

Estimate of OC Veterans Who May Benefit from LGBT Discharge Reform				
Number of Veterans in the United States	18000000 National Center for Veterans Analysis and Statistics, "Veterans Population," (https://www.va.gov/vetdata/veteran_population.asp , accessed 1/9/2021)			
Number of Veterans in OC	122679 <i>Ibid.</i> , "Table 9L: VetPop2018 County-Level Veteran Population by STATE, AGE GROUP, GENDER, 2018-2048."			
Number of Veterans Who Were Invol Sep for Being LGBT	114,000 David F. Addlestone, et al, "Do Ask, Do Tell: Pursuing Justice for LGBTQ Military Veterans, A Summary Report from a Two-Day Summit, Held at Harvard Law School April 19 & 20, 2018, (Cambridge, MA, https://www.legalservicescenter.org/wp-content/uploads/2012/10/Do-Ask-Do-Tell-Do-Justice-Summit-Report-June-2018.pdf accessed 1/9/2021)			
Estimated % of Veterans Population Involuntarily Separated for LGBT	0.63%			
Number of Transgender Veterans	134300 Gary J. Gates and Jody L. Herman, "Transgender Military Service in the United States," (The Williams Institute, University of California Los Angeles, Los Angeles, 2014, https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf , accessed 1/19/2021)			
% of National Veterans Population that Are Trans	0.746%			
% of OC Veterans who are Transgender	915	0.746×122679	122679	0.75% 915.18534
Estimated Number of OC Veterans Discharged for LGBT	722	$0.63\% \times 122679$	122679	0.63% 772.8777
Estimated Total # of OC Veterans Who May Benefit from Discharge Reform	1687			

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Orange County Veterans Advisory Council

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February 10th, 2021

Orange County Board of Supervisors

333 W. Santa Ana Blvd.

Santa Ana, California 92701

Re: Recommendation for Supportive Action Regarding LGBT Related Military Discharges

Dear Board of Supervisors:

Between 1949 and 2011 when the “don’t ask don’t tell” policy ended, some 114,000 veterans were involuntarily separated from the U.S. military for their sexual orientation or gender identity.¹ There are also thousands of transgender veterans who have legally changed their name and gender after leaving the service but bear discharges that list a former name.² Military discharge documents (DD Form 214 “Certificate of release or Discharge from Active Duty”) that contain adverse remarks related to veterans’ gender nonconformity or sexual orientation or incorrect names due to transgender status continue to affect the honor, medical and financial benefits, and employment status of these veterans, well after the Department of Defense acknowledged their right to serve in the military.

Unfortunately, the existing process to correct military records is complex, burdensome, stigmatizing, and time consuming and very few veterans successfully obtain these corrections. We estimate that 1,000 to 1,600³ lesbian, gay, bisexual, and transgender (LGBT) Orange County veterans are currently affected by this issue—many of whom are among Orange County’s most at-risk for housing instability, homelessness, poverty, substance abuse, mental health disparities, and suicide.⁴ The Veterans Advisory Council has recently heard from several of the Orange County’s LGBT veterans and, after researching and discussing this issue, we believe that federal action is needed to streamline LGBT related corrections.

We recommend the Board of Supervisors send a letter to certain state and federal officials advocating for a federal action to remedy this problem. We believe that we have a responsibility to bring this change as quickly as possible and that your support would help improve the lives of many Orange County veterans.

BACKGROUND

A significant number of LGBT veterans separated from the U.S. military for their sexual orientation or gender identity are unable to access VA benefits because of their discharge status. Many others, like those who have changed their name and gender marker or those who received administrative discharges, may qualify for VA benefits but are unwilling to seek them because they lack the understanding or ability to undergo the complex, burdensome, and lengthy process to change that information or because of the stigma experienced during this process. Further, a military discharge document (referred to as the “DD 214”) is commonly required by employers and prospective employers. Presenting a DD 214 with an adverse LGBT related comment or a former name effectively “outs” the veteran and subjects them to serious possibilities of discrimination in employment.

Under current law, the only way LGBT veterans can correct this information is through “request” to the very service that has caused their injury. The process, which is intended for considerations of clemency in criminal cases rather than the now overturned ban on non-conforming sexual or gender minorities, is complex. Veterans often require the assistance of an attorney or Veterans Service Organization.

