

History of Military Whistleblower Protection Act and Statute Prohibiting the Use of Mental Health Evaluations in Reprisal

1985 – Congresswoman Barbara Boxer introduces a bill to provide protections for military whistleblowers.

1986 – Substance of Boxer bill becomes an amendment to the FY 1987 House Defense Authorization bill. The language dies in conference between the House and Senate.

November 1987 – The Defense Acquisition Policy Panel of the House Armed Services Committee holds a hearing on the Boxer bill to protect military whistleblowers. The witnesses include whistleblowers Chief Petty Officer Michael R. Tufariello, U.S. Naval Reserve, and Major Peter C. Cole, U.S. Army National Guard, Texas. Mr. Derek Vander Schaaf, Deputy Inspector General, Department of Defense, also testifies.

1988 – Boxer’s “Military Whistleblower Protection Act” (10 U.S.C. 1034) is enacted as part of the FY 1989 Defense Authorization Act. It is intended to protect military members who make disclosures of wrongdoing to Members of Congress or an IG from reprisal. It requires the DoD IG to investigate allegations of whistleblower reprisal from military members.

1990 – Boxer amendment to the FY 1991 Defense Authorization Act prohibits the referral of military members for mental health evaluations (MHE) in reprisal for making protected communications as defined by the 10 U.S.C. 1034. It requires the DoD to implement regulations specifying procedures for referring military members for MHEs.

1991 – Congress includes an amendment to 10 U.S.C. 1034 in the FY 1992/1993 Defense Authorization Act extending protections to whistleblowers that make disclosures to auditors, criminal investigators, inspectors, and other DoD law enforcement officers.

1992 – Congress includes a Boxer provision in the FY 1993 Defense Authorization Act requiring the DoD to implement regulations governing the referral of military members for MHEs. It again prohibits referring military members for MHEs in reprisal for making communications protected under 10 U.S.C. 1034.

1994 – As part of the FY 1995 Defense Authorization Act, Congress again expands the protections afforded under 10 U.S.C. 1034. It broadens the definition of “protected communication” to include allegations of sexual harassment or discrimination. It also expands the universe of those to whom protected communications can be made, to include any person or organization designated pursuant to regulations or administrative procedures to receive such communications, including those in the military member’s chain of command.

1998 – Congress amends 10 U.S.C. 1034 to do the following: 1) give Military Department IGs the authority to receive allegations of whistleblower reprisal and conduct preliminary inquiries into such allegations; 2) require Military Department IGs to report receipt of reprisal allegations

to the DoD IG within 10 days and to have their reports of preliminary inquiry and investigation reviewed and approved by the DoD IG; 3) reduce burdensome administrative requirements; and 4) insert the word “gross” before the word “mismanagement.”

2002 – The Homeland Security Act transfers the assets and personnel of the U.S. Coast Guard from the Department of Transportation to the Department of Homeland Security. Therefore, references in 10 U.S.C. 1034 to the Department of Transportation are replaced with references to the Department of Homeland Security.

2004 – The FY 2005 Defense Authorization Act amends 10 U.S.C. 1034 to clarify that any individual within a Military member’s chain of command can receive protected communications, as well as any person or organization designated by regulation or established procedure to receive protected communications.

2007 – The Directive which implements 10 U.S.C. 1034 is reissued. Included among the revisions to DoDD 7050.06 is the addition of the definition of “chain of command” as: the “succession of commanding officers from a superior to a subordinate through which command is exercised, but also the succession of officers, enlisted members or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.”