

Calendar No. 499114TH CONGRESS
2^D SESSION**S. 2127****[Report No. 114-262]**

To provide appropriate protections to probationary Federal employees, to provide the Special Counsel with adequate access to information, to provide greater awareness of Federal whistleblower protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2015

Mr. JOHNSON (for himself, Ms. AYOTTE, Mr. KIRK, and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MAY 26, 2016

Reported by Mr. JOHNSON, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To provide appropriate protections to probationary Federal employees, to provide the Special Counsel with adequate access to information, to provide greater awareness of Federal whistleblower protections, 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,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Dr. Chris Kirkpatrick Whistleblower Protection Act of
 6 2015”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYEES GENERALLY

Sec. 101. Definitions.

Sec. 102. Whistleblower protections for probationary employees.

Sec. 103. Adequate access of Special Counsel to information.

Sec. 104. Removal or demotion of employees based on retaliation against whis-
 tleblowers.

Sec. 105. Suicide by executive branch employees.

Sec. 106. Access to medical files.

Sec. 107. Training for supervisors.

Sec. 108. Information on whistleblower protections.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

Sec. 201. Protecting medical privacy of employees of the Department of Vet-
 erans Affairs.

Sec. 202. Mental health services for employees of the Department of Veterans
 Affairs.

Sec. 203. Protocols to address threats against employees of the Department of
 Veterans Affairs.

Sec. 204. Comptroller General of the United States study on accountability of
 chiefs of police of Department of Veterans Affairs medical cen-
 ters.

9 **TITLE I—EMPLOYEES**
 10 **GENERALLY**

11 **SEC. 101. DEFINITIONS.**

12 In this title—

1 (1) the term “Executive agency” has the mean-
2 ing given that term under section 105 of title 5,
3 United States Code; and

4 (2) the term “executive branch employee”
5 means an employee of an Executive agency.

6 **SEC. 102. WHISTLEBLOWER PROTECTIONS FOR PROBA-**
7 **TIONARY EMPLOYEES.**

8 (a) **IN GENERAL.**—Section 1214 of title 5, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

11 “(i)(1) In this subsection, the term ‘covered proba-
12 tionary employee’ means an individual who—

13 “(A) is an employee in probationary status; and

14 “(B) has submitted to the Special Counsel an
15 allegation of a prohibited personnel practice de-
16 scribed in paragraph (8) or subparagraph (A)(i),
17 (B), (C), or (D) of paragraph (9) of section 2302(b)
18 with respect to the individual.

19 “(2) Not later than 10 days after the date on which
20 an agency terminates a covered probationary employee,
21 the Special Counsel shall determine whether a substantial
22 likelihood exists that—

23 “(A) the agency engaged in the prohibited per-
24 sonnel practice alleged by the covered probationary
25 employee, as described in paragraph (1)(B); and

1 “(B) the termination of the covered proba-
2 tionary employee was related to that prohibited per-
3 sonnel practice.

4 “(3)(A) If the Special Counsel determines there is a
5 substantial likelihood the circumstances described in para-
6 graph (2) exist, the Special Counsel shall request and the
7 Merit Systems Protection Board, without further pro-
8 ceedings, shall order a stay of the termination for 60 days
9 for the Special Counsel to complete an investigation of the
10 termination of the covered probationary employee.

11 “(B) If, before the end of the 60-day period described
12 in subparagraph (A), the Special Counsel determines that
13 additional investigation is warranted, the Special Counsel
14 shall request and the Merit Systems Protection Board,
15 without further proceedings, shall order a stay of the ter-
16 mination for such period as the Special Counsel deter-
17 mines appropriate, which may not exceed an additional pe-
18 riod of 6 months.

19 “(4)(A) If the Special Counsel determines that the
20 agency employing a covered probationary employee en-
21 gaged in the prohibited personnel practice alleged by the
22 covered probationary employee, as described in paragraph
23 (1)(B), and the termination of the covered probationary
24 employee was related to that prohibited personnel practice,
25 the Special Counsel shall request and the Merit Systems

1 Protection Board, without further proceedings, shall order
2 the reinstatement of the covered probationary employee.

3 “(B) If the Special Counsel determines that the agen-
4 cy employing a covered probationary employee did not en-
5 gage in the prohibited personnel practice alleged by the
6 covered probationary employee, described in paragraph
7 (1)(B), or that the termination of the covered proba-
8 tionary employee was not related to that prohibited per-
9 sonnel practice, the Special Counsel shall request and the
10 Merit Systems Protection Board, without further pro-
11 ceedings, shall order the immediate enforcement of the
12 termination.

13 “(C) An order reinstating a covered probationary em-
14 ployee may be appealed by the agency to the Merit Sys-
15 tems Protection Board under section 7701.

16 “(5) If a stay is granted to a covered probationary
17 employee under paragraph (3) or a covered probationary
18 employee is reinstated under this subsection, the head of
19 the agency employing the covered probationary employee
20 shall give priority to a request for a transfer submitted
21 by the covered probationary employee.”.

22 (b) INDIVIDUAL RIGHT OF ACTION.—Section 1221 of
23 title 5, United States Code, is amended by adding at the
24 end the following:

1 “(k)(1) In this subsection, the term ‘covered proba-
2 tionary employee’ has the meaning given that term under
3 section 1214(i)(1).

