

103^D CONGRESS
2^D SESSION

H. R. 5043

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1994

Mr. MURPHY introduced the following bill; which was 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
12 court-martial authority over the person, in the
13 case of a member of the armed forces, or to the
14 Secretary of the department employing the per-
15 son or contracting with the contractor, in the
16 case of a civilian employee of the Federal Gov-
17 ernment or contractor of the Federal Govern-
18 ment, as the case may be—

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

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

1 “(II) describes the actions taken
2 to locate the person; and

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

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

9 “(I) summarizes the actions
10 taken to locate the person; and

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

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

17 “(I) summarizes the continuing
18 actions to locate the person; and

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

23 “(iv) at any other time, a report that
24 sets forth any other information that may

1 be relevant to the whereabouts or status of
2 the person.

3 “(b) INITIAL INQUIRY.—

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

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

23 “(3) COMPOSITION.—

24 “(A) IN GENERAL.—A board appointed
25 under this subsection shall consist of at least

1 one individual described in subparagraph (B)
2 who has experience with and understanding of
3 military operations or activities similar to the
4 operation or activity in which the person or per-
5 sons disappeared.

6 “(B) REQUIRED MEMBER.—An individual
7 referred to in subparagraph (A) is the follow-
8 ing:

9 “(i) A military officer, in the case of
10 an inquiry with respect to a member of the
11 armed forces.

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

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

23 “(4) ACTIVITIES.—A board appointed to con-
24 duct an inquiry into the whereabouts or status of a

1 missing person or persons under this subsection
2 shall—

3 “(A) collect, develop, and investigate all
4 facts and evidence relating to the disappear-
5 ance, whereabouts, or status of the person or
6 persons;

7 “(B) collect appropriate documentation of
8 the facts and evidence covered by the investiga-
9 tion;

10 “(C) analyze the facts and evidence, make
11 findings based on the analysis, and draw con-
12 clusions as to the current whereabouts and sta-
13 tus of the person or persons; and

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

23 “(i) the person or persons continue to
24 have a missing status; or

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

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

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

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

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

19 “(6) COUNSEL FOR MISSING PERSON.—

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

24 “(B) QUALIFICATIONS.—An individual ap-
25 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 under the inquiry for
16 which 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 such report.

4 “(D) TREATMENT OF REVIEW.—A review
5 of the report of a board on an inquiry that is
6 submitted under subparagraph (C)(vi) shall be
7 made an official part of the record of the board
8 with respect to 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, including to any mem-
12 ber of the immediate family, dependent, primary
13 next of kin, or previously designated person of the
14 person or persons covered by the inquiry.

15 “(8) RECOMMENDATION ON STATUS.—

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

22 “(B) RECOMMENDATION OF STATUS AS
23 DEAD.—

24 “(i) IN GENERAL.—A board may not
25 recommend under subparagraph (A) that a

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

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

10 “(9) REPORT.—

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

16 “(i) a discussion of the facts and evi-
17 dence considered by the board in the in-
18 quiry; and

19 “(ii) the recommendation of the board
20 under paragraph (8).

21 “(B) SUBMITTAL DATE.—A board shall
22 submit a report under this paragraph not later
23 than 45 days after the date of the first official
24 notice of the disappearance of the person or

1 persons covered by the inquiry described in the
2 report.

3 “(C) PUBLIC AVAILABILITY.—A report
4 submitted under this paragraph may not be
5 made public until 1 year after the date referred
6 to in subparagraph (B).

7 “(10) ACTIONS BY APPOINTING OFFICIAL.—

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

12 “(i) the report; and

13 “(ii) the review submitted under para-
14 graph (6)(C)(vi) by the counsel for the per-
15 son or persons covered by the inquiry de-
16 scribed in the report.

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

22 “(C) RETURN.—If an official determines
23 under subparagraph (B) that a report is incom-
24 plete, or that a report is not free of administra-
25 tive error, the official may return the report to

1 the board for further action on the report by
2 the board.

