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Court Security Improvement Act of 2007: A Legal Analysis of Public Law 110-177 (H.R. 660 and S. 378)

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Summary

The proposals of the Court Security Improvement Act of 2007 (P.L. 110-177, H.R. 660 and S. 378), fall within one of four categories. One consists of amendments to existing federal criminal law. The bill increases the penalties for manslaughter committed during the course of an obstruction of justice and for witness intimidation and retaliation. It creates new federal crimes proscribing (1) the use of nuisance liens and encumbrances to harass federal officials; (2) the public disclosure of personal, identifying information concerning federal officials in order to intimidate them or incite crimes of violence against them; and (3) the possession of dangerous weapons in federal courthouses.

A second category seeks to improve implementation of judicial security measures through increased appropriations, enhanced security for the Tax Court, explicit provisions for consultation between the Department of Justice and the Judicial Conference relating to court security, a report on concerns for the safety of federal prosecutors, and a revival of authority to redact information from certain publicly available judicial financial disclosure statements.

A third authorizes grants for state witness protection programs; for increased security of state, territorial and tribal courts; and for acquisition of armored vests for state court officials. The fourth category consists of proposals whose relation to security may appear more tangential: procurement authority for the United States Sentencing Commission; life insurance costs for bankruptcy, magistrate, and territorial judges; the appointment and en banc participation for senior judges; and judgeships in the Ninth Circuit and District of Columbia Courts of Appeal.

This report is available in an abridged version – stripped of its footnotes, and most of its citations to authority – as CRS Report RS22607, *Court Security Improvement Act of 2007: Public Law 110-177 (H.R. 660 and S. 378) in Brief*, by Charles Doyle.

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Introduction

Early in the 110th Congress, the Chairmen of the House and Senate Judiciary Committees introduced essentially identical versions of the Court Security Improvement Act of 2007, as H.R. 660 and S. 378, that mirrored legislation that passed the Senate at the close of the 109th Congress.[1] Each House reported[2] and passed somewhat different variations,[3] although the basic structure of the legislation remained unchanged in both instances. The Senate subsequently accepted and passed H.R. 660 with slight amendments,[4] which the House in turn accepted under suspension of the rules.[5] The President the bill on January 7, 2008.[6] The bill as passed, Public Law 110-177 (P.L. 110-177), consists of four components: adjustments to applicable provisions of criminal law, reenforcement of the authority and oversight features of the law that governs federal judicial security, grant programs to facilitate increased security for the judiciary of the states, and miscellaneous provisions whose relation to judicial security might initially appear remote.

Existing Criminal Law

Existing federal criminal law seeks to ensure the safety and integrity of federal judicial and other official proceedings by proscribing threats and violence (1) against federal personnel, (2) against witnesses in official proceedings, and (3) against federal proceedings and facilities.

Federal Judges, Officers and Employees

It is a federal crime to:

- assault, kidnap or kill a federal judge during or on account of the performance of his or her duties;[7] or

[1] Each House approved a different version of a judicial security bill, H.R. 1751 (109th Cong.) in the last Congress, 151 *Cong. Rec.* H10108 (daily ed. November 6, 2005); 152 *Cong. Rec.* S11387 (daily ed. December 6, 2006). Each had earlier held hearings and several related bills had been introduced on either side of the Hill, *Secure Access to Justice and Court Protection Act of 2005: Hearing Before the Crime, Terrorism and Homeland Security Subcomm. of the House Comm. on the Judiciary*, 109th Cong., 1st Sess. (2005); *Protecting the Judiciary at Home and in the Courthouse: Hearing Before the Senate Comm. on the Judiciary*, 109th Cong., 1st Sess. (2005); see also H.Rept. 109-271 (2005). The prepared statements of witnesses at a Senate Judiciary Committee hearing entitled *Judicial Security and Independence* held early in the 110th Congress are available at http://judiciary.senate.gov/schedule_all.cfm. For a discussion of the policy questions associated with the bills see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110th Congress*, by Nathan James; and CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong.

[2] S.Rept. 110-42 (2007); H.Rept. 110-218 (2007).

[3] 153 *Cong. Rec.* S4741-742 (daily ed. April 19, 2007); 153 *Cong. Rec.* H7466 (daily ed. July 10, 2007).

[4] 153 *Cong. Rec.* S15789-790 (daily ed. December 17, 2007).

[5] 153 *Cong. Rec.* H16867-870 (daily ed. December 19, 2007).

[6] P.L. 110-177, 121 Stat. 2534 (2008).

[7] 18 U.S.C. 1114 (killing federal officers or employees or those assisting them); 18 U.S.C. 111 (assaulting, intimidating or interfering with individuals designated in section 1114); 18 U.S.C. 1201(a)(5)(kidnaping an officer or employee designated in section 1114)(the text of sections 1114, 111, and 1201 are appended). Assault, kidnaping and murder are state crimes. The fact they are committed against federal officials simply means that in most instances they may be prosecuted in federal court or in the courts of the state where the offense occurs or in both, *Bartkus v. Illinois*, 359 U.S. 121, 127-39 (1959); *Abbate v. United States*, 359 U.S. 187, 195-96 (1959)(successive state and federal prosecutions for the same conduct offends neither the Constitution's due process clause nor its double jeopardy clause). As a matter of policy, the United States will only initiate a dual prosecution under special circumstances, *United States Attorneys' Manual* §9-2.031 (December 2006), and a few states have statutory limitations on successive federal-state prosecutions,

- assault, kidnap, or murder an immediate member of a federal judge's family with the intent to obstruct (or retaliate for) the judge's performance of his or her duties;[8] or
- assault, kidnap, or murder a former federal judge or member of his or her family on account of the performance of judge's duties;[9] or
- threaten, attempt, or conspire to do so.[10]

Moreover, the proscriptions are not limited to federal judges. They protect federal law enforcement officers as well as prosecutors and in fact protect any federal officer or employee or anyone assisting them, as long as the threat, assault, kidnaping or killing has the necessary connection (during or on account of) to the performances of federal duties.[11] The penalties for the offenses are calibrated according to the seriousness of the obstructing offense.[12]

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Section 1114 (killing federal officers and employees, etc.) adopts by cross reference the penalties of 18 U.S.C. 1112 (manslaughter in the special maritime and territorial jurisdiction) when the offense involves manslaughter committed against federal judges, officials or employees. Section 207 of P.L. 110-177 increases the maximum penalty for manslaughter committed in violation of Section 1114 by increasing the penalties under 18 U.S.C. 1112. In the case of voluntary manslaughter, the term of imprisonment goes from not more than 10 years to not more than 15 years, and in the case of involuntary manslaughter from not more than 6 years to not more than 8 years.

