

AMENDMENT TO H.R. 5620
OFFERED BY MRS. KIRKPATRICK OF ARIZONA

Strike section 8 and insert the following:

1 **SEC. 8. OFFICE OF ACCOUNTABILITY AND WHISTLE-**
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—Chapter 3 of title 38, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

6 **“§ 323. Office of Accountability and Whistleblower**
7 **Protection**

8 “(a) ESTABLISHMENT.—There is established in the
9 Department an office to be known as the Office of Ac-
10 countability and Whistleblower Protection (in this section
11 referred to as the ‘Office’).

12 “(b) HEAD OF OFFICE.—(1) The head of the Office
13 shall be responsible for the functions of the Office and
14 shall be appointed by the President pursuant to section
15 308(a) of this title.

16 “(2) The head of the Office shall be known as the
17 ‘Assistant Secretary for Accountability and Whistleblower
18 Protection’.

19 “(3) The Assistant Secretary shall report directly to
20 the Secretary on all matters relating to the Office.

1 “(4) Notwithstanding section 308(b) of this title, the
2 Secretary may only assign to the Assistant Secretary re-
3 sponsibilities relating to the functions of the Office set
4 forth in subsection (c).

5 “(c) FUNCTIONS.—(1) The functions of the Office
6 are as follows:

7 “(A) Advising the Secretary on all matters of
8 the Department relating to accountability, including
9 accountability of employees of the Department, re-
10 tialiation against whistleblowers, and such matters as
11 the Secretary considers similar and affect public
12 trust in the Department.

13 “(B) Issuing reports and providing rec-
14 ommendations related to the duties described in sub-
15 paragraph (A).

16 “(C) Receiving whistleblower disclosures.

17 “(D) Referring whistleblower disclosures re-
18 ceived under subparagraph (C) for investigation to
19 the Office of the Medical Inspector, the Office of In-
20 spector General, or other investigative entity, as ap-
21 propriate, if the Assistant Secretary has reason to
22 believe the whistleblower disclosure is evidence of a
23 violation of a provision of law, mismanagement,
24 gross waste of funds, abuse of authority, or a sub-

1 stantial and specific danger to public health and
2 safety.

3 “(E) Receiving and referring disclosures from
4 the Special Counsel for investigation to the Medical
5 Inspector of the Department, the Inspector General
6 of the Department, or such other person with inves-
7 tigatory authority, as the Assistant Secretary con-
8 siders appropriate.

9 “(F) Recording, tracking, reviewing, and con-
10 firming implementation of recommendations from
11 audits and investigations carried out by the Inspec-
12 tor General of the Department, the Medical Inspec-
13 tor of the Department, the Special Counsel, and the
14 Comptroller General of the United States, including
15 the imposition of disciplinary actions and other cor-
16 rective actions contained in such recommendations.

17 “(G) Analyzing data from the Office and the
18 Office of Inspector General telephone hotlines, other
19 whistleblower disclosures, disaggregated by facility
20 and area of health care if appropriate, and relevant
21 audits and investigations to identify trends and issue
22 reports to the Secretary based on analysis conducted
23 under this subparagraph.

1 “(H) Receiving, reviewing, and investigating al-
2 legations of misconduct, retaliation, or poor perform-
3 ance involving—

4 “(i) an individual in a senior executive po-
5 sition (as defined in section 713(d) of this title)
6 in the Department;

7 “(ii) an individual employed in a confiden-
8 tial, policy-making, policy-determining, or pol-
9 icy-advocating position in the Department; or

10 “(iii) a supervisory employee, if the allega-
11 tion involves retaliation against an employee for
12 making a whistleblower disclosure.

13 “(I) Making such recommendations to the Sec-
14 retary for disciplinary action as the Assistant Sec-
15 retary considers appropriate after substantiating any
16 allegation of misconduct or poor performance pursu-
17 ant to an investigation carried out as described in
18 subparagraph (F) or (H).

19 “(2) In carrying out the functions of the Office, the
20 Assistant Secretary shall ensure that the Office maintains
21 a toll-free telephone number and Internet website to re-
22 ceive anonymous whistleblower disclosures.

23 “(3) In any case in which the Assistant Secretary re-
24 ceives a whistleblower disclosure from an employee of the
25 Department under paragraph (1)(C), the Assistant Sec-

1 retary may not disclose the identity of the employee with-
2 out the consent of the employee, except in accordance with
3 the provisions of section 552a of title 5, or as required
4 by any other applicable provision of Federal law.

5 “(d) STAFF AND RESOURCES.—The Secretary shall
6 ensure that the Assistant Secretary has such staff, re-
7 sources, and access to information as may be necessary
8 to carry out the functions of the Office.

9 “(e) RELATION TO OFFICE OF GENERAL COUN-
10 SEL.—The Office shall not be established as an element
11 of the Office of the General Counsel and the Assistant
12 Secretary may not report to the General Counsel.

