

AMENDMENT TO RULES COMMITTEE PRINT 115-

23

OFFERED BY MR. POCAN OF WISCONSIN

Page 126, after line 12, insert the following new section:

1 SEC. 516. REVIEW OF DISCHARGE CHARACTERIZATION.

2 (a) IN GENERAL.—The appropriate discharge
3 boards—

4 (1) shall review the discharge characterization
5 of a covered member at the request of the covered
6 member; and

7 (2) if such characterization is any characteriza-
8 tion except honorable, may change such character-
9 ization to honorable.

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

15 (1) The original discharge must be based on
16 Don't Ask Don't Tell (in this Act referred to as
17 "DADT") or a similar policy in place prior to the
18 enactment of DADT.

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

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

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

20 (3) When requesting a review, a covered mem-
21 ber, or their representative, shall be required to pro-
22 vide either—

23 (A) documents consisting of—

24 (i) a copy of the DD-214 form of the
25 member;

1 (ii) a personal affidavit of the cir-
2 cumstances surrounding the discharge; and

3 (iii) any relevant records pertaining to
4 the discharge; or

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

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

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

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

19 (c) REQUEST FOR REVIEW.—The appropriate dis-
20 charge board shall ensure the mechanism by which covered
21 members, or their representative, may request to have the
22 discharge characterization of the covered member reviewed
23 under this section is simple and straightforward.

24 (d) REVIEW.—

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

7 (2) ADDITIONAL MATERIALS.—If additional
8 materials are necessary for the review, the appro-
9 priate discharge board—

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

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

18 (e) CHANGE OF CHARACTERIZATION.—The appro-
19 priate discharge board shall change the discharge charac-
20 terization of a covered member to honorable if such change
21 is determined to be appropriate after a review is conducted
22 under subsection (d) pursuant to the criteria under sub-
23 section (b). A covered member, or the representative of
24 the member, may appeal a decision by the appropriate dis-

1 charge board to not change the discharge characterization
2 by using the regular appeals process of the board.

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

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

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

24 (g) STATUS.—

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

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

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

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

19 (h) REPORTS.—Not later than 270 days after the
20 date of the enactment of this Act, and each year thereafter
21 for a four-year period, the Secretary of Defense shall sub-
22 mit to Congress a report on the consistency and uni-
23 formity of the reviews conducted under this section. Such
24 reports shall include any comments or recommendations
25 for continued actions.

1 (i) HISTORICAL REVIEW.—The Secretary of each
2 military department shall ensure that oral historians of
3 the department—

4 (1) review the facts and circumstances sur-
5 rounding the estimated 100,000 members of the
6 Armed Forces discharged from the Armed Forces
7 between World War II and September 2011 because
8 of the sexual orientation of the member; and

9 (2) receive oral testimony of individuals who
10 personally experienced discrimination and discharge
11 because of the actual or perceived sexual orientation
12 of the individual so that such testimony may serve
13 as an official record of these discriminatory policies
14 and their impact on American lives.

15 (j) DEFINITIONS.—In this section:

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

21 (2) The term “covered member” means any
22 former member of the Armed Forces who was dis-
23 charged from the Armed Forces because of the sex-
24 ual orientation of the member.

1 (3) The term “discharge characterization”
2 means the characterization under which a member
3 of the Armed Forces is discharged or released, in-
4 cluding “dishonorable”, “general”, “other than hon-
5 orable”, and “honorable”.

6 (4) The term “Don’t Ask Don’t Tell” means
7 section 654 of title 10, United States Code, as in ef-
8 fect before such section was repealed pursuant to the
9 Don’t Ask, Don’t Tell Repeal Act of 2010 (Public
10 Law 111–321).

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

