

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2614
"THE ARKANSAS ANTI-TERRORISM ACT OF 2003."

Amendment No. 1 to House Bill No. 2614.

Amend House Bill No. 2614 as engrossed, 03/26/03:

Delete everything after the enacting clause and substitute:

“SECTION 1. Arkansas Code § 5-38-101(5), concerning the definition of catastrophe, is amended to read as follows:

(5) “Catastrophe” means serious physical injury or death to ~~ten (10)~~ five (5) or more persons or substantial damage to ~~ten (10)~~ five (5) or more occupiable structures, or property loss in excess of one-half million dollars (\$500,000).

SECTION 2. Arkansas Code § 5-38-202 is amended to read as follows:

5-38-202. Causing a catastrophe - Threatening to cause a catastrophe.

(a)(1) A person commits the offense of causing a catastrophe if he or she ~~purposely~~ knowingly causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, distribution of poison, radioactive material, bacteria, virus, or other dangerous and difficult to confine force or substance.

(2) Causing a catastrophe is a Class Y felony.

(b)(1) A person commits the offense of threatening to cause a catastrophe if he or she contacts any person, company, corporation, or governmental entity and threatens to cause a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult to confine force or substance unless paid a sum of money, any type of property, or unless the person, company, corporation, or governmental entity performs a requested act.

(2) Threatening to cause a catastrophe is a Class D felony.

(c) The court may order, in addition to any other restitution ordered under § 5-4-205, that a person who violates this section make restitution to the state or any of its political subdivisions for any cleanup costs associated with the commission of the offense.

SECTION 3. Arkansas Code Title 5, Chapter 54 is amended to add an additional subchapter to read as follows:

Subchapter 2 - Terrorism



5-54-201. Definitions.

For purposes of this subchapter:

(1) "Act of terrorism" means:

(A) Any act that causes or creates a risk of death or serious physical injury to five (5) or more persons;

(B) Any act that disables or destroys the usefulness or operation of any communications system;

(C) Any act or any series of two (2) or more acts committed in furtherance of a single intention, scheme, or design that disables or destroys the usefulness or operation of a computer network, computers, computer programs, or data used by any industry, by any class of business, or by five (5) or more businesses or by the federal government, state government, any unit of local government, a public utility, a manufacturer of pharmaceuticals, a national defense contractor, or a manufacturer of chemical or biological products used in connection with agricultural production;

(D) Any act that disables or causes substantial damage to or destruction of any structure or facility used in or in connection with ground, air, or water transportation, the production or distribution of electricity, gas, oil, or other fuel, the treatment of sewage or the treatment or distribution of water, or controlling the flow of any body of water;

(E) Any act that causes substantial damage to or destruction of livestock or crops or a series of two (2) or more acts committed in furtherance of a single intention, scheme, or design which, in the aggregate, causes substantial damage to or destruction of livestock or crops;

(F) Any act that causes substantial damage to or destruction of any hospital, or any building or facility used by the federal government, state government, any unit of local government, by a national defense contractor, a public utility, a manufacturer of chemical or biological products used in or in connection with agricultural production or the storage or processing of agricultural products or the preparation of agricultural products for food or food products intended for resale or for feed for livestock; or

(G) Any act that causes five hundred thousand dollars (\$500,000) damage to any building or set of buildings;

(2) "Agricultural products" means crops and livestock;

(3) "Agricultural production" means the breeding and growing of livestock and crops;

(4) "Biological products used in agriculture" means, but is not limited to, seeds, plants, and DNA of plants or animals altered for use in crop or livestock breeding or production or which are sold, intended, designed, or produced for use in crop production;

(5) "Communications system" means any works, property, or material of any radio, telegraph, telephone, microwave, cable station, or system;

(6)(A) "Computer" means a device that accepts, processes, stores, retrieves, or outputs data.

