



**Modern Military
Association
of America**

FREEDOM TO SERVE

THE DEFINITIVE GUIDE TO LGBTQ+ MILITARY SERVICE

THIRD EDITION

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THE VISION

Freedom to serve.

THE MISSION



The Modern Military Association of America (MMAA) is the nation's largest organization of LGBTQ+ service members, military spouses, veterans, their families and allies.

Formed through the merger of the American Military Partner Association and OutServe-SLDN, we are a united voice for the LGBTQ military and veteran community. As a non-partisan, nonprofit 501(c)3 organization, we are working to make a real difference in the lives of our modern military families through education, advocacy and support.

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**Modern Military
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MMAA CHAPTERS

MMAA chapters facilitate opportunities for mutual support, camaraderie, and leadership development for LGBTQ+ service members, veterans, military spouses, and family members.

For more information on MMAA chapters, please visit our website at: modernmilitary.org/programs/mmaa-chapters.

For a list of all of our current chapters, go to facebook.com/modernmilitary/groups.

TO REPORT AN INCIDENT:

modernmilitary.org/report-an-incident

If you have experienced LGBTQ+ or HIV discrimination as a service member, military spouse/family member, or veteran, we want to know. Your incident report enables MMAA to track and address concerns that arise within the worldwide U.S. military community and better support LGBTQ+ or HIV+ military members, veterans, and their families.

make a real difference in the lives of our modern military families through education, advocacy and support. We also provide free, direct legal services and referrals for the LGBTQ+ and HIV+ military and veteran communities.

In this era of open service for LGBQ servicemembers—and changing regulations for transgender servicemembers—this guide is intended to help the LGBTQ+ military community make informed decisions about how to lead their lives and serve equally. It may also help LGBTQ+ servicemembers understand how to protect themselves and respond if they feel they have been targeted. **This guide does not, however, provide comprehensive counseling for servicemembers, nor is it intended to be a substitute for seeking assistance from an attorney familiar with military law.** Each servicemember's situation is

different and must be evaluated and handled based on its own facts. Servicemembers who need an in-depth assessment of their unique circumstances should contact MMAA.

All LGBTQ+ servicemembers and their allies should be aware of the information contained in this publication. It is important to review the entire guide before studying individual sections. This will provide an overview of the laws and policies, which is necessary to understand individual sections and how they work together, both on paper and in practice. It is also important to know that this guide was created using research about Department of Defense directives. Regulations of the individual services generally mirror the Department of Defense's directives, though some differ in minor but sometimes significant ways.

ABOUT THIS PUBLICATION

This guide provides lesbian, gay, bisexual, transgender, and queer (LGBTQ+) servicemembers and veterans with a comprehensive overview of the laws, policies, and practices that are relevant to their military service, as well as practical information for spouses, family members, advocates and friends of LGBTQ+ servicemembers.

The Modern Military Association of America (MMAA) is the nation's largest organization of LGBTQ+ service members, military spouses, veterans, their families and allies. Formed through the merger of the American Military Partner Association and OutServe-SLDN, we are a united voice for the LGBTQ military and veteran community. As a non-partisan, nonprofit organization, we are working to

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The Department of Defense and each individual service branch also offers legal counseling at no cost to you through your local Legal Assistance Office. The appropriate service offices are listed in the resources section of this guide.

A Brief History of LGBTQ+ Military Service	8
Service-Related Information	14
Identity and Being “Out”	14
Open LGBQ Service	14
Open Transgender Service	15
Sharing Information About Yourself With Others	17
Living Publicly “Out”	21
Standards of Conduct	21
Social Media and Other Public Profiles	24
Political Activity	25
Harassment and Discrimination	26
Privacy Issues	30
Cohabitation	30
Pornography	31
Sexually Explicit Imagery	31
Sexting and Revenge Porn	32
Security Clearance Interviews and Regulations	34
Physical and Mental Health	35
Medical Care	35
Mental Healthcare	38
HIV/AIDS	41
Veterans Administration Benefits	48
Healthcare Services	48
Military Family Matters and Benefits	50
LGBTQ+ Military Families	50
Marriage and Commitment	50
Adopting and Having Children	51
Family Care Plans	51
Housing and PCS	52
Marital Status and the UCMJ	52
Benefits	52
For Servicemembers	52
For Spouse-Dependents	53
For Children-Dependents	57
For Veterans	58

Future Challenges and Continued Advocacy	61
Creating More Inclusive Policies	61
Transgender Service and Healthcare Benefits	61
Service for People Living With HIV	62
Service for Intersex and Non-Binary People	63
Title IX Regulations in DoD Schools and Educational Programs	64
Pride Flags at Military Bases and DoD Facilities	65
Tracking Care for LGBTQ+ Veterans	66
Understanding the Needs of Caregivers for LGBTQ+ Veterans	66
Appendix A: The Uniform Code of Military Justice (UCMJ)	68
Sodomy (Article 125)	68
Sexual Misconduct (Articles 120, 120a, 120b, and 120c)	69
Revenge Porn (Article 117a)	70
Conduct Unbecoming (Article 133) and Catch-All Article (Article 134)	71
Fraternization	71
Adultery	72
Appendix B: Additional Resources	74
Military Legal Resources	74
Service-Related Resources	75
Legal Services for Service Members & Veterans	75
LGBTQ+ Military Member Organizations	76
Research Organizations	77
Military News Sources	78
Service Directives, Instructions, & Publications	79
LGBTQ+ Resources	80
Family and Youth Resources	80
General Resources	81
Legal and Policy Organizations	82
Professional Associations	83
HIV/AIDS Resources	85
Transgender Resources	86
Other LGBTQ-Identity Specific Resources	87
Women’s Resources	89
Political Resources	90
Spiritual Resources	91
Veterans’ Resources	94

A BRIEF HISTORY OF LGBTQ+ MILITARY SERVICE

While open service for LGBTQ+ individuals is still relatively recent, there is a long history of LGBTQ+ people serving in the United States military. For example, the U.S. Naval Institute notes that the first person discharged for homosexuality was Lieutenant Frederick Gotthold Enslin in 1778.¹ LGBTQ+ individuals have continued to serve in the military throughout American history, though not with impunity.

Homosexuality was first criminalized by the military in 1917 under Article 93 of the Articles of War, which was approved by Congress in 1920.² During World War I, the military began a series of reforms aimed at ensuring the 'moral' health of servicemembers.³ During this time, vice squads actively investigated military bases and adjacent towns and cities; while these vice squads were searching for a wide range of activities, identifying servicemembers engaging in 'immoral sexual behaviors' was one goal.⁴ During this period, one such instance in Newport, Rhode Island led to major controversies and severe

penalties for servicemembers found guilty of these 'immoral sexual behaviors.'⁵

As the LGBTQ+ movement began in the United States in the 1940s, so too did the use of psychiatry to attack homosexuality through the government.⁶ As historian Michael Bronski notes, "a direct link was being made between homosexual behavior and a threat to national security."⁷ With the approval and authority of the psychiatric discipline, the government began to systematically codify homophobia. For instance, the Army, during World War II, created more than 20 different revisions to policies related to homosexuality in a four-year period.⁸ Such policies also extended to the Women's Army Auxiliary Corps (WAAC).⁹

By 1949, the Department of Defense (DoD) created a more unified policy prohibiting homosexuality in the Armed Forces.¹⁰ Ultimately, the prohibition on sodomy was added to the UCMJ in 1951. During the early 1950s, the Senate also formed a subcommittee, the Hoey Committee, to examine potential

LGBTQ+ influence in the federal government, and the primary concern was that LGBTQ+ people were susceptible to blackmail by Soviet spies.¹¹ While the Hoey Committee found no evidence to substantiate their concern, they issued a report about the dangers of homosexuality in the federal workforce in 1950.¹² By 1953, President Dwight D. Eisenhower signed an Executive Order listing "sexual perversion"—which included homosexuality—"as a security risk constituting grounds for termination or denial of employment."¹³

Scholars today note that this executive order was applied, at least as early as 1960, to ban transgender individuals from serving as well.¹⁴ In the late 1950s, the U.S. Navy Board of Inquiry examined some of the claims that led to this executive order, and in 1957, the Navy produced the Crittenden Report, which found the claims against LGBTQ+ personnel to be both negligible and erroneous.¹⁵ The Crittenden Report remained confidential until it was retrieved through a court order, stemming from a contested Freedom of Information Act (FOIA) request in the early 1980s.¹⁶

In 1959, the DoD issued Department of Defense Directive 1332.14, which stated that

homosexuality would render someone unfit for service.¹⁷ This policy would continue in the coming decades, and in the 1981 reissue of Department of Defense Directive 1332.14, the language pointedly stated that "homosexuality is incompatible with military service."¹⁸ As for transgender people, the 1980s were a time when "the military was applying its medical regulations more forcefully" to exclude this population from service.¹⁹

¹ U.S. Naval Institute, "Key Dates in U.S. Military LGBT Policy" [hereinafter Key Dates], available <https://www.usni.org/news-and-features/dont-ask-dont-tell/timeline>

² *Id.*

³ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (2009), p. 61.

⁴ Margot Canaday, *supra* note 3; George Chauncey, "Christian Brotherhood or Sexual Perversion? Homosexual Identities and the Construction of Sexual Boundaries in World War One Era," *Journal of Social History*, vol. 19, no. 2 (1985); and Sherry Zane, "'I Did It for the Uplift of Humanity and the Navy': Same-Sex Acts and the Origins of the National Security State, 1919-1921," *The New England Quarterly*, vol. 91, no. 2 (2018).

⁵ Sherry Zane, *supra* note 4.

⁶ Michael Bronski, *A Queer History of the United States* (2011), p. 159.

⁷ *Id.*

⁸ Bernard Rostker and Scott Harris, *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment* (1993), p. 5.

⁹ Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in the 20th-Century America* (2012 [1991]), p. 123.

¹⁰ "Department of Defense Memorandum," Reprinted in *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment* (1993 [1949]).

¹¹ David Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (2004) and Judith Adkins, "Congressional Investigations and the Lavender Scare," *Prologue*, vol. 48, no. 2 (2016).

¹² *Id.*

¹³ Key Dates, *supra* note 1.

¹⁴ Sandhya Somashekhar and Craig Whitlock, "Military to Allow Transgender Members to Serve Openly," *The Washington Post* (2015).

¹⁵ David Johnson, *supra* note 11; see also S. H. Crittenden, "Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals" for the United States Navy Board of Inquiry (1957) and Kate Dyer, "Foreward," *Gays in Uniform: The Pentagon's Secret Papers* (1990), p. xiii-xviii.

¹⁶ Kate Dyer, *supra* note 15. *History of the United States* (2011), p. 159.

¹⁷ D.o.D. Directive 1332.14 (1959); see also Dorian Rhea Debussy, *Lavender Security Threats: Understanding the Histories of Discrimination Against LGBT Persons in the American Military and Intelligence Communities* (2018), p. 87-100 and Jeffrey Davis, "Military Policy Towards Homosexuals: Scientific, Historical, and Legal Perspectives," *Military Law Review*, vol. 131 (1991).

¹⁸ Key Dates, *supra* note 1.

¹⁹ Sandhya Somashekhar and Craig Whitlock, *supra* note 14.

While anti-LGBTQ+ laws and policies were actively codified and enforced since World War I, the DoD commissioned a study on this topic in the late 1980s. In 1988, the published study affirmed the findings of the Crittenden Report from 1957 and explained that homosexuality was not a threat to national security.²⁰ There was no discussion of removing bans on service for transgender individuals, but there was renewed hope that bans on LGBQ service may be lifted.

By the early 1990s, this possibility seemed more likely, as then-Governor Bill Clinton made a campaign promise to lift the ban.²¹ President Clinton never fulfilled that promise. Instead, he commissioned a report from RAND Corporation, which was intended to understand whether LGBQ inclusion in the Armed Forces was viable.²² Despite the report not indicating any major concerns, he signed the controversial “Don’t Ask, Don’t Tell” (DADT) policy into law in 1993. Although President Clinton portrayed this policy as “a dramatic step forward,”²³ opinions differ on whether it was an improvement over previous draconian policies, and his compromise forced LGBQ servicemembers to remain closeted to join or continue serving in the military.²⁴

To address the DADT setback,
Servicemembers Legal Defense Network

(SLDN) was created. SLDN began working in 1993 as a nonprofit providing free legal services to LGBTQ+ servicemembers and veterans.²⁵ Over the years, the organization represented LGBQ servicemembers, who were discharged or threatened with discharge under DADT. SLDN also directly challenged both DADT and the Defense of Marriage Act (DOMA) in the courts. During the fight to repeal DADT, another organization arose to address the inequalities that active-duty LGBQ servicemembers were facing. OutServe was founded in 2010 under the name “Citizens for Repeal,” and it was the first member-based organization to represent the interests of LGBQ servicemembers.

In fall 2009, President Barack Obama, while attending a fundraiser for the Human Rights Campaign, announced his re-commitment to ending DADT.²⁶ By 2010, RAND Corporation released an updated report to their 1993 research. With the rationale of ‘unit cohesion’ in mind, the updated report clearly indicated that there was “little reason to expect that ending DADT would produce any notable deterioration in unit performance.”²⁷ Following a filibuster in the Senate and a mounting public engagement campaign, Secretary of Defense Robert Gates urged Congress to act.²⁸ By late December 2010, the repeal bill had finally passed Congress, and on December 22, 2010, President Obama signed the repeal, with an effective date of September 20, 2011, into law.²⁹

Following the repeal of DADT, SLDN and OutServe—two crucial organizations for LGBTQ+ servicemembers—combined their efforts through a merger in 2012, and they formed OutServe-SLDN, which was “a non-partisan, nonprofit, legal services, watchdog and policy organization dedicated to bringing about full LGBT equality to America’s military and ending all forms of discrimination and harassment of military personnel on the basis of sexual orientation and gender identity.”³⁰

In May 2019, OutServe-SLDN merged with the American Military Partner Association (AMPA), which was an organization designed to support the partners, spouses, and families of LGBTQ+ servicemembers and veterans. That merger formed the Modern Military Association of America, which became the leading nonprofit organization aimed at supporting LGBTQ+ servicemembers, veterans, and military families.³¹ Other organizations have also been created to serve various constituencies of the LGBTQ+ military community, such as SPARTA, which focuses on transgender servicemembers. (For more information on other relevant organizations, see the [“Additional Resources”](#) section at the end of this guidebook.)

Even with the repeal of DADT, there were still federal laws and policies preventing open and equal service. For example, another prominent issue for LGBQ servicemembers was DOMA, which provided a federal

definition of marriage as being between one man and one woman.³² Among other things, DOMA prevented military spouses, who were lawfully married under state law, from being recognized by the DoD and the Department of Veterans Affairs (VA).³³

Additionally, under DOMA, states could prohibit same-sex marriage and did not have to recognize same-sex marriages formed in other states where it was legal. Though DOMA was challenged many times, it was the case of *U.S. v. Windsor*³⁴ in 2013 that the Supreme Court finally ruled the federal definition of marriage to be unconstitutional. This historic victory meant that same-gender couples could have their marriages recognized by the federal government, which subsequently granted access to a plethora of military and veterans’ benefits that were previously unavailable to them.

However, it also created a two-tiered system for servicemembers and veterans. More specifically, some states issued marriage licenses to same-gender couples, while others did not, and the federal government—including the DoD and the VA—used state law to determine who was considered a “spouse” for benefit purposes. If couples lived in a state without legal same-sex marriage, they would have to wed in another state that permitted it in order to be legally married and qualify for spousal military benefits.³⁵

²⁰ Theodore Sarbin and Kenneth Karols, *Nonconforming Sexual Orientation and Military Suitability* (1988); see also *Key Dates*, *supra* note 1.

²¹ Neil Miller, *Out of the Past: Gay and Lesbian History from 1869 to the Present* (2006), p. 501.

²² Bernard Rostker and Scott Harris, *supra* note 8.

²³ Neil Miller, *supra* note 21, p. 502.

²⁴ See also Fenton Bailey and Randy Barbato, *The Strange History of Don’t Ask, Don’t Tell* (2012).

²⁵ OutServe-SLDN, “About,” available http://www.outserve-sldn.org/?page=about_us

²⁶ Sheryl Stolberg, “Obama Pledges Again to End ‘Don’t Ask, Don’t Tell,’” *The New York Times* (2010).

²⁷ Bernard Rostker, *Sexual Orientation and U.S. Military Personnel Policy: An Update of RAND’s 1993 Study* (2010).

²⁸ Liz Halloran, “Gates to Senate: End ‘Don’t Ask’ Before Courts Do,” *NPR* (2010).

²⁹ Aaron Belkin, *How We Won: Progressive Lessons from the Repeal of “Don’t Ask, Don’t Tell”* (2011).

³⁰ OutServe-SLDN, *supra* note 25.

³¹ Trudy Ring, “LGBTQ+ Military Groups Merge as Modern Military Association of America,” *The Advocate* (2019).

³² Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996), codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C.

³³ Editor’s note: The Defense of Marriage Act was formally repealed by the Respect for Marriage Act (Pub. L. 117-228; 1 U.S.C. § 7; 28 U.S.C. § 1738C [2022]) in December 2022; as such, the aforementioned statute citations in footnote 32 are for historical purposes only.

³⁴ *United States v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675 (2013).

³⁵ Defense Finance and Accounting Service, “Same-Sex Marriage SBP,” available <https://www.dfas.mil/RetiredMilitary/provide/sbp/same-sex-sbp/>

It wasn't until the Supreme Court's 2015 ruling in *Obergefell v. Hodges* that marriage equality became a reality for all Americans, and LGBTQ military families began receiving full recognition and benefits as a result.³⁶ With these rulings, as well as updates to the Military Equal Opportunity program³⁷ and the UCMJ,³⁸ LGBTQ servicemembers are now able to serve freely in the military without formal laws or policies preventing them from joining, punishing them based on sexual orientation or depriving their partners of spousal benefits.

Regarding transgender inclusion in the military, there have been a number of recent victories and subsequent challenges. In June 2015, Secretary of Defense Ash Carter held a televised press conference, where he shared that the department was a "learning organization."³⁹ He went on to say that the current policies about transgender exclusion were outdated, while also stating that a working group would assess barriers to trans-inclusion in the Armed Forces.⁴⁰ That same day, Secretary Carter also directed the department to not involuntarily separate any transgender personnel from the military on the basis of their gender identity, effective immediately.⁴¹

In June 2016, the Pentagon announced that transgender personnel could serve openly in all branches of the Armed Forces, and Secretary Carter shared a number of policy and protocol updates via a department-wide memo.⁴² In late September 2016, the DoD issued a new guidebook, *Transgender Service in the U.S. Military: An Implementation Handbook*, to provide guidance on trans-inclusion in a variety of circumstances. Department of Defense Instruction 1300.28, which provided guidance for transition related guidelines, then went into effect on October 1, 2016.⁴³ And finally, the DoD set an effective date of July 1, 2017 for the accession of new transgender personnel into the military. In short, the question of trans-inclusion in the military appeared to have been answered.⁴⁴

However, this was not the case, and on the eve of that deadline for the accession of new transgender personnel, Secretary of Defense James Mattis issued a statement, which indicated there would be a delay in that new policy. By the end of July 2017, President Donald Trump, with no apparent forewarning to DoD officials, issued a series of tweets stating that cohesion' was resurrected from the DADT era, and it was offered as a reason why transgender people would be barred from service.⁴⁵

There were also arguments about purported cost and impacts to readiness and lethality, all of which were debunked. In early 2018, the Trump administration officially disqualified transgender people, excluding some in very select cases, from military service.⁴⁶ President Trump also directed the Secretaries of Defense and Homeland Security to carry out the new policy, which, after a number of prominent court battles, officially went into full effect in April 2019.⁴⁷ Many openly transgender service members were granted exceptions and could remain, but after that point, nobody else could transition in service, commission from enlisted, or join the military if they were transgender.

At the end of the 2020 presidential election, it was highly expected that the incoming Biden administration would lift this ban and restore the Obama-era regulations for allowing transgender people to serve in the military. On January 25, 2021, President Joseph Biden rescinded the Trump administration's executive guidance on transgender servicemembers effective immediately.⁴⁸

For Transgender Day of Visibility 2021, the White House issued the first-ever presidential proclamation for that day of recognition.⁴⁹ Later that day, the Pentagon then announced updated guidance, which once again allowed for many transgender people to serve openly. This was scheduled to become effective on April 30, 2021.⁵⁰

As detailed above, there have been a number of crucial victories and important milestones for LGBTQ+ inclusion in the military, but the work is not done. While we simultaneously hold onto the victories that we've fought for, work remains to be done for servicemembers living with HIV, for non-binary people who wish to serve, for transgender and intersex servicemembers and veterans in need of inclusive and affirming healthcare, for LGBTQ+ servicemembers and veterans of color, and for others in the broader LGBTQ+ community. With that being said, MMAA will not rest until its mission of "full LGBTQ+ equality in the military" is achieved.

³⁶ *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584 (2015).

³⁷ D.o.D. Directive 1020.02E. (Note: "All Service members are afforded equal opportunity in an environment free from harassment, including sexual harassment, and unlawful discrimination on the basis of race, color, national origin, religion, sex (including gender identity), or sexual orientation.")

³⁸ National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1707, 127 Stat. 672, 961 (2013). For further information, see *infra* Section on the Uniform Code of Military Justice.

³⁹ "Statement by Secretary of Defense Ash Carter on DOD Transgender Policy" (2015).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² "Memorandum for Secretaries of the Military Departments," Subject: Guidance for Treatment of Gender Dysphoria for Active and Reserve Competent Service Members (2016); see also DoDI 1300.28, In-Service Transition for Transgender Service Members (October 1, 2016), available https://dod.defense.gov/Portals/1/features/2016/0616_policy/DoD-Instruction-1300.28.pdf

⁴³ *Id.*; see also *Transgender Service in the U.S. Military: An Implementation Handbook*, U.S. Dept. of Defense, (Sept. 30, 2016), p. 64, available https://dod.defense.gov/Portals/1/features/2016/0616_policy/DoDTGHandbook_093016.pdf

⁴⁴ See also Dorian Rhea Debussy, *supra* note 17, p. 135-142.

⁴⁵ *Id.*; see also "Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security," Subject: Military Service by Transgender Individuals, The White House (August 25, 2017), available <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-secretary-homeland-security/>

⁴⁶ *Id.*; see also "Memorandum," Subject: Directive-type Memorandum (DTM)-19-004—Military Service by Transgender Persons and Persons with Gender Dysphoria, Office of the Deputy Secretary of Defense (March 12, 2019), available <https://drive.google.com/file/d/1tQugAtmmg-cDrhwQVRPtCGNBA6c7b3x2/view>; "Memorandum for the President," Subject: Military Service by Transgender Individuals," Secretary of Defense (Feb. 22, 2018), available <https://media.defense.gov/2018/Mar/23/2001894037/-1/-1/0/MILITARY-SERVICE-BY-TRANSGENDER-INDIVIDUALS.PDF>; and Richard Gonzales, "Trump Memo Disqualifies Certain Transgender People from Military Service," NPR (2018).

⁴⁷ DoDI 1300.28, Military Service by Transgender Persons and Persons with Gender Dysphoria (Sept. 4, 2020), ¶ 3, p. 8, available <https://www.health.mil/Reference-Center/Policies/2020/09/04/Military-Service-by-Transgender-Persons-and-Persons-with-Gender-Dysphoria>; see also "Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security," *supra* note 45 and Hallie Jackson and Courtney Kube, "Trump's Controversial Transgender Military Policy Goes Into Effect," NBC News (2019).

⁴⁸ "Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform," The White House (January 25, 2021), available <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-enabling-all-qualified-americans-to-serve-their-country-in-uniform/>; see also David Crary and Elana Schor, "Lifting Near-Total Ban on Transgender People from Military Service among Biden Plans to Protect LGBTQ+ Rights," Military Times (2020) and "Face Sheet: President Biden Signs Executive Order Enabling All Qualified Americans to Serve Their Country in Uniform," The White House (January 25, 2021).

⁴⁹ "A Proclamation on Transgender Day of Visibility, 2021," The White House (March 31, 2021), available <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/31/a-proclamation-on-transgender-day-of-visibility-2021/>

⁵⁰ Laurel Wamsley, "Pentagon Releases New Policies Enabling Transgender People to Serve in the Military," NPR (2021); see also DoDI 6130.03, Medical Standards for Military Service: Appointment Enlistment, or Induction (April 30, 2021), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/613003v1p.PDF?ver=7cPFjXiGqfQNSF2HHw-X6w%3d%3d> and DoDI 1300.28, Military Service by Transgender Persons and Persons with Gender Dysphoria (April 30, 2021), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130028p.pdf>

SERVICE-RELATED INFORMATION

IDENTITY & BEING “OUT”

OPEN LGBTQ SERVICE

As mentioned above, DADT, which prevented LGBTQ individuals from serving openly, was repealed under the Obama administration, and the repeal was effective on September 20, 2011.⁵¹ Servicemembers no longer need to hide their sexual orientation to protect their military careers, but there are still decisions that these servicemembers must make and several issues they may face. There is also no requirement for a servicemember to “come out” or to declare their sexual orientation to anyone, though if you get married, it must be disclosed in some instances. With the repeal of DADT, LGBTQ servicemembers may choose whether they would like to come out, and to whom, without fear of repercussions.

Many servicemembers choose to be open, honest, and authentic about their sexual orientation by inviting their significant others to command-sponsored events, placing photographs on their desks, and talking about their partners with others in the office. Many servicemembers living openly have stated that “coming out” alleviated their feelings of depression and isolation. Some

have stated that living openly is a matter of honor and integrity. Others choose not to come out for personal reasons, including the following: fear of perception by their chain of command, peers, family, and friends; fear that unconscious or intentional bias might affect their careers; or a basic desire to keep their “love life” private.

Servicemembers making this choice should realize the possible implications that hiding an integral part of their identity may have on their mental health, and they should surround themselves with affirming individuals and resources while off-duty. Several organizations can provide resources and assistance to servicemembers in these situations, and they can be found in the [“Additional Resources”](#) section of this publication.

The DoD has established policies that are intended to provide some protection to servicemembers who do not wish to declare their sexual orientation. For instance, neither the DoD nor any of the service branches will create a data category for sexual orientation,⁵² and the services will not request, collect, or

maintain sexual orientation data as a matter of course, except where the information is essential to an investigation or other official action.⁵³ An individual’s sexual orientation can no longer be the basis for administrative separation actions.

Sexual misconduct, regardless of sexual orientation, remains a basis for criminal and non-judicial punishment (NJP). Investigations relating to sexual misconduct may result in requests for a servicemember to disclose their sexual orientation, if it is essential to the investigation.⁵⁴

No matter what you decide, it is your decision, and you can make it without fear of repercussions.

OPEN TRANSGENDER SERVICE

As noted by GLAAD, transgender is “an umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth.”⁵⁵ Some transgender people may seek transition-related medical care, including but not limited to hormone replacement therapy and/or gender confirmation surgery; however, this is not inherently a part of everyone’s transition. Throughout this guide, we also discuss transgender people’s rights, as they relate to military rules and regulations. The military

has a binary view of gender, and the rules and regulations, including the language the military uses, reflect this understanding of gender identity. Additionally, much of the information in this guide is applicable for both sexual orientation and gender identity; however, information for specific populations, such as transgender people and people living with HIV, is specified, when applicable.

