

# PALM CENTER

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BLUEPRINTS FOR SOUND PUBLIC POLICY

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**REPORT OF THE PLANNING COMMISSION ON TRANSGENDER MILITARY SERVICE**

August, 2014

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## Report of the Planning Commission on Transgender Military Service

A nonpartisan national commission offering implementation guidance for the inclusion of openly-serving transgender personnel in the US military.

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## Contents

### Executive Summary

- 1) Introduction
- 2) Core values
- 3) Methods
- 4) Definitions
- 5) Current regulations
- 6) Regulatory update
- 7) Administrative issues
- 8) Gender transition
- 9) Training
- 10) Command and leadership responsibilities
- 11) Conclusion

### Appendices (from the Australian military)

Administration of Transitioning ADF Members

Tips for Commanders from Members Who Have Transitioned Gender

### Endnotes

### Commissioner biographies

*The views expressed are those of the authors and do not necessarily represent the views of the Department of Defense or the US Government.*

## Executive Summary

- An estimated 15,500 transgender personnel serve in the US armed forces, but current policy prohibits them from serving and requires separation if they are discovered.
- The US armed forces likely will, at some point, join the 18 foreign nations that allow transgender personnel to serve openly.
- In this report, we outline ideal administrative practices for adopting inclusive policy while maintaining readiness. In particular, we identify 14 relevant dimensions of policy formulation and implementation concerning transgender military service, and offer administrative guidance to help prepare the US military for the inevitable updating of current policy.
- Our central conclusion is that formulating and implementing inclusive policy is administratively feasible and neither excessively complex nor burdensome.
- Our research has been guided by seven overarching principles, beginning with the premise that preserving and promoting military readiness must be the priority of any new policy.
- Our recommendations are informed by lessons from foreign military forces that allow transgender personnel to serve openly, as well as research on, and experience with, the integration of groups previously excluded from the US military.
- In addition to careful planning and policy formulation, research shows that strong leadership throughout the chain of command will ensure successful implementation.
- While the transition to inclusive policy will require some effort and resources, the status quo policy of separating transgender personnel requires commanders, attorneys, and administrators to expend effort and resources as well.
- Inclusion of transgender personnel, however, is not primarily about administrative matters, but about core military values and principles: all military personnel should serve with honor and integrity, which means that they should not have to lie about who they are; all members of the military should be treated with respect; all persons capable of serving their country should be allowed to do so; and the military should not needlessly separate personnel who are willing and able to serve.

## **1) Introduction<sup>1</sup>**

In May 2014, Secretary of Defense Chuck Hagel stated that he is open to reviewing the rules that govern service by transgender people, an estimated 15,500 of whom serve currently in the US armed forces.<sup>2</sup> Following his remarks, a White House spokesperson indicated that the administration supports Secretary Hagel's openness to a regulatory review. While the timing of any future policy revision is unknown, the US armed forces likely will, at some point, join the 18 foreign nations and NATO allies that allow transgender personnel to serve openly.<sup>3</sup> Unlike "don't ask, don't tell," the Congressional statute that for nearly two decades prohibited gay, lesbian, and bisexual people from serving openly in the armed forces, the rules and regulations governing transgender military service appear in military instructions under the authority and jurisdiction of the President and Secretary of Defense.

In March 2014, the Transgender Military Service Commission, a panel of military and medical experts including a former US Surgeon General, released a report underscoring the need for more careful deliberation in this area.<sup>4</sup> In particular, the Commission called for military analysts as well as outside experts to consider how to "formulate administrative guidance to address fitness testing, records and identification, uniforms, housing and privacy." The Commission also suggested that efforts to formulate inclusive policy should be informed by lessons from foreign military forces that allow transgender personnel to serve. In this report, we follow that Commission's advice by identifying all anticipated dimensions of policy formulation and implementation concerning service by transgender people and offering administrative guidance. As the Commission recommended, our conclusions are informed by lessons from foreign military forces that allow transgender personnel to serve openly, as well as research on, and experience with, the integration of groups previously excluded from the US military. As we demonstrate, formulating and implementing inclusive policy is administratively feasible and neither excessively complex nor burdensome.

Strong leadership throughout the chain of command has been the cornerstone of military culture and has led to the successful integration of other previously excluded groups throughout our military's history. Leadership by the Commander in Chief, and by senior officers and non-commissioned officers embracing the inclusion of transgender personnel, will be as vital to transgender inclusion as it was to integration based upon race, gender, and sexual orientation. As was the case with the repeal of "don't ask, don't tell," commanders will be responsible for setting a tone that takes fundamental leadership principles seriously, and setting such a tone is likely to prevent conflict and problems. For this to happen, military research notes that it is particularly important for the Commander in Chief to articulate his policy goals clearly, and for the military's top commanders to echo that message. Training modules will need to be prepared for leaders as well as for the rank and file. The literature shows consistently that organizations that demonstrate respect for members and that treat them accordingly show higher morale and performance levels. Strong leadership from the top will be the key to creating such a culture of respect.

## **2) Core values**

We address the question of whether transgender personnel should be allowed to serve in the context of core values, including whether citizens who are able to serve their country should be

allowed to do so, absent clear and compelling reasons for exclusion. As determined by the Transgender Military Service Commission, no such reasons for exclusion exist in this case. Policy changes in complex organizations must be coordinated with deliberation, and can require periods of adjustment. Inclusive policy, however, will yield administrative efficiencies as well, as it takes time, energy, and money to maintain exclusionary policies. Thus, while the transition to inclusive policy will require some effort and resources, the status quo policy of separating transgender personnel requires military commanders, attorneys, and administrators to expend effort and resources as well. The experiences of foreign military forces as well as domestic police and fire departments in which transgender personnel serve openly show that formulating and implementing inclusive policy is neither excessively complex nor burdensome. Transgender inclusion, however, is not primarily about administrative matters. It reflects the core military values and principles that all military personnel should serve with honor and integrity, which means that they should not have to lie about who they are; all members of the military should be treated with respect; all persons capable of serving their country should be allowed to do so; and the military should not needlessly separate personnel who are willing and able to serve. Former Chairman of the Joint Chiefs of Staff Admiral Mike Mullen, while discussing the question of gay, lesbian, and bisexual people in the military, referred to the “whole issue of integrity in asking young people to come in to a military and essentially live a lie in an institution that values integrity at the highest level.”<sup>5</sup> The same point could be made about transgender military service.

Before beginning our research, we came to agree on seven overarching principles that would guide our investigation. In formulating these principles, our concern was identifying standards that any new policy must meet in order to ensure that military readiness is enhanced at the same time that the well-being of transgender and non-transgender personnel is promoted. The seven principles we identify below should serve as benchmarks, or minimum standards, for any new policies that the Pentagon enacts.

- (1) Promote military readiness. Preserving and promoting military readiness should be the priority of any new policy. As with all policies that the military adopts, the central aim of new rules concerning transgender military service should be to enhance the military’s ability to accomplish its mission. Mission must always come first.
- (2) Formulate unified policy. Unified and comprehensive policy concerning transgender service should be developed so that commanders and subordinates know where to turn for guidance. While the Services may wish to develop implementing regulations that follow from Defense Department instructions, a DoD-wide policy that is unified in a single document will minimize confusion.
- (3) Minimize regulatory revision. The presumption should be against creating new rules that regulate transgender and non-transgender service members differently. The major exception is that new rules are required to govern gender transition, a process that is by definition temporary. There is no reason to treat transgender and non-transgender personnel differently on an ongoing basis before or after transition.
- (4) Provide medically necessary health care. Transgender personnel should be provided with medically necessary health care, as is the case with all personnel whose medical conditions can be addressed sufficiently to maintain or restore their fitness for duty.

- (5) Follow scientific consensus: Military medicine generally follows the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, but current medical regulations do not reflect modern medical understandings of gender identity, and military medicine ignores standards of care applicable to the health care needs of transgender personnel. Transgender identity should be de-pathologized in military rules, and transgender service members should be treated in accordance with established medical practice, as is the case with all other personnel.
- (6) Apply relevant foreign military lessons. While no two military organizations are exactly the same, the US military often studies and applies lessons learned by foreign militaries.<sup>6</sup> In the case of transgender military service, lessons should inform the implementation of US policy.
- (7) Preserve flexibility. Because no two transgender individuals transition in exactly the same way, military regulations should be flexible enough to allow the individual service member and the unit commanding officer to fashion a transition plan that is medically appropriate for the service member and supportive of the command's mission.

### 3) Methods

Our research methodology consisted of careful analysis of foreign military regulations concerning transgender military service, as well as interviews with policy makers and service members from United Kingdom, Israel, Australia, Canada and New Zealand. During the course of our interviews, we sought to acquire a deep understanding of lessons learned — what worked and what did not work — when foreign military forces adopted inclusive policy. We also consulted the scholarly literature on organizational change, and paid particular attention to the recommendations of the RAND Corporation and the Pentagon's Comprehensive Review Working Group, both of which offered extensive guidance on the related question of how to allow gay, lesbian, and bisexual people to serve openly without disrupting readiness.

### 4) Definitions

This background summary of relevant definitions is taken almost verbatim from the first in a series of Palm Center commission reports on transgender military policy, the March 2014 *Report of the Transgender Military Service Commission*.

