

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Dr. Chris Kirkpatrick Whistleblower Protection Act of  
6 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—EMPLOYEES GENERALLY

Sec. 101. Definitions.  
 Sec. 102. Stays; probationary employees.  
 Sec. 103. Prohibited personnel practices.  
 Sec. 104. Discipline of supervisors based on retaliation against whistleblowers.  
 Sec. 105. Suicide by employees.  
 Sec. 106. Training for supervisors.  
 Sec. 107. Information on whistleblower protections.

#### TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

Sec. 201. Prevention of unauthorized access to medical records of employees of the Department of Veterans Affairs.  
 Sec. 202. Outreach on availability of mental health services available to employees of the Department of Veterans Affairs.  
 Sec. 203. Protocols to address threats against employees of the Department of Veterans Affairs.  
 Sec. 204. Comptroller General of the United States study on accountability of chiefs of police of Department of Veterans Affairs medical centers.

## 3 **TITLE I—EMPLOYEES** 4 **GENERALLY**

### 5 **SEC. 101. DEFINITIONS.**

6 In this title—

7 (1) the term “agency”—

8 (A) except as provided in subparagraph  
 9 (B), means an entity that is an agency, as de-  
 10 fined under section 2302 of title 5, United  
 11 States Code, without regard to whether 1 or  
 12 more portions of title 5 of the United States  
 13 Code are inapplicable to the entity; and

14 (B) does not include any entity that is an  
 15 element of the intelligence community, as de-

1            fined in section 3(4) of the National Security  
2            Act of 1947 (50 U.S.C. 3003(4));

3            (2) the term “employee” means an employee  
4            (as defined in section 2105 of title 5, United States  
5            Code) of an agency; and

6            (3) the term “personnel action” has the mean-  
7            ing given that term under section 2302 of title 5,  
8            United States Code.

9    **SEC. 102. STAYS; PROBATIONARY EMPLOYEES.**

10          (a) REQUEST BY SPECIAL COUNSEL.—Section  
11    1214(b)(1) of title 5, United States Code, is amended by  
12    adding at the end the following:

13          “(E) If the Merit Systems Protections Board grants  
14    a stay under this subsection, the head of the agency em-  
15    ploying the employee shall give priority to a request for  
16    a transfer submitted by the employee.”.

17          (b) PROBATIONARY EMPLOYEES.—Section 1221 of  
18    title 5, United States Code, is amended by adding at the  
19    end the following:

20          “(k) If the Merit Systems Protection Board grants  
21    a stay to an employee in probationary status under sub-  
22    section (c), the head of the agency employing the employee  
23    shall give priority to a request for a transfer submitted  
24    by the employee.”.

1 (c) STUDY REGARDING RETALIATION AGAINST PRO-  
2 BATIONARY EMPLOYEES.—The Comptroller General of  
3 the United States shall submit to the Committee on  
4 Homeland Security and Governmental Affairs of the Sen-  
5 ate and the Committee on Oversight and Government Re-  
6 form of the House of Representatives a report discussing  
7 retaliation against employees in probationary status.

8 **SEC. 103. PROHIBITED PERSONNEL PRACTICES.**

9 Section 2302(b) of title 5, United States Code, is  
10 amended—

11 (1) in paragraph (12), by striking “or” at the  
12 end;

13 (2) in paragraph (13), by striking the period at  
14 the end and inserting “; or”; and

15 (3) by inserting after paragraph (13) the fol-  
16 lowing:

17 “(14) access the medical record of another em-  
18 ployee or an applicant for employment as a part of,  
19 or otherwise in furtherance of, any conduct de-  
20 scribed in paragraphs (1) through (13).”.

