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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 SENATE OF THE UNITED STATES

JUNE 26, 2019

Mr. SCHATZ (for himself, Mrs. GILLIBRAND, Ms. BALDWIN, Mr. BENNET, Mr. BROWN, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. DUCKWORTH, Mr. DURBIN, Ms. HARRIS, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mrs. SHAHEEN, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mrs. FEINSTEIN, and Mr. PETERS) introduced the following bill; which was read twice and 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”.

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

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

4 (1) shall review the discharge characterization
5 of covered members 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.

19 (2) Such discharge characterization shall be so
20 changed if, with respect to the original discharge,
21 there were no aggravating circumstances, such as
22 misconduct, that would have independently led to a
23 discharge characterization that was any character-
24 ization except honorable. For purposes of this para-
25 graph, such aggravating circumstances may not in-
26 clude—

1 (A) an offense under section 925 of title
2 10, United States Code (article 125 of the Uni-
3 form Code of Military Justice), committed by a
4 covered member against a person of the same
5 sex with the consent of such person; or

6 (B) statements, consensual sexual conduct,
7 or consensual acts relating to sexual orientation
8 or identity, or the disclosure of such state-
9 ments, conduct, or acts, that were prohibited at
10 the time of discharge but after the date of such
11 discharge became permitted.

12 (3) When requesting a review, a covered mem-
13 ber, or the member's representative, shall be re-
14 quired to provide either—

15 (A) documents consisting of—

16 (i) a copy of the DD-214 form of the
17 member;

18 (ii) a personal affidavit of the cir-
19 cumstances surrounding the discharge; and

20 (iii) any relevant records pertaining to
21 the discharge; or

22 (B) an affidavit certifying that the mem-
23 ber, or the member's representative, does not
24 have the documents specified in subparagraph
25 (A).

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

3 (A) the appropriate discharge board shall
4 make every effort to locate the documents speci-
5 fied in subparagraph (A) of such paragraph
6 within the records of the Department of De-
7 fense; and

8 (B) the absence of such documents may
9 not be considered a reason to deny a change of
10 the discharge characterization under subsection
11 (a)(2).

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

17 (d) REVIEW.—

18 (1) IN GENERAL.—After a request has been
19 made under subsection (c), the appropriate dis-
20 charge board shall review all relevant laws, records
21 of oral testimony previously taken, service records,
22 or any other relevant information regarding the dis-
23 charge characterization of the covered member.

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

4 (A) may request additional information
5 from the covered member or the member’s rep-
6 resentative, in writing, and specifically detailing
7 what is being requested; and

8 (B) shall be responsible for obtaining a
9 copy of the necessary files of the covered mem-
10 ber from the member, or when applicable, from
11 the Department of Defense.

12 (e) CHANGE OF CHARACTERIZATION.—The appro-
13 priate discharge board shall change the discharge charac-
14 terization of a covered member to honorable if such change
15 is determined to be appropriate after a review is conducted
16 under subsection (d) pursuant to the criteria under sub-
17 section (b). A covered member, or the member’s represent-
18 ative, may appeal a decision by the appropriate discharge
19 board to not change the discharge characterization by
20 using the regular appeals process of the board.

21 (f) CHANGE OF RECORDS.—For each covered mem-
22 ber whose discharge characterization is changed under
23 subsection (e), or for each covered member who was hon-
24 orably discharged but whose DD–214 form reflects the
25 sexual orientation of the member, the Secretary of Defense

1 shall reissue to the member or the member's representa-
2 tive a revised DD-214 form that reflects the following:

3 (1) For each covered member discharged, the
4 Separation Code, Reentry Code, Narrative Code, and
5 Separation Authority shall not reflect the sexual ori-
6 entation of the member and shall be placed under
7 secretarial authority. Any other similar indication of
8 the sexual orientation or reason for discharge shall
9 be removed or changed accordingly to be consistent
10 with this paragraph.

11 (2) For each covered member whose discharge
12 occurred prior to the creation of general secretarial
13 authority, the sections of the DD-214 form referred
14 to paragraph (1) shall be changed to similarly reflect
15 a universal authority with codes, authorities, and
16 language applicable at the time of discharge.

17 (g) STATUS.—

18 (1) IN GENERAL.—Each covered member whose
19 discharge characterization is changed under sub-
20 section (e) shall be treated without regard to the
21 original discharge characterization of the member,
22 including for purposes of—

23 (A) benefits provided by the Federal Gov-
24 ernment to an individual by reason of service in
25 the Armed Forces; and

1 (B) all recognitions and honors that the
2 Secretary of Defense provides to members of
3 the Armed Forces.

