

# CRS Report for Congress

## Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress

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Nathan James  
Analyst in Crime Policy  
Domestic Social Policy Division



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# Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress

## Summary

The 2005 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, 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.

Several bills that seek to address judicial security have been introduced in the 110<sup>th</sup> Congress. H.R. 660 and S. 378 would address many of the same issues that legislation introduced in the 109<sup>th</sup> Congress sought to address. On January 7, 2008, H.R. 660 was enacted into law (P.L. 110-177). P.L. 110-177 (1) improves judicial security measures and increases funding for judicial security; (2) amends the criminal code to provide greater protection for judges, their family members, and witnesses; and (3) provides grant funding for states to provide protection for judges and witnesses. Four other bills, H.R. 933, H.R. 3547, S. 79, and S. 456, would create a short-term witness protection section in the USMS. All four bills would also create a grant program to provide funding for short-term witness protection programs. Another bill, H.R. 2325, would, along with amending the criminal code to provide greater protection for federal judges, federal law enforcement officers, and their family members, allow federal judges and justices, U.S. Attorneys, and any other officer or employee of the Department of Justice whose duties include representing the United States in court to carry firearms.

This report discusses the state of judicial security in the United States and the legislation introduced in the 110<sup>th</sup> Congress that would enhance judicial security. This report will be updated as needed.

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# Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress

## Current Legislative Developments

On January 7, 2008, H.R. 660, the Court Security Improvement Act of 2007, was enacted into law (P.L. 110-177). P.L. 110-177 (1) improves judicial security measures and increases funding for judicial security; (2) amends the criminal code to provide greater protection for judges, their family members, and witnesses; and (3) provides grant funding for states to provide protection for judges and witnesses.<sup>1</sup>

## Background<sup>2</sup>

Two recent events heightened congressional concern about the 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. The 109<sup>th</sup> Congress responded by introducing a number of bills. Some pieces of legislation addressed issues of courthouse security and physical security for judges and court personnel, whereas other legislation went beyond courthouse security and physical security for judges and court personnel and addressed issues concerning the integrity of the judicial system in the United States. Legislation has been introduced in the 110<sup>th</sup> Congress that addresses many of the same issues that were addressed by legislation in the 109<sup>th</sup> Congress.

This report discusses the state of judicial security in the United States, as well as legislation introduced in the 110<sup>th</sup> Congress that would enhance judicial security. This report also provides a brief overview of legislation introduced in 109<sup>th</sup> Congress that would have addressed judicial security. This report, however, does not discuss the agencies involved in providing security for the federal judiciary.

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<sup>1</sup> S. 378, also titled the Court Security Improvement Act of 2007, is similar to H.R. 660.

<sup>2</sup> 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.

## Current Issues in Judicial Security

### Court 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.<sup>3</sup> 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 estimated 700 threats against members of the judiciary each year.<sup>4</sup> 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. A recent report from the Bureau of Justice Assistance (BJA) discussed data collected by the National Sheriff's Association (NSA).<sup>5</sup> The NSA data indicated that over the past 35 years:

- 8 state or local judges have been killed;
- 13 state or local judges have been assaulted;
- 3 local prosecutors have been killed;
- 4 local prosecutors have been assaulted;
- 5, if not more, local law enforcement officers have been killed at local courthouses;
- 27 local law enforcement officers have been assaulted at local courthouses;
- 42 court participants have been killed at local courthouses; and
- 53 court participants have been assaulted at local courthouses.<sup>6</sup>

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<sup>3</sup> 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.

<sup>4</sup> Bethany Broida, "Judges, Officials Hold D.C. Summit on Courthouse Security," *Legal Times*, April 5, 2005, at [<http://www.law.com/jsp/article.jsp?id=114160713238>].

<sup>5</sup> Frederick S. Calhoun and Stephen W. Weston, *Protecting Judicial Officials: Implementing and Effective Threat Management Process*, June 2006, Washington DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, p. 2, available online at [<http://www.ncjrs.gov/pdffiles1/bja/213930.pdf>], accessed January 9, 2007.

<sup>6</sup> Ibid.

