



Obstruction of Congress: An Abridged Overview of Federal Criminal Laws Relating to Interference with Congressional Activities

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Summary

Obstruction of justice is the frustration of governmental purposes by violence, corruption, destruction of evidence, or deceit. It is a federal crime. In fact, it is several crimes. Obstruction prosecutions regularly involve charges under several statutory provisions. Federal obstruction of justice laws are legion; too many for even passing reference to all of them in a single report.

The general obstruction of justice provisions are six: 18 U.S.C. 1512 (tampering with federal witnesses), 1513 (retaliating against federal witnesses), 1503 (obstruction of pending federal court proceedings), 1505 (obstruction of pending congressional or federal administrative proceedings), 371 (conspiracy), and contempt. Other than Section 1503, each prohibits obstruction of certain congressional activities. In addition to these, there are a host of other statutes that penalize obstruction by violence, corruption, destruction of evidence, or deceit.

Moreover, regardless of the offense for which an individual is convicted, his sentence may be enhanced as a consequence of any obstruction of justice for which he is responsible, if committed during the course of the investigation, prosecution, or sentencing for the offense of his conviction. The enhancement may result in an increase in his term of imprisonment by as much as four years.

This is an abridged version of CRS Report RL34304, [*Obstruction of Congress: a Brief Overview of Federal Law Relating to Interference with Congressional Activities*](#), by Charles Doyle, without the footnotes, quotations, or citations to authority found in the longer report.

Witness Tampering (18 U.S.C. 1512)

Section 1512 applies to the obstruction of federal proceedings—congressional, judicial, or executive. It consists of four somewhat overlapping crimes: use of force or the threat of the

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use or force to prevent the production of evidence (18 U.S.C. 1512(a)); use of deception or corruption or intimidation to prevent the production of evidence (18 U.S.C. 1512(b)); destruction or concealment of evidence or attempts to do so (18 U.S.C. 1512(c)); and witness harassment to prevent the production of evidence (18 U.S.C. 1512(d)).

Obstruction by Violence (18 U.S.C. 1512(a))

Subsection 1512(a) has slightly different elements depending upon whether the offense involves a killing or attempted killing—18 U.S.C. 1512(a)(1), or some other use of physical force or a threat—18 U.S.C. 1512(a)(2). In essence, it condemns the use of violence to prevent a witness from testifying or producing evidence for an investigation and sets its penalties according to whether the obstructive violence was a homicide, an assault or a threat.

Auxiliary Offenses and Liability

Subsection 1512(k) makes conspiracy to violate Section 1512 a separate offense subject to the same penalties as the underlying offense. The section serves as an alternative to a prosecution under 18 U.S.C. 371 that outlaws conspiracy to violate any federal criminal statute. Section 371 is punishable by imprisonment for not more than five years and conviction requires the government to prove the commission of an overt act in furtherance of the scheme by one of the conspirators. Subsection 1512(k) has no specific overt act element, and the courts have generally declined to imply one under such circumstances. Regardless of which section is invoked, conspirators are criminally liable under the *Pinkerton* doctrine for any crime committed in the foreseeable furtherance of the conspiracy.

Accomplices to a violation of subsection 1512(a) may incur criminal liability by operation of 18 U.S.C. 2, 3, 4, or 373 as well. Section 2 treats accomplices before the fact as principals, that is, it declares that those who command, procure or aid and abet in the commission of a federal crime by another, are to be sentenced as if they committed the offense themselves.¹ As a general rule, in order to aid and abet another to commit a crime it is necessary that a defendant in some way associate himself with the venture, that he participate in it as in something he wishes to bring about, that he seek by his action to make it succeed. It is also necessary to prove that someone else committed the underlying offense. Section 3 outlaws acting as an accessory after the fact, which occurs when one knowing that an offense has been committed, receives, relieves, comforts or assists the offender in order to hinder his or her apprehension, trial, or punishment. Prosecution requires the commission of an underlying federal crime by someone else. Offenders face sentences set at one half of the sentence attached to the underlying offense, or if the underlying offense is punishable by life imprisonment or death, by imprisonment for not more than 15 years (and a fine of not more than \$250,000). The elements of misprision of felony under 18 U.S.C. 4 are (1) the principal

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committed and completed the felony alleged; (2) the defendant had full knowledge of that fact; (3) the defendant failed to notify the authorities; and (4) defendant took steps to conceal the crime. The offense is punishable by imprisonment for not more than three years and/or a fine of not more than \$250,000. Solicitation to commit an offense under subsection 1512(a), or any other crime of violence, is proscribed in 18 U.S.C. 373. To establish solicitation under §373, the Government must demonstrate that the defendant (1) had the intent for another to commit a crime of violence and (2) solicited, commanded, induced or otherwise endeavored to persuade such other person to commit the crime of violence under circumstances that strongly corroborate evidence of that intent. Section 373 provides an affirmative statutory defense if an offender prevents the commission of the solicited offense.² Offenders face penalties set at one half of the sanctions for the underlying offense, but imprisonment for not more than 20 years, if the solicited crime of violence is punishable by death or imprisonment for life. A subsection 1512(a) violation opens up the prospect of prosecution for other crimes for which a violation of subsection 1512(a) may serve as an element. The federal money laundering and racketeering statutes are perhaps the most prominent examples of these. The racketeering statutes (RICO) outlaw acquiring or conducting the affairs of an interstate enterprise through a pattern of predicate offenses. Section 1512 offenses are RICO predicate offenses. RICO violations are punishable by imprisonment for not more than 20 years (or imprisonment for life if the predicate offense carries such a penalty), a fine of not more than \$250,000 and the confiscation of related property. The money laundering provisions, among other things, prohibit financial transactions involving the proceeds of a predicate offense. RICO predicate offenses are by definition money laundering predicate offenses. Money laundering is punishable by imprisonment for not more than 20 years, a fine, and the confiscation of related property.

