

CRS Report for Congress

Received through the CRS Web

Judicial Security: Comparison of Legislation in the 109th Congress

June 15, 2006

Nathan James
Analyst in Social Policy
Domestic Social Policy Division

Judicial Security: Comparison of Legislation in the 109th Congress

Summary

Recently, the murders of the husband and mother of United States District Judge Joan Lefkow by a disgruntled litigant and the murders of Judge Rowland Barton, his court reporter, a deputy sheriff, and a federal officer in Atlanta, Georgia, focused national attention on the need for increased court security. Data from the U.S. Marshals Service (USMS), Pennsylvania's survey of judicial safety, and the New York Office of Court Administration demonstrate that judges are the targets of threats and other aggressive actions. In addition, recent congressional testimony and a report by the Department of Justice's (DOJ's) Office of the Inspector General (OIG) raise questions about the abilities of the USMS to protect the federal judiciary.

The USMS is the primary agency responsible for the security of the federal judiciary. According to a March 2004 OIG report, USMS routinely failed to assess the threats against federal judges in a timely manner and it has limited ability to collect and share intelligence on threats to the judiciary to appropriate entities. The concerns noted by the OIG may be due, in part, to funding and staffing issues highlighted in recent congressional testimony.

In an effort to strengthen court security, Congress has responded with a number of measures that would affect both the federal and state judicial systems, including H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005; Title VII of H.R. 4472, the Children's Safety and Violent Crime Reduction Act of 2006; H.R. 4732, the Sergeant Henry Prendes Memorial Act of 2006; S. 1968, the Court Security Improvement Act of 2005; H.R. 1710, the Internet Police Protection Act of 2005; S. 1605, the Law Enforcement Officers' Protection Act of 2005; and S. 1558 and H.R. 4311. These measures would strengthen court security in the United States by (1) increasing sentences for people who commit crimes against judicial and law enforcement personnel, (2) creating grant programs for states for court security, and (3) increasing measures to protect judicial personnel. These measures are in addition to the emergency supplemental appropriations bill (P.L. 109-13) passed by Congress in May 2005, which appropriated \$11.9 million for the USMS for increased judicial security outside the courthouse, including home security systems for federal judges.

This report discusses the current state of judicial security in the United States and the legislation introduced in the 109th Congress that would address judicial security. This report will be updated as needed.

Contents

Background	1
Current Issues in Judicial Security	1
Legislation in the 109 th Congress	3
Increased Sentences	4
Protection of Federally Funded Public Safety Officers	4
Penalties for Certain Assaults	5
Increased Penalties for Murder and Manslaughter	6
Penalties for Influencing or Injuring a Court Officer or Juror	6
Modification of Tampering with a Witness, Victim, or an Informant Offense	7
Modification of Retaliation Offense	8
Intimidating and Retaliating Against a Witness in a State Prosecution as Basis for Federal Prosecution	9
Flight To Avoid Prosecution for Killing a Peace Officer	9
Special Penalties for Murder and Kidnapping Against Federal Judges and Federal Law Enforcement Officers	9
Penalties for Influencing, Impeding, or Retaliating Against Judges and Other Officials by Threatening or Injuring a Family Member	9
Clarification of Venue for Retaliation Against a Witness	11
New Federal Grant Programs	11
Witness Protection Grant Program	11
Grants for <i>Young</i> Witness Assistance	11
State and Local Court Eligibility To Apply for Department of Justice (DOJ) Grants	12
Funding for State Courts To Assess and Enhance Court Security and Emergency Preparedness	13
Grants to States for Threat Assessment Databases	13
Measures to Protect Judicial Personnel	13
Judicial Branch Security Requirements	13
Additional Amounts for the USMS To Protect the Judiciary	14
Protection Against Malicious Recording of Fictitious Liens Against a Federal Employee	14
Protection of Individuals Performing Certain Federal and Other Functions	15
Report on the Security of Federal Prosecutors	16
Authority of Federal Judges and Prosecutors To Carry Firearms	16
Prohibition of Possession of Dangerous Weapons in Federal Court Facilities	16
Allowing for the Redaction of Reports from the Judiciary	16
Media Coverage of Court Proceedings	17

Judicial Security: Comparison of Legislation in the 109th Congress

Background¹

Two recent events heightened congressional concern about the current state of judicial security: the murders of the husband and mother of United States District Judge Joan Lefkow by a disgruntled litigant and the murders of Judge Rowland Barton, his court reporter, a deputy sheriff, and a federal officer in Atlanta, Georgia. Congress has responded with the introduction of a number of bills. Some pieces of legislation would address issues of courthouse security and physical security for judges and court personnel, whereas other legislation would go beyond courthouse security and physical security for judges and court personnel and would address issues concerning the integrity of the judicial system in the United States.

This report discusses the current state of judicial security in the United States, as well as legislation introduced in the 109th Congress that would address judicial security. This report, however, does not discuss the agencies involved in providing security for the federal judiciary.

Current Issues in Judicial Security

Data suggests that judges, both federal and state, are the targets of threats and other aggressive behavior. Between October 1, 1980, and September 30, 1993, the U.S. Marshals Service (USMS) collected information about reports of inappropriate communications, threats, and attacks involving federal judicial officials.² During the 13-year period, 3,096 reports were recorded by the USMS. Approximately 8% of the reports involved inappropriate communications that appeared to be linked to later, more serious actions; 4% involved incidents where court officials were attacked or involved in attacks against others; and another 4% involved incidents where court officials were in danger of being harmed by people who threatened or attempted to take inappropriate actions. More recently, the USMS reported that they received an

¹ For more information on (1) the roles and responsibilities of federal agencies that provide judicial security, (2) Fiscal Year 2007 judicial security budget requests, and (3) actions taken by the Judicial Conference and the National Center for State Courts to improve judicial security, see CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine Tong.

