

Calendar No. 727

115TH CONGRESS
2D SESSION**S. 3191****[Report No. 115–424]**

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2018

Mr. JONES (for himself, Mrs. McCASKILL, Ms. HARRIS, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 10, 2018

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the expeditious disclosure of records related to civil rights cold cases, 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 “Civil Rights Cold Case
5 Records Collection Act of 2018”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) All Government records related to civil
4 rights cold cases shall be preserved for historical and
5 Governmental purposes.

6 (2) All Government records concerning civil
7 rights cold cases shall carry a presumption of imme-
8 diate disclosure, and all records shall be eventually
9 disclosed to enable the public to become fully in-
10 formed about the history surrounding the cases.

11 (3) Legislation is necessary to create an en-
12 forceable, independent, and accountable process for
13 the public disclosure of such records.

14 (4) Legislation is necessary because congres-
15 sional records related to civil rights cold cases would
16 not otherwise be subject to public disclosure.

17 (5) Legislation is necessary because section 552
18 of title 5, United States Code (commonly known as
19 the Freedom of Information Act), as implemented by
20 the executive branch, has prevented the timely and
21 adequate public disclosure of records relating to civil
22 rights cold cases.

23 (6) Legislation is necessary because Executive
24 Order 13526 (75 Fed. Reg. 707; relating to classi-
25 fied national security information) has not resulted

1 in the timely and adequate public disclosure of
 2 records relating to civil rights cold cases.

3 ~~(7)~~ Most of the records related to the civil
 4 rights cold cases are almost 50 years old and only
 5 in the rarest cases is there any legitimate need for
 6 continued protection of such records.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 ~~(1)~~ ARCHIVIST.—The term “Archivist” means
 10 the Archivist of the United States.

11 ~~(2)~~ CIVIL RIGHTS COLD CASE.—The term “civil
 12 rights cold case” means any unsolved case—

13 ~~(A)~~ arising out of events which occurred
 14 during the period beginning on January 1,
 15 1940 and ending on December 31, 1979; and

16 ~~(B)~~ related to—

17 ~~(i)~~ section 241 of title 18, United
 18 States Code (relating to conspiracy against
 19 rights);

20 ~~(ii)~~ section 242 of title 18, United
 21 States Code (relating to deprivation of
 22 rights under color of law);

23 ~~(iii)~~ section 245 of title 18, United
 24 States Code (relating to federally protected
 25 activities);

1 (iv) sections 1581 and 1584 of title
2 18, United States Code (relating to peon-
3 age and involuntary servitude);

4 (v) section 901 of the Fair Housing
5 Act (42 U.S.C. 3631); or

6 (vi) any other Federal law that was—
7 (I) in effect on or before Decem-
8 ber 31, 1979; and

9 (II) enforced by the criminal sec-
10 tion of the Civil Rights Division of the
11 Department of Justice before the date
12 of enactment of this Act.

13 ~~(3) CIVIL RIGHTS COLD CASE RECORD.—~~The
14 term “civil rights cold case record” means a record
15 that—

16 (A) is related to a civil rights cold case;
17 and

18 (B) was created or made available for use
19 by, obtained by, or otherwise came into the pos-
20 session of—

21 (i) the Library of Congress;

22 (ii) the National Archives and Records
23 Administration;

24 (iii) any executive agency;

25 (iv) any independent agency;

1 (v) any other entity of the Federal
2 Government; and

3 (vi) any State or local government, or
4 component thereof, that provided support
5 or assistance or performed work in connec-
6 tion with a Federal inquiry into a civil
7 rights cold case.

8 (4) COLLECTION.—The term “Collection”
9 means the Civil Rights Cold Cases Collection estab-
10 lished under section 4.

11 (5) EXECUTIVE AGENCY.—The term “executive
12 agency” means an agency, as defined in subsection
13 552(f) of title 5, United States Code.

14 (6) GOVERNMENT OFFICE.—The term “Govern-
15 ment office” means any office of the Federal Gov-
16 ernment that has possession or control of 1 or more
17 civil rights cold case records.

18 (7) GOVERNMENT OFFICIAL.—The term “Gov-
19 ernment official” means any officer or employee of
20 the United States, including elected and appointed
21 officials.

22 (8) NATIONAL ARCHIVES.—The term “National
23 Archives” means the National Archives and Records
24 Administration and all components thereof, includ-

1 ing Presidential archival depositories established
2 under section 2112 of title 44, United States Code.

3 (9) OFFICIAL INVESTIGATION.—The term “offi-
4 cial investigation” means the reviews of civil rights
5 cold cases conducted by any entity of the Federal
6 Government either independently, at the request of
7 any Presidential commission or congressional com-
8 mittee, or at the request of any Government official.

9 (10) ORIGINATING BODY.—The term “origi-
10 nating body” means the executive agency, Govern-
11 ment commission, congressional committee, or other
12 Governmental entity that created a record or par-
13 ticular information within a record.

14 (11) PUBLIC INTEREST.—The term “public in-
15 terest” means the compelling interest in the prompt
16 public disclosure of civil rights cold case records for
17 historical and Governmental purposes and for the
18 purpose of fully informing the people of the United
19 States about the history surrounding all civil rights
20 cold cases in the United States.

21 (12) RECORD.—The term “record” has the
22 meaning given the term in section 3301 of title 44,
23 United States Code.

1 ~~(13)~~ REVIEW BOARD.—The term “Review
2 Board” means the Civil Rights Cold Case Records
3 Review Board established under section 6.

4 **SEC. 4. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
5 **AT THE NATIONAL ARCHIVES AND RECORD**
6 **ADMINISTRATION.**

7 ~~(a)~~ IN GENERAL.—

8 ~~(1)~~ ESTABLISHMENT OF THE CIVIL RIGHTS
9 COLD CASE RECORDS COLLECTION.—Not later than
10 60 days after the date of enactment of this Act, the
11 Archivist shall—

12 ~~(A)~~ commence establishing a collection of
13 civil rights cold case records to be known as the
14 “Civil Rights Cold Case Records Collection”
15 that ensures the physical integrity and original
16 provenance of all records in the Collection; and

17 ~~(B)~~ commence preparing and publishing
18 the subject guidebook and index to the Collec-
19 tion; and

20 ~~(C)~~ establish criteria for Government of-
21 fices to follow when transmitting copies of civil
22 rights cold case records to the Archivist, to in-
23 clude required metadata.

24 ~~(2)~~ CONTENTS OF COLLECTION.—The Collec-
25 tion shall include—

1 (A) a copy of each civil rights cold case
2 record—

3 (i) that has not been transmitted to
4 the Archivist, which shall be transmitted
5 by the entity described in section 3(3) in
6 possession of the civil rights cold case
7 record to the Archivist in accordance with
8 section 2107 of title 44, United States
9 Code; or

10 (ii) that has been transmitted to the
11 Archivist or disclosed to the public in an
12 unredacted form before the date of the en-
13 actment of this Act;

14 (iii) that is required to be transmitted
15 to the Archivist; or

16 (iv) the disclosure of which is post-
17 poned under this Act; and

18 (B) all Review Board records, as required
19 under this Act.

20 (b) DISCLOSURE OF RECORDS.—All civil rights cold
21 case records transmitted to the Archivist for disclosure to
22 the public—

23 (1) shall be included in the Collection;

24 (2) not later than 60 days after the trans-
25 mission of the record to the Archivist, shall be avail-

1 able to the public for inspection and copying at the
2 National Archives; and

3 ~~(3)~~ shall be prioritized for digitization by the
4 National Archives.

5 ~~(c) FEES FOR COPYING.~~—The Archivist shall—

6 ~~(1)~~ use efficient electronic means when possible;

7 ~~(2)~~ charge fees for copying civil rights cold case
8 records; and

9 ~~(3)~~ grant waivers of such fees pursuant to the
10 standard established under section 552(a)(4) of title
11 5, United States Code.

12 ~~(d) ADDITIONAL REQUIREMENTS.~~—The Archivist
13 shall ensure the security of civil rights cold case records
14 in the Collection for which disclosure is postponed.

15 ~~(e) TRANSMISSION TO THE NATIONAL ARCHIVES.~~—

16 Each Government office shall, in accordance with the cri-
17 teria established by the Archivist under subsection
18 ~~(a)(1)(C)~~—

19 ~~(1)~~ not later than 300 days after the date of
20 the enactment of this Act, transmit to the Archivist,
21 for the Archivist to make available to the public in
22 accordance with subsection ~~(b)~~, a copy of each civil
23 rights cold case record that can be publicly disclosed,
24 including any such record that is publicly available
25 on the date of enactment of this Act, without any re-

1 daction, adjustment, or withholding under the stand-
 2 ards of this Act; and

3 ~~(2)~~ transmit to the Archivist upon approval for
 4 postponement by the Review Board or upon comple-
 5 tion of other action authorized by this Act, a copy
 6 of each civil rights cold case record for which public
 7 disclosure has been postponed, in whole or in part,
 8 under the standards of this Act, to become part of
 9 the protected Collection.

10 ~~(f)~~ PERIODIC REVIEW OF POSTPONED CIVIL RIGHTS
 11 COLD CASE RECORDS.—

12 ~~(1)~~ IN GENERAL.—Each civil rights cold case
 13 record that is redacted or for which public disclosure
 14 is postponed shall be reviewed not later than Decem-
 15 ber ~~31~~ each year by the entity submitting the record
 16 and the Archivist, consistent with the recommenda-
 17 tions of the Review Board under section 8(c)(3)(B).

18 ~~(2)~~ REQUIREMENTS OF PERIODIC REVIEW.—

19 The periodic review under paragraph (1) shall—

20 (A) address the public disclosure of addi-
 21 tional civil rights cold case records in the Col-
 22 lection under the standards of this Act; and

23 (B) serve to declassify classified informa-
 24 tion, with the presumption of providing public
 25 disclosure.