Given the Trump administration’s hostile policy guidance, transgender people who were serving or attempting to serve were advised to take additional care and consideration. Importantly, the Trump administration introduced a policy that affects the accession and retention of servicemembers who are transgender.⁵⁶ Previously, courts enjoined this policy from taking effect.⁵⁷ In a direct effort to counteract these unjust policy changes, OS-SLDN (now MMAA) partnered with the Lambda Legal Defense and Education Fund to pursue legal action against the policy.⁵⁸ However, this policy officially went into effect in April 2019.⁵⁹

This policy barred transgender people from joining the military. Additionally, transgender people who were currently serving and who were diagnosed with gender dysphoria before the implementation date of April 12, 2019, were permitted to continue serving and taking steps to transition under the Obama-era guidelines.⁶⁰

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ “Glossary of Terms – Transgender,” GLAAD Media Reference Guide, 10th edition (2016), p. 10.

⁵⁶ Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security,” *supra* note 45.

⁵⁷ *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017); *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464 (W.D. Wash. Apr. 13, 2018).

⁵⁸ *Karnoski v. Trump*, No. C17-1297-MJP (W.D. Wash.). (Note: MMAA, formerly under OS-SLDN, was co-counsel in this litigation, representing nine individual plaintiffs and three organizational plaintiffs challenging the ban.)

⁵⁹ Hallie Jackson and Courtney Kube, *supra* note 47.

⁶⁰ The Making of a Ban: How DTM-19-004 Works to Push Transgender People Out of Military Service,” The Palm Center (2019), p. 1-2; see also DoDI 1300.28 (2016), *supra* note 42 and “Memorandum,” Subject: Directive-type Memorandum (DTM)-19-004—Military Service by Transgender Persons and Persons with Gender Dysphoria, *supra* note 46.

⁵¹ Don’t Ask, Don’t Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515.

⁵² “Memorandum from Under Secretary of Defense for Personnel and Readiness Clifford Stanley to the Secretaries of the Military Departments,” Repeal of Don’t Ask Don’t Tell and Future Impact on Policy [hereinafter Stanley Policy Memorandum], attachment DADT Repeal Policy Guidance [hereinafter Policy Guidance], p. 1, 4 (Jan. 28, 2011).

Servicemembers who identified as transgender but didn't receive a gender dysphoria diagnosis prior the aforementioned date may have been able to continue to serve under the following conditions: 1) a military medical provider determines that transitioning is not medically necessary to protect the health of the servicemember, 2) the servicemember does not transition, 3) the servicemember is "willing and able to serve in his or her biological sex," and 4) the servicemember meets applicable deployability requirements.⁶¹ In other words, they could stay in the military and identify as transgender as long as they didn't actually take any steps to transition (unless they got a waiver, which were notoriously difficult to obtain).

As previously mentioned, it was highly expected that the Biden administration would restore the Obama-era regulations for allowing transgender people to serve in the military, and on January 25, 2021, President Biden rescinded the Trump administration's executive guidance. The Executive Order also directed the Secretary of Defense to "immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity."⁶² On Transgender Day of Visibility 2021, the Pentagon then announced updated guidance that largely mirrors the Obama-era guidance.⁶³ Effective

April 30, 2021, transgender people are once again allowed to serve openly, and in-service transition is once again allowed for servicemembers.⁶⁴

Under this new guidance, in-service transition has specific beginning and end points. More specifically, [DoDI 1300.28](#) notes the following about in-service transition: "gender transition begins when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, and then completes the medical care identified or approved by a military mental health or medical provider in a documented treatment plan as necessary to achieve stability in the self-identified gender. It concludes when the Service member's gender marker in DEERS is changed and the Service member is recognized in his or her self-identified gender."⁶⁵

Similar to sexual orientation, there is no policy that requires a servicemember to reveal their gender identity, when it differs from their sex assigned at birth. Many servicemembers who identify as transgender do not share this with their command for various reasons.⁶⁶ Those who make this choice should recognize the effect this can have on their mental health, and they should surround themselves with affirming individuals and resources while off-duty. Several organizations can provide resources and assistance to servicemembers in these situations; they can be found in

the "[Additional Resources](#)" section of this publication. Conversely, many transgender servicemembers also choose to be open about their gender identity and various aspects of their transition, and this should not impact one's service.

And finally, issues for transgender individuals may come up at the time of enlistment, appointment, or commissioning into the Armed Forces, or they may arise for personnel already serving in the military, especially during deployments, career field changes, or Permanent Change of Station.⁶⁷ Any transgender individual who has questions about military service, is being harassed, or is under investigation based upon their gender identity should [contact MMAA for assistance](#). Additional generalized guidance and resources concerning open transgender service will also be released, as they become available.

SHARING INFORMATION ABOUT YOURSELF WITH OTHERS

As being open about one's sexual orientation and/or gender identity is a personal choice and isn't required unless making certain legal changes, some servicemembers may wish to have more control over who they are "out" to. When speaking to individuals both on- and off-base, servicemembers should, therefore, be aware of how privilege and confidentiality concepts operate to protect (or not protect) their private disclosures.

Peers, Subordinates, and Superiors

Servicemembers will spend their careers working and socializing with a variety of people, including other military personnel, DoD civilians, and civilian contractors. A sense of camaraderie will often lead to the sharing of personal and private matters with peers, subordinates, and superiors. While these conversations are good for building and maintaining fruitful relationships, servicemembers should be aware that there are no protections afforded to these conversations other than a mutual respect of privacy.

Privileged Conversations v. Confidential Conversations

While the terms "privileged" and "confidential" are often used interchangeably in both practice and conversation, they are, in reality, two different concepts concerning different levels of protection from disclosure.

Confidentiality refers to an affirmative duty to not disclose information that a party has received. Generally, a person must not disclose confidential information and cannot be compelled to do so.

Privilege refers to an exemption from a normal duty to disclose information. In privileged conversations, the law recognizes a private, personal relationship between the communicating parties and cannot compel disclosure of the information communicated.

⁶¹ DoDI 1300.28 (2020), *supra* note 47; *see also id.*

⁶² "Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform," *supra* note 48; *see also* David Crary and Elana Schor, *supra* note 48.

⁶³ "A Proclamation on Transgender Day of Visibility, 2021," *supra* note 49 and Laurel Wamsley, *supra* note 50.

⁶⁴ DoDI 1300.28 (2021), *supra* note 50 and DoDI 6130.03 (2021), *supra* note 50.

⁶⁵ *Id.*

⁶⁶ Editor's note: As with LGBQ servicemembers, transgender servicemembers are able to remain in the closet. However, taking formal steps to legally change your name and/or gender marker and/or medically transitioning may require said servicemember to work with their command and a military medical team.

⁶⁷ *See* DoDI 6130.03 (2021), *supra* note 50.

But misuse of private information could be a form of harassment or lead to discrimination. People experiencing issues with the malicious disclosure of their private information should immediately seek redress through normal channels, as discussed below in the “[Harassment and Discrimination](#)” section.

Chaplains and Religious Leaders

Religious leaders may be an important resource for servicemembers. While the DoD’s directives appointing military Chaplains do not directly address confidentiality, the regulations for service branches may provide some protections.⁶⁸ For example, in the Army, servicemembers are advised to speak with Chaplains as a confidential resource,⁶⁹ and the Air Force states that Chaplains “will not disclose confidential communications in private or public.”⁷⁰ Additionally, the Chaplain’s specific denomination may impose additional confidentiality obligations that prevent the disclosure of conversations.

The Military Rules of Evidence affirm that conversations with Chaplains and their assistants are privileged when servicemembers seek spiritual guidance and counseling.⁷¹ But if the servicemember is speaking with the Chaplain for any reason other than spiritual guidance, no privilege attaches to their conversations. What constitutes “spiritual guidance” may not always be clear. Conversations about a

servicemember’s sexual orientation and/or gender identity may not be considered spiritual guidance, depending on the Chaplain’s religious doctrine. While Chaplains have a duty to care for all servicemembers,⁷² they are not required to take actions inconsistent with their personal religious beliefs while conducting their religious ministries.⁷³

If servicemembers would like to speak with a military-sanctioned religious leader about issues surrounding their sexual orientation and/or gender identity, they should investigate what the Chaplain’s denomination says about homosexuality, bisexuality, and transgender identity. They should also ask the Chaplain if the conversation would be considered confidential.

Healthcare Providers (Doctors, Dentists, Nurses, Therapists)

Military healthcare providers are required to keep individually identifiable health information confidential, except when the information is necessary for treatment, for judicial and administrative proceedings, or where disclosure is otherwise required by law.⁷⁴

Servicemembers must understand that anything they reveal to military health professionals may be used by commands to investigate or commence administrative and separation proceedings. The Rules for Courts-Martial recognize a limited psychotherapist-patient privilege that may prevent disclosure

of information during court-martial.⁷⁵ This privilege applies to the psychotherapist providing treatment in addition to any assistants throughout the treatment. The privilege exists only in the criminal context and not in administrative-separation processes. Additionally, there is no doctor-patient privilege in the military criminal justice system.

A military commander may request access to a servicemember’s medical records to ensure fulfillment of military missions,⁷⁶ to determine deployability and fitness for duty, to enforce compliance with standards and orders, or to carry out any other mission-necessary activity.⁷⁷ Commands are unable to request medical records solely to determine a servicemember’s potential LGBTQ+ identity, because policies forbid their use as criteria in any mission, assignment, or duty determinations.⁷⁸ But because commands may still have access to such information when checking the servicemember’s records for other mission-related reasons, servicemembers may wish to be careful of the information provided to military health professionals, if they do not wish to be “out” to their command.

As there is a lack of full confidentiality with military healthcare providers, many servicemembers choose to seek medical and mental healthcare from civilian providers. Servicemembers who choose to be treated by civilian practitioners should be aware

that services have regulations that require them to report that they have received such care outside of the military medical system.⁷⁹ Failure to report—or, if applicable, to obtain pre-approval for—such treatment could result in NJP or discipline under the UCMJ for failure to follow a lawful order.⁸⁰ Likewise, should a servicemember lie or make a false statement about care and treatment received off-base, they could be subject to discipline under the UCMJ.⁸¹

Additionally, some military positions require a servicemember to maintain a security clearance. During investigations for security clearances, questionnaires often ask servicemembers to identify any civilian healthcare providers and their reasons for treatment. Investigators will also often press servicemembers to sign an authorization form that allows them to question the healthcare providers. Refusal to sign the authorization form may result in the servicemember being denied a security clearance.

Occasionally, investigators may attempt to question civilian mental-health providers without receiving express permission from the servicemember. Most civilian mental-health professionals refuse to answer such questions, but servicemembers should speak with their civilian providers, before starting treatment, to verify that 1) their conversations are confidential and 2) the conversations will not be revealed without the servicemember’s explicit permission.

⁶⁸ DoDD 1304.19, Appointment of Chaplains for the Military Departments (2007).

⁶⁹ “The privilege of confidential communication with a Chaplain is a right of every individual and an essential component of the Chaplains ministry.” AR 165-1, ¶ 16-2(a).

⁷⁰ See, e.g., AFMAN 52-103, Chaplain Service Readiness Manual, Attachment 10. The quoted language is part of the Covenant and Code of Ethics for Chaplains of the Armed Forces as prescribed by the National Conference on Ministry to the Armed Forces.

⁷¹ Military Rule of Evidence (Mil. R. Evid.) 503.

⁷² DoDI 1304.28, Guidance for the Appointment of Chaplains for the Military Departments, ¶ 6.1.2, available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130428p.pdf?ver=2019-02-26-152326-953>

⁷³ Policy Guidance, *supra* note 52, p. 3.

⁷⁴ DoD 6025.18-R, DoD Health Information Privacy Regulation, ¶¶ C1.2.1, C1.2.2, C1.2.3, C1.2.4, C1.2.5.

⁷⁵ Rules for Courts-Martial (“R.C.M.”) 513.

⁷⁶ DOD 6025.18-R, ¶ C7.11.1.1.

⁷⁷ *Id.*, ¶ C7.11.1.3.

⁷⁸ Policy Guidance, *supra* note 52, p. 5.

⁷⁹ See, e.g., AFI 41-210, TRICARE Operations and Patient Administration Functions (2018); AR 40-400, ¶ 10-6; NAVMED P-117.

⁸⁰ Article 92, UCMJ, 10 U.S.C. § 892.

⁸¹ Article 107, UCMJ, 10 U.S.C. § 907.

Lawyers

Servicemembers may consult with an attorney on base, which is provided for free at the local Legal Assistance Office, and/or a civilian attorney. Consulting the Legal Assistance Office first can help a servicemember determine what services the office may provide for free and what matters, if any, may need to be referred to a civilian attorney. Additionally, the Legal Assistance Office can direct servicemembers to specific regulations, which may offer them protection and provide a link between the servicemember and their command.

Generally, communications between attorneys and their clients, which are made in connection with seeking legal advice, are confidential and protected by attorney-client privilege.⁸² But in some circumstances, conversations between a servicemember and their attorney may be unprotected, including when the attorney believes that the client is about to commit a crime or when a third party is present during the conversation.

Defense attorneys have ethical obligations to be zealous advocates for their clients and will keep client information confidential. But not all military attorneys are defense attorneys. Command legal officers and prosecutors (a.k.a. trial counsel) have no obligation to keep conversations with servicemembers confidential.

Anything a servicemember says to these personnel can be used against them. Before discussing case-specific information with a military lawyer, a servicemember should always inquire whether they are speaking with a defense or legal assistance attorney and whether their conversation will be considered confidential. If the answer to either question is no, the servicemember should understand that the conversation is not protected and may be disclosed to another party.

If dealing with civilian counsel, a servicemember should understand that a civilian attorney also owes a duty of confidentiality, and a civilian attorney must keep conversations with their clients confidential, unless they receive express permission from their client to divulge. If a servicemember is unsure whether they are considered a client, they should ask the civilian attorney to ensure their conversations will be held in confidence.

Ensure Confidentiality with a Military Lawyer

- (1) Are you a defense attorney?
- (2) Is our conversation confidential?

If the answer to either question is **NO**, the conversation has no confidentiality protections.

Spouses

Private conversations between spouses are privileged, except in very limited situations. Under the Military Rules of Evidence, a spouse may choose not to testify as a witness about private marital conversations, and a spouse, as a defendant in a case, can also prevent their spouse from testifying about private marital conversations. However, a spouse may not refuse to testify if the marriage has been terminated by divorce or annulment by the time of the testimony.⁸³ Additionally, this privilege applies only to spouses, not to any other committed relationship, and in some cases, it may be applicable to previous marriages.⁸⁴

Among exceptions to this privilege include: 1) when someone is charged with a crime against their spouse, their spouse's property, or a child of either person; 2) if the marriage was fraudulent; or 3) if both parties have substantially and jointly participated in an illegal activity.⁸⁵

The spousal privilege rules discussed above apply in military proceedings, but each state has its own laws about spouses' private conversations. If a servicemember is involved in a case in a state court (i.e. for a divorce, child custody matter, etc.), then different spousal privileges will apply. A civilian attorney can assist a servicemember with navigating the state court rules, regarding spousal privilege.

LIVING PUBLICLY "OUT"

Choosing to live openly and authentically can be a difficult decision, even for civilians in the most progressive environments. It is a highly personal and sensitive choice, and servicemembers should move at a pace comfortable to them in deciding when, how, and to whom they want to reveal these personal aspects of their identity.

As a guiding principle, all servicemembers should be allowed to serve in the same manner, regardless of their sexual orientation and/or gender identity. Servicemembers' choices to come out and to serve openly should not affect the quality of their service or the benefits and privileges related to their service.

STANDARDS OF CONDUCT

The DoD and individual service branches have many rules, regulations, and policies that set forth standards of how members should conduct themselves on- and off-duty. Servicemembers are responsible for complying with these standards, which should be applied consistently and without regard to sexual orientation and/or gender expression.⁸⁶

Regarding gender identity, special considerations needed to be taken by transgender servicemembers, under the Trump administration; however, the Biden administration, via Executive Order, rescinded the guidance prohibiting open transgender

⁸³ Mil. R. Evid. 504.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Policy Guidance, *supra* note 52, 2.

service on January 25, 2021.⁸⁷ For transgender servicemembers with questions regarding gender identity and the standards of conduct, contact MMAA with any relevant questions or concerns.

In short, LGBTQ+ servicemembers should be regulated by the same high standards of conduct that their heterosexual and cisgender counterparts are subjected to under the same situations. Contact MMAA immediately if a regulation is being misapplied as a way of targeting or harassing LGBTQ+ servicemembers.

ENGAGING IN THE LGBTQ+ COMMUNITY

There are situations unique to the LGBTQ+ community with few parallels to environments and activities in other populations. As a result, some may find it difficult to readily identify guidance for navigating these spaces and recognizing potential implications for their military careers. The information below is provided as a general recommendation. Each situation is unique; for more resources, go to modernmilitary.org/programs/lgbtq-advocacy.⁸⁸

LGBTQ+ Pride Events

The same regulations that apply to a servicemember's attendance at any public event, parade, or rally are applicable, when those events are focused on the LGBTQ+ community. Servicemembers may attend social events and participate in a manner

consistent with off-duty conduct expectations. For instance, servicemembers may attend political activities when not in uniform, and they may voice their personal opinions on political candidates and issues, as long as the activity is conducted in a manner that could not be construed as being representative of the DoD or any service branch. While attending such events that are more political in nature, servicemembers must abide by their individual service branch's regulations concerning participation, which is further discussed below. Similarly, servicemembers are able to attend LGBTQ+ pride events and may voice their opinions in congruence with the information detailed above.

LGBTQ+ Bars and Clubs

Servicemembers may frequent any drinking establishment that they choose, as long as the establishment has not been "black-listed" or placed on an "off-limits" list by their command. An establishment may be declared off-limits for several reasons, including the presence of known criminal activity, previous altercations between servicemembers and civilians, and other factors that affect good order and discipline.⁸⁹ A command may not declare an establishment off-limits simply because it caters to LGBTQ+ clientele. Off-limits orders restricting servicemembers from patronizing a LGBTQ+ bar or club should be [reported to MMAA](#), so we may address the situation directly with the individual command or service branch.

While at a LGBTQ+ bar or club, a servicemember's conduct must conform to their command's regulations and standards of conduct. Activities that might be acceptable for a civilian may not be acceptable for a member of the Armed Forces. For example, both "indecent acts" and "indecent exposure" are prohibited by [Article 120, UCMJ](#).

ENGAGING IN MILITARY-SPECIFIC ACTIVITIES

Similarly, LGBTQ+ servicemembers may need guidance for navigating military-specific spaces as openly LGBTQ+ people. Again, the information below is a general recommendation.

Attending Military-Sponsored Events

Command- and service-sponsored activities, including service balls, command picnics, and formal dinners, are an important aspect of military life, promoting esprit de corps, and celebrating joint and individual accomplishments. All servicemembers should be able to fully participate in these events. If the event allows guests, servicemembers should feel free to invite people of their choice, regardless of their sexual orientation and/or gender identity. Policies regarding dress, grooming, and public displays of affection (PDA) apply at all military functions, including celebratory and morale-building activities. Likewise, servicemembers are still subject to the UCMJ during military-sponsored activities.

Servicemembers may also be responsible for the conduct of their guests, and their guests may be expected to conform to any rules and regulations that the event imposes on all other guests. MMAA can help to address any issues regarding restrictions and repercussions based on the sexual orientation and/or gender identity of servicemembers or their guests.

Serving OCONUS

Overseas deployments and assignments should not be restricted based on a servicemember's sexual orientation. Likewise, transgender servicemembers have successfully deployed and served—both pre- and post-transition—while stationed overseas. However, host countries may have laws concerning homosexuality, homosexual conduct, and/or transgender status. Servicemembers should be informed of host-country laws and local military policies during assignment notifications and deployment briefings.⁹⁰ Similarly, certain challenges to access to transition-related care may impact a servicemembers' ability to pursue an OCONUS assignment. Servicemembers preparing for an OCONUS assignment can contact MMAA for additional information on the host country policies, laws, and attitudes towards LGBTQ+ people, as well as resources for their continued support. Command sponsorship and OCONUS permanent changes of station with dependents are further discussed below in the "[Military Family Matters and Benefits](#)" section of this guide.

Finding Support Groups

The military community has developed several resources to help servicemembers who need

⁸⁷ See DoDI 1300.28 (2020), *supra* note 47; see also "Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform," *supra* note 48 and David Crary and Elana Schor, *supra* note 48.

⁸⁸ Editor's note: When on-duty and in uniform, servicemembers must adhere to certain dress and appearance standards, which conform to a binary gender expression. However, off-duty servicemembers, including those who identify as non-binary and/or gender expansive, may dress in a manner that more authentically affirms their gender identity and expression.

⁸⁹ 32 C.F.R. § 631.11.

⁹⁰ *Policy Guidance*, *supra* note 52, p. 5.

support in both professional and personal matters. The on-base Morale, Welfare, and Recreation (MWR) office may have information for community and on-base support programming. Servicemembers experiencing family, relationship, and military life issues may additionally contact Military OneSource, a free counseling service provided by the DoD.⁹¹ In addition to active MMAA chapters, a list of additional LGBTQ+ organizations and support programs available to servicemembers can be found in the ["Additional Resources"](#) section of this guide.

SOCIAL MEDIA AND OTHER PUBLIC PROFILES

Social media platforms are prevalent today, and they are often used for networking and socializing on both personal and professional levels. These platforms provide means of sharing information, posting photographs, and connecting with friends.

All regulations that govern conduct also apply to online behavior. If an act violates rules governing public displays of affection while in uniform, then a photograph of that conduct taking place will also violate that regulation. Additionally, political activity, via social media platforms, is governed and limited in the same manner. A servicemember's actions on social media, regardless whether on a personal or private account, can be punishable under the UCMJ and/or branch specific regulations.

To enhance recruiting and command morale and to improve communications, servicemembers may be able to use government computers to access their social media for both official purposes and limited personal use, when authorized.⁹² But servicemembers may not visit websites that reflect poorly on the DoD, such as pornographic websites and online gambling websites.⁹³ Local command policies regarding acceptable personal use should be applied without regard to sexual orientation and/or gender identity. If the command allows access to social media and dating websites, then there should be no restrictions on visiting similar sites that cater to the LGBTQ+ community.

When using any machine or system owned by the government or one connected to a government network, servicemembers' activities may be monitored.⁹⁴ Policies concerning the use of computers apply equally to the use of smartphones—both government-issued and personal—when on-duty or connected to the command's internet network. Servicemembers should practice the same care that they would with a personal or government-issued computer.



Servicemembers must maintain operational security (OPSEC) when using any information system or social network. Units should provide guidance on what information may or may not be shared publicly. However, a servicemember should treat everything posted to a social network as public, and therefore should not disclose unit strength, mission details, or travel information.

POLITICAL ACTIVITY

Servicemembers may attend political activities, vote, and voice their personal opinions on political candidates and issues.⁹⁵ Servicemembers may also attend political fundraising events, meetings, rallies, debates, conventions, or activities as spectators 1) when not in uniform and 2) when no inference or appearance of official sponsorship, approval, or endorsement can reasonably be drawn.⁹⁶ Servicemembers

may not participate, as more than spectators, in partisan political events; such events are those that advocate for a particular candidate, political party, or a cause identified with a particular political party. This restriction applies even when the servicemember is in civilian clothes and there is no appearance of official endorsement.⁹⁷ When in a foreign country, servicemembers are restricted from attending any off-base demonstrations, even out of uniform.⁹⁸

Political Activity⁹⁹

 A servicemember may:	 A servicemember may not:
<ul style="list-style-type: none"> • Make monetary contributions to a political organization. • Attend political meetings, rallies, events, and conventions as a spectator and when not in uniform, unless in a foreign country. • Lobby a Member of Congress (i.e. make phone calls, write emails/letters, attend a townhall, etc.) on their own time and when not in uniform. • Join a political organization and attend its meetings, as a private citizen and when not in uniform. • Sign a petition, if done as a private citizen and not as a member of the Armed Forces. • Write a letter to the editor of a newspaper expressing one's personal views on public issues, political campaigns, and/or political candidates. • Display a bumper sticker on their private vehicle. • Vote.¹⁰⁰ 	<ul style="list-style-type: none"> • Participate, as more than a spectator, in partisan political campaigns, events, etc. • Use contemptuous words against military or elected officials. • Display a large political sign, banner, poster, and/or flag (as distinguished from a bumper sticker) on their private vehicle. • Display political signs at on-base housing. • Sell tickets for or otherwise actively promote, partisan political dinners, programs, and similar fundraising events. • Attend political meetings, rallies, events, and conventions, as an official representative of the Armed Forces. • Engage in any political activity while in uniform or in a foreign country. • Engage in any other activity that will be viewed as associating the DoD, the DHS, or an individual service branch directly or indirectly with partisan political activity.

Servicemembers who are uncertain whether an activity is covered by DoD policy should contact MMAA for guidance prior to engaging in the activity.

⁹¹ See <http://www.militaryonesource.mil/>

⁹² See DoDI 8550.01, DoD Internet Services and Internet-Based Capabilities (Sept. 11, 2012), available https://fas.org/irp/doddir/dod/i8550_01.pdf

⁹³ DoD. 5500.7-R, The Joint Ethics Regulation, ¶ 2-301(a)(2)(d) (2012).

⁹⁴ *Id.* ¶ 2-301(a)(3).

⁹⁵ DoDD 1344.10, Political Activities by Members of the Armed Forces, ¶ 4.1.1 (2008).

⁹⁶ *Id.*

⁹⁷ *Id.* ¶ 4.1.2.1.

⁹⁸ DoDI 1325.06, Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, Enclosure 3, ¶ 6.b (2021).

⁹⁹ *Id.*

¹⁰⁰ See "Military Voter," Federal Voting Assistance Program (FVAP), available <https://www.fvap.gov/military-voter>

HARASSMENT AND DISCRIMINATION

Servicemembers who are or are perceived as LGBTQ+ may face harassment, discrimination, threats, and/or violence. While the perpetrators of harassment and discrimination on the basis of sexual orientation and/or gender identity usually don't identify as LGBTQ+, even people who identify within this community can harass and discriminate against LGBTQ+ people.

Harassment can take different forms, ranging from a hostile command climate filled with anti-LGBTQ+ jokes, insults mocking transgender people, or even direct verbal and physical abuse and threats. Many military leaders have publicly stated that they will not tolerate harassment or discrimination against LGBTQ+ servicemembers. Additionally, members of the Armed Forces have the right to make complaints, through both military and civilian channels, about improper treatment or harassment by their peers, chain of command, or other personnel. Servicemembers who are facing the threat of immediate physical harm may also report the threat directly to the military police or the on-base Chaplain's office. Servicemembers may also seek guidance via the Legal Assistance Office on how to proceed with filing a complaint or taking corrective action.

