

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(l) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104-106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended Pub. L. 104-201, div. A, title V, § 578(a)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105-85, div. A, title V,

§ 599(a)(3), (d)(1), title X, § 1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1769, 1902.)

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 office established under section 1501 of this title.

(2) Upon receipt of information under paragraph (1), the head of the office established under section 1501 of this title shall as expeditiously 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 head of the office established under section 1501 of this title, 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.)

AMENDMENTS

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 missing 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.