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The Proposed Witness Protection and Interstate Relocation Act of 1997: H.R. 2181

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Summary

H.R. 2181 addresses the problem of gang-related witness intimidation by making it a federal offense to travel in interstate or foreign commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation, or threat.

The bill would establish new federal offenses (punishable by fines and imprisonment) relating to attempts to influence the testimony of witnesses in criminal proceedings. The bill would authorize the appropriation of $500,000 for the Attorney General to provide witness protection training to state and local governments. The bill would also authorize the Attorney General to make grants from current appropriations to state and local governments for witness protection programs.

Introduced by Representative McCollum on July 17, 1997, H.R. 2181 passed the House under the suspension of the Rules on February 25, 1998, and has been placed on the Senate calendar.

Existing Law

In a growing number of criminal cases throughout the United States, police and prosecutors have become more disturbed by their inability to investigate and prosecute cases successfully because key witnesses refuse to provide critical evidence or are unwilling to testify due to fear that the defendant or his family and friends will retaliate.[1] The problem is particularly acute in the case of gang-and drug-related crimes.[2] Refusal by witnesses to cooperate with investigations and prosecutions is considered a major

[1] H.R. Rep. No. 258, 105th Cong., 1st Sess. 2.

[2] *Id.*

concern because it undermines the administration of justice system while at the same time eroding public confidence in the government's ability to protect its citizens.[3]

Under existing practices, there have been four traditional methods utilized by law enforcement to address the problem of witness intimidation. These methods include: requesting high bail for known intimidators; aggressively prosecuting reported intimidators; closely managing key witnesses; and expanding victim/witness program (assistance) services. However, these traditional approaches to addressing witness intimidation appear to have had limited effect. Gangs have become more interstate in their scope of operation and their ability and willingness to trace witnesses to other states has expanded, thereby creating the need for a greater federal role in responding to gang-related witness intimidation. This is also compounded by the fact that the nature and sophistication of witness protection programs varies widely among the states. Some jurisdictions have programs, but have chosen not to fund them. Other localities lack funds and personnel and in general have no witness relocation capability.[4]

According to the House Report, "[t]here is currently no federal law directly addressing the interstate relocation of witnesses."[5] The purpose of the hearings held on June 16, 1997[6] "was to examine the growing problem of gang-related intimidation and retaliation against witnesses, and the need for Federal legislation to address [the] problem."[7]

H.R. 2181: Section-by-section analysis.. Section 1. Short Title. This section provides that the Act may be cited as the "Witness Protection and Interstate Relocation Act of 1997."

Section 101 would amend section 1952 of title 18 of the United States Code, by adding a new section (b). This subsection would make it a federal offense to travel in interstate or foreign commerce with the intent of delaying or influencing the testimony of a witness in a state criminal proceeding by bribery, force, intimidation, or threat directed against any person, and then engaging or attempting to engage in such conduct.

This section would also prohibit interstate traveling with the intent by bribery, force, intimidation, or threat to cause any person to destroy, or alter, or conceal a record, document, or other object, with the intent to impair the object's integrity or availability for use in a state criminal proceeding, and then engaging or attempting to engage in such conduct.

The sentence for the offense under subsection (b) may be a fine or imprisonment of not more than 10 years, or both. However, if the offense results in serious bodily injury, the term of imprisonment may be not more than 20 years and if death results, the term of

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[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id. at 5.* The Judiciary Committee's Subcommittee on Crime held two hearings on the issue of witness protection. The other was held on November 7, 1996.

[7] *Id.*

imprisonment may be for any term of years or for life, or the sentence may be death. These are the same penalties that 18 U.S.C. §1503 imposes for obstruction of federal criminal proceedings.

Section 102 provides for refined conspiracy penalties for obstruction of justice offenses involving victims, witnesses, and informants. This would .be accomplished by amending section 1512 of title 18, United States Code, by a new subsection (j). This new subsection provides that whoever conspires to commit any offense defined in section 1512 or 1513 shall be subject to the same penalties as those penalties established for the offense the commission of which was the object of the conspiracy. Section 1512 establishes the offense of tampering with a witness, victim, or an informant. Section 1513 establishes the offense of retaliating against a witness, victim, or informant. Consequently, under these sections, whoever conspires to tamper with or retaliate against a witness, victim, or informant would be subject to the same penalties as someone who himself or herself directly tampers with or retaliates against a witness, victim, or informant, pursuant to sections 1512 and 1513 of title 18, United States. Depending upon the seriousness of the underlying offense, a conspiracy offense would carry a penalty of imprisonment for not more than 1, 10, or any term of years or life imprisonment.

Under current law, a conspiracy to commit a felony violation of sections 1512 or 1513 is punishable by imprisonment for not more than 5 years (misdemeanors carry the same penalty as the underlying offense), 18 U.S.C. §371.

Section 201 recognizes and provides for the need for safe and effective witness protection programs. This is achieved by directing the Attorney General to survey all State and selected local witness protection and relocation programs to determine the extent and nature of such programs and the training needs of those programs. The Attorney General is to report the results of this survey within 270 days after the enactment of this bill.

This section also directs the Attorney General to use the results of the survey to make training available to State and local law enforcement agencies to assist them in developing and managing witness protection and relocation programs.

Section 202 is designed to promote coordination among jurisdictions when a witness is in an interstate relocation program.

Subsection (a) directs the Attorney General to engage in activities, including the establishment of a model Memorandum of Understanding (MOU), as set out in subsection (b), which promotes coordination among State and local witness interstate relocation programs.

Subsection (b) directs the Attorney General to establish a model MOU for States and localities that engage in interstate witness relocation.

Subsection (c) authorizes the Attorney General to make grants under the Byrne discretionary grant program, pursuant to section 511 of subpart 2 of part E of the Omnibus Crime Control and Safe Streets Act of 1968, to those jurisdictions that have interstate witness relocation programs that have substantially followed the MOU.

Subsection (d) directs the Attorney General to establish guidelines relating to the implementation of subsection (c) and to determine, consistent with these guidelines, which jurisdictions are eligible for grants under subsection (c).

Section 203 would ensure that funding pursuant to the *Byrne Grant* program will be used by recipients to develop and maintain witness security and relocation programs, including training of personnel in the effective management of such programs.

Section 204 defines the term State to include the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States.