

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 3191

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. JONES

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Rights Cold Case

5 Records Collection Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ARCHIVIST.—The term “Archivist” means

9 the Archivist of the United States.

10 (2) CIVIL RIGHTS COLD CASE.—The term “civil

11 rights cold case” means any unsolved case—

1 (A) arising out of events which occurred
2 during the period beginning on January 1,
3 1940 and ending on December 31, 1979; and

4 (B) related to—

5 (i) section 241 of title 18, United
6 States Code (relating to conspiracy against
7 rights);

8 (ii) section 242 of title 18, United
9 States Code (relating to deprivation of
10 rights under color of law);

11 (iii) section 245 of title 18, United
12 States Code (relating to federally protected
13 activities);

14 (iv) sections 1581 and 1584 of title
15 18, United States Code (relating to peon-
16 age and involuntary servitude);

17 (v) section 901 of the Fair Housing
18 Act (42 U.S.C. 3631); or

19 (vi) any other Federal law that was—

20 (I) in effect on or before Decem-
21 ber 31, 1979; and

22 (II) enforced by the criminal sec-
23 tion of the Civil Rights Division of the
24 Department of Justice before the date
25 of enactment of this Act.

1 (3) CIVIL RIGHTS COLD CASE RECORD.—The
2 term “civil rights cold case record” means a record
3 that—

4 (A) is related to a civil rights cold case;

5 and

6 (B) was created or made available for use
7 by, obtained by, or otherwise came into the pos-
8 session of—

9 (i) the Library of Congress;

10 (ii) the National Archives and Records
11 Administration;

12 (iii) any executive agency;

13 (iv) any independent agency;

14 (v) any other entity of the Federal
15 Government; and

16 (vi) any State or local government, or
17 component thereof, that provided support
18 or assistance or performed work in connec-
19 tion with a Federal inquiry into a civil
20 rights cold case.

21 (4) COLLECTION.—The term “Collection”
22 means the Civil Rights Cold Cases Collection estab-
23 lished under section 3.

1 (5) EXECUTIVE AGENCY.—The term “executive
2 agency” means an agency, as defined in subsection
3 552(f) of title 5, United States Code.

4 (6) GOVERNMENT OFFICE.—The term “Govern-
5 ment office” means any office of the Federal Gov-
6 ernment that has possession or control of 1 or more
7 civil rights cold case records.

8 (7) GOVERNMENT OFFICIAL.—The term “Gov-
9 ernment official” means any officer or employee of
10 the United States, including elected and appointed
11 officials.

12 (8) NATIONAL ARCHIVES.—The term “National
13 Archives” means the National Archives and Records
14 Administration and all components thereof, includ-
15 ing Presidential archival depositories established
16 under section 2112 of title 44, United States Code.

17 (9) OFFICIAL INVESTIGATION.—The term “offi-
18 cial investigation” means the reviews of civil rights
19 cold cases conducted by any entity of the Federal
20 Government either independently, at the request of
21 any Presidential commission or congressional com-
22 mittee, or at the request of any Government official.

23 (10) ORIGINATING BODY.—The term “origi-
24 nating body” means the executive agency, Govern-
25 ment commission, congressional committee, or other

1 Governmental entity that created a record or par-
2 ticular information within a record.

3 (11) PUBLIC INTEREST.—The term “public in-
4 terest” means the compelling interest in the prompt
5 public disclosure of civil rights cold case records for
6 historical and Governmental purposes and for the
7 purpose of fully informing the people of the United
8 States about the history surrounding all civil rights
9 cold cases in the United States.

10 (12) RECORD.—The term “record” has the
11 meaning given the term in section 3301 of title 44,
12 United States Code.

13 (13) REVIEW BOARD.—The term “Review
14 Board” means the Civil Rights Cold Case Records
15 Review Board established under section 5.

16 **SEC. 3. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
17 **AT THE NATIONAL ARCHIVES AND RECORD**
18 **ADMINISTRATION.**

19 (a) IN GENERAL.—

20 (1) ESTABLISHMENT OF THE CIVIL RIGHTS
21 COLD CASE RECORDS COLLECTION.—Not later than
22 60 days after the date of enactment of this Act, the
23 Archivist shall—

24 (A) commence establishing a collection of
25 civil rights cold case records to be known as the

1 “Civil Rights Cold Case Records Collection”
2 that ensures the physical integrity and original
3 provenance of all records in the Collection;

4 (B) commence preparing and publishing
5 the subject guidebook and index to the Collec-
6 tion; and

7 (C) establish criteria for Government of-
8 fices to follow when transmitting copies of civil
9 rights cold case records to the Archivist, to in-
10 clude required metadata.

