Center for Military Readiness — Policy Analysis —

February 2023

Biden Pentagon Quietly Expands Woke Transgender Policies in the Military

On Inauguration Day 2021, President Joe Biden signed Executive Order 13988 prohibiting discrimination based on gender identity or sexual orientation. Executive Order 14004, signed five days later, specifically imposed those policies on the **Department of Defense**. ¹

An amendment to the National Defense Authorization Act (NDAA) for 2023, which would have added "gender identity" to other non-discrimination factors, was proposed but withdrawn. Instead, on December 20, 2022, the **Biden Administration** administratively imposed new mandates regarding transgenders in the military without legislative debate, extending directives issued on April 30, 2021. ²

To evaluate the Biden Administration's policy regarding military personnel who identify as transgender, it is useful to compare the recently revised **DoD Instruction 1300.28 – Inservice Transition for Transgender** Service Members, with the same document, DoDI 1300.28, released when the Obama Administration revoked previous Defense Department policies regarding transgenders in the military in June 2016.

The Center for Military Readiness has identified at least six significant differences in the most recent version of DoDI 1300.28 compared to the 2016 policy. Without public debate, the most recent DoD Instruction:

- 1. Changes official DoD vocabulary to reflect transgender ideology;
- 2. Specifically involves the **military service academies** and **ROTC** (contract) programs:
- 3. Holds commanders directly responsible for all alleged "biases against transgender individuals;"
- 4. Allows **cross-dressing** and other "transitioning" behaviors **on-base** as well as off-base;
- 5. Allows "de-transition" procedures if treatments do not resolve gender dysphoria; and
- 6. Restricts collection and disclosure of data on "incidents of harmful behaviors" involving sexual **orientation** and **transgender** persons, even for legislative purposes.

These mandates are prime examples of woke-ism in the military, defined as policies that impose progressive ideology and take them to extremes with enforced compliance, even if it hurts the institution.

Associated Implementation Manuals and Tiered Training programs released in August 2021 are essentially the same as Obama-era policies that CMR analyzed in July 2017. ⁴ Revisions made by the Biden Administration in December 2022, however, extended those policies to new extremes that reflect radical transgender ideology.

The main elements of former and current Biden military transgender policies are analyzed below, with emphasis added throughout:

1. New Words Have Woke Meanings

Definitions of key terms in the Glossary of DoDI 1300.28 affirm once again that the Department of Defense is operating on woke pseudo-science. "Transition," for example, is defined as a "Period of time when individuals

CMR Policy Analysis Page 1 of 8 change from the gender role associated with their sex assigned at birth to a different gender role."

This premise fails to explain who or what is responsible for the "assigning" of sex at birth. Transgender ideology denies science, which teaches that biological sex is determined by human **DNA**, which exists in every cell of the body, even before birth.

The December 2022 version of DoDI 1300.28 also uses the phrase "self-identified gender," replacing "preferred gender" throughout. The nuance suggests that if a person "self-identifies" as a person of the opposite sex, they must be treated as such, even though changes in appearance cannot change biological sex.

The DoD Instruction rests on the false premise that a different "gender role," if recognized by a bureaucratic change in a person's "gender marker," is the same as or equivalent to a change in biological sex. Therefore, a man claiming to be a woman must be treated as a woman, and vice versa.

All personnel, including commanders, doctors and nurses, chaplains, and military men and women at all levels, must comply with this ideology or suffer career penalties if they don't. 5

The DoDI also directs commanders to: "c. Establish a Service Central Coordination Cell (SCCC) to provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military and to assist commanders in the execution of DoD, Military Department, and Service policies and procedures."

The SCCCs, referenced six times in the DoDI, are described as "go-to" authorities who answer all commanders' questions and guide decisions about transgender policies. 6 These include matters of personal privacy and medical decisions, even though SCCC "experts" have no responsibility for military operations and no obligation to put the needs of the patient first.

Patients who are confused about gender identity deserve compassionate counseling and competent medical care that provides full information about serious risks and irreversible consequences of "gender affirming" treatments that do not change biological sex.