*Transgender* is an adjective used to describe people whose “sex at birth is opposite from who they know they are on the inside. Many transgender people are prescribed hormones by their doctors to change their bodies. Some undergo surgery as well.”<sup>7</sup> There is no single medical treatment for transgender individuals who undergo gender transition, as a wide variety of surgical and/or hormonal options is available. *Surgical transition* refers to the use of transition-related surgery to change one's gender; *medical transition* refers to the use of surgery and/or cross-sex hormone treatment (CSH) to do so; and *social transition* refers to dressing, working, and living in one's *target gender* (a term that is used by the US Office of Personnel Management to refer to the gender to which an individual intends to transition) and often includes changing one's name and gender marker in official records. The transgender community includes people

who have already transitioned to the other gender, who have not yet transitioned but who plan to do so, and who identify with the other gender but do not plan to transition.<sup>8</sup>

Mental health professionals have de-pathologized gender nonconformity in recent years. In the newest edition of the *Diagnostic and Statistical Manual (DSM-5)*, gender identity disorder has been replaced with gender dysphoria, a diagnostic term that refers to clinically significant distress that may follow from an incongruence between a person's gender identity and the physical gender that they were assigned at birth.<sup>9</sup> Gender dysphoria is understood as a condition that is amenable to treatment,<sup>10</sup> and mental health professionals agree that not all transgender individuals suffer from dysphoria. The World Health Organization's Working Group on the Classification of Sexual Disorders and Sexual Health (WGCSDSH) has recommended that the forthcoming version of the *International Statistical Classification of Diseases and Related Health Problems (ICD-11)*, due for publication in 2015, "abandon the psychopathological model of transgender people based on 1940's conceptualizations of sexual deviance."<sup>11</sup> According to a recent publication by WGCSDSH members, "once-prevailing views that reject the aim of supporting transition are no longer part of the mainstream of either psychiatric or general medical thought and practice...[and] the continued linkage of gender identity diagnoses with paraphilias and diagnoses of sexual dysfunction in the classification system appears to be both outdated and inappropriate."<sup>12</sup>

The reclassification of gender nonconformity in both *DSM* and *ICD* is based, in part, on the understanding among scientists and medical practitioners that distress can be caused by prejudice and stigmatization, not mental illness, and that many individuals who do not identify with the physical gender they were assigned at birth do not suffer from clinically significant distress, and therefore do not have a medical or psychological illness.<sup>13</sup> WGCSDSH members wrote recently that, "there are individuals who today present for gender reassignment who may be neither distressed nor impaired."<sup>14</sup>

## 5) Current regulations

Portions of this background summary of military regulations are taken almost verbatim from the first in a series of Palm Center commission reports on transgender military policy, the March 2014 *Report of the Transgender Military Service Commission*.

Policies governing transgender service can be broken down into two categories: accession disqualifications and retention disqualifications.

*Accession disqualification:* Department of Defense Instruction (DODI) 6130.03 establishes medical standards for entry into military service.<sup>15</sup> Enclosure 4 of DODI 6130.03 contains a list of disqualifying physical and mental conditions that preclude applicants from joining the military, and the list includes the following conditions, some of which are transgender-related: 14f. Female genitalia: History of major abnormalities or defects of the genitalia including but not limited to change of sex ... 15r. Male genitalia: History of major abnormalities or defects of the genitalia such as change of sex ... 25l. Endocrine and metabolic: Male hypogonadism [low testosterone] ... 29r. Learning, psychiatric and behavioral: Current or history of psychosexual

conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias.<sup>16</sup> Thus, the accession prohibition against transgender service includes a physical component (“change of sex”) and a psychological component (“transsexualism”).

Medical regulations generally allow for waivers of accession standards under some circumstances.<sup>17</sup> Accession regulations also specify, however, that waivers will not be granted for conditions that would disqualify an individual for the possibility of retention.<sup>18</sup> As discussed below, because some conditions related to transgender identity are grounds for discharge, and because recruiters cannot waive a condition upon enlistment that would be disqualifying for retention, transgender individuals cannot obtain medical waivers for entrance into the military. In response to a 2013 Freedom of Information Act (FOIA) request submitted by the Palm Center, the Pentagon disclosed that between 2008 and 2012, three individuals had been denied entry into the military for transgender-related conditions.<sup>19</sup> We are unaware of any instances in which transgender-related conditions have been waived at the time of accession.

*Retention disqualification:* Less than three weeks before this report was released, the Department of Defense cancelled DODI 1332.38, *Physical Disability Evaluation*, its longstanding regulation on medical retention standards.<sup>20</sup> This regulation was replaced by DODI 1332.18, *Disability Evaluation System (DES)*, on August 5, 2014. One of the important changes in the new issuance was the elimination of DoD guidance on specific medical conditions that may lead to separation from the military. Instead, the new DODI 1332.18 sets only general criteria for referral for disability evaluation and defers to service-specific standards for retention. Criteria for referral include whether a medical condition prevents reasonable performance of duty, represents an obvious medical risk to self or others, or imposes unreasonable requirements on the military.<sup>21</sup>

Until the recent change, DoD retention disqualifications included two components, the first of which distinguished transgender identity from medical conditions that were eligible for evaluation and treatment, and the second of which designated conditions that were ineligible for evaluation and treatment as grounds for discharge. Unlike regulations governing entry, the now-cancelled DODI 1332.38 divided potentially disqualifying conditions into two tracks. Individuals with conditions deemed “physical disabilities” (both physical and psychological) were tracked into a medical system of disability evaluation, leading to a determination of fitness for duty or entitlement to benefits for medical separation or retirement. However, service members with conditions defined as “not constituting a physical disability” could be separated administratively from military service at a commander’s discretion, without the same opportunity to demonstrate medical fitness for duty or eligibility for disability compensation. This system diverted some service members out of the medicine-based disability system and into the commander-based system for administrative separation, and rendered them ineligible for disability evaluation. DODI 1332.38 listed more than twenty conditions and circumstances defined by the regulation as “not constituting a physical disability,” including “Sexual Gender and Identity Disorders, including Sexual Dysfunctions and Paraphilias.”<sup>22</sup>

The new DODI 1332.18 no longer lists transgender-related conditions as grounds for administrative separation. However, the regulation permits the individual services to authorize administrative separation outside the usual medical evaluation process on the basis of “a condition, circumstance, or defect of a developmental nature, not constituting a physical



disability,” which is language similar to the basis for separation of transgender personnel under the earlier regulation. DODI 1332.18 leaves it to the individual services to determine which conditions should be placed in this discretionary category, but only if the conditions in fact “interfere with assignment to or performance of duty.”<sup>23</sup> This is a significant change from the earlier regulation, which permitted administrative separation under a variety of circumstances at the discretion of a commander, including separations of transgender personnel, but without any explicit requirement that an individual’s fitness for duty was affected.

Service-specific regulations from the Army, Navy/Marine Corps, and Air Force still disqualify transgender personnel for retention,<sup>24</sup> and the new guidance in DODI 1332.18 does not appear to overrule those service policies. However, the service policies were instituted under a system in which DoD issued general policies governing retention for all military services, and DoD has eliminated any directive that transgender personnel should be subject to administrative separation. DODI 1332.14 controls administrative separations for enlisted persons (DODI 1332.30 controls for officers), and the policies behind administrative separation emphasize conduct and discipline, not medical fitness.<sup>25</sup> A service member may be separated for the convenience of the government and at the discretion of a commander for “other designated physical or mental conditions,” but DoD no longer includes transgender issues within that category.<sup>26</sup>

In response to a recent FOIA request for discharge data submitted by the Palm Center, a Pentagon spokesperson said that the military does not track the number of service members who have been separated for transgender-related reasons. We are aware, however, of approximately two dozen service members who have been discharged because of their transgender identity in recent years.<sup>27</sup>

In addition to the accession and retention regulations discussed above, some aspects of transgender military service are governed by other rules. For example, transgender service members risk being held in violation of orders for receiving undisclosed or prohibited medical treatment if they obtain health care from non-military doctors without receiving permission from commanders.<sup>28</sup> The military health care system specifically prohibits treatment related to gender identity.<sup>29</sup>

## **6) Regulatory update**

Allowing transgender personnel to serve requires only minor regulatory revisions. Defense Department as well as service regulations should be amended to eliminate bars to accession and grounds for separation. As explained above, Defense Department accession regulations automatically disqualify all transgender applicants, whether the condition is defined physically (“abnormalities or defects of the genitalia such as change of sex”) or mentally (“psychosexual conditions, including but not limited to transsexualism”), regardless of ability to serve or degree of medical risk. These enlistment bars should be deleted.<sup>30</sup> Also as explained above, service-level retention regulations list transgender identity as a condition of presumptive unfitness justifying administrative separation, although the new DODI 1332.18 now limits such separations to circumstances preventing fitness for duty. Gender identity issues should be deleted from the list of conditions that service regulations deem ineligible for physical evaluation and treatment and

also deleted from the list of conditions that justify administrative separation. Finally, military health care rules that prohibit medical treatment related to gender identity should be deleted, giving transgender service members the same access to health care provided to non-transgender personnel.