² Neil Alan Weiner, Donald J. Harris, Frederick S. Calhoun, Victor E. Flango, Donald Hardenbergh, Charlotte Kirschner, Thomas O'Reilly, Robert Sobolevitch, and Brian Vossekui, "Safe and Secure: Protecting Judicial Officials," *Court Review*, vol. 36, no. 4 (Winter 2000), pp. 26-33.

estimated 700 threats against members of the judiciary each year.³ Of these, about 20 were serious enough to warrant a protective detail and about 12 warranted around-the-clock protection.

Additional data, while more limited, demonstrate that state and local judges face many of the same threats as federal judges. Data about the types of threats Pennsylvania judges face were collected as a part of a “survey of judicial safety.”⁴ Of the judges who responded to the survey, 52% reported that they had experienced one or more incidents of “inappropriate communications,” “inappropriate approaches,” “threatening communications,” “physical assaults,” or “any threatening actions” in the past year. Thirty-five percent of the respondents reported that they changed their judicial conduct “somewhat” or “a great deal” because either they or one of their associates had experienced one or more threats, inappropriate approaches, or physical assaults. Moreover, New York’s Office of Court Administration reported that since 1987, it has handled more than 2,000 reported threats against judges, with more than 1,300 of the reported threats occurring since 1995.⁵

Recently, there have been concerns about the ability of the U.S. Marshals Service (USMS) to provide security for the federal judiciary.⁶ A Department of Justice (DOJ), Office of the Inspector General (OIG), report on the U.S. Marshal’s Judicial Security process found that USMS routinely failed to assess the threats against federal judges in a timely manner.⁷ The OIG found that USMS has limited ability to collect and share intelligence on threats to the judiciary amongst its districts and its representatives on the Federal Bureau of Investigation’s (FBI’s) Joint Terrorism Task Forces.⁸ The OIG also found that USMS lacked adequate risk-based

³ Bethany Broida, “Judges, Officials Hold D.C. Summit on Courthouse Security,” *Legal Times*, Apr. 5, 2005, at [<http://www.law.com/jsp/article.jsp?id=114160713238>].

⁴ Neil Alan Weiner, Donald J. Harris, Frederick S. Calhoun, Victor E. Flango, Donald Hardenbergh, Charlotte Kirschner, Thomas O’Reilly, Robert Sobolevitch, and Brian Vossekuil, “Safe and Secure: Protecting Judicial Officials,” *Court Review*, vol. 36, no. 4 (Winter 2000), pp. 26-33.

⁵ The Task Force on Court Security, *Report to the Chief Judge and the Chief Administrative Judge*, Oct. 2005, p. 9, at [http://www.nycourts.gov/reports/security/SecurityTaskForce_Report.pdf].

⁶ The USMS is the primary agency responsible for the security of the federal judiciary. Senior inspectors, deputy marshals and court security officers (CSOs) provide security for the judiciary in each of the 94 United States district courts and the District of Columbia courts. Three additional agencies also have security responsibilities for the federal judiciary and include the Department of Homeland Security’s Federal Protective Service, the General Services Administration’s Public Building Service, and the Administrative Office of the U.S. Courts.

⁷ U.S. Department of Justice, Office of the Inspector General, *Review of the United States Marshals Service Judicial Security Process*, Report number I-2004-004, March 2004, p. ii, at [<http://www.usdoj.gov/oig/reports/USMS/e0404/final.pdf>].

⁸ *Ibid.*, pp. ii-iii.

standards for determining the appropriate means for protecting judges during high-risk trials and for protecting threatened judges while they are not in court.⁹

In recent congressional testimony, Judge Jane R. Roth¹⁰ stated that funding and staffing issues at the USMS have decreased its ability to provide adequate protection for the federal judiciary.¹¹ Judge Roth noted that on many occasions, the Judicial Conference had found that the USMS did not have adequate staff to protect the judiciary. Judge Roth testified that DOJ had not shared information about USMS staffing levels, but “many United States Marshals report to us that their staffing levels have been significantly reduced.”¹² Judge Roth also questioned whether the law enforcement responsibilities (fugitive apprehension, asset forfeiture, and witness protection) had caused budgetary problems for the Marshals’ judiciary security program because the USMS must serve both the executive and judicial branches. A report that reviewed the protection provided to the federal judiciary by the USMS found “[t]he staffing level of the USMS for protection of the Judiciary has not grown commensurate with operational demands.”¹³ Specifically, the USMS is having problems with providing an adequate number of Deputy U.S. Marshals (DUSMs) for judicial security duties.¹⁴

There is federal funding available for state courts; however, with respect to judicial security in state courts, state courts cannot directly apply for such funding.¹⁵ They have to request such funding from the state’s executive branch, which means that state courts must compete with executive branch agencies for federal funding. This has proven to be a barrier for state courts in directly accessing federal funding for court security measures.

Legislation in the 109th Congress

Several bills have been introduced in the 109th Congress that would address judicial security issues — for example, H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005; Title VII of H.R. 4472, the Children’s Safety and

⁹ *Ibdi*, p. iv.

¹⁰ Judge Roth is the Chair of the Committee on Security and Facilities, Judicial Conference of the United States.

¹¹ Testimony of Judge Jane R. Roth, U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security, *Secure Access to Justice and Court Protection Act*, hearing on H.R. 1751, 109th Cong., 1st sess., Apr. 26, 2005, H.Hrg. 109-44.

¹² *Ibid.*, p. 8.

¹³ John D. Veatch, Joseph W. James, Terry T. May, Donald E. Williams, and Robert A. Kromer, *Management of the Protection Afforded the Federal Judiciary*, July 14, 2004, a study prepared for the Judicial Security Division, U.S. Marshals Service, pp. 2-4.

¹⁴ *Ibid.*

¹⁵ Pamela Casey, *A National Strategic Plan for Judicial Branch Security*, p. 11, Feb. 7, 2006, at [http://www.ncsconline.org/WC/Publications/Res_CtSecu_JudclStrategicPlan.pdf].

Violent Crime Reduction Act of 2006; H.R. 4732, the Sergeant Henry Prendes Memorial Act of 2006; S. 1968, the Court Security Improvement Act of 2005; H.R. 1710, the Internet Police Protection Act of 2005; S. 1605, the Law Enforcement Officers' Protection Act of 2005; and S. 1558 and H.R. 4311. These bills would strengthen judicial security in the United States by (1) increasing sentences for people that commit crimes against judicial and law enforcement personnel, (2) creating grant programs for states for court security, and (3) increasing measures to protect judicial personnel. Some of the major provisions in these bills are discussed below.

