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H. R. 3359

[Report No. 117-]

To provide for a system for reviewing the case files of cold case murders
at the instance of certain persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2021

Mr. SWALWELL (for himself and Mr. McCAUL) introduced the following bill;
which was referred to the Committee on the Judiciary

JANUARY --, 2022

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 19, 2021]

A BILL

To provide for a system for reviewing the case files of cold case murders at the instance of certain persons, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Homicide Victims’ Fam-*
5 *ilies’ Rights Act of 2021”.*

6 **SEC. 2. CASE FILE REVIEW.**

7 (a) *IN GENERAL.*—*The head of an agency shall review*
8 *the case file regarding a cold case murder upon written ap-*
9 *plication by one designated person to determine if a full*
10 *reinvestigation would result in either the identification of*
11 *probative investigative leads or a likely perpetrator.*

12 (b) *REVIEW.*—*The review under subsection (a) shall*
13 *include—*

14 (1) *an analysis of what investigative steps or fol-*
15 *low-up steps may have been missed in the initial in-*
16 *vestigation;*

17 (2) *an assessment of whether witnesses should be*
18 *interviewed or reinterviewed;*

19 (3) *an examination of physical evidence to see if*
20 *all appropriate forensic testing and analysis was per-*
21 *formed in the first instance or if additional testing*
22 *might produce information relevant to the investiga-*
23 *tion; and*

24 (4) *an update of the case file using the most cur-*
25 *rent investigative standards as of the date of the re-*

1 *view to the extent it would help develop probative*
2 *leads.*

3 *(c) CERTIFICATION IN LIEU OF REVIEW.—In any case*
4 *in which a written application for review has been received*
5 *under this Act by the agency, review shall be unnecessary*
6 *where the case does not satisfy the criteria for a cold case*
7 *murder. In such a case, the head of the agency shall issue*
8 *a written certification, with a copy provided to the des-*
9 *ignated person that made the application under subsection*
10 *(a), stating that final review is not necessary because all*
11 *probative investigative leads have been exhausted or that*
12 *a likely perpetrator will not be identified.*

13 *(d) REVIEWER.—A review required under subsection*
14 *(a) shall not be conducted by a person who previously inves-*
15 *tigated the murder at issue.*

16 *(e) ACKNOWLEDGMENT.—The agency shall provide in*
17 *writing to the applicant as soon as reasonably possible—*

18 *(1) confirmation of the agency's receipt of the*
19 *application under subsection (a); and*

20 *(2) notice of the applicant's rights under this*
21 *Act.*

22 *(f) PROHIBITION ON MULTIPLE CONCURRENT RE-*
23 *VIEWS.—Only one case review shall be undertaken at any*
24 *one time with respect to the same cold case murder victim.*

1 (g) *TIME LIMIT.*—Not later than 6 months after the
2 receipt of the written application submitted pursuant to
3 subsection (a), the agency shall conclude its case file review
4 and reach a conclusion about whether or not a full reinves-
5 tigation under section 4 is warranted.

6 (h) *EXTENSIONS.*—

7 (1) *IN GENERAL.*—The agency may extend the
8 time limit under subsection (g) once for a period of
9 time not to exceed 6 months if the agency makes a
10 finding that the number of case files to be reviewed
11 make it impracticable to comply with such limit
12 without unreasonably taking resources from other law
13 enforcement activities.

14 (2) *ACTIONS SUBSEQUENT TO WAIVER.*—For
15 cases for which the time limit in subsection (g) is ex-
16 tended, the agency shall provide notice and an expla-
17 nation of its reasoning to one designated person who
18 filed the written application pursuant to this section.

19 **SEC. 3. APPLICATION.**

20 Each agency shall develop a written application to be
21 used for designated persons to request a case file review
22 under section 2.

23 **SEC. 4. FULL REINVESTIGATION.**

24 (a) *IN GENERAL.*—The agency shall conduct a full re-
25 investigation of the cold case murder at issue if the review

1 *of the case file required by section 2 concludes that a full*
2 *reinvestigation of such cold case murder would result in*
3 *probative investigative leads.*

4 (b) *REINVESTIGATION.*—*A full reinvestigation shall*
5 *include analyzing all evidence regarding the cold case mur-*
6 *der at issue for the purpose of developing probative inves-*
7 *tigative leads or a likely perpetrator.*

8 (c) *REVIEWER.*—*A reinvestigation required under sub-*
9 *section (a) shall not be conducted by a person who pre-*
10 *viously investigated the murder at issue.*

11 (d) *PROHIBITION ON MULTIPLE CONCURRENT RE-*
12 *VIEWS.*—*Only one full reinvestigation shall be undertaken*
13 *at any one time with respect to the same cold case murder*
14 *victim.*

15 **SEC. 5. CONSULTATION AND UPDATES.**

16 (a) *IN GENERAL.*—*The agency shall consult with the*
17 *designated person who filed the written application pursu-*
18 *ant to section 2 and provide him or her with periodic up-*
19 *dates during the case file review and full reinvestigation.*

20 (b) *EXPLANATION OF CONCLUSION.*—*The agency shall*
21 *meet with the designated person and discuss the evidence*
22 *to explain to the designated person who filed the written*
23 *application pursuant to section 2 its decision whether or*
24 *not to engage in the full reinvestigation provided for under*
25 *section 4 at the conclusion of the case file review.*

