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The Making of a Ban: How DTM-19-004 Works to Push Transgender People Out of Military Service

The Defense Department began the final phase of implementing the Trump ban on transgender military service with the March 12, 2019 release of [DTM-19-004](#), *Military Service by Transgender Persons and Persons with Gender Dysphoria*. DoD’s counterintuitive [selling point](#) for the policy is the claim that it “doesn’t ban transgender individuals from service.” The diversion is DoD’s latest attempt to shield from serious scrutiny a policy that is based on [deceptive arguments by DoD officials](#).

This explainer, however, is not about deception in justification, which is amply covered elsewhere in a report by [former chiefs of military medicine](#). Instead, here the Palm Center examines the language of DTM-19-004 and explains in detail why it is a ban and how it will systematically push transgender people out of military service. The policy is insidious in operation but designed to be as comprehensive a ban as possible. In that sense it is a perfect parallel to the failed “don’t ask, don’t tell” policy, also sold as not being a ban although designed to systemically push gay people out of military service—or at least keep them silent and invisible.

1. The Basics of the Ban.

a. DTM-19-004 is organized on two tracks, like military personnel policy in general:

- how to manage applicants for military service (“accession”); and
- how to manage persons already in military service (“retention”).

b. The regulation targets transgender people in two ways, with disqualifications for:

- persons who are, or who have been, gender dysphoric, which is a medical term for discomfort or dissonance with gender as assigned at birth; and
- persons who have transitioned gender, or who have a medically advised need to transition gender.

c. Rules for accession:

- History of gender dysphoria is disqualifying, unless applicants have lived in *birth gender* for three years immediately prior.
- History of any medical treatment associated with gender transition (hormones or surgery) is permanently disqualifying, even if successful in relieving gender dysphoria.

d. Rules for retention:

- Gender dysphoria is a basis for separation from military service.
- A medically advised need for any treatment for gender dysphoria requires separation.
- Grandfathered exceptions: current personnel diagnosed with gender dysphoria before the effective date of policy (April 12, 2019) will be permitted to serve (and transition gender) under prior rules.

2. The Details of Implementation.

DTM-19-004 revealed some additional mechanics of policy implementation, although it is consistent with the [general plan approved by former Defense Secretary Mattis](#) in 2018 and the original Trump tweets and [directive](#) in 2017. The purpose of the DTM is to translate policy into the customary language of military regulation. It does not make the policy more nuanced, more forgiving, or more justified.

Most importantly, the details within [DTM-19-004](#) demonstrate how carefully and intentionally it is constructed to be a ban on transgender service. (Relevant DTM page numbers in parentheses.)

a. **Makes gender dysphoria a basis for separation:** Service members without grandfathered protection “may consult with a military medical provider, receive a diagnosis of gender dysphoria, and receive mental health counseling.” However, if they are diagnosed with gender dysphoria, they are subject to administrative separation for “conditions and circumstances . . . that interfere with assignment to or performance of duty.” (9, 13)

The DTM invites personnel lacking grandfathered protection (the “nonexempt”) to seek appropriate mental-health support, but then it makes the potential outcome of that consultation a basis for separation.

b. **Bars transgender members from opportunity to demonstrate fitness:** It was key to the ban that gender dysphoria be designated one of the “conditions and circumstances . . . that interfere with assignment to or performance of duty.” (13) This designation permits a quick administrative separation outside the usual Disability Evaluation System. Service members with a medical need to transition gender typically could not be referred to the DES (unless eligible for an unrelated reason) because that requires an inability to perform duty for more than one year, and a medical course of gender transition would be far shorter than that. ([DoD Instruction 1332.18](#), pages 26, 28) DoD’s only option for pushing transgender members out quickly was to shunt them to an administrative separation track, even though the supposed reason for their separation was based on medical unfitness.

c. **Offers only a precarious opportunity for retention** after gender-dysphoria diagnosis: Retention is possible only if a military medical provider determines that gender transition is not medically necessary to protect health **AND** the member is willing and able to serve in birth gender. (9)