11 (2) CONTENTS OF COLLECTION.—The Collec-
12 tion shall include—

13 (A) a copy of each civil rights cold case
14 record—

15 (i) that has not been transmitted to
16 the Archivist, which shall be transmitted to
17 the Archivist in accordance with section
18 2107 of title 44, United States Code by
19 the entity described in section 2(3)(B) in
20 possession of the civil rights cold case
21 record, except in the case of a State or
22 local government; or

23 (ii) that has been transmitted to the
24 Archivist or disclosed to the public in an

1 unredacted form before the date of the en-
2 actment of this Act;

3 (iii) that is required to be transmitted
4 to the Archivist; or

5 (iv) the disclosure of which is post-
6 poned under this Act; and

7 (B) all Review Board records, as required
8 under this Act.

9 (b) DISCLOSURE OF RECORDS.—All civil rights cold
10 case records transmitted to the Archivist for disclosure to
11 the public—

12 (1) shall be included in the Collection;

13 (2) not later than 60 days after the trans-
14 mission of the record to the Archivist, shall be avail-
15 able to the public for inspection and copying at the
16 National Archives; and

17 (3) shall be prioritized for digitization by the
18 National Archives.

19 (c) FEES FOR COPYING.—The Archivist shall—

20 (1) use efficient electronic means when possible;

21 (2) charge fees for copying civil rights cold case
22 records; and

23 (3) grant waivers of such fees pursuant to the
24 standard established under section 552(a)(4) of title
25 5, United States Code.

1 (d) ADDITIONAL REQUIREMENTS.—The Archivist
2 shall ensure the security of civil rights cold case records
3 in the Collection for which disclosure is postponed.

4 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 each Government office shall, in accordance with the
7 criteria established by the Archivist under subsection

8 (a)(1)(C)—

9 (A) as soon as is reasonably practicable,
10 and in any event not later than 2 years after
11 the date of the enactment of this Act, transmit
12 to the Archivist, for the Archivist to make avail-
13 able to the public in accordance with subsection
14 (b), a copy of each civil rights cold case record
15 that can be publicly disclosed, including any
16 such record that is publicly available on the
17 date of enactment of this Act, without any re-
18 daction, adjustment, or withholding under the
19 standards of this Act; and

20 (B) transmit to the Archivist upon ap-
21 proval for postponement by the Review Board
22 or upon completion of other action authorized
23 by this Act, a copy of each civil rights cold case
24 record for which public disclosure has been
25 postponed, in whole or in part, under the stand-

1 ards of this Act, to become part of the pro-
2 tected Collection.

3 (2) REOPENING OF CASES.—If, not later than
4 2 years after the date of enactment of this Act, the
5 Attorney General submits to the Archivist a certifi-
6 cation that the Attorney General intends to reopen
7 and pursue prosecution of the civil rights cold case
8 to which a civil rights cold case record relates, the
9 Attorney General shall transmit to the Archivist the
10 civil rights cold case record in accordance with para-
11 graph (1)—

12 (A) not later than 90 days after—

13 (i) final judgement is entered in the
14 proceedings relating to the civil rights cold
15 case; or

16 (ii) proceedings relating to the civil
17 rights cold case are dismissed with preju-
18 dice; or

19 (B) not later than the date that is 1 year
20 after the date on which the Attorney General
21 submits to the Archivist the certification, if an
22 indictment or information has not been filed
23 with respect to the civil rights cold case.

24 (f) PERIODIC REVIEW OF POSTPONED CIVIL RIGHTS
25 COLD CASE RECORDS.—

1 (1) IN GENERAL.—Each civil rights cold case
2 record that is redacted or for which public disclosure
3 is postponed shall be reviewed not later than Decem-
4 ber 31 each year by the entity submitting the record
5 and the Archivist, consistent with the recommenda-
6 tions of the Review Board under section 7(c)(3)(B).

7 (2) REQUIREMENTS OF PERIODIC REVIEW.—
8 The periodic review under paragraph (1) shall ad-
9 dress the public disclosure of additional civil rights
10 cold case records in the Collection under the stand-
11 ards of this Act.

12 (3) UNCLASSIFIED WRITTEN DESCRIPTION.—
13 Any civil rights cold case record for which postpone-
14 ment of public disclosure is continued shall include
15 an unclassified written description of the reason for
16 such continued postponement, which shall be pro-
17 vided to the Archivist and made available on a pub-
18 licly accessible website upon the determination to
19 continue the postponement.

