

HOUSE BILL REPORT

HB 1210

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to terrorism offenses.

Brief Description: Enacting the Washington Antiterrorism Act of 2003.

Sponsors: Representatives O'Brien, Buck, Haigh, Mielke, Conway and Campbell; by request of Governor Locke and Attorney General.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/5/03, 2/21/03 [DP].

Brief Summary of Bill

- Establishes six new terrorism related crimes.
- Adds terrorism related crimes to the Criminal Profiteering Act.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 6 members: Representatives O'Brien, Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Minority Report: Do not pass. Signed by 1 member: Representative Darneille, Vice Chair.

Staff: Jim Morishima (786-7191).

Background:

I. Terrorism Related Crimes

The Washington State Explosives Act (WSEA) prohibits several bomb-related crimes, some of which consider whether the perpetrator had terrorist intent. These crimes include:

- Exploding a bomb with terrorist intent (class A felony, seriousness level XIV);
- Exploding a bomb and endangering life or safety (class A felony, seriousness level XIII);
- Placing a bomb with terrorist intent (class A felony, seriousness level XIII);
- Placing a fake bomb with terrorist intent (class B felony, seriousness level XII);
- Exploding a bomb and damaging property (class B felony, seriousness level X);
- Placing a bomb to endanger life or safety (class B felony, seriousness level IX);
- Placing a bomb to damage property (class B felony, seriousness level VII); and
- Placing a fake bomb without terrorist intent (class C felony, seriousness level VI).

The WSEA defines a terrorist act as 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.

II. Criminal Profiteering

A. In General

The Criminal Profiteering Act (CPA) prohibits certain acts and patterns of activity that constitute organized crime and criminal profiteering. Criminal profiteering is the commission for financial gain of certain enumerated violent crimes; e.g., murder, kidnaping, forgery, theft. A person engages in a pattern of criminal profiteering if he or she engages in at least three acts of criminal profiteering within a five-year period. The 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.

B. Penalties for Criminal Profiteering

The CPA contains several felonies associated with criminal profiteering. The CPA also contains three types of civil penalties: monetary penalties, injunctive relief, and civil forfeiture.

1) Monetary Penalties:

Monetary penalties include actual damages payable to the victim resulting from an act of criminal profiteering or leading organized crime, which the court has the ability to triple. Also, the court may order a civil fine of up to \$250,000 plus litigation costs and expenses.

2) Injunctive Relief:

Injunctive relief may include court orders restricting the defendant's future activities and investments. For example, the court may order a defendant to divest himself or herself

of any interest in any enterprise. Also, the court may order the dissolution or reorganization of any enterprise.

3) Civil Forfeiture:

Civil forfeiture in connection with criminal profiteering can happen in connection with a general civil action for damages or a forfeiture action brought by the Attorney General or county prosecuting attorney. A victim of criminal profiteering may bring a civil lawsuit within three years of the discovery of a pattern of criminal profiteering or within three years after the pattern should have been discovered. An action brought by the Attorney General or county prosecuting attorney may be in lieu of the victim's suit or in addition to the suit.

Summary of Bill:

I. Terrorism Related Crimes

Six new terrorism related crimes are created: felony terrorism, unlawful possession of a weapon of mass destruction, making terrorist threats in the first and second degrees, providing material support or resources to terrorists, and unlawful possession of false identification for terrorist purposes. There is no statute of limitations for these crimes. A person guilty of one of these crimes must also pay restitution to the victims and to the state or county.

Felony Terrorism

A person is guilty of felony terrorism if he or she commits a felony under circumstances manifesting an extreme indifference to human life and with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States and thereby:

- Causes substantial bodily harm to any other person;
- Causes substantial damage to any habitable building or structure, whether or not occupied, sufficient to create a substantial risk of death to another person if the building or structure had been occupied by any such person; or
- Causes substantial physical damage sufficient to disrupt the normal functioning of a public or private infrastructure system including, but not limited to, a public water system, or an emergency, governmental, medical, fire, or law enforcement response system.

Felony terrorism is a class A felony with a seriousness level of XV for adult sentencing. The offense is also categorized as a serious violent offense, which can lead to an increased offender score at sentencing. For juveniles, the crime has an offense category of A. The standard sentence range for a first-time adult offender is 240-320 months.

The standard sentence for a first-time juvenile offender is 103-129 weeks.

