

SENATE BILL REPORT

ESSB 6704

As Passed Senate, February 18, 2002

Title: An act relating to the state's measured response to terrorism.

Brief Description: Increasing penalties for terrorist acts.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Hargrove, Kastama, Winsley, Oke, Keiser and Johnson).

Brief History:

Committee Activity: Judiciary: 1/31/02, 2/6/02 [DPS].

Passed Senate: 2/18/02, 42-7.

Brief Summary of Bill

- Three new crimes with terrorist intent are created.
- Terrorist intent can be an aggravating factor for sentencing.
- Terrorists can receive a life sentence or capital punishment if they cause a death.
- The statute of limitations is extended for terrorist acts.
- The Criminal Profiteering Act applies.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6704 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Roach and Zarelli.

Staff: Aldo Melchiori (786-7439)

Background: The terrorist events of September 11, 2001, and thereafter have expanded the stage of terrorism and heightened awareness of the scope of our vulnerability to acts of domestic and international terrorism. In response, Congress passed the USA PATRIOT Act of 2001. The new federal laws provide funding for state anti-terrorism plans, new criminal penalties and sanctions for terrorists, expanded surveillance capabilities by the federal government, and many other provisions designed to root out and punish terrorists and those who support them. On the state level, many present laws may be applied to terrorists who chose to commit crimes within Washington, including some that specifically address terrorism.

The Washington State explosives act provides criminal penalties for the malicious placement of explosives, malicious placement of imitation explosive devices, and malicious explosion of a substance. All of these offenses provide for enhanced punishment if they are committed

with terrorist intent. For the purposes of violations of the explosives act, "terrorist act" means an act that is intended to: (1) intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. Placing poison or other harmful objects in food, drinks, medicine or water is unlawful regardless of intent as is the unlawful use or possession of sources of ionic radiation without a license.

Summary of Bill: For the purposes of the Washington explosives act and this act, "terrorist intent" means the intent to significantly disrupt the general civilian population or the conduct of government by committing an act which (a) manifests an extreme indifference to human life; or (b) causes or is intended to cause permanent or protracted loss of use of private or public property. Felonies involving terrorist intent may be prosecuted at any time after their commission.

Persons are guilty of a hoax terrorist act if they knowingly and falsely claim to have committed a crime with terrorist intent or make any statement or take any action to cause or that is intended to cause a reasonable belief that a crime with terrorist intent has or will be committed. A hoax terrorist act is a class A felony ranked at level IX on the sentencing grid (31 to 41 months for a first offense).

A person is guilty of unlawful use of agents for terrorist purposes if the person willfully and with terrorist intent places, introduces, broadcasts, disseminates, or releases any biological agent, chemical agent, or toxin. "Biological agent," "chemical agent," "toxin," and "habitable building" are defined. Unlawful use of agents for terrorist purposes is a class A felony ranked at level XV on the sentencing grid (240 to 320 months for a first offense). Possession of these agents with terrorist purposes is a class A felony ranked at level XIII on the sentencing grid (123 to 164 months for a first offense).

A person is guilty of releasing radioactive material with terrorist intent if the person releases, broadcasts, or disseminates ionizing radiation with terrorist intent. Releasing radioactive material with terrorist intent is a class A felony ranked at level XV on the sentencing grid (240 to 320 months for a first offense). Possession of radioactive material with terrorist intent is a class A felony ranked at level XIII on the sentencing grid (123 to 164 months for a first offense).

An aggravating factor is added that permits a judge to sentence outside the standard sentencing range if the current offense was committed with terrorist intent. As with all sentences outside the standard range, the offender may appeal the sentence length. If an aggravating circumstance of terrorist intent is found, the maximum sentence for a class A or B felony is life imprisonment and the maximum sentence for a class C felony is ten years imprisonment.

A "terrorist offender" is defined as an offender who commits a felony with terrorist intent and the felony results in the death of one or more persons. Terrorist offenders are sentenced to life without the possibility of release or capital punishment.

The Criminal Profiteering Act applies to all felony offenses committed with terrorist intent. A single act, whether or not committed for financial gain may result in the forfeiture of

property traceable or used or derived from the offense; the payment of actual damages, restitution, and attorney's fees; and a civil penalty of up to \$250,000.

Appropriation: None.

Fiscal Note: Requested on January 25, 2002.

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

Testimony For: We have a deficiency in our present laws and this bill attempts to address that deficiency. Washington is particularly at risk because of the number of critical structures we have. We need to send a message to terrorists that Washington is not the place to commit terrorist acts. Using aggravating circumstances for present crimes, as this bill does, is a more measured response.

Testimony Against: We need to honor and maintain our civil liberties instead of sacrificing them in response to terrorist threats. The death penalty for an unintended death is too severe.

Testified: PRO: Larry Erickson, WASPC; Tom McBride, WAPA; Dick Van Wagenen (concerns). CON: Jerry Sheehan (concerns); Jennifer Shaw, WACDL.

House Amendment(s): The entirety of ESSB 6704 as passed by the Senate is replaced with the text of HB 2416, relating to investigative tools to deter terrorism, and SHB 2879, creating penalties and remedies for acts of terrorism.

Six new felony terrorism crimes are created which must be committed with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States, and which manifest an extreme indifference to human life: Terrorism in the first degree; terrorism in the second degree; unlawful possession of a weapon of mass destruction; threatening acts of terrorism in the first and second degree; unlawful possession of false identification for terrorist purposes; and providing material support or resources to terrorists. Terrorism in the first degree is an alternate means of committing aggravated first degree murder. Sentences for crimes other than those created by the amendment are not subject to a sentence enhancement for being committed with terrorist intent.

Only the crimes of terrorism in the first or second degree and unlawful use or possession of a weapon of mass destruction are serious violent offenses, eliminating offenders from eligibility for a first time offender waiver. All of the new terrorism crimes may result in an action under the criminal profiteering act.

Provisions are added authorizing the interception of communications in cases involving some acts of terrorism (terrorism in the first degree; terrorism in the second degree; unlawful use or possession of a weapon of mass destruction; and threatening acts of terrorism in the first degree):

- (1) Allows prior judicial authorization to intercept a communication involving acts of terrorism when no party to the communication has consented to the interception. Specifies the procedure for seeking such authorization, exceptions to that procedure, the basis upon

which the court may grant authorization, the length of time for which such authorization is valid, and procedures after entering an order.

(2) Allows law enforcement agencies to authorize the interception of communications with post-interception judicial review when at least one party has consented to the interception and the communication involves an act of terrorism. Specifies when interceptions can be made and provides the procedure for post-judicial review. Makes an intentional interception done in violation of one-party consent interception requirements a class C felony and subjects a law enforcement agency to liability for civil damages, including exemplary damages of \$25,000, if the agency authorized interception without the required probable cause and without a reasonable suspicion the intercepted communication would involve the act of terrorism identified in the authorization.

(3) Allows the expanded use of pen registers and traps and traces in investigations of terrorism and covers electronic communications such as e-mail as well as telephones. Specifies procedure for seeking authorization from the superior court to use a pen register or a trap and trace and the basis upon which the court may grant authorization. Specifies length of validity of authorization and allows for use before judicial authorization in emergency situations under certain circumstances.

(4) Details the ways in which law enforcement agencies may share and use information obtained through surveillance authorized in investigations of terrorism.