

Subsec. (f). Pub. L. 106-65, § 578(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “The Secretary of Defense shall by regulation establish a system for selection of units of the armed forces and other organizations to provide honor guard details. The system shall place an emphasis on balancing the funeral detail workload among the units and organizations providing honor guard details in an equitable manner as they are able to respond to requests for such details in terms of geographic proximity and available resources. The Secretary shall provide in such regulations that the armed force in which a veteran served shall not be considered to be a factor when selecting the military unit or other organization to provide an honor guard detail for the funeral of the veteran.”

Pub. L. 106-65, § 578(c)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 106-65, § 1067(1), substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

Pub. L. 106-65, § 578(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 106-65, § 578(e), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “In this section, the term ‘veteran’ has the meaning given that term in section 101(2) of title 38.”

Pub. L. 106-65, § 578(c)(1), redesignated subsec. (f) as (h).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 applicable with respect to funerals and burials that occur on or after Jan. 6, 2006, see section 662(e) of Pub. L. 109-163, set out as a note under section 985 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, § 578(a)(2), Oct. 5, 1999, 113 Stat. 625, provided that: “Section 1491(a) of title 10, United States Code, as amended by paragraph (1), shall apply with respect to funerals that occur after December 31, 1999.”

CHAPTER 76—MISSING PERSONS

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AMENDMENTS

2009—Pub. L. 111-84, div. A, title V, § 541(b), Oct. 28, 2009, 123 Stat. 2298, substituted “Program to resolve preenactment missing person cases” for “Preenactment cases” in item 1509.

1996—Pub. L. 104-201, div. A, title V, § 578(f)(2)(B), Sept. 23, 1996, 110 Stat. 2537, struck out “, special interest” after “Preenactment” in item 1509.

§ 1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONNEL.—

(1) The Secretary of Defense shall designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of De-

fense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters relating to missing persons. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the official designated under this paragraph shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion);

(B) policy, control, and oversight of the program established under section 1509 of this title, as well as the accounting for missing persons (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased); and

(C) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons.

(2) The official designated under paragraph (1) shall also serve as the Director, Defense Prisoner of War/Missing Personnel Office, as established under paragraph (6)(A), exercising authority, direction, and control over that activity.

(3) In carrying out the responsibilities established under this subsection, the official designated under paragraph (1) and (2) shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(4) The designated official shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel recovery (including search, rescue, escape, and evasion) and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased).

(5) The designated official shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(6)(A) The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office. The Secretary of Defense shall ensure that the activity is provided sufficient military and civilian personnel, and sufficient funding, to enable the activity to fully perform the complete range of missions of the activity. The Secretary shall ensure that Department of Defense programming, planning, and budgeting procedures are structured so as to ensure compliance with the preceding sentence for each fiscal year.

(B)(i) For any fiscal year, the number of military and civilian personnel, whether temporary or permanent, assigned or detailed activity may not be less than the number requested in the President’s budget for fiscal year 2003, unless a level below such number is expressly required by law.

(ii) If for any reason the number of military and civilian personnel assigned or detailed activity should fall below the required level under

clause (i), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned or detailed and of the Secretary's plan to restore the staffing level of the activity to at least the required minimum number under clause (i). The Secretary shall publish such notice and plan in the Federal Register.

(C) For any fiscal year, the level of funding allocated to the activity within the Department of Defense may not be below the level requested for such purposes in the President's budget for fiscal year 2003, unless such a level of funding is expressly required by law.

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any responsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in

subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term "Secretary concerned" includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended Pub. L. 104–201, div. A, title V, § 578(a)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(1), Nov. 18, 1997, 111 Stat. 1766; Pub. L. 106–65, div. A, title X, § 1066(a)(13), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title V, § 551, Dec. 2, 2002, 116 Stat. 2551; Pub. L. 108–375, div. A, title V, § 582(a), Oct. 28, 2004, 118 Stat. 1928; Pub. L. 111–383, div. A, title IX, § 901(g), Jan. 7, 2011, 124 Stat. 4322.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 901(g)(1), substituted "Responsibility for Missing Personnel" for "Office for Missing Personnel" in heading.

Subsec. (a)(1). Pub. L. 111–383, § 901(g)(2)(A)–(C), in introductory provisions, substituted "designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters" for "establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy", struck out "Such office shall be known as the Defense Prisoner of War/Missing Personnel Office." after "persons.", and substituted "of the official designated under this paragraph" for "of the office".