Data about the types of threats Pennsylvania judges face were collected as a part of a “survey of judicial safety.”<sup>7</sup> 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.<sup>8</sup>

There have been concerns about the ability of the U.S. Marshals Service (USMS) to provide security for the federal judiciary.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> The OIG also found that USMS lacked adequate risk-based standards for determining the appropriate means for protecting judges during high-risk trials and for protecting threatened judges while they are not in court.<sup>12</sup>

In congressional testimony, Judge Jane R. Roth<sup>13</sup> stated that funding and staffing issues at the USMS have decreased its ability to provide adequate protection for the

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<sup>7</sup> 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.

<sup>8</sup> The Task Force on Court Security, *Report to the Chief Judge and the Chief Administrative Judge*, October 2005, p. 9, at [[http://www.nycourts.gov/reports/security/SecurityTaskForce\\_Report.pdf](http://www.nycourts.gov/reports/security/SecurityTaskForce_Report.pdf)].

<sup>9</sup> 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.

<sup>10</sup> 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>].

<sup>11</sup> *Ibid.*, pp. ii-iii.

<sup>12</sup> *Ibid.*, p. iv.

<sup>13</sup> Judge Roth is the Chair of the Committee on Security and Facilities, Judicial Conference of the United States.

federal judiciary.<sup>14</sup> 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.”<sup>15</sup> 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.”<sup>16</sup> Specifically, the USMS is having problems with providing an adequate number of Deputy U.S. Marshals (DUSMs) for judicial security duties.<sup>17</sup>

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.<sup>18</sup> 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.

## Witness Intimidation

Witness intimidation reduces the likelihood that citizens will engage with the criminal justice system, which could deprive police and prosecutors of critical evidence.<sup>19</sup> Witness intimidation can reduce public confidence in the criminal justice system and it can create the perception that the criminal justice system cannot protect citizens. Witness intimidation can be the result of actual or perceived threats from an offender or his associates, but it can also be the result of more general community norms that discourage residents from cooperating with the police or prosecutors. Witnesses can be intimidated in many ways, including

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<sup>14</sup> 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, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., April 26, 2005, H.Hrg. 109-44.

<sup>15</sup> *Ibid.*, p. 8.

<sup>16</sup> 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.

<sup>17</sup> *Ibid.*

<sup>18</sup> Pamela Casey, *A National Strategic Plan for Judicial Branch Security*, p. 11, February 7, 2006, at [[http://www.ncsconline.org/WC/Publications/Res\\_CtSecu\\_JudclStrategicPlan.pdf](http://www.ncsconline.org/WC/Publications/Res_CtSecu_JudclStrategicPlan.pdf)].

<sup>19</sup> Kelly Dedel, *Witness Intimidation*, Department of Justice, Community Oriented Policing Services, July 2006, p. 6, at [<http://www.cops.usdoj.gov/mime/open.pdf?Item=1762>], accessed January 10, 2007.

- implicit threats, looks, or gestures,
- explicit threats of violence,
- actual physical violence,
- property damage, or
- other threats, such as challenges to child custody or immigration status.<sup>20</sup>

Threats are more common than actual physical violence, but they can be just as effective in deterring cooperation with police and prosecutors. Some witnesses might experience one incident of intimidation, but others might experience an escalating series of threats and actions that become more violent over time. Other witnesses might not experience intimidation directly, but they believe that they will receive retaliation if they cooperate with law enforcement.

According to a Community Oriented Policing Services (COPS) report, “small-scale studies and surveys of police and prosecutors suggest that witness intimidation is pervasive and increasing.”<sup>21</sup> The report cites a study of witnesses appearing in criminal courts in Bronx County, New York, which shows that 36% of witnesses had been directly threatened, and of those that were not directly threatened, 57% feared reprisals. The report also states that prosecutors believe that witness intimidation plays a role in 75%-100% of violent crime committed in gang-controlled neighborhoods, but it might be less of a factor in neighborhoods not dominated by gangs and drugs. The report also notes that it is hard to quantify the prevalence of witness intimidation for several reasons. Some reasons include

- crime is under-reported for reasons not related to witness intimidation;
- in cases where a witness is successfully intimidated, neither the crime nor the intimidation is reported;
- victimization surveys and interviews with witnesses whose cases go to trial only capture information from a subset of witnesses; and
- there has been no empirical research on the scope or specific characteristics of community-wide intimidation.

