

Superseded by AR 635-100
Changes in force: C 2 and C 3

& Ch 4, Jan 70, AR 635-100

AR 635-89
C 3

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HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 15 May 1969

CHANGE }
No. 3 }

PERSONNEL SEPARATIONS

HOMOSEXUALITY

Effective 1 July 1969

This change revises paragraph 17, which relieves commanders exercising general court-martial jurisdiction of the requirement to administer actions relating to undesirable discharges for personnel in subordinate commands that are commanded by a general officer with a judge advocate on his staff.

AR 635-89, 15 July 1966, is changed as follows:

Page 7, paragraph 17a. The first sentence is superseded as follows:

17. Action by officer exercising general court-martial jurisdiction (Class II cases). a. When the investigation indicates that an enlisted person's case is Class II, the officer exercising general court-martial jurisdiction may take one of the actions in (1) through (7) below. (This authority may be delegated to a general in command who has a judge advocate on his staff for cases arising in that command. Every action taken pursuant to such a delegation will state the authority therefor. All references to officers and commanders exercising general court-martial jurisdiction in this section include this delegation authority.)

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) to The Adjutant General, ATTN: AGPO-P, Department of the Army, Washington, D.C. 20315.

By Order of the Secretary of the Army:

W. C. WESTMORELAND,
General, United States Army,
Chief of Staff.

Official:

KENNETH G. WICKHAM,
Major General, United States Army,
The Adjutant General.

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Change in force: C 2

AR 635-89

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CHANGE }
No. 2 }

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HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 4 April 1969

PERSONNEL SEPARATIONS
HOMOSEXUALITY

Effective 1 June 1969

This change adds paragraph 7.1 which furnishes guidance as to the assignment of personnel who are considered for separation under the provisions of this regulation while assigned to an oversea replacement station.

AR 635-89, 15 July 1966, is changed as follows:

Page 2. Paragraph 2b(1). (As superseded by C 1, 1 Oct 68.)

(1) Individuals who have apparently been involved in a single homosexual episode, stemming solely from immaturity, curiosity, or intoxication. This provision does not preclude consideration of the conduct involved, together with other matters, if disciplinary action or administrative elimination under other regulations is deemed appropriate.

Page 4. Paragraph 7.1 is added as follows:

7.1 Assignment action for personnel en route to an oversea area. *a.* When action has been initiated under the provisions of this regulation against an individual while assigned to an oversea replacement station, he will be transferred to the Army garrison at that or another appropriate installation to await final action on his case.

b. If the convening authority disapproves the recommendation for separation, the individual will again be assigned to the oversea replacement station for compliance with his original orders.

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) to The Adjutant General, ATTN: AGPO, Department of the Army, Washington, D.C. 20315.

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Chief of Staff.

Official:

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Major General, United States Army,
The Adjutant General.

Distribution:

Active Army, ARNG, and USAR: To be distributed in accordance with DA Form 12-9 requirements for AR, Personnel Separations—A (quantity block No. 542).

*This change supersedes C 1, 1 October 1968.

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SUPERSEDED

AR 635-89
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CHANGE }
No. 1 }

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 1 October 1968

PERSONNEL SEPARATIONS
HOMOSEXUALITY

AR 635-89, 15 July 1966, is changed as follows:

Page 2. Paragraph 2b (1) is superseded as follows:

(1) Individuals who have apparently been involved in a single homosexual episode, stemming solely from immaturity, curiosity, or intoxication. This provision does not preclude consideration of the conduct involved, together with other matters, if disciplinary action or administrative elimination under other regulations is deemed appropriate.

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements to The Adjutant General, ATTN: AGPO-P, Department of the Army, Washington, D.C. 20315.

By Order of the Secretary of the Army:

W. C. WESTMORELAND,
General, United States Army,
Chief of Staff.

Official:

KENNETH G. WICKHAM,
Major General, United States Army,
The Adjutant General.

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*This change supersedes DA message 877643, 26 August 1968.

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 *AR 635-89

ARMY REGULATION }
 No. 635-89

HEADQUARTERS
 DEPARTMENT OF THE ARMY
 WASHINGTON, D.C., 15 July 1966

PERSONNEL SEPARATIONS
HOMOSEXUALITY

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Section I. GENERAL

1. Purpose. This regulation prescribes the authority, criteria, and procedures for the disposition of military personnel who are homosexuals and military personnel who engage in homosexual acts, or are alleged to have engaged in such acts. This regulation is applicable only to military personnel on active duty.

2. Policy. a. Personnel who voluntarily engage in homosexual acts, irrespective of sex, will not be permitted to serve in the Army in any capacity, and their prompt separation is mandatory. Homosexuality is a manifestation of a severe personality defect which appreciably limits the ability of such individuals to function effectively in a

*This regulation supersedes AR 635-89, 8 September 1958, including C 1, 8 April 1959, and C 2, 22 January 1960; and DA message 702547, 4 February 1965.

military environment. Members who engage in homosexual acts, even though they are not homosexuals within the meaning of this regulation, are considered to be unfit for military service because their presence impairs the morale and discipline of the Army.

b. The following classes of persons who engage in homosexual acts will not be processed under this regulation.