Subsec. (a)(1)(B), (C). Pub. L. 111–383, § 901(g)(2)(D)–(F), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 111–383, § 901(g)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 111–383, § 901(g)(3), (5), redesignated par. (2) as (3), struck out "of the office" after "responsibilities", and substituted "official designated under paragraph (1) and (2)" for "head of the office". Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 111–383, § 901(g)(3), (6), redesignated par. (3) as (4), substituted "designated official" for "office", and inserted "and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased)" after "evasion". Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111–383, § 901(g)(3), (7), redesignated par. (4) as (5) and substituted "designated official" for "office". Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 111-383, §901(g)(3), redesignated par. (5) as (6).

Subsec. (a)(6)(A). Pub. L. 111-383, §901(g)(8)(A)(ii), which directed the substitution of “activity” for “office” both places appearing, was executed by making the substitution in three places to reflect the probable intent of Congress.

Pub. L. 111-383, §901(g)(8)(A)(i), inserted “The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office.” after “(A)”.

Subsec. (a)(6)(B)(i). Pub. L. 111-383, §901(g)(8)(B), substituted “activity” for “to the office”.

Subsec. (a)(6)(B)(ii). Pub. L. 111-383, §901(g)(8)(C), substituted “activity” for “to the office” and “of the activity” for “of the office”.

Subsec. (a)(6)(C). Pub. L. 111-383, §901(g)(8)(D), substituted “activity” for “office”.

2004—Subsec. (a)(5)(B). Pub. L. 108-375 designated existing provisions as cl. (i), inserted “, whether temporary or permanent,” after “civilian personnel”, and added cl. (ii).

2002—Subsec. (a)(1). Pub. L. 107-314, §551(b), inserted “Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.” after first sentence.

Subsec. (a)(5). Pub. L. 107-314, §551(a), added par. (5). 1999—Subsec. (d). Pub. L. 106-65 substituted “described” for “prescribed” in first sentence.

1997—Subsec. (c). Pub. L. 105-85, §599(a)(1)(A), added subsec. (c) and struck out former subsec. (c) which read as follows:

“(c) COVERED PERSONS.—Section 1502 of this title applies in the case of any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.”

Subsec. (f). Pub. L. 105-85, §599(a)(1)(B), added subsec. (f).

1996—Subsec. (c). Pub. L. 104-201, §578(a)(1)(A), substituted “applies in the case of” for “applies in the case of the following persons:” and “any member” for “(1) Any member” and struck out par. (2) which read as follows: “Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.”

Subsec. (f). Pub. L. 104-201, §578(a)(1)(B), struck out subsec. (f) which read as follows:

“(f) SECRETARY CONCERNED.—In this chapter, the term ‘Secretary concerned’ includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111-383, set out as a note under section 131 of this title.

RECOVERY AND IDENTIFICATION OF REMAINS OF CERTAIN WORLD WAR II SERVICEMEN LOST IN PACIFIC THEATER OF OPERATIONS

Pub. L. 106-65, div. A, title V, §576, Oct. 5, 1999, 113 Stat. 624, as amended by Pub. L. 107-107, div. A, title X, §1048(g)(3), Dec. 28, 2001, 115 Stat. 1228, provided that:

“(a) RECOVERY OF REMAINS.—(1) The Secretary of Defense shall make every reasonable effort to search for, recover, and identify the remains of United States servicemen lost in the Pacific theater of operations during

World War II (including in New Guinea) while engaged in flight operations.

“(2) In order to provide high priority to carrying out paragraph (1), the Secretary of Defense shall consider increasing the number of personnel assigned to the Central Identification Laboratory, Hawaii.

“(3) Not later than September 30, 2000, the Secretary shall submit to Congress a report setting forth the efforts made to accomplish the objectives specified in paragraph (1). The Secretary shall include in the report a statement of the backlog of cases at the Central Identification Laboratory, Hawaii, shown by conflict, and the status of the joint manning plan required by section 566(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2029).

“(b) DIPLOMATIC INTERVENTION IF REQUIRED.—The Secretary of State, upon request by the Secretary of Defense, shall work with officials of governments of nations in the area that was covered by the Pacific theater of operations of World War II to seek to overcome any diplomatic obstacles that may impede the Secretary of Defense from carrying out the objectives specified in subsection (a)(1).”