4 “(2) In this section, the term ‘employee’ includes a
5 covered probationary employee who is terminated, includ-
6 ing for purposes of seeking a stay under subsection (e).

7 “(3) If the Merit Systems Protection Board grants
8 a stay to a covered probationary employee under sub-
9 section (e), the head of the agency employing the covered
10 probationary employee shall give priority to a request for
11 a transfer submitted by the covered probationary em-
12 ployee.”.

13 (e) STUDY REGARDING RETALIATION AGAINST PRO-
14 BATIONARY EMPLOYEES.—The Comptroller General of
15 the United States shall submit to the Committee on
16 Homeland Security and Governmental Affairs of the Sen-
17 ate and the Committee on Oversight and Government Re-
18 form of the House of Representatives a report discussing
19 retaliation against employees in probationary status relat-
20 ing to a disclosure by the employees of information de-
21 scribed in section 2302(b)(8) of title 5, United States
22 Code, by the employees.

1 **SEC. 103. ADEQUATE ACCESS OF SPECIAL COUNSEL TO IN-**
2 **FORMATION.**

3 Section 1212(b) of title 5, United States Code, is
4 amended by adding at the end the following:

5 “(5)(A) The Special Counsel, in carrying out this
6 subchapter, is authorized to—

7 “(i) have access to all records, reports, audits,
8 reviews, documents, papers, recommendations, or
9 other material available to the applicable agency
10 which relate to a matter within the jurisdiction or
11 authority of the Special Counsel; and

12 “(ii) request from any agency such information
13 or assistance as may be necessary for carrying out
14 the duties and responsibilities of the Special Counsel
15 under this subchapter.

16 “(B) Upon request of the Special Counsel for infor-
17 mation or assistance under subparagraph (A)(ii), the head
18 of the agency involved shall, insofar as is practicable and
19 not in contravention of any existing statutory restriction
20 or regulation of the agency from which the information
21 or assistance is requested, furnish to the Special Counsel
22 such information or assistance.”

1 **SEC. 104. REMOVAL OR DEMOTION OF EMPLOYEES BASED**
 2 **ON RETALIATION AGAINST WHISTLE-**
 3 **BLOWERS.**

4 (a) **IN GENERAL.**—Subchapter II of chapter 75 of
 5 title 5, United States Code, is amended by adding at the
 6 end the following:

7 **“§ 7515. Removal or demotion of employees based on**
 8 **retaliation against whistleblowers**

9 “(a) **DEFINITION.**—In this section, the term ‘retalia-
 10 tion against a whistleblower’ means a prohibited personnel
 11 practice described in paragraph (8) or subparagraph
 12 (A)(i), (B), (C), or (D) of paragraph (9) of section
 13 2302(b).

14 “(b) **REMOVAL OR DEMOTION.**—

15 “(1) **IN GENERAL.**—The head of an agency may
 16 remove or demote an employee of the agency if the
 17 head of the agency determines that the employee re-
 18 taliated against a whistleblower.

19 “(2) **IMPOSITION OF ACTION.**—If the head of
 20 an agency removes or demotes an employee under
 21 this section, the head of the agency may—

22 “(A) remove the employee from the civil
 23 service; or

24 “(B) demote the employee by means of—

1 “(i) a reduction in grade for which the
2 employee is qualified and that the head of
3 the agency determines is appropriate; or

4 “(ii) a reduction in annual rate of pay
5 that the head of the agency determines is
6 appropriate.

7 “(c) PAY OF CERTAIN DEMOTED EMPLOYEES.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, any employee subject to a demotion
10 under subsection (b)(2)(B)(i) shall, beginning on the
11 date of the demotion, receive the annual rate of pay
12 applicable to the applicable grade.

13 “(2) APPEAL.—An employee demoted under
14 subsection (b)(2)(B)(i) may not be placed on admin-
15 istrative leave or any other category of paid leave
16 during the period during which an appeal (if any)
17 under this section is ongoing.

18 “(3) FAILURE TO REPORT.—An employee de-
19 moted under subsection (b)(2)(B)(i)—

20 “(A) may only receive pay if the employee
21 reports for duty; and

22 “(B) if the employee does not report for
23 duty, shall not receive pay or other benefits de-
24 scribed in subsection (f)(5).

1 “(d) NOTICE TO CONGRESS.—Not later than 30 days
2 after removing or demoting an employee under subsection
3 (b), the head of an agency shall submit to each committee
4 of Congress with jurisdiction of the activities of the agency
5 notice in writing of the removal or demotion and the rea-
6 son for the removal or demotion.

7 “(e) PROCEDURE.—

8 “(1) IN GENERAL.—The procedures under sec-
9 tion 7513(b) and chapter 43, shall not apply to a re-
10 moval or demotion under this section.

11 “(2) APPEAL.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B) and subsection (f), any removal or
14 demotion under subsection (b) may be appealed
15 to the Merit Systems Protection Board under
16 section 7701.

17 “(B) TIME FOR MAKING AN APPEAL.—An
18 appeal under subparagraph (A) of a removal or
19 demotion may only be made if the appeal is
20 made not later than 7 days after the date of the
21 removal or demotion.

