

103^D CONGRESS
2^D SESSION

S. 2411

To amend title 10, United States Code, to establish procedures for determining that status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 19 (legislative day, AUGUST 18), 1994

Mr. DOLE (for himself, Mr. LAUTENBERG, Mr. SIMPSON, Mr. LIEBERMAN, and Mr. WOFFORD) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to establish procedures for determining that status of certain missing members of the Armed Forces and certain civilians, 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 “Missing Service Per-
5 sonnel Act of 1994”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure that any member
8 of the Armed Forces and any civilian employee of the Fed-

1 eral Government or contractor of the Federal Government
 2 who serves with or accompanies an Armed Force in the
 3 field under orders is fully accounted for by the Federal
 4 Government and, as a general rule, is not declared dead
 5 solely because of the passage of time.

6 **SEC. 3. DETERMINATION OF WHEREABOUTS AND STATUS**
 7 **OF CERTAIN MISSING PERSONS.**

8 (a) IN GENERAL.—Chapter 53 of title 10, United
 9 States Code, is amended by adding at the end of the fol-
 10 lowing new section:

11 **“§ 1060a. Missing persons: informal investigations; in-**
 12 **quiries; determinations of death; person-**
 13 **nel files**

14 “(a) INFORMAL INVESTIGATIONS.—

15 “(1) IN GENERAL.—After receiving factual in-
 16 formation that the whereabouts or status of a person
 17 described in paragraph (2) is uncertain and that the
 18 absence of the person may be involuntary, the mili-
 19 tary commander of the unit, facility, or area to or
 20 in which the person is assigned shall conduct an in-
 21 vestigation into the whereabouts and status of the
 22 person.

23 “(2) COVERED PERSONS.—Paragraph (1) ap-
 24 plies to the following individuals:

1 “(A) Any member of the armed forces who
2 disappears during a time of war or national
3 emergency, or during a period of such other
4 hostilities as the Secretary of Defense may pre-
5 scribe.

6 “(B) Any civilian employee of the Federal
7 Government (including an employee of a con-
8 tractor of the Federal Government) who—

9 “(i) serves with or accompanies an
10 armed force in the field during such a time
11 or period; and

12 “(ii) disappears during such service or
13 accompaniment.

14 “(3) FURTHER ACTIVITIES.—As a result of an
15 investigation into the whereabouts and status of a
16 person under paragraph (1), a commander shall—

17 “(A) place the person in a missing status;

18 “(B) submit a notice that the person has
19 been placed in a missing status to—

20 “(i) in the case of a person who is a
21 member of the armed forces, the officer
22 having general court-martial authority over
23 the person;

24 “(ii) in the case of a person who is a
25 civilian employee of the Federal Govern-

1 ment or contractor of the Federal Govern-
2 ment, the Secretary of the department em-
3 ploying the person or contracting with the
4 contractor;

5 “(C) retain and safeguard for official use
6 any information, documents, records, state-
7 ments, or other evidence relating to the where-
8 abouts or status of the person that result from
9 the investigation or from actions taken to locate
10 the person; and

11 “(D) submit to the officer having general court-
12 martial authority over the person, in the case of a
13 member of the armed forces, or to the Secretary of
14 the department employing the person or contracting
15 with the contractor, in the case of a civilian em-
16 ployee of the Federal Government or contractor of
17 the Federal Government, as the case may be—

18 “(i) not later than 48 hours after the date
19 on which the absence of the person is officially
20 noted, a report that—

21 “(I) contains information on the ab-
22 sence or disappearance of the person;

23 “(II) describes the actions taken to lo-
24 cate the person; and

1 “(III) sets forth any information re-
2 relating to the whereabouts or status of the
3 person not contained in any previous re-
4 port;

5 “(ii) not later than 7 days after such date,
6 a report that—

7 “(I) summarizes the actions taken to
8 locate the person; and

9 “(II) sets forth any information relat-
10 ing to the whereabouts or status of the
11 person not contained in any previous re-
12 port;

13 “(iii) not later than 30 days after such
14 date, a report that—

15 “(I) summarizes the continuing ac-
16 tions to locate the person; and

17 “(II) sets forth any information on
18 the whereabouts or status of the person
19 that results from such actions; and

20 “(iv) at any other time, a report that sets
21 forth any other information that may be rel-
22 evant to the whereabouts or status of the per-
23 son.

24 “(b) INITIAL INQUIRY.—

1 “(1) IN GENERAL.—Not later than 7 days after
2 receiving notification under subsection (a)(3)(B)
3 that a person has been placed in missing status, the
4 officer having general court-martial authority over
5 the person, in the case of a person who is a member
6 of the armed forces, or the Secretary of the depart-
7 ment employing the person or contracting with the
8 contractor, in the case of a person who is a civilian
9 employee of the Federal Government or contractor
10 of the Federal Government, shall appoint a board to
11 conduct an inquiry into the whereabouts and status
12 of the person.

13 “(2) SCOPE OF CERTAIN INQUIRIES.—If it ap-
14 pears to the official who appoints a board under this
15 subsection that the absence or missing status of two
16 or more persons is factually related, the official may
17 appoint one board under this subsection to conduct
18 the inquiry into the whereabouts or status of the
19 persons.

20 “(3) COMPOSITION.—

21 “(A) IN GENERAL.—A board appointed
22 under this subsection shall consist of at least
23 one individual described in subparagraph (B)
24 who has experience with and understanding of
25 military operations or activities similar to the

1 operation or activity in which the person or per-
2 sons disappeared.

3 “(B) REQUIRED MEMBER.—An individual
4 referred to in subparagraph (A) is the follow-
5 ing:

6 “(i) A military officer, in the case of
7 an inquiry with respect to a member of the
8 armed forces.

