

On page 3, line 12, strike the quotation marks.

On page 3, line 14, strike "the following".

At the end, add the following:

"(e) AUTHORITY TO ACQUIRE LAND IN SUBSTITUTION.—Subject to the availability of appropriations, the Secretary shall acquire land within Oregon, and within or in the vicinity of the Deschutes National Forest, of an acreage equivalent to that of the land conveyed under subsection (a). Any lands acquired shall be added to and administered as part of the Deschutes National Forest."

MILITARY AND EXTRATERRITORIAL JURISDICTION ACT OF 1999

SESSIONS (AND OTHERS)
AMENDMENT NO. 1226

Mr. GORTON (for Mr. SESSIONS (for himself, Mr. LEAHY, and Mr. DEWINE)) proposed an amendment to the bill (S. 786) to establish court-martial jurisdiction over civilian serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Military and Extraterritorial Jurisdiction Act of 1999".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Civilian employees of the Department of Defense, and civilian employees of Department of Defense contractors, provide critical support to the Armed Forces of the United States that are deployed during a contingency operation.

(2) Misconduct by such persons undermines good order and discipline in the Armed Forces, and jeopardizes the mission of the contingency operation.

(3) Military commanders need the legal tools to address adequately misconduct by civilians serving with Armed Forces during a contingency operation.

(4) In its present state, military law does not permit military commanders to address adequately misconduct by civilians serving with Armed Forces, except in time of a congressionally declared war.

(5) To address this need, the Uniform Code of Military Justice should be amended to provide for court-martial jurisdiction over civilians serving with Armed Forces in places designated by the Secretary of Defense during a "contingency operation" expressly designated as such by the Secretary of Defense.

(6) This limited extension of court-martial jurisdiction over civilians is dictated by military necessity, is within the constitutional powers of Congress to make rules for the government of the Armed Forces, and, therefore, is consistent with the Constitution of the United States and United States public policy.

(7) Many thousand civilian employees of the Department of Defense, civilian employees of Department of Defense contractors, and civilian dependents accompany the Armed Forces to installations in foreign countries.

(8) Misconduct among such civilians has been a longstanding problem for military commanders and other United States offi-

cial in foreign countries, and threatens United States citizens, United States property, and United States relations with host countries.

(9) Federal criminal law does not apply to many offenses committed outside of the United States by such civilians and, because host countries often do not prosecute such offenses, serious crimes often go unpunished and, to address this jurisdictional gap, Federal law should be amended to punish serious offenses committed by such civilians outside the United States, to the same extent as if those offenses were committed within the special maritime and territorial jurisdiction of the United States.

(10) Federal law does not apply to many crimes committed outside the United States by members of the Armed Forces who separate from the Armed Forces before they can be identified, thus escaping court-martial jurisdiction and, to address this jurisdictional gap, Federal law should be amended to punish serious offenses committed by such persons outside the United States, to the same extent as if those offenses were committed within the special maritime and territorial jurisdiction of the United States.

SEC. 3. COURT-MARTIAL JURISDICTION.

(a) JURISDICTION DURING CONTINGENCY OPERATIONS.—Section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended by inserting after paragraph (12) the following:

"(13) To the extent not covered by paragraphs (10) and (11), persons not members of the armed forces who, in support of a contingency operation described in section 101(a)(13)(B) of this title, are serving with and accompanying an armed force in a place or places outside the United States specified by the Secretary of Defense, as follows:

"(A) Employees of the Department of Defense.

"(B) Employees of any Department of Defense contractor who are so serving in connection with the performance of a Department of Defense contract."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and apply with respect to acts or omissions occurring on or after that date.

SEC. 4. FEDERAL JURISDICTION.

(a) CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES.—Title 18, United States Code, is amended by inserting after chapter 211 the following:

"CHAPTER 212—CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES

"Sec.

"3261. Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the Armed Forces outside the United States.

"3262. Delivery to authorities of foreign countries.

"3263. Regulations.

"3264. Definitions.

"§3261. Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the Armed Forces outside the United States

"(a) IN GENERAL.—Whoever, while serving with, employed by, or accompanying the Armed Forces outside of the United States, engages in conduct that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, shall be guilty of a like offense and subject to a like punishment.

"(b) CONCURRENT JURISDICTION.—Nothing in this chapter may be construed to deprive

a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

"(c) ACTION BY FOREIGN GOVERNMENT.—No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval shall not be delegated.

"(d) ARRESTS.—

"(1) LAW ENFORCEMENT PERSONNEL.—The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside of the United States any person described in subsection (a) if there is probable cause to believe that such person engaged in conduct that constitutes a criminal offense under subsection (a).

"(2) RELEASE TO CIVILIAN LAW ENFORCEMENT.—A person arrested under paragraph (1) shall be released to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such paragraph unless—

"(A) such person is delivered to authorities of a foreign country under section 3262; or

"(B) such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

"§3262. Delivery to authorities of foreign countries

"(a) IN GENERAL.—Any person designated and authorized under section 3261(d) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have engaged in conduct described in section 3261(a) of this section if—

"(1) the appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

"(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

"(b) DETERMINATION BY THE SECRETARY.—The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

"§3263. Regulations

"(a) IN GENERAL.—The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall issue regulations governing the apprehension, detention, and removal of persons under this chapter. Such regulations shall be uniform throughout the Department of Defense.

"(b) NOTICE TO THIRD PARTY NATIONALS.—

"(1) IN GENERAL.—The Secretary of Defense, after consultation with the Secretary of State, shall issue regulations requiring that, to the maximum extent practicable, notice shall be provided to any person serving with, employed by, or accompanying the Armed Forces outside the United States who is not a national of the United States that such person is potentially subject to the criminal jurisdiction of the United States under this chapter.

"(2) FAILURE TO PROVIDE NOTICE.—The failure to provide notice as prescribed in the