



**Restoration of Honor:  
Expanding LGBT Veterans' Access to State  
Veterans' Benefits**



**New York State Senator Brad Hoylman**

## Introduction

For over two centuries, the experience of lesbian, gay, bisexual and transgender (LGBT) service members in the United States military was one of repression, deception, and fear. For the vast majority of our nation's history, patriotic service members willing to risk their lives in service of their country faced everything from criminal penalties to an unceremonious discharge solely due to their sexual orientation or gender identity.

LGBT veterans were often left out in the cold by the country they served. Depending on how service members were discharged, they could be stripped of benefits they would otherwise have been entitled to, and left ineligible for a host of state and federal programs aimed at assisting veterans.

With the repeal of the military's Don't Ask, Don't Tell (DADT) policy in 2011, a bright new chapter has begun for LGBT service members. For the first time in the history of the United States military, service members can serve openly without fear of reprisal or discharge. While there are still major issues that need to be addressed to ensure the equality and protection of LGBT service members, it is undeniable that four years after the repeal of DADT the United States military is more welcoming toward LGBT individuals today than at any point in its history.

Even so, we cannot forget the generations of LGBT veterans who suffered through past institutional discrimination and were forced out of military service due to their sexual orientation or gender identity. An estimated 114,000 service members have been discharged because of their sexual orientation or gender identity since World War II, leaving many with tarnished military records and reputations that have unfairly jeopardized their ability to access jobs, scholarships, and vital services.

### Key Findings

- An estimated 114,000 U.S. service members have been discharged because of their sexual orientation or gender identity since World War II.
- At least 53 New York State programs, benefits, and tax breaks for military veterans are directly contingent upon the discharge status of the veteran.
- New York LGBT veterans who were discharged due to their sexual orientation or gender identity are potentially ineligible to access these state programs, depending on their discharge status.
- The federal government has not yet acted to comprehensively restore the discharge status of LGBT veterans who were discharged prior to the repeal of Don't Ask, Don't Tell.

A comprehensive survey of New York State's laws by my office found over 50 state programs, benefits, and tax breaks for military veterans that are directly contingent upon the veteran's discharge status. The benefits range in scope from general eligibility for the comprehensive services provided by the New York State Division of Veterans' Affairs to the issuance of commemorative license plates. The laws we identified touch virtually every aspect of veterans' lives, from scholarships to job opportunities to health screenings to reimbursement for burial costs. After demonstrating unparalleled service and risking their lives for our nation, it is our obligation to extend a hand to all of our distinguished veterans, many who experience great difficulty assimilating back into to civilian life.

The federal government is in the best position to act to once and for all restore LGBT veterans' discharge records to reflect their honorable service. Unfortunately, legislation to do this has stalled in Congress.

While we wait for Washington, D.C. to act, it is incumbent upon New York to lead the way. That's why I am introducing the *New York Restoration of Honor Act*. My legislation will ensure that veterans whose discharges were less than honorable due solely to their sexual orientation or gender identity are not impeded from receiving state programs, services, and benefits for which they would otherwise be eligible.

## **The History of Military Discharge for Sexual Orientation**

The history of discrimination against LGBT service members dates back as far as the history of our nation. In 1778, under an order from General George Washington, Lieutenant Gotthold Frederick Enslin of the Continental Army became the first enlisted service member to be dismissed from United States military service due to sexual orientation. In the two centuries to follow, the military would continuously clarify and strengthen policies that prohibited homosexuality.

Shortly after the conclusion of World War I, the United States Congress approved modified Articles of War that criminalized the act of sodomy, making it an offense subject to a court-martial. During World War II, even as the nation rallied around the war effort against the Axis forces, men with "homosexual proclivities" were disqualified from conscripted service and the military issued its first formal regulations stating that service members identified as homosexual could be discharged from service and denied benefits.

Over the course of the Cold War, the military's treatment of LGBT service members grew more complicated. Punishments ranging from court-martial to dishonorable discharge to compulsory general discharge depended on whether homosexual service members were determined to be "aggressive," "active," or merely "exhibiting homosexual tendencies."

