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104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
104–787

CARJACKING CORRECTION ACT OF 1996

SEPTEMBER 16, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 3676]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3676) to amend title 18, United States Code, clarify the intent of Congress with respect to the Federal carjacking prohibition, 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:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Carjacking Correction Act of 1996".

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS IN FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting ", including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title" after (as defined in section 1365 of this title".

PURPOSE AND SUMMARY

H.R. 3676, the "Carjacking Corrections Act of 1996," amends § 2119 of title 18, United States Code, to clarify that rape constitutes a serious bodily injury for the purposes of the penalty enhancement provided for in the federal carjacking statute. Currently, a defendant convicted under the federal carjacking statute can be imprisoned for up to fifteen years. However, a penalty enhancement is provided under § 2119(2) when serious bodily injury results. In the case of a carjacking conviction involving serious bodily injury, the maximum penalty rises to twenty-five years. This bill makes clear that rape or other sexual assault constitutes a serious bodily injury for the purposes of the enhancement.

BACKGROUND AND NEED FOR THE LEGISLATION

Congress amended the federal carjacking statute, § 2119 of title 18, United States Code, as part of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–711). Also included in the 1994 Crime Bill was the Violence Against Women Act. Passage of the Violence Against Women Act was motivated in part by the fact that victims of rape are often unable to find justice or protection in the criminal justice system. From the initial report through prosecution, trial and sentencing, crimes against women are often treated differently and less seriously than other crimes.[1]

These were the statistics that Congress was aware of at the time it passed the Violence Against Women Act: over 60% of rape reports do not result in arrests, and a rape case, in comparison to murder, is more than twice as likely to be dismissed and nearly 40% more likely to be dismissed than a robbery case. Less than half of the individuals arrested for rape are convicted of rape. In comparison, 69% of those arrested for murder are convicted of murder, and 61% of those arrested for robbery are convicted of robbery. Finally, over one-half of all convicted rapists serve an average of one year or less in prison.[2] Thus, at the time it was amending the carjacking bill, Congress was acutely aware of the plight of women in the criminal justice system, and was attempting to ensure that crimes against women were treated seriously.

Despite this legislative history, the First Circuit Court of Appeals, in a May 21, 1996 opinion, overturned District Court Judge Juan Perez-Gimenez's decision enhancing the sentence of a convicted carjacker. Judge Perez-Gimenez had found the sentence of a convicted carjacker. Judge Perez-Gimenez had found that the carjacker had caused "serious bodily injury," as defined in § 1365 of title 18, United States Code, by raping his victim.[3] Under § 1365, "serious bodily injury" is defined as "a substantial risk of death," "extreme physical pain," "protracted and obvious disfigurement," or

[1] S. Rep. No. 103–138, 103rd Congress, 1st Sess. 42 (1993).
[2] Id.
[3] *United States* v. *Rivera,* 83 F.3rd 542 (1st Cir. 1996).

"protracted loss or impairment of the function of a bodily member, organ, or mental faculty."

A First Circuit Court of Appeals panel overturned this decision, holding that treating rape as a serious bodily injury would "broaden measurably the limited category of injuries that Congress designated as justifying a substantial increase in punishment for carjacking."[4] The First Circuit found that rape in this case was not a serious bodily injury because there was "no evidence of any cuts or bruises in [the victim's] vaginal area."[5] Under the First Circuit's interpretation of the statute, it is possible—indeed probable—that a carjacker who breaks someone's arm during a carjacking would receive a longer sentence than an offender who rapes a woman at gunpoint while stealing her car.

Disturbed by this decision, First Circuit Judge Sandra Lynch took the unusual step of requesting that the First Circuit reconsider its decision en banc. This request was denied. In her dissent, Judge Lynch stated that she believed that the holding that rape is not a serious bodily injury for the purposes of the sentencing enhancement "is directly contrary to the intent of the statute and Congress would be appalled at this outcome."[6]

Judge Lynch correctly noted that the First Circuit had considered the definition of "serious bodily injury" so narrowly that it produced a result "wholly at odds with larger considerations of congressional sentencing policy and intent."[7] Judge Lynch concluded that she doubted Congress "intended the statute to be applied in such a way that a brutal rape could fail to constitute a 'serious bodily injury,' or that the application of that term to rape could be made to turn on whether the victim testified as to how much the rape physically hurt her."[8] The Committee agrees with Judge Lynch's reading of the intent of Congress in this matter.