These measures are in addition to the emergency supplemental appropriations bill (P.L. 109-13) passed by Congress in May 2005, which appropriated \$11.9 million for the USMS for increased judicial security outside the courthouse, including home security systems for federal judges. However, the funding is only available until September 30, 2006.

H.R. 1751 passed the House on November 9, 2005, and has been referred to the Senate Judiciary Committee. H.R. 4472 passed the House on March 8, 2006, and was placed on the Senate calendar on March 27, 2006. H.R. 4311 passed the House on December 7, 2005, and passed the Senate, amended, on June 7, 2006. H.R. 4732 was introduced in the House on February 8, 2006, and was referred to the House Committee on the Judiciary. S. 1968 was introduced on November 7, 2005, and was referred to the Senate Judiciary Committee. H.R. 1710 was introduced on April 19, 2005, and has been referred to the House Subcommittee on Crime, Terrorism, and Homeland Security. S. 1605 was introduced on July 29, 2005, and was referred to the Senate Judiciary Committee. S. 1558 was introduced on July 29, 2005, and was referred to the Senate Committee on Homeland Security and Governmental Affairs. S. 1558 passed the Senate, as amended, on November 10, 2005. S. 1558 was received by the house on November 14, 2005, and was referred to the House Committee on the Judiciary. S. 1558 was referred to the House Subcommittee on the Courts, the Internet, and Intellectual Property on February 6, 2006.

Increased Sentences

Protection of Federally Funded Public Safety Officers.¹⁶ H.R. 4472, H.R. 1751, and H.R. 4732 would make it illegal to kill, or attempt or conspire to kill, a federally funded public safety officer while the officer is engaged in his duties, or because of the officer's performance of official duties. All bills would also make it illegal to kill a former federally funded public safety officer on account of the past performance of his official duties. Under all bills, a person convicted under the new section would be sentenced to prison for *not less than* 30 years or for life; if death results and the offender is prosecuted as a principal, the offender could be sentenced to death.

H.R. 4472, H.R. 1751, and H.R. 4732 would define a "federally funded public safety officer" as a public safety officer for a public agency (including a court system, the National Guard of a state to the extent the personnel of that National Guard are not in federal service, and the defense forces of a state authorized by 32 U.S.C. §109

¹⁶ Section four of H.R. 1751, section 710 of H.R. 4472 and H.R. 4732.

that receives federal financial assistance). All the bills would define a “public safety officer” as an individual serving a public agency in an official capacity, such as a judicial officer, a law enforcement officer, a firefighter, a chaplain, or a member of a rescue squad or ambulance crew.

Penalties for Certain Assaults.¹⁷ H.R. 4472 would increase the sentence (from not more than 8 years in prison to not more than 15 years in prison) for anyone who (1) assaults (other than simple assault), resists, impedes, opposes, intimidates, or interferes with any U.S. employee¹⁸ while the person is engaged in, or on account of, the performance of his or her duties or (2) assaults or intimidates a former U.S. government employee on account of the duties he or she performed while a U.S. government employee. H.R. 4472 would also increase the sentence (from not more than 20 years in prison to not more than 30 years) for anyone who uses a deadly or dangerous weapon to commit the crimes discussed above, or who inflicts bodily injury while doing so.

H.R. 1751 would include “federally funded public safety officers” as individuals protected under the section. H.R. 1751 would also create penalties for individuals who commit simple assaults, assaults that result in bodily injury, assaults that result in substantial bodily injury, and assaults that result in serious bodily injury against federal judges, federal law enforcement officers, or federally funded public safety officers. The bill would make a simple assault against such officials punishable by a fine and a mandatory term of imprisonment of not more than one year. An assault resulting in bodily injury¹⁹ would be punishable by a minimum term of imprisonment of 1 year, but not more than 10 years. An assault resulting in substantial bodily injury²⁰ would be punishable by a minimum term of imprisonment of 3 years, but not more than 12 years. An assault resulting in serious bodily injury²¹ would be punishable by a minimum term of imprisonment of 10 years, but not more than 30 years. The bill would also submit someone who used a dangerous weapon to commit any of the assaults described above to an additional five years in prison.

S. 1605 would create specific penalties, different than those set forth in H.R. 4472 and H.R. 1751, for individuals who (1) assault or interfere with *any* U.S. employee while the person is engaged in, or on account of the performance of, his or

¹⁷ Section three of H.R. 1751, section 709 of H.R. 4472 and section three of S. 1605.

¹⁸ The term “U.S. employee” refers to any officer or employee of the United States or of any agency of any branch of the United States Government (including any members of the uniformed services).

¹⁹ Bodily injury includes (1) a cut, abrasion, bruise, burn or disfigurement; (2) physical pain; (3) illness; (4) impairment of the function of a bodily member, organ, or mental faculty; or (5) any other injury to the body, no matter how temporary. 18 U.S.C. §1365(h)(4).

²⁰ Substantial bodily injury includes (1) a temporary but substantial disfigurement; or (2) a temporary but substantial loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. §113(b)(1).

²¹ Serious bodily injury includes (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. §1365(h)(3).

her duties, or (2) who assault or intimidate a former U.S. government employee on account of the duties he or she performed while a U.S. government employee. Under S. 1605, any individual who commits interference or simple assault against a current or former U.S. employee would be fined and imprisoned for not more than one year. Any assault resulting in bodily injury would result in a fine and imprisonment for *not less than 5 years*, but not more than 20 years. If a dangerous weapon was used or possessed during and in relation to the offense, the individual would be fined and imprisoned for *not less than 15 years*, but not more than 40 years. If the assault resulted in serious bodily injury, the individual would be fined and imprisoned for *not less than 15 years*, but not more than 40 years. In any other case, the individual would be fined and imprisoned for *not less than 2 years*, but not more than 10 years.