Transgender service members should be denied enlistment or considered for separation when surgical, medical, or psychiatric conditions are unresponsive to treatment or will interfere with performance of duty, in accordance with existing regulations. That said, once the ban on transgender service is lifted, the military will not require any new medical policies to replace current prohibitions. Transgender individuals can be diagnosed and treated under existing military protocols, and current medical regulations that apply to everyone are sufficient for enabling commanders and physicians to assess transgender service members' fitness for duty. Aside from the elimination of prohibitions described above in this discussion of regulatory updating and a commitment to allowing transgender personnel to obtain medically necessary care that is consistent with the latest standards of care,<sup>31</sup> new medical rules for transgender personnel are unnecessary. In light of recent federal government decisions to provide transition-related coverage through Medicare and to cease prohibiting private insurance companies from providing such coverage to federal employees, as well as changes at the state and local level and among private sector employers, it is clear that the national trend is in the direction of providing medically necessary transition-related care. The military should provide such care as well.<sup>32</sup> The military health care system permits referral for specialty care that is not available at military treatment facilities or within its civilian provider network.<sup>33</sup>

Current military policy already allows service by individuals who may require hormonal treatments, including those with hormonal imbalance, dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, hysterectomy, or oophorectomy, which only require special medical referral if they cause complications or impair duty performance. Non-transgender service members are allowed to take a wide range of medications, including hormones, while deployed in combat settings, and existing military policy states that "There are few medications that are inherently disqualifying for deployment."<sup>34</sup> As is the case with other service members taking prescription hormones, transgender personnel who are receiving cross-sex hormonal treatment should be considered fully fit for service so long as the dose of medication is stable, there are no significant side effects, and the medication does not interfere with military duty.<sup>35</sup> No special evaluation should be necessary.

Transition-related surgery undertaken before military service should be regarded no differently from any other surgery that potential recruits may undergo, and should only disqualify individuals from service in rare cases of serious, chronic post-operative complications. For those military members who, in consultation with physicians, determine that they need surgery after accession, the procedure should be treated in the same manner as other medically necessary procedures that may require a recovery period. In such cases, the member should be given medical leave for recovery except in rare cases when recovery requires an unusually extended period of time. There are, of course, risks of post-surgical complications which can become chronic, but the risks are no higher than risks associated with other procedures, and they are lower than risks that accompany some non-transgender-related reconstructive surgeries which are permitted.<sup>36</sup> According to a recent ruling by the Department of Health and Human Services,

transition-related surgery “is safe.”<sup>37</sup> Any post-surgical complications that arise should be addressed by medical professionals on a case-by-case basis under existing medical protocols.

The fact that a medical problem is related to transgender care is much less important than the nature of the medical problem itself. Any resulting physical or mental impairment should be the focus, regardless of the cause. Medical regulations governing enlistment and retention already require fitness evaluation when surgical, medical, or psychiatric conditions are unresponsive to treatment or will interfere with performance of duty. Gender identity is not relevant to those medical determinations, and medical conditions should be evaluated under the same standards for both transgender and non-transgender personnel.

## **7) Administrative issues**

Based on our analysis of foreign military forces that allow transgender personnel to serve, we have identified 14 administrative issues that should be addressed when military planners prepare to adopt inclusive policy. We offer guidance on each issue below.

### *(1) Gender marker changes*

The Defense Enrollment Eligibility Reporting System (DEERS) manages the identity information used to issue identification cards (Common Access Cards) for military personnel. DEERS relies on the same documents for verifying identity that are reviewed by the US Citizenship and Immigration Services to establish civilian employment eligibility. To obtain a military identification card, applicants must present two valid and original documents “from the list of acceptable documents included in the Form I-9 ‘Employment Eligibility Verification.’”<sup>38</sup> A US passport appears first on that list as the gold standard of identification documents. We highlight the acceptance of a US passport within the DEERS procedures for managing military identity information because the State Department has already instituted a standard and efficient procedure for changing gender markers in passports.<sup>39</sup> Under State Department rules, applicants have two options for the timing of gender marker changes. They may obtain a ten-year passport reflecting a new gender by presenting a physician’s letter stating that “the applicant has had appropriate clinical treatment for gender transition.” Alternatively, they may obtain a two-year passport by presenting a physician’s letter stating that “the applicant is in the process of gender transition.”

Because the military already relies on the accuracy of passports for establishing identification (and, by definition, on the procedures followed by the State Department for updating gender markers), it should directly accept the same underlying documentation of gender transition once the ban on transgender service is lifted. This documentation requires only a physician’s letter certifying appropriate clinical treatment, which in many cases will be provided by a doctor also serving in the military. The Commission recommends that gender markers be changed at the commencement of transition to limit instances in which a service member’s identity or access will be challenged. Challenges to identity and access are a particularly important issue in a military setting because the government can control right of entry to the workplace, living accommodations, and morale, welfare, and recreational activities. The Department of Veterans Affairs follows a similar physician-based procedure for changing gender markers in VA records.<sup>40</sup> Reliance on a standard federal practice also avoids the inconsistency of state-level

practices for changing gender markers in identity documents.<sup>41</sup> Although military identification cards do not state gender on the face of the card, the Commission recommends that cards be re-issued with a new photograph when necessary. Identification that accurately reflects gender presentation and appearance is an essential component of maintaining good order and discipline. No new procedures are needed for name changes within DEERS. Any service member can change his or her name by submitting a court order documenting a new legal name.<sup>42</sup>

## *2) Confidentiality and privacy*

Information related to transgender status and medical care will be subject to the same rules regulating confidentiality of medical information that protect all service members. Medical confidentiality in the military is not absolute, and information may be disclosed if necessary to ensure military readiness and fitness for duty. The military “may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.”<sup>43</sup> Commanders should consult with transgender service members and unit leaders within the chain of command to determine the best means of fostering acceptance and understanding during the process of gender transition, which we address in greater depth in a subsequent section. Colleagues should be reminded, however, that an obligation of confidentiality still applies, and commanders must make reasonable efforts to limit the use or disclosure of protected health information to the minimum necessary to accomplish the intended purpose.<sup>44</sup>

## *(3) Grooming*

Upon the beginning of transition, transgender service members should conform to service-specific regulations governing grooming, appearance, and wearing of the uniform for their gender identity.

## *(4) Uniforms*

The US military should follow the British model by establishing a policy to issue gender-correct uniforms all at once. Upon the beginning of transition, transgender service members should be issued new, gender-correct uniforms. British policy states that, “Every effort should be made to ensure that the issue of new uniform relevant to a transsexual person’s acquired gender is done in a single issue, especially for items of gender-specific kit. This avoids causing embarrassment or anxiety to the individual if repeated visits to uniform clothing stores are required.”<sup>45</sup> In the US military, current regulations authorize payment for replacement of initial-issue uniforms that are “rendered unusable,” “if the loss was not caused by any fault or negligence of the service member.”<sup>46</sup> Although this language can be interpreted to authorize replacement of uniforms rendered unusable as a result of gender transition, the regulation should be amended to make clear that medically directed gender transition requires a new initial clothing allowance, at no cost to the service member.

## *(5) Cross-dressing*

In several cases now more than twenty years old, the military justice system upheld criminal prosecutions for wearing the clothing of the opposite gender while off-duty, which in practical terms has always meant the wearing of women’s clothing by men.<sup>47</sup> Cross-dressing was prosecuted as conduct that was unbecoming, service-discrediting, or prejudicial to good order

and discipline.<sup>48</sup> In circumstances in which uniform regulations do not apply, the end of transgender disqualification rules should eliminate any need for gender-based regulation of off-duty dress that is compatible with gender identity.<sup>49</sup> However, in duty-related circumstances in which uniform regulations do apply, transgender service members should continue to dress in accordance with their gender assigned at birth unless and until they commence transition under medical guidance. All service members, transgender and non-transgender, should comply with existing regulations governing suitable civilian dress, such as rules related to bodily piercings or offensive messages. No changes to the Uniform Code of Military Justice or to military regulations are needed.

#### *(6) Housing and bathroom facilities*

Management of privacy concerns in military facilities has traditionally been a matter of command judgment and discretion, and the military has extensive experience in addressing those concerns when men and women live and shower in close quarters. Similar issues that arise as a result of transgender service may require resolution on a case-by-case basis, and commanders should not be constrained by across-the-board policies. No regulatory changes are needed. When they address privacy concerns, commanders should adhere to the following guidelines: (1) Upon beginning the process of transition, transgender personnel should use the accommodations of their target gender; (2) When practical, facilities should have some private, enclosed changing areas, showers, and toilets for use by any service member who desires them; (3) Temporary, reasonable compromises may be appropriate for transitioning individuals; (4) However, transgender personnel should not be required to use separate facilities; (5) Commanders should not create separate, new bathroom facilities or living quarters for the exclusive purpose of accommodating or segregating transgender personnel, because this would have the effect of formally setting up discriminatory systems; (6) However, commanders should have the discretion to modify bathroom and shower schedules as well as berthing or billeting assignments on a case-by-case basis if necessary to maintain morale, good order, and discipline; (7) Service members should be given the opportunity to wear shower shorts and/or shirts during compulsory group showers. All members of the military should be reminded that privacy is not guaranteed and that such minimal privacy is not a bar to mission accomplishment.

#### *(7) Physical standards*

The policy underlying the military's standards of physical fitness is to "maintain physical readiness through appropriate nutrition, health, and fitness habits," including "aerobic capacity, muscular strength, muscular endurance, and desirable body fat composition."<sup>50</sup> Physical fitness, it should be noted, is different from job-related fitness. Physical fitness tests "assess Service-wide baseline generalized fitness levels and are not intended to represent mission or occupationally specific fitness demands."<sup>51</sup> Only recently has the military started a process of determining job-specific physical standards for positions that have been closed to women on the basis of sex.<sup>52</sup> Physical fitness standards are adjusted for both gender and age, and transgender personnel who medically transition should be required to meet fitness standards for their target gender. Current regulations already permit a temporary waiver from fitness standards for medical reasons,<sup>53</sup> and transgender personnel should be allowed to use this remedial opportunity, if needed, to train to the new standard. If unsuccessful, the same consequences for failure to meet the standard would apply. No regulatory changes are needed.