Despite the fact that the definition of "serious bodily injury" stems from a statute prohibiting tampering with consumer products, courts should be guided by common sense, and should consider what Congress would assume would fall within the definition. Given that at least one circuit has misconstrued congressional intent, H.R. 3676 is intended to make clear that offenders who commit rape during a carjacking should get the penalty enhancement provided for in the statute.

HEARINGS

No hearings were held on H.R. 3676.

COMMITTEE CONSIDERATION

On July 10, 1996, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 3676 by a voice vote, a quorum being present. On September 11, 1996, the Full Committee met in open session and ordered reported favorably the

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[4] Id. at 548.
[5] Id. at 547.
[6] *United States* v. *Rivera,* 83 F. 3rd 542, reh'g denied, Order of Court, June 18, 1996, (Lynch, J. Dissenting).
[7] Id at 14.
[8] Id.

bill H.R. 3676 without amendment by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(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) or 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(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3676, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 13, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3676, the Carjacking Correction Act of 1996, as ordered reported by the House Committee on the Judiciary on September 11, 1996. CBO estimates that enacting the bill would result in no significant costs to the federal government. H.R. 3676 would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. The bill contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), and would not affect the budgets of state, local, or tribal governments.

Violators of the federal carjacking law face prison sentences of up to 15 years, or up to 25 years if serious bodily injury results from the crime. H.R. 3676 would clarify the definition of serious bodily injury to include sexual abuse. Enacting the bill could result in some offenders receiving longer prison sentences than they would

under current law. Based on information from the U.S. Sentencing Commission, however, we expect that very few federal cases would be affected. Thus, enacting H.R. 3676 would not have any significant impact on federal spending.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee estimates that H.R. 3676 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.—This section states that the short title of the bill is the "Carjacking Correction Act of 1996."

Sec. 2. Clarification of Intent of Congress In Federal Carjacking Prohibition.—This section amends § 2119(2) of title 18, United States Code, to make clear that the definition of "serious bodily injury" in the federal carjacking statute includes conduct that constitutes aggravated sexual abuse or sexual abuse under §§ 2241 and 2242 of title 18, United States Code.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 31, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As the Committee on the Judiciary prepares to mark up H.R. 3676, I write to express the support of the Department of Justice for this bill.

H.R. 3676 would amend the federal carjacking statute (18 U.S.C. § 2119). The statute punishes the taking of a motor vehicle that has moved in interstate or foreign commerce from the person or presence of another by force or by intimidation and with "the intent to cause death or serious bodily harm." The statute carries a basic penalty of up to fifteen years' imprisonment, but the maximum penalty rises to twenty-five years if the offense results in "serious bodily injury (as defined in section 1365 of this title)." H.R. 3676 would ensure that this higher penalty level is available in a case in which the victim is raped or otherwise sexually assaulted, thereby overturning a recent decision of the United States Court of Appeals for the First Circuit. We believe that this is a proper amendment of the statute.

In the future, we would urge the Committee to consider eliminating the intent or scienter requirement of this law as well. This unique element—which does not appear in other, comparably pun-

ished robbery statutes, e.g. 18 U.S.C. §§ 1951, 2113 and 2118—inappropriately makes carjackings difficult or impossible to prosecute in certain circumstances. At this time, we urge approval of H.R. 3676 as a limited measure to ensure that those engaging in carjacking and who in the course of the offense commit a sexual act on the victim do not escape the increased penalties provided by the law.

Please do not hesitate to contact me if I may be of additional assistance concerning this or any other matter.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

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):

SECTION 2119 OF TITLE 18, UNITED STATES CODE

§ 2119. Motor vehicles

Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—

(1) * * *

(2) if serious bodily injury (as defined in section 1365 of this title, *including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title)* results, be fined under this title or imprisoned not more than 25 years, or both, and

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