

110TH CONGRESS  
1ST SESSION

# S. 1235

To impose appropriate penalties for the assault or murder of a Federal law enforcement officer or Federal judge, for the retaliatory assault or murder of a family member of a Federal law enforcement officer or Federal judge, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2007

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

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## A BILL

To impose appropriate penalties for the assault or murder of a Federal law enforcement officer or Federal judge, for the retaliatory assault or murder of a family member of a Federal law enforcement officer or Federal judge, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Daniel Faulkner Law  
5       Enforcement Officers and Judges Protection Act of  
6       2007”.

1 **SEC. 2. SPECIAL PENALTIES FOR MURDER OR KIDNAPPING**  
2 **OF A FEDERAL LAW ENFORCEMENT OFFICER**  
3 **OR FEDERAL JUDGE.**

4 (a) MURDER.—Section 1114 of title 18, United  
5 States Code, is amended—

6 (1) by inserting “(a)” before “Whoever”; and

7 (2) by adding at the end the following:

8 “(b) If the victim of an offense punishable under this  
9 section or section 1117 is a Federal law enforcement offi-  
10 cer or a United States judge (as those terms are defined  
11 in section 115), the offender shall be punished by a fine  
12 under this title and—

13 “(1) in the case of murder in the first degree,  
14 or an attempt or conspiracy to commit murder in  
15 the first degree, death or imprisonment for life;

16 “(2) in the case of murder in the second degree,  
17 or an attempt or conspiracy to commit murder in  
18 the second degree, imprisonment for any term of  
19 years not less than 25 or for life; and

20 “(3) in the case of voluntary manslaughter, im-  
21 prisonment for any term of years not less than 10  
22 or for life.”.

23 (b) KIDNAPPING.—Section 1201(a) of title 18,  
24 United States Code, is amended—

25 (1) by redesignating subsections (f), (g), and

26 (h) as subsections (g), (h), and (i), respectively; and

1           (2) by inserting after subsection (e) the fol-  
2           lowing:

3           “(f) If the victim of an offense punishable under sub-  
4           section (a), (c), or (d) is a Federal law enforcement officer  
5           or a United States judge (as those terms are defined in  
6           section 115), the offender shall be punished by a fine  
7           under this title and imprisonment for any term of years  
8           not less than 20 or for life, or, if death results, may be  
9           sentenced to death.”.

10 **SEC. 3. SPECIAL PENALTIES FOR ASSAULTING A FEDERAL**  
11 **LAW ENFORCEMENT OFFICER OR FEDERAL**  
12 **JUDGE.**

13           (a) IN GENERAL.—Section 111 of title 18, United  
14 States Code, is amended to read as follows:

15 **“§ 111. Assaulting or interfering with certain officers**  
16 **or employees**

17           “(a) OFFICERS AND EMPLOYEES.—

18           “(1) IN GENERAL.—It shall be unlawful to—

19           “(A) assault or interfere with an officer or  
20           employee described in section 1114, while such  
21           officer or employee is engaged in, or on account  
22           of the performance of, official duties;

23           “(B) assault or interfere with an individual  
24           who formerly served as an officer or employee

1 described in section 1114 on account of the per-  
2 formance of official duties; or

3 “(C) assault or interfere with an individual  
4 on account of that individual’s current or  
5 former status as an officer or employee de-  
6 scribed in section 1114.

7 “(2) PENALTY.—Any person who violates para-  
8 graph (1), shall be—

9 “(A) fined under this title;

10 “(B)(i) in the case of an interference or a  
11 simple assault, imprisoned for not more than 1  
12 year;

13 “(ii) in the case of an assault involving ac-  
14 tual physical contact or the intent to commit  
15 any other felony, imprisoned for not more than  
16 10 years;

17 “(iii) in the case of an assault resulting in  
18 bodily injury, imprisoned for not more than 20  
19 years; or

20 “(iv) in the case of an assault resulting in  
21 substantial bodily injury (as that term is de-  
22 fined in section 113), or if a dangerous weapon  
23 was used or possessed during and in relation to  
24 the offense (including a weapon intended to  
25 cause death or danger but that fails to do so by

1 reason of a defective component), imprisoned  
2 for not more than 30 years; or

3 “(C) fined under subparagraph (A) and  
4 imprisoned under subparagraph (B).