In spite of military-issued reports finding that LGBT service members posed no significant security risk, federal courts repeatedly ruled in favor of the military's ban on homosexuality.

In 1993, President Bill Clinton entered the White House promising to end discriminatory practices by the military and allow anyone who qualified to serve, regardless of sexual orientation. Institutional opposition to the Clinton proposal proved too strong, and in November of that year President Clinton signed a compromise measure known as "Don't Ask, Don't Tell" (DADT).

DADT allowed LGBT individuals to serve in the military as long as they did not openly declare their sexual orientation. It included provisions to disallow pursuing or harassing individuals who may be gay, though investigations into someone's sexual orientation could occur in certain circumstances. In effect, the policy encouraged LGBT service members to remain closeted, under the constant threat of mandatory discharge.

In December 2010, after a relentless campaign by Democrats on Capitol Hill, including New York Senator Kirsten Gillibrand, President Barack Obama signed legislation repealing DADT. The policy officially came to an end in September 2011, establishing a new era in which the military would allow openly LGBT individuals to serve and be treated equally under the law.

## **The Legacy of 'Don't Ask, Don't Tell'**

Under 17 years of DADT, over 14,000 service members were dismissed from the military due to their sexual orientation. The law continued to criminalize homosexuality to the effect that many members who were dismissed earned an "other than honorable" (OTH) discharge, a category generally reserved for those who exhibit serious misconduct such as using deliberate force to harm another person. OTH status means that veterans are prohibited from receiving federal military benefits.

Some service members discharged under DADT received an honorable discharge. However, many of these service members may still have a narrative reason for

discharge listed on their discharge paperwork such as “Homosexual Conduct,” “Homosexual Act,” or “Homosexual Marriage.” These notices have the potential to affect future employment, housing, and other benefits. In addition, many of these members received a negative re-enlistment code, which bars them from re-enlisting in the military and unfairly stigmatizes them in their civilian life.

Unfortunately, the 2010 repeal of DADT did not include language to retroactively support the 14,000 service members who lost access to benefits under the law. Their OTH statuses, narrative reasons for discharge, and negative re-enlistment codes remain to this day, with the only mechanism in place to upgrade their discharge status being a burdensome, byzantine federal review process. The same holds true for the nearly 100,000 other men and women who were discharged from military service solely due to their sexual orientation between World War II and the enactment of DADT.

## **Federal Efforts**

In July 2013, U.S. Representatives Charlie Rangel of New York and Mark Pocan of Wisconsin introduced the *Restore Honor to Service Members Act*. In January 2014, U.S. Senators Kirsten Gillibrand of New York and Brian Schatz of Hawaii followed suit by introducing companion legislation in the Senate. The bill allows veterans who were discharged due to their sexual orientation to correct their military records to reflect their honorable service and therefore reinstate the benefits they rightfully earned.

While the bill boasts enviable goals, unfortunately it has stalled in committees and lost traction. In the absence of federal action, it is pertinent that we seek to restore LGBT veterans’ benefits and dignity at the state level.

## **Impact on New York State LGBT Veterans**

Searching through New York State’s Consolidated Law, my office identified 53 state programs, benefits, and tax breaks for military veterans that are tied to the discharge status of the veteran (see Appendix A for the full list). The benefits range in scope from general eligibility for the comprehensive services provided by the New York State Division of Veterans’ Affairs to the issuance of commemorative license plates.

The laws we identified touch virtually every aspect of veterans’ lives, from scholarships to job opportunities to health screenings to reimbursement for burial costs. As a result,

LGBT veterans with tarnished discharge records stand to lose out on credit toward their public pensions, targeted entrepreneurship training, and property tax breaks.

The repeal of DADT was a major step forward for LGBT service members, but we still have a long way to go to before we fully eliminate LGBT discrimination in the military. These lost benefits are the legacy of a failed policy and the need is clear for immediate state action. That is why I am introducing the *New York Restoration of Honor Act*, which will:

- Make clear that LGBT veterans are not to be considered ineligible to access state programs, services, or benefits due solely to their sexual orientation or gender identity.
- Establish a simple, streamlined certification process within the State Division of Veterans' Affairs for LGBT veterans to clarify their discharge status for the purposes of accessing state programs, services, or benefits.
- Place the burden on the state to prove that a veteran who has been discharged from the military because of their sexual orientation or gender identity is not otherwise eligible to receive state programs, services, or benefits.