In the military, however, persons who suffer from gender dysphoria are denied the opportunity to obtain an independent "second opinion" on major, life-changing medical decisions, in their own interest. A self-diagnosis of gender dysphoria permits only one course of treatment, moving toward "transition."

Commanders are required to consult with military health care providers if service members request adjustments in medical treatments, even after their gender marker is changed in the Defense Enrollment Eligibility Reporting System, known as DEERS. 8 These responsibilities divert time and attention from operational concerns and readiness to deploy. 9

2. Military Service Academies and ROTC Programs

Excepting an Army training vignette used in August 2021 and limited actions at the Air Force Academy, this appears to be the first time that DoD Instruction 1300.28 specifically extends transgender policies to cadets under contract in the Reserve Officer Training Corps (ROTC), and cadets/midshipmen at the Military Service Academies. 10

This provision opens the door to a wide range of issues and problems that could distract from what officer training is for. To date there have been no reports of male cadets or midshipmen being assigned to live in

CMR Policy Analysis Page 2 of 8

female living quarters, or signing up to compete on women's athletic teams, but the administration's extension of transgender policies are likely to create conflicts like those occurring in civilian settings.

Several male athletes claiming to be women, for example, have won championships and scholarships intended for female athletes. 11 Similar controversies at the military service academies would not help to boost application rates at the military service academies, which declined in 2022. 12

3. Commanders Responsible for All Alleged "Biases Against Transgender Individuals" 13

With the approval of a military doctor, transition can be deemed "complete" without surgical removal or alteration of healthy body parts. A person with male sex organs, therefore, can reach the point where he satisfies reality-denying criteria for changing his gender marker to "female" in DEERS.

Several times for emphasis, the DoDI states variations of: "For facilities subject to regulation by the military, service members will use those berthing, bathroom, and shower facilities associated with their gender marker in DEERS." 14

These doctrinaire mandates violate minimal expectations of personal privacy in close quarters, and deny realities of human emotions and behavior, including sexual attractions and the desire for personal modesty between men and women. 15 Females attempting to transition to male status also will have access to male private facilities and the responsibility to meet male physical standards.

The DoD Instruction does not mention or call for protection of rights of religious liberty for chaplains and people of faith who object to transgender ideology on moral grounds. Nor does the directive provide any options for doctors, nurses, and other medical personnel who do not want to participate in transgender treatments that violate personal convictions or medical ethics.

As in 2016, Army transgender training programs use PowerPoint presentation "scenarios" to promote discussion of reality-denying situations that put both commanders and military personnel in impossible situations. Army Tier One Training Vignette 6, for example, describes a "female to male" soldier who becomes pregnant and informs the commander of the pregnancy. 16

Vignette 8 centers on "privacy concerns" and "discomfort" caused when a soldier transitioned from male to female, as indicated in DEERS, has not had "sex-reassignment surgery." The soldier wants to use femaledesignated open-bay showers, but minimal modifications such as shower curtains "cannot isolate or stigmatize the transgender soldier." 17

Training Vignette 12 describes the disruption caused when a "transgender female" is assigned to the room of a female soldier who requests re-assignment elsewhere, and others complain about tension between the two. 18 The responsibility to resolve the situation, perhaps with "alternate living arrangements," falls on the commander.

This is a lose-lose situation, since both the female soldier and the commander, who is advised to contact the SCCC for assistance, are likely to be accused of "biases against transgender individuals."

Indeed, all commanders will be held accountable if anyone in their chain of command uses the "wrong" pronouns or makes any statement that might be construed as "bias against transgender individuals." Why should a tank company commander at Fort Hood have to concentrate on transgender pronoun etiquette instead

CMR Policy Analysis Page 3 of 8 of training his company to find, fight, and destroy an enemy force? 19

4. Cross-dressing and Other "Real Life Experience" (RLE) Behaviors Allowed On-Base

Apparently for the first time, the December 2022 revision in DoDI 1300.28 specifically authorizes on-duty, onbase "real life experience" (RLE) options for persons who are preparing to transition.