22 “(f) EXPEDITED REVIEW BY ADMINISTRATIVE LAW
23 JUDGE.—

24 “(1) IN GENERAL.—Upon receipt of an appeal
25 under subsection (e)(2)(A), the Merit Systems Pro-

1 tection Board shall refer the appeal to an adminis-
2 trative law judge under section 7701(b)(1), who
3 shall expedite the appeal and issue a decision not
4 later than 45 days after the date of the appeal.

5 “(2) FINALITY OF DECISION.—Notwithstanding
6 any other provision of law, including section 7703,
7 the decision of an administrative law judge under
8 paragraph (1) shall be final and shall not be subject
9 to any further appeal.

10 “(3) DELAY IN DECISION.—If an administrative
11 law judge cannot issue a decision before the end of
12 the 45-day period described in paragraph (1)—

13 “(A) the removal or demotion is final; and

14 “(B) not later than 14 days after the end
15 of the 45-day period, the Merit Systems Protec-
16 tion Board shall submit to each committee of
17 Congress with jurisdiction of the activities of
18 the applicable agency a report that explains the
19 reasons why a decision was not issued during
20 the period.

21 “(4) NO STAYS.—The Merit Systems Protection
22 Board or administrative law judge may not stay any
23 removal or demotion under this section.

24 “(5) NO PAY OR BENEFITS DURING PENDING
25 APPEAL.—During the period beginning on the date

1 on which an employee appeals a removal from the
2 civil service under subsection (e) and ending on the
3 date that the administrative law judge issues a final
4 decision on the appeal, the employee may not receive
5 any pay, awards, bonuses, incentives, allowances, dif-
6 ferentials, student loan repayments, special pay-
7 ments, or benefits.

8 “(6) ASSISTANCE BY AGENCY.—To the max-
9 imum extent practicable, the head of an agency shall
10 provide to the Merit Systems Protection Board, and
11 to any administrative law judge to whom an appeal
12 under this section is referred, such information and
13 assistance as may be necessary to ensure an appeal
14 under this subsection is expedited.

15 “(g) LIMITATION ON REMOVAL OR DEMOTION.—If
16 an employee seeking corrective action (or on behalf of
17 whom corrective action is sought) from the Office of Spe-
18 cial Counsel based on an alleged prohibited personnel
19 practice, the head of an agency may not remove or demote
20 the employee under subsection (b) without the approval
21 of the Special Counsel under section 1214(f).

22 “(h) RELATION TO OTHER PROVISIONS OF LAW.—

23 “(1) ADDITIONAL AUTHORITY.—The authority
24 provided by this section is in addition to any author-
25 ity provided under this chapter or chapter 43.

1 ~~“(2) NOT SUBJECT TO OTHER PROVISIONS.—~~
 2 The requirements under any other provision of this
 3 chapter shall not apply to any action under this sec-
 4 tion.”.

5 ~~(b) TECHNICAL AND CONFORMING AMENDMENTS.—~~

6 ~~(1) The table of sections for subchapter II of~~
 7 ~~chapter 75 of title 5, United States Code, is amend-~~
 8 ~~ed by adding at the end the following:~~

~~“7515. Removal or demotion of employees based on retaliation against whistle-~~
~~blowers.”.~~

9 ~~(2) Section 4303(f) of title 5, United States~~
 10 ~~Code, is amended—~~

11 ~~(A) by striking “or” at the end of para-~~
 12 ~~graph (2);~~

13 ~~(B) by striking the period at the end of~~
 14 ~~paragraph (3) and inserting “, or”; and~~

15 ~~(C) by adding at the end the following:~~

16 ~~“(4) any removal or demotion under section~~
 17 ~~7515.”.~~

18 **SEC. 105. SUICIDE BY EXECUTIVE BRANCH EMPLOYEES.**

19 ~~(a) REFERRAL.—The head of the Executive agency~~
 20 ~~employing an executive branch employee who commits sui-~~
 21 ~~cide shall refer the matter to the Inspector General of the~~
 22 ~~Executive agency, or senior ethics official of the Executive~~
 23 ~~agency for an Executive agency without an Inspector Gen-~~

1 eral, to determine whether the suicide of the executive
2 branch employee was work-related.

3 (b) INFORMATION TO NEXT OF KIN.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 the head of the Executive agency employing an execu-
6 tive branch employee who commits suicide shall
7 provide the personnel file of the Executive agency to
8 the next of kin of the executive branch employee.

9 (2) NATIONAL SECURITY EXCEPTION.—The
10 head of an Executive agency may withhold informa-
11 tion in a personnel file under paragraph (1) if the
12 head determines the disclosure of the information
13 would likely compromise national security.

14 **SEC. 106. ACCESS TO MEDICAL FILES.**

15 (a) IN GENERAL.—Except for an emergency situa-
16 tion, an executive branch employee may not access the
17 medical record of another executive branch employee, un-
18 less the executive branch employee whose medical record
19 will be accessed provides consent to the access.

20 (b) EMERGENCY SITUATIONS.—The Director of the
21 Office of Management and Budget shall promulgate regu-
22 lations defining the term “emergency situation” for pur-
23 poses of this section.

1 **SEC. 107. TRAINING FOR SUPERVISORS.**

2 The head of each Executive agency shall provide
3 training regarding how to respond to complaints alleging
4 a violation of whistleblower protections available to execu-
5 tive branch employee of the Executive agency to—

6 (1) executive branch employees appointed to su-
7 pervisory positions in the Executive agency who have
8 not previously served as a supervisor; and

9 (2) on an annual basis, to all executive branch
10 employees of the Executive agency serving in a su-
11 pervisory position.