A report from the National Center for Victims of Crime presented data from surveys and interviews of youths in Massachusetts.<sup>22</sup> The youth surveys and interviews focused on different topics related to gangs and violence, including experiences with gang-related crime and witness intimidation. Thirty-eight percent of survey respondents reported hearing about threats against schoolmates and 28% reported hearing about threats made against neighbors because they reported gang crime. Of the respondents who had reported a gang crime, 12% reported receiving a threat because they reported the crime. The most common way threats were made

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<sup>20</sup> Ibid., p. 3.

<sup>21</sup> Ibid., p. 5.

<sup>22</sup> Julie L. Whitman and Robert C. Davis, *Snitches Get Stitches: Youth, Gangs, and Witness Intimidation in Massachusetts*, National Center for Victims of Crime, 2007, available at [<http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=42548>], accessed April 12, 2007.

against schoolmates, neighbors, or the respondents themselves were face-to-face contacts, followed by receiving telephone calls. Respondents reported that half of the threats against schoolmates and neighbors they heard about involved beatings, though the researchers warn that this figure might be inflated because respondents were more likely to hear about threats that involved violence. Threats were also delivered through notes, online, and indirectly by stalking the person who reported the crime, vandalizing their property, or socially isolating them.

## Legislation in the 110<sup>th</sup> Congress

In an effort to strengthen court security, the 109<sup>th</sup> Congress responded with a number of measures that would have affected both the federal and state judicial systems. Similar legislation has been introduced in the 110<sup>th</sup> Congress. H.R. 660 and S. 378 would address many of the same issues that legislation in the 109<sup>th</sup> Congress sought to address. On January 7, 2008, H.R. 660 was enacted into law (P.L. 110-177). P.L. 110-177 (1) improves judicial security measures and increases funding for judicial security; (2) amends the criminal code to provide greater protection for judges, their family members, and witnesses; and (3) provides grant funding for states to provide protection for judges and witnesses.

Four other bills, H.R. 933, H.R. 3547, S. 79, and S. 456, would create a short-term witness protection section in the USMS. All four bills would also create a grant program to provide funding for short-term witness protection programs. Another bill, H.R. 2325, would, along with amending the criminal code to provide greater protection for federal judges, federal law enforcement officers, and their family members, allow federal judges and justices, U.S. Attorneys, and any other officer or employee of the Department of Justice whose duties include representing the United States in court to carry firearms. Other bills introduced in the 110<sup>th</sup> Congress that seek to address issues of court security include S. 456, the Gang Abatement and Prevention Act of 2007, and H.R. 2325, the Court and Law Enforcement Officers Protection Act of 2007.

S. 378 was introduced on January 24, 2007. S. 378 was referred to the Senate Judiciary Committee. On March 29, 2007, S. 378 was reported by the Senate Judiciary Committee. The Senate passed S. 378 on April 19, 2007. S. 456, the Gang Abatement and Prevention Act of 2007, was introduced on January 31, 2007, and it was referred to the Senate Judiciary Committee. The Senate passed S. 456 on September 21, 2007. H.R. 933 was introduced on February 8, 2007, and it was referred to the House Judiciary Committee. S. 79 was introduced on January 4, 2007, and it was referred to the Senate Judiciary Committee. H.R. 2325, the Court and Law Enforcement Officers Protection Act of 2007, was introduced on May 15, 2007, and it was referred to the House Judiciary Committee. H.R. 3547, the Gang Prevention, Intervention, and Suppression Act, was introduced on September 17, 2007, and it was referred to both the House Judiciary and Education and Labor Committees.

## The Court Security Improvement Act of 2007 (P.L. 110-177)

This section discusses provisions of P.L. 110-117 that address judicial security and witness protection. The following section discusses provisions of the six above-referenced bills that address judicial security but are not included in P.L. 110-177.

**Increased Sentences.** Several provisions in P.L. 110-177 increase sentences for specified offenses, as discussed below.

**General Modifications of Federal Murder Crime and Related Crimes.**<sup>23</sup> P.L. 110-177 increases the maximum penalty from 10 years to 15 years for persons convicted of voluntary manslaughter.<sup>24</sup> For involuntary manslaughter, the maximum penalty increases from six years to eight years.<sup>25</sup>

**Modification of Tampering with a Witness, Victim, or an Informant Offense.**<sup>26</sup> P.L. 110-177 sets forth new penalties relating to the suppression of testimony, communication to relevant officials, or production of official documents in an official proceeding.