During RLE, "the individual begins living socially in the gender role consistent with their self-identified gender. . . RLE generally encompasses dressing in the new gender, as well as using self-identified gender berthing, bathroom, and shower facilities." 20

The new policy, allowing RLE on-base and on-duty, stands in sharp contrast with the same passage in the 2016 version of DoDI 1330.28, which clearly stated that RLE would occur while off-duty and away from the base, often for weeks or months at a time. 21

Possibilities for interpersonal tension and disruption under these policies are endless, even if nothing is reported publicly, due to expanded non-disclosure rules. (See #6 below)

Whether intended or not, this significant change also could increase cross-dressing performers (drag queens, who are not necessarily transgender), performing on military bases. ²² Enthusiastic promotions of **LGBT Pride Month** celebrations in June have expanded to nearly year-round sexualized events, including hyper-sexual drag queens performing "family friendly" story hours for the children of military parents. ²³

Events such as this on military bases, which feature exaggerated make-up, wigs, and suggestive clothing and dancing, stereotype women with a form of "cultural appropriation" that is unacceptable, especially in the presence of children. Policies that sexualize the military undermine the institution, which should be encouraging discipline, not indiscipline, both on-base and off-base, 24/7.

5. "De-transition" Procedures Approved if Treatments Do Not "Resolve Gender Dysphoria

Apparently for the first time, the DoD has acknowledged that procedures "affirming" a person's gender that differs from sex at birth are not always successful. As stated in DoDI 1300.8: "e. A Service member who has completed a gender transition but has not resolved the gender dysphoria should consult with their military medical provider and commander. If a return to their previous gender is medically required, the Service member is to use the procedures outlined in Paragraph 3.4. of this issuance." 24

This means that defense dollars will be used for even more expensive treatments and surgeries in attempts to fix previous misjudgments of patients' gender identities. There are no known cost estimates, but in February 2018 the panel of experts established by then-Secretary of Defense James Mattis during the Trump **Administration** reported data collected since implementation of the Obama transgender policy.

The data showed that from October 1, 2015, to October 3, 2017, 994 active-duty Service members diagnosed with gender dysphoria accounted for 30,000 mental health visits. In addition, medical costs for service members with gender dysphoria, usually involving hormone treatments, increased nearly three times — or 300%.

More importantly, service members with gender dysphoria were found to be eight times more likely to attempt suicide than service members as a whole (12% vs. 1.5%) 25.

CMR Policy Analysis Page 4 of 8 Costs will be even greater if activists invited to consult with Pentagon officials succeed in their campaigns to expand transgender treatments and surgeries to minor children of military parents, and to military veterans, for life. 26

This could be a bonanza for practitioners of highly questionable medical procedures once the military medical establishment approves their work as "civilian health care professionals." Non-military practitioners could include Planned Parenthood, which has become prominent in the lucrative transgender treatment field. 27

Even more than in 2016, the current DoDI invites persons claiming to be "stable" for 18 months in their new gender to sign up for induction. Some expect that major transition costs, including expensive hormone treatments, will be paid for by the government for life. 28 None of these expenditures will improve military readiness or morale in the All-Volunteer Force.

6. Restrictions on Disclosure of Data Involving Sexual Orientation and Transgender Persons

As former Secretary of Defense James Mattis noted in congressional testimony in April 2018, the Obama Administration's policies imposed by his predecessor, Ashton Carter, precluded reporting of any problems with transgender policies up the chain of command. 29

Secretary Mattis' panel of experts nevertheless conducted an extensive study of numerous problems resulting from Obama-era policies, which supported the change in policy that President Trump approved in March 2018. The Trump policy was not a ban on transgenders; it was a nuanced policy affecting persons diagnosed with gender dysphoria. 30

There is no way to predict **Supreme Court** decisions before they are announced, but the **U.S. Court of** Appeals for the District of Columbia Circuit explained in exhaustive detail why lower courts that had enjoined the Trump-Mattis transgender policy were wrong. ³¹ Despite the clear and cogent reasoning of the D.C. Circuit, the Biden Administration revoked the Trump-Mattis policy with Executive Order 14004 on January 25, 2021.