3 “(D) DETERMINATION OF STATUS.—Upon
4 a determination by the official concerned that a
5 report reviewed by the official under this para-
6 graph is complete and free of administrative
7 error, the official shall make a determination of
8 the status of the person or persons covered by
9 the report.

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

16 “(A) provide an unclassified summary of
17 the report of the board to the members of the
18 immediate family, dependents, primary next of
19 kin, and previously designated persons of the
20 person or persons; and

21 “(B) inform the individuals referred to in
22 subparagraph (A) that the Federal Government
23 will conduct a subsequent inquiry into the
24 whereabouts or status of the person or persons
25 not earlier than 1 year after the date of the

1 first official notice of the disappearance of the
2 person or persons, unless information becomes
3 available sooner that would result in a substan-
4 tial change in the official status of the person
5 or persons.

6 “(12) ADDITIONAL INVESTIGATION.—

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

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

22 “(c) SUBSEQUENT INQUIRY.—

23 “(1) REQUIREMENT.—

24 “(A) IN GENERAL.—If as a result of an in-
25 quiry under subsection (b) an official deter-

1 mines under paragraph (10)(D) of that sub-
2 section that a person or persons retain or be
3 placed in a missing status, the Secretary con-
4 cerned shall appoint a board under this sub-
5 section to conduct an inquiry into the where-
6 abouts and status of the person or persons.

7 “(B) DEFINITION.—For purposes of this
8 subsection, the term ‘Secretary concerned’
9 means the following:

10 “(i) In the case of a member of the
11 armed forces, the Secretary of the military
12 department having jurisdiction over the
13 armed force of the member.

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

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

1 “(3) SCOPE OF CERTAIN INQUIRIES.—If it ap-
2 pears to the Secretary concerned that the absence or
3 status of two or more persons is factually related,
4 the Secretary may appoint one board under this sub-
5 section to conduct the inquiry into the whereabouts
6 or status of the persons.

7 “(4) COMPOSITION.—

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

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

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

21 “(I) not less than three civilian
22 employees of the Federal Government
23 whose rate of annual pay is equal to
24 or greater than the rate of annual pay
25 payable for grade GS-13 of the Gen-

1 eral Schedule under section 5332 of
2 title 5; and

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

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

15 “(C) REQUIREMENTS FOR OTHER MEM-
16 BERS.—

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

1 “(ii) OCCUPATIONAL SPECIALIST.—

2 One member of each board appointed
3 under this subsection shall be an individual
4 who has—

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

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

12 “(iii) EXPERT IN TRANSPORTATION.—

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

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

1 “(A) review the report under paragraph
2 (9) of subsection (b) of the board appointed to
3 conduct the inquiry into the status or where-
4 abouts of the person or persons under sub-
5 section (b) and the determination under para-
6 graph (10)(D) of that subsection of the official
7 who appointed the board under that subsection
8 as to the status of the person or persons;

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

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

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

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

1 “(6) COUNSEL FOR MISSING PERSON OR PER-
2 SONS.—

3 “(A) IN GENERAL.—The Secretary who
4 appoints a board to conduct an inquiry under
5 this subsection shall appoint counsel to rep-
6 resent the person or persons covered by the in-
7 quiry.

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

10 “(i) meet the qualifications set forth
11 in section 827(b) of this title (article 27(b)
12 of the Uniform Code of Military Justice);
13 and

14 “(ii) have a security clearance that af-
15 fords the individual access to all informa-
16 tion relating to the whereabouts or status
17 of the person or persons.

18 “(C) RESPONSIBILITIES AND DUTIES.—An
19 individual appointed as counsel under this para-
20 graph—

21 “(i) shall have access to all facts and
22 evidence considered by the board during
23 the proceedings under the inquiry for
24 which the counsel is appointed;

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

3 “(iii) may question witnesses before
4 the board;

5 “(iv) shall monitor the deliberations of
6 the board;

7 “(v) shall review the report of the
8 board under paragraph (11); and

9 “(vi) shall submit to the Secretary
10 concerned an independent review of the
11 recommendation of the board under para-
12 graph (10).

