

115TH CONGRESS  
1ST SESSION

# H. R. 3209

To amend title 10, United States Code, to improve protections for a member of the Armed Forces who is a survivor of a sex-related offense during military service regarding the separation, or the characterization of any separation, of the member from the Armed Forces, to make additional changes to the authorities and procedures of boards for the correction of military records and discharge review boards, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2017

Ms. HERRERA BEUTLER (for herself and Ms. TSONGAS) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

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1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Protecting Military Honor Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Confidential review of characterization of terms of discharge of members who are survivors of sex-related offenses.
- Sec. 3. Authority for discharge review boards to refer certain applications for relief to the Physical Disability Board of Review.
- Sec. 4. Public availability of information related to disposition of claims regarding discharge or release of members of the Armed Forces when the claims involve sex-related offenses.
- Sec. 5. Training requirements.
- Sec. 6. Other improvements to authorities and procedures for the correction of military records.
- Sec. 7. Burdens of proof applicable to investigations and reviews related to protected communications of members of the Armed Forces and prohibited retaliatory actions.
- Sec. 8. Administrative separation protections for members of the Armed Forces who are survivors of sex-related offenses.
- Sec. 9. Department of Defense working group on administrative review boards.

6 **SEC. 2. CONFIDENTIAL REVIEW OF CHARACTERIZATION OF**  
7 **TERMS OF DISCHARGE OF MEMBERS WHO**  
8 **ARE SURVIVORS OF SEX-RELATED OFFENSES.**

9 (a) CODIFICATION OF CURRENT CONFIDENTIAL  
10 PROCESS.—

11 (1) CODIFICATION.—Chapter 79 of title 10,  
12 United States Code, is amended by inserting after  
13 section 1554a a new section 1554b consisting of—

14 (A) a heading as follows:

1 **“§ 1554b. Confidential review of characterization of**  
2 **terms of discharge of members of the**  
3 **armed forces who are survivors of sex-re-**  
4 **lated offenses”;**

5 and

6 (B) a text consisting of the text of section  
7 547 of the National Defense Authorization Act  
8 for Fiscal Year 2015 (10 U.S.C. 1553 note,  
9 Public Law 113–291).

10 (2) CLERICAL AMENDMENT.—The table of sec-  
11 tions at the beginning of chapter 79 of such title is  
12 amended by inserting after the item relating to sec-  
13 tion 1554a the following new item:

“1554b. Confidential review of characterization of terms of discharge of mem-  
bers of the armed forces who are survivors of sex-related of-  
fenses.”.

14 (3) CONFORMING REPEAL.—Section 547 of the  
15 National Defense Authorization Act for Fiscal Year  
16 2015 (10 U.S.C. 1553 note, Public Law 113–291)  
17 is repealed.

18 (b) CLARIFICATION OF APPLICABILITY TO INDIVID-  
19 UALS WHO ALLEGE SEX-RELATED OFFENSES DURING  
20 MILITARY SERVICE.—Subsection (a) of section 1554b of  
21 title 10, United States Code, as added by subsection (a)  
22 of this section, is amended by striking “sex-related of-  
23 fense” and inserting the following: “sex-related offense, or

1 alleges that the individual was the survivor of a sex-related  
2 offense.”.

3 (c) ADDITIONAL REQUIREMENTS FOR CONSIDER-  
4 ATION OF EVIDENCE.—Subsection (b) of section 1554b of  
5 title 10, United States Code, as added by subsection (a)  
6 of this section, is amended—

7 (1) by striking “and” at the end of paragraph  
8 (1);

9 (2) by striking the period at the end of para-  
10 graph (2) and inserting “; and”; and

11 (3) by adding at the end the following new  
12 paragraph:

13 “(3) to give liberal consideration to all available  
14 evidence that a sex-related offense occurred, includ-  
15 ing evidence from sources other than records of the  
16 armed force concerned that may corroborate the in-  
17 dividual’s account of the sex-related offense (includ-  
18 ing evidence of changes in the individual’s behavior  
19 after the offense and other circumstantial evidence  
20 that may corroborate the individual’s account of the  
21 sex-related offense).”.

