

HOUSE BILL REPORT

ESHB 2505

As Amended by the Senate

Title: An act relating to instruction in civil disorder.

Brief Description: Providing criminal penalties for training in furtherance of civil disorders.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Ballasiotes, Lantz, Haigh, Lovick, Ruderman, Schual-Berke, Crouse, Campbell, Delvin, Hurst, Lisk, Buck, Benson and Bush).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/1/02, 2/5/02 [DPS].

Floor Activity:

Passed House: 2/16/02, 98-0.

Senate Amended.

Passed Senate: 3/8/02, 27-22.

Brief Summary of Engrossed Substitute Bill

- Prohibits the teaching or demonstrating of a device or technique capable of causing significant injury or death to persons if the device or technique is to be used in a civil disorder.
- Prohibits assembling with another for the purpose of being trained in the use of a device or technique capable of causing significant injury or death to persons if the device or technique is to be used in a civil disorder.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

Staff: Jim Morishima (786-7191).

Background:

I. Liability for the Crimes of Another

A person may be held criminally liable for the actions of another if:

- The person acts with the same kind of culpability that is sufficient for the crime and causes an innocent or irresponsible person to engage in criminal conduct;
- The person is made accountable by statute; or
- The person is an accomplice of the person committing the crime. A person is an accomplice if, with knowledge that it will promote or facilitate the commission of the crime, he or she 1) solicits, commands, encourages, or requests the other person to commit the crime or 2) aids or agrees to aid the person in committing the crime.

A person will not be held to be liable for the criminal acts of another if he or she:

- Is the victim of the crime; or
- Terminates his or her involvement in the crime and gives timely notice to law enforcement or makes a good faith effort to stop the crime.

II. Federal Law on Civil Disorders

Under federal law, a person is guilty of a felony if he or she:

"Teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function." 18 U.S.C. 231(1)(a).

"Civil disorder" is defined as "any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual."

Although the Supreme Court has not ruled on this law's constitutionality, several federal district courts and courts of appeal have upheld the statute. For example, the Seventh Circuit has ruled that the crime's intent element narrows the crime's scope and exempts innocent and inadvertent behavior. National Mobilization Committee to End War in Viet Nam v. Foran, 411 F.2d 934 (7th Cir., 1969).

Summary of Engrossed Substitute Bill:

It is a class B felony (seriousness level VII) to:

- Teach or demonstrate to another person the use, application, or making of a device or technique capable of causing significant injury or death to people, knowing, having

reason to know, or intending that the device or technique will be unlawfully used for use in, or in furtherance of, a civil disorder; or

- Assemble with one or more persons for the purpose of training with, practicing with, or being instructed in the use of a device or technique capable of causing significant injury or death to persons, intending to unlawfully employ the device or technique for use in, or in furtherance of, a civil disorder.

"Civil disorder" is defined as a "public disturbance involving acts of violence that causes an immediate danger of or results in significant injury to the person of any other individual."

The provisions of the act do not apply to the actions of law enforcement officers in the lawful performance of their official duties or to firearms training, target shooting, or other firearms activity not in furtherance of a civil disorder.

EFFECT OF SENATE AMENDMENT(S):

Clarifies that the injury must be "bodily" injury. Removes the provisions relating to assembling for the purpose of being trained in the use of a device or technique capable of causing injury or death if the device or technique is to be used in a civil disorder.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Testimony For Original Bill: This bill will help target violent, extremist activities. Stricter laws in other states have made Washington a haven for extremist groups. This bill will put Washington's law in harmony with other states. The bill does not punish the behavior involved in a civil disorder, but rather the training for such behavior. The bill does not address behavior covered by the First Amendment.

Testimony Against Original Bill: The definition of civil disorder is so broad that it may encompass acts of civil disobedience. The definition should not contain damage to property. Although the goal behind the bill is laudable, enforcement may be problematic. Determining the party who is actually teaching the techniques could be difficult. Also, the law could be used to target minorities or poor people.

Testified: (In support) Representative O'Brien, prime sponsor; and Brian Goldberg, Diane Rosemanbaer, and Rebecca Jacobs, Anti-Defamation League.

(Opposed) Diane Haynes, citizen; and Dennis Haynes, citizen.