- see CI*
- (1) Individuals who have been involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication. This provision does not preclude consideration of the conduct involved, together with other matters, if disciplinary action or administrative elimination under other regulations is deemed appropriate.
 - (2) Individuals who engage in homosexual acts because of a mental illness which is deemed to incapacitate them for further service, upon a determination that their case should not be processed as Class I. Such individuals will be processed for separation from the service by reason of their primary medical condition, pursuant to AR 635-40A and AR 635-40B.
 - (3) Individuals who engage in homosexual acts which fall within the scope of Class II and Class III and are determined by a medical evaluation to have a physical or mental condition which incapacitates them for further service but which is unrelated to their homosexual acts, upon a determination by the officer exercising general court-martial jurisdiction over the individual that disposition through medical channels rather than under this regulation is warranted.

c. As an alternative to action pursuant to this regulation, individuals who engage in homosexual acts may be brought to trial by court-martial. The disposition of any charges preferred is within the discretion of the appropriate commander. In determining his course of action, he will carefully consider all pertinent factors, including the nature of the acts charged, the surrounding facts, the character of the accused, and any applicable medical condition. Commanders will not take action under this regulation in lieu of disciplinary action solely to spare an individual who may have com-

mitted a serious homosexual act (such as a Class I case) the harsher penalties which may be imposed under the Uniform Code of Military Justice.

d. In determining the characterization of service to be furnished a member whose separation is provided for in this regulation, due regard will be given to the member's current record of service and the particular circumstances which require his separation. Adverse matter unrelated to his current period of service will not be considered. Such characterization will be determined without regard to component, sex, or status (officer, warrant officer, or enlisted).

3. **Definitions.** For the purpose of this regulation, the following definitions apply:

a. *Homosexual act.* Bodily contact between persons of the same sex, actively undertaken or passively permitted by either or both with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act.

b. *Class I.* Class I consists of those cases which involve invasion of the rights of another person, as when the homosexual act is accomplished by assault or coercion, or where the person involved does not willingly cooperate in or consent to the homosexual act, or, if the act is cooperated in or consented to, where cooperation or consent was obtained by fraud. Class I also includes cases which involve a homosexual act with a child under the age of 16 years, without regard to whether the child cooperated in or consented to such act.

c. *Class II.* Class II consists of those cases in which personnel have engaged in one or more homosexual acts not within the purview of Class I during military service. No distinction is made in the handling of such cases based upon the active or passive participation of individuals. Class II also includes:

- (1) Class I cases which have not been referred to trial by court-martial.
- (2) Class I and Class II cases which have been referred to trial, but have not been tried by court-martial within the meaning of article 44(c), Uniform Code of Military Justice.
- (3) Class I and Class II cases which have been tried by court-martial within the meaning of article 44(c), Uniform Code of Military Justice, subject to the limitations on administrative action set forth

in paragraph 1-13, AR 635-200, or paragraphs 5 and 9, AR 635-105. When a conviction has been disapproved on appeal, and the charges are not again tried by court-martial, administrative action as in a Class II case may be taken, subject to the provisions of paragraph 1-13, AR 635-200, or paragraphs 5 and 9, AR 635-105 (para 7).

d. Class III. Class III consists of members who have not engaged in a homosexual act during military service, but have a verified record of pre-service homosexual acts. It also includes all other cases within the purview of this regulation which do not fall within Class I or Class II.

e. Individuals. Commissioned officers, warrant officers, and enlisted personnel.

f. Officers. Commissioned and warrant officers.

Section II. PROCEDURES

4. Responsibility. *a.* It is the duty of every member of the military service to be alert to situations affecting discipline, morale, or security of the military forces. In this connection homosexuality and homosexual acts are not to be condoned, whatever their cause, and when discovered, will be reported through command channels to the unit commander of the member concerned.

b. A commanding officer receiving information that an individual under his command is a homosexual or has engaged in an act of homosexuality, will inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. Any investigation required normally should be referred to the local provost marshal for investigation and recording on DA Form 2800 (CID Report of Investigation). The facts and circumstances of each case will govern the commander's decision as to the appropriate agency of investigation. Flagging action will be initiated in accordance with AR 600-31 unless the appropriate commander determines the allegation is baseless. If the information available is of sufficient stature to warrant investigation the commander will take necessary action to protect the security of his command to include suspension of security clearance, if any, and denial of access to classified defense information pending completion of actions on the case. When the report of investigation substantiates such allegations, the commanding officer will refer the individual for medical evaluation, revoke his security clearance, if any, and prepare a memorandum for the record outlining action taken and forward it with the subject's revoked Certificate of Clearance and/or Security Determination under EP 10450 (DA Form 873) to the Commanding Officer, U.S. Army Investiga-

tive Records Repository, Fort Holabird, Md. 21219. Revocation of security clearance will be in accordance with paragraph 24*b*, AR 604-5.

c. When flagging action under AR 600-31 has been initiated solely for the reason that an individual is being considered for elimination under this regulation, and the individual is to be processed for separation under medical jurisdiction, the individual's commanding officer will take expeditious action to complete the case and remove the flagging action in order that disposition of the individual through medical channels will not be delayed.