Increased Penalties for Murder and Manslaughter.²² H.R. 4472, H.R. 1751, and S. 1605 would establish a mandatory minimum sentence of *not less than 30 years* imprisonment for anyone convicted of murder in the second degree. Both H.R. 4472 and H.R. 1751 would increase the maximum penalty from 10 years to 20 years for persons convicted of voluntary manslaughter.²³ For involuntary manslaughter, the maximum penalty would be increased from 6 years to 10 years.²⁴ S. 1605 would change the penalty for voluntary manslaughter to imprisonment for *not less than 15 years*, but not more than 40 years. The penalty for involuntary manslaughter would be changed to imprisonment for *not less than 3 years*, but not more than 15 years. S. 1605 would increase the penalty for attempted murder or manslaughter to the penalty an individual would face if he committed murder or manslaughter. S. 1605 would also increase the penalty for conspiracy to murder to the penalty an individual would face for the crime that is the object of the conspiracy.

Penalties for Influencing or Injuring a Court Officer or Juror.²⁵ Both H.R. 1751 and H.R. 4472 would change the definition of what constitutes influencing or injuring a court officer or juror and the penalties for doing so by making it illegal to (1) corrupt, or by threat of force or by force, influence, intimidate, or impede a juror or officer in a judicial proceeding²⁶ in the discharge of the juror's or officer's duties; (2) injure a juror or an officer in a judicial proceeding arising out of the performance of official duties; or (3) corrupt, or by threats of force or force, obstruct, or impede, or endeavor to influence, obstruct, or impede, the administration of justice. Both H.R. 1751 and H.R. 4472 would increase the sentence for anyone found guilty of a crime under these sections, other than murder, manslaughter, attempted murder or manslaughter, or conspiracy to commit murder, to 30 years in prison in addition to a fine. Individuals convicted of murder, manslaughter, or attempted murder or manslaughter would be punished as prescribed in 18 U.S.C. §§1111

²² Section five of H.R. 1751, section 717 of H.R. 4472, and section five of S. 1605.

²³ 18 U.S.C. §1112(b).

²⁴ *Ibid.*

²⁵ Section six of H.R. 1751, section 711 of H.R. 4472, and section nine of S. 1605.

²⁶ Both section six of H.R. 1751, section 711 of H.R. 4472, and section nine of S. 1605 define a "juror or officer in a judicial proceeding" as a grand or petit juror, or other officer in or of any court of the United States, or an officer who may be serving at any examination or other proceeding before any U.S. magistrate judge or other committing magistrate.

(murder), 1112 (manslaughter), 1113 (attempt to commit murder or manslaughter), and 1117 (conspiracy to murder). Both H.R. 1751 and H.R. 4472 would also include a penalty for conspiracy to commit murder.

S. 1605 would include a similar definition of what constitutes influencing or injuring a court officer or juror. The definition would be the same as the one put forth by H.R. 1751 and H.R. 4472, but it would also include language that would make it illegal to use threatening letters or communications to (1) influence, intimidate, or impede a juror or officer in a judicial proceeding in the discharge of the juror's or officer's duties or (2) obstruct, or impede, or endeavor to influence, obstruct, or impede, the administration of justice. S. 1605 would set forth different penalties for committing a crime under this section. If the crime results in a killing, the individual would be punished as provided under 18 U.S.C. §§1111 (murder) and 1112 (manslaughter). If the crime was committed against a petit juror, for a matter in which a felony was charged, the individual would be fined and imprisoned for *not less than* 20 years or for life. If an individual committed any other crime under this section, the individual would be fined and imprisoned for *not less than* 10 years, but not more than 30 years. S. 1605 would set forth that any attempt or conspiracy to commit a crime under this section would be punished the same way as a completed crime (in the case of an attempt) or the crime that is the object of the conspiracy.

Modification of Tampering with a Witness, Victim, or an Informant Offense.²⁷ H.R. 1751, H.R. 4472, and S. 1605 would set forth new penalties relating to the suppression of testimony, communication to relevant officials, or production of official documents in an official proceeding. H.R. 1751 and H.R. 4472 would also add language that would make it illegal to conspire or threaten to use physical force against someone with the intent of delaying, influencing, or preventing the person from testifying in an official proceeding or from notifying federal officials about a violation or possible violation of any pre- or post-sentencing release. H.R. 1751 and H.R. 4472 would also make it illegal to conspire or threaten to use physical force against someone with the intent of causing someone to not appear in an official proceeding, or to withhold a record, document, or testimony in an official proceeding.

H.R. 1751 and H.R. 4472 set forth that if an offense results in a killing, the offense would be punishable by the sentences prescribed in 18 U.S.C. §§1111 and 1112. H.R. 1751 and H.R. 4472 set forth that if an offense involves attempted murder, or the use or attempted use of physical force, the offender would be imprisoned for not more than 30 years. H.R. 1751 and H.R. 4472 set forth that if the offense involves the threatened use of physical force against any person, the offender would be imprisoned for not more than 20 years. S. 1605 sets forth that an offender would be imprisoned for *not less than* five years, but not more than 20 years.

H.R. 1751 and H.R. 4472 set forth that if the offense involved intimidating, threatening, corruptly persuading another person, or attempting to do so, or engaging in misleading conduct towards another person with the intent of preventing the person from testifying, destroying physical evidence, avoiding a summons, or providing information about a possible federal offense, or is a violation of parole,

²⁷ Section seven of H.R. 1751, section 712 of H.R. 4472 and section ten of S. 1605.

probation, or release pending a judicial proceeding, the offender would be imprisoned for not more than 30 years. S. 1605 sets forth that an offender would be imprisoned for *not less than* five years, but not more than 20 years.

H.R. 1751 and H.R. 4472 set forth that if the offense involved intimidating, threatening, corruptly persuading another person, or attempting to do so, or engaging in misleading conduct toward another person with the intent of delaying, influencing, or preventing the person from testifying in an official proceeding, or notifying federal officials about a violation or possible violation of any pre- or post-sentencing release, or causing someone to not appear in an official proceeding, or withholding a record, document, or testimony in an official proceeding, the offender would be imprisoned for not more than 20 years. S. 1605 sets forth that an offender would be imprisoned for *not less than* five years, but not more than 20 years.

