

118TH CONGRESS
1ST SESSION

S. 1598

To clarify and improve accountability for certain members of the Armed Forces during consideration for medical separation in the Integrated Disability Evaluation System of the Department of Defense, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2023

Mr. SCOTT of Florida introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To clarify and improve accountability for certain members of the Armed Forces during consideration for medical separation in the Integrated Disability Evaluation System of the Department of Defense, 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 “Wounded Warrior Bill
5 of Rights Act of 2023”.

1 **SEC. 2. ACCOUNTABILITY FOR CERTAIN MEMBERS OF THE**
2 **ARMED FORCES DURING THE INTEGRATED**
3 **DISABILITY EVALUATION SYSTEM.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) Members of the Armed Forces are the brave
6 men and women who voluntarily put themselves in
7 harm's way, while fighting the enemies of freedom
8 around the world so that all citizens of the United
9 States and countless citizens of other nations can
10 enjoy the blessings of liberty in peace. We owe those
11 members not only a debt of gratitude, but our will-
12 ingness to ensure every single member receives excel-
13 lent health care and just treatment in the medical
14 separation process when they've become ill or in-
15 jured in the line of duty. This is critically important,
16 not only for the present state of readiness in the
17 Armed Forces, but for potential recruitment of fu-
18 ture warfighters as elucidated by President George
19 Washington when he stated, "The willingness with
20 which our young people are likely to serve in any
21 war, no matter how justified, shall be directly pro-
22 portional to how they perceive veterans of early wars
23 were treated and appreciated by our nation.".

24 (2) Wounded Warriors remain members of an
25 Armed Force under the jurisdiction of the Secretary
26 of a military department and determinations regard-

1 ing their physical ability is the responsibility of the
2 chain of command of the member, rather than the
3 personnel within or under the direction of the De-
4 fense Health Agency. That responsibility through
5 the jurisdiction of the military chain of command is
6 effective during the entirety of the process of the In-
7 tegrated Disability Evaluation System of the De-
8 partment of Defense, or successor system, instead of
9 vesting for practical purposes only at the end of
10 such process.

11 (3) Section 1214 of title 10, United States
12 Code, guarantees that “[n]o member of the armed
13 forces may be retired or separated for physical dis-
14 ability without a full and fair hearing if he demands
15 it.”.

16 (4) Section 1216(b) of such title grants the
17 Secretary concerned “all powers, functions, and du-
18 ties incident to the determination” of “fitness for ac-
19 tive duty of any member of an armed force under his
20 jurisdiction.”.

21 (5) Sections 7013(b), 8013(b), and 9013(b) of
22 such title assigns responsibility for and grants “the
23 authority necessary to conduct” the administration
24 of the “morale and welfare of personnel” to the Sec-

1 retary of the Army, the Secretary of the Navy, and
2 the Secretary of the Air Force respectively.

3 (b) DECLARATION OF POLICY REGARDING ACCOUNT-
4 ABILITY FOR WOUNDED WARRIORS.—It is the policy of
5 Congress that—

6 (1) determinations of fitness for duty or phys-
7 ical capability to perform a military occupational
8 specialty of a member of the Armed Forces under
9 the jurisdiction of the Secretary of a military depart-
10 ment are the responsibility of such Secretary;

11 (2) determinations of fitness for a Wounded
12 Warrior may be assessed by medical professionals
13 outside the military department of the Wounded
14 Warrior and may be influenced by precedents across
15 other entities of the Department of Defense, includ-
16 ing the Defense Health Agency, but ultimately, such
17 determination remains a decision of the Secretary of
18 the military department concerned;

19 (3) the full authority for a determination de-
20 scribed in paragraph (1) or (2) resides in the mili-
21 tary chain of command and not the chain of respon-
22 sibility of the Defense Health Agency; and

23 (4) at no point during the medical evaluation of
24 a Wounded Warrior shall the Wounded Warrior be
25 denied the protections, privileges, or right to due

1 process afforded under the laws, regulations, or
2 other applicable guidance of the military department
3 of the Wounded Warrior.

