

114TH CONGRESS
1ST SESSION

S. 1130

To amend title 10, United States Code, to improve procedures for legal justice for members of the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2015

Mrs. BOXER (for herself, Mr. WYDEN, and Mr. MARKEY) 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 procedures for legal justice for members of the Armed Forces, 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.**

4 This Act may be cited as the “Legal Justice for
5 Servicemembers Act of 2015”.

6 **SEC. 2. IMPROVEMENTS TO WHISTLEBLOWER PROTECTION**
7 **PROCEDURES.**

8 (a) **MODIFICATION OF ACTIONS TREATABLE AS PRO-**
9 **HIBITED PERSONNEL ACTIONS.**—Paragraph (2) of sub-

1 section (b) of section 1034 of title 10, United States Code,
2 is amended to read as follows:

3 “(2) The following actions shall be considered for the
4 purposes of this section to be a personnel action prohibited
5 by this subsection:

6 “(A) Any action prohibited by paragraph (1)
7 (including the threat to take any unfavorable action,
8 the withholding or threat to withhold any favorable
9 action, making or threatening to make a significant
10 change in the duties or responsibilities of a member
11 of the armed forces not commensurate with the
12 member’s grade, a retaliatory investigation, and the
13 failure of a superior to respond to retaliatory action
14 or harassment by one or more subordinates taken
15 against a member of which the superior knew or
16 should have known).

17 “(B) Any other action that could be reasonably
18 understood as an attempt to dissuade a member of
19 the armed forces from making or preparing a com-
20 munication, or participating in any other activity,
21 described in paragraph (1).”.

22 (b) OPTION OF MEMBER CONCERNED TO DECLINE
23 DELEGATION OF INVESTIGATION BY DoD IG TO MILI-
24 TARY DEPARTMENT IG.—Subparagraph (D) of subsection
25 (c)(4) of such section is amended in the second sentence

1 by inserting before the period the following: “unless the
2 member submitting the allegation declines the delegation”.

3 (c) TEMPORARY STAY OF PERSONNEL ACTIONS.—

4 Subsection (c)(4) of such section is further amended—

5 (1) by redesignating subparagraph (E) as sub-
6 paragraph (F); and

7 (2) by inserting after subparagraph (D) the fol-
8 lowing new subparagraph (E):

9 “(E)(i) If the Inspector General makes a preliminary
10 determination in an investigation under subparagraph (D)
11 that there are reasonable grounds to believe that a per-
12 sonnel action prohibited by subsection (b) has occurred
13 and the personnel action will result in an immediate hard-
14 ship to the member alleging the personnel action, the In-
15 spector General may impose a stay of the personnel action
16 of not more than 90 days in order to prevent undue hard-
17 ship to the member.

18 “(ii) If the Inspector General has not completed the
19 investigation described in clause (i) upon the expiration
20 of the stay of the personnel action with respect to a mem-
21 ber imposed by the Inspector General under that clause,
22 the Secretary of the military department concerned or the
23 Secretary of Homeland Security, as applicable, may con-
24 tinue the stay of the personnel action with respect to the

1 member for such additional time as is required for the
2 completion of the investigation by the Inspector General.”.

3 (d) PERIODIC NOTICE TO MEMBERS ON PROGRESS
4 OF IG INVESTIGATIONS.—Paragraph (3) of subsection (e)
5 of such section is amended to read as follows:

6 “(3)(A) Not later than 180 days after the commence-
7 ment of an investigation of an allegation under subsection
8 (c)(4), and every 90 days thereafter until the transmission
9 of the report on the investigation under paragraph (1) to
10 the member concerned, the Inspector General conducting
11 the investigation shall submit a notice on the investigation
12 described in subparagraph (B) to the following:

13 (i) The member.

14 (ii) The Secretary of Defense.

15 (iii) The Secretary of the military department
16 concerned, or the Secretary of Homeland Security in
17 the case of a member of the Coast Guard when the
18 Coast Guard is not operating as a service in the
19 Navy.

20 (B) Each notice on an investigation under subpara-
21 graph (A) shall include the following:

22 (i) A description of the current progress of the
23 investigation, including the number of witnesses
24 interviewed and the number of documents reviewed.

1 “(ii) An estimate of the time remaining until
2 the completion of the investigation and the trans-
3 mittal of the report required by paragraph (1) to the
4 member concerned.”.

5 (e) IG RECOMMENDATIONS REGARDING DISPOSITION
6 OF COMPLAINTS.—Paragraph (4) of subsection (e) of such
7 section is amended to read as follows:

8 “(4) The report on the results of the investigation
9 shall contain the following:

10 “(A) A thorough review of the facts and cir-
11 cumstances relevant to the allegation and the com-
12 plaint or disclosure.

