

108TH CONGRESS
1ST SESSION

S. 1440

To reform the Federal Bureau of Investigation.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JULY 21), 2003

Mr. GRASSLEY (for himself and Mr. LEAHY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the Federal Bureau of Investigation.

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 Bureau of In-
5 vestigation Reform Act of 2003”.

6 **TITLE I—WHISTLEBLOWER**
7 **PROTECTION**

8 **SEC. 101. INCREASING PROTECTIONS FOR FBI WHISTLE-**
9 **BLOWERS.**

10 Section 2303 of title 5, United States Code, is
11 amended to read as follows:

1 **“§ 2303. Prohibited personnel practices in the Fed-**
2 **eral Bureau of Investigation**

3 “(a) DEFINITION.—In this section, the term ‘per-
4 sonnel action’ means any action described in clauses (i)
5 through (x) of section 2302(a)(2)(A).

6 “(b) PROHIBITED PRACTICES.—Any employee of the
7 Federal Bureau of Investigation who has the authority to
8 take, direct others to take, recommend, or approve any
9 personnel action, shall not, with respect to such authority,
10 take or fail to take a personnel action with respect to any
11 employee of the Bureau or because of—

12 “(1) any disclosure of information by the em-
13 ployee to the Attorney General (or an employee des-
14 igned by the Attorney General for such purpose),
15 a supervisor of the employee, the Inspector General
16 for the Department of Justice, or a Member of Con-
17 gress that the employee reasonably believes evi-
18 dences—

19 “(A) a violation of any law, rule, or regula-
20 tion; or

21 “(B) mismanagement, a gross waste of
22 funds, an abuse of authority, or a substantial
23 and specific danger to public health or safety;
24 or

1 “(2) any disclosure of information by the em-
2 ployee to the Special Counsel of information that the
3 employee reasonably believes evidences—

4 “(A) a violation of any law, rule, or regula-
5 tion; or

6 “(B) mismanagement, a gross waste of
7 funds, an abuse of authority, or a substantial
8 and specific danger to public health or safety,
9 if such disclosure is not specifically prohibited by law
10 and if such information is not specifically required
11 by Executive order to be kept secret in the interest
12 of national defense or the conduct of foreign affairs.

13 “(c) INDIVIDUAL RIGHT OF ACTION.—Chapter 12 of
14 this title shall apply to an employee of the Federal Bureau
15 of Investigation who claims that a personnel action has
16 been taken under this section against the employee as a
17 reprisal for any disclosure of information described in sub-
18 section (b)(2).

19 “(d) REGULATIONS.—The Attorney General shall
20 prescribe regulations to ensure that a personnel action
21 under this section shall not be taken against an employee
22 of the Federal Bureau of Investigation as a reprisal for
23 any disclosure of information described in subsection
24 (b)(1), and shall provide for the enforcement of such regu-
25 lations in a manner consistent with applicable provisions

1 of sections 1214 and 1221, and in accordance with the
2 procedures set forth in sections 554 through 557 and 701
3 through 706.”.

4 **TITLE II—FBI SECURITY CAREER** 5 **PROGRAM**

6 **SEC. 201. SECURITY MANAGEMENT POLICIES.**

7 The Attorney General shall establish policies and pro-
8 cedures for the effective management (including accession,
9 education, training, and career development) of persons
10 serving in security positions in the Federal Bureau of In-
11 vestigation.

12 **SEC. 202. DIRECTOR OF THE FEDERAL BUREAU OF INVES-** 13 **TIGATION.**

14 (a) **IN GENERAL.**—Subject to the authority, direc-
15 tion, and control of the Attorney General, the Director of
16 the Federal Bureau of Investigation (referred to in this
17 title as the “Director”) shall carry out all powers, func-
18 tions, and duties of the Attorney General with respect to
19 the security workforce in the Federal Bureau of Investiga-
20 tion.

21 (b) **POLICY IMPLEMENTATION.**—The Director shall
22 ensure that the policies of the Attorney General estab-
23 lished in accordance with this Act are implemented
24 throughout the Federal Bureau of Investigation at both
25 the headquarters and field office levels.

1 **SEC. 203. DIRECTOR OF SECURITY.**

2 The Director shall appoint a Director of Security, or
3 such other title as the Director may determine, to assist
4 the Director in the performance of the duties of the Direc-
5 tor under this Act.