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

18 “(7) PARTICIPATION OF CERTAIN INTERESTED
19 PERSONS IN PROCEEDINGS.—

20 “(A) IN GENERAL.—Notwithstanding any
21 other provision of law, the members of the im-
22 mediate family, dependents, primary next of
23 kin, and previously designated persons of the
24 person or persons covered by an inquiry under

1 this subsection may participate at the proceed-
2 ings of the board during the inquiry.

3 “(B) NOTIFICATION OF PERSONS.—The
4 Secretary concerned shall notify the individuals
5 referred to in subparagraph (A) of the oppor-
6 tunity to participate at the proceedings of a
7 board not later than 60 days before the first
8 meeting of the board.

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

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

23 “(E) MANNER OF PARTICIPATION.—Indi-
24 viduals who notify the Secretary under subpara-

1 graph (C) of their intent to participate at the
2 proceedings of a board—

3 “(i) in the case of individuals whose
4 entitlement to the pay or allowances (in-
5 cluding allotments) of a missing person
6 could be reduced or terminated as a result
7 of a revision in the status of the missing
8 person, may attend the proceedings of the
9 board with private counsel;

10 “(ii) shall have access to the personnel
11 file of the missing person, to unclassified
12 reports (if any) of the board appointed
13 under subsection (b) to conduct the inquiry
14 into the whereabouts and status of the per-
15 son, and to any other unclassified informa-
16 tion or documents relating to the where-
17 abouts and status of the person;

18 “(iii) shall be afforded the opportunity
19 to present information at the proceedings
20 that such individuals consider to be rel-
21 evant to the proceedings; and

22 “(iv) subject to subparagraph (F),
23 shall be afforded the opportunity to submit
24 in writing objections to the recommenda-

1 tions of the board under paragraph (10) as
2 to the status of the missing person.

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

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

21 “(8) AVAILABILITY OF INFORMATION TO
22 BOARDS.—

23 “(A) IN GENERAL.—In conducting pro-
24 ceedings in an inquiry under this subsection, a
25 board may secure directly from any department

1 or agency of the Federal Government any infor-
2 mation that the members of the board consider
3 necessary in order to conduct the proceedings.

4 “(B) AUTHORITY TO RELEASE.—Upon
5 written request from the President of a board,
6 the head of a department or agency of the Fed-
7 eral Government shall release information cov-
8 ered by the request to the board. In releasing
9 such information, the head of the department
10 or agency shall—

11 “(i) declassify to an appropriate de-
12 gree classified information; or

13 “(ii) release the information in a man-
14 ner not requiring the removal of markings
15 indicating the classified nature of the in-
16 formation.

17 “(C) TREATMENT OF CLASSIFIED INFOR-
18 MATION.—

19 “(i) RELEASE.—If a request for infor-
20 mation under subparagraph (B) covers
21 classified information that cannot be de-
22 classified, cannot be removed before release
23 from the information covered by the re-
24 quest, or cannot be summarized in a man-
25 ner that prevents the release of classified

1 information, the classified information
2 shall be made available only to the Presi-
3 dent of the board making the request and
4 the counsel for the missing person ap-
5 pointed under paragraph (6).

6 “(ii) USE IN PROCEEDINGS.—The
7 President of a board shall close to persons
8 who do not have appropriate security clear-
9 ances the proceeding of the board at which
10 classified information is discussed. Partici-
11 pants at a proceeding of a board at which
12 classified information is discussed shall
13 comply with all applicable laws and regula-
14 tions relating to the disclosure of classified
15 information. The Secretary concerned shall
16 assist the President of a board in ensuring
17 that classified information is not com-
18 promised through board proceedings.

19 “(9) BOARD MEETINGS.—

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

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

1 “(i) The counsel appointed under
2 paragraph (6) for the person or persons
3 covered by the proceeding.

4 “(ii) Any member of the immediate
5 family, dependent, primary next of kin, or
6 previously designated person of the person
7 or persons.