1 ~~(3) UNCLASSIFIED WRITTEN DESCRIPTION.—~~

2 Any civil rights cold case record for which postpone-
3 ment of public disclosure is continued shall include
4 an unclassified written description of the reason for
5 such continued postponement, which shall be pro-
6 vided to the Archivist and made available on a pub-
7 licly accessible website upon the determination to
8 continue the postponement.

9 ~~(4) FULL DISCLOSURE OF CIVIL RIGHTS COLD~~
10 ~~CASE RECORD REQUIRED.—~~

11 ~~(A) IN GENERAL.—~~Each civil rights cold
12 case record that is not publicly disclosed in full
13 as of the date on which the Review Board ter-
14 minates under section 6(n) shall be publicly dis-
15 closed in full and available in the Collection not
16 later than 25 years after the date of enactment
17 of this Act unless—

18 ~~(i)~~ the head of the originating body;
19 an executive agency; or other Government
20 office recommends in writing that contin-
21 ued postponement is made necessary by an
22 identifiable harm to military defense, law
23 enforcement, intelligence operations, or the
24 conduct of foreign relations that is of such

1 gravity that it outweighs the public inter-
 2 est in disclosure;

3 (ii) the written recommendation de-
 4 scribed in clause (i)—

5 (I) is provided to the Archivist
 6 not later than 180 days before the
 7 date that is 25 years after the date of
 8 enactment of this Act; and

9 (II) includes—

10 (aa) a justification of the
 11 recommendation to postpone dis-
 12 closure; and

13 (bb) a recommended speci-
 14 fied time at which or a specified
 15 occurrence following which the
 16 material may be appropriately
 17 disclosed to the public under this
 18 Act; and

19 (iii) the Archivist agrees with the
 20 written recommendation described in
 21 clause (i).

22 (B) NOTIFICATION.—If the Archivist does
 23 not agree with the recommendation described in
 24 subparagraph (A)(1), the Archivist shall notify
 25 the head of the originating body, executive

1 agency, or other Government office making the
 2 recommendation not later than 90 days before
 3 the date that is 25 years after the date of en-
 4 actment of this Act.

5 (g) DIGITIZATION OF RECORDS.—Each executive
 6 agency shall make text searchable documents available to
 7 the Review Board pursuant to standards established under
 8 section 552(a)(3) of title 5, United States Code.

9 **SEC. 5. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
 10 **SURE OF RECORDS.**

11 Disclosure of civil rights cold case records or par-
 12 ticular information within a civil rights cold case record
 13 to the public may be postponed subject to the limitations
 14 of this Act if there is clear and convincing evidence of any
 15 of the following:

16 (1) The threat to the military defense, law en-
 17 forcement, intelligence operations, or the conduct of
 18 domestic affairs of the United States posed by the
 19 public disclosure of the civil rights cold case record
 20 is of such gravity that the disclosure outweighs the
 21 public interest and would reveal information de-
 22 scribed in paragraphs (1) through (9) of section
 23 3.3(b) of Executive Order 13526 (75 Fed. Reg. 707;
 24 relating to classified national security information).

1 (2) The public disclosure of the civil rights cold
2 case record would reveal the name or identity of a
3 living individual who provided confidential informa-
4 tion to the United States and would pose a substan-
5 tial risk of harm to that individual.

6 (3) The public disclosure of the civil rights cold
7 case record could reasonably be expected to con-
8 stitute an unwarranted invasion of personal privacy,
9 and that invasion of privacy is so substantial that
10 the protection of privacy outweighs the public inter-
11 est.

12 (4) The public disclosure of the civil rights cold
13 case record would compromise the existence of an
14 understanding of confidentiality currently requiring
15 protection between a Government agent and a co-
16 operating individual or group and public disclosure
17 would be so harmful that the understanding of con-
18 fidentiality outweighs the public interest.

19 **SEC. 6. ESTABLISHMENT AND POWERS OF THE CIVIL**
20 **RIGHTS COLD CASE RECORDS REVIEW**
21 **BOARD.**

22 (a) **ESTABLISHMENT.**—There is established, as an
23 independent agency, a board to be known as the Civil
24 Rights Cold Case Records Review Board.

25 (b) **APPOINTMENT.**—

1 (1) IN GENERAL.—The President shall appoint,
2 by and with the advice and consent of the Senate,
3 5 individuals to serve as members of the Review
4 Board to ensure and facilitate the review, trans-
5 mission to the Archivist, and public disclosure of
6 civil rights cold case records.

7 (2) INITIAL APPOINTMENT.—

8 (A) IN GENERAL.—Initial appointments to
9 the Review Board shall, so far as practicable,
10 be made not later than 60 days after the enact-
11 ment of this Act.

12 (B) RECOMMENDATIONS.—In making ap-
13 pointments to the Review Board, the President
14 shall consider any individuals recommended by
15 the American Historical Association, the Orga-
16 nization of American Historians, the Society of
17 American Archivists, and the American Bar As-
18 sociation.

19 (C) EXTENSION.—If an organization de-
20 scribed in subparagraph (B) does not rec-
21 ommend at least 2 nominees meeting the quali-
22 fications stated in paragraph (3) within 60 days
23 after the date of enactment of this Act, the
24 deadline under subparagraph (A) shall be ex-
25 tended until the earlier of 60 days after the

1 date on which such recommendations are made
 2 or 120 days after the date of enactment of this
 3 ~~Act.~~

4 ~~(D)~~ ~~ADDITIONAL RECOMMENDATIONS.—~~

5 The President may request that any organiza-
 6 tion described in subparagraph ~~(B)~~ submit ad-
 7 ditional recommended nominees.

8 ~~(3)~~ ~~QUALIFICATIONS.—~~Individuals nominated
 9 to the Review Board shall—

10 ~~(A)~~ not have had any previous involvement
 11 with any official investigation or inquiry con-
 12 ducted by the Federal Government, or any
 13 State or local government, relating to any civil
 14 rights cold case;

15 ~~(B)~~ be distinguished individuals of high
 16 national professional reputation in their respec-
 17 tive fields who are capable of exercising the
 18 independent and objective judgment necessary
 19 to fulfill their role in ensuring and facilitating
 20 the review, transmission to the public, and pub-
 21 lic disclosure of files related to civil rights cold
 22 cases and who possess an appreciation of the
 23 value of such material to the public, scholars,
 24 and government; and

1 (C) include at least 1 professional historian
2 and 1 attorney.

3 (c) SECURITY CLEARANCES.—All Review Board
4 nominees shall be processed for the necessary security
5 clearances in an accelerated manner by the appropriate
6 Federal agencies and subject to the standard procedures
7 for granting such clearances.

8 (d) VACANCY.—A vacancy on the Review Board shall
9 be filled in the same manner as the original appointment
10 within 60 days of the occurrence of the vacancy.

11 (e) CHAIRPERSON.—The members of the Review
12 Board shall elect 1 of the members as chairperson.

13 (f) REMOVAL OF REVIEW BOARD MEMBER.—

14 (1) IN GENERAL.—No member of the Review
15 Board shall be removed from office, other than—

16 (A) by impeachment and conviction; or

17 (B) by the action of the President for inef-
18 ficiency, neglect of duty, malfeasance in office,
19 physical disability, mental incapacity, or any
20 other condition that substantially impairs the
21 performance of the member's duties.

22 (2) REPORT.—

23 (A) IN GENERAL.—If a member of the Re-
24 view Board is removed from office, and that re-
25 moval is by the President, not later than 10

1 days after the removal, the President shall sub-
2 mit to the Committee on Oversight and Govern-
3 ment Reform of the House of Representatives
4 and the Committee on Homeland Security and
5 Governmental Affairs of the Senate a report
6 specifying the facts found and the grounds for
7 the removal.

8 (B) PUBLICATION.—The President shall
9 publish in the Federal Register a report sub-
10 mitted under subparagraph (A), except that the
11 President may, if necessary to protect the
12 rights of a person named in the report or to
13 prevent undue interference with any pending
14 prosecution, postpone or refrain from pub-
15 lishing any or all of the report until the comple-
16 tion of such pending cases or pursuant to pri-
17 vacy protection requirements in law.

18 (3) JUDICIAL REVIEW.—

19 (A) IN GENERAL.—A member of the Re-
20 view Board removed from office may obtain ju-
21 dicial review of the removal in a civil action
22 commenced in the United States District Court
23 for the District of Columbia.

1 (B) RELIEF.—The member may be rein-
 2 stated or granted other appropriate relief by
 3 order of the court.

4 (g) COMPENSATION OF MEMBERS.—

5 (1) IN GENERAL.—A member of the Review
 6 Board shall be compensated at a rate equal to the
 7 daily equivalent of the annual rate of basic pay pre-
 8 scribed for level IV of the Executive Schedule under
 9 section 5315 of title 5, United States Code, for each
 10 day (including travel time) during which the member
 11 is engaged in the performance of the duties of the
 12 Review Board.

13 (2) TRAVEL EXPENSES.—A member of the Re-
 14 view Board shall be allowed reasonable travel ex-
 15 penses, including per diem in lieu of subsistence, at
 16 rates for employees of agencies under subchapter I
 17 of chapter 57 of title 5, United States Code, while
 18 away from the member's home or regular place of
 19 business in the performance of services for the Re-
 20 view Board.

21 (h) DUTIES OF THE REVIEW BOARD.—

22 (1) IN GENERAL.—The Review Board shall con-
 23 sider and render decisions on a determination by a
 24 Government office to seek to postpone the disclosure
 25 of civil rights cold case records.

1 (2) DECISIONS.—In carrying out paragraph
2 (1), the Review Board shall consider and render de-
3 cisions—

4 (A) whether a record constitutes a civil
5 rights cold case record; and

6 (B) whether a civil rights cold case record
7 or particular information in a record qualifies
8 for postponement of disclosure under this Act.