Note: Although some Chaplains have been open in their opposition to the LGBTQ+ community, they must, as a matter of policy,

provide aid and assistance for servicemembers whose physical and emotional safety is at risk. Chaplains' offices can offer a safe space when there may be nowhere else for a servicemember to retreat to, and this is especially true when on a forward-operating base or deployed ship or when command is perceived as hostile.

Some of the more common complaint procedures regarding discrimination and harassment are detailed below:

Command Complaints: If possible, servicemembers should try to use their chain of command to address issues before attempting to make complaints through other channels. Servicemembers may ask their commands to take disciplinary action against other members who violate the UCMJ or other punitive regulations.¹⁰¹ Requests of this nature are normally made in writing, and it is up to the command to decide whether to act. It is important to recognize that a junior servicemember who attempts to place a senior servicemember "on report" through this process may face retaliation in ways that are difficult to prove (i.e. difficult work assignments, weekend duty, etc.), regardless of whether that individual is in their direct chain of command.

If a servicemember's chain of command is part of the complaint, or condones or is complicit in the harassment, the servicemember need not try to resolve the issue through a command

complaint, and they may need to use other methods to report the mistreatment. Servicemembers may also utilize their local Inspector General, Equal Opportunity program, or Legal Assistance Office for guidance on filing a complaint.

Equal Opportunity (EO) Complaints:

After the repeal of DADT, the DoD updated its equal-opportunity policy to include sexual orientation. In addition, employment discrimination on the basis gender identity constitutes sex discrimination.¹⁰² This has also recently been affirmed by the Supreme Court.¹⁰³ Each service branch has a dedicated military equal opportunity (MEO) office, which is staffed with officers trained to handle complaints of discrimination, harassment, and/or mistreatment based on "race, color, national origin, religion, sex (including gender identity), or sexual orientation."¹⁰⁴ Any servicemember experiencing any such issue can make a complaint directly to their MEO office.

Inspector General (IG) Complaints:

Servicemembers may bring complaints of harassment or regulation violations to the Inspector General's Office on their base, service branch, or the DoD.¹⁰⁵ The individual offices have little power to correct the problems on their own, but their findings and recommendations may induce action by the command.

Formal Complaints Against Superior Officers (Article 138, UCMJ):

A servicemember is permitted to seek a redress of grievances against a superior officer, which includes their commanding officer, under Article 138, UCMJ.¹⁰⁶ Servicemembers may attempt to use this complaint process to right a wrong that they believe they have faced, even if no law or regulation has been violated.

Service-branch regulations vary, but these complaints generally begin with a letter or memo to the superior or commanding officer requesting redress (usually through an apology, a command training session to address violated

Protection Against Retaliation

Servicemembers who face retaliation for making complaints often have protections under the [Military Whistleblower Protection Act](#) (10 U.S.C. § 1034 and DoDD 7050.6, Military Whistleblower Protection (2000)).

Under the Act, servicemembers who make certain types of complaints are entitled to prompt Inspector General investigations of any adverse personnel action or threatened adverse personal action that may be retaliatory in nature. If the retaliation results in formal adverse action, servicemembers are entitled to expedited proceedings before the Boards for Corrections of Military and Naval Records (BCM/NR).

¹⁰² DoDD 1020.02E, Diversity Management and Equal Opportunity in the DoD (June 8, 2015); see also DoDD 1020.02E, "Incorporating Change 2" (June 1, 2018).

¹⁰³ *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731 (2020).

¹⁰⁴ DoDD 1020.02E, *supra* note 98, Enclosure 2 ¶ 2.b(1).

¹⁰⁵ 10 U.S.C. § 1034(c).

¹⁰⁶ "Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made." Article 138, UCMJ, 10 U.S.C. § 938.

policies, request to transfer to another department or unit, etc.). If the officer denies the request or does not respond in a certain length of time, then a formal complaint may be made to any commissioned officer superior to the first officer, who must then forward the complaint to the officer exercising general-court-martial-convening authority over that first officer. The officer exercising general-court-martial-convening authority must then act on the complaint and report the matter to the Secretary of the Service.¹⁰⁷

Congressional Inquiries: Servicemembers have the right to communicate with their congressional representative(s) to seek their assistance in resolving problems with the military.¹⁰⁸ They do not need command permission to contact the offices of their congressional representative(s).

In some cases, congressional inquiries are no more than an exchange of letters between a congressional aide and a liaison officer at the service branch's headquarters. When presented with concrete evidence and asked for specific types of assistance, sympathetic congressional representatives can urge services and local commands to act on incidents of discrimination and harassment.

Contacting the Media and Press:

Complaints made to the press in an attempt to use their ability to influence the military should be done only with legal counsel and only as part of a well-examined strategy to redress a wrong. The decision to go to the media is not to be taken lightly, and it should generally be considered only after other

avenues of redress have been unsuccessful. While the press can be influential, there is little the servicemember can do to control the situation once the media has the story. In addition, the servicemember may be ordered not to communicate with the press after the initial story runs. In these cases, a civilian attorney can represent the servicemember's interests to the press in an effort to protect the servicemember from repercussions of disobeying a lawful order.

In addition to the complaint procedures listed above, servicemembers who experience harassment based on their actual or perceived sexual orientation and/or gender identity may also contact MMAA for assistance.

Important Information to Include when Reporting Harassment

- What happened?
- Who did it? (Detailed description)
- When and where did it happen?
- Were there witnesses?

In general, it is helpful for servicemembers to document harassment when it occurs. Documentation should include clear statements of fact, including: what happened, when it happened, where it happened, and names and descriptions of harassers,

witnesses, and/or other people involved. If servicemembers receive a threatening note, they should handle it as little as possible, while then placing it in a sealed zip-locked bag or other sealed container for preservation. If the notes are in the form of graffiti (i.e. they cannot be contained for preservation or can easily be erased), the servicemember should photograph the epithets and identify a third-party witness who is willing to provide corroboration.

If the notes are in a temporary electronic message (i.e. a SnapChat, Instagram story, or other temporary file), the servicemember should make every effort to screenshot the epithets and any identifying indicators (i.e. usernames, account name, etc.). If the servicemember is subjected to any destruction of property, they should follow these same photographing and corroboration processes. If the servicemember does not feel comfortable going to the site of the destruction or graffiti themselves, then they should ask someone they trust to visit the site with a witness in order to take the photographs. It is important that the servicemember make and keep copies of their documentation and any other information and/or messages that they receive.

In some instances, it may be valuable to reveal the nature of the harassment being reported, as federal law permits prosecutors in crimes motivated by animus to enhance the sentence for the underlying crime by labeling it as a hate crime.¹⁰⁹

A servicemember, whether they are openly LGBTQ+ or have simply been perceived as LGBTQ+, reporting anti-LGBTQ+ harassment

Realities of Physical Harassment and Property Damage

After Private Mark Dennis was outed to his command by an online social media profile, he started to experience significant harassment from other soldiers. This harassment included vandalism of his car: interior fabrics were slashed, the exterior was defaced with anti-gay graffiti, access to the vehicle was barricaded, and the gas tank was contaminated. OS-SLDN (now MMAA) assisted Private Dennis in reporting these incidents to his command and in filing a successful claim with the Army to recover out-of-pocket expenses associated with repairs to his vehicle.

may also ask their commands not to reveal the nature of the alleged harassment to other servicemembers. The chief concern behind this decision making process is rooted in the fact that revealing that a servicemember has been harassed because they are perceived to be LGBTQ+ (regardless of whether it is true) may create and fuel rumors that might further jeopardize their safety and well-being.

A servicemember can submit a complaint, even when they are subjected to disciplinary actions in the same manners listed above. Normally, complaints cannot be used to stop discharge proceedings or disciplinary actions; however, they can be useful in bringing the military's attention to problems within those proceedings. Commands may also take a second look if they realize that the proceedings are tied to improper or illegal actions.

¹⁰⁷ Article 138, UCMJ, 10 U.S.C. § 938.

¹⁰⁸ See 10 U.S.C. § 1034.

¹⁰⁹ 18 U.S.C. § 249(a)(2).

If a servicemember is considering making any type of complaint, they file an incident report at modernmilitary.org/report-an-incident. We can help the servicemember decide the best way to route the complaint, encourage

the command or the service to treat the complaint seriously, and help to protect the servicemember from retaliation for making the complaint.

PRIVACY ISSUES

COHABITATION

Independent of DADT and its repeal, the DoD Unified Facilities Criteria is continuously working towards securing better privacy by requiring new housing construction to afford servicemembers a private bedroom and a bathroom that is shared by no more than one other person.¹¹⁰ While the military attempts to accommodate the privacy needs of servicemembers, military life and necessity sometimes require living in environments with little to no privacy.¹¹¹

Units will assign living quarters based on the needs of the service, but they will not ask for or use a servicemember's sexual orientation in making any housing decisions. Additionally, units will not segregate servicemembers based upon their actual or perceived sexual orientation. Servicemembers are expected to respect the privacy of their fellow servicemembers and to live in their assigned quarters.¹¹² Any problems with assigned roommates should be addressed through their command, but

the command will not grant reassignments solely because of an individual's sexual orientation or their personal views concerning sexual orientation.¹¹³ If servicemembers are experiencing housing difficulties based upon their actual or perceived sexual orientation, they should contact MMAA for assistance. Units may assign living quarters based upon gender. However, the current non-discrimination provisions disallow units in any branch of the Armed Forces from discriminating on the basis of gender.¹¹⁴ Under the Obama-era guidelines, transgender servicemembers were assigned living quarters "immediately based upon the gender marker change in the Service personnel data system."¹¹⁵

However, regulations during the Trump administration disallowed transgender servicemembers from serving outside of their gender assigned at birth.¹¹⁶ As noted in other areas of this guide, the Biden administration rescinded the Trump-era guidance via Executive Order on January 25, 2021, and while this information is still developing at the time of this

writing, transgender servicemembers should now be assigned into living quarters that correspond with their gender identity.¹¹⁷ Servicemembers who are experiencing housing difficulties based upon their actual or perceived gender identity should contact MMAA for assistance.

Servicemembers may be eligible to live either in on-base family housing, if available, or off-base housing, depending on their pay-grade and number of dependents. Those authorized to live in on-base family housing because of legal dependents (children, spouse, parents, etc.) are normally not allowed to have non-family members live in their housing unit. If a servicemember is authorized to live off-base, there is no restriction on the people with whom the member may share housing. For more information on military housing, please see the "[Military Family Matters and Benefits](#)" section of this guide.

PORNOGRAPHY

In most cases, there is no issue with servicemembers purchasing, possessing, and/or viewing legal pornography. But the unique demands of the military do create limitations on a servicemember's ability to have pornographic materials. For instance, services may restrict members from possessing pornography while in a training status; pornography is forbidden on government computers or networks;¹¹⁸ and military commissaries and exchanges may not sell or rent pornographic materials.¹¹⁹

Members who are serving overseas or in deployed locations may be subject to additional area-of-responsibility (AOR) orders restricting the creation, purchase, and/or possession of pornography. For example, General Order Number 1 of U.S. Central Command (CENTCOM) forbids pornography in deployment locations under its control.¹²⁰ Host-country laws may also create additional restrictions on the types of pornographic materials that are permissible within a host country.

Servicemembers who fail to follow applicable regulations and orders that apply to purchasing, possessing, and/or viewing pornography are subject to discipline, including NJP, court martial under Article 92, UCMJ, or administrative action up to and including separation.

SEXUALLY EXPLICIT IMAGERY

Taking private, sexually explicit photos or video of oneself—or others with their consent—is likewise generally not a problem, though there are some important exceptions discussed below. The words "private" and "consent" are key here. Issues arise if the sexually explicit images are not intended to be private or if they become public intentionally or accidentally.

Consent: Servicemembers who are photographed or videotaped without their consent are victims of a sexual crime, and if the person doing so is a servicemember, then they may be charged under Article 120c, UCMJ.¹²¹ As a reminder, best practices for

¹¹⁰ DoD Manual 4165.63-M, DoD Housing Management, Enclosure 3, table 2 (2018).

¹¹¹ *Policy Guidance*, *supra* note 52, 4.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ DoD Manual 4165.63-M, *supra* note 110, p. 50.

¹¹⁵ Transgender Service in the U.S. Military: An Implementation Handbook, *supra* note 43.

¹¹⁶ DoDI 1300.28 (2020), *supra* note 447.

¹¹⁷ See "Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform," *supra* note 48; see also David Crary and Elana Schor, *supra* note 48.

¹¹⁸ DoD 5500.7-R, ¶ 2-301(a)(2)(d).

¹¹⁹ 10 U.S.C. § 2495b.

¹²⁰ U.S. Central Command, General Order Number 1, ¶ 3(e) (4 Nov. 2009).

¹²¹ Article 120c, UCMJ, 10 U.S.C. § 920c (regarding indecent viewing, visual recording, or broadcasting). Servicemembers should report to command, legal office, or chaplain. Victims of servicemembers may report to a legal office or criminal investigation office. If the perpetrator is not active duty military, victims in 38 states and the District of Columbia may report under state revenge-porn laws. See also <https://www.cybercivilrights.org/revenge-porn-laws/>. (Note: There may also be a civil claim for invasion of privacy or emotional distress. LGBTQ+ servicemembers, whether victim or accused, may also call MMAA.)

consent include ensuring that it is freely given, reversible, informed, enthusiastic, and specific. Participants should also be aware of potential power differentials in any sexual and/or romantic relationships and/or encounters.¹²²

Conduct Orders: Even when there is consent, servicemembers should be aware of general orders that govern their AOR and/or their situation. For example, CENTCOM General Order No. 1 prohibits not just purchasing and possessing, but it also prohibits “creating, or displaying” material “depicting pornographic or sexually explicit material or images.”¹²³ Similar orders may exist in other AORs, in other commands, or in other circumstances such as while in a training status or on a ship during deployment.

Appearing in Pornography: Servicemembers may not appear in pornography, which would be considered indecent exposure in violation of Article 120c.¹²⁴ This prohibition applies to mass-market pornography in addition to pornography that is self-produced for public display, distribution, and/or sale. Being paid and appearing in uniform, with weapons, and/or while wearing dog tags could violate various regulations, including some that are punitive.¹²⁵

Public Display or Distribution: Servicemembers who make explicit images public may be producing revenge porn. (See the section below for more information on this topic.) If the individual did not consent

to the display or distribution of the images, then the people depicted should be considered victims. Even if the servicemember is a victim of this act, discipline cannot be ruled out, especially if they consented to or participated in creating the images and/or if that activity is itself independently prohibited. There may be additional legal, administrative, and/or disciplinary ramifications if the images depict illegal or prohibited acts like using drugs.

SEXTING AND REVENGE PORN

As noted above, there is generally no issue with sending pornographic electronic images to another person if: 1) the images are of oneself or, if other individuals are included, they were able to and have given consent; 2) the person receiving the images is able to and has consented to receive them; 3) all parties involved are of the age of consent; and 4) government property is not being used to send the images. The same qualifications discussed above also apply here; however, sending explicit images, even when consent is present, may violate AOR and/or other orders that prohibit this conduct, so servicemembers should be aware of their circumstances.

If a servicemember sends sexually explicit images of themselves or of others to a person who did not consent to receive them, then that would likely be considered sexual misconduct in violation of Article 120c, UCMJ. (This is discussed in more detail below.)

If a servicemember distributes sexually explicit images of others without consent, then that

When considering sexually explicit images, the following chart should help identify the potential legal issues that may arise.

Legal Issues Re Sexually Explicit Images

Role ¹²⁶	Activity	Consent?	Potential Issues
Creator of image	Creation of self-image	Yes	Be aware of any conduct orders
	Creation of image of someone else	Yes	Be aware of any conduct orders
		No	Indecent viewing, Article 120c(a), UCMJ
	Send self-image to others	Yes	Be aware of any conduct orders
		No	Indecent exposure, Article 120c(c), UCMJ
	Public display of self-image	Yes	Indecent exposure, Article 120c(c), UCMJ <i>See also below re: “subject of image.”</i>
Public display or distribution of image of someone else	Yes to both	Indecent exposure, Article 120c(c), UCMJ	
	Yes to creation only	Wrongful broadcast, Article 117a, UCMJ	
	No	Indecent broadcast, Article 120c(a), UCMJ Wrongful broadcast, Article 117a, UCMJ	
Subject of image	Creation of image	Yes	Be aware of any conduct orders
		No	Victim
	Public display or distribution of image	Yes to both	Indecent exposure, Article 120c(c), UCMJ And: possible disciplinary and/or administrative action, if the image depicts separate offense or prohibited conduct
		Yes to creation only	Be aware of conduct orders. And: possible disciplinary and/or administrative action, if the image depicts separate offense or prohibited conduct
		No	Victim But: possible disciplinary and/or administrative action, if the image depicts separate offense or prohibited conduct
	Stationed in CENTCOM or subject to AOR or other applicable orders	Failure to obey, Article 92, UCMJ; conduct unbecoming, Article 133 (officer), UCMJ; service discrediting conduct, Article 134 (enlisted)	
	Received payment	Violation of Joint Ethics Regulation (JER), possibly ethics rule re using public office for private gain ¹²⁷	
	Wearing uniform/ID tags	Violation of non-punitive uniform regulations; may contribute to charges under Article 133 or 134	
	Appearing with weapons	Violation of punitive provisions of JER	
	What is depicted	Reaction may be more severe for sexual activity, multiple partners, “deviant” acts than for mere nudity	

¹²² “Sexual Consent,” Planned Parenthood, available <https://www.plannedparenthood.org/learn/relationships/sexual-consent>

¹²³ U.S. Central Command, General Order Number 1, ¶ 3(e).

¹²⁴ Article 120c, UCMJ, 10 U.S.C. § 920c(c), (regarding making indecent exposure a punishable offense).

¹²⁵ See *infra chart*, LEGAL ISSUES RE SEXUALLY EXPLICIT IMAGES, and accompanying footnotes.

¹²⁶ For this chart, the actors are assumed to be active duty servicemembers. For National Guard members not subject to the UCMJ, applicable State Code of Military Justice or state statutes would apply.

¹²⁷ DoD 5500.07-R ¶ 5-404(a) (prohibiting compensation from non-federal sources); 5 C.F.R. § 2635.702 (prohibiting use of public office for private gain).

could be considered “revenge porn,” which could result in administrative and/or disciplinary consequences. Responding to a scandal involving the non-consensual use of someone’s explicit images, Congress prohibited the “wrongful broadcast or distribution of intimate visual images” in 2017.¹²⁸ The statute made it a chargeable offense 1) when someone “knowingly and wrongfully broadcasts or distributes an intimate visual image of another person” without the explicit consent of the person depicted, and 2) when that substantially harms the person depicted with regard to their “health, safety, business, calling, career, financial condition, reputation, or personal relationships.”¹²⁹ The new offense became Article 117a of the UCMJ.

SECURITY CLEARANCE INTERVIEWS AND REGULATIONS

The process of seeking security clearance can be very invasive, and servicemembers seeking such clearance may feel that they are subject to reduced levels of privacy to obtain it. No matter how invasive, servicemembers should always be truthful during security clearance investigations, and servicemembers should not fear that their honesty during the application or interviews will endanger their career.

The basic security clearance questionnaire asks whether the applicant has a “cohabitant,”

which means a person with whom they “share bonds of affection, obligation, or other commitment, as opposed to ... a roommate.”¹³⁰ But beyond that, under President Clinton’s May 1995 Executive Order and resulting policy changes, questions about sexual orientation or same-gender sexual activities are improper, and they can no longer be asked unless they are relevant to resolve a legitimate national security concern.¹³¹ Legitimate security concerns include sexual conduct—whether with someone of the same gender or someone of a different gender—that “could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability, or good judgment that is required of anyone with access to classified information.”¹³² Nevertheless, some security clearance investigators do ask questions about sexual orientation and same-gender relationships. Servicemembers who are in relationships with foreign nationals are especially at risk of invasive questioning, and such relationships create additional obstacles to gaining or retaining a security clearance.¹³³

Regarding transgender servicemembers, information about any aspect of an individual’s medical transition is protected under the Privacy Act of 1974. Additionally, non-consensual access to an individual’s medical history under this act requires certain requirements, such as being “compiled solely for the purpose of determining suitability,

eligibility, or qualifications for...military service... or access to classified information.”¹³⁴ With that being said, there may be an instance where a servicemember is asked a question about their gender identity, but confidential information from a security clearance investigator should not be shared, unless it is deemed relevant as legitimate security concern as described in the above paragraph.¹³⁵ As such, identifying as transgender is not an automatic disqualification for a security clearance.

PHYSICAL AND MENTAL HEALTH

MEDICAL CARE

All servicemembers, regardless of sexual orientation and/or gender identity, are eligible for treatment at a military Medical Treatment Facility (MTF). A servicemember’s sexual orientation or history of same-gender sexual activity should never prevent them from accessing medical treatment or preventative-medicine programs.¹³⁷

Military healthcare providers must protect individually identifiable health information

As noted above, security clearance investigators should not reveal to commanders any information about servicemembers’ sexual orientation, transgender status, or associated activities, as this was obtained during a security clearance interview. According to the regulations governing security clearance investigations, commanders, who have been given information from the interview, should not use this information as a basis for adverse administrative action.¹³⁶

from disclosure, except when the information is necessary for treatment, for judicial and/or administrative proceedings, or where disclosure is otherwise allowed by law.¹³⁸ Military commanders may also request access to the medical records of servicemembers when necessary to assure fulfillment of military missions.¹³⁹ Military health information can be disclosed to commanders to determine the servicemember’s fitness for duty, to ensure compliance with standards and orders, or to carry out any other mission-necessary activity.¹⁴⁰

¹²⁸ National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 533 (2017), 10 U.S.C. § 917a.

¹²⁹ 10 U.S.C. § 917a

¹³⁰ Standard Form 86, Questionnaire for National Security Positions, Question 17.3 (December 2010), available https://www.opm.gov/forms/pdf_fill/sf86-non508.pdf

¹³¹ Exec. Order No. 12,968, 60 Fed. Reg. 40,245 (Aug. 7, 1995).

¹³² “Memorandum from Secretary of Defense Les Aspin to the Secretaries of the Military Department,” Policy Guidelines on Homosexual Conduct in the Armed Forces, July 19, 1993; see also DoD 5200.2-R, Personnel Security Program, Appendix 8, “Sexual Behavior” (1987, incorporating changes through 1996).

¹³³ DoD 5200.2-R, Personnel Security Program, Appendix 8, “Foreign Influence” (1987, incorporating changes through 1996).

¹³⁴ Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896.

¹³⁵ “Know Your Rights: Employment (Federal),” National Center for Transgender Equality, available <https://transequality.org/know-your-rights/employment-federal>

¹³⁶ “Information about an individual’s sexual orientation or statements by an individual that he or she is a homosexual or bisexual, or words to that effect, shall not be referred to law enforcement agencies or to Military Departments (other than consolidated adjudication facilities) for any purpose. If investigative reports containing such information are referred to law enforcement agencies or Military Departments for other reasons, information subject to the limitations in this paragraph will be removed.” For more information, see DoD 5200.2-R, ¶ C2.4.3.4.3.

¹³⁷ DoD has adopted FDA guidelines for blood and tissue donations, however. Under current FDA guidelines, a man who has had sex with men (MSM) may not donate blood for one year. Women who have had sexual contact with MSMs also may not donate blood for a year. This policy applies only to blood donation, not its receipt. MSM may receive blood when treated in an MTF, but they may not donate blood even to another MSM.

¹³⁸ DoD 6025.18-R, ¶ C1.2; see also Privacy Act of 1974, *supra* note 119.

¹³⁹ *Id.*, ¶ C7.11.1.1.

¹⁴⁰ *Id.*, ¶ C7.11.1.3.

As noted previously, commands are unable to request a servicemember's medical records solely to find information on the member's sexual orientation, because policies forbid the use of sexual orientation as criteria in any mission, assignment, or duty determinations.¹⁴¹ Because commands may still have access to information about their sexual orientation and/or gender identity when checking the servicemember's records for mission-related reasons, servicemembers may wish to be careful of information provided to military health professionals, if the member does not wish to be out to their command. Be mindful, however, that keeping medically relevant information from treating physicians may affect treatment decisions in addition to the quality of care received. This can be a difficult balancing act.

Should servicemembers feel that private health information has been disclosed improperly, they should contact MMAA for assistance. For more information on protections for medical information, see the "Healthcare Providers (Doctors, Dentists, Nurses, Therapists)" sub-section under the "[Sharing Information About Yourself With Others](#)" section above.

Civilian Medical Care

Many servicemembers seek medical

and mental health treatment in the civilian community. Servicemembers who choose to be treated by civilian practitioners should be aware that military regulations require them to report receiving medical or mental health treatment outside the military medical system.¹⁴² Should the military learn of such treatment and the member has not reported it, the member may face discipline.¹⁴³ If a servicemember lies about receiving treatment, they are at risk of violating the UCMJ by making a false statement.¹⁴⁴

Pre-Exposure Prophylaxis (PrEP) and Post-Exposure Prophylaxis (PEP)

Pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) are biomedical interventions that help to prevent the spread of HIV/AIDS by protecting a person from acquiring the virus.¹⁴⁵ PrEP is prescribed and taken daily, prior to exposure to HIV, and PEP, which must be taken within 72 hours after exposure to HIV has already occurred, is generally prescribed for 28 days total.¹⁴⁶

In 2018, the DoD issued guidance on PrEP, and as a part of this guidance, an associated PrEP toolkit for military medical providers.¹⁴⁷ In this guidance, the DoD noted that the military medical providers offering PrEP should follow the CDC guidelines for administering the medication, while also ensuring culturally competent care to patients in the LGBTQ+ community.¹⁴⁸ The DoD also clearly noted in

the guidance that "participation in an HIV PrEP program will not be used to deny reenlistment to members on continuous active duty or deny eligibility for accession into any Service branch."¹⁴⁹

And finally, the DoD's Defense Health Agency (DHA) finalized the policy for PrEP in 2019. In this guidance, the DHA noted that "PrEP will be available and delivered in a standardized fashion throughout the MHS [Military Health System] in order to minimize the risk of HIV acquisition."¹⁵⁰ Similarly, the final guidance noted that this resource is available to "all military and non-military beneficiaries who are at high risk for HIV acquisition," and the DHA reaffirmed that PrEP usage shall not be used to deny reenlistment or accession.¹⁵¹

Navy and Marine Corps: Beginning in 2015, the Sexual Health and Responsibility Program (SHARP) of the Navy and Marine Corps Public Health Center (NMCPHC) developed prevention posters advertising the availability of PrEP and PEP, as well as web-based educational tools that included information about PrEP.¹⁵² SHARP also produced a fact sheet and webinar about PrEP and provided direction for military medical providers about prescribing PrEP to servicemembers.¹⁵³ Despite this, Sailors and Marines, who sought PrEP during this time, experienced localized differences in the ability to access PrEP. For instance, servicemembers on larger bases, those near urban areas, and those

with infectious-disease (ID) specialists had an easier time accessing PrEP.

