

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

RYAN KARNOSKI, et al.,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States, et al.,

*Defendants.*

Case No. 2:17-cv-01297-MJP

**DECLARATION OF ERIC FANNING  
IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY  
JUDGMENT**

I, Eric K. Fanning, declare as follows:

**Background and Experience**

1. I served as Secretary of the Army from May 18, 2016, to January 20, 2017.
2. I received a Bachelor’s Degree in History from Dartmouth College in 1990. From 1991 until 1996, I worked in various government positions in Washington, D.C., as a research assistant with the House Armed Services Committee, a special assistant in the Office of the Secretary of Defense, and Associate Director of Political Affairs at the White House. From 1997 to 1998, I worked on the national and foreign assignment desks at CBS News in New York. Subsequently, I worked at Robinson, Lerer & Montgomery, a strategic communications firm. From 2001 to 2006, I was Senior Vice President for Strategic Development at Business

1 Executives for National Security, a Washington, D.C.-based think tank, where I oversaw  
2 international programs and all regional office operations in six cities across the country. I next  
3 served as managing director at CMG, another strategic communications firm. From 2008 to  
4 2009, I was Deputy Director of the Commission on the Prevention of Weapons of Mass  
5 Destruction Proliferation and Terrorism, which issued its report in December 2008.

6 3. From 2009 to 2013, I served as the Deputy Under Secretary of the Navy and  
7 Deputy Chief Management Officer. In this role, I led the department's business transformation  
8 and governance processes and coordinated efforts to identify enterprise-wide efficiencies. From  
9 April 18, 2013, to February 17, 2015, I served as Under Secretary of the Air Force after being  
10 nominated by the President to that position and confirmed by the Senate. From June 21, 2013,  
11 through December 20, 2013, I served as Acting Secretary of the Air Force.

12 4. In March 2015, I was assigned as the Special Assistant to the Secretary and  
13 Deputy Secretary of Defense (Chief of Staff). In this role, I helped manage Secretary of Defense  
14 Ashton Carter's transition into office, built his leadership team, and oversaw the day-to-day staff  
15 activities of the Office of the Secretary of Defense.

16 5. On June 30, 2015, President Barack Obama directed me to serve as Acting Under  
17 Secretary of the Army and Chief Management Officer. In that position, I served as the Secretary  
18 of the Army's senior civilian assistant and principal adviser on matters related to the  
19 management and operation of the Army, including development and integration of the Army  
20 Program and Budget. From November 3, 2015, to January 11, 2016, I served as Acting Secretary  
21 of the Army. On November 3, 2015, President Obama nominated me to serve as Secretary of the  
22 Army, and the Senate confirmed my nomination on May 17, 2016.

23 6. As Secretary of the Army, I was head of the Department of the Army and had  
24 statutory responsibility for all matters relating to the United States Army: manpower, personnel,  
25 reserve affairs, installations, environmental issues, weapons systems and equipment acquisition,  
26 communications, and financial management. Subject to the authority, direction, and control of  
27 the Secretary of Defense, the Secretary of the Army is responsible for all affairs of the

1 Department of the Army, including the morale and welfare of personnel. My personnel-related  
2 oversight responsibilities included the development and implementation of recruitment, training,  
3 retention, and medical policies for active duty and reserve Army personnel. For duties other than  
4 those as a member of the Joint Chiefs of Staff, the Chief of Staff of the Army—the most senior  
5 uniformed Army officer—operated under my authority, direction, and control.

### 6 The Army

7 7. The Army is the largest of the service branches of the United States Armed Forces  
8 and performs land-based military operations. The Department of the Army is one of the three  
9 military departments of the Department of Defense (“DoD”). The Army has an annual budget of  
10 more than \$140 billion, inclusive of funding for Overseas Contingency Operations. For fiscal  
11 year 2017, the projected end strength for the Active Army is 460,000 soldiers, with an additional  
12 335,000 soldiers in the Army National Guard, and 195,000 in the United States Army Reserve,  
13 for a total of 990,000. As of 2016, the Army had approximately 190,000 soldiers deployed to 140  
14 countries in support of U.S. geographic Combatant Command missions. The Army’s command  
15 structure includes three Army Commands, ten Army Service Component Commands, and  
16 thirteen Direct Reporting Units, operating in the field and from bases and facilities located across  
17 the United States and around the world.

18 8. The Army’s core mission is to fight and win our Nation’s wars by providing  
19 prompt, sustained land dominance across the full range of military operations and spectrum of  
20 conflict in support of combatant commanders. It does this by executing statutory directives,  
21 including organizing, equipping, and training forces for the conduct of prompt and sustained  
22 combat operations on land, and by accomplishing missions assigned by the President, Secretary  
23 of Defense, and combatant commanders.

24 9. The Army is the most formidable ground combat force on earth and one of the  
25 largest employers in the United States. The Army’s continued excellence in executing its many  
26 missions is largely due to deliberate investments in soldier training, equipping, and leader  
27 development. Soldiers receive training at the highest level, not only in the classroom, but also

1 through rigorous instruction under intense pressure and realistic battlefield conditions. Many  
2 Army personnel are employed in highly technical roles that require lengthy and expensive  
3 specialized training. Particularly in light of these investments in personnel, recruitment, and  
4 retention of capable and qualified soldiers is crucial to Army readiness.

### 5 **Development of DoD Policy**

6 10. In 2010, Congress voted to repeal the so-called Don't Ask, Don't Tell statute that  
7 previously had prevented gay, lesbian, and bisexual persons from serving openly in the military.  
8 The repeal statute required the President, the Secretary of Defense, and the Chairman of the Joint  
9 Chiefs of Staff to certify that allowing individuals to serve openly regardless of their sexual  
10 orientation would be consistent with the standards of military readiness, military effectiveness,  
11 unit cohesion, and recruiting and retention of the Armed Forces. That certification was provided  
12 to Congress on July 22, 2011, following a process of review, both before and after passage of the  
13 repeal statute, of the impact of the change and of the training and other policy changes that  
14 would be necessary to implement it.

15 11. The repeal of Don't Ask, Don't Tell raised questions about the Armed Forces'  
16 policy on service by transgender individuals. Particularly among commanders in the field, there  
17 was an increasing awareness that there were already capable, experienced transgender service  
18 members in every branch, including on active deployment on missions around the world.

19 12. In August 2014, the Department of Defense issued a new regulation, DODI  
20 1332.18, Disability Evaluation System (DES). The regulation eliminated a DoD-wide list of  
21 conditions that would disqualify persons from retention in military service, including the  
22 categorical ban on open service by transgender persons. This new regulation instructed each  
23 branch of the Armed Forces to reassess whether disqualification based on these conditions,  
24 including the ban on service by transgender persons, was justified. As of August 2014, there was  
25 no longer a DoD-wide position on whether transgender persons should be disqualified for  
26 retention.

27 13. In February 2015, just a few days after Secretary of Defense Ashton Carter took  
28

1 office, I accompanied him on a trip to Kandahar, Afghanistan, in my capacity as his chief of  
2 staff. At an open town-hall-style meeting with service members, Secretary Carter was asked  
3 about his views on service by transgender service members in an austere environment like  
4 Afghanistan. The Secretary's response was that he had not given the issue much study, but his  
5 "fundamental starting point" was "that we want to make our conditions and experience of service  
6 as attractive as possible to our best people in our country." He stated that the "important criteria"  
7 was: "Are they going to be excellent service members?"

8 14. The Kandahar town hall received significant media coverage. As a result, senior  
9 officials, including the offices of the Joint Chiefs of Staff, began to inquire about the Secretary's  
10 plans concerning the policy on transgender service members.

