

105TH CONGRESS  
2D SESSION

# H. R. 3396

To establish standards of conduct for Department of Justice employees,  
and to establish a review board to monitor compliance with such standards.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1998

Mr. McDADE (for himself and Mr. MURTHA) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

To establish standards of conduct for Department of Justice  
employees, and to establish a review board to monitor  
compliance with such standards.

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 “Citizens Protection Act  
5       of 1998”.

6       **SEC. 2. INTERPRETATION.**

7       It is the intent of this Act that the term “employee”  
8       shall be interpreted so as to include, but not be limited  
9       to, an attorney, investigator, special prosecutor, or other  
10      employee of the Department of Justice as well as an attor-

1 ney, investigator, accountant, or a special prosecutor act-  
2 ing under the authority of the Department of Justice.

3 **TITLE I—ETHICAL STANDARDS**  
4 **FOR FEDERAL PROSECUTORS**

5 **SEC. 101. ETHICAL STANDARDS FOR FEDERAL PROSECU-**  
6 **TORS.**

7 (a) IN GENERAL.—Chapter 31 of title 28, United  
8 States Code, is amended by adding at the end the follow-  
9 ing:

10 **“§ 530B. Ethical standards for attorneys for the Gov-**  
11 **ernment**

12 “(a) An attorney for the Government shall be subject  
13 to State laws and rules, and local Federal court rules, gov-  
14 erning attorneys in each State where such attorney en-  
15 gages in that attorney’s duties, to the same extent and  
16 in the same manner as other attorneys in that State.

17 “(b) The Attorney General shall make and amend  
18 rules of the Department of Justice to assure compliance  
19 with this section.

20 “(c) As used in this section, the term ‘attorney for  
21 the Government’ includes any attorney described in sec-  
22 tion 77.2(a) of part 77 of title 28 of the Code of Federal  
23 Regulations.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 at the beginning of such chapter is amended by adding  
 3 at the end the following new item:

“530B. Ethical standards for attorneys for the Government.”.

4 **TITLE II—PUNISHABLE**  
 5 **CONDUCT**

6 **SEC. 201. PUNISHABLE CONDUCT.**

7 (a) VIOLATIONS.—The Attorney General shall estab-  
 8 lish, by plain rule, that it shall be punishable conduct for  
 9 any Department of Justice employee to—

10 (1) in the absence of probable cause seek the  
 11 indictment of any person;

12 (2) fail promptly to release information that  
 13 would exonerate a person under indictment;

14 (3) intentionally mislead a court as to the guilt  
 15 of any person;

16 (4) intentionally or knowingly misstate evi-  
 17 dence;

18 (5) intentionally or knowingly alter evidence;

19 (6) attempt to influence or color a witness’ tes-  
 20 timony;

21 (7) act to frustrate or impede a defendant’s  
 22 right to discovery;

23 (8) offer or provide sexual activities to any gov-  
 24 ernment witness or potential witness;

1           (9) leak or otherwise improperly disseminate in-  
2           formation to any person during an investigation; or  
3           (10) engage in conduct that discredits the De-  
4           partment.

5           (b) PENALTIES.—The Attorney General shall estab-  
6           lish penalties for engaging in conduct described in sub-  
7           section (a) that shall include—

- 8           (1) probation;
- 9           (2) demotion;
- 10          (3) dismissal;
- 11          (4) referral of ethical charges to the bar;
- 12          (5) loss of pension or other retirement benefits;
- 13          (6) suspension from employment; and
- 14          (7) referral of the allegations, if appropriate, to  
15          a grand jury for possible criminal prosecution.

16 **SEC. 202. COMPLAINTS.**

17          (a) WRITTEN STATEMENT.—A person who believes  
18          that an employee of the Department of Justice has en-  
19          gaged in conduct described in section 201(a) may submit  
20          a written statement, in such form as the Attorney General  
21          may require, describing the alleged conduct.

22          (b) PRELIMINARY INVESTIGATION.—Not later than  
23          30 days after receipt of a written statement submitted  
24          under subsection (a), the Attorney General shall conduct  
25          a preliminary investigation and determine whether the al-

1 legations contained in such written statement warrant fur-  
2 ther investigation.

3 (c) INVESTIGATION AND PENALTY.—If the Attorney  
4 General determines after conducting a preliminary inves-  
5 tigation under subsection (a) that further investigation is  
6 warranted, the Attorney General shall within 90 days fur-  
7 ther investigate the allegations and, if the Attorney Gen-  
8 eral determines that a preponderance of the evidence sup-  
9 ports the allegations, impose an appropriate penalty.

10 **SEC. 203. MISCONDUCT REVIEW BOARD.**

11 (a) ESTABLISHMENT.—There is established as an  
12 independent establishment a board to be known as the  
13 “Misconduct Review Board” (hereinafter in this Act re-  
14 ferred to as the “Board”).

15 (b) MEMBERSHIP.—The Board shall consist of—

16 (1) three voting members appointed by the  
17 President, one of whom the President shall designate  
18 as Chairperson;

19 (2) two non-voting members appointed by the  
20 Speaker of the House of Representatives, one of  
21 whom shall be a Republican and one of whom shall  
22 be a Democrat; and

23 (3) two non-voting members appointed by the  
24 Majority Leader of the Senate, one of whom shall be  
25 a Republican and one of whom shall be a Democrat.

1       (c) NON-VOTING MEMBERS SERVE ADVISORY ROLE  
2 ONLY.—The non-voting members shall serve on the Board  
3 in an advisory capacity only and shall not take part in  
4 any decisions of the Board.