9 “(ii) A civilian, in the case of an in-
10 quiry with respect to a civilian employee of
11 the Federal Government or contractor of
12 the Federal Government.

13 “(C) ACCESS TO CLASSIFIED INFORMA-
14 TION.—Each member of a board appointed for
15 an inquiry under this subsection shall have a
16 security clearance that affords the member ac-
17 cess to all information relating to the where-
18 abouts and status of the missing person or per-
19 sons covered by the inquiry.

20 “(4) ACTIVITIES.—A board appointed to con-
21 duct an inquiry into the whereabouts or status of a
22 missing person or persons under this subsection
23 shall—

24 “(A) collect, develop, and investigate all
25 facts and evidence relating to the disappear-

1 ance, whereabouts, or status of the person or
2 persons;

3 “(B) collect appropriate documentation of
4 the facts and evidence covered by the investiga-
5 tion;

6 “(C) analyze the facts and evidence, make
7 findings based on the analysis, and draw con-
8 clusions as to the current whereabouts and sta-
9 tus of the person or persons; and

10 “(D) recommend to the officer having gen-
11 eral court-martial authority over the person, in
12 the case of a person who is a member of the
13 armed forces, or the Secretary of the depart-
14 ment employing the person or contracting with
15 the contractor, in the case of a person who is
16 a civilian employee of the Federal Government
17 or contractor of the Federal Government,
18 that—

19 “(i) the person or persons continue to
20 have a missing status; or

21 “(ii) the person or persons be declared
22 (I) to have deserted, (II) to be absent with-
23 out leave, or (III) to be dead.

1 “(5) INQUIRY PROCEEDINGS.—During the pro-
2 ceedings of an inquiry under this subsection, a board
3 shall—

4 “(A) collect, record, and safeguard all clas-
5 sified and unclassified facts, documents, state-
6 ments, photographs, tapes, messages, maps,
7 sketches, reports, and other information relat-
8 ing to the whereabouts or status of the person
9 or persons covered by the inquiry;

10 “(B) gather facts and information relating
11 to actions taken to find the person or persons,
12 including any evidence of the whereabouts or
13 status of the person or persons that arises from
14 such actions; and

15 “(C) maintain a record of the proceedings.

16 “(6) COUNSEL FOR MISSING PERSON.—

17 “(A) IN GENERAL.—The official who ap-
18 points a board to conduct an inquiry under this
19 subsection shall appoint counsel to represent
20 the person or persons covered by the inquiry.

21 “(B) QUALIFICATIONS.—An individual ap-
22 pointed as counsel under this paragraph shall—

23 “(i) meet the qualifications set forth
24 in section 827(b) of this title (article 27(b)

1 of the Uniform Code of Military Justice);
2 and

3 “(ii) have a security clearance that af-
4 fords the individual access to all informa-
5 tion relating to the whereabouts or status
6 of the person or persons covered by the in-
7 quiry.

8 “(C) RESPONSIBILITIES AND DUTIES.—An
9 individual appointed as counsel under this para-
10 graph—

11 “(i) shall have access to all facts and
12 evidence considered by the board during
13 the proceedings under the inquiry for
14 which the counsel is appointed;

15 “(ii) shall observe all official activities
16 of the board during such proceedings;

17 “(iii) may question witnesses before
18 the board;

19 “(iv) shall monitor the deliberations of
20 the board; and

21 “(v) shall review the report of the
22 board under paragraph (9); and

23 “(vi) shall submit to the official who
24 appointed the board an independent review
25 of such report.

1 “(D) TREATMENT OF REVIEW.—A review
2 of the report of a board on an inquiry that is
3 submitted under subparagraph (C)(vi) shall be
4 made an official part of the record of the board
5 with respect to the inquiry.

6 “(7) ACCESS TO MEETINGS.—The proceedings
7 of a board during an inquiry under this subsection
8 shall be closed to the public, including to any mem-
9 ber of the immediate family, dependent, primary
10 next of kin, or previously designated person of the
11 person or persons covered by the inquiry.

12 “(8) RECOMMENDATION ON STATUS.—

13 “(A) IN GENERAL.—Upon completion of
14 an inquiry into the whereabouts or status of a
15 person or persons under this subsection, a
16 board shall make a recommendation to the offi-
17 cial who appointed the board as to the current
18 whereabouts or status of the person or persons.

19 “(B) RECOMMENDATION OF STATUS AS
20 DEAD.—

21 “(i) IN GENERAL.—A board may not
22 recommend under subparagraph (A) that a
23 person or persons be declared dead unless
24 conclusive proof of the death of the person
25 or persons is established by the board.

1 “(ii) DEFINITION.—In this subpara-
2 graph, the term ‘conclusive proof of death’,
3 in the case of a person or persons, means
4 evidence establishing that death is the only
5 plausible explanation for the absence of the
6 person or persons.

7 “(9) REPORT.—

8 “(A) REQUIREMENT.—A board appointed
9 under this subsection shall submit to the official
10 who appointed the board a report on the in-
11 quiry carried out by the board. Such report
12 shall include—

13 “(i) a discussion of the facts and evi-
14 dence considered by the board in the in-
15 quiry; and

16 “(ii) the recommendation of the board
17 under paragraph (8).

18 “(B) SUBMITTAL DATE.—A board shall
19 submit a report under this paragraph not later
20 than 45 days after the date of the first official
21 notice of the disappearance of the person or
22 persons covered by the inquiry described in the
23 report.

24 “(C) PUBLIC AVAILABILITY.—A report
25 submitted under this paragraph may not be

1 made public until 1 year after the date referred
2 to in subparagraph (B).