The DoDI 1330.28 issued in April 2021 included a section limiting research and release of data related to transgender policies, stating, "d. Gender identity is a personal and private matter. DoD Components, including the Military Departments and Services, require written approval from the USD(P&R) to collect transgender and transgender related data or publicly release such data." (p. 17)

The latest version added three new clauses that included references to several additional DoD Instructions. One of these, **DoD Instruction 6400.11**, was issued on the same day, December 20, 2022. 32

The complicated language of DoDI 6400.11 appears to set up barriers to deter questions and the release of information about specifically named "sexual orientation," "gender identity," "transgender-related information," and "incidents of harmful behaviors," without permission of the Under Secretary of Defense for Personnel & Readiness.

In particular, "2. A certificate of confidentiality prohibits disclosing or providing information created or compiled for purposes of research in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding."

The Pentagon claims that such information is "personal and private," but the process of "transition," including on-base, on-duty real life experience as a person of the opposite sex, is anything but private.

CMR Policy Analysis Page 5 of 8

The real purpose seems to be denial of information, shielding from public view non-personal data reflecting the results of public policies regarding sexual minorities and "harmful behaviors" associated with those policies. Why?

The DoDI 6400.11 Glossary defines "harmful behaviors" as: "Self-directed harm and prohibited abuse and harm, including sexual assault, harassment, retaliation, suicide, domestic abuse, and child abuse." Use of the word "including" suggests that anything someone decides is either "self-directed harm" or "prohibited abuse and harm," such as "mis-gendering" someone, could be included in the definition.

This suggests that politicized "chief diversity officers" (CDOs) which already exist in the Pentagon and the various services, will decide what harmful behaviors are, collect data on incidents, and inform superiors of the "harmful" command climate that such behaviors have created.

Absent public disclosure, this environment could create a new or expanded bureaucracy inside the larger Pentagon bureaucracy, which will be the central clearinghouse for all sorts of surveys and data collection on "harmful behaviors" — all without congressional oversight or disclosure of problems to the American people. The situation epitomizes woke-ism in today's military. Pentagon officials are imposing extreme policies enforced with coercion, with the option to withhold information on the costs and consequences of their own actions.

Challenge to Congress

The Heritage Foundation recently conducted a high-tech, independent survey on politicalization of the military. The survey found that among active-duty respondents, 80% named the "changing of policy to allow unrestricted service by transgender individuals" as a reason for decreased trust in the military. 33

Sixty-eight percent of active-duty personnel said they have witnessed a "growing politicization" of the military, and 68% said that politicization would impact their decision to encourage their children to join the armed forces.

During the worrisome recruiting crisis of 2022, several senators and members of Congress offered amendments to the annual defense bill challenging woke policies, including transgender "sex reassignment" surgeries and other controversial, often irreversible medical treatments. Amendments that failed with narrow margins should be offered again.

Another attempt to file a "resolution of inquiry" for information on the costs and consequences of Biden's transgender policies, updating Obama-era data, would help in assessing results of the current social experiment.

And in the interests of common sense, members of Congress should consider mandating that all Defense Department agencies return to recognizing scientific realities of biological sex, not "self-identified gender." These should include, for example, the Defense Enrollment Eligibility Reporting System (DEERS), the Service Central Coordination Cells (SCCCs), Department of Defense Education Activity (DODEA) schools, war colleges, military service academies, and ROTC programs.

Servicemen and women deserve reality-based health care programs that protect the rights of doctors and nurses whose medical ethics and religious convictions differ from transgender ideology. Women also deserve separate-sex athletic teams and reasonable privacy in female-only living facilities.

CMR Policy Analysis Page 6 of 8 Americans are awake and aware of woke-ism in the military, even if officials try to deny, dissemble, or withhold information on results of their policies. Men and women who volunteer to serve should not be required to participate in woke social experiments that harm them and our military, the only one we have.

Endnotes

CMR Policy Analysis Page 7 of 8

¹ Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Jan. 20, 2021, and Executive Order 14004, Enabling All Qualified Americans to Serve Their Country in Uniform, Jan. 25, 2021.