11 15. On July 28, 2015, after consultations with the secretaries of the military  
12 departments, Secretary Carter directed Brad Carson, Acting Undersecretary of Defense for  
13 Personnel and Readiness, to convene a working group ("the "Working Group") to study the  
14 policy and readiness implications allowing transgender persons to serve openly in the Armed  
15 Forces. The Working Group was asked to start with the presumption that transgender persons  
16 could serve openly unless objective, practical impediments were identified, and to develop an  
17 implementation plan that addressed those issues with the goal of maximizing military readiness.

18 16. By the time Secretary Carter directed the formation of the Working Group, I had  
19 moved out of my position in his office to become Acting Under Secretary of the Army.  
20 Subsequently, from November 3, 2015, to January 11, 2016, I served as Acting Secretary of the  
21 Army, and then as Secretary of the Army beginning May 18, 2016. During my time as Acting  
22 Secretary and Secretary, I oversaw the Department of the Army's participation in the Working  
23 Group. The Working Group met as a whole and also assigned various sub-groups to research  
24 and analyze discrete issues and report their findings. I met regularly with members of the  
25 Working Group to discuss their progress and the Army's input on the issues discussed.

26 17. The Working Group considered information from a variety of sources, including  
27 medical and other experts, drawn from both within and outside of the Department of Defense;

1 senior military personnel who supervised transgender service members; and transgender people  
2 on active duty. The input of commanders reflected their high regard for the transgender staff  
3 serving under their command.

4 18. Members of the Working Group discussed the evidence relating to the costs of  
5 permitting transgender persons to serve openly in the military, and the evidence relating to the  
6 impact of service by transgender people on operational effectiveness and readiness. Members of  
7 the Working Group noted that while transgender service members might have short periods  
8 when they were not deployable due to their medical treatment, such periods are not unusual for  
9 service members generally, who may take time off due to medical conditions or other reasons.

10 19. The Working Group also considered that providing medical care for transgender  
11 individuals is becoming increasingly prevalent in both public and private sectors alike. Over a  
12 third of Fortune 500 companies currently offer employee health insurance plans with  
13 transgender-inclusive coverage. Similarly, nondiscrimination policies at two-thirds of Fortune  
14 500 companies now cover gender identity.

15 20. With respect to the public sector, the Working Group learned that all civilian  
16 federal employees have access today to a health insurance plan that provides comprehensive  
17 coverage for transgender-related care and medical treatment.

18 21. Members of the Working Group also discussed the disruptive effect of banning  
19 service by transgender people, since such a ban necessitates the discharge of highly trained and  
20 experienced service members, leaving unexpected vacancies in operational units and requiring  
21 the expensive and time-consuming recruitment and training of replacement personnel.

22 22. Members of the Working Group also discussed the negative impact of continuing  
23 to ban service by transgender people on overall military readiness because it reduces the pool of  
24 potential, qualified recruits for military service.

25 23. The Working Group also considered the 2016 report of a study that the DoD had  
26 commissioned from the RAND Corporation, a federally funded research center sponsored by the  
27 Defense Secretary's Office, the Joint Staff, the Unified Combatant Command, and the defense

1 Intelligence Community, about the healthcare needs of transgender service members, the  
2 associated costs of extending healthcare coverage for transition-related treatments, and the  
3 potential readiness implications of allowing transgender service members to serve openly. The  
4 report was entitled *Assessing the Implications of Allowing Transgender Personnel to Serve*  
5 *Openly* (the “RAND Report”).

6 24. The RAND Report concluded that the cost of caring for the medical needs of  
7 transgender personnel would amount to “an exceedingly small proportion of ... overall DoD  
8 health care expenditures” (xi-xii). The RAND Report further noted that there was no evidence  
9 that allowing transgender people to serve openly would negatively impact unit cohesion,  
10 operational effectiveness, or readiness. Among other things, the RAND Report found that  
11 eighteen other countries that permit open service by transgender personnel—including Israel,  
12 Australia, the United Kingdom, and Canada—had not identified any negative impacts on  
13 operational effectiveness or readiness. Based on its analysis of allied militaries and the expected  
14 rate at which American transgender service members would require medical treatment that  
15 would affect their fitness for duty or deployability, RAND’s analysis concluded that there would  
16 be “minimal impact on readiness from allowing transgender personnel to serve openly” (47).

17 25. At the conclusion of its discussion and analysis, the members of the Working  
18 Group did not identify any basis for a blanket prohibition on open military service of transgender  
19 people. Likewise, no one suggested to me that a bar on military service by transgender persons  
20 was necessary for any reason, including readiness or unit cohesion.

21 26. The Working Group communicated its conclusions to the Secretary of Defense,  
22 including that permitting transgender people to serve openly in the United States military would  
23 not pose any significant costs or risks to readiness, unit cohesion, morale, or good order and  
24 discipline.

25 27. The Working Group also agreed that the accession policy should be changed to  
26 allow transgender people to enlist. The Working Group agreed that the medical standards for  
27 accession into the Military Services by transgender persons should be based upon the same

1 standards applied to persons with other medical conditions, which seek to ensure that those  
2 entering service are free of medical conditions or physical defects that may require excessive  
3 time lost from duty. Based upon that standard, the Working Group agreed that an applicant with  
4 a history of gender dysphoria or of treatment for gender dysphoria should be able to accede when  
5 the applicant has completed all medical treatment associated with the applicant's medical  
6 condition and has been stable in the preferred gender for a specified period of time.

7 28. The Working Group also provided comprehensive input regarding all aspects of  
8 implementing any change to related military policy. That included addressing practical concerns,  
9 like housing and uniform standards for transgender personnel, including when a transitioning  
10 service member should be authorized to conform to the standard of the gender to which they  
11 were transitioning.

12 29. The guiding principle behind the Working Group deliberations was that all who  
13 are qualified to serve should have the opportunity to do so. The ban on transgender service  
14 members was the last categorical ban on otherwise qualified potential service members. No  
15 qualified American who can meet the enlistment and retention standards should be excluded  
16 from the opportunity to serve.

17 30. On June 30, 2016, Secretary of Defense Ashton Carter issued Directive-type  
18 Memorandum (DTM) 16-005, entitled "Military Service of Transgender Service Members"  
19 ("DTM 16-005").

20 31. The purpose of DTM 16-005 was to "[e]stablish[] policy, assign[] responsibilities,  
21 and prescribe [ ] procedures for the standards for retention, accession, separation, in-service  
22 transition, and medical coverage for transgender personnel serving in the Military Services."  
23 DTM 16-005 was applicable to all Military Departments, including the Army, as well as all  
24 organizational entities within the DoD, including the Joint Chiefs of Staff.

25 32. In DTM 16-005, the Secretary of Defense noted that the "defense of the Nation  
26 requires a well-trained, all-volunteer force comprised of Active and Reserve Component Service  
27 members ready to deploy worldwide on combat and operational missions." Consistent with and  
28



1 in service to that requirement, DTM 16-005 set forth the policy of the DoD:

2 The policy of the Department of Defense is that service in the United  
3 States military should be open to all who can meet the rigorous standards  
4 for military service and readiness. Consistent with the policies and  
5 procedures set forth in this memorandum, transgender individuals shall be  
6 allowed to serve in the military.

7 33. In DTM 16-005, the Secretary of Defense set forth DoD’s “position, consistent  
8 with the U.S. Attorney General’s opinion, that discrimination based on gender identity is a form  
9 of sex discrimination.”

10 34. Through DTM 16-005, the Secretary of Defense ordered the Secretaries of the  
11 Military Departments—including the Army—to identify all DoD, Military Department, and  
12 Service issuances in need of revision in light of the DoD change in policy, and to submit  
13 proposed revisions to the Undersecretary of Defense for Personnel and Readiness (“USD P&R”).  
14 USD P&R was tasked with drafting revisions to all necessary issuances consistent with  
15 DTM 16-005.

16 35. DTM 16-005 also detailed procedures with respect to military service of  
17 transgender individuals concerning (i) separation and retention, (ii) accessions, (iii) in-service  
18 transition, (iv) medical policy, (v) equal opportunity, (vi) education and training, and  
19 (vii) implementation and timeline.