20 (4) FULL DISCLOSURE OF CIVIL RIGHTS COLD
21 CASE RECORD REQUIRED.—

22 (A) IN GENERAL.—Each civil rights cold
23 case record that is not publicly disclosed in full
24 as of the date on which the Review Board ter-
25 minates under section 5(n) shall be publicly dis-

1 closed in full and available in the Collection not
2 later than 25 years after the date of enactment
3 of this Act unless—

4 (i) the head of the originating body,
5 an executive agency, or other Government
6 office recommends in writing the exemp-
7 tion of the record or information, the re-
8 lease of which would clearly and demon-
9 strably be expected to—

10 (I) cause identifiable or describ-
11 able damage to national security, mili-
12 tary defense, law enforcement, intel-
13 ligence operations, or the conduct of
14 foreign relations that is of such grav-
15 ity that it outweighs the public inter-
16 est in disclosure; or

17 (II) reveal information described
18 in paragraphs (1) through (9) of sec-
19 tion 3.3(b) of Executive Order 13526
20 (75 Fed. Reg. 707; relating to classi-
21 fied national security information);

22 (ii) the written recommendation de-
23 scribed in clause (i)—

24 (I) is provided to the Archivist
25 not later than 180 days before the

1 date that is 25 years after the date of
2 enactment of this Act; and

3 (II) includes—

4 (aa) a justification of the
5 recommendation to postpone dis-
6 closure; and

7 (bb) a recommended speci-
8 fied time at which or a specified
9 occurrence following which the
10 material may be appropriately
11 disclosed to the public under this
12 Act; and

13 (iii) the Archivist agrees with the
14 written recommendation described in
15 clause (i).

16 (B) NOTIFICATION.—If the Archivist does
17 not agree with the recommendation described in
18 subparagraph (A)(i), the Archivist shall notify
19 the head of the originating body, executive
20 agency, or other Government office making the
21 recommendation not later than 90 days before
22 the date that is 25 years after the date of en-
23 actment of this Act.

24 (g) DIGITIZATION OF RECORDS.—Each executive
25 agency shall make text searchable documents available to

1 the Review Board pursuant to standards established under
2 section 552(a)(3) of title 5, United States Code.

3 (h) NOTICE REGARDING PUBLIC DISCLOSURE.—

4 (1) FINDING.—Congress finds that the public
5 release of case-related documents and information
6 without notice may significantly affect the victims of
7 the events to which the case relates and their next
8 of kin.

9 (2) NOTICE.—Not later than 7 days before a
10 civil rights cold case record is publicly disclosed, the
11 executive agency releasing the civil rights cold case
12 record, in coordination with the Government office
13 that had possession or control of the civil rights cold
14 case record, shall take all reasonable efforts to pro-
15 vide the civil rights cold case record to the victims
16 of the events to which the civil rights cold case
17 record relates, or their next of kin.

18 **SEC. 4. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
19 **SURE OF RECORDS.**

20 Disclosure of civil rights cold case records or par-
21 ticular information within a civil rights cold case record
22 to the public may be postponed subject to the limitations
23 of this Act if disclosure would clearly and demonstrably
24 be expected to—

1 (1)(A) cause identifiable or describable damage
2 to national security, military defense, law enforce-
3 ment, intelligence operations, or the conduct of for-
4 eign relations that is of such gravity that it out-
5 weighs the public interest in disclosure; or

6 (B) reveal information described in paragraphs
7 (1) through (9) of section 3.3(b) of Executive Order
8 13526 (75 Fed. Reg. 707; relating to classified na-
9 tional security information);

10 (2)(A) reveal the name or identity of a living in-
11 dividual who provided confidential information to the
12 United States; and

13 (B) pose a substantial risk of harm to that indi-
14 vidual;

15 (3) constitute an unwarranted invasion of per-
16 sonal privacy;

17 (4)(A) compromise the existence of an under-
18 standing of confidentiality currently requiring pro-
19 tection between a Government agent and a cooper-
20 ating individual or group; and

21 (B) be so harmful that the understanding of
22 confidentiality outweighs the public interest;

23 (5) endanger the life or physical safety of any
24 individual; or

1 (6) interfere with ongoing law enforcement pro-
2 ceedings.

3 **SEC. 5. ESTABLISHMENT AND POWERS OF THE CIVIL**
4 **RIGHTS COLD CASE RECORDS REVIEW**
5 **BOARD.**

6 (a) **ESTABLISHMENT.**—There is established, as an
7 independent agency, a board to be known as the Civil
8 Rights Cold Case Records Review Board.

9 (b) **APPOINTMENT.**—

10 (1) **IN GENERAL.**—The President shall appoint,
11 by and with the advice and consent of the Senate,
12 5 individuals to serve as members of the Review
13 Board, to ensure and facilitate the review, trans-
14 mission to the Archivist, and public disclosure of
15 civil rights cold case records.

