106TH CONGRESS
1ST Session

S. 250

To establish ethical standards for Federal prosecutors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. Hatch (for himself, Mr. DeWine, and Mr. Nickles) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish ethical standards for Federal prosecutors, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Prosecutor
Ethics Act”.

SEC. 2. ETHICAL STANDARDS FOR FEDERAL PROSECU-
TORS.

(a) Amendments to Title 28, United States
Code.—
(1) GENERAL.—Section 530B of title 28, United States Code, is amended to read as follows:

“§ 530B. Ethical standards for Federal prosecutors

“(a) GENERAL.—Except as provided in subsection (b), a Federal prosecutor shall be subject to all laws and rules governing ethical conduct of attorneys of the State in which the Federal prosecutor is licensed as an attorney.

“(b) EXCEPTION.—A Federal prosecutor shall not be subject to a State law or rule governing ethical conduct of attorneys, to the extent that the State law or rule is inconsistent with Federal law or interferes with the effectuation of Federal law or policy, including the investigation of violations of Federal law.

“(c) FEDERAL PROSECUTOR DEFINED.—In this section, the term ‘Federal prosecutor’ means an attorney employed by the Department of Justice who is directly engaged in the prosecution of violations of Federal civil or criminal law.’’.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 31 of title 28, United States Code, is amended by striking the item for section 530B and inserting the following:

“530B. Ethical standards for Federal prosecutors.”.

(3) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate such regulations as may be
necessary to carry out section 530B of title 28, United States Code, as added by paragraph (1) of this subsection.

(b) **Prohibited Conduct for Department of Justice Employees.**—

(1) **In general.**—The Attorney General shall establish by rule that it shall be punishable conduct for any officer or employee of the Department of Justice, in the discharge of his or her official duties, intentionally to—

(A) seek the indictment of any person in the absence of a reasonable belief of probable cause, as prohibited by the Principles of Federal Prosecution, United States Attorneys’ Manual 9-27.200 et seq.;

(B) fail to disclose exculpatory evidence to the defense, in violation of his or her obligations under Brady v. Maryland (373 U.S. 83 (1963));

(C) mislead a court as to the guilt of any person by knowingly making a false statement of material fact or law;

(D) offer evidence known to be false;

(E) alter evidence in violation of section 1512 of title 18, United States Code;
(F) attempt to corruptly influence or color a witness’s testimony with the intent to encourage untruthful testimony, in violation of section 1503 or 1512 of title 18, United States Code;

(G) violate a defendant’s right to discovery under Rule 16(a) of the Federal Rules of Criminal Procedure;

(H) offer or provide sexual activities to any government witness or potential witness in exchange for or on account of his or her testimony; or

(I) improperly disseminate confidential, non-public information to any person during an investigation or trial, in violation of—

(i) section 50.2 of title 28, Code of Federal Regulations;

(ii) Rule 6(e) of the Federal Rules of Criminal Procedure;

(iii) subsection (b) or (c) of section 2232 of title 18, United States Code;

(iv) section 6103 of the Internal Revenue Code of 1986; or

(v) United States Attorneys’ Manual 1–7.000 et seq.
(2) PENALTIES.—The Attorney General shall establish a range of penalties for engaging in conduct prohibited under paragraph (1), which shall include—

(A) reprimand;

(B) demotion;

(C) dismissal;

(D) suspension from employment;

(E) referral of ethical charges to the bar;

and

(F) referral of evidence related to the conduct, if appropriate, to a grand jury for possible criminal prosecution.

(3) SUBSTANTIVE RIGHTS.—Nothing in paragraph (1) may be construed to—

(A) establish any substantive right on behalf of a criminal defendant, civil litigant, target or subject of an investigation, witness, counsel for a represented party or parties, or any other person; or

(B) provide a basis for—

(i) dismissing any criminal or civil charge or proceeding against any person in any court of the United States; or
(ii) excluding relevant evidence in any proceeding in any court of the United States.

(c) Annual Report.—

(1) In general.—Beginning on June 1, 1999, and on June 1 of each year thereafter, the Attorney General shall submit to the Committees on the Judiciary and on Appropriations of the House of Representatives and the Senate a report on the activities and operations of the Office of Professional Responsibility of the Department of Justice during the fiscal year that ended on September 30 of the preceding year.