- If an offense results in a killing, the offense would be punishable by the sentences prescribed in 18 U.S.C. § 1111 and § 1112.
- If an offense involves attempted murder, or the use or attempted use of physical force, P.L. 110-177 requires imprisonment for not more than 20 years if the offense involves the threatened use of physical force against any person.
- If the offense involves intimidating, threatening, corruptly persuading another person, or attempting to do so, or engaging in misleading conduct toward another person with the intent of (1) preventing the person from testifying, (2) destroying physical evidence, (3) avoiding a summons, or (4) providing information about a possible federal offense, or a violation of parole, probation, or release pending a judicial proceeding, P.L. 110-177 requires a fine, imprisonment for not more than 20 years, or both.
- If the offense involves intentionally harassing, or attempting to harass, a person and thereby prevents the person from (1) attending or testifying in an official proceeding, (2) notifying federal officials about a violation or possible violation of any pre- or post-sentencing release, (3) arresting or seeking the arrest of someone in connection with a crime, or (4) causing a criminal prosecution, or a parole or probation revocation hearing to be held, or assisting in such

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<sup>23</sup> Section 207 of P.L. 110-177.

<sup>24</sup> 18 U.S.C. § 1112(b).

<sup>25</sup> Ibid.

<sup>26</sup> Section 205 of P.L. 110-177.

prosecution or hearing, P.L. 110-177 requires a fine, imprisonment for not more than three years, or both.

**Modification of Retaliation Offense.**<sup>27</sup> P.L. 110-177 increases the sentence to a maximum term of imprisonment of 30 years for anyone convicted of attempting to kill another 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.

P.L. 110-177 also increases 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 20 years.<sup>28</sup>

**Clarification of Venue for Retaliation Against a Witness.**<sup>29</sup> P.L. 110-177 permits 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.

**Assault Penalties.**<sup>30</sup> P.L. 110-177 sets forth new penalties for individuals that assault United States officials, United States judges, federal law enforcement officers, or officials whose killing would be a crime under 18 U.S.C. §1114, or their immediate family members, with the intent to impede, intimidate, or interfere with officials, judges, or law enforcement officers while they are engaged in the performance of official duties, or with intent to retaliate against officials, judges, or law enforcement officers on account of their performance of official duties. Under P.L. 110-177, anyone who commits a simple assault punishable under 18 U.S.C. §115 can be fined and sentenced to not more than a year imprisonment. If an assault punishable under 18 U.S.C. §115 involved physical contact with the victim or the intent to commit another felony, the offender can be fined and sentenced to not more than 10 years imprisonment. Under P.L. 110-177, if an assault resulted in bodily injury, the offender can be fined and sentenced to not more than 20 years imprisonment. If an assault resulted in serious bodily injury (as defined in 18 U.S.C. §1365, and including any conduct that, if the conduct occurred in the special

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<sup>27</sup> Section 206 of P.L. 110-177.

<sup>28</sup> 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.

<sup>29</sup> Section 204 of P.L. 110-177.

<sup>30</sup> Section 208 of P.L. 110-177.

maritime and territorial jurisdiction of the United States, would violate 18 U.S.C. §2241 or §2242) or a dangerous weapon was used in relation to the offense, the offender can be fined and sentenced to not more than 30 years imprisonment.

**New Federal Grant Programs.** Several provisions in P.L. 110-177 create new grant programs, as discussed below.

***Grants to States to Protect Witnesses and Victims of Crime.***<sup>31</sup> P.L. 110-177 expands an existing grant program so funds could be used for witness and victim protection. The grant program can provide funds to states, units of local government, and Indian tribes to create and expand witness and victim protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes. P.L. 110-177 authorizes \$20 million annually for the program for FY2008 through FY2012.

***Eligibility of State Courts for Certain Federal Grants.***<sup>32</sup> P.L. 110-177 permits the Bureau of Justice Assistance (BJA) to make Correctional Options grants to state courts to improve the security for state and 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. P.L. 110-177 amends current law<sup>33</sup> so that 10% of the funds appropriated for Correctional Options grants are awarded to state courts for the purpose of providing court security. The Act would also make state and local courts eligible to receive funding under the Bulletproof Vest Grant program to help pay the cost of providing bulletproof vests to court officers.