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

18 “(iv) The President of the board, but
19 only for discussion of classified informa-
20 tion.

21 “(10) RECOMMENDATION ON STATUS.—

22 “(A) IN GENERAL.—Upon completion of
23 proceedings in an inquiry under this subsection,
24 a board shall make a recommendation as to the

1 current whereabouts or status of the missing
2 person or persons covered by the inquiry.

3 “(B) RECOMMENDATION OF DEAD STA-
4 TUS.—

5 “(i) IN GENERAL.—A board may not
6 recommend under subparagraph (A) that a
7 person or persons be declared dead un-
8 less—

9 “(I) conclusive proof of death is
10 established by the board; and

11 “(II) in making the declaration,
12 the board complies with subsection
13 (f).

14 “(ii) DEFINITION.—In this subpara-
15 graph, the term ‘conclusive proof of death’,
16 in the case of a person or persons, means
17 evidence establishing that death is the only
18 plausible explanation for the absence of the
19 person or persons.

20 “(11) REPORT.—

21 “(A) REQUIREMENT.—A board appointed
22 under this subsection shall submit to the Sec-
23 retary concerned a report on the inquiry carried
24 out by the board, together with the evidence
25 considered by the board during the inquiry.

1 “(B) CLASSIFIED ANNEX.—The report
2 may include a classified annex.

3 “(12) ACTIONS BY SECRETARY.—

4 “(A) REVIEW.—Not later than 30 days
5 after the receipt of a report from a board under
6 paragraph (11), the Secretary concerned shall
7 review—

8 “(i) the report;

9 “(ii) the review submitted to the Sec-
10 retary under paragraph (6)(C)(vi) by the
11 counsel for the person or persons covered
12 by the report; and

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

16 “(B) SCOPE OF REVIEW.—In reviewing the
17 report, review, and objections under subpara-
18 graph (A), the Secretary shall determine wheth-
19 er or not the report is complete and free of ad-
20 ministrative error.

21 “(C) FURTHER ACTION.—If the Secretary
22 determines under subparagraph (B) that a re-
23 port is incomplete, or that a report is not free
24 of administrative error, the Secretary may re-

1 turn the report to the board for further action
2 on the report by the board.

3 “(D) DETERMINATION OF STATUS.—Upon
4 a determination by the Secretary that a report
5 reviewed by the Secretary under this paragraph
6 is complete and free of administrative error, the
7 Secretary shall make a determination of the
8 status of the person or persons covered by the
9 report.

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

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

19 “(B) in the case of a person or persons
20 who continue to be in missing status, inform
21 the members, dependents, kin, and persons of
22 the person or persons that the Federal Govern-
23 ment will conduct a further investigation into
24 the whereabouts or status of the person or per-
25 sons not later than 3 years after the date of the

1 official notice of the disappearance of the per-
2 son or persons, unless information becomes
3 available within that time that would result in
4 a substantial change in the official status of the
5 person or persons.

6 “(14) RECONVENING OF BOARD.—

7 “(A) IN GENERAL.—If the Secretary con-
8 cerned recommends that a person or persons
9 continue in missing status, or that a missing
10 person previously declared dead be given a
11 missing status, the Secretary shall reconvene
12 the board when information becomes available
13 that would directly lead to a determination of
14 status of the missing person or persons.

15 “(B) CONDUCT OF PROCEEDINGS.—The
16 provisions of this subsection shall apply to the
17 activities of a board convened under this para-
18 graph.

19 “(d) FURTHER REVIEW.—

20 “(1) SUBSEQUENT REVIEW.—

21 “(A) IN GENERAL.—The Secretary con-
22 cerned shall appoint a board to conduct an in-
23 quiry into the whereabouts or status of any per-
24 son or persons determined by the Secretary

1 under subsection (c)(12)(D) to be a person or
2 persons in missing status.

3 “(B) FREQUENCY OF APPOINTMENT.—
4 Subject to subparagraph (C), the Secretary
5 shall appoint a board to conduct an inquiry
6 with respect to a person or persons under this
7 paragraph—

8 “(i) on or about 3 years after the date
9 of the official notice of the disappearance
10 of the person or persons; and

11 “(ii) not later than every 3 years
12 thereafter.