6 **SEC. 204. SECURITY CAREER PROGRAM BOARDS.**

7 (a) ESTABLISHMENT.—The Director acting through
8 the Director of Security shall establish a security career
9 program board to advise the Director in managing the hir-
10 ing, training, education, and career development of per-
11 sonnel in the security workforce of the Federal Bureau
12 of Investigation.

13 (b) COMPOSITION OF BOARD.—The security career
14 program board shall include—

15 (1) the Director of Security (or a representative
16 of the Director of Security);

17 (2) the senior officials, as designated by the Di-
18 rector, with responsibility for personnel manage-
19 ment;

20 (3) the senior officials, as designated by the Di-
21 rector, with responsibility for information manage-
22 ment;

23 (4) the senior officials, as designated by the Di-
24 rector, with responsibility for training and career de-
25 velopment in the various security disciplines; and

1 (5) such other senior officials for the intel-
2 ligence community as the Director may designate.

3 (c) CHAIRPERSON.—The Director of Security (or a
4 representative of the Director of Security) shall be the
5 chairperson of the board.

6 (d) SUBORDINATE BOARDS.—The Director of Secu-
7 rity may establish a subordinate board structure to which
8 functions of the security career program board may be del-
9 egated.

10 **SEC. 205. DESIGNATION OF SECURITY POSITIONS.**

11 (a) DESIGNATION.—The Director shall designate, by
12 regulation, those positions in the Federal Bureau of Inves-
13 tigation that are security positions for purposes of this
14 Act.

15 (b) REQUIRED POSITIONS.—In designating security
16 positions under subsection (a), the Director shall include,
17 at a minimum, all security-related positions in the areas
18 of—

19 (1) personnel security and access control;

20 (2) information systems security and informa-
21 tion assurance;

22 (3) physical security and technical surveillance
23 countermeasures;

24 (4) operational, program, and industrial secu-
25 rity; and

1 (5) information security and classification man-
2 agement.

3 **SEC. 206. CAREER DEVELOPMENT.**

4 (a) CAREER PATHS.—The Director shall ensure that
5 appropriate career paths for personnel who wish to pursue
6 careers in security are identified in terms of the education,
7 training, experience, and assignments necessary for career
8 progression to the most senior security positions and shall
9 make available published information on those career
10 paths.

11 (b) LIMITATION ON PREFERENCE FOR SPECIAL
12 AGENTS.—

13 (1) IN GENERAL.—Except as provided in the
14 policy established under paragraph (2), the Attorney
15 General shall ensure that no requirement or pref-
16 erence for a Special Agent of the Federal Bureau of
17 Investigation (referred to in this title as a “Special
18 Agent”) is used in the consideration of persons for
19 security positions.

20 (2) POLICY.—The Attorney General shall estab-
21 lish a policy that permits a particular security posi-
22 tion to be specified as available only to Special
23 Agents, if a determination is made, under criteria
24 specified in the policy, that a Special Agent—

25 (A) is required for that position by law;

1 (B) is essential for performance of the du-
2 ties of the position; or

3 (C) is necessary for another compelling
4 reason.

5 (3) REPORT.—Not later than December 15 of
6 each year, the Director shall submit to the Attorney
7 General a report that lists—

8 (A) each security position that is restricted
9 to Special Agents under the policy established
10 under paragraph (2); and

11 (B) the recommendation of the Director as
12 to whether each restricted security position
13 should remain restricted.

14 (c) OPPORTUNITIES TO QUALIFY.—The Attorney
15 General shall ensure that all personnel, including Special
16 Agents, are provided the opportunity to acquire the edu-
17 cation, training, and experience necessary to qualify for
18 senior security positions.

19 (d) BEST QUALIFIED.—The Attorney General shall
20 ensure that the policies established under this Act are de-
21 signed to provide for the selection of the best qualified
22 individual for a position, consistent with other applicable
23 law.

1 (e) ASSIGNMENTS POLICY.—The Attorney General
2 shall establish a policy for assigning Special Agents to se-
3 curity positions that provides for a balance between—

4 (1) the need for personnel to serve in career en-
5 hancing positions; and

6 (2) the need for requiring service in each such
7 position for sufficient time to provide the stability
8 necessary to carry out effectively the duties of the
9 position and to allow for the establishment of re-
10 sponsibility and accountability for actions taken in
11 the position.

