

105TH CONGRESS  
1ST SESSION

# S. 755

To amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for Fiscal Year 1997 and to make other improvements to that chapter.

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## IN THE SENATE OF THE UNITED STATES

MAY 15, 1997

Mr. CAMPBELL (for himself and Mr. FORD) introduced the following bill;  
which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for Fiscal Year 1997 and to make other improvements to that chapter.

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 Persons Au-  
5       thorities Improvement Act of 1997”.

1 **SEC. 2. IMPROVEMENT OF MISSING PERSONS AUTHORITIES**

2 **APPLICABLE TO DEPARTMENT OF DEFENSE.**

3 (a) **APPLICABILITY TO DEPARTMENT OF DEFENSE**  
4 **CIVILIAN EMPLOYEES AND CONTRACTOR EMPLOYEES.—**

5 (1) Section 1501 of title 10, United States Code, is  
6 amended—

7 (A) by striking out subsection (c) and inserting  
8 in lieu thereof the following:

9 “(c) **COVERED PERSONS.**—Section 1502 of this title  
10 applies in the case of the following persons:

11 “(1) Any member of the armed forces on active  
12 duty who becomes involuntarily absent as a result of  
13 a hostile action, or under circumstances suggesting  
14 that the involuntary absence is a result of a hostile  
15 action, and whose status is undetermined or who is  
16 unaccounted for.

17 “(2)(A) Any other person who is a citizen of  
18 the United States and is described in subparagraph  
19 (B) who serves with or accompanies the armed  
20 forces in the field under orders and becomes involun-  
21 tarily absent as a result of a hostile action, or under  
22 circumstances suggesting that the involuntary ab-  
23 sence is a result of a hostile action, and whose sta-  
24 tus is undetermined or who is unaccounted for.

25 “(B) A person described in this subparagraph  
26 is any of the following:

1           “(i) A civilian officer or employee of the  
2 Department of Defense.

3           “(ii) An employee of a contractor of the  
4 Department of Defense.

5           “(iii) An employee of a United States firm  
6 licensed by the United States under section 38  
7 of the Arms Export Control Act (22 U.S.C.  
8 2778) to perform duties under contract with a  
9 foreign government involving military training  
10 of the military forces of that government in ac-  
11 cordance with policies of the Department of De-  
12 fense.”; and

13           (B) by adding at the end the following new sub-  
14 section:

15           “(f) SECRETARY CONCERNED.—In this chapter, the  
16 term ‘Secretary concerned’ includes—

17           “(1) in the case of a person covered by clause  
18 (i) of subsection (c)(2)(B), the Secretary of the mili-  
19 tary department or head of the element of the De-  
20 partment of Defense employing the employee;

21           “(2) in the case of a person covered by clause  
22 (ii) of subsection (c)(2)(B), the Secretary of the  
23 military department or head of the element of the  
24 Department of Defense contracting with the contrac-  
25 tor; and

1           “(3) in the case of a person covered by clause  
2           (iii) of subsection (c)(2)(B), the Secretary of De-  
3           fense.”.

4           (2) Section 1503(c) of such title is amended—

5           (A) in paragraph (1), by striking out “one mili-  
6           tary officer” and inserting in lieu thereof “one indi-  
7           vidual described in paragraph (2)”;

8           (B) by redesignating paragraphs (2) and (3) as  
9           paragraphs (3) and (4), respectively; and

10          (C) by inserting after paragraph (1) the follow-  
11          ing new paragraph (2):

12          “(2) An individual referred to in paragraph (1) is the  
13          following:

14               “(A) A military officer, in the case of an in-  
15               quiry with respect to a member of the armed forces.

16               “(B) A civilian, in the case of an inquiry with  
17               respect to a civilian employee of the Department of  
18               Defense or of a contractor of the Department of De-  
19               fense.”.

20          (3) Section 1504(d) of such title is amended—

21               (A) in paragraph (1), by striking out “who are”  
22               and all that follows in that paragraph and inserting  
23               in lieu thereof “as follows:

24                       “(A) In the case of a board that will inquire  
25                       into the whereabouts and status of one or more

1 members of the armed forces (and no civilians de-  
2 scribed in subparagraph (B)), the board shall be  
3 composed of officers having the grade of major or  
4 lieutenant commander or above.

