

VETERANS' CEMETERY PROTECTION ACT OF 1997

JUNE 21, 1997.—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

R E P O R T

[To accompany H.R. 1532]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1532) to amend title 18, United States Code, to create criminal penalties for theft and willful vandalism at national cemeteries, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are 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 “Veterans’ Cemetery Protection Act of 1997”.

SEC. 2. SENTENCING FOR VANDALISM AT NATIONAL CEMETERIES.

(a) GENERAL RULE.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense against any property of a national cemetery—

(1) by at least 4 levels if the offense involves the willful injury to or depredation against such property, and

(2) by at least 6 levels if the offense involves the knowing theft, conversion, or unlawful sale or disposition of such property.

(b) COMMISSION DUTY.—In carrying out subsection (a), the Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in subsection (a) are appropriately severe and reasonably consistent with other relevant directives and with other guidelines.

(c) DEFINITION.—For the purposes of this section, the term “national cemetery” means a cemetery in the National Cemetery System established under section 2400 of title 38 and a cemetery under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

Amend the title so as to read:

A bill to direct the United States Sentencing Commission to provide sentencing enhancement for offenses against property at national cemeteries.

PURPOSE AND SUMMARY

The purpose of H.R. 1532, the “Veterans” Cemetery Protection Act of 1997,” is to increase penalties for offenses against property of a national cemetery. The bill, as introduced, would have amended Chapter 91 of title 18, United States Code, to create a new federal crime of “vandalism and theft at national cemeteries.” The new offense, which mirrored an already existing prohibition on destruction of federal property, included the potential for lengthy prison sentences, thereby increasing the relatively light penalties currently imposed on persons convicted of such offenses. In lieu of creating this new federal statute to address the problem of inadequate punishment, the Committee adopted a substitute amendment which directs the United States Sentencing Commission to increase penalties for offenses against national cemetery property. As amended, H.R. 1532 requires the Sentencing Commission to review and amend the sentencing guidelines to provide a sentencing enhancement for any offense against any property of a national cemetery: the increase shall be at least 4 levels for wilful injury to or depredation against such property, and at least six levels for the knowing theft, conversion or unlawful sale or disposition of such property.

The term national cemetery is defined as a cemetery within the “National Cemetery System” established under §2400 of title 38, United States Code. It also includes any cemetery under the jurisdiction of the Secretary of the Interior, or the Secretaries of the Army, Navy or Air Force.

BACKGROUND AND NEED FOR THE LEGISLATION

There are currently 114 cemeteries within the National Cemetery System (NCS), operated by the Department of Veterans Affairs.¹ The NCS maintains the grounds, structures and roads of these national shrines. In 1996, the NCS serviced more than two million grave sites, and experienced an average increase rate of 152 new grave sites daily. Moreover, the NCS expects the cumulative number of graves maintained to increase from 2.2 million in 1997 to 2.37 million in 2000. The long-term projections estimate more than three million graves by the year 2010.

State and local authorities play an important role in assisting the NCS with maintaining order and control over such a vast amount of grave sites and property. Most crimes at national cemeteries are minor, and are prosecuted pursuant to the concurrent jurisdiction of State or local law enforcement agencies. Local investigation and prosecution may be preferred for a myriad of reasons: perpetrators may have a history of similar offenses committed locally, and thus would be familiar to local law enforcement; local po-

¹ Since cemeteries within the National Cemetery System are operated and maintained by the Department of Veterans Affairs, they are considered federal property. As the Justice Department noted in comments regarding H.R. 1532, “we believe that the federal control of the cemeteries to which this legislation applies establishes an adequate federal nexus to support federal jurisdiction.” Letter from Andrew Fois, Assistant Attorney General, Department of Justice, to Bill McCollum, Chairman, Subcommittee on Crime, Committee on the Judiciary (June 11, 1997) (attached in Agency Views).

lice will likely have a quicker response time; and perpetrators may be in violation of parole for State convictions, which could offer additional charges for prosecutors. As the Justice Department noted in comments to H.R. 1532, "Even when federal criminal jurisdiction exists, federal authorities should be expected to defer to local investigation and prosecution if certain conditions favor state or local criminal justice response."

