

1962—Pub. L. 87-651, title I, §106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

LIMITATIONS AND REQUIREMENTS IN CONNECTION WITH SEPARATIONS FOR MEMBERS OF THE ARMED FORCES WHO SUFFER FROM MENTAL HEALTH CONDITIONS IN CONNECTION WITH A SEX-RELATED, INTIMATE PARTNER VIOLENCE-RELATED, OR SPOUSAL-ABUSE OFFENSE

Pub. L. 116-92, div. A, title V, §570A, Dec. 20, 2019, 133 Stat. 1398, provided that:

“(a) CONFIRMATION OF DIAGNOSIS OF CONDITION REQUIRED BEFORE SEPARATION.—Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Armed Forces (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Armed Forces based solely on such condition, the diagnosis of such condition must be—

“(1) corroborated by a competent mental health care professional at the peer level or a higher level of the health care professional making the diagnosis; and

“(2) endorsed by the Surgeon General of the military department concerned.

“(b) NARRATIVE REASON FOR SEPARATION IF MENTAL HEALTH CONDITION PRESENT.—If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release shall be a condition, not a disability, or Secretarial authority.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘intimate partner violence-related offense’ means the following:

“(A) An offense under section 928 or 930 of title 10, United States Code (article 128 or 130 of the Uniform Code of Military Justice).

“(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

“(2) The term ‘sex-related offense’ means the following:

“(A) An offense under section 920 or 920b of title 10, United States Code (article 120 or 120b of the Uniform Code of Military Justice).

“(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

“(3) The term ‘spousal-abuse offense’ means the following:

“(A) An offense under section 928 of title 10, United States Code (article 128 of the Uniform Code of Military Justice).

“(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

“(d) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act [Dec. 20, 2019], and shall apply with respect to separations, discharges, and releases from the Armed Forces that occur on or after that effective date.”

PROHIBITION ON INVOLUNTARY SEPARATION OF CERTAIN MEMBERS OF THE ARMED FORCES

Pub. L. 116-92, div. A, title V, §570B(a), Dec. 20, 2019, 133 Stat. 1398, provided that:

“(1) IN GENERAL.—No member of the Armed Forces may be involuntarily separated from the Armed Forces solely because that member is a covered member.

“(2) COVERED MEMBER DEFINED.—In this subsection, the term ‘covered member’ means a member of the Armed Forces who—

“(A) possesses a current and valid employment authorization document that was issued pursuant to the memorandum of the Secretary of Homeland Security

dated June 15, 2012, and entitled ‘Exercising Prosecutorial Discretion with Respect to Individuals who Came to the United States as Children’; or

“(B) is currently in a temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a).”

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

- (1) by sentence of a general court-martial;
- (2) in commutation of a sentence of a general court-martial; or
- (3) in time of war, by order of the President.

(b) The President or the Secretary of Defense, or in the case of a commissioned officer of the Coast Guard, the Secretary of the department in which the Coast Guard is operating when it is not operating in the Navy, may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, (2) who may be separated under section 1167 of this title by reason of a sentence to confinement adjudged by a court-martial, or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89; Pub. L. 104-106, div. A, title V, §563(b)(1), Feb. 10, 1996, 110 Stat. 325; Pub. L. 104-201, div. A, title X, §1074(a)(5), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 114-328, div. A, title V, §507, Dec. 23, 2016, 130 Stat. 2109.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1161(a)	50:739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, §10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161(b)	50:739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word “commissioned” is inserted since, for the Army and the Air Force, the term “officer” is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words “from his place of duty” are omitted as surplusage. The words “at least” are substituted for the words “or more”. The words “by a court other than a court-martial or other military court” are substituted for the words “by the civil authorities”.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114-328 inserted “or the Secretary of Defense, or in the case of a commissioned officer of the Coast Guard, the Secretary of the department in which the Coast Guard is operating when it is not operating in the Navy,” after “President”.

1996—Subsec. (b). Pub. L. 104-201 substituted “section 1167” for “section 1178” in par. (2).

Pub. L. 104-106 struck out “or” after “three months,” added par. (2), and redesignated former par. (2) as (3).

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85-754, Aug. 25, 1958, 72 Stat. 847, provided: “That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [Aug. 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act, be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act, as if he had not been dropped from the rolls.

“SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive provisions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [Aug. 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

“SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act.”

[[§§ 1162, 1163. Repealed. Pub. L. 103-337, div. A, title XVI, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

Section 1162, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85-861, §1(27), 72 Stat. 1450, related to discharge of Reserves. See sections 12681 and 12682 of this title.

Section 1163, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87-651, title I, §106(a), 76 Stat. 508; Dec. 30, 1987, Pub. L. 100-224, §4, 101 Stat. 1538, related to limitations on separation of Reserve members from their reserve components. See sections 12683 to 12686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 89-718, §3, Nov. 2, 1966, 80 Stat. 1115; Pub. L.

90-130, §1(5), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96-513, title V, §511(41), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97-295, §1(16), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1164(a)	10:600(c) (as applicable to men). 10:600r(c) (as applicable to 10:600(c)). 34:430(c) (as applicable to men). 34:430c (as applicable to 34:430(c)).	May 29, 1954, ch. 249, §§14(c), (e) (as applicable to (c)), 21(c) (as applicable to §14(c)), 68 Stat. 163, 168.
1164(b)	10:600(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c)	10:600(e) (as applicable to 10:600(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words “Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section” are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words “Unless retired or separated on or before the expiration of that period” are inserted for clarity. The words “becomes 62[55] years of age” are substituted for the words “attains the age of sixty-two * * * or the age of fifty-five”.

In subsection (c), the words “The Secretary concerned may defer” are substituted for the words “may, in the discretion of the Secretary, be deferred”. The words “not more than” are substituted for the words “a period not to exceed”. The words “determination of his” are inserted for clarity. The words “he would otherwise be required to be separated under this section” are substituted for the words “separation would otherwise be required”. The words “proper”, “which is required”, “possible”, and “a period of” are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97-295, §1(16), substituted a colon for a semicolon after “officers” in section catchline.

1980—Subsec. (b). Pub. L. 96-513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96-513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90-130 struck out “male” before “warrant officer”.

Subsec. (b). Pub. L. 90-130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90-130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89-718 substituted “8301” for “47a” wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Act Aug. 10, 1956, ch. 1041, §46, 70A Stat. 638, provided that:

“(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later