

PRESIDENTIAL THREAT PROTECTION ACT OF 2000

JUNE 12, 2000.—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. 3048]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3048) to amend section 879 of title 18, United States Code, to provide clearer coverage over threats against former Presidents and members of their families, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	<i>Page</i>
The Amendment	2
Purpose and Summary	4
Background and Need for the Legislation	4
Hearings	7
Committee Consideration	7
Vote of the Committee	7
Committee Oversight Findings	7
Committee on Government Reform Findings	7
New Budget Authority and Tax Expenditures	7
Congressional Budget Office Cost Estimate	7
Constitutional Authority Statement	9
Section-by-Section Analysis and Discussion	9
Agency Views	13
Changes in Existing Law Made by the Bill, as Reported	15

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 “Presidential Threat Protection Act of 2000”.

SEC. 2. REVISION OF SECTION 879 OF TITLE 18, UNITED STATES CODE.

- (a) **IN GENERAL.**—Section 879 of title 18, United States Code, is amended—
- (1) by striking “or” at the end of subsection (a)(2);
 - (2) in subsection (a)(3)—
 - (A) by striking “the spouse” and inserting “a member of the immediate family”; and
 - (B) by inserting “or” after the semicolon at the end;
 - (3) by inserting after subsection (a)(3) the following:

“(4) a person protected by the Secret Service under section 3056(a)(6);”;
 - (4) in subsection (a)—
 - (A) by striking “who is protected by the Secret Service as provided by law;” and
 - (B) by striking “three years” and inserting “5 years”; and
 - (5) in subsection (b)(1)(B)—
 - (A) by inserting “and (a)(3)” after “subsection (a)(2)”; and
 - (B) by striking “or Vice President-elect” and inserting “Vice President-elect, or major candidate for the office of President or Vice President”.
- (b) **CONFORMING AMENDMENTS.**—
- (1) **HEADING.**—The heading for section 879 of title 18, United States Code, is amended by striking “protected by the Secret Service”.
 - (2) **TABLE OF SECTIONS.**—The item relating to section 879 in the table of sections at the beginning of chapter 41 of title 18, United States Code, is amended by striking “protected by the Secret Service”.

SEC. 3. CLARIFICATION OF SECRET SERVICE AUTHORITY FOR SECURITY OPERATIONS AT EVENTS AND GATHERINGS OF NATIONAL SIGNIFICANCE.

Section 3056 of title 18, United States Code, is amended by adding at the end the following:

“(e) Under the direction of the Secretary of the Treasury, the United States Secret Service is authorized to coordinate the design, planning, and implementation of security operations for any special event of national significance, as determined by the President or the President’s designee.”.

SEC. 4. NATIONAL THREAT ASSESSMENT CENTER.

(a) **ESTABLISHMENT.**—The United States Secret Service (hereinafter in this section referred to as the “Service”), at the direction of the Secretary of the Treasury, may establish the National Threat Assessment Center (hereinafter in this section referred to as the “Center”) as a unit within the Service.

(b) **FUNCTIONS.**—The Service may provide the following to Federal, State, and local law enforcement agencies through the Center:

- (1) Training in the area of threat assessment.
- (2) Consultation on complex threat assessment cases or plans.
- (3) Research on threat assessment and the prevention of targeted violence.
- (4) Facilitation of information sharing among all such agencies with protective or public safety responsibilities.
- (5) Programs to promote the standardization of Federal, State, and local threat assessments and investigations involving threats.
- (6) Any other activities the Secretary determines are necessary to implement a comprehensive threat assessment capability.

(c) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Service shall submit a report to the committees on the judiciary of the Senate and the House of Representatives detailing the manner in which the Center will operate.

SEC. 5. ADMINISTRATIVE SUBPOENAS WITH REGARD TO PROTECTIVE INTELLIGENCE FUNCTIONS OF THE SECRET SERVICE.

- (a) **IN GENERAL.**—Section 3486(a) of title 18, United States Code, is amended—
- (1) so that paragraph (1) reads as follows: “(1)(A) In any investigation of—
 - “(i)(I) a Federal health care offense or (II) a Federal offense involving the sexual exploitation or abuse of children, the Attorney General; or
 - “(ii) an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section

3056, if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury; may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

“(B) Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

“(i) the production of any records or other things relevant to the investigation; and

“(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

“(C) A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a Federal offense involving the sexual exploitation or abuse of children shall not extend beyond—

“(i) requiring that provider to disclose the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, which may be relevant to an authorized law enforcement inquiry; or

“(ii) requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.

