

104TH CONGRESS
1ST SESSION

H. R. 945

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1995

Mr. GILMAN (for himself, Ms. MOLINARI, Mrs. THURMAN, and Mr. HAMILTON) introduced the following bill; which was referred to the Committee on National Security

A BILL

To amend title 10, United States Code, to establish procedures for determining the status of missing members of the Armed Forces and certain missing 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 1995”.

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

1 Federal Government or contractor of the Federal Govern-
2 ment who serves with or accompanies an Armed Force in
3 the field under orders, is fully accounted for by the Fed-
4 eral Government and, as a general rule, is not declared
5 dead 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 **“§ 1060b. Missing persons: members and certain civil-**
12 **ian employees; determinations of status**

13 “(a) INFORMAL INVESTIGATIONS.—

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

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

24 “(A) Any member of the armed forces who
25 disappears during a time of war or national

1 emergency, or during a period of such other
2 hostilities as the Secretary of Defense may pre-
3 scribe.

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

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

10 “(ii) disappears during such service or
11 accompaniment.

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

15 “(A) if the whereabouts and status of the
16 person remain uncertain, place the person in a
17 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 an employee of a contractor of the
2 Federal Government, the Secretary con-
3 cerned;

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

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

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

20 “(I) contains information on the
21 absence or disappearance of the per-
22 son;

23 “(II) describes the actions taken
24 to locate the person; and

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

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

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

9 “(II) sets forth any information
10 relating to the whereabouts or status
11 of the person not contained in any
12 previous report;

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

15 “(I) summarizes the continuing
16 actions to locate the person; and

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

21 “(iv) at any other time, a report that
22 sets forth any other information that may
23 be relevant to the whereabouts or status of
24 the person.

25 “(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 concerned, in
7 the case of a person who is a civilian employee of
8 the Federal Government or of a contractor of the
9 Federal Government, shall appoint a board to con-
10 duct an inquiry into the whereabouts and status of
11 the person.

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

19 “(3) COMPOSITION.—

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

1 operation or activity in which the person or per-
2 sons subject to the inquiry 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 of a contractor
12 of 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 person or persons cov-
19 ered by the inquiry.

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

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

1 ance, whereabouts, and 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 to the Secretary concerned, in
14 the case of a person who is a civilian employee
15 of the Federal Government or of a contractor of
16 the Federal Government, that the person or
17 persons—

18 “(i) continue to have a missing status;

19 or

20 “(ii) be declared (I) to have deserted,
21 (II) to be absent without leave, or (III) to
22 be dead.

23 “(5) PROCEEDINGS.—A board conducting an
24 inquiry under this subsection shall—

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

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

12 “(C) maintain a record of its proceedings.

13 “(6) COUNSEL FOR MISSING PERSONS.—

14 “(A) IN GENERAL.—The official who ap-
15 points a board to conduct an inquiry under this
16 subsection shall appoint counsel to represent
17 the person or persons covered by the inquiry. In
18 the case of an appointment by a Secretary who
19 is not a Secretary of a military department, the
20 appointment shall be made by the Secretary of
21 the appropriate military department in con-
22 sultation with such Secretary.

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

1 “(i) meet the qualifications set forth
2 in section 827(b) of this title (article 27(b)
3 of the Uniform Code of Military Justice);
4 and

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

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

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

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

19 “(iii) may question witnesses before
20 the board;

21 “(iv) shall monitor the deliberations of
22 the board;

23 “(v) shall review the report of the
24 board under paragraph (9); and

1 “(vi) shall submit to the official who
2 appointed the board an independent review
3 of the report.

4 “(D) TREATMENT OF REVIEW.—A review
5 of the report of a board on an inquiry under
6 subparagraph (C)(vi) shall be made an official
7 part of the record of the board with respect to
8 the inquiry.

9 “(7) ACCESS TO MEETINGS.—The proceedings
10 of a board during an inquiry under this subsection
11 shall be closed to the public and to the individual or
12 individuals, if any, specified under section 520c of
13 this title by the person or persons covered by the in-
14 quiry.

15 “(8) RECOMMENDATION ON STATUS.—

16 “(A) IN GENERAL.—Upon the completion
17 of an inquiry into the whereabouts or status of
18 a person or persons under this subsection, the
19 board conducting the inquiry shall make a rec-
20 ommendation to the official who appointed the
21 board as to the current whereabouts or status
22 of the person or persons.