3 “(10) ACTIONS BY APPOINTING OFFICIAL.—

4 “(A) REVIEW.—Not later than 15 days
5 after the date of the receipt of a report from a
6 board under paragraph (9), the official who ap-
7 pointed the board shall review—

8 “(i) the report; and

9 “(ii) the review submitted under para-
10 graph (6)(C)(vi) by the counsel for the per-
11 son or persons covered by the inquiry de-
12 scribed in the report.

13 “(B) SCOPE OF REVIEW.—In conducting a
14 review of a report under subparagraph (A), the
15 official receiving the report shall determine
16 whether or not the report is complete and free
17 of administrative error.

18 “(C) RETURN.—If an official determines
19 under subparagraph (B) that a report is incom-
20 plete, or that a report is not free of administra-
21 tive error, the official may return the report to
22 the board for further action on the report by
23 the board.

24 “(D) DETERMINATION OF STATUS.—Upon
25 a determination by the official concerned that a

1 report reviewed by the official under this para-
2 graph is complete and free of administrative
3 error, the official shall make a determination of
4 the status of the person or persons covered by
5 the report.

6 “(11) REPORT TO INTERESTED PERSONS.—Not
7 later than 90 days after the first official notice of
8 the disappearance of a person or persons, the official
9 who appoints a board of inquiry into the where-
10 abouts or status of the person or person under this
11 subsection shall—

12 “(A) provide an unclassified summary of
13 the report of the board to the members of the
14 immediate family, dependents, primary next of
15 kin, and previously designated persons of the
16 person or persons; and

17 “(B) inform the individuals referred to in
18 subparagraph (A) that the Federal Government
19 will conduct a subsequent inquiry into the
20 whereabouts or status of the person or persons
21 not earlier than 1 year after the date of the
22 first official notice of the disappearance of the
23 person or persons, unless information becomes
24 available sooner that would result in a substan-

1 tial change in the official status of the person
2 or persons.

3 “(12) ADDITIONAL INVESTIGATION.—

4 “(A) IN GENERAL.—If information on the
5 whereabouts or status of a person or persons
6 covered by an inquiry under this subsection be-
7 comes available within 1 year after the date of
8 the first official notice of the disappearance of
9 the person or persons, the official who ap-
10 pointed the board to inquire into the where-
11 abouts or status of the person or persons under
12 this subsection shall appoint an additional
13 board to conduct an inquiry into the informa-
14 tion

15 “(B) CONDUCT OF INQUIRY.—The ap-
16 pointment and activities of a board under this
17 paragraph shall be subject to the provisions of
18 this subsection.

19 “(c) SUBSEQUENT INQUIRY.—

20 “(1) REQUIREMENT.—

21 “(A) IN GENERAL.—If as a result of an in-
22 inquiry under subsection (b) an official deter-
23 mines under paragraph (10)(D) of that sub-
24 section that a person or persons retain or be
25 placed in a missing status, the Secretary con-

1 cerned shall appoint a board under this sub-
2 section to conduct an inquiry into the where-
3 abouts and status of the person or persons.

4 “(B) DEFINITION.—For purposes of this
5 subsection, the term ‘Secretary concerned’
6 means the following:

7 “(i) In the case of a member of the
8 armed forces, the Secretary of the military
9 department having jurisdiction over the
10 armed force of the member.

11 “(ii) In the case of a civilian employee
12 of the Federal Government or contractor
13 of the Government, the Secretary of the
14 department employing the employee or
15 contracting with the contractor, as the case
16 may be.

17 “(2) DATE OF APPOINTMENT.—The Secretary
18 concerned shall appoint a board under this sub-
19 section to conduct an inquiry into the whereabouts
20 and status of a person or persons on or about 1 year
21 after the date of the first official notice of the dis-
22 appearance of the person or persons.

23 “(3) SCOPE OF CERTAIN INQUIRIES.—If it ap-
24 pears to the Secretary concerned that the absence or
25 status of two or more persons is factually related,

1 the Secretary may appoint one board under this sub-
2 section to conduct the inquiry into the whereabouts
3 or status of the persons.

4 “(4) COMPOSITION.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graphs (B) and (C), a board appointed under
7 this subsection shall consist of the following:

8 “(i) In the case of a board appointed
9 to inquire into the whereabouts or status
10 of a member or members of the armed
11 forces, not less than three officers having
12 a grade O-4 or higher.

13 “(ii) In the case of a board appointed
14 to inquire into the whereabouts or status
15 of a civilian employee or employees of the
16 Federal Government or contractor of the
17 Government—

18 “(I) not less than three civilian
19 employees of the Federal Government
20 whose rate of annual pay is equal to
21 or greater than the rate of annual pay
22 payable for grade GS-13 of the Gen-
23 eral Schedule under section 5332 of
24 title 5; and

1 “(II) such members of the armed
2 forces as the Secretary concerned and
3 the Secretary of Defense jointly deter-
4 mine advisable.

5 “(B) PRESIDENT OF BOARD.—The Sec-
6 retary concerned shall designate one member of
7 each board appointed under this subsection as
8 President of the board. The President shall
9 have a security clearance that affords the Presi-
10 dent access to all information relating to the
11 whereabouts and status of the person or per-
12 sons covered by the inquiry.

13 “(C) REQUIREMENTS FOR OTHER MEM-
14 BERS.—

15 “(i) ATTORNEY.—One member of
16 each board appointed under this subsection
17 shall be an attorney, or judge advocate,
18 who has expertise in the public law relating
19 to missing persons, the determination of
20 death of such persons, and the rights of
21 family members and dependents of such
22 persons.