This is a very thin protection, subject to the medical provider’s judgment. A transgender service member’s only reasonable approach to career preservation would be to avoid medical or mental-health contacts that could lead to a diagnosis of gender dysphoria. It is ludicrous to claim, [as DoD does](#), that its policy “doesn’t ban transgender individuals from service” and “prohibits discrimination based on gender identity.” In the military, commanders can order subordinates to undergo medical evaluation at any time. Revealing transgender identity to anyone therefore carries a significant risk that a military medical provider will find a basis for separation, regardless of fitness for duty.

d. Assigns blame to transgender personnel: Service members diagnosed with gender dysphoria are subject to separation “if they are unable or unwilling to adhere to all applicable standards, including the standards associated with their biological sex.” The policy assumes the cause is poor attitude or lack of motivation:

“Separation processing will not be initiated until the enlisted Service member has been formally counseled on his or her failure to adhere to such standards and has been given an opportunity to correct those deficiencies, or has been formally counseled that his or her indication that he or she is unable or unwilling to adhere to such standards may lead to processing for administrative separation and has been given an opportunity to correct those deficiencies.” (Similar guidance for officers follows.) (13)

e. Denies medically necessary care, with the possible exception of persons awaiting separation: While not entirely clear, the DTM may authorize some treatment for gender dysphoria from military providers prior to separation:

“For Service members who have been diagnosed with gender dysphoria and are not exempt, the Military Departments and the USCG . . . will provide necessary care consistent with Section 1074 of Title 10, United States Code and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum for as long as the individual remains a Service member as set forth in a medical treatment plan developed with the military medical provider and provided to the commander.” (11)

However, administrative separations are designed to be processed quickly, so this commitment to care—if it is a correct reading of the DTM—is likely to be short-term. In any event no one, other than the small number of grandfathered personnel, will be permitted to transition gender. (9)

f. Offers a small window of accession grandfathering: Applicants will be grandfathered if they signed a contract for enlistment (or were selected for entrance into an officer commissioning program) prior to the DTM effective date **AND** they medically qualified in “preferred gender” (i.e., post-gender-transition). (7)

g. Allows grandfathered enlisted persons to seek commissions as officers: This has been an open issue until now, but it appears that the DTM permits grandfathered enlisted persons to commission in the future under the prior, inclusive accession standard. (7) But this provision affects a very small number of enlisted persons. Its primary motivation may be to remove several highly qualified enlisted persons as plaintiffs in lawsuits challenging the ban.

h. Permits application for discretionary waiver on a case-by-case basis: But the usual waiver authorities cannot grant them; waivers related to transgender service can only be granted by a Military Service Personnel Chief or higher. (5) In addition, no transgender applicants received an accession waiver prior to 2016, and there is no reason to believe DoD would be any more inclined to grant one after reinstating the ban.

3. Conclusion.

Despite the careful construction of a ban designed to push transgender people out of military service—or at least to ensure they remain silent and invisible, avoiding medical support—DoD astoundingly includes in the DTM an affirmation that it provides “equal opportunity” to all members, *including on the basis of gender identity*:

“Equal Opportunity. The DoD and the USCG provide equal opportunity to all Service members, in an environment free from harassment and discrimination on the basis of race, color, national origin, religion, sex, gender identity, or sexual orientation.” (11)

When DoD disqualifies all applicants with a history of gender dysphoria (unless they renounce transgender identity for years) and all applicants who have ever received treatment for gender dysphoria, that is a ban. When DoD tells non-grandfathered transgender personnel—about 8,000 people now, according to DoD’s own [estimate](#), not even counting those in the future—that coming forward can lead to separation, that is a ban. DTM-19-004 depends on directly banning the transgender people who are immediately identifiable and threatening the rest, forcing them to remain silent and invisible. It is “don’t ask, don’t tell” all over again.