23 “(B) RECOMMENDATION OF STATUS AS
24 DEAD.—A board may not recommend under
25 subparagraph (A) that a person or persons be

1 declared dead unless conclusive proof of the
2 death of the person or persons is established by
3 the board.

4 “(9) REPORT.—

5 “(A) REQUIREMENT.—A board appointed
6 under this subsection shall submit to the official
7 who appointed the board a report on the in-
8 quiry carried out by the board under this sub-
9 section. Such report shall include—

10 “(i) a discussion of the facts and evi-
11 dence considered by the board in the in-
12 quiry; and

13 “(ii) the recommendation of the board
14 under paragraph (8).

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

21 “(C) RELEASE TO PUBLIC.—A report sub-
22 mitted under this paragraph may not be made
23 public until 1 year after the date referred to in
24 subparagraph (B).

25 “(10) ACTIONS BY APPOINTING OFFICIAL.—

1 “(A) REVIEW.—Not later than 15 days
2 after the date of the receipt of a report under
3 paragraph (9), the official who appointed the
4 board shall review the report and the review of
5 the report submitted under paragraph
6 (6)(C)(vi) by the counsel for the person or per-
7 sons covered by the inquiry described in the re-
8 port.

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

14 “(C) RETURN.—If an official determines
15 as a result of a review under this paragraph
16 that a report is incomplete, or that a report is
17 not free of administrative error, the official may
18 return the report to the board that submitted
19 the report for further action.

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

1 “(11) REPORT TO INTERESTED INDIVIDUALS.—
2 Not later than 90 days after the first official notice
3 of the disappearance of a person or persons covered
4 by an inquiry under this subsection, the official who
5 appoints a board of inquiry into the whereabouts or
6 status of the person or persons under this subsection
7 shall—

8 “(A) provide an unclassified summary of
9 the report of the board on that inquiry to the
10 individual or individuals, if any, specified by
11 such person or persons under section 520c of
12 this title; and

13 “(B) inform such individual or individuals
14 that the Federal Government will conduct a
15 subsequent inquiry into the whereabouts or sta-
16 tus of the person or persons not earlier than 1
17 year after the date of the first official notice of
18 the disappearance of the person or persons, un-
19 less information becomes available sooner that
20 would result in a substantial change in the sta-
21 tus of the person or persons.

22 “(12) ADDITIONAL INQUIRY.—

23 “(A) IN GENERAL.—If information on the
24 whereabouts or status of a person or persons
25 placed in missing status under this subsection

1 becomes available within 1 year after the date
2 of the first official notice of the disappearance
3 of the person or persons, the official who ap-
4 pointed the board to inquire into the where-
5 abouts or status of the person or persons under
6 this subsection shall appoint a board under this
7 paragraph to conduct an inquiry into the infor-
8 mation.

9 “(B) CONDUCT OF INQUIRY.—The ap-
10 pointment and activities of a board under this
11 paragraph, and the actions by the official ap-
12 pointing the board with respect to any rec-
13 ommendations made by the board, shall be gov-
14 erned by the provisions of this subsection.

15 “(c) SUBSEQUENT INQUIRY.—

16 “(1) REQUIREMENT.—If as a result of an in-
17 quiry under subsection (b) an official determines
18 under paragraph (10)(D) of that subsection that a
19 person or persons retain or be placed in a missing
20 status, the Secretary concerned shall appoint a
21 board under this subsection to conduct an inquiry
22 into the whereabouts and status of the person or
23 persons.

24 “(2) DATE OF APPOINTMENT.—The Secretary
25 concerned shall appoint a board to conduct an in-

1 quiry into the whereabouts and status of a person or
2 persons under this subsection on or about 1 year
3 after the date of the first official notice of the dis-
4 appearance of the person or persons.

5 “(3) COMBINED INQUIRIES.—If it appears to
6 the Secretary concerned that the absence or status
7 of two or more persons is factually related, the Sec-
8 retary may appoint one board under this subsection
9 to conduct the inquiry into the whereabouts or sta-
10 tus of the persons.

11 “(4) COMPOSITION.—

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

15 “(i) In the case of a board appointed
16 to inquire into the whereabouts or status
17 of a member or members of the armed
18 forces, not less than three officers having
19 a grade O-4 or higher.