13 “(B) The documents acquired during the course
14 of the investigation, including summaries of inter-
15 views conducted.

16 “(C) A recommendation as to the disposition of
17 the complaint.

18 “(D) Recommendations, made in consultation
19 with the appropriate Judge Advocate General, for
20 disciplinary actions against the person who com-
21 mitted the prohibited personnel action, against a su-
22 perior who failed to address such action of which the
23 superior knew or should have known, or both.”.

1 (f) ACTIONS IN CASE OF VIOLATIONS.—Subpara-
2 graph (B) of subsection (f)(3) of such section is amended
3 to read as follows:

4 “(B) refer the report to the appropriate board
5 for the correction of military records for further re-
6 view under subsection (g) unless the member or
7 former member requests, in writing, during the 30-
8 day period beginning on the date of the making of
9 the determination, that the report not be so re-
10 ferred.”.

11 (g) CORRECTION OF RECORDS.—Subsection (g) of
12 such section is amended—

13 (1) by redesignating paragraphs (3) through
14 (6) as paragraphs (4) through (7), respectively;

15 (2) by striking paragraph (2) and inserting the
16 following new paragraphs (2) and (3):

17 “(2) In resolving an application described in para-
18 graph (1) for which there is a report of the Inspector Gen-
19 eral under subsection (e)(1), a correction board—

20 “(A) shall review the report of the Inspector
21 General;

22 “(B) may request the Inspector General to
23 gather further evidence;

24 “(C) may receive oral argument, examine and
25 cross-examine witnesses, and take depositions; and

1 “(D) if requested by the member or former
2 member, in writing, shall hold an evidentiary hear-
3 ing.

4 “(3) In resolving an application described in para-
5 graph (1) for which there is no final action of the Inspec-
6 tor General within 365 days after the claimant submits
7 an application to the Inspector General, the correction
8 board—

9 “(A) may receive oral argument, examine and
10 cross-examine witnesses, and take depositions; and

11 “(B) if requested by the member or former
12 member, in writing, shall hold an evidentiary hear-
13 ing.”; and

14 (3) in paragraph (7), as redesignated by para-
15 graph (1) of this subsection, by inserting before the
16 period at the end the following: “, against a superior
17 who failed to address such action of which the supe-
18 rior knew or should have known, or both”.

19 (h) BURDENS OF PROOF.—Such section is further
20 amended—

21 (1) by redesignating subsections (h), (i), and (j)
22 as subsections (i), (j), and (k), respectively; and

23 (2) by inserting after subsection (g) the fol-
24 lowing new subsection (h):

1 “(h) BURDENS OF PROOF.—The burdens of proof
2 specified in section 1221(e) of title 5 shall apply in any
3 investigation conducted by an Inspector General, in any
4 board for the correction of military records, and in any
5 review conducted by the Secretary of Defense and the Sec-
6 retary of Homeland Security, under this section.”.

7 (i) CONFORMING AMENDMENT.—Subsection
8 (b)(1)(B)(ii) of such section is amended by striking “sub-
9 section (i)” and inserting “subsection (k)”.

10 (j) UNIFORM STANDARDS FOR IG INVESTIGATIONS
11 OF PROHIBITED PERSONNEL ACTIONS AND OTHER MAT-
12 TERS.—

13 (1) IN GENERAL.—Not later than one year
14 after the date of the enactment of this Act, the In-
15 spector General of the Department of Defense shall
16 prescribe uniform standards for the following:

17 (A) The investigation of allegations of pro-
18 hibited personnel actions under section 1034 of
19 title 10, United States Code (as amended by
20 this section), by the Inspector General, the In-
21 spectors General of the military departments,
22 and the Inspector General of the Department of
23 Homeland Security.

24 (B) The training of the staffs of the In-
25 spectors General referred to in subparagraph

1 (A) on the conduct of investigations described
2 in that subparagraph.

3 (2) USE.—Commencing 180 days after pre-
4 scription of the standards required by paragraph
5 (1), the Inspectors General referred to in that para-
6 graph shall comply with such standards in the con-
7 duct of investigations described in that paragraph
8 and in the training of the staffs of such Inspectors
9 General in the conduct of such investigations.

10 **SEC. 3. IMPROVEMENTS TO AUTHORITIES AND PROCE-**
11 **DURES FOR THE CORRECTION OF MILITARY**
12 **RECORDS.**

13 (a) REQUIREMENT FOR CORRECTION OF MILITARY
14 RECORDS.—Paragraph (1) of subsection (a) of section
15 1552 of title 10, United States Code, is amended in the
16 first sentence by striking “may correct” and inserting
17 “shall correct”.