Obstruction by Intimidation, Threats, Persuasion, or Deception (18 U.S.C. 1512(b))

The second group of offenses within Section 1512 outlaws obstruction of federal congressional, judicial, or administrative activities by intimidation, threat, corrupt persuasion or deception. In more general terms, subsection 1512(b) bans (1) knowingly, (2) using one of the prohibited forms of persuasion (intimidation, threat, misleading or corrupt persuasion), (3) with the intent to prevent a witness's testimony or physical evidence from being truthfully presented at congressional or other official federal proceedings or with the intent to prevent a witness from cooperating with authorities in a matter relating to a federal offense. It also bans any attempt to so intimidate, threaten, or corruptly persuade. The conspiracy, accomplice, RICO and money laundering attributes are equally applicable to subsection 1512(b) offenses.

Obstruction by Destruction of Evidence or Harassment (18 U.S.C. 1512(c), 1512(d))

Subsection 1512(c) proscribes obstruction of official proceedings by destruction of evidence and is punishable by imprisonment for not more than 20 years. Subsection 1512(d) outlaws

and is punishable by imprisonment for not more than 20 years. Subsection 1512(d) outlaws harassing federal witnesses and is a misdemeanor punishable by imprisonment for not more than one year. Both enjoy the conspiracy, accomplice, RICO and money laundering attributes that to apply to all Section 1512 offenses.

Retaliating Against Federal Witnesses (18 U.S.C. 1513)

Section 1513 prohibits witness or informant retaliation in the form of killing, attempting to kill, inflicting or threatening to inflict bodily injury, damaging or threatening to damage property, and conspiracies to do so. It also prohibits economic retaliation against a federal witnesses, but only witnesses in court proceedings and only on criminal cases. Its penalty structure is comparable to that of Section 1503. Section 1513 offenses are RICO predicate offenses and money laundering predicate offenses, and the provisions for conspirators and accomplices apply as well.

Obstructing Congressional or Administrative Proceedings (18 U.S.C. 1505)

Section 1505 outlaws obstructing congressional or federal administrative proceedings, a crime punishable by imprisonment not more than five years (not more than eight years if the offense involves domestic or international terrorism). The crime has three essential elements. First, there must be a proceeding pending before a department or agency of the United States. Second, the defendant must be aware of the pending proceeding. Third, the defendant must have intentionally endeavored corruptly to influence, obstruct or impede the pending proceeding. Section 1505 offenses are not RICO or money laundering predicate offenses. Conspiracy to obstruct administrative or congressional proceedings may be prosecuted under 18 U.S.C. 371, and the general aiding and abetting, accessory after the fact, and misprision statutes are likely to apply with equal force in the case of obstruction of an administrative or congressional proceeding.

Conspiracy to Obstruct to Defraud (18 U.S.C. 371)

Section 371 contains both a general conspiracy prohibition and a specific obstruction conspiracy prohibition in the form of a conspiracy to defraud proscription. The elements of conspiracy to defraud the United States are: (1) an agreement of two more individuals; (2) to defraud the United States; and (3) an overt act by one of conspirators in furtherance of the scheme. The fraud covered by the statute reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful functions of any department of Government by deceit, craft or trickery, or at least by means that are dishonest. The scheme may be designed to deprive the United States of money or property, but it need not be so; a plot calculated to frustrate the functions of a governmental entity will suffice.

Contempt of Congress

Contempt of Congress is punishable by statute and under the inherent powers of Congress. Congress has not exercised its inherent contempt power for some time. The statutory contempt of Congress provision, 2 U.S.C. 192, outlaws the failure to obey a congressional subpoena or the refusal to answer questioning at a congressional hearing. The offense is punishable by imprisonment for not more than one year and a fine of up to \$100,000.

Obstruction of Justice by Violence or Threat

Several other federal statutes outlaw use of threats or violence to obstruct federal government activities. One, 18 U.S.C. 115, prohibits acts of violence against Members of Congress, judges, jurors, officials, former officials, and their families in order to impede the performance of their duties or to retaliate for the performance of those duties. It makes assault, kidnapping, murder, and attempts and conspiracies to commit such offenses in violation of the section subject to the penalties imposed for those crimes elsewhere in the Code. It makes threats to commit an assault punishable by imprisonment for not more than six years and threats to commit any of the other offenses under the section punishable by imprisonment for not more than 10 years. Another, 18 U.S.C. 1114, protects federal officers and employees as well as those assisting them, from murder, manslaughter, and attempted murder and manslaughter committed during or on account of the performance of their duties. The section's coverage extends to government witnesses. Other provisions protect federal officers and employees from kidnapping and assault committed during or account of the performance of their duties, but their coverage of those assisting them is less clear. Beyond these general prohibitions, federal law proscribes the murder, kidnapping, or assault of Members of Congress, Supreme Court Justices, or Cabinet Secretaries; and a number of statutes outlaw assaults on federal officers and employees responsible for the enforcement of particular federal statutes and programs.

Obstruction of Justice by Bribery

18 U.S.C. 201

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