

(b) STATEMENT FOR RESERVES.—The Secretary concerned shall provide a member of a reserve component with a current assessment of benefits described in subsection (a) upon release of that member from active duty.

(Added Pub. L. 115–232, div. A, title V, § 522(a), Aug. 13, 2018, 132 Stat. 1756.)

CHAPTER 59—SEPARATION

- Sec.
1161. Commissioned officers: limitations on dismissal.
- [1162, 1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Members under confinement by sentence of court-martial: separation after six months confinement.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
- 1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
- 1175a. Voluntary separation pay and benefits.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation.
1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program.

Editorial Notes

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, § 512(a)(2), Oct. 28, 2009, 123 Stat. 2281, added item 1177.

2006—Pub. L. 109–163, div. A, title VI, § 643(a)(2), Jan. 6, 2006, 119 Stat. 3309, added item 1175a.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, § 751(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193, added item 1178.

1996—Pub. L. 104–134, title II, § 2707(a)(2), Apr. 26, 1996, 110 Stat. 1321–330, struck out item 1177 “Members infected with HIV–1 virus: mandatory discharge or retirement”.

Pub. L. 104–106, div. A, title V, §§ 563(a)(1)(B), 567(a)(2), Feb. 10, 1996, 110 Stat. 325, 329, added item 1167 and substituted “Members infected with HIV–1 virus: mandatory discharge or retirement” for “Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling” in item 1177.

1994—Pub. L. 103–337, div. A, title V, § 560(a)(2), title XVI, § 1671(b)(10), Oct. 5, 1994, 108 Stat. 2778, 3013, struck out items 1162 “Reserves: discharge” and 1163 “Reserve components: members; limitations on separation” and added item 1177.

1992—Pub. L. 102–484, div. A, title V, § 541(b), Oct. 23, 1992, 106 Stat. 2413, added item 1176.

1991—Pub. L. 102–190, div. A, title VI, §§ 661(a)(2), 662(a)(2), Dec. 5, 1991, 105 Stat. 1395, 1398, added items 1174a and 1175.

1980—Pub. L. 96–513, title V, § 501(15), Dec. 12, 1980, 94 Stat. 2908, struck out item 1167 “Regular warrant officers: severance pay” and added item 1174.

1973—Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147, added item 1173.

1968—Pub. L. 90–235, § 3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169 to 1172.

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

Statutory Notes and Related Subsidiaries

LIMITATION ON CERTAIN DISCHARGES SOLELY ON THE BASIS OF FAILURE TO OBEY LAWFUL ORDER TO RECEIVE COVID–19 VACCINE

Pub. L. 117–81, div. A, title VII, § 736, Dec. 27, 2021, 135 Stat. 1800, provided that:

“(a) LIMITATION.—During the period of time beginning on August 24, 2021, and ending on the date that is two years after the date of the enactment of this Act [Dec. 27, 2021], any administrative discharge of a covered member, on the sole basis that the covered member failed to obey a lawful order to receive a vaccine for COVID–19, shall be—

“(1) an honorable discharge; or

“(2) a general discharge under honorable conditions.

“(b) DEFINITIONS.—In this section:

“(1) The terms ‘Armed Forces’ and ‘military departments’ have the meanings given such terms in section 101 of title 10, United States Code.

“(2) The term ‘covered member’ means a member of an Armed Force under the jurisdiction of the Secretary of a military department.”

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—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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”.

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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.

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.