There are, however, serious criminal incidents against national cemetery property which clearly justify a federal response. Between January 1, 1995 and May 31, 1997, there were twenty-one acts of vandalism against national cemetery property which resulted in damages over \$1,000.²

One of the most egregious acts was an attack against the National Memorial Cemetery of the Pacific in Honolulu, Hawaii, on April 20, 1997. Vandals defaced all twenty-two walls of the Columbarium Courts at the cemetery with red-painted racist and profane statements. The Columbaria contained the remains of thousands of veterans, spouses and dependants. The vandals also desecrated the chapel, grave markers and the Courts of the Missing, which are tablets inscribed with the names of those missing-in-action. Repair costs are currently at \$12,800 and are expected to rise.³ Other outrageous incidents include theft of tools and several hundred flag poles from Calverton National Cemetery—replacement costs were more than \$18,000. At Wood National Cemetery, vandals stole snow blowers and set fire to the property—repairs cost approximately \$25,000. At Culpeper National Cemetery, headstones, roadways and shelters on the cemetery property were spray painted with swastikas and satanic symbols. These are just a few examples of crimes where federal action is not only proper, it is critical.

Attacks on National Cemeteries assault America's heritage, and the courageous sacrifice of its citizens. Such unconscionable acts insult the memories of the brave men and women who fought to protect the freedoms cherished by all Americans. The federal response to such cowardly criminal acts should be swift and strong.

H.R. 1532, the "Veterans" Cemetery Protection Act," ensures that vandals who deface and destroy the hallowed ground of a National Cemetery will be appropriately punished. By directing the Sentencing Commission to increase penalties for such crimes, thieves and vandals will learn that the United States does not tolerate attacks against national symbols of peace and courage. The Committee expects the Sentencing Commission to ensure that the guidelines and policy statements for convicted offenders are reasonably consistent with other directives, avoid duplicative punishment for substantially similar offenses and take into account any aggravating or mitigating factors.

This legislation is supported by the Non Commissioned Officers Association (NCOA), the Enlisted Association of the National Guard of the United States (EANGUS), the Fleet Reserve Association, and The American Legion.

²The Committee also notes the tragic murder of a National Cemetery System caretaker on May 5, 1997. This crime is being investigated by both federal and State authorities.

³ See, Report on Vandalism At National Cemeteries From January 1, 1995 to May 31, 1997 (attached in Agency Views).

HEARINGS

No hearings were held on H.R. 1532.

COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1532, as amended, by voice vote, a quorum being present. On June 18, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1532, without amendment, by 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) 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(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)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1532, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

H.R. 1532—Veterans' Cemetery Protection Act of 1997

CBO estimates that enacting H.R. 1532 would result in additional costs to the federal government to accommodate prisoners for longer periods of time. We estimate that the cost of enacting this bill would be less than \$500,000 annually for fiscal years 1997 through 2002, subject to the availability of appropriated funds. Enacting H.R. 1532 could lead to an increase in direct spending and receipts; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any increases in direct spending and receipts would likely be significantly less than \$500,000 annually.

H.R. 1532 would direct the United States Sentencing Commission to increase penalties recommended for offenses against property at national cemeteries. The commission has assigned each federal crime a base offense level, numbered from 1 to 43, which cor-

responds to a certain recommended length of imprisonment, with higher numbers reflecting longer prison terms. The bill would direct the commission to amend the federal sentencing guidelines for property offenses at national cemeteries to increase the base offense level by at least 4 levels if the offense involves vandalism of national cemetery property and at least 6 levels if the offense involves theft of national cemetery property.

According to the U.S. Sentencing Commission, the bill's provisions would affect fewer than 100 individuals per year. Enacting H.R. 1532 would increase the average sentence by about 9 months. Assuming no significant change in the number of annual convictions, CBO estimates that additional costs of longer prison sentences would be less than \$500,000 a year for at least the next five fiscal years, subject to the availability of appropriated funds.

Because the maximum fine for an offense increases as the offense level increases, the bill's sentencing enhancements also could result in increased criminal fines. Therefore, enacting H.R. 1532 could increase governmental receipts through greater fine collections. However, CBO estimates that any such increase would be significantly less than \$500,000 annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

H.R. 1532 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995. While this bill directs the United States Sentencing Commission to provide sentencing enhancements for vandalism committed at national cemeteries and prosecuted under federal law, state and local authority would remain unchanged.

The CBO staff contacts for this estimate are Kristen Layman (for federal costs), and Leo Lex (for the state and local impact). This estimate was approved by James R. Horney for Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This section states that the short title of the bill is the "Veterans' Cemetery Protection Act of 1997."

Sec. 2. Sentencing For Vandalism At National Cemeteries. This section directs the U.S. Sentencing Commission to review and amend the sentencing guidelines to provide a sentencing enhancement for any offense against any property of a national cemetery—by at least 4 levels if the offense involves the willful injury to or depredation against such property, and by at least 6 levels if the offense involves the knowing theft, conversion, or unlawful sale or disposition of such property. Rather than create a new federal crime, this instruction to the Sentencing Commission ensures an effective and direct response to criminal acts against national cemetery property.