13 “(f) REPORTS.—(1)(A) Not later than June 30 of
14 each calendar year, beginning with June 30, 2017, the As-
15 sistant Secretary shall submit to the Committee on Vet-
16 erans’ Affairs of the Senate and the Committee on Vet-
17 erans’ Affairs of the House of Representatives a report
18 on the activities of the Office during the calendar year
19 in which the report is submitted.

20 “(B) Each report submitted under subparagraph (A)
21 shall include, for the period covered by the report, the fol-
22 lowing:

23 “(i) A full and substantive analysis of the ac-
24 tivities of the Office, including such statistical infor-

1 mation as the Assistant Secretary considers appro-
2 priate.

3 “(ii) Identification of any issues reported to the
4 Secretary under subsection (c)(1)(G), including such
5 data as the Assistant Secretary considers relevant to
6 such issues and any trends the Assistant Secretary
7 may have identified with respect to such issues.

8 “(iii) Identification of such concerns as the As-
9 sistant Secretary may have regarding the size, staff-
10 ing, and resources of the Office and such rec-
11 ommendations as the Assistant Secretary may have
12 for legislative or administrative action to address
13 such concerns.

14 “(iv) Such recommendations as the Assistant
15 Secretary may have for legislative or administrative
16 action to improve—

17 “(I) the process by which concerns are re-
18 ported to the Office; and

19 “(II) the protection of whistleblowers with-
20 in the Department.

21 “(v) Such other matters as the Assistant Sec-
22 retary considers appropriate regarding the functions
23 of the Office or other matters relating to the Office.

24 “(2) If the Secretary receives a recommendation for
25 disciplinary action under subsection (c)(1)(I) and does not

1 take or initiate the recommended disciplinary action before
2 the date that is 60 days after the date on which the Sec-
3 retary received the recommendation, the Secretary shall
4 submit to the Committee on Veterans' Affairs of the Sen-
5 ate and the Committee on Veterans' Affairs of the House
6 of Representatives a detailed justification for not taking
7 or initiating such disciplinary action.

8 “(g) DEFINITIONS.—In this section:

9 “(1) The term ‘supervisory employee’ means an
10 employee of the Department who is a supervisor as
11 defined in section 7103(a) of title 5.

12 “(2) The term ‘whistleblower’ means one who
13 makes a whistleblower disclosure.

14 “(3) The term ‘whistleblower disclosure’ means
15 any disclosure of information by an employee of the
16 Department or individual applying to become an em-
17 ployee of the Department which the employee or in-
18 dividual reasonably believes evidences—

19 “(A) a violation of a provision of law; or

20 “(B) gross mismanagement, a gross waste
21 of funds, an abuse of authority, or a substantial
22 and specific danger to public health or safety.”.

23 (b) CONFORMING AMENDMENT.—Section 308(b) of
24 such title is amended by adding at the end the following
25 new paragraph:

1 “(12) The functions set forth in section 323(c)
2 of this title.”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 3 of such title is amended by
5 adding at the end the following new item:

 “323. Office of Accountability and Whistleblower Protection.”.

6 **SEC. 9. PROTECTION OF WHISTLEBLOWERS IN DEPART-**
7 **MENT OF VETERANS AFFAIRS.**

8 (a) IN GENERAL.—Chapter 7 of title 38, United
9 States Code, is further amended by adding at the end the
10 following new sections:

11 **“§ 725. Protection of whistleblowers as criteria in**
12 **evaluation of supervisors**

13 “(a) DEVELOPMENT AND USE OF CRITERIA RE-
14 QUIRED.—The Secretary, in consultation with the Assist-
15 ant Secretary of Accountability and Whistleblower Protec-
16 tion, shall develop criteria that—

17 “(1) the Secretary shall use as a critical ele-
18 ment in any evaluation of the performance of a su-
19 pervisory employee; and

20 “(2) promotes the protection of whistleblowers.

21 “(b) PRINCIPLES FOR PROTECTION OF WHISTLE-
22 BLOWERS.—The criteria required by subsection (a) shall
23 include principles for the protection of whistleblowers,
24 such as the degree to which supervisory employees respond
25 constructively when employees of the Department report

1 concerns, take responsible action to resolve such concerns,
2 and foster an environment in which employees of the De-
3 partment feel comfortable reporting concerns to super-
4 visory employees or to the appropriate authorities.

5 “(c) SUPERVISORY EMPLOYEE AND WHISTLE-
6 BLOWER DEFINED.—In this section, the terms ‘super-
7 visory employee’ and ‘whistleblower’ have the meanings
8 given such terms in section 323 of this title.