9 (i) POWERS.—

10 (1) IN GENERAL.—The Review Board shall
11 have the authority to act in a manner prescribed
12 under this Act including the authority to—

13 (A) obtain access to civil rights cold case
14 records that have been identified and organized
15 by a Government office;

16 (B) direct a Government office to make
17 available to the Review Board; and if necessary
18 investigate the facts surrounding; additional in-
19 formation; records; or testimony from individ-
20 uals; which the Review Board has reason to be-
21 lieve is required to fulfill its functions and re-
22 sponsibilities under this Act;

23 (C) subpoena private persons to compel
24 testimony; records; and other information rel-
25 evant to its responsibilities under this Act;

1 ~~(D)~~ require any Government office to ac-
 2 count in writing for the destruction of any
 3 records relating to civil rights cold cases;

4 ~~(E)~~ receive information from the public re-
 5 garding the identification and public disclosure
 6 of civil rights cold case records; and

7 ~~(F)~~ hold hearings, administer oaths, and
 8 subpoena witnesses and documents.

9 ~~(2) ENFORCEMENT OF SUBPOENAS.—~~Any sub-
 10 poena issued under this subsection may be enforced
 11 by any appropriate Federal court acting pursuant to
 12 a lawful request of the Review Board.

13 ~~(j) WITNESS IMMUNITY.—~~The Review Board shall be
 14 considered to be an agency of the United States for pur-
 15 poses of chapter 601 of title 18, United States Code.

16 ~~(k) OVERSIGHT.—~~

17 ~~(1) IN GENERAL.—~~The Committee on Oversight
 18 and Government Reform of the House of Represent-
 19 atives and the Committee on Homeland Security and
 20 Governmental Affairs of the Senate shall have con-
 21 tinuing oversight jurisdiction with respect to the offi-
 22 cial conduct of the Review Board and the disposition
 23 of postponed records after termination of the Review
 24 Board, and shall have access to any records held or
 25 created by the Review Board.

1 (2) COOPERATION OF REVIEW BOARD.—The
2 Review Board shall have a duty to cooperate with
3 the exercised of the oversight jurisdiction described
4 in paragraph (1).

5 (l) SUPPORT SERVICES.—The Administrator of Gen-
6 eral Services shall provide administrative services for the
7 Review Board on a reimbursable basis.

8 (m) INTERPRETIVE REGULATIONS.—The Review
9 Board may issue interpretive regulations.

10 (n) TERMINATION.—

11 (1) IN GENERAL.—The Review Board shall ter-
12 minate not later than 3 years after the enactment of
13 this Act, except that the Review Board may, by ma-
14 jority vote, extend its term for an additional 1-year
15 period if the Review Board has not completed its
16 work within that 3-year period.

17 (2) REPORTS.—Before its termination, the Re-
18 view Board shall submit reports to the President
19 and the Congress, including a complete and accurate
20 accounting of expenditures during its existence, and
21 shall complete all other reporting requirements
22 under this Act.

23 (3) TRANSFER OF RECORDS.—

1 (A) ~~IN GENERAL.~~—Upon termination, the
 2 Review Board shall transfer all of its records to
 3 the Archivist for inclusion in the Collection.

4 (B) ~~PRESERVATION OF RECORDS.~~—The
 5 records of the Review Board shall not be de-
 6 stroyed, except that the Archivist may destroy
 7 routine administrative records covered by a gen-
 8 eral records schedule following notification in
 9 the Federal Register and after considering com-
 10 ments.

11 **~~SEC. 7. REVIEW BOARD PERSONNEL.~~**

12 (a) ~~CHIEF OF STAFF.~~—

13 (1) ~~APPOINTMENT.~~—Not later than 45 days
 14 after the initial meeting of the Review Board, and
 15 without regard to political affiliation, the Review
 16 Board shall appoint an individual to the position of
 17 Chief of Staff of the Review Board.

18 (2) ~~REQUIREMENTS.~~—The individual appointed
 19 as Chief of Staff—

20 (A) shall be a citizen of the United States
 21 of integrity and impartiality who is a distin-
 22 guished professional; and

23 (B) shall have had no previous involvement
 24 with any official investigation or inquiry relat-
 25 ing to civil rights cold cases.

1 ~~(3) CANDIDATE TO HAVE CLEARANCES.—~~A
 2 candidate for Chief of Staff shall be granted the nec-
 3 essary security clearances in an accelerated manner
 4 subject to the standard procedures for granting such
 5 clearances.

6 ~~(4) APPROVAL CONTINGENT ON PRIOR CLEAR-~~
 7 ~~ANCE.—~~A candidate shall qualify for the necessary
 8 security clearance prior to being appointed by the
 9 Review Board.

10 ~~(5) DUTIES.—~~The Chief of Staff shall—

11 (A) serve as principal liaison to Govern-
 12 ment offices;

13 (B) be responsible for the administration
 14 and coordination of the Review Board's review
 15 of records;

16 (C) be responsible for the administration
 17 of all official activities conducted by the Review
 18 Board; and

19 (D) have no authority to decide or deter-
 20 mine whether any record shall be disclosed to
 21 the public or postponed for disclosure.

22 ~~(6) REMOVAL.—~~The Chief of Staff shall not be
 23 removed except upon a majority vote of the Review
 24 Board to remove the Chief of Staff for cause on the
 25 grounds of inefficiency, neglect of duty, malfeasance

1 in office, physical disability, mental incapacity, or
 2 any other condition that substantially impairs the
 3 performance of the responsibilities of the Chief of
 4 Staff or the employees of the Review Board.

5 (b) STAFF.—

6 (1) ADDITIONAL PERSONNEL.—The Review
 7 Board may, in accordance with the civil service laws
 8 but without regard to civil service laws and regula-
 9 tions for appointments in the competitive service
 10 under subchapter I of chapter 33 of title 5, United
 11 States Code, appoint and terminate additional em-
 12 ployees as are necessary to enable the Review Board
 13 and its Chief of Staff to perform its duties.

14 (2) REQUIREMENTS.—An individual appointed
 15 as an employee of the Review Board—

16 (A) shall be a private citizen of integrity
 17 and impartiality; and

18 (B) shall have had no previous involvement
 19 with any official investigation or inquiry relat-
 20 ing to the civil rights cold cases.

21 (3) NOMINATIONS.—Before making an appoint-
 22 ment pursuant to paragraph (1), the Review Board
 23 shall consider individuals recommended by the
 24 American Historical Association, the Organization of

1 American Historians, the Society of American Archi-
 2 vists, and the American Bar Association.

3 ~~(4) SECURITY CLEARANCES.~~—A candidate shall
 4 qualify for the necessary security clearance prior to
 5 being appointed by the Review Board.

6 ~~(c) COMPENSATION.~~—The Review Board shall fix the
 7 compensation of the Chief of Staff and other employees
 8 in accordance with title 5, United States Code, except that
 9 the rate of pay for the Chief of Staff and other employees
 10 may not exceed the rate payable for level V of the Execu-
 11 tive Schedule under section 5316 of that title.

12 ~~(d) ADVISORY COMMITTEES.~~—The Review Board
 13 may create advisory committees to assist in fulfilling the
 14 responsibilities of the Review Board under this Act.

15 **SEC. 8. REVIEW OF RECORDS BY THE REVIEW BOARD.**

16 ~~(a) CUSTODY OF RECORDS REVIEWED BY THE~~
 17 ~~BOARD.~~—Pending the outcome of the Review Board's re-
 18 view activity, a Government office shall retain custody of
 19 a civil rights cold case records for purposes of preserva-
 20 tion, security, and efficiency, unless—

21 ~~(1) the Review Board requires the physical~~
 22 ~~transfer of records for reasons of conducting an~~
 23 ~~independent and impartial review; or~~

1 (2) such transfer is necessary for an adminis-
 2 trative hearing or other official Review Board func-
 3 tion.

4 (b) **STARTUP REQUIREMENTS.**—The Review Board
 5 shall—

6 (1) not later than 90 days after the date on
 7 which all members of the Review Board are ap-
 8 pointed, publish a schedule for review of all civil
 9 rights cold case records in the Federal Register; and

10 (2) not later than 180 days after the enactment
 11 of this Act, begin its review of civil rights cold case
 12 records under this Act.

13 (c) **DETERMINATION OF THE REVIEW BOARD.**—

14 (1) **IN GENERAL.**—The Review Board shall di-
 15 rect that copies of all civil rights cold case records
 16 be transmitted to the Archivist and disclosed to the
 17 public in the Collection in the absence of clear and
 18 convincing evidence that—

19 (A) a Government record is not a civil
 20 rights cold case record; or

21 (B) a Government record or particular in-
 22 formation within a civil rights cold case record
 23 qualifies for postponement of public disclosure
 24 under this Act.

1 (2) POSTPONEMENT.—In approving postpone-
 2 ment of public disclosure of a civil rights cold case
 3 record, the Review Board shall work to—

4 (A) provide for the disclosure of segregable
 5 parts, substitutes, or summaries of such a
 6 record; and

7 (B) determine, in consultation with the
 8 originating body and consistent with the stand-
 9 ards for postponement under this Act, which of
 10 the following alternative forms of disclosure
 11 shall be made by the originating body:

12 (i) Any reasonably segregable par-
 13 ticular information in a civil rights cold
 14 case record.

15 (ii) A substitute record for that infor-
 16 mation which is postponed.

17 (iii) A summary of a civil rights cold
 18 case record.

19 (3) REPORT.—With respect to each civil rights
 20 cold case record or particular information in civil
 21 rights cold case records the public disclosure of
 22 which is postponed under section 5, or for which
 23 only substitutions or summaries have been disclosed
 24 to the public, the Review Board shall create and
 25 transmit to the Archivist a report containing—

1 (A) a description of actions by the Review
 2 Board, the originating body, the President, or
 3 any Government office (including a justification
 4 of any such action to postpone disclosure of any
 5 record or part of any record) and of any official
 6 proceedings conducted by the Review Board
 7 with regard to specific civil rights cold case
 8 records; and

9 (B) a statement, based on a review of the
 10 proceedings and in conformity with the deci-
 11 sions reflected therein, designating a rec-
 12 ommended specified time at which or a specified
 13 occurrence following which the material may be
 14 appropriately disclosed to the public under this
 15 Act.