5 “(B) In the case of a board that will inquire  
6 into the whereabouts and status of one or more civil-  
7 ian employees of the Department of Defense or con-  
8 tractors of the Department of Defense (and no  
9 members of the armed forces), the board shall be  
10 composed of—

11 “(i) not less than three employees of the  
12 Department of Defense whose rate of annual  
13 pay is equal to or greater than the rate of an-  
14 nual pay payable for grade GS-13 of the Gen-  
15 eral Schedule under section 5332 of title 5; and

16 “(ii) such members of the armed forces as  
17 the Secretary considers advisable.

18 “(C) In the case of a board that will inquire  
19 into the whereabouts and status of both one or more  
20 members of the armed forces and one or more civil-  
21 ians described in subparagraph (B)—

22 “(i) the board shall include at least one of-  
23 ficer described in subparagraph (A) and at least  
24 one employee of the Department of Defense de-  
25 scribed in subparagraph (B)(i); and

1           “(ii) the ratio of such officers to such em-  
2           ployees on the board shall be roughly propor-  
3           tional to the ratio of the number of members of  
4           the armed forces who are subjects of the  
5           board’s inquiry to the number of civilians who  
6           are subjects of the board’s inquiry.”; and

7           (B) in paragraph (4), by striking out “section  
8           1503(c)(3)” and inserting in lieu thereof “section  
9           1503(c)(4)”.

10          (4) Paragraph (1) of section 1513 of such title is  
11          amended to read as follows:

12                 “(1) The term ‘missing person’ means—

13                         “(A) a member of the armed forces on ac-  
14                         tive duty who is in a missing status; or

15                         “(B) a civilian employee of the Depart-  
16                         ment of Defense or an employee of a contractor  
17                         of the Department of Defense who serves with  
18                         or accompanies the armed forces in the field  
19                         under orders and who is in a missing status.

20          Such term includes an unaccounted for person de-  
21          scribed in section 1509(b) of this title, under the cir-  
22          cumstances specified in the last sentence of section  
23          1509(a) of this title.”.

24          (b) REPORT ON PRELIMINARY ASSESSMENT OF STA-  
25          TUS.—(1) Section 1502 of such title is amended—

1 (A) in subsection (a)(2)—

2 (i) by striking out “10 days” and inserting  
3 in lieu thereof “48 hours”; and

4 (ii) by striking out “Secretary concerned”  
5 and inserting in lieu thereof “theater compo-  
6 nent commander with jurisdiction over the  
7 missing person”;

8 (B) in subsection (a), as amended by subpara-  
9 graph (A)—

10 (i) by redesignating paragraphs (1) and  
11 (2) as subparagraphs (A) and (B), respectively;

12 (ii) by inserting “(1)” after “COM-  
13 MANDER.—”; and

14 (iii) by adding at the end the following new  
15 paragraph:

16 “(2) However, if the commander determines that  
17 operational conditions resulting from hostile action or  
18 combat constitute an emergency that prevents timely re-  
19 porting under paragraph (1)(B), the initial report should  
20 be made as soon as possible, but in no case later than  
21 ten days after the date on which the commander receives  
22 such information under paragraph (1).”;

23 (C) by redesignating subsection (b) as sub-  
24 section (c);

1           (D) by inserting after subsection (a), as amend-  
2           ed by subparagraphs (A) and (B), the following new  
3           subsection (b):

4           “(b) TRANSMISSION THROUGH THEATER COMPO-  
5           NENT COMMANDER.—Upon reviewing a report under sub-  
6           section (a) recommending that a person be placed in a  
7           missing status, the theater component commander shall  
8           ensure that all necessary actions are being taken, and all  
9           appropriate assets are being used, to resolve the status  
10          of the missing person. Not later than 14 days after receiv-  
11          ing the report, the theater component commander shall  
12          forward the report to the Secretary of Defense or the Sec-  
13          retary concerned in accordance with procedures prescribed  
14          under section 1501(b) of this title. The theater component  
15          commander shall include with such report a certification  
16          that all necessary actions are being taken, and all appro-  
17          priate assets are being used, to resolve the status of the  
18          missing person.”; and

19          (E) in subsection (c), as redesignated by sub-  
20          paragraph (C), by adding at the end the following  
21          new sentence: “The theater component commander  
22          through whom the report with respect to the missing  
23          person is transmitted under subsection (b) shall en-  
24          sure that all pertinent information relating to the  
25          whereabouts and status of the missing person that

1 results from the preliminary assessment or from ac-  
2 tions taken to locate the person is properly safe-  
3 guarded to avoid loss, damage, or modification.”.