18 (b) AJS AS PRESIDING OFFICERS AT MEETINGS OF
19 BOARDS FOR CORRECTION OF MILITARY RECORDS.—
20 Such subsection is further amended—

21 (1) by redesignating paragraphs (3) and (4) as
22 paragraphs (5) and (8), respectively; and

23 (2) by inserting after paragraph (2) the fol-
24 lowing new paragraph (3):

1 “(3) Each meeting of a board under this subsection,
2 including any evidentiary hearing under paragraph (6),
3 shall, to the extent practicable, have as its presiding officer
4 an administrative judge serving on a part-time basis for
5 that purpose under a contract with the Secretary con-
6 cerned for that purpose.”.

7 (c) QUALIFICATIONS AND TERMS OF SERVICE ON
8 BOARDS.—

9 (1) IN GENERAL.—Such subsection is further
10 amended by inserting after paragraph (3), as in-
11 serted by subsection (b)(2) of this section, the fol-
12 lowing new paragraph (4):

13 “(4)(A) The members of each board under this sub-
14 section shall be individuals who, by demonstrated ability,
15 background, training, or experience are especially qualified
16 to carry out the functions of a board under this section.
17 No member of a board may hold another office or position
18 in the Federal Government except as otherwise provided
19 by law.

20 “(B) The term of service of an individual on a board
21 may not exceed five years.”.

22 (2) APPLICATION OF TERM OF SERVICE LIMITA-
23 TION TO MEMBERS SERVING ON DATE OF ENACT-
24 MENT.—For purposes of the application of para-
25 graph (4)(B) of subsection (a) of section 1552 of

1 title 10, United States Code (as amended by para-
2 graph (1) of this subsection), to individuals serving
3 on boards for the correction of military records as
4 of the date of the enactment of this Act, the term
5 of service of such individuals on such boards shall be
6 deemed to have commenced on the date of the enact-
7 ment of this Act.

8 (d) PROCEDURES OF BOARDS.—Paragraph (5) of
9 such subsection, as redesignated by subsection (b)(1) of
10 this section, is further amended—

11 (1) by inserting “(A)” after “(5)”; and

12 (2) by adding at the end the following new sub-
13 paragraphs:

14 “(B) If a board makes a preliminary determination
15 that a claim under this section lacks sufficient information
16 or documents to support the claim, the board shall notify
17 the claimant, in writing, indicating the specific informa-
18 tion or documents necessary to make the claim complete
19 and reviewable by the board.

20 “(C) If a claimant is unable to provide military per-
21 sonnel or medical records applicable to a claim under this
22 section, the board shall make reasonable efforts to obtain
23 the records. A claimant shall provide the board with docu-
24 mentary evidence of the efforts of the claimant to obtain
25 such records. The board shall inform the claimant of the

1 results of the board's efforts, and shall provide the claim-
2 ant copies of any records so obtained upon request of the
3 claimant.

4 “(D) Any request for reconsideration of a determina-
5 tion of a board under this section, no matter when filed,
6 shall be reconsidered by a board under this section if sup-
7 ported by materials not previously presented to or consid-
8 ered by the board in making such determination.”.

9 (e) EVIDENTIARY HEARINGS ON CERTAIN CLAIMS.—
10 Such subsection is further amended by inserting after
11 paragraph (5), as redesignated by subsection (b)(1) of this
12 section and amended by subsection (d) of this section, the
13 following new paragraph (6):

14 “(6)(A) A board shall hold an evidentiary hearing on
15 a claim that presents a genuine issue of material fact, if
16 requested by the claimant.

17 “(B) A board holding an evidentiary hearing shall
18 have broad discretion (as specified in the procedures re-
19 quired by paragraph (5)) to allow and limit discovery on
20 matters covered by the hearing in order to expedite the
21 hearing and action on the claim concerned.

22 “(C) A claimant may, at the election and expense of
23 the claimant, be represented by outside counsel in connec-
24 tion with an evidentiary hearing.”.

1 (f) FINAL DECISIONS OF BOARDS.—Such subsection
2 is further amended by inserting after paragraph (6), as
3 inserted by subsection (e) of this section, the following new
4 paragraph (7):

5 “(7)(A) Each final decision of a board under this sub-
6 section shall be made available to the public in electronic
7 form on a centralized Internet website. In any decision so
8 made available to the public—

9 (i) there shall be redacted all personally identi-
10 fiable information; but

11 (ii) if the decision relates to or arises from an
12 investigation under section 1034 of this title, there
13 shall not be redacted the names and position of such
14 categories of officers investigated, above the grade of
15 lieutenant colonel (or commander in the case of the
16 Navy and the Coast Guard) as the Secretary of De-
17 fense or the Secretary of Homeland Security, as ap-
18 plicable, shall prescribe in the procedures under
19 paragraph (5).