16 (2) **INITIAL APPOINTMENT.**—

17 (A) **IN GENERAL.**—Initial appointments to
18 the Review Board shall, so far as practicable,
19 be made not later than 60 days after the enact-
20 ment of this Act.

21 (B) **RECOMMENDATIONS.**—In making ap-
22 pointments to the Review Board, the President
23 may consider any individuals recommended by
24 the American Historical Association, the Orga-
25 nization of American Historians, the Society of

1 American Archivists, and the American Bar As-
2 sociation.

3 (C) EXTENSION.—If an organization de-
4 scribed in subparagraph (B) does not rec-
5 ommend at least 2 nominees meeting the quali-
6 fications stated in paragraph (3) within 60 days
7 after the date of enactment of this Act, the
8 deadline under subparagraph (A) shall be ex-
9 tended until the earlier of 60 days after the
10 date on which such recommendations are made
11 or 120 days after the date of enactment of this
12 Act.

13 (D) ADDITIONAL RECOMMENDATIONS.—
14 The President may request that any organiza-
15 tion described in subparagraph (B) submit ad-
16 ditional recommended nominees.

17 (3) QUALIFICATIONS.—Individuals nominated
18 to the Review Board shall—

19 (A) not have had any previous involvement
20 with any official investigation or inquiry con-
21 ducted by the Federal Government, or any
22 State or local government, relating to any civil
23 rights cold case;

24 (B) be distinguished individuals of high
25 national professional reputation in their respec-

1 tive fields who are capable of exercising the
2 independent and objective judgment necessary
3 to fulfill their role in ensuring and facilitating
4 the review, transmission to the public, and pub-
5 lic disclosure of files related to civil rights cold
6 cases and who possess an appreciation of the
7 value of such material to the public, scholars,
8 and government; and

9 (C) include at least 1 professional historian
10 and 1 attorney.

11 (c) SECURITY CLEARANCES.—All Review Board
12 nominees shall be processed for the necessary security
13 clearances in an accelerated manner by the appropriate
14 Federal agencies and subject to the standard procedures
15 for granting such clearances.

16 (d) VACANCY.—A vacancy on the Review Board shall
17 be filled in the same manner as the original appointment
18 within 60 days of the occurrence of the vacancy.

19 (e) CHAIRPERSON.—The members of the Review
20 Board shall elect 1 of the members as chairperson.

21 (f) REMOVAL OF REVIEW BOARD MEMBER.—

22 (1) IN GENERAL.—No member of the Review
23 Board shall be removed from office, other than—

24 (A) by impeachment and conviction; or

1 (B) by the action of the President for inef-
2 ficiency, neglect of duty, malfeasance in office,
3 physical disability, mental incapacity, or any
4 other condition that substantially impairs the
5 performance of the member's duties.

6 (2) REPORT.—

7 (A) IN GENERAL.—If a member of the Re-
8 view Board is removed from office, and that re-
9 moval is by the President, not later than 10
10 days after the removal, the President shall sub-
11 mit to the Committee on Oversight and Govern-
12 ment Reform of the House of Representatives
13 and the Committee on Homeland Security and
14 Governmental Affairs of the Senate a report
15 specifying the facts found and the grounds for
16 the removal.

17 (B) PUBLICATION.—The President shall
18 publish in the Federal Register a report sub-
19 mitted under subparagraph (A), except that the
20 President may, if necessary to protect the
21 rights of a person named in the report or to
22 prevent undue interference with any pending
23 prosecution, postpone or refrain from pub-
24 lishing any or all of the report until the comple-

1 tion of such pending cases or pursuant to pri-
2 vacy protection requirements in law.

3 (3) JUDICIAL REVIEW.—

4 (A) IN GENERAL.—A member of the Re-
5 view Board removed from office may obtain ju-
6 dicial review of the removal in a civil action
7 commenced in the United States District Court
8 for the District of Columbia.

9 (B) RELIEF.—The member may be rein-
10 stated or granted other appropriate relief by
11 order of the court.

12 (g) COMPENSATION OF MEMBERS.—

13 (1) IN GENERAL.—A member of the Review
14 Board shall be compensated at a rate equal to the
15 daily equivalent of the annual rate of basic pay pre-
16 scribed for level IV of the Executive Schedule under
17 section 5315 of title 5, United States Code, for each
18 day (including travel time) during which the member
19 is engaged in the performance of the duties of the
20 Review Board.

21 (2) TRAVEL EXPENSES.—A member of the Re-
22 view Board shall be allowed reasonable travel ex-
23 penses, including per diem in lieu of subsistence, at
24 rates for employees of agencies under subchapter I
25 of chapter 57 of title 5, United States Code, while

1 away from the member's home or regular place of
2 business in the performance of services for the Re-
3 view Board.

