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**SENATE BILL 5176**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By** Senators Hasegawa, Chase, and Keiser

Read first time 01/16/17. Referred to Committee on Law & Justice.

1            AN ACT Relating to creating the Washington state preservation of  
2 liberty act condemning the unlawful detention of United States  
3 citizens and lawful resident aliens under the national defense  
4 authorization act; adding a new section to chapter 42.20 RCW; adding  
5 a new section to chapter 38.40 RCW; creating new sections;  
6 prescribing penalties; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
9 Washington state preservation of liberty act.

10           NEW SECTION.    **Sec. 2.** The Washington state legislature finds the  
11 following:

12           (1) The congress of the United States passed the national defense  
13 authorization act, 2011 P.L. 112-81, ("2012 NDAA") for fiscal year  
14 2012 on December 15, 2011;

15           (2) The president of the United States of America signed the 2012  
16 NDAA into law on December 31, 2011;

17           (3) Section 1022 of the 2012 NDAA requires the armed forces of  
18 the United States to detain, pending disposition according to the law  
19 of war, any person involved in, or whom provided substantial support

1 to, terrorism or belligerent acts against the United States, and whom  
2 is a member of al-Qaeda or an associated force;

3 (4) Section 1022 (4)(b)(1) and (2) of the 2012 NDAA excludes  
4 United States citizens, and lawful resident aliens for conduct  
5 occurring within the United States, from its mandatory detention  
6 provisions but is only applicable to that section of the 2012 NDAA;

7 (5) Section 1022 (4)(b)(1) of the 2012 NDAA specifically provides  
8 that, "The requirement to detain a person in military custody under  
9 this section does not extend to citizens of the United States";

10 (6) Section 1022 of the 2012 NDAA specifically provides that,  
11 "The requirement to detain a person in military custody under this  
12 section does not extend to lawful resident aliens of the United  
13 States . . .";

14 (7) By contrast, section 1021 of the 2012 NDAA purports to  
15 authorize, but does not require, the president of the United States  
16 to utilize the armed forces of the United States to detain persons  
17 the president suspects were part of, or substantially supported, al-  
18 Qaeda, the Taliban, or associated forces and to dispose of such  
19 detained persons according to the law of war, which may include, but  
20 is not limited to: (a) Indefinite detention without charge or trial  
21 until the end of hostilities authorized by the 2001 authorization for  
22 use of military force against terrorists, 2001 P.L. 107-40, (b)  
23 prosecution through a military commission, or (c) transfer to a  
24 foreign country or foreign entity;

25 (8) Additionally, section 1021 of the 2012 NDAA purports to  
26 enlarge the scope of those persons the office of the president may  
27 indefinitely detain beyond those responsible for the September 11,  
28 2001, terrorist attacks, and those who harbored them, as purportedly  
29 authorized by the 2001 authorization for use of military force  
30 against terrorists, to now include "[a] person who was a part of or  
31 substantially supported al-Qaeda, the Taliban, or associated forces  
32 that are engaged in hostilities against the United States or its  
33 coalition partners, including any person who has committed a  
34 belligerent act or has directly supported such hostilities in aid of  
35 such enemy forces";

36 (9) However, section 1021, unlike section 1022 of the 2012 NDAA,  
37 makes no specific exclusion for United States citizens and lawful  
38 resident aliens for conduct occurring within the United States;

39 (10) While section 1021 of the 2012 NDAA seeks to preserve  
40 existing law and authorities pertaining to the detention of United

1 States citizens, lawful resident aliens of the United States, and any  
2 other person captured in the United States, it does not specify what  
3 such existing law or authorities are;

4 (11) President Obama issued a signing statement upon signing the  
5 NDAA into law indicating that he "will not authorize the indefinite  
6 military detention without trial of American citizens";

7 (12) The clear language of, and omission of an exclusion in,  
8 section 1021 of the 2012 NDAA combined with the language of President  
9 Obama's signing statement indicates that while the president claims  
10 he will not authorize the indefinite military detention without trial  
11 of American citizens, he believes that the office of president now  
12 possesses the authority to do so;

13 (13) Furthermore, the specific exclusion of application to United  
14 States citizens and lawful resident aliens contained in section 1022  
15 of the 2012 NDAA, and the absence of such exclusion in section 1021  
16 of the NDAA, strongly implies that the provisions of section 1021 are  
17 intended to apply to United States citizens and lawful resident  
18 aliens, whether or not they are captured in the United States in the  
19 context of the following facts:

20 (a) The office of the president of the United States, under both  
21 the administrations of George W. Bush and Barack H. Obama, has  
22 asserted the 2001 authorization for the use of military force against  
23 terrorists allows the office of the president to indefinitely detain  
24 without charge United States citizens and lawful resident aliens  
25 captured in the United States;

