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Pentagon restricts evidence that can be used against gays in military

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The U.S. military moved a step closer Thursday to allowing gay men and lesbians to serve openly in the armed forces, as the Pentagon announced that it will ease enforcement of the "don't ask, don't tell" policy that has been in place for 17 years.

Defense Secretary Robert M. Gates said the military will restrict the kind of evidence that can be used against gay service members. For example, investigators will generally ignore anonymous complaints and make those who file them give statements under oath. In addition, only high-ranking officers -- the equivalent of a one-star general or admiral -- will have the authority to open inquiries or to decide whether a discharge is warranted.

Gates said the changes, which took effect immediately, will provide "a greater measure of common sense and common decency." He said the new regulations also will apply to cases currently under review, but not to those of people who already have been discharged.

Pentagon officials said they do not know how many current cases might be affected. Overall, more than 13,000 service members have been kicked out of the military since 1993, including 428 last year.

Gay rights groups welcomed the announcement, saying the policy changes will make it much harder to expel gay service members. They also said that people would be less likely to file complaints after Gates and Adm. Mike Mullen, the chairman of the Joint Chiefs of Staff, said in recent weeks that the Pentagon is preparing for the day when gays will be allowed to serve openly.

Gates and Mullen "have been very clear to folks up and down the chain of command that the focus is on ending 'don't ask, don't tell,' " said Aubrey Sarvis, executive director of the Servicemembers Legal Defense Network, which represents gays facing expulsion.

The Pentagon is moving ahead on the assumption that Congress will overturn the ban on gays serving openly, which was codified into law in 1993 after military leaders resisted attempts by President Bill Clinton to integrate gays into the armed forces. Under the law, gays are allowed to serve as long as they hide their sexual orientation and the military cannot prove they have engaged in "homosexual conduct."

Gates asked Pentagon lawyers last summer to review whether the Defense Department had the legal discretion to enforce "don't ask, don't tell" more loosely. The process stalled until President Obama urged Congress to repeal the law in his Jan. 27 State of the Union address.

Afterward, Gates asked his lawyers to reexamine the issue, and that culminated in Thursday's announcement.

Some gay rights advocates criticized the Pentagon and White House for not making the changes earlier. "It's clear this could have been done right after the president took office," said Richard Socarides, a Clinton White House official who served as an adviser on gay issues. "This is a terrific step in the right direction toward ending this policy, but in some ways it's tragic it's taken this long."

It is unclear when Congress might act. Opposition is strong from Republicans and some influential Democrats who say that the law is working well and that it would be a mistake to impose major social changes on the armed forces when the United States is fighting two wars.

Elaine Donnelly, president of the Center for Military Readiness, a group that opposes changing the law, said "don't ask, don't tell" is "important to protect recruiting, retention and readiness in the all-volunteer force." She accused Gates of trying to usurp Congress's authority by making the changes.

Gates has assigned Gen. Carter F. Ham, the commander of the U.S. Army Europe, and Jeh C. Johnson, the Pentagon's chief legal counsel, to come up with a plan by Dec. 1 for integrating gays into the armed services. The issues they will have to sort out include same-sex marriage and barracks co-habitation.

At the same time, Gates on Thursday urged Congress not to act too quickly by repealing "don't ask, don't tell" before Dec. 1, or by approving a moratorium on discharges -- something that some advocacy groups have called for. "Doing it hastily is very risky," he said.

The issue remains sensitive among the military brass. Some generals and admirals have said they are against any changes. But few have been willing to openly contradict Mullen, the nation's highest-ranking military officer, who told the Senate in February that repealing the law would be "the right thing to do."

An exception has been Lt. Gen. Benjamin R. Mixon, the commander of the U.S. Army Pacific. In a letter this month to Stars and Stripes, a newspaper that covers military affairs, he said that ending "don't ask, don't tell" would be "ill-advised." He urged service members and their families to lobby their elected officials against any changes.

That last part apparently crossed the line with Mullen, who said Thursday that if officers feel so strongly that they cannot abide by policy changes, "the answer is not advocacy. It is in fact to vote with your feet."

Asked if he thought Mixon should resign, Mullen told reporters, "That's a decision that would certainly be up to him."