

115TH CONGRESS
1ST SESSION

S. 1543

To amend title 10, United States Code, to improve protections for a member of the Armed Forces who is a survivor of a sexual assault 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.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2017

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to improve protections for a member of the Armed Forces who is a survivor of a sexual assault 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.

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 sexual assault.
- 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 sexual assault.
- 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 sexual assault.
- 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 SEXUAL ASSAULT.**

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 sexual**
4 **assault”;**

5 and

6 (B) a text consisting of the text of section
7 547 of the Carl Levin and Howard P. “Buck”
8 McKeon National Defense Authorization Act
9 for Fiscal Year 2015 (Public Law 113–291;
10 128 Stat. 3375; 10 U.S.C. 1553 note).

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions at the beginning of chapter 79 of such title is
13 amended by inserting after the item relating to sec-
14 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 sexual assault.”.

15 (3) CONFORMING REPEAL.—Section 547 of the
16 Carl Levin and Howard P. “Buck” McKeon Na-
17 tional Defense Authorization Act for Fiscal Year
18 2015 is repealed.

19 (b) TERMINOLOGY.—Section 1554b of title 10,
20 United States Code, as added by subsection (a) of this
21 section, is amended—

22 (1) in subsection (a), by striking “victim” each
23 place it appears and inserting “survivor”; and

1 (2) by striking “sex-related” each place it ap-
2 pears and inserting “sexual assault”.

3 (c) CLARIFICATION OF APPLICABILITY TO INDIVID-
4 UALS WHO ALLEGE THEY WERE A SURVIVOR OF SEXUAL
5 ASSAULT DURING MILITARY SERVICE.—Subsection (a) of
6 such section 1554b, as so added, is further amended by
7 inserting after “sexual assault offense” the following: “,
8 or alleges that the individual was the survivor of a sexual
9 assault offense,”.

10 (d) ADDITIONAL REQUIREMENTS FOR CONSIDER-
11 ATION OF EVIDENCE.—Subsection (b) of such section
12 1554b, as so added, is amended—

13 (1) by striking “and” at the end of paragraph
14 (1);

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

17 (3) by adding at the end the following new
18 paragraph:

19 “(3) to give liberal consideration to all available
20 evidence that a sexual assault occurred, including
21 evidence from sources other than records of the
22 armed force concerned that may corroborate the in-
23 dividual’s account of the sexual assault (including
24 evidence of changes in the individual’s behavior after
25 the offense and other circumstantial evidence that

1 may corroborate the individual’s account of the sexual
2 assault).”.

3 (e) MEDICAL ADVISORY OPINIONS IN CONNECTION
4 WITH SURVIVORS OF SEXUAL ASSAULT.—Such section
5 1554b, as so added, is further amended—

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

8 (2) by inserting after subsection (c) the fol-
9 lowing new subsection (d):

10 “(d) MEDICAL ADVISORY OPINIONS.—Any medical
11 advisory opinion issued to a board established in accord-
12 ance with this chapter in the case of a review carried out
13 in accordance with the process established under this sec-
14 tion shall include the opinion of a psychiatrist or psycholo-
15 gist with training in sexual trauma cases.”.

16 (f) CONFORMING AMENDMENTS.—Such section
17 1554b, as so added, is further amended—

18 (1) by striking “Armed Forces” each place it
19 appears in subsections (a) and (b) and inserting
20 “armed forces”;

21 (2) in subsection (a)—

22 (A) by striking “boards for the correction
23 of military records of the military department
24 concerned” and inserting “boards of the mili-

1 tary department concerned established in ac-
2 cordance with this chapter”; and

3 (B) by striking “such an offense” and in-
4 serting “a sexual-assault offense”;

5 (3) in subsection (b), by striking “boards for
6 the correction of military records” and inserting
7 “boards of the military department concerned estab-
8 lished in accordance with this chapter”; and

9 (4) in subsection (e), as redesignated by sub-
10 section (e)(1) of this section—

11 (A) in the subsection heading, by striking
12 “SEX-RELATED” and inserting “SEXUAL AS-
13 SAULT”;

14 (B) in paragraph (1), by striking “title 10,
15 United States Code” and inserting “this title”;
16 and

17 (C) in paragraphs (2) and (3), by striking
18 “such title” and inserting “this title”.

