

**Editorial Notes**

## 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 Secretary of Defense.

(2) Upon receipt of information under paragraph (1), the Secretary of Defense shall as expe-

ditiously 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 Secretary of Defense, 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; Pub. L. 113–291, div. A, title IX, § 916(c), Dec. 19, 2014, 128 Stat. 3478; Pub. L. 114–328, div. A, title IX, § 953(b), Dec. 23, 2016, 130 Stat. 2376.)

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2016—Subsec. (c). Pub. L. 114–328 substituted “Secretary of Defense” for “designated Agency Director” in pars. (1), (2), and (3).

2014—Subsec. (c)(1). Pub. L. 113–291, § 916(c)(1), substituted “the designated Agency Director” for “the office established under section 1501 of this title”.

Subsec. (c)(2), (3). Pub. L. 113–291, § 916(c)(2), substituted “designated Agency Director” for “head of the office established under section 1501 of this title”.

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 practicable, ensure that the personnel file of a miss-

ing 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) The Secretary concerned shall withhold from personnel files under this section, as privileged information, any survival, evasion, resistance, and escape debriefing report provided by a person described in section 1501(c) of this title who is returned to United States control which is obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(3) 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.

(4) 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 (3) and (4) 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; Pub. L. 113-66, div. A, title V, § 582(a), Dec. 26, 2013, 127 Stat. 776.)

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2013—Subsec. (d)(2) to (4). Pub. L. 113-66, § 582(a)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f). Pub. L. 113-66, § 582(a)(2), substituted “paragraphs (3) and (4)” for “paragraphs (2) and (3)”.

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.)

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##### 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 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.—(1) The Secretary of Defense shall implement the program within the Department of Defense through the designated Agency Director.

(2)(A) The Secretary shall assign or detail to the designated Defense Agency on a full-time basis a senior medical examiner from the personnel of the Armed Forces Medical Examiner