(B) "Computer" includes, but is not limited to, auxiliary storage and telecommunications devices;

(7) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one (1) computer with the capability to transmit data among them through communication facilities;

(8) "Computer program" means a series of coded instruction or statements in a form acceptable to a computer that causes the computer to process data and supply the results of data processing;

(9)(A) "Data" means representations of information, knowledge, facts, concepts, or instructions, including program documentation, which are prepared in a formalized manner and are stored or processed in or transmitted by a computer.

(B) Data may be stored in any form including, but not limited to, magnetic or optical storage media, punch cards, or data stored internally in the memory of a computer;

(10) "Hoax substance" means any substance that would cause a reasonable person to believe that it is a dangerous chemical or biological agent, a poison, a harmful radioactive substance, or similar substance;

(11) "Livestock" means animals bred or raised for human consumption;

(12) "Material support or resources" means currency or other financial securities, financial services, lodging, training, safe house, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, any other kind of physical assets or intangible property, and expert services or expert assistance;

(13)(A) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(B) "Person" includes, without limitation, any charitable organization, whether incorporated or unincorporated, any professional fund raiser, professional solicitor, limited liability company, association, joint stock company, association, trust, trustee, or any group people formally or informally affiliated or associated for a common purpose, and any officer, director, partner, member, or agent of any person;

(14) "Render criminal assistance" means to do any of the following with the purpose to prevent, hinder, or delay the discovery or apprehension of, a person who he or she knows or believes has committed an offense under this subchapter or is being sought by law enforcement officials for the commission of an offense under this subchapter, or with the purpose to assist a person in profiting or benefiting from the commission of an offense under this subchapter:

(A) Harbor or conceal the person;

(B) Warn the person of impending discovery or apprehension;

(C) Provide the person with money, transportation, a weapon, a disguise, false identification documents, or any other means of avoiding discovery or apprehension;

(D) Prevent or obstruct, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of the person;

(E) Suppress, by any act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person;

(F) Aid the person to protect or expeditiously profit from an advantage derived from the crime; or

(G) Provide expert services or expert assistance to the person. Providing expert services or expert assistance shall not be construed to

apply to:

(i) A licensed attorney who discusses with a client the legal consequences of a proposed course of conduct or advises a client of legal or constitutional rights; and

(ii) Licensed medical personnel who provides emergency medical treatment to a person whom the doctor believes committed an offense under this subchapter if, as soon as reasonably practicable either before or after providing the treatment, the doctor notifies a law enforcement agency; and

(15) "Terrorist" means any person who engages in or is about to engage in a terrorist act with the purpose to intimidate or coerce a significant portion of the civilian population or influence the policy of a government or a unit of government.

5-54-202. Soliciting material support for terrorism – Providing material support for a terrorist act.

(a)(1)(A) A person commits the offense of soliciting material support for terrorism if the person knowingly raises, solicits, or collects material support or resources knowing that the material support or resources will be used, in whole or in part, to plan, prepare, carry out, or avoid apprehension for committing terrorism or causing a catastrophe, as defined under § 5-38-202, or who knows that the material support or resources so raised, solicited, or collected will be used by an organization designated under § 8 U.S.C. 1189, as the list of organizations existed March 1, 2003, and which designates foreign terrorist organizations.

(B) It is not an element of the offense that the defendant knows that an organization has been designated under § 8 U.S.C. 1189, as it existed March 1, 2003.

(2) Soliciting material support for terrorism is a Class Y felony.

(b)(1) A person commits the offense of providing material support for a terrorist act if the person knowingly provides material support or resources to a person knowing that the person will use that support or those resources in whole or in part to plan, prepare, carry out, facilitate, or to avoid apprehension for committing an act of terrorism or to cause a catastrophe, as defined under § 5-38-202.

(2) Providing material support for a terrorist act is a Class Y felony.

5-54-203. Making a terrorist threat.