12 **SEC. 108. INFORMATION ON WHISTLEBLOWER PROTEC-**
13 **TIONS.**

14 (a) IN GENERAL.—Chapter 23 of title 5, United
15 States Code, is amended by adding at the end the fol-
16 lowing:

17 **“§ 2307. Information on whistleblower protections**

18 **“(a) DEFINITIONS.—**In this section—

19 **“(1) the term ‘new employee’ means an indi-**
20 **vidual—**

21 **“(A) appointed to a position as an em-**
22 **ployee on or after the date of enactment of the**
23 **Dr. Chris Kirkpatrick Whistleblower Protection**
24 **Act of 2015; and**

25 **“(B) who has not previously served as an**
26 **employee; and**

1 “(2) the term ‘whistleblower protections’
2 means—

3 “(A) the protections against and remedies
4 for a prohibited personnel practice described in
5 paragraph (8) or subparagraph (A)(i), (B), (C),
6 or (D) of paragraph (9) of section 2302(b); and

7 “(B) similar protections for an employee
8 under any other provision of law.

9 “(b) INFORMATION FOR NEW HIRES.—The head of
10 each agency or other establishment in the Federal Govern-
11 ment shall provide each new employee of the agency or
12 establishment information regarding the whistleblower
13 protections available to the new employee and the role of
14 the Office of Special Counsel.

15 “(c) INFORMATION ONLINE.—The head of each agen-
16 cy or other establishment in the Federal Government shall
17 make available information regarding whistleblower pro-
18 tections applicable to employees of the agency or other es-
19 tablishment on any online portal that is made available
20 only to employees of the agency or other establishment.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—
22 The table of sections for chapter 23 of title 5, United
23 States Code, is amended by adding at the end the fol-
24 lowing:

“2307. Information on whistleblower protections.”.

1 **TITLE II—DEPARTMENT OF**
2 **VETERANS AFFAIRS EMPLOYEES**

3 **SEC. 201. PROTECTING MEDICAL PRIVACY OF EMPLOYEES**
4 **OF THE DEPARTMENT OF VETERANS AF-**
5 **FAIRS.**

6 (a) IN GENERAL.—Chapter 7 of title 38, United
7 States Code, is amended by adding at the end the fol-
8 lowing new section:

9 **“§ 714. Accessing of medical records of employees**

10 “(a) NOTICE OF ACCESS.—(1) Not later than five
11 days after an employee of the Department accesses the
12 medical record of another employee of the Department,
13 the Secretary shall notify the such other employee of such
14 access:

15 “(2) Notice under paragraph (1) shall include the fol-
16 lowing:

17 “(A) The name of the employee accessing the
18 medical record:

19 “(B) The date and time the employee accessed
20 the medical record:

21 “(C) The period during which the employee
22 accessed the medical record:

23 “(D) A description of any modification of the
24 medical record made by the employee:

1 “(b) DETERMINATION OF PROHIBITED ACCESS.—(1)

2 If an employee of the Department receives notice under
3 subsection (a) that a medical record of the employee was
4 accessed by another employee of the Department and the
5 employee believes that such access was conducted in viola-
6 tion of an applicable provision of Federal privacy law, the
7 employee shall file a complaint with the Office of Account-
8 ability Review.

9 “(2) If the Office of Accountability Review receives
10 a complaint from an employee with respect to a notice that
11 the employee received under subsection (a) not more than
12 45 days after the notice was transmitted to the employee,
13 the Office of Accountability Review shall, not later than
14 30 days after receiving such complaint—

15 “(A) determine whether the access identified in
16 the notice was conducted in violation of an applica-
17 ble provision of Federal privacy law; and

18 “(B) notify the employee of the determination.

19 “(c) ACTION IN RESPONSE TO UNAUTHORIZED AC-
20 CESS.—(1) If the Office of Accountability Review deter-
21 mines that an employee of the Department has accessed
22 the medical record of another employee of the Department
23 in violation of an applicable provision of Federal privacy
24 law, the Secretary shall—

1 “(A) for the first such access, issue an order
2 that, for the two-year period beginning on the date
3 of the order, the employee is not eligible to receive
4 any bonus or cash award from the Department, in-
5 cluding—

6 “(i) an award under chapter 45 of title 5;

7 “(ii) an award under section 5384 of title
8 5; and

9 “(iii) a retention bonus under section 5754
10 of title 5;

11 “(B) for the second such access, suspend the
12 employee for not less than 14 days; and

13 “(C) for the third such access, terminate the
14 employee.

15 “(2) Any action under paragraph (1)—

16 “(A) shall be taken in accordance with chapter
17 75 of title 5; and

18 “(B) may be appealed to the Merit Systems
19 Protection Board under section 7701 of title 5.

20 “(d) APPLICABLE PROVISION OF FEDERAL PRIVACY
21 LAW DEFINED.—In this section, the term ‘applicable pro-
22 vision of Federal privacy law’ includes the following:

23 “(1) The Federal regulations (concerning the
24 privacy of individually identifiable health informa-
25 tion) promulgated under section 264(e) of the

1 Health Insurance Portability and Accountability Act
2 of 1996.

3 “(2) Section 552a of title 5 (commonly known
4 as the ‘Privacy Act of 1974’).”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—

6 The table of sections for chapter 7 of title 38, United
7 States Code, is amended by adding at the end the fol-
8 lowing new item:

“714. Accessing of medical records of employees.”.