*(8) Eligibility for gender-specific occupational specialties*

The Department of Defense is currently reviewing all military occupational specialties that exclude women to determine if gender-neutral standards would be appropriate. In the interim, however, and as long as gender-based restrictions limit assignment to some positions, transgender personnel who transition should be subject to assignment rules applicable to their target gender. Service members who transition from male to female would lose eligibility to serve in positions closed to women, while service members who transition from female to male should be permitted to serve in those positions if otherwise qualified. No regulatory changes are needed.

*(9) Marriage benefits*

The policy of the Department of Defense is to treat all married military personnel equally. “The Department will work to make the same benefits available to all spouses, regardless of whether they are in same-sex or opposite-sex marriages, and will recognize all marriages that are valid in the place of celebration.”<sup>54</sup> Service by transgender individuals should have no effect on this policy. The military should follow the precedent set by the Social Security Administration, which assumes that marriages remain valid for their duration even if one or both of the spouses undergoes gender transition.<sup>55</sup>

*(10) Harassment, equal opportunity, and non-discrimination*<sup>56</sup>

The US Equal Employment Opportunity Commission considers discrimination on the basis of gender identity to be a form of sex discrimination, and the same standard should apply in military settings. All personnel deserve to work in harassment-free environments in which discrimination, humiliation, and intimidation are not acceptable. Upon the removal of prohibitions against transgender service, leaders should emphasize that harassment of other service members will not be tolerated and will be swiftly and appropriately addressed, and Military Equal Opportunity offices should provide venues for transgender service members to report incidents of harassment or discrimination.<sup>57</sup> Commanders are responsible for maintaining good order and discipline, and they should establish a clear tone of respect for transgender personnel.

*(11) Early separation from the armed forces*

Transgender status, in and of itself, should not be considered as legitimate grounds for early separation. While a service member may request early separation for reasons of undue hardship, the military is not required to grant the request.<sup>58</sup> Transgender personnel who seek to separate from the armed forces should follow the same procedures as anyone else seeking premature separation.

*(12) Apprehension (arrest), detention, and incarceration*

While only an insignificant number of transgender military personnel may become the subject of apprehension and detention, a model policy should be developed in line with federal standards established under the Prison Rape Elimination Act and best practices from civilian police departments and prisons.<sup>59</sup> Military police and security personnel should be trained to ensure that detainees and inmates are treated with respect and in accordance with their gender identity to the greatest extent practical. Upon apprehension, if a bodily search is necessary, the search should be conducted under rules applicable to the gender a person identifies with and lives in, unless the

individual requests to be searched by someone of the other gender. For short-term detentions, such as custody immediately after an apprehension, safety should always be prioritized, and detaining officers should determine which facility and cell placement would provide the safest environment. For long-term incarceration, military policy should require staff to classify transgender prisoners in terms of individualized considerations, including appearance and self-identification, with the aim of minimizing risk factors that can lead to sexual victimization. Military prisons should avoid reliance on automatic, long-term isolation as the only option for safely housing transgender prisoners. Military prisons should be required to adopt best practices, such as providing transgender prisoners the option of showering at separate times, to minimize the risk of sexual assault.<sup>60</sup> As is done for all non-transgender prisoners, all medically necessary health care should be provided.

### *(13) Selective Service*

All non-transgender men who are between the ages of 18 and 25 and who live in the United States must register with the Selective Service. Individuals assigned female at birth who transition to male, however, are not required to register, while individuals assigned male at birth who transition to female must remain registered, even after the completion of gender transition. Unlike other federal agencies, in other words, the Selective Service Administration considers gender transition to be irrelevant, and only recognizes gender that was assigned at birth. Thus, in the event of a return of conscription after the lifting of the military's prohibition against transgender service, transgender women would be subject to the draft while transgender men would be exempt. Given that the purpose of Selective Service registration is to facilitate filling the military's ranks if the need arises, Selective Service should amend its rules to recognize gender transition and require registration accordingly. In the case of a draft, eligibility to serve becomes obligation to serve. As long as non-transgender men are required to register, transgender men, like all other men, should be required to fulfill this obligation.

### *(14) Supporting transgender service members*

Even with a clear recognition of their need to undergo gender transition, some transgender personnel may not necessarily be aware of how to communicate about their transition with the chain of command, how to manage issues of disclosure to colleagues, and how to anticipate issues that may arise from undergoing gender transition while on active status. The military should prepare a brief memorandum, modeled on the Australian Air Force's *Air Force Diversity Handbook: Transitioning Gender in Air Force*, to provide advice about these and other related matters to transgender personnel contemplating or undergoing transition.<sup>61</sup>

## **8) Gender transition**

Medically necessary gender transition is a variable process that individuals necessarily pursue in varied ways and at different times in their lives. Some transgender individuals will have completed their transition prior to joining the military, some will need to wait until they complete their military service, some may not transition at any point in their lives, and others will need to transition during their military careers. Thus, military policy concerning transition should be designed to promote medical readiness while allowing for flexibility in the ways that different individuals undergo gender transition. Service members who need to transition during their military careers should consult with a physician to determine the most fitting medical transition

program, ideal starting date, and expected length of time that the process will require. The medical transition program should include when the individual will be ready for social transition and begin the “real life experience” of living in the other gender full time; whether hormones and/or surgeries will be involved; and when agreed-upon medical treatments should take place. Typically, hormone therapy precedes social transition and the commencement of living in the other gender, which is generally advised before surgery. The appropriate duration of living in the other gender prior to surgery should be determined on a case-by-case basis by the service member and his or her physician. In many cases this duration will be a matter of months and, for some, may be up to a year. The date when social transition commences typically should be the date when the service member will be held to the grooming standards of the target gender, begin to use the housing and other facilities of the target gender, and have the right to change gender markers in DEERS. The physician should issue a letter confirming the service member’s medical need to undergo transition.

A reasonable period of time prior to the commencement of transition, the service member should notify their commander, who should consult with Military Equal Opportunity staff as discussed below in our section on “Command and Leadership Responsibilities.” Commanders should consult with the transitioning individual as well as the transitioning individual’s physician or mental health provider.

In light of the medical necessity of gender transition for some transgender service members, and absent a military contingency sufficiently serious as to require other service members to defer medically necessary health care, commanders should not have final say over whether and when gender transition commences. Physicians should determine, in consultation with commanders, whether the member can continue to perform current duties or should be put on limited duty or medical leave. Factors to consider should include the needs of the unit, expected time of transition, availability of appropriate housing and toileting facilities during transition, and the transitioning individual’s preferences for informing colleagues. Additionally, commanders should take into account whether the individual prefers to transfer to another unit upon the completion of the process. Temporary medical waiver from physical fitness standards should be granted, if necessary, under existing rules. With the input of the transitioning individual and the physician, the commander should then approve a gender transition plan that includes the following elements:

- *Informing colleagues:* How and when unit members will be informed, and how their questions will be addressed. Australian guidance on this point, for instance, suggests that “sufficient detail should be provided to explain the facts in an appropriate manner and at a suitable level, without going into unnecessary personal or graphic detail.” Information provided to colleagues, according to the Australian guidelines, could include that there will be changes to the transitioning person’s appearance, that there may be behavioral changes, and that the person’s personality will likely remain unchanged.<sup>62</sup>
- *Facilities and accommodations:* How the reassignment of facilities and accommodations will be managed. Typically, the date when social transition commences will also be the date when the service member will begin to use the housing and other facilities of the target gender. According to Australian military guidance, “Should the situation arise



where open communal same sex showers are the only showers available (i.e. field exercises/deployments), the transitioning person and their commander or manager should discuss and agree upon an appropriate arrangement to ensure the needs of all people are met. This situation would only apply prior to the transitioning person undergoing gender realignment surgery.”<sup>63</sup>

- *Changing official records*: When name and gender markers in the DEERS system will be changed. Typically this should take place upon the commencement of social transition.

Appendix 1 to this report contains a flowchart used by the Australian military to illustrate the administrative process of gender transition.<sup>64</sup>

## 9) Training

The more leaders and service members feel capable of doing what is necessary to adapt to the new policy, the more likely it is that it will be implemented successfully. Training was critical to the success of “don’t ask, don’t tell” (DADT) repeal and to the Veterans Health Administration’s 2011 introduction of transgender health care, and it will be an important element of transgender inclusion in the military as well. As such, we provide the following recommendations for training to help military personnel at all levels adjust to the new policy without imposing unnecessary educational requirements on members who do not need them.<sup>65</sup>

As was the case with training materials that DoD developed in preparation for DADT repeal, training should be accompanied by vignette examples of cases that reveal variation in social and medical experiences, because vignettes can provide service members with opportunities to think through and practice professional conduct in new situations they may face. In addition, training modules should include a set of frequently asked questions that may come from military personnel in varied roles as well as from their families. As it develops its own materials, the DoD should consult relevant training materials that other organizations have prepared, such as VA Boston Healthcare System’s *Patient Care Memorandum on the Management of Transgender Veteran Patients*.<sup>66</sup>

Training materials through written, video, and face-to-face methods should precede and accompany policy implementation, revealing leadership’s commitment to its swift and effective change and providing military members with the tools to comply. For example, the repeal of DADT was accompanied by training videos that included a message from Marine Corps Commandant James Amos and Sergeant Major Carlton Kent, emphasizing the commitment to the mission in the wake of the repeal. Training modules that we recommend below should address the following topics:

- Explanation of the new policy, and the rationale behind it
- Role of audience members in effective policy implementation (“What does this change mean to me?”)
- Professional conduct associated with working with transgender service members
- Definitions of transgender and other related language, including distinctions between biological sex, gender identity, and sexual orientation

- Name, pronoun use, preferred terminology (included gendered formal address – when relevant) and protocols for determining this when unknown
- Policies on discrimination and harassment
- Confidentiality and privacy requirements (both with regard to disclosure of transgender identity and related medical issues)
- Resources available for transgender service members
- Accountability processes, including sanctions to enforce compliance

(1) *Military Equal Opportunity (MEO) Officers*: The Office of Diversity Management and Equal Opportunity should design thorough training for all military and civilian MEO personnel. Training should go into depth about the new policy, and should prepare MEO personnel to advise commanders who supervise individuals undergoing gender transition. MEO personnel should be sufficiently trained to provide one-stop shopping for commanders seeking advice about any aspect of the new policy or about gender transition.