21 **SEC. 104. DISCIPLINE OF SUPERVISORS BASED ON RETAL-**  
22 **IATION AGAINST WHISTLEBLOWERS.**

23 (a) IN GENERAL.—Subchapter II of chapter 75 of  
24 title 5, United States Code, is amended by adding at the  
25 end the following:

1 **“§ 7515. Discipline of supervisors based on retaliation**  
2 **against whistleblowers**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘agency’—

5 “(A) except as provided in subparagraph  
6 (B), means an entity that is an agency, as de-  
7 fined under section 2302, without regard to  
8 whether any other provision of this chapter is  
9 applicable to the entity; and

10 “(B) does not include any entity that is an  
11 element of the intelligence community, as de-  
12 fined in section 3(4) of the National Security  
13 Act of 1947 (50 U.S.C. 3003(4));

14 “(2) the term ‘prohibited personnel action’  
15 means taking or failing to take an action in violation  
16 of paragraph (8), (9), or (14) of section 2302(b)  
17 against an employee of an agency; and

18 “(3) the term ‘supervisor’ means an employee  
19 who would be a supervisor, as defined under section  
20 7103(a), if entity employing the employee was an  
21 agency.

22 “(b) PROPOSED DISCIPLINARY ACTIONS.—

23 “(1) IN GENERAL.—If the head of the agency  
24 employing a supervisor, an administrative law judge,  
25 the Merit Systems Protection Board, the Special  
26 Counsel, a judge of the United States, or the Inspec-

1       tor General of the agency employing a supervisor de-  
2       termines that the supervisor has committed a pro-  
3       hibited personnel action, the head of the agency em-  
4       ploying the supervisor, in accordance with the proce-  
5       dures required under paragraph (2)—

6               “(A) for the first prohibited personnel ac-  
7               tion committed by a supervisor—

8                       “(i) shall propose suspending the su-  
9                       pervisor for a period of not less than 3  
10                      days; and

11                     “(ii) may, in addition to a suspension  
12                     described in clause (i), propose any other  
13                     action, including a reduction in grade or  
14                     pay, that the head of the agency deter-  
15                     mines appropriate; and

16               “(B) for the second prohibited personnel  
17               action committed by a supervisor, shall propose  
18               removing the supervisor.

19       “(2) PROCEDURES.—

20               “(A) NOTICE.—A supervisor against whom  
21               an action is proposed to be taken under para-  
22               graph (1) is entitled to written notice—

23                       “(i) stating the specific reasons for  
24                       the proposed action; and

1           “(ii) informing the supervisor of the  
2 right of the supervisor to review the mate-  
3 rial which is relied on to support the rea-  
4 sons for the proposed action.

5           “(B) ANSWER AND EVIDENCE.—

6           “(i) IN GENERAL.—A supervisor who  
7 is notified under subparagraph (A) that  
8 the supervisor is the subject of a proposed  
9 action under paragraph (1) is entitled to  
10 14 days following such notification to an-  
11 swer and furnish evidence in support of the  
12 answer.

13           “(ii) NO EVIDENCE FURNISHED; IN-  
14 SUFFICIENT EVIDENCE.—After the end of  
15 the 14-day period described in clause (i), if  
16 a supervisor does not furnish evidence as  
17 described in clause (i) or if the head of the  
18 agency determines that such evidence is  
19 not sufficient to reverse the proposed ac-  
20 tion, the head of the agency shall carry out  
21 the action.

22           “(C) SCOPE OF PROCEDURES.—An action  
23 carried out under this section—

24           “(i) except as provided in clause (ii),  
25 shall be subject to the same requirements

1 and procedures (including regarding ap-  
2 peals) as an action under section 7503,  
3 7513, or 7543; and

4 “(ii) shall not be subject to—

5 “(I) paragraphs (1) and (2) of  
6 section 7503(b);

7 “(II) paragraphs (1) and (2) of  
8 subsection (b) and subsection (c) of  
9 section 7513; or

10 “(III) paragraphs (1) and (2) of  
11 subsection (b) and subsection (c) of  
12 section 7543.

13 “(3) DELEGATION.—

14 “(A) IN GENERAL.—Except as provided in  
15 paragraph (B), the head of an agency may dele-  
16 gate any authority or responsibility under this  
17 subsection.