² DoDI 1300.28, "In-Service Transition for Transgender Service Members," April 30, 2021; Incorporating Change 1 on December 20, 2022 (whs.mil)

³ DoD-Instruction-1300.28.pdf "In-Service Transition for Transgender Service Members, June 30, 2016. This directive was repealed by the Trump Administration and replaced with a nuanced policy centering on gender dysphoria. See CMR Policy Analysis: Trump/Mattis Transgender Policy Promotes Military Readiness (4-page March 2019 update) The Biden Defense Department reinstated Obama-era policies on April 30, 2021.

⁴ CMR Special Report: Department of Defense & Military Services Should Revoke Problematic Transgender Policy Directives and <u>Instructions</u>, July 2017, 27 pages. Also see <u>Executive Summary</u>.

⁵ DoDI 1300.28, Dec. 20, 2022, p. 5: "2.5. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, UNITED STATES COAST GUARD (USCG). The Secretaries of the Military Departments and the Commandant, USCG [must]: a. Adhere to all provisions of this issuance, [and] b. Administer their respective programs, and update existing Military Department regulations, policies, and guidance, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance."

⁶ *Ibid*, p. 5, p. 10, 12, 16, and Glossary, p. 21.

⁷ James Lynch, Daily Caller: Famous Transgender Navy SEAL Chris Beck Announces Detransition, Calls For Treatments On Kids To Stop, Dec. 1, 2022.

⁸ DoDI 1300.28, Dec. 20, 2022, Glossary, p. 19: A "gender marker" is a data element in DEERS that identifies a service member's gender. Gender transition is considered "complete" when "A service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the self-identified gender." Revised "real life experience" (RLE) policies and a statement on page 7, however, appear contradictory: "These policies and procedures are applicable, in whole or in relevant part, to Service members who intend to begin transition, are beginning transition, who already may have started transition, and who have completed gender transition and are stable in their self-identified gender."

⁹ Ibid, p. 8: "A military medical provider may determine certain medical care and treatment (e.g., cross-sex hormone therapy) to be medically necessary even after a Service member's gender marker is changed in DEERS. Also p. 12, "(4) At any time before the change of the Service member's gender marker in DEERS, the commander, in consultation with the Service member and a military health care provider, may modify a previously approved approach to, or an ETP [exception to policy] associated with, gender transition."

¹⁰ Ibid, p. 3: "c. For the purpose of this issuance, the term "Service member" includes cadets and midshipmen in a contracted Reserve Officer Training Corps (ROTC) status and those at the Military Service Academies. This issuance does not apply to individuals participating in ROTC programs in a non-contracted volunteer status. Contracted ROTC midshipmen and cadets have limited eligibility for medical benefits and care through a military medical treatment facility (MTF), delineated in DoD Instruction (DoDI) 1215.08.

¹¹ CNN: Swimmer Lia Thomas becomes first transgender athlete to win a NCAA D-I title, Mar. 17, 2022, and Washington Examiner, Female high school athletes fear for their future with inclusion of transgender women in sports Jan. 30, 2023.

¹² Thomas Novelly, Military.com: Applications to Service Academies Plummet Amid Recruitment and Pandemic Woes, Aug. 19, 2022.

¹³ DoDI 1330.28, Dec. 20, 2022, p. 6: "f. Commanders will assess expected impacts on mission and readiness after consideration of the advice of military medical providers and will address such impacts in accordance with this issuance. In applying the tools described in this issuance, a commander will not accommodate biases against transgender individuals."

¹⁴ *Ibid*, p. 6, p. 8, p. 11, and Glossary, pp. 19 and 21.