20 “(ii) In the case of a board appointed
21 to inquire into the whereabouts or status
22 of a civilian employee or employees of the
23 Federal Government or of a contractor of
24 the Federal Government—

1 “(I) not less than three civilian
2 employees of the Federal Government
3 whose rate of annual pay is equal to
4 or greater than the rate of annual pay
5 payable for grade GS-13 of the Gen-
6 eral Schedule under section 5332 of
7 title 5; and

8 “(II) such members of the armed
9 forces as the Secretary concerned and
10 the Secretary of Defense jointly deter-
11 mine advisable.

12 “(B) PRESIDENT OF BOARD.—The Sec-
13 retary concerned shall designate one member of
14 each board appointed under this subsection as
15 president of the board. The president shall have
16 a security clearance that affords the president
17 access to all information relating to the where-
18 abouts and status of the person or persons cov-
19 ered by the inquiry carried out by the board.

20 “(C) REQUIREMENTS FOR OTHER MEM-
21 BERS.—

22 “(i) ATTORNEY.—One member of
23 each board appointed under this subsection
24 shall be an attorney, or judge advocate,
25 who has expertise in public law relating to

1 missing persons, determinations of death
2 of such persons, and the rights of family
3 members and dependents of such persons.

4 “(ii) OCCUPATIONAL SPECIALIST.—
5 One member of each board appointed
6 under this subsection shall be an individual
7 who has—

8 “(I) an occupational specialty
9 similar to that of one or more of the
10 persons covered by the inquiry carried
11 out by the board; and

12 “(II) an understanding of and
13 expertise in the official activities of
14 one or more such persons at the time
15 such person or persons disappeared.

16 “(iii) EXPERT IN TRANSPORTATION.—
17 If the person or persons covered by an in-
18 quiry under this subsection disappeared in
19 transit, one member of the board ap-
20 pointed for the inquiry shall be an individ-
21 ual whose occupational specialty relates to
22 the piloting, navigation, or operation of the
23 mode of transportation in which the person
24 or persons were travelling at the time such
25 person or persons disappeared.

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

4 “(A) review—

5 “(i) the report on such person or per-
6 sons that is submitted under paragraph (9)
7 of subsection (b); and

8 “(ii) the determination with respect to
9 such person or persons under paragraph
10 (10)(D) of that subsection;

11 “(B) collect and evaluate any documents,
12 facts, or other evidence with respect to the
13 whereabouts or status of the person or persons
14 that have become available since the completion
15 of the inquiry with respect to the person or per-
16 sons under subsection (b);

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

19 “(D) determine on the basis of the activi-
20 ties under subparagraphs (A) and (B) whether
21 the status of the person or persons should be
22 continued or changed; and

23 “(E) issue a report to the Secretary con-
24 cerned describing the findings and conclusions
25 of the board, together with a recommendation

1 as to the whereabouts or status of the person
2 or persons.

3 “(6) COUNSEL FOR MISSING PERSONS.—

4 “(A) IN GENERAL.—The Secretary con-
5 cerned shall appoint counsel to represent the
6 person or persons covered by an inquiry carried
7 out under this subsection. In the case of an ap-
8 pointment by a Secretary who is not a Sec-
9 retary of a military department, the appoint-
10 ment shall be made by the Secretary of the ap-
11 propriate military department in consultation
12 with such Secretary.

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

15 “(i) meet the qualifications set forth
16 in section 827(b) of this title (article 27(b)
17 of the Uniform Code of Military Justice);
18 and

19 “(ii) have a security clearance that af-
20 fords the individual access to all informa-
21 tion relating to the whereabouts or status
22 of the person or persons covered by the in-
23 quiry.

1 “(C) RESPONSIBILITIES AND DUTIES.—An
2 individual appointed as counsel under this
3 paragraph—

4 “(i) shall have access to all facts and
5 evidence considered by the board during
6 the proceedings of the inquiry for which
7 the counsel is appointed;

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

10 “(iii) may question witnesses before
11 the board;

12 “(iv) shall monitor the deliberations of
13 the board;

14 “(v) shall review the report of the
15 board under paragraph (11); and

16 “(vi) shall submit to the Secretary
17 concerned an independent review of the
18 recommendation of the board under para-
19 graph (10).