POW/MIA INTELLIGENCE ANALYSIS

Pub. L. 105-85, div. A, title IX, §934, Nov. 18, 1997, 111 Stat. 1866, as amended by Pub. L. 106-65, div. A, title X, §1066(c)(4), Oct. 5, 1999, 113 Stat. 773, provided that:

“(a) INTELLIGENCE ANALYSIS.—The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) to all departments and agencies of the Federal Government involved in such matters.

“(b) USE OF INTELLIGENCE IN ANALYSIS OF POW/MIA CASES IN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the Defense Prisoner of War/Missing Personnel Office of the Department of Defense takes into full account all intelligence regarding matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.]

CONGRESSIONAL STATEMENT OF PURPOSE

Section 569(a) of Pub. L. 104-106 provided that: “The purpose of this section [enacting this chapter and section 655 of this title, amending sections 552, 553, 555, and 556 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 5561 of Title 5, Government Organization and Employees] is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.”

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is

uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104-201, div. A, title V, § 578(b)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105-85, div. A, title V, § 599(b)(1), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105-85 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a)(2). Pub. L. 104-201, § 578(b)(1)(A), substituted “10 days” for “48 hours” and “Secretary concerned” for “theater component commander with jurisdiction over the missing person”.

Subsec. (b). Pub. L. 104-201, § 578(b)(1)(D), struck out at end “The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.”

Pub. L. 104-201, § 578(b)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.”

Subsec. (c). Pub. L. 104-201, § 578(b)(1)(C), redesignated subsec. (c) as (b).

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

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

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

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (sub-

ject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as “missing person’s counsel” and represents the interests of the person covered by the inquiry (and not any member of the person’s family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person’s primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person’s counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person’s counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person’s counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person’s counsel relative to the disappearance or status of the missing person.

(5) A missing person’s counsel shall review the report of the board under subsection (h) and sub-

mit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave;

or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104-106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104-201, div. A, title V, §578(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105-85, div. A, title V, §599(a)(2), (d), Nov. 18, 1997, 111 Stat. 1767, 1769.)

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105-85, §599(a)(2)(A), substituted “one individual described in paragraph (2)” for “one military officer”.

Subsec. (c)(2) to (4). Pub. L. 105-85, §599(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f)(1). Pub. L. 105-85, §599(d)(1), inserted at end “The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.”

Subsec. (f)(4). Pub. L. 105-85, §599(d)(2), inserted at end “The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.”

1996—Subsec. (a). Pub. L. 104-201, §578(b)(2), substituted “section 1502(a)” for “section 1502(b)”.

Subsec. (c)(1). Pub. L. 104-201, §578(a)(2)(A), substituted “one military officer” for “one individual described in paragraph (2)”.

Subsec. (c)(2) to (4). Pub. L. 104-201, §578(a)(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “An individual referred to in paragraph (1) is the following:

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

“(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.”

§ 1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts

and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS-13 of the General Schedule under section 5332 of title 5; and

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

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

- (1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;
- (2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;
- (3) draw conclusions as to the whereabouts and status of the person;
- (4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and
- (5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if

any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clear-

ances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(l) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person

under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended Pub. L. 104-201, div. A, title V, § 578(a)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105-85, div. A, title V, § 599(a)(3), (d)(1), title X, § 1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1769, 1902.)

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105-85, § 599(a)(3)(A), substituted “as follows:” and subpars. (A) to (C) for “who are officers having the grade of major or lieutenant commander or above.”

Subsec. (d)(4). Pub. L. 105-85, § 599(a)(3)(B), substituted “section 1503(c)(4)” for “section 1503(c)(3)”.

Subsec. (f)(1). Pub. L. 105-85, § 599(d)(1), inserted at end “The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person’s primary next of kin and any other previously designated person of the person.”

Subsec. (i)(1). Pub. L. 105-85, § 1073(a)(30), substituted “this section” for “this subsection”.

1996—Subsec. (d)(1). Pub. L. 104-201, § 578(a)(3)(A), added text of par. (1) and struck out former text of par. (1) which read as follows: “A board appointed under this section shall be composed of at least three members as follows:

“(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

“(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

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

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

“(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

“(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

“(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board’s inquiry to the number of civilians who are subjects of the board’s inquiry.”

Subsec. (d)(4). Pub. L. 104-201, § 578(a)(3)(B), substituted “section 1503(c)(3)” for “section 1503(c)(4)”.

§ 1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that

may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the office established under section 1501 of this title.