4 (2) Section 1503(a) of such title is amended by strik-  
5 ing out “section 1502(a)” and inserting in lieu thereof  
6 “section 1502(b)”.

7 (3) Section 1504 of such title is amended by striking  
8 out “section 1502(a)(2)” in subsections (a), (b), and  
9 (e)(1) and inserting in lieu thereof “section 1502(a)”.

10 (4) Section 1513 of such title is amended by adding  
11 at the end the following new paragraph:

12 “(8) The term ‘theater component commander’  
13 means, with respect to any of the combatant com-  
14 mands, an officer of any of the armed forces who  
15 (A) is commander of all forces of that armed force  
16 assigned to that combatant command, and (B) is di-  
17 rectly subordinate to the commander of the combat-  
18 ant command.”.

19 (c) FREQUENCY OF SUBSEQUENT REVIEWS.—Sub-  
20 section (b) of section 1505 of such title is amended to read  
21 as follows:

22 “(b) FREQUENCY OF SUBSEQUENT REVIEWS.—(1)  
23 In the case of a missing person who was last known to  
24 be alive or who was last suspected of being alive, the Sec-

1   retary shall appoint a board to conduct an inquiry with  
2   respect to a person under this subsection—

3           “(A) on or about three years after the date of  
4           the initial report of the disappearance of the person  
5           under section 1502(a) of this title; and

6           “(B) not later than every three years there-  
7           after.

8           “(2) In addition to appointment of boards under  
9   paragraph (1), the Secretary shall appoint a board to con-  
10   duct an inquiry with respect to a missing person under  
11   this subsection upon receipt of information that could re-  
12   sult in a change of status of the missing person. When  
13   the Secretary appoints a board under this paragraph, the  
14   time for subsequent appointments of a board under para-  
15   graph (1)(B) shall be determined from the date of the re-  
16   ceipt of such information.

17          “(3) The Secretary is not required to appoint a board  
18   under paragraph (1) with respect to the disappearance of  
19   any person—

20           “(A) more than 30 years after the initial report  
21           of the disappearance of the missing person required  
22           by section 1502(a) of this title; or

23           “(B) if, before the end of such 30-year period,  
24           the missing person is accounted for.”.

1 (d) PENALTIES FOR WRONGFUL WITHHOLDING OF  
2 INFORMATION.—Section 1506 of such title is amended by  
3 adding at the end the following new subsection:

4 “(f) WRONGFUL WITHHOLDING.—Any person who  
5 (except as provided in subsections (a) through (d)) will-  
6 fully withholds, or directs the withholding of, any informa-  
7 tion relating to the disappearance or whereabouts and sta-  
8 tus of a missing person from the personnel file of that  
9 missing person, knowing that such information is required  
10 to be placed in the personnel file of the missing person,  
11 shall be fined as provided in title 18 or imprisoned not  
12 more than one year, or both.”.

13 (e) INFORMATION TO ACCOMPANY RECOMMENDA-  
14 TION OF STATUS OF DEATH.—Section 1507(b) of such  
15 title is amended by adding at the end the following new  
16 paragraphs:

17 “(3) A description of the location of the body,  
18 if recovered.

19 “(4) If the body has been recovered and is not  
20 identifiable through visual means, a certification by  
21 a practitioner of an appropriate forensic science that  
22 the body recovered is that of the missing person.”.

23 (f) MISSING PERSON’S COUNSEL.—(1) Sections  
24 1503(f)(1) and 1504(f)(1) of such title are amended by  
25 adding at the end the following: “The identity of counsel

1 appointed under this paragraph for a missing person shall  
2 be made known to the missing person's primary next of  
3 kin and any other previously designated person of the per-  
4 son.”.

5 (2) Section 1503(f)(4) of such title is amended by  
6 adding at the end the following: “The primary next of kin  
7 of a missing person and any other previously designated  
8 person of the missing person shall have the right to submit  
9 information to the missing person's counsel relative to the  
10 disappearance or status of the missing person.”.

11 (3) Section 1505(c)(1) is amended by adding at the  
12 end the following: “The Secretary concerned shall appoint  
13 counsel to represent any such missing person to whom  
14 such information may be related. The appointment shall  
15 be in the same manner, and subject to the same provi-  
16 sions, as an appointment under section 1504(f)(1) of this  
17 title.”.