With the new guidance, these localized differences should be minimized or non-existent.¹⁵⁴ Sailors and Marines should speak to their military medical provider if they are interested in PrEP. If necessary, servicemembers can still request a referral to a medical provider off-base.

Army, Air Force, and Coast Guard: At time of publication for our previous edition, the Army, Air Force, and Coast Guard did not appear to have a service-wide HIV-prevention program that included PrEP. Soldiers, Airmen, and Coast Guardsmen who sought PrEP during this time often needed to speak to their military medical providers or to request a referral to a medical provider off-base. As such, the lack of a program made approval and, thus PrEP, difficult to obtain. Under the new guidance, Airmen and Coast Guardsmen who are interested in PrEP should speak to their military medical provider. If necessary, servicemembers can still request a referral to a medical provider off-base.¹⁵⁵

Servicemembers who encounter difficulty accessing PrEP or PEP should contact MMAA for assistance.

¹⁴¹ *Policy Guidance*, *supra* note 52, p. 5.

¹⁴² See *supra* notes 73-77 and their accompanying texts.

¹⁴³ Article 92, UCMJ, 10 U.S.C. § 892.

¹⁴⁴ Article 107, UCMJ, 10 U.S.C. § 907.

¹⁴⁵ "About PrEP," Centers for Disease Control and Prevention (CDC) (2020), available <https://www.cdc.gov/hiv/basics/prep/about-prep.html> and "About PEP," Centers for Disease Control and Prevention (CDC) (2020), available <https://www.cdc.gov/hiv/basics/pep/about-pep.html>

¹⁴⁶ *Id.*

¹⁴⁷ DHA-IPM 18-020, Guidance for the Provision of Human Immunodeficiency Virus (HIV) Pre-Exposure Prophylaxis (PrEP) for Persons at High Risk of Acquiring HIV Infection (Nov. 8, 2018); see also "Human Immunodeficiency Virus (HIV) and Pre-Exposure Prophylaxis (PrEP) for Military Service Members (SMs) (2021), available at https://www.dhaj7-cepo.com/sites/default/files/DHA_J7_CEPO_FY21_NursesWeek_HIVPrEP_v1-0_2021-04-27.pdf

¹⁴⁸ *Id.*, Attachment 3, p. 5-6.

¹⁴⁹ *Id.*, p. 6.

¹⁵⁰ DHA-PI 6025.29, Provision of Human Immunodeficiency Virus (HIV) Pre-Exposure Prophylaxis (PrEP) for Persons at High Risk of Acquiring HIV Infection (Dec. 20, 2019), available <https://health.mil/Reference-Center/Policies/2019/12/20/DHA-PI-6025-29-Provision-of-HIV-Pre-Exposure-Prophylaxis>

¹⁵¹ *Id.*, Enclosure 2, p. 4.

¹⁵² Micahel MacDonald, "Navy Medicine and the 2020 National HIV Prevention Strategy," Navy Medicine Live (2015).

¹⁵³ "Webinar – HIV Pre-Exposure Prophylaxis (PrEP) in DOD," Navy and Marine Corps Public Health Center (2015), available <https://www.med.navy.mil/sites/nmcpHC/Documents/health-promotion-wellness/general-tools-and-programs/Webinars/webinar-hiv-prep-2015-presentation.pdf>

¹⁵⁴ DHA-PI 6025.29, *supra* note 147.

¹⁵⁵ *Id.*

Hormone Replacement Therapy and Transition-Related Care

As noted in the “[Open Transgender Service](#)” sub-section of the “[Identity and Being ‘Out’](#)” section above, open transgender service was previously restricted by the Trump administration.¹⁵⁶ Given the specifications around the effective date for the Trump administration’s guidance, access to hormone replacement therapy and transition-related care also was contingent upon when a transgender servicemember joined the military and when they were diagnosed with gender dysphoria. However, the Biden administration rescinded the Trump-era executive guidance on January 25, 2021.¹⁵⁷ While access to transition-related care was not directly mentioned in this Executive Order, it was mentioned in the updated guidance that the Pentagon issued on March 31, 2021.¹⁵⁸

In that updated guidance, transgender servicemembers must receive a diagnosis of gender dysphoria from a military medical provider, and the military medical provider will recommend what is deemed to be medically necessary treatment. As with the Obama-era guidance, detailed information about the roles and responsibilities of the servicemember, the military medical provider, the servicemember’s command, and the service branch are outlined in the document.¹⁵⁹

Transgender servicemembers who have questions about the latest guidance related

to accessing hormone replacement therapy and transition-related care should contact MMAA for assistance.

MENTAL HEALTHCARE

Servicemembers consistently face circumstances that can lead to mental health concerns and conditions, including but not limited to the following: separation from loved ones, the near-constant potential for or actual catastrophic injury, long-term uncertainty and loss of control, loss of friends and comrades, and the potential for or threat of life-altering or life-ending events.

LGBTQ+ servicemembers face a layer of additional concerns, including but not limited to the following: loneliness and isolation from LGBTQ+ support networks; potential harassment, discrimination, and even violence arising from homophobia and/or transphobia; higher reported rates of childhood trauma, including violence and family rejection due to their LGBTQ+ identity; uncertain political environments, featuring debates about their right to exist and serve equally; and much more. As such, anxiety, depression, mood disorders, substance misuse, and PTSD are not uncommon in the broader LGBTQ+ community, and LGBTQ+ servicemembers are not immune to these mental health concerns and conditions.

Regardless of their sexual orientation and/or gender identity, servicemembers are often reluctant to access mental healthcare due to fear of negative professional consequences,

stigma associated with seeking treatment, concerns about being seen as weak, pressure to maintain or to project a sense of control and strength, and even physical and geographical barriers to seeing a provider. The military typically does not conduct routine required mental health screenings besides at medical appointments and post-deployment, and it is up to individual servicemembers to take the initiative to seek treatment whenever it is necessary for their mental health and well-being.

Service-Provided Care

As with physical medical care, all active-duty servicemembers are eligible for mental healthcare provided by the military. Recognizing the importance of mental health, all service branches are making efforts to integrate mental health services more closely into primary care. Servicemembers should be aware that certain mental health conditions can be disqualifying, either partially (as to certain positions, assignments, deployments, duties, or rights and privileges) or fully (so as to lead to involuntary separation), and such disqualification can be temporary or permanent.

In the sections below, there is a discussion of two specific mental health issues: Military Sexual Trauma (MST) and PTSD. LGBTQ+ servicemembers may find this information especially useful or important when seeking service-provided care.

Military Sexual Trauma (MST): MST refers to the results of not just rape and sexual

assault but also threats of sexual violence and/or repeated or severe incidents of sexual harassment. MST includes the following: 1) sexual activity against one’s will, either by force or threat of force or violence, threat of negative professional outcomes, or promises of positive treatment; 2) sexual activity when unable to consent, such as while asleep or incapacitated by drugs or alcohol; 3) sexual activity that goes beyond the scope of the consent given; 4) unwelcome touching of a sexual nature, with or without clothing; 5) offensive sexual comments, including comments about a person’s body, looks, sexual activity, sexual orientation, and/or gender identity, particularly as it relates to sex and sexual activities; and 6) unwelcome, threatening, or repeated sexual advances. Any servicemember can experience MST, regardless of the sexual orientation and/or gender identity of the perpetrator.¹⁶⁰

The DoD has established the Sexual Assault Prevention and Response Office to oversee the military’s sexual assault policy.¹⁶¹ In addition, each service branch has its own prevention and response program, and each service branch has a Special Victims’ Counsel, who serves as a free and confidential attorney to the servicemember.¹⁶² Servicemember victims of sexual assault are encouraged to report to command to activate both victims’ services and law enforcement responses (known as “unrestricted” reporting). Servicemembers who desire only healthcare and advocacy services may choose to make a restricted report, which is confidential and does not involve the command

¹⁵⁶ DoDI 1300.28 (2020), *supra* note 47; *see also* “The Making of a Ban: How DTM-19-004 Works to Push Transgender People Out of Military Service,” *supra* note 60 and “Memorandum,” Subject: Directive-type Memorandum (DTM)-19-004—Military Service by Transgender Persons and Persons with Gender Dysphoria, *supra* note 46.

¹⁵⁷ *See* “Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform,” *supra* note 48; *see also* David Crary and Elana Schor, *supra* note 48 and Meghann Myers, “Retired Surgeons General Say Trump’s Transgender Ban Damaged Military Readiness,” *Military Times* (2020).

¹⁵⁸ DoDI 1300.28 (2021), *supra* note 50 and DoDI 6130.03 (2021), *supra* note 50.

¹⁵⁹ *Id.*

¹⁶⁰ Sharon Valente and Callie Wright, “Military Sexual Trauma: Violence and Sexual Abuse,” *Military Medicine*, vol. 172, no. 3 (2007), p. 259-265.

¹⁶¹ *See* <http://www.sapr.mil/>

¹⁶² For more information, *see* Army SHARP, available <http://www.sexualassault.army.mil/>; Air Force SAPR, available <http://www.af.mil/SAPR.aspx>; Navy SAPR, available <https://www.sapr.navy.mil/>; Marine Corps SAPR, available <http://www.hqmc.marines.mil/Agencies/Headquarters-and-Service-Battalion/SAPR-Office/>; and/or Coast Guard SAPR, available <https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Health-Safety-and-Work-Life-CG-11/Office-of-Work-Life-CG-111/Sexual-Assault-Prevention-and-Response-Program/>

or law enforcement.¹⁶³

PTSD: It is theorized that members of the LGBTQ+ community, when coming of age as adults, already experience symptoms of anxiety, depression, and/or PTSD from growing up in a heteronormative, homophobic, cisnormative, and transphobic world.¹⁶⁴ As noted above, service in the military can have its own unique set of stressors, and these can cause, contribute to, or exacerbate PTSD, particularly for LGBTQ+ people. For this reason, it is especially important to seek mental healthcare services and support when needed.

Servicemembers who experience MST and/or symptoms of PTSD may also contact MMAA for advice and assistance about getting help and treatment via service-provided care.

Pastoral Care

In addition to seeking counseling services, servicemembers may also seek religious and/or spiritual guidance from military Chaplains. Across the Armed Forces, servicemembers identify with many different religions or adhere to no religion. The military Chaplaincy reflects this diversity, and in the Army alone, it includes Chaplains who represent 140 different religious organizations and faith traditions.¹⁶⁵

As noted by the DoD, a Chaplain “shall serve a religiously diverse population.”¹⁶⁶ For a person to be considered for appointment as a military Chaplain, a religious organization must certify that they are both “willing to function in a pluralistic environment...and... willing to support directly and indirectly the free exercise of religion by all members of the Military Services, their family members, and other persons authorized to be served by the military Chaplaincies.”¹⁶⁷ Religious organizations that choose to participate in the military Chaplaincies recognize that military commanders are required to provide comprehensive religious support to all authorized individuals within their areas of responsibility.¹⁶⁸

Military Chaplains, like other members of the Armed Forces, may freely exercise their religious beliefs. In the context of their ministry, Chaplains are not required to take actions that are inconsistent with their religious beliefs. As such, a Chaplain, when conducting a denominational service, must adhere to and preach fundamental teachings of the religion. However, the DoD has also emphasized that with the repeal of DADT and greater strides towards inclusion of servicemembers regardless of their sexual orientation and/or gender identity, the Chaplains’ “duty to care for all will not change.”¹⁶⁹

At times, servicemembers may have to seek counseling or moral support from Chaplains who are not of their own religion or faith tradition, simply because there is no other Chaplain available. Military Chaplains are required to provide counseling and support services to all servicemembers, as noted above. In this situation, a Chaplain may not criticize a servicemember’s religion or faith tradition, and a Chaplain may not denigrate a servicemember based on race, religion, sexual orientation, gender identity, and other protected classes, even if that is part of the Chaplain’s own religious beliefs.

At the same time, what Chaplains say or do can be limited by the tenets of their own religion or faith tradition. If the Chaplain cannot provide the needed services because of their own religious beliefs, then the Chaplain is required to help the servicemember find a religious or spiritual resource, which can be another Chaplain or a lay leader, who can provide that servicemember with the needed support and guidance.

HIV/AIDS

The repeal of DADT did not change any of the regulations relating to HIV/AIDS or any other sexually transmitted diseases/sexually transmitted infections (STDs/STIs). Below, there are sections that address topics like accession, retention, treatment, and more, which may be

particularly helpful for servicemembers living with HIV. Important updates about current litigation on behalf of people living with HIV (PLWHIV) is also provided throughout, when applicable.

Accession

People who wish to enter the military must undergo a medical evaluation, and this includes an HIV test. If the test shows that the person is living with HIV, regulations impose a categorical ban, and PLWHIV are currently prohibited from enlisting in or being appointed to the Armed Forces.¹⁷⁰

In recent years, several court cases have challenged military policies, and a recent victory ended the long-standing ban on deploying or commissioning for PLWHIV. In April 2022, a federal court ruled that the DoD could no longer discriminate against servicemembers living with HIV and must allow them to deploy and commission as officers; MMAA, alongside Lambda Legal, filed this important lawsuit.¹⁷¹ Subsequently, the Secretary of Defense in June 2022, issued a memo directing a policy change that prevents servicemembers living with HIV from restrictions from deployment or commissioning, so long as they are undetectable and asymptomatic.¹⁷² Unfortunately, that victory still didn’t allow PLWHIV to enlist in the U.S. military, and in November 2022, Lambda

¹⁶³ *Id.*; see also <http://sapr.mil/index.php/reporting-options>

¹⁶⁴ See David Guggenheim, “PTSD: It Comes With The Territory If You’re LGBT,” *The Advocate* (2016) and Payam Ghassemi, “LGBT Suicide and the Trauma of Growing Up Gay,” *Psych Central*; see also Alan Downs, *The Velvet Rage: Overcoming the Pain of Growing Up Gay in a Straight Man’s World* (2012 ed.) and “Preventing Suicide in LGBTQ+ Youth,” *American Medical Association*, available <https://www.ama-assn.org/delivering-care/population-care/preventing-suicide-LGBTQ+-youth>

¹⁶⁵ See <https://www.army.mil/chaplaincorps/>

¹⁶⁶ DoDD 1304.19, Appointment of Chaplains for the Military Departments, § 4.2 (2007).

¹⁶⁷ DoDI 1304.28, Guidance for the Appointment of Chaplains for the Military Departments § 6.1.2 (2014).

¹⁶⁸ *Id.*, Enclosure 3, § E3.1.1, available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130428p.pdf?ver=2019-02-26-152326-953>

¹⁶⁹ *Policy Guidance*, *supra* note 52, p. 3.

¹⁷⁰ See DoDI 6485.01, Human Immunodeficiency Virus (HIV) in Military Service Members, ¶ 3a (June 7, 2013), available <https://apps.dtic.mil/dtic/tr/fulltext/u2/a617332.pdf> (Note: For service regulations more generally, see the following: SECNAVINST 5300.30E, Management of Human Immunodeficiency Virus, Hepatitis B Virus, and Hepatitis C Virus Infection in the Navy and Marine Corps [2012]; AR 600-110, Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus [2014]; and AFI 48-135, Human Immunodeficiency Virus Program [2018].)

¹⁷¹ “Federal Court Strikes Down Pentagon’s Discriminatory Restrictions on Military Service of People Living with HIV as Arbitrary and Unconstitutional; Hailed by Lambda Legal as ‘Landmark Victory,’” *Lambda Legal* (April 7, 2022), available https://www.lambdalegal.org/news/us_20220407_federal-court-strikes-down-pentagons-discriminatory-restrictions-on-military-service-of-people-living-with-hiv; see also *Harrison v. Austin*, No. 18-cv-641 (E.D. Va.) (2022) and *Roe v. Austin*, No. 18-cv-1565 (E.D. Va.) (2022).

¹⁷² See “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors,” Subject: Policy Regarding Human Immunodeficiency Virus-Positive Personnel Within the Armed Forces (June 6, 2022), available <https://media.defense.gov/2022/Jun/07/2003013398/-1/-1/0/POLICY-REGARDING-HUMAN-IMMUNODEFICIENCY-VIRUS-POSITIVE-PERSONNEL-WITHIN-THE-ARMED-FORCES.PDF>

Legal filed a new lawsuit to challenge this restriction.¹⁷³ At the time of publication, this case is still ongoing.

Additionally, it should also be noted that, MMAA and Lambda Legal filed a lawsuit representing two cadets, who were rejected from the Navy and Air Force upon graduation because of their HIV status.¹⁷⁴ While the Trump administration requested that this lawsuit be dismissed, the court denied this request, and this case is still pending.¹⁷⁵

For updates to these cases and/or for questions about accession for PLWHIV, please contact MMAA or Lambda Legal for more information, as these cases are still developing at the time of this writing.¹⁷⁶

Retention

Once in the military, servicemembers are periodically tested for HIV. Those who acquire HIV after ascension into the military are subject to numerous regulations and restrictions, as detailed below.

Fitness for Duty

Whether an active duty servicemember with HIV may continue serving primarily depends on the servicemember's health condition. Upon initial diagnosis and, annually

thereafter, all active duty personnel with HIV are evaluated for medical fitness. If they are found to be and remain healthy (i.e. "medically fit for duty"), active-duty personnel are generally allowed to continue serving "in a manner that ensures access to appropriate medical care."¹⁷⁷ Even if found to be medically fit, active-duty servicemembers with HIV may request administrative separation from the service, but the services are not obligated to approve the request.¹⁷⁸

In addition to annual check-ups, active-duty personnel are also medically evaluated to determine whether they show symptoms of any HIV-related condition. Whether upon initial diagnosis during an annual examination or if showing symptoms related to an HIV-infection, active duty or reserve-component personnel "who are determined to be unfit for further duty" are medically separated from the service.¹⁷⁹

Servicemembers who are medically unfit with at least a 30% disability rating (using the Department of Veterans Affairs "Schedule for Rating Disabilities"¹⁸⁰) will likely be medically retired (i.e. retired from active-duty with a pension along with access to military healthcare facilities).¹⁸¹ Servicemembers who are medically unfit with less than a 30% rating usually receive a one-time disability severance payment, rather than disability retirement.¹⁸²

These members are then eligible for limited healthcare through VA medical facilities.¹⁸³ If you feel that you deserve a higher rating, please contact MMAA for assistance.

Duty Assignments, Deployment, and Promotion

Prior to recent developments, active duty servicemembers living with HIV, for the most part, were restricted to assignment within the continental United States, Hawaii, Alaska, and Puerto Rico.¹⁸⁴ Additionally, servicemembers were assigned to units that are not normally deployable, and they were not eligible for deployment orders.¹⁸⁵ These rules often limited a servicemember's ability to obtain a permanent change of station (PCS) or a new military occupational specialty (MOS). Service regulations and command decisions sometimes resulted in additional duty restrictions, such as pilots being grounded and air-traffic control being disqualified.¹⁸⁶

The restrictions on assignment and deployability interfered with the ability of servicemembers living with HIV to obtain the opportunities, experiences, career milestones, and ribbons and recognitions that are important to advance and achieve promotions, in addition to some specialty qualifications.

In 2012, the Navy updated its policy to loosen the restrictions on the deployment of Sailors

and Marines with HIV. The new policy stated that "certain personnel who are considered to have controlled HIV disease as manifested by a reconstituted immune system, no viremia, an established history of medical compliance, and a history of professional attitude, may be considered for OCONUS or large ship platform tours."¹⁸⁷

These placements still required the receiving command's acceptance, and even this updated policy prohibited consideration for some assignments.¹⁸⁸ Sailors and Marines who sought such assignments had to go through an exception-to-policy (ETP) process.¹⁸⁹ An ETP process was also available for Soldiers and Airmen living with HIV who sought OCONUS assignments.¹⁹⁰

As mentioned previously, an April 2022 court decision and subsequent memo from the Secretary of Defense in November 2022 prohibited HIV status alone from impacting deployability.

Reserve and National Guard servicemembers who are diagnosed with HIV have historically been treated differently. Usually, these individuals have been separated from the service without the opportunity to apply for disability retirement; if they were in or eligible to transfer into an available non-deployable billet or if they were granted an ETP, then they were generally not be separated from the service.¹⁹¹ However, there have been relatively few non-deployable billets in the National Guard and

¹⁷³ "Lambda Legal to Challenge Discriminatory Military Service Policy Preventing People Living with HIV from Enlisting in U.S. Armed Forces," Lambda Legal (November 10, 2022), available https://www.lambdalegal.org/news/us_20221110_ll-to-challenge-military-policy-preventing-people-living-with-hiv-from-enlisting; see also *Wilkins v. Austin*, No. 22-cv-01272 (Ed. Va.) (2022).

¹⁷⁴ *Deese and Doe v. Esper*, RDB-18-2669 (D. Md.) (2020).

¹⁷⁵ *Id.* and "Lambda Legal to Challenge Discriminatory Military Service Policy Preventing People Living with HIV from Enlisting in U.S. Armed Forces" *supra* note 173.

¹⁷⁶ See *Harrison v. Austin*, *supra* note 171; *Roe v. Austin*, *supra* note 171; and *Wilkins v. Austin*, *supra* note 173; see also *Deese and Doe v. Esper*, *supra* note 174 and "*Harrison v. Austin* (formerly *v. Esper* and at filing *v. Shanahan*)," Lambda Legal (2022), available <https://www.lambdalegal.org/in-court/cases/harrison-v-austin>

¹⁷⁷ DoDI 6485.01, *supra* note 170, Enclosure 2 ¶ 2.c.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*, Enclosure 2 ¶ 2.e.

¹⁸⁰ 38 C.F.R. § 4.88b, item 6351.

¹⁸¹ 10 U.S.C. § 1201(b)(3)(B).

¹⁸² 10 U.S.C. § 1212.

¹⁸³ 38 C.F.R. § 17.46.

¹⁸⁴ AFI 48-135, ¶ 3.8 (2000); AR 600-110, ¶ 4-2 (2014); SECNAVINST 5300.30E, ¶¶ 9, 11(g) (2012); NAVMC 2904, ¶ 2002(3) (1991); COMDTINST M6230.9, Chap. 3, Sec A (2008).

¹⁸⁵ *Id.*

¹⁸⁶ See e.g., Air Force Waiver Guide, at 423 (2017) ("[HIV] infection is disqualifying for all flying class personnel per Air Force policy. ... ATC/GBC and MOD personnel are also disqualified for retention duties so will require an AMS for disposition from their special duty assignments.").

¹⁸⁷ SECNAVINST 5300.30E, ¶ 9.b (2012).

¹⁸⁸ *Id.*

¹⁸⁹ SECNAVINST 5300.30E, ¶ 9.c (2012).

¹⁹⁰ *Id.*

¹⁹¹ See, e.g., AR 600-110 ¶ 7-12.

Reserves, and most National Guard and Reserve billets are required to be available for overseas deployment when activated.

At the time of this writing, information is continuing to develop about Reserve and National Guard servicemembers, based upon the court cases discussed above. For updates and/or questions about PLWHIV in the Reserve or National Guard, please contact MMAA or Lambda Legal for more information, as the DoD working group is still developing policies and procedures at the time of this writing.¹⁹²

Non-Deployability and Retention

Though servicemembers who acquire HIV are no longer separated if found to be fit for duty, the previous automatic classification as “non-deployable” affected retention. In early 2018, the DoD made a policy announcement about the retention of servicemembers who were classified as being long-term non-deployable.¹⁹³ The policy purported to require the administrative or disability separation of any servicemember “who [has] been non-deployable for more than 12 consecutive months, for any reason.”¹⁹⁴ Although the policy gave Service Secretaries the authority to grant waivers, only pregnant and postpartum servicemembers were exempt from it. This policy memorandum was replaced by a DoDI with similar effects.¹⁹⁵

This retention policy had severe implications for servicemembers living with HIV, as they were all classified as non-deployable. Fortunately, the new policy announced in November 2022 ends this era of automatic non-deployability for PLWHIV.

Contact Tracing

Servicemembers who are diagnosed with HIV may go through contact tracing or “epidemiological assessment.”¹⁹⁶ During this process, military and potentially civilian healthcare professionals will ask the servicemember for the names and contact information of people with whom they engaged in sexual activity during a certain time period before the diagnosis. Obtaining this information would allow public-health officials to confidentially contact sexual partners and urge them to get tested for HIV. The epidemiological assessment is mandatory, but servicemembers are not, strictly speaking, required to reveal the information requested unless there is a direct order to do so.

The information provided during this epidemiological assessment should not be used against the servicemember in personnel or legal actions.¹⁹⁷ Current DoD policy prohibits “adverse personnel actions” against people diagnosed with HIV, and this includes involuntary administrative discharge, court-martial, or unfavorable entries in personnel record based solely on information obtained during a contact-

tracing investigation.¹⁹⁸ Servicemembers are encouraged to contact MMAA with questions related to contact tracing procedures.

Treatment Medical Care

Servicemembers who are diagnosed with HIV are provided medical care to treat the condition. In fact, the servicemember will be ordered to obtain treatment and to abide by the treating physician’s instructions, such as adhering to their antiretroviral therapy (ART) regimen.

Generally, ID specialists in the service branches provide competent HIV-related care using up-to-date treatment protocols, but the cultural competence of military medical providers may vary, depending on circumstances like location, geography, and personal background. Some military medical providers may hold outdated and possibly biased views—perhaps informed by non-medical regulations that do not reflect the current state of HIV medical science—concerning both the transmission of HIV and those who live with it. If you encounter any bias, harassment, and/or discrimination related to HIV treatment, contact MMAA for assistance.

Confidentiality

The HIV status of servicemembers should be, and usually is, treated confidentially. Regulations limit who may be informed of a servicemember’s HIV status, and this is generally limited to a commanding officer. Furthermore, such persons are required to undergo training or instruction concerning the confidentiality of the information and the handling of medical and legal documentation.

Depending upon one’s service branch, they may be temporarily relocated to another location for initial medical evaluations. Airmen with HIV are sent to the San Antonio Military Medical Center (SAMMC) at Brooke Army Medical Center for both the initial medical evaluation and annual follow-up evaluations with an ID specialist. Sailors, Marines, and Coast Guardsmen are usually sent to designated HIV Evaluation and Treatment Units (HETU) in Bethesda, Portsmouth, or San Diego for initial evaluation and, at least for Coast Guardsmen, for follow-up evaluations as well. And finally, Soldiers are evaluated at regional medical centers across the country. As such, the processing of temporary duty (TDY) orders related to these appointments may reveal—to non-commissioned officers and others in the unit—that the servicemember is living with HIV.

Although military regulations require confidentiality of HIV test results and limiting knowledge of a servicemember’s HIV status to those that need to know, test results often, in reality, become more widely known. Such medical privacy violations may cause embarrassment and even lead to the harassment of servicemembers with HIV. If health information becomes known and leads to harassment or discrimination, servicemembers are encouraged to contact MMAA for assistance.

Counseling and Conduct Orders

Historically, servicemembers living with HIV have been, almost immediately after diagnosis, ordered preventative health counseling by medical professionals, in addition to commander

¹⁹² See “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors,” *supra* note 172; see also *Deese and Doe v. Esper*, *supra* note 174; *Harrison v. Austin*, *supra* note 171; “*Harrison v. Austin* (formerly *v. Esper* and at filing *v. Shanahan*),” *supra* note 176; *Roe v. Austin*, *supra* note 171; and *Wilkins v. Austin*, *supra* note 173.