18 “(B) NONDELEGABILITY OF DETERMINA-  
19 TION REGARDING PROHIBITED PERSONNEL AC-  
20 TION.—If the head of an agency is responsible  
21 for determining whether a supervisor has com-  
22 mitted a prohibited personnel action for pur-  
23 poses of paragraph (1), the head of the agency  
24 may not delegate that responsibility.”



1 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
2 The table of sections for subchapter II of chapter 75 of  
3 title 5, United States Code, is amended by adding at the  
4 end the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”.

5 **SEC. 105. SUICIDE BY EMPLOYEES.**

6 (a) REFERRAL.—The head of an agency shall refer  
7 to the Special Counsel, along with any information known  
8 to the agency regarding the circumstances described in  
9 paragraphs (2) and (3), any instance in which the head  
10 of the agency has information indicating—

11 (1) an employee of the agency committed sui-  
12 cide;

13 (2) prior to the death of the employee, the em-  
14 ployee made any disclosure of information which rea-  
15 sonably evidences—

16 (A) any violation of any law, rule, or regu-  
17 lation; or

18 (B) gross mismanagement, a gross waste  
19 of funds, an abuse of authority, or a substantial  
20 and specific danger to public health or safety;  
21 and

22 (3) after a disclosure described in paragraph  
23 (2), a personnel action was taken against the em-  
24 ployee.

1 (b) OFFICE OF SPECIAL COUNSEL REVIEW.—For  
2 any referral to the Special Counsel under subsection (a),  
3 the Special Counsel shall—

4 (1) examine whether any personnel action was  
5 taken because of any disclosure of information de-  
6 scribed in subsection (a)(2); and

7 (2) take any action the Special Counsel deter-  
8 mines appropriate under subchapter II of chapter 12  
9 of title 5, United States Code.

10 **SEC. 106. TRAINING FOR SUPERVISORS.**

11 In consultation with the Special Counsel and the In-  
12 spector General of the agency (or senior ethics official of  
13 the agency for an agency without an Inspector General),  
14 the head of each agency shall provide training regarding  
15 how to respond to complaints alleging a violation of whis-  
16 tleblower protections (as defined in section 2307 of title  
17 5, United States Code, as added by section 107) available  
18 to employees of the agency—

19 (1) to employees appointed to supervisory posi-  
20 tions in the agency who have not previously served  
21 as a supervisor; and

22 (2) on an annual basis, to all employees of the  
23 agency serving in a supervisory position.

1 **SEC. 107. INFORMATION ON WHISTLEBLOWER PROTEC-**  
2 **TIONS.**

3 (a) EXISTING PROVISION.—

4 (1) IN GENERAL.—Section 2302 of title 5,  
5 United States Code, is amended—

6 (A) by striking subsection (c); and

7 (B) by redesignating subsections (d), (e),  
8 and (f) as subsections (c), (d), and (e), respec-  
9 tively.

10 (2) TECHNICAL AND CONFORMING AMEND-  
11 MENTS.—

12 (A) Section 4505a(b)(2) of title 5, United  
13 States Code, is amended by striking “section  
14 2302(d)” and inserting “section 2302(c)”.

15 (B) Section 5755(b)(2) of title 5, United  
16 States Code, is amended by striking “section  
17 2302(d)” and inserting “section 2302(c)”.

18 (C) Section 110(b)(2) of the Whistleblower  
19 Protection Enhancement Act of 2012 (5 U.S.C.  
20 2302 note) is amended by striking “section  
21 2303(f)(1) or (2)” and inserting “section  
22 2303(e)(1) or (2)”.

23 (D) Section 704 of the Homeland Security  
24 Act of 2002 (6 U.S.C. 344) is amended by  
25 striking “2302(c)” each place it appears and  
26 inserting “2307”.

