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**Select Committee on Community  
Security Committee**

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**HB 2293**

**Brief Description:** Creating the antiterrorism crime act of 2002.

**Sponsors:** Representatives Buck, Pearson, Schoesler, Benson, Sump, Delvin, Ahern, Ballasiotes, Mulliken, Campbell, Holmquist, Anderson, Alexander, Armstrong, Lisk, D. Schmidt, Mielke, Boldt, Edwards, Pflug and Esser.

**Brief Summary of Bill**

- Enacts the Antiterrorism Crime Act of 2002.
- Includes terrorism-related definitions, such as "terrorist act" and "terrorist organization," within criminal code provisions.
- Creates specific felony terrorism crimes of criminal terrorism; terrorist activity; malicious detonation or release (and malicious placement of, malicious intimidation or harassment with, and malicious threat to use a real or imitation) chemical, biological, explosive, incendiary, flammable, or radiological substance or device; assemblage of terrorists.
- Includes terrorism crimes within sentencing provisions for adults and juveniles.
- Provides for forfeiture of property of terrorists or terrorist organizations convicted of any of felony terrorism crimes.
- Includes several of the new felony terrorism crimes within aggravated first degree murder, which is subject to the death penalty or life imprisonment without release.
- Includes circumstances related to terrorism crimes within aggravating circumstances for departure from standard sentencing range.
- States new criminal code provisions do not authorize, require, or establish censorship.
- Repeals provisions of malicious mischief and explosives law statutes.
- Includes an emergency clause for provisions to take effect immediately.

**Hearing Date:** 1/16/02

**Staff:** Ilene Miller (786-7310) and Caroleen Dineen (786-7156).

**Background:**

Terrorist Attacks

On September 11, 2001, terrorists hijacked four commercial airliners and crashed them into the twin towers of the World Trade Center, into the Pentagon, and onto a field in Pennsylvania, killing thousands of people. Shortly after these attacks occurred, anthrax-contaminated mail was found in various locations, including postal facilities, Congressional offices and the United States Supreme Court. As a result of exposure to anthrax contaminated mail, some people became infected with inhalation or cutaneous anthrax, and some died from inhalation anthrax.

After the September 11, 2001 attacks, the United States began a military campaign to eliminate terrorism. The federal government and numerous state legislatures also have begun reviewing current laws and considering and enacting legislation to prevent and respond to terrorism and to punish persons committing or attempting to commit terrorist attacks.

On October 26, 2001, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT). USA PATRIOT creates new terrorism crimes, including knowingly harboring a terrorist and committing acts of violence against mass transit systems, increases criminal penalties, and broadens application of the death penalty to terrorist acts. The act subjects the assets of identified terrorists to civil forfeiture. In addition, USA PATRIOT also includes provisions relating to electronic surveillance, money laundering, immigration and deportation, and victims' assistance.

Forfeiture

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. For example, law enforcement agencies may seize and forfeit certain property under Washington's drug forfeiture statute. This includes a provision authorizing forfeiture of real and personal property when the property has been employed in the commission of a drug law violation, or has been acquired with the proceeds of illegal drug activity.

Real property may only be seized upon process issued by a superior court. Forfeiture proceedings for real property are always judicial. Prior judicial action is not always necessary for the seizure of personal property. For example, law enforcement may seize personal property if: the seizure is incident to the arrest or under search warrant; the officer has probable cause to believe the property is directly or indirectly dangerous to public health or safety; or the officer has probable cause to believe the property was used or intended to be used in violation of the drug laws.

In the case of personal property, the seizing agency has the initial burden of showing probable cause exists to believe the property is subject to forfeiture. The burden shifts to the claimant to establish, by a preponderance of the evidence, that the property is not subject to

forfeiture.

For real property, the burden of proof to show that the real property is subject to forfeiture remains on the seizing law enforcement agency.

When property is forfeited, the seizing law enforcement agency may:

- retain the forfeited property for official use by the agency;
- sell the forfeited property;
- forward the forfeited property to the drug enforcement administration; or
- request the sheriff or director of public safety to take custody of the forfeited property.