Several other federal statutes also adopt the penalty structure of Section 1112 by cross-reference. Consequently, when P.L. 110-177 enhances sanctions of Section 1112 the increases the penalties for manslaughter in violation of both Sections 1112 and 1114, but also manslaughter committed:

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see e.g., Colo.Rev.Stat. §18-1-303(1)(a); Del.Code Ann. tit. 11, §209(1); Haw.Rev.Stat. §701-112(1).

[8] 18 U.S.C. 115(a)(1) (influencing, impeding, or retaliating against a federal official protected by section 1114 by threatening or injuring a family member)(the text of Section 115 is appended).

[9] 18 U.S.C. 115(a)(2)(assaults, kidnappings, and murders committed in retaliating against a former official protected by Section 1114 or a member of his or her immediate family).

[10] 18 U.S.C. 1114 (attempted murder of federal officers or employees or those assisting them); 18 U.S.C. 111 (forcible interference of those protected under section 1114); 18 U.S.C. 1201 (attempts and conspiracies to kidnap); 18 U.S.C. 115 (threats against federal officers or employees, former officers or employees, or their families; and attempts or conspiracy to assault, kidnap or murder them); 18 U.S.C. 371 (conspiracy to commit a federal offense).

[11] 18 U.S.C. 1114; 18 U.S.C. 1201; 18 U.S.C. 111; 18 U.S.C. 115.

[12] *1st degree murder*: death or imprisonment for life, 18 U.S.C. 1114, 115, 1111; *2d degree murder*: imprisonment for any term of years or for life, 18 U.S.C. 1114, 115, 1111; *attempted murder*: imprisonment for not more than 20 years, 18 U.S.C. 1114, 115, 1113; *conspiracy to murder*: imprisonment for any term of years or for life, 18 U.S.C. 1114, 115, 1117; *voluntary manslaughter*: imprisonment for not more than 10 years, 18 U.S.C. 1114, 1112; *involuntary manslaughter*: imprisonment for not more than 6 years, *id.*; *attempted manslaughter:* imprisonment for not more than 7 years, 18 U.S.C. 1114, 115, 1113; *kidnaping*: imprisonment for any term of years or for life, 18 U.S.C. 1201, 115; *attempted kidnaping*: imprisonment for not more than 20 years, *id.*; *conspiracy to kidnap*: imprisonment for any term of years or for life, *id.*; *simple assault*: imprisonment for not more than 1 year, 18 U.S.C. 111, 115; *assault with a dangerous weapon or causing injury*: imprisonment for not more than 20 years, *id.*; *other assaults*: imprisonment for not more than 8 years, *id.*; *conspiracy to assault*: imprisonment for not more than 5 years, 18 U.S.C. 371; *threatening to murder or kidnap*: imprisonment for not more than 10 years, 18 U.S.C. 115; *threatening to assault*: imprisonment for not more than 6 years, *id*.

- against a Member of Congress, a senior executive branch official, or, a Supreme Court Justice;[13]
- in connection with a federal offense that involves the use or possession of armor piercing ammunition during and furtherance of the offense;[14]
- in connection with the possession of a firearm or dangerous weapon in a federal facility;[15]
- against protected diplomatic officials;[16]
- against an American by an American overseas;[17]
- in the course of an obstruction of justice in violation of 18 U.S.C. 1503, 1512, or 1513;[18]
- against the President, Vice-President, or senior executive branch officials.[19]

Section 208 of P.L. 110-177 leaves the penalties for assaulting federal judges, officers or employees unchanged, but increases those for assaulting members of their families or former judges, officers or employees to: imprisonment for not more than 30 years for assault with a dangerous weapon; not more than 15 years for assault resulting in serious bodily injury; and not more than 10 years for assault resulting in serious injury, 18 U.S.C. 115(b)(1).[20]

Section 209 directs the United States Sentencing Commission to review the sentencing guidelines applicable to threats committed in violation of 18 U.S.C. 115 and communicated over the Internet.

Federal Witnesses

Federal obstruction of justice statutes protect witnesses and potential witnesses in federal judicial, Congressional and administrative proceedings by outlawing murder, assault and threats intended to prevent or influence a witness' testimony or to retaliate for past testimony, 18 U.S.C. 1512 and 1513. The penalties for murder, manslaughter and attempted murder of federal witnesses under Sections 1512 and 1513 are the same as when those crimes are committed against federal officials, but the penalties for assault and conspiracy are a bit more severe.[21]

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[13] 18 U.S.C. 351.

[14] 18 U.S.C. 924(c)(5)(B).

[15] 18 U.S.C. 930.

[16] 18 U.S.C. 1116.

[17] 18 U.S.C. 1119.

[18] 18 U.S.C. 1503, 1512, 1513 (text is appended).

[19] 18 U.S.C. 1751.

[20] For purposes of the new penalties, "(3) the term 'serious bodily injury' means bodily injury which involves – (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and (4) the term 'bodily injury' means – (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary," 18 U.S.C. 1365(g).

[21] *1st degree murder*: death or imprisonment for life, 18 U.S.C. 1512(a). 1513(a), 1111; *2d degree murder*: imprisonment for any term of years or for life, *id*.; *attempted murder*: imprisonment for not more than 20 years, 18 U.S.C. 1512(a), 1513(a); *conspiracy to murder*: imprisonment for any term of years or for life, 18 U.S.C. 1512(a). 1513(a), 1111; *voluntary manslaughter*: imprisonment for not more than 15 years, 18 U.S.C. 1512(a). 1513(a), 1112; *involuntary manslaughter*: imprisonment for not more than 8 years, *id*.; *use of physical force to obstruct*: imprisonment for not more than 30 years, 18 U.S.C. 1512(a); *attempted use of physical force to obstruct*: imprisonment for not more

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In addition to the penalty increases occurring when the bills change the Section 1112 manslaughter penalties that apply to manslaughter committed in violation of Sections 1512 and 1513 (from imprisonment for not more than10 years to imprisonment for not more than 15 years for voluntary manslaughter; and from not more than 6 years to not more than 8 years for involuntary manslaughter), Sections 205 and 206 boost the maximum penalties for witness tampering or retaliation in violation of 18 U.S.C. 1512 or 1513 when the offense involves the use of physical force from 20 years to 30 years; when it involves the threat of the use of physical force from 10 years to 20 years; and for harassment from 1 year to 3 years.