P.L. 110-177 permits the Attorney General to require, as appropriate, states, units of local government, and Indian tribes applying for grants to demonstrate that they considered the needs of the judicial branch and 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.

***Grants to States for Threat Assessment Databases.***<sup>34</sup> P.L. 110-177 creates a new grant program that awards grants to the highest court in the state for the purposes of establishing and maintaining a threat assessment database. P.L. 110-177 defines 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. The law also requires the Attorney General to develop a core set of data elements to be used by each state's database so that the information can

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<sup>31</sup> Section 301 of P.L. 110-177.

<sup>32</sup> Sections 302 of P.L. 110-177.

<sup>33</sup> 42 U.S.C. § 3762b.

<sup>34</sup> Section 303 of P.L. 110-177.

be effectively shared with other states and the Department of Justice. P.L. 110-177 authorizes \$15 million for each FY for FY2006 through FY2009.

**Measures to Protect Judicial Personnel.** Several provisions in P.L. 110-177 include measures to protect judicial personnel, as discussed below.

**Judicial Branch Security Requirements.**<sup>35</sup> P.L. 110-177 requires the Director of the USMS and the Judicial Conference of the United States to consult with one another on a continuing basis regarding the security requirement of the judicial branch, to ensure that the views of the Judicial Conference regarding security needs for the judiciary are taken into account when determining staffing levels, setting priorities for programs regarding judicial security, and allocating judicial security resources. Under P.L. 110-177, the USMS retains the final authority regarding the security requirements for the judicial branch.

**Additional Amounts for the USMS to Protect the Judiciary.**<sup>36</sup> P.L. 110-177 authorizes an additional \$20 million for each FY2007 to FY2011 for the USMS to provide protection for the judiciary.<sup>37</sup> The additional funds are to be used to

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

**Protection Against Malicious Recording of Fictitious Liens Against a Federal Employee.**<sup>38</sup> P.L. 110-177 makes it illegal to file, attempt to file, or conspire 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 (as designated in 18 U.S.C. § 1114), on account of the performance of official duties by the employee, knowing or having reason to know that the lien or encumbrance is false, or contains any false, fictitious or fraudulent information. Under P.L. 110-177, individuals convicted of filing a fictitious lien against a federal employee can be fined, sentenced to no more than 10 years in prison, or both.

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<sup>35</sup> Section 101 of P.L. 110-177.

<sup>36</sup> Section 103 of P.L. 110-177.

<sup>37</sup> 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 September 30, 2006.

<sup>38</sup> Section 201 of P.L. 110-177.

**Protection of Individuals Performing Certain Federal and Other Functions.**<sup>39</sup> P.L. 110-177 makes it illegal to make restricted personal information<sup>40</sup> about covered persons,<sup>41</sup> or a member of the immediate family of the covered person, publicly available. P.L. 110-177 requires an individual to be found guilty of an offense under the section if the individual made the information publicly available (1) with the intent to threaten, intimidate, or incite a crime of violence against the covered individual or an immediate family member, or (2) with the intent and knowledge that the information would be used to threaten, intimidate, or facilitate the commission of a crime of violence against the covered individual or an immediate family member. The law provides 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 section.

**Report on the Security of Federal Prosecutors.**<sup>42</sup> P.L. 110-177 requires 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.

**Prohibition of Possession of Dangerous Weapons in Federal Court Facilities.**<sup>43</sup> P.L. 110-177 makes it illegal to possess or bring a “dangerous weapon” into a federal court facility, or to attempt to do so.

**Reauthorization of Fugitive Apprehension Task Forces.**<sup>44</sup> P.L. 110-177 reauthorizes the fugitive apprehension task forces that are directed and coordinated by the U.S. Marshals Service. The task forces locate and apprehend fugitives and are composed of members of federal, state, and local law enforcement. P.L. 110-177 authorizes \$10 million each FY for FY2008 through FY2012 for the fugitive apprehension task forces.

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<sup>39</sup> Section 202 of P.L. 110-177.