### Criminal Sentencing

An adult offender who commits a felony on or after July 1, 1984, is subject to the provisions of the Sentencing Reform Act (SRA), and a court generally must impose a sentence within the standard sentence range, which is based on the severity of the crime and the offender's felony convictions. Crimes are categorized into one of 16 "seriousness levels" depending on the seriousness of the offense, from level I (punishable by zero days to 29 months imprisonment) to level XVI (punishable by life imprisonment without parole or by death). An adult offender is also assigned an "offender score" generally based on the number of the offender's prior convictions. A table that matches the "seriousness level" of the crime with the "offender score" is used to determine the offender's sentence.

#### *Exceptional Sentence*

The court may impose a sentence outside the standard range if substantial and compelling reasons justify an exceptional sentence. Sentences that depart from the standard range must meet certain requirements and may be appealed by either the defendant or the state. The SRA lists a number of illustrative factors both mitigating and aggravating that the court may consider in determining whether an offender should receive an exceptional sentence.

#### *Three strikes*

Under what is commonly referred to as the "Three Strikes and You're Out" law, a persistent offender is subject to a sentence of life imprisonment. A person is considered a "persistent offender" if he or she commits three most serious offenses. The term "most serious offense" includes all class A felonies and several other enumerated offenses.

### Bombing related crimes

The Washington State Explosives Act (Explosives Act) includes provisions regarding licensing for and manufacture of explosives as well as the sale, transport and storage of explosives. The Explosives Act also includes criminal provisions making malicious placement or explosion or intimidation or harassment with an explosive felonies under Washington law.

In 1997, the Explosives Act was amended to include terrorism-related crimes. The crimes of threatening, placing or exploding a bomb were ranked under the SRA, with rankings for then-existing crimes increased and higher rankings imposed for bombings done with terrorist intent. Bombing related crimes are now classified as "A," "B," or "C" felonies, and these

crimes are classified as follows:

- Level XIV Exploding a bomb with terrorist intent (class A);
- Level XIII Exploding a bomb and endangering life or safety (class A);
- Level XIII Placing a bomb with terrorist intent (class A);
- Level XII Placing a fake bomb with terrorist intent (class B);
- Level X Exploding a bomb and damaging property (class B);
- Level IX Placing a bomb to endanger life or safety (class B);
- Level VII Placing a bomb to damage property (class B);
- Level VI Placing a fake bomb without terrorist intent (class C); and
- Level IV Threats to bomb or injure property (class B);

### Criminal Law Provisions

A person is guilty of aggravated first-degree murder if the person committed premeditated first-degree murder and at least one aggravating circumstance exists. Some examples of aggravating circumstances are if the victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties, if the person murdered more than one victim as part of a common scheme or in a single act, or if the murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes: first- or second-degree robbery; rape; burglary; residential burglary; first-degree kidnaping; or arson. The sentence for aggravated first-degree murder is either life imprisonment without the possibility of release or death.

### **Summary of Bill:**

The Antiterrorism Crime Act of 2002 is established. New terrorism crimes are established, and state law is amended to include specific terrorism crimes and to enhance sentencing ranges for those crimes. Forfeiture provisions for any property used in the commission, preparation, or financing of any terrorist crime are added.

### Forfeiture

The property of any person who pleads guilty or is convicted of any terrorist crime is subject to forfeiture. Property subject to forfeiture includes any property in which the person had control of or possession of at the time of the commission of the offense, and more likely than not the person knew it would be used in the commission of the terrorist crime. The proceeds from the sale of the forfeited property will be distributed in the following order:

- restitution for victims and the families of the victims of terrorist crimes;
- payment of any damage to property or equipment; and
- for the purchase of equipment to combat terrorism.

### Bombing related crimes

Portions of the Washington State Explosives Act and several bombing related crimes are repealed. The following crimes are repealed: Exploding a bomb with terrorist intent; Exploding a bomb and endangering life or safety; Placing a bomb with terrorist intent;

Placing a fake bomb with terrorist intent; Exploding a bomb and damaging property; Placing a bomb to endanger life or safety; Placing a bomb to damage property; Placing a fake bomb without terrorist intent; and Threats to bomb or injure property.

### Terrorism-Related Definitions

"Terrorist act" is defined in the state criminal code as any violent act, or threat of a violent act, intended to:

- intimidate or coerce a civilian population; or
- affect or influence the policy of any branch or level of government by intimidation or coercion;
- affect or influence the conduct of a civilian population or any branch or level of government by intimidation or coercion; or
- exact revenge, retribution, or retaliation against a civilian population for the conduct of the population or against any branch or level of government for a policy of conduct of the government.