(a) A person commits the offense of making a terrorist threat when, with the purpose to intimidate or coerce a civilian population, influence the policy of a government or a unit of government by intimidation or coercion, the person in any manner knowingly threatens to commit or causes to be committed a terrorist act and thereby causes a reasonable expectation or fear of the imminent commission of a terrorist act or of another terrorist act.

(b) It is not a defense to a prosecution under this section that at the time the person made the terrorist threat, unknown to him or her, it was impossible to carry out the threat, nor is it a defense that the threat was not made to a person who was a subject or intended victim of the threatened act.

(c) Making a terrorist threat is a Class A felony.

5-54-204. Falsely making a terrorist threat.

(a) A person commits the offense of falsely communicating a terrorist threat when, in any manner, the person knowingly makes a threat to commit or cause to be committed a terrorist act or otherwise creates the impression or belief that a terrorist act is about to be or has been committed, or, in any manner, knowingly makes a threat to commit or cause to be committed a catastrophe, as defined under § 5-38-202, which the person knows is false.

(b) Falsely communicating a terrorist threat is a Class B felony.

5-54-205. Terrorism.

(a) A person commits the offense of terrorism when, with the intent to intimidate or coerce a civilian population, influence the policy of a unit of government using intimidation or coercion, affect the conduct of a unit or level of government by intimidation or coercion, or retaliate against a civilian population or unit of government for a policy or conduct the person:

(1) Knowingly commits an act of terrorism within this state; or

(2) While outside this state, knowingly commits an act of terrorism that takes effect within this state or produces substantial detrimental effects within this state.

(b) Terrorism is a Class Y felony.

5-54-206. Terrorism - - Enhanced penalties.

(a) Any person who is found guilty of or who pleads guilty or nolo contendere to terrorism, § 5-54-205, may be subject to an enhanced sentence of an additional term of imprisonment of ten (10) years if the person's acts caused serious physical injury to a law enforcement officer, fire fighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism.

(b) The enhanced portion of the sentence shall be consecutive to any other sentence imposed.

(c) Any person sentenced under this section shall not be eligible for early release on parole for the enhanced portion of the sentence.

5-54-207. Hindering prosecution of terrorism.

(a) A person commits the offense of hindering prosecution of terrorism when the person renders criminal assistance to a person who has committed terrorism, as defined in Arkansas Code § 5-54-205, or causing a catastrophe, as defined in § 5-38-202, when he or she knows that the person to whom he or she rendered criminal assistance engaged in an act of terrorism or caused a catastrophe.

(b) Hindering prosecution of terrorism is a Class B felony, provided that if the defendant shows by a preponderance of the evidence that he or she stands to the person assisted in the relation of parent, child, brother, sister, corresponding step relationships of the preceding, or husband and wife, hindering is a Class D felony.

5-54-208. Exposing the public to toxic biological, chemical, or radioactive substances.

(a) A person commits the offense of exposing the public to toxic biological, chemical, or radioactive substances when the person knowingly delivers or causes the delivery of a biological, chemical, or radioactive

substance to a governmental facility, school, business, hospital, office building, or similar facility open to the public, with the purpose of causing bodily injury or evacuation of the facility.

(b) Exposing the public to toxic biological, chemical, or radioactive substances is a Class Y felony.

5-54-209. Use of a hoax substance.

(a) A person commits the offense of use of a hoax substance when the person knowingly delivers or causes the delivery of a hoax substance to a governmental facility, school, business, hospital, office building, or similar facility open to the public, or to a person's home, business, or place of work with the purpose of causing anxiety, unrest, fear or personal discomfort or the evacuation of the facility.

(b) Use of a hoax substance is a Class D felony.

5-54-210. Restitution.

The court may order, in addition to any other restitution ordered under § 5-4-205, that a person who violates this section make restitution to the state or any of its political subdivisions for any cleanup costs associated with the commission of any offense in this subchapter.

SECTION 4. Arkansas Code § 5-71-210 is amended to read as follows:

5-71-210. Communicating a false alarm.

