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## Select Committee on Community Security

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### ESSB 6704

**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 Summary of Engrossed Substitute Bill

- Creates specific felony terrorism crimes.
- Adds felonies committed with terrorist intent to the criminal profiteering law, regardless of financial gain.
- Creates definitions for terrorist intent, terrorist act, and terrorist offender.
- Creates definitions for unconventional weapons.
- Felonies committed with terrorist intent have no statute of limitations.
- Increases the maximum punishment for classified felonies committed with terrorist intent.
- Terrorist intent can be used as an aggravating circumstance for sentencing.

**Hearing Date:** 2/27/02

**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.

### **Offenses.**

The Explosives Act 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.

### ***Definitions.***

The definition of "terrorist act" pertains specifically to certain crimes within the Washington State Explosives Act (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.

### ***Criminal Profiteering.***

There are provisions in law that provide for forfeitures of both real and personal property if the property was used or gained in the commission of a crime.

### **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 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.

### ***Maximum Punishments.***

Felonies defined within the criminal code are designated as A, B, or C class felonies. These felonies carry the following maximum penalties:

- Class A felony - Life in prison, \$50,000 fine.
- Class B felony - 10 years in prison, \$20,000 fine.
- Class C felony - Five years in prison, \$10,000 fine.

### ***Death Penalty.***

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: the victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties; the person murdered more than one victim as part of a common scheme or in a single act; or the murder was committed in the course of, in furtherance of, or in immediate flight from one of several specified crimes. The sentence for aggravated first-degree murder is either life imprisonment without the possibility of release or death.

### ***Serious Violent Offenses.***

Serious violent offenses are a subcategory of violent offenses. Those convicted of a serious violent offense are subject to a sentence of three times the maximum punishment.

### ***Exceptional 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.

### ***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 limitations 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.

## **Summary of Bill:**

### ***Definitions.***

Definitions related to terrorism are added to the code.

"Terrorist intent" is defined as the intent to significantly disrupt the general civilian population or the conduct of government by committing an act which:

- Manifests an extreme indifference to human life; or
- Causes or is intended to cause permanent or protracted loss of use of private or public property.

In order to prove "terrorist intent," prosecuting attorneys must file a special allegation of terrorist intent and prove it beyond a reasonable doubt. This definition applies to any criminal case, except for crimes that fall under the State Explosives Act, unlawful use or possession of agents for terrorist purposes, or release or possession of radioactive material.

"Terrorist act" as defined for the State Explosive Act is given a new definition. "Terrorist act" is committed with the intent to significantly disrupt the general civilian or the conduct of government by committing an act which:

- Manifests an extreme indifference to human life; or
- Causes or is intended to cause permanent or protracted loss of use of private or public property.

"Terrorist offender" means a person who commits a felony that results in the death of one or more persons for which a special allegation of terrorist intent has been filed and proven beyond a reasonable doubt.

Definitions related to unconventional weapons are added to the code.

"Biological agent" is defined as any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring microorganism, virus, infectious substance, biological product, or toxin or vector, or any naturally occurring or bioengineered component thereof, capable of causing:

- Death, disease or other biological malfunction in a human, an animal, a plant, or another living organism;
- Deterioration of food, water equipment, supplies, or material of any kind; or
- Significant deterioration of the environment.

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

"Habitable building" means any building in which persons reside or assemble for recreational or employment purposes.

"Toxin" includes the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production to include:

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

### **Offenses.**

Several new crimes requiring terrorist intent are created.

*Hoax Terrorist Act* occurs when a person knowingly and falsely:

- Claims to have committed a felony with terrorist intent; or
- Makes any statement or takes any other action that causes or is intended to cause a reasonable belief that a felony with terrorist intent has been or will be committed.

This is a class A felony and has a seriousness level of IX (31-41 months for a first offense).

*Unlawful Use of Agents For Terrorist Purposes* occurs when a person willfully and with terrorist intent uses, places, introduces, broadcasts, disseminates, or releases any biological agent, chemical agent or toxin. This is a class A felony and has a seriousness level of XV (240-320 months for a first offense). *Possession of Agents For Terrorist Purposes* is a class A felony and has a seriousness level of XIII (123-164 months for a first offense).

*Releasing Radioactive Material with Terrorist Intent* occurs when a person releases, broadcasts, or disseminates ionizing radiation with terrorist intent. This is a class A felony and has a seriousness level of XV (240-320 months for a first offense). *Possession of Radioactive Material with Terrorist Intent* is a class A felony and has a seriousness level of XIII (123-164 months for a first offense).

### ***Criminal Profiteering.***

Includes any felony committed with terrorist intent, to include any anticipatory and completed acts, whether or not committed for financial gain.

### **Sentencing.**

#### ***Maximum Punishments.***

If a person is found guilty of any classified felony while using "terrorist intent," the maximum punishment is raised for a class B felony to a term of life imprisonment, or fine of fifty thousand dollars, or both; a term of ten years of imprisonment, or fine of ten thousand dollars, or both if it is a class C felony. This section is not retroactive.

#### ***Death Penalty.***

A person is deemed a "terrorist offender" if the person commits a felony with terrorist intent as defined in this bill and that felony results in the death of one or more persons. Terrorist offenders may be sentenced either to life without the possibility of release or capital punishment. Special allegation of terrorist intent must be filed and proven beyond a reasonable doubt in order for a person to be punished in accordance with this section.

***Serious Violent Offenses.***

*Possession of radioactive material; Releasing radioactive material; Possession of agents; and Unlawful use of agents* are added to this list.

***Exceptional Sentence.***

If a crime was committed with terrorist intent, courts are allowed to use this as an aggravating circumstance for a sentence outside of the sentencing range. This does NOT apply to crimes committed under the State Explosives Act or *Releasing radioactive material; Possession of radioactive material; Unlawful use of agents; or Possession of agents.*

***Statute of Limitations.***

There is no statute of limitations for any felonies committed with terrorist intent.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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