5. Medical evaluation. *a.* A final type physical examination will be accomplished to include a psychiatric study. A written evaluation report based on the results of the medical examination and a review of the individual's health and other locally available records will be prepared. The medical evaluation including a psychiatric study of the individual will include the following:

- (1) Personal history, including, if any, a detailed account of development of homosexuality.
- (2) Report of mental and physical examination. The report will completely describe the essential points of the individual's mental and physical condition in relation to the conduct under consideration, indicate whether the member meets the retention standards prescribed in chapter 3, AR 40-501, and recommend medical disposition, if it is deemed appropriate.
- (3) Psychiatric diagnosis, including an opinion whether the member was able to distinguish right from wrong and adhere to the right at the time of the conduct under investigation, and whether he currently has the mental capacity to understand

board and judicial proceedings and participate in his own defense. If it is determined that the member is suffering from an incapacitating mental illness, the examiner should indicate whether that illness was probably the cause of the homosexual conduct under investigation.

- (4) Opinion regarding the existence of homosexuality. (No recommendation will be made concerning the classes of homosexual cases defined in para 3.)
- (5) The psychiatrist will further render an opinion whether the individual should be—
 - (a) Eliminated from the service under the provisions of this regulation.
 - (b) Retained in service. If retention in the service is recommended, then, if considered appropriate, statement of the procedures likely to be of value in the individual's rehabilitation may be included.

b. A copy of the medical evaluation to include the psychiatric study will be filed with the individual's health record. The medical treatment facility commander will forward the original of this evaluation report to the unit commander.

Section III. OFFICER PERSONNEL

8. **Class I.** When the investigation referred to in paragraph 4b indicates that an officer's case falls within Class I, the officer exercising immediate article 15 jurisdiction, or an appropriate superior commander, may, in his discretion, prefer charges and initiate action under the Uniform Code of Military Justice. Disposition as a Class II will be accomplished under the circumstances set forth in paragraph 3c.

9. **Class II.** When the investigation referred to in paragraph 4b indicates that an officer's case is Class II:

a. The commander concerned may—

- (1) Initiate action for elimination of the officer under the provisions of AR 635-105.
- (2) Initiate action under the Uniform Code of Military Justice.
- (3) Afford the officer the opportunity to submit a resignation for the good of the service due to homosexuality (resignation will be prepared as shown in fig. 1). This ac-

6. **Availability of witnesses.** a. In order to guarantee the availability of essential military witnesses in any subsequent proceedings, the appropriate commander will ascertain promptly the termination or transfer status of each witness. No witness will be transferred nor will he be separated from the service prior to the beginning of such proceedings, except where an enlistment or period of service fixed by law expires. In such a case, an attempt will be made to obtain the individual's consent to retention. If he does not consent, a deposition or affidavit will be obtained, as appropriate.

b. The individual will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the individual, endeavor to arrange for the presence of any available witness he desires to call. A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the individual.

7. **Limitations on administrative discharges and board hearings.** See paragraphs 5 and 9, AR 635-105 (pertaining to officers) and paragraph 1-13, AR 635-200 (pertaining to enlisted persons) for limitations on administrative discharges and board hearings and rehearings.

tion will not be taken in the case of an officer who is eligible for voluntary retirement. When an officer is eligible for retirement, the case will be processed in accordance with (1) and (2) above.

- (4) Afford the officer the opportunity to request separation under the provisions of sections IV, V, or X, AR 635-120, as modified by this section.
- (5) Forward the investigation with a recommendation that the officer be processed through medical channels, if the medical report indicates that the officer is suffering from an incapacitating physical or mental illness. Such disposition is required if the officer has an incapacitating mental illness which was the cause of the alleged homosexual conduct, and action under the Uniform Code of Military Justice is not initiated.

b. The case will be forwarded to the officer exercising general court-martial jurisdiction who may take one or more of the following actions:

- (1) Process the action selected under *a* above. Disposition through medical channels is required for an incapacitating mental illness, which was the cause of the alleged homosexual conduct, if action pursuant to the Uniform Code of Military Justice is not initiated.
- (2) Initiate action under AR 635-105 or under the Uniform Code of Military Justice.
- (3) Direct the officer's retention in the service if he determines that the investigation does not support the allegations.
- (4) Return the case for further investigation.

10. Class III. When the investigation referred to in paragraph 4*b* indicates that an officer's case is Class III—

a. The commander concerned may—

- (1) Initiate action for elimination of the officer under the provisions of AR 635-105.
- (2) Afford the officer the opportunity to submit a resignation under the provisions of section III, AR 635-120.
- (3) Forward the investigation with a recommendation that the officer be processed through medical channels, if the medical report indicates that the officer is suffering from an incapacitating physical or mental illness. Such disposition is required if the officer has an incapacitating mental illness which was the cause of the alleged homosexual conduct.

b. The case will be forwarded to the officer exercising general court-martial jurisdiction who may take one or more of the following actions:

- (1) Process the action selected under *a* above. Disposition through medical channels is required if the officer has an incapacitating mental illness which was the cause of the alleged homosexual conduct.
- (2) Initiate action under AR 635-105.
- (3) Direct the officer's retention in the service if he determines that the investigation does not support the allegations.
- (4) Return the case for further investigation.