20 “(D) TREATMENT OF REVIEW.—The re-
21 view of the report of a board on an inquiry
22 under subparagraph (C)(vi) shall be made an
23 official part of the record of the board with re-
24 spect to the inquiry.

1 “(7) PARTICIPATION OF INTERESTED INDIVID-
2 UALS IN PROCEEDINGS.—

3 “(A) IN GENERAL.—Notwithstanding any
4 other provision of law, the individual or individ-
5 uals, if any, specified under section 520c of this
6 title by the person or persons covered by an in-
7 quiry under this subsection may participate at
8 the proceedings of the board during the inquiry.

9 “(B) NOTIFICATION OF PERSONS.—The
10 Secretary concerned shall notify the individual
11 or individuals referred to in subparagraph (A)
12 of the opportunity to participate at the proceed-
13 ings of a board not later than 60 days before
14 the first meeting of the board.

15 “(C) RESPONSE.—An individual who re-
16 ceives notice under subparagraph (B) shall no-
17 tify the Secretary concerned of the intent, if
18 any, of the individual to participate at the pro-
19 ceedings of a board not later than 21 days after
20 the date of the individual’s receipt of the notice.

21 “(D) SCHEDULE AND LOCATION OF PRO-
22 CEEDINGS.—The Secretary concerned shall, to
23 the maximum extent practicable, provide that
24 the schedule and location of the proceedings of
25 a board under this subsection be established so

1 as to be convenient to the individuals who no-
2 tify that Secretary under subparagraph (C) of
3 their intent to participate at such proceedings.

4 “(E) MANNER OF PARTICIPATION.—Indi-
5 viduals who notify the Secretary concerned
6 under subparagraph (C) of their intent to par-
7 ticipate at the proceedings of a board—

8 “(i) in the case of individuals whose
9 entitlement to the pay or allowances (in-
10 cluding allotments) of a person covered by
11 this section could be reduced or terminated
12 as a result of a revision in the status of
13 the person, may attend the proceedings of
14 the board with private counsel;

15 “(ii) shall have access to the personnel
16 file of the person, to unclassified reports
17 (if any) of the board appointed under sub-
18 section (b) to conduct the inquiry into the
19 whereabouts and status of the person, and
20 to any other unclassified information or
21 documents relating to the whereabouts and
22 status of the person;

23 “(iii) shall be afforded the opportunity
24 to present information at the proceedings

1 that such individuals consider to be rel-
2 evant to the proceedings; and

3 “(iv) subject to subparagraph (F),
4 shall be afforded the opportunity to submit
5 in writing objections to the recommenda-
6 tions of the board under paragraph (10) as
7 to the status of the missing person.

8 “(F) OBJECTIONS.—Objections to the rec-
9 ommendations of the board under subparagraph
10 (E)(iv) shall be submitted to the president of
11 the board not later than 24 hours after the date
12 on which such recommendations are made. The
13 president shall include the objections in the re-
14 port of the board to the Secretary concerned
15 under paragraph (12).

16 “(G) PROHIBITION ON REIMBURSE-
17 MENT.—Individuals referred to in subparagraph
18 (A) who participate in the proceedings of a
19 board under this paragraph shall not be entitled
20 to reimbursement by the Federal Government
21 for any costs (including travel, lodging, meals,
22 local transportation, legal fees, transcription
23 costs, witness expenses, and other expenses) in-
24 curred by such individuals in participating in
25 such proceedings.

1 “(8) AVAILABILITY OF INFORMATION TO
2 BOARDS.—

3 “(A) IN GENERAL.—A board under this
4 subsection may secure directly from any depart-
5 ment or agency of the Federal Government any
6 information that the members of the board con-
7 sider necessary in order to conduct an inquiry
8 under this subsection.

9 “(B) AUTHORITY TO RELEASE.—Upon
10 written request from the president of a board,
11 the head of a department or agency of the Fed-
12 eral Government shall release information cov-
13 ered by the request to the board. In releasing
14 such information, the head of the department
15 or agency shall—

16 “(i) declassify to an appropriate de-
17 gree classified information; or

18 “(ii) release the information in a man-
19 ner not requiring the removal of markings
20 indicating the classified nature of the in-
21 formation.

