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**SJR-6 Don't Ask, Don't Tell: discharge characterizations.** (2023-2024)

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**Senate Joint Resolution No. 6**

**CHAPTER 173**

Relative to veterans' benefits.

[ Filed with Secretary of State August 21, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SJR 6, Caballero. Don't Ask, Don't Tell: discharge characterizations.

This measure would urge the President and the Congress of the United States to address, with effective policies, the issue of servicemembers who were unjustly discharged under "Don't Ask, Don't Tell" or predecessor provisions, in order to unify efforts to upgrade discharges issued under the DADT policy, and to restore benefits.

Fiscal Committee: no

WHEREAS, In the 1940s and the 1980s, the United States Department of Defense (DOD) established policies that penalized military members and resulted in the discharge of gay, lesbian, and bisexual members regardless of their service to the country and good military service. During the 1980s, more than 17,000 military members were dismissed from their duties due to their orientation, not because of misconduct; and

WHEREAS, In the military, there are administrative and punitive discharges. The three types of administrative terminations that exist are honorable, general, and other than honorable. The punitive discharges are bad conduct and dishonorable; and

WHEREAS, Receiving a dishonorable discharge represents the most serious form of punitive termination. Thousands of brave women, men, and transgender people were discharged due to their orientation and their associations; and

WHEREAS, The different branches of the DOD have labeled their discharges as "sexual perversion," "homosexual," or other codes, which are derogatory, harmful, and outdated; and

WHEREAS, Thousands of veterans have carried the emotional pain, anguish, and burden of their discharge for decades; and

WHEREAS, Almost 30 years ago, "Don't Ask, Don't Tell" (DADT) brought a new wave of homophobia and persecution to the military. In 1993, President Clinton signed the DADT policy into law, which would ultimately lead to the discharge of more than 14,000 servicemembers over the 17 years in which the policy was in place; and

WHEREAS, This policy discriminated against and prevented servicemembers from expressing their sexuality and participating as equal members of the military and continues to punish them to this day. The policy punished servicemembers for being their authentic selves if other members or supervisors found out about their orientation; gay, lesbian, and bisexual members would be discharged under the "other than honorable" and "dishonorable" categories; and

WHEREAS, Such discharges resulted in servicemembers losing benefits they were entitled to and hindered future employment opportunities. Veterans that received “other than honorable” or “dishonorable” discharges have not had access to health care and their full benefits. This limits their ability to access benefits such as a debt-free college education and other employment opportunities. Furthermore, with these discharges, members are prevented from careers within the federal government; and

WHEREAS, In 2010, President Obama signed into law, the repeal of the DADT policy, that went into effect the next year; and

WHEREAS, The repeal of DADT provided a pathway for veterans that received an “other than honorable” discharge to undergo an upgrade, and veterans with a “dishonorable” discharge to apply for a “character of discharge process.” While this was an important step to help right a wrong, it is the responsibility of the discharged veteran to initiate the process to clear their record; and

WHEREAS, Despite that initial effort, and further changes to the policy, thousands of veterans still have not upgraded their discharges, and have not had access to their benefits; and

WHEREAS, Thousands of former members face different obstacles to access the discharge upgrade. Many are unaware the process to update their discharge is available. Some of the members that have been working on their discharges learned about it by chance or because of their families. There have not been other forums to educate former servicemembers of the possibility of utilizing this process; and

WHEREAS, Another barrier that exists is the emotional trauma associated with reengaging the military that wrongfully discharged them. When members have to go back to the entity that discriminated against them, it becomes an emotional strain. And there is still resistance from the boards that are processing discharge upgrades. Boards are harsh, they do not see the harm, and there is no recognition of the context; and

WHEREAS, A further burden when applying for a discharge upgrade is the accessibility and complexity of the process. Veterans often need to retain legal guidance and the overall process can take over a year. If a servicemember’s record was destroyed or misplaced, that can add even more time to the process; and

WHEREAS, Transgender people have also faced discrimination while serving our country. In 2019, President Trump barred them from joining the military. Those already in the military had to refrain from gender-affirming health care and serve according to their assigned sex at birth. In 2021, President Biden issued an executive order repealing this discriminatory policy; and

WHEREAS, On September 20, 2023, the DOD announced the “DOD’s Proactive Approach to Reviewing Military Records for Those Affected by DADT” to proactively work on the review of military records of veterans whose records indicate administrative separation under the DADT period, this effort still leaves out thousands of veterans discharged prior to the DADT policy because it ignores other discharged members that were not explicitly discharged on these grounds. Other discharged members were affected by the previous policies that resulted in service records with aggravating factors such as misconduct or court-martial convictions; and

WHEREAS, These non-DADT discharges were also the product of bias, perception, or suspicion of sexual orientation or the identity of the members, or a pretext to separate and discipline the members; and

WHEREAS, Some discharges were also the product of cases in which the members of the DOD had consensual activity with adults of the same sex, and that some of these were categorized as sodomy, and eventually misconduct that was used to effect administrative separation for activity which is now acceptable; and

WHEREAS, Guidance is available with respect to the applications that are more complex than those addressed in previous efforts. Guidance may be provided by veterans’ advocates or found in the Memorandum for Secretaries of the Military Departments regarding discharge review boards and boards for correction of military and naval records dated July 25, 2018; and

WHEREAS, Despite the many obstacles, there have been many great efforts to help discharged military members. Most of the work has been done through legal service providers, which have been working with unfairly discharged veterans to provide free or low-cost services to upgrade their discharge; and

WHEREAS, For the last 70 years, much harm was caused to the thousands of veterans unfairly discharged under DADT and previous policies. For many, the damage and the trauma can be permanent. Discharged members have struggled with feelings of shame and anxiety. The true cure must be addressed with more effective policies to restore their dignity; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature denounces the obstacles and harm that members of the military discharged before, under, and even after the DADT policy have undergone and suffered; and be it further

Resolved, That the Legislature urges the President and Congress of the United States to address the issue with effective policies to unify efforts to upgrade the "less than honorable" discharges issued under DADT and predecessor policies. The federal government should address the obstacles veterans and organizations have encountered to create a streamlined, simple, and immediate option to upgrade an "other than honorable" discharge and restore benefits to veterans who have served our country honorably are entitled to; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.