



## Summary of Trump Administration Policy on Transgender Military Service

*Peter Sprigg*

### ***Brief Timeline of Military Transgender Policy***

- *Before 2016* – Persons who identify as transgender are generally prohibited from serving in the military.<sup>1</sup>
- *July 1, 2016* – In final year of Obama administration, new policy announced by Defense Secretary Ash Carter takes effect, ending discharges of transgender Service members; will allow those who identify as transgender to join the military beginning July 1, 2017.<sup>2</sup>
- *June 30, 2017* – President Trump’s Defense Secretary James Mattis postpones July 1 deadline for accession of transgender-identified Service members by six months.<sup>3</sup>
- *July 26, 2017* – President Trump announces reversal of the Obama/Carter policy on Twitter, declaring that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military.”<sup>4</sup>
- *August 25, 2017* – President Trump issues memorandum instructing Secretary Mattis to draft policies to implement his decision.<sup>5</sup>
- *August-December, 2017* – Four lawsuits are filed challenging Trump policy; judges in all four cases issue preliminary injunctions against implementation of Trump policy.<sup>6</sup>
- *January 1, 2018* – Pursuant to the court injunctions, the Armed Forces begin to accept applicants who identify as transgender.
- *March 23, 2018* – The White House and Department of Defense release documents laying out a new policy regarding military service by those who identify as transgender.<sup>7</sup>

### ***Definitions (portions in quotation marks are from the DoD documents released March 23, 2018)***

- *Transgender*: “Those persons whose gender identity differs from their biological sex” (also referred to as “gender incongruity”).
- *Gender dysphoria*: “Discomfort with their biological sex, resulting in significant distress or difficulty functioning.” This definition is based on the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* published by the American Psychiatric Association in 2013.<sup>8</sup>
- *Gender transition*: A process whereby a person changes from publicly identifying with and living as their biological sex to living as their preferred gender. May include “medical transition” (hormones); “surgical transition” (altering the anatomy); or merely “social transition” (to “forego medical transition treatment altogether, retain all of their biological anatomy, and live as the opposite gender”).
- *Medically necessary/medical need*: Transgender activists contend that for many people who identify as transgender, a gender transition (whether social, medical, surgical, or all three) is “necessary” to alleviate the discomfort or distress of gender dysphoria. Family Research Council, as well as the DoD’s new report and recommendations, have questioned whether transition procedures are

effective and thus can be deemed “medically necessary;”<sup>9</sup> however, the term is used here as it is in the Obama/Carter policy.

Note the implication of these definitions:

- Not all persons who identify as transgender are diagnosed with gender dysphoria;
- Not all people with gender dysphoria undergo a gender transition; and
- Not all gender transitions are alike.

The 2018 DoD *Report and Recommendations* says that “8,980 Service members identify as transgender.” However, the seeming precision of this number is misleading, since it is extrapolated from the results of a survey that did not include all Service members.<sup>10</sup> Since the advent of the Obama/Carter policy in July 2016, only 937 Service members have been diagnosed with gender dysphoria (and are thus eligible to undergo gender transition under that policy). This fact (if the survey estimate is accurate) – that **nearly nine out of ten “transgender-identified” Service members have not been diagnosed with gender dysphoria as a step toward seeking gender transition** – is important to bear in mind when considering the application of the new Trump/Mattis policy.