<sup>40</sup> P.L. 110-177 defines “restricted personal information” as Social Security numbers, home addresses, home phone numbers, mobile phone numbers, personal email, or the home fax number.

<sup>41</sup> P.L. 110-177 defines “covered persons” as (1) an individual designated in 18 U.S.C. § 1114, (2) a petit juror, witness, or other officer in or of, any court in the U.S. , or an officer who may be serving at any examination or other proceeding before any U.S. magistrate judge or other committing magistrate; (3) an informant or witness in a federal criminal investigation or prosecution; or (4) a state or local officer or employee whose restricted personal information is made publicly available because of the participation in, or assistance provided to, a federal criminal investigation by that officer or employee.

<sup>42</sup> Section 401 of P.L. 110-177.

<sup>43</sup> Section 203 of P.L. 110-177.

<sup>44</sup> Section 507 of P.L. 110-177.

**Financial Disclosure Reports.**<sup>45</sup> P.L. 110-177 extends the provision in current law<sup>46</sup> that allows for the redaction of information in financial disclosure reports submitted by judges, justices, or judicial officers until December 31, 2011.

## Other Legislation in the 110<sup>th</sup> Congress

This section discusses provisions in S. 378, H.R. 933, S. 79, H.R. 2325, and H.R. 3547 that would address judicial security but are not included in P.L. 110-177.

**Increased Sentences.** Several provisions in the aforementioned bills would increase sentences for specified offenses, as discussed below.

**Special Penalties for Murder, Kidnapping, and Related Crimes Against Federal Judges and Federal Law Enforcement Officers.**<sup>47</sup> H.R. 2325 would create specific penalties for people who commit certain crimes against federal judges or law enforcement officers (as those terms are defined in 18 U.S.C. § 115). The bill would provide for a fine and imprisonment for any term of years not less than 30 years, or life, or, if death results, the death penalty, for anyone who is convicted of murdering, attempting to murder, or conspiring to murder a federal judge or law enforcement officer. The bill would require a fine and a term of imprisonment of not less than 15 years, but not more than 40 years, for anyone convicted of committing voluntary manslaughter against a federal judge or law enforcement officer. The bill would also require a fine and a term of imprisonment of not less than 3 years, but not more than 15 years, for anyone convicted of committing involuntary manslaughter against a federal judge or law enforcement officer. The bill would provide for a fine and a term of imprisonment for any term of years not less than 30 years, or life, or, if death results, the death penalty, for anyone convicted of kidnapping a federal judge or law enforcement officer.

**Penalties for Certain Assaults.**<sup>48</sup> H.R. 2325 would increase the penalty from a fine, 8 years imprisonment, or both to a fine, 15 years imprisonment, or both for anyone who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with a U.S. government employee (as defined in 18 U.S.C. § 1114) while the employee is engaged in or on account of the employee's performance of official duties, or for anyone who forcibly assaults or intimidates any former U.S. government employee on account of the employee's performance of official duties during the employee's time of service, if the person's actions constitute assault other than simple assault. The bill would increase the penalty from a fine, 15 years imprisonment, or both to a fine, 20 years imprisonment, or both for anyone who uses a deadly or dangerous weapon to commit one of the above described assaults, or who inflicts bodily injury while committing one of the above described assaults. The bill would also set forth specific penalties for assaults against federal judges and law enforcement officers. The bill would require a fine and imprisonment for not less

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<sup>45</sup> Section 104 of P.L. 110-177.

<sup>46</sup> Section 105(b) of the Ethics in Government Act of 1978 (5 U.S.C. App).

<sup>47</sup> Section two of H.R. 2325.

<sup>48</sup> Section four of H.R. 2325.

than 2 years, but not more than 10 years, for an assault against a federal judge or law enforcement officer that resulted in bodily injury (as defined in 18 U.S.C. § 1365). The bill would require a fine and imprisonment for not less than 5 years, but not more than 15 years, for an assault against a federal judge or law enforcement officer that resulted in substantial bodily injury (as defined in 18 U.S.C. § 113). The bill would also provide for a fine and imprisonment of not less than 10 years, but not more than 25 years, if the offender used or possessed a dangerous weapon during an assault against a federal judge or law enforcement officer, or if the assault resulted in serious bodily injury (as defined in 18 U.S.C. § 2119(2)). The bill would also require that any penalty imposed for assaulting a federal judge or law enforcement officer would be in addition to any other punishment imposed for other criminal conduct during the same criminal episode.

