

103^D CONGRESS
1ST SESSION

H. R. 291

To amend title 10, United States Code, to establish procedures for determining whether members of the Armed Forces in a missing status or certain civilian officers and employees are deceased, to require certain information to be kept in the personnel files of such persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. MURPHY (for himself and Mr. SWIFT) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to establish procedures for determining whether members of the Armed Forces in a missing status or certain civilian officers and employees are deceased, to require certain information to be kept in the personnel files of such persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Missing Service Per-
5 sonnel Act of 1993”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to ensure that any member
3 of the Armed Forces or any civilian officer or employee
4 serving with or accompanying an Armed Force in the field
5 under orders is fully accounted for by the Federal Govern-
6 ment and, as a general rule, may not be declared dead
7 solely because of the passage of time.

8 **SEC. 3. REQUIREMENTS WITH RESPECT TO MISSING PER-**
9 **SONS.**

10 Chapter 53 of title 10, United States Code, is amend-
11 ed by adding at the end the following new section:

12 **“§1058. Missing persons: informal investigations;**
13 **boards of inquiry; determinations of**
14 **death; personnel files**

15 “(a) INFORMAL INVESTIGATIONS.—After receiving
16 notice that a person under the command of an element
17 of the armed forces is missing, the responsible commander
18 shall conduct an informal investigation to determine that
19 person’s whereabouts and, if appropriate, shall place the
20 missing person in a missing status.

21 “(b) BOARDS OF INITIAL INQUIRY; DUTIES.—(1) If
22 a missing person placed in a missing status under sub-
23 section (a) is a member of the armed forces on active duty,
24 the responsible commander who places that person in a
25 missing status shall, as soon as feasible after placing that
26 person in a missing status, notify the officer holding gen-

1 eral court-martial authority over that person that the per-
2 son has been placed in a missing status, and such officer
3 shall convene a board of initial inquiry not later than 45
4 days after receiving such notice.

5 “(2) If a missing person placed in a missing status
6 under subsection (a) is a civilian, the responsible com-
7 mander who places that person in a missing status shall,
8 as soon as feasible after placing that person in a missing
9 status, notify the Secretary concerned that that person
10 has been placed in a missing status, and the Secretary
11 concerned shall convene a board of initial inquiry not later
12 than 45 days after receiving such notice.

13 “(3) A board of initial inquiry convened under this
14 subsection shall—

15 “(A) investigate and analyze evidence relating
16 to the disappearance of the missing person;

17 “(B) based upon such evidence, recommend
18 whether to continue such person in a missing status
19 or make a finding that such person has deserted, is
20 absent without leave, or is dead; and

21 “(C) issue a report describing its recommenda-
22 tions and findings.

23 “(c) BOARDS OF FURTHER INQUIRY; DUTIES.—(1)
24 If a board of initial inquiry convened under subsection (b)
25 recommends that a missing person be continued in a miss-

1 ing status, the Secretary concerned shall convene a board
2 of further inquiry not later than one year after the date
3 on which the board of initial inquiry issues its rec-
4 ommendation. The board of further inquiry shall—

5 “(A) analyze any information which has become
6 available since the board of initial inquiry issued its
7 report;

8 “(B) based upon such information and a review
9 of evidence presented during the board of initial in-
10 quiry, determine whether such person should be con-
11 tinued in a missing status or should be declared
12 dead; and

13 “(C) issue a report describing its recommenda-
14 tions and findings.

15 “(2) Upon the written request of a member of the
16 immediate family of a missing person who, before the date
17 of the enactment of this section, was determined by the
18 Secretary concerned to be dead, the Secretary concerned
19 shall convene a board of further inquiry which shall—

20 “(A) conduct an investigation to determine
21 whether such finding of death should be upheld or
22 such person should be placed in a missing status;
23 and

24 “(B) issue a report describing its recommenda-
25 tions and findings.

1 “(3) If a board of further inquiry convened under this
2 subsection recommends continuing the missing status of
3 a missing person or placing a missing person previously
4 found to be dead in a missing status, the Secretary con-
5 cerned shall reconvene such board to review the missing
6 status of such person not later than three years after such
7 recommendation is made.

8 “(d) COMPOSITION AND MEETINGS OF BOARDS.—(1)
9 Each board convened under subsection (b) or (c) shall be
10 composed of members of the armed forces on active duty
11 (except as provided in subparagraph (C)) and shall in-
12 clude—

13 “(A) one attorney;

14 “(B) one person who is a member of the armed
15 forces whose primary military occupational specialty
16 is the same occupational specialty as that of the
17 missing person at the time of such missing person’s
18 disappearance;

19 “(C) if the missing person being investigated is
20 a civilian, one person whose occupational specialty is
21 similar to the occupational specialty of such missing
22 person at the time of such missing person’s dis-
23 appearance; and

24 “(D) if the missing person being investigated
25 disappeared while in transit, one person who is a

1 member of the armed forces whose military occupa-
2 tional specialty pertains to the piloting, navigating,
3 or operating of the mode of transportation used by
4 such missing person at the time of his disappear-
5 ance.