¹⁹³ Policy Memorandum, “Subject: DoD Retention Policy for Non-Deployable Service Members (Feb. 14, 2018), available <https://www.usar.army.mil/Portals/98/Users/151/87/1687/MEMO%2020180218%20DoD%20Policy%20for%20Non-deployable%20Service%20Members.pdf?ver=2018-12-18-111950-887>

¹⁹⁴ *Id.*

¹⁹⁵ DoDI 1332.45, Retention Discriminations for Non-Deployable Service Members (July 30, 2018), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133245p.pdf?ver=2018-08-01-143025-053>

¹⁹⁶ *E.g.*, AR 600-110 ¶ 9-3.

¹⁹⁷ See *id.*

¹⁹⁸ See DoDI 6485.01, *supra* note 170, ¶ 6.5.

counseling from their commanding officer. These measures have been ostensibly a force-protection and a public health effort meant to stop the spread of HIV. However, the orders are out-of-date, scientifically inaccurate, and dubious in their effectiveness in many ways. Even so, servicemembers have had to obey these orders. The commander counseling in particular—known as “safe sex” orders—come with important consequences for non-compliance.¹⁹⁹

As with portions of the sections above, information is continuing to develop about this topic at the time of this writing. More specifically, pending court cases, along with the outcome of the aforementioned DoD working group, may impact counseling and conduct orders for PLWHIV. For updates and/or questions related to this topic, please contact MMAA or Lambda Legal for more information.²⁰⁰

Content and Requirements

The “safe-sex” orders are similar, although not identical, across the service branches. Generally, they require the servicemember:

1. to inform potential sexual partners of their HIV status before engaging in any form of sexual activity;
2. to use condoms to prevent the transfer of bodily fluids during sexual activity;
3. to inform emergency medical personnel

and medical providers of their HIV status, as soon as practicable; and

4. to not donate blood, tissues, organs, and/or breast milk.

It should also be noted that the general “safe-sex” orders are not immediately clear about what is an acceptable method of “informing” and which “bodily fluids” are necessarily covered.

Additionally, the “safe-sex” orders do not account for biomedical interventions like ART, which all active-duty servicemembers with HIV will be prescribed at their initial evaluation. While the CDC has affirmed that HIV transmission from an HIV+ person with an undetectable viral load is “effectively no risk” (i.e. undetectable equals untransmittable or U=U), the “safe-sex” orders must still be followed, pending the potential updates noted above.²⁰¹

Compliance and Concerns

As noted above, complying with the “safe-sex” order is mandatory. Failure to follow the order may result in disciplinary action, including involuntary separation and even criminal prosecution at court-martial for violation of [Article 92, UCMJ](#) (failure to obey an order or regulation), [Article 120, UCMJ](#) (sexual assault), [Article 128, UCMJ](#) (assault), and others. Under long-standing military law, assault charges are technically possible based solely on the lack of

disclosure, even if a condom was used and there was no risk of transmission.²⁰²

Below are some issues that servicemembers with HIV should keep in mind:

Viral suppression/undetectable status:

Servicemembers must comply with the “safe-sex” order even if they are virally suppressed or undetectable and therefore unable to transmit the virus.²⁰³

PrEP/HIV status of sex partner: Strictly speaking, servicemembers must comply with the “safe-sex” order, and this is still true, even if their partner is on PrEP to help prevent an HIV infection and even if their partner is also living with HIV. Conceivably, that partner may decide that condoms aren’t a necessary protective measure. Particularly in serious or long-term relationships, enforcing the “safe-sex” order under these circumstances may be subject to legal challenge on the grounds that: 1) it is not a lawful order, because it does not meet its purpose of preventing the spread of HIV, and 2) it is an unconstitutional invasion into intimate relations in violation of the principles of *Lawrence v. Texas*.²⁰⁴ These theories are untested, though MMAA is continuing to challenge outdated policies related to HIV/AIDS.²⁰⁵

Oral sex: Again, strictly speaking, the “safe-sex” order requires that condoms be worn during oral sex, and this is still true, despite the fact that the

CDC has noted that there is “little to no risk” for HIV transmission during oral sex.²⁰⁶

Other STDs and STIs: In some cases, acquiring a sexually transmitted disease (STD) or sexually transmitted infection (STI) other than HIV can be considered evidence of failure to follow the portion of the order that requires condoms be used during sexual activity.²⁰⁷ Yet some STDs and STIs are transmissible by touch, meaning that they can be contracted, even if the servicemember complies with the safe-sex order by informing the sexual partner and wearing a condom.

Being mindful of regulations that require servicemembers to inform the service when seeking civilian medical care, MMAA suggests that routine STD/STI screenings, when possible, should be conducted off-base by not-for-profit local agencies. STD/STI screenings alone are not medical treatment, and strictly speaking, they should not be considered to violate regulation. Servicemembers should ask such agencies whether STD/STI screenings can be conducted anonymously or confidentially, and specifically, they should ask whether positive test results are required to be reported to state agencies or to the member’s service branch. If the servicemember receives positive test results, they are encouraged to reach out to MMAA for guidance.

Dating Apps: MMAA is aware of a servicemember being disciplined for failing to follow the “safe-sex” order by not informing his sexual partner that he

¹⁹⁹ “Federal Law Including U.S. Military,” HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice (2020), The Center for HIV Law and Policy, available <https://www.hivlawandpolicy.org/issues/military>

²⁰⁰ See “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors,” *supra* note 172; see also *Deese and Doe v. Esper*, *supra* note 174; *Harrison v. Austin*, *supra* note 171; “*Harrison v. Austin* (formerly v. Esper and at filing v. Shanahan),” *supra* note 176; *Roe v. Austin*, *supra* note 171; and *Wilkins v. Austin*, *supra* note 173.

²⁰¹ “HIV Treatment as Prevention,” Centers for Disease Control and Prevention (CDC) (2020), available <https://www.cdc.gov/hiv/risk/art/index.html>; see also “The Science is Clear: With HIV, Undetectable Equals Untransmittable,” National Institutes of Health, U.S. Dept. of Health and Human Services (2019), available <https://www.nih.gov/news-events/news-releases/science-clear-hiv-undetectable-equals-untransmittable>

²⁰² *E.g.*, *United States v. Gutierrez*, 74 M.J. 61 (C.A.A.F. 2015).

²⁰³ See “HIV Treatment as Prevention,” *supra* note 201 and “10 Things to Know About HIV Suppression,” National Institute of Allergy and Infectious Diseases (Nov. 14, 2017), available <https://www.niaid.nih.gov/news-events/10-things-know-about-hiv-suppression>

²⁰⁴ 539 U.S. 558, 123 S. Ct. 2472 (2003) (holding that intimate consensual sexual conduct is a liberty interest protected by substantive due process).

²⁰⁵ “Lambda Legal to Challenge Discriminatory Military Service Policy Preventing People Living with HIV from Enlisting in U.S. Armed Forces,” *supra* note 173.

²⁰⁶ “Ways HIV Can Be Transmitted,” Centers for Disease Control and Prevention (CDC) (2020), available <https://www.cdc.gov/hiv/basics/hiv-transmission/ways-people-get-hiv.html>

²⁰⁷ See A.R. 600-110 ¶ 6-14(c)(2) (regarding involuntary separation may occur based on independently derived evidence of failure to follow preventative medicine procedures; evidence includes “the routine diagnosis of sexually transmitted infections (STI) other than HIV”).

had HIV, even though he listed his HIV status on the Grindr profile that the two used to connect. All servicemembers with HIV are advised to disclose their HIV status by text or app message when possible, and it is also recommended that they take a screenshot of the disclosure if there is any danger that the original conversation might disappear. Servicemembers are also advised to orally disclose information about their status prior to engaging in any sexual activity.

VETERANS ADMINISTRATION BENEFITS

Eventually, service comes to an end and members begin the transition from their military service to civilian life. Regardless of sexual orientation and/or gender identity, servicemembers leaving active duty service should be eligible for Transition Assistance Programs to help them prepare a resume, look for new careers, or apply for continuing education. Servicemembers may also be eligible for a host of additional benefits that they have earned through service. For a listing of some of these benefits, please see the “[Military Family Matters and Benefits](#)” section of this guide or contact MMAA directly.

Veterans and their lawful spouses, when applicable, should never be denied any benefit due solely to their sexual orientation and/or gender identity. Veterans who are denied benefits based on their sexual orientation and/

Servicemembers diagnosed with HIV should seek guidance from MMAA or an attorney who is experienced in military law and culturally competent in providing services to the LGBTQ+ community. If subject to any type of discipline under a “safe-sex” order or any service branch’s HIV program, servicemembers should visit modernmilitary.org/programs/lgbtq-advocacy for legal referrals and resources.

or gender identity should contact MMAA for assistance. While a veteran’s service may have ended, MMAA’s commitment to that veteran continues, and with that in mind, information about health-specific resources, which may be of particular interest to LGBTQ+ veterans, are highlighted below.

HEALTHCARE SERVICES

The Dept. of Veterans Affairs notes that all veterans, including LGBTQ+ veterans, should be welcome at VA healthcare facilities. They also acknowledge that LGBTQ+ veterans face additional health disparities due to stigma, discrimination, and other systemic challenges.²⁰⁸ With these existing health disparities in mind, the VA notes that VA healthcare includes, among other services: hormone replacement therapy; HIV prevention via biomedical interventions like PrEP; cancer screening, prevention, and treatment; and more.²⁰⁹

To help LGBTQ+ veterans learn more about these health disparities and to showcase the importance in potentially coming out to a medical provider, they have also developed resources specific to the following groups within the broader LGBTQ+ community: 1) gay, bisexual, and queer men; 2) lesbian, bisexual, and queer women; 3) transgender men; and 4) transgender women.²¹⁰

More information about specific topics related to VA healthcare for LGBTQ+ veterans is provided below.

Healthcare Guidance Related to LGBQ

Veterans: In 2017, the VA issued a directive to establish a Veterans Health Administration (VHA) policy related to the care of LGBQ veterans. As noted in their directive, it is “VHA policy that all staff members provide clinically appropriate, comprehensive Veteran-centered care with respect and dignity” to LGBQ veterans.²¹¹ Additionally, this directive also clearly states that attempts, whether formal or informal, to administer conversion therapy to a LGBQ veteran is prohibited.²¹²

Healthcare Guidance Related to

Transgender Veterans: Similarly to the directive above, the VA issued a transgender-

specific directive in 2018. This directive notes that it is “VHA policy that all staff members provide clinically appropriate, comprehensive Veteran-centered care with respect and dignity” to transgender veterans.²¹³ It explains that such healthcare includes hormone replacement therapy and mental healthcare services, in addition to pre-operative and post-operative care for those seeking gender confirmation surgery.²¹⁴ The directive also noted that gender confirmation surgeries were not currently covered in the medical benefits package, but in June 2021, the VA announced that they were moving to offer gender confirmation surgeries, given the importance of this care.²¹⁵ At the time of this writing, the rule-making process for providing gender confirmation surgeries through the VA is



²⁰⁹ *Id.*

²¹⁰ *Id.*; see also “LGBT Veteran Health Care – Male Veterans: Gay and Bisexual Health Care,” Patient Care Services, Veterans Health Administration, Dept. of Veterans Affairs (2020), available <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-gay-bisexual.pdf#>; “LGBT Veteran Health Care – Female Veterans: Lesbian and Bisexual Health Care,” Patient Care Services, Veterans Health Administration, Dept. of Veterans Affairs (2020), available <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-lesbian-bisexual.pdf#>; “LGBT Veteran Health Care – Male Veterans: Transgender Male Health Care,” Patient Care Services, Veterans Health Administration, Dept. of Veterans Affairs (2020), available <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-transgender-male.pdf#>; and/or “LGBT Veteran Health Care – Female Veterans: Transgender Female Health Care,” Patient Care Services, Veterans Health Administration, Dept. of Veterans Affairs (2020), available <https://www.patientcare.va.gov/LGBT/docs/va-pcs-lgbt-factsheet-transgender-female.pdf#>

²¹¹ VHA Directive 1340(2), Veterans Health Administration, Dept. of Veterans Affairs (July 6, 2017), p. 2, available https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=5438

²¹² *Id.*

²¹³ VHA Directive 1341(2), Veterans Health Administration, Dept. of Veterans Affairs (May 23, 2018), p. 3, available https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=6431

²¹⁴ *Id.*

²¹⁵ *Id.*; see also “VA Moves to Offer Gender Confirmation Surgery to Vets,” NBC News (2021).

²¹⁶ VHA Directive 1341(2), *supra* note 213.

²⁰⁸ “Patient Care Services: Veterans with Lesbian, Gay, Bisexual, and Transgender (LGBT) and Related Identities,” Veterans Health Administration, Dept. of Veterans Affairs (2020), available <https://www.patientcare.va.gov/LGBT/index.asp>

just beginning.

Healthcare Guidance Related to Intersex Veterans: In their 2018 directive focused on healthcare for transgender veterans, the VA also noted the same provisions for intersex veterans. Similarly to the other LGBTQ+ directives, VHA policy also stipulates that “all staff members should provide clinically appropriate, comprehensive, Veteran-centered care with respect and dignity” to intersex veterans.²¹⁶

LGBTQ+ Veteran Care Coordinators: Both the 2017 and 2018 directives also

provided guidance for LGBTQ+ Veteran Care Coordinators, who are responsible for ensuring culturally competent care is provided to veterans in the broader LGBTQ+ community.²¹⁷ Additionally, it should be noted that every VA facility should have a LGBTQ+ Veteran Care Coordinator on staff.²¹⁸

LGBTQ+ veterans with additional questions about healthcare benefits should contact MMAA for more information. A list of additional, non-healthcare related benefits for veterans is provided in the “[Military Family Matters and Benefits](#)” section below.

MILITARY FAMILY MATTERS AND BENEFITS

LGBTQ+ MILITARY FAMILIES

MARRIAGE AND COMMITMENT

With the repeal of DADT and the Supreme Court’s ruling in *Obergefell v. Hodges*, same-gender marriages are now recognized by the military. Families with same-gender spouses should be treated the same as any other family. As such, LGBTQ+ servicemembers should be able to talk about their home life without losing their careers, and they should be able to engage without fear of the natural

conversations that occur when working closely with others in a tightly-knit unit.

Regarding marriage and commitment, servicemembers should be aware that neither the DoD nor any individual service branch recognizes common-law marriages or engagements for purposes of benefits or status.

Service academy cadets should also be aware

of specific marriage rules that govern their ability to enter into a marriage contract. Cadets are not permitted to get married until they graduate or otherwise leave the academy. Failure to abide by this regulation can result in discipline or even discharge. No other commands should have regulations or restrictions on a servicemember’s ability to enter into a marriage contract. If a servicemember has been told otherwise, then they may be experiencing discrimination based upon their sexual orientation and/or gender identity, and they should contact MMAA for assistance.

Servicemembers who wish to remain closeted should be aware that records of marriage and commitment are publicly available. The name and gender identity of their spouse could become known to anyone who bothers to look.

ADOPTING AND HAVING CHILDREN

A servicemember’s biological, foster, and/or adopted children are eligible for benefits. When a servicemember has or adopts a child, they must report their new dependent to the military through the Defense Enrollment Eligibility Reporting System (DEERS).²¹⁹ To enroll the child in DoD-provided healthcare (TRICARE) and to receive additional child-related benefits, the servicemember must present their command with the child’s birth certificate and/or adoption paperwork or foster care documentation, if applicable.²²⁰ Failure to do so may result in a delay or denial of benefits.

In cases where an unmarried servicemember did not actually give birth to the child, proof of legal adoption should be sufficient to establish parentage for purposes of benefits eligibility. For example, if a servicemember and a same-gender partner jointly adopt a child, then the policies should present no obstacle to recognition of the servicemember as a parent. If parentage is established through less-traditional means (i.e. a second-parent adoption, presumption by virtue of a same-gender marriage, or through a parenting agreement) or if the servicemember does not appear on the birth certificate, then the servicemember may encounter problems registering the child as a dependent.²²¹ If this occurs, the servicemember should contact MMAA for assistance.

Finally, stepchildren and parents-in-law, who are gained through same-gender marriages, are no longer excluded from benefits eligibility as they were under DOMA. Typically, stepchildren are eligible for dependent benefits, and a stepchild must be registered in DEERS just like any other dependent child. Please note that to register a stepchild, a marriage certificate must be presented along with the child’s birth certificate. If you experience discrimination while attempting to enroll your child-dependents for benefits, contact MMAA for assistance.

FAMILY CARE PLANS

Servicemembers with children must create a Family Care Plan to delineate how their dependents will be cared for when the

²¹⁹ See DoDI 7730.19, Reporting of Dependents of Active Duty Military Personnel and U.S. Citizen Employees (March 22, 1988), ¶ 4, available https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/i773019_032288/i773019p.pdf and DoDI 1342.19, Family Care Plans, (November 30, 2017), ¶ 1(e)(2)(a), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134219p.pdf>

²²⁰ See <https://tricare.mil/Plans/Eligibility/DEERS/RequiredDocuments>.

²²¹ See e.g., 37 U.S.C. §§ 401, 403; see also *Policy Guidance*, supra note 52, p.4 and DoD Manual 4165.63-M, at 49-50, DoD Housing Management (Oct 28, 2010). (Editor’s note: This document defines terms, such as “dependent,” “family,” “family member”).

²¹⁷ *Id.*

²¹⁸ “Patient Care Services: Veterans with Lesbian, Gay, Bisexual, and Transgender (LGBT) and Related Identities,” supra note 208.

servicemember is deployed. Any adult, including a same-gender partner or spouse, may be named as the caregiver on the Family Care Plan. This gives the caregiver access to benefits, such as counseling through Military OneSource and shopping and/or programs at military installations on behalf of the dependents.²²² See the [“Family Care Plans & Deployment Support”](#) sub-section below for more information.

HOUSING AND PCS

When a married servicemember is assigned to a new duty station, they are eligible for increased funding to allow their spouse to accompany them.²²³ Additionally, a legal child of a servicemember will be eligible for the dependent travel allowances to accompany the servicemember to the new station. If you

encounter problems with your same-gender spouse or dependents qualifying under this policy, contact MMAA for assistance.

MARITAL STATUS AND THE UCMJ

Marital status is relevant to several types of misconduct punishable under the UCMJ, such as adultery, spouse abuse, and cohabitation. The conduct of married servicemembers is fully subject to these provisions, and they are expected to behave in accordance with good order and discipline, regardless of their sexual orientation and/or gender identity.²²⁴ A marriage does not “cure” previous instances of fraternization for couples. For more information on that topic, see the [“Fraternization”](#) sub-section under the section on the UCMJ above.

BENEFITS

Most of the benefits available to veterans, servicemembers, and their families are granted directly by Congress.²²⁵ Well over one hundred of these statutory benefits are contingent on a servicemember’s marital status.²²⁶ Again, the DoD does not recognize common law marriages or engagements, and partners of servicemembers in these types of relationships are not eligible for benefits.

FOR SERVICEMEMBERS

Under DADT, single LGBQ servicemembers were technically eligible for the same benefits as their single heterosexual counterparts, and those benefits were available to everyone who served, regardless of sexual orientation. But LGBQ servicemembers often decided not to take advantage of all of their benefits for fear that doing so would “out” them, leading to involuntary separation under DADT. With

the repeal of DADT, all servicemembers, regardless of their sexuality, should feel secure in accessing all their well-earned benefits.

Regarding transgender servicemembers, benefits should also be applied, regardless of gender identity. Similar to LGBQ servicemembers serving under DADT, some transgender servicemembers may have decided not to take advantage of all of their benefits for similar fears of being “outed.” At the time of this writing, open transgender service is no longer determined by the date of diagnosis of gender dysphoria, as this was the reality during the Trump administration.²²⁷ For questions about regulations related to transgender service, refer to the [“Open Transgender Service”](#) sub-section of the [“Identity and Being ‘Out’”](#) section above. Transgender servicemembers who have concerns about accessing benefits or questions about benefits should contact MMAA for assistance.

With the repeal of DADT and DOMA, married LGBTQ+ servicemembers are eligible for family-related benefits as well:

Family Separation Allowance: A servicemember who is on duty or assigned to a new station, and whose spouse and children are unable to accompany them, is entitled to a monthly allowance.²²⁸ If both spouses are servicemembers and both are

assigned to duty away from their (non-spouse) dependents, then both are entitled to the allowance.²²⁹

Basic Allowance for Housing at “With Dependent Rate”: To receive the much-greater basic allowance for housing (BAH) at the “with dependent rate,” servicemembers must have a qualifying dependent. The meaning of “dependent” for BAH and many other benefits includes the following: a spouse, dependent parents and parents-in-law, biological and adopted children, and stepchildren.²³⁰ The gender identity of the spouse is irrelevant.

Joint-Duty Assignments: Under DoD regulations, dual-career military married couples are generally stationed in the same geographic area.²³¹ Unmarried but committed dual-military couples, like any single servicemember, may make hardship-based requests for accommodation in assignments.²³² Military spouses are eligible for exemption from serving in hostile-fire areas when their spouse is wounded or disabled by hostile fire.²³³

FOR SPOUSE-DEPENDENTS

Servicemembers have also always been able to designate a person of their choice for certain benefits; however, members of the LGBTQ+ community have often refrained from doing so as a way to avoid raising suspicions about their

²²² *Id.*; see also <https://www.militaryonesource.mil/>

²²³ See, e.g., 37 U.S.C. §§ 474a, 476, 477, and 484.

²²⁴ 10 U.S.C. § 934.

²²⁵ E.g., “Study on the Defense of Marriage Act and the U.S. Code,” GAO/OCG-97-16, Prepared by the Associate General Counsel, General Accounting Office (GAO) (1997), available <https://www.gao.gov/assets/230/223674.pdf>; see also “Updated Study on the Defense of Marriage Act and the U.S. Code,” GAO-04-353R, Prepared by the Associate General Counsel, General Accounting Office (GAO) (2004), available <https://www.gao.gov/assets/100/92441.pdf>

²²⁶ *Id.*

²²⁷ DoDI 1300.28 (2016), *supra* note 42.

²²⁸ 37 U.S.C. § 427.

²²⁹ *Id.*

²³⁰ 37 U.S.C. § 401.

²³¹ See DoDI 1315.18, Procedures for Military Personnel Assignments (June 24, 2019), ¶¶ 6.2.3.2, E2.1.29, available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131518p.pdf>

²³² See Report of the Comprehensive Review of the Issues Associated with a Repeal of “Don’t Ask, Don’t Tell,” Dept. of Defense (2010), p. 147-48, available https://www.washingtonpost.com/wp-srv/special/politics/dont-ask-dont-tell/DADTReport_FINAL.pdf

²³³ DoDI 1315.18, *supra* note 231, ¶ E3.11.1.1.

²³³ See *Policy Guidance*, *supra* note 52, p. 4-5.

sexual orientation and/or gender identity.

Servicemembers should feel free to designate a same-gender and/or transgender partner or spouse for any of the benefits listed below.

Member-Designated Benefits:

Servicemembers may freely designate any person, including a same-gender and/or transgender partner, for the following benefits:²³⁴

- Beneficiary of Servicemembers Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) payments;
- Receipt of unused contributions from Post Vietnam-Era Veterans Assistance Program (VEAP) and the Montgomery G.I. Bill Death Benefit, as long as the person is also designated as an SGLI beneficiary;
- Beneficiary of Thrift Savings Plan (TSP);
- Retirement annuity under the Survivor Benefit Plan (SBP), as long as the service member is not in a marriage and does not have a dependent child;
- Beneficiary for Death Gratuity and Beneficiary for Unpaid Pay/Allowances on DD Form 93;
- Appointment as the Designated Caregiver of a wounded service member during recovery under the Wounded Warrior Act;
- Appointment as the caregiver of the servicemember's children on a Family Care Plan if the service member is deployed.

More information about these and other benefits are provided below.

Medical and Dental Care for Spouses:

Spouses of servicemembers are eligible for healthcare and insurance from TRICARE. At the time of this writing, dental care is provided by a private insurer, United Concordia. Spouses with special medical needs have access to the Exceptional Family Member Program (EFMP).²³⁵

Free Legal Services: Spouses qualify as dependents, and they are eligible to receive free legal services from military legal assistance officers.

Spousal Privilege in Courts-Martial:

The Military Rules of Evidence give spouses the privilege to refuse to testify against their spouse in criminal cases with only some exceptions.²³⁶ As mentioned above, spouses cannot be forced to testify against their loved ones or to disclose confidential information shared during the marriage relationship. For more information on this topic, refer to the "[Spouses](#)" sub-section of the "[Sharing Information About Yourself With Others](#)" section above. Additionally, contact MMAA if you are facing criminal charges and your spouse may have to testify against you.

Emergency Notification: Servicemembers must keep their Record of Emergency Data (DD Form 93) updated. This ensures that family members are notified if the servicemember is wounded or killed in action, missing in action, or taken as a prisoner of war. A spouse may be recognized

as the primary next of kin (PNOK), which is determined by the family members listed on the servicemember's Record of Emergency Data.²³⁷ However, unmarried partners may be listed only as "Designated Persons," as the DoD does not recognize common law marriages or engagements. "Designated persons" will be notified of the same information regarding their servicemember, though with less urgency than is reserved for notifying the servicemember's PNOK. The DD-93 also requires the identification of a Person Authorized to Direct Disposition (PADD) of remains.²³⁸ This person must be a spouse or a blood or adoptive relative.²³⁹

Servicemembers and their families should understand that privacy regulations prevent "designated persons" from receiving all the details of the emergency. If a servicemember is killed in action, any beneficiaries receiving survivor benefits or entitlements will be notified.²⁴⁰

In cases where a servicemember has children but is not married, the servicemember's children will be listed as the next-of-kin, regardless of whether the servicemember was in a committed relationship with the other parent of their children. The other parent or guardian will be notified of the emergency on the child's behalf.

In case of emergencies back home (i.e. serious illness, death, birth of a child or grandchild, etc.), the American Red Cross provides notification to the servicemember, and if leave is requested, notification can be provided to their command as verification of the emergency.²⁴¹ If the

servicemember's presence is requested, then they may ask for leave to return home and attend to the situation.

Contacting a Servicemember for an Emergency Situation

If the partner or family of a servicemember needs to contact their servicemember for an emergency situation back home, they should contact the American Red Cross for assistance. The Red Cross will need the following information about the servicemember:

- Full Name, Rank, and Rating
- Branch of Service
- Social Security Number
- Command's Address
- Deployment information, if applicable

For additional information, visit: www.redcross.org/get-help/military-families/emergency-communication

Hospital Visitation: With same-gender marriages now recognized under federal law, military and civilian hospitals may not restrict or limit visitation privileges based on sexual orientation. If you choose not to marry your same-gender partner, it is still recommended that you consult with a family law attorney to create a "hospital visitation authorization,"²⁴² and if desired, medical powers of attorney,

²³⁴ See *Policy Guidance*, *supra* note 52, p. 4-5.