S. 1605 would also increase the penalty for individuals who corruptly alter, destroy, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the object's integrity or availability for use in an official proceeding, or otherwise obstruct, influence, or impede any official proceeding, or attempt to do so, to imprisonment for *not less than* five years, but not more than 20 years. S. 1605 would also make it a crime to attempt to, in addition to conspiring to, commit any crime under this section.

Modification of Retaliation Offense.²⁸ H.R. 1751 and H.R. 4472 would make it illegal to conspire to kill a person with the intent of retaliating against the 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) 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. H.R. 1751 and H.R. 4472 would also increase the sentence for anyone convicted of an attempted crime under this section from a maximum term of imprisonment of 20 years to 30 years (S. 1605 would strike this language).

H.R. 1751 and H.R. 4472 would also increase the sentence for anyone who knowingly engages in, threatens, or attempts to engage in any conduct that causes bodily injury or damage to another person's property with the intent of retaliating against the person from a maximum term of imprisonment of 10 years to 30 years.²⁹ S. 1605 would increase the penalty to imprisonment for *not less than* 10 years, but not more than 30 years.

²⁸ Section eight of H.R. 1751, section 713 of H.R. 4472 and section 11 of S. 1605.

²⁹ This sentence applies if the offender retaliates against the individual 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) 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.

H.R. 1751 and H.R. 4472 would also increase the sentence of anyone who knowingly, with the intent to retaliate, takes any actions harmful to another person, including interference with lawful employment or their livelihood, for providing a law enforcement officer with any truthful information relating to the commission or possible commission of any federal offense, to not more than 30 years in prison, rather than the current punishment of not more than 10 years in prison. S. 1605 would increase the penalty to imprisonment for *not less than* 10 years, but not more than 30 years. S. 1605 would also make it a crime to attempt to, in addition to conspire to, commit any crime under this section.

Intimidating and Retaliating Against a Witness in a State Prosecution as Basis for Federal Prosecution.³⁰ Both H.R. 1751 and H.R. 4472 would make an act of “intimidation of, or retaliation against, a witness, victim, juror, or informant.” in violation of the laws in the state in which the act is committed, a federal crime under 18 U.S.C. §1952.

Flight To Avoid Prosecution for Killing a Peace Officer.³¹ Both H.R. 1751 and H.R. 4472 would make it illegal to flee to another state with the intent to avoid prosecution, or custody after being convicted, under the laws of the state where the crime was committed or under 18 U.S.C. §1114 (protection of officers and employees of the United States) or §1123 (see above), for a crime consisting of (1) the killing, attempted killing, or a conspiracy to kill someone involved in crime and juvenile delinquency control, or (2) any crime under 18 U.S.C. §1114 or §1123. Language in both H.R. 1751 and H.R. 4472 would provide that the punishment for someone found guilty of a crime under the section would be a fine and imprisonment for *not less than* 10 years, in addition to any other sentences for the underlying crime.

Special Penalties for Murder and Kidnapping Against Federal Judges and Federal Law Enforcement Officers.³² Both H.R. 1751 and H.R. 4472 would require a mandatory minimum term of imprisonment of 30 years, or life, and a fine for the murder of a U.S. judge or a federal law enforcement officer. The offender could also be sentenced to death. Both H.R. 1751 and H.R. 4472 would require a mandatory minimum term of imprisonment of 30 years, or life, and a fine for the kidnapping of a U.S. judge or a federal law enforcement officer. If the kidnapping results in the death of the kidnappee, the offender could be sentenced to death.

Penalties for Influencing, Impeding, or Retaliating Against Judges and Other Officials by Threatening or Injuring a Family Member.³³ H.R. 1751 would make it a crime to assault, kidnap, or murder, or threaten to do so, or attempt or conspire to kidnap or murder, a member of the immediate family of a U.S. judge, a federal law enforcement officer, or federally funded public safety officer with the intent to impede, intimidate, or interfere with the performance of such an

³⁰ Section nine of H.R. 1751 and section 714 of H.R. 4472.

³¹ Section 20 of H.R. 1751 and section 706 of H.R. 4472.

³² Section 21 of H.R. 1751 and section 707 of H.R. 4472.

³³ Section two of H.R. 1751 and section four of S. 1605.

official's duties or with the intent to retaliate against such an official on account of the performance of his or her duties. It would also be a crime under this section to threaten to assault, kidnap, or murder a U.S. judge, a federal law enforcement officer, or federally funded public safety officer with the intent to retaliate against the federally funded public safety officer on account of the performance of his or her duties.

H.R. 1751 would specify punishments for crimes where the victim is an immediate family member of a U.S. judge, a federal law enforcement officer, or a federally funded public safety officer. The bill would amend current law so that someone convicted of simple assault against the immediate family member of a U.S. judge, a federal law enforcement officer, or a federally funded public safety officer would be sentenced to not more than one year in prison, a fine, or both. Individuals convicted of an assault that resulted in bodily injury would be sentenced to *not less than* 1 year, but not more than 10 years in prison and a fine. Individuals convicted of an assault that resulted in substantial bodily injury would be sentenced to *not less than* 3 years, but not more than 12 years in prison and a fine. Individuals convicted of an assault that resulted in serious bodily injury would be sentenced to *not less than* 10 years, but not more than 30 years in prison and a fine. An individual convicted of kidnapping, attempted kidnapping, or conspiracy to kidnap an immediate family member of such an official, would be fined and imprisoned for any term of years not less than 30, or for life. An individual who was convicted of murder, attempted murder, or conspiracy to commit murder, would be fined and imprisoned for any term of years *not less than* 30, or for life, or if death results and the offender is prosecuted as a principal, the individual may be sentenced to death. An individual convicted of a threat would be fined and sentenced to *not less than* one year, but not more than ten years, in prison. The bill would also require anyone convicted of using a dangerous weapon during and in relation to the offense be sentenced to an additional five years in prison.

