

115TH CONGRESS  
2D SESSION

# S. 3191

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## AN ACT

To provide for the expeditious disclosure of records related  
to civil rights cold cases, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Civil Rights Cold Case  
3 Records Collection Act of 2018”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ARCHIVIST.—The term “Archivist” means  
7 the Archivist of the United States.

8 (2) CIVIL RIGHTS COLD CASE.—The term “civil  
9 rights cold case” means any unsolved case—

10 (A) arising out of events which occurred  
11 during the period beginning on January 1,  
12 1940 and ending on December 31, 1979; and

13 (B) related to—

14 (i) section 241 of title 18, United  
15 States Code (relating to conspiracy against  
16 rights);

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

20 (iii) section 245 of title 18, United  
21 States Code (relating to federally protected  
22 activities);

23 (iv) sections 1581 and 1584 of title  
24 18, United States Code (relating to peon-  
25 age and involuntary servitude);

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

3 (vi) any other Federal law that was—  
4 (I) in effect on or before Decem-  
5 ber 31, 1979; and

6 (II) enforced by the criminal sec-  
7 tion of the Civil Rights Division of the  
8 Department of Justice before the date  
9 of enactment of this Act.

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

13 (A) is related to a civil rights cold case;  
14 and

15 (B) was created or made available for use  
16 by, obtained by, or otherwise came into the pos-  
17 session of—

18 (i) the Library of Congress;

19 (ii) the National Archives;

20 (iii) any executive agency;

21 (iv) any independent agency;

22 (v) any other entity of the Federal  
23 Government; or

24 (vi) any State or local government, or  
25 component thereof, that provided support

1           or assistance or performed work in connec-  
2           tion with a Federal inquiry into a civil  
3           rights cold case.

4           (4) COLLECTION.—The term “Collection”  
5           means the Civil Rights Cold Case Records Collection  
6           established under section 3.

7           (5) EXECUTIVE AGENCY.—The term “executive  
8           agency” means an agency, as defined in section  
9           552(f) of title 5, United States Code.

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

14          (7) GOVERNMENT OFFICIAL.—The term “Gov-  
15          ernment official” means any officer or employee of  
16          the United States, including elected and appointed  
17          officials.

18          (8) NATIONAL ARCHIVES.—The term “National  
19          Archives” means the National Archives and Records  
20          Administration and all components thereof, includ-  
21          ing Presidential archival depositories established  
22          under section 2112 of title 44, United States Code.

23          (9) OFFICIAL INVESTIGATION.—The term “offi-  
24          cial investigation” means the review of a civil rights  
25          cold case conducted by any entity of the Federal

1 Government either independently, at the request of  
2 any Presidential commission or congressional com-  
3 mittee, or at the request of any Government official.

4 (10) ORIGINATING BODY.—The term “origi-  
5 nating body” means the executive agency, Govern-  
6 ment commission, congressional committee, or other  
7 Governmental entity that created a record or par-  
8 ticular information within a record.

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

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

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

22 **SEC. 3. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**  
23 **AT THE NATIONAL ARCHIVES AND RECORD**  
24 **ADMINISTRATION.**

25 (a) IN GENERAL.—

1           (1) ESTABLISHMENT OF THE CIVIL RIGHTS  
2 COLD CASE RECORDS COLLECTION.—Not later than  
3 60 days after the date of enactment of this Act, the  
4 Archivist shall—

5           (A) commence establishing a collection of  
6 civil rights cold case records to be known as the  
7 “Civil Rights Cold Case Records Collection”  
8 that ensures the physical integrity and original  
9 provenance of all records in the Collection;

10           (B) commence preparing and publishing  
11 the subject guidebook and index to the Collec-  
12 tion; and

13           (C) establish criteria for Government of-  
14 fices to follow when transmitting copies of civil  
15 rights cold case records to the Archivist, to in-  
16 clude required metadata.

17           (2) CONTENTS OF COLLECTION.—The Collec-  
18 tion shall include—

19           (A) a copy of each civil rights cold case  
20 record—

21           (i) that has not been transmitted to  
22 the Archivist, which shall be transmitted to  
23 the Archivist in accordance with section  
24 2107 of title 44, United States Code, by  
25 the entity described in section 2(3)(B) in

1 possession of the civil rights cold case  
2 record, except in the case of a State or  
3 local government;

4 (ii) that has been transmitted to the  
5 Archivist or disclosed to the public in an  
6 unredacted form before the date of the en-  
7 actment of this Act;

8 (iii) that is required to be transmitted  
9 to the Archivist; or

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

12 (B) all Review Board records, as required  
13 under this Act.

