

112TH CONGRESS
2D SESSION

H. R. 6574

To amend title 10, United States Code, to require a review of the separation of members of the Armed Forces on the basis of a mental condition not amounting to disability, including separation on the basis of a personality or adjustment disorder.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 12, 2012

Mr. WALZ of Minnesota (for himself, Mr. ROONEY, Mr. DENHAM, and Ms. PINGREE of Maine) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to require a review of the separation of members of the Armed Forces on the basis of a mental condition not amounting to disability, including separation on the basis of a personality or adjustment disorder.

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 “Servicemember Mental
5 Health Review Act”.

1 **SEC. 2. FINDINGS.**

2 (1) Since September 11, 2001, approximately
3 30,000 veterans have been separated from the
4 Armed Forces on the basis of a personality disorder
5 or adjustment disorder.

6 (2) Nearly all veterans who are separated on
7 the basis of a personality or adjustment disorder are
8 prohibited from accessing service-connected disability
9 compensation, disability severance pay, and disability
10 retirement pay.

11 (3) Many veterans who are separated on the
12 basis of a personality or adjustment disorder are un-
13 able to find employment because of the “personality
14 disorder” or “adjustment disorder” label on their
15 Certificate of Release or Discharge from Active
16 Duty.

17 (4) The Government Accountability Office has
18 found that the regulatory compliance of the Depart-
19 ment of Defense in separating members of the
20 Armed Forces on the basis of a personality or ad-
21 justment disorder was as low as 40 percent between
22 2001 and 2007.

23 (5) The establishment of a Mental Health Dis-
24 charge Board of Review to review the separation of
25 veterans who are separated on the basis of a person-
26 ality or adjustment disorder is warranted to ensure

1 that any veteran wrongly separated on such basis
2 will have the ability to access disability benefits and
3 employment opportunities available to veterans.

4 **SEC. 3. DEPARTMENT OF DEFENSE REVIEW OF MILITARY**
5 **SEPARATION ON BASIS OF A MENTAL CONDI-**
6 **TION NOT AMOUNTING TO DISABILITY.**

7 (a) REVIEW REQUIRED.—Chapter 79 of title 10,
8 United States Code, is amended by inserting after section
9 1554a the following new section:

10 **“§ 1554b. Review of separation on basis of mental**
11 **condition not amounting to disability**

12 “(a) IN GENERAL.—(1) The Secretary of Defense
13 shall oversee the establishment within the Office of the
14 Secretary of each military department a board of review
15 to review determinations previously made that covered in-
16 dividuals separated from the armed forces have a mental
17 condition not amounting to disability. The board of each
18 military department shall be known as the ‘Mental Health
19 Discharge Board of Review’.

20 “(2) Each Mental Health Discharge Board of Review
21 shall consist of not less than five members appointed by
22 the Secretary. At least one licensed psychologist and one
23 licensed psychiatrist who has not had any fiduciary re-
24 sponsibility to the Department of Defense since December
25 31, 2001, shall be appointed to the board.

1 “(3) The Secretary of a military department shall
2 equip the Mental Health Discharge Board of Review es-
3 tablished for that department with adequate administra-
4 tive and behavioral health support staff.

5 “(b) COVERED INDIVIDUALS.—For purposes of this
6 section, covered individuals are members and former mem-
7 bers of the armed forces who have been separated from
8 the armed forces since September 11, 2001, because of
9 unfitness for duty because of a mental condition not
10 amounting to disability, including separation on the basis
11 of a personality disorder or adjustment disorder.

12 “(c) NOTIFICATION OF AVAILABILITY OF REVIEW.—
13 (1) The Secretary of Defense shall ensure, to the greatest
14 extent practicable, that each covered individual receives
15 oral and written notification of the right of the covered
16 individual to the review by the appropriate Mental Health
17 Discharge Board of Review of the separation of the cov-
18 ered individual from the armed forces.

19 “(2) The Secretary of the military department with
20 jurisdiction over the armed force in which a covered indi-
21 vidual served immediately before separation shall be re-
22 sponsible for providing to the covered individual the notifi-
23 cation required by this subsection. The Secretary of De-
24 fense shall monitor compliance with this notification re-

1 quirement and promptly notify Congress of any failures
2 to comply.

3 “(3) If a covered individual does not receive notifica-
4 tion under this subsection, the covered individual or a sur-
5 viving spouse, next of kin, or legal representative of the
6 covered individual may file a request for the Mental
7 Health Discharge Board of Review to review the separa-
8 tion of the covered individual from the armed forces.

9 “(d) LEGAL COUNSEL.—The notification required by
10 subsection (c) shall—

11 “(1) inform the covered individual of the right
12 to obtain private counsel to represent the covered in-
13 dividual before the Mental Health Discharge Board
14 of Review; and

15 “(2) include a list of organizations that may
16 provide counsel at no cost to the covered individual.