16 (4) NOTICE.—Not later than 14 days after the
 17 Review Board makes a determination that a civil
 18 rights cold case record shall be publicly disclosed in
 19 the Collection or postponed for disclosure and held
 20 in the protected Collection, the Review Board shall
 21 notify the head of the originating body of its deter-
 22 mination and publish a copy of the determination in
 23 the Federal Register.

24 (5) OTHER NOTICE.—Contemporaneous notice
 25 shall be made to the President of Review Board de-

1 terminations regarding executive branch civil rights
 2 cold case records, and to the oversight committees
 3 designated in this Act in the case of legislative
 4 branch records. Such notice shall contain a written
 5 unclassified justification for public disclosure or
 6 postponement of disclosure, including an explanation
 7 of the application of any standards under section 5.

8 (d) PRESIDENTIAL AUTHORITY OVER REVIEW
 9 BOARD DETERMINATION.—

10 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
 11 OF DISCLOSURE.—After the Review Board has made
 12 a formal determination concerning the public disclo-
 13 sure or postponement of disclosure of an executive
 14 branch civil rights cold case record or information
 15 contained in a civil rights cold case record, obtained
 16 or developed solely within the executive branch, the
 17 President shall have the sole and nondelegable au-
 18 thority to require the disclosure or postponement of
 19 such record or information under the standards set
 20 forth in section 5, and the President shall provide
 21 the Review Board with an unclassified written cer-
 22 tification specifying the President's decision within
 23 30 days after the Review Board's determination and
 24 notice to the executive agency as required under this
 25 Act, stating the justification for the President's deci-

1 sion, including the applicable grounds for postpone-
2 ment under section 5.

3 ~~(2) PERIODIC REVIEW.~~—Any executive branch
4 civil rights cold case record for which public disclo-
5 sure is postponed by the President shall be subject
6 to the requirements of periodic review and declas-
7 sification of classified information and public disclo-
8 sure in the Collection set forth in section 4.

9 ~~(3) RECORD OF PRESIDENTIAL POSTPONE-~~
10 ~~MENT.~~—The Review Board shall, upon its receipt,
11 publish in the Federal Register a copy of any unclas-
12 sified written certification, statement, and other ma-
13 terials transmitted by or on behalf of the President
14 with regard to postponement of the public disclosure
15 of civil rights cold case records.

16 ~~(c) NOTICE TO THE PUBLIC.~~—On each day that is
17 on or after the date that is 60 days after the Review Board
18 first approves the postponement of disclosure of a civil
19 rights cold case record, the Review Board shall publish
20 on a publicly available website a notice that summarizes
21 the postponements approved by the Review Board or initi-
22 ated by the President, including a description of the sub-
23 ject, originating agency, length or other physical descrip-
24 tion, and each ground for postponement that is relied
25 upon.

1 (f) REPORTS BY THE REVIEW BOARD.—

2 (1) IN GENERAL.—The Review Board shall re-
 3 port its activities to the Speaker of the House of
 4 Representatives, the Minority Leader of the House
 5 of Representatives, the Committee on Oversight and
 6 Government Reform of the House of Representa-
 7 tives, the Majority Leader of the Senate, the Minor-
 8 ity Leader of the Senate, the Committee on Home-
 9 land Security and Governmental Affairs of the Sen-
 10 ate, the President, the Archivist, and the head of
 11 any Government office whose records have been the
 12 subject of Review Board activity.

13 (2) DEADLINES.—Not later than 1 year after
 14 the date of enactment of this Act, and every year
 15 thereafter until termination of the Review Board,
 16 the Review Board shall issue a report under para-
 17 graph (1).

18 (3) CONTENTS.—Each report under paragraph
 19 (1) shall include the following information:

20 (A) A financial report of the expenses for
 21 all official activities and requirements of the
 22 Review Board and its employees.

23 (B) The progress made on review, trans-
 24 mission to the Archivist, and public disclosure
 25 of civil rights cold case records.

1 (C) The estimated time and volume of civil
 2 rights cold case records involved in the comple-
 3 tion of the Review Board's performance under
 4 this Act.

5 (D) Any special problems, including re-
 6 quests and the level of cooperation of Govern-
 7 ment offices, with regard to the ability of the
 8 Review Board to operate as required by this
 9 Act.

10 (E) A record of review activities, including
 11 a record of postponement decisions by the Re-
 12 view Board or other related actions authorized
 13 by this Act, and a record of the volume of
 14 records reviewed and postponed.

15 (F) Recommendations and requests to
 16 Congress for additional authorization.

17 (G) An appendix containing copies of re-
 18 ports of postponed records to the Archivist re-
 19 quired under section subsection (c)(3) made
 20 since the date of the preceding report under
 21 this subsection.

22 (4) NOTICE OF TERMINATION.—Not later than
 23 90 days before terminating, the Review Board shall
 24 provide written notice to the President and the Con-

1 gress of its intention to terminate its operations at
2 a specified date.

3 **SEC. 9. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
4 **TIONAL STUDY.**

5 (a) MATERIALS UNDER THE SEAL OF THE COURT.—

6 (1) IN GENERAL.—The Review Board may re-
7 quest the Attorney General to petition any court in
8 the United States or abroad to release any informa-
9 tion relevant to civil rights cold cases that is held
10 under seal of court.

11 (2) GRAND JURY MATERIALS.—

12 (A) IN GENERAL.—The Review Board may
13 request the Attorney General to petition any
14 court in the United States to release any infor-
15 mation relevant to civil rights cold cases that is
16 held under the injunction of secrecy of a grand
17 jury.

18 (B) PARTICULARIZED NEED.—A request
19 for disclosure of civil rights cold case records
20 under this Act shall be deemed to constitute a
21 showing of particularized need under rule 6 of
22 the Federal Rules of Criminal Procedure.

23 (3) DEADLINE.—The Attorney General shall
24 comply with any request that is subject to this sub-
25 section within 45 days.

1 (b) COOPERATION WITH AGENCIES.—It is the sense
2 of Congress that—

3 (1) the Attorney General should assist the Re-
4 view Board in good faith to unseal any records that
5 the Review Board determines to be relevant and held
6 under the seal by a court or under the injunction of
7 secrecy of a grand jury; and

8 (2) all departments and agencies of the United
9 States Government should cooperate in full with the
10 Review Board to seek the disclosure of all informa-
11 tion relevant to civil rights cold cases consistent with
12 the public interest.

13 **SEC. 10. RULES OF CONSTRUCTION.**

14 (a) PRECEDENCE OVER OTHER LAW.—When this
15 Act requires transmission of a record to the Archivist or
16 public disclosure, it shall take precedence over any other
17 law (except section 6103 of the Internal Revenue Code of
18 1986), judicial decisions construing such law, or common
19 law doctrine that would otherwise prohibit such trans-
20 mission or disclosure with the exception of deeds governing
21 access to or transfer or release of gifts and donations of
22 records to the United States Government.

23 (b) FREEDOM OF INFORMATION ACT.—Nothing in
24 this Act shall be construed to eliminate or limit any right
25 to file any requests with any executive agency or seek judi-

1 cial review of the decisions under section 552 of title 5,
2 United States Code.

3 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
4 construed to preclude judicial review, under chapter 7 of
5 title 5, United States Code, of final actions taken or re-
6 quired to be taken under this Act.

7 (d) EXISTING AUTHORITY.—Nothing in this Act re-
8 vokes or limits the existing authority of the President, any
9 executive agency, the Senate, the House of Representa-
10 tives, or any other entity of the Government to publicly
11 disclose records in its possession.

12 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There are authorized to be appro-
14 priated such sums as are necessary to carry out this Act,
15 to remain available until expended.

16 (b) INTERIM PROVISIONS.—Until such time as funds
17 are appropriated pursuant to subsection (a), the President
18 shall use such sums as are available for discretionary use
19 to carry out this Act.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Civil Rights Cold Case*
22 *Records Collection Act of 2018”.*

23 **SEC. 2. DEFINITIONS.**

24 *In this Act:*

1 (1) *ARCHIVIST*.—The term “Archivist” means
2 the Archivist of the United States.

3 (2) *CIVIL RIGHTS COLD CASE*.—The term “civil
4 rights cold case” means any unsolved case—

5 (A) arising out of events which occurred
6 during the period beginning on January 1, 1940
7 and ending on December 31, 1979; and

8 (B) related to—

9 (i) section 241 of title 18, United
10 States Code (relating to conspiracy against
11 rights);

12 (ii) section 242 of title 18, United
13 States Code (relating to deprivation of
14 rights under color of law);

15 (iii) section 245 of title 18, United
16 States Code (relating to federally protected
17 activities);

18 (iv) sections 1581 and 1584 of title 18,
19 United States Code (relating to peonage
20 and involuntary servitude);

21 (v) section 901 of the Fair Housing
22 Act (42 U.S.C. 3631); or

23 (vi) any other Federal law that was—

24 (I) in effect on or before December
25 31, 1979; and

1 (II) enforced by the criminal sec-
2 tion of the Civil Rights Division of the
3 Department of Justice before the date
4 of enactment of this Act.

5 (3) *CIVIL RIGHTS COLD CASE RECORD.*—The
6 term “civil rights cold case record” means a record
7 that—

8 (A) is related to a civil rights cold case; and
9 (B) was created or made available for use
10 by, obtained by, or otherwise came into the pos-
11 session of—

12 (i) the Library of Congress;

13 (ii) the National Archives;

14 (iii) any executive agency;

15 (iv) any independent agency;

16 (v) any other entity of the Federal
17 Government; or

18 (vi) any State or local government, or
19 component thereof, that provided support or
20 assistance or performed work in connection
21 with a Federal inquiry into a civil rights
22 cold case.

23 (4) *COLLECTION.*—The term “Collection” means
24 the Civil Rights Cold Case Records Collection estab-
25 lished under section 3.

