

112TH CONGRESS
2D SESSION

S. 2127

To protect State and local witnesses from tampering and retaliation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2012

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect State and local witnesses from tampering and retaliation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Witness Protec-
5 tion Act of 2012”.

6 **SEC. 2. PROTECTION OF STATE AND LOCAL WITNESSES.**

7 (a) IN GENERAL.—Chapter 73 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 1522. State and local witness tampering and retal-**
2 **iation**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘State official proceeding’ means
5 a proceeding before a judge or court of a State or
6 political subdivision thereof; and

7 “(2) the term ‘physical force’ has the meaning
8 given the term in section 1515.

9 “(b) TAMPERING AND RETALIATION.—It shall be un-
10 lawful, in a circumstance described in subsection (c), for
11 a person to kill, attempt to kill, use physical force or the
12 threat of physical force against, harass, intimidate or at-
13 tempt to intimidate, or offer anything of value to, another
14 individual, with the intent to—

15 “(1) influence, delay, or prevent the testimony
16 or attendance of any person in a State official pro-
17 ceeding;

18 “(2) prevent the production of a record, docu-
19 ment, or other object, in a State official proceeding;

20 “(3) cause or induce any person to—

21 “(A) withhold testimony, or withhold a
22 record, document, or other object from a State
23 official proceeding;

24 “(B) alter, destroy, mutilate, or conceal an
25 object with intent to impair the integrity or

1 availability of the object for use in a State official proceeding;
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3 “(C) evade legal process summoning that
4 person to appear as a witness, or to produce a
5 record, document or other object in a State official proceeding; or
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7 “(D) be absent from a State official proceeding to which that person has been summoned by legal process;
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10 “(4) hinder, delay, or prevent the communication by any person to a law enforcement officer or
11 judge of a State, or political subdivision thereof, of
12 information relating to the violation or possible violation of a law of a State or political subdivision
13 thereof, or a violation of conditions of probation, parole, or release pending judicial proceedings; or
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17 “(5) retaliate against any person for—

18 “(A) the attendance of a witness or party
19 at a State official proceeding, or any testimony
20 given or any record, document, or other object
21 produced by a witness in a State official proceeding; or
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23 “(B) providing to a law enforcement officer
24 any information relating to the violation or possible violation of a law of a State or political
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1 subdivision thereof, or a violation of conditions
2 of probation, supervised release, parole, or re-
3 lease pending judicial proceedings.

4 “(c) CIRCUMSTANCES.—A circumstance described in
5 this subsection is that—

6 “(1) any communication involved in or made in
7 furtherance of the offense is communicated or trans-
8 ported by the mail, or in interstate or foreign com-
9 merce by any means, including by computer, or any
10 means or instrumentality of interstate or foreign
11 commerce is otherwise used in committing or in fur-
12 therance of the commission of the offense;

13 “(2) any person travels or is transported in
14 interstate or foreign commerce in the course of the
15 commission of or in furtherance of the commission
16 of the offense; or

17 “(3) any weapon, including a firearm, shipped
18 or transported across State lines or in interstate or
19 foreign commerce is used in committing or in fur-
20 therance of the commission of the offense.

21 “(d) PENALTIES.—

22 “(1) IN GENERAL.—Any person that violates
23 this section—

1 “(A) in the case of a killing, shall be pun-
2 ished as provided under sections 1111 and
3 1112;

4 “(B) in the case of an attempt to murder,
5 or the use or attempted use of physical force
6 against any person, shall be fined under this
7 title, or imprisoned for not more than 30 years,
8 or both; and

9 “(C) in the case of any other violation of
10 this section, shall be fined under this title, im-
11 prisoned for not more than 20 years, or both.

12 “(2) EXCEPTION.—If the offense under this
13 section occurs in connection with a trial of a crimi-
14 nal case, the maximum term of imprisonment that
15 may be imposed for the offense shall be the higher
16 of—

17 “(A) the penalty described in paragraph
18 (1); or

19 “(B) the maximum term that could have
20 been imposed for any offense charged in the
21 criminal case.

22 “(3) ATTEMPT AND CONSPIRACY.—Any person
23 who attempts or conspires to commit any offense
24 under this section shall be subject to the same pen-
25 alties as those prescribed for the offense, the com-

1 mission of which was the object of the attempt or
2 conspiracy.

3 “(e) AFFIRMATIVE DEFENSE.—It is an affirmative
4 defense to a prosecution under this section, which the de-
5 fendant shall prove by a preponderance of the evidence,
6 that the conduct committed by the defendant—

7 “(1) consisted solely of lawful conduct; and

8 “(2) that the sole intention of the defendant
9 was to encourage, induce, or cause the other person
10 to testify truthfully.

11 “(f) PENDING PROCEEDING; EVIDENTIARY
12 VALUE.—For the purposes of this section—

13 “(1) a State official proceeding need not be
14 pending or about to be instituted at the time of the
15 offense; and

16 “(2) the testimony, or the record, document, or
17 other object obstructed, tampered, or retaliated
18 against by the defendant need not be admissible in
19 evidence or free of a claim of privilege.

20 “(g) INTENT.—In a prosecution for an offense under
21 this section, the state of mind need not be proved with
22 respect to—

23 “(1) a State official proceeding before a judge,
24 court, magistrate judge, or grand jury being before

1 a judge or court of a State or political subdivision
2 thereof;

3 “(2) a judge being a judge of a State or polit-
4 ical subdivision thereof; or

5 “(3) a law enforcement officer being an officer
6 or employee of the State or political subdivision
7 thereof.

8 “(h) VENUE.—A prosecution brought under this sec-
9 tion may be brought—

10 “(1) in the district in which the State official
11 proceeding (whether or not pending or about to be
12 instituted) was intended to be affected; or

13 “(2) in the district which the conduct consti-
14 tuting the alleged offense occurred.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
16 The table of contents for chapter 73 of title 18, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

“1522. State and local witness tampering and retaliation.”.

19 **SEC. 3. SENTENCING GUIDELINES ENHANCEMENT.**

20 Pursuant to its authority under section 994 of title
21 28, United States Code, and in accordance with this sec-
22 tion, the United States Sentencing Commission shall
23 amend the Federal Sentencing Guidelines to increase the
24 guideline range for Obstruction of Justice, §2J1.2, as fol-
25 lows—

1 (1) by 2 levels if the defendant threatened or
2 harmed 1 or more individuals on more than 1 occa-
3 sion;

4 (2) by 2 levels if the defendant accepted or paid
5 a bribe or payoff as part of a scheme to obstruct
6 justice;

7 (3) by 2 levels if the defendant destroyed or
8 caused the destruction of documents on a computer;
9 and

10 (4) by 6 levels if the offense resulted in sub-
11 stantial interference with the administration of jus-
12 tice.

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