12 (f) LENGTH OF ASSIGNMENT.—In implementing the
13 policy established under subsection (b)(2), the Director
14 shall provide, as appropriate, for longer lengths of assign-
15 ments to security positions than assignments to other po-
16 sitions.

17 (g) PERFORMANCE APPRAISALS.—The Director shall
18 provide an opportunity for review and inclusion of any
19 comments on any appraisal of the performance of a person
20 serving in a security position by a person serving in a secu-
21 rity position in the same security career field.

22 (h) BALANCED WORKFORCE POLICY.—In the devel-
23 opment of security workforce policies under this Act with
24 respect to any employees or applicants for employment,
25 the Attorney General shall, consistent with the merit sys-

1 tem principles set out in paragraphs (1) and (2) of section
2 2301(b) of title 5, United States Code, take into consider-
3 ation the need to maintain a balanced workforce in which
4 women and members of racial and ethnic minority groups
5 are appropriately represented in Government service.

6 **SEC. 207. GENERAL EDUCATION, TRAINING, AND EXPERI-**
7 **ENCE REQUIREMENTS.**

8 (a) IN GENERAL.—The Director shall establish edu-
9 cation, training, and experience requirements for each se-
10 curity position, based on the level of complexity of duties
11 carried out in the position.

12 (b) QUALIFICATION REQUIREMENTS.—Before being
13 assigned to a position as a program manager or deputy
14 program manager of a significant security program, a per-
15 son—

16 (1) must have completed a security program
17 management course that is accredited by the Intel-
18 ligence Community-Department of Defense Joint Se-
19 curity Training Consortium or is determined to be
20 comparable by the Director; and

21 (2) must have not less than 6 years experience
22 in security, of which not less than 2 years were per-
23 formed in a similar program office or organization.

1 **SEC. 208. EDUCATION AND TRAINING PROGRAMS.**

2 (a) IN GENERAL.—The Director, in consultation with
3 the Director of Central Intelligence and the Secretary of
4 Defense, shall establish and implement education and
5 training programs for persons serving in security positions
6 in the Federal Bureau of Investigation.

7 (b) OTHER PROGRAMS.—The Director shall ensure
8 that programs established under subsection (a) are estab-
9 lished and implemented, to the maximum extent prac-
10 ticable, uniformly with the programs of the Intelligence
11 Community and the Department of Defense.

12 **SEC. 209. OFFICE OF PERSONNEL MANAGEMENT AP-**
13 **PROVAL.**

14 (a) IN GENERAL.—The Attorney General shall sub-
15 mit any requirement that is established under section 207
16 to the Director of the Office of Personnel Management
17 for approval.

18 (b) FINAL APPROVAL.—If the Director does not dis-
19 approve the requirements established under section 207
20 within 30 days after the date on which the Director re-
21 ceives the requirement, the requirement is deemed to be
22 approved by the Director of the Office of Personnel Man-
23 agement.

1 **TITLE III—FBI COUNTERINTEL-**
2 **LIGENCE POLYGRAPH PRO-**
3 **GRAM**

4 **SEC. 301. DEFINITIONS.**

5 In this title:

6 (1) POLYGRAPH PROGRAM.—The term “poly-
7 graph program” means the counterintelligence
8 screening polygraph program established under sec-
9 tion 302.

10 (2) POLYGRAPH REVIEW.—The term “Poly-
11 graph Review” means the review of the scientific va-
12 lidity of the polygraph for counterintelligence screen-
13 ing purposes conducted by the Committee to Review
14 the Scientific Evidence on the Polygraph of the Na-
15 tional Academy of Sciences.

16 **SEC. 302. ESTABLISHMENT OF PROGRAM.**

17 Not later than 6 months after the date of enactment
18 of this Act, the Attorney General, in consultation with the
19 Director of the Federal Bureau of Investigation and the
20 Director of Security of the Federal Bureau of Investiga-
21 tion, shall establish a counterintelligence screening poly-
22 graph program for the Federal Bureau of Investigation
23 that consists of periodic polygraph examinations of em-
24 ployees, or contractor employees of the Federal Bureau
25 of Investigation who are in positions specified by the Di-

1 rector of the Federal Bureau of Investigation as exception-
2 ally sensitive in order to minimize the potential for unau-
3 thorized release or disclosure of exceptionally sensitive in-
4 formation.