“(D) As used in this paragraph, the term ‘Federal offense involving the sexual exploitation or abuse of children’ means an offense under section 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years.”;

(2) in paragraph (3)—

(A) by inserting “relating to a Federal health care offense” after “production of records”; and

(B) by adding at the end the following: “The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.”; and

(3) by adding at the end the following:

“(5) At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).

“(6)(A) A United State district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.

“(B) Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—

“(i) endangerment to the life or physical safety of any person;

“(ii) flight to avoid prosecution;

“(iii) destruction of or tampering with evidence; or

“(iv) intimidation of potential witnesses.

“(C) An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.

“(D) Whoever knowingly violates an order under this paragraph shall be fined under this title or imprisoned not more than 5 years, or both.

“(7) A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.

“(8) If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.

“(9) A subpoena issued under paragraph (1)(A)(i)(II) or (1)(A)(ii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

“(10) As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(ii), the Secretary of the Treasury shall notify the Attorney General of its issuance.”.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 3486 of title 18, United States Code, is amended by striking:

“in Federal health care investigations”.

(2) TABLE OF SECTIONS.—The item relating to section 3486 in the table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by striking:

“in Federal health care investigations”.

(3) CONFORMING REPEAL.—Section 3486A, and the item relating to that section in the table of sections at the beginning of chapter 223, of title 18, United States Code, are repealed.

(c) TECHNICAL AMENDMENT.—Section 3486 of title 18, United States Code, is amended—

(1) in subsection (a)(4), by striking “summoned” and inserting “subpoenaed”; and

(2) in subsection (d), by striking “summons” each place it appears and inserting “subpoena”.

PURPOSE AND SUMMARY

The principle purpose of H.R. 3048 is to clarify the jurisdiction of the United States Secret Service to investigate threats made against former Presidents or their families, or the immediate families of the President, Vice President, President Elect, Vice President Elect, and major candidates for the office of President or Vice President and to provide the Service with appropriate investigative tools to investigate those threats. The bill also clarifies the authority of the Secret Service to participate in the design, planning, and implementation of security operations at special events of national significance. Further, the bill authorizes the Service to establish a National Threat Assessment Center as an office within the Service. Finally, H.R. 3048 authorizes the Secretary of the Treasury, in limited situations, to issue administrative subpoenas in cases involving threats made against a person whom the Secret Service is authorized to protect.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1998, the Department of Justice transmitted to the Speaker of the House a draft bill entitled the Threat Protection for Former Presidents Act of 1998 requesting the bill be introduced and enacted in the House. That bill proposed to expand the authority of the United States Secret Service in a manner similar to section 2 of H.R. 3048. In June, 1999, the Subcommittee on Crime held an oversight hearing of the Secret Service during which various issues concerning the work of the Service were discussed.¹ During the hearing several areas were identified as to which legislative changes would be appropriate. The provisions of H.R. 3048 address a number of those areas.

The principal change made by the bill is with respect to the jurisdiction of the Secret Service to investigate threats made against former Presidents or their families, or the immediate families of the President, Vice President, President Elect, the Vice President

¹The transcript of that hearing is available from the committee as Serial No. 6.

Elect, and major candidates for the office of President or Vice President. Under current law, in order for the Service to have jurisdiction to investigate a threat made against any person, that person must currently be receiving Secret Service protection.² However, the immediate family of major candidates for the office of President and Vice President do not receive Secret Service protection and so, threats made against them are not Federal crimes and may not be investigated by the Service. Obviously, threats made against children of candidates for President or Vice President are often related to their candidacy, and should be investigated by the Federal law enforcement agency charged with protecting the candidate during the pendency of their campaign.

Similarly, should a former President decline Secret Service protection, as has occurred in the past,³ threats made against him would not be a Federal crime and may not be investigated by the Secret Service. This potential problem will be exacerbated by a change made to title 18 in 1994 which requires that Secret Service protection for former Presidents and their spouses terminate 10 years after the President leaves office.⁴

To remedy this problem, H.R. 3048 will amend current law to make it clear that it will be a Federal crime, which the Secret Service is authorized to investigate, for any person to threaten any current or former President, Vice President, or the immediate family of that person, notwithstanding the fact that the Secret Service may not be protecting the person at the time the threat is made. This section of the bill will also expand current Secret Service authority so that it may investigate threats made against the immediate family of candidates for the office of President, or Vice President.

