

Calendar No. 643

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-356

PASSENGER RAIL CREW PROTECTION
PARITY ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2861



NOVEMBER 14, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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PASSENGER RAIL CREW PROTECTION PARITY ACT

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2861]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2861) to prosecute, as a Federal crime, the assault or intimidation of a passenger train crew member to the same extent as such actions against aircraft crew members are prosecuted, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2861 is to provide Federal protections to certain rail passenger crew members against assault to improve public safety and discourage violence aboard intercity rail passenger transportation trains. The bill is further intended to encourage such carriers to develop and implement assault prevention and response training programs and to direct the Government Accountability Office (GAO) to review the prevalence of assaults occurring against commuter train crew members.

BACKGROUND AND NEEDS

Amtrak is the predominant rail passenger carrier providing intercity rail passenger transportation in the United States. Amtrak operates more than 21,400 route miles, serving over 500 sta-

tions in 46 States.¹ In fiscal year 2017, Amtrak completed 31.7 million passenger trips with 12 million riders on its Northeast Corridor, 15 million riders on its State-supported routes, and 4.6 million riders on its long-distance routes.²

From 2015 to 2017, according to internal data, Amtrak recorded 73 assaults to crew members aboard its trains with 49 of the reported assaults occurring in the Western Service region and 24 assaults in the Northeastern Corridor and Eastern Service region. S. 2861 would provide that certain assaults be charged under Federal law, as opposed to being adjudicated under the laws of the local jurisdiction where they are committed. According to Amtrak and rail labor groups, the application of Federal criminal law to Amtrak assaults would improve public safety and discourage violence aboard Amtrak passenger trains by serving as a deterrent.

Similar Federal protections currently are provided to airline crew members. Under section 46504 of title 49, United States Code, a person on an aircraft in the special aircraft jurisdiction of the United States who assaults or intimidates a flight crew member, thereby interfering with the performance of the crew member's duties or lessening the ability of the member to perform those duties, or attempts or conspires to do such an act, may be fined or imprisoned for up to 20 years, or both. If a dangerous weapon is used in such an assault or intimidation, the individual may be imprisoned for life.

Under S. 2861, only an assault that interferes with the performance of a crew member's duties or lessens the crew member's ability to perform such duties, or attempts or conspires to commit such an assault, would be subject to Federal penalties. Among other differences from the airline crew provision, S. 2861 also would provide shorter terms for imprisonment to account for differing characteristics and levels of risk present in the passenger rail industry as compared to aviation.

SUMMARY OF PROVISIONS

If enacted, S. 2861 would do the following:

- Make it unlawful for any person, while onboard a passenger train providing intercity rail passenger transportation in operation, or on a platform serving such a train, to: (1) assault a crew member and thereby interfere with the performance of the duties of the crew member or lessen the ability of a crew member to perform those duties; or (2) attempt or conspire to perform such an act.
- Direct GAO to review the number of assaults on rail crew members operating or assisting with commuter rail passenger transportation (as defined in section 24102 of title 49, United States Code) at each of the 10 largest commuter rail carriers (as determined by annual ridership) and submit a report to Congress with any recommendations from its findings.

¹See Amtrak National Facts (<https://www.amtrak.com/national-facts>); Bureau of Transportation Statistics, Amtrak Ridership (May 20, 2017) (<https://www.bts.gov/archive/publications/multimodal-transportation-indicators/october-2005/rail-amtrak-ridership>).

²Amtrak Sets Ridership, Revenue and Earnings Records (Nov. 16, 2017) (<https://media.amtrak.com/2017/11/amtrak-sets-ridership-revenue-and-earnings-records/>).

LEGISLATIVE HISTORY

S. 2861 was introduced on May 16, 2018, by Senator Duckworth (for herself and Senator Hoeven) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On July 27, 2018, Senator Duckworth filed a substitute amendment to the bill. On August 1, 2018, the Committee met in an open Executive Session and by voice vote ordered S. 2861 to be reported favorably with an amendment (in the nature of a substitute).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2861—Passenger Rail Crew Protection Parity Act

S. 2861 would establish a new federal crime addressing the assault of certain crew members on passenger trains. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the bill would apply to fewer than 10 cases a year, however, so any increase in spending for law enforcement, court proceedings, or prison operations would not be significant. Any such spending would be subject to the availability of appropriated funds.

Because people prosecuted and convicted under S. 2861 could be subject to criminal fines, the federal government might collect additional amounts under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation. CBO expects that any additional revenues and associated direct spending would not be significant because the bill would probably affect fewer than 10 cases per year.

Pay-as-you-go procedures apply because enacting S. 2861 would affect direct spending and revenues.