5       (d) SUBMISSION OF WRITTEN STATEMENT TO  
6 BOARD.—If the Attorney General makes no determination  
7 pursuant to section 202(b) or imposes no penalty under  
8 section 202(c), a person who submitted a written state-  
9 ment under section 202(a) may submit such written state-  
10 ment to the Board.

11       (e) REVIEW OF ATTORNEY GENERAL DETERMINA-  
12 TION.—The Board shall review all determinations made  
13 by the Attorney General under sections 202(b) or 202(c).

14       (f) BOARD INVESTIGATION.—In reviewing a deter-  
15 mination with respect to a written statement under sub-  
16 section (e), or a written statement submitted under sub-  
17 section (d), the Board may investigate the allegations  
18 made in the written statement as the Board considers ap-  
19 propriate.

20       (g) SUBPOENA POWER.—

21           (1) IN GENERAL.—The Commission may issue  
22 subpoenas requiring the attendance and testimony of  
23 witnesses and the production of any evidence relat-  
24 ing to any matter under investigation by the Com-  
25 mission. The attendance of witnesses and the pro-

duction of evidence may be required from any place within the United States.

(2) FAILURE TO OBEY A SUBPOENA.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) SERVICE OF PROCESS.—All process of any court to which application is made under paragraph (2) may be served in the judicial district in which the person required to be served resides or may be found.

1       (h) MEETINGS.—The Board shall meet at the call of  
2 the Chairperson or a majority of its voting members. All  
3 meetings shall be open to the public. The Board is author-  
4 ized to sit where the Board considers most convenient  
5 given the facts of a particular complaint, but shall give  
6 due consideration to conducting its activities in the judi-  
7 cial district where the complainant resides.

8       (i) DECISIONS.—Decisions of the Board shall be  
9 made by majority vote of the voting members.

10       (j) AUTHORITY TO IMPOSE PENALTY.—After con-  
11 ducting such independent review and investigation as it  
12 deems appropriate, the Board by a majority vote of its  
13 voting members may impose a penalty, including dismis-  
14 sal, as provided in section 201(b) as it considers appro-  
15 priate.

16       (k) COMPENSATION.—

17               (1) PROHIBITION OF COMPENSATION OF FED-  
18 ERAL EMPLOYEES.—Members of the Board who are  
19 full-time officers or employees of the United States,  
20 including Members of Congress, may not receive ad-  
21 ditional pay, allowances, or benefits by reason of  
22 their service on the Board.

23               (2) TRAVEL EXPENSES.—Each member shall  
24 receive travel expenses, including per diem in lieu of



1 subsistence, in accordance with sections 5702 and  
2 5703 of title 5, United States Code.

3 (l) EXPERTS AND CONSULTANTS.—The Board may  
4 procure temporary and intermittent services under section  
5 3109(b) of title 5, United States Code, but at rates for  
6 individuals not to exceed \$200 per day.

7 (m) STAFF OF FEDERAL AGENCIES.—Upon request  
8 of the Chairperson, the head of any Federal department  
9 or agency may detail, on a reimbursable basis, any of the  
10 personnel of that department or agency to the Board to  
11 assist it in carrying out its duties under this Act.

12 (n) OBTAINING OFFICIAL DATA.—The Board may  
13 secure directly from any department or agency of the  
14 United States information necessary to enable it to carry  
15 out this Act. Upon request of the Chairperson of the  
16 Board, the head of that department or agency shall fur-  
17 nish that information to the Board.

18 (o) MAILS.—The Board may use the United States  
19 mails in the same manner and under the same conditions  
20 as other departments and agencies of the United States.

21 (p) ADMINISTRATIVE SUPPORT SERVICES.—Upon  
22 the request of the Board, the Administrator of General  
23 Services shall provide to the Board, on a reimbursable  
24 basis, the administrative support services necessary for the  
25 Board to carry out its responsibilities under this Act.

1 (q) CONTRACT AUTHORITY.—The Board may con-  
2 tract with and compensate government and private agen-  
3 cies or persons for services, without regard to section 3709  
4 of the Revised Statutes (41 U.S.C. 5).

5 [( ) SUBPOENA POWER.—

6 (1) IN GENERAL.—The Commission may issue  
7 subpoenas requiring the attendance and testimony of  
8 witnesses and the production of any evidence relat-  
9 ing to any matter [under investigation by the Com-  
10 mission] [which the Commission is empowered to in-  
11 vestigate by section ]. The attendance of witnesses  
12 and the production of evidence may be required from  
13 any place within [the United States] [a State] [a ju-  
14 dicial district] at any designated place of hearing  
15 within the [United States] [that State] [that judicial  
16 district].

17 (2) FAILURE TO OBEY A SUBPOENA.—If a per-  
18 son refuses to obey a subpoena issued under para-  
19 graph (1), the Commission may apply to a United  
20 States district court for an order requiring that per-  
21 son to appear before the Commission to give testi-  
22 mony, produce evidence, or both, relating to the  
23 matter under investigation. The application may be  
24 made within the judicial district where the hearing  
25 is conducted or where that person is found, resides,

1 or transacts business. Any failure to obey the order  
2 of the court may be punished by the court as civil  
3 contempt.

4 (3) SERVICE OF SUBPOENAS.—The subpoenas  
5 of the Commission shall be served in the manner  
6 provided for subpoenas issued by a United States  
7 district court under the Federal Rules of Civil Pro-  
8 cedure for the United States district courts.

9 (4) SERVICE OF PROCESS.—All process of any  
10 court to which application is made under paragraph  
11 (2) may be served in the judicial district in which  
12 the person required to be served resides or may be  
13 found.]

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