23 “(ii) OCCUPATIONAL SPECIALIST.—
24 One member of each board appointed

1 under this subsection shall be an individual
2 who has—

3 “(I) an occupational specialty
4 similar to that of one or more of the
5 persons covered by the inquiry; and

6 “(II) an understanding of and
7 expertise in the official activities of
8 one or more such persons at the time
9 such person or persons disappeared.

10 “(iii) EXPERT IN TRANSPORTATION.—

11 If the person or persons covered by an in-
12 quiry disappeared in transit, one member
13 of the board appointed for the inquiry shall
14 be an individual whose occupational spe-
15 cialty relates to the piloting, navigation, or
16 operation of the mode of transportation in
17 which the person or persons were travelling
18 at the time such person or persons dis-
19 appeared.

20 “(5) ACTIVITIES.—A board appointed under
21 this subsection to conduct an inquiry into the where-
22 abouts or status of a person or persons shall—

23 “(A) review the report under paragraph
24 (9) of subsection (b) of the board appointed to
25 conduct the inquiry into the status or where-

1 abouts of the person or persons under sub-
2 section (b) and the determination under para-
3 graph (10)(D) of that subsection of the official
4 who appointed the board under that subsection
5 as to the status of the person or persons;

6 “(B) collect and evaluate any documents,
7 facts, or other evidence with respect to the
8 whereabouts or status of the person or persons
9 that have become available since the completion
10 of the inquiry under subsection (b);

11 “(C) draw conclusions as to the where-
12 abouts or status of the person or persons;

13 “(D) determine on the basis of the activi-
14 ties under subparagraphs (A) and (B) whether
15 the status of the person or persons should be
16 continued or changed; and

17 “(E) issue a report to the Secretary con-
18 cerned describing the findings and conclusions
19 of the board, together with a recommendation
20 on the whereabouts or status of the person or
21 persons.

22 “(6) COUNSEL FOR MISSING PERSON OR PER-
23 SONS.—

24 “(A) IN GENERAL.—The Secretary who
25 appoints a board to conduct an inquiry under

1 this subsection shall appoint counsel to rep-
2 resent the person or persons covered by the in-
3 quiry.

4 “(B) QUALIFICATIONS.—An individual ap-
5 pointed as counsel under this paragraph shall—

6 “(i) meet the qualifications set forth
7 in section 827(b) of this title (article 27(b)
8 of the Uniform Code of Military Justice);
9 and

10 “(ii) have a security clearance that af-
11 fords the individual access to all informa-
12 tion relating to the whereabouts or status
13 of the person or persons.

14 “(C) RESPONSIBILITIES AND DUTIES.—An
15 individual appointed as counsel under this para-
16 graph—

17 “(i) shall have access to all facts and
18 evidence considered by the board during
19 the proceedings under the inquiry for
20 which the counsel is appointed;

21 “(ii) shall observe all official activities
22 of the board during such proceedings;

23 “(iii) may question witnesses before
24 the board;

1 “(iv) shall monitor the deliberations of
2 the board; and

3 “(v) shall review the report of the
4 board under paragraph (11); and

5 “(vi) shall submit to the Secretary
6 concerned an independent review of the
7 recommendation of the board under para-
8 graph (10).

9 “(D) TREATMENT OF REVIEW.—The re-
10 view of the report of a board on an inquiry that
11 is submitted under subparagraph (C)(vi) shall
12 be made an official part of the record of the
13 board with respect to the inquiry.

14 “(7) PARTICIPATION OF CERTAIN INTERESTED
15 PERSONS IN PROCEEDINGS.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of law, the members of the im-
18 mediate family, dependents, primary next of
19 kin, and previously designated persons of the
20 person or persons covered by an inquiry under
21 this subsection may participate at the proceed-
22 ings of the board during the inquiry.

23 “(B) NOTIFICATION OF PERSONS.—The
24 Secretary concerned shall notify the individuals
25 referred to in subparagraph (A) of the oppor-

1 tunity to participate at the proceedings of a
2 board not later than 60 days before the first
3 meeting of the board.

4 “(C) RESPONSE.—An individual who re-
5 ceives notice under subparagraph (B) shall no-
6 tify the Secretary of the intent, if any, of the
7 individual to participate at the proceedings of a
8 board not later than 21 days after the date of
9 the individual’s receipt of the notice.

10 “(D) SCHEDULE AND LOCATION OF PRO-
11 CEEDINGS.—The Secretary shall, to the maxi-
12 mum extent practicable, provide that the sched-
13 ule and location of the proceedings of a board
14 under this subsection be established so as to be
15 convenient to the individuals who notify the
16 Secretary under subparagraph (C) of their in-
17 tent to participate at such proceedings.

18 “(E) MANNER OF PARTICIPATION.—Indi-
19 viduals who notify the Secretary under subpara-
20 graph (C) of their intent to participate at the
21 proceedings of a board—

22 “(i) in the case of individuals whose
23 entitlement to the pay or allowances (in-
24 cluding allotments) of a missing person
25 could be reduced or terminated as a result

1 of a revision in the status of the missing
2 person, may attend the proceedings of the
3 board with private counsel;

4 “(ii) shall have access to the personnel
5 file of the missing person, to unclassified
6 reports (if any) of the board appointed
7 under subsection (b) to conduct the inquiry
8 into the whereabouts and status of the per-
9 son, and to any other unclassified informa-
10 tion or documents relating to the where-
11 abouts and status of the person;

12 “(iii) shall be afforded the opportunity
13 to present information at the proceedings
14 that such individuals consider to be rel-
15 evant to the proceedings; and

16 “(iv) subject to subparagraph (F),
17 shall be afforded the opportunity to submit
18 in writing objections to the recommenda-
19 tions of the board under paragraph (10) as
20 to the status of the missing person.