H.R. 3048 will also clarify the authority of the Secret Service to coordinate the design, planning, and implementation of security operations at special events of national significance, as determined by the President or his designee. Under the authorizing statute for the Secret Service,⁵ the Service is authorized to protect a number of persons, including: the President, Vice President, former Presidents and their spouse and certain of their children, visiting heads of foreign states or governments, other distinguished visitors to the United States, major candidates for the office of President and Vice President, and certain other persons as to whom the President directs receive such protection. Recently, the President has directed the Secret Service to coordinate the design, planning, and implementation of security operations at special events of national significance. In some cases, however, none of the persons specified in section 3056 may be present at these events and, therefore, the Secret Service's authority to coordinate the security for these events is unclear.

Because the Secret Service is the preeminent law enforcement agency in the world in planning security operations, the committee believes it is appropriate that this expertise be brought to bear in

² 18 U.S.C. § 879

³ Former President Nixon declined Secret Service protection as of August 1, 1985.

⁴ 18 U.S.C. § 3056(a)(3). This provision will only apply to Presidents who take office in and after 2001.

⁵ 18 U.S.C. § 3056.

regard to the planning for major events within the United States, such as summit meetings of the G-7 economic ministers and Olympic Games hosted by the United States. H.R. 3048 clarifies the authority of the Secret Service to do this by specifically authorizing it to coordinate the design, planning, and implementation of security operations at these events.

H.R. 3048 also authorizes the Secretary of the Treasury to issue administrative subpoenas in limited situations. Administrative subpoenas are subpoenas issued by a law enforcement agency rather than a United States court. Under current law the authority to issue administrative subpoenas is given to the Attorney General, but limited to cases involving violations of Title 21 (i.e., drug cases), investigations concerning a Federal health care offense, or investigations involving child abuse and child sexual exploitation.⁶ During the oversight hearing of the Service held by the Subcommittee on Crime, the Service asked the committee to consider granting it administrative subpoena authority for investigations under sections 871 and 879 of title 18 (involving threats against the President, former Presidents, and other persons protected by the Service.). The bill grants the Secretary of the Treasury this authority but limits its use by the Secretary only to cases where the Director of the Service determines that the threat being investigated is imminent.

The administrative subpoena power proposed in the bill would grant the Secretary the authority to require the production of records and other things relevant to an investigation (but not the testimony of persons) in cases involving violations of those two statutes. The Service has informed the committee that it would seek to use this power, for example, in a situation where a person has made threats against the President and is believed to be en route to act upon those threats. The administrative subpoena authority would enable the Service to expeditiously obtain credit card receipts, rental car receipts, hotel receipts, and other documentary evidence in an effort to track the progress of the potential assassin. The Service's ability to obtain this information promptly could be delayed under current law by the time it takes to seek a court order or a grand jury subpoena for this information, and could be delayed for several days if the information is sought over a weekend when courts are closed. Should the Service be delayed for several days in obtaining this information, the potential assassin could more easily elude interdiction prior to acting on his or her threat. For this reason also, H.R. 3480 authorizes the Service to request production of the records and relevant things sought through the administrative subpoena within 24 hours.

The use by the Service of the new administrative subpoena authority set forth in the bill is limited to investigations involving the two types of cases listed above. The remainder of the statute set forth in the bill is a consolidation of the two administrative subpoena statutes that exist in title 18 today, together with the new authority granted to the Secretary of the Treasury under this bill, into one comprehensive statute. The re-draft also contains provisions designed to give citizens added protections against misuse of

⁶18 U.S.C. §§ 3486, 3486A; 21 U.S.C. § 876.

these subpoenas, including provisions that give citizens the right to move a court to quash an administrative subpoena and which describe the process by which that may be accomplished.

HEARINGS

The committee's Subcommittee on Crime held no hearings on H.R. 3048. The subcommittee did hold an oversight hearing on the United States Secret Service on June 24, 1999 during which various issues to which the bill relates were discussed.