1 **SEC. 6. SUBSEQUENT REVIEWS.**

2 (a) *CASE FILE REVIEW.*—*If a review under subsection*
3 *(a) case file regarding a cold case murder is conducted and*
4 *a conclusion is reached not to conduct a full reinvestigation,*
5 *no additional case file review shall be required to be under-*
6 *taken under this Act with respect to that cold case murder*
7 *for a period of five years, unless there is newly discovered,*
8 *materially significant evidence. An agency may continue*
9 *an investigation absent a designated person's application.*

10 (b) *FULL REINVESTIGATION.*—*If a full reinvestigation*
11 *of a cold case murder is completed and a suspect is not*
12 *identified at its conclusion, no additional case file review*
13 *or full reinvestigation shall be undertaken with regard to*
14 *that cold case murder for a period of five years beginning*
15 *on the date of the conclusion of the reinvestigation, unless*
16 *there is newly discovered, materially significant evidence.*

17 **SEC. 7. DATA COLLECTION.**

18 (a) *IN GENERAL.*—*Beginning on the date that is three*
19 *years after the date of enactment of this Act, and annually*
20 *thereafter, the Director of the National Institute of Justice*
21 *shall publish statistics on the number of cold case murders.*

22 (b) *MANNER OF PUBLICATION.*—*The statistics pub-*
23 *lished pursuant to subsection (a) shall, at a minimum, be*
24 *disaggregated by the circumstances of the cold case murder,*
25 *including the classification of the offense, and by agency.*

1 **SEC. 8. PROCEDURES TO PROMOTE COMPLIANCE.**

2 (a) *REGULATIONS.*—Not later than one year after the
3 date of enactment of this Act, the head of each agency shall
4 promulgate regulations to enforce the right of a designated
5 person to request a review under this Act and to ensure
6 compliance by the agency with the obligations described in
7 this Act.

8 (b) *PROCEDURES.*—The regulations promulgated
9 under subsection (a) shall—

10 (1) *designate an administrative authority within*
11 *the agency to receive and investigate complaints relat-*
12 *ing to a review initiated under section 2 or a reinves-*
13 *tigation initiated under section 4;*

14 (2) *require a course of training for appropriate*
15 *employees and officers within the agency regarding*
16 *the procedures, responsibilities, and obligations re-*
17 *quired under this Act;*

18 (3) *contain disciplinary sanctions, which may*
19 *include suspension or termination from employment,*
20 *for employees of the agency who are shown to have*
21 *willfully or wantonly failed to comply with this Act;*

22 (4) *provide a procedure for the resolution of com-*
23 *plaints filed by the designated person concerning the*
24 *agency's handling of a cold case murder investigation*
25 *or the case file evaluation; and*

1 (5) provide that the head of the agency, or the
2 designee thereof, shall be the final arbiter of the com-
3 plaint, and that there shall be no judicial review of
4 the final decision of the head of the agency by a com-
5 plainant.

6 **SEC. 9. WITHHOLDING INFORMATION.**

7 Nothing in this Act shall require an agency to provide
8 information that would endanger the safety of any person,
9 unreasonably impede an ongoing investigation, violate a
10 court order, or violate legal obligations regarding privacy.

11 **SEC. 10. MULTIPLE AGENCIES.**

12 In the case that more than one agency conducted the
13 initial investigation of a cold case murder, each agency
14 shall coordinate their case file review or full reinvestigation
15 such that there is only one joint case file review or full re-
16 investigation occurring at a time in compliance with sec-
17 tion 2(f) or 4(d), as applicable.

18 **SEC. 11. APPLICABILITY.**

19 This Act applies in the case of any cold case murder
20 occurring on or after January 1, 1970.

21 **SEC. 12. DEFINITIONS.**

22 In this Act:

23 (1) The term “designated person” means an im-
24 mediate family member or someone similarly situ-
25 ated, as defined by the Attorney General.

1 (2) *The term “immediate family member” means*
2 *a parent, parent-in-law, grandparent, grandparent-*
3 *in-law, sibling, spouse, child, or step-child of a mur-*
4 *der victim.*

5 (3) *The term “victim” means a natural person*
6 *who died as a result of a cold case murder.*

7 (4) *The term “murder” means any criminal of-*
8 *fense under section 1111(a) of title 18, United States*
9 *Code, or any offense the elements of which are sub-*
10 *stantially identical to such section.*

11 (5) *The term “agency” means a Federal law en-*
12 *forcement entity with jurisdiction to engage in the de-*
13 *tection, investigation, or prosecution of a cold case*
14 *murder.*

15 (6) *The term “cold case murder” means a mur-*
16 *der—*

17 (A) *committed more than three years prior*
18 *to the date of an application by a designated*
19 *person under section 2(a);*

20 (B) *previously investigated by a Federal*
21 *law enforcement entity;*

22 (C) *for which all probative investigative*
23 *leads have been exhausted; and*

24 (D) *for which no likely perpetrator has been*
25 *identified.*

1 **SEC. 13. ANNUAL REPORT.**

2 (a) *IN GENERAL.*—Each agency shall submit an an-
3 nual report to the Committees on the Judiciary of the House
4 of Representatives and of the Senate describing actions
5 taken and results achieved under this Act during the pre-
6 vious year.

7 (b) *REPORT DESCRIBED.*—The report described in
8 subsection (a) shall include—

9 (1) the number of written applications filed with
10 the agency pursuant to section 2(a);

11 (2) the number of extensions granted, and an ex-
12 planation of reasons provided under section 2(h);

13 (3) the number of full reinvestigations initiated
14 and closed pursuant to section 4; and

15 (4) statistics and individualized information on
16 topics that include identified suspects, arrests,
17 charges, and convictions for reviews under section 2
18 and reinvestigations under section 4.