21 “(F) OBJECTIONS.—Objections to the rec-
22 ommendations of the board under subparagraph
23 (E)(iv) shall be submitted to the President of
24 the board not later than 24 hours after the date
25 on which such recommendations are made. The

1 President shall include the objections in the re-
2 port of the board to the Secretary concerned
3 under paragraph (12).

4 “(G) PROHIBITION ON REIMBURSE-
5 MENT.—Individuals referred to in subparagraph
6 (A) who participate in the proceedings of a
7 board under this paragraph shall not be entitled
8 to reimbursement by the Federal Government
9 for any costs incurred by such individuals in at-
10 tending such proceedings, including travel, lodg-
11 ing, meals, local transportation, legal fees, tran-
12 scription costs, witness expenses, and other ex-
13 penses.

14 “(8) AVAILABILITY OF INFORMATION TO
15 BOARDS.—

16 “(A) IN GENERAL.—In conducting pro-
17 ceedings in an inquiry under this subsection, a
18 board may secure directly from any department
19 or agency of the Federal Government any infor-
20 mation that the members of the board consider
21 necessary in order to conduct the proceedings.

22 “(B) AUTHORITY TO RELEASE.—Upon
23 written request from the President of a board,
24 the head of a department or agency of the Fed-
25 eral Government shall release information cov-

1 ered by the request to the board. In releasing
2 such information, the head of the department
3 or agency shall—

4 “(i) declassify to an appropriate de-
5 gree classified information; or

6 “(ii) release the information in a man-
7 ner not requiring the removal of markings
8 indicating the classified nature of the in-
9 formation.

10 “(C) TREATMENT OF CLASSIFIED INFOR-
11 MATION.—

12 “(i) RELEASE.—If a request for infor-
13 mation under subparagraph (B) covers
14 classified information that cannot be de-
15 classified, cannot be removed before release
16 from the information covered by the re-
17 quest, or cannot be summarized in a man-
18 ner that prevents the release of classified
19 information, the classified information
20 shall be made available only to the Presi-
21 dent of the board making the request and
22 the counsel for the missing person ap-
23 pointed under paragraph (6).

24 “(ii) USE IN PROCEEDINGS.—The
25 President of a board shall close to persons

1 who do not have appropriate security clear-
2 ances the proceeding of the board at which
3 classified information is discussed. Partici-
4 pants at a proceeding of a board at which
5 classified information is discussed shall
6 comply with all applicable laws and regula-
7 tions relating to the disclosure of classified
8 information. The Secretary concerned shall
9 assist the President of a board in ensuring
10 that classified information is not com-
11 promised through board proceedings.

12 “(9) BOARD MEETINGS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the proceedings of a board under
15 this subsection shall be open to the public.

16 “(B) EXCEPTIONS.—A proceeding of a
17 board shall be closed to the public at the re-
18 quest of the following:

19 “(i) The counsel appointed under
20 paragraph (6) for the person or persons
21 covered by the proceeding.

22 “(ii) Any member of the immediate
23 family, dependent, primary next of kin, or
24 previously designated person of the person
25 or persons.

1 “(iii) The Secretary who appointed
2 the board, but only if such Secretary deter-
3 mines that a proceeding open to the public
4 could jeopardize the health and well-being
5 of other missing persons or impair the ac-
6 tivities of the Federal Government to re-
7 cover missing persons in the theater of op-
8 erations or the area in which the missing
9 person or persons are thought to have dis-
10 appeared.

11 “(iv) The President of the board, but
12 only for discussion of classified informa-
13 tion.

14 “(10) RECOMMENDATION ON STATUS.—

15 “(A) IN GENERAL.—Upon completion of
16 proceedings in an inquiry under this subsection,
17 a board shall make a recommendation as to the
18 current whereabouts or status of the missing
19 person or persons covered by the inquiry.

20 “(B) RECOMMENDATION OF DEAD STA-
21 TUS.—

22 “(i) IN GENERAL.—A board may not
23 recommend under subparagraph (A) that a
24 person or persons be declared dead un-
25 less—

1 “(I) conclusive proof of death is
2 established by the board; and

3 “(II) in making the declaration,
4 the board complies with subsection
5 (f).

6 “(ii) DEFINITION.—In this subpara-
7 graph, the term ‘conclusive proof of death’,
8 in the case of a person or persons, means
9 evidence establishing that death is the only
10 plausible explanation for the absence of the
11 person or persons.

12 “(11) REPORT.—

13 “(A) REQUIREMENT.—A board appointed
14 under this subsection shall submit to the Sec-
15 retary concerned a report on the inquiry carried
16 out by the board, together with the evidence
17 considered by the board during the inquiry.

18 “(B) CLASSIFIED ANNEX.—The report
19 may include a classified annex.

20 “(12) ACTIONS BY SECRETARY.—

21 “(A) REVIEW.—Not later than 30 days
22 after the receipt of a report from a board under
23 paragraph (11), the Secretary concerned shall
24 review—

25 “(i) the report;

1 “(ii) the review submitted to the Sec-
2 retary under paragraph (6)(C)(vi) by the
3 counsel for the person or persons covered
4 by the report; and

5 “(iii) the objections, if any, to the re-
6 port submitted to the President of the
7 board under paragraph (7)(F).

8 “(B) SCOPE OF REVIEW.—In reviewing the
9 report, review, and objections under subpara-
10 graph (A), the Secretary shall determine wheth-
11 er or not the report is complete and free of ad-
12 ministrative error.