(2) Upon receipt of information under paragraph (1), the head of the office established under section 1501 of this title shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The head of the office established under section 1501 of this title, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

(Added Pub. L. 104-106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 345; amended Pub. L. 104-201, div. A, title V, §578(c), Sept. 23, 1996, 110 Stat. 2536.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-201 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

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

“(B) not later than every three years thereafter.

“(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

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

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

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

§ 1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent prac-

ticable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonably accessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(3) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file

contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (2) and (3) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 346; amended Pub. L. 104-201, div. A, title V, § 578(d), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105-85, div. A, title V, § 599(f), (g), Nov. 18, 1997, 111 Stat. 1770; Pub. L. 106-65, div. A, title V, § 575, Oct. 5, 1999, 113 Stat. 624; Pub. L. 107-107, div. A, title V, § 573, Dec. 28, 2001, 115 Stat. 1122.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107-107 designated existing provisions as subpar. (A), inserted “of all missing persons from the conflict or period of war to which the classified information pertains” before period at end, and added subpar. (B).

1999—Subsec. (f). Pub. L. 106-65 added subsec. (f).

1997—Subsec. (b). Pub. L. 105-85, § 599(f), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (d)(2). Pub. L. 105-85, § 599(g)(1), inserted “or about unnamed missing persons” after “the debriefing report” in first sentence, substituted “each missing person named in the debriefing report” for “the missing person” in second sentence, and inserted at end “Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.”

Subsec. (d)(3). Pub. L. 105-85, § 599(g)(2), inserted “, or part of a debriefing report,” after “a debriefing report”.

1996—Subsecs. (e), (f). Pub. L. 104-201 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: “WRONGFUL WITHHOLDING.—Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.”

§ 1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

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

(2) A statement of the date on which the death occurred.

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

(4) If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 347; amended Pub. L. 104-201, div. A, title V, § 578(e), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105-85, div. A, title V, § 599(c), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsec. (b)(3), (4). Pub. L. 105-85 added pars. (3) and (4).

1996—Subsec. (b)(3), (4). Pub. L. 104-201 struck out pars. (3) and (4) which read as follows:

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

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

§ 1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) **SUBSEQUENT REVIEW.**—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

(Added Pub. L. 104-106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 348.)

§ 1509. Program to resolve preenactment missing person cases

(a) **PROGRAM REQUIRED; COVERED CONFLICTS.**—The Secretary of Defense shall implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons described in subparagraph (A) or (B) of section 1513(1) of this title who are unaccounted for from the following conflicts:

(1) World War II during the period beginning on December 7, 1941, and ending on December 31, 1946, including members of the armed forces who were lost during flight operations in the Pacific theater of operations covered by section 576 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 1501 note).

(2) The Cold War during the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The Korean War during the period beginning on June 27, 1950, and ending on January 31, 1955.

(4) The Indochina War era during the period beginning on July 8, 1959, and ending on May 15, 1975.

(5) The Persian Gulf War during the period beginning on August 2, 1990, and ending on February 28, 1991.

(6) Such other conflicts in which members of the armed forces served as the Secretary of Defense may designate.

(b) **IMPLEMENTATION PROCESS.**—(1) The Secretary of Defense shall implement the program within the Department of Defense POW/MIA accounting community.

(2) For purposes of paragraph (1), the term “POW/MIA accounting community” means:

(A) The Defense Prisoner of War/Missing Personnel Office (DPMO).

(B) The Joint POW/MIA Accounting Command (JPAC).

(C) The Armed Forces DNA Identification Laboratory (AFDIL).

(D) The Life Sciences Equipment Laboratory of the Air Force (LSEL).

(E) The casualty and mortuary affairs offices of the military departments.

(F) Any other element of the Department of Defense whose mission (as designated by the Secretary of Defense) involves the accounting for and recovery of members of the armed forces who are missing in action, prisoners of war, or unaccounted for.

(c) **TREATMENT AS MISSING PERSONS.**—Each unaccounted for person covered by subsection (a)

shall be considered to be a missing person for purposes of the applicability of other provisions of this chapter to the person.

(d) **ESTABLISHMENT OF PERSONNEL FILES.**—(1) The Secretary of Defense shall ensure that a personnel file is established and maintained for each person covered by subsection (a) if the Secretary—

(A) possesses any information relevant to the status of the person; or

(B) receives any new information regarding the missing person as provided in subsection (e).

(2) The Secretary of Defense shall ensure that each file established under this subsection contains all relevant information pertaining to a person covered by subsection (a) and is readily accessible to all elements of the department, the combatant commands, and the armed forces involved in the effort to account for the person.