19 **SEC. 3. AUTHORITY FOR DISCHARGE REVIEW BOARDS TO**
20 **REFER CERTAIN APPLICATIONS FOR RELIEF**
21 **TO THE PHYSICAL DISABILITY BOARD OF RE-**
22 **VIEW.**

23 (a) AUTHORITY FOR DISCHARGE REVIEW BOARDS
24 TO REFER FOR DISABILITY REVIEW.—

1 (1) AUTHORITY.—Subsection (b) of section
2 1553 of title 10, United States Code, is amended to
3 read as follows:

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

6 “(A) change a discharge or dismissal;

7 “(B) issue a new discharge; or

8 “(C) in the case of a former member whose ap-
9 plication for relief is based in whole or in part on
10 matters relating to a sexual assault, post-traumatic
11 stress disorder, or traumatic brain injury, refer the
12 application for relief to the Physical Disability
13 Board of Review established under section 1554a of
14 this title for review under such section.

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

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

19 (1) by redesignating subsection (f) as sub-
20 section (g); and

21 (2) by inserting after subsection (e) the fol-
22 lowing new subsection (f):

23 “(f) REFERRALS FROM DISCHARGE REVIEW
24 BOARD.—(1) Except as provided in paragraph (2), a re-
25 ferral for review pursuant to section 1553(b)(1)(C) of this

1 title shall be treated as a request for review by a covered
2 individual for purposes of this section.

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

5 “(A) a previous disability determination by a
6 Physical Evaluation Board shall not be required;
7 and

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

9 **SEC. 4. PUBLIC AVAILABILITY OF INFORMATION RELATED**
10 **TO DISPOSITION OF CLAIMS REGARDING DIS-**
11 **CHARGE OR RELEASE OF MEMBERS OF THE**
12 **ARMED FORCES WHEN THE CLAIMS INVOLVE**
13 **SEXUAL ASSAULT.**

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

20 “(4) The number and disposition of claims de-
21 cided during the calendar quarter preceding the cal-
22 endar quarter in which such information is made
23 available in which sexual assault is alleged to have
24 contributed, whether in whole or in part, to the

1 original characterization of the discharge or release
2 of the claimant.”.

3 (b) DISCHARGE REVIEW BOARDS.—Section 1553(f)
4 of title 10, United States Code, as added by section 533(b)
5 of the National Defense Authorization Act for Fiscal Year
6 2017, is amended by adding at the end the following new
7 paragraph:

8 “(4) The number and disposition of claims de-
9 cided during the calendar quarter preceding the cal-
10 endar quarter in which such information is made
11 available in which sexual assault is alleged to have
12 contributed, whether in whole or in part, to the
13 original characterization of the discharge or release
14 of the claimant.”.

15 **SEC. 5. TRAINING REQUIREMENTS.**

16 (a) MEMBERS OF BOARDS FOR THE CORRECTION OF
17 MILITARY RECORDS.—Section 534(c)(1) of the National
18 Defense Authorization Act for Fiscal Year 2017 (Public
19 Law 114–328; 10 U.S.C. 1552 note) is amended by add-
20 ing at the end the following new sentence: “This cur-
21 riculum shall also address the proper handling of claims
22 in which sexual assault is alleged to have contributed to
23 the original characterization of the discharge or release
24 of the claimant, including guidelines for the consideration
25 of evidence substantiating such allegations in accordance

1 with the requirements of section 1554b(b)(3) of title 10,
2 United States Code.”.

3 (b) DEPARTMENT OF DEFENSE PERSONNEL WHO
4 INVESTIGATE CLAIMS OF RETALIATION.—Section 546(a)
5 of the National Defense Authorization Act for Fiscal Year
6 2017 is amended by striking “section.” and inserting “sec-
7 tion, including guidelines for the consideration of evidence
8 substantiating such allegations in accordance with the re-
9 quirements of section 1554b(b)(3) of title 10, United
10 States Code.”.

11 **SEC. 6. OTHER IMPROVEMENTS TO AUTHORITIES AND PRO-**
12 **CEDURES FOR THE CORRECTION OF MILI-**
13 **TARY RECORDS.**

14 (a) BOARDS FOR THE CORRECTION OF MILITARY
15 RECORDS.—

16 (1) USE OF SECRETARIAL AUTHORITY TO COR-
17 RECT MILITARY RECORDS.—Section 1552(a)(1) of
18 title 10, United States Code, is amended by striking
19 “may” both places it appears and inserting “shall”.

