
**Select Committee on Community
Security Committee**

HB 2314

Brief Description: Increasing penalties for terrorism offenses.

Sponsors: Representatives Hurst, Kessler, Berkey, Sullivan, Dunshee, Lovick, Kenney, Edwards, Rockefeller, Conway, Lisk, Buck, D. Schmidt, Alexander, Kirby, Haigh, Fromhold, O'Brien and Esser; by request of Governor Locke and Attorney General.

Brief Summary of Bill

- Enacts the Washington AntiTerrorism Act of 2002.
- Includes terrorism-related definitions, such as "terroristic intent" and "weapon of mass destruction," within criminal code provisions.
- Creates specific felony terrorism crimes of terrorism in the first and second third degrees; unlawful use or possession of a weapon of mass destruction; threatening acts of terrorism; providing material support or resources to terrorists; and unlawful possession of false identification for terrorist.
- Includes terrorism crimes within sentencing provisions for adults.
- Makes terrorism in the first degree an alternate means of aggravated first degree murder, which is subject to the death penalty or life imprisonment without release.
- Adds terrorism crimes to criminal profiteering law, regardless of financial gain. Provides civil remedies for terrorism victims.
- 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.

Immediately following September 11, 2001, the American Red Cross, United Way and other charitable organizations started collecting aid to distribute and provide relief to victims of the attacks. On September 24, 2001, President Bush signed the September 11 Victim Compensation Fund of 2001. The federal government created this fund to allow victims of the September 11, 2001 attacks to file claims for compensation.

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.

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.

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.

Death Penalty

The death penalty is available only for aggravated first-degree murder convictions. If a prosecutor seeks the death penalty, there must be a special sentencing proceeding following the conviction to determine whether there are sufficient mitigating circumstances to merit leniency. In order for an offender to receive the death penalty, a jury must find beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency. If sufficient mitigating circumstances exist, the sentence is life imprisonment without possibility of release rather than death.

In deciding whether there are sufficient mitigating circumstances to merit leniency, the jury or court may consider any relevant factors, including but not limited to, whether the defendant has a significant history of prior criminal activity, whether the murder was committed while the defendant was under extreme mental disturbance, the age of the defendant at the time of the crime, and the likelihood that the defendant will pose a danger to others in the future.

The state supreme court must review any death sentence, and this review is in addition to any appeal available to the defendant. In its review the supreme court must consider whether: (1) sufficient evidence exists to justify the jury's finding beyond a reasonable doubt that there were not sufficient mitigating circumstances to merit leniency; (2) the sentence is excessive or disproportionate to the penalty imposed in similar cases considering both the crime and defendant; (3) the sentence was brought about through passion or prejudice; and (4) the defendant was mentally retarded.

Statute of Limitations. The criminal code provides various statute of limitation periods during which the prosecution of a crime must take place. The general statute of limitations for felony crimes is three years. There are several exceptions to this general time period. For example, there is no statute of limitation for the crimes of murder, homicide by abuse, arson if a death results, vehicular homicide, vehicular assault if a death results, and hit-and-run injury-accident if a death results.

Explosives Act. 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 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); and
- Level VI - Placing a fake bomb without terrorist intent (class C).

Terrorism-Related Definitions

The state explosives law defines "terrorist act" as an act that is intended to do one of the following:

intimidate or coerce a civilian population or to influence or retaliate against government; 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.

Criminal Profiteering

The federal Racketeering Influenced and Corrupt Organizations Act (RICO) was enacted in 1970 to combat organized crime. In addition to criminal remedies, the federal RICO provides civil remedies that include civil forfeiture. In 1985, Washington enacted its own version of RICO as the Criminal Profiteering Act (formerly called the Racketeering Act).

Washington's law, similar in many ways to the federal RICO, created several new felonies for engaging in certain acts and patterns of activity that constitute organized crime and criminal profiteering. "Criminal profiteering" is defined under the state law to include the commission, for financial gain, of any one of a number of crimes listed in the statute. Among the crimes which may constitute criminal profiteering are violent felonies and felonies associated with gambling, drugs, pornography, prostitution, extortion, and securities fraud. A "pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering within a five-year period. To constitute a "pattern" the three acts must have the same or similar intent, results, accomplices, principals, victims or methods of commission, or otherwise be interrelated by distinguishing characteristics including a nexus to the same enterprise.

In addition to its criminal penalties, the state law provides three civil remedies: (a) monetary penalties; (b) injunctive remedies; and (c) forfeiture. Monetary penalties include the actual damages payable to the victim resulting from an act of criminal profiteering or of leading organized crime, and the court has discretion to triple those damages. The court also may order payment of a civil fine up to \$250,000 and litigation costs and expenses. Injunctive remedies may include court orders restricting the defendant's future activities or investments. Finally, forfeiture may be accomplished through a private civil action for damages and/or a forfeiture action filed by the attorney general or county prosecuting attorney. Victims of criminal profiteering may bring a civil lawsuit within three years after discovery of a pattern of criminal profiteering or within three years after the pattern should have been reasonably discovered. Victims of criminal profiteering may obtain restitution, penalties, and the costs of bringing a civil lawsuit from the offender's available assets. Besides any criminal or civil penalties, offenders convicted of criminal profiteering may also be required to make restitution to victims for actual damages, pay costs and expenses of investigation and prosecution, and pay for the costs of a public defense.