This section also instructs the Sentencing Commission to ensure that the sentences, guidelines and policy statements for convicted offenders are appropriately severe and reasonably consistent with other directives. The Committee expects the Sentencing Commission to implement the directives in a manner which fulfills the purposes of sentencing as set forth in § 3553(a)(2) of title 18, United States Code.

Finally, this section defines a “national cemetery” as a cemetery within the “National Cemetery System,” established under § 2400 of title 38, United States Code. The term “national cemetery” also includes cemeteries under the direction of the Secretary of the Interior, or the Secretaries of the Army, Navy or Air Force. This language makes clear that H.R. 1532 only applies to federal lands.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 11, 1997.

Hon. BILL MCCOLLUM,
*Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The purpose of this letter is to provide you with the views of the Department of Justice concerning various law enforcement related legislative proposals now under consideration by the Subcommittee. We note that certain of these proposals are similar or identical to bills on which the Department submitted written comments in the 104th Congress.

H.R. 1532

H.R. 1532, the “Veterans’ Cemetery Protection Act of 1997,” would create in title 18, United States Code, a new section 1865, “Vandalism and theft at national cemeteries,” at the conclusion of chapter 91 (Public Lands). The proposed new section, which appears to be modeled on 18 U.S.C. § 1361, “Government property or contracts,” would punish whoever “willfully injures or commits any depredation against any property of a national cemetery, or attempts to commit” such offenses. Stealing or knowingly converting to personal use any property of a national cemetery, receiving, concealing, or retaining such property with the intent of converting that property for personal gain with knowledge of its stolen nature, and selling, conveying, or disposing of such property without authorization are also prohibited.

The Department of Justice supports the goal of H.R. 1532 to deter vandalism and theft at national cemeteries, though we recommend some modification of the proposed sanctions in the interest of consistency with existing theft of property offense penalties, and certain technical revisions, as described below, to clarify the coverage of “attempt” offenses.

Jurisdiction. Since “national cemeteries” as defined within the draft bill are United States property, or are on land over which there is federal criminal jurisdiction, willful damage or depredation of such facilities and theft of government property from such facilities are generally already subject to federal prosecution pursuant

to 18 U.S.C. §§ 641 (theft of government property), 1361 (destruction of government property), 1363 (destruction of property within the special maritime and territorial jurisdiction of the United States), or 13 (the Assimilative Crimes Act). While past service in the United States armed forces of the veterans buried at such facilities might not alone constitute a sufficient constitutional basis for the assertion of federal jurisdiction, we believe that the federal control of the cemeteries to which this legislation applies establishes an adequate federal nexus to support federal jurisdiction.

“Attempt” Coverage. Although the coverage of attempted offenses follows the approach of 18 U.S.C. § 1361 in discussing the value of “attempted damage,” we believe that the approach of 18 U.S.C. § 1366(a), in addressing damage which “in fact exceeds [the designated amount] or would if the attempted offense had been completed” is more precise, and thus preferable. Accordingly, we recommend that “damage or attempted damage to such property exceeds the sum of \$1000” in (a)(1) of the bill be replaced with “actual damage exceeds \$1000 or would have exceeded \$1000 if the attempted offense had been completed” and that (a)(2) be revised in a consistent fashion.

Sanctions. The theft and related receipt, concealment, and possession components of the bill provide a maximum sanction of 15 years’ incarceration, regardless of the value of the property involved. This sanction exceeds 18 U.S.C. § 641’s maximum sentences of 10 years’ incarceration for property worth more than \$1000, and of one year’s incarceration for offenses involving property worth \$1000 or less. We recommend that the maximum sentences provided in H.R. 1532 be made consistent with those in section 641 to avoid creating a distinction in which offenses involving national cemetery property are subject to more severe penalties than offenses involving most other Federal Government property, including theft or destruction of our nation’s most important historical papers and monuments.

Concurrent Jurisdiction Enforcement. Although the Department does not oppose the emphasis upon federal criminal justice response which H.R. 1532 seeks to establish for desecration and other crimes against graves at national cemeteries, it is important to recognize the vital continuing role of state and local law enforcement agencies in responding to such criminal conduct. State and local criminal laws also apply to offenses within the scope of H.R. 1532 if those offenses are committed at facilities subject to concurrent jurisdiction or if those offenses involve prohibited receipt, concealment, sale, or other disposal of property stolen from a national cemetery to the extent that such conduct occurs beyond federal facilities.

Even when federal criminal jurisdiction exists, federal authorities should be expected to defer to local investigation and prosecution if certain conditions favor state or local criminal justice response. For example, there are many more state and local police than federal agents, and thus the local law enforcement response to such incidents may be faster, and involve a greater range of available resources in the immediate vicinity. Local police are often more knowledgeable about the activities of the possible perpetrators of such vandalism offenses, since those perpetrators may have

previous local criminal justice contacts involving similar or other criminal conduct. A perpetrator may even have probationary or other judicially imposed status in the state or local criminal justice system, which status will offer additional and more prompt sanctions when raised in conjunction with new charges.