(a) A person commits the offense of communicating a false alarm if he or she purposely initiates or circulates a report of a present, past, or impending bombing, fire, offense, catastrophe, or other emergency knowing that the report is false or baseless and knowing that it is likely:

(1) To cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

(2) To place any person in fear of physical injury to himself or another person or of damage to his or her property or that of another person; or

(3) To cause total or partial evacuation of any occupiable structure, vehicle, or vital public facility.

(b)(1) Communicating a false alarm is a Class D C felony if ~~physical~~ injury to a person results;

~~(A) Physical injury to a person results; or~~

~~(B) Otherwise, it is a Class A misdemeanor.~~

(2) Communicating a false alarm is a Class D felony if damage to property results; or

(3) If there is no resulting physical injury or damage to property, communicating a false alarm is a Class A misdemeanor; provided that a second or subsequent offense that would otherwise be a Class A misdemeanor shall be a Class D felony.

(c) The court may order, in addition to any other restitution ordered under § 5-4-205, that a person who violates this section make restitution to the state or any of its political subdivisions for any cleanup costs associated with the commission of the offense.

SECTION 5. Arkansas Code § 5-10-101(a) is amended to read as follows:

5-10-101. Capital murder.

(a) A person commits capital murder if:

(1) Acting alone or with one (1) or more other persons, he or she commits or attempts to commit terrorism, as defined in § 5-54-205, rape, kidnapping, vehicular piracy, robbery, burglary, a felony violation of the Uniform Controlled Substances Act §§ 5-64-101 -- 5-64-608, involving an actual delivery of a controlled substance, or escape in the first degree, and in the course of and in furtherance of the felony, or in immediate flight therefrom, he or she or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life; or

(2) Acting alone or with one (1) or more other persons, he or she commits or attempts to commit arson, and in the course of and in furtherance of the felony or in immediate flight therefrom, he or she or an accomplice causes the death of any person; or

(3) With the premeditated and deliberated purpose of causing the death of any law enforcement officer, jailer, prison official, fire fighter, judge or other court official, probation officer, parole officer, any military personnel, or teacher or school employee, when such person is acting in the line of duty, he or she causes the death of any person; or

(4) With the premeditated and deliberated purpose of causing the death of another person, he or she causes the death of any person; or

(5) With the premeditated and deliberated purpose of causing the death of the holder of any public office filled by election or appointment or a candidate for public office, he or she causes the death of any person; or

(6) While incarcerated in the Department of Correction or the Department of Community Punishment, he or she purposely causes the death of another person after premeditation and deliberation; or

(7) Pursuant to an agreement that he or she cause the death of another person in return for anything of value, he or she causes the death of any person; or

(8) He or she enters into an agreement whereby one person is to cause the death of another person in return for anything of value, and the person hired, pursuant to the agreement, causes the death of any person; or

(9) Under circumstances manifesting extreme indifference to the value of human life, he or she knowingly causes the death of a person fourteen (14) years of age or younger at the time the murder was committed, provided that the defendant was eighteen (18) years of age or older at the time the murder was committed. It shall be an affirmative defense to any prosecution under this subdivision (a)(9) arising from the failure of the parent, guardian, or person standing in loco parentis to provide specified medical or surgical treatment, that the parent, guardian, or person standing in loco parentis relied solely on spiritual treatment through prayer in accordance with the tenets and practices of an established church or religious denomination of which he or she is a member; or

(10) He or she purposely discharges a firearm from a vehicle at a person, or at a vehicle, conveyance, or a residential or commercial occupiable structure he or she knows or has good reason to believe to be occupied by a person, and thereby causes the death of another person under circumstances manifesting extreme indifference to the value of human life.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the State of Arkansas' criminal statutes do not adequately address terrorism, as terrorism is known since September 11, 2001. Therefore, an emergency is declared to exist and

this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor; or

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Laverty

PBB/APK - 040320031607

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Secretary