## **Further Information**

For more information about the *New York Restoration of Honor Act*, please contact Burton Phillips, Chief Counsel & Policy Director for Senator Brad Hoylman, at (518) 455-2451.

## **Acknowledgements**

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## **APPENDIX A**

### **New York State Laws**

Benefit	Section of Law	Condition of Discharge
<b>NEW YORK STATE DIVISION OF VETERANS AFFAIRS</b>		
<b>General eligibility for the services, programs, activities, seminars, counseling, etc. provided by the New York State Division of Veterans' Affairs.</b>	Executive Law § 353	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>General eligibility for programs and services offered by the state veterans' services agency.</b>	Executive Law § 356	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>General eligibility for programs and services offered by local veterans' services agencies.</b>	Executive Law § 357	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>Health screening services for veterans who have been experiencing health problems.</b>	Executive Law § 366	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 366(1)(b)
<b>JOB OPPORTUNITIES</b>		
<b>Eligibility to gain official status as a service-disabled veteran owned business.</b>	Executive Law § 369-I	<i>Honorably discharged.</i>  Exec. L. § 369-I(5)(b)
<b>Eligibility to benefit from the provisions of the Veterans Employment Act.</b>	Executive Law § 369-C	<i>Released from...service otherwise then by dishonorable discharge.</i>  Exec. L. § 369-b(3)

<b>Eligibility for access to ESDC development centers targeted toward veteran-owned business ventures.</b>	Economic Development Law § 211	<i>Honorable or general discharge.</i> Ec. Dev. L. § 210(6)
<b>Eligibility for access to ESDC entrepreneurship support centers for training in all aspects of business development and small business management.</b>	Economic Development Law § 212	<i>Honorable or general discharge.</i> Ec. Dev. L. § 210(6)
<b>Veterans automatically receive additional points on civil service examinations.</b>	Civil Service Law § 85	<i>Honorably discharged or released under honorable circumstances.</i> Civ. Serv. L. § 85(a)
<b>Up to 500 noncompetitive civil service jobs are earmarked for disabled veterans and veterans with disabilities.</b>	Civil Service Law § 55-c	<i>Honorably discharged or released under honorable circumstances.</i> Civ. Serv. L. § 85(a)
<b>Protection from being discharged from public service if a veteran holds a civil service position that is abolished.</b>	Civil Service Law § 86	<i>Honorably discharged or released under honorable circumstances.</i> Civ. Serv. L. § 85(a)
<b>Veterans outside of New York City have the right to procure street vending licenses at no cost.</b>	General Business Law § 32	<i>Honorably discharged.</i> Gen. Bus. L. (1)
<b>Disabled veterans in New York City have the right to procure street vending licenses.</b>	General Business Law § 35-a	<i>Honorably discharged.</i> Gen. Bus. L. § 35-a(1)(a)

## EDUCATION

<b>Access to full tuition award scholarships for SUNY undergraduate and graduate degree programs.</b>	Education Law § 669-a	<i>Discharged...under honorable conditions, including but not limited to honorable discharge, discharge under honorable conditions, or general discharge.</i>
		Ed. L. § 669-a(1)
<b>Veterans may attend public schools free of charge at any age if they do not have a high school diploma.</b>	Education Law § 3202	<i>Discharged...under conditions other than dishonorable.</i>
		Ed. L. § 3202(1)
<b>Access to Regents scholarships for children of disabled or deceased veterans.</b>	Education Law § 668	<i>Honorably discharged.</i>
		Ed. L. § 668(2)(b)
<b>Allows children of injured veterans to benefit from the Interstate Compact on Education Opportunity for Military Children.</b>	Education Law Article 66	<i>Discharged...under conditions other than dishonorable.</i>
		Ed. L. § 3302(19)
<b>Access to scholarships for children of Vietnam War veterans born with Spina Bifida.</b>	Education Law § 668-c	<i>Honorably discharged.</i>
		Ed. L. § 668-c(1)
<b>Exemption from parking or vehicle registration fees or fines on SUNY campuses while an enrolled student.</b>	Education Law § 360	<i>Honorably discharged or released under honorable circumstances from such service.</i>
		Ed. L. § 360(c)
<b>Participation in the Veteran Speaker Education Program.</b>	Executive Law § 353-A	<i>Released from...service otherwise than by dishonorable discharge.</i>
		Exec. L. § 350(3)