22 (d) MEDICAL ADVISORY OPINIONS IN CONNECTION  
23 WITH SEX-RELATED OFFENSES.—Section 1554b of title  
24 10, United States Code, as added by subsection (a), is  
25 amended—

1           (1) by redesignating subsection (d) as sub-  
2           section (e); and

3           (2) by inserting after subsection (c) the fol-  
4           lowing new subsection (d):

5           “(d) MEDICAL ADVISORY OPINIONS.—Any medical  
6           advisory opinion issued to a board established in accord-  
7           ance with this chapter in the case of a review carried out  
8           in accordance with the process established under this sec-  
9           tion shall include the opinion of a psychologist or psychia-  
10          trist with training in sexual trauma cases.”.

11          (e) CONFORMING AMENDMENTS.—Section 1554b of  
12          title 10, United States Code, as added by subsection (a),  
13          is further amended—

14                 (1) by striking “Armed Forces” each place it  
15                 appears in subsections (a) and (b) and inserting  
16                 “armed forces”;

17                 (2) in subsection (a)—

18                         (A) by striking “boards for the correction  
19                         of military records of the military department  
20                         concerned” and inserting “boards of the mili-  
21                         tary department concerned established in ac-  
22                         cordance with this chapter”; and

23                         (B) by striking “such an offense” and in-  
24                         serting “a sex-related offense”;

1           (3) in subsection (b), striking “boards for the  
2           correction of military records” in the matter pre-  
3           ceding paragraph (1) and inserting “boards of the  
4           military department concerned established in accord-  
5           ance with this chapter”; and

6           (4) in subsection (e), as redesignated by sub-  
7           section (d)(1)—

8                   (A) in paragraph (1), by striking “title 10,  
9                   United States Code” and inserting “this title”;  
10                   and

11                   (B) in paragraphs (2) and (3), by striking  
12                   “such title” and inserting “this title”.

13 **SEC. 3. AUTHORITY FOR DISCHARGE REVIEW BOARDS TO**  
14 **REFER CERTAIN APPLICATIONS FOR RELIEF**  
15 **TO THE PHYSICAL DISABILITY BOARD OF RE-**  
16 **VIEW.**

17           (a) **AUTHORITY FOR DISCHARGE REVIEW BOARDS**  
18 **TO REFER FOR DISABILITY REVIEW.**—Section 1553(b) of  
19 title 10, United States Code, is amended to read as fol-  
20 lows:

21           “(b)(1) To reflect its findings, a board established  
22 under this section may—

23                   “(A) change a discharge or dismissal;

24                   “(B) issue a new discharge; or

1           “(C) in the case of a former member whose ap-  
2           plication for relief is based in whole or in part on  
3           matters relating to a sex-related offense, post-trau-  
4           matic stress disorder, or traumatic brain injury,  
5           refer the application for relief to the Physical Dis-  
6           ability Board of Review established under section  
7           1554a of this title for review under such section.

8           “(2) Any action of the board under this subsection  
9           is subject to review by the Secretary concerned.”.

10          (b) TREATMENT OF REFERRAL.—Section 1554a of  
11          title 10, United States Code, is amended—

12                 (1) by redesignating subsection (f) as sub-  
13                 section (g); and

14                 (2) by inserting after subsection (e) the fol-  
15                 lowing new subsection (f):

16          “(f) REFERRALS FROM DISCHARGE REVIEW  
17          BOARD.—(1) Except as provided in paragraph (2), a re-  
18          ferral for review pursuant to section 1553(b)(1)(C) of this  
19          title shall be treated as a request for review by a covered  
20          individual for purposes of this section.

21          “(2) In the case of a referral for review pursuant to  
22          section 1553(b)(1)(C) of this title—

23                 “(A) a previous disability determination by a  
24                 Physical Evaluation Board shall not be required;  
25                 and

1 “(B) subsection (c)(4) shall not apply.”.