9 **“§ 727. Training regarding whistleblower disclosures**

10 “(a) TRAINING.—Not less frequently than once every
11 two years, the Secretary, in coordination with the Whistle-
12 blower Protection Ombudsman designated under section
13 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.
14 App.), shall provide to each employee of the Department
15 training regarding whistleblower disclosures, including—

16 “(1) an explanation of each method established
17 by law in which an employee may file a whistle-
18 blower disclosure;

19 “(2) the right of the employee to petition Con-
20 gress regarding a whistleblower disclosure in accord-
21 ance with section 7211 of title 5;

22 “(3) an explanation that the employee may not
23 be prosecuted or reprimed against for disclosing in-
24 formation to Congress, the Inspector General, or an-
25 other investigatory agency in instances where such

1 disclosure is permitted by law, including under sec-
2 tions 5701, 5705, and 7732 of this title, under sec-
3 tion 552a of title 5 (commonly referred to as the
4 Privacy Act), under chapter 93 of title 18, and pur-
5 suant to regulations promulgated under section
6 264(c) of the Health Insurance Portability and Ac-
7 countability Act of 1996 (Public Law 104–191);

8 “(4) an explanation of the language that is re-
9 quired to be included in all nondisclosure policies,
10 forms, and agreements pursuant to section
11 115(a)(1) of the Whistleblower Protection Enhance-
12 ment Act of 2012 (5 U.S.C. 2302 note); and

13 “(5) the right of contractors to be protected
14 from reprisal for the disclosure of certain informa-
15 tion under section 4705 or 4712 of title 41.

16 “(b) MANNER TRAINING IS PROVIDED.—The Sec-
17 retary shall ensure, to the maximum extent practicable,
18 that training provided under subsection (a) is provided in
19 person.

20 “(c) CERTIFICATION.—Not less frequently than once
21 every two years, the Secretary shall provide training on
22 merit system protection in a manner that the Special
23 Counsel certifies as being satisfactory.

24 “(d) PUBLICATION.—The Secretary shall publish on
25 the Internet website of the Department, and display

1 prominently at each facility of the Department, the rights
2 of an employee to make a whistleblower disclosure, includ-
3 ing the information described in paragraphs (1) through
4 (5) of subsection (a).

5 “(e) WHISTLEBLOWER DISCLOSURE DEFINED.—In
6 this section, the term ‘whistleblower disclosure’ has the
7 meaning given such term in section 323 of this title.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of such chapter is further amended by
10 adding at the end the following new items:

“725. Protection of whistleblowers as criteria in evaluation of supervisors.
“727. Training regarding whistleblower disclosures.”.

11 **SEC. 10. TREATMENT OF CONGRESSIONAL TESTIMONY BY**
12 **DEPARTMENT OF VETERANS AFFAIRS EM-**
13 **PLOYEES AS OFFICIAL DUTY.**

14 (a) IN GENERAL.—Chapter 7 of title 38, United
15 States Code, is further amended by adding at the end the
16 following new section:

17 **“§ 729. Congressional testimony by employees: treat-**
18 **ment as official duty**

19 “(a) CONGRESSIONAL TESTIMONY.—An employee of
20 the Department is performing official duty during the pe-
21 riod with respect to which the employee is testifying in
22 an official capacity in front of either chamber of Congress,
23 a committee of either chamber of Congress, or a joint or
24 select committee of Congress.

1 “(b) TRAVEL EXPENSES.—The Secretary shall pro-
2 vide travel expenses, including per diem in lieu of subsist-
3 ence, in accordance with applicable provisions under sub-
4 chapter I of chapter 57 of title 5, to any employee of the
5 Department of Veterans Affairs performing official duty
6 described under subsection (a).”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of such chapter, as amended by section
9 102, is further amended by inserting after the item relat-
10 ing to section 721 the following new item:

“Sec. 729. Congressional testimony by employees: treatment as official duty.”.

11 **SEC. 11. REPORT ON METHODS USED TO INVESTIGATE EM-**
12 **EMPLOYEES OF DEPARTMENT OF VETERANS AF-**
13 **FAIRS.**

14 (a) REPORT REQUIRED.—Not later than 540 days
15 after the date of the enactment of this Act, the Assistant
16 Secretary for Accountability and Whistleblower Protection
17 shall submit to the Secretary, the Committee on Veterans’
18 Affairs of the Senate, and the Committee on Veterans’ Af-
19 fairs of the House of Representatives a report on methods
20 used to investigate employees of the Department of Vet-
21 erans Affairs and whether such methods are used to retali-
22 ate against whistleblowers.

23 (b) CONTENTS.—The report required by subsection
24 (a) shall include the following:

1 (1) An assessment of the use of administrative
2 investigation boards, peer review, searches of med-
3 ical records, and other methods for investigating em-
4 ployees of the Department.

5 (2) A determination of whether and to what de-
6 gree the methods described in paragraph (1) are
7 being used to retaliate against whistleblowers.

8 (3) Recommendations for legislative or adminis-
9 trative action to implement safeguards to prevent
10 the retaliation described in paragraph (2).

11 (c) WHISTLEBLOWER DEFINED.—In this section, the
12 term “whistleblower” has the meaning given such term in
13 section 323 of title 38, United States Code, as added by
14 section 8.