1           (E) Section 1217(d)(3) of the Panama  
2 Canal Act of 1979 (22 U.S.C. 3657(d)(3)) is  
3 amended by striking “section 2302(d)” and in-  
4 serting “section 2302(c)”.

5           (F) Section 1233(b) of the Panama Canal  
6 Act of 1979 (22 U.S.C. 3673(b)) is amended by  
7 striking “section 2302(d)” and inserting “sec-  
8 tion 2302(e)”.

9           (b) PROVISION OF INFORMATION.—Chapter 23 of  
10 title 5, United States Code, is amended by adding at the  
11 end the following:

12 **“§ 2307. Information on whistleblower protections**

13           “(a) DEFINITIONS.—In this section—

14               “(1) the term ‘agency’—

15                   “(A) except as provided in subparagraph  
16 (B), has the meaning given that term in section  
17 2302; and

18                   “(B) does not include any entity that is an  
19 element of the intelligence community, as de-  
20 fined in section 3(4) of the National Security  
21 Act of 1947 (50 U.S.C. 3003(4));

22               “(2) the term ‘new employee’ means an indi-  
23 vidual—

24                   “(A) appointed to a position as an em-  
25 ployee of an agency on or after the date of en-

1 actment of the Dr. Chris Kirkpatrick Whistle-  
2 blower Protection Act of 2017; and

3 “(B) who has not previously served as an  
4 employee; and

5 “(3) the term ‘whistleblower protections’ means  
6 the protections against and remedies for a prohibited  
7 personnel practice described in paragraph (8), sub-  
8 paragraph (A)(i), (B), (C), or (D) of paragraph (9),  
9 or paragraph (14) of section 2302(b).

10 “(b) RESPONSIBILITIES OF HEAD OF AGENCY.—The  
11 head of each agency shall be responsible for the prevention  
12 of prohibited personnel practices, for the compliance with  
13 and enforcement of applicable civil service laws, rules, and  
14 regulations, and other aspects of personnel management,  
15 and for ensuring (in consultation with the Special Counsel  
16 and the Inspector General of the agency) that employees  
17 of the agency are informed of the rights and remedies  
18 available to them under this chapter and chapter 12, in-  
19 cluding—

20 “(1) information regarding whistleblower pro-  
21 tections available to new employees during the pro-  
22 bationary period;

23 “(2) the role of the Office of Special Counsel  
24 and the Merit Systems Protection Board with regard  
25 to whistleblower protections; and

1           “(3) how to make a lawful disclosure of infor-  
2           mation that is specifically required by law or Execu-  
3           tive order to be kept classified in the interest of na-  
4           tional defense or the conduct of foreign affairs to the  
5           Special Counsel, the Inspector General of an agency,  
6           Congress, or other agency employee designated to  
7           receive such disclosures.

8           “(c) TIMING.—The head of each agency shall ensure  
9           that the information required to be provided under sub-  
10          section (b) is provided to each new employee of the agency  
11          not later than 6 months after the date the new employee  
12          begins performing service as an employee.

13          “(d) INFORMATION ONLINE.—The head of each  
14          agency shall make available information regarding whistle-  
15          blower protections applicable to employees of the agency  
16          on the public website of the agency, and on any online  
17          portal that is made available only to employees of the  
18          agency if one exists.

19          “(e) DELEGEEES.—Any employee to whom the head  
20          of an agency delegates authority for personnel manage-  
21          ment, or for any aspect thereof, shall, within the limits  
22          of the scope of the delegation, be responsible for the activi-  
23          ties described in subsection (b).”.

24          (c) TECHNICAL AND CONFORMING AMENDMENT.—  
25          The table of sections for chapter 23 of title 5, United

1 States Code, is amended by adding at the end the fol-  
2 lowing:

“2307. Information on whistleblower protections.”.