COMMITTEE CONSIDERATION

March 16, 2000, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R.3048, as amended, by a voice vote, a quorum being present. On May 17, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3048 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

During committee consideration of the bill, H.R. 3048, Mr. McCollum offered an amendment in the nature of a substitute incorporating amendments made to the bill during subcommittee consideration, which was adopted by voice vote. There were no rollcall votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII 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 FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

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. 3048, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 2000.

Hon. HENRY J. HYDE, *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. 3048, the Presidential Threat Protection Act of 2000.

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

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 3048—Presidential Threat Protection Act of 2000.

CBO estimates that implementing this legislation would have no significant impact on the federal budget. The bill would affect direct spending and receipts, so pay-as-you-go procedures would apply, but we estimate that the amounts involved would be less than \$500,000 a year. H.R. 3048 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 3048 would broaden the current laws against threatening persons protected by the Secret Service to cover certain family members of major candidates for President and Vice President. For cases involving threats against persons protected by the Secret Service, the bill would provide subpoena authority to the Secretary of the Treasury and would increase the maximum penalties for offenders. H.R. 3048 also would authorize the Secret Service to establish the National Threat Assessment Center as a unit within that agency to provide assistance to federal, state, and local law enforcement agencies.

The Secret Service already provides assistance to federal and nonfederal agencies for threat assessments through its Office of Protective Research. Based on discussions with the agency, CBO expects that establishing the National Threat Assessment Center would not significantly increase the costs of such assistance.

If H.R. 3048 were enacted, the federal government would be able to pursue cases that it otherwise would not be able to prosecute and could assign longer prison sentences to persons convicted of threatening certain persons protected by the Secret Service. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3048 could be subject to criminal fines, the federal government might collect

additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would be less than \$500,000 each year.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

Section 1 of the bill states the short title of the Act as the “Presidential Threat Protection Act of 2000.”

Section 2. Revision of Section 879 Title 18, United States Code.

Section 2 of the bill amends section 879 of title 18, United States Code; the section that makes it a Federal crime to threaten to kill, kidnap, or inflict bodily harm against former Presidents or their families, or the immediate families of the President, President-elect, Vice President, or the Vice President-elect. Additionally, that section makes it a crime to threaten major candidates for the office of President or Vice President, or the spouses of those candidates. Under existing section 879, it is a crime to threaten these individuals only if the Secret Service is providing protection to them at the time the threat is made.

The bill deletes the requirement that the Secret Service be protecting the person named in that statute in order for a threat made against that person to be a Federal crime. As a result, the Service will be authorized to investigate threats made against any of the persons named in section 879 regardless of whether the Service is protecting them because simply threatening a person named in that section will be a Federal crime.

Section 2 of the bill also extends coverage of the statute to the immediate family of candidates for the office President or Vice President. Under current law, only the candidate and his or her spouse are covered by the statute. Threats against other members of the candidate’s immediate family do not violate section 879 and, therefore, do not provide the Secret Service with a basis to investigate the threat. Under the change made by the bill, threats against the immediate family of candidates for the office of President or Vice President will violate section 879, and may be investigated by the Service.

Additionally, section 2 of the bill will amend section 879 of title 18 to make it a Federal crime which the Secret Service would investigate to threaten any other person protected by the Secret Service. Under section 3056 of title 18, the Service is authorized to protect visiting heads of foreign states or governments, other distinguished foreign visitors to the United States, and certain other

persons as to whom the President directs are to receive such protection. Currently, threats against these persons are not actionable under section 879.⁷ H.R. 3048 will make threats against these persons a violation of section 879, which will give the Service the authority to investigate the threats, if the person was protected by the Service at the time a threat was made.

Finally, this section of the bill increases the maximum penalty for violations of section 879 from three years to five years. This change will bring the punishment for violations of section 879 in line with the maximum punishment for the other crimes listed in chapter 41 of title 18 (the chapter dealing with extortion and threats.)

Section 3. Clarification of Secret Service Authority for Security Operations at Events and Gatherings of National Significance.