- ¹⁵ To change his or her DEERS gender marker, a service member must present a certified birth certificate showing the self-identified gender, a passport with the self-identified gender, or a court order. Until that is done, the service member is held to the grooming, berthing, and physical fitness standards of his or her birth gender. These expectations, however, seem inconsistent with allowances for individuals to experience pre-DEERS-change "real life experience, living as a person of the opposite sex on-base as well as offbase. (See #4 above, and related footnotes)
- ¹⁶ Tier I Army Transgender Training Slides, Annex 1, Aug. 2021, p. 33 and Tier II Army Transgender Training Slides, Annex 1, Aug. 2021; also see the Wall Street Journal Editorial Board, The U.S. Government's Woke Training, Dec. 30, 2022, and Micaela Burrow, Daily Caller, US Army Explains How To Respond When A Soldier Questions Showering With 'A Female Who Has Male Genitalia,', Jan. 9, 2023.
- ¹⁷ *Ibid*, Army Tier One Slides, p. 36.
- ¹⁸ *Ibid*, Army Tier One Slides, p. 40.
- ¹⁹ Daily Signal: Police Officer Resigns After Backlash Over Traditional Marriage Views, Jan. 25, 2023. A Georgia police officer was forced to resign because he posted support for traditional marriage on social media.
- ²⁰ DoDI 1330.28, Dec. 2020, p. 8: "d. Living in Self-Identified Gender. Each Military Department and Service may issue policy regarding the application of real-life experience (RLE), including RLE in an on-duty status before gender marker change in DERS." Also see Glossary, pp. 20-21.
- ²¹ DoDI 1330.28, June 30, 2016, p. 8: "d. . . . Although in civilian life this phase is generally categorized by living and working fulltime in the preferred gender, consistent application of military standards will normally require that RLE occur in an off-duty status and away from the Service member's place of duty, prior to the change of a gender marker in DEERS."
- ²² Navy Times, Sailor by day, performer by night meet the Navy's drag queen, 'Harpy Daniels' Aug. 30, 2018.
- ²³ Elaine Donnelly, *The Federalist*: With Drag Shows and 'Gender Fluid' Internships, It's No Wonder Military Readiness is Down, Oct. 21, 2022, and Newsweek: U.S. Military Defends Drag Show at Largest Training Center as 'Essential to Morale'.
- ²⁴ DoD Instruction 1300.28, Dec. 20, 2022, pp. 12-13.
- ²⁵ Findings are summarized here: <u>CMR Fact Sheet: The Mattis/Department of Defense Report</u>, 2018.
- ²⁶ DoD: Readout of Deputy Secretary of Defense Dr. Kathleen Hicks' Meeting With LGBTO+ Advocacy Groups > U.S. Department of Defense News Release, Aug. 9, 2022.
- ²⁷ Nicole Russell, *The Daily Signal*, Planned Parenthood Plays Big Role in Transgender Revolution, Feb. 18, 2021.
- ²⁸ DoD Instruction 1300.28, Dec. 20, 2022, p. 14, "3.6. CONSIDERATIONS ASSOCIATED WITH THE FIRST TERM OF SERVICE. a. A blanket prohibition on gender transition during a Service member's first term of service is not permissible. However, the All-Volunteer Force readiness model may be taken into consideration by a commander in evaluating a request for medical care or treatment or an ETP associated with gender transition during a Service member's first term of service."
- ²⁹ Travis Tritten, Washington Examiner, Jim Mattis, Kristen Gillibrand Butt Heads Over Transgender Policy, April 26, 2018. Excerpt: "The reason is that under the Carter policy the reporting is opaque," said Mattis. "We cannot report that problems emanated from a transgender. So, the questions you've asked the service chiefs and the Chairman [of the Joint Chiefs of Staff] prohibited that very information from coming up because it is private information."
- ³⁰ CMR: The Trump/Mattis Transgender Policy What Are the Facts? Apr. 7, 2019.
- ³¹ Doe 2, et al., v. Shanahan, 917 F. 3d 694 (D.C. Cir. 2019).
- ³² DoDI 6400.11, Dec. 20, 2022, referenced on page 17 at c. (1) thru (4) of DoDI 1330.28. See pp. 4 and 38-40.
- ³³ The Heritage Foundation: Poll: Nearly Seven in 10 Active Service Members Have Witnessed Politicization in U.S. Military, Jan. 30, 2023, and Breccan F. Thies, Breitbart.com, 68 Percent of Active Duty Military Believe Pentagon is Politicized, Jan. 12, 2023.
- ³⁴ Ben Wolfgang, Washington Times, House GOP Falls Short in Effort to Get Pentagon Information on 'Woke' Policies, Dec. 13, 2022.

* * * *

The Center for Military Readiness (CMR) is an independent, non-partisan public policy organization that reports on and analyzes military/social issues. More information is available at www.cmrlink.org.

CMR Policy Analysis Page 8 of 8