5 “(b) LAW ENFORCEMENT OFFICERS AND JUDGES.—

6 “(1) IN GENERAL.—If the victim of an assault  
7 punishable under this section is a Federal law en-  
8 forcement officer or a United States judge (as those  
9 terms are defined in section 115)—

10 “(A) and if the assault resulted in substan-  
11 tial bodily injury (as that term is defined in sec-  
12 tion 113), the offender shall be punished by a  
13 fine under this title and imprisonment for not  
14 less 5 years nor more than 30 years; and

15 “(B) and if the assault resulted in serious  
16 bodily injury (as that term is defined in section  
17 2119(2)), or a dangerous weapon was used or  
18 possessed during and in relation to the offense,  
19 the offender shall be punished by a fine under  
20 this title and imprisonment for any term of  
21 years not less than 10 or for life.

22 “(2) IMPOSITION OF PUNISHMENT.—Each pun-  
23 ishment for criminal conduct described in this sub-  
24 section shall be in addition to any other punishment

1 for other criminal conduct during the same criminal  
2 episode.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of sections at the beginning of chapter 7 of title  
5 18, United States Code, is amended by striking the item  
6 relating to section 111 and inserting the following:

“111. Assaulting or interfering with certain officers or employees.”.

7 **SEC. 4. SPECIAL PENALTIES FOR RETALIATING AGAINST A**  
8 **FEDERAL LAW ENFORCEMENT OFFICER OR**  
9 **FEDERAL JUDGE BY MURDERING OR AS-**  
10 **SAULTING A FAMILY MEMBER.**

11 (a) IN GENERAL.—Section 115 of title 18, United  
12 States Code, is amended—

13 (1) by redesignating subsections (c) and (d) as  
14 subsections (d) and (e), respectively; and

15 (2) by inserting after subsection (b) the fol-  
16 lowing:

17 “(c)(1) If an offense punishable under this section  
18 is committed with the intent to impede, intimidate, or  
19 interfere with a Federal law enforcement officer or a  
20 United States judge while that officer or judge is engaged  
21 in the performance of official duties, with the intent to  
22 retaliate against that officer or judge or a person who for-  
23 merly served as such an officer or judge on account of  
24 the performance of official duties, or with the intent to  
25 retaliate against an individual on account of that individ-

1 ual’s current or former status as such an officer or judge,  
2 the offender shall be punished—

3 “(A) in the case of murder, attempted murder,  
4 conspiracy to murder, or manslaughter, as provided  
5 in section 1114(b);

6 “(B) in the case of kidnapping, attempted kid-  
7 napping, or conspiracy to kidnap, as provided in sec-  
8 tion 1201(f);

9 “(C) in the case of an assault resulting in bod-  
10 ily injury or involving the use or possession of a dan-  
11 gerous weapon during and in relation to the offense,  
12 as provided for a comparable offense against a Fed-  
13 eral law enforcement officer or United States judge  
14 under section 111; and

15 “(D) in the case of any other assault or threat,  
16 by a fine under this title and imprisonment for not  
17 more than 10 years.

18 “(2) Each punishment for criminal conduct described  
19 in this subsection shall be in addition to any other punish-  
20 ment for other criminal conduct during the same criminal  
21 episode.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
23 Section 2237(e)(1) of title 18, United States Code, is  
24 amended by striking “in section 115(c)” and inserting “in  
25 section 115”.

1 **SEC. 5. AUTHORIZATION FOR FEDERAL JUDGES AND FED-**  
2 **ERAL PROSECUTORS TO CARRY FIREARMS.**

3 (a) **AUTHORITY.**—

4 (1) **IN GENERAL.**—Chapter 203 of title 18,  
5 United States Code, is amended by inserting after  
6 section 3053 the following:

7 **“§ 3054. Authority of Federal judges and prosecutors**  
8 **to carry firearms**

9 “(a) **IN GENERAL.**—Any justice of the United States  
10 or judge of the United States (as those terms are defined  
11 in section 451 of title 28), any judge of a court created  
12 under article I of the United States Constitution, any  
13 bankruptcy judge, any magistrate judge, any United  
14 States attorney, and any other officer or employee of the  
15 Department of Justice whose duties include representing  
16 the United States in a court of law, may carry a firearm.

17 “(b) **REGULATIONS.**—Not later than 180 days after  
18 the date of enactment of the Daniel Faulkner Law En-  
19 forcement Officers and Judges Protection Act of 2007, the  
20 Attorney General shall promulgate regulations to carry  
21 out this section. Such regulations may provide for training  
22 and regular certification in the use of firearms and shall,  
23 with respect to justices, judges, bankruptcy judges, and  
24 magistrate judges, be promulgated after consultation with  
25 the Judicial Conference of the United States.”.