1 (5) *EXECUTIVE AGENCY.*—*The term “executive*
 2 *agency” means an agency, as defined in section*
 3 *552(f) of title 5, United States Code.*

4 (6) *GOVERNMENT OFFICE.*—*The term “Govern-*
 5 *ment office” means any office of the Federal Govern-*
 6 *ment that has possession or control of 1 or more civil*
 7 *rights cold case records.*

8 (7) *GOVERNMENT OFFICIAL.*—*The term “Govern-*
 9 *ment official” means any officer or employee of the*
 10 *United States, including elected and appointed offi-*
 11 *cials.*

12 (8) *NATIONAL ARCHIVES.*—*The term “National*
 13 *Archives” means the National Archives and Records*
 14 *Administration and all components thereof, including*
 15 *Presidential archival depositories established under*
 16 *section 2112 of title 44, United States Code.*

17 (9) *OFFICIAL INVESTIGATION.*—*The term “offi-*
 18 *cial investigation” means the review of a civil rights*
 19 *cold case conducted by any entity of the Federal Gov-*
 20 *ernment either independently, at the request of any*
 21 *Presidential commission or congressional committee,*
 22 *or at the request of any Government official.*

23 (10) *ORIGINATING BODY.*—*The term “originating*
 24 *body” means the executive agency, Government com-*
 25 *mission, congressional committee, or other Govern-*

1 *mental entity that created a record or particular in-*
 2 *formation within a record.*

3 (11) *PUBLIC INTEREST.*—*The term “public in-*
 4 *terest” means the compelling interest in the prompt*
 5 *public disclosure of civil rights cold case records for*
 6 *historical and Governmental purposes and for the*
 7 *purpose of fully informing the people of the United*
 8 *States about the history surrounding all civil rights*
 9 *cold cases in the United States.*

10 (12) *RECORD.*—*The term “record” has the mean-*
 11 *ing given the term in section 3301 of title 44, United*
 12 *States Code.*

13 (13) *REVIEW BOARD.*—*The term “Review*
 14 *Board” means the Civil Rights Cold Case Records Re-*
 15 *view Board established under section 5.*

16 **SEC. 3. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
 17 **AT THE NATIONAL ARCHIVES AND RECORD**
 18 **ADMINISTRATION.**

19 (a) *IN GENERAL.*—

20 (1) *ESTABLISHMENT OF THE CIVIL RIGHTS COLD*
 21 *CASE RECORDS COLLECTION.*—*Not later than 60 days*
 22 *after the date of enactment of this Act, the Archivist*
 23 *shall—*

24 (A) *commence establishing a collection of*
 25 *civil rights cold case records to be known as the*

1 *“Civil Rights Cold Case Records Collection” that*
 2 *ensures the physical integrity and original prov-*
 3 *enance of all records in the Collection;*

4 *(B) commence preparing and publishing the*
 5 *subject guidebook and index to the Collection;*
 6 *and*

7 *(C) establish criteria for Government offices*
 8 *to follow when transmitting copies of civil rights*
 9 *cold case records to the Archivist, to include re-*
 10 *quired metadata.*

11 (2) *CONTENTS OF COLLECTION.—The Collection*
 12 *shall include—*

13 *(A) a copy of each civil rights cold case*
 14 *record—*

15 *(i) that has not been transmitted to the*
 16 *Archivist, which shall be transmitted to the*
 17 *Archivist in accordance with section 2107 of*
 18 *title 44, United States Code, by the entity*
 19 *described in section 2(3)(B) in possession of*
 20 *the civil rights cold case record, except in*
 21 *the case of a State or local government;*

22 *(ii) that has been transmitted to the*
 23 *Archivist or disclosed to the public in an*
 24 *unredacted form before the date of the enact-*
 25 *ment of this Act;*

1 (iii) that is required to be transmitted
2 to the Archivist; or

3 (iv) the disclosure of which is post-
4 poned under this Act; and

5 (B) all Review Board records, as required
6 under this Act.

7 (b) *DISCLOSURE OF RECORDS.*—All civil rights cold
8 case records transmitted to the Archivist for disclosure to
9 the public—

10 (1) shall be included in the Collection;

11 (2) not later than 60 days after the transmission
12 of the record to the Archivist, shall be available to the
13 public for inspection and copying at the National Ar-
14 chives; and

15 (3) shall be prioritized for digitization by the
16 National Archives.

17 (c) *FEES FOR COPYING.*—The Archivist shall—

18 (1) use efficient electronic means when possible;

19 (2) charge fees for copying civil rights cold case
20 records; and

21 (3) grant waivers of such fees pursuant to the
22 standard established under section 552(a)(4) of title
23 5, United States Code.

1 (d) *ADDITIONAL REQUIREMENTS.—The Archivist shall*
 2 *ensure the security of civil rights cold case records in the*
 3 *Collection for which disclosure is postponed.*

4 (e) *TRANSMISSION TO THE NATIONAL ARCHIVES.—*

5 (1) *IN GENERAL.—Subject to paragraph (2),*
 6 *each Government office shall, in accordance with the*
 7 *criteria established by the Archivist under subsection*
 8 *(a)(1)(C)—*

9 (A) *as soon as is reasonably practicable,*
 10 *and in any event not later than 2 years after the*
 11 *date of the enactment of this Act, transmit to the*
 12 *Archivist, for the Archivist to make available to*
 13 *the public in accordance with subsection (b), a*
 14 *copy of each civil rights cold case record that can*
 15 *be publicly disclosed, including any such record*
 16 *that is publicly available on the date of enact-*
 17 *ment of this Act, without any redaction, adjust-*
 18 *ment, or withholding under the standards of this*
 19 *Act; and*

20 (B) *transmit to the Archivist upon approval*
 21 *for postponement by the Review Board or upon*
 22 *completion of other action authorized by this*
 23 *Act, a copy of each civil rights cold case record*
 24 *for which public disclosure has been postponed,*

1 *in whole or in part, under the standards of this*
 2 *Act, to become part of the protected Collection.*

3 (2) *REOPENING OF CASES.*—*If, not later than 2*
 4 *years after the date of enactment of this Act, the At-*
 5 *torney General submits to the Archivist a certification*
 6 *that the Attorney General intends to reopen and pur-*
 7 *sue prosecution of the civil rights cold case to which*
 8 *a civil rights cold case record relates, the Attorney*
 9 *General shall transmit to the Archivist the civil rights*
 10 *cold case record in accordance with paragraph (1)—*

11 *(A) not later than 90 days after—*

12 *(i) final judgment is entered in the*
 13 *proceedings relating to the civil rights cold*
 14 *case; or*

15 *(ii) proceedings relating to the civil*
 16 *rights cold case are dismissed with preju-*
 17 *dice; or*

18 *(B) not later than the date that is 1 year*
 19 *after the date on which the Attorney General*
 20 *submits to the Archivist the certification, if an*
 21 *indictment or information has not been filed*
 22 *with respect to the civil rights cold case.*

23 *(f) PERIODIC REVIEW OF POSTPONED CIVIL RIGHTS*
 24 *COLD CASE RECORDS.*—

1 (1) *IN GENERAL.*—*Each civil rights cold case*
 2 *record that is redacted or for which public disclosure*
 3 *is postponed shall be reviewed not later than Decem-*
 4 *ber 31 each year by the entity submitting the record*
 5 *and the Archivist, consistent with the recommenda-*
 6 *tions of the Review Board under section 7(c)(3)(B).*

7 (2) *REQUIREMENTS OF PERIODIC REVIEW.*—*The*
 8 *periodic review under paragraph (1) shall address the*
 9 *public disclosure of additional civil rights cold case*
 10 *records in the Collection under the standards of this*
 11 *Act.*

12 (3) *UNCLASSIFIED WRITTEN DESCRIPTION.*—*Any*
 13 *civil rights cold case record for which postponement*
 14 *of public disclosure is continued shall include an un-*
 15 *classified written description of the reason for such*
 16 *continued postponement, which shall be provided to*
 17 *the Archivist and made available on a publicly acces-*
 18 *sible website upon the determination to continue the*
 19 *postponement.*

20 (4) *FULL DISCLOSURE OF CIVIL RIGHTS COLD*
 21 *CASE RECORD REQUIRED.*—

22 (A) *IN GENERAL.*—*Each civil rights cold*
 23 *case record that is not publicly disclosed in full*
 24 *as of the date on which the Review Board termi-*
 25 *nates under section 5(n) shall be publicly dis-*

1 *closed in full and available in the Collection not*
2 *later than 25 years after the date of enactment*
3 *of this Act unless—*

4 *(i) the head of the originating body, an*
5 *executive agency, or other Government office*
6 *recommends in writing the exemption of the*
7 *record or information, the release of which*
8 *would clearly and demonstrably be expected*
9 *to—*

10 *(I) cause identifiable or describ-*
11 *able damage to national security, mili-*
12 *tary defense, law enforcement, intel-*
13 *ligence operations, or the conduct of*
14 *foreign relations that is of such gravity*
15 *that it outweighs the public interest in*
16 *disclosure; or*

17 *(II) reveal information described*
18 *in paragraphs (1) through (9) of sec-*
19 *tion 3.3(b) of Executive Order 13526*
20 *(75 Fed. Reg. 707; relating to classified*
21 *national security information);*

22 *(ii) the written recommendation de-*
23 *scribed in clause (i)—*

24 *(I) is provided to the Archivist*
25 *not later than 180 days before the date*

1 *that is 25 years after the date of enact-*
 2 *ment of this Act; and*

3 *(II) includes—*

4 *(aa) a justification of the*
 5 *recommendation to postpone dis-*
 6 *closure; and*

7 *(bb) a recommended specified*
 8 *time at which or a specified oc-*
 9 *currence following which the ma-*
 10 *terial may be appropriately dis-*
 11 *closed to the public under this*
 12 *Act; and*

13 *(iii) the Archivist agrees with the writ-*
 14 *ten recommendation described in clause (i).*

15 *(B) NOTIFICATION.—If the Archivist does*
 16 *not agree with the recommendation described in*
 17 *subparagraph (A)(i), the Archivist shall notify*
 18 *the head of the originating body, executive agen-*
 19 *cy, or other Government office making the rec-*
 20 *ommendation not later than 90 days before the*
 21 *date that is 25 years after the date of enactment*
 22 *of this Act.*