13 “(C) DELIMITING DATE.—The Secretary
14 shall not be required to appoint a board under
15 this paragraph more than 12 years after the
16 end of the time of war or emergency or period
17 of hostilities in which the missing person or
18 persons disappeared.

19 “(2) REVIEW OF PROBATIVE INFORMATION.—
20 Upon receipt of information that could result in a
21 change or revision of status of a missing person or
22 persons, the Secretary concerned shall appoint a
23 board to evaluate the information and make a rec-
24 ommendation as to the status of the person or per-
25 sons to which the information relates.

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

5 “(e) PERSONNEL FILES.—

6 “(1) INFORMATION IN FILES.—Except as pro-
7 vided in paragraph (2), the Secretary of the depart-
8 ment having jurisdiction over a missing person at
9 the time of the person’s disappearance shall, to the
10 maximum extent practicable, ensure that the person-
11 nel file of the person contains all information in the
12 possession of the Federal Government relating to the
13 disappearance and whereabouts or status of the per-
14 son.

15 “(2) CLASSIFIED INFORMATION.—

16 “(A) AUTHORITY TO WITHHOLD.—The
17 Secretary concerned may withhold classified in-
18 formation from a personnel file under this sub-
19 section.

20 “(B) NOTICE OF WITHHOLDING.—If the
21 Secretary concerned withholds classified infor-
22 mation from the personnel file of a person, the
23 Secretary shall ensure that the file contains the
24 following:

1 “(i) A notice that the withheld infor-
2 mation exists.

3 “(ii) A notice of the date of the most
4 recent review of the classification of the
5 withheld information.

6 “(3) WRONGFUL WITHHOLDING.—Any person
7 who knowingly and willfully withholds from the per-
8 sonnel file of a missing person any information
9 (other than classified information) relating to the
10 disappearance or whereabouts or status of a missing
11 person shall be fined as provided in title 18, or im-
12 prisoned not more than 1 year, or both.

13 “(4) AVAILABILITY OF INFORMATION.—The
14 Secretary concerned shall, upon request, make avail-
15 able the contents of the personnel file of a missing
16 person to members of the immediate family, depend-
17 ents, primary next of kin, or previously designated
18 person of the person.

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

20 “(1) REQUIREMENTS RELATING TO REC-
21 COMMENDATION.—A board appointed under sub-
22 section (c) or (d) may not recommend that a person
23 be declared dead unless—

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

4 “(B) the Federal Government possesses no
5 evidence that reasonably suggests that the per-
6 son is alive;

7 “(C) representatives of the Federal Gov-
8 ernment have made a complete search of the
9 area where the person was last seen (unless,
10 after making every good faith effort to obtain
11 access to such area, such representatives are
12 not granted such access); and

13 “(D) representatives of the Federal Gov-
14 ernment have examined the records of the gov-
15 ernment or entity having control over the area
16 where the person was last seen (unless, after
17 making every good faith effort to obtain access
18 to such records, such representatives are not
19 granted such access).

20 “(2) SUBMITTAL OF INFORMATION ON
21 DEATH.—If a board appointed under subsection (c)
22 or (d) makes a recommendation that a missing per-
23 son be declared dead, the board shall include in the
24 report of the board with respect to the person under
25 such subsection (c) or (d) the following:

1 “(A) A detailed description of the location
2 where the death occurred.

3 “(B) A statement of the date on which the
4 death occurred.

5 “(C) A description of the location of the
6 body, if recovered.

7 “(D) If the body has been recovered, a cer-
8 tification by a licensed practitioner of forensic
9 medicine that the body recovered is that of the
10 missing person.

11 “(g) JUDICIAL REVIEW.—

12 “(1) IN GENERAL.—

13 “(A) JUDICIAL REVIEW.—A person re-
14 ferred to in subparagraph (B) may obtain re-
15 view of a finding described in subparagraph (C)
16 by the court of appeals of the United States for
17 the circuit in which the person resides or in
18 which the finding was made.