14 (b) DISCLOSURE OF RECORDS.—All civil rights cold  
15 case records transmitted to the Archivist for disclosure to  
16 the public—

17 (1) shall be included in the Collection;

18 (2) not later than 60 days after the trans-  
19 mission of the record to the Archivist, shall be avail-  
20 able to the public for inspection and copying at the  
21 National Archives; and

22 (3) shall be prioritized for digitization by the  
23 National Archives.

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

25 (1) use efficient electronic means when possible;

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

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

6           (d) **ADDITIONAL REQUIREMENTS.**—The Archivist  
7 shall ensure the security of civil rights cold case records  
8 in the Collection for which disclosure is postponed.

9           (e) **TRANSMISSION TO THE NATIONAL ARCHIVES.**—

10           (1) **IN GENERAL.**—Subject to paragraph (2),  
11 each Government office shall, in accordance with the  
12 criteria established by the Archivist under subsection  
13 (a)(1)(C)—

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

1           (B) transmit to the Archivist upon ap-  
2           proval for postponement by the Review Board  
3           or upon completion of other action authorized  
4           by this Act, a copy of each civil rights cold case  
5           record for which public disclosure has been  
6           postponed, in whole or in part, under the stand-  
7           ards of this Act, to become part of the pro-  
8           tected Collection.

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

18               (A) not later than 90 days after—

19                   (i) final judgment is entered in the  
20                   proceedings relating to the civil rights cold  
21                   case; or

22                   (ii) proceedings relating to the civil  
23                   rights cold case are dismissed with preju-  
24                   dice; or

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

6 (f) PERIODIC REVIEW OF POSTPONED CIVIL RIGHTS  
7 COLD CASE RECORDS.—

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

14 (2) REQUIREMENTS OF PERIODIC REVIEW.—  
15 The periodic review under paragraph (1) shall ad-  
16 dress the public disclosure of additional civil rights  
17 cold case records in the Collection under the stand-  
18 ards of this Act.

19 (3) UNCLASSIFIED WRITTEN DESCRIPTION.—  
20 Any civil rights cold case record for which postpone-  
21 ment of public disclosure is continued shall include  
22 an unclassified written description of the reason for  
23 such continued postponement, which shall be pro-  
24 vided to the Archivist and made available on a pub-

1       licly accessible website upon the determination to  
2       continue the postponement.

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

5               (A) IN GENERAL.—Each civil rights cold  
6       case record that is not publicly disclosed in full  
7       as of the date on which the Review Board ter-  
8       minates under section 5(n) shall be publicly dis-  
9       closed in full and available in the Collection not  
10      later than 25 years after the date of enactment  
11      of this Act unless—

12              (i) the head of the originating body,  
13      an executive agency, or other Government  
14      office recommends in writing the exemp-  
15      tion of the record or information, the re-  
16      lease of which would clearly and demon-  
17      strably be expected to—

18              (I) cause identifiable or describ-  
19      able damage to national security, mili-  
20      tary defense, law enforcement, intel-  
21      ligence operations, or the conduct of  
22      foreign relations that is of such grav-  
23      ity that it outweighs the public inter-  
24      est in disclosure; or

1 (II) reveal information described  
2 in paragraphs (1) through (9) of sec-  
3 tion 3.3(b) of Executive Order 13526  
4 (75 Fed. Reg. 707; relating to classi-  
5 fied national security information);

6 (ii) the written recommendation de-  
7 scribed in clause (i)—

8 (I) is provided to the Archivist  
9 not later than 180 days before the  
10 date that is 25 years after the date of  
11 enactment of this Act; and

12 (II) includes—

13 (aa) a justification of the  
14 recommendation to postpone dis-  
15 closure; and

16 (bb) a recommended speci-  
17 fied time at which or a specified  
18 occurrence following which the  
19 material may be appropriately  
20 disclosed to the public under this  
21 Act; and

22 (iii) the Archivist agrees with the  
23 written recommendation described in  
24 clause (i).

1           (B) NOTIFICATION.—If the Archivist does  
2           not agree with the recommendation described in  
3           subparagraph (A)(i), the Archivist shall notify  
4           the head of the originating body, executive  
5           agency, or other Government office making the  
6           recommendation not later than 90 days before  
7           the date that is 25 years after the date of en-  
8           actment of this Act.