9 **SEC. 202. MENTAL HEALTH SERVICES FOR EMPLOYEES OF**
10 **THE DEPARTMENT OF VETERANS AFFAIRS.**

11 (a) OUTREACH ON AVAILABILITY OF SERVICES.—

12 The Secretary of Veterans Affairs shall conduct a program
13 of outreach to employees of the Department of Veterans
14 Affairs to inform them of the mental health services avail-
15 able to them.

16 (b) STUDY ON USE OF MENTAL HEALTH PROFES-
17 SIONALS OF THE DEPARTMENT TO PROVIDE SERVICES
18 TO EMPLOYEES.—

19 (1) IN GENERAL.—The Secretary of Veterans
20 Affairs shall conduct a study to assess the feasibility
21 of using mental health professionals who provide
22 mental health services for the Department of Vet-
23 erans Affairs to provide mental health services to
24 employees of the Department.

1 (2) REPORT.—Upon completion of the study re-
2 quired by paragraph (1), the Secretary shall submit
3 to Congress a report on the findings of the Secretary
4 with respect to the study.

5 **SEC. 203. PROTOCOLS TO ADDRESS THREATS AGAINST EM-**
6 **PLOYEES OF THE DEPARTMENT OF VET-**
7 **ERANS AFFAIRS.**

8 The Secretary of Veterans Affairs shall develop pro-
9 tocols to address threats from individuals receiving health
10 care from the Department of Veterans Affairs directed to-
11 wards employees of the Department who are providing
12 such health care.

13 **SEC. 204. COMPTROLLER GENERAL OF THE UNITED**
14 **STATES STUDY ON ACCOUNTABILITY OF**
15 **CHIEFS OF POLICE OF DEPARTMENT OF VET-**
16 **ERANS AFFAIRS MEDICAL CENTERS.**

17 The Comptroller General of the United States shall
18 conduct a study to assess the reporting, accountability,
19 and chain of command structure of the Department of
20 Veterans Affairs police officers at medical centers of the
21 Department.

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

23 (a) *SHORT TITLE.*—*This Act may be cited as the “Dr.*
24 *Chris Kirkpatrick Whistleblower Protection Act of 2015”.*

1 (b) *TABLE OF CONTENTS.—The table of contents for*
 2 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYEES GENERALLY

Sec. 101. Definitions.

Sec. 102. Stays; probationary employees.

Sec. 103. Adequate access of Special Counsel to information.

Sec. 104. Prohibited personnel practices.

Sec. 105. Discipline of supervisors based on retaliation against whistleblowers.

Sec. 106. Suicide by employees.

Sec. 107. Training for supervisors.

Sec. 108. Information on whistleblower protections.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

Sec. 201. Prevention of unauthorized access to medical records of employees of the Department of Veterans Affairs.

Sec. 202. Outreach on availability of mental health services available to employees of the Department of Veterans Affairs.

Sec. 203. Protocols to address threats against employees of the Department of Veterans Affairs.

Sec. 204. Comptroller General of the United States study on accountability of chiefs of police of Department of Veterans Affairs medical centers.

3 **TITLE I—EMPLOYEES**
 4 **GENERALLY**

5 **SEC. 101. DEFINITIONS.**

6 *In this title—*

7 (1) *the terms “agency” and “personnel action”*
 8 *have the meanings given such terms under section*
 9 *2302 of title 5, United States Code; and*

10 (2) *the term “employee” means an employee (as*
 11 *defined in section 2105 of title 5, United States Code)*
 12 *of an agency.*

1 **SEC. 102. STAYS; PROBATIONARY EMPLOYEES.**

2 (a) *REQUEST BY SPECIAL COUNSEL.*—Section
3 1214(b)(1) of title 5, United States Code, is amended by
4 adding at the end the following:

5 “(E) If the Merit Systems Protections Board grants
6 a stay under this subsection, the head of the agency employ-
7 ing the employee shall give priority to a request for a trans-
8 fer submitted by the employee.”.

9 (b) *INDIVIDUAL RIGHT OF ACTION FOR PROBATIONARY*
10 *EMPLOYEES.*—Section 1221 of title 5, United States Code,
11 is amended by adding at the end the following:

12 “(k) If the Merit Systems Protection Board grants a
13 stay to an employee in probationary status under sub-
14 section (c), the head of the agency employing the employee
15 shall give priority to a request for a transfer submitted by
16 the employee.”.

17 (c) *STUDY REGARDING RETALIATION AGAINST PROBA-*
18 *TIONARY EMPLOYEES.*—The Comptroller General of the
19 United States shall submit to the Committee on Homeland
20 Security and Governmental Affairs of the Senate and the
21 Committee on Oversight and Government Reform of the
22 House of Representatives a report discussing retaliation
23 against employees in probationary status.