11. Counseling. Officers submitting either qualified or unqualified resignations will be afforded counseling of the nature prescribed in para-

graph 15, AR 635-120. The format therein for unqualified resignations will be modified to reflect such action by inserting paragraph 2.1 of the format for qualified resignations. The officer will be advised that he may submit a statement in his own behalf to be attached as an inclosure to his resignation.

12. Documentation. It is essential that all facts indicating homosexual tendencies, or acts, be recorded properly. The file will consist of the following documents in addition to that required by AR 635-120.

a. Report of investigation which will include but not be limited to:

- (1) Statement of date and place of birth.
- (2) Amount of active service.
- (3) Date and current period of service.

b. Statements of witnesses. (See UCMJ, art. 31.)

c. Medical evaluation reports as specified in paragraph 5.

d. An individual's statement in his own behalf, if it is desired.

e. In Class III cases, a detailed signed statement from the officer concerned relative to his tendencies and any past homosexual action or his statement to the effect that he does not desire to make a statement.

f. Waiver of appearance before a board of officers, if appropriate.

13. Forwarding. *a.* A resignation submitted under the provisions of this section will be forwarded by the immediate commanding officer through channels to the officer exercising general court-martial jurisdiction. The commander exercising general court-martial jurisdiction will personally recommend approval or disapproval, type of discharge certificate to be issued and any other action deemed appropriate, and forward direct to The Adjutant General, ATTN: AGPO-SE, Department of the Army, Washington, D.C. 20315.

b. Commanders may recommend an honorable or general discharge certificate be given if the officer concerned has performed outstanding or heroic military service, or if he has performed service over an extended period and the commander determines that the best interests of the service would be served thereby.

c. In determining the character of service rendered, commanders will not take into consideration homosexual acts committed by the officer while not in the service, or homosexual tendencies not manifested by inservice conduct.

14. Action by Headquarters, Department of the Army. a. Upon receipt in Headquarters, Department of the Army, of resignations submitted pursuant to this regulation, one of the following actions will be taken:

- (1) The resignation will be accepted.
- (2) The resignation will be rejected; and
 - (a) The officer's retention in service will be directed, or
 - (b) The case will be returned for such disposition as is deemed appropriate by the local commander, or

Section IV. ENLISTED PERSONNEL

15. Class I. When the investigation indicates that an individual's case is Class I, the commander concerned may, in his discretion, on the basis of all the facts, initiate action under the Uniform Code of Military Justice. After charges are preferred, and it is determined on evaluation of all relevant facts not to refer them to trial, disposition will be accomplished as in a Class II case. Disposition as a Class II case will be accomplished under the circumstances set forth in paragraph 3c.

16. Class II. When the investigation referred to in paragraph 4b indicates that an enlisted person's case is Class II, the commander concerned may—

a. Afford the enlisted member the opportunity to resign, or waive his right to a hearing before a board of officers and accept discharge. When board action is contemplated, the commander will:

- (1) Advise the enlisted member in writing of the specific allegations which are the basis for the proposed discharge action, and advise him that he has the following rights:
 - (a) To present his case before a board of officers.
 - (b) To submit statements in his own behalf.
 - (c) To be represented by counsel.
 - (d) To waive the above right in writing.
- (2) Give the enlisted member a reasonable time to consider waiver of board proceedings (not less than 48 hours) in order that

(c) Elimination proceedings pursuant to AR 635-105 will be initiated.

b. When an officer's resignation is accepted under the provisions of this regulation, he may be furnished an Honorable Discharge Certificate (DD Form 256A), a General Discharge Certificate (DD Form 257A), or a Certificate Under Other Than Honorable Conditions (DD Form 794A), as determined in Headquarters, Department of the Army.

c. Notification of final action on each case will be forwarded to the Commanding Officer, U.S. Army Investigative Records Repository, Fort Holabird, Md. 21219. Notification will include the name, grade, service number, date and place of birth, and action taken on the case.

he will have an opportunity to consult with counsel prior to waiving his rights. The individual will submit a signed statement (fig. 2) indicating that he has been advised of the basis for the contemplated separation and its effect, and of his rights listed in (1) above. The statement will include a request or a waiver by the individual of each right. The counsel will sign the statement and the statement will be included with the documentation required by paragraph 21.

- (3) Offer the enlisted person serving on an unspecified enlistment an opportunity to tender his resignation in lieu of board action pursuant to chapter 9, AR 635-200; any other enlisted person may waive his rights (fig. 2). A waiver of his rights will be prepared as shown in figure 2. A resignation will be prepared as shown in chapter 9, AR 635-200. The resignation, or signed statement waiving his rights, together with the documentation required by paragraph 21, will be forwarded to the officer exercising general court-martial jurisdiction over the individual concerned. An individual who is within 6 months of eligibility for retirement will not be permitted to waive his rights (fig. 2), or submit a resignation. A resignation may be withdrawn pursuant to AR

635-200. A waiver may be withdrawn at any time prior to the action of the commander ordering the discharge. Subsequent to such an order, the commander may authorize withdrawal of the waiver.

b. Forward the investigation with a recommendation that elimination proceedings pursuant to this regulation be initiated.

c. Forward the investigation with a recommendation that the individual be processed through medical channels. Such disposition is required if the individual has an incapacitating mental illness which was the cause of the alleged homosexual conduct, and action under the Uniform Code of Military Justice is not initiated.

d. Initiate action under the Uniform Code of Military Justice.