23 *(g) DIGITIZATION OF RECORDS.—Each executive agen-*
 24 *cy shall make text searchable documents available to the Re-*

1 *view Board pursuant to standards established under section*
 2 *552(a)(3) of title 5, United States Code.*

3 *(h) NOTICE REGARDING PUBLIC DISCLOSURE.—*

4 *(1) FINDING.—Congress finds that the public re-*
 5 *lease of case-related documents and information with-*
 6 *out notice may significantly affect the victims of the*
 7 *events to which the case relates and their next of kin.*

8 *(2) NOTICE.—Not later than 7 days before a*
 9 *civil rights cold case record is publicly disclosed, the*
 10 *executive agency releasing the civil rights cold case*
 11 *record, in coordination with the Government office*
 12 *that had possession or control of the civil rights cold*
 13 *case record, shall take all reasonable efforts to provide*
 14 *the civil rights cold case record to the victims of the*
 15 *events to which the civil rights cold case record re-*
 16 *lates, or their next of kin.*

17 **SEC. 4. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
 18 **SURE OF RECORDS.**

19 *Disclosure of civil rights cold case records or particular*
 20 *information within a civil rights cold case record to the*
 21 *public may be postponed subject to the limitations of this*
 22 *Act if disclosure would clearly and demonstrably be ex-*
 23 *pected to—*

24 *(1)(A) cause identifiable or describable damage*
 25 *to national security, military defense, law enforce-*

1 *ment, intelligence operations, or the conduct of foreign*
2 *relations that is of such gravity that it outweighs the*
3 *public interest in disclosure; or*

4 *(B) reveal information described in paragraphs*
5 *(1) through (9) of section 3.3(b) of Executive Order*
6 *13526 (75 Fed. Reg. 707; relating to classified na-*
7 *tional security information);*

8 *(2)(A) reveal the name or identity of a living in-*
9 *dividual who provided confidential information to the*
10 *United States; and*

11 *(B) pose a substantial risk of harm to that indi-*
12 *vidual;*

13 *(3) constitute an unwarranted invasion of per-*
14 *sonal privacy;*

15 *(4)(A) compromise the existence of an under-*
16 *standing of confidentiality currently requiring protec-*
17 *tion between a Government agent and a cooperating*
18 *individual or group; and*

19 *(B) be so harmful that the understanding of con-*
20 *fidentiality outweighs the public interest;*

21 *(5) endanger the life or physical safety of any*
22 *individual; or*

23 *(6) interfere with ongoing law enforcement pro-*
24 *ceedings.*

1 **SEC. 5. ESTABLISHMENT AND POWERS OF THE CIVIL**
 2 **RIGHTS COLD CASE RECORDS REVIEW**
 3 **BOARD.**

4 (a) *ESTABLISHMENT.*—*There is established, as an*
 5 *independent agency, a board to be known as the Civil*
 6 *Rights Cold Case Records Review Board.*

7 (b) *APPOINTMENT.*—

8 (1) *IN GENERAL.*—*The President shall appoint,*
 9 *by and with the advice and consent of the Senate, 5*
 10 *individuals to serve as members of the Review Board,*
 11 *to ensure and facilitate the review, transmission to*
 12 *the Archivist, and public disclosure of civil rights cold*
 13 *case records.*

14 (2) *INITIAL APPOINTMENT.*—

15 (A) *IN GENERAL.*—*Initial appointments to*
 16 *the Review Board shall, so far as practicable, be*
 17 *made not later than 60 days after the date of en-*
 18 *actment of this Act.*

19 (B) *RECOMMENDATIONS.*—*In making ap-*
 20 *pointments to the Review Board, the President*
 21 *may consider any individuals recommended by*
 22 *the American Historical Association, the Organi-*
 23 *zation of American Historians, the Society of*
 24 *American Archivists, and the American Bar As-*
 25 *sociation.*

1 (C) *EXTENSION.*—*If an organization de-*
 2 *scribed in subparagraph (B) does not recommend*
 3 *at least 2 nominees meeting the qualifications*
 4 *stated in paragraph (3) within 60 days after the*
 5 *date of enactment of this Act, the deadline under*
 6 *subparagraph (A) shall be extended until the ear-*
 7 *lier of 60 days after the date on which such rec-*
 8 *ommendations are made or 120 days after the*
 9 *date of enactment of this Act.*

10 (D) *ADDITIONAL RECOMMENDATIONS.*—*The*
 11 *President may request that any organization de-*
 12 *scribed in subparagraph (B) submit additional*
 13 *recommended nominees.*

14 (3) *QUALIFICATIONS.*—*Individuals nominated to*
 15 *the Review Board shall—*

16 (A) *not have had any previous involvement*
 17 *with any official investigation or inquiry con-*
 18 *ducted by the Federal Government, or any State*
 19 *or local government, relating to any civil rights*
 20 *cold case;*

21 (B) *be distinguished individuals of high na-*
 22 *tional professional reputation in their respective*
 23 *fields who are capable of exercising the inde-*
 24 *pendent and objective judgment necessary to ful-*
 25 *fill their role in ensuring and facilitating the re-*

1 *view, transmission to the public, and public dis-*
 2 *closure of files related to civil rights cold cases*
 3 *and who possess an appreciation of the value of*
 4 *such material to the public, scholars, and govern-*
 5 *ment; and*

6 *(C) include at least 1 professional historian*
 7 *and 1 attorney.*

8 *(c) SECURITY CLEARANCES.—All Review Board nomi-*
 9 *nees shall be processed for the necessary security clearances*
 10 *in an accelerated manner by the appropriate Federal agen-*
 11 *cies and subject to the standard procedures for granting*
 12 *such clearances.*

13 *(d) VACANCY.—A vacancy on the Review Board shall*
 14 *be filled in the same manner as the original appointment*
 15 *within 60 days of the occurrence of the vacancy.*

16 *(e) CHAIRPERSON.—The members of the Review Board*
 17 *shall elect 1 of the members as chairperson.*

18 *(f) REMOVAL OF REVIEW BOARD MEMBER.—*

19 *(1) IN GENERAL.—No member of the Review*
 20 *Board shall be removed from office, other than—*

21 *(A) by impeachment and conviction; or*

22 *(B) by the action of the President for ineffi-*
 23 *ciency, neglect of duty, malfeasance in office,*
 24 *physical disability, mental incapacity, or any*

1 *other condition that substantially impairs the*
 2 *performance of the member's duties.*

3 (2) *REPORT.—*

4 (A) *IN GENERAL.—If a member of the Re-*
 5 *view Board is removed from office, and that re-*
 6 *moval is by the President, not later than 10 days*
 7 *after the removal, the President shall submit to*
 8 *the Committee on Oversight and Government Re-*
 9 *form of the House of Representatives and the*
 10 *Committee on Homeland Security and Govern-*
 11 *mental Affairs of the Senate a report specifying*
 12 *the facts found and the grounds for the removal.*

13 (B) *PUBLICATION.—The President shall*
 14 *publish in the Federal Register a report sub-*
 15 *mitted under subparagraph (A), except that the*
 16 *President may, if necessary to protect the rights*
 17 *of a person named in the report or to prevent*
 18 *undue interference with any pending prosecu-*
 19 *tion, postpone or refrain from publishing any or*
 20 *all of the report until the completion of such*
 21 *pending cases or pursuant to privacy protection*
 22 *requirements in law.*

23 (3) *JUDICIAL REVIEW.—*

24 (A) *IN GENERAL.—A member of the Review*
 25 *Board removed from office may obtain judicial*

1 *review of the removal in a civil action com-*
 2 *menced in the United States District Court for*
 3 *the District of Columbia.*

4 (B) *RELIEF.*—*The member may be rein-*
 5 *stated or granted other appropriate relief by*
 6 *order of the court.*

7 (g) *COMPENSATION OF MEMBERS.*—

8 (1) *IN GENERAL.*—*A member of the Review*
 9 *Board shall be compensated at a rate equal to the*
 10 *daily equivalent of the annual rate of basic pay pre-*
 11 *scribed for level IV of the Executive Schedule under*
 12 *section 5315 of title 5, United States Code, for each*
 13 *day (including travel time) during which the member*
 14 *is engaged in the performance of the duties of the Re-*
 15 *view Board.*

16 (2) *TRAVEL EXPENSES.*—*A member of the Re-*
 17 *view Board shall be allowed reasonable travel ex-*
 18 *penses, including per diem in lieu of subsistence, at*
 19 *rates for employees of agencies under subchapter I of*
 20 *chapter 57 of title 5, United States Code, while away*
 21 *from the member's home or regular place of business*
 22 *in the performance of services for the Review Board.*

23 (h) *DUTIES OF THE REVIEW BOARD.*—

24 (1) *IN GENERAL.*—*The Review Board shall con-*
 25 *sider and render decisions on a determination by a*

1 *Government office to seek to postpone the disclosure of*
 2 *civil rights cold case records.*

3 (2) *DECISIONS.—In carrying out paragraph (1),*
 4 *the Review Board shall consider and render decisions*
 5 *on—*

6 (A) *whether a record constitutes a civil*
 7 *rights cold case record; and*

8 (B) *whether a civil rights cold case record*
 9 *or particular information in a record qualifies*
 10 *for postponement of disclosure under this Act.*

11 (i) *POWERS.—*

12 (1) *IN GENERAL.—The Review Board shall have*
 13 *the authority to act in a manner prescribed under*
 14 *this Act including the authority to—*

15 (A) *obtain access to civil rights cold case*
 16 *records that have been identified and organized*
 17 *by a Government office;*

18 (B) *direct a Government office to make*
 19 *available to the Review Board, and if necessary*
 20 *investigate the facts surrounding, additional in-*
 21 *formation, records, or testimony from individ-*
 22 *uals, which the Review Board has reason to be-*
 23 *lieve is required to fulfill its functions and re-*
 24 *sponsibilities under this Act;*

1 (C) subpoena private persons to compel tes-
 2 timony, records, and other information relevant
 3 to its responsibilities under this Act;

4 (D) require any Government office to ac-
 5 count in writing for the destruction of any
 6 records relating to civil rights cold cases;

7 (E) receive information from the public re-
 8 garding the identification and public disclosure
 9 of civil rights cold case records; and

10 (F) hold hearings, administer oaths, and
 11 subpoena witnesses and documents.