(3) Each file established under this subsection shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person otherwise subject to such section.

(e) **REVIEW OF STATUS REQUIREMENTS.**—(1) If new information (as described in paragraph (3)) is found or received that may be related to one or more unaccounted for persons covered by subsection (a), whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person, that information shall be provided to the Secretary of Defense.

(2) Upon receipt of new information under paragraph (1), the Secretary shall ensure that—

(A) the information is treated under paragraph (2) of subsection (c) of section 1505 of this title, relating to addition of the information to the personnel file of a person and notification requirements, in the same manner as information received under paragraph (1) under such subsection; and

(B) the information is treated under paragraph (3) of subsection (c) and subsection (d) of such section, relating to a board review under such section, in the same manner as information received under paragraph (1) of such subsection (c).

(3) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons covered by subsection (a).

(f) **COORDINATION REQUIREMENTS.**—(1) In establishing and carrying out the program, the Secretary of Defense shall coordinate with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(2) In carrying out the program, the Secretary of Defense shall establish close coordination

with the Department of State, the Central Intelligence Agency, and the National Security Council to enhance the ability of the Department of Defense POW/MIA accounting community to account for persons covered by subsection (a).

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348; amended Pub. L. 104-201, div. A, title V, § 578(f)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105-85, div. A, title V, § 599(e), Nov. 18, 1997, 111 Stat. 1769; Pub. L. 106-65, div. A, title X, § 1066(a)(14), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111-84, div. A, title V, § 541(a), Oct. 28, 2009, 123 Stat. 2296.)

AMENDMENTS

2009—Pub. L. 111-84 amended section generally. Prior to amendment, section consisted of subsections (a) to (d) relating to review of status of missing person cases arising before enactment of this chapter.

1999—Subsec. (a)(2)(A), (B). Pub. L. 106-65 substituted “November 18, 1997,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998”.

1997—Subsec. (a). Pub. L. 105-85, § 599(e)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

“(a) REVIEW OF STATUS.—In the case of an unaccounted for person covered by section 1501(c) of this title who is described in subsection (b), if new information that could change the status of that person is found or received by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title, that information shall be provided to the Secretary of Defense with a request that the Secretary evaluate the information in accordance with sections 1505(c) and 1505(d) of this title.”

Subsec. (d). Pub. L. 105-85, § 599(e)(2), added subsec. (d).

1996—Pub. L. 104-201, § 578(f)(2)(A), struck out “, special interest” after “Preenactment” in section catchline.

Subsecs. (c), (d). Pub. L. 104-201, § 578(f)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

“(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS ‘KIA/BNR’.—In the case of a person described in subsection (b) who was classified as ‘killed in action/body not recovered’, the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.”

IMPLEMENTATION

Pub. L. 111-84, div. A, title V, § 541(d), Oct. 28, 2009, 123 Stat. 2298, provided that:

“(1) PRIORITY.—A priority of the program required by section 1509 of title 10, United States Code, as amended by subsection (a), to resolve missing person cases arising before the enactment of chapter 76 of such title by section 569 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 336) [approved Feb. 10, 1996] shall be the return of missing persons to United States control alive.

“(2) ACCOUNTING FOR GOAL.—In implementing the program, the Secretary of Defense, in coordination with the officials specified in subsection (f)(1) of section 1509 of title 10, United States Code, shall provide such funds, personnel, and resources as the Secretary considers appropriate to increase significantly the capability and capacity of the Department of Defense, the Armed Forces, and commanders of the combatant commands to account for missing persons so that, beginning with fiscal year 2015, the POW/MIA accounting community has sufficient resources to ensure that at least 200 missing persons are accounted for under the program annually.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘accounted for’ has the meaning given such term in section 1513(3)(B) of title 10, United States Code.

“(B) The term ‘POW/MIA accounting community’ has the meaning given such term in section 1509(b)(2) of such title.”

§ 1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Homeland Security shall designate an officer of the Department of Homeland Security to have responsibility within the Department of Homeland Security for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Homeland Security shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation” wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

§ 1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before February 10, 1996.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107-107, div. A, title X, § 1048(c)(10), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-107 substituted “February 10, 1996” for “the date of the enactment of this chapter”.

§ 1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1513. Definitions

In this chapter:

(1) The term “missing person” means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in subsection (a) of section 1509 of this title who is required by subsection (b) of such section to be considered a missing person.

(2) The term “missing status” means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person’s will.