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

23 “(i) A member of the immediate fam-
24 ily of the person.

25 “(ii) A dependent of the person.

1 “(iii) The primary next of kin of the
2 person.

3 “(iv) A person previously designated
4 by the person.

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

7 “(i) A finding by a board appointed
8 under subsection (c) or (d) that a missing
9 person is dead.

10 “(ii) A finding by a board appointed
11 under subsection (h) that confirms that a
12 missing person formerly declared dead is in
13 fact dead.

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

19 “(2) APPEAL AND FINALITY OF REVIEW.—The
20 decision of the court of appeals on a petition for re-
21 view under paragraph (1) shall be final, except that
22 it shall be subject to review by the Supreme Court
23 upon certiorari, as provided in section 1254 of title
24 28.

25 “(3) ADDITIONAL REVIEW.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), upon request by a person referred to
3 in paragraph (1)(B), the Secretary concerned
4 shall appoint a board to review the status of a
5 person covered by a finding described in para-
6 graph (1)(C) if the court of appeals sets aside
7 the finding and—

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

11 “(ii) the petition for certiorari has
12 been denied; or

13 “(iii) the decision of the court of ap-
14 peals has been affirmed by the Supreme
15 Court.

16 “(B) DELIMITING DATE.—A person re-
17 ferred to in subparagraph (A) shall make a re-
18 quest referred to in that subparagraph not later
19 than 3 years after the date of the event under
20 that subparagraph that entitles the person to
21 request the appointment of a board.

22 “(h) PERSONS PREVIOUSLY DECLARED DEAD.—

23 “(1) REVIEW OF STATUS.—

24 “(A) IN GENERAL.—Not later than 2 years
25 after the date of the enactment of the Missing

1 Service Personnel Act of 1994, a person re-
2ferred to in subparagraph (B) may submit to
3the appropriate Secretary a request for appoint-
4ment by the Secretary of a board to review the
5status of a person previously declared dead.

6 “(B) AVAILABILITY.—A board shall be ap-
7pointed under this paragraph based on the re-
8quest of any of the following persons:

9 “(i) An adult member of the imme-
10diate family of a person previously declared
11dead.

12 “(ii) An adult dependent of such per-
13son.

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

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

18 “(C) APPROPRIATE SECRETARY.—A re-
19quest under this paragraph shall be submitted
20to the Secretary of the department of the Fed-
21eral Government that had jurisdiction over the
22person covered by the request at the time of the
23person’s disappearance.

24 “(2) APPOINTMENT OF BOARD.—Upon request
25of a person under paragraph (1), the Secretary con-

1 cerned shall appoint a board to review the status of
2 the person covered by the request.

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

6 “(A) conduct an investigation to determine
7 the status of the person; and

8 “(B) issue a report describing the findings
9 of the board under the investigation and the
10 recommendations of the board as to the status
11 of the person.

12 “(4) SUBSEQUENT REVIEW.—If the Secretary
13 concerned is apprised of any information which
14 would directly lead to a determination of the status
15 of a missing person, the Secretary shall reconvene a
16 board to consider the information.

17 “(5) EFFECT OF CHANGE IN STATUS.—If a
18 board appointed under this subsection recommends
19 placing a person previously declared dead in a miss-
20 ing status such person shall accrue no pay or allow-
21 ances as a result of the placement of the person in
22 such status.

23 “(i) RETURN ALIVE OF PERSON DECLARED MISSING
24 OR DEAD.—

1 “(1) PAY AND ALLOWANCES.—Any person in a
2 missing status or declared dead under the Missing
3 Persons Act of 1942 (56 Stat. 143) or by a board
4 appointed under this section who is found alive and
5 returned to the control of the United States shall be
6 paid for the full time of the absence of the person
7 while given that status or declared dead under the
8 law and regulations relating to the pay and allow-
9 ances of persons returning from a missing status.