12 (2) *ENFORCEMENT OF SUBPOENAS.*—Any sub-
 13 poena issued under this subsection may be enforced by
 14 any appropriate Federal court acting pursuant to a
 15 lawful request of the Review Board.

16 (j) *WITNESS IMMUNITY.*—The Review Board shall be
 17 considered to be an agency of the United States for purposes
 18 of chapter 601 of title 18, United States Code.

19 (k) *OVERSIGHT.*—

20 (1) *IN GENERAL.*—The Committee on Oversight
 21 and Government Reform of the House of Representa-
 22 tives and the Committee on Homeland Security and
 23 Governmental Affairs of the Senate shall have con-
 24 tinuing oversight jurisdiction with respect to the offi-
 25 cial conduct of the Review Board and the disposition

1 *of postponed records after termination of the Review*
2 *Board, and shall have access to any records held or*
3 *created by the Review Board.*

4 (2) *COOPERATION OF REVIEW BOARD.—The Re-*
5 *view Board shall have a duty to cooperate with the*
6 *exercise of the oversight jurisdiction described in*
7 *paragraph (1).*

8 (1) *SUPPORT SERVICES.—The Administrator of Gen-*
9 *eral Services shall provide administrative services for the*
10 *Review Board on a reimbursable basis.*

11 (m) *INTERPRETIVE REGULATIONS.—The Review*
12 *Board may issue interpretive regulations.*

13 (n) *TERMINATION.—*

14 (1) *IN GENERAL.—The Review Board shall ter-*
15 *minate not later than 4 years after the date of enact-*
16 *ment of this Act, except that the Review Board may,*
17 *by majority vote, extend its term for an additional 1-*
18 *year period if the Review Board has not completed its*
19 *work within that 4-year period.*

20 (2) *REPORTS.—Before its termination, the Re-*
21 *view Board shall submit reports to the President and*
22 *the Congress, including a complete and accurate ac-*
23 *counting of expenditures during its existence, and*
24 *shall complete all other reporting requirements under*
25 *this Act.*

1 (3) *TRANSFER OF RECORDS.*—

2 (A) *IN GENERAL.*—Upon termination, the
3 Review Board shall transfer all of its records to
4 the Archivist for inclusion in the Collection.

5 (B) *PRESERVATION OF RECORDS.*—The
6 records of the Review Board shall not be de-
7 stroyed, except that the Archivist may destroy
8 routine administrative records covered by a gen-
9 eral records schedule following notification in the
10 Federal Register and after considering com-
11 ments.

12 **SEC. 6. REVIEW BOARD PERSONNEL.**

13 (a) *CHIEF OF STAFF.*—

14 (1) *APPOINTMENT.*—Not later than 45 days after
15 the initial meeting of the Review Board, and without
16 regard to political affiliation, the Review Board shall
17 appoint an individual to the position of Chief of Staff
18 of the Review Board.

19 (2) *REQUIREMENTS.*—The individual appointed
20 as Chief of Staff—

21 (A) shall be a citizen of the United States
22 of integrity and impartiality who is a distin-
23 guished professional; and

1 *(B) shall have had no previous involvement*
 2 *with any official investigation or inquiry relat-*
 3 *ing to civil rights cold cases.*

4 *(3) CANDIDATE TO HAVE CLEARANCES.—A can-*
 5 *didate for Chief of Staff shall be granted the necessary*
 6 *security clearances in an accelerated manner subject*
 7 *to the standard procedures for granting such clear-*
 8 *ances.*

9 *(4) APPROVAL CONTINGENT ON PRIOR CLEAR-*
 10 *ANCE.—A candidate for Chief of Staff shall qualify*
 11 *for the necessary security clearance prior to being ap-*
 12 *pointed by the Review Board.*

13 *(5) DUTIES.—The Chief of Staff shall—*

14 *(A) serve as principal liaison to Govern-*
 15 *ment offices;*

16 *(B) be responsible for the administration*
 17 *and coordination of the Review Board's review of*
 18 *records;*

19 *(C) be responsible for the administration of*
 20 *all official activities conducted by the Review*
 21 *Board; and*

22 *(D) have no authority to decide or deter-*
 23 *mine whether any record shall be disclosed to the*
 24 *public or postponed for disclosure.*

1 (6) *REMOVAL.*—*The Chief of Staff shall not be*
 2 *removed except upon a majority vote of the Review*
 3 *Board to remove the Chief of Staff for cause on the*
 4 *grounds of inefficiency, neglect of duty, malfeasance*
 5 *in office, physical disability, mental incapacity, or*
 6 *any other condition that substantially impairs the*
 7 *performance of the responsibilities of the Chief of*
 8 *Staff or the employees of the Review Board.*

9 (b) *STAFF.*—

10 (1) *ADDITIONAL PERSONNEL.*—*The Review*
 11 *Board may, in accordance with the civil service laws*
 12 *but without regard to civil service laws and regula-*
 13 *tions for appointments in the competitive service*
 14 *under subchapter I of chapter 33 of title 5, United*
 15 *States Code, appoint and terminate additional em-*
 16 *ployees as are necessary to enable the Review Board*
 17 *and its Chief of Staff to perform their duties.*

18 (2) *REQUIREMENTS.*—*An individual appointed*
 19 *as an employee of the Review Board—*

20 (A) *shall be a private citizen of integrity*
 21 *and impartiality; and*

22 (B) *shall have had no previous involvement*
 23 *with any official investigation or inquiry relat-*
 24 *ing to civil rights cold cases.*

1 (3) *NOMINATIONS.*—*Before making an appoint-*
 2 *ment pursuant to paragraph (1), the Review Board*
 3 *shall consider individuals recommended by the Amer-*
 4 *ican Historical Association, the Organization of*
 5 *American Historians, the Society of American Archi-*
 6 *vists, and the American Bar Association.*

7 (4) *SECURITY CLEARANCES.*—*A candidate shall*
 8 *qualify for the necessary security clearance prior to*
 9 *being appointed by the Review Board.*

10 (c) *COMPENSATION.*—*The Review Board shall fix the*
 11 *compensation of the Chief of Staff and other employees in*
 12 *accordance with title 5, United States Code, except that the*
 13 *rate of pay for the Chief of Staff and other employees may*
 14 *not exceed the rate payable for level V of the Executive*
 15 *Schedule under section 5316 of that title.*

16 (d) *ADVISORY COMMITTEES.*—*The Review Board may*
 17 *create advisory committees to assist in fulfilling the respon-*
 18 *sibilities of the Review Board under this Act.*

19 **SEC. 7. REVIEW OF RECORDS BY THE REVIEW BOARD.**

20 (a) *CUSTODY OF RECORDS REVIEWED BY THE*
 21 *BOARD.*—*Pending the outcome of the Review Board's re-*
 22 *view activity, a Government office shall retain custody of*
 23 *a civil rights cold case record for purposes of preservation,*
 24 *security, and efficiency, unless—*

1 (1) *the Review Board requires the physical*
 2 *transfer of records for reasons of conducting an inde-*
 3 *pendent and impartial review; or*

4 (2) *such transfer is necessary for an administra-*
 5 *tive hearing or other official Review Board function.*

6 (b) *STARTUP REQUIREMENTS.—The Review Board*
 7 *shall—*

8 (1) *not later than 90 days after the date on*
 9 *which all members of the Review Board are ap-*
 10 *pointed, publish a schedule for review of all civil*
 11 *rights cold case records in the Federal Register; and*

12 (2) *not later than 180 days after the enactment*
 13 *of this Act, begin its review of civil rights cold case*
 14 *records under this Act.*

15 (c) *DETERMINATION OF THE REVIEW BOARD.—*

16 (1) *IN GENERAL.—The Review Board shall direct*
 17 *that copies of all civil rights cold case records be*
 18 *transmitted to the Archivist and disclosed to the pub-*
 19 *lic in the Collection in the absence of clear and con-*
 20 *vincing evidence that—*

21 (A) *a Government record is not a civil*
 22 *rights cold case record; or*

23 (B) *a Government record or particular in-*
 24 *formation within a civil rights cold case record*
 25 *qualifies for postponement of public disclosure*

1 *under this Act, which shall include consideration*
 2 *by the Review Board of relevant laws and poli-*
 3 *cies protecting criminal records of juveniles.*

4 (2) *POSTPONEMENT.*—*In approving postpone-*
 5 *ment of public disclosure of a civil rights cold case*
 6 *record, the Review Board shall work to—*

7 (A) *provide for the disclosure of segregable*
 8 *parts, substitutes, or summaries of such a record;*
 9 *and*

10 (B) *determine, in consultation with the*
 11 *originating body and consistent with the stand-*
 12 *ards for postponement under this Act, which of*
 13 *the following alternative forms of disclosure shall*
 14 *be made by the originating body:*

15 (i) *Any reasonably segregable par-*
 16 *ticular information in a civil rights cold*
 17 *case record.*

18 (ii) *A substitute record for that infor-*
 19 *mation which is postponed.*

20 (iii) *A summary of a civil rights cold*
 21 *case record.*

22 (3) *REPORT.*—*With respect to each civil rights*
 23 *cold case record or particular information in civil*
 24 *rights cold case records the public disclosure of which*
 25 *is postponed under section 4, or for which only substi-*

1 *tutions or summaries have been disclosed to the pub-*
2 *lic, the Review Board shall create and transmit to the*
3 *Archivist a report containing—*

4 *(A) a description of actions by the Review*
5 *Board, the originating body, the President, or*
6 *any Government office (including a justification*
7 *of any such action to postpone disclosure of any*
8 *record or part of any record) and of any official*
9 *proceedings conducted by the Review Board with*
10 *regard to specific civil rights cold case records;*
11 *and*

12 *(B) a statement, based on a review of the*
13 *proceedings and in conformity with the decisions*
14 *reflected therein, designating a recommended*
15 *specified time at which or a specified occurrence*
16 *following which the material may be appro-*
17 *priately disclosed to the public under this Act.*

18 *(4) NOTICE.—Not later than 14 days after the*
19 *Review Board makes a determination that a civil*
20 *rights cold case record shall be publicly disclosed in*
21 *the Collection or postponed for disclosure and held in*
22 *the protected Collection, the Review Board shall notify*
23 *the head of the originating body of its determination*
24 *and publish a copy of the determination in the Fed-*
25 *eral Register.*

1 (5) *OTHER NOTICE.*—Contemporaneous notice
2 shall be made to the President of Review Board deter-
3 minations regarding executive branch civil rights cold
4 case records, and to the oversight committees des-
5 ignated in this Act in the case of legislative branch
6 records. Such notice shall contain an unclassified
7 written justification for public disclosure or postpone-
8 ment of disclosure, including an explanation of the
9 application of any standards under section 4.