(2) Elements of report.—Each report submitted under paragraph (1) shall—

(A) include the number, type, and disposition of all investigations conducted or supervised by the Office of Professional Responsibility;

(B) include a summary of the findings of each investigation in which the Department of Justice found that an officer or employee of the Department of Justice—

(i) engaged in willful misconduct; or
(ii) committed a willful violation of subsection (b)(1); and

(C) be confidential and not disclose information that would interfere with any pending investigation or improperly infringe upon the privacy rights of any individual.

(d) Commission on Federal Prosecutorial Conduct.—

(1) Establishment and Functions of Commission.—

(A) Establishment.—There is established a Commission on Federal Prosecutorial Conduct (referred to in this subsection as the “Commission”).

(B) Functions.—The functions of the Commission shall be to—

(i) conduct a review regarding—

(I) whether there are specific Federal duties related to investigation and prosecution of violations of Federal law which are incompatible with the regulation of the conduct of Federal prosecutors (as that term is defined in section 530B of title 28, United States Code) by any State law
or rule governing ethical conduct of attorneys; and

(II) the procedures utilized by the Department of Justice to investigate and punish inappropriate conduct by Federal prosecutors; and

(ii) not later than 12 months after the date on which the members of the Commission are appointed under paragraph (2)(B), submit to the Attorney General a report concerning the review under clause (i), including any recommendations of the Commission relating to the matters reviewed under clause (i).

(C) CONSULTATION.—In carrying out subparagraph (B), the Commission shall consult with the Attorney General, the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate, the American Bar Association and other organizations of attorneys, representatives of Federal, State, and local law enforcement agencies, and Federal and State courts.

(2) MEMBERSHIP.—
(A) IN GENERAL.—The Commission shall be composed of 7 members, each of whom shall be—

(i) appointed by the Chief Justice of the United States, after consultation with the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate, and representatives of judges, prosecutors, defense attorneys, law enforcement officials, victims of crime, and others interested in the criminal justice process; and

(ii) a judge of the United States (as defined in section 451 of title 28, United States Code).

(B) APPOINTMENT.—The members of the Commission shall be appointed not later than 30 days after the date of enactment of this Act.

(C) VACANCY.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(D) CHAIRPERSON.—The Commission shall elect a chairperson and vice chairperson from among its members.
(E) QUORUM.—Four members of the Commission shall constitute a quorum, but 2 members may conduct hearings.

(3) COMPENSATION.—Members of the Commission who are officers, or full-time employees, of the United States shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

(4) PERSONNEL.—

(A) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director, who shall receive compensation at a rate not exceeding the rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(B) STAFF.—The Executive Director, with the approval of the Commission, may appoint and fix the compensation of such additional personnel as the Executive Director determines to be necessary, without regard to the provisions of title 5, United States Code, governing
appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Compensation under this subparagraph shall not exceed the annual maximum rate of basic pay for a position above GS–15 of the General Schedule under section 5108 of title 5, United States Code.

(C) EXPERTS AND CONSULTANTS.—The Executive Director may procure personal services of experts and consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the highest level payable under the General Schedule pay rates under section 5332 of title 5, United States Code.

(D) SERVICES.—The Administrative Office of the United States Courts shall provide administrative services, including financial and budgeting services, to the Commission on a reimbursable basis. The Federal Judicial Center shall provide necessary research services to the Commission on a reimbursable basis.

(5) INFORMATION.—The Commission may request from any department, agency, or independent
instrumentality of the Federal Government any in-
formation and assistance the Commission determines
to be necessary to carry out its functions under this
subsection. Each such department, agency, and inde-
dependent instrumentality is authorized to provide
such information and assistance to the extent per-
mitted by law when requested by the chairperson of
the Commission.

(6) Report of the Attorney General.—
Not later than 60 days after the date of enactment
of this Act, the Attorney General shall submit to the
Commission a report, which shall, with respect to
the 3-year period preceding the date on which the
report is submitted under this paragraph—

(A) include the number, type, and disposi-
tion of all investigations conducted or super-
vised by the Office of Professional Responsibil-
ity of the Department of Justice;

(B) include a summary of the findings of
each investigation in which the Department of
Justice found that an officer or employee of the
Department of Justice engaged in willful mis-
conduct; and

(C) be confidential and not disclose infor-
mation that would interfere with any pending
investigation or improperly infringe upon the privacy rights of any individual.

(7) TERMINATION.—The Commission shall terminate 90 days after the date on which the Commission submits the report under paragraph (1)(B)(ii).

(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums, not to exceed $900,000, as may be necessary to carry out this subsection. Amounts made available under this paragraph shall remain available until expended.