10 “(2) EFFECT ON GRATUITIES PAID AS A RE-
11 SULT OF STATUS.—Paragraph (1) shall not be inter-
12 preted to invalidate or otherwise affect the receipt by
13 any person of a death gratuity or other payment
14 from the United States on behalf of a person re-
15 ferred to in paragraph (1) before the date of the en-
16 actment of the Missing Service Personnel Act of
17 1994.

18 “(j) EFFECT ON STATE LAW.—Nothing in this sec-
19 tion shall be construed to invalidate or limit the power
20 of any State court or administrative entity, or the power
21 of any court or administrative entity of any political sub-
22 division thereof, to find or declare a person dead for pur-
23 poses of the such State or political subdivision.

24 “(k) DEFINITIONS.—In this section:

1 “(1) The term ‘classified information’ means
2 any information the unauthorized disclosure of
3 which (as determined under applicable law and regu-
4 lations) could reasonably be expected to damage the
5 national security.

6 “(2) The term ‘dependent’, in the case of a
7 missing person, mean any individual who would, but
8 for the status of the person, be entitled to receive
9 the pay and allowances (including allotments) of the
10 person.

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

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

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

18 “(B) a civilian employee serving with or
19 accompanying an armed force under orders who
20 is missing.

21 “(5) The term ‘missing status’ means the sta-
22 tus of a missing person who is determined to be ab-
23 sent in a status of—

24 “(A) missing;

25 “(B) missing in action;

1 “(C) interned in a foreign country;

2 “(D) captured, beleaguered, or besieged by
3 a hostile force; or

4 “(E) detained in a foreign country against
5 his or her will.

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

8 “(A) the principal individual who, but for
9 the status of the person, would receive financial
10 support from the person; or

11 “(B) in the case of a missing person for
12 whom there is no individual meeting the re-
13 quirement of subparagraph (A), the family
14 member or other individual designated by the
15 missing person to receive death gratuities.

16 “(7) The term ‘previously designated person’, in
17 the case of a missing person, means an individual
18 (other than an individual who is a member of the
19 immediate family of the missing person) designated
20 by the missing person as the individual to be notified
21 of all matters relating to the status of the missing
22 person.

23 “(8) The term ‘State’ means any State, the
24 District of Columbia, the Commonwealth of Puerto

1 Rico, and any territory or possession of the United
2 States.”.

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

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

6 (c) CONFORMING AMENDMENTS.—(1)(A) Section
7 555 of title 37, United States Code, is repealed.

8 (B) The table of sections at the beginning of chapter
9 10 of such title is amended by striking out the item relat-
10 ing to section 555.

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

12 (A) in the second sentence of the flush matter
13 following paragraph (2) in subsection (a), by strik-
14 ing out “for all purposes,” and all that follows
15 through the end of the sentence and inserting in lieu
16 thereof “for all purposes.”;

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

19 “(2) that his death is determined under section
20 1060a of title 10.”; and

21 (C) in subsection (e), by striking “section 555
22 of this title” and inserting “section 1060a of title
23 10”.

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

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

4 (B) by striking out “the Secretary concerned
5 receives evidence” and inserting in lieu thereof “a
6 board convened under section 1060a of title 10 re-
7 ports”; and

8 (C) in subsection (g), by striking out “section
9 555 of this title” and inserting “section 1060a of
10 title 10”.

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

12 (A) in subsection (a)—

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

15 (ii) by striking out the semicolon at the
16 end of paragraph (4) and inserting in lieu
17 thereof a period; and

18 (iii) by striking paragraphs (1), (5), (6),
19 and (7) and redesignating paragraphs (2), (3),
20 and (4) as paragraphs (1), (2), and (3), respec-
21 tively;

22 (B) by striking out subsection (b) and redesi-
23 gnating subsections (c), (d), (e), (f), (g), and (h) as
24 subsections (b), (c), (d), (e), (f), and (g), respec-
25 tively; and

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

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

3 (ii) by striking “status” and inserting
4 “pay”.

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

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

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