2 **SEC. 4. PUBLIC AVAILABILITY OF INFORMATION RELATED**  
3 **TO DISPOSITION OF CLAIMS REGARDING DIS-**  
4 **CHARGE OR RELEASE OF MEMBERS OF THE**  
5 **ARMED FORCES WHEN THE CLAIMS INVOLVE**  
6 **SEX-RELATED OFFENSES.**

7 (a) **BOARDS FOR THE CORRECTION OF MILITARY**  
8 **RECORDS.**—Section 1552(h) of title 10, United States  
9 Code, as added by section 533(a) of the National Defense  
10 Authorization Act for Fiscal Year 2017 (Public Law 114–  
11 328), is amended by adding at the end the following new  
12 paragraph:

13 “(4) The number and disposition of claims sub-  
14 mitted during the calendar quarter preceding the  
15 calendar quarter in which such information is made  
16 available in which a sex-related offense is alleged to  
17 have contributed, whether in whole or in part, to the  
18 original characterization of the discharge or release  
19 of the claimant.”.

20 (b) **DISCHARGE REVIEW BOARDS.**—Section 1553(f)  
21 of title 10, United States Code, as added by section 533(b)  
22 of the National Defense Authorization Act for Fiscal Year  
23 2017 (Public Law 114–328), is amended by adding at the  
24 end the following new paragraph:



1           “(4) The number and disposition of claims sub-  
2           mitted during the calendar quarter preceding the  
3           calendar quarter in which such information is made  
4           available in which a sex-related offense is alleged to  
5           have contributed, whether in whole or in part, to the  
6           original characterization of the discharge or release  
7           of the claimant.”.

8   **SEC. 5. TRAINING REQUIREMENTS.**

9           (a) MEMBERS OF BOARDS FOR THE CORRECTION OF  
10          MILITARY RECORDS.—Section 534(c)(1) of the National  
11          Defense Authorization Act for Fiscal Year 2017 (Public  
12          Law 114–328; 10 U.S.C. 1552 note) is amended by add-  
13          ing at the end the following new sentence: “This cur-  
14          riculum shall also address the proper handling of claims  
15          in which a sex-related offense is alleged to have contrib-  
16          uted to the original characterization of the discharge or  
17          release of the claimant, including guidelines for the consid-  
18          eration of evidence substantiating such allegations in ac-  
19          cordance with the requirements of section 1554b(b)(3) of  
20          title 10, United States Code.”.

21          (b) DEPARTMENT OF DEFENSE PERSONNEL WHO  
22          INVESTIGATE CLAIMS OF RETALIATION.—Section 546(a)  
23          of the National Defense Authorization Act for Fiscal Year  
24          2017 (Public Law 114–328) is amended by striking “sec-  
25          tion.” and inserting “section, including guidelines for the



1           (1) REPEAL OF 15-YEAR STATUTE OF LIMITA-  
2           TIONS ON MOTIONS OR REQUESTS FOR REVIEW.—  
3           Section 1553(a) of title 10, United States Code, is  
4           amended by striking the second sentence.

5           (2) TELEPHONIC PRESENTATION OF EVI-  
6           DENCE.—Section 1553(c) of title 10, United States  
7           Code, is amended in the second sentence by striking  
8           “or by affidavit” and inserting “, by affidavit, or by  
9           telephone or video conference”.

10          (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall take effect on October 1, 2018.

12 **SEC. 7. BURDENS OF PROOF APPLICABLE TO INVESTIGA-**  
13 **TIONS AND REVIEWS RELATED TO PRO-**  
14 **TECTED COMMUNICATIONS OF MEMBERS OF**  
15 **THE ARMED FORCES AND PROHIBITED RE-**  
16 **TALIATORY ACTIONS.**

17          (a) IN GENERAL.—Section 1034 of title 10, United  
18 States Code, is amended—

19           (1) by redesignating subsections (i) and (j) as  
20 subsections (j) and (k), respectively; and

21           (2) by inserting after subsection (h) the fol-  
22 lowing new subsection (i):

23           “(i)(1) For purposes of this section, there is sufficient  
24 basis to conclude that a personnel action prohibited by  
25 subsection (b) has occurred if the communication made

1 by the member or former member was a contributing fac-  
2 tor in the personnel action that was taken, or is to be  
3 taken, against the member or former member unless there  
4 is clear and convincing evidence that the same personnel  
5 action would have been taken in the absence of the com-  
6 munication.

