

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.

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 “Federal Prosecutor  
5       Ethics Act”.

6       **SEC. 2. ETHICAL STANDARDS FOR FEDERAL PROSECU-**  
7       **TORS.**

8       (a) AMENDMENTS TO TITLE 28, UNITED STATES  
9       CODE.—

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

3   **“§ 530B. Ethical standards for Federal prosecutors**

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

8       “(b) EXCEPTION.—A Federal prosecutor shall not be  
9 subject to a State law or rule governing ethical conduct  
10 of attorneys, to the extent that the State law or rule is  
11 inconsistent with Federal law or interferes with the effec-  
12 tuation of Federal law or policy, including the investiga-  
13 tion of violations of Federal law.

14       “(c) FEDERAL PROSECUTOR DEFINED.—In this sec-  
15 tion, the term ‘Federal prosecutor’ means an attorney em-  
16 ployed by the Department of Justice who is directly en-  
17 gaged in the prosecution of violations of Federal civil or  
18 criminal law.”.

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

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

23           (3) REGULATIONS.—Not later than 90 days  
24       after the date of enactment of this Act, the Attorney  
25       General shall promulgate such regulations as may be

1       necessary to carry out section 530B of title 28,  
2       United States Code, as added by paragraph (1) of  
3       this subsection.

4       (b) PROHIBITED CONDUCT FOR DEPARTMENT OF  
5 JUSTICE EMPLOYEES.—

6           (1) IN GENERAL.—The Attorney General shall  
7       establish by rule that it shall be punishable conduct  
8       for any officer or employee of the Department of  
9       Justice, in the discharge of his or her official duties,  
10      intentionally to—

11           (A) seek the indictment of any person in  
12      the absence of a reasonable belief of probable  
13      cause, as prohibited by the Principles of Fed-  
14      eral Prosecution, United States Attorneys'  
15      Manual 9–27.200 et seq.;

16           (B) fail to disclose exculpatory evidence to  
17      the defense, in violation of his or her obligations  
18      under *Brady v. Maryland* (373 U.S. 83  
19      (1963));

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

23           (D) offer evidence known to be false;

24           (E) alter evidence in violation of section  
25      1512 of title 18, United States Code;

1 (F) attempt to corruptly influence or color  
2 a witness's testimony with the intent to encour-  
3 age untruthful testimony, in violation of section  
4 1503 or 1512 of title 18, United States Code;

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

8 (H) offer or provide sexual activities to any  
9 government witness or potential witness in ex-  
10 change for or on account of his or her testi-  
11 mony; or

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

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

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

19 (iii) subsection (b) or (c) of section  
20 2232 of title 18, United States Code;

21 (iv) section 6103 of the Internal Reve-  
22 nue Code of 1986; or

23 (v) United States Attorneys' Manual  
24 1-7.000 et seq.

1           (2) PENALTIES.—The Attorney General shall  
2       establish a range of penalties for engaging in con-  
3       duct prohibited under paragraph (1), which shall  
4       include—

5                   (A) reprimand;

6                   (B) demotion;

7                   (C) dismissal;

8                   (D) suspension from employment;

9                   (E) referral of ethical charges to the bar;

10          and

11                   (F) referral of evidence related to the con-  
12       duct, if appropriate, to a grand jury for possible  
13       criminal prosecution.

14          (3) SUBSTANTIVE RIGHTS.—Nothing in para-  
15       graph (1) may be construed to—

16                   (A) establish any substantive right on be-  
17       half of a criminal defendant, civil litigant, tar-  
18       get or subject of an investigation, witness,  
19       counsel for a represented party or parties, or  
20       any other person; or

21                   (B) provide a basis for—

22                           (i) dismissing any criminal or civil  
23       charge or proceeding against any person in  
24       any court of the United States; or

1 (ii) excluding relevant evidence in any  
2 proceeding in any court of the United  
3 States.

4 (c) ANNUAL REPORT.—

5 (1) IN GENERAL.—Beginning on June 1, 1999,  
6 and on June 1 of each year thereafter, the Attorney  
7 General shall submit to the Committees on the Judi-  
8 ciary and on Appropriations of the House of Rep-  
9 resentatives and the Senate a report on the activities  
10 and operations of the Office of Professional Respon-  
11 sibility of the Department of Justice during the fis-  
12 cal year that ended on September 30 of the preced-  
13 ing year.

14 (2) ELEMENTS OF REPORT.—Each report sub-  
15 mitted under paragraph (1) shall—

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

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

24 (i) engaged in willful misconduct; or

1 (ii) committed a willful violation of  
 2 subsection (b)(1); and

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

7 (d) COMMISSION ON FEDERAL PROSECUTORIAL CON-  
 8 DUCT.—

9 (1) ESTABLISHMENT AND FUNCTIONS OF COM-  
 10 MISSION.—

11 (A) ESTABLISHMENT.—There is estab-  
 12 lished a Commission on Federal Prosecutorial  
 13 Conduct (referred to in this subsection as the  
 14 “Commission”).