Section 204 adds a venue provision to the witness retaliation offenses in 18 U.S.C. 1513 purporting to permit prosecution of offenses under the section either in the place where the violation occurs or in place where the proceeding occurs. Section 1512 already contains a similar provision.[22]

The Constitution may confine Section 204's reach and that of the comparable provision in Section 1512.[23] The Constitution provides that the "trial of all crimes ... shall be held in the state where the said crimes shall have been committed,"[24] and in "all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."[25] The Supreme Court has indicated that the prosecution of offenses, other than where one of its "conduct elements" occurs, poses serious constitutional problems.[26]

Federal Proceedings

Federal obstruction of justice law also prohibits the use of force or threats to obstruct or to endeavor to obstruct the "due administration of justice" in federal courts[27] or to obstruct

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than 30 years, *id*.; *conspiracy to use of physical force to obstruct*: imprisonment for not more than 30 years, *id*.; *use of threats to obstruct*: imprisonment for not more than 20 years, 18 U.S.C. 1512(a), (b); *causing injury or damage to retaliate*: imprisonment for not more than 20 years, 18 U.S.C. 1513(b); *conspiracy or attempt to cause retaliatory injury or damage*: imprisonment for not more than 20 years, 18 U.S.C. 1513(b), (e); *obstructive harassment*: imprisonment for not more than 3 years,18 U.S.C. 1512(d).

[22] 18 U.S.C. 1512(h).

[23] The extraterritorial jurisdiction feature was enacted when section 1512 was first approved in 1982, 96 Stat. 1250 (1982), before Congress had the benefit of the Supreme Court decision which called its reach into question.

[24] U.S. Const. Art. III, §2.

[25] U.S. Const. Amend. VI.

[26] "In sum, we interpret §924(c)(1) to contain two distinct conduct elements – as is relevant to this case, the 'using or carrying' of a gun and the commission of a kidnaping. [By way of comparison, last Term in *United States v. Cabrales*, 524 U.S. 1 (1998), we considered whether venue for money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(ii) and 1957, was proper in Missouri, where the laundered proceeds were unlawfully generated, or rather, only in Florida, where the prohibited laundering transactions occurred. As we interpreted the laundering statutes at issue, they did not proscribe 'the anterior criminal conduct that yielded the funds allegedly laundered, *Cabrales*, 524 U.S. at 7. The existence of criminally generated proceeds was a circumstance element of the offense but the proscribed conduct – defendant's money laundering activity – occurred 'after the fact' of an offense begun and completed by others.'],"
United States v. Rodriguez-Moreno, 526 U.S. 275, 280 (1999) (footnote 4 of the Court's opinion in brackets); see also, *United States v. Bowens*, 224 F.3d 302, 308-11 (4th Cir. 2000)(finding that *Cabrales* and *Rodriguez-Moreno* precluded prosecution for harboring a fugitive in the district where the arrest warrant was issued when the harboring (the conduct element) occurred exclusively elsewhere).

[27] 18 U.S.C. 1503 (text is appended).

Congressional or administrative proceedings.[28] Obstruction of Congressional and administrative proceedings carries a flat sanction of imprisonment for not more than 5 years (not more than 8 years if the proceedings involve international or domestic terrorism). Penalties for the obstruction of federal judicial proceedings are more structured, particularly if a killing occurs.[29]

Other than the change attributable to the manslaughter amendments in Section 1112 mentioned earlier, the bill leaves sentencing under Section 1503 as it finds it.

Means of Obstruction

Beyond the proscriptions addressed to the use of violence against federal officials, witnesses and proceedings, there are federal criminal prohibitions directed at the misuse of firearms, explosives and other dangerous instrumentalities that may be implicated by a breach of court security. For example, the use of explosives as the means of obstruction may trigger a federal proscription that outlaws damaging federal property with explosives, one that exposes offenders to imprisonment for not less than 7 nor more than 40 years if the offense involves a substantial risk of injury; to imprisonment for not less than 20 years or for life (and possible to the death penalty) if the offense results in death; and to imprisonment for not less than 5 nor more than 20 years in all other instances.[30]

When firearms are the violent obstructive means employed, a second statute calls for imposition of a progression of mandatory minimum terms of imprisonment based on the type and manner of firearm use. Under its provisions when a firearm is used or carried during and in furtherance of a federal crime of violence, a mandatory minimum term of imprisonment of 5 years is imposed; and the mandatory minimum is 7 years, if the firearm is brandished; 10 years, if it is discharged; 10 years, if it is a short-barreled shotgun or short-barreled rifle; 30 years, if it is a machine gun or fitted with a silencer; 25 years, if the offender has a prior conviction under the section; and life imprisonment, if the offender has such a prior conviction and the firearm is a machine gun or fitted with a silencer.[31]

A third federal provision, 18 U.S.C. 930, outlaws the use of a firearm or other dangerous weapon in a fatal attack in a federal facility. It adopts by cross reference the penalties assigned elsewhere for murder, manslaughter, attempted murder or manslaughter, and conspiracy to murder or manslaughter.[32] The same statute punishes possession or attempted possession of a firearm or dangerous weapon within a federal facility with intent to use it there with imprisonment for not more than 5 years,[33] simple possession of a firearm or dangerous weapon within a federal facility other than a federal courthouse with imprisonment for not more than 1 year,[34] and simple

[28] 18 U.S.C. 1505 (text is appended).

[29] *1st degree murder*: death or imprisonment for life, 18 U.S.C. 1503(b)(1), 1111; *2d degree murder*: imprisonment for any term of years or for life, *id.*; *attempted murder*: imprisonment for not more than 20 years, 18 U.S.C. 1503(b)(2); *voluntary manslaughter*: imprisonment for not more than 15 years, 18 U.S.C. 1503(b)(1), 1112; *involuntary manslaughter*: imprisonment for not more than 8 years, *id.*; *obstruction involving a juror in A/ B felony case*: imprisonment for not more than 20 years, 18 U.S.C. 1503(b)(2); *other violations of 1503*: imprisonment for not more than 10 years, 18 U.S.C. 1503(b)(3).

[30] 18 U.S.C. 844(f).

[31] 18 U.S.C. 924(c).

[32] 18 U.S.C. 930(c)(incorporating the penalty provisions from 18 U.S.C. 1111 (murder), 1112 (manslaughter), 1113 (attempted murder or manslaughter), and 1117 (conspiracy to murder). And as a consequence, finds its manslaughter sanctions enhanced by virtue of the bill's amendments to section 1112. The text of section 930 is appended.

[33] 18 U.S.C. 930(b).

[34] 18 U.S.C. 930(a).

possession or attempted possession of a firearm within a federal courthouse with imprisonment for not more than 2 years.[35]

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Dangerous Weapons

Section 203 amends the proscription for simple courthouse firearm possession found in Section 930(e) to include possession of other dangerous weapons as well. The possession with intent proscription already includes coverage of both firearms and dangerous weapons. The existing statute has a definition that excludes small pocket knives from the term "dangerous weapon."[36] Yet, it describes dangerous weapons as any item capable of inflicting serious injury. When used to describe the objects that may be impermissibly used in an assault, its breadth is understandable. In such circumstances, it has been understood to include shoes,[37] belts,[38] rings,[39] chairs,[40] desks,[41] teeth,[42] screwdrivers,[43] and a host of other ordinarily innocent objects that could be misused to inflict serious injury. When the definition makes it a crime to possess such items in a federal courthouse regardless of how innocently they are used, practical problems may arise. If the courts read the definition out of the statute for purposes of simple courthouse possession prosecutions, they may take the small knife exception with it and be left to their own devices to define what constitutes a dangerous weapon. The same incongruity, however, appears to have escaped notice in the case of simple possession of a dangerous weapon in a federal facility other than a federal courthouse under 18 U.S.C. 930(a).

