

WITNESS SECURITY AND PROTECTION GRANT PROGRAM
ACT OF 2009

JUNE 8, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1741]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 1741) to require the Attorney General to make competitive
grants to eligible State, tribal, and local prosecutors to establish
and maintain certain protection and witness assistance programs,
having considered the same, reports favorably thereon with amend-
ments and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendments	1
Purpose and Summary	3
Background and Need for the Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
New Budget Authority and Tax Expenditures	4
Congressional Budget Office Cost Estimate	4
Performance Goals and Objectives	6
Constitutional Authority Statement	6
Advisory on Earmarks	6
Section-by-Section Analysis	6

THE AMENDMENTS

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Witness Security and Protection Grant Program Act of 2009”.

SEC. 2. ESTABLISHMENT OF WITNESS PROTECTION GRANT PROGRAM.

(a) **IN GENERAL.**—The Attorney General shall make competitive grants to eligible State, tribal, and local governments to establish or maintain programs that provide protection or assistance to witnesses in court proceedings involving homicide, or involving a serious violent felony or serious drug offense as defined in section 3559(c)(2) of title 18, United States Code. The Attorney General shall ensure that, to the extent reasonable and practical, such grants are made to achieve an equitable geographical distribution of such programs throughout the United States.

(b) **STATE DEFINED.**—For purposes of this Act, the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

SEC. 3. USE OF GRANTS.

A grant made under section 2 may be used only to pay all or part of the cost of the program for which such grant is made.

SEC. 4. PRIORITY.

In making grants under section 2, the Attorney General shall give priority to applications submitted under section 5 involving programs in States with an average of not less than 100 murders per year during the most recent 5-year period, as calculated using the latest available crime statistics from the Federal Bureau of Investigation.

SEC. 5. APPLICATION.

To be eligible for a grant under section 2, a State, tribal, or local government shall submit to the Office of Justice Programs an application in such form and manner, at such time, and accompanied by such information as the Attorney General specifies.

SEC. 6. TECHNICAL ASSISTANCE.

From amounts made available to carry out this Act, the Attorney General, upon request of a recipient of a grant under section 2, shall provide technical assistance to such recipient to the extent the Attorney General determines such technical assistance is needed to establish or maintain a program described in such section.

SEC. 7. BEST PRACTICES.

(a) **REPORT.**—Each recipient of a grant under section 2 shall submit to the Attorney General a report, in such form and manner and containing such information as specified by the Attorney General, that evaluates each program established or maintained pursuant to such grant, including policies and procedures under the program.

(b) **DEVELOPMENT OF BEST PRACTICES.**—Based on the reports submitted under subsection (a), the Attorney General shall develop best practice models to assist States and other relevant entities in addressing—

- (1) witness safety;
- (2) short-term and permanent witness relocation;
- (3) financial and housing assistance; and
- (4) any other services related to witness protection or assistance that are determined by the Attorney General to be necessary.

(c) **DISSEMINATION TO STATES.**—Not later than 1 year after the development of best practice models under subsection (b), the Attorney General shall disseminate to States and other relevant entities such models.

(d) **SENSE OF CONGRESS.**—It is the sense of Congress that States and other relevant entities should use the best practice models developed and disseminated in accordance with this Act to evaluate, improve, and develop witness protection or witness assistance as appropriate.

(e) **CLARIFICATION.**—Nothing in this Act requires the dissemination of any information if the Attorney General determines such information is law enforcement sensitive and should only be disclosed within the law enforcement community or that such information poses a threat to national security.

SEC. 8. REPORT TO CONGRESS.

Not later than December 31, 2015, the Attorney General shall submit a report to Congress on the programs funded by grants awarded under section 2, including on matters specified under section 7(b).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act \$30,000,000 for each of the fiscal years 2010 through 2014.

Amend the title so as to read:

A bill to require the Attorney General to make competitive grants to eligible State, tribal, and local governments to establish and maintain certain protection and witness assistance programs.

PURPOSE AND SUMMARY

H.R. 1741, the Witness Protection and Security Act of 2009, will authorize the Attorney General to provide grants to local jurisdictions to implement and maintain witness security programs. With enhanced security measures, witnesses will be more likely to cooperate with police and prosecutors in identifying criminals and testifying against them. The resulting increased cooperation between citizens and public safety officials will improve the quality of life in neighborhoods around the Nation.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1741, the Witness Protection and Security Act of 2009, directs the Attorney General to provide grants to State and local prosecutors for establishing and maintaining witness security programs to combat witness intimidation. Witness intimidation can prevent the discovery of critical evidence, reduce public confidence in the criminal justice system, and create the perception that the criminal justice system cannot protect citizens.

According to a 2006 COPS report, “small-scale studies and surveys of police and prosecutors suggest that witness intimidation is pervasive and increasing.”¹ For example, the report reveals that in a study of Bronx County, New York criminal courts, 36% of witnesses had been directly threatened, and 57% of those who were not directly threatened still feared reprisals.² The report also found that prosecutors believe that witness intimidation plays a role in 75% to 100% of violent crime committed in gang-controlled neighborhoods.