13 “(C) FURTHER ACTION.—If the Secretary
14 determines under subparagraph (B) that a re-
15 port is incomplete, or that a report is not free
16 of administrative error, the Secretary may re-
17 turn the report to the board for further action
18 on the report by the board.

19 “(D) DETERMINATION OF STATUS.—Upon
20 a determination by the Secretary that a report
21 reviewed by the Secretary under this paragraph
22 is complete and free of administrative error, the
23 Secretary shall make a determination of the
24 status of the person or persons covered by the
25 report.

1 “(13) REPORT TO INTERESTED PERSONS.—Not
2 later than 90 days after a board submits a report
3 on a person or persons under paragraph (11), the
4 Secretary concerned shall—

5 “(A) provide an unclassified summary of
6 the report to the members of the immediate
7 family, the dependents, the primary next of kin,
8 and the previously designated persons of the
9 person or persons covered by the report; and

10 “(B) in the case of a person or persons
11 who continue to be in missing status, inform
12 the members, dependents, kin, and persons of
13 the person or persons that the Federal Govern-
14 ment will conduct a further investigation into
15 the whereabouts or status of the person or per-
16 sons not later than 3 years after the date of the
17 official notice of the disappearance of the per-
18 son or persons, unless information becomes
19 available within that time that would result in
20 a substantial change in the official status of the
21 person or persons.

22 “(14) RECONVENING OF BOARD.—

23 “(A) IN GENERAL.—If the Secretary con-
24 cerned recommends that a person or persons
25 continue in missing status, or that a missing

1 person previously declared dead be given a
2 missing status, the Secretary shall reconvene
3 the board when information becomes available
4 that would directly lead to a determination of
5 status of the missing person or persons.

6 “(B) CONDUCT OF PROCEEDINGS.—The
7 provisions of this subsection shall apply to the
8 activities of a board convened under this para-
9 graph.

10 “(d) FURTHER REVIEW.—

11 “(1) SUBSEQUENT REVIEW.—

12 “(A) IN GENERAL.—The Secretary con-
13 cerned shall appoint a board to conduct an in-
14 quiry into the whereabouts or status of any per-
15 son or persons determined by the Secretary
16 under subsection (c)(12)(D) to be a person or
17 persons in missing status.

18 “(B) FREQUENCY OF APPOINTMENT.—
19 Subject to subparagraph (C), the Secretary
20 shall appoint a board to conduct an inquiry
21 with respect to a person or persons under this
22 paragraph—

23 “(i) on or about 3 years after the date
24 of the official notice of the disappearance
25 of the person or persons; and

1 “(ii) not later than every 3 years
2 thereafter.

3 “(C) DELIMITING DATE.—The Secretary
4 shall not be required to appoint a board under
5 this paragraph more than 12 years after the
6 end of the time of war or emergency or period
7 of hostilities in which the missing person or
8 persons disappeared.

9 “(2) REVIEW OF PROBATIVE INFORMATION.—
10 Upon receipt of information that could result in a
11 change or revision of status of a missing person or
12 persons, the Secretary concerned shall appoint a
13 board to evaluate the information and make a rec-
14 ommendation as to the status of the person or per-
15 sons to which the information relates.

16 “(3) CONDUCT OF PROCEEDINGS.—The ap-
17 pointment of and activities before a board appointed
18 under this subsection shall be governed by the provi-
19 sions of subsection (c).

20 “(e) PERSONNEL FILES.—

21 “(1) INFORMATION IN FILES.—Except as pro-
22 vided in paragraph (2), the Secretary of the depart-
23 ment having jurisdiction over a missing person at
24 the time of the person’s disappearance shall, to the
25 maximum extent practicable, ensure that the person-

1 nel file of the person contains all information in the
2 possession of the Federal Government relating to the
3 disappearance and whereabouts or status of the per-
4 son.

5 “(2) CLASSIFIED INFORMATION.—

6 “(A) AUTHORITY TO WITHHOLD.—The
7 Secretary concerned may withhold classified in-
8 formation from a personnel file under this sub-
9 section.

10 “(B) NOTICE OF WITHHOLDING.—If the
11 Secretary concerned withholds classified infor-
12 mation from the personnel file of a person, the
13 Secretary shall ensure that the file contains the
14 following:

15 “(i) A notice that the withheld infor-
16 mation exists.

17 “(ii) A notice of the date of the most
18 recent review of the classification of the
19 withheld information.

20 “(3) WRONGFUL WITHHOLDING.—Any person
21 who knowingly and willfully withholds from the per-
22 sonnel file of a missing person any information
23 (other than classified information) relating to the
24 disappearance or whereabouts or status of a missing

1 person shall be fined as provided in title 18, or im-
2 prisoned not more than 1 year, or both.

3 “(4) AVAILABILITY OF INFORMATION.—The
4 Secretary concerned shall, upon request, make avail-
5 able the contents of the personnel file of a missing
6 person to members of the immediate family, depend-
7 ents, primary next of kin, or previously designated
8 person of the person.

9 “(f) RECOMMENDATION OF STATUS OF DEATH.—

10 “(1) REQUIREMENTS RELATING TO REC-
11 OMMENDATION.—A board appointed under sub-
12 section (c) or (d) may not recommend that a person
13 be declared dead unless—

14 “(A) evidence (other than the passage of a
15 period of time of less than 50 years) exists to
16 suggest that the person is dead;

17 “(B) the Federal Government possesses no
18 evidence that reasonably suggests that the per-
19 son is alive;

20 “(C) representatives of the Federal Gov-
21 ernment have made a complete search of the
22 area where the person was last seen (unless,
23 after making every good faith effort to obtain
24 access to such area, such representatives are
25 not granted such access); and

1 “(D) representatives of the Federal Gov-
2 ernment have examined the records of the gov-
3 ernment or entity having control over the area
4 where the person was last seen (unless, after
5 making every good faith effort to obtain access
6 to such records, such representatives are not
7 granted such access).