Harassing Federal Officials with False Liens

Retaliation against federal officials in the past has sometimes taken the form of filing false liens and other legal nuisance actions against their property. Such obstructions have been prosecuted under federal statutes that prohibit obstruction of the due administration of justice (18 U.S.C. 1503)[44] or that prohibit conspiracy to retaliate against federal officials by inflicting economic damage (18 U.S.C. 372).[45] These statutes are not without limitation, however, since most courts

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[35] 18 U.S.C. 930(e).

[36] "The term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length," 18 U.S.C. 930(g)(2).

[37] *United States v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994).

[38] *Id.*

[39] *United States v. Serrata*, 425 F.3d 886, 910 (10th Cir. 2005).

[40] *United States v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963).

[41] *United States v. Gholston*, 932 F.2d 904, 904-905 (11th Cir. 1991).

[42] *United States v. Sturgis*, 48 F.3d 784, 788 (4th Cir. 1995).

[43] *United States v. Lavender*, 224 F.3d 939, 941 (9th Cir. 2000).

[44] *United States v. Joiner*, 418 F.3d 863, 867-68 (8th Cir. 2005) (upholding conviction for filing false property liens against the judge and prosecutors involved in the defendant's earlier drug prosecution); *United States v. McBride*, 362 F.3d 360, 372 (6th Cir. 2004)(upholding conviction for filing false bankruptcy petitions against the judge who was trying a tax case against the defendant's girl friend); *United States v. Fleming*, 215 F.3d 930, 932-38 (9th Cir. 2000) (upholding conviction for filing a $10 million lien against the property of the judge who had dismissed his civil suit). Violations of section 1503 are punishable by imprisonment for not more than 10 years.

[45] *United States v. Joiner*, 418 F.3d 863, 867 (8th Cir. 2005) (upholding conviction for filing false property liens against the judge and prosecutors involved in the earlier drug prosecution of one of the defendants); *United States v. Boos*, 166

insist that a prosecution under Section 1503 requires that the misconduct occur during the pendency of a judicial proceeding[46] and that a prosecution under Section 372 requires a conspiracy, that is, a scheme of two or more defendants.[47]

Section 201 of P.L. 110-177 makes it a separate federal crime, punishable by imprisonment for not more than 10 years, to knowingly file a false lien or similar encumbrance against the property of a federal officer or employee on account of the performance of his or her federal duties or to conspire or attempt to do so, 18 U.S.C. 1521.

Aiding the Intimidation of Federal Officials

It is a federal crime to threaten to kill, kidnap or assault a federal officer or employee, a retired federal officer or employee, or a member of their immediate family to impede or on account of the performance of their federal duties.[48] It is likewise a federal offense to threaten a witness or potential witness in a federal proceeding in order to impede or retaliate for their performance as a witness.[49] And it is a federal crime to threaten federal grand or petit jurors in order to impede or influence their service.[50] Moreover, anyone who aids or abets the commission of these or of any other federal crime is criminally liable to the same extent as the individual who actually commits them.[51] Liability for aiding or abetting, however, can only be incurred upon the commission of the underlying offense.[52]

Section 202 of P.L. 110-177 makes it a federal crime to make publicly available certain identifying information such as home addresses, telephone numbers, and social security numbers[53] of federal officials, employees, witnesses, and jurors (grand and petite) either (1) with

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F.3d 1222 (10th Cir. 1999)(upholding conviction for filing false property liens against Internal Revenue Service agents who tried to collect taxes from one of the defendants). Violations of section 372 are punishable by imprisonment for not more than 6 years. There is a separate "due administration" clause, 26 U.S.C. 7212, that applies when such schemes are used to obstruct the due administration of the Internal Revenue Code, see e.g., *United States v. Kassouf*, 144 F.3d 952, 954-56 (6th Cir. 1998).

[46] *United States v. Quattrone*, 441 F.3d 153, 170 (2d Cir. 2006); *United States v. Weber*, 320 F.3d 1047, 1050 (9th Cir. 2003); *United States v. Fassnacht*, 332 F.3d 440, 447 (7th Cir. 2003); *United States v. Steele*, 241 F.3d 302, 304-5 (3d Cir. 2001); *United States v. Sharpe*, 193 F.3d 852, 864 (5th Cir. 1999); *United States v. Layne*, 192 F.3d 556, 572 (6th Cir. 1999); *United States v. Frankhauser*, 80 F.3d 641, 650-51 (1st Cir. 1966); *United States v. Littleton*, 76 F.3d 614, 618-19 (4th Cir. 1996); *contra*, *United States v. Novak*, 217 F.3d 566, 571-72 (8th Cir. 2000); *see also United States v. Vaghela*, 169 F.3d 729, 732-34 (11th Cir. 1999)(pendency not necessarily required in cases of conspiracy to violate section 1503); *United States v. Bruno*, 383 F.3d 65,87 (2d Cir. 2004)(proceedings need not be pending but there must be evidence from which to infer that they were anticipated in the case of a conspiracy to violate section 1503).

[47] *United States v. Joiner*, 418 F.3d 863, 867 (8th Cir. 2005).

[48] 18 U.S.C. 115. Violations are punishable by imprisonment for not more than 10 years (not more than 6 years if the threat is simply a threat to commit an assault).

[49] 18 U.S.C. 1512, 1513. Violations are punishable by imprisonment for not more than 10 years, and section 205 of P.L. 110-177 increases the maximum to not more than 20 years when the threat involves the threat of physical injury.

[50] 18 U.S.C. 1503. Violations here too are punishable by imprisonment for not more than 10 years.

[51] 18 U.S.C. 2. In order to aid or abet the offense of another, the defendant must associate himself with the venture, participate or assist in some way, and thereby seek to contribute to its success, *United States v. Ibarra-Zelaya*, 465 F.3d 596, 603 (5th Cir. 2006); *United States v. Isaac-Sigala*, 448 F.3d 1206, 1213 (10th Cir. 2006); *United States v. Blood*, 435 F.3d 612, 623 (6th Cir. 2006).

[52] *United States v. Lo*, 447 F.3d 1212, 1227 (9th Cir. 2006); *United States v. Reifler*, 446 F.3d 65, 96 (2d Cir. 2006); *United States v. Wasserson*, 418 F.3d 225, 233 (3d Cir. 2005).