22 “(C) CLASSIFIED INFORMATION.—If a re-
23 quest for information under subparagraph (B)
24 covers classified information that cannot be de-
25 classified, cannot be removed before release

1 from the information covered by the request, or
2 cannot be summarized in a manner that pre-
3 vents the release of classified information, the
4 classified information shall be made available
5 only to the president of the board making the
6 request and the counsel appointed to appear be-
7 fore the board under paragraph (6).

8 “(9) BOARD MEETINGS.—

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

12 “(B) EXCEPTION.—A proceeding of a
13 board shall be closed to the public at the re-
14 quest of any of the following:

15 “(i) The counsel appointed under
16 paragraph (6) for the person or persons
17 covered by the proceeding.

18 “(ii) Any individual referred to in
19 paragraph (7)(A).

20 “(iii) The Secretary concerned, but
21 only if that Secretary determines that a
22 proceeding open to the public could jeop-
23 ardize the health and well-being of other
24 missing persons or impair the activities of
25 the Federal Government to recover missing

1 persons in the theater of operations or the
2 area in which the person or persons cov-
3 ered by the proceeding are thought to have
4 disappeared.

5 “(iv) The president of the board, but
6 only for discussion of classified informa-
7 tion.

8 “(C) TREATMENT OF CLASSIFIED INFOR-
9 MATION.—Participants at a proceeding of a
10 board at which classified information is dis-
11 cussed shall comply with all applicable laws and
12 regulations relating to the disclosure of classi-
13 fied information. The Secretary concerned shall
14 assist the president of a board in ensuring that
15 classified information is not compromised
16 through board proceedings.

17 “(10) RECOMMENDATION ON STATUS.—

18 “(A) IN GENERAL.—Upon the completion
19 of an inquiry into the whereabouts and status
20 of a person or persons under this subsection, a
21 board shall make a recommendation as to the
22 current whereabouts or status of the person or
23 persons.

24 “(B) RECOMMENDATION OF DEAD STA-
25 TUS.—A board may not recommend under sub-

1 paragraph (A) that a person or persons be de-
2 clared dead unless—

3 “(i) conclusive proof of death is estab-
4 lished by the board; and

5 “(ii) in making the declaration, the
6 board complies with subsection (f).

7 “(11) REPORT.—A board appointed under this
8 subsection shall submit to the Secretary concerned a
9 report on the inquiry carried out by the board under
10 this subsection, together with the evidence consid-
11 ered by the board during the inquiry. The report
12 may include a classified annex.

13 “(12) ACTIONS BY SECRETARY.—

14 “(A) REVIEW.—Not later than 30 days
15 after the receipt of a report under paragraph
16 (11), the Secretary concerned shall review—

17 “(i) the report;

18 “(ii) the review of the report submit-
19 ted to the Secretary under paragraph
20 (6)(C)(vi) by the counsel for the person or
21 persons covered by the report; and

22 “(iii) the objections, if any, to the re-
23 port submitted to the president of the
24 board under paragraph (7)(F).

1 “(B) SCOPE OF REVIEW.—In reviewing the
2 report, review, and objections under subpara-
3 graph (A), the Secretary concerned shall deter-
4 mine whether or not the report is complete and
5 free of administrative error.

6 “(C) FURTHER ACTION.—If the Secretary
7 concerned determines as a result of a review
8 under this paragraph that a report is incom-
9 plete, or that a report is not free of administra-
10 tive error, that Secretary may return the report
11 to the board that submitted the report for fur-
12 ther action.

13 “(D) DETERMINATION OF STATUS.—Upon
14 a determination that a report reviewed under
15 this paragraph is complete and free of adminis-
16 trative error, the Secretary concerned shall
17 make a determination of the status of the per-
18 son or persons covered by the report.

19 “(13) REPORT TO INTERESTED INDIVIDUALS.—
20 Not later than 90 days after a board submits a re-
21 port on a person or persons under paragraph (11),
22 the Secretary concerned shall—

23 “(A) provide an unclassified summary of
24 the report to the individual or individuals, if

1 any, specified by the person or persons under
2 section 520c of this title; and

3 “(B) in the case of a person or persons
4 who continue to be in missing status, inform
5 such individual or individuals that the Federal
6 Government will conduct a further inquiry into
7 the whereabouts or status of the person or per-
8 sons not later than 3 years after the date of the
9 first official notice of the disappearance of the
10 person or persons, unless information becomes
11 available within that time that would result in
12 a substantial change in the status of the person
13 or persons.