4 (h) DUTIES OF THE REVIEW BOARD.—

5 (1) IN GENERAL.—The Review Board shall con-
6 sider and render decisions on a determination by a
7 Government office to seek to postpone the disclosure
8 of civil rights cold case records.

9 (2) DECISIONS.—In carrying out paragraph
10 (1), the Review Board shall consider and render de-
11 cisions—

12 (A) whether a record constitutes a civil
13 rights cold case record; and

14 (B) whether a civil rights cold case record
15 or particular information in a record qualifies
16 for postponement of disclosure under this Act.

17 (i) POWERS.—

18 (1) IN GENERAL.—The Review Board shall
19 have the authority to act in a manner prescribed
20 under this Act including the authority to—

21 (A) obtain access to civil rights cold case
22 records that have been identified and organized
23 by a Government office;

24 (B) direct a Government office to make
25 available to the Review Board, and if necessary

1 investigate the facts surrounding, additional in-
2 formation, records, or testimony from individ-
3 uals, which the Review Board has reason to be-
4 lieve is required to fulfill its functions and re-
5 sponsibilities under this Act;

6 (C) subpoena private persons to compel
7 testimony, records, and other information rel-
8 evant to its responsibilities under this Act;

9 (D) require any Government office to ac-
10 count in writing for the destruction of any
11 records relating to civil rights cold cases;

12 (E) receive information from the public re-
13 garding the identification and public disclosure
14 of civil rights cold case records; and

15 (F) hold hearings, administer oaths, and
16 subpoena witnesses and documents.

17 (2) ENFORCEMENT OF SUBPOENAS.—Any sub-
18 poena issued under this subsection may be enforced
19 by any appropriate Federal court acting pursuant to
20 a lawful request of the Review Board.

21 (j) WITNESS IMMUNITY.—The Review Board shall be
22 considered to be an agency of the United States for pur-
23 poses of chapter 601 of title 18, United States Code.

24 (k) OVERSIGHT.—

1 (1) IN GENERAL.—The Committee on Oversight
2 and Government Reform of the House of Represent-
3 atives and the Committee on Homeland Security and
4 Governmental Affairs of the Senate shall have con-
5 tinuing oversight jurisdiction with respect to the offi-
6 cial conduct of the Review Board and the disposition
7 of postponed records after termination of the Review
8 Board, and shall have access to any records held or
9 created by the Review Board.

10 (2) COOPERATION OF REVIEW BOARD.—The
11 Review Board shall have a duty to cooperate with
12 the exercised of the oversight jurisdiction described
13 in paragraph (1).

14 (l) SUPPORT SERVICES.—The Administrator of Gen-
15 eral Services shall provide administrative services for the
16 Review Board on a reimbursable basis.

17 (m) INTERPRETIVE REGULATIONS.—The Review
18 Board may issue interpretive regulations.

19 (n) TERMINATION.—

20 (1) IN GENERAL.—The Review Board shall ter-
21 minate not later than 4 years after the enactment of
22 this Act, except that the Review Board may, by ma-
23 jority vote, extend its term for an additional 1-year
24 period if the Review Board has not completed its
25 work within that 4-year period.

1 (2) REPORTS.—Before its termination, the Re-
2 view Board shall submit reports to the President
3 and the Congress, including a complete and accurate
4 accounting of expenditures during its existence, and
5 shall complete all other reporting requirements
6 under this Act.

7 (3) TRANSFER OF RECORDS.—

8 (A) IN GENERAL.—Upon termination, the
9 Review Board shall transfer all of its records to
10 the Archivist for inclusion in the Collection.

11 (B) PRESERVATION OF RECORDS.—The
12 records of the Review Board shall not be de-
13 stroyed, except that the Archivist may destroy
14 routine administrative records covered by a gen-
15 eral records schedule following notification in
16 the Federal Register and after considering com-
17 ments.

18 **SEC. 6. REVIEW BOARD PERSONNEL.**

19 (a) CHIEF OF STAFF.—

20 (1) APPOINTMENT.—Not later than 45 days
21 after the initial meeting of the Review Board, and
22 without regard to political affiliation, the Review
23 Board shall appoint an individual to the position of
24 Chief of Staff of the Review Board.

1 (2) REQUIREMENTS.—The individual appointed
2 as Chief of Staff—

3 (A) shall be a citizen of the United States
4 of integrity and impartiality who is a distin-
5 guished professional; and

6 (B) shall have had no previous involvement
7 with any official investigation or inquiry relat-
8 ing to civil rights cold cases.

9 (3) CANDIDATE TO HAVE CLEARANCES.—A
10 candidate for Chief of Staff shall be granted the nec-
11 essary security clearances in an accelerated manner
12 subject to the standard procedures for granting such
13 clearances.