20 36. With respect to separation and retention, DTM 16-005 provided that, “[e]ffective  
21 immediately, no otherwise qualified Service member may be involuntarily separated, discharged  
22 or denied reenlistment or continuation of service, solely on the basis of their gender identity.” In  
23 addition, transgender service members would “be subject to the same standards as any other  
24 Service member of the same gender.”

25 37. Concerning accessions, DTM 16-005 required that, no later than July 1, 2017,  
26 USD P&R update DoD Instruction 6130.03, which establishes medical standards that, if not met,  
27 are grounds for rejection for military service. Specifically, DTM 16-005 instructed USD P&R to  
28 revise DoD Instruction 6130.03 to reflect that:

1 (1) individuals with a history of gender dysphoria would not be  
2 disqualified from serving on that basis if a licensed medical provider  
3 certifies “the applicant has been stable without clinically significant  
4 distress or impairment in social, occupational, or other important areas of  
5 functioning for 18 months”;

6 (2) individuals with a history of medical treatment associated with  
7 gender transition would not be disqualified from serving on that basis if a  
8 licensed medical provider certifies “the applicant has completed all  
9 medical treatment associated with the applicant’s gender transition[,] ...  
10 has been stable in the preferred gender for 18 months,” and ... has been  
11 stable on any “cross-sex hormone therapy post-gender transition ... for 18  
12 months”; and

13 (3) individuals with a history of sex reassignment or genital  
14 reconstruction surgery would not be disqualified from serving on that  
15 basis if a licensed medical service provider certifies that 18 months have  
16 elapsed since the surgery, and “no functional limitations or complications  
17 persist, nor is any additional surgery required.”

18 38. DTM 16-005 further ordered that effective October 1, 2016, “DoD will  
19 implement a construct by which transgender Service members may transition gender while  
20 serving in accordance with DoDI 1300.28 [In-Service Transition for Transgender Service  
21 Members].” DoDI 1300.28 established a construct by which transgender service members may  
22 transition gender while serving, proscribed procedures for changing a service member’s gender  
23 marker in the Defense Enrollment Eligibility Reporting System (DEERS), and specified medical  
24 treatment provisions for transgender service members.

25 39. Through DTM 16-005, the Secretary of Defense also ordered USD P&R to  
26 “develop and promulgate education and training materials to provide relevant, useful information  
27 for transgender Service members, commander, the force, and medical professionals regarding  
28 DoD policies and procedures on transgender service” no later than October 1, 2016. Each  
Military Department, including the Department of the Army, was also ordered to issue  
implementing guidance and a written force training and education plan no later than  
November 1, 2016, detailing the Department’s plan and program for training and educating its  
assigned force, including medical professionals.

40. When Secretary Carter publicly announced the issuance of DTM 16-005 on  
July 1, 2016, he quoted at length the Army’s senior general and Chief of Staff, Mark Milley, to

1 convey the principle that Americans who want to serve and can meet our standards should be  
2 afforded the opportunity to compete to do so: “The United States Army is open to all Americans  
3 who meet the standard, regardless of who they are. Embedded within our Constitution is that  
4 very principle, that all Americans are free and equal. And we as an Army are sworn to protect  
5 and defend that very principle. And we are sworn to even die for that principle. So if we in  
6 uniform are willing to die for that principle, then we in uniform should be willing to live by that  
7 principle.”

### 8 **Change, Development, and Implementation of Army Policy**

9 41. To begin implementing DTM 16-005 as applied to the Army, on July 1, 2016, I  
10 issued Army Directive 2016-30, titled “Army Policy on Military Service of Transgender  
11 Soldiers.” A true and accurate copy of Army Directive 2016-30 is attached to this declaration as  
12 Exhibit A.

13 42. Army Directive 2016-30 was effective immediately and applies to all personnel in  
14 the Active Army, U.S. Army Reserve, Army National Guard, and Army National Guard of the  
15 United States. It states:

16 it is Army policy to allow open Service by transgender Soldiers. The  
17 Army is open to all who can meet the standards for military service and  
18 remains committed to treating all Soldiers with dignity and respect while  
19 ensuring good order and discipline. Transgender Soldiers will be subject  
20 to the same standards as any other Soldier of the same gender. An  
otherwise qualified Soldier will not be involuntarily separated, discharged,  
or denied reenlistment or continuation of service solely on the basis of  
gender identity.

21 The Directive required the Assistant Secretary of the Army for Manpower and Reserve Affairs  
22 (the “ASA (M&RA)”) to establish, no later than July 5, 2016, a Transgender Service  
23 Implementation Group to develop policies and procedures for transgender service, as well as a  
24 Service Central Coordination Cell (SCCC), comprised of medical, legal, and military personnel  
25 experts, to serve as a resource for commanders’ inquiries and requests. By October 1, 2016, the  
26 ASA (M&RA) was directed to recommend a policy addressing service of transgender soldiers,  
27 including “a process by which transgender soldiers may transition gender while serving

1 consistent with mission, training, operational, and readiness needs and a procedure where by a  
2 Soldier's gender marker will be changed in [the Defense Enrollment Eligibility Reporting  
3 System (DEERS)].” In the meantime, the Directive established a process whereby gender marker  
4 changes would be handled via Exceptions to Policy (ETPs) processed by the SCCC and ASA  
5 (MR&A), with weekly reports summarizing the ETPs to be provided to me and the Army Chief  
6 of Staff.

7 43. Army Directive 2016-30 also instructed the ASA (M&RA) to create a force-wide  
8 training and implementation plan no later than November 1, 2016, to be completed across the  
9 Army by July 1, 2017. By the end of 2016, the Army had completed the necessary training and  
10 education to ensure that all members of the force understood and could implement the core  
11 provisions of the Army's policy on the military service for transgender soldiers.

12 44. Army Directive 2016-30 also instructed that the Army would continue to provide  
13 medically necessary care to all soldiers, and that the Army would issue further guidance to its  
14 medical providers no later than 45 days following the publication of guidance from the DoD on  
15 medical care for transgender service members.

16 45. On October 7, 2016, I issued a further directive, Army Directive 2016-35, which  
17 “establishes policies and procedures for gender transition in the Army.” A true and accurate copy  
18 of Army Directive 2016-35 is attached to this declaration as Exhibit B.

19 46. Army Directive 2016-35 provides that “a Soldier eligible for military medical  
20 care with a diagnosis from a military medical provider indicating that gender transition is  
21 medically necessary will be provided medical care and treatment for the diagnosed medical  
22 condition.” The Directive provides that gender transition in the Army begins with a diagnosis  
23 that gender transition is medically necessary and ends when the Soldier's gender marker in  
24 DEERS is changed to show the Soldier's preferred gender. The Directive further states that for  
25 policies and standards that differ according to gender, the Army will recognize a Soldier's  
26 gender based on the gender marker that appears in DEERS. It states that “the Army applies, and  
27 Soldiers are expected to meet, all standards for uniforms and grooming, body composition

1 assessment, physical readiness testing, participation in the Military Personnel Drug Abuse  
2 Testing Program, and other military standards” according the gender marker in DEERS.

3 47. Army Directive 2016-35 includes detailed procedures to be followed by soldiers  
4 with a medical diagnosis indicating that gender transition is medically necessary. These  
5 procedures require consultation with the soldier’s chain of command and differ depending on the  
6 soldier’s duty status and eligibility for military medical care. When a soldier has completed  
7 gender transition and is stable in his or her preferred gender as confirmed by a military medical  
8 provider, the soldier may request approval of a change to their gender marker in DEERS, which  
9 must be supported by “legal documentation supporting a gender change, consisting of a certified  
10 copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the  
11 Soldier’s preferred gender.”