(2) *Health care personnel*: Surgeons General of each service branch should design brief training modules, informed by materials that have been developed by the VHA, for all health care personnel, including doctors, nurses, and mental health providers.<sup>67</sup> The training should consist of a short video that would explain the new policy, discuss health care needs of transgender individuals, address rules and best practices concerning confidentiality and disclosure, and reinforce the point that transition plans differ from person to person.<sup>68</sup> Health care personnel should be provided with a summary version of the World Professional Association for Transgender Health's (WPATH) *Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender Nonconforming People*, which offers extensive information on every aspect of transgender health care.<sup>69</sup>

(3) *Experts*: The Office of Diversity Management and Equal Opportunity should design a brief training module for personnel responsible for administration or policy implementation, or whose occupational specialty requires them to understand the implications of policy change. At a minimum this would include judge advocates and civilian lawyers, chaplains, recruiters, personnel specialists, and military law enforcement personnel.

(4) *Leaders*: The Office of Diversity Management and Equal Opportunity should design a brief training module for personnel in leadership positions who are responsible for maintaining standards of conduct, good order and discipline, and military effectiveness. At a minimum this includes: senior leaders (general/flag officers and Senior Executive Service), commanding officers, commissioned and warrant officers, senior enlisted advisors, senior non-commissioned officers, and civilian supervisors. Rather than going into depth, the training should instruct leaders to consult with a Military Equal Opportunity officer if an individual under their command seeks to undergo transition. Training materials for leaders should emphasize leadership principles and service core values, and the expectation that if transgender personnel serve under their command, it will be their responsibility as leaders to become knowledgeable about relevant policies and guidelines, to educate members about professional conduct, and to hold them accountable for compliance.

(5) *Service members*: A brief module explaining the new policy and outlining expectations of personal conduct should be included in already-existing diversity trainings that take place from time to time. The training module should address professionalism and core values (e.g., respect, service, integrity, and honor), definitions, administrative issues (e.g., uniform regulations and physical standards), and consequences of unprofessional conduct.

## **10) Command and leadership responsibilities**

Drawing upon policy and guidelines in use and recommended by other agencies regarding the employment of transgender personnel, this section presents command staff responsibilities that will facilitate transgender inclusion, consistent with core service values.<sup>70</sup> This section offers administrative guidance to help commanders know what to expect and what is expected of them when a transgender individual serving in their unit undergoes gender transition.

The RAND Corporation's 1993 and 2010 reports about sexual orientation and the military and the DoD's *Support Plan for Implementation* for the repeal of "don't ask, don't tell" thoroughly address the inclusion of gay, lesbian, and bisexual service members.<sup>71</sup> These reports, which include reviews of related social science research on implementation of change in complex organizations, contain lessons for the inclusion of transgender service members, as do actual experiences integrating gay, lesbian, and bisexual personnel in the US and abroad.<sup>72</sup> The success of DADT repeal was due, at least in part, to DoD's thoughtful and deliberate approach to implementation, which included an education and training framework emphasizing the importance of military professionalism.<sup>73</sup>

Scholarly analysis of transgender military service confirms the central role of leadership for policy implementation and underscores lessons learned during the integration of gay, lesbian, and bisexual personnel.<sup>74</sup> In particular, policy implementation requires leadership, and leadership, in turn, depends on clearly formulated policy.<sup>75</sup> Research suggests that in Canada, an inclusive transgender policy did not undermine readiness in the military. However, vague policy, an absence of education and training, and a failure to hold "commanders accountable for successful enforcement of the policy" did pose unnecessary and avoidable challenges to the integration of transgender personnel.<sup>76</sup> The Canadian case reaffirms some of the critical components of effective policy implementation, including professionalism and respect communicated through example, as well as the commitment of leadership and subsequent education and training.<sup>77</sup>

While having a member of one's command pursue gender transition will likely be a rare occurrence, commanders should receive basic guidance on pertinent regulations. Additionally, commanders whose units include transgender members undergoing gender transition should be required to turn to MEO officers for assistance, and MEO officers should be held responsible for developing enough in-house expertise to assist commanders, as was the case during DADT repeal. Indeed, DoD's *Support Plan for Implementation* makes clear that MEO personnel are responsible for training and for fostering environments free of harassment.

Taking into account lessons learned in the Canadian Forces, MEO officers can offer information that will assist commanders in meeting the needs of personnel undergoing gender transition

without compromising unit effectiveness.<sup>78</sup> More specifically, MEO officers should help commanders fulfill their responsibilities to:

- Know that advice from medical personnel should be treated with the same consideration as would be accorded to medical advice about any other physical or mental condition.
- Know what transgender means and whom it includes. This includes understanding key definitions related to sex and gender.
- Know policies on discrimination and harassment as they relate to gender identity.
- Use, and require others to use, respectful and preferred terminology (including preferred pronouns) when talking to and about transgender service members. If unsure of which language to use, ask directly how the person would like to be addressed.
- Know how policy changes related to transgender inclusion inform administrative regulations related to appearance (uniforms, grooming standards), physical standards, records, facilities, privacy, and confidentiality. Understand that these issues are managed in terms of gender identity, rather than biological sex.
- Respect transgender service members' right to privacy with regard to personal (including medical) information. This includes restricting questions about anatomy to persons with a professional need to know.
- Ensure that transgender service members who are transitioning are treated with dignity, respect, sensitivity, and confidentiality, as with anyone else managing a challenging life experience.<sup>79</sup>
- Proactively respond to reports of violations of these requirements.
- Work with transgender service members and other designated staff to develop a transition plan addressing the activities and logistics involved in their transition process.<sup>80</sup>
- Educate and train unit members on associated policies, their implementation, and related professional conduct; ensure they are prepared to comply; and enforce compliance regulations in place. This includes responding to questions and clarifying points of confusion.

In the second appendix of this report, we re-publish a list of “Tips For Commanders From Members Who Have Transitioned Gender,” which was developed by the Australian Air Force. Commanders who fulfill their responsibilities will demonstrate a commitment to the change in policy and ensure respect and privacy for both transgender and non-transgender personnel.