8 “(2) SUBMITTAL OF INFORMATION ON
9 DEATH.—If a board appointed under subsection (c)
10 or (d) makes a recommendation that a missing per-
11 son be declared dead, the board shall include in the
12 report of the board with respect to the person under
13 such subsection (c) or (d) the following:

14 “(A) A detailed description of the location
15 where the death occurred.

16 “(B) A statement of the date on which the
17 death occurred.

18 “(C) A description of the location of the
19 body, if recovered.

20 “(D) If the body has been recovered, a cer-
21 tification by a licensed practitioner of forensic
22 medicine that the body recovered is that of the
23 missing person.

24 “(g) JUDICIAL REVIEW.—

25 “(1) IN GENERAL.—

1 “(A) JUDICIAL REVIEW.—A person re-
2 ferred to in subparagraph (B) may obtain re-
3 view of a finding described in subparagraph (C)
4 by the court of appeals of the United States for
5 the circuit in which the person resides or in
6 which the finding was made.

7 “(B) AVAILABILITY OF REVIEW.—Sub-
8 paragraph (A) applies to any of the following
9 persons with respect to a missing person sub-
10 ject to a finding described in subparagraph (C):

11 “(i) A member of the immediate fam-
12 ily of the person.

13 “(ii) A dependent of the person.

14 “(iii) The primary next of kin of the
15 person.

16 “(iv) A person previously designated
17 by the person.

18 “(C) COVERED FINDINGS.—Subparagraph
19 (A) applies to the following findings:

20 “(i) A finding by a board appointed
21 under subsection (c) or (d) that a missing
22 person is dead.

23 “(ii) A finding by a board appointed
24 under subsection (h) that confirms that a

1 missing person formerly declared dead is in
2 fact dead.

3 “(D) COMMENCEMENT OF REVIEW.—A
4 person referred to in subparagraph (B) shall re-
5 quest review of a finding under this paragraph
6 by filing with the appropriate court a written
7 petition requesting that the finding be set aside.

8 “(2) APPEAL AND FINALITY OF REVIEW.—The
9 decision of the court of appeals on a petition for re-
10 view under paragraph (1) shall be final, except that
11 it shall be subject to review by the Supreme Court
12 upon certiorari, as provided in section 1254 of title
13 28.

14 “(3) ADDITIONAL REVIEW.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), upon request by a person referred to
17 in paragraph (1)(B), the Secretary concerned
18 shall appoint a board to review the status of a
19 person covered by a finding described in para-
20 graph (1)(C) if the court of appeals sets aside
21 the finding and—

22 “(i) the time allowed for filing a peti-
23 tion for certiorari has expired and no such
24 petition has been duly filed;

1 “(ii) the petition for certiorari has
2 been denied; or

3 “(iii) the decision of the court of ap-
4 peals has been affirmed by the Supreme
5 Court.

6 “(B) DELIMITING DATE.—A person re-
7 ferred to in subparagraph (A) shall make a re-
8 quest referred to in that subparagraph not later
9 than 3 years after the date of the event under
10 that subparagraph that entitles the person to
11 request the appointment of a board.

12 “(h) PERSONS PREVIOUSLY DECLARED DEAD.—

13 “(1) REVIEW OF STATUS.—

14 “(A) IN GENERAL.—Not later than 2 years
15 after the date of the enactment of the Missing
16 Service Personnel Act of 1994, a person re-
17 ferred to in subparagraph (B) may submit to
18 the appropriate Secretary a request for appoint-
19 ment by the Secretary of a board to review the
20 status of a person previously declared dead.

21 “(B) AVAILABILITY.—A board shall be ap-
22 pointed under this paragraph based on the re-
23 quest of any of the following persons:

1 “(i) An adult member of the imme-
2 diate family of a person previously declared
3 dead.

4 “(ii) An adult dependent of such per-
5 son.

6 “(iii) The primary next of kin of such
7 person.

8 “(iv) A person previously designated
9 by such person.

10 “(C) APPROPRIATE SECRETARY.—A re-
11 quest under this paragraph shall be submitted
12 to the Secretary of the department of the Fed-
13 eral Government that had jurisdiction over the
14 person covered by the request at the time of the
15 person’s disappearance.

16 “(2) APPOINTMENT OF BOARD.—Upon request
17 of a person under paragraph (1), the Secretary con-
18 cerned shall appoint a board to review the status of
19 the person covered by the request.

20 “(3) ACTIVITIES OF BOARD.—A board ap-
21 pointed under paragraph (2) to review the status of
22 a person shall—

23 “(A) conduct an investigation to determine
24 the status of the person; and

1 “(B) issue a report describing the findings
2 of the board under the investigation and the
3 recommendations of the board as to the status
4 of the person.

5 “(4) SUBSEQUENT REVIEW.—If the Secretary
6 concerned is apprised of any information which
7 would directly lead to a determination of the status
8 of a missing person, the Secretary shall reconvene a
9 board to consider the information.

10 “(5) EFFECT OF CHANGE IN STATUS.—If a
11 board appointed under this subsection recommends
12 placing a person previously declared dead in a miss-
13 ing status such person shall accrue no pay or allow-
14 ances as a result of the placement of the person in
15 such status.