### *Provisions of New Trump/Mattis Policy*

#### **Retention Policy (Existing Service Members)**

1. The following transgender-identified Service members would be **permitted to serve** in accordance with their **preferred gender**, as long as they are not deemed non-deployable for more than 12 months:
  - A. Service members **diagnosed with gender dysphoria** by a military medical provider **between July 1, 2016 and the effective date of new policy**. These are those “grandfathered in” because they began their transition under the Obama/Carter policy, based on what DoD now calls “the reasonable expectation of these Service members that the Department would honor their service on the terms that then existed.”
    - Service member may undertake/continue gender transition
    - Military will provide/continue transition care deemed “medically necessary,” including hormones and surgery
    - When gender transition is complete, Service member can change gender marker in military personnel system and be treated as member of preferred gender for all purposes
  - B. Service members who underwent **gender transition before joining the military; and joined the military between January 1, 2018 and the effective date of the new policy**. Because of a preliminary injunction from the courts, these were allowed to join the military, as their preferred gender, under the Carter/Obama accession policy.
    - Must have completed gender transition and any gender reassignment surgery at least 18 months before joining
    - Must have been stable in gender identity and in any hormone treatments for at least 18 months before joining
2. The following transgender-identified Service members would be **permitted to serve** in the military, subject to normal mental and physical health standards, but *only* if they are willing and able to adhere to all standards associated **with their biological sex**:

- A. Those who have *not* been diagnosed with gender dysphoria and have *not* undergone gender transition
  - B. Those who have been diagnosed with gender dysphoria after joining military but have no medical need for gender transition
3. Transgender-identified Service members would be **disqualified from service** if, **after the effective date of the new policy**, they:
- A. Are diagnosed with gender dysphoria and have a medical need for gender transition; or
  - B. Undergo gender transition; or
  - C. Are deemed to be non-deployable for more than 12 months

### Accession Policy (For Those Wishing to Join the Military)

1. The following transgender-identified applicants would be **permitted to join** the military, subject to normal mental and physical health standards, but *only* if they are willing and able to adhere to all standards associated **with their biological sex**:
  - A. Those who have never been diagnosed with gender dysphoria, have never undergone gender transition, and have not been deemed to have a medical need for gender transition
  - B. Those who have been diagnosed with gender dysphoria at some time before joining the military (including in childhood), *but* have not transitioned to the opposite gender and can demonstrate 36 consecutive months of stability (absence of gender dysphoria)
2. The following transgender-identified applicants would be **disqualified from service** and not permitted to join the military after the effective date of the new policy:
  - A. Those who have undergone gender transition
  - B. Those who have experienced gender dysphoria in the last 36 months prior to joining

### Pending Court Cases

Four [lawsuits](#) were filed against President Trump’s revisions of the Obama/Carter policy in 2017, and judges issued preliminary injunctions prohibiting discharge of transgender-identified Service members and allowing persons who identify as transgender to join the military effective January 1, 2018.<sup>11</sup> The Department of Defense has chosen to abide by these injunctions and the Department of Justice chose not to appeal them to the Supreme Court. Therefore, **the policy announced on March 23 will likely not take effect until these cases are resolved**. However, now that a detailed final policy has been released, we expect the Trump administration to continue to litigate these cases on their merits, and we are hopeful that that ultimate decision will uphold the power of the executive branch to set personnel policy for the Armed Forces.

### Unanswered Questions

Three questions which have been at issue in either past or recent discussions of this issue were not explicitly addressed by the latest Report and Recommendations:

1. **Will Service members who have not undergone a formal gender transition be permitted to cross-dress when off-duty?** Because the older regulations which were superseded by the Obama/Carter policy listed even “transvestism” as a disqualifying condition, Service members in the past could be discharged for cross-dressing behavior regardless of when or where it occurred. It appears that because the new policy relies on the narrower categories of “gender dysphoria”

(under the *DSM-5* definition) and gender transition to determine who may be disqualified from service, gender non-conforming behavior when off-duty would not be grounds for disqualification. However, this was not explicitly stated.