3 **TITLE II—DEPARTMENT OF**  
4 **VETERANS AFFAIRS EMPLOYEES**

5 **SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO**  
6 **MEDICAL RECORDS OF EMPLOYEES OF THE**  
7 **DEPARTMENT OF VETERANS AFFAIRS.**

8 (a) DEVELOPMENT OF PLAN.—

9 (1) IN GENERAL.—Not later than 180 days  
10 after the date of the enactment of this Act, the Sec-  
11 retary of Veterans Affairs shall—

12 (A) develop a plan to prevent access to the  
13 medical records of employees of the Department  
14 of Veterans Affairs by employees of the Depart-  
15 ment who are not authorized to access such  
16 records;

17 (B) submit to the appropriate committees  
18 of Congress the plan developed under subpara-  
19 graph (A); and

20 (C) upon request, provide a briefing to the  
21 appropriate committees of Congress with re-  
22 spect to the plan developed under subparagraph  
23 (A).

24 (2) ELEMENTS.—The plan required under  
25 paragraph (1) shall include the following:

1           (A) A detailed assessment of strategic  
2 goals of the Department for the prevention of  
3 unauthorized access to the medical records of  
4 employees of the Department.

5           (B) A list of circumstances in which an  
6 employee of the Department who is not a health  
7 care provider or an assistant to a health care  
8 provider would be authorized to access the med-  
9 ical records of another employee of the Depart-  
10 ment.

11           (C) Steps that the Secretary will take to  
12 acquire new or implement existing technology to  
13 prevent an employee of the Department from  
14 accessing the medical records of another em-  
15 ployee of the Department without a specific  
16 need to access such records.

17           (D) Steps the Secretary will take, includ-  
18 ing plans to issue new regulations, as necessary,  
19 to ensure that an employee of the Department  
20 may not access the medical records of another  
21 employee of the Department for the purpose of  
22 retrieving demographic information if that de-  
23 mographic information is available to the em-  
24 ployee in another location or through another  
25 format.



1 (E) A proposed timetable for the imple-  
2 mentation of such plan.

3 (F) An estimate of the costs associated  
4 with implementing such plan.

5 (b) APPROPRIATE COMMITTEES OF CONGRESS DE-  
6 FINED.—In this section, the term “appropriate commit-  
7 tees of Congress” means—

8 (1) the Committee on Homeland Security and  
9 Governmental Affairs and the Committee on Vet-  
10 erans’ Affairs of the Senate; and

11 (2) the Committee on Oversight and Govern-  
12 ment Reform and the Committee on Veterans’ Af-  
13 fairs of the House of Representatives.

14 **SEC. 202. OUTREACH ON AVAILABILITY OF MENTAL**  
15 **HEALTH SERVICES AVAILABLE TO EMPLOY-**  
16 **EES OF THE DEPARTMENT OF VETERANS AF-**  
17 **FAIRS.**

18 The Secretary of Veterans Affairs shall conduct a  
19 program of outreach to employees of the Department of  
20 Veterans Affairs to inform those employees of any mental  
21 health services, including telemedicine options, that are  
22 available to them.

1 **SEC. 203. PROTOCOLS TO ADDRESS THREATS AGAINST EM-**  
2 **PLOYEES OF THE DEPARTMENT OF VET-**  
3 **ERANS AFFAIRS.**

4 The Secretary of Veterans Affairs shall ensure proto-  
5 cols are in effect to address threats from individuals re-  
6 ceiving health care from the Department of Veterans Af-  
7 fairs directed towards employees of the Department who  
8 are providing such health care.

9 **SEC. 204. COMPTROLLER GENERAL OF THE UNITED**  
10 **STATES STUDY ON ACCOUNTABILITY OF**  
11 **CHIEFS OF POLICE OF DEPARTMENT OF VET-**  
12 **ERANS AFFAIRS MEDICAL CENTERS.**

13 The Comptroller General of the United States shall  
14 conduct a study to assess the reporting, staffing, account-  
15 ability, and chain of command structure of the Depart-  
16 ment of Veterans Affairs police officers at medical centers  
17 of the Department.