14 (4) APPROVAL CONTINGENT ON PRIOR CLEAR-
15 ANCE.—A candidate shall qualify for the necessary
16 security clearance prior to being appointed by the
17 Review Board.

18 (5) DUTIES.—The Chief of Staff shall—

19 (A) serve as principal liaison to Govern-
20 ment offices;

21 (B) be responsible for the administration
22 and coordination of the Review Board's review
23 of records;

1 (C) be responsible for the administration
2 of all official activities conducted by the Review
3 Board; and

4 (D) have no authority to decide or deter-
5 mine whether any record shall be disclosed to
6 the public or postponed for disclosure.

7 (6) REMOVAL.—The Chief of Staff shall not be
8 removed except upon a majority vote of the Review
9 Board to remove the Chief of Staff for cause on the
10 grounds of inefficiency, neglect of duty, malfeasance
11 in office, physical disability, mental incapacity, or
12 any other condition that substantially impairs the
13 performance of the responsibilities of the Chief of
14 Staff or the employees of the Review Board.

15 (b) STAFF.—

16 (1) ADDITIONAL PERSONNEL.—The Review
17 Board may, in accordance with the civil service laws
18 but without regard to civil service laws and regula-
19 tions for appointments in the competitive service
20 under subchapter I of chapter 33 of title 5, United
21 States Code, appoint and terminate additional em-
22 ployees as are necessary to enable the Review Board
23 and its Chief of Staff to perform its duties.

24 (2) REQUIREMENTS.—An individual appointed
25 as an employee of the Review Board—

1 (A) shall be a private citizen of integrity
2 and impartiality; and

3 (B) shall have had no previous involvement
4 with any official investigation or inquiry relat-
5 ing to the civil rights cold cases.

6 (3) NOMINATIONS.—Before making an appoint-
7 ment pursuant to paragraph (1), the Review Board
8 shall consider individuals recommended by the
9 American Historical Association, the Organization of
10 American Historians, the Society of American Archi-
11 vists, and the American Bar Association.

12 (4) SECURITY CLEARANCES.—A candidate shall
13 qualify for the necessary security clearance prior to
14 being appointed by the Review Board.

15 (c) COMPENSATION.—The Review Board shall fix the
16 compensation of the Chief of Staff and other employees
17 in accordance with title 5, United States Code, except that
18 the rate of pay for the Chief of Staff and other employees
19 may not exceed the rate payable for level V of the Execu-
20 tive Schedule under section 5316 of that title.

21 (d) ADVISORY COMMITTEES.—The Review Board
22 may create advisory committees to assist in fulfilling the
23 responsibilities of the Review Board under this Act.

1 **SEC. 7. REVIEW OF RECORDS BY THE REVIEW BOARD.**

2 (a) CUSTODY OF RECORDS REVIEWED BY THE
3 BOARD.—Pending the outcome of the Review Board’s re-
4 view activity, a Government office shall retain custody of
5 a civil rights cold case records for purposes of preserva-
6 tion, security, and efficiency, unless—

7 (1) the Review Board requires the physical
8 transfer of records for reasons of conducting an
9 independent and impartial review; or

10 (2) such transfer is necessary for an adminis-
11 trative hearing or other official Review Board func-
12 tion.

13 (b) STARTUP REQUIREMENTS.—The Review Board
14 shall—

15 (1) not later than 90 days after the date on
16 which all members of the Review Board are ap-
17 pointed, publish a schedule for review of all civil
18 rights cold case records in the Federal Register; and

19 (2) not later than 180 days after the enactment
20 of this Act, begin its review of civil rights cold case
21 records under this Act.

22 (c) DETERMINATION OF THE REVIEW BOARD.—

23 (1) IN GENERAL.—The Review Board shall di-
24 rect that copies of all civil rights cold case records
25 be transmitted to the Archivist and disclosed to the

1 public in the Collection in the absence of clear and
2 convincing evidence that—

3 (A) a Government record is not a civil
4 rights cold case record; or

5 (B) a Government record or particular in-
6 formation within a civil rights cold case record
7 qualifies for postponement of public disclosure
8 under this Act, which shall include consider-
9 ation by the Review Board of relevant laws and
10 policies protecting criminal records of juveniles.

11 (2) POSTPONEMENT.—In approving postpone-
12 ment of public disclosure of a civil rights cold case
13 record, the Review Board shall work to—

14 (A) provide for the disclosure of segregable
15 parts, substitutes, or summaries of such a
16 record; and

17 (B) determine, in consultation with the
18 originating body and consistent with the stand-
19 ards for postponement under this Act, which of
20 the following alternative forms of disclosure
21 shall be made by the originating body:

22 (i) Any reasonably segregable par-
23 ticular information in a civil rights cold
24 case record.

