

# SENATE BILL REPORT

## HB 1210

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As Reported By Senate Committee On:  
Judiciary, April 4, 2003

**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:** Judiciary: 4/2/03, 4/4/03 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline and Thibaudeau.

**Staff:** Aldo Melchiori (786-7439)

**Background:** As of December 2002, 33 states have passed legislation amending their criminal codes for acts relating to terrorism. The Washington Legislature considered a number of bills during the 2001 and 2002 legislative sessions, three of which became law. SSB 5255 (2001) and SSB 6439 (2002) provided public disclosure protection for specific records relating to vulnerability assessments or response plans intended to prevent or mitigate criminal acts of terrorism and specific records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts. SHB 2502 (2002) established a class B felony (seriousness level VII) for teaching or demonstrating to another person the use, application, or making of a device or technique capable of causing significant bodily injury or death to people, knowing, having reason to know, or intending that the device or technique would be unlawfully used in, or in furtherance of, a civil disorder.

The Washington State Explosives Act (WSEA) prohibits several bomb-related crimes including: exploding a bomb with terrorist intent (class A felony, level XIV); exploding a bomb and endangering life or safety (class A felony, level XIII); placing a bomb with terrorist intent (class A felony, level XIII); placing a fake bomb with terrorist intent (class B felony, level XII); exploding a bomb and damaging property (class B felony, level X); placing a bomb to endanger life or safety (class B felony, level IX); placing a bomb to damage property (class B felony, level VII); and placing a fake bomb without terrorist intent (class C felony, 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. A number of other criminal statutes may also apply depending upon the circumstances.

The Criminal Profiteering Act (CPA) prohibits certain acts and patterns of activity that constitute organized crime and criminal profiteering. Criminal profiteering is the commission of certain crimes for financial gain. A person engages in a pattern of criminal profiteering if he or she engages in at least three related criminal profiteering acts within a five-year period. The CPA contains several felonies associated with criminal profiteering and also contains three types of civil remedies: monetary penalties (treble damages, fines, and litigation costs), injunctive relief, and civil forfeiture.

**Summary of Bill:** Six new terrorism related crimes are created. There is no statute of limitations for any of these crimes. A person guilty of one of these crimes must also pay restitution to the victims and to the state or county.

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: (1) causes substantial bodily harm to any other person; (2) causes substantial damage to any habitable building or structure, whether or not occupied, sufficient to create a substantial risk of death if the building or structure had been occupied; or (3) 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 ranked at level XV (240-320 months for a first offense). For juveniles, the crime has an offense category of A (103-129 weeks). The offense is a serious violent offense.

A person commits 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. This is a class A felony ranked at level of XIV (123-220 months for a first offense). For juveniles, the crime has an offense category of B+ (15-36 weeks). The offense is a serious violent offense.

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 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. This is a class B felony ranked at level of XII (93-123 months for a first offense). For juveniles, the crime has an offense category of B (local sanctions:

0-30 days incarceration, 0-12 months community supervision, and/or 0-150 hours of community restitution, \$0-\$500 fine).

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. This is an unranked class C felony (0-12 months). For juveniles, the crime has an offense category of D+ (local sanctions).

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. This is a class B felony ranked at level of X (51-68 months for a first offense). For juveniles, the crime has an offense category of C+ (local sanctions).

A person commits 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. This is a class B felony ranked at level of X (51-68 months for a first offense). For juveniles, the crime has an offense category of C (local sanctions).

The new terrorism related crimes are all added to the list of crimes that constitute criminal profiteering. Unlike the other listed crimes, the terrorism related crimes do not have to be committed for financial gain to be applicable and a single terrorist act triggers the provisions. 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 from when 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.

**Testimony For:** Law enforcement needs this provision to protect the public from terrorist activities. The FBI has inadequate resources to deal with all the terrorist problems in Washington. The bill fills the gaps in state law to help us work in partnership with the federal government. This is not a version of the USA PATRIOT Act. It retains all of the protections engendered in Washington criminal procedures. The Governor and the Attorney General have worked hard to address all of the concerns expressed with the terrorism bills from 2002. The bill does not affect, nor is it intended to affect, the lawful possession or use of firearms.

**Testimony Against:** The bill is unnecessary and may produce unintended consequences. We have plenty of current laws that can be used to prosecute these crimes. The federal government has the tools and the resources to prosecute terrorists. Local agencies are already stretched and this will just add to the overload. The bill significantly increases penalties for some acts that have not caused personal injury. The bill must not infringe upon the citizens' right to bear arms.

**Testified:** PRO: Christine Gregoire, Attorney General; Dick Van Wagenen, Governor's Policy Office; Larry Erickson, WASPC; CONCERNS: Joe Waldron, Citizens Committee for the Right to Keep and Bear Arms; CON: Jennifer Shaw, WDA, WACDL; Jerry Sheehan, ACLU; Brian Judy, NRA; Alan Mountjoy-Venning, Washington Friends Committee on Washington Public Policy.