Like H.R. 1751, S. 1605 would create new penalties for crimes where the victim is an immediate family member of a United States judge, or a federal law enforcement officer. Unlike H.R. 1751, S. 1605 would not include a federally funded public safety officer's immediate family. Under S. 1605, anyone who commits a simple assault would be fined and imprisoned for not more than one year. Anyone who commits an assault that results in bodily injury would be fined and imprisoned for *not less than* 5 years, but not more than 20 years. If a dangerous weapon was used or possessed during and in relation to the offense, the individual would be fined and imprisoned for *not less than* 15 years, but not more than 40 years. If the assault resulted in serious bodily injury, the individual would be fined and imprisoned for *not less than* 15 years, but not more than 40 years. In any other case, the individual would be fined and imprisoned for *not less than* two years, but not more than 10 years. The punishment for a kidnapping, attempted kidnapping, or conspiracy to commit kidnapping would be imprisonment for *not less than* 30 years, or for life. The punishment for murder, attempted murder, or conspiracy to commit murder would be imprisonment for *not less than* 30 years, or for life, or death. Anyone who threatens to assault, kidnap, or murder such family members would be imprisoned for *not less than* five years, but not more than 20 years. S. 1605 also includes language that would make sentences for the above crimes additional to any other

punishments the individual might receive for other criminal conduct during the same criminal episode.

Clarification of Venue for Retaliation Against a Witness.³⁴ H.R. 1751, H.R. 4472, and S. 1968 would permit a prosecution for retaliating against a witness, victim, or informant to be brought in the district where the official proceeding was intended to be affected, or in which the offense occurred.

New Federal Grant Programs

Witness Protection Grant Program.³⁵ H.R. 1751, H.R. 4472, and S. 1968 would create a new witness protection grant program and expand an existing grant program so funds could be used for witness protection. Both grant programs would provide funds to be used by grantees to create and expand witness protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

The new grant program created by H.R. 1751, H.R. 4472, and S. 1968 would focus grant funds on witness protection programs in high-crime areas (though funds could be awarded to any witness protection grant program). All three bills include language that would allow the Attorney General to give preferential consideration to applications from jurisdictions that (1) have the greatest need for witness and victim protection programs, (2) have a serious violent crime problem in the jurisdiction, and (3) have had, or are likely to have, instances of threats, intimidation, and retaliation against victims of, and witnesses to, crimes. H.R. 1751 and H.R. 4447 also include language that would allow the Attorney General to give preferential consideration to applications from jurisdictions that share an international border and face a demonstrable threat from cross-border crime and violence. The grant program that would be expanded under the bills would provide funding for witness protection programs throughout the United States, regardless of the programs location, or the threat that witnesses face.

H.R. 1751, H.R. 4472, and S. 1968 would authorize \$20 million for both grant programs for each Fiscal Year (FY) for FYs 2006 through 2010.

Grants for Young Witness Assistance.³⁶ Both H.R. 1751 and H.R. 4472 would create a new grant program to provide funding for *young* witness assistance programs. State and local prosecutors and law enforcement agencies that have developed, or are in the process of developing, witness assistance programs that specifically target the needs of juvenile and young adult witnesses and their families would be eligible to apply for these grants. Grant funds under this program could be used for (1) assessing the needs of juvenile and young adult witnesses, (2) developing appropriate program goals and objectives, and (3) developing and administering a

³⁴ Section 10 of H.R. 1751, section 715 of H.R. 4472, and section eight of S. 1968.

³⁵ Sections 11 and 12 of H.R. 1751, sections 718 and 721 of H.R. 4472, and sections nine and 10 of S. 1968.

³⁶ Section 26 of H.R. 1751 and section 722 of H.R. 4472.

variety of witness assistance programs. Both H.R. 1751 and H.R. 4472 would authorize \$3 million for the program for each FY for FYs 2006 through 2008.

State and Local Court Eligibility To Apply for Department of Justice (DOJ) Grants.³⁷ H.R. 1751 and H.R. 4472 would permit state and local courts to apply directly for Bureau of Justice Statistics (BJS) grants. However, H.R. 4472 would also allow local law enforcement agencies to apply directly for BJS grants. Both bills would amend current law³⁸ by making state and local courts eligible to receive funding under the Bulletproof Vest Grant program. Both bills would also amend current law³⁹ by allowing state and local courts to apply directly for child abuse prevention grants.

H.R. 1751 would permit *state and local courts* to receive funding under both the Edward Byrne Memorial *Formula* Grant program and the Edward Byrne Memorial *Discretionary* Grant program.⁴⁰ S. 1968 would amend current law⁴¹ so that *state courts* would be eligible to receive funding under the Edward Byrne Memorial *Discretionary* Grant program. H.R. 1751 would also permit state and local courts to apply for discretionary grants available through the Office of Justice Programs where units of local government are eligible to apply.

H.R. 4472 would permit the Attorney General to require, as appropriate, states, units of local government, or Indian tribes applying for grants to demonstrate that they considered the needs of the judicial branch, consulted with the judicial officer of the highest court of the state, unit, or tribe, and with the chief law enforcement officer of the law enforcement agency responsible for the security needs of the judicial branch. H.R. 1751 contains a similar provision.⁴²

S. 1968 would permit the Bureau of Justice Assistance (BJA) to make Correctional Options grants⁴³ to state courts to improve the security for state and

³⁷ Sections 18 and 27 of H.R. 1751, section 723 of H.R. 4472, and section 11 of S. 1968.

³⁸ Section 2501 of Title I of P.L. 90-351.

³⁹ Section 105 of the P.L. 93-247.

⁴⁰ Section 1111 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) merged the Byrne Formula Grant program and the Local Law Enforcement Block Grant program into the Edward Byrne Memorial Justice Assistance Grant program. This section also repealed the authorization for the Byrne Discretionary Grant program. For more information, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

⁴¹ 42 U.S.C. §3760.

⁴² Under H.R. 1751, the judicial branch of a state, unit of local government, or Indian tribe would be considered a “local unit of government” for the purposes of awarding discretionary grants.