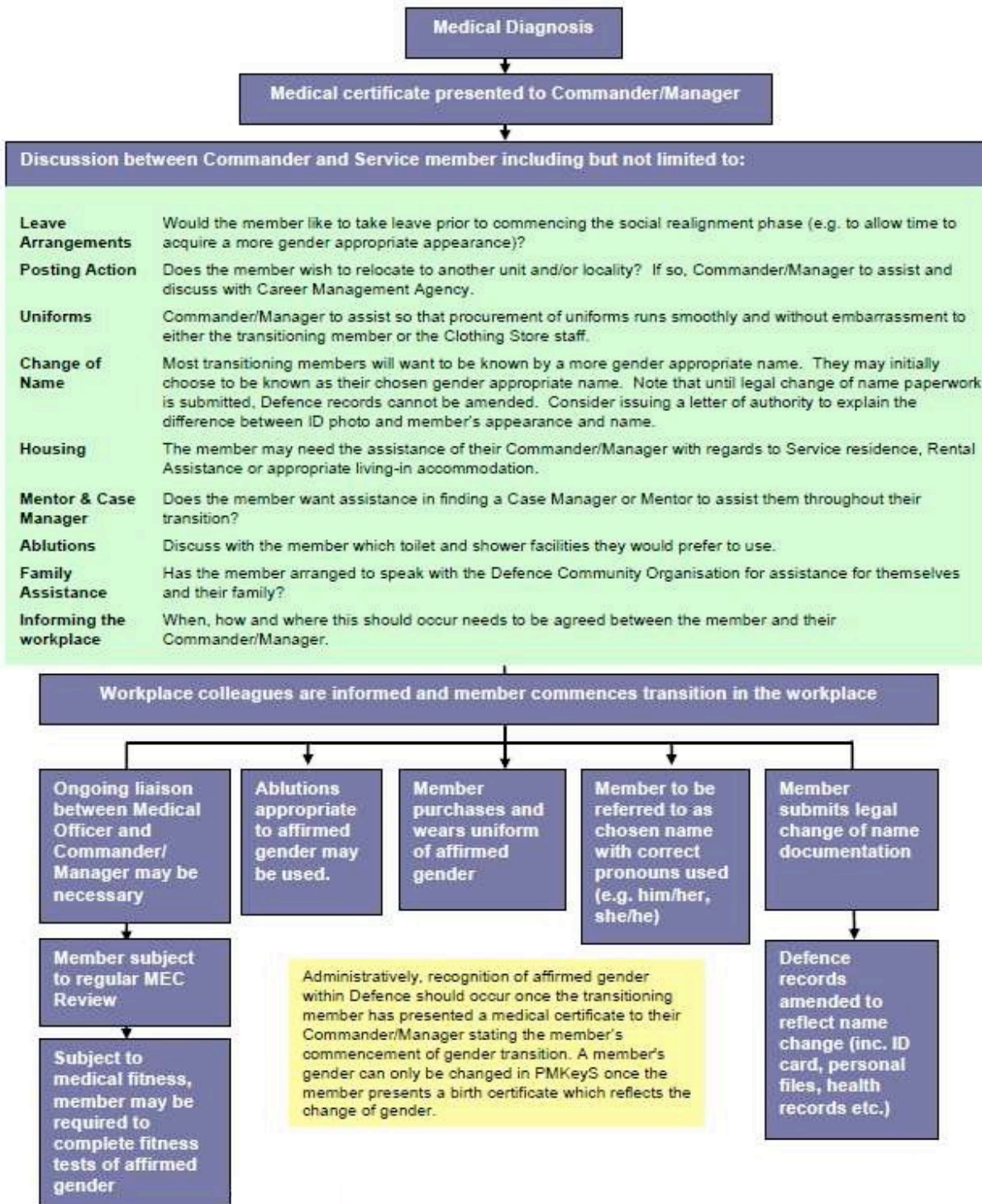
## 11) Conclusion

The decision to allow transgender personnel to serve in the military reflects the core values and principles that all military personnel should serve with honor and integrity; all persons capable of serving their country should be allowed to do so unless there is a compelling reason for prohibiting their service; and the military should not needlessly separate personnel who are willing and able to serve. As we demonstrate in this report, formulating and implementing inclusive policy is administratively feasible. Experiences of foreign military organizations that have adopted inclusive policy indicate that when the US military allows transgender personnel to

serve, commanders will be better equipped to take care of the service members under their charge, and the 15,500 transgender individuals estimated to be serving currently will have greater access to health care and be better equipped to do their jobs. While the military must prepare for the implementation of inclusive policy with deliberation and care, doing so will not be burdensome or complex. By following the recommendations outlined in this report, the US military will better live up to its ideal of reflecting the diversity of the nation it is responsible for defending.

Appendix 1 (from the Australian Department of Defence)<sup>81</sup>**ADMINISTRATION OF TRANSITIONING ADF MEMBERS**

Note that the needs of every transitioning member will differ, and not every member will pass through all the phases of transition. This diagram is intended as a guide only; every member should be managed on a case-by-case basis.





**Appendix 2 (from the Australian Air Force)<sup>82</sup>**

## **TIPS FOR COMMANDERS FROM MEMBERS WHO HAVE TRANSITIONED GENDER**

- Protect the member's privacy. Information management is very important.
- Become very familiar with Understanding Transitioning Gender in the Workplace.
- Seek guidance and advice from the Padre, Psychology section and Medical services. Attend medical case management meetings to ensure you are well informed on the issues surrounding your member.
- Seek guidance and advice from other Commanders & Managers who have experience with gender issues. AFWD or DEFGLIS may be able to put you in contact with other Commanders/managers who have been through a similar management process.
- If the member has not articulated a transition plan encourage the member to develop a transition plan to include a notification plan.
- Listen to the member's wishes with respect to disclosure to the workplace and the broader community.
- Provide the member with a Mentor who the member is comfortable with.
- Be sure you understand your member's wishes with regards to their transition
- Be open with your transitioning member. Feel free to ask them questions.
- Ensure that other members in the unit know that intolerance, bullying or any other ill-behaviour towards the member transitioning will not be tolerated.

## Endnotes

<sup>1</sup> We thank Flight Lieutenant Caroline Page (Royal Air Force), Captain Jacob Eleazer (US Army National Guard), Captain Sage Fox (US Army Reserve), Mara Keisling (National Center for Transgender Equality), Harper Jean Tobin (National Center for Transgender Equality), and Professor George R. Brown (East Tennessee State University) for helpful comments on an earlier draft of this report and Professor Jennifer Sumner (Seattle University) for outstanding research support in the preparation of this report. This report draws on policy guidance developed by the National Collegiate Athletic Association, National Center for Transgender Equality, civilian agencies of the US federal government, and foreign military forces. For other resources on this topic, see the forthcoming analysis of implementation issues by Allyson Robinson, Sue Fulton, and Brynn Tannehill of SPART\*A.

<sup>2</sup> See Gary Gates and Jody Herman (2014), *Transgender Military Service in the United States*, Los Angeles, CA: Williams Institute, retrieved at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf>.

<sup>3</sup> As reported by Joycelyn Elders, Alan M. Steinman, George R. Brown, Eli Coleman, and Thomas A. Kolditz, Medical Aspects of Transgender Military Service (forthcoming in *Armed Forces and Society*), based on a private communication with the authors of Joshua Polchar, Tim Sweijs, Philipp Marten, and Jan Galdiga (2014), *LGBT Military Personnel: A Strategic Vision for Inclusion*, The Hague, The Netherlands: The Hague Centre for Strategic Studies. The 18 countries are Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom.

<sup>4</sup> Joycelyn Elders, Alan M. Steinman, George R. Brown, Eli Coleman, and Thomas A. Kolditz (2014), *Report of the Transgender Military Service Commission*, San Francisco, CA: Palm Center, accessed at <http://www.palmcenter.org/files/Transgender%20Military%20Service%20Report.pdf>.

<sup>5</sup> Comments by former Chairman of the Joint Chiefs of Staff Mike Mullen, May 28, 2010.

<sup>6</sup> Nathaniel Frank (2010), *Gays in Foreign Militaries 2010: A Global Primer*, Santa Barbara, CA: Palm Center, 104-133, accessed at [http://www.voltairenet.org/IMG/pdf/Gays\\_in\\_Foreign\\_Militaries.pdf](http://www.voltairenet.org/IMG/pdf/Gays_in_Foreign_Militaries.pdf).

<sup>7</sup> Transgender Law Center and Basic Rights Education Fund (2013), *Healthy People. Healthy Communities*, 11.

<sup>8</sup> For example, “For many gender non-conforming people, transition as a framework has no meaning in expressing their gender – there may be no transition process at all, but rather a recognition of a gender identity that defies convention or conventional categories.” Jaime M. Grant, Lisa A. Mottet and Justin Tanis (2011), *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 26.

<sup>9</sup> In the World Professional Association for Transgender Health Standards of Care, dysphoria refers to the distress itself, not the incongruence between gender identity and assigned sex. See Eli Coleman et al. (2011), Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7, *International Journal of Transgenderism*, 13, 168. Indeed, non-transgender people can experience gender dysphoria. For example, some men who are disabled in combat, especially if their injury includes genital wounds, may feel that they are no longer men because their bodies do not conform to their concept of manliness. Similarly, a woman who opposes plastic surgery, but who must undergo mastectomy because of breast cancer, may find that she requires reconstructive breast surgery in order to resolve gender dysphoria arising from the incongruence between her body without breasts and her sense of herself as a woman.

<sup>10</sup> Coleman et al., Standards of Care, 168.

<sup>11</sup> Jack Drescher, Peggy Cohen-Kettenis, and Sam Winter (2012), Minding the Body: Situating Gender Identity Diagnoses in the ICD-11, *International Review of Psychiatry*, 24(6), 575.

<sup>12</sup> Drescher, Cohen-Kettenis, and Winter, Minding the Body, 569; 574.

<sup>13</sup> Ilan H. Meyer and Mary E. Northridge, eds. (2007), *The Health of Sexual Minorities: Public Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations*, New York, NY: Springer.

<sup>14</sup> Drescher, Cohen-Kettenis, and Winter, Minding the Body, 573.

<sup>15</sup> Department of Defense Instruction (DODI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, April 28, 2010, Incorporating Change 1, September 13, 2011.

<sup>16</sup> Paraphilia is sexual arousal to an atypical object. See American Psychiatric Association (2013), *Diagnostic and Statistical Manual* (5<sup>th</sup> ed.), Arlington, VA: American Psychiatric Publishing.

<sup>17</sup> DODI 6130.03, *Medical Standards for Appointment*, Enclosure 2, ¶ 3(b).

<sup>18</sup> Army Regulation 40-501, *Standards of Medical Fitness*, December 14, 2007, Revised August 4, 2011, ¶ 1-6(h).