²³⁵ See "About the Exceptional Family Member Program," EFMP & Me, available <https://efmpandme.militaryonesource.mil/about-efmp-program>

²³⁶ Mil .R. Evid. 504.

²³⁷ DD Form 93, Instructions, Item 9a, 13a.

²³⁸ DoDI 1300.18, Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures, (August 14, 2009), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130018p.pdf>

²³⁹ 10 U.S.C. § 1482(c).

²⁴⁰ See DoDI 1300.18, *supra* note 238.

²⁴¹ See "Emergency Communications," American Red Cross, available <http://www.redcross.org/get-help/military-families/emergency-communication>

²⁴² See "Hospital Visitation Guide for LGBTQ+ Families," Human Rights Campaign, available <https://www.hrc.org/resources/hospital-visit-guide-for-lgbt-families>

giving each other the ability to make medical decisions on behalf of the other person.

Employment and Education for Spouses:

All spouses may be eligible for employment assistance during a PCS, and this includes benefits related to education and training to help them find a “portable” career.²⁴³

Morale, Welfare, and Recreation

(MWR) Programs: Generally, spouses of servicemembers, along with dependent parents, parents-in-law, children and stepchildren, are authorized for unlimited use of all MWR programs, because they are eligible for ID cards and registration in DEERS.²⁴⁴ Eligible members are the same as those eligible for TRICARE benefits, meaning that same-gender spouses in addition to parents-in-law and stepchildren are included.²⁴⁵

Additionally, some regulations allow Installation Commanders to open up limited access to certain MWR programs to guests and the general public.²⁴⁶ These exceptions should be applied regardless of sexual orientation, gender identity, and/or individual situations.

Relocation & Transportation: If married servicemembers are assigned to a new

location, then the couple may be eligible for increased funding and support to allow their spouse to accompany them to the new assignment.²⁴⁷ Similarly, spouses can receive travel assistance to attend the burial ceremonies if the servicemember dies while on duty.²⁴⁸ These statutory benefits are available to legally married spouses and children of servicemembers, which includes stepchildren.²⁴⁹

Surviving Spouse Benefits: All benefits that are available to opposite-gender spouses are now available to same-gender spouses. This includes annuities based on retired or retainer pay²⁵⁰ in addition to death benefits.²⁵¹

Family Advocacy & Spouse Abuse

Services: Family Advocacy Services, including New Parent Support and assistance for abused or maltreated spouses, are available only to those eligible for treatment in military medical facilities, which includes same-gender spouses.²⁵² A married same-gender spouse of a servicemember can receive the same confidential care as an opposite-gender spouse, including military-sponsored protection and emergency shelter,²⁵³ as well as ongoing financial support and benefits that are provided to spouses of service members discharged

from the military for dependent abuse.²⁵⁴

FOR CHILDREN-DEPENDENTS

In general, dependent children of servicemembers, including biological children, legally adopted children, foster children, and stepchildren, are entitled to a great number of benefits, such as healthcare. Parents serving in the military may be eligible for certain additional benefits and allowances.

Servicemembers have a duty to report any legal dependents, including adopted children.¹⁵⁵ This applies to all active duty, Reserve, National Guard, and personnel in the Individual Ready Reserves (IRR). If you have questions about your individual family situation, contact MMAA, especially if the servicemember is not the biological parent of the child.

Medical and Dental Care for Children:

Children of servicemembers are eligible for healthcare and insurance from TRICARE. At the time of this writing, dental care is provided by a private insurer, United Concordia. If the child is adopted, the servicemember must present the birth certificate of the child, in addition to proof of adoption, to verify parentage. Children with special medical or educational needs have access to the Exceptional Family Member Program (EFMP).²⁵⁶

Emergency Notification: Spouses are the servicemember’s default next-of-kin. For unmarried servicemembers with children, the

child is considered the default next-of-kin, and a parent or guardian of the child will be notified on behalf of the child in emergencies involving the servicemember, as described above. In other words, an unmarried partner who is also the legal parent or guardian of the servicemember’s child will likely receive notification more quickly than they would as a “designated person” without children.²⁵⁷ It should be noted that these discrepancies are remedied through marriage.

Housing and Housing Allowances:

The military recognizes legal spouses and children as dependents of servicemembers, which means that military family housing (MFH) and dependent-rate basic allowance for housing (BAH) or monthly housing allowance (MHA) is available to LGBTQ+ military families. If you are being denied housing or the dependent-rate for these allowances, then you may be experiencing discrimination based on your actual or perceived sexual orientation and/or gender identity. If this occurs, contact MMAA for immediate assistance.

Military ID Cards: As noted above, children of servicemembers are eligible for a military ID card after being designated by a servicemember as dependents in DEERS. Children who are living with someone other than the servicemember, and all children over age 10, must have ID cards.²⁵⁸ An ID card gives a child access to the base and associated

²⁴³ 10 U.S.C. §§ 1784, 1784(a).

²⁴⁴ See DoDI 1015.10, Military Morale, Welfare, and Recreation (MWR) Programs (July 6, 2009), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/101510p.pdf>

²⁴⁵ 10 U.S.C. § 1072 (Editor’s note: This explains eligibility, using the term “spouse”).

²⁴⁶ See DoDI 1015.10, *supra* note 244.

²⁴⁷ See, e.g., 37 U.S.C. §§ 474a, 476, 477, and 484.

²⁴⁸ 37 U.S.C. § 411f (Editor’s note: This provides information limiting the burial ceremony travel allowance to “eligible relatives,” including parents, spouse, children and stepchildren, siblings of the deceased service member, and the person designated to direct disposition of remains [“PADD”] on DD Form 93. Designation as the PADD is limited by 10 U.S.C. § 1482(c) to blood and adopted relatives, surviving spouse, or if none of those can be found, “a person standing in loco parentis to the decedent.”)

²⁴⁹ 37 U.S.C. § 401 and DoDI 1315.18, Procedures for Military Personnel Assignments (June 24, 2019), available <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131518p.pdf>

²⁵⁰ 10 U.S.C. §§ 1431-55.

²⁵¹ See, e.g., 10 U.S.C. § 1450.

²⁵² See 10 U.S.C. §1072.

²⁵³ DoDI 6400.06, Domestic Abuse Involving DoD Military and Certain Affiliated Personnel (May 26, 2017), available <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf>

²⁵⁴ Editor’s note: Under 10 U.S.C. § 1059, spouses and former spouses of servicemembers convicted of dependent abuse are afforded continuing commissary privileges and monthly pay, as long as they do not live with the abusive spouse.

²⁵⁵ See DoDI 7730.19, ¶ 4; see also DoDI 1342.19, ¶ 4.7.

²⁵⁶ See “About the Exceptional Family Member Program,” EFMP & Me, available <https://efmpandme.militaryonesource.mil/about-efmp-program>

²⁵⁷ See DoDI 1300.18, *supra* note 238, ¶ 4.11.

²⁵⁸ See “Plans & Eligibility: ID Cards,” TRICARE, Defense Health Agency (DHA), Dept. of Defense, available <https://tricare.mil/Plans/Eligibility/IDCards>

programming, including the Commissary and Exchange facilities in addition to Morale, Welfare, and Recreation programming.

Family Care Plans and Deployment

Support: When a servicemember is deployed, they must set up a Family Care Plan, designating someone to care for their minor children and certain other dependents.²⁵⁹ Through marriage, spouses are already registered as dependents of servicemembers, granting them all benefits and privileges as the designated caregiver on a Family Care Plan. However, partners who are not married may be named as the caregiver on the servicemember's Family Care Plan. This provides them access to benefits, such as counseling through Military OneSource, shopping at base facilities, and programs at military installations, all on behalf of the dependents.

The unmarried caregiver does not receive a military ID card while the servicemember is deployed, but they may purchase things for the dependents at a military Commissary and Exchange during deployment. To do this, the servicemember or caregiver must request a letter of authorization from the commanding officer of the installation with the Commissary or Exchange through the ID card office at that installation.²⁶⁰

In addition, the designated caregiver should be sure to have a comprehensive power of attorney written up as part of the Family Care Plan, and this ensures that they are

able to accompany the dependent to military medical facilities and to make decisions on their behalf.²⁶¹

FOR VETERANS

Veterans can be open about their sexual orientation and/or gender identity without risking loss of benefits or retirement pay. The section below contains information about select benefits of interest to veterans and their families.

If you have questions about your eligibility for any veterans' benefits, please contact MMAA for assistance.

Education Benefits (G.I. Bill): Under the Montgomery G.I. Bill (Chapter 30), servicemembers who have served a minimum of two years active-duty, received an honorable discharge, and contributed \$1200 toward the program will qualify for these benefits. Veterans who were discharged under DADT or who were discharged under the ban on open transgender service might have been unable to meet these requirements. To explore the possibility of obtaining a discharge upgrade or to ask any other questions related to your individual situation, contact MMAA for assistance.

Under the new post-9/11 G.I. Bill (Chapter 33), the qualifications were modified so that veterans who served at least 90 days active duty after September 10, 2001, and received an honorable discharge can recover a portion of the maximum benefit.²⁶² Veterans who paid into the Montgomery G.I. Bill may be

able to transfer into the post-9/11 G.I. Bill if they meet the new service requirements. Servicemembers who have used all their Chapter 30 benefit and qualify for Chapter 33 can receive up to 12 months of Chapter 33. In addition, the post-9/11 G.I. Bill allows servicemembers to transfer their G.I. Bill benefits to their spouse or children if they take on additional service obligations.²⁶³

VA Caregiver Support: Family members who are providing care for veterans injured in the line of duty may be eligible for federal assistance and support through two programs: the Program of Comprehensive Assistance for Family Caregivers (PCAFC) and the Program of General Caregiver Support Services (PGCSS).²⁶⁴

Access to the PGCSS is available to any caregiver without submitting a formal application. The PGCSS provides resources, education, and support to caregivers of veterans. The veteran does not need to have a service-related condition for which the caregiver is needed, and the veteran may have served during any era.²⁶⁵

Access to the PCAFC is only possible if two requirements are met. First, the veteran must meet the eligibility criteria as determined by a VA clinical staff member, and second, the caregiver must submit a formal application to

the Caregiver Support Program.²⁶⁶ In 2018, access to the PCAFC was expanded to family member caregivers whose veteran 1) either served on or before May 7, 1975, or on or after September 11, 2001, and 2) has a "serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service."²⁶⁷

Regarding the PCAFC, participation is available to the following: family members who provide in-person care and/or roommates, including unmarried partners, who provide care in accordance with PCAFC rules. Upon acceptance in the PCAFC, caregivers receive a number of benefits, which include a monthly stipend and at least 30 days of respite care for their veteran annually. It is important to remember that a determining factor for participation in the PCAFC is "whether participation in the program significantly enhances the veteran's or servicemember's ability to live safely in a home setting; supports the veteran's or servicemember's potential progress in rehabilitation, if such potential exists; increases the veteran's or servicemember's potential independence, if such potential exists; and creates an environment that supports the health and well-being of the veteran or servicemember."²⁶⁸

²⁵⁹ See <https://www.militaryonesource.mil/>

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² 38 U.S.C. § 3311.

²⁶³ 38 U.S.C. § 3319.

²⁶⁴ 38 U.S.C. § 1720G(a)(3)(A)(i).

²⁶⁵ "Program of General Caregiver Support Services Fact Sheet," Dept. of Veterans Affairs, available https://www.caregiver.va.gov/docs/PGCSS_Fact_Sheet.pdf

²⁶⁶ "Veterans Affairs Program of Comprehensive Assistance for Family Caregivers," Dept. of Veterans Affairs, available https://www.caregiver.va.gov/pdfs/MISSIONAct/CSP_Expansion_Factsheet_092720_Approved_Final.pdf

²⁶⁷ 38 U.S.C. § 161(a)(1)(A)(i)(ii).

²⁶⁸ "Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018," Federal Register, available <https://www.federalregister.gov/documents/2020/07/31/2020-15931/program-of-comprehensive-assistance-for-family-caregivers-improvements-and-amendments-under-the-va>

VA Guaranteed Home Loan Program:

Under the Home Loan Program, servicemembers and veterans may be able to obtain favorable financing on home mortgage loans without requiring a down payment. Private lenders still finance the loan, but the federal government guarantees part of the loan to the lender, providing the security normally offered by a down payment.²⁶⁹

Surviving spouses may also participate in the VA Home Loan Program in certain circumstances. The surviving spouse of a veteran who died either on active duty or as the result of a service-connected disability may be eligible, as long as they have not remarried.²⁷⁰ Additionally, the surviving spouse of any veteran who had a previous VA loan may refinance that loan through the program.²⁷¹

VA Healthcare Services: For more information on this topic, refer to the “[Veterans Administration Benefits](#)” sub-section of the “[Healthcare Services](#)” section above.

Disability Compensation: Veterans with disabilities are entitled to various types of compensation for service-connected disability or death²⁷² and pensions for some non-service-connected disabilities.²⁷³ Generally, veterans receive additional benefits if they are married or have dependent children.²⁷⁴

Spousal Compensation: Generally, dependency and indemnity compensation is available to surviving spouses of veterans who die of a service-connected disability²⁷⁵ or who were receiving compensation for a service-connected disability.²⁷⁶ These benefits should be available to spouses regardless of their sexual orientation and/or gender identity.

FUTURE CHALLENGES AND CONTINUED ADVOCACY

New to our latest edition of this guidebook, this section examines future challenges and advocacy related to our overall vision: the freedom to serve. In this new section, you

can explore existing and emerging challenges, which will require continued advocacy in pursuit of both our vision and mission.

CREATING MORE INCLUSIVE POLICIES

As discussed throughout this guide, there are still a number of challenges for LGBTQ+ servicemembers, and this is particularly true for transgender servicemembers and servicemembers living with HIV. Below, you can explore information related to the need for more inclusive policies related to issues including: affirming healthcare for transgender servicemembers and servicemembers living with HIV, greater intersex and non-binary inclusion, more resilient Title IX regulations at DoD schools, pride flags at military bases, access to family planning and reproductive healthcare, tracking care for LGBTQ+ veterans, and better understanding the needs of caregivers for LGBTQ+ veterans.

While this is certainly not a comprehensive list of areas for needed policy development, these are existing and emerging issues that require attention and advocacy. If you have additional questions related to these areas, please contact MMAA for assistance.

INCLUSIVE AND AFFIRMING HEALTHCARE FOR TRANSGENDER SERVICEMEMBERS

As noted in both the “[Open Transgender Service](#)” sub-section of the “[Identify and Being ‘Out’](#)” section and the “[A Brief History of LGBTQ+ Military Service](#)” section, there have been a number of clear challenges related to open service for transgender people.²⁷⁷

DoD policy under the Trump administration barred transgender people from joining the military, and

²⁶⁹ 38 U.S.C. § 3710.

²⁷⁰ 38 U.S.C. § 3701(b)(2).

²⁷¹ 38 U.S.C. §3710(e)(3).

²⁷² See Title 38 of the US Code, Chapter 11.

²⁷³ 38 U.S.C. § 1521.

²⁷⁴ 38 U.S.C. §§ 1115, 1521(c), 1521(d)(2).

²⁷⁵ 38 U.S.C. § 1310.

²⁷⁶ 38 U.S.C. § 1541.

²⁷⁷ See also Dorian Rhea Debussy, *supra* note 17, p. 135-142.

transgender people who were currently serving could be separated in many circumstances.²⁷⁸ One such exception included transgender people who were both serving and diagnosed with gender dysphoria before the implementation date of April 12, 2019; these servicemembers were permitted to serve and to transition under the Obama-era guidelines. The only other exception included transgender servicemembers (with this diagnosis after the aforementioned date), who 1) were deemed to not need to medically transition, 2) did not transition, 3) remained “willing and able to serve in his or her biological sex,” and 4) met applicable deployability requirements.²⁷⁹

While the Biden administration has rescinded the Trump administration’s executive guidance and subsequently issued new guidance for in-service transitions, the new guidance still presumes that all transgender servicemembers will have access to an inclusive and affirming military medical provider.²⁸⁰ Creating additional training opportunities for military medical providers across all service branches is critical to ensuring that all transgender servicemembers have equitable access to inclusive and affirming medical care. This is particularly true, given the importance of gender affirming care in relation to 1) the health of transgender servicemembers and 2) the guidelines for in-service transitions.

As such, ensuring access to healthcare services remains a critical area of advocacy in pursuit of our vision of transgender people being able to openly serve their country with dignity and respect.

SERVICE FOR PEOPLE LIVING WITH HIV

As noted in the “Retention” sub-section of the “HIV/AIDS” section above, servicemembers living with HIV face a number of challenges, particularly related to accession and retention.

When someone wishes to enter the military, they must undergo a medical evaluation, which includes an HIV test. If the test renders a positive result for HIV, current DoD regulations impose a categorical ban. As such, people living with HIV are prohibited from enlisting in or being appointed to the Armed Forces, though at the time of writing, a lawsuit is underway in an attempt to change this.²⁸¹

Previously, decisions about deployment were generally restricted to assignments within the continental United States, Hawaii, Alaska and Puerto Rico.²⁸² As noted by HIV/AIDS advocacy organizations and servicemembers living with HIV, such restrictions on assignments and deployability have had adverse effects on their opportunities, experiences, and recognitions of servicemembers living with HIV. Over time, this automatic classification as “non-deployable” likely affected the retention of servicemembers

living with HIV under this previous DoD policy.²⁸³

Per a memo from the Secretary of Defense in June 2022, servicemembers living with HIV are no longer automatically considered undeployable, and decisions will be made on a case-by-case basis.²⁸⁴ While the memo also finally permits enlisted servicemembers with HIV to commission as officers, there are still a number of challenges, given that the policies and procedures of this working group have not yet been finalized at the time of this writing.²⁸⁵ Given this and pending litigation, it is critical for this DoD working group to engage with servicemembers and veterans living with HIV to ensure more culturally responsive and scientifically sound policies moving forward.²⁸⁶

As noted previously, MMAA and other organizations continue to challenge policies that discriminate against servicemembers living with HIV, particularly since many were created with outdated understandings of HIV.²⁸⁷ Similar to removing outdated policies barring transgender service, this remains an important area of advocacy in pursuit of both our vision and mission.

SERVICE FOR INTERSEX AND NON-BINARY PEOPLE

As noted in other areas of our guide, the military has a binary understanding of both sex and gender. The Obama-era policies

for transgender inclusion, along with the emerging Biden-era policies, have failed to adequately support the needs of intersex and non-binary people who wish to serve. Previous policies banned intersex service; at the time of writing and even with updated policies, intersex people still face challenges with joining the military, if their intersex variation has features that would be considered a ‘disqualifying’ medical condition. At the time of this writing, intersex organizations and their allies are still analyzing the full depth of a new policy, which was released by the Dept. of Defense in 2022.²⁸⁸

Currently, such advocacy organizations believe that intersex people would only be disallowed from service if: “(1) the diagnosis or cause of their variation had never been investigated to confirm they would not have any medical consequences related to their variation that would present actual problems for service (such as adrenal insufficiency, which is specifically disqualifying on its own), and/or (2) the symptoms of their variation required certain medical treatment in order to not be disqualifying under other specific medical standards, and they had not had this treatment.”²⁸⁹ Given this developing situation, more information will be provided from MMAA, as it becomes available.

²⁷⁸ “The Making of a Ban: How DTM-19-004 Works to Push Transgender People Out of Military Service,” *supra* note 58; *see also* DoDI 1300.28 (2016), *supra* note 40 and “Memorandum,” Subject: Directive-type Memorandum (DTM)-19-004—Military Service by Transgender Persons and Persons with Gender Dysphoria, *supra* note 44.

²⁷⁹ DoDI 1300.28 (2020), *supra* note 45; *see also* “Memorandum,” Subject: Directive-type Memorandum (DTM)-19-004—Military Service by Transgender Persons and Persons with Gender Dysphoria, *supra* note 44.

²⁸⁰ *See* “Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform,” *supra* note 48 and DoDI 6130.03 (2021), *supra* note 50.

²⁸¹ *See* DoDI 6485.01, *supra* note 170.

²⁸² *See* AFI 48-135; AR 600-110; SECNAVINST 5300.30E; NAVMC 2904; and COMDTINST M6230.9, *supra* note 184.

²⁸³ *See* “Policy Memorandum,” Subject: DoD Retention Policy for Non-Deployable Service Members, *supra* note 193.

²⁸⁴ *See* “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors,” *supra* note 172.

²⁸⁵ *Id.*

²⁸⁶ *Id.*; *see also* Deese and Doe v. Esper, *supra* note 174; Harrison v. Austin, *supra* note 171; “Harrison v. Austin (formerly v. Esper and at filing v. Shanahan),” *supra* note 176; Roe v. Austin, *supra* note 171; and Wilkins v. Austin, *supra* note 173.

²⁸⁷ *Id.*

²⁸⁸ DoDI 6130.03, vol. 1 (2018 with changes effective in 2022), available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/613003_vol1.PDF?ver=7fhqacc0jGX_R9_1iexudA%3d%3d

²⁸⁹ Sylvan Fraser, Quotation via Email, interAct Advocates for Intersex Youth (16 December 2022).

Additionally, non-binary people typically still have to conform to dress and appearance standards of one gender within the gender binary, which may prevent them from being able to present themselves authentically. There may also be difficulties obtaining affirming medical care that is specific to the needs of the non-binary community, and this is a much needed area for continued improvement for non-binary servicemembers.

In addition to advocacy related to inclusion more broadly, it is important to ensure that a new policy also meets the needs of both the intersex and non-binary communities, since the previous regulations did not fully account for a more comprehensive understanding of both sex and gender. In short, a more nuanced policy would support goals towards inclusion of the broader LGBTQ+ community into the Armed Forces. Advocacy organizations, such as Out & Equal Workplace Advocates, have recently been developing general tools for non-binary inclusion in the workplace.²⁹⁰ Additionally, advocacy organizations, such as InterAct Advocates for Intersex Youth, have similarly been developing tools for intersex inclusion in the workplace.²⁹¹

As such, MMAA hopes that these and similar resources will soon inform updated DoD policies, which will better allow for both intersex and non-binary people to serve with

dignity and respect.

TITLE IX REGULATIONS IN DOD SCHOOLS AND EDUCATIONAL PROGRAMS

In addition to policies impacting servicemembers, there are also opportunities for growth in policies that affect the LGBTQ+ children of servicemembers. More specifically, the Trump-era alterations to Title IX guidance have had a negative impact for LGBTQ+—particularly transgender—children of servicemembers.

In May 2016, the Dept. of Education and the Dept. of Justice, under the Obama administration, released a “Dear Colleague” letter to all publicly funded schools, including DoD schools.²⁹² This “Dear Colleague” letter provided guidance on transgender inclusion under Title IX, and it covered the following issues: 1) creating a safe and non-discriminatory learning environment; 2) creating processes for students to obtain correctly named and gendered identification documents; 3) ensuring access to the appropriate sex-segregated activities and facilities; and 4) protecting student information and ensuring privacy.²⁹³

In February 2017, the Dept. of Education and the Dept. of Justice, under the Trump administration, rescinded the Obama-era letter, and in doing so, they indicated that the

states and local school districts should be able to establish educational policy related to the previous guidance.²⁹⁴ Following the new guidance, numerous legal challenges—most notably led by the ACLU—have emerged, along with resources to ensure the rights of transgender and non-binary students.²⁹⁵

Under the Trump-era guidance from the Dept. of Education, decisions about affirming a transgender student’s name and/or pronouns in a DoD school were made on a case-by-case basis, which means that the rights of transgender students in federally conducted schools were very tenuous.²⁹⁶ While the Biden administration’s recent announcements about 1) the return to a transgender-inclusive interpretation of Title IX, and 2) the application of the post-Bostock decision are celebrated news, more resilient Title IX regulations are still needed for DoD schools. By making this a legislative priority, we can better ensure that Title IX and related policies better serve the needs of LGBTQ+—especially transgender and non-binary—youth in DoD schools and beyond.²⁹⁷

In conjunction with our vision and mission,

ensuring the equitable treatment of LGBTQ+ students in DoD schools is another urgent challenge that requires immediate attention.

PRIDE FLAGS AT MILITARY BASES AND DOD FACILITIES

In July 2020, the DoD issued guidance related to the presence of flags and banners at military bases, training facilities, and other DoD buildings.²⁹⁸ While the presumed impact was to ban flags and banners that symbolize racism and white supremacy, the narrow directions provided in this guidance only permit official military or government-related flags. As such, this guidance prohibits the display of a number of other flags, including LGBTQ+ pride flags.²⁹⁹

While the removal of racist imagery across DoD facilities is an important movement towards a more inclusive military, the prohibition of LGBTQ+ pride flags is not.³⁰⁰ The DoD reviewed the policy in 2021 but decided to keep it in place.³⁰¹ In recognition of the importance of ensuring an inclusive environment for our LGBTQ+ servicemembers and their families, several

²⁹⁰ “Best Practices for Non-Binary Inclusion in the Workplace: An Out & Equal Guide,” Out & Equal Workplace Advocates (2019), available <https://outandequal.org/wp-content/uploads/2019/11/OE-Non-Binary-Best-Practices-Final.pdf>

²⁹¹ “Supporting Intersex Inclusion in the Workplace,” InterAct Advocates for Intersex Youth and Out & Equal Workplace Advocates (2020), available https://outandequal.org/wp-content/uploads/2020/10/IntersexResource_R62.pdf

²⁹² “Dear Colleague Letter,” Office for Civil Rights, Dept. of Education and Civil Rights Division, Dept. of Justice (May 13, 2016), available <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>; see also “Memorandum from the Assistant Secretary of Defense,” Subject: Transgender Students in Department of Defense Education Activity Schools and Youth Programs (Oct. 26, 2016), available https://westpoint.armymwr.com/application/files/5714/9335/3328/CYS_Transgender_Children_and_Youth_Policy.pdf

²⁹³ *Id.*

²⁹⁴ “Dear Colleague Letter on Transgender Students,” Office for Civil Rights, Dept. of Education and Civil Rights Division, Dept. of Justice (May 13, 2016), available <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>

²⁹⁵ See “ACLU Statement on Revoking of Title IX Guidance for Transgender Students and Impact on Gavin Grimm Supreme Court Case,” American Civil Liberties Union (ACLU) (2017), available <https://www.aclu.org/press-releases/aclu-statement-revoking-title-ix-guidance-transgender-students-impact-gavin-grimm>; “ACLU Statement on Department of Education Action on Title IX and Transgender Student Athletes,” American Civil Liberties Union (ACLU) (2020), available <https://www.aclu.org/press-releases/aclu-statement-department-education-action-title-ix-transgender-student-athletes>; and “Know Your Rights: A Guide for Transgender and Gender Nonconforming Students,” American Civil Liberties Union (ACLU) and GLSEN (2017), available https://www.aclu.org/sites/default/files/field_document/07-26-17tgnstudentbrochure.pdf

²⁹⁶ Andre deGrandpre and Karen Jowers, “At Military Schools, Transgender Bathroom Decisions Will Be Made Case by Case,” Military Times (2017); see also “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexuality Orientation,” The White House (January 20, 2021).