14 “(14) ADDITIONAL INQUIRY.—

15 “(A) IN GENERAL.—If information on the
16 whereabouts or status of a person or persons
17 placed in missing status under this subsection
18 becomes available after the date of the place-
19 ment of the person or persons in such status
20 under this subsection and before the end of the
21 3-year period beginning on the date of the first
22 official notice of the disappearance of the per-
23 son or persons, the Secretary shall appoint a
24 board under this paragraph to conduct an in-
25 quiry into that information.

1 “(B) CONDUCT OF PROCEEDINGS.—The
2 activities of a board appointed under this para-
3 graph, and the actions by the Secretary con-
4 cerned with respect to any recommendations
5 made by the board, shall be governed by the
6 provisions of this subsection.

7 “(d) FURTHER INQUIRY.—

8 “(1) INQUIRY.—

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

15 “(B) FREQUENCY OF APPOINTMENT.—
16 Subject to subparagraph (C), the Secretary con-
17 cerned shall appoint a board to conduct an in-
18 quiry with respect to a person or persons under
19 this paragraph—

20 “(i) on or about 3 years after the date
21 of the first official notice of the disappear-
22 ance of the person or persons; and

23 “(ii) not later than every 3 years
24 thereafter.

1 “(C) DELIMITING DATE.—Except as pro-
2 vided in subsection (e), the Secretary concerned
3 shall not be required to appoint a board under
4 this paragraph more than 12 years after the
5 end of the time of war or emergency or period
6 of hostilities in which a person or persons dis-
7 appeared.

8 “(2) REVIEW OF PROBATIVE INFORMATION.—
9 Upon receipt of information that could result in a
10 change or revision of status of a person or persons
11 covered by this section, the Secretary concerned
12 shall appoint a board to evaluate the information
13 and make a recommendation as to the status of the
14 person or persons to which the information relates.

15 “(3) CONDUCT OF PROCEEDINGS.—The ap-
16 pointment and activities of a board under paragraph
17 (1) or (2), and the actions by the Secretary con-
18 cerned with respect to any recommendations made
19 by the board, shall be governed by the provisions of
20 subsection (c).

21 “(e) PERSONS PREVIOUSLY DECLARED DEAD.—

22 “(1) REVIEW OF STATUS.—

23 “(A) IN GENERAL.—Not later than 5 years
24 after the date of the enactment of the Missing
25 Service Personnel Act of 1995, an individual re-

1 ferred to in subparagraph (C) may submit to
2 the Secretary concerned a request for appoint-
3 ment by that Secretary of a board to review the
4 status of a person declared dead before such
5 date.

6 “(B) PERSONS COVERED.—This subsection
7 applies only to persons declared dead whose
8 death is declared to have occurred on or after
9 December 7, 1941.

10 “(C) INDIVIDUALS ELIGIBLE TO REQUEST
11 REVIEW.—

12 “(i) IN GENERAL.—A board shall be
13 appointed under this paragraph based on
14 the request of—

15 “(I) any individual who is the
16 primary next of kin of a person pre-
17 viously declared dead; or

18 “(II) subject to clause (ii), any
19 adult family member of the immediate
20 family of such a person.

21 “(ii) EXCEPTION.—A board may not
22 be appointed upon the request of a family
23 member described in clause (i)(II) if an in-
24 dividual referred to in clause (i)(I) objects.
25 The Secretary concerned shall notify such

1 individuals of the request of such family
2 members for the appointment of a board
3 under this paragraph.

4 “(2) APPOINTMENT OF BOARD.—Upon a re-
5 quest under paragraph (1), the Secretary concerned
6 shall appoint a board to review the status of the per-
7 son covered by the request.

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

11 “(A) conduct an investigation to determine
12 the status of the person; and

13 “(B) issue a report describing the findings
14 of the board under the investigation and the
15 recommendation of the board as to the status
16 of the person.

17 “(4) SUBSEQUENT REVIEW.—If the Secretary
18 concerned is apprised of any information which
19 would directly lead to a determination of the status
20 of a person covered by this subsection, the Secretary
21 shall reconvene a board to consider the information.