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 Washington AntiTerrorism Act of 2002 is established. The act establishes new terrorism crimes and amends state criminal law to include specific terrorism crimes and to enhance sentencing ranges for these crimes. Civil remedies for victims of terrorist acts are also provided for in state law.

Terrorism-Related Definitions.

"Terroristic intent" is defined in the state criminal code as the intent to either use a weapon of mass destruction or cause substantial damage to a habitable structure or critical infrastructure with the intent to:

- intimidate or coerce a civilian population; or
- affect the conduct of a government or unit of government.

Definitions related to unconventional weapons are added to the criminal code. "Weapon of mass destruction" is defined as any device, object, or substance designed or intended to be used to cause multiple human deaths or serious physical injuries. The definition also includes intentional unlawful release or dissemination of a biological or chemical agent or of radioactive material. "Biological agent" is defined to include any naturally occurring or engineered microorganism, virus, infectious substance or biological product, or any of their components that is 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. Other definitions related to dissemination of chemical and biological agents are added to the criminal code.

Criminal Law Provisions

Terrorism crimes are added to the criminal code. Some new crimes focus directly on persons committing or attempting to commit terrorist acts.

Terrorism in the first degree occurs when a person acts with terrorist intent and causes the death of another person. For purposes of this crime, "another person" includes both emergency services personnel and civilians responding at any point in time to render aid in response to the act of terrorism. Terrorism in the first degree is a Class A Felony punishable by life imprisonment or death.

Terrorism in the second degree occurs when a person acts with terrorist intent and causes substantial: (1) bodily harm to more than one person; (2) damage to a habitable building sufficient to create a substantial risk of death; or (3) physical damage sufficient to disrupt the normal functioning of a critical public or private infrastructure, including a public water system, an emergency, governmental, medical, fire, or law enforcement response system. Terrorism in the second degree is a class A felony.

Unlawful use or possession of a weapon of mass destruction occurs when a person acts with terrorist intent and uses, manufactures, transports, possesses, spills, disposes or otherwise releases a weapon of mass destruction. Unlawful use or possession of a weapon of mass destruction is a class A felony.

The crime of *Threatening acts of terrorism*, a Class B felony, occurs when a person knowingly threatens to commit, falsely claims to have committed, or takes any other action intended to cause a reasonable person to believe that a person used or possessed a weapon of mass destruction. This crime includes placement of an imitation weapon of mass destruction in an area open or frequented by the public. Lack of intent or capability of committing a terrorist act is not a defense to threatening acts of terrorism.

Other terrorism crimes are focused on persons assisting with terrorist activities.

First, *Providing material support or resources to terrorists*, a Class B felony, occurs when a person knowingly provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources with the intent that the support or resources be used in planning, preparation, or carrying out a terrorist crime or the concealment or an escape from the commission of any such offense. "Material support or resources" is defined to include currency or other financial securities or services as well as a broad array of other items, such as lodging, training, safehouses, false documentation or identification, intelligence information, communications equipment, facilities, weapons, lethal substances, explosives, personnel, and transportation.

Second, *Unlawful possession of false identification for terrorist*, a Class B felony, occurs when a person acts with the intent to commit or facilitate the commission of a terrorist crime and possesses or uses any document or record containing false information relating to the person who is the subject of that document or record.

Terrorism crimes have no statute of limitations.

Criminal Sentencing

Terrorism crimes are added to the seriousness level ranking order in the Sentencing Reform Act (SRA). *Terrorism in the first degree* is a Class A Felony with a seriousness level of XVI. Terrorism in the first degree is punishable by life imprisonment or death. *Terrorism in the second degree* is a Class A felony with a seriousness level of XV. The presumptive sentencing range for this crime for a first-time offender is 240-320 months. *Unlawful use or possession of a weapon of mass destruction* is a class A felony with a seriousness level of XIV and a presumptive sentencing range for a first-time offender of 123-220 months. *Threatening acts of terrorism* is a class B felony with a seriousness level of XII and a presumptive sentencing range for a first-time offender of 93-123 months.

The crimes committed by persons aiding terrorists are Class B felonies and accorded seriousness level ranking orders in the SRA. *Providing material support or resources to terrorists* has a seriousness level of X. *Unlawful possession of false identification for terrorist* also has a seriousness level of X. For both crimes, the presumptive sentencing range for a first-time offender is 51-68 months.

As with other crime victims, victims of terrorism crimes may bring a civil lawsuit against terrorists and their accomplices. Besides any criminal or civil penalties, offenders convicted of terrorism crimes must make restitution to victims for actual damages, costs and expenses of investigation and prosecution, and for costs of a public defense.

Death Penalty

Terrorism in the first degree is added as an alternate means of committing aggravated first degree murder. An offender convicted of terrorism in the first degree may be subject to a death sentence or to life in prison without release.

Criminal Profiteering

Terrorism crimes are added to the definition of crimes that constitute "criminal profiteering." Terrorism crimes are included as criminal profiteering regardless of whether they are committed for financial gain. Victims of terrorism may bring a civil lawsuit within three years after the final disposition of any criminal charges, rather than the general limitation for other types of criminal profiteering (i.e., three years after discovery of a pattern).

Appropriation: None.

Fiscal Note: Requested on January 15, 2002.

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