1           (2) EFFECTIVE DATE.—Section 3054(a) of title  
 2           18, United States Code, as added by paragraph (1),  
 3           shall take effect 90 days after the date on which the  
 4           Attorney General promulgates regulations under sec-  
 5           tion 3054(b) of title 18, United States Code, as  
 6           added by paragraph (1).

7           (3) TECHNICAL AND CONFORMING AMEND-  
 8           MENT.—The table of sections at the beginning of  
 9           chapter 203 of title 18, United States Code, is  
 10          amended by inserting after item relating to section  
 11          3053 the following:

“3054. Authority of Federal judges and prosecutors to carry firearms.”.

12          (b) AMENDMENTS TO LAW ENFORCEMENT OFFICER  
 13          SAFETY PROVISIONS OF TITLE 18.—

14          (1) IN GENERAL.—Section 926B of title 18,  
 15          United States Code, is amended by adding at the  
 16          end the following:

17          “(f) For purposes of this section, a law enforcement  
 18          officer of the Amtrak Police Department or a law enforce-  
 19          ment or police officer of any department or agency of the  
 20          Federal Government qualifies as an employee of a govern-  
 21          mental agency who is authorized by law to engage in or  
 22          supervise the prevention, detection, investigation, or pros-  
 23          ecution of, or the incarceration of any person for, any vio-  
 24          lation of law, and has statutory powers of arrest.”.

1           (2) RETIRED LAW ENFORCEMENT OFFICERS.—  
2           Section 926C of title 18, United States Code, is  
3           amended—

4                   (A) in subsection (c)—

5                           (i) in paragraph (3)(A), by striking  
6                           “was regularly employed as a law enforce-  
7                           ment officer for an aggregate of 15 years  
8                           or more” and inserting “served as a law  
9                           enforcement officer for an aggregate of 10  
10                           years or more”;

11                           (ii) by striking paragraphs (4) and (5)  
12                           and inserting the following:

13                           “(4) during the most recent 12-month period,  
14                           has met, at the expense of the individual, the stand-  
15                           ards for qualification in firearms training for active  
16                           law enforcement officers as set by the former agency  
17                           of that officer, the State in which that officer re-  
18                           sides, or a law enforcement agency within the State  
19                           in which that officer resides;” and

20                           (iii) by redesignating paragraphs (6)  
21                           and (7) as paragraphs (5) and (6), respec-  
22                           tively;

23                   (B) in subsection (d)—

24                           (i) in paragraph (1), by striking “to  
25                           meet the standards established by the

1 agency for training and qualification for  
2 active law enforcement officers to carry a  
3 firearm of the same type as the concealed  
4 firearm” and inserting “to meet the active  
5 duty standards for qualification in firearms  
6 training as established by the agency to  
7 carry a firearm of the same type as the  
8 concealed firearm”; and

9 (ii) in paragraph (2)(B), by striking  
10 “otherwise found by the State” and all  
11 that follows and inserting “otherwise found  
12 by the State or a certified firearms instruc-  
13 tor that is qualified to conduct a firearms  
14 qualification test for active duty officers  
15 within that State to have met—

16 “(i) the active duty standards for qualifica-  
17 tion in firearms training as established by the  
18 State to carry a firearm of the same type as the  
19 concealed firearm; or

20 “(ii) if the State has not established the  
21 standards described in clause (i), standards set  
22 by any law enforcement agency within that  
23 State to carry a firearm of the same type as the  
24 concealed firearm.”; and

25 (C) by adding at the end the following:

1 “(f) In this section, the term ‘service with a public  
2 agency as a law enforcement officer’ includes service as  
3 a law enforcement officer of the Amtrak Police Depart-  
4 ment or as a law enforcement or police officer of any de-  
5 partment or agency of the Federal Government.”.

6 **SEC. 6. LIMITATION ON DAMAGES INCURRED DURING COM-**  
7 **MISSION OF A FELONY OR CRIME OF VIO-**  
8 **LENCE.**

9 (a) IN GENERAL.—Section 1979 of the Revised  
10 States (42 U.S.C. 1983) is amended by—

11 (1) striking “except that in any action” and all  
12 that follows through “relief was unavailable.” and  
13 inserting the following: “except that—

14 “(1) in any action brought against a judicial of-  
15 ficer for an act or omission taken in the judicial ca-  
16 pacity of that officer, injunctive relief shall not be  
17 granted unless a declaratory decree was violated or  
18 declaratory relief was unavailable; and

19 “(2) in any action seeking redress for a depri-  
20 vation that was incurred in the course of, or as a re-  
21 sult of, or is related to, conduct by the injured party  
22 that, more likely than not, constituted a felony or a  
23 crime of violence (as that term is defined in section  
24 16 of title 18, United States Code) (including any  
25 deprivation in the course of arrest or apprehension

1 for, or the investigation, prosecution, or adjudication  
2 of, such an offense), a court shall not have jurisdic-  
3 tion to consider a claim for damages other than for  
4 necessary out-of-pocket expenditures and other mon-  
5 etary loss.”; and

6 (2) indenting the last sentence as an undesig-  
7 nated paragraph.