22 “(5) EFFECT OF CHANGE IN STATUS.—If a
23 board appointed under this subsection recommends
24 placing a person covered by this subsection in a
25 missing status such person shall accrue no pay or al-

1 lowances as a result of the placement of the person
2 in such status.

3 “(f) RECOMMENDATION OF DECLARATION OF
4 DEATH.—

5 “(1) REQUIREMENTS RELATING TO REC-
6 OMMENDATION.—A board appointed under sub-
7 section (c) or (d) may not recommend that a person
8 be declared dead unless—

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

12 “(B) the Federal Government possesses no
13 evidence that reasonably suggests that the per-
14 son is alive;

15 “(C) representatives of the Federal Gov-
16 ernment have made a complete search of the
17 area where the person was last seen (unless,
18 after making a good faith effort to obtain ac-
19 cess to such area, such representatives are not
20 granted such access);

21 “(D) representatives of the Federal Gov-
22 ernment have examined the records of the gov-
23 ernment or entity having control over the area
24 where the person was last seen (unless, after
25 making a good faith effort to obtain access to

1 such records, such representatives are not
2 granted such access); and

3 “(E) the President certifies that the gov-
4 ernment or entity most likely to have the re-
5 mains of the person has released such remains,
6 or all available information on such remains, to
7 the Federal Government.

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

1 “(1) INFORMATION IN FILES.—Except as pro-
2 vided in paragraph (2), the Secretary concerned
3 shall, to the maximum extent practicable, ensure
4 that the personnel file of each person covered by this
5 section contains all information in the possession of
6 the Federal Government relating to the disappear-
7 ance and whereabouts or status of the person.

8 “(2) CLASSIFIED INFORMATION.—

9 “(A) AUTHORITY TO WITHHOLD.—The
10 Secretary concerned may withhold classified in-
11 formation from a personnel file.

12 “(B) NOTICE OF WITHHOLDING.—If the
13 Secretary concerned withholds classified infor-
14 mation from a personnel file under this para-
15 graph, the Secretary shall ensure that the file
16 contains the following:

17 “(i) A notice that the withheld infor-
18 mation exists.

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

22 “(3) WRONGFUL WITHHOLDING.—Any individ-
23 ual who knowingly and willfully withholds from the
24 personnel file of a person covered by this section any
25 information (other than classified information) relat-

1 ing to the disappearance or whereabouts or status of
2 the person shall be fined as provided in title 18, or
3 imprisoned not more than 1 year, or both.

4 “(4) AVAILABILITY OF INFORMATION.—The
5 Secretary concerned shall, upon request, make avail-
6 able the contents of the personnel file of a person
7 covered by this section to the individual or individ-
8 uals, if any, specified by the person under section
9 520c of this title.

10 “(h) JUDICIAL REVIEW.—

11 “(1) IN GENERAL.—

12 “(A) JUDICIAL REVIEW.—An individual
13 specified under section 520c of this title by a
14 person covered by this section may obtain re-
15 view of a determination referred to in subpara-
16 graph (B)(i) or a recommendation referred to
17 in subparagraph (B)(ii) by the court of appeals
18 of the United States for the circuit in which the
19 individual resides or in which the finding was
20 made.

21 “(B) COVERED DETERMINATIONS.—Sub-
22 paragraph (A) applies to the following findings:

23 “(i) A determination under subsection
24 (c)(10)(D) or (d)(12)(D) that a person is
25 dead.

1 “(ii) A recommendation under sub-
2 section (e)(3)(B) that a person formerly
3 declared dead is in fact dead.

4 “(C) COMMENCEMENT OF REVIEW.—An
5 individual referred to in subparagraph (A) shall
6 request review of a determination or rec-
7 ommendation under this paragraph by filing
8 with the appropriate court a written petition re-
9 questing that the finding be set aside.

10 “(2) APPEAL AND FINALITY OF REVIEW.—The
11 decision of the court of appeals on a petition for re-
12 view under paragraph (1) shall be final, except that
13 it shall be subject to review by the Supreme Court
14 upon certiorari, as provided in section 1254 of title
15 28.

16 “(3) ADDITIONAL REVIEW.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graph (B), upon request by an individual re-
19 ferred to in paragraph (1)(A), the Secretary
20 concerned shall appoint a board to review the
21 status of a person covered by a determination
22 or recommendation referred to in paragraph
23 (1)(B) if the court of appeals sets aside the
24 finding and—

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

4 “(ii) the petition for certiorari has
5 been denied; or

6 “(iii) the decision of the court of ap-
7 peals has been affirmed by the Supreme
8 Court.