⁴³ Under this grant program, the Director of the BJA, in consultation with the Director of the National Institute of Corrections, can make four grants in each fiscal year, in various geographical areas throughout the United States, to public agencies for correctional options (including the cost of construction) that provide alternatives to traditional modes of

local court systems. Priority would be given to state court applicants that have the greatest demonstrated need to provide court security in order to administer justice. S. 1968 would amend current law⁴⁴ so that 10% of the funds appropriated for Correctional Options grants are awarded to state courts for the purpose of providing court security.

Funding for State Courts To Assess and Enhance Court Security and Emergency Preparedness.⁴⁵ Both H.R. 1751 and H.R. 4472 would create a new grant program to award grants to the highest court in a state for the purpose of (1) conducting assessments focused on the essential elements⁴⁶ for effective courtroom safety and security planning and (2) implementing changes deemed necessary as a result of the assessment. Both H.R. 1751 and H.R. 4472 would authorize \$20 million for the program for each FY for FYs 2006 through 2010.

Grants to States for Threat Assessment Databases.⁴⁷ Both H.R. 1751 and H.R. 4472 would create a new grant program that would award grants to the highest court in the state for the purposes of establishing and maintaining a threat assessment database. Both H.R. 1751 and H.R. 4472 would define a threat assessment database as a database through which a state can (1) analyze trends and patterns in domestic terrorism and crime, (2) project the probabilities that specific acts of domestic terrorism or crime will occur, and (3) develop measures and procedures that can effectively reduce the probabilities that those acts will occur. Both H.R. 1751 and H.R. 4472 would authorize the appropriations necessary to carry out the program for each FY for FYs 2006 through 2009.

Measures to Protect Judicial Personnel

Judicial Branch Security Requirements.⁴⁸ Both H.R. 1751 and H.R. 4472 would require the USMS to consult with the Administrative Office of the U.S. Courts (AOUSC) on a continuing basis regarding the security requirements of the U.S. courts, and to inform the AOUSC about what the USMS is doing to address those needs. S. 1968 would require the Director of the USMS to consult and

⁴³ (...continued)

incarceration and offender release programs. The Director of BJA can also make grants to public agencies to establish, operate, and support boot camp prisons.

⁴⁴ 42 U.S.C. §3762b.

⁴⁵ Section 25 of H.R. 1751 and section 719 of H.R. 4472.

⁴⁶ Section 23 of H.R. 1751 and section 719 of H.R. 4472 state that “essential elements” include, but are not limited to (1) operational security and standard operating procedures; (2) facility security planning and self-audit surveys of court facilities; (3) emergency preparedness and response and continuity of operations; (4) disaster recovery and the essential elements of a plan; (5) threat assessment; (6) incident reporting; (7) security equipment; (8) developing resources and building partnerships; and (9) new courthouse design.

⁴⁷ Section 25 of H.R. 1751 and section 720 of H.R. 4472.

⁴⁸ Section 13 of H.R. 1751, section 701 of H.R. 4472, and section two of S. 1968.

coordinate with the Judicial Conference of the United States on a continuing basis regarding the security requirements for the judicial branch.

Additional Amounts for the USMS To Protect the Judiciary. Both H.R. 1751 and H.R. 4472 would authorize an additional \$20 million for each of FYs 2006 to 2010 for the USMS to provide protection for the judiciary.⁴⁹ The additional funds are required to be used for

- hiring entry-level deputy marshals for providing judicial security;
- hiring senior-level deputy marshals for investigating threats to the judiciary and providing protective details to members of the judiciary and Assistant U.S. Attorneys; and
- for the Office of Protective Intelligence, to hire senior-level deputy marshals, and program analysts, and to provide secure computer systems.

Protection Against Malicious Recording of Fictitious Liens Against a Federal Employee.⁵⁰ H.R. 1751, H.R. 4472, S. 1968, and S. 1605 would make it illegal to file, in any public record, or in any private record that is generally available to the public, any false lien or encumbrance against the real or personal property of a U.S. employee. However, there are some slight differences in the language of the new section that would be created by the four bills. H.R. 4472 would make it illegal for someone to file a fictitious lien against a U.S. employee (as designated in 18 U.S.C. §1114) with the intent to *harass or intimidate*, and if the lien is filed against the federal employee on account of the performance of the official duties of the employee. H.R. 1751 would make it illegal to file a fictitious lien against a U.S. employee (as designated in 18 U.S.C. §1114) with the intent to *harass*. H.R. 1751 would make it illegal to attempt to, or conspire to, file a fictitious lien against a U.S. employee. S. 1968 would make it illegal to file, or attempt to file, a false lien against a *federal judge* or a *federal law enforcement officer*.⁵¹ S. 1968 would include language which states that the individual filing the lien knows, or has reason to know, that the lien is false or contains any materially false, fictitious, or fraudulent statement or representation. Under all four bills, individuals convicted of

⁴⁹ On May 11 2005, Congress passed an emergency supplemental appropriations bill (P.L. 109-13), which appropriated \$11.9 million for the USMS for increased judicial security outside the courthouse, including home security systems for federal judges, but the funding was only to remain available until Sept. 30, 2006.

⁵⁰ Section 14 of H.R. 1751, section 703 of H.R. 4472, section five of S. 1968, and section 12 of S. 1605.

⁵¹ Section five of S. 1968 defines a “federal judge” as a justice or judge of the U.S. as defined in 28 U.S.C. §451, a judge of the U.S. Court of Federal Claims, a U.S. bankruptcy judge, a U.S. magistrate judge, and a judge of the U.S. Court of Appeals for the Armed Forces, U.S. Court of Appeals for Veterans Claims, U.S. Tax Court, District Court of Guam, District Court of the Northern Mariana Islands, or District Court of the Virgin Islands. The section also states that “federal law enforcement officer” has the meaning given to it in 18 U.S.C. §115 and includes an attorney who is an officer or an employee of the United States in the executive branch.

filing a fictitious lien against a federal employee could be fined, sentenced to no more than 10 years in prison, or both.