6 “(2) The Secretary concerned shall invite each mem-
7 ber of the immediate family of the missing person being
8 investigated to attend any meeting of a board of initial
9 inquiry convened under subsection (b) unless he deter-
10 mines, in consultation with the commander of the military
11 installation at which such meeting is convened, that at-
12 tendance at such a meeting would place such family mem-
13 bers in physical danger. In the case of the meetings of
14 a board of further inquiry convened or reconvened under
15 subsection (c), the Secretary concerned shall—

16 “(A) invite each member of the immediate fam-
17 ily of such missing person to attend such meetings;

18 “(B) attempt to schedule such meetings at loca-
19 tions and times convenient for the members of the
20 immediate family of such missing person;

21 “(C) provide members of the immediate family
22 of such missing person with reasonable notice of the
23 time and location of such meetings; and

24 “(D) open such meetings to the general public.

1 “(3) Each board convened under subsection (b) or (c)
2 may hold such meetings, take such testimony, and receive
3 such evidence as it considers appropriate, and may secure
4 directly from any department or agency of the United
5 States any information necessary to carry out its duties
6 under this section.

7 “(e) APPOINTMENT OF COUNSEL.—The officer or
8 Secretary concerned who convenes a board under sub-
9 section (b) or (c) shall appoint counsel to represent the
10 missing person. Counsel appointed under this subsection
11 shall have the qualifications prescribed under section
12 827(b) of this title (article 27(b) of the Uniform Code of
13 Military Justice).

14 “(f) DETERMINATIONS OF DEATH.—If a board con-
15 vened under subsection (b) or (c) determines that a miss-
16 ing person is dead, it shall include in its report a detailed
17 description of the location where the death occurred, the
18 date on which the death occurred, whether the body has
19 been recovered, and, if the body has been recovered,
20 whether a licensed practitioner of forensic medicine deter-
21 mined that the body recovered is that of the missing per-
22 son. No missing person may be declared dead by a board
23 convened under subsection (a) unless—

1 “(1) evidence other than the passage of a pe-
2 riod of time of less than 50 years exists which sug-
3 gests that the person is dead;

4 “(2) no evidence which reasonably suggests that
5 such person is alive is in the possession of the Fed-
6 eral Government;

7 “(3) representatives of the Federal Government
8 have made a complete search of the area where such
9 person was last seen (unless, after making every
10 good faith effort to obtain access to such area, the
11 United States is not granted such access); and

12 “(4) representatives of the Federal Government
13 have examined the records of the government or en-
14 tity having control over the area where such person
15 was last seen (unless, after making every good faith
16 effort to obtain access to such records, the United
17 States is not granted such access).

18 “(g) JUDICIAL REVIEW.—(1) Any member of the im-
19 mediate family of a missing person who was found by a
20 board convened under subsection (b) or (c)(1) to be dead,
21 or the finding of whose death was upheld by a board con-
22 vened under subsection (c)(2), may obtain a review of such
23 finding in the court of appeals of the United States within
24 the circuit where such member resides or where the find-
25 ing of death was made or upheld. Such family member

1 may obtain such review if, at any time after receiving no-
2 tice of such finding, the family member files in the court
3 a written petition requesting that the finding be set aside.

4 “(2) The decision of the court of appeals shall be
5 final, except that it shall be subject to review by the Su-
6 preme Court upon certiorari, as provided in section 1254
7 of title 28.

8 “(3) If the court of appeals sets aside the finding of
9 death and if—

10 “(A) the time allowed for filing a petition for
11 certiorari has expired and no such petition has been
12 duly filed;

13 “(B) the petition for certiorari has been denied;
14 or

15 “(C) the decision of the court of appeals has
16 been affirmed by the Supreme Court;

17 the Secretary concerned shall convene a board of further
18 inquiry under subsection (c)(2) to review the missing per-
19 son’s status not later than three years after the date on
20 which the finding is set aside, the petition for certiorari
21 is denied, or the Supreme Court affirms the decision of
22 the court of appeals.

23 “(h) PERSONNEL FILES.—(1) Except as provided in
24 paragraph (2), the Secretary concerned shall ensure that
25 a missing person’s personnel file contains all information

1 in the possession of Federal departments and agencies
2 pertaining to the disappearance or whereabouts of such
3 person.