2. **Will the military pay for hormone therapy or gender reassignment surgery?** This was an issue addressed in a 2017 Family Research Council paper,<sup>12</sup> as well as a failed amendment to the National Defense Authorization Act offered by Rep. Vicki Hartzler (R-Mo.).<sup>13</sup> It was also alluded to by President Trump in his announcement on Twitter that he would reverse the Obama/Carter policy (citing “tremendous medical costs”). The new proposed policy makes clear that these procedures *will* continue to be provided (at taxpayer expense) for those who have already begun a gender transition under the Obama/Carter policy. However, under the Trump/Mattis policy, those who are diagnosed with gender dysphoria or undertake a gender transition *after* the effective date of the policy will be disqualified from service. This implies that these procedures will *not* be funded for any Service members except those “grandfathered in.” However, this is not explicitly stated.
3. **Will the 937 Service members who have already been diagnosed with gender dysphoria be permitted to use “berthing, bathroom, and shower facilities,” and to abide by “physical fitness, . . . uniform and grooming” standards, that correspond to their preferred gender rather than their biological sex?** The February 2018 *Department of Defense Report and Recommendations on Military Service by Transgender Persons* (released March 2018) articulates (pp. 28-31) the compelling reasons for “Sex-Based Standards” in certain areas because of the biological differences between males and females. However, the fact that the Service members grandfathered in under the Obama/Carter policy will be allowed “to serve in their preferred gender, even after the new policy commences” appears to suggest that they will *not* be required to abide by “[Biological] Sex-Based Standards.” However, this is not explicitly stated.

*Peter Sprigg is a Senior Fellow for Policy Studies at Family Research Council in Washington, D.C.*

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<sup>1</sup> Peter Sprigg, “Should Individuals Who Identify as Transgender Be Permitted to Serve in the Military?” Family Research Council, September 2016, <https://www.frc.org/transgenderinthemilitary>.

<sup>2</sup> “Military Service of Transgender Service Members,” Department of Defense, June 30, 2016, [https://www.defense.gov/Portals/1/features/2016/0616\\_policy/DTM-16-005.pdf](https://www.defense.gov/Portals/1/features/2016/0616_policy/DTM-16-005.pdf).

<sup>3</sup> “More time allowed for review of new transgender enlistments,” Fox News, July 1, 2017, accessed April 5, 2018, <http://www.foxnews.com/us/2017/07/01/more-time-allowed-for-review-new-transgender-enlistments.html>.

<sup>4</sup> Jacob Pramuk, “Trump says his administration will block transgender people from serving in the military,” CNBC.com, July 26, 2017, accessed April 5, 2018, <https://www.cnbc.com/2017/07/26/trump-will-block-transgender-people-from-serving-in-the-military.html>.

<sup>5</sup> “Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security,” The White House, August 25, 2017, accessed April 5, 2018, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-secretary-homeland-security/>.

<sup>6</sup> Maria Perez, “Trump’s Transgender Military Ban Is Being Legally Challenged,” *Newsweek*, January 27, 2018, accessed April 5, 2018, <http://www.newsweek.com/transgender-military-ban-transgender-rights-president-donald-trump-us-793075>.

<sup>7</sup> “March 23 Policy Implementation,” [https://drive.google.com/file/d/1orvILU5VJ2EkrHSDCBVBmv8t\\_V6sbne9/view](https://drive.google.com/file/d/1orvILU5VJ2EkrHSDCBVBmv8t_V6sbne9/view).

<sup>8</sup> “What Is Gender Dysphoria?” American Psychiatric Association, accessed April 5, 2018, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

<sup>9</sup> Peter Sprigg, “Is Gender Reassignment Surgery ‘Medically Necessary?’” Family Research Council, December 2017, <https://www.frc.org/genderreassignmentsurgery>.

<sup>10</sup> “2016 Workplace and Gender Relations Survey of Active Duty Members,” Office of People Analytics, Department of Defense, [http://www.sapr.mil/public/docs/reports/FY16\\_Annual/Annex\\_1\\_2016\\_WGRA\\_Report.pdf](http://www.sapr.mil/public/docs/reports/FY16_Annual/Annex_1_2016_WGRA_Report.pdf).

<sup>11</sup> Maria Perez, *Newsweek*.

<sup>12</sup> Peter Sprigg, “Transgender Policy Could Cost Military Billions Over Ten Years,” Family Research Council, July 2017, <https://www.frc.org/transgndermilitarycost>.

<sup>13</sup> Jeremy Herb, “House defeats bid to block Pentagon funding transgender surgeries,” CNN, July 26, 2017, accessed April 5, 2018, <https://www.cnn.com/2017/07/13/politics/house-defeats-bid-block-pentagon-transgender-surgeries/index.html>.