The powers, authorities, and duties of the United States Secret Service are described in section 3056 of title 18.⁸ With respect to its protective functions, the Secret Service is authorized to protect a number of persons including: the President, Vice President, former Presidents and their spouses and some of their children, visiting heads of foreign states or governments, other distinguish foreign visitors to the United States, major candidates for the office the President and Vice President, and certain other persons as to whom the President directs are to receive such protection. In the past several years, however, the President has also directed the Secret Service to coordinate the design, planning, and implementation of security operations at special events of national significance (such as the 50th Anniversary Summit of the North Atlantic Treaty Organization in 1999 and the annual meeting of the International Monetary Fund and the World Bank in 2000.) Because none of the persons specified in section 3056 may be present at these events, or present at all times during the event, the authority of the Secret Service to coordinate the security for these events is unclear.

The committee believes that it is appropriate that the expertise developed by the Secret Service in the area of protective operations over the last 100 years be brought to bear in coordinating the design, planning, and implementation of security operations for these events. Section 3 of the bill, therefore, extends the authority of the Secret Service so that it may coordinate the design, planning, and implementation of security operations for any special event of national significance. The determination as to whether an event is of such national significance as to fall within the meaning of section 3 of the bill is to be determined by the President or his designee. The decision as to whether the Service will participate in any specific event is to be determined by the Secretary of the Treasury. The committee intends that the involvement of the Service at these events be limited to security operations. This section of the bill is not intended to authorize the Service to act as the lead Federal agency with respect to all aspects of such event nor to usurp the authority of other Federal agencies to conduct crises management,

⁷Threats against some of these persons might violate other Federal statutes. See, e.g., 18 U.S.C. §§ 112, 1114.

⁸Additional authorizing statutes concerning the Secret Service are set forth in section 1752 of title 18 and section 202 of title 3.

consequence management, or criminal investigative activities in connection with that event.

Section 4. National Threat Assessment Center.

Section 4 of the bill authorizes the Secret Service to establish a National Threat Assessment Center as a unit within the Service, at the direction of the Secretary of the Treasury. Under the authorizing statute governing the operation of the Service, no provision is made for it to share information or research in the area of threat assessment and prevention of targeted violence with other Federal, State, or local law enforcement agencies. During the oversight hearing on the Service held by the Subcommittee on Crime, the Service informed the committee that it would like to share such information and research, to consult with other law enforcement agencies in complex threat assessment cases or with respect to plans to prevent targeted violence, and to provide training to other Federal, State, and local law enforcement agencies in the area of threat assessment.

Section 4 of the bill provides the Service with this authority, if directed to do so by the Secretary of the Treasury. This section of the bill specifies the activities that may be conducted through the National Threat Assessment Center. It also provides that the Secretary may authorize the center to perform such other activities that are necessary to “implement a comprehensive threat assessment capability.” This section of the bill requires the Service to submit a report to the committee on the Judiciary of the Senate and of the House of Representatives detailing the manner in which the center will operate. The report is to be submitted not later than one year after the date of enactment of the bill.

Section 5. Administrative Subpoenas with Regard to Protective Intelligence Functions of the Secret Service.

Administrative subpoenas are subpoenas issued by a law enforcement agency, rather than a United States court. Under current law, the authority to issue administrative subpoenas is granted only to the Attorney General and then only in very limited situations.⁹ Only cases involving violations of title 21 (i.e., drug cases) or investigations concerning a Federal health care offense¹⁰ or involving the sexual exploitation or other abuse of children¹¹ form the basis for the issuance of an administrative subpoena.¹²

⁹The committee notes that the Attorney General may from time to time make such provision as he or she consider appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General. See 28 U.S.C. § 510.

¹⁰Federal Health Care Offense is defined in 18 U.S.C. § 24.

¹¹Due to inconsistent acts of Congress, administrative subpoenas have been authorized in cases involving the sexual exploitation or abuse of children under both section 3486 and section 3486A. See Public Law No. 105–277, Title I, § 122 and Public Law No. 105–314, Title I, § 606. Section 3486A lists specific crimes for which these subpoenas may be used while section 3486 does not. The authority under section 3486A is far more limited, however, and applies only when the subpoena is to be served on a provider of an “electronic communication service” or “remote computing service.” Those terms are defined in section 227 of the Victims of Child Abuse Act of 1990, which can be found at 42 U.S.C. § 13032.

¹²18 U.S.C. §§ 3486, 3486A; 21 U.S.C. § 876.