16 “(i) RETURN ALIVE OF PERSON DECLARED MISSING
17 OR DEAD.—

18 “(1) PAY AND ALLOWANCES.—Any person in a
19 missing status or declared dead under the Missing
20 Persons Act of 1942 (56 Stat. 143) or by a board
21 appointed under this section who is found alive and
22 returned to the control of the United States shall be
23 paid for the full time of the absence of the person
24 while given that status or declared dead under the

1 law and regulations relating to the pay and allow-
2 ances of persons returning from a missing status.

3 “(2) EFFECT ON GRATUITIES PAID AS A RE-
4 SULT OF STATUS.—Paragraph (1) shall not be inter-
5 preted to invalidate or otherwise affect the receipt by
6 any person of a death gratuity or other payment
7 from the United States on behalf of a person re-
8 ferred to in paragraph (1) before the date of the en-
9 actment of the Missing Service Personnel Act of
10 1994.

11 “(j) EFFECT ON STATE LAW.—Nothing in this sec-
12 tion shall be construed to invalidate or limit the power
13 of any State court or administrative entity, or the power
14 of any court or administrative entity of any political sub-
15 division thereof, to find or declare a person dead for pur-
16 poses of the such State or political subdivision.

17 “(k) DEFINITIONS.—In this section:

18 “(1) The term ‘classified information’ means
19 any information the unauthorized disclosure of
20 which (as determined under applicable law and regu-
21 lations) could reasonably be expected to damage the
22 national security.

23 “(2) The term ‘dependent’, in the case of a
24 missing person, mean any individual who would, but
25 for the status of the person, be entitled to receive

1 the pay and allowances (including allotments) of the
2 person.

3 “(3) The term ‘member of the immediate fam-
4 ily’, in the case of a missing person, means the
5 spouse, adopted or natural child, parent, and sibling
6 of the missing person.

7 “(4) The term ‘missing person’ means—

8 “(A) a member of the armed forces on ac-
9 tive duty who is missing; or

10 “(B) a civilian employee serving with or
11 accompanying an armed force under orders who
12 is missing.

13 “(6) The term ‘missing status’ means the sta-
14 tus of a missing person who is determined to be ab-
15 sent in a status of—

16 “(A) missing;

17 “(B) missing in action;

18 “(C) interned in a foreign country;

19 “(D) captured, beleaguered, or besieged by
20 a hostile force; or

21 “(E) detained in a foreign country against
22 his or her will.

23 “(6) The term ‘primary next of kin’, in the case
24 of a missing person, means—

1 “(A) the principal individual who, but for
2 the status of the person, would receive financial
3 support from the person; or

4 “(B) in the case of a missing person for
5 whom there is no individual meeting the re-
6 quirement of subparagraph (A), the family
7 member or other individual designated by the
8 missing person to receive death gratuities.

9 “(7) The term ‘previously designated person’, in
10 the case of a missing person, means an individual
11 (other than an individual who is a member of the
12 immediate family of the missing person) designated
13 by the missing person as the individual to be notified
14 of all matters relating to the status of the missing
15 person.

16 “(8) The term ‘State’ means any State, the
17 District of Columbia, the Commonwealth of Puerto
18 Rico, and any territory or possession of the United
19 States.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of chapter 53 of title 10, United States
22 Code, is amended by adding the end the following:

 “1060a. Missing persons: informal investigations; inquiries; determinations of
 death; personnel files.”.

23 (c) CONFORMING AMENDMENTS.—(1)(A) Section
24 555 of title 37, United States Code, is repealed.

1 (B) The table of sections at the beginning of chapter
2 10 of such title is amended by striking out the item relat-
3 ing to section 555.

4 (2) Section 552 of such title is amended—

5 (A) in the second sentence of the flush matter
6 following paragraph (2) in subsection (a), by strik-
7 ing out “for all purposes,” and all that follows
8 through the end of the sentence and inserting in lieu
9 thereof “for all purposes.”;

10 (B) in striking out paragraph (2) of subsection
11 (b) and inserting in lieu thereof the following:

12 “(2) that his death is determined under section
13 1060a of title 10.”; and

14 (C) in subsection (e), by striking “section 555
15 of this title” and inserting “section 1060a of title
16 10”.

17 (3) Section 553 of such title is amended—

18 (A) in subsection (f), by inserting “under sec-
19 tion 1060a of title 10” after “When the Secretary
20 concerned”;

21 (B) by striking out “the Secretary concerned
22 receives evidence” and inserting in lieu thereof “a
23 board convened under section 1060a of title 10 re-
24 ports”; and

1 (C) in subsection (g), by striking out “section
2 555 of this title” and inserting “section 1060a of
3 title 10”.

4 (4) Section 556 of such title is amended—

5 (A) in subsection (a)—

6 (i) by inserting “and” at the end of para-
7 graph (3);

8 (ii) by striking out the semicolon at the
9 end of paragraph (4) and inserting in lieu
10 thereof a period; and

11 (iii) by striking paragraphs (1), (5), (6),
12 and (7) and redesignating paragraphs (2), (3),
13 and (4) as paragraphs (1), (2), and (3), respec-
14 tively;

15 (B) by striking out subsection (b) and redesi-
16 gnating subsections (c), (d), (e), (f), (g), and (h) as
17 subsections (b), (c), (d), (e), (f), and (g), respec-
18 tively; and

19 (C) in subsection (g), as so redesignated—

20 (i) by striking out the second sentence; and

21 (ii) by striking “status” and inserting
22 “pay”.

23 (5) Section 557(a)(1) of such title is amended by
24 striking out “, 553, and 555” and inserting in lieu thereof
25 “and 553”.

1 (6) Section 559(b)(4)(B) of such title is amended by
2 striking out “section 556(f)” and inserting in lieu thereof
3 “section 556(e)”.

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