1 **SEC. 103. ADEQUATE ACCESS OF SPECIAL COUNSEL TO IN-**
2 **FORMATION.**

3 *Section 1212(b) of title 5, United States Code, is*
4 *amended by adding at the end the following:*

5 *“(5) The Special Counsel, in carrying out this sub-*
6 *chapter, is authorized to—*

7 *“(A) have access to all records, reports, audits,*
8 *reviews, documents, papers, recommendations, or*
9 *other material available to the applicable agency*
10 *which relate to a matter within the jurisdiction or*
11 *authority of the Special Counsel; and*

12 *“(B) request from any agency such information*
13 *or assistance as may be necessary for carrying out the*
14 *duties and responsibilities of the Special Counsel*
15 *under this subchapter.”.*

16 **SEC. 104. PROHIBITED PERSONNEL PRACTICES.**

17 *Section 2302(b) of title 5, United States Code, is*
18 *amended—*

19 *(1) in paragraph (12), by striking “or” at the*
20 *end;*

21 *(2) in paragraph (13), by striking the period at*
22 *the end and inserting “; or”; and*

23 *(3) by inserting after paragraph (13) the fol-*
24 *lowing:*

1 “(14) access the medical record of another em-
2 ployee for the purpose of retaliation for a disclosure
3 or activity protected under paragraph (8) or (9).”.

4 **SEC. 105. DISCIPLINE OF SUPERVISORS BASED ON RETAL-**
5 **IATION AGAINST WHISTLEBLOWERS.**

6 (a) *IN GENERAL.*—Subchapter II of chapter 75 of title
7 5, United States Code, is amended by adding at the end
8 the following:

9 **“§ 7515. Discipline of supervisors based on retaliation**
10 **against whistleblowers**

11 “(a) *DEFINITIONS.*—In this section—

12 “(1) the term ‘agency’ has the meaning given
13 that term under section 2302;

14 “(2) the term ‘prohibited personnel action’
15 means taking or failing to take an action in violation
16 of paragraph (8), (9), or (14) of section 2302(b)
17 against an employee of an agency; and

18 “(3) the term ‘supervisor’ means a supervisor, as
19 defined under section 7103(a), who is employed by an
20 agency, as defined under paragraph (1) of this sub-
21 section.

22 “(b) *PROPOSED ADVERSE ACTIONS.*—

23 “(1) *IN GENERAL.*—In accordance with para-
24 graph (2), the head of an agency shall propose
25 against a supervisor whom the head of that agency,

1 *an administrative law judge, the Merit Systems Pro-*
2 *tection Board, the Office of Special Counsel, an adju-*
3 *dicating body provided under a union contract, a*
4 *Federal judge, or the Inspector General of the agency*
5 *determines committed a prohibited personnel action*
6 *the following adverse actions:*

7 *“(A) With respect to the first prohibited*
8 *personnel action, an adverse action that is not*
9 *less than a 12-day suspension.*

10 *“(B) With respect to the second prohibited*
11 *personnel action, removal.*

12 *“(2) PROCEDURES.—*

13 *“(A) NOTICE.—A supervisor against whom*
14 *an adverse action under paragraph (1) is pro-*
15 *posed is entitled to written notice.*

16 *“(B) ANSWER AND EVIDENCE.—*

17 *“(i) IN GENERAL.—A supervisor who*
18 *is notified under subparagraph (A) that the*
19 *supervisor is the subject of a proposed ad-*
20 *verse action under paragraph (1) is entitled*
21 *to 14 days following such notification to an-*
22 *swer and furnish evidence in support of the*
23 *answer.*

24 *“(ii) NO EVIDENCE.—After the end of*
25 *the 14-day period described in clause (i), if*

1 *a supervisor does not furnish evidence as*
2 *described in clause (i) or if the head of the*
3 *agency determines that such evidence is not*
4 *sufficient to reverse the proposed adverse ac-*
5 *tion, the head of the agency shall carry out*
6 *the adverse action.*

7 *“(C) SCOPE OF PROCEDURES.—Paragraphs*
8 *(1) and (2) of subsection (b) of section 7513, sub-*
9 *section (c) of such section, paragraphs (1) and*
10 *(2) of subsection (b) of section 7543, and sub-*
11 *section (c) of such section shall not apply with*
12 *respect to an adverse action carried out under*
13 *this subsection.*

14 *“(c) LIMITATION ON OTHER ADVERSE ACTIONS.—*
15 *With respect to a prohibited personnel action, if the head*
16 *of the agency carries out an adverse action against a super-*
17 *visor under another provision of law, the head of the agency*
18 *may carry out an additional adverse action under this sec-*
19 *tion based on the same prohibited personnel action.”.*

20 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
21 *table of sections for subchapter II of chapter 75 of title 5,*
22 *United States Code, is amended by adding at the end the*
23 *following:*

“7515. Discipline of supervisors based on retaliation against whistleblowers.”.

1 **SEC. 106. SUICIDE BY EMPLOYEES.**

2 (a) *REFERRAL.*—*The head of an agency shall refer to*
3 *the Office of Special Counsel, along with any information*
4 *known to the agency regarding the circumstances described*
5 *in paragraphs (2) and (3), any instance in which the head*
6 *of the agency has information indicating—*

7 (1) *an employee of the agency committed suicide;*

8 (2) *prior to the death of the employee, the em-*
9 *ployee made any disclosure of information which rea-*
10 *sonably evidences—*

11 (A) *any violation of any law, rule, or regu-*
12 *lation; or*

13 (B) *gross mismanagement, a gross waste of*
14 *funds, an abuse of authority, or a substantial*
15 *and specific danger to public health or safety;*
16 *and*