9           (g) DIGITIZATION OF RECORDS.—Each executive  
10          agency shall make text searchable documents available to  
11          the Review Board pursuant to standards established under  
12          section 552(a)(3) of title 5, United States Code.

13          (h) NOTICE REGARDING PUBLIC DISCLOSURE.—

14               (1) FINDING.—Congress finds that the public  
15               release of case-related documents and information  
16               without notice may significantly affect the victims of  
17               the events to which the case relates and their next  
18               of kin.

19               (2) NOTICE.—Not later than 7 days before a  
20               civil rights cold case record is publicly disclosed, the  
21               executive agency releasing the civil rights cold case  
22               record, in coordination with the Government office  
23               that had possession or control of the civil rights cold  
24               case record, shall take all reasonable efforts to pro-  
25               vide the civil rights cold case record to the victims

1 of the events to which the civil rights cold case  
2 record relates, or their next of kin.

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

5 Disclosure of civil rights cold case records or par-  
6 ticular information within a civil rights cold case record  
7 to the public may be postponed subject to the limitations  
8 of this Act if disclosure would clearly and demonstrably  
9 be expected to—

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

15 (B) reveal information described in paragraphs  
16 (1) through (9) of section 3.3(b) of Executive Order  
17 13526 (75 Fed. Reg. 707; relating to classified na-  
18 tional security information);

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

22 (B) pose a substantial risk of harm to that indi-  
23 vidual;

24 (3) constitute an unwarranted invasion of per-  
25 sonal privacy;

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

5           (B) be so harmful that the understanding of  
6           confidentiality outweighs the public interest;

7           (5) endanger the life or physical safety of any  
8           individual; or

9           (6) interfere with ongoing law enforcement pro-  
10          ceedings.

11 **SEC. 5. ESTABLISHMENT AND POWERS OF THE CIVIL**  
12                   **RIGHTS COLD CASE RECORDS REVIEW**  
13                   **BOARD.**

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

17          (b) **APPOINTMENT.**—

18           (1) **IN GENERAL.**—The President shall appoint,  
19 by and with the advice and consent of the Senate,  
20 5 individuals to serve as members of the Review  
21 Board, to ensure and facilitate the review, trans-  
22 mission to the Archivist, and public disclosure of  
23 civil rights cold case records.

24           (2) **INITIAL APPOINTMENT.**—

1 (A) IN GENERAL.—Initial appointments to  
2 the Review Board shall, so far as practicable,  
3 be made not later than 60 days after the date  
4 of enactment of this Act.

5 (B) RECOMMENDATIONS.—In making ap-  
6 pointments to the Review Board, the President  
7 may consider any individuals recommended by  
8 the American Historical Association, the Orga-  
9 nization of American Historians, the Society of  
10 American Archivists, and the American Bar As-  
11 sociation.

12 (C) EXTENSION.—If an organization de-  
13 scribed in subparagraph (B) does not rec-  
14 ommend at least 2 nominees meeting the quali-  
15 fications stated in paragraph (3) within 60 days  
16 after the date of enactment of this Act, the  
17 deadline under subparagraph (A) shall be ex-  
18 tended until the earlier of 60 days after the  
19 date on which such recommendations are made  
20 or 120 days after the date of enactment of this  
21 Act.

22 (D) ADDITIONAL RECOMMENDATIONS.—  
23 The President may request that any organiza-  
24 tion described in subparagraph (B) submit ad-  
25 ditional recommended nominees.

1           (3) QUALIFICATIONS.—Individuals nominated  
2 to the Review Board shall—

3           (A) not have had any previous involvement  
4 with any official investigation or inquiry con-  
5 ducted by the Federal Government, or any  
6 State or local government, relating to any civil  
7 rights cold case;

8           (B) be distinguished individuals of high  
9 national professional reputation in their respec-  
10 tive fields who are capable of exercising the  
11 independent and objective judgment necessary  
12 to fulfill their role in ensuring and facilitating  
13 the review, transmission to the public, and pub-  
14 lic disclosure of files related to civil rights cold  
15 cases and who possess an appreciation of the  
16 value of such material to the public, scholars,  
17 and government; and

18           (C) include at least 1 professional historian  
19 and 1 attorney.