## PENSION & RETIREMENT

<b>Up to three years of credit for military service for the purposes of Public Retirement Systems.</b>	Retirement & Social Security Law § 1000	<i>Honorably discharged.</i>  Ret. Soc. Sec. L. § 1000
<b>Credit for certain military service in the New York State Employees Retirement System.</b>	Retirement & Social Security Law § 2	<i>Credit...shall not accrue to a person who is released from active duty under conditions other than honorable.</i>  Ret. Soc. Sec. L. § 2
<b>Credit for certain military service in the New York State Policemen's and Firemen's Retirement System.</b>	Retirement & Social Security Law § 302	<i>Honorably discharged or released...under honorable circumstances.</i>  Ret. Soc. Sec. L. § 302
<b>Credit for certain military service in the State Teachers' Retirement System for Public School Teachers.</b>	Education Law § 503	<i>Honorably discharged or released...under honorable circumstances.</i>  Ed. L. § 503
<b>Retirement allowances of certain war veterans who are members of the New York City Teachers' Retirement System.</b>	Military Law § 245	<i>Honorably discharged.</i>  Mil. L. § 245

## DEATH BENEFITS

<b>Eligibility to have up to \$2,500 in burial costs reimbursed through the New York State Veteran Burial Fund.</b>	Executive Law § 354-C	<i>Honorably discharged.</i>  Exec. L. § 354-C(2)
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<b>Eligibility to be buried in a veterans cemetery or veterans section of a normal cemetery.</b>	Executive Law § 365	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
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<b>County-funded purchase, care, and maintenance of burial plots in Dutchess County cemeteries, for veterans who were residents of the county at the time of their death.</b>	County Law § 831	<i>Discharged...honorably or under honorable circumstances.</i>  Co. L. § 831
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### TRANSPORTATION BENEFITS

<b>Special identifying mark to denote veteran status on driver licenses.</b>	Vehicle & Traffic Law § 504	<i>Received an honorable discharge or was released...under honorable conditions.</i>  V. T. L. § 504(1)(a-1)
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<b>Special identifying mark to denote veteran status on non-driver ID cards.</b>	Vehicle & Traffic Law § 490	<i>Received an honorable discharge or was released...under honorable conditions.</i>  V. T. L. § 490(3)(b)
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<b>Distinctive license plates for U.S. Naval Armed Guard veterans.</b>	Vehicle & Traffic Law § 404-V*2	<i>Honorably discharged.</i>  V. T. L. § 404-V*2(1)
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<b>Distinctive license plates for War on Terror veterans.</b>	Vehicle & Traffic Law § 404-W	<i>Discharged...under other than dishonorable conditions.</i>  V. T. L. § 404-W(1)
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<b>Distinctive license plates for Persian Gulf veterans.</b>	Vehicle & Traffic Law § 404-W*2	<i>Honorably discharged.</i>  V. T. L. § 404-W*2(3)
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## TAX BENEFITS

<b>Eligibility for real property tax exemptions for military or naval services.</b>	Real Property Tax Law § 458	<i>Honorably discharged.</i>  Real Prop. Tax L. § 458(2)
<b>Eligibility for real property tax exemptions for veterans.</b>	Real Property Tax Law § 458-A	<i>Discharged or released...under honorable conditions.</i>  Real Prop. Tax L. § 458-A(1)(e)
<b>Eligibility for real property tax exemptions for Cold War veterans.</b>	Real Property Tax Law § 458-B	<i>Discharged or released...under honorable conditions.</i>  Real Prop. Tax L. § 458-B(1)(a)
<b>Eligibility of businesses to receive "hire-a-vet" tax credit against franchise taxes on business corporations.</b>	Tax Law § 210-B	<i>General or honorable discharge.</i>  Tax L. § 210-B(29)(b)(1)
<b>Exemption from sales taxes on military decorations.</b>	Tax Law § 1115	

