

117TH CONGRESS
1ST SESSION

S. 2188

To establish the Commission to Study the Stigmatization, Criminalization, and Ongoing Exclusion and Inequity for LGBTQ Servicemembers and Veterans.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2021

Mr. BLUMENTHAL (for himself, Mr. CARDIN, Mr. MERKLEY, Mr. MARKEY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To establish the Commission to Study the Stigmatization, Criminalization, and Ongoing Exclusion and Inequity for LGBTQ Servicemembers and Veterans.

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 “Commission to Study
5 the Stigmatization, Criminalization, and Ongoing Exclu-
6 sion and Inequity for LGBTQ Servicemembers and Vet-
7 erans Act”.

1 **SEC. 2. ESTABLISHMENT AND DUTIES.**

2 (a) ESTABLISHMENT.—There is established the Com-
3 mission to Study the Stigmatization, Criminalization, and
4 Ongoing Exclusion and Inequity for LGBTQ Servicemem-
5 bers and Veterans (in this Act referred to as the “Com-
6 mission”).

7 (b) DUTIES.—The Commission shall perform the fol-
8 lowing duties:

9 (1) Identify and compile a corpus of informa-
10 tion about the history of military policy regarding
11 homosexuality, from 1778 onward. The Commis-
12 sion’s documentation shall include facts related to—

13 (A) the history of military policy regarding
14 LGBTQ sexual orientation and gender identity,
15 including—

16 (i) “blue discharges” and other forms
17 of discharge based on sexual orientation
18 that rendered former members of the
19 Armed Forces ineligible for veterans’ bene-
20 fits;

21 (ii) military documents published in
22 1942 that linked homosexuality to psy-
23 chopathy;

24 (iii) 1963 Army Regulation 40-501,
25 which banned gender transitioned or
26 transitioning members of the Armed

1 Forces under the reasoning that they were
2 “mentally unfit”; and

3 (iv) the Department of Defense direc-
4 tive dated 1981 that unequivocally stated
5 that homosexuality was incompatible with
6 military service and banning all homo-
7 sexual individuals from service; and

8 (B) the arguments that led to the creation
9 of the “Don’t Ask, Don’t Tell” policy, including
10 the claims that openly homosexual members of
11 the military inhibited combat-readiness and unit
12 cohesion.

13 (2) Hold public hearings in such cities of the
14 United States as it finds appropriate, and do com-
15 munity outreach and other public relations efforts in
16 order to advertise such hearings and the opportunity
17 to give testimony.

18 (3) Gather testimonies, written and oral, from
19 LGBTQ members of the Armed Forces and veterans
20 about their experiences, both anonymously and with
21 names given.

22 (4) Examine the impacts that discriminatory
23 policy had on the physical and mental well-being of
24 members of the Armed Forces.

1 (5) Examine the lasting impacts, including psy-
2 chological, financial, and employment-related, that
3 military policy has had on veterans and members of
4 the Armed Forces who were discharged due to their
5 sexual orientation or gender identity.

6 (6) Examine disparate impact that policies such
7 as the “Don’t Ask, Don’t Tell” policy and the
8 Transgender Service Ban had on minority groups in
9 the Armed Forces, particularly racial minorities and
10 women.

11 (7) Recommend appropriate ways to educate
12 the American public about institutionalized and Gov-
13 ernment-sanctioned discrimination.

14 (8) Recommend appropriate remedies to ad-
15 dress findings of the Commission, including how—

16 (A) the Government may offer an apology
17 for enforcing discrimination that led to psycho-
18 logical, emotional, and physical harm of United
19 States troops and their families;

20 (B) discharge upgrades and record amend-
21 ment may be streamlined through the Boards
22 for Correction of Military Records, including
23 improving the transparency and accessibility of
24 records by the members of the Armed Forces to
25 whom they pertain;

1 (C) the service of LGBTQ individuals in
2 the Armed Forces may be made more visible in
3 materials distributed by the Secretaries of De-
4 fense and Veterans Affairs;

5 (D) diversity and inclusion policies of the
6 Department of Defense may be revised, and
7 how resources may be committed to diversity
8 training; and

9 (E) health care, furnished by such Secre-
10 taries to members of the Armed Forces and for
11 veterans, may include more resources to meet-
12 ing the needs of LGBTQ patients, including im-
13 proved data collection on LGBTQ patients,
14 mental health counseling, and other medical ne-
15 cessities.

16 (9) Submit a written report of its findings to
17 Congress not later than one year after the date of
18 the first meeting of the Commission.

19 **SEC. 3. MEMBERSHIP.**

20 (a) IN GENERAL.—The Commission shall be com-
21 posed of 16 members, appointed not later than 30 days
22 after the date of the enactment of this Act, as follows:

23 (1) Seven members appointed by the President,
24 at least four of whom shall represent historical soci-

1 eties, nonprofits, research institutions, or advocacy
2 organizations—

3 (A) that represent veterans from a diver-
4 sity of service populations, across age range,
5 tour of service, and era served; and

6 (B) at least two of which represent organi-
7 zations that focus on transgender veterans and
8 members of the Armed Forces.

9 (2) Three members appointed by the Speaker of
10 the House of Representatives, including one member
11 each from—

12 (A) the Committee on Armed Services of
13 the House of Representatives;

14 (B) the Committee on Veterans' Affairs of
15 the House of Representatives; and

16 (C) the Congressional LGBTQ+ Equality
17 Caucus.

18 (3) Two members appointed by the President
19 pro tempore of the Senate.

20 (4) Two members appointed by the Secretary of
21 Defense.