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Unfortunately, these obstacles are so great that most LGBT veterans do not even apply for their corrections or upgrades. It is also time consuming for both the veteran and the Department of Defense. According to Jennifer Dane, the Executive Director of the Modern Military Association of America, the average wait after submission of an upgrade or correction request is 2 years.⁵ The ineffectiveness of this existing system for LGBT related upgrades can be seen in very stark numerical terms, as noted in a recent study that revealed that as late as 2018 **only 8%** of veterans involuntarily separated for the being lesbian or gay had applied for upgrades to their discharges.⁶ Nor is there anything in President Biden's January 25th Executive Order on transgender military service that is likely to improve the experience or increase the numbers of LGBT veterans willing and able to apply for upgrades or corrections to their service records.⁷

Taken together—the lack of access to medical and financial benefits, the employment obstacles created by adverse discharge information, and the stigmatizing process—this is an especially harsh burden for a community that already suffers significantly higher rates of discrimination, suicide, substance abuse, mental health disparities, poverty, joblessness and housing insecurity. While we are currently unable to offer definitive statistics on how many Orange County veterans are affected by these discharge issues, we estimate the number to be over a thousand and possibly as high as 1,687. Veterans need a streamlined, culturally appropriate administrative process for the quick and fair upgrade or correction of LGBT related discharges. We encourage you to act on their behalf principally because it is the right thing to do, but also because it is in the County's best interest to help secure federal funds that can support this high-risk population.⁸

We believe that a streamlined administrative process would enjoy large support from Orange County veterans and the public at large. The right of lesbian, gay, and transgender Americans to serve in the armed forces has been settled Department of Defense policy at least since at least the repeal of the ban on transgender military personnel in 2016. We believe the service of our LGBT veterans should be honored and acknowledged and they should receive the benefits to which they are entitled.⁹

RECOMMENDATION

Military discharges are governed by Title 10 of the U.S. Code which means that reforming this process will require federal legislation or, at a minimum, an executive order creating a new process for administering the law in a fair and efficient manner. The Veterans Council believes that Orange County Board of Supervisors can help expedite and signal its support for this necessary reform by writing to:

1. California Secretary of Veterans Affairs, Dr. Vito Imbasciani, who has expressed an interest in lobbying on this issue and who will have greater leverage to do so if you write to support it.
2. Senators Feinstein and Padilla.
3. The seven members of the U.S. House of Representatives who represent the County.

We have enclosed a template for such a letter (see Encl. 2 "Proposed Text for a Resolution or Letter on LGBT Related Military Upgrades and Corrections). Please know that your Veterans Advisory Council is ready to answer questions about this recommendation or help in any way you might direct us.

Sincerely,

David Han
Chairman
Orange County Veterans Advisory Council

CC: Supervisor Andrew Do, Vice Chairman, District 1
Supervisor Michelle Steel, Chair, District 2
Supervisor Donald P. Wagner, District 3
Supervisor Doug Chaffee, District 4
Supervisor Lisa Bartlett, District 5

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Dylan Wright, OCCR Director
 Renee Ramirez, OCCS Director
 Frank Kim, CEO

- Enc: 1.) "Estimate of OC Veterans Who May Benefit from LGBT Discharge Reform."
 2.) "Proposed Text for a Resolution or Letter on LGBT Related Military Upgrades and Corrections"

¹ David F. Addlestone, et al, "Do Ask, Do Tell: Pursuing Justice for LGBTQ Military Veterans, A Summary Report from a Two-Day Summit, Held at Harvard Law School April 19 & 20, 2018, (Cambridge, MA, <https://www.legalservicescenter.org/wp-content/uploads/2012/10/Do-Ask-Do-Tell-Do-Justice-Summit-Report-June-2018.pdf> accessed 1/9/2021).

² Gary J. Gates and Jody L. Herman, "Transgender Military Service in the United States," (The Williams Institute, University of California Los Angeles, Los Angeles, 2014, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf>, accessed 1/19/2021

³ These estimates are based upon the most recent national data available and applying that data proportionally to Orange County's veteran's population. For a more detailed explanation, including citations, please see the enclosure 1, titled "Estimate of OC Veterans Who May Benefit from LGBT Discharge Reform."

⁴ See, e.g., U.S. Department of Veterans Affairs, *Veterans Experiencing Homelessness*, available at <https://www.va.gov/HOMELESS/nchav/resources/veteran-populations/lgbt.asp#:~:text=Transgender%20Veterans%20are%20more%20than,among%20the%20general%20U.S.%20population> (last visited February 1, 2021).

⁵ This estimate squares with the practical experience of the attorney's at the Orange County based Veterans Legal Institute. They noted, in a recent phone call with OCVAC Commissioner Stephanie Wade, that each service has its own board and that these service specific boards vary in their response time with the Army being the slowest at 3 years or more for most cases and the Navy-Marine Corps being the fastest at about 18-24 months but all the serves probably netting out at about 2 years to respond to most petitions for upgrade or correction.