4 (2) REINSTATEMENT.—In carrying out para-
5 graph (1)(B), the Secretary shall reinstate all rec-
6 ognitions and honors of a covered member whose
7 discharge characterization is changed under sub-
8 section (e) that the Secretary withheld because of
9 the original discharge characterization of the mem-
10 ber.

11 (3) EFFECTIVE DATE OF CHANGE OF CHARAC-
12 TERIZATION FOR VETERANS BENEFITS.—For pur-
13 poses of the provision of benefits to which veterans
14 are entitled under the laws administered by the Sec-
15 retary of Veterans Affairs to a covered member
16 whose discharge characterization is changed under
17 subsection (e), the date of discharge of the member
18 from the Armed Forces shall be deemed to be the
19 effective date of the change of discharge character-
20 ization under that subsection.

21 (4) CONSTRUCTION.—Nothing in this sub-
22 section shall be construed to authorize any benefit to
23 a covered member in connection with the change of
24 discharge characterization of the member under sub-

1 section (e) for any period before the effective date of
2 the change of discharge characterization.

3 (h) DEFINITIONS.—In this section:

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

9 (2) The term “covered member” means any
10 former member of the Armed Forces who was dis-
11 charged from the Armed Forces because of the sex-
12 ual orientation of the member.

13 (3) The term “discharge characterization”
14 means the characterization under which a member
15 of the Armed Forces is discharged or released, in-
16 cluding “dishonorable”, “general”, “other than hon-
17 orable”, and “honorable”.

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

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

1 **SEC. 3. TIGER TEAM FOR OUTREACH TO FORMER MEM-**
2 **BERS.**

3 (a) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that—

5 (1) the mission of the Department of Defense
6 is to provide the military forces needed to deter war
7 and to protect the security of the United States;

8 (2) expanding outreach to veterans impacted by
9 DADT or a similar policy prior to the enactment of
10 DADT is important to closing a period of history
11 harmful to the creed of integrity, respect, and honor
12 of the military;

13 (3) the Department is responsible for providing
14 for the review of a veteran's military record before
15 the appropriate discharge review board or, when
16 more than 15 years has passed, board of correction
17 for military or naval records; and

18 (4) the Secretary of Defense should, wherever
19 possible, coordinate and conduct outreach to im-
20 pacted veterans through the veterans community
21 and networks, including through the Department of
22 Veterans Affairs and veterans service organizations,
23 to ensure that veterans understand the review proc-
24 esses that are available to them for upgrading mili-
25 tary records.

26 (b) TIGER TEAM.—

1 (1) IN GENERAL.—Not later than 30 days after
2 the date of the enactment of this Act, the Secretary
3 of Defense shall establish a team (commonly known
4 as a “tiger team” and referred to in this section as
5 the “Tiger Team”) responsible for conducting out-
6 reach to build awareness among former members of
7 the Armed Forces of the process established pursu-
8 ant to section 2 for the review of discharge charac-
9 terizations by appropriate discharge boards. The
10 Tiger Team shall consist of appropriate personnel of
11 the Department of Defense assigned to the Tiger
12 Team by the Secretary for purposes of this section.

13 (2) TIGER TEAM LEADER.—One of the persons
14 assigned to the Tiger Team under paragraph (1)
15 shall be a senior-level officer or employee of the De-
16 partment who shall serve as the lead official of the
17 Tiger Team (in this section referred to as the “Tiger
18 Team Leader”) and who shall be accountable for the
19 activities of the Tiger Team under this section.

20 (3) REPORT ON COMPOSITION.—Not later than
21 60 days after the date of the enactment of this Act,
22 the Secretary shall submit to Congress a report set-
23 ting forth the names of the personnel of the Depart-
24 ment assigned to the Tiger Team pursuant to this
25 subsection, including the positions to which assigned.

1 The report shall specify the name of the individual
2 assigned as Tiger Team Leader.

3 (c) DUTIES.—

4 (1) IN GENERAL.—The Tiger Team shall con-
5 duct outreach to build awareness among veterans of
6 the process established pursuant to section 2 for the
7 review of discharge characterizations by appropriate
8 discharge boards.