[53] More exactly, the information includes social security numbers, home addresses, home telephone numbers, mobile telephone numbers, personal e-mail addresses, and home fax numbers identifiable to a federal officer, employee, witness, juror or member of their immediate family, proposed 18 U.S.C. 118(b)(1).

the intent to threaten, intimidate, or incite a crime of violence against such individuals or members of their immediate families, or (2) with the intent and knowledge that the information will be used for such purpose, 18 U.S.C. 119. Offenders are subject to a term of imprisonment for not more than 5 years, *id.* There is no requirement that the victims be targeted on account of their federal or family status, that any incited violence be imminent, or that the information be publicly unavailable otherwise.

The new section also covers federal, territorial, state and local public safety officers whose agencies receive federal funding,[54] witnesses and informants in federal criminal investigations and prosecutions, and witnesses and informants in state investigations and prosecutions of crimes that have an impact on interstate or foreign commerce, 18 U.S.C. 119(b)(2)(c),(d).

First Amendment considerations may color the section's application. The First Amendment has been held to prohibit the punishment of a newspaper for publishing the name of rape victim when her identity was otherwise available as a matter of public record.[55] And it has been held to preclude punishing a newspaper for publishing the name of a juvenile subject to delinquency proceedings when it obtained the information lawfully.[56] On the other hand, neither true threats nor incitement to immediate criminal action are entitled to First Amendment protection.[57] Moreover, in a somewhat analogous case, the Ninth Circuit found a want of First Amendment protection for "true threats" in the form of "wanted" bulletins, posted on the Internet, that listed the pictures, names and address of various doctors after other doctors similarly identified in previous bulletins had been murdered.[58]

The statute prohibits disclosure of identifying information only where publication is intended to threaten or incite violence or is intended to be used for such purposes. Proof of such an intent is likely to require evidence that demonstrates the existence of a true threat or the incitement of an immediate crime of violence and therefore satisfies First Amendment concerns.

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[54] For these purposes, public safety officer means "(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew; (B) an employee of the Federal Emergency Management Agency who is performing official duties of the Agency in an area, if those official duties – (i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and (ii) are determined by the Administrator of the Federal Emergency Management Agency to be hazardous duties; or (C) an employee of a State, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties – (i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and (ii) are determined by the head of the agency to be hazardous duties," 42 U.S.C. 3796b(9), cross referenced in proposed 18 U.S.C. 119. In that context, "'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to, police, corrections, probation, parole, and judicial officers," 42 U.S.C. 3796b(6).

[55] *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975).

[56] *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 105-106 (1979).

[57] *Virginia v. Black*, 538 U.S. 343, 359 (2003)(parallel citations and parentheticals omitted) ("'the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.' *Brandenberg v. Ohio*, 395 U.S. 444, 447 (1969). And the First Amendment also permits a state to ban a 'true threat' *Watts v. United States*, 394 U.S. 705, 708 (1969)").

[58] *Planned Parenthood v. American Coalition of Life Activists*, 290 F.3d 1058, 1063 (9th Cir. 2002).

Implementation of Judicial Security

Responsibilities of the Marshals Service

The United States Marshals Service is located in the Department of Justice.[59] The Director of the Marshals Service and the Marshals for each of the 94 judicial districts and for the Superior Court of the District of Columbia are appointed by the President, with the advice and consent of the Senate.[60] Marshals serve four year terms at the pleasure of the President.[61] Marshals are responsible for the security of the U.S. District Courts, U.S. Courts of Appeal and Court of International Trade sitting in their districts, and for the execution of warrants, subpoenas and other process of those courts.[62] The Marshals are also responsible for the protection of witnesses,[63] the asset forfeiture program,[64] and the arrest of fugitives from federal law.[65]

P.L. 110-177

Additional Authorizations

Section 105 calls for $20 million in additional authorization of appropriations for each fiscal year through 2011 in order to hire additional marshals to provide security for federal judges and assistant United States attorneys and to augment the resources of the Marshals Service's Office of Protective Intelligence.

In a related matter, the President's budget for FY2008 indicates that the Administration will request additional appropriations for the Marshals Service of $25.7 million "for investigating threats against the Judiciary, high-threat trial security, judicial security in the Southwest Border district offices, and enforcement of the Adam Walsh Child Protection and Safety Act."[66]

Security for Tax Court Activities

The Marshals Service is authorized to provide security and service of process for the federal District Courts, Courts of Appeal and the Court of International Trade. Section 102 expands those responsibilities to the Tax Court, 28 U.S.C. 566(a). They also bolster the authority to serve the Tax Court. Section 7456 of the Internal Revenue Code (26 U.S.C. 7456) ends with the instruction that, "The United States marshal for any district in which the Tax Court is sitting shall, when requested by the chief judge of the Tax Court, attend any session of the Tax Court in such district." P.L. 110-177 amends the section to include an explicit instruction to provide security for

[59] 28 U.S.C. 561(a).

[60] 28 U.S.C. 561(a), (c). Subsection 561(i) lists a fairly restrictive list of qualifications each Marshal "should have." The provision was added to the USA PATRIOT Improvement and Reauthorization Act in conference, see H.Rep. 109-333, at 109 (2005), and it is unclear whether it was intended to establish necessary qualifications or simply as an aspirational standard.

[61] 28 U.S.C. 561(d).

[62] 28 U.S.C. 566(a),(b),(c).

[63] 28 U.S.C. 566(e); 18U.S.C. 3521-3528; 28 C.F.R. §0.111(c).

[64] 28 U.S.C. 524(c); 28 C.F.R. §0.111(i).

[65] 28 U.S.C. 566(e).

[66] Section 632 of the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, 120 Stat.641-42 (2006), 42 U.S.C. 16989, authorizes appropriations of $5 million for FY2008 to enable the Marshals Service to establish a Fugitive Safe Surrender Program.

the Court, its judges, personnel, witnesses, and other participants in its proceedings, when requested by the Chief Justice of the Tax Court.[67]

Coordination with the Judicial Conference

The Judicial Conference of the United States oversees the rules and conditions under which the federal courts operate.[68] Section 101 amends the organic statutes for the Marshals Service and the Judicial Conference to ensure regular consultation between the two concerning the judicial security, assessment of threats against members of the judiciary and protection of judicial personnel.[69]

Safety of Federal Prosecutors

Like federal judges, federal prosecutors have been the subject of both threats and plots to kill them.[70] Neither have express authority to carry firearms in the performance of their duties. Marshals and deputy marshals, on the other hand, do have such express authority.[71] And prosecutors, at least, can be deputized as deputy marshals, a process that carries with it the authority of the office, e.g., the authority to carry a firearm.[72]

Section 401 directs the Attorney General to report to the House and Senate Judiciary Committees within 90 days on the security of federal prosecutors. The report must include:

- the extent and a description of the threats made against federal prosecutors,
- the steps taken for their security,
- the number of prosecutors deputized in response to such threats,
- the policies governing the practices of Department attorneys with state firearm licenses,
- the security consequences of the considerations under which threatened prosecutors must perform such as after hours work and parking priorities,
- a discussion of related training available to prosecutors,
- the identity of the officials responsible for the development of Department policies to deal with such matters, and
- the role of the Marshals Service and other Department security components in such matters.