20 (B)(i) Under procedures jointly developed by the
21 Secretaries of the military departments and the Secretary
22 of Homeland Security, each final decision of a board shall
23 be characterized by the board as having precedential value
24 or non-precedential value for purposes of subsequent deci-
25 sions of boards under this section.

1 “(ii) For purposes of this subparagraph—

2 “(I) a decision having precedential value is any
3 decision determined by a board in accordance with
4 the procedures required by clause (i) to add signifi-
5 cantly to the case law of boards under this section;
6 and

7 “(II) a decision having non-precedential value is
8 any decision that does not have precedential value.

9 “(iii) Any decision having precedential value for pur-
10 poses of this subparagraph may be cited or referred to
11 by any party in a claim under this section.”.

12 (g) JUDICIAL REVIEW OF DETERMINATIONS OF
13 BOARDS.—Paragraph (8) of such subsection, as redesign-
14 nated by subsection (b)(1) of this section, is further
15 amended—

16 (1) by inserting “(A)” after “(8)”;

17 (2) in subparagraph (A), as so designated, by
18 inserting “or subject to review or appeal as de-
19 scribed in subparagraph (B)” after “Except when
20 procured by fraud”; and

21 (3) by adding at the end the following new sub-
22 paragraph:

23 “(B) A claimant may seek judicial review of a deter-
24 mination of a board under this section in an appropriate
25 court of the United States. The scope of judicial review

1 under this subparagraph shall be as specified in section
2 706 of title 5.”.

3 (h) TRAINING OF MEMBERS OF BOARDS.—

4 (1) IN GENERAL.—Not later than one year
5 after the date of the enactment of this Act, each
6 Secretary concerned shall develop and implement a
7 comprehensive training curriculum for members of
8 boards for the correction of military records under
9 the jurisdiction of such Secretary in the duties of
10 such boards under section 1552 of title 10, United
11 States Code. The curriculum shall address all areas
12 of administrative law applicable to the duties of such
13 boards.

14 (2) UNIFORM CURRICULA.—The Secretary of
15 Defense and the Secretary of Homeland Security
16 shall jointly ensure that the curricula developed and
17 implemented pursuant to this subsection are, to the
18 extent practicable, uniform.

19 (3) TRAINING.—

20 (A) IN GENERAL.—Each member of a
21 board for the correction of military records
22 shall undergo retraining (consistent with the
23 curriculum developed and implemented pursu-
24 ant to this subsection) regarding the duties of
25 boards for the correction of military records

1 under section 1552 of title 10, United States
2 Code, at least once during the member's tenure
3 on the board.

4 (B) CURRENT MEMBERS.—Each member
5 of a board for the correction of military records
6 as of the date of the implementation of the cur-
7 riculum required by paragraph (1) (in this
8 paragraph referred to as the “curriculum imple-
9 mentation date”) the shall undergo training de-
10 scribed in subparagraph (A) not later than 90
11 days after the curriculum implementation date.

12 (C) NEW MEMBERS.—Each individual who
13 becomes a member of a board for the correction
14 of military records after the curriculum imple-
15 mentation date shall undergo training described
16 in subparagraph (A) by not later than 90 days
17 after the date on which such individual becomes
18 a member of the board.

19 (4) REPORTS.—Not later than 18 months after
20 the date of the enactment of this Act, each Secretary
21 concerned shall submit to Congress a report setting
22 forth the following:

23 (A) A description and assessment of the
24 progress made by such Secretary in imple-
25 menting training requirements for members of

1 boards for the correction of military records
2 under the jurisdiction of such Secretary.

3 (B) A detailed description of the training
4 curriculum required of such Secretary by para-
5 graph (1).

6 (C) A description and assessment of any
7 impediments to the implementation of training
8 requirements for members of boards for the
9 correction of military records under the juris-
10 diction of such Secretary.

11 (5) SECRETARY CONCERNED DEFINED.—In this
12 subsection, the term “Secretary concerned” means a
13 “Secretary concerned” as that term is used in sec-
14 tion 1552 of title 10, United States Code.

15 **SEC. 4. INCLUSIONS OF INSPECTORS GENERAL OF THE**
16 **MILITARY DEPARTMENTS AND CERTAIN**
17 **OTHER INSPECTORS GENERAL IN COUNCIL**
18 **OF THE INSPECTORS GENERAL ON INTEG-**
19 **RITY AND EFFICIENCY.**

20 Section 11(b)(1) of the Inspector General Act of
21 1978 (5 U.S.C. App.) is amended by adding at the end
22 the following new subparagraph:

23 “(J) The Inspectors General of the Army,
24 the Navy, the Air Force, the Marine Corps, the

1 National Guard Bureau, and the Coast
2 Guard.”.

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