17 “(e) REVIEW.—(1) For each covered individual, the
18 Mental Health Discharge Board of Review shall review—

19 “(A) the findings of the psychologist or psychia-
20 trist of the Department of Defense who diagnosed
21 the mental condition;

22 “(B) the findings and decisions of the separa-
23 tion authority with respect to the covered individual;
24 and

1 “(C) whether the separation authority correctly
2 followed the process for separation as set forth in
3 law, including regulations.

4 “(2) The review by the Mental Health Discharge
5 Board of Review under paragraph (1) shall be based on
6 the records of the Department of Defense and the Depart-
7 ment of Veterans Affairs and such other evidence as may
8 be presented to the Mental Health Discharge Board of Re-
9 view. The board shall consider any and all evidence to be
10 considered, including private mental health records sub-
11 mitted by the covered individual in support of the claim.

12 “(3) If the Mental Health Discharge Board of Review
13 proposes, upon its own motion, to conduct a review under
14 paragraph (1) with respect to a covered individual, the
15 Mental Health Discharge Board of Review shall notify the
16 covered individual, or a surviving spouse, next of kin, or
17 legal representative of the covered individual, of the pro-
18 posed review and obtain the consent of the covered indi-
19 vidual or a surviving spouse, next of kin, or legal rep-
20 resentative of the covered individual before proceeding
21 with the review.

22 “(4) After the Mental Health Discharge Board of Re-
23 view has completed the review under this subsection with
24 respect to the separation of a covered individual, the board
25 must provide the claimant with a statement of reasons

1 concerning the board's decision. The covered individual
2 has the right to raise with the board a motion for reconsid-
3 eration if new evidence can be presented that would ad-
4 dress the issues raised in the board's statement of reasons.

5 “(f) AUTHORIZED RECOMMENDATIONS.—The Mental
6 Health Discharge Board of Review may, as a result of its
7 findings in a review under subsection (e), recommend to
8 the Secretary of the military department concerned the
9 following (as applicable) with respect to a covered indi-
10 vidual:

11 “(1) No negative recharacterization of the sepa-
12 ration of such individual or modification of the dis-
13 ability rating previously assigned such individual.

14 “(2) The recharacterization of the separation of
15 such individual to retirement for disability.

16 “(3) The recharacterization of the separation of
17 such individual—

18 “(A) to separation for disability with enti-
19 tlement to receive severance pay;

20 “(B) to separation upon expiration of term
21 of service; or

22 “(C) to separation for convenience of the
23 Government.

24 “(4) The issuance of a new disability rating for
25 such individual.

1 “(g) COMPLIANCE WITH ADMINISTRATIVE PROCE-
2 DURE ACT TRANSPARENCY REQUIREMENT.—If the Men-
3 tal Health Discharge Board of Review does not rec-
4 ommend under subsection (f)(2) a recharacterization of
5 the separation of a covered individual to retirement for
6 disability, the Mental Health Discharge Board of Review
7 shall include a brief statement of the reasons why such
8 a recommendation was not made. The recommendation
9 and, if applicable, the brief statement shall be mailed to
10 the covered individual or a surviving spouse, next of kin,
11 or legal representative of the covered individual.

12 “(h) CORRECTION OF MILITARY RECORDS.—(1) The
13 Secretary of the military department concerned shall cor-
14 rect the military records of a covered individual in accord-
15 ance with the recommendation made by the Mental Health
16 Discharge Board of Review under subsection (f). Any such
17 correction shall be made effective as of the date of the
18 separation of the covered individual.

19 “(2) In the case of a covered individual previously
20 separated with a lump-sum or other payment of back pay
21 and allowances at separation, the amount of pay or other
22 monetary benefits to which such individual would be enti-
23 tled based on the individual’s military record as corrected
24 shall be reduced to take into account receipt of such lump-
25 sum or other payment in such manner as the Secretary

1 of the military department concerned considers appro-
2 priate.

3 “(i) REGULATIONS.—(1) This section shall be carried
4 out in accordance with regulations prescribed by the Sec-
5 retary of Defense.

6 “(2) The regulations under paragraph (1) shall speci-
7 fy reasonable deadlines for the performance of reviews re-
8 quired by this section.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of such chapter is amended by inserting
11 after the item relating to section 1554a the following new
12 item:

“1554b. Review of separation on basis of mental condition not amounting to dis-
ability.”.

13 (c) IMPLEMENTATION.—Not later than 90 days after
14 the date of the enactment of this Act, the Secretary of
15 Defense shall require the establishment of the Mental
16 Health Discharge Boards of Review required under sec-
17 tion 1554b of title 10, United States Code, as added by
18 subsection (a) and prescribe the regulations required by
19 subsection (i) of such section.

○