Section 5 of the bill would extend administrative subpoena power to the Secretary of the Treasury¹³ for investigations of: 1) violations of section 871 of title 18 (threats made against the President, Vice President, or successor to the office of President), 2) violations of section 879 of title 18 (threats made against former Presidents and their spouses, immediately family of the President and Vice President, or candidates for the office of President or Vice President), or 3) threats made against visiting foreign heads of state or government, other distinguished foreign visitors to the United States protected by the Service, or official U.S. representatives performing missions abroad and who are receiving Secret Service protection. This power may only be exercised when the Director of the Secret Service determines that the threat being investigated is imminent.

The administrative subpoena power granted to the Secretary of the Treasury under the bill is further limited to requiring only the production of records and other things relevant to the investigation, and the testimony of the custodian of the records and things required to be produced concerning the production and authenticity of those things. Except for testimony by the custodian of the records or things, the administrative subpoena power of section 5 of the bill does not authorize the government to require the testimony of any person. The committee intends that the term “records” be interpreted broadly to include, for example, books, papers, and electronic media.

Under the bill, the Secretary of the Treasury is required to notify the Attorney General whenever it issues an administrative subpoena as soon as practicable. This provision simply requires that notice be given. The Attorney General is not required to approve the issuance of such a subpoena and the failure by the Secretary to give this notice should not be construed to have any impact on the validity of the subpoena.

Section 5 also amends current section 3486 of title 18, which authorizes the Attorney General to issue administrative subpoenas in connection with an investigation of a Federal health care offense and section 3486A of title 18, which authorizes the Attorney General to issue administrative subpoenas in cases involving the sexual exploitation or abuse of children. Section 5 of the bill repeals 3486A and folds the authority contained in that section, together with the new authority given to the Service under this bill, into section 3486 as amended by the bill. The bill retains the limitation (currently in section 3486A) on the type of records that may be requested from providers of electronic communication services and remote computing services.¹⁴

In consolidating these statutes into one section the bill also adds new provisions to the administrative subpoena statute, applicable in all instances in which a subpoena is issued under the statute, to protect the rights of citizens. For example, the bill provides a mechanism by which the person or entity upon whom the administrative subpoena is served may petition a United States District

¹³The committee notes that the Secretary may delegate the duties and powers of the Secretary to another officer or employee of the Department of the Treasury. See 31 U.S.C. § 321(b)(2).

¹⁴These terms are defined at 42 U.S.C. § 13032.

Court for an order modifying or setting aside the summons, and specifies the district in which such a petition may be filed. The bill also requires that if no case or proceeding arises from the production of records or things produced in response to an administrative subpoena within a reasonable time after the records or things are produced, the person who produced the records or things may demand their return by submitting a written demand to the agency to which the records or things were delivered. The agency is required to return those records or things to that person, except where the production required was only of copies rather than originals. Further, administrative subpoenas issued by the Attorney General in child sexual exploitation and abuse cases, or issued by the Secretary of the Treasury in threat cases, may not require production of the things specified in the subpoena in less than 24 hours after service of the subpoena on the party required to make that production. Also, as amended by the bill, section 3486 will make explicit that any summons issued under the section is not to be construed to require the production of anything that would be protected from production under the standards applicable to a *subpoena duces tecum* issued by a United States court. Simply stated, the committee intends that administrative subpoenas not have any greater scope than would a subpoena issued by a United States court.

Finally, section 5 of the bill also provides a mechanism by which the government may file an application in the United States District Court for the district in which the summons is or will be served, seeking an *ex parte* order prohibiting any person or entity from disclosing the existence of the summons for the period of up to 90 days. The statute specifies the showing the government must make to obtain such an order and provides that the order may be renewed for additional periods of up to 90 days each upon a further showing that the circumstances giving rise to the order continue to exist. There is no limit on the number of times the order may be renewed. The section also establishes a penalty of a fine, imprisonment for up to five years, or both for any person who knowingly violates an order of non-disclosure.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 9, 2000.

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

DEAR MR. CHAIRMAN: This presents the views of the Department of Justice on H.R. 3048, the "Presidential Threat Protection Act of 1999," as reported by the Subcommittee on Crime. Our comments are limited to sections 2 and 5 of the bill.