4 “(2) If classified information is withheld from the
5 personnel file of a missing person, the Secretary concerned
6 shall ensure that the file—

7 “(A) contains a notice that the information ex-
8 ists; and

9 “(B) contains a notice of the date of the most
10 recent review of the classification status of the infor-
11 mation.

12 “(3) Any person who knowingly and willfully with-
13 holds information pertaining to the disappearance or
14 whereabouts of a missing person from that person’s per-
15 sonnel file shall be fined as provided in title 18 or impris-
16 oned not more than one year, or both.

17 “(4) The Secretary concerned shall make the con-
18 tents of the personnel file of a missing person available
19 to a member of the immediate family of such person upon
20 the written request of such family member.

21 “(i) EFFECT ON STATE LAW.—Nothing in this sec-
22 tion shall be construed to invalidate or limit the power
23 of any State court or administrative entity, or the power
24 of any court or administrative entity of any political sub-

1 division thereof, to find or declare a person dead for pur-
2 poses of the law of such State or political subdivision.

3 “(j) DEFINITIONS.—In this section:

4 “(1) The term ‘member of the immediate fam-
5 ily’ means the spouse, each adopted or natural child,
6 each parent, and each sibling.

7 “(2) The term ‘military installation’ means a
8 base, camp, post, station, yard, center, or other ac-
9 tivity under the jurisdiction of the Secretary of a
10 military department.

11 “(3) The term ‘missing person’ means—

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

14 “(B) a civilian officer or employee serving
15 with or accompanying an armed force under or-
16 ders who is missing.

17 “(4) The term ‘missing status’ means the sta-
18 tus of a missing person who is determined to be ab-
19 sent in a status of—

20 “(A) missing;

21 “(B) missing in action;

22 “(C) interned in a foreign country;

23 “(D) captured, beleaguered, or besieged by
24 a hostile force; or

1 “(E) detained in a foreign country against
2 his will.

3 “(5) The term ‘State’ means any State, the
4 District of Columbia, the Commonwealth of Puerto
5 Rico, and any territory or possession of the United
6 States.”.

7 **SEC. 4. CONFORMING AND CLERICAL AMENDMENTS.**

8 (a) CONFORMING AMENDMENTS.—(1) Section 555 of
9 title 37, United States Code, is repealed.

10 (2) Chapter 10 of title 37, United States Code, is
11 amended—

12 (A) in the last sentence of section 552(a), by
13 striking the second comma and all that follows and
14 inserting a period;

15 (B) in the second sentence of section 552(b)(2),
16 by striking the hyphen and all that follows and in-
17 serting “that his death is determined under section
18 1057 of title 10”;

19 (C) in section 552(e), by striking “section 555
20 of this title” and inserting “section 1057 of title
21 10”;

22 (D) in section 553(f)—

23 (i) by striking “When the Secretary con-
24 cerned” and inserting “When a board convened
25 under section 1057 of title 10”; and

1 (ii) by striking “the Secretary concerned
2 receives evidence” and inserting “a board con-
3 vened under section 1057 of title 10 reports”;

4 (E) in section 553(g) by striking “section 555
5 of this title” and inserting “section 1057 of title
6 10”;

7 (F) in section 556(a)—

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

10 (ii) by striking the semicolon at the end of
11 paragraph (4) and inserting a period; and

12 (iii) by striking paragraphs (1), (5), (6),
13 and (7) and redesignating paragraphs (2), (3),
14 and (4) as paragraphs (1), (2), and (3), respec-
15 tively;

16 (G) in section 556(h)—

17 (i) by striking “status” and inserting
18 “pay”; and

19 (ii) by striking the second sentence;

20 (H) in section 556, by striking subsection (b)
21 and redesignating subsections (c), (d), (e), (f), (g),
22 and (h) as subsections (b), (c), (d), (e), (f), and (g),
23 respectively;

24 (I) in paragraph (1) of section 557(a), by strik-
25 ing “, 553, and 555” and inserting “and 553”; and

1 (J) in paragraph (4)(B) of section 559(a), by
2 striking “556(f)” and inserting “556(e)”.

3 (b) CLERICAL AMENDMENTS.—(1) The table of sec-
4 tions at the beginning of chapter 53 of title 10, United
5 States Code, is amended by adding at the end the follow-
6 ing new item:

 “1058. Missing persons: informal investigations; boards of inquiry; determina-
 tions of death; personnel files.”.

7 (2) The table of sections at the beginning of chapter
8 10 of title 37, United States Code, is amended by striking
9 the item relating to section 555.

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