

HOUSE BILL REPORT

HB 2879

As Reported by House Committee On:
Select Committee on Community Security

Title: An act relating to terrorism offenses.

Brief Description: Providing penalties and remedies for terrorism offenses.

Sponsors: Representatives Hurst, Lisk, Mulliken, Woods, Buck, Kirby, Simpson, Barlean, Fromhold, Edwards, Haigh, Morris, Kessler, Jackley, O'Brien, Sullivan, Lovick, Berkey, Pflug, Ballasiotes, Campbell, Esser, Alexander, Chase and Conway; by request of Governor Locke and Attorney General.

Brief History:

Committee Activity:

Select Committee on Community Security: 1/31/02 [DPS].

Brief Summary of Substitute Bill

- Enacts the Washington AntiTerrorism Act of 2002.
- Creates specific felony terrorism crimes.
- Makes terrorism in the first degree an alternate means of committing aggravated first degree murder.
- Adds terrorism crimes to criminal profiteering law, regardless of financial gain.

HOUSE COMMITTEE ON SELECT COMMITTEE ON COMMUNITY SECURITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Hurst, Chair; Simpson, Vice Chair; Lisk, Ranking Minority Member; Ballasiotes, Barlean, Benson, Buck, Campbell, Haigh, Jackley, Kessler, Morris, O'Brien and Schmidt.

Minority Report: Without recommendation. Signed by 1 member: Representative Schual-Berke.

Staff: Ilene Miller (786-7310).

Background:

Terrorist Attacks

On September 11, 2001, terrorists hijacked four commercial airlines 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). The USA PATRIOT creates new terrorism crimes, increases criminal penalties, and broadens application of the death penalty to terrorist acts. The USA PATRIOT subjects the assets of identified terrorists to civil forfeiture. In addition, the USA PATRIOT includes provisions relating to electronic surveillance, money laundering, immigration and deportation, and victims' assistance.

Criminal Sentencing

An adult offender who commits a felony is subject to the provisions of the Sentencing Reform Act (SRA). 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. The state supreme court must review any death sentence, and this review is in addition to any appeal available to the defendant.

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. Several exceptions to this general time period exist, including 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.

Terrorism-Related Definitions

The state Explosives Act 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.

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.

In addition to its criminal penalties, the state law provides three civil remedies: (a) monetary penalties; (b) injunctive remedies; and (c) forfeiture.

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 circumstances 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 certain crimes. The sentence for aggravated first-degree murder is either life imprisonment without the possibility of release or death.

Summary of Substitute 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

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 and 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, 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. 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, with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States, commits any act which manifests an extreme indifference to human life and thereby 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, with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States, commits an act which manifests an extreme indifference to human life and causes substantial: (1) bodily harm to any other 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, with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States by engaging in conduct manifesting extreme indifference to human life, 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.

Threatening acts of terrorism occurs when a person knowingly threatens to use or release, or falsely claims to have used or released, a weapon of mass destruction, or who takes

any other action intended to cause a reasonable belief that a weapon of mass destruction has been or will be used or released. This crime includes, but is not limited to, placement of an imitation weapon of mass destruction in an area open to or frequented by the public. *Threatening acts of terrorism in the first degree* requires the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States by threatening to engage in conduct which manifests extreme indifference to human life. It is a Class B felony. *Threatening act of terrorism in the second degree* occurs in other circumstances and is a Class C felony.

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 a variety of support items.

Second, *unlawful possession of false identification for terrorist purposes*, 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 and is punishable by life imprisonment or death. *Terrorism in the second degree* is a Class A felony with a seriousness level of XV and a presumptive sentencing range for a first-time offender of 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 in the first degree* 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. *Threatening acts of terrorism in the second degree* is an unranked Class C felony.

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 purposes* 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 for victims' actual damages, costs and expenses of investigation and prosecution, and 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).

Substitute Bill Compared to Original Bill:

The substitute bills amends the definition of biological agent– to include toxin– or vector– and to clarify that application of the terms naturally occurring– and bioengineered– to the listed items or their components. Possession without lawful authority is added to the definition of weapon of mass destruction– in the substitute. Further, the substitute revises provisions of threatening acts of terrorism in the first degree to apply to threatening to engage in conduct which manifests extreme indifference to human life.

Appropriation: None.

Fiscal Note: Available for HB 2314, a similar bill.

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

Testimony For: *[Testimony for a similar bill (HB 2314)]* No one will forget the horror of September 11, and the attacks and subsequent anthrax scare gave us an idea of what some people are capable of doing. Terrorism is a real and credible threat, and Washington faces a significant number of risks with an international border, major shipping ports, nuclear plants and nuclear waste, and large hydroelectric facilities. The government has a duty to protect citizens, and it also has to protect civil liberties.

The bill allows prosecution of terrorist acts intended to terrorize the whole population. The criminal code does not adequately address terrorism; this bill fills in the gaps in state law. Federal authorities cannot cover everything, and this bill provides new tools for Washington to work in partnership with the federal government. The bill requires not just intent -- it also requires specific violent acts and specific results.

This bill does not infringe on civil rights. The bill does not criminalize any political beliefs or rights of expression and does not add crimes for nonviolent acts of civil disobedience. The World Trade Organization (WTO) summit would not fall under this bill.

Testimony Against: [*Testimony against a similar bill (HB 2314)*] There is no dichotomy between national security and civil liberties. This bill could apply to events already transpired, such as WTO summit. This bill is painted with an overly broad brush.

Washington criminal law already covers these activities. There have not been any examples presented of what types of acts would not be covered by existing law.

A period of national shock is not the time for the state to take extraordinary measures.

Testified: (In support) Representative Hurst, prime sponsor; Dick Van Wagenen, Governor's Policy Office; Russ Harge, Washington Association of Prosecuting Attorneys; Larry V. Erickson, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, King County Prosecuting Attorney's Office.

(Opposed) Jerry Sheehan, American Civil Liberties Union of Washington.