

MPs Prepare for the End of "Don't Ask, Don't Tell"

A military policeman spots two male soldiers in uniform openly kissing and hugging at the post exchange before a woman steps in and slaps one of their faces.

What does he do?

Welcome to the brave, new post-"don't ask, don't tell" Army in which law enforcement agents are receiving training to tackle such thorny scenes.

Training that kicked off across the services in mid-February is expected to wrap up in mid-July for active-duty troops and mid-August for the Guard and Reserve.

Army Times obtained the Army law enforcement "Tier 1" briefing slides, which tackle same-sex adultery and fraternization, hate crimes against gays and what to do about same-sex public displays of affection.

The slides must be "read and understood by every member of the Military Police Corps," Brig. Gen. Colleen L. McGuire, the Army provost marshal general, said in an internal memo addressed to corps leaders.

"While repeal does not change the policies governing personal and professional conduct in any way, how law enforcement professionals and judge advocates apply policies pertaining to conduct is key," the training script says.

"Bottom line, law enforcement personnel should apply all statutes and policies regulating personal and professional conduct without regard to sexual orientation."

So far, advocates have given the training passing marks. Aaron Belkin, of the Palm Center, a think tank on gays in the military, said the services have correctly provided simple guidance that relies on soldiers' professionalism, maturity and common sense without micromanaging.

"This is not rocket science," Belkin said.

However, Attorney Greg T. Rinckey predicts a wave of legal battles to carve out the rights of homosexual service members and address policy breaches. Law enforcement, he said, is "where the rubber meets the road."

"How does an MP handle homosexual PDA?" Rinckey said. "This is going to be hard for Cpl. Snuffy in his patrol car to get right away because it's a cultural change."

The training poses several tricky scenarios that combine questions of federal law and the Uniform Code of Military Justice.

As for public displays of affection, they are not banned by Army standards, but they are discouraged. Exceptions apply, such as when a soldier kisses his or her spouse at a promotion ceremony.

"Simply put, if a leader would not correct a male Soldier for kissing his girlfriend at the PX, then that same leader should not correct a male Soldier for kissing his boyfriend at the PX," the briefing notes.

The woman who slapped one of them appears to be most firmly in the wrong, and she must be apprehended and questioned.

The repeal of "don't ask, don't tell" is limited by the federal Defense of Marriage Act. Under DOMA, the federal government defines "marriage" as a legal union between a man and a woman, and "spouse" only as a member of the opposite sex.

That means a service member's same-sex partner cannot be considered a dependent, and soldiers cannot receive benefits for them. The child of such a couple can be considered a dependent, however.

In one training scenario, an audit detects possible fraud when a male staff sergeant, married to a man, is collecting a Basic Allowance for Housing at the married rate.

The briefing cautions investigators to be careful to establish the soldier's intent and notes he could be claiming the BAH for a child, if he has one.

Whether a same-sex partner is authorized to live at a soldier's on-post residence would have to be determined by the garrison commander. However, the commander must not factor sexual orientation into the decision.

Rinkey predicted these kind of command-level decisions will be ripe for lawsuits from civil liberties groups.

"It's a big issue," Rinkey said. "'I'm married, but I can't get on-post housing or a military ID card?' There will be litigation on it for sure because you're creating a second class of citizen within the military."

What happens when a homosexual soldier is the victim of a violent bias attack? In one training scenario, a badly hurt male soldier reports he was beaten in his barracks by three soldiers who, when questioned, say "they will not serve with a queer."

The briefing notes that an attack based on sexual orientation is considered by regulations to be a hate crime.

What about soldiers who commit same-sex fraternization or adultery?

Fraternization regulations ban intimate relationships between officers and enlisted troops, regardless of sexual orientation, but adultery is not so simple. The UCMJ adultery statute, as written, makes specific reference to male and female anatomy, which means same-sex adultery is exempt.

Citing a recent Supreme Court decision that protects private, consensual sexual activity, the briefing advises against filing criminal charges for sodomy.

However, commanders can rely on the statutes that address conduct unbecoming an officer and behavior that is service discrediting and prejudicial to good order and discipline.

Rinkey said the ability to grapple with such questions "will not be as seamless as a lot of people say it's going to be."

He likened it to another, far more superficial change that took a long time for soldiers to adjust to. "It's like the beret," he said.