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

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Summary

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This is an abridged version of CRS Report RL33884, *Court Security Improvement Act of 2007: A Legal Analysis of Public Law 110-177 (H.R. 660 and S. 378)*, by Charles Doyle, without the footnotes and citations to authority found in the longer report.

I. Existing Criminal Law : Federal Judges, Officers and Employees. It is a federal crime: (1) to assault, kidnap or kill a federal judge during or on account of the performance of his or her duties; or (2) to 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; or (3) to assault, kidnap, or murder a former federal judge or member of his or her family on account of the performance of judge's duties; or (4) to threaten, attempt, or conspire to do so. 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. The penalties are calibrated according to the

seriousness of the obstructing offense. Section 207 of P.L. 110-177 increases the maximum penalties for voluntary manslaughter in such cases from not more than 10 years to not more than 15 years and for involuntary manslaughter from not more than 6 years to not more than 8 years. Several other federal statutes adopt the penalty structure by cross-reference, so that the amendment extends not only to the killing of federal judges, officers and employees, and those assisting them but also to manslaughter committed under several other federal jurisdictional circumstances as well.

Federal Witnesses. Witnesses and potential witnesses for federal judicial, Congressional and administrative proceedings enjoy somewhat comparable protection under the federal obstruction of justice statutes which outlaw murder, assaults and threats intended to prevent or influence a witness' testimony or to retaliate for past testimony. The penalties for murder, manslaughter and attempted murder of federal witnesses are the same as when those crimes are committed against federal officials, but those for assault and conspiracy are a bit more severe. Sections 205 and 206 of P.L. 110-177 increase the maximum penalty for witness tampering or retaliation involving the use of physical force from 20 years to 30 years; those involving 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 occurred or in place where the proceeding occurred. The Constitution may confine Section 204's reach. The Supreme Court has indicated that the prosecution of offenses other than where one of its "conduct elements" occurs, poses serious constitutional problems.

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. For example, one federal statute, 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 of manslaughter. The same statute punishes with imprisonment for not more than 5 years possession or attempted possession of a firearm or dangerous weapon within a federal facility with the intent to use it there, simple possession of a firearm or dangerous weapon within a federal facility with imprisonment for not more than 1 year, and simple possession or attempted possession of a firearm within a federal courthouse with imprisonment for not more than 2 years. Section 203 of P.L. 110-177 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. The statute defines "dangerous weapon" very broadly. It has been understood to cover shoes, belts, rings, chairs, desks, teeth, screwdrivers, 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 a crime regardless of how innocently they are possessed, practical problems may arise. On the other hand, 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.

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. These obstructions have been prosecuted under the federal statutes that prohibit obstruction of the due administration of justice or that prohibit conspiracy to retaliate against federal officials by inflicting economic damage. These statutes are not without limitation, however. 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.

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. 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. And it is a federal crime to threaten federal grand or petit jurors in order to impede or influence their service. 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. Liability for aiding or abetting, however, can only be incurred upon the commission of the underlying offense. 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 of federal officials, employees, witnesses, and jurors (grand and petite) either (1) with 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. Offenders are subject to a term of imprisonment for not more than 5 years. 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. First Amendment considerations may restrict the proposal's full sweep.

II. Implementation of Judicial Security: Responsibilities of the Marshals Service. The United States Marshals Service is located in the Department of Justice. 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. Marshals serve four year terms at the pleasure of the President. 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. The Marshals are also responsible for the protection of witnesses, the asset forfeiture program, and the arrest of fugitives from federal law.

Additional Authorizations. Section 103 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."

Security for Tax Court Activities. Section 102 of P.L. 110-177 bolsters the authority to serve the Tax Court, the one court that appears to fit the "any other court as provided by law" description. Section 7456 of the Internal Revenue Code 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 the Court, its judges, personnel, witnesses, and other participants in its proceedings.

Coordination with the Judicial Conference. The Judicial Conference of the United States oversees the rules and conditions under which the federal courts operate. Section 101 of P.L. 110-177 amends the organic statutes for the Marshals Service and the Judicial Conference to ensure regular consultation between the two concerning judicial security, the assessment of threats against members of the judiciary, and protection of judicial personnel.

Safety of Federal Prosecutors. Like federal judges, federal prosecutors have been the subject of both threats and plots to kill them. 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. 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. Section 401 of P.L. 110-177 directs the Attorney General to report to the House and Senate Judiciary Committees within 90 days on the security of federal prosecutors including firearm possession matters.

III. Grants to the States: Witness Protection. Part H of the Violent Crime Control and Law Enforcement Act of 1994 authorizes community-based grants for state, territorial, and tribal prosecutors. Appropriations were last authorized for FY2000. 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 2011.

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. Section 2501 of Title I authorizes a matching grant program to purchase armored vests for state, territorial and tribal law enforcement officers. Section 302 of P.L. 110-177 amends Sections 515 and 516 to permit 10% 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 greatest need. To accommodate the new allotment, the percentage of appropriations available for corrections alternatives would be reduced from 80% to 70% of the funds appropriated. 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. Section 302 further allows the Attorney General to require 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.

IV. Miscellaneous Provisions: Sentencing Commission Procurement Authority. The United States Sentencing Commission was established in 1984 as an independent entity located within the judicial branch. Its purpose is to promulgate sentencing guidelines for use by federal courts in criminal cases. 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. The Commission may enter into contracts in fulfillment of its responsibilities. As a general rule, appropriated funds are available for obligation under contract or otherwise only during the fiscal year for which they were appropriated. 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. They may also enter into multi-year contracts. And with sufficient security, they may make advance payments on contract obligations to be fulfilled at a later date. In the judicial branch, the Administrative Office of the United States Courts enjoys similar authority. Section 501 of P.L. 110-177 temporarily grants the Sentencing Commission comparable authority.

Life Insurance Costs. Section 502 of P.L. 110-177 eases the burdens of life insurance costs for 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. 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 appoint any person to a statutory position. Federal statutes describe the appointment authority for several positions in the judicial branch. Bankruptcy judges are appointed by the circuit Court of Appeals, who also appoint their clerks and librarians; circuit judges appoint their own law clerks and secretaries; and circuit chief justices appoint senior staff attorneys. Magistrate judges are appointed by the district court judges, who also appoint their clerks and court reporters; individual judges appoint their own bailiffs, law clerks and secretaries. Beyond the explicit exceptions and the general rule notwithstanding, there are several powers that only a judge in "regular active service" and not a senior judge may exercise. Thus, 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. 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. Senior judges may serve as well as members of the Judicial Conference of the United States, the rule propounding body for the federal courts, and as members of 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. Section 503 of P.L. 110-177 amends 28 U.S.C. 296 to provide that certain senior judges when designated and assigned to the court to which they were appointed, 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. The amendment appears to override the limitations on both en banc and appointment participation.

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 of P.L. 110-177 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. The amendment should probably be understood to do no more than to add senior United States district court judges those who may retire under Section 371(b) to the core of judges who may participate in the decision to appoint magistrate judges for their districts.

Judgeships in the Ninth Circuit. Section 509 of P.L. 110-177 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.

Studies and Reports. Section 506 of P.L. 110-177 directs the Attorney General to study and report on the impact of state and local open access laws on federal judicial security. Section 510 calls for a study and report by the National Institute of Justice on the collateral consequences of conviction under federal and state law.