17. Action by officer exercising general court-martial jurisdiction (Class II cases). *a.* When the investigation indicates that an enlisted person's case is Class II, the officer exercising general court-martial jurisdiction may take one of the following actions:

- (1) Process the resignation in accordance with AR 635-200, or accept the waiver for board hearing and order discharge of the individual, or reject the waiver and refer the case to a board of officers.
- (2) Process the action recommended in paragraph 16 *b*, *c*, or *d*. Disposition through medical channels is required if the individual has an incapacitating mental illness which was the cause of the alleged homosexual conduct, and action under the Uniform Code of Military Justice is not initiated.
- (3) Afford an individual who has completed 19½ years active Federal service creditable toward retirement the opportunity to apply for retirement in lieu of board action to be effective immediately, if eligible, or upon completion of 20 years' service. The individual will be advised that authority to submit application does not carry assurance that application will be approved. The application for retirement will be appended to the case and forwarded to The Adjutant General, ATTN: AGPO-SS, Department of the Army, Washington, D.C. 20315, with recommendation. The application for re-

tirement will specifically state that it is submitted in lieu of board action.

- (4) Direct the individual's retention in the service if he determines that the investigation does not support the allegations.
- (5) Initiate action under this regulation, or the Uniform Code of Military Justice.
- (6) Return the case for further investigation.
- (7) Initiate action under AR 635-212 when evidence indicates unfitness or unsuitability for military service. Such action is proper only when homosexual activities or tendencies are regarded as insufficient to warrant separation under this regulation.

b. The officer exercising general court-martial jurisdiction over the individual concerned is required personally to sign any action directing an undesirable discharge of an enlisted member under his command; his deputy or other officer within his headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases except to direct an undesirable discharge or suspend execution of an approved discharge (para 24).

c. The officer exercising general court-martial jurisdiction over the individual concerned will not direct discharge when a board of officers recommends retention, nor will he authorize the issuance of a discharge of a lesser character than that recommended by a board (i.e., honorable to general or general to undesirable); he may authorize issuance of a discharge of a higher character than that recommended by a board (i.e., general to honorable or undesirable to general or honorable).

18. Class III. When the investigation referred to in paragraph 4*b* indicates that an enlisted person's case is Class III, the commander concerned may:

a. Afford the enlisted member the opportunity to resign, if serving on an unspecified enlistment, or waive his right of a hearing before a board of officers, as appropriate. When board action is contemplated, the commander will:

- (1) Advise the enlisted member in writing of the specific allegations which are the basis for the proposed discharge action, and advise him that he has the following rights:
 - (a) To present his case before a board of officers.

- (b) To submit statements in his own behalf.
 - (c) To be represented by counsel.
 - (d) To waive the above rights in writing.
- (2) Give the enlisted member a reasonable time to consider waiver of board proceedings (not less than 48 hours) in order that he will have an opportunity to consult with counsel prior to waiving his rights. The individual will submit a signed statement (fig. 2) indicating that he has been advised of the basis for the contemplated separation and its effect, and of his rights listed in (1) above. The statement will include a request or a waiver by the individual of each right. The counsel will sign the statement and the statement will be included with the documentation required by paragraph 21.
- (3) Allow an individual serving on an unspecified enlistment to tender an unconditional resignation under chapter 9, AR 635-200. A resignation or waiver (fig. 2), together with the documentation required by paragraph 21, will be forwarded to the officer exercising general court-martial jurisdiction over the individual concerned. An enlisted person who is within 6 months of eligibility for retirement will not be permitted to waive his rights (fig. 2) nor submit a resignation.

b. Take one of the actions set forth in paragraph 16b and c.

19. Action by officer exercising general court-martial jurisdiction (Class III cases). The officer exercising general court-martial jurisdiction may take one of the actions specified in paragraph 17, except that action under the Uniform Code of Military Justice may not be taken.

20. Counseling. a. Appointed counsel will be a lawyer within the meaning of article 27(b) (1) of the Uniform Code of Military Justice unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel.

b. Commanders will insure that provisions for counsel are accomplished expeditiously. Before an enlisted person waives his rights outlined in paragraphs 16a and 18a, tenders a resignation or applies for retirement, he will be advised that he is

entitled to consult with counsel appointed by the officer exercising general court-martial jurisdiction; military counsel of his own choosing, if reasonably available; or civilian counsel of his own choosing and at his own expense.

c. The name, grade, and branch of the counsel will be included in the waiver, the resignation, or the application for retirement as well as the date and place of counseling. Should the enlisted member refuse to acknowledge in writing that such counseling was performed, a notation to that effect will be included in the first indorsement prepared by the member's immediate commander.

d. An enlisted person holding a USAR commission will be advised that his resignation, or waiver of rights will not be accepted unless written waiver of board action is submitted in connection with his reserve status.