***Special Penalties for Retaliating Against a Federal Judge or Federal Law Enforcement Officer by Murdering or Assaulting a Family Member.***<sup>49</sup> H.R. 2325 sets forth specific penalties for anyone that (1) 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 federal judge or law enforcement officer; (2) threatens to assault, kidnap, or murder a federal judge or law enforcement officer; or (3) 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 federal judge or law enforcement officer or the immediate family member of any person who formerly served as a federal judge or law enforcement officer, with the intent to impede, intimidate, or interfere with a federal judge or law enforcement officer while engaged in the performance of official duties, or with the intent to retaliate against a federal judge or law enforcement officer on account of the performance of official duties. In the case of murder, attempted murder, conspiracy to murder, or manslaughter, the bill would provide for the same penalty as the penalty specified in 18 U.S.C. § 1114(b). In the case of kidnapping, attempted kidnapping, or conspiracy to kidnap, the bill would provide for the same penalty as the penalty specified in 18 U.S.C. § 1201(a). In the case of assault, the bill would provide for the same penalty as the penalty specified in 18 U.S.C. § 111. In the case of a threat, the bill would provide for a penalty of a fine and imprisonment of not less than 2 years, but not more than 10 years. The bill would also require that any penalty imposed would be in addition to any other punishment imposed for other criminal conduct during the same criminal episode.

**New Federal Grant Programs.** Several provision in the aforementioned bills would create new grant programs, as discussed below.

***Short-term State Witness Protection Section.***<sup>50</sup> H.R. 933, H.R. 3547, S. 79, and S. 456 would amend Chapter 37 of Title 28 by adding a new section, which would establish a Short-term State Witness Protection Section within the USMS. Under all of the bills, the proposed Short-term State Witness Protection Section would provide protection for witnesses in state and local trials involving homicide or other major violent crimes pursuant to cooperative agreements with state

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<sup>49</sup> Section five of H.R. 2325.

<sup>50</sup> Section two of H.R. 933 and S. 79, section 306 of H.R. 3547, and section 308 of S. 456.

and local prosecutors' offices and the U.S. Attorney for the District of Columbia. H.R. 933 would also allow the Short-term State Witness Protection Section to provide protection for witnesses in state and local trials involving serious drug offenses.

Under H.R. 933 and S. 79, the Short-term State Witness Protection Section would be required to give priority in awarding grants (see next section) and providing services to prosecutors' offices in states with an average of not less than 100 murders per year during the five-year period immediately preceding an application for protection. Under H.R. 3547 and S. 456, the Short-term State Witness Protection Section would be required to give priority in awarding grants and providing services to prosecutors' offices in states with an average of not less than 100 murders per year and that include a city, town, or township with an average violent crime rate that is above the national average during the five-year period immediately preceding an application for protection.

***Short-term State Witness Protection Grants.***<sup>51</sup> H.R. 933, H.R. 3547, S. 79, and S. 456 would also authorize a grant program to provide funding for short-term witness protection. H.R. 933 would allow the Attorney General to make grant awards for short-term witness protection to state and local district attorneys offices and the U.S. attorney for the District of Columbia. H.R. 933 would allow the Attorney General to make grant awards to state and local district attorneys only in states with an average of not less than 100 murders per year during the most recent five-year period. H.R. 933 would allow the Attorney General to make awards to state and local district attorneys offices for the purpose of providing short-term witness protection to witnesses in trials involving homicide or a serious violent felony or serious drug offense.<sup>52</sup> S. 79 would allow the Attorney General to make grant awards to state and local criminal prosecutors' offices and the U.S. Attorney for the District of Columbia that are located in a state with an average of not less than 100 murders per year during the most recent five-year period. S. 79 would allow the Attorney General to make grant awards to prosecutors' offices for the purpose of providing short-term protection to witnesses in trials involving homicide or serious violent felonies.<sup>53</sup> Under H.R. 933 and S. 79, grants awarded to prosecutors' offices can be used to provide protection to witnesses or the grant award can be credited, pursuant to a cooperative agreement, to the Short-term State Witness Protection Section for providing protection to witnesses.

