

CRS Insights

What are the Department of Defense (DOD) Policies on Transgender Service?

Kristy N. Kamarck, Analyst in Military Manpower (kkamarck@crs.loc.gov, 7-7783)

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Background

On December 18, 2014, then-[Attorney General Eric Holder announced](#) that the Department of Justice would take the position in litigation that the protection of Title VII of the Civil Rights Act of 1964 extends to claims of discrimination based on an individual's gender identity, including transgender status. While Title VII does not apply to military personnel, for some, this change in the Administration's position has raised questions about U.S. law and DOD policies as they relate to transgender individuals.

The word "transgender" does not appear in the United States Code, the Code of Federal Regulations, or in any DOD issuances. However, the term "transgender" is typically applied to individuals who do not identify or conform to their physical gender at birth and may include, but is not limited to, those who self-identify as transgender, transsexual, gender-queer, gender non-conforming, or cross-gender. For the purpose of diagnosis, the [American Psychiatric Association classifies this condition as "gender dysphoria."](#)

DOD treats the physical and psychological aspects of transgender conditions as disqualifying conditions for new accessions and for the discharge of existing servicemembers.

[Current DOD policies:](#)

- 1. Prohibit the appointment, enlistment, or induction of those with a "current or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias," or those with "history of major abnormalities or defects of the genitalia including but not limited to change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis;"
- 2. Allow servicemembers to be [separated administratively](#) on the basis of a diagnosis of a mental disorder. Mental disorders are further defined by military department regulations to include, "[psychosexual, transsexual, and gender identity conditions to include...change of sex or a current attempt to change sex.](#)"

The first policy effectively bans entry into service of those who have undergone sex reassignment surgery and those who have a psychiatric history of the conditions listed above. In the case of military discharges, while DOD policies *allow* for existing servicemembers to be administratively separated for mental disorders, they do not *require* that the servicemember be separated. The [DOD policy authorizes the discharge of the servicemember](#) only if the mental health provider's diagnosis "concludes that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired."

What are Some Implications of Change for DOD?

In prior legal challenges to the military discharge policy, DOD has argued that the medical needs of transgender servicemembers would impact military readiness and deployability. However, not all transgender individuals have the same level of medical requirements. If the DOD were to make policy changes to allow the open service of transgender individuals, considerations may vary for individuals who:

- 1. self-identify as a different gender and would like to be recognized as their chosen gender, but do not choose to undergo hormone therapy or surgery,
- 2. are undergoing or would like to undergo hormone therapy without surgery, and
- 3. have had or wish to have gender reassignment surgery.

In all cases the DOD might need to consider administrative questions regarding, for example, the type of uniform

worn, the gender listed on the individual's military I.D., and duty and berthing assignments. If the individual is undergoing hormone therapy, another consideration might be the physical fitness testing and standards that apply (currently these vary by gender). In cases where medical treatments are required, the DOD might need to review military health insurance (TRICARE) [benefits](#) that currently do not cover treatments or surgery related to transsexualism or gender dysphoria.

Is the DOD Considering Policy Changes?

While [some in the military have expressed reservations](#) about any policy changes that would allow transgender individuals to serve in the military, other [senior leaders have signaled openness](#) to the possibility of shifting DOD policies. In February 2015, during a question and answer session with troops in Kandahar, Afghanistan, [Secretary of Defense Ashton Carter responded](#) to questions about transgender service, saying:

I'm very open-minded about ... what their personal lives and proclivities are, provided they can do what we need them to do for us. That's the important criteria. Are they going to be excellent service members?

[DOD has not initiated a formal review](#) of the transgender service policies. However, the [Pentagon has stated](#) that in February 2015 a routine, periodic review of [medical requirements](#) began that is expected to take approximately 12-18 months.