21. Documentation. It is essential that all facts indicating homosexual tendencies or acts be recorded properly. In all cases, including those in which the immediate commanding officer requests board action, the report will include the statement of the individual's date and place of birth; the amount of active service of the individual concerned; the date and period of the individual's current period of service; statement of witnesses; the resignation letter of the individual concerned, or the waiver of his rights, as applicable; a detailed signed statement from the individual concerned (in Class III cases) relative to his tendencies and any past homosexual actions (UCMJ, art. 31), or his statement to the effect that he does not desire to make a statement; and the commanding officer's detailed comments and recommendations. Also included with the file will be the medical evaluation as set forth in paragraph 5.

22. Board of officers. a. *Composition of board.* Whenever board action is required, the officer exercising general court-martial jurisdiction over the enlisted person concerned will convene a board consisting of at least three officers, at least one of whom is in the grade of major or higher; a non-voting recorder will also be appointed. Care will be exercised in the selection of officers designated to serve on boards convened under this regulation to insure that—

- (1) The board is composed of experienced officers of mature judgment.

- (2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of this nature.
- (3) The officer initiating the action under this regulation or any intervening officer who had direct knowledge of the case is not a member of the board.
- (4) In the case of an enlisted member of the Women's Army Corps, the board includes an officer of the Women's Army Corps.
- (5) In the case of an individual who has a Reserve status, the membership of the board will include a majority of Reserve officers if reasonably available. Where a Reserve majority is not available, the board will include at least one Reserve component officer.
- (6) In the case of an enlisted member of the Army who holds a Reserve commission or warrant, the board will be composed of an uneven number of commissioned officers. The officers will be senior in permanent grade to the Reserve grade held by the enlisted member. One member of the board will be a Regular Army officer and the remainder Reserve officers of the Army who are serving on active duty. If the enlisted member also is an ARNGUS officer, at least one member of the board will be an ARNGUS officer, if reasonably available.
- (7) The board is provided a competent reporter (or stenographer).

b. Board procedures.

- (1) Except as modified herein, the board will conform to the provision of AR 15-6. As an exception to paragraph 13b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of affidavit. However, if the respondent desires to present such evidence he is entitled to have the witnesses appear in person, if they are reasonably available.
- (2) When the board meets in closed session, only voting members will be present. The proceedings of the board will be as complete as possible and will contain a verbatim record of the findings and recommendations (see fig. 3 for sample).
- (3) A minimum of 15 days written notice before date of board hearing will be given an enlisted person who is to appear before a board of officers so that he or his counsel may prepare his case. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will insure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 30 days after notice) will be granted if in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.
- (4) An enlisted person who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the individual by the president of the board:
 - (a) An enlisted person may appear in person, with or without counsel, or in the individual's absence, be represented by counsel, at all open proceedings of the board of officers.
 - (b) He may challenge any voting member of the board for cause only.
 - (c) He may request the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The board will invite the witness to attend if it considers that the witness is reasonably available and that his testimony can add materially to the case. If a witness on active duty declines the invitation, the board may refer the matter to the convening authority for a decision or orders. However, witnesses not on active duty must appear voluntarily and at no expense to the Government.
 - (d) The respondent may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affi-

davit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(e) He may or may not submit to examination by the board. The provisions of article 31, Uniform Code of Military Justice, will apply.

(f) The respondent and his counsel may question any witness who appears before the board.

(g) Failure of the individual to invoke any of the above rights, after he has been apprised of same, will not have an effect upon the validity of the elimination proceedings.

(5) In the case of an enlisted member holding a Reserve commission or warrant, the board will notify the individual that the action involves his Reserve status and may result in the termination of that status.

c. Authorized recommendations. The board will make specific findings of facts with particular emphasis on the number of homosexual acts committed in the current period of service, prior period of service, and prior thereto (see para 26b for preservice acts), together with a statement of material facts in support thereof (see fig. 3 for example).

(1) The board will recommend that the enlisted person be—

(a) Discharged under this regulation (indicating type of discharge certificate to be furnished).

(b) Discharged because of unsuitability (AR 635-212) if the board finds that the case falls within Class III, or that the individual committed the alleged homosexual act as a result of immaturity, curiosity, or intoxication, but is unsuitable for further service (indicating whether an honorable or general discharge certificate should be furnished).

(c) Discharged under AR 635-212 when the board finds the individual did not commit the homosexual acts alleged but that the conduct alleged and proven establishes that the member is otherwise

unfit or unsuitable for further service (indicating type of discharge certificate to be furnished).

(d) Retained in service.

(2) In the case of an enlisted member holding a Reserve commission or warrant, the board will make separate recommendations on Reserve status including type of discharge certificate to be issued.

d. Forwarding of report of proceedings. The completed report of proceedings will be forwarded to the convening authority.