Unlawful Possession of a Weapon of Mass Destruction

A person is guilty of unlawful possession of a weapon of mass destruction if he or she possesses, manufactures, transports, disposes of, spills, or otherwise releases a weapon of mass destruction 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. A weapon of mass destruction is a device, object, or substance that a person intends to use to cause multiple human deaths or a biological agent, radioactive material, or chemical agent that is possessed, released, or disseminated without lawful authority.

Unlawful possession of a weapon of mass destruction is a class A felony with a seriousness level of XIV adult sentencing. The offense is also categorized as a serious violent offense, which can lead to an increased offender score at sentencing. For juveniles, the crime has an offense category of B+. The standard sentence range for a first-time adult offender is 123-220 months. The standard sentence for a first-time juvenile offender is 15-36 weeks.

Making Terrorist Threats in the first and second degrees

A person is guilty of making terrorist threats if he or she 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, including, but not limited to, placement of an imitation weapon of mass destruction in an area open to or frequented by the public. The person is guilty of making terrorist threats in the first degree if the offense is committed with 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 that manifests an extreme indifference to human life. The person is guilty of making terrorist threats in the second degree if the offense is committed under circumstances not amounting to making terrorist threats in the first degree.

Making terrorist threats in the first degree is a class B felony with a seriousness level of XII for adult sentencing. For juveniles, the crime has an offense category of B. The standard sentence range for a first-time adult offender is 93-123 months. The standard sentence for a first-time juvenile offender is local sanctions (zero-30 days incarceration, zero-12 months community supervision, zero-150 hours of community restitution, \$0-\$500 fine, or any combination thereof). Making terrorist threats in the second degree is an unranked class C felony, which carries a standard sentence of zero-12 months in jail for adult sentencing. For juveniles, the crime has an offense category of D+, the standard sentence for which is local sanctions.

Providing Material Support or Resources to Terrorists

A person is guilty of providing material support or resources to terrorists if he or she provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, intending that the material support or resources are to be used in planning, preparing for, carrying out, escaping from, or concealing the commission of any of the new terrorism related crimes.

Providing material support or resources to terrorists is a class B felony with a seriousness level of X for adult sentencing. For juveniles, the crime has an offense category of C+. The standard sentence range for a first-time offender is 51-68 months. The standard sentence for a first-time juvenile offender is local sanctions.

Unlawful Possession of False Identification for Terrorist Purposes

A person is guilty of unlawful possession of false identification for terrorist purposes if he or she possesses or uses a document or record that contains false information relating to the person who is the subject of the document or record with the intent to commit or facilitate a terrorism related crime.

Unlawful possession of false identification for terrorist purposes is a class B felony with a seriousness level of X for adult sentencing. For juveniles, the crime has an offense category of C. The standard sentence range for a first-time adult offender is 51-68 months. The standard sentence for a first-time juvenile offender is local sanctions.

II. Criminal Profiteering

The new terrorism related crimes are added to the list of crimes that constitute criminal profiteering. Unlike the other crimes on the list, the terrorism related crimes do not have to be committed for financial gain to be applicable. Victims of terrorism related crimes may bring a civil lawsuit under the CPA within three years after the disposition of any criminal charges or within three years of the pattern was, or should have been, discovered, whichever is later.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except section 24, which takes effect July 1, 2004.

Testimony For: This bill gives local law enforcement the authority to help the federal government to fight the war against terrorism. The federal government cannot address

this issue alone. Terrorism in our state is a real and credible threat. This bill helps balance the need to protect the public and the need to protect individuals' civil rights. This bill helps fill gaps in state law relating to terrorism and will provide a deterrent effect against terrorism. There are many unique risks in Washington. This bill addresses many of the concerns with last year's legislation. Since local law enforcement officers and prosecutors cannot enforce federal law, this bill gives these officials the tools they need.

Testimony Against: This bill seems unnecessary. Terrorist acts similar to those committed on September 11 are already illegal under current state criminal law. All of the new crimes in the bill are already covered by current law. It is questionable whether these new crimes will provide any deterrent value. The state has successfully used existing state laws in the past to prosecute and investigate terrorist activity in the state.

Testified: (In support) Representative O'Brien, prime sponsor; Christine Gregoire, Attorney General; Dick VanWagenen, Governor's Policy Office; Jim McDevitt, United States Attorney's Office Eastern District of Washington; Charles Mandigo, Federal Bureau of Investigations; and Russ Hauge, Kitsap County Prosecutor and Washington Association of Prosecuting Attorneys.

(Opposed) Jerry Sheehan, American Civil Liberties Union; Amanda Lee, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; and Alan Mountjoy-Venning, Friends Committee on Washington State Public Policy.