

AMENDMENT TO RULES COMM PRINT 114–51

OFFERED BY MR. POCAN OF WISCONSIN

At the end of subtitle C of title V (page 131, after line 2), add the following new section:

1 **SEC. 530. REVIEW OF DISCHARGE CHARACTERIZATION OF**
2 **FORMER MEMBERS OF THE ARMED FORCES**
3 **WHO WERE DISCHARGED BY REASON OF THE**
4 **SEXUAL ORIENTATION OF THE MEMBER.**

5 (a) REVIEW REQUIRED.—In accordance with this
6 section, the appropriate discharge board—

7 (1) shall review the discharge characterization
8 of covered members at the request of the covered
9 member; and

10 (2) if such characterization is any characteriza-
11 tion except honorable, may change such character-
12 ization to honorable.

13 (b) CRITERIA.—In changing the discharge character-
14 ization of a covered member to honorable under subsection
15 (a)(2), the Secretary of Defense shall ensure that such
16 changes are carried out consistently and uniformly across
17 the military departments using the following criteria:

1 (1) The original discharge must be based on
2 Don't Ask Don't Tell or a similar policy in place
3 prior to the enactment of DADT.

4 (2) Such discharge characterization shall be so
5 changed if, with respect to the original discharge,
6 there were no aggravating circumstances, such as
7 misconduct, that would have independently led to a
8 discharge characterization that was any character-
9 ization except honorable. For purposes of this para-
10 graph, such aggravating circumstances may not in-
11 clude—

12 (A) an offense under section 925 of title
13 10, United States Code (article 125 of the Uni-
14 form Code of Military Justice), committed by a
15 covered member against a person of the same
16 sex with the consent of such person; or

17 (B) statements, consensual sexual conduct,
18 or consensual acts relating to sexual orientation
19 or identity, or the disclosure of such state-
20 ments, conduct, or acts, that were prohibited at
21 the time of discharge but after the date of such
22 discharge became permitted.

23 (3) When requesting a review, a covered mem-
24 ber, or their representative, shall be required to pro-
25 vide either—

1 (A) documents consisting of—

2 (i) a copy of the DD-214 form of the
3 member;

4 (ii) a personal affidavit of the cir-
5 cumstances surrounding the discharge; and

6 (iii) any relevant records pertaining to
7 the discharge; or

8 (B) an affidavit certifying that the mem-
9 ber, or their representative, does not have the
10 documents specified in subparagraph (A).

11 (4) If a covered member provides an affidavit
12 described in subparagraph (B) of paragraph (3)—

13 (A) the appropriate discharge board shall
14 make every effort to locate the documents speci-
15 fied in subparagraph (A) of such paragraph
16 within the records of the Department of De-
17 fense; and

18 (B) the absence of such documents may
19 not be considered a reason to deny a change of
20 the discharge characterization under subsection
21 (a)(2).

22 (c) REQUEST FOR REVIEW.—The appropriate dis-
23 charge board shall ensure the mechanism by which covered
24 members, or their representative, may request to have the

1 discharge characterization of the covered member reviewed
2 under this section is simple and straightforward.

3 (d) REVIEW.—

4 (1) IN GENERAL.—After a request has been
5 made under subsection (c), the appropriate dis-
6 charge board shall review all relevant laws, records
7 of oral testimony previously taken, service records,
8 or any other relevant information regarding the dis-
9 charge characterization of the covered member.

10 (2) ADDITIONAL MATERIALS.—If additional
11 materials are necessary for the review, the appro-
12 priate discharge board—

13 (A) may request additional information
14 from the covered member or their representa-
15 tive, in writing, and specifically detailing what
16 is being requested; and

17 (B) shall be responsible for obtaining a
18 copy of the necessary files of the covered mem-
19 ber from the member, or when applicable, from
20 the Department of Defense.

21 (e) CHANGE OF CHARACTERIZATION.—The appro-
22 priate discharge board shall change the discharge charac-
23 terization of a covered member to honorable if such change
24 is determined to be appropriate after a review is conducted
25 under subsection (d) pursuant to the criteria under sub-

1 section (b). A covered member, or the representative of
2 the member, may appeal a decision by the appropriate dis-
3 charge board to not change the discharge characterization
4 by using the regular appeals process of the board.