23. Action by commander exercising general court-martial jurisdiction. *a.* The convening authority's deputy or other officer within his headquarters may be delegated authority to approve, disapprove, or make other appropriate disposition of cases other than directing an undesirable discharge. The convening authority is required to personally sign any action directing an undesirable discharge of an enlisted member under his command. He may direct other appropriate disposition of the case.

b. The convening authority will not direct discharge of an individual who is within 6 months of eligibility for retirement upon the date the board recommends discharge. The convening authority may, however, direct retention, or in the alternative forward the case together with his recommendations and the member's application for retirement in lieu of board action, if he submitted one, direct to The Adjutant General, ATTN: AGPO-SS, Department of the Army, Washington, D.C. 20315. A copy of this action will be forwarded to the intermediate commanders.

c. No convening authority will direct discharge if a board recommends retention, nor will he authorize the issuance of a discharge of a less favorable character than that recommended by the board. A convening authority may direct retention when discharge is recommended, or he may issue a discharge of a more favorable character than that recommended. If the board recommends discharge under this regulation, a convening authority may direct discharge for unfitness or unsuitability. However, he will not direct discharge for unfitness when the board recommends discharge for unsuitability. He may, however, direct discharge for unsuitability when the board has recommended discharge for unfitness.

d. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *b* and *c* above. With respect to substantial defects, he may take one of the following actions:

- (1) Direct retention.
- (2) If the board has failed to make findings or recommendations required by this regulation, return the case to the same board for compliance.
- (3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.
- (4) If the board committed error which materially prejudiced a substantial right of the respondent, convene a new board to rehear the case. No member of the new board will have served on a prior board which considered the same matter. The new board may be furnished the evidence properly considered by the first board, to include extracts from its record of testimony of those witnesses not deemed reasonably available to testify at the rehearing. The findings, recommendations, and prejudicial matter of the first board will not be furnished the successor board. Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than those rendered by the previous board. No more than one rehearing may be directed without approval from Headquarters, Department of the Army.

24. Suspension of execution of approved discharge. In order to afford a highly deserving

member a probationary period to demonstrate successful rehabilitation prior to expiration of his enlistment or period of obligated service, the officer exercising general court-martial jurisdiction over the individual concerned personally may suspend execution of an approved discharge for a period not to exceed 6 months. See paragraph 1-15, AR 635-200 for procedures. This authority may not be delegated.

25. Disposition of proceedings. *a.* When discharge is ordered by the convening authority, or his designee, he will so note on the proceedings and forward them as authority for discharge to the appropriate commander for execution of the discharge (see para 29 for disposition of papers when discharge is accomplished).

b. When discharge is not ordered by convening authority, the proceedings will be filed at the headquarters of the convening authority and the enlisted person's commanding officer will be notified of the final action in the case. When deemed appropriate, consideration will be given to the individual's transfer to a different organization.

c. When the convening authority approves a recommendation that an enlisted member be discharged from a Reserve commission or warrant, he will forward a copy of the approved proceedings to the Commanding Officer, U.S. Army Administration Center, ATTN: AGAC-R, St. Louis, Mo. 63132, for appropriate action under the provisions of AR 135-175. Action under AR 135-175 will be taken after member's separation from active duty.

26. Character of separation. *a.* Enlisted members whose cases are processed under this regulation in the Class II category normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be issued when an individual has been awarded a personal decoration or if warranted by the particular circumstances in a given case. (Also see sec. III, ch. 1, AR 635-200.)

b. Enlisted members whose cases are processed under this regulation in the Class III category will be furnished an honorable or general discharge certificate based on the character of service rendered. (Also see sec. III, ch. 1, AR 635-200.) In determining the character of service rendered, commanders will not take into consideration homosexual actions committed by the individual while

he was not in the service, or homosexual tendencies not manifested by inservice conduct.

27. Reduction in grade. When an individual is to be discharged with an undesirable discharge, the convening authority will direct his immediate reduction to the lowest grade under the provisions of paragraph 7-30e, AR 600-200, and this regulation.

28. Reason and authority for discharge. a. When individuals are administratively discharged from service pursuant to this regulation, the reason and authority for discharge (item 11c, DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)) will be entered as shown in appendix I, AR 635-5.

b. Army National Guard of the United States trainees will be released from active duty for training and returned to the control of the appropriate State national guard authorities for discharge.

c. USAR trainees will be discharged from their status as "Reservists of the Army."

d. Individuals whose cases fall within Class III and are approved for discharge will be discharged under authority of paragraph 24b, AR 635-212.

29. Disposition of case. a. When discharge of an enlisted person has been accomplished by appropriate authority under this regulation, the complete file of the case, together with the individual's DA Form 201, will be forwarded to U.S. Army Personnel Services Support Center, Fort Benjamin Harrison, Ind. 46249.

b. A notification of final action will be prepared on each enlisted person processed under the provisions of this regulation. This notification will include the name, grade, service number, date and place of birth, and action taken on the case. Such notification will be forwarded to the Commanding Officer, U.S. Army Investigative Records Repository, Fort Holabird, Md. 21219.

c. When an ARNGUS trainee is released from active duty for training under this regulation, a copy of the approved proceedings will be forwarded to the Adjutant General of the State concerned.