A violent act for purposes of this definition encompasses acts against persons or property, including mass destruction, bombings, arson, kidnapping, and assassination.

A "terrorist organization" is defined as any permanent or temporary organization that knowingly, or with reason to know, engages in the commission, instigation, planning, preparation, aiding, or financing of any terrorist act. Corporations, companies, partnerships, associations, trusts, foundations, funds, clubs, societies, committees, or other groups of two or more persons are included within this definition.

A "terrorist" is defined as a person who knowingly or with reason to know engages in the commission, instigation, planning, preparation, aiding, or financing of any terrorist act.

A "device" means any apparatus, appliance, contrivance, or contraption assembled, fabricated, or manufactured with any destructive, lethal, noxious, or pyrotechnic substance (including chemical, biological, explosive, incendiary, flammable, or radiological) that is designed or intended to disfigure, damage, destroy, distract, or harass. The definition of "imitation, fake, or hoax substance or device" includes any substance or device that does not meet this definition but by appearance or representation would lead a reasonable person to believe the device or substance is a device as defined.

### Criminal Law Provisions

New terrorism crimes are added to the criminal code. Some of the new crimes focus on the commission of terrorist acts, and some of the new crimes focus on hoaxes and threats of terrorist acts.

*Criminal Terrorism* occurs when a person commits a terrorist act with intent or with reason to believe that the terrorist act may injure, interrupt, or obstruct the owner's or operator's management, possession, use or control of any business, whether agricultural, business or commercial in nature and:

- willfully damages or destroys any property; or
- unlawfully takes or possesses any property, instrumentality, machine, animal or plant used in the business.

Criminal Terrorism includes any attempts of the crime.

*Terrorist Activity* occurs when a person voluntarily and knowingly:

- commits, plans, aids, or conspires with one or more persons to commit a terrorist act;
- conspires with one or more persons, solicits or contributes financial support or other material support to any terrorist or terrorist organization; or
- destroys or conspires to destroy any books, records or files or secretes or conspires to secrete any funds of any terrorist or terrorist organization.

Terrorist Activity includes any attempts of the crime.

*Malicious detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person by the detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device maliciously damages, disfigures, destroys or contaminates any means of transportation listed, any type of utility listed, any computer system or network, or other structure.

This is a first degree offense if committed with intent; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to malicious detonation or release in the first degree; and a third degree offense if committed under circumstances not amounting to malicious detonation or release in the first or second degree.

*Malicious placement of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person maliciously places a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in, upon, under, against or near any type of building, any means of transportation listed, any type of utility listed, any computer system or network, or any other structure in such a manner that it would destroy, contaminate, damage or injure it if diffused, ignited or exploded.

This is a first degree offense if committed with intent; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to malicious placement in the first degree; and a third degree offense if committed under circumstances not amounting to malicious placement in the first or second degree.

*Malicious placement of an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person maliciously places an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device in, upon, under, against or near any type of building, any means of transportation listed, any type of utility listed, any computer system, network, telecommunications, or other structure with the intent to give the appearance or

impression that this device or substance is real.

This is a first degree offense if committed with intent; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to malicious placement.

*Malicious intimidation or harassment with a chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person intentionally intimidates or harasses another person by maliciously exhibiting a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.

This is a first degree offense if committed in furtherance of a terrorist act; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to malicious intimidation or harassment in the first degree; and a third degree offense if committed under circumstances not amounting to malicious intimidation or harassment in the first or second degree.

*Malicious intimidation or harassment with an imitation, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person intentionally intimidates or harasses another person by maliciously exhibiting an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device.

This is a first degree offense if committed in furtherance of a terrorist act; and a second degree offense if committed under circumstances not amounting to malicious intimidation or harassment.

*Malicious threat to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device* occurs generally when a person threatens to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device against any school building, any place of worship, any place of public assembly, any governmental property or any other building used for human occupancy; or repeats any information about the threatened use, knowing the information to be false, and does so with the intent to alarm others.

This is a first degree offense if committed in furtherance of a terrorist act; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to a malicious threat; and a third degree offense if committed under circumstances not amounting to a malicious threat in the first or second degree.

