

106TH CONGRESS
1ST SESSION

S. 768

To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 1999

Mr. SESSIONS (for himself and Mr. DEWINE) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States.

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 “Military and
5 Extraterritorial Jurisdiction Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Civilian employees of the Department of
4 Defense, and civilian employees of Department of
5 Defense contractors, provide critical support to the
6 Armed Forces of the United States that are de-
7 ployed during a contingency operation.

8 (2) Misconduct by such persons undermines
9 good order and discipline in the Armed Forces, and
10 jeopardizes the mission of the contingency operation.

11 (3) Military commanders need the legal tools to
12 address adequately misconduct by civilians serving
13 with Armed Forces during a contingency operation.

14 (4) In its present state, military law does not
15 permit military commanders to address adequately
16 misconduct by civilians serving with Armed Forces,
17 except in time of a congressionally declared war.

18 (5) To address this need, the Uniform Code of
19 Military Justice should be amended to provide for
20 court-martial jurisdiction over civilians serving with
21 Armed Forces in places designated by the Secretary
22 of Defense during a “contingency operation” ex-
23 pressly designated as such by the Secretary of De-
24 fense.

25 (6) This limited extension of court-martial ju-
26 risdiction over civilians is dictated by military neces-

1 sity, is within the constitutional powers of Congress
2 to make rules for the government of the Armed
3 Forces, and, therefore, is consistent with the Con-
4 stitution of the United States and United States
5 public policy.

6 (7) Many thousand civilian employees of the
7 Department of Defense, civilian employees of De-
8 partment of Defense contractors, and civilian de-
9 pendents accompany the Armed Forces to installa-
10 tions in foreign countries.

11 (8) Misconduct among such civilians has been a
12 longstanding problem for military commanders and
13 other United States officials in foreign countries,
14 and threatens United States citizens, United States
15 property, and United States relations with host
16 countries.

17 (9) Federal criminal law does not apply to
18 many offenses committed outside of the United
19 States by such civilians and, because host countries
20 often do not prosecute such offenses, serious crimes
21 often go unpunished and, to address this jurisdic-
22 tional gap, Federal law should be amended to punish
23 serious offenses committed by such civilians outside
24 the United States, to the same extent as if those of-

1 fenses were committed within the special maritime
2 and territorial jurisdiction of the United States.

3 (10) Federal law does not apply to many crimes
4 committed outside the United States by members of
5 the Armed Forces who separate from the Armed
6 Forces before they can be identified, thus escaping
7 court martial jurisdiction and, to address this juris-
8 dictional gap, Federal law should be amended to
9 punish serious offenses committed by such persons
10 outside the United States, to the same extent as if
11 those offenses were committed within the special
12 maritime and territorial jurisdiction of the United
13 States.

14 **SEC. 3. COURT-MARTIAL JURISDICTION.**

15 (a) JURISDICTION DURING CONTINGENCY OPER-
16 ATIONS.—Section 802(a) of title 10, United States Code
17 (article 2(a) of the Uniform Code of Military Justice), is
18 amended by inserting after paragraph (12) the following:

19 “(13) To the extent not covered by paragraphs
20 (10) and (11), persons not members of the armed
21 forces who, in support of an operation designated as
22 a contingency operation as described in section
23 101(a)(13)(A) of this title, are serving with and ac-
24 companying an armed force in a place or places out-

1 side the United States specified by the Secretary of
 2 Defense, as follows:

3 “(A) Employees of the Department of De-
 4 fense.

5 “(B) Employees of any Department of De-
 6 fense contractor who are so serving in connec-
 7 tion with the performance of a Department of
 8 Defense contract.”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall take effect on the date of the enact-
 11 ment of this Act and apply with respect to acts or omis-
 12 sions occurring on or after that date.

13 **SEC. 4. FEDERAL JURISDICTION.**

14 (a) CRIMINAL OFFENSES COMMITTED OUTSIDE THE
 15 UNITED STATES.—Title 18, United States Code, is
 16 amended by inserting after chapter 211 the following:

17 **“CHAPTER 212—CRIMINAL OFFENSES**
 18 **COMMITTED OUTSIDE THE UNITED**
 19 **STATES**

“Sec.

“3261. Criminal offenses committed by persons formerly serving with, or pres-
 ently employed by or accompanying, the Armed Forces outside
 the United States.

“3262. Delivery to authorities of foreign countries.

“3263. Regulations.

“3264. Definitions.