²⁹⁷ Katie Rogers, “Title IX Protections Extend to Transgender Students, Education Dept. Says,” The New York Times (2021); “Title IX Cover Addendum Post-Bostock,” Title IX Legal Manual, Dept. of Justice (2021), available <https://www.justice.gov/crt/title-ix>

²⁹⁸ “Memorandum from the Secretary of Defense,” Subject: Public Display or Depiction of Flags in the Department of Defense (July 16, 2020), available <https://media.defense.gov/2020/Jul/17/2002458783/-1/-1/1/200717-FLAG-MEMO-DTD-200716-FINAL.PDF>

²⁹⁹ *Id.*; see also Nico Lang, “Pentagon’s Confederate Flag Ban Also Prohibits Pride Flags at Military Bases,” them (2020).

³⁰⁰ Editor’s note: There are exceptions for educational or historical uses, such as booths at diversity events, but in most other situations, the flags are banned in military spaces.

³⁰¹ Meghann Myers, “Pentagon’s ban on Pride, and nearly all other, flags is staying,” Military Times (2021), available: <https://www.militarytimes.com/news/your-military/2021/06/04/pentagons-ban-on-pride-and-nearly-all-other-flags-is-staying/>

lawmakers and organizations have continued to call upon the DoD to issue an official exception for LGBTQ+ pride flags.³⁰²

In order to ensure an inclusive environment for our LGBTQ+ servicemembers and their families, MMAA continues to strongly oppose the prohibition of LGBTQ+ pride flags under this guidance, and given the early actions of the Biden administration, we expect this guidance to alter.³⁰³

TRACKING CARE FOR LGBTQ+ VETERANS

As noted in the “[Healthcare Services](#)” sub-section of the “[Veterans Administration Benefits](#)” section of this guide, the VA provides a number of LGBTQ+-specific resources for veterans. However, recent reports have indicated that the tracking of health issues for LGBTQ+ veterans is not standardized.³⁰⁴ According to the Government Accountability Office, the system from the Veterans Health Administration (VHA) has a number of limitations for tracking the health issues for LGBTQ+ veterans.³⁰⁵

Given the health disparities faced by LGBTQ+ people more generally and the additional challenges for the health of

LGBTQ+ veterans, there is a pressing need to ensure a better tracking system is developed in coordination with the new electronic health record (EHR) system that is being introduced by the VA.³⁰⁶ This is particularly urgent, as LGBTQ+ veterans may face significant health disparities related to depression and suicidal ideation.³⁰⁷ And of course, it is also important to note that transgender veterans face additional health disparities, as compared to their LGBQ peers.³⁰⁸

In pursuit of our mission, MMAA strongly recommends the creation of a tracking system that will better ensure the care of LGBTQ+ veterans, and as noted in other areas of this guide, MMAA is available to assist LGBTQ+ veterans with questions related to accessing healthcare services through the VA.

UNDERSTANDING THE NEEDS OF CAREGIVERS FOR LGBTQ+ VETERANS

As noted in the “[For Veterans](#)” sub-section of the “[Military Family Matters and Benefits](#)” section of this guide, the VA provides resources to caregivers of eligible veterans. In 2014, RAND Corporation released a report about the needs of caregivers for veterans, and this report highlighted the sacrifices and needs

of military and veteran caregivers.³⁰⁹

Ultimately, this report helped to enable both the passage of key legislation and the creation of programs to better support caregivers for military and veteran caregivers. While this study did help to identify gaps in the various programs, policies, and initiatives that are designed to support caregivers, it did not include any analysis related to the needs of caregivers supporting LGBTQ+ veterans. As such, additional research to better understand the needs of these caregivers is needed, as this would help to ensure better support for them in pursuit of care for LGBTQ+ veterans.

Until this is accomplished, targeted services, programs, and initiatives to support this segment of the veteran caregiver community will continue to be ad hoc. As such, MMAA strongly recommends a more targeted study about the needs of caregivers who support LGBTQ+ veterans.

³⁰² “Members of Congress Demand Reinstatement of Pride Flag on Military Installations,” Modern Military Association of America (2020), available <https://modernmilitary.org/2020/07/members-of-congress-demand-reinstatement-of-lgbtq+-pride-and-sovereign-native-nations-flags-on-military-installations-explicit-ban-on-confederate-flag/> and Meghann Myers and Leo Shane, “There’s a Movement Building to Reverse DoD’s Policy on LGBTQ+ Pride Flag and Other Banners,” Military Times (2020).

³⁰³ *Id.*; see also Trudy Ring, “Biden Admin Will Have LGBTQ+ Envoy, Allow Pride Flag at Embassies,” The Advocate (2021).

³⁰⁴ Leo Shane, “VA Failing to Track Health Issues for LGBT Vets: Report,” Military Times (2020).

³⁰⁵ “VA Healthcare: Better Data Needed to Assess the Health Outcomes of Lesbian, Gay, Bisexual, and Transgender Veterans,” Government Accountability Office (GAO) (October 2020), available <https://www.gao.gov/assets/720/710200.pdf>

³⁰⁶ See “EHR Modernization,” Dept. of Veterans Affairs, available <https://www.ehrm.va.gov/>

³⁰⁷ *Id.*; see also Leo Shane, *supra* note 304.

³⁰⁸ Madeline Smith-Johnson, “Transgender Adults Have Higher Rates of Disability Than Their Cisgender Counterparts,” Health Affairs (2022), available <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00500#:~:text=After%20confounders%20are%20controlled%20for,cisgender%20counterparts%20at%20both%20ages>.

³⁰⁹ Rajeev Ramchand, Terri Tanielian, Michael P. Fisher, Christine Anne Vaughan, Thomas E. Trail, Caroline Batka, Phoenix Voorhies, Michael W. Robbins, Eric Robinson, and Bonnie Ghosh-Dastidar, *Hidden Heroes: America’s Military Caregivers* (2014).

APPENDIX A: THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

The UCMJ is a series of laws enacted by Congress, and they define the military justice system, while also listing criminal offenses under military law. Like all military policies,

the UCMJ should be applied without regard to a servicemember's sexual orientation and/or gender identity.

SODOMY (ARTICLE 125)

Consensual sodomy between same-gender partners has been legal in the civilian sector since 2003.³¹⁰ The National Defense Authorization Act for fiscal year 2014 included provisions that repealed sections of Article 125, UCMJ, which criminalized consensual sodomy.³¹¹ As such, private, consensual sexual activity between members of the same gender is no longer criminalized under the UCMJ. However, non-consensual sodomy and sodomy with a minor still violate Article 125, and potentially, other UCMJ provisions.

The repeal of Article 125, which applies to private, consensual sodomy, does not mean that all consensual sexual activity is approved. The UCMJ still criminalizes adultery and fraternization (both under Article 133 or 134), and those offenses will continue to be charged. In addition, regulations prohibit consensual activity under some

conditions and in certain places, such as while in a training status, on a ship, or in public. These may be charged as violations of Article 120c (indecent acts or exposure), Article 92 (failure to follow an order or regulation), Article 133 (conduct unbecoming), and/or Article 134 (catch-all). More information on these portions of the UCMJ are provided below.

Apart from the above, servicemembers should not be prosecuted for private, consensual sexual activity, including sodomy. If you are accused of violating the UCMJ for engaging in private, consensual sodomy, you may be experiencing harassment and/or discrimination related to your sexual orientation and/or gender identity, and you should contact MMAA for assistance. For more information on harassment and discrimination, see the "[Harassment and Discrimination](#)" section of this guide.

SEXUAL MISCONDUCT (ARTICLES 120, 120A, 120B, AND 120C)

These sections of the UCMJ criminalize sexual assault and other sexual crimes, and they were extensively amended through the National Defense Authorization Act for Fiscal Year 2012.³¹² What follows is a list of the relevant Articles and what is prohibited by them:

- **Article 120:** Rape, sexual assault, aggravated sexual contact, and abusive sexual contact;³¹³
- **Article 120a:** Stalking;³¹⁴
- **Article 120b:** Rape, sexual assault, or sexual abuse of a child;³¹⁵ and
- **Article 120c:** Other sexual misconduct, including 1) indecent viewing, visual recording, or broadcasting of sexually explicit images; 2) forcible pandering; and 3) indecent exposure.³¹⁶

Servicemembers should be aware that voluntary intoxication is not a defense to charges under Article 120. Claiming that you were too drunk either to control your actions or to make better decisions will not excuse behavior related to prohibited conduct. If convicted, servicemembers may receive punishment, which can include confinement and/or a bad-conduct or dishonorable discharge. Conviction may also require the accused to register as a sex offender, which has far-reaching and long-lasting consequences.

Due to a series of scandals involving sexual harassment, sexual misconduct, and rape in the military, all instances of alleged violations of Article 120 are investigated vigorously, and charges will be preferred if there is evidence to support them.

We are aware of instances where gay servicemembers specifically have been falsely accused of sexual misconduct. The circumstances vary, but based upon these cases, we advise taking the following precautions to minimize the chance of a false accusation stemming from your sexual orientation and/or gender identity:

- Never engage in any sexual activity with someone who is or may be sleeping or who is or may be intoxicated;
- Always obtain verbal consent before engaging in any sexual activity, and obtain ongoing verbal consent for every type of sexual act before you engage in it;
- Never engage in sexual activity in times, places, and/or circumstances that are against regulation and/or orders;
- Always get to know a person before engaging in any sexual activity with them, and try to determine if they may later regret their actions or claim that they did not give consent; and
- Never put yourself in situations—for example, someone else's bed—where even innocent actions may be misconstrued or misunderstood.

³¹⁰ *Lawrence v. Texas*, 539 U.S. 558 (2003). (Editor's note: In this case, the Supreme Court found that the U.S. Constitution protects the right of all individuals to engage in adult, consensual personal relationships. It overruled a previous decision by the Supreme Court in *Bowers v. Hardwick* (1986), which upheld state laws prohibiting some types of private consensual sexual conduct.)

³¹¹ Pub. L. No. 113-66, § 1707, 127 Stat. 672, 961 (2013). (Note: This is the repeal of the offense of consensual sodomy under the UCMJ.)

³¹² Pub. L. No. 112-81, § 541, 125 Stat. 1298, 1404-11 (2011). (Note: This amends Article 120 and adding Articles 120b and 120c, UCMJ.)

³¹³ Manual for Courts Martial ("MCM") (2016 ed.), pt. IV, ¶ 45.

³¹⁴ MCM, pt. IV, ¶ 45a.

³¹⁵ MCM, pt. IV, ¶ 45b.

³¹⁶ MCM, pt. IV, ¶ 45c.

If you find yourself wrongfully accused of sexual misconduct (particularly due to your sexual orientation and/or gender identity),

go to modernmilitary.org/programs/lgbtq-advocacy for legal referrals and resources.

REVENGE PORN (ARTICLE 117A)

In a 2017 response to a scandal involving the non-consensual posting of nude photos of women,³¹⁷ Congress prohibited the “wrongful broadcast or distribution of intimate visual images.”³¹⁸ Anyone who “knowingly and wrongfully broadcasts or distributes an intimate visual image of another person” without the express permission of the person depicted can be charged, should such an act substantially harm the person depicted in regards to their “health, safety, business, calling, career, financial condition, reputation, or personal relationships.”³¹⁹ This act was then listed as a new offense under Article 117a of the UCMJ.

Under this Article, servicemembers could be subject to criminal charges for texting, emailing, messaging, SnapChatting, or posting online (in other forms not listed here) any explicit images of another person without that person’s consent. The prohibition applies even if the images also depict the person who is distributing the images.

For more information related to the topic of revenge porn and sexually explicit images, refer to the “[Privacy Issues](#)” section of this guide.



CONDUCT UNBECOMING (ARTICLE 133) AND CATCH-ALL ARTICLE (ARTICLE 134)

Articles 133 and 134 are referred to as the “general articles,” and they serve as a catch-all for offenses that the military wishes to prohibit but has not specifically outlawed in other articles. Article 133 of the UCMJ prohibits “conduct unbecoming an officer and a gentleman,”³²⁰ and Article 134 of the UCMJ prohibits conduct that results in the “prejudice of good order and discipline in the armed forces” in addition to conduct that “bring[s] discredit upon the armed forces.”³²¹

Due to their general nature, Articles 133 and 134 were historically used to punish individuals for same-gender sexual activities and identities, as described in the “[A Brief History of LGBTQ+ Military Service](#)” section above. With the repeal of DADT and the repeal of consensual sodomy as a crime under the UCMJ, same-gender sexual activity alone is no longer considered an offense, and it is not punishable under any article, including Articles 133 and 134, of the UCMJ.

However, both same-gender sexual activity and heterosexual sexual activity, as noted above, are subject to the same regulations related to violence and other forms of misconduct under the UCMJ. For instance,

conduct that has been considered a violation of these Articles includes fraternization, adultery, and soliciting another to commit an offense among others.

Servicemembers should understand that these provisions do not apply solely to sexual activities, and virtually any physical act with another person can be criminally prosecuted if it can be shown that the act was committed for a sexual and/or romantic purpose.

FRATERNIZATION

Punishable under Article 134, fraternization is an offense that prohibits commissioned and warrant officers from having unduly familiar relationships with enlisted members.³²² The implementation guidelines allow the branches to apply fraternization policies both to enlisted members of different ranks and officers of different ranks, if the relationship is prejudicial to good order and discipline.³²³ Fraternization includes both sexual and/or romantic relationships in addition to business relationships, and the prohibition applies regardless of the gender identity of the members involved.³²⁴

³²⁰ Article 133, 10 U.S.C. § 933.

³²¹ Article 134, 10 U.S.C. § 934.

³²² MCM, pt. IV, ¶¶ 60, 83.

³²³ MCM, pt. IV, ¶ 83.c.2. Fraternization therefore may also be charged under Article 92, UCMJ, 10 U.S.C. § 892 (failure to obey an order or regulation). *See id.*

³²⁴ *E.g., AR 600-20, Army Command Policy*, ¶ 4-14.a (Editor’s note: This states that “This policy ... applies to opposite-gender relationships and same-gender relationships.”); *see also* OPNAVINST 5370.2C, Navy Fraternization Policy, ¶ 4.c (Editor’s note: This states that “Historically, and as used in this instruction, fraternization is a gender-neutral concept. Its focus is on the detriment to good order and discipline resulting from the erosion of respect for authority inherent in an unduly familiar senior-subordinate relationship, not the sex of the members involved.”)

³¹⁷ See “Office of Marine Corps Communications Public Affairs Guidance: Marines United,” Office of Marine Corps Communications, Marine Corps, Dept. of Defense (2017), available <https://assets.documentcloud.org/documents/3481701/MARINE-RESPONSE.pdf>

³¹⁸ National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 533 (2017), 10 U.S.C. § 917a.

³¹⁹ Article 117a, 10 U.S.C. § 917a.

However, not all contact or association between seniors and subordinates constitutes fraternization, and the determining factor is “whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale.”³²⁵ For example, “dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling and borrowing money between officers and enlisted members, regardless of service, are unduly familiar and are prohibited.”³²⁶

Additionally, each branch has their own policies governing fraternization. In the Air Force³²⁷ and Army³²⁸ regulations, fraternization applies only to officer-enlisted relationships. In the Navy, Chief Petty Officers (E-7 through E-9) may be punished for having a personal relationship with enlisted members (E-1 through E-6) within their chain of command.³²⁹ In the Marines, non-commissioned officers (NCOs) similarly may be charged with fraternization for an improper relationship with a subordinate.³³⁰

Generally, marriage “cures” issues related to fraternization.³³¹ In other words, an officer who is legally married to an enlisted member cannot be charged with fraternization for conduct occurring after the marriage became

legally recognized. As such, legally married, dual-military couples should not be vulnerable to fraternization charges, regardless of their sexual orientations and/or gender identities, and they should go to modernmilitary.org/programs/lgbtq-advocacy for legal referrals and resources if this occurs.

And finally, there are two things that servicemembers should keep in mind regarding fraternization. First, fraternization does not require a sexual and/or romantic relationship. Second, the standard—“whether the conduct has compromised the chain of command, resulted in the appearance of partiality, or otherwise undermined good order, discipline, authority, or morale”—is subjective. These factors can make servicemembers vulnerable to accusations of fraternization, even where there was no improper conduct.

ADULTERY

Adultery is also punishable under Article 134.³³² Adultery is defined as wrongful sexual intercourse between a married person and someone who is not their spouse, when the conduct is 1) prejudicial to good order and discipline or 2) brings discredit to the armed forces.³³³ Even private and discreet adultery can violate these standards, depending on the circumstances.

Factors to be considered include the following: the marital status and rank, grade, and position of all parties involved; the military status or relationship to the military of all parties involved; the effect of the actions on the ability of the persons affected to perform their military duties; the misuse of government time and/or resources to facilitate the conduct; the flagrancy of the conduct and whether it continued despite counseling or orders; the effect on the units or organizations of the persons affected; whether the married persons were separated; and whether the conduct was recent or remote.³³⁵

Furthermore, this provision applies not just to relationships between a married servicemember and someone other than their spouse, but it also applies to an unmarried servicemember engaging in sexual activity with any married individual. And finally, “sexual intercourse” is not defined in the Manual for Courts Martial section dealing with adultery.

However, it is defined broadly in other sections of the UCMJ, and this definition includes any and all forms of vaginal, oral, and/or anal sex.³³⁶

And of course, such dated policies can create additional challenges for servicemembers who are polyamorous and/or practice ethical non-monogamy. Such servicemembers should remain keenly aware of this policy and the potential impacts that it may have.

³²⁵ MCM, pt. IV, ¶ 83.c.1.

³²⁶ OPNAVINST 5370.2C, ¶ 6.b.

³²⁷ AFI 36-2909, Professional and Unprofessional Relationships, ¶ 2.2.1.

³²⁸ AR 600-20, ¶ 4-14.a.

³²⁹ OPNAVINST 5370.2C, ¶ 5.b.

³³⁰ Marine Corps Manual, 1100.4-5.

³³¹ E.g., AR 600-20, ¶ 4-14.c.2.a. (Editor’s note: This lists marriage as an exception to the rule against dating and shared living accommodations.)

³³² MCM, pt. IV, ¶¶ 60, 62.

³³³ MCM, pt. IV, ¶ 62.b.

³³⁶ MCM, pt. IV, ¶ 68b.c(7)(a). (Editor’s note: In the section on child pornography, “sexual intercourse” includes “genital-genital, oral-genital, anal-genital, or oral-anal, whether between of the same or opposite sex.”)

APPENDIX B: ADDITIONAL RESOURCES

In addition to the assistance and information that our staff and volunteers can provide you, we encourage you to contact the

organizations below for any additional information or resources you may be seeking.

MILITARY LEGAL RESOURCES

- » **U.S. Army**
Trial Defense Service (TDS) www.jagcnet.army.mil
- » **U.S. Air Force**
Area Defense Counsel (ADC) www.afjag.af.mil
- » **U.S. Navy**
Navy Legal Service Office (NLSO) www.jag.navy.mil/legal_services/nlso_map_global.htm
- » **U.S. Marine Corps**
Navy Legal Service Office (NLSO) www.jag.navy.mil/legal_services/nlso_map_global.htm
- » **U.S. Coast Guard**
Navy Legal Service Office (NLSO) www.jag.navy.mil/legal_services/nlso_map_global.htm

Note: Generally, Marines and Coast Guardsmen will need to seek representation through the closest NLSO office. There are fewer Marine and Coast Guard defense attorneys, and they often work in a NLSO office.

SERVICE-RELATED RESOURCES

LEGAL SERVICES FOR SERVICE MEMBERS & VETERANS

- » **American Bar Association's Home Front Program**
website: www.americanbar.org/groups/legal_services/milvets/aba_home_front
The American Bar Association's Home Front connects service members with legal information and has a comprehensive listing of state-by-state legal assistance programs for servicemembers. For a direct referral, servicemembers must go through their military legal services office to request a referral through the Military Pro Bono Center.
- » **American Bar Association's Military Pro Bono Project**
website: www.militaryprobono.org
The ABA Military Pro Bono Project sponsors ongoing projects to help active duty military personnel and military attorneys with free legal assistance. Through Operation Stand-By, military attorneys may seek attorney-to-attorney advice on state-specific legal information affecting their clients. The Project also accepts referrals from military legal services offices for pro bono civilian legal services for servicemembers.
- » **GI Rights Hotline**
website: www.girightshotline.org
The GI Rights Hotline will connect service members with counselors (not always lawyers) who can provide up-to-date information about military law and policies. The calls are confidential, and the counselors can provide referrals for service members with additional needs.
- » **Military Law Task Force of the National Lawyers Guild**
website: www.nlgmltf.org
The National Lawyers Guild's Military Law Task Force assists those working on military law issues as well as military law counselors working directly with GIs. It updates changes in military law and policy.
- » **National Institute of Military Justice**
website: www.nimjblog.org
The National Institute of Military Justice (NIMJ) is a District of Columbia nonprofit corporation organized in 1991 to advance the fair administration of military justice and foster improved public understanding of the military justice system.
- » **National Veterans Legal Service Program**
website: www.nvlsp.org
The National Veterans Legal Service Program (NVLSP) coordinates free legal services for veterans through the Veterans Consortium Pro Bono Program (at www.vetsprobono.net), and for recent veterans through Lawyers Serving Warriors (at www.lawyerservingwarriors.com).

LGBTQ+ MILITARY MEMBER ORGANIZATIONS

»» The American Veterans for Equal Rights

website: www.aver.us

The American Veterans for Equal Rights (AVER) is a Veterans Service Organization of active, reserve, and veteran servicemembers dedicated to full and equal rights and equitable treatment for all present and former members of the U.S. Armed Forces.

»» The Blue Alliance

website: www.facebook.com/Blue.Alliance.USAFA

Blue Alliance is an organization of U. S. Air Force Academy alumni who are gay, lesbian, bisexual and transgender, along with supporters and friends. The organization is dedicated to reconnecting LGBTQ+ alumni to the Academy.

»» Knights Out

website: www.knightsout.org

Knights Out is an organization of West Point Alumni, Staff and Faculty who are united in supporting the rights of lesbian, gay, bisexual and transgender soldiers to openly serve their country. Knights Out is currently in the second phase of their mission: "to prepare West Point graduates and cadets to lead in a military where LGBT soldiers are allowed to serve openly."

»» Modern Military Association of America (MMAA)

website: www.modernmilitary.org

Formed through the merger of the American Military Partner Association and OutServe-SLDN, the Modern Military Association of America is the nation's largest nonprofit organization dedicated to advancing fairness and equality for the LGBTQ+ military and veteran community. Through education, advocacy, and support, we are making a real difference in the lives of LGBTQ+ servicemembers, military spouses, veterans and family members.

»» SPARTA

website: www.spartapride.org

SPARTA's mission is to advocate for our actively serving transgender military members, veterans, and their families. SPARTA provides members with a peer support network, assistance in navigating military transgender policy and health care, and educational resources for their professional development.

»» Service Academy LGBT Network

website: www.sagala.net

Connects LGBT alumni of all the Service Academies to LGBT representatives from their school, including the Coast Guard Academy and Merchant Marine Academy.

»» USNA Out

website: www.usnaout.org

USNA Out is an organization of more than 350 LGBTQ+ US Naval Academy alumni, their supporters and their friends. The organization strives to provide a path for "reconnection" to the many USNA alumni who have over time been disassociated from the Academy and the USNA Alumni Association because of their sexuality or gender identity. Membership is open to all alumni of USNA.

»» Transgender American Veterans Association

website: www.transveteran.org

Transgender American Veterans Association (TAVA) acts proactively with other concerned gay, lesbian, bisexual, and transgender (GLBT) organizations to ensure that transgender veterans will receive appropriate care for their medical conditions in accordance with the Veterans Health Administration's Customer Service Standards promise to "treat you with courtesy and dignity...as the first class citizen that you are."

RESEARCH ORGANIZATIONS

»» Rand Corporation

website: www.rand.org

RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. While not an LGBTQ+-specific organization, RAND is passionate about diversity, equity, and inclusion, and it has done a large amount of research on both the LGBTQ+ population and military space.

»» The Williams Institute

website: www.williamsinstitute.law.ucla.edu

The Williams Institute advances sexual orientation law and public policy through rigorous independent research and scholarship, and disseminates it to judges, legislators, policymakers, media, and the public. A national think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance.

MILITARY NEWS SOURCES

- » **Air Force Times**
 website: www.airforcetimes.com
Air Force Times is part of the Military Times Media group, consisting of Army Times, Navy Times, Air Force Times and Marine Corps Times.
- » **Army Times**
 website: www.armytimes.com
Army Times is part of the Military Times Media group, consisting of Army Times, Navy Times, Air Force Times and Marine Corps Times.
- » **Defense Link**
 website: www.defenselink.mil
The mission of Defense Link is to support the overall mission of the Department of Defense by providing official, timely and accurate information about defense policies, organizations, functions and operations.
- » **Marine Corps Times**
 website: www.marinecorpstimes.com
Marine Corps Times is part of the Military Times Media group, consisting of Army Times, Navy Times, Air Force Times and Marine Corps Times.
- » **Military.com**
 website: www.military.com
Military.com is a news and resource website for military members, veterans and their families. They provide daily defense news, benefits information, veteran employment resources, spouse and family resources and tools to support their audience throughout the life cycle of military service and post-service life.
- » **Navy Times**
 website: www.navytimes.com
Navy Times is part of the Military Times Media group, consisting of Army Times, Navy Times, Air Force Times and Marine Corps Times.
- » **Stars & Stripes**
 website: stripes.com
Stars and Stripes provides independent news and information to the U.S. military community, including active-duty servicemembers, DoD civilians, veterans, contractors, and their families. Stars and Stripes has published a newspaper continuously since World War II and maintains news bureaus around the world to provide first-hand reporting on events.

- » **Task & Purpose**
 website: www.taskandpurpose.com
Task & Purpose was founded in 2014 with a mission to inform, engage, entertain, and stand up for active-duty military members, veterans, and their families. It provides military news, culture, and analysis by and for the military and veterans community, and it has a strong reputation for investigative journalism.
- » **The War Horse**
 website: thewarhorse.org
The War Horse is an award-winning nonprofit newsroom and the most trusted source for bulletproof reporting on the human impact of military service. Their team holds power to account, strengthens our democracy, and improves understanding of the true cost of military service.
- » **We Are The Mighty**
 website: wearethemighty.com
We Are The Mighty is a veteran-led digital publisher and Emmy-award-winning media agency. Their website features news on military culture and history, along with tips and advice for those in the military community.

