

AMENDING TITLE 18, UNITED STATES CODE, WITH RE-
SPECT TO WITNESS RETALIATION, WITNESS TAMPERING
AND JURY TAMPERING

MAY 1, 1996.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. McCOLLUM, from the Committee on the Judiciary,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3120]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3120) to amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That title 18, United States Code, is amended—

(1) in section 1513—

(A) by redesignating subsection (c) as subsection (d); and

(B) by adding at the end the following:

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

(2) in section 1512, by adding at the end the following:

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

(3) in section 1503(a), by adding at the end the following: “If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.”.

PURPOSE AND SUMMARY

H.R. 3120, introduced by Rep. Jon Fox of Pennsylvania, makes three changes to title 18 in order to increase the maximum penalties which may be imposed for jury and witness retaliation and tampering.

First, this bill amends the title 18 provisions relating to retaliation against witnesses, victims, or informants (18 U.S.C. § 1513). Current law provides for a maximum penalty of 10 years imprisonment for persons convicted of this crime. This bill will amend that law to provide that if the retaliation occurred because of attendance at a criminal trial, the maximum punishment would be the higher of that in the present statute, or the maximum term for any offense charged in the criminal case to which the retaliation related.

Second, this bill would amend the title 18 provision relating to tampering with a witness, victim, or informant (18 U.S.C. § 1512). Current law provides for a maximum penalty of ten years if the act involves intimidation or the threat of physical force, or one year if the act constitutes “harassment.” If the act involved murder, the maximum punishment is death. If the act involved attempted murder, the maximum punishment is 20 years imprisonment. This bill would provide that if the offense occurred in connection with a criminal trial, the maximum punishment would be the higher of that provided by the present statute or the maximum term for any offense charged in the criminal case in question.

Finally, this bill would amend the title 18 provision relating to jury tampering and influencing or injuring court officials (18 U.S.C. § 1503). Under current law the maximum punishment is 10 years imprisonment. However, if the act involved killing a person, the maximum punishment is death. If the act involved attempted killing, the maximum punishment is 20 years imprisonment. This bill provides that if the offense occurred in connection with a criminal trial and involved the use of physical force or threat of physical force, the maximum punishment shall be the higher of that pro-

vided by the present statute or the maximum term for any offense charged in the criminal case in question.

BACKGROUND AND NEED FOR THE LEGISLATION

In recent years, criminal sentences have increased in response to the scourge of drugs and violent crime, yet the penalties for retaliating against or tampering with witnesses, jurors, and court officials in criminal cases have remained unchanged. Some federal and state prosecutors blame witness intimidation and juror tampering for the falling conviction rates in some parts of the country.

Indeed, under current law, a defendant facing a federal criminal sentence of ten years or more may believe he or she is better off trying to influence the outcome of the trial by intimidating a witness, or tampering with a juror or court officer, because the maximum punishment for such crime is generally 10 years in prison.

In order to deter criminals and their associates from attempting to illegally influence the outcome of a criminal trial, H.R. 3120 increases the maximum penalty for witness intimidation, and tampering with a juror or court official, so that it equals the maximum penalty for the crime being tried in the case. As a result, criminals will no longer be tempted to illegally influence their trial in the hope that, even if caught, their punishment for the act of intimidation or tampering will be less than what they would have faced had they been convicted on the original charges.

The integrity of the criminal justice system is vital to public safety. Defendants must believe that any attempt to affect the rule of law by undermining the judicial process will be punished severely.

HEARINGS

The Committee's Subcommittee on Crime held one day of hearings on H.R. 3140 on March 7, 1996. Testimony was received from two witnesses, Rep. Jon Fox of Pennsylvania, the sponsor of H.R. 2137, and Kevin Di Gregory, Deputy Assistant Attorney General, Department of Justice, with no additional material submitted.

COMMITTEE CONSIDERATION

On March 21, 1996, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 3120, by a voice vote, a quorum being present. On April 25, 1996, the Committee met in open session and ordered reported the bill H.R. 3120, with an amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Watt offered an amendment to limit the application of the bill only to defendants charged in the underlying case to which the witness or jury tampering crime relates. The Watt amendment was defeated by a 5–21 rollcall vote.

AYES	NAYES
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Moorhead
Mr. Scott	Mr. McCollum
Mr. Watt	Mr. Coble
Mr. Becerra	Mr. Smith (TX)
	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Reed
	Mr. Nadler

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3120, the following cost estimate.

The Committees estimates that the costs associated with the increased sentences under H.R. 3120 will be negligible, and as such, cannot be estimated further. The frequency of future prosecutions enforcing the statutes amended by the bill cannot be known. To the extent that there is a significant numbers of such prosecutions, there will be increased prison operating costs associated with the incarceration of defendants affected by the bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3120 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

H.R. 3120 consists of one section. There is no short title for this bill. H.R. 3120 makes modifications to the three title 18 offenses relating to jury and witness tampering.