It is not a defense that the threat was a hoax.

*Assemblage of terrorists* occurs when two or more people gather with the specific purpose of committing, instigating, planning or aiding a terrorist act. Any person who knowingly and voluntarily participates commits this offense.

### Criminal Sentencing

Terrorism crimes are added to the seriousness level ranking order in the Sentencing Reform Act (SRA). The bombing related crimes which are repealed, are removed from the seriousness level ranking order.

*Criminal Terrorism* is a class A felony with a seriousness level of XV. The presumptive sentencing range for a first-time offender is 240-320 months.

*Terrorist Activity* is a class B felony with a seriousness level of IX. The presumptive sentencing range for a first-time offender is 31-41 months.

*Malicious detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class A felony with a seriousness level of XV. The presumptive sentencing range for a first-time offender is 240-320 months.
- Second degree. Class A felony with a seriousness level of XIV. The presumptive sentencing range for a first-time offender is 123-220 months.
- Third degree. Class B felony with a seriousness level of XI. The presumptive sentencing range for a first-time offender is 78-102 months.

*Malicious placement of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class A felony with a seriousness level of XIV. The presumptive sentencing range for a first-time offender is 123-220 months.
- Second degree. Class B felony with a seriousness level of X. The presumptive sentencing range for a first-time offender is 51-68 months.
- Third degree. Class B felony with a seriousness level of VIII. The presumptive sentencing range for a first-time offender is 21-27 months.

*Malicious placement of an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class B felony with a seriousness level of XIII. The presumptive sentencing range for a first-time offender is 123-164 months.
- Second degree. Class C felony with a seriousness level of VII. The presumptive sentencing range for a first-time offender is 15-20 months.

*Malicious intimidation or harassment with a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class A felony with a seriousness level of VII. The presumptive sentencing range for a first-time offender is 15-20 months.
- Second degree. Class B felony with a seriousness level of VI. The presumptive sentencing range for a first-time offender is 12-14 months.
- Third degree. Class C felony with a seriousness level of V. The presumptive sentencing range for a first-time offender is 6-12 months.

*Malicious intimidation or harassment with an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class B felony with a seriousness level of V. The presumptive sentencing range for a first-time offender is 6-12 months.

- Second degree. Class C felony with a seriousness level of IV. The presumptive sentencing range for a first-time offender is 3-9 months.

*Malicious threat to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.*

- First degree. Class B felony with a seriousness level of VII. The presumptive sentencing range for a first-time offender is 15-20 months.
- Second degree. Class B felony with a seriousness level of VI.. The presumptive sentencing range for a first-time offender is 12-14 months.
- Third degree. Class C felony with a seriousness level of V. The presumptive sentencing range for a first-time offender is 6-12 months.

*Assemblage of terrorists* is a class C felony with a seriousness level of VII . The presumptive sentencing range for a first-time offender is 21-27 months.

#### *Exceptional Sentence*

Five new aggravating circumstances are created for the purpose of allowing the court to impose a sentence outside the standard sentencing range. It is an aggravating circumstance if:

- The offense involves at least three separate actions to commit, aid, fund or attempt to commit, aid, or fund any terrorist act or terrorist organization;
- The offense either involves or attempts to involve a terrorist act with a large number of potential victims;
- The offender occupies a high position in the terrorist organizational hierarchy;
- The offense involves a high degree of sophistication or planning over an extended length, occurs over an extended length of time, or involves a broad geographical target area; or
- The offender uses his or her position or status to facilitate the commission of the offense.

#### *Three Strikes*

*Terrorist activity; Malicious placement of an imitation, hoax, or fake chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the first degree; Malicious intimidation or harassment with an imitation, hoax, or fake chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the second degree; and Assemblage of terrorists* are added to the list of most serious offenses. A conviction for any of these crimes constitutes a "strike" under the persistent offender statute.

#### Death Penalty

The following new crimes are added as alternate means of committing aggravated first degree murder: *Criminal terrorism; Terrorist activity; Malicious detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the first degree; Malicious placement of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the first degree; Malicious intimidation or harassment with a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the first degree; and Malicious threat to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in the first degree.*

**Appropriation:** None.

**Fiscal Note:** Requested on January 15, 2002.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.