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[67] " ... The United States marshal for any district in which the Tax Court is sitting ... may otherwise provide, *when requested by the chief judge of the Tax Court*, for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened person in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding,"proposed 26 U.S.C. 7456(c)(emphasis added).

[68] 28 U.S.C. 331.

[69] 28 U.S.C. 566(i); 28 U.S.C. 331.

[70] *United States v. Bonner*, 85 F.3d 522, 523 (11th Cir. 1996).

[71] 18 U.S.C. 3053; 28 U.S.C. 566(d); see also 28 U.S.C. 564 (marshals, deputy marshals and other officials designated by the Director of the Marshals Service enjoy the authority of a sheriff under the laws of the state in which they perform their duties).

[72] 28 C.F.R. §0.112; 28 U.S.C. 561(f).

Redacted Financial Disclosure Statements

The Ethics in Government Act requires federal judges, Members of Congress, and senior officials in the legislative, executive and judicial branches to file publicly available financial disclosure reports.[73] Concerned that information contained in the financial disclosure statements of federal judges might be misused in efforts to threaten or intimidate them,[74] Congress temporarily authorized the redaction of certain information from the financial disclosure statements of certain federal judges.[75]

Section 104 temporarily extends the provision until December 31, 2011.[76]

Grants to the States

Witness Protection

Part H of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 13861-13868, authorizes community-based grants for state, territorial, and tribal prosecutors.[77] Appropriations were last authorized for FY2000, 42 U.S.C. 13867.

Section 301 of P.L. 110-177 amends Part H to include state witness protection programs and authorizes appropriations for Part H of $20 million for each fiscal year through 2012.

State and Tribal Court Security

Sections 515 and 516 of Title I of the Omnibus Crime and Safe Streets Act of 1968 authorizes discretionary Bureau of Justice Assistance Correctional Options grants, 42 U.S.C. 3762a, 3762b. Section 2501 of Title I authorizes a matching grant program to purchase armored vests for state, territorial and tribal law enforcement officers, 42 U.S.C. 3796ll to 3796ll-2.

Section 302 of P.L. 110-177 amends Sections 515 and 516 to permit 10 per cent of the funds appropriated for grants under those sections to be available for grants to improve security for state, territorial, or tribal court systems with priority to be given to those demonstrating the

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[73] 5 U.S.C.App. 101-111.

[74] 144 *Cong.Rec.* 26270 (1998)(remarks of Senator Leahy).

[75] 5 U.S.C.App. 105(b)(3)(text quoted below with changes).

[76] 5 U.S.C.App. 105(b)(3)("(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act [relating to judges and certain judicial branch employees] if a finding is made by the Judicial Conference, in consultation with United States Marshal[s] Service, that revealing personal and sensitive information could endanger that individual or a family member of that individual. (B) A report may be redacted pursuant to this paragraph only – (i) to the extent necessary to protect the individual who filed the report or a family member of that individual; and (ii) for as long as the danger to such individual exists. (C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including – (i) the total number of reports redacted pursuant to this paragraph; (ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; (iii) the types of threats against individuals whose reports are redacted, if appropriate; (iv) the nature or type of information redacted; (v) what steps or procedures are in place to ensure that sufficient information is available to litigants to determine if there is a conflict of interest; (vi) principles used to guide implementation of redaction authority; and (vii) any public complaints received in regards to redaction. (D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction. (E) This paragraph shall expire on December 31, 2011, and apply to filings through calendar year 2011").

[77] "State" is generally defined to include any state, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands, see e.g., 42 U.S.C. 13868, 3791, 3796ll-2.

greatest need, 42 U.S.C. 3762a, 3762b. To accommodate the new allotment, the percent of appropriations available for corrections alternatives would be reduced from 80 percent to 70 percent of the funds appropriated, 42 U.S.C. 3762b.

Section 302 also amends Section 2501 of the Omnibus Crime Control and Safe Streets Act to include matching grants for the purchase of armored vests for state and territorial court officers, 42 U.S.C. 3796ll.

Section 302 further permits the Attorney General to require when appropriate that state, territorial or tribal applicants for grants under programs administered by the Department of Justice show that they have considered the security needs of their judicial branch following consultation with judicial and law enforcement authorities.

Section 303 authorizes the Attorney General to award grants to permit the highest courts in each state to establish and maintain threat assessment databases in a manner to allow access by other states and the Justice Department. The section authorizes the necessary appropriations for fiscal years 2008 through 2011 as well.

Miscellaneous Provisions

U.S. Sentencing Commission Procurement Authority

The United States Sentencing Commission was established in 1984 as an independent entity located within the judicial branch.[78] Its purpose is to promulgate sentencing guidelines for use by federal courts in criminal cases.[79] Those guidelines, once binding upon the courts, are now simply advisory, although the courts must continue to consider them and the guidelines continue to carry considerable persuasive force.[80] The Commission may enter into contracts in fulfillment of its responsibilities.[81]

As a general rule, appropriated funds are available for obligation under contract or otherwise only during the fiscal year for which they were appropriated.[82] There are several exceptions to the general rule. For example, the heads of executive agencies may contract for services that begin in one fiscal year and end in the next.[83] They may also enter into multi-year contracts.[84] And with sufficient security, they may make advance payments on contract obligations to be fulfilled at a later date.[85] In the judicial branch, the Administrative Office of the United States Courts enjoys similar authority.[86] Section 501 temporarily grants the Sentencing Commission comparable authority, 28 U.S.C. 995(f)(expiring on September, 30, 2010).

[78] P.L. 98-473, 98 Stat. 2017 (1984), 28 U.S.C. 991.

[79] 28 U.S.C. 994.

[80] *United States v. Booker*, 544 U.S. 220, 264-65 (2005).

[81] 28 U.S.C. 995(a)(6).

[82] United States General Accounting Office [now the Government Accountability Office], I *Principles of Federal Appropriations Law* 5-4 (2d ed. 2004), available on February 9, 2007 at http://www.gao.gov/special.pubs/d04261sp.pdf.

[83] 41 U.S.C. 253*l*.

[84] 41 U.S.C. 254c.

[85] 41 U.S.C. 255.

[86] 28 U.S.C. 604(g)(4).