5 **SEC. 303. REGULATIONS.**

6 (a) IN GENERAL.—The Attorney General shall pre-
7 scribe regulations for the polygraph program in accord-
8 ance with subchapter II of chapter 5 of title 5, United
9 States Code (commonly referred to as the Administrative
10 Procedures Act).

11 (b) CONSIDERATIONS.—In prescribing regulations
12 under subsection (a), the Attorney General shall—

13 (1) take into account the results of the Poly-
14 graph Review; and

15 (2) include procedures for—

16 (A) identifying and addressing false posi-
17 tive results of polygraph examinations;

18 (B) ensuring that adverse personnel ac-
19 tions are not taken against an individual solely
20 by reason of the physiological reaction of the in-
21 dividual to a question in a polygraph examina-
22 tion, unless—

23 (i) reasonable efforts are first made
24 independently to determine through alter-

1 native means, the veracity of the response
2 of the individual to the question; and

3 (ii) the Director of the Federal Bu-
4 reau of Investigation determines personally
5 that the personnel action is justified;

6 (C) ensuring quality assurance and quality
7 control in accordance with any guidance pro-
8 vided by the Department of Defense Polygraph
9 Institute and the Director of Central Intel-
10 ligence; and

11 (D) allowing any employee or contractor
12 who is the subject of a counterintelligence
13 screening polygraph examination under the
14 polygraph program, upon written request, to
15 have prompt access to any unclassified reports
16 regarding an examination that relates to any
17 adverse personnel action taken with respect to
18 the individual.

19 **SEC. 304. REPORT ON FURTHER ENHANCEMENT OF FBI**
20 **PERSONNEL SECURITY PROGRAM.**

21 (a) IN GENERAL.—Not later than 9 months after the
22 date of enactment of this Act, the Director of the Federal
23 Bureau of Investigation shall submit to Congress a report
24 setting forth recommendations for any legislative action
25 that the Director considers appropriate in order to en-

1 hance the personnel security program of the Federal Bu-
2 reau of Investigation.

3 (b) POLYGRAPH REVIEW RESULTS.—Any rec-
4 ommendation under subsection (a) regarding the use of
5 polygraphs shall take into account the results of the Poly-
6 graph Review.

7 **TITLE IV—REPORTS**

8 **SEC. 401. REPORT ON LEGAL AUTHORITY FOR FBI PRO-** 9 **GRAMS AND ACTIVITIES.**

10 (a) IN GENERAL.—Not later than 9 months after the
11 date of enactment of this Act, the Attorney General shall
12 submit to Congress a report describing the statutory and
13 other legal authority for all programs and activities of the
14 Federal Bureau of Investigation.

15 (b) CONTENTS.—The report submitted under sub-
16 section (a) shall describe—

17 (1) the titles within the United States Code and
18 the statutes for which the Federal Bureau of Inves-
19 tigation exercises investigative responsibility;

20 (2) each program or activity of the Federal Bu-
21 reau of Investigation that has express statutory au-
22 thority and the statute which provides that author-
23 ity; and

24 (3) each program or activity of the Federal Bu-
25 reau of Investigation that does not have express

1 statutory authority, and the source of the legal au-
2 thority for that program or activity.

3 (c) RECOMMENDATIONS.—The report submitted
4 under subsection (a) shall recommend whether—

5 (1) the Federal Bureau of Investigation should
6 continue to have investigative responsibility for each
7 statute for which the Federal Bureau of Investiga-
8 tion currently has investigative responsibility;

9 (2) the legal authority for any program or ac-
10 tivity of the Federal Bureau of Investigation should
11 be modified or repealed;

12 (3) the Federal Bureau of Investigation should
13 have express statutory authority for any program or
14 activity of the Federal Bureau of Investigation for
15 which the Federal Bureau of Investigation does not
16 currently have express statutory authority; and

17 (4) the Federal Bureau of Investigation
18 should—

19 (A) have authority for any new program or
20 activity; and

21 (B) express statutory authority with re-
22 spect to any new programs or activities.