## APPOINTMENT OPPORTUNITIES

<b>Appointment as Director of Veterans Affairs</b>	Executive Law § 351	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>Appointment to Veterans Affairs Commission</b>	Executive Law § 352	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>Appointment as Women's Veterans Coordinator</b>	Executive Law § 361-B	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)

## OTHER BENEFITS

<b>Eligibility for admission to the New York State Veterans' Home.</b>	Public Health Law § 2632	<i>Discharged under honorable conditions.</i>  Pub. H. L. § 2632(1)
<b>General eligibility for veteran assistance through social services districts.</b>	Social Services Law § 168-178	<i>Honorably discharged or released under honorable circumstances.</i>  Soc. Serv. L. § 168(1)
<b>Entitlement to an annuity paid to veterans.</b>	Executive Law § 364	<i>Honorable, general or ordinary discharge or any other form of release...except a dishonorable discharge, a bad conduct discharge, an undesirable discharge, a discharge without honor or a discharge for the good of the service.</i>
<b>Entitlement to an additional annuity paid to blind veterans.</b>	Executive Law § 362	<i>Released from...service otherwise than by dishonorable discharge.</i>  Exec. L. § 350(3)
<b>Eligibility to apply for the issuance or renewal of a gun license.</b>	Penal Law § 400.00	<i>Has not been discharged...under dishonorable conditions.</i>  Pen. L. § 400.00(1)(g)
<b>Exemption from age restriction for the issuance of a gun license.</b>	Penal Law § 400.00	<i>Honorably discharged.</i>  Pen. L. § 400.00(1)(a)
<b>Eligibility to receive the Conspicuous Service Cross award from the Governor.</b>	Military Law § 247	<i>Honorable service.</i>  Mil. L. § 247(1)
<b>Eligibility to receive the Conspicuous Service Star award from the Governor.</b>	Military Law § 247	<i>Honorable service.</i>  Mil. L. § 247(1-a)

<b>Eligibility to receive the Cold War Certificate from the New York State Adjutant General.</b>	Military Law § 247	<i>Honorably discharged or released under honorable circumstances.</i>  Mil. L. § 247(1-b)(iv)
<b>Paid leave for public employees who are veterans on Memorial Day and Veterans Day.</b>	Public Officers Law § 63	<i>Discharged or released...under honorable conditions.</i>  Pub. Off. L. § 63
<b>Paid leave for public employees who are veterans on July 4th.</b>	Military Law § 249	<i>Honorably discharged.</i>  Mil. L. § 249
<b>Exemption from licensing fees for insurance agents.</b>	Insurance Law § 2013	<i>Conditions other than dishonorable.</i>  Ins. L. § 2103(j)(11)

## **APPENDIX B**

### **Forms of Discharge**

<b>Name</b>	<b>Type</b>	<b>Details</b>
<b>Honorable Discharge</b>	Administrative	The most common form of discharge. Given to those who have exhibited good or excellent service.
<b>General Discharge</b> (a/k/a Discharge Under Honorable Conditions)	Administrative	Given to those who have exhibited satisfactory service, but have had performance-related issues such as personal conduct infractions or failing to advance in training.
<b>Other Than Honorable Discharge</b>	Administrative	Given to those with serious misconduct issues such as abuse of authority, use of violence, or security violations.  Often given to LGBT service members under Don't Ask, Don't Tell.
<b>Entry Level Separation</b>	Administrative	Given to members who leave service prior to completing 180 days of service.
<b>Bad Conduct Discharge</b>	Punitive	A punishment given by a court martial to those who have committed a violation such as disorderly conduct, being absent without leave, or being drunk on duty.
<b>Dishonorable Discharge</b>	Punitive	A punishment given by a court martial to those who have exhibited reprehensible behavior, such as murder, sexual assault, or desertion.
<b>Dismissal</b>	Administrative	Commissioned officers cannot receive punitive discharges, and instead are issued dismissals if convicted by a court martial.  They are treated effectively the same as dishonorable discharges for enlisted service members.