Life Insurance Costs

Judges of the United States Courts of Appeal and United States District Courts serve during good behavior,[87] which ordinarily means for life. When they reach 65 years of age with at least 15 years of service or at such later date as their age and years of service equal 80 years, they may remain in active service, they may retire at an annuity equal to their salary on the date of retirement, or they may retire to senior status.[88] Judges in senior status continue to serve but are considered to have left office for vacancy purposes so that replacements may be appointed.[89] Senior judges receive full salary, including any pay increases or adjustments given judges on active service, as long as they essentially carry at least the equivalent of 25% of the workload of a full time member of the court.[90]

When the Office of Personnel Management announced life insurance premium increases for District and Appeals Court judges in 1999, the judges and the Administrative Office objected that the increase would operate as a disincentive to serve on senior status.[91] The appropriations legislation for that year included a provision now found in 28 U.S.C. 604(a)(5):

> The Director ... shall ... pay on behalf of Justices and judges of the United States appointed to hold office during good behavior, aged 65 or over, any increases in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the Judicial Conference of the United States.

Similar provisions have been made for judges of the Tax Court[92] and the Court of Federal Claims,[93] judges who serve 15 year terms.[94] They may be recalled to perform judicial duties for periods up to 90 days a year.[95] Section 502 makes this provision applicable to magistrate judges.

Assignment of Senior Judges

The chief judges of the various United States Courts of Appeal or the various circuit judicial councils may designate and assign senior judges to perform judicial duties within the circuit.[96] As a general matter, senior judges who are designated and assigned enjoy all of the powers of the court, circuit or district to which they are assigned, except for the power to permanently designate a publisher for legal notices or depository of funds or "to appoint any person to a statutory position."[97]

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[87] U.S. Const. Art. III, §1.

[88] 28 U.S.C. 371.

[89] 28 U.S.C. 371(b), (d).

[90] 28 U.S.C. 371(e).

[91] 31 *Third Branch* 4 (May, 1999), available on February 9, 2007 at http://www.uscourts.gov/ttb/may99ttb/insurance.html.

[92] 26 U.S.C. 7472.

[93] 28 U.S.C. 179(c), 5 U.S.C. 8701(a)(5).

[94] 28 U.S.C. 172, 26 U.S.C. 7443(e).

[95] 28 U.S.C. 178(d), 26 U.S.C. 7447(c).

[96] 28 U.S.C. 294. The United States is divided into twelve appellate circuits each with a Court of Appeals generally responsible for appeals from the United States district courts within its assigned geographical area; a thirteenth, the Court of Appeals for the Federal Circuit, has topical appellate jurisdiction over patents, copyright, trademark, and claims questions no matter where in the United States they arise, 28 U.S.C. 41, 1295.

[97] 28 U.S.C. 296.

Federal statutes describe the appointment authority for several positions in the judicial branch. Bankruptcy judges are appointed by the circuit Court of Appeals,[98] who also appoint their clerks[99] and librarians;[100] circuit judges appoint their own law clerks and secretaries;[101] and circuit chief justices appoint senior staff attorneys.[102] Magistrate judges are appointed by the district court judges,[103] who also appoint their clerks[104] and court reporters;[105] individual judges appoint their own bailiffs,[106] law clerks and secretaries.[107]

Beyond the explicit exceptions and the general rule notwithstanding, there are several powers that only a judge in "regular active service" and no senior judge may exercise. Thus, only a judge in regular active service may serve as a chief judge of a federal district or circuit.[108] The decision to present an appeal to all of the judges of a particular circuit (to grant a hearing or rehearing en banc) is made by a majority vote of the judges of that circuit who are in regular active service.[109] A senior judge may participate in an en banc appeal only if he or she was a member of the panel that initially decided the case being heard en banc.[110] Senior judges may serve on the United States Sentencing Commission and on the Board of the Federal Judicial Center.[111] They may serve as well as members of the Judicial Conference of the United States, the rule propounding body for the federal courts.[112] They may also sit on the judicial councils for their circuits, the local rule making authority for the circuit, but the number of members of such councils and their terms of service are determined by a majority vote of the judges in regular active service in the circuit.[113]

Section 503 amends 28 U.S.C. 296 to declare that senior judges "when designated and assigned to the court to which such judge was appointed, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall have all the powers of a judge of that court, including participation in appointment of court officers and magistrates, rulemaking, governance, and administrative matters," 28 U.S.C. 296. Although the amendment might under other circumstances be thought to extend merely to those judicial powers and tasks for which there is no contrary instruction by statute or rule, the specific mention of the appointment of magistrate seems to preclude such a construction. It would presumably override the circuit court en banc limitations as well.

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[98] 28 U.S.C. 152.

[99] 28 U.S.C. 711.

[100] 28 U.S.C. 713.

[101] 28 U.S.C. 712.

[102] 28 U.S.C. 715.

[103] 28 U.S.C. 631.

[104] 28 U.S. 751.

[105] 28 U.S.C. 753.

[106] 28 U.S.C. 755.

[107] 28 U.S.C. 752.

[108] 28 U.S.C. 45(a), 133(a).

[109] 28 U.S.C. 46(c); F.R.App.P 35(a).

[110] *Id*. Most appeals are heard and decided by a panel of three circuit court judges; such panels may include a senior judge, 28 U.S.C. 46.

[111] 28 U.S.C. 991, 621.

[112] 28 U.S.C. 331.

[113] 28 U.S.C. 332.

Appointment of Magistrates

Magistrate judges are appointed pursuant to a statute that declares that, "the judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges..." 28 U.S.C. 631(a). Section 504 amends this language to add, after "the Northern Mariana Islands", the parenthetical "(including any judge in regular active service and any judge who has retired from regular active service under Section 371(b) of this title, when designed and assigned to the court to which such judge was appointed)".

The amendment may present an interpretative challenge. The problem is that only United States district court judges retire under Section 371(b); the judges in the Virgin Islands, Guam and the Northern Mariana Islands retire under Section 373. So does the amendment intend to add only senior United States district court judges to the core of judges who may participate in the decision to appoint magistrate judges for their districts? Probably, but that intent would have been more clearly demonstrated if the parenthetical had been added immediately after the phrase "United States district court." Such a reading might be thought to render the amendment redundant since the prior section vests senior judges with share in the appointment of magistrate judges for their districts, but it can also be read as simply confirming the operation of the previous section.

Or does the amendment intend to permit both United States district court senior judges who retired under Section 371(b) and territorial judges who retired under Section 373 to participate in the appointment magistrate judges of their courts? Possibly, but read literally it would mean that territorial judges could participate as long as they had elected eligibility for senior status upon retirement regardless of whether they had been actually recalled.

Or does the amendment intend only to permit appointment by a senior judge in the district court of the Northern Mariana Islands who retired under Section 373? Very unlikely, for while it is perhaps the most grammatically faithful reading, it would mean affording a senior judge of the Northern Mariana Islands authority that is denied the other territorial district courts. Moreover, senior judges of the Northern Mariana Islands retire under Section 373 rather than 371 as stated in the amendment.

