

HOUSE BILL REPORT

EHB 2759

As Passed House:

February 19, 2002

Title: An act relating to crimes involving chemical, biological, explosive, incendiary, flammable, or radiological substances or devices.

Brief Description: Increasing penalties for chemical, biological, and other crimes.

Sponsors: By Representatives Buck, Hurst, Lisk, Talcott, Schoesler, Pflug, Woods and Pearson.

Brief History:

Committee Activity:

Select Committee on Community Security: 2/6/02, 2/7/02 [DPA].

Floor Activity:

Passed House: 2/19/02, 97-0.

Brief Summary of Engrossed Bill

- Creates specific felony terrorism crimes of 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.
- Repeals provisions of malicious mischief and portions of the State Explosives Act.
- Applies the definition of "terrorist act" and explosive- from the State Explosives Act to the new explosives crimes.
- Adds definitions related to unconventional weapons.

HOUSE COMMITTEE ON SELECT COMMITTEE ON COMMUNITY SECURITY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Hurst, Chair; Lisk, Ranking Minority Member; Ballasiotes, Benson, Buck, Campbell, Haigh, Jackley, Kessler, Morris, O'Brien, Schmidt and Schual-Berke.

Minority Report: Without recommendation. Signed by 1 member: Representative Simpson, Vice Chair.

Staff: Ilene Miller (786-7310).

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, increases criminal penalties, and broadens application of the death penalty to terrorist acts.

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 to bomb, malicious placement of an explosive, and malicious explosion of a substance were ranked under the Sentencing Reform Act (SRA), with rankings for then-existing crimes increased and higher rankings imposed for bombings done with the intent to commit a terrorist act. Bombing related crimes are classified as "A," "B," or "C" felonies.

Definitions

The definition of "terrorist act" pertains specifically to certain crimes within the Explosives Act. The definition of "terrorist act" means an act that is intended to:

- intimidate or coerce a civilian population;
- influence the policy of a branch or level of government by intimidation or coercion;
- affect the conduct of a branch or level of government by intimidation or coercion; or
- retaliate against a branch or level of government for a policy or conduct of the government.

The definition of "explosive" or "explosives" is defined for purposes of the Explosives Act and includes any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such amounts that any type of ignition may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

Offenses

Some of the bombing related crimes focus on the act itself, and some of the crimes focus on hoaxes and threats.

Malicious explosion of a substance occurs generally when a person maliciously destroys or damages any building; any type of transportation listed; or any public utility transmission system or structure by the explosion of a substance or material.

Malicious placement of an explosive occurs generally when a person maliciously places an explosive in, upon, under, against, or near any building; any type of transportation listed; or in such a manner as to destroy or injure if it exploded.

Malicious placement of an imitation device occurs generally when a person maliciously places an imitation device in, upon, under, against, or near any building; any type of transportation listed; or any public utility transmission system or structure with the intent to give the appearance that the imitation device is real.

For these three crimes, the crime is a first degree offense if a person acts with the intent to commit a terrorist act; and a second degree offense if committed under circumstances not amounting to a crime in the first degree. For the first two crimes, a third degree is added if the offense was committed under circumstances not amounting to a first or second degree offense.

Intimidation or harassment with an explosive occurs generally when a person exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive, and who intends to, and does intimidate or harass another person.

Threats to bomb or injure property occurs generally when a person threatens to either bomb or otherwise injure any public or private school building, any place of worship, any governmental property, any other building, common structure, or carrier, used for human occupancy, or communicates or threatens to communicate any such information, knowing it to be false and with the intent to alarm.

Criminal Sentencing

An adult offender who commits a felony on or after July 1, 1984, is subject to the provisions of the SRA, and a court generally must impose a sentence within the standard sentence range 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. 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.

Summary of Engrossed Bill:

Bombing related crimes

Portions of the Washington State Explosives Act and several bombing related crimes are repealed. The following crimes are repealed: *Malicious explosion of a substance; malicious placement of an explosive; malicious placement of an imitation device; intimidation or harassment with an explosive; and threats to bomb or injure property.*

Terrorism-Related Definitions

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 the "device" definition but by appearance or representation would lead a reasonable person to believe the device or substance is a device as defined.

"Biological agent" is defined to include any naturally occurring or engineered microorganism, virus, infectious substance, biological product, toxin, or vector or any of their components capable of causing:

- human, plant, or animal death, disease, or biological malfunction;
- deterioration of food, water equipment, supplies or materials; or

- deleterious alteration of the environment.

A "chemical agent" is defined as any weapon, device, material, or substance designed or intended to cause widespread death or physical injury through release, dissemination, or impact of toxic or poisonous chemicals or their precursors.

"Radioactive material" is defined to include any material containing, emitting, or releasing radiation or radioactivity at a level dangerous to human life.

Toxin— means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whether its origin or method of production, including:

- any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or
- any poisonous isomer or biological product, homolog, or derivative of such a substance.

Vector— means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

Offenses

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.

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.

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.

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.

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.

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

For these four crimes, the crime 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 a first degree offense; and a third degree offense if the crime was committed under circumstances not amounting a first or second degree offense.

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.

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.

For these two crimes, the crime is a first degree offense if committed in furtherance of a terrorist act, and a second degree offense if the crime was committed under circumstances not amounting to a first degree offense.

Criminal Sentencing

Terrorism crimes are added to the seriousness level ranking order in the SRA. The repealed bombing related crimes are removed from the seriousness level ranking order.

Appropriation: None.

Fiscal Note: Requested on February 6, 2002.

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

Testimony For: Existing law does not punish those who use or threaten to use explosives of a chemical, biological or radiological nature as current law does not adequately address certain types of explosives offenses. This bill covers offenses dealing with chemical, biological, explosive, incendiary, flammable, or radiological substances or devices. Our laws need to change to reflect the changing nature of crimes committed against our citizens.

Testimony Against: (Written testimony submitted by Sheryl Gordon McCloud, Washington Association of Criminal Defense Lawyers): Washington State law already punishes criminals for these types of offenses. The crimes in this bill are vague. Making new law is bad policy.

Testified: Representative Buck, prime sponsor.