Developments.

c. Army Regulation (AR) 600-200, Active Duty Enlisted Administrative Separations (Rapid Action Revision), 27 Apr 10.

d. Army Regulation (AR) 600-8-24, Officer Transfers and Discharges (Rapid Action Revision), 27 Apr 10.

2. On 1 November 2010, the United States Court of Appeals for the 9th Circuit issued a ruling that effectively continues "Don't Ask Don't Tell Act" (DADT), 10 USC § 654, as Department of Defense Policy for the foreseeable future. The decision stayed an earlier district court ruling which had imposed an injunction against the Department of Defense (DoD) from enforcing DADT. As a result of the stay, DADT remains in effect.

3. Under DADT, it is the policy of the DoD not to ask Service members or applicants about their sexual orientation. All personnel involved in the recruitment and accessions process will adhere to this policy.

4. Pursuant to AR 600-200 and AR 600-8-24, only an officer in the grade of O-7 or above may initiate an investigation or separation for an alleged violation of the DADT statute. Accordingly all allegations of violations of the statute or implementing regulations will be forwarded to the first general officer in the chain of command. The first general officer in the chain of command may, within his discretion, initiate a fact finding inquiry in accordance with the above regulations.

5. Additionally, due to the current uncertainty resulting from the legal process, the Secretary of Defense has directed that, effective immediately and until future notice, no military member shall be separated pursuant to 10 USC § 654 without the personal

ARNG-HRH

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approval of the Secretary of the military department concerned, and only in coordination with the Under Secretary of Defense for Personnel and Readiness and the General Counsel of the Department of Defense, and that this authority may not be delegated.

6. We note again for Service members, that altering their personal conduct during this period, in reaction to the ongoing debate over the Don't Ask, Don't Tell Policy, may have adverse consequences for themselves or others depending upon the state of the law. It is also emphasized that it remains the policy of the Department of Defense not to ask Service members or applicants about their sexual orientation, to treat all members with dignity and respect, and to ensure maintenance of good order and discipline.

7. This guidance is current as date of publication, however, the law and policy is under intense scrutiny and is subject to further revision.

8. Point of contact is COL Dennis Chapman, Chief, Personnel Policy Division at DSN 327-5904, 703-607-5904 or [dennis.chapman@us.army.mil](mailto:dennis.chapman@us.army.mil).

FOR THE CHIEF, NATIONAL GUARD BUREAU:

Encls

  
MARIANNE E. WATSON  
COL, GS  
G1, Army National Guard



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

OCT 21 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
UNDER SECRETARY OF DEFENSE FOR PERSONNEL  
AND READINESS  
GENERAL COUNSEL OF THE DEPARTMENT OF  
DEFENSE

SUBJECT: Title 10, U.S.C., § 654

In light of the legal uncertainty that currently exists surrounding the Don't Ask, Don't Tell law and policy, including last week's injunction issued by the District Court in *Log Cabin Republicans v. United States*, Case No. CV 04-84425-VAP (C.D. Cal.), and the temporary stay of that injunction issued yesterday by the Court of Appeals, and in order to further ensure uniformity and care in the enforcement of the Don't Ask, Don't Tell law and policy during this period, effective immediately and until further notice, no military member shall be separated pursuant to 10 U.S.C. § 654 without the personal approval of the Secretary of the Military Department concerned, in coordination with the Under Secretary of Defense for Personnel and Readiness and the General Counsel of the Department of Defense. These functions may not be delegated.

A handwritten signature in black ink, which appears to be "Robert M. Gates", is positioned to the right of the main text.

cc:  
Chairman of the Joint Chiefs of Staff  
Assistant Secretary of Defense for Public Affairs





PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-4000

OCT 21 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Don't Ask, Don't Tell Legal Developments

Last week I wrote to inform you of the injunction issued by a federal district court in California ordering the Department of Defense to cease enforcement of the "Don't Ask, Don't Tell" law. I noted then that the Department of Justice had filed an appeal and sought a stay of the injunction while the appeal is pending.

Last night the appellate court issued a temporary stay of the injunction, for at least the next four days, while it considers whether to grant a stay of the injunction for the entire time the case is on appeal before that court. This means that, during this period, the injunction is suspended and the Don't Ask, Don't Tell law and policy is back in force and in effect. Within days the court will decide whether to extend the stay for a longer period of weeks or months, or discontinue it. No doubt, I will have additional guidance for you at some point soon.

This latest twist highlights the legally uncertain period in which we now find ourselves with respect to Don't Ask, Don't Tell, and the need to further ensure uniformity and care in the enforcement of this law. Accordingly, the Secretary of Defense is directing that, effective immediately and until future notice, no military member shall be separated pursuant to title 10, U.S.C., § 654, without the personal approval of the secretary of the military department concerned, and only in coordination with me and the General Counsel of the Department of Defense, and that this authority may not be delegated. A copy of the Secretary of Defense's directive is attached.

We note again for Servicemembers, that altering their personal conduct during this period, in reaction to last week's injunction, may have adverse consequences for themselves or others depending upon the state of the law. I also emphasize again, that it remains the policy of the Department of Defense not to ask Servicemembers or applicants about their sexual orientation, to treat all members with dignity and respect, and to ensure maintenance of good order and discipline.

Clifford L. Stanley

Attachment:  
As stated

cc:  
Chairman of the Joint Chiefs of Staff  
General Counsel of the Department of Defense