5 (f) CHANGE OF RECORDS.—For each covered mem-
6 ber whose discharge characterization is changed under
7 subsection (e), or for each covered member who was hon-
8 orably discharged but whose DD–214 form reflects the
9 sexual orientation of the member, the Secretary of Defense
10 shall reissue to the member or their representative a re-
11 vised DD–214 form that reflects the following:

12 (1) For each covered member discharged, the
13 Separation Code, Reentry Code, Narrative Code, and
14 Separation Authority shall not reflect the sexual ori-
15 entation of the member and shall be placed under
16 secretarial authority. Any other similar indication of
17 the sexual orientation or reason for discharge shall
18 be removed or changed accordingly to be consistent
19 with this paragraph.

20 (2) For each covered member whose discharge
21 occurred prior to the creation of general secretarial
22 authority, the sections of the DD–214 form referred
23 to paragraph (1) shall be changed to similarly reflect
24 a universal authority with codes, authorities, and
25 language applicable at the time of discharge.

1 (g) STATUS.—

2 (1) IN GENERAL.—Each covered member whose
3 discharge characterization is changed under sub-
4 section (e) shall be treated without regard to the
5 original discharge characterization of the member,
6 including for purposes of—

7 (A) benefits provided by the Federal Gov-
8 ernment to an individual by reason of service in
9 the Armed Forces; and

10 (B) all recognitions and honors that the
11 Secretary of Defense provides to members of
12 the Armed Forces.

13 (2) REINSTATEMENT.—In carrying out para-
14 graph (1)(B), the Secretary shall reinstate all rec-
15 ognitions and honors of a covered member whose
16 discharge characterization is changed under sub-
17 section (e) that the Secretary withheld because of
18 the original discharge characterization of the mem-
19 ber.

20 (h) REPORTING REQUIREMENTS.—

21 (1) SECRETARY OF DEFENSE.—Not later than
22 270 days after the date of the enactment of this Act,
23 and each year thereafter through 2020, the Sec-
24 retary of Defense shall conduct a review of the con-
25 sistency and uniformity of the reviews conducted by

1 appropriate discharge boards under this section. Not
2 later than 30 days after completing the review for a
3 year, the Secretary shall submit to Congress a re-
4 port containing the results of the Secretary's review,
5 including any comments or recommendations of the
6 Secretary for continued actions.

7 (2) SECRETARIES OF THE MILITARY DEPART-
8 MENTS.—The Secretary of each military department
9 shall ensure that oral historians of the department—

10 (A) review the facts and circumstances
11 surrounding the estimated 100,000 members of
12 the Armed Forces discharged from the Armed
13 Forces between World War II and September
14 2011 because of the sexual orientation of the
15 member; and

16 (B) receive oral testimony of individuals
17 who personally experienced discrimination and
18 discharge because of the actual or perceived
19 sexual orientation of the individual so that such
20 testimony may serve as an official record of
21 these discriminatory policies and their impact
22 on American lives.

23 (i) DEFINITIONS.—In this section:

24 (1) The term “appropriate discharge board”
25 means the boards for correction of military records

1 under section 1552 of title 10, United States Code,
2 or the discharge review boards under section 1553
3 of such title, as the case may be.

4 (2) The term “covered member” means any
5 former member of the Armed Forces who was dis-
6 charged from the Armed Forces because of the sex-
7 ual orientation of the member.

8 (3) The term “discharge characterization”
9 means the characterization under which a member
10 of the Armed Forces is discharged or released, in-
11 cluding “dishonorable”, “general”, “other than hon-
12 orable”, and “honorable”.

13 (4) The terms “Don’t Ask Don’t Tell” and
14 “DADT” mean section 654 of title 10, United
15 States Code, as in effect before such section was re-
16 pealed pursuant to the Don’t Ask, Don’t Tell Repeal
17 Act of 2010 (Public Law 111–321).

18 (5) The term “representative” means the sur-
19 viving spouse, next of kin, or legal representative of
20 a covered member.

