

SUMMARY: The Civil Rights Cold Case Records Collection Act of 2018

July 2018

The Emmett Till Act encourages the Department of Justice (DOJ) to investigate unsolved civil rights cases, but many of these cases remain unsolved decades after the crimes were committed. The public has a compelling interest in the disclosure of civil rights cold case records for historical purposes, and victims, their families, and private investigators need access to the case files and records in order to try to solve these cases and find justice at long last.

Legislation is necessary because the Freedom of Information Act (FOIA), as implemented, has prevented the timely and adequate disclosure of executive branch records, and congressional records are not subject to public disclosure under FOIA. In addition, some of these records, although almost 50 years old, remain classified unnecessarily or shielded from public view. This bill was patterned after the President John F. Kennedy, Jr. Assassination Records Collection Act of 1992, which created an orderly and effective process for reviewing, declassifying, and releasing thousands of documents related to the assassination of President Kennedy.

This bill requires government offices to submit files and records about civil rights cold cases to the National Archives and Records Administration (NARA), which will create a collection of documents that will be (1) publicly disclosed in the collection without redaction or withholding or (2) held in a protected collection of records for which public disclosure may be postponed.

The Civil Rights Cold Case Records Review Board is established as an independent agency of impartial private citizens to: (1) facilitate the review, transmission to NARA, and public disclosure of government records related to such cases; (2) hold hearings and render decisions on determinations by government offices to seek to postpone the disclosure of such records; (3) direct government offices to make information available to the board; (4) subpoena private persons to compel testimony and records; and (5) receive information from the public.

DOUG JONES

SENATOR *for* ALABAMA

Postponement is permitted based on clear and convincing evidence that public disclosure would: (1) impair national security or reveal intelligence sources or methods; (2) reveal the name of, and pose substantial harm to, a living person who provided confidential information; (3) constitute an unwarranted invasion of personal privacy that outweighs the public interest; or (4) compromise an understanding of confidentiality currently requiring protection between a government agent and a cooperating individual or group.

NARA and the originating agency must review postponed or redacted records every year. The reasons for any continuation of postponement must be published in the Federal Register.

Each cold case record shall be publicly disclosed and shall be available in NARA's collection not later than 25 years after enactment of this bill, unless: (1) continued postponement is made necessary by an identifiable harm to military defense, intelligence operations, or the conduct of foreign relations; and (2) the gravity of the identifiable harm outweighs the public interest in disclosure.

The President has sole and non-delegable authority to require disclosure or postponement of an executive branch cold case record under the grounds set forth in this bill after the board has made a formal determination concerning a record obtained or developed solely within the executive branch.

The Board may request the Department of Justice to petition courts to release information related to cold cases under seal or held under the injunction of secrecy of a grand jury.