REVISION OF SECTION 879 OF TITLE 18, UNITED STATES CODE

Section 2 of H.R. 3048 would expand the coverage of 18 U.S.C. § 879, which punishes threats against former Presidents, the immediate families of the President and Vice President, major Presi-

dential and Vice Presidential candidates, and certain other persons protected by Secret Service. Because the statute expressly limits coverage to designated persons “who are protected by the Secret Service,” there are important gaps that need to be addressed. For example, future protection of former Presidents by the Secret Service is limited by 18 U.S.C. § 3056(a)(3). Similarly, 18 U.S.C. § 3056(a)(7) provides for limited Secret Service protection for spouses, but not the immediate families, of major candidates for President and Vice President. Moreover, such major candidates may decline Secret Service protection. In our view, the Secret Service has a legitimate interest in investigating threats against a former President or a current major Presidential candidate regardless of whether the person is actually receiving Secret Service protection. The status of the person as a “former President” or “major candidate” is generally the reason such a person is the subject of a threat, not whether the person is protected by the Secret Service.

In addition, the bill would extend the threat coverage in 18 U.S.C. § 879 to distinguished foreign visitors to the United States and certain other persons receiving Secret Service protection pursuant to 18 U.S.C. § 3056(a)(6). Finally, the bill would increase the statutory maximum penalty for a violation of 18 U.S.C. § 879 from three years to five years.

The Department supports the changes made by section 2 of the bill.

ADMINISTRATIVE SUBPOENAS WITH REGARD TO THE PROTECTIVE INTELLIGENCE FUNCTIONS OF THE SECRET SERVICE

Section 5 of the bill would amend 18 U.S.C. § 3486(a) (relating to administrative subpoenas in federal health care investigations), to allow the Secretary of the Treasury to issue a subpoena requiring the production of records and testimony in an investigation of an offense under 18 U.S.C. §§ 871 or 879 (threats against certain Secret Service protectees) or a threat against a person protected by Secret Service under 18 U.S.C. § 3056(a)(5).

We appreciate the revisions to this section that were adopted by the Subcommittee on Crime to address some of the Department’s concerns about this section. There remains, however, an additional outstanding issue: whether the extension of administrative subpoena power to the Secretary of the Treasury would more prudently be incorporated in a new statutory section related to the provisions that establish the Secret Service and set forth its mission (*e.g.*, 18 U.S.C. § 3056) rather than as an amendment to the existing health care fraud administrative subpoena authority granted to the Attorney General under section 3486. Also, we ask the Committee to reconsider the proposed incorporation of 18 U.S.C. § 3486A (administrative subpoenas in child abuse and exploitation cases) into section 3486.

The administrative subpoena power granted to the Attorney General in 18 U.S.C. § 3486 reflects a delicate balancing of law enforcement, oversight, and privacy needs and issues, all within the limited context of health care fraud investigations. This statute, enacted as part of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), was part of a special health care fraud and abuse initiative included in the HIPAA legislation. Section

3486 was not anticipated to serve as a vehicle by which to expand administrative subpoena authority to other Cabinet officers for special types of investigations unrelated to health care fraud.

The balance in section 3486 is reflected, for example, in subsection (e)(3), which prohibits the reuse of health records disclosed pursuant to such a subpoena against the patient without prior court approval. Similar limitations on the Secret Service would, we believe, be inapplicable in connection with an administrative subpoena issued in the context of a presidential threat investigation. In such an investigation, the Secretary may need immediate access to information for the explicit purpose of using it against a target to evaluate the threat.

Likewise, the purpose underlying section 3486 relating to health care fraud investigations is clearly distinguishable from the purposes behind section 3486A. The latter statute envisions the disclosure of records maintained by electronic service providers, not health care providers. Intermingling these two sections would, in our view, likely be countproductive and would, at a minimum, cause needless confusion for investigators, prosecutors, and the courts. We ask that sections 3486 and 3486A not be merged in the manner contemplated by H.R. 3048.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program. Please do not hesitate to call upon us if we may be of additional assistance.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

CHAPTER 41—EXTORTION AND THREATS

Sec.

871. Threats against President and successors to the Presidency.

* * * * *

879. Threats against former Presidents and certain other persons [protected by the Secret Service].

* * * * *

§ 879. Threats against former Presidents and certain other persons [protected by the Secret Service]

(a) Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon—

- (1) a former President or a member of the immediate family of a former President;

(2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect; **or**

(3) a major candidate for the office of President or Vice President, or **the spouse** *a member of the immediate family* of such candidate; or

(4) *a person protected by the Secret Service under section 3056(a)(6)*;

who is protected by the Secret Service as provided by law, shall be fined under this title or imprisoned not more than **three** 5 years, or both.

