

Boxer, Wyden, Markey, Speier Introduce Legislation to Strengthen Protections for Military Whistleblowers

The 'Legal Justice for Servicemembers Act' Would Provide Military Whistleblowers with the Same Protections as Civilians

Wednesday, April 29th 2015

Washington, D.C. – U.S. Senators Barbara Boxer (D-CA), Ron Wyden (D-OR) and Edward J. Markey (D-MA), and Congresswoman Jackie Speier (D-CA) today introduced the *Legal Justice for Servicemembers Act* – legislation to strengthen protections for military whistleblowers, including sexual assault survivors, and reform military correction boards to help servicemembers who have been wronged receive restitution.

Senator Boxer authored the original *Military Whistleblower Protection Act* in 1988 as a member of the House of Representatives. Although the law has been updated periodically over the years, changes have not kept pace with protections afforded to civilian whistleblowers.

“Servicemembers who bravely speak out about wrongdoing or misconduct—especially sexual assault survivors—deserve to know that they will be protected from retaliation,” Senator Boxer said. “This bill will help ensure that whistleblowers who experience reprisal receive justice and that retaliators are held accountable.”

“Whistleblowers in the military who so bravely step forward to shine a bright, necessary light on fraud, waste and sexual abuse often do so at great personal and professional risk,” Senator Wyden said. “That’s not right and it doesn’t serve the public interest. I believe servicemembers who blow the whistle need the strongest possible protections from retaliation, and that’s why I’m proud to work with Sens. Boxer and Markey on this important legislation.”

Senator Markey said, “Too often whistleblowers in the military who simply tell the truth end up risking their positions, or in terrible circumstances, even their own well-beings. We must do everything we can to ensure whistleblowers, especially those shining a light on the devastation of sexual assault, are protected and are not subjected to harassment or retaliation for serving as modern-day Paul Reveres. I thank Senators Boxer and Wyden for their leadership on this issue and look forward to working with my colleagues to support whistleblowers who come forward when issues arise.”

“Military whistleblower protections are meaningless unless they actually protect military whistleblowers,” said Congresswoman Speier. “When the majority of whistleblowers report retaliation and the Pentagon’s processes fail to prevent it, it’s time to update the law. We need to give DoD Inspectors General both more authority and accountability, create a meaningful appeals process, and hold both retaliators and the supervisors who are complicit accountable.”

To ensure that military whistleblowers receive the same protections as their civilian counterparts, the *Legal Justice for Servicemembers Act*:

- Establishes a “clear and convincing” legal burden of proof standard in line with federal civilian whistleblower protection standards.
- Gives the investigating Inspector General the authority to temporarily suspend negative personnel actions against a whistleblower if it causes significant hardship to the servicemember.

Whistleblower retaliation claims in the military are investigated by the Department of Defense Inspector General (DODIG) or the Service – Army, Navy, Marine Corps, Air Force or Coast Guard – Inspector General. However, these claims are rarely substantiated, and numerous Government Accountability Office audits have pointed to serious quality issues in investigations conducted by the Service Inspectors General. In FY2014, DODIG and the Service IGs together closed 645 claims of whistleblower retaliation, and less than 5 percent – or 26 claims – were substantiated.

The legislation would ensure that claims of retaliation are fairly and thoroughly investigated by allowing servicemembers to decline investigation of their retaliation claim by a Service IG in favor of a higher-level review by the DODIG and requiring the DODIG to develop standardized training and investigation procedures.

The bill also holds retaliators and complicit supervisors accountable by requiring the investigating Inspector General to recommend disciplinary actions against those guilty of retaliation and modifying the definition of prohibited personnel actions to stop commanders from turning a blind eye to acts of retaliation.

All too often, when a servicemember’s claim of retaliation is substantiated by an Inspector General, that individual is forced to navigate a complicated and bureaucratic records correction process at the Boards for Correction of Military or Naval Records. To ensure all applications receive fair and thorough consideration from the boards, the bill:

- Directs military correction boards to conduct evidentiary hearings on significant cases presenting factual discrepancies that cannot be resolved without witness testimony.
- Instructs boards to obtain relevant medical or personnel records if servicemembers make reasonable efforts but are still unable to obtain the records.
- Requires that, to the extent practicable, administrative judges serve as presiding officers of the boards.

- Establishes board membership as a full-time position with a 5-year term limit.

Senators Boxer, Wyden and Markey are members of the Senate Whistleblower Protection Caucus.

The bill is supported by the Government Accountability Project (GAP), Project on Government Oversight (POGO), Protect Our Defenders (POD), Service Women's Action Network (SWAN), American Civil Liberties Union (ACLU), Sunlight Foundation, Human Rights Watch, TechFreedom, Public Citizen, National Veterans Legal Services Program, National Whistleblowers Center, International Association of Whistleblowers, Whistleblower Support Fund, OpenTheGovernment.org, National Forum On Judicial Accountability, Federal Ethics Center, Liberty Coalition, National Taxpayers Union, Taxpayer Protection Alliance, American Library Association and the Union of Concerned Scientists.

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