1 (ii) A substitute record for that infor-
2 mation which is postponed.

3 (iii) A summary of a civil rights cold
4 case record.

5 (3) REPORT.—With respect to each civil rights
6 cold case record or particular information in civil
7 rights cold case records the public disclosure of
8 which is postponed under section 4, or for which
9 only substitutions or summaries have been disclosed
10 to the public, the Review Board shall create and
11 transmit to the Archivist a report containing—

12 (A) a description of actions by the Review
13 Board, the originating body, the President, or
14 any Government office (including a justification
15 of any such action to postpone disclosure of any
16 record or part of any record) and of any official
17 proceedings conducted by the Review Board
18 with regard to specific civil rights cold case
19 records; and

20 (B) a statement, based on a review of the
21 proceedings and in conformity with the deci-
22 sions reflected therein, designating a rec-
23 ommended specified time at which or a specified
24 occurrence following which the material may be

1 appropriately disclosed to the public under this
2 Act.

3 (4) NOTICE.—Not later than 14 days after the
4 Review Board makes a determination that a civil
5 rights cold case record shall be publicly disclosed in
6 the Collection or postponed for disclosure and held
7 in the protected Collection, the Review Board shall
8 notify the head of the originating body of its deter-
9 mination and publish a copy of the determination in
10 the Federal Register.

11 (5) OTHER NOTICE.—Contemporaneous notice
12 shall be made to the President of Review Board de-
13 terminations regarding executive branch civil rights
14 cold case records, and to the oversight committees
15 designated in this Act in the case of legislative
16 branch records. Such notice shall contain a written
17 unclassified justification for public disclosure or
18 postponement of disclosure, including an explanation
19 of the application of any standards under section 4.

20 (d) PRESIDENTIAL AUTHORITY OVER REVIEW
21 BOARD DETERMINATION.—

22 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
23 OF DISCLOSURE.—After the Review Board has made
24 a formal determination concerning the public disclo-
25 sure or postponement of disclosure of an executive

1 branch civil rights cold case record or information
2 contained in a civil rights cold case record, obtained
3 or developed solely within the executive branch, the
4 President shall have the sole and nondelegable au-
5 thority to require the disclosure or postponement of
6 such record or information under the standards set
7 forth in section 4, and the President shall provide
8 the Review Board with an unclassified written cer-
9 tification specifying the President's decision within
10 30 days after the Review Board's determination and
11 notice to the executive agency as required under this
12 Act, stating the justification for the President's deci-
13 sion, including the applicable grounds for postpone-
14 ment under section 4.

15 (2) PERIODIC REVIEW.—Any executive branch
16 civil rights cold case record for which public disclo-
17 sure is postponed by the President shall be subject
18 to the requirements of periodic review and declas-
19 sification of classified information and public disclo-
20 sure in the Collection set forth in section 3.

21 (3) RECORD OF PRESIDENTIAL POSTPONE-
22 MENT.—The Review Board shall, upon its receipt,
23 publish in the Federal Register a copy of any unclas-
24 sified written certification, statement, and other ma-
25 terials transmitted by or on behalf of the President

1 with regard to postponement of the public disclosure
2 of civil rights cold case records.

3 (e) NOTICE TO THE PUBLIC.—On each day that is
4 on or after the date that is 60 days after the Review Board
5 first approves the postponement of disclosure of a civil
6 rights cold case record, the Review Board shall publish
7 on a publicly available website a notice that summarizes
8 the postponements approved by the Review Board or initi-
9 ated by the President, including a description of the sub-
10 ject, originating agency, length or other physical descrip-
11 tion, and each ground for postponement that is relied
12 upon.

13 (f) REPORTS BY THE REVIEW BOARD.—

14 (1) IN GENERAL.—The Review Board shall re-
15 port its activities to the Speaker of the House of
16 Representatives, the Minority Leader of the House
17 of Representatives, the Committee on Oversight and
18 Government Reform of the House of Representa-
19 tives, the Majority Leader of the Senate, the Minor-
20 ity Leader of the Senate, the Committee on Home-
21 land Security and Governmental Affairs of the Sen-
22 ate, the President, the Archivist, and the head of
23 any Government office whose records have been the
24 subject of Review Board activity.

1 (2) DEADLINES.—Not later than 1 year after
2 the date of enactment of this Act, and every year
3 thereafter until termination of the Review Board,
4 the Review Board shall issue a report under para-
5 graph (1).

6 (3) CONTENTS.—Each report under paragraph
7 (1) shall include the following information:

8 (A) A financial report of the expenses for
9 all official activities and requirements of the
10 Review Board and its employees.