First, this bill amends 18 U.S.C. § 1513, which sets forth the punishment for the crime involving retaliation against witnesses, victims, or informants. Current law provides for a maximum penalty of 10 years imprisonment for persons convicted of this crime. This bill amends that law to provide that if the retaliation occurred because of attendance at a criminal trial, the maximum punishment would be the higher of that in the present statute, or the maximum term for any offense charged in the criminal case to which the retaliation related.

Second, this bill amends 18 U.S.C. § 1512, which sets forth the punishment for the crime involving tampering with a witness, victim, or informant. Current law provides for a maximum penalty of ten years if the act involves intimidation or the threat of physical force, or one year if the act constitutes "harassment." If the act involved murder, the maximum punishment is death. If the act involved is attempted murder, the maximum punishment is 20 years imprisonment. This bill amends that section to provide that if the offense occurred in connection with a criminal trial, the maximum punishment would be the higher of that provided by the present statute or the maximum term for any offense charged in the criminal case in question.

Finally, this bill amends 18 U.S.C. § 1503 which sets forth the punishment for the crime of jury tampering. Under current law the maximum punishment is 10 years imprisonment. However, if the act involved killing a person, the maximum punishment is death. If the act involved is attempted killing, the maximum punishment is 20 years imprisonment. This bill provides that if the offense occurred in connection with a criminal trial, and involved the use of physical force or threat of physical force, the maximum punishment shall be the higher of that provided by the present statute or the maximum term for any offense charged in the criminal case in question.

AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 1143, H.R. 1144, and H.R. 1145, and other bills. The letter addressed the issues presented in H.R. 1143, H.R. 1144, and H.R. 1145, which were later combined and re-introduced as one bill—H.R. 3120, in pertinent part, as follows:

H.R. 1143—RETALIATION AGAINST WITNESSES

This bill would amend 18 U.S.C. § 1513, relating to retaliating against a witness, by providing that if the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case. The Department supports this penalty enhancement, which is clearly and rationally designed to deter the commission of this type of offense. As a technical matter, it would appear that this amendment ought to be designated subsection (d) rather than subsection (c).

H.R. 1144—WITNESS TAMPERING

This bill would amend 18 U.S.C. § 1512, relating to witness tampering, by providing that if the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case. The Department supports this penalty enhancement, which again seems rationally designed to deter such tampering offenses.

H.R. 1145—JURY TAMPERING

This bill would amend 18 U.S.C. § 1503, relating to jury tampering, by providing that if the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case. The Department supports this penalty enhancement, for the reason given in connection with the discussion of H.R. 1144.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 73 OF TITLE 18, UNITED STATES CODE**CHAPTER 73—OBSTRUCTION OF JUSTICE**

* * * * *

§ 1503. Influencing or injuring officer or juror generally

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

* * * * *

§ 1512. Tampering with a witness, victim, or an informant

(a) * * *

* * * * *

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

§ 1513. Retaliating against a witness, victim, or an informant

(a) * * *

* * * * *

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

[(c)] *(d) There is extraterritorial Federal jurisdiction over an offense under this section.*

* * * * *

DISSENTING VIEWS

H.R. 3120, would amend sections 1513, 1512 and 1503 of Title 18 of the U.S. Code such that persons found guilty of witness or jury intimidation, tampering or retaliation could be sentenced to the maximum term of imprisonment which could have been imposed for any offense charged in the underlying case, even if the violator of the section was not charged in the underlying case.

Although we have no quarrel with the notion of imposing severe penalties on those who intimidate, tamper with or retaliate against witnesses or jurors, we believe the penalties established in the current law adequately provide for these situations. For example, current Title 18 USCA Sec. 1502(b)(3) provides for up to 10 years imprisonment and fines for jury tampering, while 18 USCA Sec. 1512(a)(2) provides for the death penalty in cases where witnesses are murdered in order to prevent their appearance at trial. Accordingly, the enhanced penalties proposed by H.R. 3120 are unnecessary.

Moreover, we believe this legislation is overbroad and would lead to unjust results and imposition of penalties disproportionate to the crime. As currently drafted, H.R. 3120 would permit the imposition of severe prison sentences (even the death penalty) for persons who intimidated a witness but who had no involvement in the underlying case or for persons who intimidated a witness for the benefit of a defendant charged with one of the lesser offenses charged in the underlying case.

Finally, because the existing statutes are so broadly drafted, relatively minor behavior can be deemed acts of intimidation—from a glaring look to an angry telephone call. Such a broad definition of “intimidation”, coupled with the extreme sentences proposed in H.R. 3120, would doubtlessly invite overly zealous prosecutors to abuse their discretion.

For these reasons, we opposed H.R. 3120.

MELVIN L. WATT.
BOBBY SCOTT.
JERROLD NADLER.

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