7 “(2) A member or former member may demonstrate  
8 that the communication was a contributing factor in the  
9 personnel action through circumstantial evidence, such as  
10 evidence that—

11 “(A) the official taking the personnel action  
12 knew of the communication; and

13 “(B) the personnel action occurred within a pe-  
14 riod of time such that a reasonable person could  
15 conclude that the communication was a contributing  
16 factor in the personnel action.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall take effect on the date that is 30 days  
19 after the date of the enactment of this Act, and shall apply  
20 with respect to allegations pending or submitted under  
21 section 1034 of title 10, United States Code, on or after  
22 that date.

1 **SEC. 8. ADMINISTRATIVE SEPARATION PROTECTIONS FOR**  
2 **MEMBERS OF THE ARMED FORCES WHO ARE**  
3 **SURVIVORS OF SEX-RELATED OFFENSES.**

4 (a) COVERED MEMBER DEFINED.—In this section,  
5 the term “covered member” means a member of the  
6 Armed Forces who is diagnosed with a mental health con-  
7 dition related to a sex-related offense that occurred during  
8 the member’s service in the Armed Forces.

9 (b) LIMITATIONS ON SEPARATION FOR A MENTAL  
10 DISORDER NOT CONSTITUTING A PHYSICAL DIS-  
11 ABILITY.—

12 (1) REVIEW OF DIAGNOSIS.—A covered member  
13 shall not be separated on the basis of a personality  
14 disorder or other mental disorder not constituting a  
15 physical disability, unless the diagnosis of such dis-  
16 order has been—

17 (A) corroborated by a peer or higher-level  
18 mental health professional; and

19 (B) endorsed by the Surgeon General of  
20 the military department concerned.

21 (2) CO-MORBID PTSD DIAGNOSIS.—Unless  
22 found fit for duty by the disability evaluation sys-  
23 tem, a covered member shall not be separated on the  
24 basis of a personality disorder or other mental dis-  
25 order not constituting a physical disability if service-

1 related post-traumatic stress disorder is also diag-  
2 nosed.

3 (c) EFFECTIVE DATE.—This section shall take effect  
4 180 days after the date of the enactment of this Act.

5 **SEC. 9. DEPARTMENT OF DEFENSE WORKING GROUP ON**  
6 **ADMINISTRATIVE REVIEW BOARDS.**

7 (a) ESTABLISHMENT AND PURPOSE.—The Secretary  
8 of Defense shall establish a Department of Defense work-  
9 ing group for the purpose of identifying and making rec-  
10 ommendations to the Secretary of Defense on best prac-  
11 tices and procedures to be used by boards for the correc-  
12 tion of military records and discharge review boards in  
13 carrying out their responsibilities under chapter 79 of title  
14 10, United States Code, and in granting relief to claim-  
15 ants under that chapter.

16 (b) CONSULTATION.—In carrying out the responsibil-  
17 ities of the working group, members of the group shall  
18 consult, as appropriate, with civilian practitioners of mili-  
19 tary law and representatives of organizations that have ex-  
20 perience in cases before boards for the correction of mili-  
21 tary records and discharge review boards.

22 (c) REPORTS REQUIRED.—

23 (1) INITIAL REPORT.—Not later than 180 days  
24 after the date of the establishment of the working  
25 group, the Secretary of Defense shall submit to the

1 Committees on Armed Services of the Senate and  
2 the House of Representatives a report containing the  
3 findings and recommendations of the working group.

4 (2) SUBSEQUENT REPORT.—Not later than two  
5 years after the date of the establishment of the  
6 working group, the Secretary of Defense shall sub-  
7 mit to the Committees on Armed Services of the  
8 Senate and the House of Representatives a report  
9 containing an evaluation conducted by the working  
10 group of—

11 (A) all recommendations of the working  
12 group that have been or are being implemented  
13 by boards for the correction of military records  
14 and discharge review boards; and

15 (B) the results of the implementation of  
16 such recommendations.

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