

**AMENDMENT TO RULES COMMITTEE PRINT 118-**

**36**

**OFFERED BY MS. LEE OF CALIFORNIA**

At the end of subtitle C of title XVII, insert the following new section:

1 **SEC. 17\_\_\_ . REVIEW AND REPORT ON FEDERAL LAW AND**  
2 **UPDATED REVIEW OF STATE LAWS.**

3 (a) REPORT ON LAWS, POLICIES, REGULATIONS AND  
4 JUDICIAL DECISIONS THAT CREATE UNIQUE OR DIS-  
5 PROPORTIONATE PENALTIES FOR MEMBERS OF THE  
6 ARMED FORCES LIVING WITH HIV.—

7 (1) IN GENERAL.—Not later than 270 days  
8 after the date of the enactment of this Act, the Sec-  
9 retary of Defense, secretaries of the military depart-  
10 ments, and the Secretary of Homeland Security,  
11 with regard to the U.S. Coast Guard, in coordina-  
12 tion with the Attorney General of the United State  
13 (in this section referred to as the “designated offi-  
14 cials”) shall complete a report that summarizes the  
15 status and impact of relevant laws, policies, regula-  
16 tions, and judicial decisions in which a person’s HIV  
17 status is a factor in determining guilt, including the  
18 following:

1 (A) Provisions and cases under the Uni-  
2 form Code of Military Justice (referred to in  
3 this section as the “UCMJ”) regarding consen-  
4 sual sexual relations of members of the Armed  
5 Forces who are living with HIV.

6 (C) Policies and practices, including ad-  
7 ministrative actions in the Military Correctional  
8 Facilities resulting in unique or dispropor-  
9 tionate punishments or penalties or diminution  
10 of opportunities to participate in rehabilitative,  
11 recreational or other programs or activities trig-  
12 gered by an individual’s HIV diagnosis.

13 (D) A summary overview of relevant laws,  
14 policies, regulations, and judicial decisions in  
15 which a person’s HIV status is a factor in de-  
16 termining guilt, including the extent to which  
17 they are congruent with prevailing criminal law  
18 requirements and scientifically current under-  
19 standing of the routes, risks, treatment and  
20 prevention of HIV transmission.

21 (E) A determination of whether and how  
22 such laws, policies, regulations, and judicial de-  
23 cisions affect the health, quality of life, and  
24 deployability of service members living with  
25 HIV, their families, and military units.

1 (F) A determination of whether and how  
2 such laws, policies, regulations, and judicial de-  
3 cisions disproportionately affect persons on the  
4 basis of race, sex, gender identity, sexual ori-  
5 entation, sex characteristics (including intersex  
6 traits), economic status, or disability.

7 (G) Recommendations for amendments to  
8 the Uniform Code of Military Justice, including  
9 discontinuing the use of a service member's  
10 HIV diagnosis as the basis for prosecution, en-  
11 hanced penalties, or discharge from military  
12 service, in order to ensure that laws, policies,  
13 regulations, and judicial decisions regarding  
14 people living with HIV are in accordance with  
15 the principles set forth in section 3. Such rec-  
16 ommendations should include any necessary and  
17 appropriate changes to "Orders to Follow Pre-  
18 ventative Medicine Requirements".

19 (H) Assessments of the UCMJ and surveys  
20 of the appropriate officials regarding the impact  
21 of laws or personnel policies that create unique  
22 penalties and disadvantages for service mem-  
23 bers living with HIV and whether such policies  
24 should be amended or repealed.

1           (2) CONSULTATION.—In completing the report  
2 required under paragraph (1), the designated offi-  
3 cials shall include broad diverse input from each of  
4 the following:

5           (A) Affected individuals and communities,  
6 including those who have been subject to HIV-  
7 related arrests and/or prosecution, in States  
8 and Federal systems with laws, policies, or reg-  
9 ulations described in paragraph (1).

10           (B) State attorneys general (or their rep-  
11 resentatives).

12           (C) State public health officials (or their  
13 representatives).

14           (D) State judicial system officers, includ-  
15 ing judges, district attorneys, prosecutors, de-  
16 fense attorneys, law enforcement, and correc-  
17 tional officers.

18           (E) Members of the United States Armed  
19 Forces, including members of other Federal  
20 services subject to the Uniform Code of Military  
21 Justice.

22           (F) Legal and community advocates and  
23 HIV service organizations that work with peo-  
24 ple living with HIV and are knowledgeable in  
25 the application of the criminal law to HIV.

1 (G) Nongovernmental health organizations  
2 that work on behalf of people living with HIV.

3 (H) military service organizations and  
4 other advocacy organizations representing per-  
5 sons or entities described in subparagraphs (A)  
6 through (G).

7 (3) RELATION TO OTHER REVIEWS.—In com-  
8 pleting the report required under paragraph (1), the  
9 designated officials may reference existing, up-to-  
10 date reviews of criminal and related civil commit-  
11 ment cases involving people living with HIV, includ-  
12 ing such reviews completed and published by any  
13 Federal or State agency, legal organization or asso-  
14 ciation specializing in criminal and public health  
15 legal research and analysis.

16 (b) DELIVERY OF REPORT.—Not later than 30 days  
17 after completing the report required by subsection (a), the  
18 Secretary of Defense shall transmit to the Congressional  
19 Defense Committees and make publicly available the re-  
20 port from subsection (a).

21 (c) GUIDANCE.—Not later than 90 days after the re-  
22 lease of the report required by subsection (b), the White  
23 House Office of National AIDS Policy shall develop and  
24 publicly release updated guidance for Congress, including  
25 any technical assistance, strategic planning, or other re-

1 source to amend existing laws or legislate new authorities  
2 to repeal or modernize laws, civil commitment rules, and  
3 policies that discriminate against service members living  
4 with HIV.

5 (d) MODERNIZATION OF FEDERAL LAWS, POLICIES,  
6 AND REGULATIONS.—Not later than 180 days after the  
7 release of the report required by subsection (b) and the  
8 guidance required by subsection (c), the designated offi-  
9 cials shall develop and transmit to the President and the  
10 Congress, and make publicly available, such proposals as  
11 may be necessary to implement adjustments to Federal  
12 laws, policies, or regulations, including to the Uniform  
13 Code of Military Justice, that reflect the reports and guid-  
14 ance required under this section either through Executive  
15 order or through changes to statutory law.

16 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
17 tion shall be construed to prohibit the prosecution of indi-  
18 viduals who act with the specific intent to do harm to an-  
19 other person by transmitting HIV through means likely  
20 to result in actual transmission, and who in fact transmit  
21 HIV.

22 (f) DEFINITIONS.—For purposes of this section:

23 (1) HIV—The term “HIV” has the meanings  
24 given to such a term in section 2689 of the Public  
25 Health Service Act (42 U.S.C. 300ff–88).

1           (2) STATE.—The term “State” includes the  
2           District of Columbia, American Samoa, the Com-  
3           monwealth of the Northern Mariana Islands, Guam,  
4           Puerto Rico, the United States Virgin Islands, and  
5           Federally recognized Tribal governments.