8 (b) ATTORNEY’S FEES.—Section 722(b) of the Re-  
9 vised Statutes (42 U.S.C. 1988(b)) is amended by striking  
10 “except that in any action” and all that follows and insert-  
11 ing the following: “except that—

12 “(1) in any action brought against a judicial of-  
13 ficer for an act or omission taken in the judicial ca-  
14 pacity of that officer, such officer shall not be held  
15 liable for any costs, including attorneys fees, unless  
16 such action was clearly in excess of the jurisdiction  
17 of that officer; and

18 “(2) in any action seeking redress for a depri-  
19 vation that was incurred in the course of, or as a re-  
20 sult of, or is related to, conduct by the injured party  
21 that, more likely than not, constituted a felony or a  
22 crime of violence (as that term is defined in section  
23 16 of title 18, United States Code) (including any  
24 deprivation in the course of arrest or apprehension  
25 for, or the investigation, prosecution, or adjudication

1 of, such an offense), the court may not allow such  
2 party to recover attorney’s fees.”.

3 **SEC. 7. FEDERAL REVIEW OF STATE CONVICTION FOR**  
4 **MURDER OF A LAW ENFORCEMENT OFFICER**  
5 **OR JUDGE.**

6 (a) IN GENERAL.—Section 2254 of title 28, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing:

9 “(j)(1) For an application for a writ of habeas corpus  
10 on behalf of a person in custody pursuant to the judgment  
11 of a State court for a crime that involved the killing of  
12 a public safety officer (as that term is defined in section  
13 1204 of the Omnibus Crime Control and Safe Streets Act  
14 of 1968 (42 U.S.C. 3796b)) or judge, while the public  
15 safety officer or judge was engaged in the performance  
16 of official duties, or on account of the public safety offi-  
17 cer’s or judge’s performance of official duties or status  
18 as a public safety officer or judge—

19 “(A) the application shall be subject to the time  
20 limitations and other requirements under sections  
21 2263, 2264, and 2266; and

22 “(B) the court shall not consider claims relating  
23 to sentencing that were adjudicated in a State court.

24 “(2) Sections 2251, 2262, and 2101 are the exclusive  
25 sources of authority for Federal courts to stay a sentence

1 of death entered by a State court in a case described in  
2 paragraph (1).”.

3 (b) RULES.—Rule 11 of the Rules Governing Section  
4 2254 Cases in the United States District Courts is amend-  
5 ed by adding at the end the following: “Rule 60(b)(6) of  
6 the Federal Rules of Civil Procedure shall not apply to  
7 a proceeding under these rules in a case that is described  
8 in section 2254(j) of title 28, United States Code.”.

9 (c) FINALITY OF DETERMINATION.—Section  
10 2244(b)(3)(E) of title 28, United States Code, is amended  
11 by striking “the subject of a petition” and all that follows  
12 and inserting: “reheard in the court of appeals or reviewed  
13 by writ of certiorari.”.

14 (d) EFFECTIVE DATE AND APPLICABILITY.—

15 (1) IN GENERAL.—This section and the amend-  
16 ments made by this section shall apply to any case  
17 pending on or after the date of enactment of this  
18 Act.

19 (2) TIME LIMITS.—In a case pending on the  
20 date of enactment of this Act, if the amendments  
21 made by this section impose a time limit for taking  
22 certain action, the period of which began before the  
23 date of enactment of this Act, the period of such  
24 time limit shall begin on the date of enactment of  
25 this Act.

1           (3) EXCEPTION.—The amendments made by  
2 this section shall not bar consideration under section  
3 2266(b)(3)(B) of title 28, United States Code, of an  
4 amendment to an application for a writ of habeas  
5 corpus that is pending on the date of enactment of  
6 this Act, if the amendment to the petition was adju-  
7 dicated by the court prior to the date of enactment  
8 of this Act.

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