

from one another they may be. Kristen's Act will help facilitate communication between search parties through the establishment of a national database to track involuntarily missing adults.

The greater the number of agencies helping in the search, the more likely it is that the person will be found. But there is no central organization that exists to aid law enforcement in their efforts to locate missing adults. Unfortunately, Kristen's tragic story illustrates the need for such an organization. Kristen's Act will help enable this to happen by providing funds to help establish a national clearinghouse for missing adults.

Mr. President, I believe that it is important to mention that it is true that some individuals may disappear because they want to. Some of these individuals may live in abusive households. Others may want to start a new life. And because they are considered legal adults, they have the choice to remain missing. In these cases, it may not make sense of law enforcement, the Center, or anyone else to launch a search.

That is why I believe the Attorney General should ensure that under Kristen's Act, grants will be given out only to organizations that have demonstrated they have in place clear, effective methods of distinguishing between disappearances that are voluntary and those that may involve foul play. And that is why Kristen's Act specifies that if a national database is set up, it will be used to track only those missing adults who have first been determined by law enforcement to be endangered due to age, diminished mental capacity or suspicious circumstances.

There are many individuals who really do need help. In those instances, Kristen's Act sends a message to families that they deserve whatever assistance is necessary to locate endangered and involuntarily missing loved ones. The bill will help ensure that all involuntarily missing adults—regardless of age—will receive not only the benefit of search efforts by law enforcement, but also by experienced, specialized organizations.

Mr. President, I believe we must do everything we can to prevent situations like the one that Kristen Modafferi and her family have suffered through. The bill we passed today goes a long way toward achieving this goal. Again, I commend my colleagues for recognizing its importance.

Mr. BROWNBACK. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2780) was read the third time and passed.

MILITARY EXTRATERRITORIAL JURISDICTION ACT OF 2000

Mr. BROWNBACK. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill S. 768.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 768) entitled "An Act to establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Military Extraterritorial Jurisdiction Act of 2000".

SEC. 2. FEDERAL JURISDICTION.

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

"CHAPTER 212—MILITARY EXTRATERRITORIAL JURISDICTION

"Sec.

"3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States.

"3262. Arrest and commitment.

"3263. Delivery to authorities of foreign countries.

"3264. Limitation on removal.

"3265. Initial proceedings.

"3266. Regulations.

"3267. Definitions.

"§3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

"(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

"(1) while employed by or accompanying the Armed Forces outside the United States; or

"(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

"(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

"(c) Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

"(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless—

"(1) such member ceases to be subject to such chapter; or

"(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

"§3262. Arrest and commitment

"(a) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

"(b) Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

"§3263. Delivery to authorities of foreign countries

"(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if—

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

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

"(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

"§3264. Limitation on removal

"(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed—

"(1) to the United States; or

"(2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

"(b) The limitation in subsection (a) does not apply if—

"(1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

"(2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

"(3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

"(4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or

"(5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265(a).

§ 3265. Initial proceedings

“(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure—

“(A) shall be conducted by a Federal magistrate judge; and

“(B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

“(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

“(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person’s detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person’s release before trial under chapter 207 of this title.

“(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)—

“(1) shall be conducted by a Federal magistrate judge; and

“(2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

“(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

“(2) For purposes of this subsection, the term ‘qualified military counsel’ means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who—

“(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

“(B) is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

§ 3266. Regulations

“(a) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations governing the apprehension, detention, delivery, and removal of persons under this chapter and the facilitation of proceedings under section 3265. Such regulations shall be uniform throughout the Department of Defense.

“(b)(1) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations requiring that, to the maximum extent practicable, notice shall be provided to any person employed by or accompanying the Armed Forces outside the United States who is not a national of the United States that such person is potentially subject to the criminal jurisdiction of the United States under this chapter.

“(2) A failure to provide notice in accordance with the regulations prescribed under paragraph (1) shall not defeat the jurisdiction of a court of the United States or provide a defense in any judicial proceeding arising under this chapter.

“(c) The regulations prescribed under this section, and any amendments to those regulations, shall not take effect before the date that is 90 days after the date on which the Secretary of Defense submits a report containing those regu-

lations or amendments (as the case may be) to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

§ 3267. Definitions

“As used in this chapter:

“(1) The term ‘employed by the Armed Forces outside the United States’ means—

“(A) employed as a civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department), as a Department of Defense contractor (including a subcontractor at any tier), or as an employee of a Department of Defense contractor (including a subcontractor at any tier);

“(B) present or residing outside the United States in connection with such employment; and

“(C) not a national of or ordinarily resident in the host nation.