9 “(B) DELIMITING DATE.—An individual
10 referred to in subparagraph (A) shall make a
11 request referred to in that subparagraph not
12 later than 3 years after the date of the event
13 under that subparagraph that entitles the per-
14 son to request the appointment of a board.

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

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

1 “(2) EFFECT ON GRATUITIES PAID AS A RE-
2 SULT OF STATUS.—Paragraph (1) shall not be inter-
3 preted to invalidate or otherwise affect the receipt by
4 any person of a death gratuity or other payment
5 from the United States on behalf of a person re-
6 ferred to in paragraph (1) before the date of the en-
7 actment of the Missing Service Personnel Act of
8 1995.

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

15 “(k) DEFINITIONS.—In this section:

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

21 “(2) The term ‘conclusive proof of death’, in
22 the case of a person or persons whose whereabouts
23 are unknown, means evidence establishing that
24 death is the only plausible explanation of the where-
25 abouts of the person or persons.

1 “(3) The term ‘missing status’ means the sta-
2 tus of a missing person who is determined to be ab-
3 sent in a status of—

4 “(A) missing;

5 “(B) missing in action;

6 “(C) interned in a foreign country;

7 “(D) captured, beleaguered, or besieged by
8 a hostile force; or

9 “(E) detained in a foreign country against
10 his or her will.

11 “(4) The term ‘Secretary concerned’ means the
12 following:

13 “(A) In the case of a member of the armed
14 forces, the Secretary of the military department
15 having jurisdiction over the armed force of the
16 member.

17 “(B) In the case of a civilian employee of
18 the Federal Government or of a contractor of
19 the Federal Government, the Secretary of the
20 department employing the employee or con-
21 tracting with the contractor, as the case may
22 be.”.

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

“1060b. Missing persons: members and certain civilian employees; determinations of status.”.

1 (c) CONFORMING AMENDMENTS.—(1)(A) Section
2 555 of title 37, United States Code, is repealed.

3 (B) The table of sections at the beginning of chapter
4 10 of such title is amended by striking out the item relat-
5 ing to section 555.

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

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

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

14 “(2) that his death is determined under section
15 1060b of title 10.”; and

16 (C) in subsection (e), by striking “section 555
17 of this title” and inserting “section 1060b of title
18 10”.

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

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

23 (B) by striking out “the Secretary concerned
24 receives evidence” and inserting in lieu thereof “a

1 board convened under section 1060b of title 10 re-
2 ports”; and

3 (C) in subsection (g), by striking out “section
4 555 of this title” and inserting “section 1060b of
5 title 10”.

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

7 (A) in subsection (a)—

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

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

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

17 (B) by striking out subsection (b) and redesign-
18 ating subsections (c), (d), (e), (f), (g), and (h) as
19 subsections (b), (c), (d), (e), (f), and (g), respec-
20 tively; and

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

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

23 (ii) by striking “status” and inserting
24 “pay”.

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

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

7 **SEC. 4. SOLICITATION ON ENLISTMENT OF INFORMATION**
8 **ON INDIVIDUALS INTERESTED IN STATUS OF**
9 **ENLISTEES.**

10 (a) REQUIREMENT.—Chapter 31 of title 10, United
11 States Code, is amended by adding at the end the follow-
12 ing:

13 **“§ 520c. Enlistments: information on individuals in-**
14 **terested in status**

15 “(a) The Secretary concerned shall, upon the enlist-
16 ment of a person in an armed force, require that the per-
17 son specify in writing the individual or individuals, if any,
18 to whom information on the whereabouts or status of the
19 person shall be provided in the event that such the where-
20 abouts or status are investigated under section 1060b of
21 this title. The purpose of the specification is to ensure the
22 notification of such individual or individuals in the event
23 of such an investigation.

24 “(b) The Secretary concerned shall, upon the request
25 of a person referred to in subsection (a), permit the person

1 to revise the individual or individuals specified by the per-
2 son under that subsection. The person shall make any
3 such revision in writing.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions at the beginning of such chapter is amended by add-
6 ing at the end the following:

“520c. Enlistments: information on individuals interested in status.”.



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