Payment of Fines by Former Prisoners

Federal courts that sentence an offender to prison may also include a term of supervised release to be served upon completion of the defendant's term of imprisonment, 18 U.S.C. 3583. They may at the same time impose a fine upon the defendant of up to $250,000 for most felonies and lesser amounts for misdemeanors, 18 U.S.C. 3571. Prior law stated that a defendant was not to be released on supervised release unless he agreed to follow an installment schedule for any remaining fine obligations, 18 U.S.C. 3624(e)(2000 ed.). Since the defendant must be released upon service of his sentence, the language suggested he might avoid supervised release simply by refusing to accept an installment schedule.

Section 505 amends the prior language to compel the Bureau of Prisons to notify prisoners upon their release of their obligation to follow an installment payment schedule in order to satisfy any outstanding fine obligations, 18 U.S.C. 3624(e).

Study of State Open Record Laws

Section 506 instructs the Attorney General to study whether public access to state and local public records imperils the safety of federal judges.

Authorization of Fugitive Apprehension Task Forces

The Presidential Threat Protection Act authorized the Marshals Service to direct and coordinate permanent Fugitive Apprehension Task Forces composed of federal, state and local law enforcement officers in order to capture fugitives from justice.[114] The act authorized appropriations of $30 million for the purpose for FY2001 and $5 million per year for each of the two fiscal years thereafter.

Section 507 authorizes appropriations of $10 million for each of the fiscal years from 2008 through 2012 for the Fugitive Apprehension Task Forces.

Judicial Exemption from the REAL ID Act

The REAL ID Act establishes certain minimum requirements for state drivers' licenses and other state identification documents if they are to be received for federal identification purposes – including the individual's home address.[115] In the case of federal judges, Section 508 allows the states to substitute the address of the court where the federal judge has his or her chambers.

Judgeships in the Ninth Circuit

Section 509 increases the number of judgeships on the Ninth Circuit Court of Appeals from 28 to 29 and reduces the number on the District of Columbia Circuit Court of Appeals from 12 to 11. The statement in the report of the section's sponsor, Senator Feinstein, indicates the amendment is intended to reflect the relative workloads of the two Circuits and the need to address the growing backlog of cases in the Ninth Circuit, *id*. at 10 (additional views of Senator Feinstein).[116]

Collateral Consequences of Conviction

Offenders of federal and state criminal law face the prospect of probation, imprisonment, parole, supervised release, assessments, fines, forfeiture, and/or restitution orders. They may also suffer obligations, disabilities, disqualifications, and ineligibility as a consequence of their convictions, quite apart from the sanctions imposed at the time of sentencing. The law of a particular jurisdiction may authorize authorities to lift the burden of some of these under some circumstances.

Section 510 directs the National Institute of Justice to study and report on the collateral consequences of conviction under federal law and the laws of the various states. Although the section provides explicit descriptions of the "collateral sanctions" and "disqualifications" it

[114] P.L. 106-544, § 6(a), 114 Stat. 2718 (2000), 28 U.S.C. 566 note.

[115] P.L. 109-13, §202, 119 Stat. 312 (2005), 49 U.S.C. 30301 note.

[116] An arguably kindred amendment to split the Ninth Circuit in two, offered during Senate debate, fell on a budget-related point of order, 153 *Cong. Rec.* S4738-739 (text at S4729-730)(daily ed. April 19, 2007).

anticipates the report will describe,[117] the diversity of P.L. 110-177 in the area may make the task challenging.[118]

[117] "The term 'collateral sanction' – (A) means a penalty, disability, or disadvantage, however denominated, that is imposed by law as a result of an individual's conviction for a felony, misdemeanor, or other offense, but not as part of the judge of the court; and (B) does not include a term of imprisonment, probation, parole, supervised release, fine, assessment, forfeiture, restitution, or the costs of prosecution.

"The term 'disqualification' means a penalty, disability, or disadvantage, however denominated, that an administrative agency, official, or a court in a civil proceeding is authorized, but not required, to impose on an individual convicted of a felony, misdemeanor, or other offense on grounds relating to the conviction," §510(d)(2),(3), 121 stat. 2544 (2008).

[118] It is not clear, for example, whether the study should describe reporting or registration obligations or the opportunity for the sealing or expungement of records implicated by a criminal conviction.

Appendix.

18 U.S.C. 1114

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished –

(1) in the case of murder, as provided under section 1111;

(2) in the case of manslaughter, as provided under section 1112; or

(3) in the case of attempted murder or manslaughter, as provided in section 1113.

18 U.S.C. 111

(a) In general.– Whoever–

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than 8 years, or both.

(b) Enhanced penalty.– Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. 1201

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when ... (5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties; shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

* * *

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

* * *

18 U.S.C. 115

(a)(1) Whoever –

(A) assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

(2) Whoever assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to retaliate against such person on account of the performance of official duties during the term of service of such person, shall be punished as provided in subsection (b).

(b)(1) An assault in violation of this section shall be punished as provided in section 111 of this title.

(2) A kidnaping, or attempted kidnaping of, or a conspiracy to kidnap, a person in violation of this section shall be punished as provided in Section 1201 of this title for the kidnaping, attempted kidnaping, or conspiracy to kidnap of a person described in section 1201(a)(5) of this title.

(3) A murder, attempted murder, or conspiracy to murder in violation of this section shall be punished as provided in sections 1111, 1113, and 1117 of this title.

(4) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for a term of not more than 10 years, or both, except that imprisonment for a threatened assault shall not exceed 6 years.

(c) As used in this section, the term –

(1) "Federal law enforcement officer" means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

(2) "immediate family member" of an individual means—

(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

(B) any other person living in his household and related to him by blood or marriage;

(3) "United States judge" means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge; and

(4) "United States official" means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch

who is the head of a department listed in 5 U.S.C. 101, or the Director of the Central Intelligence Agency.

(d) This section shall not interfere with the investigative authority of the United States Secret Service, as provided under sections 3056, 871, and 879 of this title

18 U.S.C. 1512

(a)(1) Whoever kills or attempts to kill another person, with intent to –

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to –

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to –

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is –

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of –

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person; imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to –

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to –

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release,, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly –

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from –

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section –

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance –

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. 1513

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for –

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is –

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for –

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(e) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. 1503 (emphasis added)

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, *or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b).* If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is –

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

18 U.S.C. 1505

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress –

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

18 U.S.C. 930

(a) Except as provided in subsection (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

(b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) A person who kills any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, or attempts or conspires to do such an act, shall be punished as provided in sections 1111, 1112, 1113, and 1117.

(d) Subsection (a) shall not apply to –

(1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;

(2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or

(3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (d).

(f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

(g) As used in this section:

(1) The term “Federal facility” means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.

(2) The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

(3) The term "Federal court facility" means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

(h) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (e) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (e), as the case may be.

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