22 (5) Two members appointed by the Secretary of
23 Veterans Affairs.

24 (b) QUALIFICATIONS.—All members of the Commis-
25 sion shall be persons who are exceptionally qualified to

1 serve on the Commission by virtue of their education,
2 training, activism, or experience, particularly in the fields
3 of advocating for LGBTQ members of the Armed Forces
4 and veterans.

5 (c) TERMS.—Each member shall be appointed for the
6 life of the Commission. A vacancy in the Commission shall
7 not affect the powers of the Commission and shall be filled
8 in the same manner in which the original appointment was
9 made.

10 (d) FIRST MEETING.—The President shall call the
11 first meeting of the Commission not later than 120 days
12 after the date of the enactment of this Act or 30 days
13 after the date of the enactment of legislation making ap-
14 propriations to carry out this Act, whichever date is later.

15 (e) QUORUM.—Nine members of the Commission
16 shall constitute a quorum, but a lesser number may hold
17 hearings.

18 (f) CHAIR AND VICE CHAIR.—The Commission shall
19 elect a Chair and Vice Chair from among its members.
20 The term of office for each shall be for the life of the
21 Commission.

22 (g) COMPENSATION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), each member of the Commission shall be
25 compensated at a rate equal to the daily equivalent

1 of the annual rate of basic pay established for a po-
2 sition at level V of the Executive Schedule under
3 section 5316 of title 5, United States Code, for each
4 day (including travel time) during which such mem-
5 ber is engaged in the performance of duties vested
6 in the Commission.

7 (2) FEDERAL EMPLOYEES.—A member of the
8 Commission who is a full-time officer or employee of
9 the United States or a Member of Congress shall re-
10 ceive no additional pay, allowances, or benefits by
11 reason of the member's service to the Commission.

12 (3) TRAVEL EXPENSES.—All members of the
13 Commission shall be reimbursed for travel, subsist-
14 ence, and other necessary expenses incurred by the
15 members in the performance of their duties to the
16 extent authorized by chapter 57 of title 5, United
17 States Code.

18 **SEC. 4. POWERS OF THE COMMISSION.**

19 (a) HEARINGS AND MEETINGS.—The Commission
20 may, for the purpose of carrying out the provisions of this
21 Act, hold such hearings and meet and act at such times
22 and at such places in the United States, and request the
23 attendance and testimony of such witnesses and the pro-
24 duction of such books, records, correspondence, memo-
25 randa, papers, and documents, as the Commission con-

1 siders appropriate. The Commission may invoke the aid
2 of an appropriate United States district court to require,
3 by subpoena or otherwise, such attendance, testimony, or
4 production.

5 (b) POWERS OF SUBCOMMITTEES AND MEMBERS.—

6 Any subcommittee or member of the Commission may, if
7 authorized by the Commission, take any action which the
8 Commission is authorized to take under this section.

9 (c) OBTAINING OFFICIAL DATA.—The Commission
10 may acquire directly from the head of any department,
11 agency, or instrumentality of the executive branch of the
12 Federal Government, available information which the
13 Commission considers useful in the discharge of its duties.
14 All departments, agencies, and instrumentalities of the ex-
15 ecutive branch of the Government shall cooperate with the
16 Commission with respect to such information and shall
17 furnish all information requested by the Commission to
18 the extent permitted by law.

19 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

20 (a) STAFF.—The Commission may, without regard to
21 the civil service laws and regulations, appoint and fix the
22 compensation of such personnel as the Commission con-
23 siders appropriate.

24 (b) APPLICABILITY OF CERTAIN CIVIL SERVICE
25 LAWS.—The personnel of the Commission may be ap-

1 pointed without regard to the provisions of title, United
2 States Code, governing appointments in the competitive
3 service, and without regard to the provisions of chapter
4 51 and subchapter III of chapter 53 of such title, relating
5 to classification and General Schedule pay rates, except
6 that the rate of basic pay of any employee of the Commis-
7 sion may not exceed the rate of basic pay established for
8 a position at level V of the Executive Schedule under sec-
9 tion 5316 of such title.

10 (c) EXPERTS AND CONSULTANTS.—The Commission
11 may procure the services of experts and consultants in ac-
12 cordance with the provisions of section 3109(b) of title 5,
13 United States Code, but at rates for individuals not to
14 exceed the daily equivalent of the annual rate of basic pay
15 established for a position at level V of the Executive
16 Schedule under section 5316 of such title.

17 (d) ADMINISTRATIVE SUPPORT SERVICES.—The
18 Commission may enter into agreements with the Adminis-
19 trator of General Services for procurement of financial
20 and administrative services necessary for the discharge of
21 the duties of the Commission. Payment for such services
22 shall be made by reimbursement from funds of the Com-
23 mission in such amounts as may be agreed upon by the
24 Chairman of the Commission and the Administrator.

25 (e) CONTRACTS.—The Commission may—

1 (1) procure supplies, services, and property by
2 contract in accordance with applicable laws and reg-
3 ulations and to the extent or in such amounts as are
4 provided in appropriations Acts; and

5 (2) enter into contracts with departments,
6 agencies, and instrumentalities of the Federal Gov-
7 ernment, State agencies, and private firms, institu-
8 tions, and agencies, for the conduct of research or
9 surveys, the preparation of reports, and other activi-
10 ties necessary for the discharge of the duties of the
11 Commission, to the extent or in such amounts as are
12 provided in appropriations Acts.

13 **SEC. 6. TERMINATION.**

14 The Commission shall terminate 90 days after the
15 date on which the Commission submits its report to Con-
16 gress under section 2(b)(9).

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