(b) As used in this section—

(1) the term “immediate family” means—

(A) * * *

(B) with respect to subsection (a)(2) and (a)(3) of this section, a person to whom the President, President-elect, Vice President, **or Vice President-elect** *Vice President-elect, or major candidate for the office of President or Vice President—*

(i) is related by blood, marriage, or adoption; or

(ii) stands in loco parentis;

* * * * *

CHAPTER 203—ARREST AND COMMITMENT

* * * * *

§ 3056. Powers, authorities, and duties of United States Secret Service

(a) * * *

* * * * *

(e) *Under the direction of the Secretary of the Treasury, the United States Secret Service is authorized to coordinate the design, planning, and implementation of security operations for any special event of national significance, as determined by the President or the President’s designee.*

* * * * *

CHAPTER 223—WITNESSES AND EVIDENCE

Sec.

3481. Competency of accused.

3486. Administrative subpoenas **[in Federal health care investigations]**.

[3486A. Administrative subpoenas in cases involving child abuse and child sexual exploitation.]

* * * * *

§ 3486. Administrative subpoenas [in Federal health care investigations]

(a) **AUTHORIZATION.—****[(1) In any investigation relating to any act or activity involving a Federal health care offense, or any act or activity involving a Federal offense relating to the sexual exploitation or other abuse of children, the Attorney General or the At-**

torney General's designee may issue in writing and cause to be served a subpoena—

【(A) requiring the production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control; or

【(B) requiring a custodian of records to give testimony concerning the production and authentication of such records.】

(1)(A) *In any investigation of—*

(i)(I) *a Federal health care offense or (II) a Federal offense involving the sexual exploitation or abuse of children, the Attorney General; or*

(ii) *an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056, if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury;*

may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

(B) *Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—*

(i) *the production of any records or other things relevant to the investigation; and*

(ii) *testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.*

(C) *A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a Federal offense involving the sexual exploitation or abuse of children shall not extend beyond—*

(i) *requiring that provider to disclose the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, which may be relevant to an authorized law enforcement inquiry; or*

(ii) *requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.*

(D) *As used in this paragraph, the term “Federal offense involving the sexual exploitation or abuse of children” means an offense under section 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years.*

* * * * *

(3) *The production of records relating to a Federal health care offense shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of such records is served. The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.*

(4) Witnesses [summoned] *subpoenaed* under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(5) *At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).*

(6)(A) *A United State district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.*

(B) *Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—*

- (i) endangerment to the life or physical safety of any person;*
- (ii) flight to avoid prosecution;*
- (iii) destruction of or tampering with evidence; or*
- (iv) intimidation of potential witnesses.*

(C) *An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.*

(D) *Whoever knowingly violates an order under this paragraph shall be fined under this title or imprisoned not more than 5 years, or both.*

(7) *A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.*

(8) *If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.*

(9) *A subpoena issued under paragraph (1)(A)(i)(II) or (1)(A)(ii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.*

(10) *As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(ii), the Secretary of the Treasury shall notify the Attorney General of its issuance.*

* * * * *

(d) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a [summons] *subpoena* under this section, who complies in good faith with the [summons] *subpoena* and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person

for such production or for nondisclosure of that production to the customer.

* * * * *

【§ 3486A. Administrative subpoenas in cases involving child abuse and child sexual exploitation

【(a) AUTHORIZATION.—

【(1) IN GENERAL.—In any investigation relating to any act or activity involving a violation of section 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title in which the victim is an individual who has not attained the age of 18 years, the Attorney General, or the designee of the Attorney General, may issue in writing and cause to be served a subpoena—

【(A) requiring a provider of electronic communication service or remote computing service to disclose the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, which may be relevant to an authorized law enforcement inquiry; or

【(B) requiring a custodian of records to give testimony concerning the production and authentication of such records or information.

【(2) ATTENDANCE OF WITNESSES.—Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

【(b) PROCEDURES APPLICABLE.—The same procedures for service and enforcement as are provided with respect to investigative demands in section 3486 apply with respect to a subpoena issued under this section.】

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