⁶ Addlestone, et al, "Do Ask, Do Tell: Pursuing Justice for LGBTQ Military Veterans, *supra*.

⁷ "Executive Order on Enabling All Qualified Americans to Serve their Country in Uniform" Jan. 25, 2021 (<https://www.federalregister.gov/documents/2021/01/28/2021-02034/enabling-all-qualified-americans-to-serve-their-country-in-uniform>, accessed 2/3/2021). The order does direct the Secretary of Defense to "issue guidance" regarding "the corrections of the military records" of those "involuntarily separated, discharged, or denied reenlistment or continuation of service under circumstances relating to their gender identity." However, this vague language merely gives transgender veterans the same ability to appeal for upgrades and corrections that has existed since the 2011 end of 'don't ask don't tell' for gay and lesbians who were discharged for their sexual orientation. Unfortunately, it does effectively nothing to change a process that, as was previously noted, is so problematic that only 8% or so of the veterans separated involuntarily for being gay have even attempted to access it.

⁸ See Enclosure 1 "Estimate of OC Veterans Who May Benefit from LGBT Discharge Reform."

⁹ It is notable that even President Trump's policy on transgender service, which President Biden has now repealed, went to great pains to make certain that it was not a ban on transgender service but on those who had obtained or sought medical transition.

Encl 2

From OC VAC to OC BOS

2/10/2021

PROPOSED TEXT FOR A RESOLUTION OR LETTER ON LGBT RELATED MILITARY DISCHARGES

We recommend that the Orange County Board of Supervisors write to both the County's state and federal legislators to move quickly to craft this legislation and that in doing so they make the following arguments:

1. WHEREAS, the equality of lesbian, gay, bisexual and transgender Americans to serve in the U.S. armed forces has, within the last decade, been accepted as a just and settled policy.
2. WHEREAS, on January 25th, 2021, President Biden signed an Executive Order that formalized the policy that all Americans who are qualified to serve in the Armed Forces of the United States should be able to serve.
3. WHEREAS, President Biden's Executive Order immediately bars the services from discharging or denying reenlistment to service members because of their gender identity and also directs the Department of Defense (DOD) to correct the record of anyone dismissed from service solely for their gender identity but does very little to reform a process that has performed so poorly for gay and lesbian veterans since the end of the don't ask don't tell policy in 2011.
4. WHEREAS, more than 114,000 veterans were involuntarily separated from the U.S. military for being lesbian, gay, bisexual or transgender between 1949 and 2011.
5. WHEREAS, there are many thousands of transgender veterans who legally changed their name and gender after serving but whose discharges still contain information that is incongruous with that legal name and gender.
6. WHEREAS, these veterans now bear discharges that legally bar them or, because of the embarrassment they suffer over the adverse or incorrect information contained on those discharges, are prevented from receiving the valuable veterans benefits they justly deserve.
7. WHEREAS, the only existing process for correcting these discharges is a burdensome, complex, and stigmatizing one for the vast number of affected lesbian, gay, bisexual or transgender veterans to undertake.
8. WHEREAS, these lesbian, gay, bisexual and transgender veterans served honorably but only have access to a process for discharge upgrades and corrections that is fundamentally designed for those seeking clemency for serious or felonious actions.
9. WHEREAS, the existing process available to gay, bisexual and transgender veterans for upgrades and corrections has proved so onerous and injurious that fewer than 10% of those veterans have applied to the Department of Defense for upgrades or corrections.
10. WHEREAS, both the nation's policy and attitude of its population toward lesbian, gay, bisexual and transgender Americans has changed to recognize the past ban on their service as a great injustice.
11. WHEREAS, these veterans, many of whom are now in failing health as they reach the twilight of their lives.
12. WHEREAS, a speedy redress of these past wrongs will help to heal old wounds and validate the nation's commitment to the equality of future generations of sexual and gender minorities who will increasingly serve openly in the U.S. military.
13. WHEREAS, such a speedy redress will provide medical, financial, educational, and burial benefits to deserving and needy veterans who have been unjustly denied those benefits.
14. AND WHEREAS, more than 100,000 American veterans will benefit from such legislation, and that many thousands of these veterans reside within the County of Orange, California.
15. We urge you, with all due haste, to promote, write, pass and fund legislation that will revise the process of correcting discharge documents for lesbian, gay, bisexual and transgender veterans who seek upgrades or corrections to their military discharge records, where such adverse or erroneous information is clearly based upon their gender or sexual orientation.