15 (B) FUNCTIONS.—The functions of the  
 16 Commission shall be to—

17 (i) conduct a review regarding—

18 (I) whether there are specific  
 19 Federal duties related to investigation  
 20 and prosecution of violations of Fed-  
 21 eral law which are incompatible with  
 22 the regulation of the conduct of Fed-  
 23 eral prosecutors (as that term is de-  
 24 fined in section 530B of title 28,  
 25 United States Code) by any State law

1 or rule governing ethical conduct of  
2 attorneys; and

3 (II) the procedures utilized by  
4 the Department of Justice to inves-  
5 tigate and punish inappropriate con-  
6 duct by Federal prosecutors; and

7 (ii) not later than 12 months after the  
8 date on which the members of the Commis-  
9 sion are appointed under paragraph  
10 (2)(B), submit to the Attorney General a  
11 report concerning the review under clause  
12 (i), including any recommendations of the  
13 Commission relating to the matters re-  
14 viewed under clause (i).

15 (C) CONSULTATION.—In carrying out sub-  
16 paragraph (B), the Commission shall consult  
17 with the Attorney General, the Chairmen and  
18 Ranking Members of the Committees on the  
19 Judiciary of the House of Representatives and  
20 the Senate, the American Bar Association and  
21 other organizations of attorneys, representatives  
22 of Federal, State, and local law enforcement  
23 agencies, and Federal and State courts.

24 (2) MEMBERSHIP.—



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

4 (i) appointed by the Chief Justice of  
5 the United States, after consultation with  
6 the Chairmen and Ranking Members of  
7 the Committees on the Judiciary of the  
8 House of Representatives and the Senate,  
9 and representatives of judges, prosecutors,  
10 defense attorneys, law enforcement offi-  
11 cials, victims of crime, and others inter-  
12 ested in the criminal justice process; and

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

16 (B) APPOINTMENT.—The members of the  
17 Commission shall be appointed not later than  
18 30 days after the date of enactment of this Act.

19 (C) VACANCY.—Any vacancy in the Com-  
20 mission shall be filled in the same manner as  
21 the original appointment.

22 (D) CHAIRPERSON.—The Commission  
23 shall elect a chairperson and vice chairperson  
24 from among its members.

1           (E) QUORUM.—Four members of the Com-  
2           mission shall constitute a quorum, but 2 mem-  
3           bers may conduct hearings.

4           (3) COMPENSATION.—Members of the Commis-  
5           sion who are officers, or full-time employees, of the  
6           United States shall receive no additional compensa-  
7           tion for their services, but shall be reimbursed for  
8           travel, subsistence, and other necessary expenses in-  
9           curred in the performance of duties vested in the  
10          Commission, but not in excess of the maximum  
11          amounts authorized under section 456 of title 28,  
12          United States Code.

13          (4) PERSONNEL.—

14               (A) EXECUTIVE DIRECTOR.—The Commis-  
15               sion may appoint an Executive Director, who  
16               shall receive compensation at a rate not exceed-  
17               ing the rate prescribed for level V of the Execu-  
18               tive Schedule under section 5316 of title 5,  
19               United States Code.

20               (B) STAFF.—The Executive Director, with  
21               the approval of the Commission, may appoint  
22               and fix the compensation of such additional  
23               personnel as the Executive Director determines  
24               to be necessary, without regard to the provi-  
25               sions of title 5, United States Code, governing

1 appointments in the competitive service or the  
2 provisions of chapter 51 and subchapter III of  
3 chapter 53 of such title relating to classification  
4 and General Schedule pay rates. Compensation  
5 under this subparagraph shall not exceed the  
6 annual maximum rate of basic pay for a posi-  
7 tion above GS-15 of the General Schedule  
8 under section 5108 of title 5, United States  
9 Code.

10 (C) EXPERTS AND CONSULTANTS.—The  
11 Executive Director may procure personal serv-  
12 ices of experts and consultants as authorized by  
13 section 3109 of title 5, United States Code, at  
14 rates not to exceed the highest level payable  
15 under the General Schedule pay rates under  
16 section 5332 of title 5, United States Code.

17 (D) SERVICES.—The Administrative Office  
18 of the United States Courts shall provide ad-  
19 ministrative services, including financial and  
20 budgeting services, to the Commission on a re-  
21 imburseable basis. The Federal Judicial Center  
22 shall provide necessary research services to the  
23 Commission on a reimbursable basis.

24 (5) INFORMATION.—The Commission may re-  
25 quest from any department, agency, or independent

1 instrumentality of the Federal Government any in-  
 2 formation and assistance the Commission determines  
 3 to be necessary to carry out its functions under this  
 4 subsection. Each such department, agency, and inde-  
 5 pendent instrumentality is authorized to provide  
 6 such information and assistance to the extent per-  
 7 mitted by law when requested by the chairperson of  
 8 the Commission.

9 (6) REPORT OF THE ATTORNEY GENERAL.—

10 Not later than 60 days after the date of enactment  
 11 of this Act, the Attorney General shall submit to the  
 12 Commission a report, which shall, with respect to  
 13 the 3-year period preceding the date on which the  
 14 report is submitted under this paragraph—

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

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

24 (C) be confidential and not disclose infor-  
 25 mation that would interfere with any pending

1 investigation or improperly infringe upon the  
2 privacy rights of any individual.

3 (7) TERMINATION.—The Commission shall ter-  
4minate 90 days after the date on which the Commis-  
5sion submits the report under paragraph (1)(B)(ii).

6 (8) AUTHORIZATION OF APPROPRIATIONS.—  
7 There is authorized to be appropriated to the Com-  
8mission such sums, not to exceed \$900,000, as may  
9be necessary to carry out this subsection. Amounts  
10made available under this paragraph shall remain  
11available until expended.

○