

105TH CONGRESS
2D SESSION

H. R. 3829

To amend the Central Intelligence Agency Act of 1949 to provide a process for agency employees to submit urgent concerns to Congress, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1998

Mr. GOSS (for himself, Mr. BASS, Mr. BOEHLERT, Mr. YOUNG of Florida, Mr. LEWIS of California, Mr. GIBBONS, and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on Intelligence (Permanent Select), and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Central Intelligence Agency Act of 1949 to provide a process for agency employees to submit urgent concerns to Congress, 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 “Intelligence Commu-
5 nity Whistleblower Protection Act of 1998”.

1 **SEC. 2. PROTECTION OF INTELLIGENCE COMMUNITY EM-**
2 **PLOYEES WHO REPORT URGENT CONCERNS**
3 **TO CONGRESS.**

4 (a) INSPECTOR GENERAL OF THE CENTRAL INTEL-
5 LIGENCE AGENCY.—Subsection (d) of section 17 of the
6 Central Intelligence Agency Act of 1949 (50 U.S.C. 403q)
7 is amended by adding at the end the following new para-
8 graph:

9 “(5)(A) An employee of the Agency, or of a contrac-
10 tor to the Agency, who wishes to report to Congress a
11 complaint or information with respect to an urgent con-
12 cern shall report to the Inspector General. If an employee
13 who makes such a report requests confidentiality, the In-
14 spector General may not, except as provided in subsection
15 (e)(3)(A), disclose the identity of the employee. This para-
16 graph describes the sole process for employees of the
17 Agency, or of contractors to the Agency, to submit to Con-
18 gress complaints or information with respect to an urgent
19 concern.

20 “(B) Within the 60-calendar day period beginning on
21 the day of receipt from an employee under subparagraph
22 (A) of a complaint or information with respect to an ur-
23 gent concern, the Inspector General shall determine
24 whether the complaint or information appears credible. If
25 the Inspector General determines that the complaint or
26 information appears credible, the Inspector General within

1 such period shall transmit the complaint or information
2 to the Director and notify the employee of the Inspector
3 General's action.

4 “(C) Except as provided in subparagraph (E), the Di-
5 rector shall, within 7 calendar days after receipt of the
6 transmittal from the Inspector General under subpara-
7 graph (B), forward such transmittal to the intelligence
8 committees together with any comments the Director con-
9 siderers appropriate.

10 “(D) If the Inspector General does not transmit, or
11 does not accurately transmit, the complaint or information
12 described in subparagraph (B), the employee may, subject
13 to subparagraph (E) and with the protections of sub-
14 sections (e)(3)(A) and (B), contact the intelligence com-
15 mittees directly to submit the complaint or information,
16 only if the employee—

17 “(i) furnishes to the Director, through the In-
18 spector General, a statement of the employee's com-
19 plaint or information and notice of the employee's
20 intent to contact the intelligence committees directly;
21 and

22 “(ii) obtains and follows direction from the Di-
23 rector, through the Inspector General, on how to
24 contact the intelligence committees in accordance
25 with appropriate security practices.

1 “(E) Should the Director, in the exceptional case and
2 in order to protect vital law enforcement, foreign affairs,
3 or national security interests, not transmit to the intel-
4 ligence committees the Inspector General’s transmittal
5 submitted under subparagraph (B), or not allow the em-
6 ployee to contact the intelligence committees under sub-
7 paragraph (D), the Director shall provide the committees
8 with the reason for such actions within 7 calendar days.

9 “(F) For purposes of this paragraph, the following
10 definitions apply:

11 “(i) The term ‘urgent concern’ means—

12 “(I) a serious or flagrant problem, abuse,
13 violation of law or Executive order, or defi-
14 ciency relating to the administration or oper-
15 ations of an intelligence activity involving classi-
16 fied information;

17 “(II) a false statement to Congress on an
18 issue of material fact relating to the adminis-
19 tration or operation of an intelligence activity;
20 or

21 “(III) an action constituting reprisal or
22 threat of reprisal in response to the employee’s
23 reporting an urgent concern pursuant to the
24 terms of this statute including any reprisal ac-
25 tion that significantly impacts upon or involves

1 the employee's appointment; promotion; being
2 subject to any disciplinary or correction action;
3 detail, transfer, or reassignment; reinstatement;
4 restoration; reemployment; performance evaluation;
5 pay, benefits, awards, or education or
6 training if the education or training may reasonably
7 be expected to lead to an appointment,
8 promotion, performance evaluation, or other action
9 within this subparagraph; being subject to
10 an extraordinary order for psychiatric testing or
11 examination; or duties, responsibilities, or working
12 conditions.

13 Such term does not include differences of opinions
14 concerning public policy matters.

15 “(ii) The term ‘intelligence committees’ means
16 the Permanent Select Committee on Intelligence of
17 the House of Representatives and the Select Committee
18 on Intelligence of the Senate.

19 “(G) The exercise of authorities under this paragraph
20 shall not be subject to judicial review.”.