It is hard to quantify the prevalence of witness intimidation for several reasons, including:

- crime is under-reported for reasons not related to witness intimidation;
- in some 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.³

A 2007 report from the National Center for Victims of Crime presented data from surveys and interviews of youths in Massachusetts, with a focus on topics related to gangs and violence. The re-

¹“Witness Intimidation” by Kelly Dedel, at p 5, available at <http://www.cops.usdoj.gov/files/RIC/Publications/e07063407.pdf>

²Id.

³Id.

port found that 38% of respondents reported hearing about threats against schoolmates, and 28% reported hearing about threats made against neighbors who reported gang crime.⁴ Of the respondents who had reported a gang crime, 12% reported receiving a threat because they had reported the crime.⁵ The threats were most commonly made through face-to-face contacts, followed by telephone calls.⁶ Threats were also delivered through notes, online, by stalking the person who reported the crime, vandalizing their property, or socially isolating them.⁷

HEARINGS

The Committee held no hearings on H.R. 1741 in the 111th Congress.

COMMITTEE CONSIDERATION

On May 20, 2009, the Committee met in open session and ordered the bill H.R. 1741 favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1741.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill authorizes such sums as may be necessary for each of the fiscal years 2009 through 2014.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 1741, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

⁴Snitches Get Stitches, Youth, Gangs, and Witness Intimidation in Massachusetts, at p 23, available at www.NVC.org

⁵Id.

⁶Id.

⁷Id.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 21, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1741, the Witness Security and Protection Grant Program Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1741—Witness Security and Protection Grant Program Act of 2009.

SUMMARY

H.R. 1741 would authorize the appropriation of \$30 million for each of fiscal years 2010 through 2014 for the Department of Justice to make grants to state, local, and tribal governments for programs to protect witnesses in certain court proceedings. Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$100 million over the 2010–2014 period, with an additional \$50 million spent after 2014. Enacting the bill would not affect direct spending and revenues.

H.R. 1741 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1741 is shown in the following table. CBO assumes that the amounts authorized by the bill will be appropriated by the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2010	2011	2012	2013	2014	2010– 2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	30	30	30	30	30	150
Estimated Outlays	7	15	22	26	30	100

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1741 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Assuming appropriation of authorized amounts, states would receive about \$100 million over the 2010–2014 period to provide protection or assistance to witnesses in court proceedings. Any costs to those governments would be incurred voluntarily as a condition of receiving assistance.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Marin Randall

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1741 is intended to increase the public safety around the Nation by providing grants to local jurisdictions for witness security programs so that citizens will be encouraged to cooperate with law enforcement in identifying and testifying against criminals without threat of recrimination.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1741 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Witness Security and Protection Act of 2009.”

Sec. 2. Establishment of Witness Protection Grant Program. Section 2 establishes a grant program for assisting States and local governments to establish and or maintain their witness security programs. It directs the Attorney General to make competitive grants to State and local prosecutors for establishing or maintaining witness security programs for witnesses in court proceedings involving homicide or other dangerous felonies.

Sec. 3. Use of Grants. Section 3 authorizes the grantee to use the grant to pay for all or part of the witness security program.

Sec. 4. Priority. Section 4 requires the Attorney General to give priority in awarding grants under section 2 to prosecutor’s offices in States with an average of not less than 100 murders per year

for the most recent 5-year period, as calculated using the latest available crime statistics from the Federal Bureau of Investigation

Sec. 5. Application. Section 5 requires a State, tribal, or local government, to be eligible for a grant under section 2, to submit its application in such form and manner, at such time, and accompanied by such information as the Attorney General specifies.

Sec. 6. Technical Assistance. Section 6 directs the United States Marshals Service (USMS) to provide technical assistance as necessary and to help grant recipients who so request carry out their witness security programs. This section requires the grant applicant to submit any request for assistance through the Attorney General, who must request the USMS to provide such assistance, which the USMS must provide pursuant to such request.

Sec. 7. Best Practices. This section requires grant recipients under section 2 to report such information as required by the Attorney General to enable him to evaluate the recipient's program. Based on this information, the Attorney General must develop a best practices model for dissemination to the States to aid in establishing and maintaining a witness security program. Such best practices model must be available to the States within 1 year of the development of the best practices model. This section also clarifies that the Act does not require dissemination of any information in a manner deemed by the Attorney General to have the potential to place the security of a witness at risk or to reveal law-enforcement-sensitive information regarding methods of protecting witnesses.

Sec. 8. Report to Congress. Section 8 directs the Attorney General to submit a report to Congress regarding the programs funded under section 2 and regarding the information required under section 7, by December 31, 2014.

Sec. 9. Authorization of Appropriations. Section 9 authorizes such sums as may be necessary to carry out the program under the bill for Fiscal Years 2009 through 2014.