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Thank you for the opportunity to comment on this matter. The Office of Management and Budget has advised that there is no objection to this report from the standpoint of the Administration's program. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

REPORT ON VANDALISM/CRIME AT NATIONAL CEMETERIES FROM JANUARY 1, 1995 TO MAY 31, 1997

Date of vandalism	Location (NC=National Cemetery)	Brief description (only damages over \$1000)	Estimated cost ¹
Feb—95	Eagle Point NC, OR	Theft of window sprayer and turf	\$1,025.
Mar—95	Calverton NC, NY	Break-in/theft: Ford tractor, Dumptruck and trailer	Estimated \$35,000 (recovered next day with the help of community and police).
Oct—95	Los Angeles NC, CA	Break-in and theft	\$5,000.
Oct—95	Springfield NC, MO	College student removed the U.S. flag from the staff, draped it around him, ran down street, broke a flag light in the process.	\$1,000.
Nov—95	Calverton NC, NY	Chain on gate cut, chain link fence cut, aluminum floral sign posts stolen, aluminum ramp stolen.	\$1,400.
Dec—95	Wood NC, WI	Quonset hut burned, snow blowers stolen	\$25,000.
Mar—96	Eagle Point NC, OR	Vandalism and theft of pressure washer, garage door damage, flags stolen, chemicals, battery and ladder.	\$2,050.
Jun—96	Riverside NC, CA	428 flat markers taken; 300 were taken from the warehouse and 128 from graves, 128 were replaced.	\$6,825.
Jul—96	Culpeper NC, NY	Six headstones, stonewall roadway and interment shelter spray painted (swastika and satanic symbols).	\$1,532.
Jul—96	Wood NC, WI	Fire damage vase container box, water gazebo, trees & shrubs.	\$1,000.
Feb—97	Fort Smith NC, AR	Trailer containing cemetery equipment was broken into and string trimmers were stolen.	\$2,500 approximate.
Feb—97	Chattanooga NC, TN	Vehicle driven into fence break ins	\$2,300 repair.
Mar—97	Florida NC, FL	Three vehicles broken into causing damage	\$2,400 repair.
Mar—97	Calverton NC, NY	Service area broken into, eleven padlocks cut, two cushion trucksters damaged, one electric hoist stolen.	\$3,200.
Mar—97	Calverton NC, NY	Three hundred & forty flag poles stolen, various tools stolen.	\$18,374.
Mar—97	Calverton NC, NY	Five hundred bronze plaques stolen	\$3,800.
Apr—97	Wood NC, WI	Nineteen headstones painted	\$1,426.
Apr—97	Marietta NC, GA	Five headstones were tipped over and damaged, two headstones were spray painted—all replaced.	\$1,295.
Apr—97	National Memorial Cemetery of the Pacific NC, HI.	Vandalism	\$12,837.00 to date (more will be expended).
May—97	Golden Gate NC, CA	Vandalism; flags stolen and halyard cut	\$1,400.

REPORT ON VANDALISM/CRIME AT NATIONAL CEMETERIES FROM JANUARY 1, 1995 TO MAY 31,
1997—Continued

Date of vandalism	Location (NC=National Cemetery)	Brief description (only damages over \$1000)	Estimated cost ¹
May—97	Beverly NC, NJ	Flag poles bent to ground, shrubs broken, four benches pulled out of concrete base.	\$4,358.

¹ Only Cemeteries with damages over \$1,000 included in listing.

² March 95 theft at Calverton not included in total since stolen materials were recovered.

Summary of Vandalism/crime at National Cemeteries:

1. 21 incidents at 114 National Cemeteries with over \$1,000 in damages totaling \$98,721 (Incidents include theft of equipment, theft of markers, headstones, flags and flag poles, miscellaneous vandalism and damage to facilities, graffiti)
2. 56 plus incidents at 114 National Cemeteries with under \$1,000 in damages totaling \$15,186 (Incidents include vandalism, theft, damage to Government property including buildings, fences, vehicles, headstones, markers, flag poles and land, graffiti)
3. The above report does not include an estimate of personal property (purses, etc.) stolen from private vehicles within national Cemeteries.
4. 3 incidents of non-vandalism/crime at National Cemeteries include:
 - a. Jan. 97 Richmond NC, VA—Bank robbery across street from Lodge—National Cemetery declared crime scene.
 - b. Apr. 97 Finns Point NC, NJ—Cemetery caretaker killed while closing cemetery at end of day.
 - c. Feb. 97 Baton Rouge NC, LA—Kidnapped victim brought to National Cemetery, raped on premises and left.