“(2) The term ‘accompanying the Armed Forces outside the United States’ means—

“(A) a dependent of—

“(i) a member of the Armed Forces;

“(ii) a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

“(iii) a Department of Defense contractor (including a subcontractor at any tier) or an employee of a Department of Defense contractor (including a subcontractor at any tier);

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

“(C) not a national of or ordinarily resident in the host nation.

“(3) The term ‘Armed Forces’ has the meaning given the term ‘armed forces’ in section 101(a)(4) of title 10.

“(4) The terms ‘Judge Advocate General’ and ‘judge advocate’ have the meanings given such terms in section 801 of title 10.”

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 211 the following new item:

“212. Military extraterritorial jurisdiction 3261”.

Amend the title so as to read “An Act to amend title 18, United States Code, to establish Federal jurisdiction over offenses committed outside the United States by persons employed by or accompanying the Armed Forces, or by members of the Armed Forces who are released or separated from active duty prior to being identified and prosecuted for the commission of such offenses, and for other purposes.”

Mr. SESSIONS. Mr. President, I commend my colleague from Vermont, Senator LEAHY, for his support in getting this bill passed. Our Armed Forces and their families are in desperate need of this legislation and it has been a long time coming. This legislation closes a legal loophole which prevented effective prosecution of certain crime committed by civilians accompanying the Armed Forces overseas. When civilian dependents, contractors, and Federal employees go overseas with the military, the Uniform Code of Military Justice and the Federal criminal code generally do not apply to them. Therefore, if one of these civilians commits a criminal act—even a serious one such as rape or child molestation—then he or she could be beyond the reach of Federal law if the foreign authorities refuse or neglect to prosecute. Surprisingly, host countries often choose to

not prosecute American civilians, especially where the crime was committed against another American or against property owned by an American or the U.S. Government. That is why this legislation is needed.

Since this legislation initially passed the Senate on July 1, 1999, the House of Representatives, under the leadership of Representative MCCOLLUM of Florida, took the bill and further refined it based upon concerns that arose after Senate Consideration. In addition, Mr. MCCOLLUM submitted House Report 106-778 to accompany the House version of the bill—H.R. 3380. This report does an outstanding job of outlining the background and need for this legislation. The report also includes a section-by-section analysis and discussion of the legislation. We have agreed to incorporate the text of H.R. 3380 into this final bill. I have reviewed House Report 106-778, and I agree with it. I believe that report reflects the intentions of the Senate. At this time, I yield to my distinguished colleague from Vermont.

Mr. LEAHY. Thank you, Senator SESSIONS. Mr. President, I too, want to congratulate and commend my distinguished colleague from Alabama for his leadership and perseverance in getting this legislation passed. I fully support S. 768, which I believe was significantly improved with this most recent substitute amendment. The due process considerations regarding appearances before U.S. Magistrates before removing civilians from overseas were added after earlier Senate consideration and, I believe, improve the bill. This important legislation will close a gap in Federal law that has existed for many years. With foreign nations often not interested in prosecuting crimes against Americans, particularly when committed by an American, the result is a jurisdictional gap that allows some civilians to literally get away with murder. The House Report 106-778, which Senator SESSIONS just referred to a moment ago, outlines many of the problems resulting from this loophole. I agree with Senator SESSIONS with respect to the report. I am glad this legislation will pass this Congress because the gap that has allowed individuals accompanying our military personnel overseas to go unpunished for heinous crimes must be closed. That is why I have been a strong proponent and co-sponsor of this legislation. I yield the floor.

Mr. LEAHY. Mr. President, I am pleased that the Senate is voting on final passage of S. 768, the Military and Extraterritorial Jurisdiction Act. I have worked on this issue for some time now and believe that the Congress should promptly move forward with this important legislation.

Specifically, in the last Congress, I originally introduced most of the provisions in this bill as part of the comprehensive crime bill, S. 2484, the Safe

Schools, Safe Streets and Secure Borders Act of 1998. On the first day of this Congress, I again included these provisions in S. 9, the Safe Schools, Safe Streets and Secure Borders Act of 1999. Last year, I was pleased to join Senators SESSIONS and DEWINE in supporting the Sessions-Leahy-DeWine substitute amendment to S. 768, which was reported favorably by the Senate Judiciary Committee and then passed unanimously by the Senate on July 1, 1999, over a year ago. The bill then sat in a House subcommittee for almost one year until the House of Representatives finally took action in late July, 2000 to consider and pass an amended version of S. 768.