11 (B) The progress made on review, trans-
12 mission to the Archivist, and public disclosure
13 of civil rights cold case records.

14 (C) The estimated time and volume of civil
15 rights cold case records involved in the comple-
16 tion of the Review Board's performance under
17 this Act.

18 (D) Any special problems, including re-
19 quests and the level of cooperation of Govern-
20 ment offices, with regard to the ability of the
21 Review Board to operate as required by this
22 Act.

23 (E) A record of review activities, including
24 a record of postponement decisions by the Re-
25 view Board or other related actions authorized

1 by this Act, and a record of the volume of
2 records reviewed and postponed.

3 (F) Recommendations and requests to
4 Congress for additional authorization.

5 (G) An appendix containing copies of re-
6 ports of postponed records to the Archivist re-
7 quired under subsection (c)(3) made since the
8 date of the preceding report under this sub-
9 section.

10 (4) NOTICE OF TERMINATION.—Not later than
11 90 days before terminating, the Review Board shall
12 provide written notice to the President and the Con-
13 gress of its intention to terminate its operations at
14 a specified date.

15 **SEC. 8. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
16 **TIONAL STUDY.**

17 (a) MATERIALS UNDER THE SEAL OF THE COURT.—

18 (1) IN GENERAL.—The Review Board may re-
19 quest the Attorney General to petition any court in
20 the United States or abroad to release any informa-
21 tion relevant to civil rights cold cases that is held
22 under seal of court.

23 (2) GRAND JURY MATERIALS.—

24 (A) IN GENERAL.—The Review Board may
25 request the Attorney General to petition any

1 court in the United States to release any infor-
2 mation relevant to civil rights cold cases that is
3 held under the injunction of secrecy of a grand
4 jury.

5 (B) PARTICULARIZED NEED.—A request
6 for disclosure of civil rights cold case records
7 under this Act shall be deemed to constitute a
8 showing of particularized need under rule 6 of
9 the Federal Rules of Criminal Procedure.

10 (3) DEADLINE.—

11 (A) IN GENERAL.—The Attorney General
12 shall respond to any request that is subject to
13 this subsection within 45 days.

14 (B) NONDISCLOSURE OF GRAND JURY IN-
15 FORMATION.—If the Attorney General deter-
16 mines that information relevant to a civil rights
17 cold case that is held under the injunction of
18 secrecy of a grand jury should not be made
19 public, the Attorney General shall set forth in
20 the response to the request the reasons for the
21 determination.

22 (b) COOPERATION WITH AGENCIES.—It is the sense
23 of Congress that—

24 (1) the Attorney General should assist the Re-
25 view Board in good faith to unseal any records that

1 the Review Board determines to be relevant and held
2 under the seal by a court or under the injunction of
3 secrecy of a grand jury; and

4 (2) all departments and agencies of the United
5 States Government should cooperate in full with the
6 Review Board to seek the disclosure of all informa-
7 tion relevant to civil rights cold cases consistent with
8 the public interest.

9 **SEC. 9. RULES OF CONSTRUCTION.**

10 (a) PRECEDENCE OVER OTHER LAW.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 when this Act requires transmission of a record to
13 the Archivist or public disclosure, it shall take prece-
14 dence over any other law (except section 6103 of the
15 Internal Revenue Code of 1986), judicial decisions
16 construing such law, or common law doctrine that
17 would otherwise prohibit such transmission or disclo-
18 sure with the exception of deeds governing access to
19 or transfer or release of gifts and donations of
20 records to the United States Government.

21 (2) PERSONNEL AND MEDICAL FILES.—This
22 Act shall not require the public disclosure of infor-
23 mation that is exempt from disclosure under section
24 552(b)(6) of title 5, United States Code.

1 (b) FREEDOM OF INFORMATION ACT.—Nothing in
2 this Act shall be construed to eliminate or limit any right
3 to file any requests with any executive agency or seek judi-
4 cial review of the decisions under section 552 of title 5,
5 United States Code.

6 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
7 construed to preclude judicial review, under chapter 7 of
8 title 5, United States Code, of final actions taken or re-
9 quired to be taken under this Act.

10 (d) EXISTING AUTHORITY.—Nothing in this Act re-
11 vokes or limits the existing authority of the President, any
12 executive agency, the Senate, the House of Representa-
13 tives, or any other entity of the Government to publicly
14 disclose records in its possession.

15 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—There are authorized to be appro-
17 priated such sums as are necessary to carry out this Act,
18 to remain available until expended.

19 (b) INTERIM PROVISIONS.—Until such time as funds
20 are appropriated pursuant to subsection (a), the President
21 shall use such sums as are available for discretionary use
22 to carry out this Act.