9 (2) COLLABORATION.—In conducting activities
10 under this subsection, the Tiger Team Leader shall
11 identify appropriate external stakeholders with
12 whom the Tiger Team shall work to carry out such
13 activities. Such stakeholders shall include the fol-
14 lowing:

15 (A) The Secretary of Veterans Affairs.

16 (B) The Archivist of the United States.

17 (C) Representatives of veterans service or-
18 ganizations.

19 (D) Such other stakeholders as the Tiger
20 Team Leader considers appropriate.

21 (3) INITIAL REPORT.—Not later than 180 days
22 after the date of the enactment of this Act, the Sec-
23 retary of Defense shall submit to Congress the fol-
24 lowing:

25 (A) A plan setting forth the following:

1 (i) A description of the manner in
2 which the Secretary, working through the
3 Tiger Team and in collaboration with ex-
4 ternal stakeholders described in paragraph
5 (2), shall identify individuals who meet the
6 criteria in section 2(b) for review of dis-
7 charge characterization.

8 (ii) A description of the manner in
9 which the Secretary, working through the
10 Tiger Team and in collaboration with the
11 external stakeholders, shall improve out-
12 reach to individuals who meet the criteria
13 in section 2(b) for review of discharge
14 characterization, including through—

15 (I) obtaining contact information
16 on such individuals; and

17 (II) contacting such individuals
18 on the process established pursuant to
19 section 2 for the review of discharge
20 characterizations.

21 (B) A description of the manner in which
22 the work described in clauses (i) and (ii) of sub-
23 paragraph (A) will be carried out, including an
24 allocation of the work among the Tiger Team
25 and the external stakeholders.

1 (C) A schedule for the implementation,
2 carrying out, and completion of the plan re-
3 quired under subparagraph (A).

4 (D) A description of the additional fund-
5 ing, personnel, or other resources of the De-
6 partment required to carry out the plan re-
7 quired under subparagraph (A), including any
8 modification of applicable statutory or adminis-
9 trative authorities.

10 (4) IMPLEMENTATION OF PLAN.—

11 (A) IN GENERAL.—The Secretary shall im-
12 plement and carry out the plan submitted under
13 subparagraph (A) of paragraph (3) in accord-
14 ance with the schedule submitted under sub-
15 paragraph (C) of that paragraph.

16 (B) UPDATES.—Not less frequently than
17 once every 90 days after the submittal of the
18 report under paragraph (3), the Tiger Team
19 shall submit to Congress an update on the car-
20 rying out of the plan submitted under subpara-
21 graph (A) of that paragraph.

22 (5) FINAL REPORT.—Not later than 3 years
23 after the date of the enactment of this Act, the
24 Tiger Team shall submit to the appropriate commit-
25 tees of Congress a final report on the activities of

1 the Tiger Team under this subsection. The report
2 shall set forth the following:

3 (A) The number of individuals discharged
4 under DADT or a similar policy prior to the en-
5 actment of DADT.

6 (B) The number of individuals described in
7 subparagraph (A) who availed themselves of a
8 review of discharge characterization (whether
9 through discharge review or correction of mili-
10 tary records) through a process established
11 prior to the enactment of this Act.

12 (C) The number of individuals contacted
13 through outreach conducted pursuant to this
14 section.

15 (D) The number of individuals described in
16 subparagraph (A) who availed themselves of a
17 review of discharge characterization through the
18 process established pursuant to section 2.

19 (E) The number of individuals described in
20 subparagraph (D) whose review of discharge
21 characterization resulted in a change of charac-
22 terization to honorable discharge.

23 (F) The total number of individuals de-
24 scribed in subparagraph (A), including individ-
25 uals also covered by subparagraph (E), whose

1 review of discharge characterization since Sep-
2 tember 20, 2011 (the date of repeal of DADT),
3 resulted in a change of characterization to hon-
4 orable discharge.

5 (6) APPROPRIATE COMMITTEES OF CONGRESS
6 DEFINED.—In this subsection, the term “appro-
7 priate committees of Congress” means—

8 (A) the Committee on Armed Services of
9 the Senate; and

10 (B) the Committee on Armed Services of
11 the House of Representatives.

12 (d) TERMINATION.—On the date that is 60 days after
13 the date on which the final report required by paragraph
14 (5) is submitted, the Secretary shall terminate the Tiger
15 Team.

16 **SEC. 4. REPORTS.**

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

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

1 **SEC. 5. HISTORICAL REVIEW.**

2 The Secretary of each military department shall en-
3 sure that oral historians of 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.

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