

113TH CONGRESS
1ST SESSION

H. R. 2839

To direct the Secretary of Defense to review the discharge characterization of former members of the Armed Forces who were discharged by reason of the sexual orientation of the member, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2013

Mr. POCAN (for himself, Mr. RANGEL, Mr. ANDREWS, Mr. BISHOP of New York, Mr. BISHOP of Georgia, Ms. BROWNLEY of California, Mrs. BUSTOS, Mrs. CAPPS, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTWRIGHT, Ms. CASTOR of Florida, Mrs. CHRISTENSEN, Mr. CICILLINE, Ms. CLARKE, Mr. CLAY, Mr. COHEN, Mr. CONNOLLY, Mr. CONYERS, Mr. CROWLEY, Mr. CUMMINGS, Ms. DELAURO, Ms. DELBENE, Mr. DEUTCH, Mr. DINGELL, Mr. ELLISON, Mr. ENGEL, Ms. ESTY, Mr. FARR, Mr. FATTAH, Ms. FRANKEL of Florida, Ms. GABBARD, Mr. GRIJALVA, Mr. GUTIÉRREZ, Ms. HAHN, Mr. HASTINGS of Florida, Mr. HIGGINS, Mr. HIMES, Mr. HOLT, Mr. HORSFORD, Mr. ISRAEL, Ms. JACKSON LEE, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. KENNEDY, Mr. KILDEE, Mr. KILMER, Mr. KIND, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSEN of Washington, Ms. LEE of California, Mr. LEWIS, Ms. LOFGREN, Mr. LOWENTHAL, Mrs. LOWEY, Mr. BEN RAY LUJÁN of New Mexico, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. MAFFEI, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MICHAUD, Ms. MOORE, Mr. MORAN, Mr. MURPHY of Florida, Mrs. NAPOLITANO, Mr. NOLAN, Ms. NORTON, Mr. O'ROURKE, Mr. PASTOR of Arizona, Mr. PAYNE, Mr. PETERS of California, Ms. PINGREE of Maine, Mr. POLIS, Mr. QUIGLEY, Ms. ROS-LEHTINEN, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Mr. SARBANES, Ms. SCHKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Ms. SCHWARTZ, Ms. SHEA-PORTER, Ms. SINEMA, Ms. SLAUGHTER, Ms. SPEIER, Mr. TAKANO, Ms. TITUS, Mr. TONKO, Ms. TSONGAS, Mr. VAN HOLLEN, Mr. VARGAS, Mr. VEASEY, Ms. VELÁZQUEZ, Mr. WAXMAN, Mr. WELCH, and Ms. WILSON of Florida) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To direct the Secretary of Defense to review the discharge characterization of former members of the Armed Forces who were discharged by reason of the sexual orientation of the member, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restore Honor to Serv-
5 ice Members Act”.

6 **SEC. 2. REVIEW OF DISCHARGE CHARACTERIZATION.**

7 (a) IN GENERAL.—In accordance with this section,
8 the appropriate discharge boards—

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

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

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

20 (1) The original discharge must be based on
21 Don’t Ask Don’t Tell (in this Act referred to as

1 “DADT”) or a similar policy in place prior to the
2 enactment of DADT.

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

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

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

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

25 (A) documents consisting of—

1 (i) a copy of the DD–214 form of the
2 member;

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

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

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

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

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

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

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

1 (d) REVIEW.—

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

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

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

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

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

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

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

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

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

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

18 **SEC. 3. REPORTS.**

19 (a) REVIEW.—The Secretary of Defense shall con-
20 duct a review of the consistency and uniformity of the re-
21 views conducted under section 2.

22 (b) REPORTS.—Not later than 270 days after the
23 date of the enactment of this Act, and each year thereafter
24 for a four-year period, the Secretary shall submit to Con-
25 gress a report on the reviews under subsection (a). Such

1 reports shall include any comments or recommendations
2 for continued actions.

3 **SEC. 4. HISTORICAL REVIEW.**

4 The Secretary of each military department shall en-
5 sure that oral historians of the department—

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

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

17 **SEC. 5. MODIFICATION OF ARTICLE 125 OF THE UNIFORM**
18 **CODE OF MILITARY JUSTICE.**

19 Section 925(a) of title 10, United States Code (article
20 125 of the Uniform Code of Military Justice) is amended
21 by striking “with another person of the same or opposite
22 sex or”.

○