



Why Is an Assault on Congress Member a Federal Crime?

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The charges against Jared Loughner for shooting Representative Gabrielle Giffords put into sharp focus a little-known federal statute, 18 U.S.C. 351. This law provides for a death penalty for killing a member of Congress, a presidential or vice presidential candidate, or a Supreme Court justice, as well as imprisonment up to life for attempting to kill such a person. Loughner is charged under this statute with attempting to kill Giffords.

The background of this law is interesting. When President John F. Kennedy was assassinated in Dallas in 1963, it was not a federal crime to kill a U.S. president. Had alleged assassin Lee Harvey Oswald been tried, the trial would have taken place in a Texas state court. In 1965, Congress passed a law, 18 U.S.C. 1751, making it a federal crime to kill, kidnap, or assault the President or the Vice President.

In 1968, presidential candidate and U.S. Senator Robert F. Kennedy was assassinated in Los Angeles. That was not a federal crime at the time, and Sirhan Sirhan was convicted in California state court for the murder and sentenced to death. (That sentence was commuted to life in prison in 1972, when that state abolished the death penalty, and Sirhan remains in a California state prison.) In 1971, Congress enacted 18 U.S.C. 351, which extended the protection of the Federal criminal law to members of Congress, paralleling that extended to the President and the Vice President.

Of course, in the absence of a federal law, Loughner could have been prosecuted, convicted, and sentenced in an Arizona state court. There has been some recent discussion of this statute in the legal blogs. See the [Concurring Opinions blog](#) and [Josh Blackman's blog](#).

Why did Congress find it necessary or desirable to make this a federal crime? Probably not because it was concerned that state prosecutors and courts would not take this crime seriously or would not hand down appropriate punishments. Most likely, Congress wanted to express a national consensus that an attack on an elected federal representative or



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similar official is, in effect, an assault on the government and on the nation itself. And it may have desired, in national times of sorrow and anger precisely like the one we are in now, to allow the nation as a whole to take action to ensure justice. The federal courts are such a vehicle for national action.

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The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