The grant program that would be authorized by H.R. 3547 and S. 456 is similar to the one that would be authorized by H.R. 933 and S. 79, with a few exceptions. Under H.R. 3547 and S. 456, the Attorney General could award grants to state and local criminal prosecutors' offices, or to the U.S. Attorney for the District of Columbia for identifying witnesses in need of protection or for providing short-term

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<sup>51</sup> Section three of H.R. 933 and S. 79, section 306 of H.R. 3547, and section 308 of S. 456.

<sup>52</sup> H.R. 933 would define "serious violent felony" or "serious drug offense" as having the meaning given to it in 18 U.S.C. § 3559(c)(2).

<sup>53</sup> S. 79 would define "serious violent felony" as having the meaning given to it in 18 U.S.C. § 3559(c)(2).

protection to witnesses in trials involving homicide or serious violent felonies.<sup>54</sup> H.R. 3547 and S. 456 would not limit the Attorney General to making grants under the proposed program to state and local district attorneys in states with an average of not less than 100 murders per year during the most recent five-year period. Under H.R. 3547 and S. 456, grants awarded to prosecutors' offices could be used to identify witnesses in need of protection, provide protection to witnesses (including tattoo removal services), or the grant award could be credited, pursuant to a cooperative agreement, to the Short-term State Witness Protection Section for providing protection to witnesses.

H.R. 933, H.R. 3547, S. 79, and S. 456 would authorize \$90 million annually for FY2008 through FY2010 to make grants for short-term witness protection.

**Witness Protection Services.**<sup>55</sup> Both H.R. 3547 and S. 456 would make it so that in cases where a state requests the Attorney General to provide temporary protection to a witness (pursuant to 18 U.S.C. §3521(e)), the state would not have to reimburse the Attorney General for the costs of providing protection if the witness is a part of an investigation or prosecution that in any way relates to crimes of violence committed by a criminal street gang, as defined under the laws of the state seeking assistance.

**Expansion of the Federal Witness Relocation and Protection Program.**<sup>56</sup> Both H.R. 3547 and S. 456 would expand the circumstances under which the Attorney General can provide for the relocation and protection of witnesses or potential witnesses in federal or state cases pursuant to 18 U.S.C. § 3521 to include witnesses or potential witnesses in cases against criminal street gangs, serious drug offenses, or homicide.

**Measures to Protect Judicial Personnel.** Several provisions in the aforementioned bills would include measures to protect judicial personnel, as discussed below.

**Protection of Family Members.**<sup>57</sup> S. 378 would allow information about the individual to be redacted from financial disclosure reports, as required under current law,<sup>58</sup> if releasing the information would put the family members of justices, judges and judicial officers in danger. Under current law financial disclosure reports submitted by judges, justices, or judicial officers can have information redacted if the Judicial Conference, in consultation with the USMS, believes that revelation of the information could put the individual in danger.

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<sup>54</sup> H.R. 3547 and S. 456 would define "serious violent felony" as having the meaning given to it in 18 U.S.C. § 3559(c)(2).

<sup>55</sup> Section 308 of H.R. 3547 and section 309 of S. 456.

<sup>56</sup> Section 309 of H.R. 3547 and section 310 of S. 456.

<sup>57</sup> Section 102 of S. 378.

<sup>58</sup> Title I of the Ethics in Government Act of 1978 (5 U.S.C. App).

***Authority of Federal Judges and Prosecutors to Carry Firearms.***<sup>59</sup>

H.R. 2325 would allow federal judges and justices, U.S. Attorneys, and any other officer or employee of the Department of Justice whose duties include representing the United States in court to carry firearms. The bill would require the Attorney General to issue regulations on how this provision is to be carried out. The bill would also allow current and retired Amtrack Police Department officers and current and retired law enforcement or police officers of the executive branch of the federal government to carry concealed firearms, so long as they meet certain requirements specified in law.<sup>60</sup> The bill would also modify the requirements that retired law enforcement officers must meet in order to carry a concealed firearm.

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<sup>59</sup> Section three of H.R. 2325.

<sup>60</sup> See 18 U.S.C. § 926B and 18 U.S.C. § 926C.