20 (2) INDEXING OF PUBLISHED DECISIONS.—
21 Paragraph (5) of section 1552(a) of title 10, United
22 States Code, is amended to read as follows:

23 “(5) Each final decision of a board under this sub-
24 section shall be made available to the public in electronic
25 form on a centralized Internet website. The information

1 provided shall include a summary of each decision, to be
2 indexed by subject matter, except that the Secretary shall
3 protect the privacy of claimants by redacting all personally
4 identifiable information.”.

5 (b) DISCHARGE REVIEW BOARDS.—

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

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

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

17 **SEC. 7. BURDENS OF PROOF APPLICABLE TO INVESTIGA-**
18 **TIONS AND REVIEWS RELATED TO PRO-**
19 **TECTED COMMUNICATIONS OF MEMBERS OF**
20 **THE ARMED FORCES AND PROHIBITED RE-**
21 **TALIATORY ACTIONS.**

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

24 (1) by redesignating subsections (i) and (j) as
25 subsections (j) and (k), respectively; and

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

3 “(i)(1) For purposes of this section, there is sufficient
4 basis to conclude that a personnel action prohibited by
5 subsection (b) has occurred if the communication made
6 by the member or former member was a contributing fac-
7 tor in the personnel action that was taken, or is to be
8 taken, against the member or former member unless there
9 is clear and convincing evidence that the same personnel
10 action would have been taken in the absence of the com-
11 munication.

12 “(2) A member or former member may demonstrate
13 that the communication was a contributing factor in the
14 personnel action through circumstantial evidence, such as
15 evidence that—

16 “(A) the official taking the personnel action
17 knew of the communication; and

18 “(B) the personnel action occurred within a pe-
19 riod of time such that a reasonable person could
20 conclude that the communication was a contributing
21 factor in the personnel action.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect on the date that is 30 days
24 after the date of the enactment of this Act, and shall apply
25 with respect to allegations pending or submitted under

1 section 1034 of title 10, United States Code, on or after
2 that date.

3 **SEC. 8. ADMINISTRATIVE SEPARATION PROTECTIONS FOR**
4 **MEMBERS OF THE ARMED FORCES WHO ARE**
5 **SURVIVORS OF SEXUAL ASSAULT.**

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

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

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

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

21 (B) endorsed by the Surgeon General of
22 the military department concerned.

23 (2) CO-MORBID PTSD DIAGNOSIS.—Unless
24 found fit for duty by the disability evaluation sys-
25 tem, a covered member shall not be separated on the

1 basis of a personality disorder or other mental dis-
2 order not constituting a physical disability if service-
3 related post-traumatic stress disorder is also diag-
4 nosed.

5 (c) EFFECTIVE DATE.—This section shall take effect
6 180 days after the date of the enactment of this Act.

7 **SEC. 9. DEPARTMENT OF DEFENSE WORKING GROUP ON**
8 **ADMINISTRATIVE REVIEW BOARDS.**

9 (a) ESTABLISHMENT AND PURPOSE.—The Secretary
10 of Defense shall establish a Department of Defense work-
11 ing group for the purpose of identifying and making rec-
12 ommendations to the Secretary on best practices and pro-
13 cedures to be used by boards for the correction of military
14 records and discharge review boards in carrying out their
15 responsibilities under chapter 79 of title 10, United States
16 Code, and in granting relief to claimants under that chap-
17 ter.

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

24 (c) REPORTS.—

1 (1) INITIAL REPORT.—Not later than 180 days
2 after the date of the establishment of the working
3 group, the Secretary shall submit to the Committees
4 on Armed Services of the Senate and the House of
5 Representatives a report containing the findings and
6 recommendations of the working group.

7 (2) SUBSEQUENT REPORT.—

8 (A) IN GENERAL.—Not later than two
9 years after the date of the establishment of the
10 working group, the Secretary shall submit to
11 the committees of Congress referred to in sub-
12 paragraph (B) a report containing an evalua-
13 tion conducted by the working group of all the
14 recommendations of the working group that
15 have been or are being implemented by boards
16 for the correction of military records and dis-
17 charge review boards of the military depart-
18 ments, including the results of the implementa-
19 tion of such recommendations.

20 (B) COMMITTEES OF CONGRESS.—The
21 committees of Congress referred to in this sub-
22 paragraph are—

23 (i) the Committee on Armed Services
24 and the Committee on Veterans' Affairs of
25 the Senate; and

- 1 (ii) the Committee on Armed Services
- 2 and the Committee on Veterans' Affairs of
- 3 the House of Representatives.

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