26. Character of separation. a. Enlisted members whose cases are processed under this regulation in the Class II category normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be issued when an individual has been awarded a personal decoration or if warranted by the particular circumstances in a given case. (Also see sec. III, ch. I, AR 635-200.)

b. Enlisted members whose cases are processed under this regulation in the Class III category will be furnished an honorable or general discharge certificate based on the character of service rendered. (Also see sec. III, ch. I, AR 635-200.) In determining the character of service rendered, commanders will not take into consideration homosexual actions committed by the individual while

Additional admissible evidence may be furnished to or obtained by the new board. The convening authority may, upon due notice to the respondent, incorporate new allegations based on subsequent conduct of the respondent. Unless the new board considers substantial additional evidence unfavorable to the respondent, the convening authority may not approve any portion of the findings and recommendations of the new board less favorable to the respondent than those rendered by the previous board. No more than one rehearing may be directed without approval from Headquarters, Department of the Army.

25. Suspension of execution of approved discharge. In order to attend a highly desir-

SUBJECT: Resignation

THRU: (Channels)

TO: The Adjutant General
ATTN: AGPO-SE
Department of the Army
Washington, D. C. 20315

1. Under the provisions of AR 635-89, I, John Doe, Major, Infantry, 0000000, hereby voluntarily tender my resignation from the Army for the good of the service. I do not desire to appear before a board of officers. I have not been subjected to coercion with respect to this resignation and have been advised of and fully understand the implications of this action.

2. I understand that this resignation, if accepted, may be considered as under other than honorable conditions and that Discharge Certificate (Under Other Than Honorable Conditions) (DD Form 794A) may be furnished. I also understand that a resignation for the good of the service may be withdrawn only with the approval of Headquarters, Department of the Army.

3. I have been afforded an opportunity to present matters in explanation, mitigation, or defense of my case and (include one of the following statements): such matters are attached hereto (or) I elect to remain silent.

4. I have been advised that prior to submitting this resignation, at my option, I may consult with and be represented by legally qualified counsel who may be (a) an officer of the Judge Advocate General's Corps or (b) civilian counsel retained by me. I (insert either of the following, as appropriate) have decided not to exercise this right or I have been fully advised and counseled in this matter by (a member of the Judge Advocate General's Corps or civilian counsel)

on _____ (date), at _____ (place)

and I fully understand the implications of this voluntary action.

5. I further understand that if my resignation is accepted under other than honorable conditions, I will not be entitled to compensation for unused accrued leave, severance or readjustment pay (as appropriate),

Figure 1. Resignation.

and I may be barred from all Federal rights based upon the period of service from which I will be separated under any laws administered by the Veterans Administration, except War Risk, United States Government (converted), or National Service Life Insurance policies or Servicemen's Group Life Insurance which I may hold.

6. Present duty station _____, assignment _____, and/or attachments, if any _____.

7. I (do) (do not) desire separation overseas. (Applicable only to an officer serving in an oversea command or area.)

8. Attached are current medical examination reports, to include a report of psychiatric evaluation, Standard Forms 88 and 89, and (if applicable), a serology report and electrocardiogram.

Figure 1—Continued



[Faint, mostly illegible text from the reverse side of the page, including phrases like 'I have been advised...', 'I fully understand...', and 'I further understand...']

 (Date individual and counsel
 sign statement)

SUBJECT: Separation under AR 635-89

TO: (Discharge authority)

1. I have been advised by counsel of the basis for contemplated action to accomplish my separation under AR 635-89.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officers.
4. Statements in my own behalf (are) (are not) submitted herewith (as Inclosure___).
5. I (request) (waive) representation by (my appointed counsel) (_____) as military counsel) (civilian counsel at my own expense).
6. I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to me. I further understand that, as the result of issuance of an undesirable discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both Federal and State laws, and that I may expect to encounter substantial prejudice in civilian life.
7. I have retained a copy of this statement.

 (Signature of individual)

 (Typed name, service number,
 grade)

Having been advised by me of the basis for his contemplated separation and its effect and the rights available to him, (name of individual) personally made the choices indicated in the foregoing statement.

 (Signature of counsel)

 (Typed name, service number,
 grade, branch)

NOTE. If the enlisted person holds a reserve status as a commissioned officer or warrant officer, the convening authority will not accept the waiver unless the person also waives board action with respect to his reserve status (para 20d).

Figure 2. Individual's statement.

FINDINGS: In the board proceedings concerning Private (E-2) John Doe, RA 00000000, the board carefully considered the evidence before it and finds:

1. That Private Doe did engage in a homosexual act with Private Bill Wills, RA 00000000, on 1 June 1966 at the Blake Hotel, Noland, Indiana.
2. That Private Doe did engage in a homosexual act with Private Joe Mills, RA 00000000, on 2 June 1966 at 600 F Street, Noland, Indiana.
3. Private Doe is undesirable for further retention in the military service.

RECOMMENDATION:

In view of the findings, the board recommends that Private Doe be discharged from the service because of homosexuality with issuance of an Undesirable Discharge Certificate (DD Form 258A).

President

Member

Member

Recorder

Figure 3. Verbatim findings and recommendations.

[AGPO]

By Order of the Secretary of the Army:

Official:

J. C. LAMBERT,
Major General, United States Army,
The Adjutant General.

HAROLD K. JOHNSON,
General, United States Army,
Chief of Staff.

Distribution:

Active Army, NG, and USAR: To be distributed in accordance with DA Form 12-9 requirements for Military Personnel Procedures, Officers and Enlisted-A.