26 (b) The United States supreme court has not decided whether the  
27 2001 authorization for the use of military force against terrorists  
28 allows the office of the president to indefinitely detain without  
29 charge United States citizens and lawful resident aliens captured in  
30 the United States;

31 (c) United States Senator, Carl Levin, declared in colloquy on  
32 the floor of the United States senate that the original 2012 NDAA  
33 provided that section 1021, then section 1031 prior to final  
34 drafting, specifically would not apply to United States citizens, but  
35 that the office of the president of the United States had requested  
36 that such restriction be removed from the 2012 NDAA;

37 (d) During debate within the Senate and before the passage of the  
38 2012 NDAA, United States Senator, Mark Udall, introduced an amendment  
39 intended to forbid the indefinite detention of United States  
40 citizens, which was rejected by a vote of 38-60;

1 (e) United States Senators John McCain and Lindsey Graham  
2 declared in colloquies on the floor of the United States senate that  
3 section 1021 of the 2012 NDAA authorized the indefinite detention of  
4 United States citizens captured within the United States by the armed  
5 forces of the United States;

6 (f) United States Senator Lindsey Graham further declared in  
7 colloquy on the floor of the United States senate that the United  
8 States homeland is now part of "the battlefield";

9 (g) Retired four star marine generals Charles C. Krulak and  
10 Joseph P. Hoar stated publicly that as a result of the indefinite  
11 detention provision of the 2012 NDAA that "due process would be a  
12 thing of the past," and "this provision would expand the battlefield  
13 to include the United States";

14 (h) Retired four star marine generals Charles C. Krulak and  
15 Joseph P. Hoar also stated publicly that the mandate of military  
16 custody for most terrorism suspects "would violate not only the  
17 spirit of the postreconstruction act limiting the use of the armed  
18 forces for domestic law enforcement but also our trust with service  
19 members, who enlist believing that they will never be asked to turn  
20 their weapons on fellow Americans";

21 (14) Policing the citizenry of the United States of America by  
22 the armed forces of the United States, as purportedly authorized by  
23 the 2012 NDAA, is contrary to the fundamental principles of our  
24 republic, and is generally repugnant to a free society;

25 (15) Section 1021 of the 2012 NDAA as it purports to authorize  
26 (a) detainment of United States citizens and legal resident aliens  
27 captured within the United States of America without charge, (b)  
28 military tribunals for United States citizens and legal resident  
29 aliens captured within the United States of America, and (c) the  
30 transfer of United States citizens and legal resident aliens captured  
31 within the United States of America to foreign jurisdictions, is  
32 violative of the following rights enshrined in the Constitution of  
33 the United States of America: Article I, section 9, clause 2's right  
34 to seek Writ of *Habeas Corpus*; the First Amendment's right to  
35 petition the government for a redress of grievances; the Fourth  
36 Amendment's right to be free from unreasonable searches and seizures;  
37 the Fifth Amendment's right to be free from charge for an infamous or  
38 capitol crime until presentment or indictment by a grand jury; the  
39 Fifth Amendment's right to be free from deprivation of life, liberty,  
40 or property, without due process of law; the Sixth Amendment's right

1 in criminal prosecutions to enjoy a speedy trial by an impartial jury  
2 in the state and district where the crime shall have been committed;  
3 the Sixth Amendment's right to be informed of the nature and cause of  
4 the accusation; the Sixth Amendment's right to confront witnesses;  
5 the Sixth Amendment's right to counsel; the Eighth Amendment's right  
6 to be free from excessive bail and fines, and cruel and unusual  
7 punishment; the Fourteenth Amendment's right to be free from  
8 deprivation of life, liberty, or property, without due process of  
9 law;