17 (3) *after a disclosure described in paragraph (2),*
18 *a personnel action was taken against the employee.*

19 (b) *OFFICE OF SPECIAL COUNSEL REVIEW.*—*For any*
20 *referral to the Office of Special Counsel under subsection*

21 (a), *the Office of Special Counsel shall—*

22 (1) *examine whether any personnel action was*
23 *taken because of any disclosure of information de-*
24 *scribed in subsection (a)(2); and*

1 (2) *take any action the Office of Special Counsel*
 2 *determines appropriate under subchapter II of chap-*
 3 *ter 12 of title 5, United States Code.*

4 **SEC. 107. TRAINING FOR SUPERVISORS.**

5 *In consultation with the Office of Special Counsel and*
 6 *the Inspector General of the agency (or senior ethics official*
 7 *of the agency for an agency without an Inspector General),*
 8 *the head of each agency shall provide training regarding*
 9 *how to respond to complaints alleging a violation of whis-*
 10 *tleblower protections (as defined in section 2307 of title 5,*
 11 *United States Code, as added by section 108) available to*
 12 *employees of the agency—*

13 (1) *to employees appointed to supervisory posi-*
 14 *tions in the agency who have not previously served as*
 15 *a supervisor; and*

16 (2) *on an annual basis, to all employees of the*
 17 *agency serving in a supervisory position.*

18 **SEC. 108. INFORMATION ON WHISTLEBLOWER PROTEC-**
 19 **TIONS.**

20 (a) *EXISTING PROVISION.—*

21 (1) *IN GENERAL.—Section 2302 of title 5,*
 22 *United States Code, is amended—*

23 (A) *by striking subsection (c); and*

1 (B) by redesignating subsections (d), (e),
2 and (f) as subsections (c), (d), and (e), respec-
3 tively.

4 (2) *TECHNICAL AND CONFORMING AMEND-*
5 *MENTS.—*

6 (A) Section 4505a(b)(2) of title 5, United
7 States Code, is amended by striking “section
8 2302(d)” and inserting “section 2302(c)”.

9 (B) Section 5755(b)(2) of title 5, United
10 States Code, is amended by striking “section
11 2302(d)” and inserting “section 2302(c)”.

12 (C) Section 110(b)(2) of the Whistleblower
13 Protection Enhancement Act of 2012 (5 U.S.C.
14 2302 note) is amended by striking “section
15 2303(f)(1) or (2)” and inserting “section
16 2303(e)(1) or (2)”.

17 (D) Section 704 of the Homeland Security
18 Act of 2002 (6 U.S.C. 344) is amended by strik-
19 ing “2302(c)” each place it appears and insert-
20 ing “2307”.

21 (E) Section 1217(d)(3) of the Panama
22 Canal Act of 1979 (22 U.S.C. 3657(d)(3)) is
23 amended by striking “section 2302(d)” and in-
24 serting “section 2302(c)”.

1 (F) *Section 1233(b) of the Panama Canal*
2 *Act of 1979 (22 U.S.C. 3673(b)) is amended by*
3 *striking “section 2302(d)” and inserting “section*
4 *2302(c)”.*

5 (b) *PROVISION OF INFORMATION.—Chapter 23 of title*
6 *5, United States Code, is amended by adding at the end*
7 *the following:*

8 **“§ 2307. Information on whistleblower protections**

9 “(a) *DEFINITIONS.—In this section—*

10 “(1) *the term ‘agency’ has the meaning given*
11 *that term in section 2302;*

12 “(2) *the term ‘new employee’ means an indi-*
13 *vidual—*

14 “(A) *appointed to a position as an em-*
15 *ployee of an agency on or after the date of enact-*
16 *ment of the Dr. Chris Kirkpatrick Whistleblower*
17 *Protection Act of 2015; and*

18 “(B) *who has not previously served as an*
19 *employee; and*

20 “(3) *the term ‘whistleblower protections’ means*
21 *the protections against and remedies for a prohibited*
22 *personnel practice described in paragraph (8), sub-*
23 *paragraph (A)(i), (B), (C), or (D) of paragraph (9),*
24 *or paragraph (14) of section 2302(b).*

1 “(b) *RESPONSIBILITIES OF HEAD OF AGENCY.*—The
2 head of each agency shall be responsible for the prevention
3 of prohibited personnel practices, for the compliance with
4 and enforcement of applicable civil service laws, rules, and
5 regulations, and other aspects of personnel management,
6 and for ensuring (in consultation with the Special Counsel
7 and the Inspector General of the agency) that employees of
8 the agency are informed of the rights and remedies available
9 to them under this chapter and chapter 12, including—

10 “(1) information regarding whistleblower protec-
11 tions available to new employees during the proba-
12 tionary period;

13 “(2) the role of the Office of Special Counsel and
14 the Merit Systems Protection Board with regard to
15 whistleblower protections; and

16 “(3) how to make a lawful disclosure of informa-
17 tion that is specifically required by law or Executive
18 order to be kept classified in the interest of national
19 defense or the conduct of foreign affairs to the Special
20 Counsel, the Inspector General of an agency, Con-
21 gress, or other agency employee designated to receive
22 such disclosures.