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- <sup>19</sup> Despite the small number of rejected applicants, demographic data indicate that transgender Americans are approximately twice as likely to serve in the military as non-transgender individuals. If the Pentagon were to allow open service, many more transgender citizens would want to serve. See Gates and Herman, *Transgender Military Service in the United States*.
- <sup>20</sup> Department of Defense Instruction 1332.38, *Physical Disability Evaluation*, November 14, 1996, Incorporating Change 2, April 10, 2013 (cancelled August 5, 2014).
- <sup>21</sup> Department of Defense Instruction 1332.18, *Disability Evaluation System (DES)*, August 5, 2014, Appendix 1 to Enclosure 3, ¶ 2.
- <sup>22</sup> DODI 1332.38, *Physical Disability Evaluation*, Enclosure 5, ¶ 1.3.9.6 (cancelled).
- <sup>23</sup> DODI 1332.18, *Disability Evaluation System (DES)*, ¶ 3(i); Appendix 1 to Enclosure 3, ¶ 4(a)(1).
- <sup>24</sup> Army Regulation 40-501, *Standards of Medical Fitness*, § 3-35(a), (b); SECNAV Instruction 1850.4E, *Department of the Navy Disability Evaluation Manual*, April 30, 2002, Enclosure 8, § 8013(a) and Attachment (b); NAVMED P-117, *U.S. Navy Manual of the Medical Department*, January 10, 2005, Chapter 18, § 18-5(3); Air Force Instruction 36-3208, *Administrative Separation of Airmen*, July 9, 2004, Incorporating Change 7, July 2, 2013, § 5.11.9.5. The only exceptions are inconsistencies within Navy regulations. In special guidelines that apply only to nuclear field duty and submarine duty, Navy regulations state that transgender status is disqualifying only if it "interfere[s] with safety and reliability or foster[s] a perception of impairment." These sections appear to permit transgender personnel to serve openly provided their gender identity does not interfere with duty performance. NAVMED P-117, Chapter 15, §§ 15-103(4)(d)(4) (Nuclear Field Duty); 15-106(4)(k)(4) (Submarine Duty) (most recently updated April 4, 2014). These sections, however, are inconsistent with general Navy guidance that categorically disqualifies transgender individuals without consideration of duty performance, as do the policies of the other services.
- <sup>25</sup> Department of Defense Instruction 1332.14, *Enlisted Administrative Separations*, January 27, 2014.
- <sup>26</sup> DODI 1332.14, *Enlisted Administrative Separations*, Enclosure 3, ¶ 3(a)8.
- <sup>27</sup> See, for example, Lisa Leff, Transgender Troop Ban Faces Scrutiny, *Associated Press*, March 13, 2014; Ernesto Londoño, For Transgender Service Members, Honesty Can End Career, *Washington Post*, April 26, 2014. The figure of two dozen was communicated in informal conversations with the leadership of SPART\*A, an organization of currently-serving transgender service members.
- <sup>28</sup> See, for example, US Marine Corps MCIWEST-MCB CAMPEN ORDER 6000.1, *Reporting of Prescribed Medications and Medical Treatment Outside the Military Health System*, October 1, 2012.
- <sup>29</sup> TRICARE Policy Manual 6010.57-M (2008), Chapter 1, § 1.2, ¶ 1.1.29.
- <sup>30</sup> DODI 6130.03, *Medical Standards for Appointment*, Enclosure 4, §§14-15, 25(l), 29.
- <sup>31</sup> Coleman et al., *Standards of Care*.
- <sup>32</sup> Department of Health and Human Services, Departmental Appeals Board, Appellate Division, NCD 104.3, Transsexual Surgery, Docket No. A-13-87, Decision No. 2576, May 30, 2014; Office of Personnel Management, FEHB Program Carrier Letter, Gender Identity Disorder/Gender Dysphoria, Letter No. 2014-17, June 13, 2014; Progress on Transgender Rights and Health, *New York Times*, June 10, 2014. See also the Human Rights Campaign's Corporate Equality Index, accessed at <http://www.hrc.org/campaigns/corporate-equality-index> on July 30, 2014.
- <sup>33</sup> TRICARE Operations Manual 6010.56-M (2008), Chapter 8, Section 5 (referral procedures).
- <sup>34</sup> Department of Defense, Assistant Secretary of Defense for Health Affairs Memorandum, *Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications*, November 7, 2006, ¶ 4.2.3.
- <sup>35</sup> UK Ministry of Defence, *Policy for the Recruitment and Management of Transsexual Personnel in the Armed Forces*, 2009DIN01-007, London, January 2009, § 42.
- <sup>36</sup> Elders et al., *Report of the Transgender Military Service Commission*.
- <sup>37</sup> Department of Health and Human Services, Departmental Appeals Board, Appellate Division, NCD 104.3, Transsexual Surgery, Docket No. A-13-87, Decision No. 2576, May 30, 2014.
- <sup>38</sup> Department of Defense Manual 1000.13 (Vol. 1), DOD Identification (ID) Cards: ID Card Lifecycle, January 23, 2014, Enclosure 2, § 4(a); US Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification.
- <sup>39</sup> US Department of State, *Foreign Affairs Manual*, 7 FAM 1300 Appendix M (Gender Change), <http://www.state.gov/documents/organization/143160.pdf>; US Department of State, Bureau of Consular Affairs, *Gender Reassignment Applicants*, <http://travel.state.gov/content/passports/english/passports/information/gender.html>.
- <sup>40</sup> Department of Veterans Affairs, Veterans Health Administration, VHA Directive 2013-003, *Providing Health Care for Transgender and Intersex Veterans*, February 8, 2013, Attachment A, §§ 20-21.

<sup>41</sup> The military should consider setting its policy on gender marker change to update automatically with future revisions to federal procedures in the Departments of State or Veterans Affairs.

<sup>42</sup> Army Regulation 600-8-104, *Army Military Human Resource Records Management*, April 7, 2014, § 5-4; Naval Military Personnel Manual, MILPERSMAN 1000-130, *Name Change of Member*, August 28, 2013; Air Force Instruction 36-2608, *Military Personnel Records System*, August 30, 2006, Certified Current as of September 17, 2010, § 5.4.

<sup>43</sup> Department of Defense, Assistant Secretary of Defense for Health Affairs, DoD 6025.18-R, *DoD Health Information Privacy Regulation*, January 24, 2003, § C7.11.1.1.

<sup>44</sup> DoD 6025.18-R, § C8.2.1.

<sup>45</sup> UK Ministry of Defence, *Policy for the Recruitment and Management of Transsexual Personnel*, § 68.

<sup>46</sup> Department of Defense Instruction 1338.18, *Armed Forces Clothing Monetary Allowance Procedures*, January 7, 1998, § 5.1.7.

<sup>47</sup> *United States v. Modesto*, 39 M.J. 1055 (A.C.M.R. 1994); *United States v. Guerrero*, 33 M.J. 295 (C.M.A. 1991); *United States v. Davis*, 26 M.J. 445 (C.M.A. 1988).

<sup>48</sup> Articles 133, 134, Uniform Code of Military Justice, 10 U.S.C. §§ 933, 934.

<sup>49</sup> Cross-dressing that is not related to expression of gender identity, e.g. the paraphilia of transvestic fetishism, is unrelated to open service by transgender people and remains a matter of military concern.

<sup>50</sup> Department of Defense Instruction 1308.3, *DOD Physical Fitness and Body Fat Programs Procedures*, November 5, 2002, § 4.

<sup>51</sup> DODI 1308.3, § 6.1.3.1.

<sup>52</sup> Chairman, Joint Chiefs of Staff, *Women in the Service Implementation Plan*, January 9, 2013 (directing the services to validate performance standards for all occupational specialties closed to women).

<sup>53</sup> DODI 1308.3, § 6.1.3.2.

<sup>54</sup> Department of Defense, Under Secretary of Defense for Personnel and Readiness, *Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members*, August 13, 2013.

<sup>55</sup> US Social Security Administration, GN 00305.005, Determining Marital Status (March 26, 2014), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0200305005>.

<sup>56</sup> Our discussion of harassment uses verbatim and adapted language from Department of Defense, *Support Plan for Implementation: Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell,"* November 30, 2010.

<sup>57</sup> The Military Equal Opportunity program provides training about equal opportunity and enforces policies that prohibit unlawful discrimination and harassment. See Department of Defense Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, August 18, 1995, Certified Current as of November 21, 2003, Incorporating Change 1, May 7, 1997.

<sup>58</sup> DODI 1332.14, *Enlisted Administrative Separations*, Enclosure 3, § 3(a)(3).

<sup>59</sup> Prison Rape Elimination Act of 2003 (PL 108-79), codified at 42 U.S.C. §§ 15601 et. seq.

<sup>60</sup> For the increased risk of sexual assault among transgender prisoners, see, for example, American Civil Liberties Union (2005), *Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners*, Washington, DC.

<sup>61</sup> Royal Australian Air Force, *Air Force Diversity Handbook: Transitioning Gender in Air Force*, Canberra, April 2013, accessed at <http://www.defglis.com.au/resources/GenderTransitionGuide.pdf>.

<sup>62</sup> Australian Department of Defence, *Understanding Transitioning Gender in the Workplace*, Canberra, November 10, 2011, 5. Retrieved from <http://www.defglis.com.au/resources/UnderstandingTransition.pdf>.

<sup>63</sup> Australian Department of Defence, *Understanding Transitioning Gender*, 7.

<sup>64</sup> Australian Department of Defence, *Understanding Transitioning Gender*, 14.

<sup>65</sup> This section uses verbatim and adapted language from Department of Defense, *Support Plan for Implementation*.

<sup>66</sup> Department of Veterans Affairs, VA Boston Healthcare System (2011), *Management of Transgender Veteran Patients*, [http://www.boston.va.gov/services/images/LGBT\\_PATIENT\\_CARE\\_MEMO\\_TRANSGENDER\\_CARE.pdf](http://www.boston.va.gov/services/images/LGBT_PATIENT_CARE_MEMO_TRANSGENDER_CARE.pdf).

<sup>67</sup> On the VHA's provision of health care to transgender veterans, see Kristin Mattocks, Michael Kauth, Theo Sandfort, Alexis Matza, J. Cherry Sullivan, and Jillian Shipherd, *Understanding Health-Care Needs of Sexual and Gender Minority Veterans: How Targeted Research and Policy Can Improve Health*, *LGBT Health* 1, 1X, 2013.