CBO estimates that enacting S. 2861 would not significantly increase net direct spending and would not increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2861 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Sarah Puro. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

Section 2 of S. 2861, as reported, would expand Federal protections against assault to crew members of a passenger train providing intercity rail passenger transportation, which is expected to predominantly cover Amtrak crew members. As discussed above,

from 2015 to 2017, Amtrak recorded 73 assaults to crew members aboard its trains. For such assaults to constitute an offense under S. 2861, the assault would have to occur onboard an Amtrak train in operation, or on a platform serving an Amtrak train in operation, and the assault would have to interfere with the performance of the duties of the Amtrak crew member or lessen that Amtrak crew member's ability to perform those duties. With respect to attempt or conspiracy to assault, Amtrak currently does not have data on the prevalence of such crimes against crew members.

ECONOMIC IMPACT

S. 2861, as reported, is not expected to have a negative impact on the Nation's economy.

PRIVACY

S. 2861, as reported, is not expected to have an impact on the personal privacy of individuals. Although the bill would require GAO to report to Congress on the number of assaults on commuter rail crew members, including a description of the number and types of assaults and related available details, and a description of the outcome of such assaults (such as the number of prosecutions of assaults, based on available data), such information is expected to be reported in a way that protects individuals' privacy and aggregated to a degree that no individual is identifiable.

PAPERWORK

S. 2861, as reported, would only incrementally affect paperwork requirements for regulated entities. Section 2(c) of the bill would require GAO to report to Congress on the number of assaults on commuter rail crew members, including a description of the number and types of assaults and related available details, a description of the outcome of such assaults (such as the number of prosecutions of assaults, based on available data), and identification of any challenges in reporting assault incidents against commuter rail crew members.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the bill may be cited as the "Passenger Rail Crew Protection Act."

Section 2. Interference with passenger train crew members.

This section would make it unlawful for any person onboard a passenger train in operation, or on a platform serving a passenger train in operation, to: (1) assault a crew member and thereby interfere with the performance of the duties of a crew member or lessen the ability of a crew member to perform those duties; or (2) attempt

or conspire to perform such an act. Passenger train would be defined as a passenger train in intercity rail passenger service transportation (as defined in section 24102 of title 49, United States Code). A violator would be subject to a fine or imprisonment for not more than 8 years, or both, or not more than 20 years if a dangerous weapon is used in assaulting the crew member.

Under this section, a platform serving a passenger train in operation is intended to mean the immediate platform that is closest to the passenger train that is used for boarding and disembarking the passenger train. Crew member would mean a service employee—defined as an engineer, conductor, onboard personnel, and employee performing or responsible for a safety-sensitive function—assigned to duty on an in-service passenger train. Dangerous weapons would be defined as a weapon, device, instrument, material, or animate or inanimate substance that is used for, or is readily capable of, causing death or serious bodily injury.

Additionally, this section would include the sense of Congress that a rail passenger carrier providing intercity rail passenger transportation should develop and implement training and protocols on assault prevention and response, as well as dealing with hostile situations. The section also would include the sense of Congress that such a carrier should provide notice to the public on the Federal offense created by this bill.

Finally, this section would direct the GAO to review the number of assaults on rail crew members operating or assisting with commuter rail passenger transportation (as defined in section 24102 of title 49, United States Code) at each of the 10 largest commuter rail carriers (as determined by annual ridership) and submit a report to Congress with any recommendations from its findings.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE V. RAIL PROGRAMS

PART E. MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§28104. *Interference with passenger train crew members*

(a) *DEFINITIONS.—In this section:*

(1) *CREW MEMBER.—The term “crew member” means a person, other than a passenger, who is a service employee assigned to duty on an in-service passenger train.*

(2) *DANGEROUS WEAPON.—*

(A) *IN GENERAL.—The term “dangerous weapon” means a weapon, device, instrument, material, or animate or inanimate substance that is used for, or is readily capable of, causing death or serious bodily injury.*

(B) *INCLUSION.*—The term “dangerous weapon” includes—

- (i) a pocket knife with a blade that is less than 2½ inches in length; and
- (ii) a box cutter.

(3) *PASSENGER TRAIN.*—The term “passenger train” means a passenger train in intercity rail passenger transportation (as defined in section 24102).

(4) *SERIOUS BODILY INJURY.*—The term “serious bodily injury” means a bodily injury that involves—

- (A) a substantial risk of death;
- (B) extreme physical pain;
- (C) protracted and obvious disfigurement; or
- (D) protracted loss or impairment of the function of—
 - (i) a bodily member;
 - (ii) an organ; or
 - (iii) a mental faculty.

(5) *SERVICE EMPLOYEE.*—The term “service employee” includes—

- (A) an engineer;
- (B) a conductor;
- (C) onboard personnel; and
- (D) an employee performing, or responsible for, a safety-sensitive function.

(b) *OFFENSE.*—It shall be unlawful for any person onboard a passenger train in operation, or on a platform serving a passenger train in operation—

- (1) to assault a crew member and thereby interfere with the performance of the duties of a crew member or lessen the ability of a crew member to perform those duties; or
- (2) to attempt or conspire to perform an act described in paragraph (1).

(c) *PENALTIES.*—A person who violates subsection (b)—

- (1) shall be fined under title 18 or imprisoned for not more than 8 years, or both; and
- (2) if a dangerous weapon is used in assaulting the crew member, shall be imprisoned for not more than 20 years.