1 **TITLE V—ENDING THE DOUBLE**
 2 **STANDARD**

3 **SEC. 501. ALLOWING DISCIPLINARY SUSPENSIONS OF MEM-**
 4 **BERS OF THE SENIOR EXECUTIVE SERVICE**
 5 **FOR 14 DAYS OR LESS.**

6 Section 7542 of title 5, United States Code, is
 7 amended by striking “for more than 14 days”.

8 **SEC. 502. SUBMITTING OFFICE OF PROFESSIONAL RESPON-**
 9 **SIBILITY REPORTS TO CONGRESSIONAL COM-**
 10 **MITTEES.**

11 (a) IN GENERAL.—For each of the 5 years following
 12 the date of enactment of this Act, the Office of the Inspec-
 13 tor General shall submit to the chairperson and ranking
 14 member of the Committees on the Judiciary of the Senate
 15 and the House of Representatives an annual report to be
 16 completed by the Federal Bureau of Investigation, Office
 17 of Professional Responsibility and provided to the Inspec-
 18 tor General, which sets forth—

19 (1) basic information on each investigation
 20 completed by that Office;

21 (2) the findings and recommendations of that
 22 Office for disciplinary action; and

23 (3) what, if any, action was taken by the Direc-
 24 tor of the Federal Bureau of Investigation or the

1 designee of the Director based on any such rec-
2 ommendation.

3 (b) CONTENTS.—In addition to all matters already
4 included in the annual report described in subsection (a),
5 the report shall also include an analysis of—

6 (1) whether senior Federal Bureau of Investiga-
7 tion employees and lower level Federal Bureau of In-
8 vestigation personnel are being disciplined and inves-
9 tigated similarly; and

10 (2) whether any double standard is being em-
11 ployed to more senior employees with respect to alle-
12 gations of misconduct.

13 **TITLE VI—ENHANCING SECURITY AT THE DEPARTMENT**
14 **OF JUSTICE**

16 **SEC. 601. REPORT ON THE PROTECTION OF SECURITY AND**
17 **INFORMATION AT THE DEPARTMENT OF JUSTICE.**
18 **TICE.**

19 Not later than 9 months after the date of enactment
20 of this Act, the Attorney General shall submit to Congress
21 a report on the manner in which the Security and Emer-
22 gency Planning Staff, the Office of Intelligence Policy and
23 Review, and the Chief Information Officer of the Depart-
24 ment of Justice plan to improve the protection of security
25 and information at the Department of Justice, including

1 a plan to establish secure electronic communications be-
2 tween the Federal Bureau of Investigation and the Office
3 of Intelligence Policy and Review for processing informa-
4 tion related to the Foreign Intelligence Surveillance Act
5 of 1978 (50 U.S.C. 1801 et seq.).

6 **SEC. 602. AUTHORIZATION FOR INCREASED RESOURCES TO**
7 **PROTECT SECURITY AND INFORMATION.**

8 There are authorized to be appropriated to the De-
9 partment of Justice for the activities of the Security and
10 Emergency Planning Staff to meet the increased demands
11 to provide personnel, physical, information, technical, and
12 litigation security for the Department of Justice, to pre-
13 pare for terrorist threats and other emergencies, and to
14 review security compliance by components of the Depart-
15 ment of Justice—

16 (1) \$13,000,000 for fiscal years 2004 and
17 2005;

18 (2) \$17,000,000 for fiscal year 2006; and

19 (3) \$22,000,000 for fiscal year 2007.

20 **SEC. 603. AUTHORIZATION FOR INCREASED RESOURCES TO**
21 **FULFILL NATIONAL SECURITY MISSION OF**
22 **THE DEPARTMENT OF JUSTICE.**

23 There are authorized to be appropriated to the De-
24 partment of Justice for the activities of the Office of Intel-
25 ligence Policy and Review to help meet the increased per-

1 sonnel demands to combat terrorism, process applications
2 to the Foreign Intelligence Surveillance Court, participate
3 effectively in counterespionage investigations, provide pol-
4 icy analysis and oversight on national security matters,
5 and enhance secure computer and telecommunications fa-
6 cilities—

- 7 (1) \$7,000,000 for fiscal years 2004 and 2005;
8 (2) \$7,500,000 for fiscal year 2006; and
9 (3) \$8,000,000 for fiscal year 2007.

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