<sup>68</sup> Coleman et al., *Standards of Care*, 166.

<sup>69</sup> Coleman et al., *Standards of Care*, 165-232.

<sup>70</sup> These points draw upon the following materials using both verbatim and adapted language: Department of Defense, *Support Plan for Implementation*; National Collegiate Athletic Association, *NCAA Inclusion of*

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*Transgender Student-Athletes*, 2011; Transgender Law Center (n.d.), *Model Transgender Employment Policy: Negotiating for Inclusive Workplaces*; US Department of the Interior, Office of the Secretary, *Personnel Bulletin No: 13-03, Transgender and Other Gender Non-Conforming Employee Policy*, 2013.

<sup>71</sup> RAND Corporation (1993), *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment*, National Defense Research Institute, Santa Monica, CA; RAND Corporation (2010), *Sexual Orientation and U.S. Military Personnel Policy: An Update of RAND's 1993 Study*, National Defense Research Institute, Santa Monica, CA.

<sup>72</sup> A. Belkin, M. Ender, N. Frank, G.R. Lucas, G. Packard, T.S. Schultz, S.M. Samuels, D.R. Segal (2012), *One year out: An assessment of DADT repeal's impact on military readiness*, Palm Center: Blueprints for Sound Public Policy. Retrieved from [http://www.palmcenter.org/files/One%20Year%20Out\\_0.pdf](http://www.palmcenter.org/files/One%20Year%20Out_0.pdf); A. Belkin & R.L. Evans (2000), *The effects of including gay and lesbian soldiers in the British Armed Forces: Appraising the evidence*, The Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara. Retrieved from [www.palmcenter.org/publications/dadt/british\\_soldier\\_motivation](http://www.palmcenter.org/publications/dadt/british_soldier_motivation); UK Ministry of Defence, *Policy for the Recruitment and Management of Transsexual Personnel*; A.F. Yerke & V. Mitchell (2013), Transgender People in the Military: Don't ask? Don't tell? Don't enlist! *Journal of Homosexuality*, 60(2-3), 436-457.

<sup>73</sup> Aaron Belkin, Morten G. Ender, Nathaniel Frank, Stacie R. Furia, George Lucas, Gary Packard, Steven M. Samuels, Tammy Schultz, and David R. Segal (2012), Readiness and DADT Repeal: Has the New Policy of Open Service Undermined the Military, *Armed Forces & Society*, 39 (4), 587-601.

<sup>74</sup> Parco, Levy, and Spears recently concluded that: "If we had to distill this study down to a singular theme, it would be the onset of a leadership dilemma for commanders with transgender members in their units. Commanders have a choice to enforce existing policy or support their troops, with the latter requiring an abdication of duty to the former." See James Parco, Dave Levy, and S. Spears (2014), Transgender Military Personnel in the Post-DADT Repeal Era: A Phenomenological Study, *Armed Forces & Society*, 17, DOI: 10.1177/0095327X14530112.

<sup>75</sup> Alan Okros and Denise Scott (2014), Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness, *Armed Forces & Society*, 1-14, DOI:10.1177/0095327X14535371. See also J. Shipherd, L. Mizock, S. Maguen, and K. Green (2012), Male-to-Female Transgender Veterans and VA Health Care Utilization, *International Journal of Sexual Health*, 24, 78-87.

<sup>76</sup> Okros and Scott, Gender Identity in the Canadian Forces, 8.

<sup>77</sup> Okros and Scott, Gender Identity in the Canadian Forces.

<sup>78</sup> Okros and Scott, Gender Identity in the Canadian Forces.

<sup>79</sup> This guidance is taken almost verbatim from US Department of the Interior, *Personnel Bulletin No: 13-03, Transgender and Other Gender Non-Conforming Employee Policy*.

<sup>80</sup> This guidance is taken almost verbatim from US Department of the Interior, *Personnel Bulletin No: 13-03, Transgender and Other Gender Non-Conforming Employee Policy*.

<sup>81</sup> Australian Department of Defence, *Understanding Transitioning Gender*, 14.

<sup>82</sup> Royal Australian Air Force, *Air Force Diversity Handbook*, 21. *Understanding Transitioning Gender in the Workplace* is an Australian military document that we reference above in note 61. AFDW is Air Force Workforce Diversity. DEFGLIS is the Defence Gay, Lesbian, Bisexual, Transgender and Intersex Information Service, an organization that supports Australian LGBTI military personnel and their families.

## Commission Co-Chairs



**MG Gale S. Pollock, USA (Ret.)**, served as Acting Surgeon General of the United States Army and Commander of the US Army Medical Command, and is the first woman and first non-physician to hold those positions. Previously she served as Deputy Surgeon General of the United States Army and 22nd Chief of the Army Nurse Corps. Other assignments in her 36-year military career included serving as Commanding General, Tripler Army Medical Center, Pacific Regional Medical Command; Special Assistant to the Surgeon General for Information Management and Health Policy; Commander, Martin Army Community Hospital, Fort Benning, GA; Commander, U.S. Army Medical Department Activity, Fort Drum, New York; and Staff Officer, Strategic Initiatives Command Group for the Army Surgeon General.



**Shannon Minter, JD**, is Legal Director of the National Center for Lesbian Rights, one of the nation's leading advocacy organizations for lesbian, gay, bisexual, and transgender people. A graduate of Cornell University Law School, Minter has guided NCLR's litigation for over 10 years, and has been lead counsel in dozens of groundbreaking legal victories, including the landmark California marriage equality case which held that same-sex couples have the fundamental right to marry. In 2009, he was named a California Lawyer of the Year by California Lawyer.

## Commission Members



**BG Clara Adams-Ender, USA (Ret.)**, was Chief of the United States Army Nurse Corps from September 1987 to August 1991, and is the first woman to receive her master's degree in military arts and sciences from the US Army Command and General Staff College and the first African-American nurse corps officer to graduate from the US Army War College. In 1991, General Adams-Ender was selected to be Commanding General at Fort Belvoir, Virginia, and served in this capacity as well as that of Deputy Commanding General of the US Military District of Washington until her retirement in 1993. In 2013, she was recognized as a Living Legend by the American Academy of Nursing.



**Professor Kylar W. Broadus, JD**, is Senior Policy Counsel of the Trans Civil Rights Project, National Gay and Lesbian Task Force and founder of the Trans People of Color Coalition, the only national social justice organization promoting the interests of transgender people of color. He served as Professor of Business Law at Lincoln University and is on the board of the National Black Justice Coalition, a national black LGBT civil rights organization based in Washington, D.C. From 2007 to 2010, he served as board chair of NBJC. Broadus was the first transgender American to testify before the United States Senate and was named to the Out 100 by Out Magazine in 2013.



**BG Thomas A. Kolditz, PhD, USA (Ret.),** is Professor in the Practice of Leadership and Management and Director of the Leadership Development Program at Yale University's School of Management, and Professor Emeritus at the US Military Academy at West Point, where he was head of the Department of Behavioral Sciences and Leadership before joining Yale's faculty. His 34-year military career included 26 years of command and leadership experience. General Kolditz is author of *In Extremis Leadership: Leading As If Your Life Depended On It*. He is a Fellow of the American Psychological Association and a member of the Academy of Management.



**Captain Lory Manning, USN (Ret.),** is a Senior Fellow at SWAN, the Servicewomen's Action Network, and a Senior Fellow at the Women's Research & Education Institute, where she ran the Women in the Military Project for a number of years. She served for more than 25 years in the US Navy, and commanded the Naval Computer and Telecommunications Station, Diego Garcia, with a mixed-gender crew of over 350 people. During her final tour of active duty, she served as Deputy to the Assistant Chief of Naval Personnel for Personal Readiness and Family Support, where her responsibilities included oversight, development, and evaluation of the Navy's physical fitness standards.



**Professor Diane H. Mazur, JD,** is Professor of Law Emeritus at the University of Florida and former Bigelow Fellow at the University of Chicago Law School. She serves as adviser to the National Institute of Military Justice, Senior Editor for the *Journal of National Security Law and Policy* and Legal Co-Director of the Palm Center. In 2010, she published *A More Perfect Military: How the Constitution Can Make Our Military Stronger* with Oxford University Press. Previously, Professor Mazur served as an aircraft and munitions maintenance officer in the US Air Force.



**Paula M. Neira, RN, CEN, Esq. (LT, USN/USNR 1985-1991),** graduated with distinction from the United States Naval Academy in 1985. A qualified Surface Warfare Officer, she served at sea and ashore including mine warfare combat during Operation Desert Storm. After leaving the Navy, she became a registered nurse, certified in emergency nursing and specializing in adult emergency and trauma care. She is also an attorney and member of the Maryland bar. For more than a decade, Neira has served as one of the nation's leading experts on transgender military service.



**Dr. Tammy S. Schultz** is Director of the National Security and Joint Warfare Program and Professor of Strategic Studies at the U.S. Marine Corps War College, and adjunct professor at Georgetown University's Security Studies Program. In 2010, she won the Dr. Elihu Rose Award for Teaching Excellence at Marine Corps University. Previously, she was a Fellow at the Center for a New American Security, Research Fellow and Director of Research and Policy at the U.S. Army's Peacekeeping and Stability Operations Institute, and Brookings Institution Research Fellow. She is a principal in the Truman National Security Project and a member of the Council on Foreign Relations.