20       (c) SECURITY CLEARANCES.—All Review Board  
21 nominees shall be processed for the necessary security  
22 clearances in an accelerated manner by the appropriate  
23 Federal agencies and subject to the standard procedures  
24 for granting such clearances.

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

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

6 (f) REMOVAL OF REVIEW BOARD MEMBER.—

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

9 (A) by impeachment and conviction; or

10 (B) by the action of the President for inef-  
11 ficiency, neglect of duty, malfeasance in office,  
12 physical disability, mental incapacity, or any  
13 other condition that substantially impairs the  
14 performance of the member's duties.

15 (2) REPORT.—

16 (A) IN GENERAL.—If a member of the Re-  
17 view Board is removed from office, and that re-  
18 moval is by the President, not later than 10  
19 days after the removal, the President shall sub-  
20 mit to the Committee on Oversight and Govern-  
21 ment Reform of the House of Representatives  
22 and the Committee on Homeland Security and  
23 Governmental Affairs of the Senate a report  
24 specifying the facts found and the grounds for  
25 the removal.

1 (B) PUBLICATION.—The President shall  
2 publish in the Federal Register a report sub-  
3 mitted under subparagraph (A), except that the  
4 President may, if necessary to protect the  
5 rights of a person named in the report or to  
6 prevent undue interference with any pending  
7 prosecution, postpone or refrain from pub-  
8 lishing any or all of the report until the comple-  
9 tion of such pending cases or pursuant to pri-  
10 vacy protection requirements in law.

11 (3) JUDICIAL REVIEW.—

12 (A) IN GENERAL.—A member of the Re-  
13 view Board removed from office may obtain ju-  
14 dicial review of the removal in a civil action  
15 commenced in the United States District Court  
16 for the District of Columbia.

17 (B) RELIEF.—The member may be rein-  
18 stated or granted other appropriate relief by  
19 order of the court.

20 (g) COMPENSATION OF MEMBERS.—

21 (1) IN GENERAL.—A member of the Review  
22 Board shall be compensated at a rate equal to the  
23 daily equivalent of the annual rate of basic pay pre-  
24 scribed for level IV of the Executive Schedule under  
25 section 5315 of title 5, United States Code, for each

1 day (including travel time) during which the member  
2 is engaged in the performance of the duties of the  
3 Review Board.

4 (2) TRAVEL EXPENSES.—A member of the Re-  
5 view Board shall be allowed reasonable travel ex-  
6 penses, including per diem in lieu of subsistence, at  
7 rates for employees of agencies under subchapter I  
8 of chapter 57 of title 5, United States Code, while  
9 away from the member's home or regular place of  
10 business in the performance of services for the Re-  
11 view Board.

12 (h) DUTIES OF THE REVIEW BOARD.—

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

17 (2) DECISIONS.—In carrying out paragraph  
18 (1), the Review Board shall consider and render de-  
19 cisions on—

20 (A) whether a record constitutes a civil  
21 rights cold case record; and

22 (B) whether a civil rights cold case record  
23 or particular information in a record qualifies  
24 for postponement of disclosure under this Act.

25 (i) POWERS.—

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

4           (A) obtain access to civil rights cold case  
5 records that have been identified and organized  
6 by a Government office;

7           (B) direct a Government office to make  
8 available to the Review Board, and if necessary  
9 investigate the facts surrounding, additional in-  
10 formation, records, or testimony from individ-  
11 uals, which the Review Board has reason to be-  
12 lieve is required to fulfill its functions and re-  
13 sponsibilities under this Act;

14           (C) subpoena private persons to compel the  
15 production of documents and other records rel-  
16 evant to its responsibilities under this Act;

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

20           (E) receive information from the public re-  
21 garding the identification and public disclosure  
22 of civil rights cold case records; and

23           (F) hold hearings, administer oaths, and  
24 subpoena documents and other records.

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

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

8           (k) OVERSIGHT.—

9           (1) IN GENERAL.—The Committee on Oversight  
10          and Government Reform of the House of Represent-  
11          atives and the Committee on Homeland Security and  
12          Governmental Affairs of the Senate shall have con-  
13          tinuing oversight jurisdiction with respect to the offi-  
14          cial conduct of the Review Board and the disposition  
15          of postponed records after termination of the Review  
16          Board, and shall have access to any records held or  
17          created by the Review Board.

18          (2) COOPERATION OF REVIEW BOARD.—The  
19          Review Board shall have a duty to cooperate with  
20          the exercise of the oversight jurisdiction described in  
21          paragraph (1).

