
Public Safety Committee

HB 1581

Brief Description: Creating the Washington state preservation of liberty act condemning the unlawful detention of United States citizens and lawful resident aliens under the national defense authorization act.

Sponsors: Representatives Overstreet, Santos, Shea, Taylor, Buys, Condotta, Scott, Upthegrove, Fitzgibbon, Blake, MacEwen, Crouse, Wylie, Pollet, Pike, Harris, Kagi, Moscoso, Warnick, Magendanz and Stonier.

Brief Summary of Bill

- Creates a criminal offense for cooperating with an investigation or detention of a United States citizen or lawful resident alien located within the United States by the armed forces of the United States.
- Creates an offense for permitting a member of the United States Armed Forces to investigate or detain a United States citizen or resident alien located within the United States.

Hearing Date: 2/21/13

Staff: Sarah Koster (786-7303).

Background:

The "Posse Comitatus" Act (Act) is a federal law, codified at 18 U.S.C. §1385, which was passed in 1878, in the wake of Reconstruction, and updated in 1981. This Act prohibits use of the United States Army or Air Force to execute laws, except as expressly authorized by the Constitution or act of Congress.

This Act is understood to generally prevent use of the United States Armed Forces as a law enforcement agency within the United States. This Act does not apply to National Guard and state defense forces while under the authority of the state Governor, as opposed to in active

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federal duty. The Act is also limited by the Insurrection Act, which allows the President to deploy troops within the United States in certain limited circumstances.

Those circumstances are if an insurrection, domestic violence, unlawful combination, or conspiracy:

1. so hinders the execution of the laws of a state, and of the United States within the state, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that state are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
2. opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

The National Defense Authorization Act (NDAA) is a federal law, passed annually, which specifies the budget and expenditures of the United States Department of Defense, as well as other provisions.

The 2012 NDAA has been particularly controversial. The controversy relates primarily to Section 1021 of the Act which affirms the authority of the armed forces of the United States to detain covered persons pursuant to the authorization for use of military force. A covered person is: (a) a person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks; or (b) a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

The 2013 National Defense Authorization Act was signed by President Obama in January 2013.

Summary of Bill:

Cooperation with an investigation or detention of a United States citizen or lawful resident alien located within the United States by the United States Armed Forces is an unranked class C felony.

- This offense may only be committed by a state or local official or employee, or an employee of a corporation providing services to the State of Washington, or member of the National Guard or state defense forces acting in his or her official capacity.
- Only "knowing" cooperation is criminalized.
- The offense exempts an investigation or detention:
 - by the United States Coast Guard when it is not acting as a service in the Navy;
 - by National Guard units or state defense forces while under the authority of the Governor of the State of Washington; or
 - of active duty members of the United States Armed Forces, when conducted by the United States Armed Forces.

Permitting an investigation or detention of a United States citizen or lawful resident alien located within the United States by the United States Armed Forces is an unranked class C felony. This offense does not apply to an investigation or detention:

- by the United States Coast Guard when it is not acting as a service in the Navy;

- by National Guard units or state defense forces while under the authority of the Governor of the State of Washington; or
- of active duty members of the Armed Forces, when conducted by the United States Armed Forces.

Appropriation: None.

Fiscal Note: Requested on February 17, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.