4 (c) CLARIFICATION OF RESPONSIBILITIES REGARD-
5 ING THE INTEGRATED DISABILITY EVALUATION SYS-
6 TEM.—Subsection (h) of section 1073c of title 10, United
7 States Code, is amended to read as follows:

8 “(h) AUTHORITIES RESERVED TO SECRETARIES OF
9 THE MILITARY DEPARTMENTS.—(1) Notwithstanding the
10 responsibilities and authorities of the Director of the De-
11 fense Health Agency with respect to the administration
12 of military medical treatment facilities under this section,
13 the Secretary of each military department shall maintain
14 authority over and responsibility for any member of the
15 armed forces under the jurisdiction of the military depart-
16 ment concerned while the member is being considered by
17 a medical evaluation board or during any other part of
18 the implementation of the Integrated Disability Evalua-
19 tion System of the Department of Defense, or successor
20 system.

21 “(2) Responsibility of the Secretary of a military de-
22 partment under paragraph (1) shall include the following:

23 “(A) Responsibility for administering the mo-
24 rale and welfare of each member of the armed forces
25 under the jurisdiction of such Secretary.

1 “(B) Responsibility for determinations of fit-
2 ness for active duty of each such member.

3 “(C) Complete operational and administrative
4 control of each such member at every stage of the
5 implementation of the Integrated Disability Evalua-
6 tion System, or successor system, from the begin-
7 ning of the medical evaluation board to the conclu-
8 sion of the physical evaluation board, including the
9 authority to pause for a reasonable amount of time
10 or completely withdraw the member from such sys-
11 tem if the military commander with jurisdiction over
12 the member finds that any policies, procedures, reg-
13 ulations, or other related guidance has not been fol-
14 lowed in the case of the member.”.

15 (d) OPPORTUNITY FOR DUE PROCESS HEARING IN
16 THE MILITARY CHAIN OF COMMAND.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of the enactment of this Act, the Secretary
19 of Defense shall update the policies and procedures
20 applicable to the implementation of the Integrated
21 Disability Evaluation System of the Department of
22 Defense, or successor system, to ensure that appeals
23 made by Wounded Warriors under the jurisdiction of
24 the Secretary concerned include (if the member de-

1 mands it) a full and fair hearing on such determina-
2 tion, to be conducted by the Secretary concerned.

3 (2) CHARACTERIZATION OF APPEAL.—An ap-
4 peal made under paragraph (1) is separate from and
5 in addition to any appellate options available to a
6 Wounded Warrior under the Integrated Disability
7 Evaluation System of the Department of Defense, or
8 successor system.

9 (3) TIMELY MANNER.—

10 (A) IN GENERAL.—Upon request by
11 Wounded Warrior, the military commander with
12 jurisdiction over the Wounded Warrior shall
13 process an appeal under paragraph (1).

14 (B) ADJUDICATION.—Not later than 90
15 days after the initiation by a Wounded Warrior
16 of an appeal under paragraph (1) the military
17 commander with jurisdiction over the Wounded
18 Warrior, and every echelon of command all the
19 way up to the general court-martial convening
20 authority if the commander denies the appeal,
21 shall complete adjudication of the appeal.

22 (e) BRIEFING.—Not later than February 1, 2024, the
23 Secretary of Defense shall provide to the appropriate con-
24 gressional committees a briefing on the status of the im-

1 plementation of this section and the amendments made
2 by this section.

3 (f) DEFINITIONS.—In this section:

4 (1) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term “appropriate congressional com-
6 mittees” means—

7 (A) the Committee on Armed Services of
8 the Senate; and

9 (B) the Committee on Armed Services of
10 the House of Representatives.

11 (2) SECRETARY CONCERNED.—The term “Sec-
12 retary concerned” has the meaning given that term
13 in section 101 of title 10, United States Code.

14 (3) WOUNDED WARRIOR.—The term “Wounded
15 Warrior” means a member of the Armed Forces
16 being processed for potential medical separation at
17 any point in the Integrated Disability Evaluation
18 System of the Department of Defense, or successor
19 system.

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