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

1 (m) INTERPRETIVE REGULATIONS.—The Review  
2 Board may issue interpretive regulations.

3 (n) TERMINATION.—

4 (1) IN GENERAL.—The Review Board shall ter-  
5minate not later than 4 years after the date of en-  
6actment of this Act, except that the Review Board  
7may, by majority vote, extend its term for an addi-  
8tional 1-year period if the Review Board has not  
9completed its work within that 4-year period.

10 (2) REPORTS.—Before its termination, the Re-  
11view Board shall submit reports to the President  
12and the Congress, including a complete and accurate  
13accounting of expenditures during its existence, and  
14shall complete all other reporting requirements  
15under this Act.

16 (3) TRANSFER OF RECORDS.—

17 (A) IN GENERAL.—Upon termination, the  
18Review Board shall transfer all of its records to  
19the Archivist for inclusion in the Collection.

20 (B) PRESERVATION OF RECORDS.—The  
21records of the Review Board shall not be de-  
22stroyed, except that the Archivist may destroy  
23routine administrative records covered by a gen-  
24eral records schedule following notification in

1           the Federal Register and after considering com-  
2           ments.

3 **SEC. 6. REVIEW BOARD PERSONNEL.**

4           (a) CHIEF OF STAFF.—

5                 (1) APPOINTMENT.—Not later than 45 days  
6           after the initial meeting of the Review Board, and  
7           without regard to political affiliation, the Review  
8           Board shall appoint an individual to the position of  
9           Chief of Staff of the Review Board.

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

12                    (A) shall be a citizen of the United States  
13           of integrity and impartiality who is a distin-  
14           guished professional; and

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

18                 (3) CANDIDATE TO HAVE CLEARANCES.—A  
19           candidate for Chief of Staff shall be granted the nec-  
20           essary security clearances in an accelerated manner  
21           subject to the standard procedures for granting such  
22           clearances.

23                 (4) APPROVAL CONTINGENT ON PRIOR CLEAR-  
24           ANCE.—A candidate for Chief of Staff shall qualify

1 for the necessary security clearance prior to being  
2 appointed by the Review Board.

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

4 (A) serve as principal liaison to Govern-  
5 ment offices;

6 (B) be responsible for the administration  
7 and coordination of the Review Board’s review  
8 of records;

9 (C) be responsible for the administration  
10 of all official activities conducted by the Review  
11 Board; and

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

15 (6) REMOVAL.—The Chief of Staff shall not be  
16 removed except upon a majority vote of the Review  
17 Board to remove the Chief of Staff for cause on the  
18 grounds of inefficiency, neglect of duty, malfeasance  
19 in office, physical disability, mental incapacity, or  
20 any other condition that substantially impairs the  
21 performance of the responsibilities of the Chief of  
22 Staff or the employees of the Review Board.

23 (b) STAFF.—

24 (1) ADDITIONAL PERSONNEL.—The Review  
25 Board may, in accordance with the civil service laws

1 but without regard to civil service laws and regula-  
2 tions for appointments in the competitive service  
3 under subchapter I of chapter 33 of title 5, United  
4 States Code, appoint and terminate additional em-  
5 ployees as are necessary to enable the Review Board  
6 and its Chief of Staff to perform their duties.

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

9 (A) shall be a private citizen of integrity  
10 and impartiality; and

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

14 (3) NOMINATIONS.—Before making an appoint-  
15 ment pursuant to paragraph (1), the Review Board  
16 shall consider individuals recommended by the  
17 American Historical Association, the Organization of  
18 American Historians, the Society of American Archi-  
19 vists, and the American Bar Association.

20 (4) SECURITY CLEARANCES.—A candidate shall  
21 qualify for the necessary security clearance prior to  
22 being appointed by the Review Board.

23 (c) COMPENSATION.—The Review Board shall fix the  
24 compensation of the Chief of Staff and other employees  
25 in accordance with title 5, United States Code, except that

1 the rate of pay for the Chief of Staff and other employees  
2 may not exceed the rate payable for level V of the Execu-  
3 tive Schedule under section 5316 of that title.

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

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

8 (a) CUSTODY OF RECORDS REVIEWED BY THE  
9 BOARD.—Pending the outcome of the Review Board’s re-  
10 view activity, a Government office shall retain custody of  
11 a civil rights cold case record for purposes of preservation,  
12 security, and efficiency, unless—

13 (1) the Review Board requires the physical  
14 transfer of records for reasons of conducting an  
15 independent and impartial review; or

16 (2) such transfer is necessary for an adminis-  
17 trative hearing or other official Review Board func-  
18 tion.