Protection of Individuals Performing Certain Federal and Other Functions.⁵² H.R. 1751, H.R. 4472, S. 1968, H.R. 1710, and S. 1605 would make it illegal to make restricted personal information⁵³ about covered officials publicly available. However, there are some differences in the language of all five bills regarding the definition of covered officials as well as the intent and the purpose for making personal information public. Language in H.R. 1751 and H.R. 4472 defines “covered officials” as any federal government employee (as defined in 18 U.S.C. §1114), a public safety officer (as defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate. The definition of “covered officials” in S. 1968 is similar to the definition in H.R. 1751 and H.R. 4472, except it does not include “public safety officer” and it would extend the definition to include a federal judge or federal law enforcement officer (as defined in 18 U.S.C. §1521). The definition of “covered officials” in H.R. 1710 is similar to the definition in H.R. 1751 and H.R. 4472, but it would extend the term “public safety officer” to include a public safety officer for a public agency (including a court system) that (1) receives federal financial assistance; or (2) is an entity of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any territory or possession of the United States, an Indian tribe, or a unit of local government of that entity. H.R. 1710 would not include a witness in any proceeding before any U.S. magistrate judge or other committing magistrate in the definition of “covered officials.” The definition of “covered officials” in S. 1605 is the same as the one found in H.R. 1751 and H.R. 4472, except it does not include “public safety officer.”

H.R. 1751 would require an individual to be found guilty of an offense under the proposed section if the individual knowingly, *and with intent to harm, intimidate, or retaliate against a covered official*, made restricted information about the covered official publicly available *through the Internet*. H.R. 1710 would require an individual to be found guilty of an offense under the proposed section if the individual made restricted information about the covered official publicly available through the Internet. H.R. 4472 would require an individual to be found guilty of an offense under the proposed section if the individual knowingly made restricted information about the covered official, *or a member of the immediate family of the covered official*, publicly available, with the intent *that such restricted personal information would be used to intimidate or facilitate the commission of a crime of violence against the covered official, or a member of the immediate family of the covered official*. S. 1968 would require an individual to be found guilty of an offense

⁵² Section 17 of H.R. 1751, section 704 of H.R. 4472, section six of S. 1968, H.R. 1710, and section 13 of S. 1605.

⁵³ Language in both bills defines “restricted personal information” as Social Security numbers, home addresses, home phone numbers, mobile phone numbers, personal email, or the home fax number.

under the proposed section if the individual knowingly made restricted information about the covered official, or a member of the immediate family of the covered official, publicly available, with the intent that *such restricted information be used to kill, kidnap, or inflict bodily harm upon, or to threaten to kill, kidnap, or inflict bodily harm upon* the covered official or a member of the immediate family of the covered official. S. 1605 would require an individual to be found guilty of an offense under the proposed section if the individual knowingly made restricted personal information about a covered official publicly available, with the intent that it be used to threaten or intimidate a covered official, or to *kidnap, injure, or threaten* a covered official.

Language in H.R. 1751 and H.R. 1710 would state that it is a defense to prosecution that the defendant is an Internet service provider and did not knowingly participate in the offense. Language in H.R. 1710 and S. 1605 would state that it is a defense to prosecution that the covered official gave permission to make the restricted information publicly available. All bills would provide for a sentence of not more than five years in prison, a fine, or both for an individual found guilty of a crime under the proposed section.

Report on the Security of Federal Prosecutors.⁵⁴ Both H.R. 1751 and H.R. 4472 would require the Attorney General to submit a report about the security of Assistant U.S. Attorneys and other federal attorneys arising from the prosecution of terrorists, violent criminal gangs, drug traffickers, gun traffickers, white supremacists, and those who commit fraud and other white-collar offenses to Congress no later than 90 days after enactment of the Act.

Authority of Federal Judges and Prosecutors To Carry Firearms.⁵⁵ Both H.R. 1751 and H.R. 4472 would permit any justice of the United States or judge of the United States (as defined in 28 U.S.C. §451), any judge of a court created under article I of the Constitution, any bankruptcy judge, any magistrate judge, any U.S. attorney, and any other officer or employee of DOJ whose duties include representing the United States in court, to carry a firearm, subject to the regulations issued by the Attorney General.

Prohibition of Possession of Dangerous Weapons in Federal Court Facilities.⁵⁶ H.R. 1751, H.R. 4472 and S.1968 would make it illegal to possess or bring a “dangerous weapon” into a federal court facility, or to attempt to do so.

Allowing for the Redaction of Reports from the Judiciary.⁵⁷ H.R. 1751 would make permanent Section 105(b)(3), which allows information on financial disclosure reports, as required by current law, filed by justices, judges and judicial officers to be redacted if the Judicial Conference, in consultation with the

⁵⁴ Section 19 of H.R. 1751 and section 705 of H.R. 4472.

⁵⁵ Section 28 of H.R. 1751 and section 708 of H.R. 4472.

⁵⁶ Section 15 of H.R. 1751, section 716 of H.R. 4472, and section seven of S. 1968.

⁵⁷ Section 16 of H.R. 1751, section four of S. 1968, H.R. 4311, S. 1558 and Section three of S. 1968.

USMS, believes that revelation of the information could put the individual in danger. S. 1968 and S. 1558 would extend this provision until December 31, 2009, rather than making it permanent. H.R. 4311 would extend this provision until December 31, 2007. S. 1558, H.R. 4311, and S. 1968 would also allow information about the individual to be redacted if releasing the information would put the family members of justices, judges and judicial officers in danger.

Media Coverage of Court Proceedings.⁵⁸ H.R. 1751 would give the presiding judge of U.S. appellate and district courts the discretion to allow the photographing, electronic recording, broadcasting, or televising of court proceedings over which the judge presides. The bill would also allow U.S. district court judges to permit obscuring or disguising a witness' or juror's face and voice at the request of the witness or juror if the proceedings are being broadcasted. The presiding judge in the case would have to let a witness or a juror know that he or she has the right to request that the court obscure his or her image or disguise his or her voice. The bill would authorize the Judicial Conference of the United States to promulgate advisory guidelines to which a presiding judge may refer in making decisions with respect to the management and administration of photographing, recording, broadcasting, or televising court proceedings.

⁵⁸ Section 22 of H.R. 1751.