10 (d) *PRESIDENTIAL AUTHORITY OVER REVIEW BOARD*
11 *DETERMINATION.*—

12 (1) *PUBLIC DISCLOSURE OR POSTPONEMENT OF*
13 *DISCLOSURE.*—After the Review Board has made a
14 formal determination concerning the public disclosure
15 or postponement of disclosure of an executive branch
16 civil rights cold case record or information contained
17 in a civil rights cold case record, obtained or devel-
18 oped solely within the executive branch, the President
19 shall have the sole and nondelegable authority to re-
20 quire the disclosure or postponement of such record or
21 information under the standards set forth in section
22 4, and the President shall provide the Review Board
23 with an unclassified written certification specifying
24 the President's decision within 30 days after the Re-
25 view Board's determination and notice to the execu-

1 *tive agency as required under this Act, stating the*
 2 *justification for the President's decision, including the*
 3 *applicable grounds for postponement under section 4.*

4 (2) *PERIODIC REVIEW.*—*Any executive branch*
 5 *civil rights cold case record for which public disclo-*
 6 *sure is postponed by the President shall be subject to*
 7 *the requirements of periodic review and declassifica-*
 8 *tion of classified information and public disclosure in*
 9 *the Collection set forth in section 3.*

10 (3) *RECORD OF PRESIDENTIAL POSTPONE-*
 11 *MENT.*—*The Review Board shall, upon its receipt,*
 12 *publish in the Federal Register a copy of any unclas-*
 13 *sified written certification, statement, or other mate-*
 14 *rials transmitted by or on behalf of the President with*
 15 *regard to postponement of the public disclosure of*
 16 *civil rights cold case records.*

17 (e) *NOTICE TO THE PUBLIC.*—*On each day that is on*
 18 *or after the date that is 60 days after the Review Board*
 19 *first approves the postponement of disclosure of a civil*
 20 *rights cold case record, the Review Board shall publish on*
 21 *a publicly available website a notice that summarizes the*
 22 *postponements approved by the Review Board or initiated*
 23 *by the President, including a description of the subject,*
 24 *originating body, length or other physical description, and*
 25 *each ground for postponement that is relied upon.*

1 (f) *REPORTS BY THE REVIEW BOARD.*—

2 (1) *IN GENERAL.*—*The Review Board shall re-*
3 *port its activities to the Speaker of the House of Rep-*
4 *resentatives, the Minority Leader of the House of Rep-*
5 *resentatives, the Committee on Oversight and Govern-*
6 *ment Reform of the House of Representatives, the Ma-*
7 *jority Leader of the Senate, the Minority Leader of*
8 *the Senate, the Committee on Homeland Security and*
9 *Governmental Affairs of the Senate, the President, the*
10 *Archivist, and the head of any Government office*
11 *whose records have been the subject of Review Board*
12 *activity.*

13 (2) *DEADLINES.*—*Not later than 1 year after the*
14 *date of enactment of this Act, and every year there-*
15 *after until termination of the Review Board, the Re-*
16 *view Board shall issue a report under paragraph (1).*

17 (3) *CONTENTS.*—*Each report under paragraph*
18 *(1) shall include the following information:*

19 (A) *A financial report of the expenses for all*
20 *official activities and requirements of the Review*
21 *Board and its employees.*

22 (B) *The progress made on review, trans-*
23 *mission to the Archivist, and public disclosure of*
24 *civil rights cold case records.*

1 (C) *The estimated time and volume of civil*
2 *rights cold case records involved in the comple-*
3 *tion of the Review Board's performance under*
4 *this Act.*

5 (D) *Any special problems, including re-*
6 *quests and the level of cooperation of Government*
7 *offices, with regard to the ability of the Review*
8 *Board to operate as required by this Act.*

9 (E) *A record of review activities, including*
10 *a record of postponement decisions by the Review*
11 *Board or other related actions authorized by this*
12 *Act, and a record of the volume of records re-*
13 *viewed and postponed.*

14 (F) *Recommendations and requests to Con-*
15 *gress for additional authorization.*

16 (G) *An appendix containing copies of re-*
17 *ports of postponed records to the Archivist re-*
18 *quired under subsection (c)(3) made since the*
19 *date of the preceding report under this sub-*
20 *section.*

21 (4) *NOTICE OF TERMINATION.—Not later than 90*
22 *days before terminating, the Review Board shall pro-*
23 *vide written notice to the President and the Congress*
24 *of its intention to terminate its operations at a speci-*
25 *fied date.*

1 **SEC. 8. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
2 **TIONAL STUDY.**

3 (a) *MATERIALS UNDER THE SEAL OF THE COURT.*—

4 (1) *IN GENERAL.*—*The Review Board may re-*
5 *quest the Attorney General to petition any court in*
6 *the United States or abroad to release any informa-*
7 *tion relevant to civil rights cold cases that is held*
8 *under seal of court.*

9 (2) *GRAND JURY MATERIALS.*—

10 (A) *IN GENERAL.*—*The Review Board may*
11 *request the Attorney General to petition any*
12 *court in the United States to release any infor-*
13 *mation relevant to civil rights cold cases that is*
14 *held under the injunction of secrecy of a grand*
15 *jury.*

16 (B) *PARTICULARIZED NEED.*—*A request for*
17 *disclosure of civil rights cold case records under*
18 *this Act shall be deemed to constitute a showing*
19 *of particularized need under rule 6 of the Fed-*
20 *eral Rules of Criminal Procedure.*

21 (3) *DEADLINE.*—

22 (A) *IN GENERAL.*—*The Attorney General*
23 *shall respond to any request that is subject to*
24 *this subsection within 45 days.*

25 (B) *NONDISCLOSURE OF GRAND JURY IN-*
26 *FORMATION.*—*If the Attorney General determines*

1 *that information relevant to a civil rights cold*
 2 *case that is held under the injunction of secrecy*
 3 *of a grand jury should not be made public, the*
 4 *Attorney General shall set forth in the response*
 5 *to the request the reasons for the determination.*

6 **(b) COOPERATION WITH AGENCIES.**—*It is the sense of*
 7 *Congress that—*

8 *(1) the Attorney General should assist the Re-*
 9 *view Board in good faith to unseal any records that*
 10 *the Review Board determines to be relevant and held*
 11 *under the seal by a court or under the injunction of*
 12 *secrecy of a grand jury; and*

13 *(2) all departments and agencies of the United*
 14 *States Government should cooperate in full with the*
 15 *Review Board to seek the disclosure of all information*
 16 *relevant to civil rights cold cases consistent with the*
 17 *public interest.*

18 **SEC. 9. RULES OF CONSTRUCTION.**

19 **(a) PRECEDENCE OVER OTHER LAW.**—

20 *(1) IN GENERAL.*—*Subject to paragraph (2),*
 21 *when this Act requires transmission of a record to the*
 22 *Archivist or public disclosure, it shall take precedence*
 23 *over any other law (except section 6103 of the Inter-*
 24 *nal Revenue Code of 1986), judicial decisions con-*
 25 *struing such law, or common law doctrine that would*

1 *otherwise prohibit such transmission or disclosure*
2 *with the exception of deeds governing access to or*
3 *transfer or release of gifts and donations of records to*
4 *the United States Government.*

5 (2) *PERSONNEL AND MEDICAL FILES.*—*This Act*
6 *shall not require the public disclosure of information*
7 *that is exempt from disclosure under section 552(b)(6)*
8 *of title 5, United States Code.*

9 (b) *FREEDOM OF INFORMATION ACT.*—*Nothing in this*
10 *Act shall be construed to eliminate or limit any right to*
11 *file any requests with any executive agency or seek judicial*
12 *review of the decisions under section 552 of title 5, United*
13 *States Code.*

14 (c) *JUDICIAL REVIEW.*—*Nothing in this Act shall be*
15 *construed to preclude judicial review, under chapter 7 of*
16 *title 5, United States Code, of final actions taken or re-*
17 *quired to be taken under this Act.*

18 (d) *EXISTING AUTHORITY.*—*Nothing in this Act re-*
19 *vokes or limits the existing authority of the President, any*
20 *executive agency, the Senate, the House of Representatives,*
21 *or any other entity of the Government to publicly disclose*
22 *records in its possession.*

1 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) *IN GENERAL.*—*There are authorized to be appro-*
3 *priated such sums as are necessary to carry out this Act,*
4 *to remain available until expended.*

5 (b) *INTERIM PROVISIONS.*—*Until such time as funds*
6 *are appropriated pursuant to subsection (a), the President*
7 *shall use such sums as are available for discretionary use*
8 *to carry out this Act.*

Calendar No. 727

115TH CONGRESS
2D Session

S. 3191

[Report No. 115-424]

A BILL

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

DECEMBER 10, 2018

Reported with an amendment