SERVICE DIRECTIVES, INSTRUCTIONS, & PUBLICATIONS

- » **DoD Directives System – DoD Issuances**
 website: www.dtic.mil/whs/directives/index.html
The DoD Directives System was established to provide a single, uniform system of DoD issuances and directive-type memorandums used to convey DoD policies, responsibilities, and procedures. The DoD Directives System provides for the orderly processing, approval, publication, distribution, internal review, and records management of DoD Directives, DoD Instructions, and DoD Publications. There is a searchable database of current issuances.
- » **U.S. Air Force Publications**
 website: www.e-publishing.af.mil
- » **U.S. Army Publications**
 website: www.apd.army.mil
- » **U.S. Coast Guard Publications**
 website: www.uscg.mil/directives
- » **U.S. Navy Publications**
 website: www.secnav.navy.mil/doni/default.aspx
- » **U.S. Marine Corps Publications**
 website: www.marines.mil/news/publications

LGBTQ+ RESOURCES³³⁷

FAMILY AND YOUTH RESOURCES

» COLAGE

website: www.colage.org

COLAGE was established to engage, connect, and empower people to make the world a better place for children of lesbian, gay, bisexual, and/or transgender parents and families.

» Family Diversity Projects

website: www.familydiv.org

Love Makes a Family is a museum-quality traveling exhibit including photographs and interviews with families that have LGBT members. Through first-person accounts and positive images, this exhibit seeks to challenge and change damaging myths and stereotypes about LGBT people and their families.

» Family Equality Council

website: www.familyequality.org

The Family Equality Council works in both state and federal government to advance full social and legal equality on behalf of the approximately one million lesbian, gay, bisexual, and transgender families raising two million children. Parenting protections, adoption, repeal of DOMA, health insurance reform, immigration reform, safe schools, and workplace equality are many of the issues Family Equality Council is currently working on at the state and federal level.

» GLSEN

website: www.glsen.org

GLSEN works to ensure that each member of every school community is valued and respected regardless of sexual orientation, gender identity, or gender expression.

» InterAct Advocates for Intersex Youth

website: www.interactadvocates.org

InterACT uses innovative legal and other strategies to advocate for the human rights of children born with intersex traits.

» PFLAG

website: www.pflag.org

Parents, Families & Friends of Lesbians & Gays (PFLAG) is a national nonprofit organization with over 200,000 members and supporters and over 500 affiliates in the United States. This vast grassroots network offers virtual and in-person support groups for loved ones and allies of LGBTQ+ people.

» The Trevor Project

website: www.thetrevorproject.org

The Trevor Project works to end suicide among gay, lesbian, bisexual, transgender, queer, and questioning young people.

GENERAL RESOURCES

» Campaign for Southern Equality

website: www.southernequality.org

The Campaign for Southern Equality works to build a South where LGBTQ+ people are equal in every sphere of life.

» CenterLink: The Community of LGBT Centers

website: www.lgbtcenters.org

CenterLink: The Community of LGBT Centers exists to support and enhance LGBT community centers, which are engines of community organizing and liberation, and crucial to the health and strength of LGBT communities.

» GLAAD

website: www.glaad.org

GLAAD rewrites the script for LGBTQ+ acceptance. As a dynamic media force, GLAAD tackles tough issues to shape the narrative and provoke dialogue that leads to cultural change.

» Matthew Shepard Foundation

website: www.matthewshepard.org

The Matthew Shepard Foundation's mission is to amplify the story of Matthew Shepard to inspire individuals, organizations, and communities to embrace the dignity and equality of all people.

» Movement Advancement Project

website: www.lgbtmap.org

MAP's mission is to provide independent and rigorous research, insight and communications that help speed equality and opportunity for all. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life.

» Out & Equal Workplace Advocates

website: www.outandequal.org

Out & Equal is the global convener, thought leader and catalyst actively working to achieve workplaces of equality and belonging, supporting LGBTQ+ employees and leaders who thrive in their careers and lives and achieve greater impact on the world.

³³⁷ Please note that some identity-specific resources, such as those for transgender people, LGBTQ+ women, LGBTQ+ people of color, LGBTQ+ people of faith, and other groups, are included in the relevant identity specific section to help make them more easily accessible for readers.

» **SAGE: Advocacy & Services for LGBT Elders**

website: www.sageusa.org

SAGE operates at the intersection of LGBT and aging experiences. Their work ensures that all LGBT older people have just and fair access to the opportunities they deserve and are free from ageism.

LEGAL AND POLICY ORGANIZATIONS

» **American Civil Liberties Union's (ACLU's) LGBT Rights Project**

website: www.aclu.org/lgbt-rights

The LGBT Rights Project works to ensure that lesbian, gay, bisexual, and transgender people can live openly without discrimination and enjoy equal rights, personal autonomy, and freedom of expression and association.

» **GLBTQ Legal Advocates & Defenders**

website: www.glad.org

GLBTQ Legal Advocates & Defenders (GLAD) is a New England-based organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. GLAD's full-time legal staff and network of New England attorneys provide litigation, advocacy, and educational work in all areas of gay, lesbian, bisexual, transgender, and queer civil rights and the rights of people living with HIV.

» **Human Rights Campaign**

website: www.hrc.org

The Human Rights Campaign (HRC) is America's largest civil rights organization working to achieve LGBTQ+ equality. HRC envisions a world where every member of the LGBTQ+ family has the freedom to live their truth without fear, and with equality under the law. They empower their 3 million members and supporters to mobilize against attacks on the most marginalized people in our community.

» **Immigration Equality**

website: www.immigrationequality.org

Immigration Equality is a national grassroots organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender, queer, and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status.

» **OutRight International**

website: www.outrightinternational.org

The mission of OutRight International is to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status. A US-based nonprofit, non-governmental organization (NGO), OutRight International effects this mission through advocacy, documentation, coalition building, public education, and technical assistance.

» **Lambda Legal's Defense and Education Fund**

website: www.lambdalegal.org

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of LGBTQ+ people and those with HIV through impact litigation, education and public policy work.

» **National Center for Lesbian Rights (NCLR)**

website: www.nclrights.org

NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education.

» **National LGBTQ+ Task Force**

website: thetaskforce.org

The National LGBTQ+ Task Force advances full freedom, justice and equality for LGBTQ+ people. Their mission is to build a future where everyone can be free to be their entire selves in every aspect of their lives.

PROFESSIONAL ASSOCIATIONS

» **Consortium of Higher Education LGBT Resource Professionals**

website: www.lgbtcampus.org

The Consortium of Higher Education LGBT Resource Professionals is a member-based organization working towards the liberation of LGBTQ+ people in higher education. They support individuals who work on campuses to educate and support people of diverse sexual orientations and gender identities, as well as advocate for more inclusive policies and practices through an intersectional and racial justice framework.

» **DoD Pride**

website: dodpride.org

DoD Pride is a nonprofit 501(c)3 LGBTQ+ service organization which serves as an Employee Resource Group for LGBT service members, civilian employees, contractors, and their families within the Department of Defense. They seek to advance U.S. national security by ensuring all employees of the Department are treated equally and fairly, empowered to support DoD's mission in a workplace free of discrimination.

» **GLMA: Health Professionals Advancing LGBTQ+ Equality**

website: www.glma.org

GLMA is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, queer (LGBTQ+) and all sexual and gender minority (SGM) individuals, and equality for LGBTQ+/SGM health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

- » **Lesbians Who Tech & Allies**
 website: lesbianswhotech.org
Lesbians Who Tech & Allies is a community of LGBTQ+ women, non-binary and trans individuals in and around tech (and the people who support them). They also have many other intersecting identities when it comes to race, ethnicity, ability, age, and more. They work to promote the visibility and inclusion of women, queer people, and others from other backgrounds underrepresented in technology.
- » **NLGJA: The Association of LGBTQ+ Journalists**
 website: www.nlgja.org
NLGJA is a journalist-led association working within the news media to advance fair and accurate coverage of LGBTQ+ communities and issues. They promote diverse and inclusive workplaces by holding the industry accountable and providing education, professional development and mentoring.
- » **National LGBT Bar Association**
 website: www.lgbtbar.org
The LGBT Bar Association is a national association of lawyers, judges and other legal professionals, law students, activists, and affiliated lesbian, gay, bisexual, transgender legal organizations. The LGBT Bar Association promotes justice in and through the legal profession for the LGBT community in all its diversity.
- » **Out in National Security**
 website: www.outinnationalsecurity.org
Out in National Security advances our community's interests by seeking outcomes and goals that positively impact the lives of today's and tomorrow's LGBTQ+IA+ national security practitioners.
- » **Out in Science, Technology, Engineering, and Mathematics (oSTEM)**
 website: www.ostem.org
oSTEM empowers LGBTQ+ people in STEM to succeed personally, academically, and professionally by cultivating environments and communities that nurture innovation, leadership, and advocacy.
- » **Out in Tech**
 website: www.outintech.com
Out in Tech unites the LGBTQ+ tech community. They do this by creating opportunities for their members to advance their careers, grow their networks, and leverage tech for social change.
- » **Protect and Defend**
 website: www.protectanddefend.org
Protect and Defend is a nonprofit organization that serves the interests of gay and lesbian law enforcement, firefighters, military, and other public safety and justice system workers. It is primarily a social organization that organizes public and private events with an eye towards charitable fundraising for LGBT organizations.

HIV/AIDS RESOURCES

- » **The AIDS Coalition to Unleash Power (ACT UP)**
 website: www.actupny.com
ACT UP is a diverse, non-partisan group of individuals, united in anger and committed to direct action to end the AIDS crisis. They meet with government officials, distribute the latest medical information, and protest and demonstrate. They are not silent.
- » **The AIDS Institute**
 website: www.theaidsinstitute.org
The AIDS Institute is a national nonpartisan organization that promotes action for social change through public policy, research, advocacy, and education.
- » **AIDS Healthcare Foundation (AHF)**
 website: www.aidshealth.org
AIDS Healthcare Foundation (AHF) is a global nonprofit organization providing cutting-edge medicine and advocacy to over 1,000,000 people in 43 countries. They are currently the largest provider of HIV/AIDS medical care in the U.S.
- » **AIDS United**
 website: www.aidsunited.org
AIDS United envisions a time when all people, governments, and organizations commit to ending the epidemic and strengthening the health, well-being, and human rights of everyone impacted by HIV.
- » **Department of Veterans Affairs' National HIV/AIDS Program**
 website: www.hiv.va.gov
The VA's goal is to provide excellence in patient care, veterans' benefits and customer satisfaction. The mission of the Public Health Strategic Healthcare Group is to provide the highest quality, comprehensive care to veterans and to have that care recognized as the standard by which all healthcare in the United States is measured. This includes patient care activities, clinician and patient education, prevention activities, and research directed at continuous improvement of medical and preventive services and delivery of care to veterans.
- » **National AIDS Memorial**
 website: www.aidsmemorial.org
The National AIDS Memorial helps to ensure that the lives of people who died from AIDS are not forgotten and the story of AIDS is known by future generations, so that never again will a community be harmed because of fear, silence, discrimination, or stigma.

» **National Minority AIDS Council**

website: www.nmac.org

The National Minority AIDS Council (NMAC) is the premiere national organization dedicated to developing leadership within communities of color to address the challenges of HIV/AIDS.

» **National Alliances of State & Territorial AIDS Directors**

website: www.nastad.org

The National Alliances of State & Territorial AIDS Directors (NASTAD) is a leading non-partisan nonprofit association that represents public health officials who administer HIV and hepatitis programs in the U.S. and around the world.

TRANSGENDER RESOURCES

» **FTM International**

website: www.ftmi.org

FTM International serves the FTM community by providing support meetings for FTM people and their families in cities around the world.

» **National Center for Transgender Equality**

website: www.transequality.org

The National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. In the nation's capital and throughout the country, NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

» **Point of Pride**

website: pointofpride.org

Point of Pride's mission is to help the most vulnerable members of the trans community feel seen and supported through access to life-saving health and wellness services. The nonprofit offers financial programs including an HRT Access Fund, Annual Transgender Surgery Fund, and Electrolysis Support Fund. They also give away free chest binders and femme shapewear to those who can't afford or safely obtain them.

» **Sylvia Rivera Law Project**

website: www.srlp.org

The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is a collective organization founded on the understanding that gender self-determination is inextricably intertwined with racial, social and economic justice.

» **Transgender Law Center**

website: www.transgenderlawcenter.org

Transgender Law Center changes law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

» **Transgender Law & Policy Institute**

website: www.transgenderlaw.org

The Transgender Law & Policy Institute (TLPI) brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality.

» **Trans Lifeline**

website: www.translifeline.org

Trans Lifeline is a grassroots hotline and microgrants nonprofit organization offering direct emotional and financial support to trans people in crisis—for the trans community, by the trans community.

» **Transgender Legal Defense & Education Fund**

website: www.transgenderlegal.org

Transgender Legal Defense & Education Fund is committed to ending discrimination based upon gender identity and expression and to achieving equality for transgender people through public education, test-case litigation, direct legal services, and public policy efforts.

» **World Professional Association of Transgender Health (WPATH)**

website: www.wpath.org

WPATH promotes evidence based care, education, research, public policy, and respect in transgender health.

OTHER LGBTQ+-IDENTITY SPECIFIC RESOURCES

» **Aces & Aros**

website: www.acesandaros.org

Aces & Aros believes that individuals have the potential to make a real difference in our movement, and we were built to empower the work of community organizers and activists who are making a change. This website acts as a hub for the ace and aro community, enabling and encouraging ace and aro people to get involved in their community.

» **Asexual Outreach**

website: www.asexualoutreach.org

Asexual Outreach aspires to act as an umbrella organization for the national ace and aro advocacy movement by providing structure, sustainability, and resources that help projects and communities flourish.

» Asexuality Visibility & Education Network (AVEN)

website: www.asexuality.org

The Asexual Visibility and Education Network (AVEN) was founded in 2001 with two distinct goals: creating public acceptance and discussion of asexuality and facilitating the growth of an asexual community. Since that time, they have grown to host the world's largest asexual community, serving as an informational resource for people who are asexual and questioning, their friends and families, academic researchers and the press.

» AUREA

website: www.aromanticism.org

AUREA's goal is to assist in the growth of the aromantic community and advocate for its interests through furthering recognition and education internationally.

» Bisexual Resource Center

website: www.biresource.org

The Bisexual Resource Center works to connect the bi+ community and help its members thrive through resources, support, and celebration. They envision an empowered, visible, and inclusive global community for bi+ people.

» Intersex Society of North America

website: www.isna.org

The Intersex Society of North America (ISNA) is devoted to systemic change to end shame, secrecy, and unwanted genital surgeries for people born with an anatomy that someone decided is not standard for male or female.

» National Black Justice Coalition

website: www.nbjc.org

The National Black Justice Coalition (NBJC) is a civil rights organization dedicated to the empowerment of Black lesbian, gay, bisexual, transgender, queer and same gender loving (LGBTQ+/SGL) people, including people living with HIV/AIDS.

» Native Justice Coalition's Two-Spirit Program

website: www.nativejustice.org/twospirit

The Native Justice Coalition was formed in 2016 with the intent of being a platform for healing, social, and racial justice for all Native American people. Their goal is to provide a safe and nurturing platform for Native people based in an anti-oppression framework. They seek to collaborate first and foremost with tribal governments, Native American nonprofits, and other Native American led community organizations. Their goal is to bring resources, initiatives, and programming into tribal communities.

» National Queer Asian Pacific Islander Alliance (NQAPIA)

website: www.nqapia.org

The National Queer Asian Pacific Islander Alliance (NQAPIA) is a federation of lesbian, gay, bisexual, and transgender (LGBT) Asian American, South Asian, Southeast Asian, and Pacific Islander (AAPI) organizations. They seek to build the organizational capacity of local LGBT AAPI groups, develop leadership, promote visibility, educate the community, enhance grassroots organizing, expand collaborations, and challenge anti-LGBTQ+ bias and racism.

» Unity Coalicion

website: www.unitycoalition.org

The Unity Coalicion works to advance equality and fairness for the Latinx, Hispanic, and Indigenous LGBTQ+ community through education, leadership, and awareness.

WOMEN'S RESOURCES

» National Organization for Women's (NOW's) LGBTQ+IA+ Rights Project

website: www.now.org/issues/LGBTQ+-rights

NOW is committed to fighting discrimination based on sexual orientation or gender identity in all areas, including employment, housing, public accommodations, health services, child custody and military policies.

» National Women's Law Center

website: www.nwlc.org

The National Women's Law Center fights for gender justice — in the courts, in public policy, and in our society — working across the issues that are central to the lives of women and girls. They use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us — especially those who face multiple forms of discrimination, including women of color, LGBTQ+ people, and low-income women and families.

» Service Women's Action Network

website: www.servicewomen.org

The Service Women's Action Network (SWAN) is the voice of women who have served or are currently serving in the military. They are a member-driven network dedicated to supporting, connecting and advocating for the individual and collective needs of service women; past, present and future.

POLITICAL RESOURCES

- » **Common Defense**
 website: www.commondefense.us
Common Defense is the country's largest veteran-led grassroots organization committed to engaging, organizing, training and mobilizing veterans to elect accountable leaders and promote progressive values.
- » **Democratic Socialists of America's Queer Socialist Working Group**
 website: www.dsausa.org/working-groups/queer-socialists-working-group
The Queer Socialists Working Group helps coordinate DSA's work on LGBTQ+ issues with chapters and the national organization, based on the resolutions and statements passed by the NPC/National Convention. They further DSA's connections to LGBTQ+ organizations and aid in educating DSA members on these issues and how they relate to democratic socialism.
- » **Drag Out the Vote**
 website: www.dragoutthe.vote
Drag Out the Vote is a nonpartisan, nonprofit organization that works with drag performers to promote participation in democracy. They educate and register voters at drag events online and offline by organizing local and national voter activations. Led by fierce drag kings and queens across the nation, they advocate for increased voter access and engagement.
- » **LGBTQ+ Victory Fund**
 website: www.victoryfund.org
LGBTQ+ Victory Fund works to achieve and sustain equality by increasing the number of openly LGBTQ+ elected officials at all levels of government while ensuring they reflect the diversity of those they serve.
- » **Log Cabin Republicans**
 website: www.logcabin.org
Log Cabin Republicans are LGBT Republicans and straight allies who support equality under the law for all, free markets, individual liberty, limited government, and a strong national defense.
- » **National Lavender Greens Caucus**
 website: www.lavendergreens.net
The National Lavender Greens Caucus (NLGC) of the Green Party of the United States is the lesbian, gay, bisexual, transgender, queer, intersex, asexual and other gender/romantic minorities Caucus of the Green Party, and their purpose is to promote lavender issues within the Green Party and to promote the Green Party to the LGBTQ+IA+ community.

- » **Stonewall Democrats**
 website: www.stonewalldemocrats.us
The Stonewall Democrats are a grassroots network connecting LGBTQ+ Democratic activists across the nation. With more than 90 chapters across the country, Stonewall is a grassroots force for social change within the LGBTQ+ movement and within the Democratic Party.
- » **Outright Libertarians**
 website: www.outrightusa.org
Outright Libertarians' goal is to be the bridge for gender and sexual minorities within the Libertarian Party. They work to ensure that GSM issues are at the forefront of the liberty movement and are well represented by liberty candidates and the party. They also look to educate people on the importance of GSM rights and issues, and to help them have a better understanding of GSM people and culture.

SPIRITUAL RESOURCES

- » **Affirmation: LGBTQ+ Mormons, Families, & Friends**
 website: www.affirmation.org
Affirmation creates worldwide communities of safety, love, and hope and promotes understanding, acceptance, and self-determination of individuals of diverse sexual orientations, gender identities and expressions. They affirm the inherent self-worth of LGBTQ+IA+ individuals as complete, equal, and valuable persons and support them as they define their individual spirituality and intersection with The Church of Jesus Christ of Latter-day Saints.
- » **Association of Welcoming & Affirming Baptists**
 website: www.awab.org
As the only organization solely devoted to building the welcoming and affirming movement within the Baptist traditions, AWAB has a unique call to be the national voice for lesbian, gay, bisexual, transgender, queer, and allied Baptists in the U.S. Since 1993 AWAB has been supporting churches in being and becoming Welcoming and Affirming of all people regardless of gender identity or sexual orientation.
- » **DignityUSA**
 website: www.dignityusa.org
DignityUSA envisions and works for a time when gay, lesbian, bisexual and transgender Catholics are affirmed and experience dignity through the integration of their spirituality with their sexuality, and as beloved persons of God participate fully in all aspects of life within the Church and Society.

- » **GALVA-108**
website: www.galva108.org
The Gay & Lesbian Vaishnava Association (GALVA) is a nonprofit religious organization offering positive information and support to LGBTI Vaishnavas and Hindus, their friends, and other interested persons.
- » **Gay Buddhist Fellowship**
website: www.gaybuddhist.org
The Gay Buddhist Fellowship supports Buddhist practice and the spiritual concerns of the LGBTQ+IA+ community and its allies in the San Francisco Bay Area, the United States, and throughout the World. GBF's mission includes offering the wisdom and compassion of diverse Buddhist traditions, and cultivating a social environment that is inclusive and caring.
- » **Human Rights Campaign's Religion and Faith Program**
website: www.hrc.org/resources/religion-faith
The HRC's Religion and Faith Program is working to build a world where LGBTQ+ people of faith are celebrated for every part of who they are, while fighting to ensure that religion is not used as a weapon of hate and discrimination.
- » **Keshet: LGBTQ+ Equality in Jewish Life**
website: www.keshetonline.org
Keshet envisions a world in which all LGBTQ+ Jews and their families can live with full equality, justice, and dignity. By strengthening Jewish communities and equipping Jewish organizations with the skills and knowledge they need to make all LGBTQ+ Jews feel welcome, they work to ensure the full equality of all LGBTQ+ Jews and our families in Jewish life. They also create spaces in which all queer Jewish youth feel seen and valued and advance LGBTQ+ rights nationwide.
- » **LGBTQ+ Humanist Council**
website: www.lgbthumanists.org
The LGBTQ+ Humanist Alliance seeks to cultivate safe and affirming communities, promote humanist values, and achieve full equality and social liberation of LGBTQ+ persons. They pursue their mission by working together at the national level to build a thriving network of LGBTQ+ humanists and partners devoted to compassionate activism.
- » **Metropolitan Community Churches**
website: www.mcccchurch.org
Since its founding in 1968, MCC has been at the vanguard of civil and human rights movements by addressing important issues such as racism, sexism, homophobia, ageism, and other forms of oppression. MCC has been on the forefront in the struggle towards marriage equality in the U.S. and other countries worldwide and continues to be a powerful voice in the LGBT equality movement.

- » **Muslims for Progressive Values**
website: www.mpvusa.org/LGBTQ+i-resources
MPV endorses the human and civil rights of lesbian, gay, bisexual, transgender, intersex, and queer individuals. They affirm their commitment to ending discrimination based on sexual orientation and gender identity, and they support full equality and inclusion of all individuals, regardless of sexual orientation or gender identity, in society and in the Muslim community.
- » **Sadhana: Coalition of Progressive Hindus**
website: www.sadhana.org
Sadhana empowers Hindu American communities to live out the values of their faith through service, community transformation, and targeted advocacy work.
- » **Soulforce**
website: www.soulforce.org
Soulforce's mission is to end the religious and political oppression of LGBTQ+I people through relentless nonviolent resistance.
- » **Reconciling Works: Lutherans for Full Participation**
website: www.reconcilingworks.org
Reconciling Works advocates for the acceptance, full participation, and liberation of all sexual orientations, gender identities, and gender expressions within the Lutheran Church.
- » **Unitarian Universalist Association**
website: www.uua.org
The Unitarian Universalist Association (UUA) represents the interests of more than one thousand Unitarian Universalist congregations on a continental scale. Unitarian Universalism has been on record as supporting the rights of LGBT people since 1970.
- » **United Methodist Reconciling Ministries**
website: www.rmnetwork.org
Reconciling Ministries Network is a national grassroots organization that exists to enable full participation of people of all sexual orientations and gender identities in the life of the United Methodist Church, both in policy and practice.
- » **The World Congress of Gay, Lesbian, Bisexual and Transgender Jews**
website: www.glbtjews.org
The World Congress of Gay, Lesbian, Bisexual, and Transgender Jews: Keshet Ga'avah consists of around fifty member organizations all over the world. The World Congress wishes: to be the worldwide voice of LGBT Jews; to support, inspire, and strengthen local groups; to foster a sense of community among diverse individuals and organizations; to achieve equality and security for LGBT Jews worldwide.

VETERAN RESOURCES

» National Organization of Veterans' Advocates

website: www.vetadvocates.com

National Organization of Veterans' Advocates (NOVA) was incorporated as a nonprofit corporation to serve attorneys and non-attorney practitioners admitted to practice before the U.S. Court of Appeals for Veterans Claims (CAVC). NOVA recognizes the need to share information and analysis in order to provide successful advocacy for veterans. NOVA provides continuing legal education and support to individuals representing veterans.

» National Veterans Foundation

website: www.nvf.org

The National Veterans Foundation's mission is to serve the crisis management, information, and referral needs of all U.S. veterans and their families through: management and operation of the nation's only toll-free, vet-to-vet helpline for all veterans and their families; public awareness programs that shine a consistent spotlight on the needs of America's veterans; and outreach services that provide veterans and families in need.

» VA Facilities with LGBT Program Websites

website: www.patientcare.va.gov/LGBT/VAFacilities.asp

All veterans are welcome at VA, even those who identify as a sexual or gender minority. Sexual and gender minority veterans have faced stigma and discrimination, which can affect health. As a healthcare institution, we need to work to make sure that veterans with LGBT and related identities know that they are welcome at VA. There is an LGBT VCC at every facility to help you get the care you need.

» Veterans Benefits Administration (VBA) of the Dept. of Veterans Affairs (VA)

website: www.benefits.va.gov/benefits

The mission of the Veterans Benefits Administration, in partnership with the Veterans Health Administration and the National Cemetery Administration, is to provide benefits and services to the veterans and their families in a responsive, timely, and compassionate manner in recognition of their service to the Nation. Their webpage provides links to the most up-to-date resources for veteran disability, education, and loan benefits.

» Veterans Consortium Pro Bono Program

website: www.vetsprobono.org

The Veterans Consortium Pro Bono Program (Program) was created in 1992, with a dual mission: to recruit and train attorneys in the fledgling field of veterans' law; and to provide assistance to unrepresented appellants at the U.S. Court of Appeals for Veterans Claims.

» Veterans Crisis Line

website: www.veteranscrisisline.net

The Veterans Crisis Line is a free, confidential resource that's available to anyone, even if you're not registered with VA or enrolled in VA healthcare. The caring, qualified responders at the Veterans Crisis Line are specially trained and experienced in helping veterans of all ages and circumstances.

» Veterans Health Administration (VHA) of the Dept. of Veterans Affairs (VA)

website: www.va.gov/health

The Veterans Health Administration is America's largest integrated healthcare system, providing care at 1,255 healthcare facilities, including 170 medical centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics), serving 9 million enrolled veterans each year.

» VoteVets

website: votevets.org

VoteVets continues to focus on matters including, but not limited to, foreign policy, energy security, veterans' unemployment, and opening military service to life-long Americans born to undocumented immigrants, as well as continued investment in care for veterans. More often than not, veterans have a stake in the top issues of the day, and VoteVets is committed to getting their voices heard on these issues.



Visit Modern Military Association of America's website
for additional information: modernmilitary.org.