12 48. Army Directive 2016-35 also provides guidance for commanders, directing that  
13 they “should approach a Soldier undergoing a gender transition in the same way they would  
14 approach a Soldier undergoing any medically necessary treatment. . . . Commanders will balance  
15 the needs of the individual transitioning Soldier and the needs of the command in a manner that  
16 is comparable to the actions available to the commander in addressing comparable medical  
17 circumstances unrelated to gender transition.” The Directive instructs commanders to consider  
18 actions, such as adjusting the dates of gender transition or discussing extended leave options, in  
19 the same manner as such actions would be considered for other medical circumstances unrelated  
20 to gender transition.

21 49. Army Directive 2016-35 also requires soldiers to use the billeting, bathroom, and  
22 shower facilities associated with their gender marker in DEERS. But commanders are given  
23 discretion to employ reasonable accommodations to respect the modesty and privacy interests of  
24 soldiers, provided that no soldier is required on the basis of gender identity to use a facility not  
25 required of other soldiers with the same gender marker.

26 50. On September 30, 2016, the Department of Defense issued Transgender Service  
27 in the Military, An Implementation Handbook (“DoD Handbook”). The DoD Handbook is



1 and present himself authentically. His principal concern, however, was that his next post would  
2 not be as accommodating, and without formal policies to change his gender marker in DEERS,  
3 he might be forced to wear a uniform inconsistent with his gender identity.

4 54. On July 26, 2017, President Donald Trump issued a statement that transgender  
5 individuals will not be permitted to serve in any capacity in the Armed Forces. On August 25,  
6 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of  
7 Homeland Security to reverse the policy adopted in June 2016 that permitted military service by  
8 openly transgender persons. That memorandum stated: “In my judgment, the previous  
9 Administration failed to identify a sufficient basis to conclude that terminating the Departments’  
10 longstanding policy and practice would not hinder military effectiveness and lethality, disrupt  
11 unit cohesion, or tax military resources, and there remain meaningful concerns that further study  
12 is needed to ensure that continued implementation of last year’s policy change would not have  
13 those negative effects.”

14 55. I am not aware of any evidence to support President Trump’s stated rationale for a  
15 total ban on transgender individuals serving in the military. Despite months of research, the  
16 members of the Working Group did not find that permitting transgender soldiers to serve would  
17 hinder any of these interests. Nor did any senior Army leaders raise these concerns with me.  
18 Because I was responsible for all Army training and readiness, such concerns would have been  
19 of great interest to me, if they existed. But they did not.

20 56. Based on my experience as Secretary of the Army, my experience in military  
21 personnel and readiness challenges, and my service as a senior executive in within the DoD—as  
22 Chief of Staff to the Secretary of Defense—and in each of the three military departments, I  
23 believe a reversal of current DoD policy permitting open service by transgender service members  
24 would be profoundly harmful to the public interest and to our military and causes significant  
25 harm to current servicemembers who have already disclosed to their commanders their status as  
26 individuals who are transgender.

27 57. **Loss of Qualified Personnel.** Discharging current transgender service members

1 or prohibiting their reenlistment or continuation in service would result in the loss of highly  
2 qualified and trained personnel. Many transgender service members have specialized training or  
3 hold leadership positions. Their training and professional development has required a significant  
4 investment of taxpayer dollars, an investment whose return depends on their continued service.  
5 In addition to losing the benefit of that investment in training and leadership development,  
6 taxpayers would bear the cost of recruiting and training replacement personnel. With an all-  
7 volunteer military, recruiting is a particular challenge, especially with a strong economy in which  
8 the military is competing for talent with the private sector.

9       **58. Effects of Uncertainty on Military Readiness.** The policy announced by the  
10 President unnecessarily creates uncertainty and instability for current transgender service  
11 members and their commanders. After serving openly and without incident for many months if  
12 not much longer, commanders must deal with the prospect that key personnel may not be able to  
13 continue their service, thus impeding military readiness. This uncertainty also affects decisions  
14 about education, training, and promotion, as commanders will be required to consider the  
15 possibility that a service member will be discharged based on a factor such as gender identity  
16 which is irrelevant to competence or fitness to serve. At the level of military policymaking, the  
17 President's action disrupts years of careful research, planning, and implementation work,  
18 reopening an issue that senior officials had already addressed comprehensively, and creating a  
19 new distraction for senior leadership at a time when our country faces unprecedented military  
20 challenges around the world.

21       **59. Loss of Morale and Unit Cohesion.** The President's reversal of policy is deeply  
22 harmful to morale because it impairs service members' trust in their command structure and their  
23 ability to rely on established policy. Commanders have told the enlisted soldiers they command  
24 that they must treat transgender service members the same as all others. Now they are being  
25 directed by the Commander in Chief that those same soldiers are unfit to serve. The new policy  
26 reinstates discrimination with no factual basis to do so. Imposing new discriminatory standards  
27 without any justification is enormously disruptive to unit cohesion and undermines the principle  
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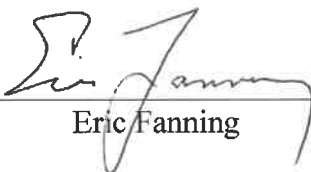
1 of mutual respect which is essential to the military's effectiveness.

2 60. In addition, forcing transgender soldiers to lie and hide their transgender status to  
3 avoid separation *undermines* unit cohesion by eroding the bonds of trust among soldiers. It puts  
4 non-transgender soldiers in the position of having to choose between reporting fellow soldiers or  
5 violating policy. When urging Congress to repeal the ban against service by openly lesbian, gay,  
6 and bisexual service members, Admiral Mullen, the former Chairman of the Joint Chiefs, said:  
7 "No matter how I look at this issue, I cannot escape being troubled by the fact that we have in  
8 place a policy which forces young men and women to lie about who they are in order to defend  
9 their fellow citizens. For me personally, it comes down to integrity—theirs as individuals and  
10 ours as an institution." The same is true of a policy that forces service members to lie about  
11 being transgender.

12 61. In the Army Directives described above, and in many other documents, the  
13 Armed Forces have told transgender service members that they may disclose their transgender  
14 status and serve openly, without fear of discharge based on their transgender status. Dramatically  
15 reversing course and now using that information as a basis for separating these soldiers from  
16 their service is an unprecedented betrayal of the trust that is so essential to achieving the mission  
17 of all of the armed forces.

18 I declare under the penalty of perjury that the foregoing is true and correct.

19  
20  
21 DATED: January 24 2018

  
Eric Fanning

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on January 25, 2018.



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# Exhibit A



**SECRETARY OF THE ARMY  
WASHINGTON**

**0 1 JUL 2016**

**MEMORANDUM FOR SEE DISTRIBUTION**

**SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)**

**1. References:**

a. Department of Defense (DoD) Directive-type Memorandum (DTM) 16-005, Military Service of Transgender Service Members, June 30, 2016.

b. DoD Instruction 1300.28 (In-Service Transition for Transgender Service Members), June 30, 2016.

2. Pursuant to references a and b, it is Army policy to allow open service by transgender Soldiers. The Army is open to all who can meet the standards for military service and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. Transgender Soldiers will be subject to the same standards as any other Soldier of the same gender. An otherwise qualified Soldier shall not be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

3. No later than July 5, 2016, the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)) will do the following.

a. Establish a Transgender Service Implementation Group (TSIG) to develop policies and procedures for transgender service. ASA (M&RA) will Chair the TSIG. Members of the TSIG will be in the rank/grade of General Officer, Civilian Senior Executive Service, or Command Sergeant Major/Sergeant Major and include representatives from the ASA (M&RA), Deputy Chief of Staff G-1, Deputy Chief of Staff G-3/5/7, Office of General Counsel, Office of the Judge Advocate General, Office of the Chief of Chaplains, the Assistant Chief of Staff for Installation Management, U.S. Army Forces Command, U.S. Army Training and Doctrine Command, Office of the Inspector General, and Office of the Surgeon General.

b. Establish and embed a Service Central Coordination Cell (SCCC) as a sub-committee within the TSIG. The SCCC will be comprised of medical, legal, and military personnel experts. The SCCC will serve as a resource for commanders, address commanders' inquires, and process requests for exceptions to policy.

SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)

4. All commands, organizations, activities, and personnel of the Department of the Army will fully support the ASA (M&RA), as chair of the TSIG, in the execution of the assigned tasks.

5. Exceptions to Policy (ETP). At present, the Army does not have codified procedures and policy for gender transition to include completing a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS). Until the Army establishes such procedures and policy, the following guidance concerning ETPs will apply:

a. For Soldiers whose gender transition is otherwise complete but are awaiting a change to their gender marker, their ETPs shall be processed within ten days after receipt of the ETP by the SCCC and shall be given a presumption in favor of approval. For the purposes of this provision, a Soldier's gender transition is complete when the Soldier has received a diagnosis indicating gender transition is medically necessary from a military medical provider, has completed medically necessary treatment, and has obtained the required documentation supporting a gender change. The Soldier's chain of command shall provide the SCCC with a recommendation for action on the ETP, and an assessment of an approved ETP on readiness and good order and discipline.

b. All other requests for ETPs from Soldiers will include the medical diagnosis from a military medical provider and an approved treatment plan with the expected date of completion. The chain of command will provide recommendations for action and an assessment of an approved ETP on readiness and good order and discipline.

c. All requests will be submitted through the first General Officer in the chain of command. Commanders shall forward all requests for ETPs related to gender transition (to include application of standards for uniform and grooming, body composition assessment, and physical readiness testing) through the chain of command to the SCCC for a recommendation to the ASA (M&RA), who will make the decision.

d. The ASA (M&RA) shall provide a report on a weekly basis to the Chief of Staff and me summarizing the requests for ETPs and the ASA (M&RA)'s decisions.

6. The ASA (M&RA), through the TSIG, is responsible for ensuring completion of the following tasks no later than the prescribed dates:

a. Training and educating the force is necessary to sustain readiness. The Army shall create a force-wide training and education plan no later than November 1, 2016. This training shall be completed across the Army no later than July 1, 2017.

b. The Army will continue to provide medically necessary care and treatment to all Soldiers, consistent with applicable laws, policies, and procedures. No later than 45 days following DoD Under Secretary of Defense for Personnel and Readiness published

**SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)**

guidance on the provision of medical care to transgender Service members, the Army shall issue guidance to its medical providers to ensure they are prepared to offer or arrange for all medically necessary care for our transgender Soldiers.

c. No later than October 1, 2016, the ASA (M&RA) will recommend a policy addressing the military service of transgender Soldiers, to include establishing a process by which transgender Soldiers may transition gender while serving consistent with mission, training, operational, and readiness needs and a procedure whereby a Soldier's gender marker will be changed in DEERS. In addition, the ASA (M&RA) will identify applicable Army issuances to be updated accordingly.

7. All Soldiers should be able to perform their duties free from unlawful discrimination. It is Army policy that discrimination based on gender identity is a form of sex discrimination. Army commanders shall promote an environment that is free from gender identity discrimination. No later than October 1, 2016, the Army's issuances implementing the DoD Military Equal Opportunity Program shall be updated to prohibit discrimination on the basis of gender identity and incorporate such prohibitions in all aspects of the Army MEO program.

8. The provisions of this directive are effective immediately and apply to all personnel in the Active Army, U.S. Army Reserve, Army National Guard, and Army National Guard of the United States. This directive shall be rescinded upon publication of revised issuances and updates to governing regulations.



Eric K. Fanning

**DISTRIBUTION:**

Principal Officials of Headquarters, Department of the Army  
Commander  
U.S. Army Forces Command  
U.S. Army Training and Doctrine Command  
U.S. Army Materiel Command  
U.S. Army Pacific  
U.S. Army Europe  
U.S. Army Central  
U.S. Army North  
U.S. Army South  
U.S. Army Africa/Southern European Task Force  
U.S. Army Special Operations Command  
(CONT)

**SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)**

**DISTRIBUTION: (CONT)**

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U.S. Army Space and Missile Defense Command/Army Strategic Command  
U.S. Army Medical Command  
U.S. Army Intelligence and Security Command  
U.S. Army Criminal Investigative Command  
U.S. Army Corps of Engineers  
U.S. Army Military District of Washington  
U.S. Army Test and Evaluation Command  
U.S. Army Installation Management Command  
Superintendent, United States Military Academy  
Director, U.S. Army Acquisition Support Center  
Executive Director, Arlington National Cemetery  
Commander, U.S. Army Accessions Support Brigade  
Commandant, U.S. Army War College  
Commander, Second Army**

**CF:**

**Director, Army National Guard  
Director of Business Transformation  
Commander, Eighth Army  
Commander, U.S. Army Cyber Command**

# Exhibit B





**SECRETARY OF THE ARMY  
WASHINGTON**

**07 OCT 2016**

**MEMORANDUM FOR SEE DISTRIBUTION**

**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

1. References. A complete list of references is at enclosure 1.
2. The Army is open to all who can meet the standards for military service and readiness and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. The Army allows transgender Soldiers to serve openly. Consistent with this policy, the following principles shall apply:
  - a. No otherwise qualified Soldier may be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of the Soldier's gender identity.
  - b. Army medical providers will diagnose and provide medically necessary care and treatment for transgender Soldiers eligible for military medical care in accordance with the guidance for transgender care issued by the Assistant Secretary of Defense (Health Affairs) and the Army Surgeon General. Consistent with that guidance, a Soldier eligible for military medical care with a diagnosis from a military medical provider indicating that gender transition is medically necessary will be provided medical care and treatment for the diagnosed medical condition.
  - c. For policies and standards that apply differently to Soldiers according to gender, the Army recognizes a Soldier's gender by the Soldier's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Coincident with that gender marker, the Army applies, and Soldiers are expected to meet, all standards for uniforms and grooming, body composition assessment, physical readiness testing, participation in the Military Personnel Drug Abuse Testing Program, and other military standards applied with consideration of the member's gender. For facilities subject to regulation by the Army, a Soldier uses those billeting, bathroom, and shower facilities associated with the Soldier's gender marker in DEERS.
3. This directive establishes policies and procedures for gender transition in the Army. Gender transition in the Army begins when a Soldier receives a diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care) indicating that gender transition is medically necessary. Gender transition ends when the Soldier's gender marker in DEERS is changed to show the Soldier's preferred gender.

**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

a. Any Soldier with a diagnosis indicating that gender transition is medically necessary must ensure that his or her chain of command is informed of the diagnosis and projected schedule for medical treatment that is part of the Soldier's medical treatment plan, including an estimated date for a change in the Soldier's gender marker, and must request that the chain of command approve the timing of the medical treatment. The Soldier must notify his or her chain of command of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.

b. The exact procedures Soldiers, military medical providers, and commanders are to follow in relation to a Soldier's gender transition depend on the Soldier's duty status and eligibility for military medical care. Procedures for Soldiers on active duty and eligible for military medical care are in enclosure 2. Procedures for Soldiers serving in the Selected Reserve in the U.S. Army Reserve or Army National Guard, including Individual Mobilization Augmentees, are in enclosure 3. Procedures for Soldiers serving in the Standby Reserve or Individual Ready Reserve are in enclosure 4. Procedures for Soldiers serving in the Inactive National Guard are in enclosure 5.

c. When the Soldier is stable in his or her preferred gender, as determined or confirmed by a military medical provider, the Soldier may request approval of a change to their gender marker in DEERS through the procedures identified in enclosures 2 through 5. The request for a change in gender marker must be supported by a medical diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care) indicating that gender transition is medically necessary; confirmation from a military medical provider that the Soldier is stable in the preferred gender; and legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

d. Within 30 days after receiving a request for a change to a Soldier's gender marker and all required documentation (within 60 days for reserve component Soldiers), the applicable approval authority identified in enclosures 2 through 5 will approve a change to the Soldier's gender marker in DEERS to show the Soldier's preferred gender. The approval will be in writing and state the effective date of the change to the Soldier's gender marker.

e. The Soldier's gender marker will be changed upon submission of the written approval to the Commander, U.S. Army Human Resources Command. Human Resources Command will make the change in the Army personnel information systems, which in turn will update the gender marker in DEERS.

SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)

f. After the gender marker in DEERS is changed to show a Soldier's preferred gender, the Soldier will be expected to adhere to Army standards applicable to the preferred gender, as described in paragraph 2c.

g. The change to the gender marker in DEERS does not preclude additional medically necessary care.

4. Commanders are responsible and accountable for the overall readiness of their command. Commanders are also responsible for the collective morale, welfare, good order, and discipline of their unit; for the command climate; and for ensuring that all members of the command are treated with dignity and respect.

a. Commanders should approach a Soldier undergoing gender transition in the same way they would approach a Soldier undergoing any medically necessary treatment. Commanders will continue to minimize effects to the mission and ensure continued unit readiness. Commanders will balance the needs of the individual transitioning Soldier and the needs of the command in a manner that is comparable to the actions available to the commander in addressing comparable medical circumstances unrelated to gender transition. Commanders may consider the following actions:

(1) Adjusting the date on which the Soldier's gender transition, or any component of the gender transition process, will begin.

(2) Advising a Soldier of the availability of options for extended leave status or participation in other voluntary absence programs during the gender transition process, in accordance with Army Regulation (AR) 600-8-10 (Leaves and Passes).

(3) Processing requests for exceptions to policy (ETPs) associated with gender transition in accordance with paragraph 5.

(4) Establishing or adjusting local policies on the use of billeting, bathroom, and shower facilities subject to regulation by the military during the gender transition process, consistent with paragraphs 4b and 4c.

(5) Referring the Soldier for a determination of fitness in the disability evaluation system in accordance with DoD Instruction 1332.18 (Disability Evaluation System (DES)) and AR 40-501 (Standards of Medical Fitness).

(6) Taking other actions, including the initiation of administrative or other proceedings, comparable to actions that could be initiated for other Soldiers whose ability to serve is similarly affected for reasons unrelated to gender transition.

**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

b. Soldiers must accept living and working conditions that are often austere, primitive, and characterized by little or no privacy. All Soldiers will use the billeting, bathroom, and shower facilities associated with their gender marker in DEERS. However, commanders have discretion to employ reasonable accommodations to respect the modesty or privacy interests of Soldiers, including discretion to alter billeting assignments or adjust local policies on the use of bathroom and shower facilities, in accordance with Army policy, in the interest of maintaining morale, good order, and discipline and consistent with performance of the mission. Nevertheless, no commander may order a Soldier on the basis of his or her gender identity or transitioning status to use a billeting, bathroom, or shower facility not required of other Soldiers with the same gender marker.

c. Facilities will not be designated, modified, or constructed to make transgender-only areas. If modifications are made to accommodate the modesty or privacy concerns of a Soldier, they must be made available for all Soldiers to use. Commanders will accommodate privacy concerns using existing facilities and furnishings where possible and will modify facilities only when other options are ineffective.

d. Commanders should remain mindful of the privacy of personal or health-related information concerning the Soldiers in their command. Personal information regarding transgender Soldiers should be safeguarded to the same extent as comparable information regarding any other Soldier.

e. The Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) has established a Service Central Coordination Cell composed of medical, legal, and military personnel experts to provide advice and assistance to commanders, address their inquiries, and process requests for ETPs in connection with gender transition for decision by the ASA (M&RA).

5. In general, Soldiers are expected to comport with the standards of their gender marker in DEERS. In the event that a Soldier undergoing gender transition is unable to meet a particular Army standard as a result of medical treatment or other aspects of the Soldier's gender transition, the Soldier's chain of command, together with the Soldier and/or the military medical provider, should consider options (for example, adjusting the date of a physical fitness test or extended leave options) other than requesting an ETP to depart from Army standards. If submitted, a request for an ETP to depart from the standards of a Soldier's gender marker in DEERS must be processed according to the procedures outlined in this paragraph and will be evaluated on a case-by-case basis.

a. An active duty or Selected Reserve Soldier should submit the ETP request through the Soldier's chain of command. An Individual Ready Reserve or Standby Reserve Soldier should submit the ETP request to the Commander, Human Resources

**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

Command. An Inactive National Guard Soldier should submit the ETP request to the Director, Army National Guard.

b. When submitting an ETP request, the Soldier must identify the specific policy for which the Soldier is seeking an exception and explain the reason for the request. The request must be accompanied by a medical diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care), an approved medical treatment plan identifying medically necessary treatment and a projected schedule for such treatment, and an estimated date for completion of the treatment pursuant to the medical treatment plan.

c. As soon as practicable, but no later than 60 days after receipt of an ETP request, the recipient of the request (as identified in paragraph 5a) must forward the request through the first general officer in the chain of command to the Service Central Coordination Cell or, if disestablished, to the relevant policy proponent in Headquarters, Department of the Army. Informed, as appropriate, by advice from a military medical provider, the recipient must provide a recommendation for action on the ETP request and an assessment of the expected effects, if any, the ETP will have on mission readiness and the good order and discipline of the unit. Commanders should include in their assessment a discussion of what other actions not requiring deviation from Army policies they considered or used and why the actions were ineffective or inadequate.

d. The ASA (M&RA) has withheld the authority to decide requests for ETPs in relation to a Soldier's gender transition.

6. Effective immediately, the following regulations will be revised in accordance with the language in enclosure 6: AR 40-501, AR 135-178, AR 600-20, AR 600-85, AR 635-200, and AR 638-2. The Deputy Chief of Staff (DCS), G-1, the proponent of AR 601-270 and AR 670-1, will review those regulations for consistency with this directive and references a and b and update those regulations as necessary. In addition, the Army will take the following actions:

a. Training and educating the force is necessary to sustain readiness. No later than 1 November 2016, the Army will develop the necessary training and education to ensure that all members of the force understand the core principles of Army policy on the military service of transgender Soldiers. Training and education via chain teaching across the Army will be completed no later than 1 July 2017. In addition, by 1 July 2017, the Army will adjust existing blocks of instruction throughout the Army to sustain the training and education of the Army policy concerning transgender military service.

b. This directive does not alter Army accessions policy. No later than 1 July 2017, the Under Secretary of Defense (Personnel and Readiness) will update the policies and procedures governing accessions for transgender applicants in DoD Instruction 6130.03

**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

(Medical Standards for Appointment, Enlistment, or Induction in the Military Services). No later than 60 days after those policies and procedures are published, the Army will update its accessions policy.

c. No later than 1 October 2017, the ASA (M&RA) will provide the Secretary of the Army with an assessment of whether the Service Central Coordination Cell should be continued, disestablished, or become a permanent body. At that time, the ASA (M&RA) will also reassess whether the ASA (M&RA) should continue to retain approval authority for ETPs associated with gender transition or should delegate the authority to the proponents of the underlying policy.

d. No later than 1 October 2018, The Inspector General will provide the Secretary of the Army with a report of inspection on the Army's compliance with reference b and this directive. This report will be used for assessing and overseeing compliance; identifying compliance deficiencies, if any; initiating timely corrective action, as appropriate; and identifying best practices and lessons learned.

e. All Army activities will review local regulations and policies for consistency with this directive and references a and b and update those regulations and policies as necessary.

7. The provisions of this directive are effective immediately and apply to all personnel in the Active Army, Army National Guard/Army National Guard of the United States, and Army Reserve. The directive will be rescinded upon publication of revised issuances and updated to governing regulations. The ASA (M&RA) is the proponent for this policy. The point of contact is Chief, Accessions Division, DCS, G-1, 703-695-7693, DSN 312-225-7693.