(3) The term “accounted for”, with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person’s status.

(4) The term “primary next of kin”, in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482(c) of this title.

(5) The term “member of the immediate family”, in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, step-child, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has

not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term “previously designated person”, in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term “classified information” means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term “theater component commander” means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 350; amended Pub. L. 104-201, div. A, title V, § 578(a)(4), (b)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105-85, div. A, title V, § 599(a)(4), (b)(2), Nov. 18, 1997, 111 Stat. 1768; Pub. L. 106-65, div. A, title X, § 1066(a)(15), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111-84, div. A, title V, § 541(c), Oct. 28, 2009, 123 Stat. 2298.)

AMENDMENTS

2009—Par. (1). Pub. L. 111-84 substituted “subsection (a) of section 1509 of this title who is required by subsection (b) of such section” for “section 1509(b) of this title who is required by section 1509(a)(1) of this title” in concluding provisions.

1999—Par. (1). Pub. L. 106-65 substituted “who is required by section 1509(a)(1) of this title to be considered a missing person” for “, under the circumstances specified in the last sentence of section 1509(a) of this title” in concluding provisions.

1997—Par. (1). Pub. L. 105-85, § 599(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘missing person’ means a member of the armed forces on active duty who is in a missing status.”

Par. (8). Pub. L. 105-85, § 599(b)(2), added par. (8).

1996—Par. (1). Pub. L. 104-201, § 578(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘missing person’ means—

“(A) a member of the Armed Forces on active duty who is in a missing status; or

“(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the Armed Forces in the field under orders and who is in a missing status.”

Par. (8). Pub. L. 104-201, § 578(b)(3), struck out par. (8) which read as follows: “The term ‘theater component

commander' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command."

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.	
1521.	Posthumous commissions.
1522.	Posthumous warrants.
1523.	Posthumous commissions and warrants: effect on pay and allowances.
1524.	Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89-718, §12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death; or

(3) was officially recommended for appointment or promotion to a commissioned grade but was unable to accept the promotion or appointment because of death.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or official recommendation, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or official recommendation to the date of his death.

(c) A commission issued under subsection (a) in connection with the promotion of a deceased member to a higher commissioned grade shall require certification by the Secretary concerned that, at the time of death of the member, the member was qualified for appointment to that higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Pub. L. 106-398, §1 [[div. A], title V, §505], Oct. 30, 2000, 114 Stat. 1654, 1654A-102; Pub. L. 110-417, [div. A], title V, §502(a), Oct. 14, 2008, 122 Stat. 4433.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1521(a)	10:491a (words before semicolon). 10:491b (words before semicolon). 10:491c (words before semicolon). 34:285b (words before semicolon). 34:285c (words before semicolon).	July 28, 1942, ch. 528, §§1-3, 56 Stat. 722, 723; July 17, 1953, ch. 220, §1(a)-(c), 67 Stat. 176.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1521(b)	34:285d (words before semicolon). 10:491a (words after semicolon). 10:491b (words after semicolon). 10:491c (words after semicolon). 34:285b (words after semicolon). 34:285c (words after semicolon). 34:285d (words after semicolon).	

In subsection (a), the words "a member of" are substituted for the words "any person who, while in", in 10:491a, 491b, 491c, and 34:285b, 285c, and 285d. The words "armed forces" are substituted for the words "military service of the United States", in 10:491a, 491b, and 491c; and the words "naval service of the United States", in 34:285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words "to such grade", in 10:491a and 34:285b, "receive or", in 10:491c and 34:285d, are omitted as surplusage.

In subsection (b), the words "if any" are substituted for words "of the service". The words "appointment and", in 10:491b and 34:285c, and "appointment or promotion and", in 10:491c and 34:285d, are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-417, §502(a)(1), struck out "in line of duty" after "death" in pars. (1) to (3).
Subsec. (c). Pub. L. 110-417, §502(a)(2), added subsec. (c).

2000—Subsec. (a)(3). Pub. L. 106-398, §1 [[div. A], title V, §505(a)], struck out "and the recommendation for whose appointment or promotion was approved by the Secretary concerned" after "commissioned grade".

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title V, §505(b)], substituted "official recommendation" for "approval" in two places.

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsection (a) of this section, see sections 1(a) and 2(a) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Section 5 of act July 28, 1942, ch. 528, as added July 17, 1953, ch. 220, §1(e), 67 Stat. 177, provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, prior to repeal by Pub. L. 89-718, §12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department