

# Forum

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**SUNDAY**

MARCH 26, 2006

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## Gays in military making gains

By **Byran Bender**  
The Boston Globe

**W**ASHINGTON — The U.S. military allowed at least 36 gay soldiers last year to stay in uniform, despite efforts by their commanders or fellow soldiers to have them discharged under the “don’t ask, don’t tell” policy, according to a review of hundreds of cases in which soldiers sought to remain in uniform without denying their homosexuality.

The number of soldiers allowed to stay despite being identified as gay — 36 of 120 contested cases — was substantially higher than in 2004, when 22 of 125 soldiers prevailed, and three times as many as in 2003, when only 12 of 107 were able to persuade their commanders or a military review board to keep them in uniform, the data show.

The Pentagon declined to explain why more gay soldiers were being retained, but the lawyers who represent soldiers challenging cases under the policy say the Pentagon seems to have softened its stance on homosexuality.

The lawyers attributed the change both to a growing acceptance of gays within the ranks and to the military’s need to keep more highly trained soldiers in the Iraq War.

“As the country has changed, so have the people in the military,” said Sharra Greer, director of law and policy at the non-profit Service Members’ Legal Defense Network, which represents gay soldiers challenging their dismissals. “More commanders are not enforcing [don’t ask, don’t tell] strictly.”

In several of the cases over the past year, service members who were found to have listed their homosexuality on Internet dating sites were reprimanded but returned to duty, according

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to the case files. In other cases, senior officers were swayed by a service member's strong performance reviews.

"The equations for commands have shifted," Greer said. "They are under enormous pressure to retain people. They do a cost-benefit analysis and we are hearing the same thing: 'I really don't care if you are gay, and I am not going to kick you out.'"

Recent studies have shown that many soldiers dismissed in past years under "don't ask, don't tell" tended to be in highly trained specialties now in demand, including linguists and medical technicians.

Meanwhile, observers have noted that the Defense Department has recently softened its position on the "don't ask, don't tell" policy.

For many years the Pentagon's public position was that the policy was crucial to maintaining "good order and discipline" and that having gay soldiers serve openly in the ranks would harm unit cohesion.

But recently, the military has stopped defending the policy, and merely notes that it is the law.

Last fall, Bill Carr, deputy undersecretary of Defense for

military personnel policy, described the policy to the armed forces' press service as "a choice the nation has made about its military."

A Pentagon spokeswoman, Lt. Colonel Ellen Krenke, asked why the policy is necessary, responded by e-mail message Thursday, writing: "The Department of Defense policy on homosexual conduct in the military implements a federal law enacted in 1993 after extensive hearings and debate. The law would need to be changed to affect the department's policy. We are complying with this statute."

Overall, the number of soldiers facing discharge under the policy has dropped steadily — from 1,273 in 2001 to 906 in 2002 and 787 in 2003, the most recent year available.

Most soldiers do not try to contest their dismissal, except to seek an honorable discharge. In total, since the advent of "don't ask, don't tell" in 1994, 9,682 members of the military have been discharged for homosexuality, according to the most recent statistics.

The Pentagon says it cannot explain the downward trend in cases.

"Since total discharge numbers are a compilation of individual cases throughout the

Department of Defense, we cannot definitively say what has caused the decrease," Krenke said.

Under the policy, any service member can initiate proceedings against any other soldier, based on evidence that the soldier is gay. The relevant command then opens an inquiry. The standard for evidence is low, according to legal specialists and military regulations, and cases can turn on one soldier's testimony.

The service members being targeted can challenge the allegations before a panel of three to eight service members of equal or higher rank.

In the cases handled by the Service Members Legal Defense Network, Greer said, the soldiers did not deny their homosexuality, but rather argued that it did not affect their performance or their units' missions, and that the grounds for their removal were not sufficient.

Greer is also representing 10 service members who have been discharged since 2001 for being gay, and are suing Secretary of Defense Donald H. Rumsfeld in federal court in Boston to be reinstated. The court has yet to issue an opinion on a motion last July by the government to dismiss the case.

Rep. Martin T. Meehan, a Lowell, Mass., Democrat, has sponsored legislation to repeal "don't ask, don't tell," citing figures from the U.S. Government Accountability Office reporting that hundreds of gay soldiers who have been dismissed in recent years were trained in specialties considered crucial in the war on terrorism.

Yet the number of instances in which gay soldiers and their lawyers have persuaded commanders to drop investigations indicates that the standards for discharge are being applied less stringently, according to the data.

"During wartime the military is always desperate," said Aaron Belkin, director of the Center for Sexual Minorities in the Military and a political science professor at the University of California at Santa Barbara. "There have been a declining number of discharges when the bullets start flying."

Meanwhile, there is a growing body of evidence that attitudes have changed within the ranks. A recent study by the Naval Postgraduate School found that a majority of military personnel felt comfortable around openly gay colleagues.

"There is no doubt that the attitudes within the military have changed," said Belkin.