Eric K. Fanning

Encls

**DISTRIBUTION:**

Principal Officials of Headquarters, Department of the Army  
Commander

- U.S. Army Forces Command
  - U.S. Army Training and Doctrine Command
  - U.S. Army Materiel Command
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  - U.S. Army North
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**SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)**

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**U.S. Army South  
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Military Surface Deployment and Distribution Command  
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U.S. Army Cyber Command  
U.S. Army Medical Command  
U.S. Army Intelligence and Security Command  
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U.S. Army Corps of Engineers  
U.S. Army Military District of Washington  
U.S. Army Test and Evaluation Command  
U.S. Army Installation Management Command  
Superintendent, United States Military Academy  
Director, U.S. Army Acquisition Support Center  
Executive Director, Arlington National Cemetery  
Commander, U.S. Army Accessions Command  
Commander, U.S. Army War College  
Commander, Second Army**

**CF:**

**Director, Army National Guard  
Director of Business Transformation  
Commander, Eighth U.S. Army**

## REFERENCES

- a. Department of Defense (DoD) Directive-type Memorandum (DTM) 16-005 (Military Service of Transgender Service Members), June 30, 2016.
- b. DoD Instruction 1300.28 (In-Service Transition for Transgender Service Members), July 1, 2016.
- c. DoD Instruction 1332.18 (Disability Evaluation System (DES)), August 5, 2014.
- d. DoD Instruction 6130.03 (Medical Standards for Appointment, Enlistment, or Induction in the Military Services), April 28, 2010, Incorporating Change 1, September 13, 2011.
- e. Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers), 1 July 2016.
- f. Army Regulation (AR) 40-501 (Standards of Medical Fitness), 14 December 2007, Including Rapid Action Revision Issued 4 August 2011.
- g. AR 135-178 (Enlisted Administrative Separations), 18 March 2014.
- h. AR 600-8-10 (Leaves and Passes), 15 February 2006, Including Rapid Action Revision Issued 4 August 2011.
- i. AR 600-20 (Army Command Policy), 6 November 2014.
- j. AR 600-85 (The Army Substance Abuse Program), 28 December 2012.
- k. AR 601-270 (Army Retention Program), 1 April 2016.
- l. AR 635-200 (Active Duty Enlisted Administrative Separations), 6 June 2005, Including Rapid Action Revision Issued 6 September 2011.
- m. AR 638-2 (Army Mortuary Affairs Program), 23 June 2015.
- n. AR 670-1 (Wear and Appearance of Army Uniforms and Insignia), 10 April 2015.



## **GENDER TRANSITION FOR ACTIVE DUTY SOLDIERS**

1. The gender transition process for a Soldier serving on active duty and eligible for military medical care begins when the Soldier receives a diagnosis from a military medical provider indicating that gender transition is medically necessary. The Soldier must ensure that his or her brigade-level commander is informed, through command channels, of the diagnosis and projected schedule for medical treatment that is part of the Soldier's medical treatment plan, including an estimated date for a change in the Soldier's gender marker. The Soldier must request that the brigade-level commander approve the timing of the medical treatment. The Soldier must also notify his or her brigade-level commander of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.
2. Upon establishing a diagnosis indicating that gender transition is necessary, the military medical provider is responsible for developing a medical treatment plan and presenting the plan through command channels to the Soldier's brigade-level commander. The provider must advise the brigade-level commander on the medical diagnosis applicable to the Soldier, including the provider's assessment of medically necessary care and treatment, the urgency of the proposed care and treatment, the likely effect of the care and treatment on the individual's readiness and deployability, and the extent of the human and functional support network needed to support the individual.
3. The Soldier's brigade-level commander is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition and must:
  - consider the Soldier's individual facts and circumstances, including the Soldier's medical treatment plan;
  - ensure military readiness by minimizing effects to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability); and
  - maintain the morale, welfare, good order, and discipline of the unit.

Upon receipt of the Soldier's request, the brigade-level commander will notify the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. The brigade-level commander will approve the timing of the medical treatment in writing. The timing of the treatment may be adjusted, after consulting with the medical provider, based on unscheduled requirements.

4. The medical provider, in consultation with the Soldier, must advise the brigade-level commander when the Soldier has completed the medical treatment necessary to achieve stability in the preferred gender and recommend to the brigade-level commander when the Soldier's gender marker should be changed in the Defense

Enrollment Eligibility Reporting System (DEERS). At that point, the Soldier may request that the brigade-level commander approve a change to the Soldier's gender marker.

a. In support of the request, the Soldier must ensure that the brigade-level commander receives:

- a medical diagnosis from a military medical provider indicating that gender transition is medically necessary;
- confirmation from the military medical provider that the Soldier is stable in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the brigade-level commander will notify the SCCC and consult the SCCC in responding to the request. The brigade-level commander will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 30 days after receiving all required information from the Soldier, the brigade-level commander will approve the request, including the date when the Soldier's gender marker should be changed in Army personnel information systems, which will initiate the gender marker change in DEERS.

c. A Soldier's gender marker will be changed when his or her brigade-level commander submits written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. Human Resources Command will make the change in Army personnel information systems, which will update the gender marker in DEERS.

## **GENDER TRANSITION FOR U.S. ARMY RESERVE AND ARMY NATIONAL GUARD SELECTED RESERVE SOLDIERS**

1. The gender transition process for a Soldier serving in the Selected Reserve in the Army Reserve or Army National Guard (ARNG), including Individual Mobilization Augmentees, who is not eligible for military medical care begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis through command channels to his or her brigade-level commander, accompanied by a projected schedule for medical treatment and an estimated date for a change in the Soldier's gender marker, and request that the commander approve the timing of the medical treatment. The Soldier must also notify the brigade-level commander in the event of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.

2. The Soldier's brigade-level commander is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition and must:

- consider the Soldier's individual facts and circumstances, including the Soldier's expected medical treatment schedule;
- ensure military readiness by minimizing effects to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability); and
- maintain the morale, welfare, good order, and discipline of the unit.

Upon receipt of the Soldier's request, the brigade-level commander will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving the request, the brigade-level commander will submit the Soldier's request and diagnosis to, as appropriate, U.S. Army Reserve Command's Command Surgeon or the Chief Surgeon, ARNG, who will confirm any civilian medical diagnosis that gender transition is medically necessary. The brigade-level commander's approval of the timing of medical treatment will be in writing. The timing of the treatment may be adjusted, after consulting with the medical provider, based on unscheduled requirements.

3. After the brigade-level commander approves the timing of medical treatment and once the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may request, through command channels, that the brigade-level commander approve a change to the Soldier's gender marker.

a. In support of the request, the Soldier must include:

- the medical diagnosis indicating that gender transition is medically necessary;

- confirmation from a medical provider that the Soldier's medical treatment plan is complete and that the Soldier has achieved stability in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the brigade-level commander will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the brigade-level commander will submit the Soldier's request to, as appropriate, Reserve Command's Command Surgeon or the Chief Surgeon, ARNG for confirmation of the medical determination that the Soldier has achieved stability in the preferred gender.

c. The brigade-level commander will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from the Soldier, the brigade-level commander will approve the request, including the date when the Soldier's gender marker should be changed, and will submit the written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. Human Resources Command will make the change in Army personnel information systems, which will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.