S. 768 closes a gap in federal law that has existed for many years and permitted individuals who accompanied military personnel overseas to "get away with murder." Foreign nations often have no interest in vindicating crimes against American servicemen stationed overseas, particularly when committed by Americans. The lack of Federal jurisdiction over such crimes has allowed the perpetrators to go unpunished. This bill establishes authority for, and sets up procedures to implement the exercise of, Federal jurisdiction over felony crimes committed by certain people overseas.

I had some concerns with certain aspects of S. 768, as originally introduced, and worked to address those concerns and improve the bill in the Sessions-Leahy-DeWine substitute amendment. For example, the original bill would have extended court-martial jurisdiction over DOD employees and contractors whenever they accompanied our Armed Forces overseas. I was concerned that this extension of court-martial jurisdiction ran afoul of the Supreme Court's decisions in *Reid v. Covert*, 354 U.S. 1 (1957), *Kinsella v. Singleton*, 361 U.S. 234 (1960) and *Toth v. Quarles*, 350 U.S. 11 (1955). Those rulings made clear that court-martial jurisdiction may not be constitutionally applied to crimes committed in peacetime by persons accompanying the armed forces overseas, or to crimes committed by a former member of the armed services.

We made progress in the Sessions-Leahy-DeWine substitute amendment passed by the Senate to limit the proposed extension of court-martial jurisdiction to DOD employees and contractors, and ensure its application only in times when the armed forces are engaged in "contingency operation" involving a war or national emergency declared by the Congress or the President. While his correction would, in my view, have comported with the Supreme Court rulings on this issue and cured any constitutional infirmity with the original language, I appreciate the action of the House to remove altogether this section of the bill, which had originally given me concern.

In addition, the original bill contained a provision that would have

deemed any delay in bringing a person before a magistrate due to transporting the person back to the U.S. from overseas as "justifiable." I was concerned that this provision could end up excusing lengthy and unreasonable delays in getting a civilian, who was arrested overseas, before a U.S. Magistrate, and thereby raise due process and other constitutional concerns.

The Sessions-Leahy-DeWine substitute cured that potential problem by eliminating the "justifiable" delay provision in the original bill. Thus, the general standard from Federal Rule of Criminal Procedure 5 about avoiding unnecessary delays in bringing an arrested person before a magistrate would apply to the removal of a civilian from overseas to answer charges in the United States.

The House has made further improvements to the removal and detention procedures in the bill, and I support them. In particular, the House has clarified the procedures necessary to protect the rights of the accused in both removal and detention hearings, and to facilitate and expedite the conduct of initial appearances by the accused before federal magistrate judges.

Finally, S. 768 as introduced authorized the Department of Defense to determine which foreign officials constitute the appropriate authorities to whom an arrested civilian should be delivered. I urged that DOD make this determination in consultation with the Department of State, and the Sessions-Leahy-DeWine substitute amendment adopted such a consultation requirement. I am pleased that the House maintained this part of the substitute amendment in House-passed version of the legislation and requires consultation with the Department of State.

The inaction of the Congress on closing the jurisdictional gap that has existed over the criminal actions of civilian on military installations overseas has been the source of terrible injustice. For example, most recently the Second Circuit Court of Appeals was compelled to reverse a conviction and dismiss an indictment of sexual abuse of a minor committed by a civilian at a military base in Germany. The Court took the "unusual step of directing the Clerk of the court to forward a copy this opinion" to the relevant Committees of the Congress. We have gotten our wake-up call and should waste no more time to send this legislation to the President.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate agree to the amendments of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDING TITLE 44, U.S. CODE, TO ENSURE PRESERVATION OF THE RECORDS OF THE FREEDMEN'S BUREAU

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5157, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5157) to amend title 44, United States Code, to ensure preservation of the records of the Freedmen's Bureau.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The bill (H.R. 5157) was read the third time and passed.

PAUL COVERDELL NATIONAL FORENSIC SCIENCES IMPROVEMENT ACT OF 2000

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 3045, and the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3045) to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, on June 9, 1999, our departed friend and colleague, the former senior Senator from Georgia, introduced the National Forensic Sciences Improvement Act of 1999. This important legislative initiative called for an infusion of Federal funds to improve the quality of State and local forensic science services. I am pleased that Senator SESSIONS has revived the bill, and that we are passing it today as the Paul Coverdell National Forensic Sciences Improvement Act of 2000, S. 3045.

The use of quality forensic science services is widely accepted as a key to effective crime-fighting, especially with advanced technologies such as DNA testing. Over the past decade, DNA testing has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene. Because of its scientific precision, DNA testing can, in some cases, conclusively establish a suspect's guilt or innocence. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value for investigators.