19 (b) STARTUP REQUIREMENTS.—The Review Board  
20 shall—

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

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

4           (c) DETERMINATION OF THE REVIEW BOARD.—

5           (1) IN GENERAL.—The Review Board shall di-  
6 rect that copies of all civil rights cold case records  
7 be transmitted to the Archivist and disclosed to the  
8 public in the Collection in the absence of clear and  
9 convincing evidence that—

10           (A) a Government record is not a civil  
11 rights cold case record; or

12           (B) a Government record or particular in-  
13 formation within a civil rights cold case record  
14 qualifies for postponement of public disclosure  
15 under this Act, which shall include consider-  
16 ation by the Review Board of relevant laws and  
17 policies protecting criminal records of juveniles.

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

21           (A) provide for the disclosure of segregable  
22 parts, substitutes, or summaries of such a  
23 record; and

24           (B) determine, in consultation with the  
25 originating body and consistent with the stand-

1           ards for postponement under this Act, which of  
2           the following alternative forms of disclosure  
3           shall be made by the originating body:

4                   (i) Any reasonably segregable par-  
5                   ticular information in a civil rights cold  
6                   case record.

7                   (ii) A substitute record for that infor-  
8                   mation which is postponed.

9                   (iii) A summary of a civil rights cold  
10                  case record.

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

18                   (A) a description of actions by the Review  
19                   Board, the originating body, the President, or  
20                   any Government office (including a justification  
21                   of any such action to postpone disclosure of any  
22                   record or part of any record) and of any official  
23                   proceedings conducted by the Review Board  
24                   with regard to specific civil rights cold case  
25                   records; and

1           (B) a statement, based on a review of the  
2           proceedings and in conformity with the deci-  
3           sions reflected therein, designating a rec-  
4           ommended specified time at which or a specified  
5           occurrence following which the material may be  
6           appropriately disclosed to the public under this  
7           Act.

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

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

1 (d) PRESIDENTIAL AUTHORITY OVER REVIEW  
2 BOARD DETERMINATION.—

3 (1) PUBLIC DISCLOSURE OR POSTPONEMENT  
4 OF DISCLOSURE.—After the Review Board has made  
5 a formal determination concerning the public disclo-  
6 sure or postponement of disclosure of an executive  
7 branch civil rights cold case record or information  
8 contained in a civil rights cold case record, obtained  
9 or developed solely within the executive branch, the  
10 President shall have the sole and nondelegable au-  
11 thority to require the disclosure or postponement of  
12 such record or information under the standards set  
13 forth in section 4, and the President shall provide  
14 the Review Board with an unclassified written cer-  
15 tification specifying the President's decision within  
16 30 days after the Review Board's determination and  
17 notice to the executive agency as required under this  
18 Act, stating the justification for the President's deci-  
19 sion, including the applicable grounds for postpone-  
20 ment under section 4.

21 (2) PERIODIC REVIEW.—Any executive branch  
22 civil rights cold case record for which public disclo-  
23 sure is postponed by the President shall be subject  
24 to the requirements of periodic review and declas-

1       sification of classified information and public disclo-  
2       sure in the Collection set forth in section 3.

3           (3) RECORD OF PRESIDENTIAL POSTPONE-  
4       MENT.—The Review Board shall, upon its receipt,  
5       publish in the Federal Register a copy of any unclas-  
6       sified written certification, statement, or other mate-  
7       rials transmitted by or on behalf of the President  
8       with regard to postponement of the public disclosure  
9       of civil rights cold case records.

10       (e) NOTICE TO THE PUBLIC.—On each day that is  
11      on or after the date that is 60 days after the Review Board  
12      first approves the postponement of disclosure of a civil  
13      rights cold case record, the Review Board shall publish  
14      on a publicly available website a notice that summarizes  
15      the postponements approved by the Review Board or initi-  
16      ated by the President, including a description of the sub-  
17      ject, originating body, length or other physical description,  
18      and each ground for postponement that is relied upon.