## **GENDER TRANSITION FOR SOLDIERS SERVING IN THE STANDBY RESERVE OR INDIVIDUAL READY RESERVE**

1. The gender transition process for a Soldier serving in the Standby Reserve or Individual Ready Reserve begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis to the Commander, Human Resources Command (HRC), accompanied by a projected schedule for medical treatment with an estimated date for a change in the Soldier's gender marker, and request that the Commander, HRC approve the timing of the medical treatment. The Soldier must also notify the Commander, HRC in the event of any change to the projected schedule for such treatment or the estimated date for the change in the Soldier's gender marker.
2. Upon receipt of a request, the Commander, HRC is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition. Factors the Commander, HRC should consider when reviewing the request include the likelihood of the Soldier's return to active service as well as any military necessity that may warrant the mobilization or activation of the Soldier. Upon receipt of the Soldier's request, the Commander, HRC will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving the timing of any medical treatment, the Commander, HRC will also ensure that the HRC Command Surgeon confirms any civilian medical diagnosis that gender transition is medically necessary. The timing of the approval will be noted in a memorandum HRC provides to the Soldier. The Commander, HRC may adjust the timing, after consulting with the medical provider, based on unscheduled requirements.
3. After the Commander, HRC approves the timing of medical treatment and the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may ask the commander to approve a change to the Soldier's gender marker.
  - a. In support of the request, the Soldier must include:
    - the medical diagnosis indicating that gender transition is medically necessary;
    - confirmation from a medical provider that the Soldier's medical treatment plan is complete and the Soldier has achieved stability in the preferred gender; and
    - legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.
  - b. Upon receipt of the Soldier's request for a change to his or her gender marker, the Commander, HRC will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the Commander, HRC will ensure that the HRC

Command Surgeon confirms the medical diagnosis that the Soldier has achieved stability in the preferred gender.

c. The Commander, HRC will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from a Soldier, the Commander, HRC will approve the request, including the effective date of the gender marker change, and change the Soldier's gender marker in Army personnel information systems. This will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.

## **GENDER TRANSITION FOR SOLDIERS SERVING IN THE INACTIVE NATIONAL GUARD**

1. The gender transition process for a Soldier serving in the Inactive National Guard begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis to the Director, Army National Guard (ARNG), accompanied by a projected schedule for medical treatment and an estimated date for a change in the Soldier's gender marker, and request that the Director, ARNG approve the timing of the medical treatment. The Soldier must also notify the Director in the event of any change to the projected schedule for the treatment or the estimated date for the change in the Soldier's gender marker.

2. Upon receipt of a request, the Director, ARNG is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition. Factors the Director, ARNG should consider when reviewing the request include the likelihood of the Soldier's return to active status or active duty, as well as any military necessity that may warrant the mobilization or activation of the Soldier. Upon receipt of the Soldier's request, the Director, ARNG will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving any treatment plan, the Director, ARNG will also ensure that the Chief Surgeon, ARNG confirms any civilian medical diagnosis that gender transition is medically necessary. The Director may adjust the timing of the treatment, after consulting with the medical provider, based on unscheduled requirements.

3. After the Director, ARNG approves the timing of the medical treatment and after the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may ask the Director, ARNG to approve a change in the Soldier's gender marker.

a. In support of the request, the Soldier must provide:

- the medical diagnosis indicating that gender transition is medically necessary;
- confirmation from a medical provider that the Soldier's medical treatment plan is complete and the Soldier has achieved stability in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the Director, ARNG will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the Director will ensure that the Chief Surgeon, ARNG confirms the medical diagnosis that the Soldier has achieved stability in the preferred gender.

c. The Director, ARNG will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from a Soldier, the Director, ARNG will approve the request, including the effective date of the gender marker change, and submit the written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. HRC will make the change in Army personnel information systems, which will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.



## PROPOSED REVISIONS TO ARMY REGULATIONS

### AR 40-501 (Standards of Medical Fitness), 14 December 2007:

Contents, page iii, line 15 should be revised to read:

Personality, psychosexual conditions, ~~transsexual, gender identity~~, exhibitionism, transvestism, voyeurism, other paraphilias, or factitious disorders; disorders of impulse control not elsewhere classified • 3–35, page 33

Paragraph 2-14a(5) should be revised to read:

(5) History of major abnormalities or defects of the genitalia such as ~~change of sex (P64.5)~~, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7), or dysfunctional residuals from surgical correction of these conditions does not meet the standard.

Paragraph 2-14d should be revised to read:

d. History of major abnormalities or defects of the genitalia, such as ~~a change of sex (P64.5)~~, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7), or dysfunctional residuals from surgical correction of these conditions does not meet the standard.

Paragraph 2-27n should be revised to read:

n. Current or history of psychosexual conditions (302), including, but not limited to ~~transsexualism~~, exhibitionism, transvestism, voyeurism, and other paraphilias, do not meet the standard.

Paragraph 3-35 should be revised to read:

**3-35. Personality, psychosexual conditions, ~~transsexual, gender identity~~, exhibitionism, transvestism, voyeurism, other paraphilias, or factitious disorders; disorders of impulse control not elsewhere classified**

a. A history of, or current manifestations of, personality disorders, disorders of impulse control not elsewhere classified, transvestism, voyeurism, other paraphilias, or factitious disorders, psychosexual conditions ~~transsexual, gender identity disorder to include major abnormalities or defects of the genitalia such as change of sex or a current attempt to change sex~~, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis or dysfunctional residuals from surgical correction of these conditions render an individual administratively unfit.

**AR 135-178 (Enlisted Administrative Separations), 18 March 2014:**

Lines 25-26 on the Summary of Change should be revised to read:

~~o Adds transsexualism/gender transformation in accordance with AR 40-501 as a basis for separation. (para 6-7a).~~

Paragraph 6-7a should be revised to read:

a. *Criteria.* The separation authority (para 1–10, of this regulation) may approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) that potentially interfere with assignment to or performance of military duty. Such conditions may include, but are not limited to, chronic airsickness or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, personality disorder, transvestism, ~~gender identity disorder or gender dysphoria,~~ and other related conditions in accordance with AR 40–501, paragraph 3–35. ~~Transsexualism/gender transformation in accordance with AR 40–501,~~ and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier’s ability to perform military duties effectively is significantly impaired.

**AR 600-20 (Army Command Policy), 6 November 2014**

Replace all references to discrimination based on sex or gender with “sex (including gender identity).”

**AR 600–85 (The Army Substance Abuse Program), 28 December 2012**

Appendix E, paragraph E-4b(2) should be revised to read:

(2) Optional wide mouth collection cup ~~(for females)~~.

Appendix E, paragraph E-5h should be revised to read:

h. If the Soldier ~~is female~~ ~~requires use of the optional wide mouth collection cup,~~ the ~~optional wide mouth collection~~ cup will be issued to the Soldier at this time.

Appendix E, paragraph E-5m should be revised to read:

m. The following procedure applies to ~~female~~ Soldiers who ~~use~~ utilize the wide mouth collection cups:

**AR 635-200 (Active Duty Enlisted Administrative Separations), 6 June 2005**

Paragraph 5-17a should be revised to read:

a. Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

- (1) Chronic airsickness.
- (2) Chronic seasickness.
- (3) Enuresis.
- (4) Sleepwalking.
- (5) Dyslexia.
- (6) Severe nightmares.
- (7) Claustrophobia.
- (8) ~~Transsexualism/gender transformation in accordance with AR 40-501 paragraph 3-35.~~

~~(9)~~ Other disorders manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired. Soldiers with 24 months or more of active duty service may be separated under this paragraph based on a diagnosis of personality disorder. For Soldiers who have been deployed to an area designated as an imminent danger pay area, the diagnosis of personality disorder must be corroborated by the MTF Chief of Behavioral Health (or an equivalent official). The corroborated diagnosis will be forwarded for final review and confirmation by the Director, Proponency of Behavioral Health, Office of the Surgeon General (DASG-HSZ). Medical review of the personality disorder diagnosis will consider whether PTSD, Traumatic Brain Injury (TBI), and/or other comorbid mental illness may be significant contributing factors to the diagnosis. If PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph, but will be evaluated under the physical disability system in accordance with AR 635-40.

**AR 638–2 (Army Mortuary Affairs Program), 23 June 2015**

Paragraph 2-9b(1) should be revised to read:

- (1) No uniform is authorized; dark suit only or equivalent for females ~~and transgenders~~.