10 (16) Section 1021 of the 2012 NDAA as it purports to authorize  
11 (a) detainment of United States citizens and legal resident aliens  
12 captured within the United States of America without charge or trial,  
13 (b) military tribunals for United States citizens and legal resident  
14 aliens captured within the United States of America, and (c) the  
15 transfer of United States citizens and legal resident aliens captured  
16 within the United States of America to foreign jurisdictions, is  
17 violative of the following rights enshrined in the Washington state  
18 Constitution: Article I, section 1: "...governments...are established  
19 to protect and maintain individual rights."; Article I, section 3:  
20 "No person shall be deprived of life, liberty, or property, without  
21 due process of law;" Article I, section 7: "No person shall be  
22 disturbed in his private affairs, or his home invaded, without  
23 authority of law;" Article I, section 10: "Justice in all cases shall  
24 be administered openly, and without unnecessary delay;" Article I,  
25 section 13: "The privilege of the writ of habeas corpus shall not be  
26 suspended, unless in case of rebellion or invasion the public safety  
27 requires it;" Article I, section 14: "Excessive bail shall not be  
28 required, excessive fines imposed, nor cruel punishment inflicted;"  
29 Article I, section 18: "The military shall be in strict subordination  
30 to the civil power;" Article I, section 21: "The right of trial by  
31 jury shall remain inviolate...;" Article I, section 22: "In criminal  
32 prosecutions the accused shall have the right to appear and defend in  
33 person, or by counsel, to demand the nature and cause of the  
34 accusation against him, to have a copy thereof, to testify in his own  
35 behalf, to meet the witnesses against him face to face, to have  
36 compulsory process to compel the attendance of witnesses in his own  
37 behalf, to have a speedy public trial by an impartial jury of the  
38 county in which the offense is charged to have been committed and the  
39 right to appeal in all cases...;" Article I, section 27: "...No  
40 person shall be convicted of treason unless on the testimony of two

1 witnesses to the same overt act, or confession in open court;"  
2 Article I, section 29: "The provisions of this Constitution are  
3 mandatory, unless by express words they are declared to be  
4 otherwise;" Article I, section 30: "The enumeration in this  
5 Constitution of certain rights shall not be construed to deny others  
6 retained by the people;" and Article I, section 32: "A frequent  
7 recurrence to fundamental principles is essential to the security of  
8 individual right and the perpetuity of free government";

9 (17) In December 2012, the congress of the United States passed,  
10 and on January 2, 2013, the president of the United States signed,  
11 the national defense authorization act for fiscal year 2013 ("2013  
12 NDAA"). They failed to include in the 2013 NDAA a specific exclusion  
13 from section 1021 of the 2012 NDAA for United States citizens and  
14 lawful resident aliens for conduct occurring within the United  
15 States; and

16 (18) As required by Article VI of the United States Constitution,  
17 the members of the Washington state legislature have taken an oath to  
18 uphold both the Constitution of the United States of America and the  
19 Constitution of the state of Washington.

20 NEW SECTION. **Sec. 3.** The Washington state legislature intends  
21 the following:

22 (1) To condemn in no uncertain terms section 1021 of the 2012  
23 NDAA as it purports to repeal the spirit of the postreconstruction  
24 act and authorize the president of the United States to utilize the  
25 armed forces of the United States to police United States citizens  
26 and lawful resident aliens within the United States of America,  
27 indefinitely detain United States citizens and lawful resident aliens  
28 captured within the United States of America without charge until the  
29 end of hostilities authorized by the 2001 authorization for use of  
30 military force, subject American citizens and lawful resident aliens  
31 captured within the United States of America to military tribunals,  
32 and transfer American citizens and lawful resident aliens captured  
33 within the United States of America to a foreign country or foreign  
34 entity.

35 (2) As a notion of conscience and strong principles, we cannot  
36 eviscerate the unalienable rights recognized by and protected in the  
37 United States Constitution and the Constitution of the state of  
38 Washington. Indeed, undermining those constitutional rights destroys  
39 the fabric of what has made the United States of America a republic

1 granting the greatest number of people the greatest amount of  
2 liberty, justice, security, opportunity, prosperity, and happiness in  
3 the history of the world.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.20  
5 RCW to read as follows:

6 (1) No state or local official or employee, or agent of the state  
7 of Washington, or employee of a corporation providing services to the  
8 state of Washington, or member of the national guard or state defense  
9 forces acting in his or her capacity as a state or local official or  
10 employee, or agent of the state of Washington, or employee of a  
11 corporation providing services to the state of Washington, or member  
12 of the national guard or state defense forces, shall knowingly  
13 cooperate with an investigation or detainment of a United States  
14 citizen or lawful resident alien located within the United States of  
15 America by the armed forces of the United States of America.

16 (2) A violation of this section is a class C felony.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 38.40  
18 RCW to read as follows:

19 (1) No member of the armed forces of the United States of  
20 America, nor any person acting directly with, or on behalf of, the  
21 armed forces of the United States of America, shall be permitted to  
22 conduct within the boundaries of the state of Washington, an  
23 investigation or detainment of a United States citizen or lawful  
24 resident alien located within the state of Washington except when  
25 granted authority compliant with the United States bill of rights and  
26 the Washington state Constitution.

27 (2) A violation of this section is a class C felony.

28 NEW SECTION. **Sec. 6.** The provisions of this act shall be  
29 construed liberally to effectuate the intent, purposes, and policies  
30 of this act.

31 NEW SECTION. **Sec. 7.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 8.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect immediately.

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