1 **“§ 3261. Criminal offenses committed by persons for-**
2 **merly serving with, or presently em-**
3 **ployed by or accompanying, the Armed**
4 **Forces outside the United States**

5 “(a) IN GENERAL.—Whoever, while serving with, em-
6 ployed by, or accompanying the Armed Forces outside of
7 the United States, engages in conduct that would con-
8 stitute an offense punishable by imprisonment for more
9 than 1 year if the conduct had been engaged in within
10 the special maritime and territorial jurisdiction of the
11 United States, shall be guilty of a like offense and subject
12 to a like punishment.

13 “(b) CONCURRENT JURISDICTION.—Nothing in this
14 chapter may be construed to deprive a court-martial, mili-
15 tary commission, provost court, or other military tribunal
16 of concurrent jurisdiction with respect to offenders or of-
17 fenses that by statute or by the law of war may be tried
18 by a court-martial, military commission, provost court, or
19 other military tribunal.

20 “(c) ACTION BY FOREIGN GOVERNMENT.—No pros-
21 ecution may be commenced against a person under this
22 section if a foreign government, in accordance with juris-
23 diction recognized by the United States, has prosecuted
24 or is prosecuting such person for the conduct constituting
25 such offense, except upon the approval of the Attorney
26 General or the Deputy Attorney General (or a person act-

1 ing in either such capacity), which function of approval
2 shall not be delegated.

3 “(d) ARRESTS.—

4 “(1) LAW ENFORCEMENT PERSONNEL.—The
5 Secretary of Defense may designate and authorize
6 any person serving in a law enforcement position in
7 the Department of Defense to arrest outside of the
8 United States any person described in subsection (a)
9 if there is probable cause to believe that such person
10 engaged in conduct that constitutes a criminal of-
11 fense under subsection (a).

12 “(2) RELEASE TO CIVILIAN LAW ENFORCE-
13 MENT.—A person arrested under paragraph (1)
14 shall be released to the custody of civilian law en-
15 forcement authorities of the United States for re-
16 moval to the United States for judicial proceedings
17 in relation to conduct referred to in such paragraph
18 unless—

19 “(A) such person is delivered to authorities
20 of a foreign country under section 3262; or

21 “(B) such person has had charges brought
22 against him or her under chapter 47 of title 10
23 for such conduct.

24 “(3) JUSTIFIABLE DELAY.—The arrest of a person
25 outside the United States by a person designated under

1 paragraph (1), and the removal of the arrested person to
2 the United States under paragraph (2), are extraordinary
3 circumstances justifying delay in bringing the arrested
4 person before a magistrate as required by the fourth
5 amendment to the United States Constitution and the
6 Federal Rules of Criminal Procedure.

7 **“§ 3262. Delivery to authorities of foreign countries**

8 “(a) IN GENERAL.—Any person designated and au-
9 thorized under section 3261(d) may deliver a person de-
10 scribed in section 3261(a) to the appropriate authorities
11 of a foreign country in which such person is alleged to
12 have engaged in conduct described in section 3261(a) of
13 this section if—

14 “(1) the appropriate authorities of that country
15 request the delivery of the person to such country
16 for trial for such conduct as an offense under the
17 laws of that country; and

18 “(2) the delivery of such person to that country
19 is authorized by a treaty or other international
20 agreement to which the United States is a party.

21 “(b) DETERMINATION BY THE SECRETARY.—The
22 Secretary of Defense shall determine which officials of a
23 foreign country constitute appropriate authorities for pur-
24 poses of this section.

1 **“§ 3263. Regulations**

2 “The Secretary of Defense shall issue regulations
3 governing the apprehension, detention, and removal of
4 persons under this chapter. Such regulations shall be uni-
5 form throughout the Department of Defense.

6 **“§ 3264. Definitions**

7 “In this chapter—

8 “(1) a person is ‘accompanying the Armed
9 Forces outside of the United States’ if the person—

10 “(A) is a dependent of—

11 “(i) a member of the Armed Forces;

12 “(ii) a civilian employee of a military
13 department or of the Department of De-
14 fense; or

15 “(iii) a Department of Defense con-
16 tractor, or is a dependent of an employee
17 of a Department of Defense contractor;

18 “(B) is residing with such member, civilian
19 employee, contractor, or contractor employee
20 outside the United States; and

21 “(C) is not a national of or ordinarily resi-
22 dent in the host nation;

23 “(2) the term ‘Armed Forces’ has the same
24 meaning as in section 101(a)(4) of title 10; and

25 “(3) a person is ‘employed by the Armed
26 Forces outside of the United States’ if the person—

