AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 1735
OFFERED BY MR. POCAN OF WISCONSIN

Page 528, after line 2, add the following new section:

SEC. 10. REVIEW OF THE DISCHARGE CHARACTERIZATION OF FORMER MEMBERS OF THE ARMED FORCES WHO WERE DISCHARGED BY REASON OF SEXUAL ORIENTATION.

(a) Review of Discharge Characterization.—

(1) In general.—In accordance with this subsection, the appropriate discharge boards—

(A) shall review the discharge characterization of covered members at the request of the covered member; and

(B) if such characterization is any characterization except honorable, may change such characterization to honorable.

(2) Criteria.—In changing the discharge characterization of a covered member to honorable under paragraph (1)(B), the Secretary of Defense shall ensure that such changes are carried out consistently
and uniformly across the military departments using the following criteria:

(A) The original discharge must be based on Don’t Ask Don’t Tell (in this Act referred to as “DADT”) or a similar policy in place prior to the enactment of DADT.

(B) Such discharge characterization shall be so changed if, with respect to the original discharge, there were no aggravating circumstances, such as misconduct, that would have independently led to a discharge characterization that was any characterization except honorable. For purposes of this subparagraph, such aggravating circumstances may not include—

(i) an offense under section 925 of title 10, United States Code (article 125 of the Uniform Code of Military Justice), committed by a covered member against a person of the same sex with the consent of such person; or

(ii) statements, consensual sexual conduct, or consensual acts relating to sexual orientation or identity, or the disclosure of such statements, conduct, or acts, that
were prohibited at the time of discharge but after the date of such discharge became permitted.

(C) When requesting a review, a covered member, or their representative, shall be required to provide either—

(i) documents consisting of—

(I) a copy of the DD–214 form of the member;

(II) a personal affidavit of the circumstances surrounding the discharge; and

(III) any relevant records pertaining to the discharge; or

(ii) an affidavit certifying that the member, or their representative, does not have the documents specified in clause (i).

(D) If a covered member provides an affidavit described in clause (ii) of subparagraph (C)—

(i) the appropriate discharge board shall make every effort to locate the documents specified in clause (i) of such subparagraph within the records of the Department of Defense; and
(ii) the absence of such documents may not be considered a reason to deny a change of the discharge characterization under paragraph (1)(B).

(3) REQUEST FOR REVIEW.—The appropriate discharge board shall ensure the mechanism by which covered members, or their representative, may request to have the discharge characterization of the covered member reviewed under this section is simple and straightforward.

(4) REVIEW.—

(A) IN GENERAL.—After a request has been made under paragraph (3), the appropriate discharge board shall review all relevant laws, records of oral testimony previously taken, service records, or any other relevant information regarding the discharge characterization of the covered member.

(B) ADDITIONAL MATERIALS.—If additional materials are necessary for the review, the appropriate discharge board—

(i) may request additional information from the covered member or their representative, in writing, and specifically detailing what is being requested; and
(ii) shall be responsible for obtaining
a copy of the necessary files of the covered
member from the member, or when appli-
cable, from the Department of Defense.

(5) CHANGE OF CHARACTERIZATION.—The ap-
propriate discharge board shall change the discharge
characterization of a covered member to honorable if
such change is determined to be appropriate after a
review is conducted under paragraph (4) pursuant to
the criteria under paragraph (2). A covered member,
or the representative of the member, may appeal a
decision by the appropriate discharge board to not
change the discharge characterization by using the
regular appeals process of the board.

(6) CHANGE OF RECORDS.—For each covered
member whose discharge characterization is changed
under paragraph (5), or for each covered member
who was honorably discharged but whose DD–214
form reflects the sexual orientation of the member,
the Secretary of Defense shall reissue to the member
or their representative a revised DD–214 form that
reflects the following:

(A) For each covered member discharged,
the Separation Code, Reentry Code, Narrative
Code, and Separation Authority shall not reflect
the sexual orientation of the member and shall
be placed under secretarial authority. Any other
similar indication of the sexual orientation or
reason for discharge shall be removed or
changed accordingly to be consistent with this
subparagraph.

(B) For each covered member whose dis-
charge occurred prior to the creation of general
secretarial authority, the sections of the DD–
214 form referred to in subparagraph (A) shall
be changed to similarly reflect a universal au-
thority with codes, authorities, and language
applicable at the time of discharge.

(7) STATUS.—

(A) IN GENERAL.—Each covered member
whose discharge characterization is changed
under paragraph (5) shall be treated without
regard to the original discharge characterization
of the member, including for purposes of—

(i) benefits provided by the Federal
Government to an individual by reason of
service in the Armed Forces; and

(ii) all recognitions and honors that
the Secretary of Defense provides to mem-
bers of the Armed Forces.
(B) REINSTATEMENT.—In carrying out subparagraph (A)(ii), the Secretary shall reinstate all recognitions and honors of a covered member whose discharge characterization is changed under paragraph (5) that the Secretary withheld because of the original discharge characterization of the member.

(8) DEFINITIONS.—In this subsection:

(A) The term “appropriate discharge board” means the boards for correction of military records under section 1552 of title 10, United States Code, or the discharge review boards under section 1553 of such title, as the case may be.

(B) The term “covered member” means any former member of the Armed Forces who was discharged from the Armed Forces because of the sexual orientation of the member.

(C) The term “discharge characterization” means the characterization under which a member of the Armed Forces is discharged or released, including “dishonorable”, “general”, “other than honorable”, and “honorable”.

(D) The term “Don’t Ask Don’t Tell” means section 654 of title 10, United States
Code, as in effect before such section was repealed pursuant to the Don’t Ask, Don’t Tell Repeal Act of 2010 (Public Law 111–321).

(E) The term “representative” means the surviving spouse, next of kin, or legal representative of a covered member.

(b) Reports.—

(1) Review.—The Secretary of Defense shall conduct a review of the consistency and uniformity of the reviews conducted under subsection (a).

(2) Reports.—Not later than 270 days after the date of the enactment of this Act, and each year thereafter for a four-year period, the Secretary shall submit to Congress a report on the reviews under paragraph (1). Such reports shall include any comments or recommendations for continued actions.

(c) Historical Review.—The Secretary of each military department shall ensure that oral historians of the department—

(1) review the facts and circumstances surrounding the estimated 100,000 members of the Armed Forces discharged from the Armed Forces between World War II and September 2011 because of the sexual orientation of the member; and
(2) receive oral testimony of individuals who personally experienced discrimination and discharge because of the actual or perceived sexual orientation of the individual so that such testimony may serve as an official record of these discriminatory policies and their impact on American lives.

(d) Modification of Article 125 of the Uniform Code of Military Justice.—Section 925(a) of title 10, United States Code (article 125 of the Uniform Code of Military Justice) is amended by striking “with another person of the same or opposite sex”.

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