21 (b) ADDITIONAL PROVISIONS WITH RESPECT TO INSPECTORS
22 GENERAL OF THE INTELLIGENCE COMMUNITY.—
23

24 (1) IN GENERAL.—The Inspector General Act
25 of 1978 (5 U.S.C. App.) is amended by redesignat-

1 ing section 8H as section 8I and by inserting after
2 section 8G the following new section:

3 “SEC. 8H. (a)(1)(A) Employees of the Defense Intel-
4 ligence Agency, the National Imagery and Mapping Agen-
5 cy, the National Reconnaissance Office, and the National
6 Security Agency, and of contractors to those Agencies,
7 who wish to report to Congress a complaint or information
8 with respect to an urgent concern shall report to the In-
9 spector General of the Department of Defense (or des-
10 ignee);

11 “(B) Employees of the Federal Bureau of Investiga-
12 tion, and of contractors to the Bureau, who wish to report
13 to Congress a complaint or information with respect to
14 an urgent concern shall report to the Inspector General
15 of the Department of Justice (or designee);

16 “(C) Any other employee of, or contractor to, an exec-
17 utive agency, or element or unit thereof, determined by
18 the President under section 2301(a)(2)(C)(ii) of title 5,
19 United States Code, to have as its principal function the
20 conduct of foreign intelligence or counterintelligence ac-
21 tivities, who wishes to report to Congress a complaint or
22 information with respect to an urgent concern shall report
23 to the appropriate Inspector General (or designee) under
24 this Act, or section 17 of the Central Intelligence Agency
25 Act of 1949.

1 “(2) The designee of an Inspector General included
2 in this section shall report such employee complaints or
3 information to their respective Inspector General within
4 7 calendar days of receipt.

5 “(3) If an employee who makes such a report re-
6 quests confidentiality, the Inspector General (or des-
7 ignees) may not, except as provided in section 7(b), dis-
8 close the identity of the employee.

9 “(4) This section describes the sole process for em-
10 ployees described in paragraph (1) to submit complaints
11 or information with respect to an urgent concern to Con-
12 gress.

13 “(b) Within the 60-calendar day period beginning on
14 the day of receipt of an employee complaint or information
15 with respect to an urgent concern, the Inspector General
16 shall determine whether the complaint or information ap-
17 pears credible. If the Inspector General determines that
18 the complaint or information appears to be credible, the
19 Inspector General within such period shall transmit the
20 complaint or information to the head of the establishment
21 and notify the employee of the Inspector General’s action.

22 “(c) Except as provided in subsection (e), the head
23 of the establishment shall, within 7 calendar days after
24 receipt of the transmittal from the Inspector General pur-
25 suant to subsection (b), forward such transmittal to the

1 intelligence committees, together with any comments the
2 head of the establishment considers appropriate.

3 “(d) If the Inspector General does not transmit, or
4 does not accurately transmit, the complaint or information
5 pursuant to subsection (b), the employee may, subject to
6 subsection (e) and with the protections of sections 7(b)
7 and (c), contact the intelligence committees directly to
8 submit the complaint or information, only if the em-
9 ployee—

10 “(1) furnishes to the head of the establishment,
11 through the Inspector General, a statement of the
12 employee’s complaint or information and notice of
13 the employee’s intent to contact the intelligence com-
14 mittees directly; and

15 “(2) obtains and follows direction from the
16 head of the establishment, through the Inspector
17 General, on how to contact the intelligence commit-
18 tees in accordance with appropriate security prac-
19 tices.

20 “(e) Should the head of the establishment or Director
21 of Central Intelligence, in the exceptional case and in
22 order to protect vital law enforcement, foreign affairs, or
23 national security interests, not transmit to the intelligence
24 committees the Inspector General’s transmittal submitted
25 under subsection (b), or not allow the employee to contact

1 the intelligence committees under subsection (d), the head
2 of the establishment or the Director of Central Intelligence
3 (as the case may be) shall provide the committees with
4 the reason for such actions within 7 calendar days.

5 “(f) For purposes of this paragraph, the following
6 definitions apply:

7 “(1) The term ‘urgent concern’ means—

8 “(A) a serious or flagrant problem, abuse,
9 violation of law or Executive order, or defi-
10 ciency relating to the administration or oper-
11 ations of an intelligence activity involving classi-
12 fied information;

13 “(B) a false statement to Congress on an
14 issue of material fact relating to the adminis-
15 tration or operation of an intelligence activity;
16 or

17 “(C) an action constituting reprisal or
18 threat of reprisal in response to the employee’s
19 reporting an urgent concern pursuant to the
20 terms of this statute including any reprisal ac-
21 tion that significantly impacts upon or involves
22 the employee’s appointment; promotion; being
23 subject to any disciplinary or correction action;
24 detail, transfer, or reassignment; reinstatement;
25 restoration; reemployment; performance evalua-

1 tion; pay, benefits, awards, or education or
2 training if the education or training may rea-
3 sonably be expected to lead to an appointment,
4 promotion, performance evaluation, or other ac-
5 tion within this subparagraph; being subject to
6 an extraordinary order for psychiatric testing or
7 examination; or duties, responsibilities, or work-
8 ing conditions.

9 Such term does not include differences of opinions
10 concerning public policy matters.

11 “(2) The term ‘intelligence committees’ means
12 the Permanent Select Committee on Intelligence of
13 the House of Representatives and the Select Com-
14 mittee on Intelligence of the Senate.

15 “(g) The exercise of authorities under this subsection
16 shall not be subject to judicial review.”.

17 (2) CONFORMING AMENDMENT.—Section 8I of
18 such Act (as redesignated by paragraph (1) of this
19 subsection) is amended by striking “or 8E” and in-
20 serting “8E, or 8H”.

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