23 “(c) *TIMING.*—The head of each agency shall ensure
24 that the information required to be provided under sub-
25 section (b) is provided to each new employee of the agency

1 *not later than 6 months after the date the new employee*
 2 *is appointed.*

3 “(d) *INFORMATION ONLINE.*—*The head of each agency*
 4 *shall make available information regarding whistleblower*
 5 *protections applicable to employees of the agency on the*
 6 *public website of the agency, and on any online portal that*
 7 *is made available only to employees of the agency if one*
 8 *exists.*

9 “(e) *DELEGEES.*—*Any employee to whom the head of*
 10 *an agency delegates authority for personnel management,*
 11 *or for any aspect thereof, shall, within the limits of the scope*
 12 *of the delegation, be responsible for the activities described*
 13 *in subsection (b).”.*

14 “(c) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 15 *table of sections for chapter 23 of title 5, United States*
 16 *Code, is amended by adding at the end the following:*

“2307. *Information on whistleblower protections.*”.

17 ***TITLE II—DEPARTMENT OF***
 18 ***VETERANS AFFAIRS EMPLOYEES***
 19 ***SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO***
 20 ***MEDICAL RECORDS OF EMPLOYEES OF THE***
 21 ***DEPARTMENT OF VETERANS AFFAIRS.***

22 “(a) *DEVELOPMENT OF PLAN.*—

23 “(1) *IN GENERAL.*—*Not later than 180 days after*
 24 *the date of the enactment of this Act, the Secretary of*
 25 *Veterans Affairs shall—*

1 (A) develop a plan to prevent access to the
2 medical records of employees of the Department
3 of Veterans Affairs by employees of the Depart-
4 ment who are not authorized to access such
5 records;

6 (B) submit to the appropriate committees of
7 Congress the plan developed under subparagraph
8 (A); and

9 (C) upon request, provide a briefing to the
10 appropriate committees of Congress with respect
11 to the plan developed under subparagraph (A).

12 (2) *ELEMENTS.*—The plan required under para-
13 graph (1) shall include the following:

14 (A) A detailed assessment of strategic goals
15 of the Department for the prevention of unau-
16 thorized access to the medical records of employ-
17 ees of the Department.

18 (B) A list of circumstances in which an em-
19 ployee of the Department who is not a health
20 care provider or an assistant to a health care
21 provider would be authorized to access the med-
22 ical records of another employee of the Depart-
23 ment.

24 (C) Steps that the Secretary will take to ac-
25 quire new or implement existing technology to

1 *prevent an employee of the Department from ac-*
2 *cessing the medical records of another employee*
3 *of the Department without a specific need to ac-*
4 *cess such records.*

5 *(D) Steps the Secretary will take, including*
6 *plans to issue new regulations, as necessary, to*
7 *ensure that an employee of the Department may*
8 *not access the medical records of another em-*
9 *ployee of the Department for the purpose of re-*
10 *trieving demographic information if that demo-*
11 *graphic information is available to the employee*
12 *in another location or through another format.*

13 *(E) A proposed timetable for the implemen-*
14 *tation of such plan.*

15 *(F) An estimate of the costs associated with*
16 *implementing such plan.*

17 ***(b) APPROPRIATE COMMITTEES OF CONGRESS DE-***
18 ***FINED.—In this section, the term “appropriate committees***
19 ***of Congress” means—***

20 *(1) the Committee on Homeland Security and*
21 *Governmental Affairs and the Committee on Veterans’*
22 *Affairs of the Senate; and*

23 *(2) the Committee on Oversight and Government*
24 *Reform and the Committee on Veterans’ Affairs of the*
25 *House of Representatives.*

1 **SEC. 202. OUTREACH ON AVAILABILITY OF MENTAL HEALTH**
2 **SERVICES AVAILABLE TO EMPLOYEES OF THE**
3 **DEPARTMENT OF VETERANS AFFAIRS.**

4 *The Secretary of Veterans Affairs shall conduct a pro-*
5 *gram of outreach to employees of the Department of Vet-*
6 *erans Affairs to inform those employees of any mental*
7 *health services, including telemedicine options, that are*
8 *available to them.*

9 **SEC. 203. PROTOCOLS TO ADDRESS THREATS AGAINST EM-**
10 **PLOYEES OF THE DEPARTMENT OF VET-**
11 **ERANS AFFAIRS.**

12 *The Secretary of Veterans Affairs shall ensure protocols*
13 *are in effect to address threats from individuals receiving*
14 *health care from the Department of Veterans Affairs di-*
15 *rected towards employees of the Department who are pro-*
16 *viding such health care.*

17 **SEC. 204. COMPTROLLER GENERAL OF THE UNITED STATES**
18 **STUDY ON ACCOUNTABILITY OF CHIEFS OF**
19 **POLICE OF DEPARTMENT OF VETERANS AF-**
20 **FAIRS MEDICAL CENTERS.**

21 *The Comptroller General of the United States shall*
22 *conduct a study to assess the reporting, staffing, account-*
23 *ability, and chain of command structure of the Department*
24 *of Veterans Affairs police officers at medical centers of the*
25 *Department.*

Amend the title so as to read: “A bill to provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, and for other purposes.”.

Calendar No. 499

114TH CONGRESS
2^D SESSION

S. 2127

[Report No. 114-262]

A BILL

To provide appropriate protections to probationary Federal employees, to provide the Special Counsel with adequate access to information, to provide greater awareness of Federal whistleblower protections, and for other purposes.

MAY 26, 2016

Reported with an amendment and an amendment to the title