18 (g) SCOPE OF PREENACTMENT REVIEW.—(1) Sec-  
19 tion 1509 of such title is amended by striking out sub-  
20 section (a) and inserting in lieu thereof the following:

21 “(a) REVIEW OF STATUS.—(1) If new information is  
22 found or received that may be related to one or more unac-  
23 counted for persons described in subsection (b) (whether  
24 or not such information specifically relates (or may specifi-  
25 cally relate) to any particular such unaccounted for per-

1 son), that information shall be provided to the Secretary  
2 of Defense. Upon receipt of such information, the Sec-  
3 retary shall ensure that the information is treated under  
4 paragraphs (2) and (3) of section 1505(c) of this title and  
5 under section 1505(d) of this title in the same manner  
6 as information received under paragraph (1) of section  
7 1505(c) of this title. For purposes of the applicability of  
8 other provisions of this chapter in such a case, each such  
9 unaccounted for person to whom the new information may  
10 be related shall be considered to be a missing person.

11       “(2) The Secretary concerned shall appoint counsel  
12 to represent each such unaccounted for person to whom  
13 the new information may be related. The appointment  
14 shall be in the same manner, and subject to the same pro-  
15 visions, as an appointment under section 1504(f)(1) of  
16 this title.

17       “(3) For purposes of this subsection, new information  
18 is information that—

19               “(A) is found or received after the date of the  
20 enactment of the Missing Persons Improvement Act  
21 of 1997 by a United States intelligence agency, by  
22 a Department of Defense agency, or by a person  
23 specified in section 1504(g) of this title; or

24               “(B) is identified after the date of the enact-  
25 ment of the Missing Persons Improvement Act of

1 1997 in records of the United States as information  
2 that could be relevant to the case of one or more un-  
3 accounted for persons described in subsection (b).”.

4 (2) Such section is further amended by adding at the  
5 end the following new subsection:

6 “(d) ESTABLISHMENT OF PERSONNEL FILES FOR  
7 KOREAN CONFLICT CASES.—The Secretary of Defense  
8 shall ensure that a personnel file is established for each  
9 unaccounted for person who is described in subsection  
10 (b)(1). Each such file shall be handled in accordance with,  
11 and subject to the provisions of, section 1506 of this title  
12 in the same manner as applies to the file of a missing  
13 person.”.

14 (h) WITHHOLDING OF CLASSIFIED INFORMATION.—  
15 Section 1506(b) of such title is amended—

16 (1) by inserting “(1)” before “The Secretary”;

17 (2) by redesignating paragraphs (1) and (2) as  
18 subparagraphs (A) and (B), respectively; and

19 (3) by adding at the end the following:

20 “(2) If classified information withheld under this sub-  
21 section refers to one or more unnamed missing persons,  
22 the Secretary shall ensure that notice of that withheld in-  
23 formation, and notice of the date of the most recent review  
24 of the classification of that withheld information, is made

1 reasonably accessible to family members of missing per-  
2 sons.”.

3 (i) WITHHOLDING OF PRIVILEGED INFORMATION.—

4 Section 1506(d) of such title is amended—

5 (1) in paragraph (2)—

6 (A) by striking out “non-derogatory” both  
7 places it appears in the first sentence;

8 (B) by inserting “or about unnamed miss-  
9 ing persons” in the first sentence after “the de-  
10 briefing report”;

11 (C) by striking out “the missing person”  
12 in the second sentence and inserting in lieu  
13 thereof “each missing person named in the de-  
14 briefing report”; and

15 (D) by adding at the end the following new  
16 sentence: “Any information contained in the ex-  
17 tract of the debriefing report that pertains to  
18 unnamed missing persons shall be made reason-  
19 ably accessible to family members of missing  
20 persons.”; and

21 (2) in paragraph (3)—

22 (A) by inserting “, or part of a debriefing  
23 report,” after “a debriefing report”; and

24 (B) by adding at the end the following new  
25 sentence: “Whenever the Secretary withholds a

1           debriefing report, or part of a debriefing report,  
2           containing information on unnamed missing  
3           persons from accessibility to families of missing  
4           persons under this section, the Secretary shall  
5           ensure that notice that the withheld debriefing  
6           report exists is made reasonably accessible to  
7           family members of missing persons.”.

○