19       (f) REPORTS BY THE REVIEW BOARD.—

20           (1) IN GENERAL.—The Review Board shall re-  
21      port its activities to the Speaker of the House of  
22      Representatives, the Minority Leader of the House  
23      of Representatives, the Committee on Oversight and  
24      Government Reform of the House of Representa-  
25      tives, the Majority Leader of the Senate, the Minor-

1       ity Leader of the Senate, the Committee on Home-  
2       land Security and Governmental Affairs of the Sen-  
3       ate, the President, the Archivist, and the head of  
4       any Government office whose records have been the  
5       subject of Review Board activity.

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

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

13           (A) A financial report of the expenses for  
14       all official activities and requirements of the  
15       Review Board and its employees.

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

19           (C) The estimated time and volume of civil  
20       rights cold case records involved in the comple-  
21       tion of the Review Board's performance under  
22       this Act.

23           (D) Any special problems, including re-  
24       quests and the level of cooperation of Govern-  
25       ment offices, with regard to the ability of the

1           Review Board to operate as required by this  
2           Act.

3           (E) A record of review activities, including  
4           a record of postponement decisions by the Re-  
5           view Board or other related actions authorized  
6           by this Act, and a record of the volume of  
7           records reviewed and postponed.

8           (F) Recommendations and requests to  
9           Congress for additional authorization.

10          (G) An appendix containing copies of re-  
11          ports of postponed records to the Archivist re-  
12          quired under subsection (c)(3) made since the  
13          date of the preceding report under this sub-  
14          section.

15          (4) NOTICE OF TERMINATION.—Not later than  
16          90 days before terminating, the Review Board shall  
17          provide written notice to the President and the Con-  
18          gress of its intention to terminate its operations at  
19          a specified date.

20 **SEC. 8. DISCLOSURE OF OTHER INFORMATION AND ADDI-**  
21 **TIONAL STUDY.**

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

23               (1) IN GENERAL.—The Review Board may re-  
24               quest the Attorney General to petition any court in  
25               the United States or abroad to release any informa-

1       tion relevant to civil rights cold cases that is held  
2       under seal of court.

3               (2) GRAND JURY MATERIALS.—

4               (A) IN GENERAL.—The Review Board may  
5       request the Attorney General to petition any  
6       court in the United States to release any infor-  
7       mation relevant to civil rights cold cases that is  
8       held under the injunction of secrecy of a grand  
9       jury.

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

15              (3) DEADLINE.—

16              (A) IN GENERAL.—The Attorney General  
17       shall respond to any request that is subject to  
18       this subsection within 45 days.

19              (B) NONDISCLOSURE OF GRAND JURY IN-  
20       FORMATION.—If the Attorney General deter-  
21       mines that information relevant to a civil rights  
22       cold case that is held under the injunction of  
23       secrecy of a grand jury should not be made  
24       public, the Attorney General shall set forth in

1           the response to the request the reasons for the  
2           determination.

3           (b) COOPERATION WITH AGENCIES.—It is the sense  
4 of Congress that—

5           (1) the Attorney General should assist the Re-  
6 view Board in good faith to unseal any records that  
7 the Review Board determines to be relevant and held  
8 under the seal by a court or under the injunction of  
9 secrecy of a grand jury; and

10          (2) all departments and agencies of the United  
11 States Government should cooperate in full with the  
12 Review Board to seek the disclosure of all informa-  
13 tion relevant to civil rights cold cases consistent with  
14 the public interest.

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

16          (a) PRECEDENCE OVER OTHER LAW.—

17          (1) IN GENERAL.—Subject to paragraph (2),  
18 when this Act requires transmission of a record to  
19 the Archivist or public disclosure, it shall take prece-  
20 dence over any other law (except section 6103 of the  
21 Internal Revenue Code of 1986), judicial decisions  
22 construing such law, or common law doctrine that  
23 would otherwise prohibit such transmission or disclo-  
24 sure with the exception of deeds governing access to

1 or transfer or release of gifts and donations of  
2 records to the United States Government.

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

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

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

16 (d) EXISTING AUTHORITY.—Nothing in this Act re-  
17 vokes or limits the existing authority of the President, any  
18 executive agency, the Senate, the House of Representa-  
19 tives, or any other entity of the Government to publicly  
20 disclose records in its possession.

1 **SEC. 10. FUNDING.**

2       Until such time as funds are appropriated to carry  
3 out this Act, the President shall use such sums as are  
4 available for discretionary use to carry out this Act.

Passed the Senate December 17, 2018.

Attest:

*Secretary.*



115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3191**

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**AN ACT**

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