

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (extracts)

Public Law 104-132

104th Congress

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TITLE V--NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A--Nuclear Materials

SEC. 501. <<NOTE: 18 USC 831 note.>> FINDINGS AND PURPOSE.

(a) Findings.--The Congress finds that--

(1) nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices that are capable of causing serious bodily injury as well as substantial damage to property and to the environment;

(2) the potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(3) due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in ensuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(4) the threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation that implemented the Convention on the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code;

(5) the successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in

increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

(6) the trafficking in the relatively more common, commercially available, and usable nuclear and byproduct materials creates the potential for significant loss of life and environmental damage;

(7) report trafficking incidents in the early 1990's suggest that the individuals involved in trafficking in these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, the former Soviet Union, Central Europe, and to a lesser extent in the Middle European countries;

[[Page 110 STAT. 1282]]

(8) the international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

(9) the potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(10) the United States has an interest in encouraging United States corporations to do business in the countries that comprised the former Soviet Union, and in other developing democracies;

(11) protection of such United States corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage business ventures in these countries, and to further the foreign relations and commerce of the United States;

(12) the nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts that constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward foreign nationals; and

(13) there is presently no Federal criminal statute that provides adequate protection to United States interests from nonweapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials that are held for other than peaceful purposes.

(b) Purpose.--The purpose of this title is to provide Federal law enforcement agencies with the necessary means and the maximum authority permissible under the Constitution to combat the threat of nuclear contamination and proliferation that may result from the illegal possession and use of radioactive materials.

SEC. 502. EXPANSION OF SCOPE AND JURISDICTIONAL BASES OF NUCLEAR MATERIALS PROHIBITIONS.

Section 831 of title 18, United States Code, is amended--

(1) in subsection (a)--

(A) by striking ``nuclear material" each place it appears and inserting ``nuclear material or nuclear byproduct material";

(B) in paragraph (1)--

(i) in subparagraph (A), by inserting ``or to the environment" after ``property"; and

(ii) so that subparagraph (B) reads as follows:

``(B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;"; and

(C) in paragraph (6), by inserting ``or to the environment" after ``property";

(2) in subsection (c)--

(A) so that paragraph (2) reads as follows:

``(2) an offender or a victim is--

``(A) a national of the United States; or

``(B) a United States corporation or other legal

entity;"

(B) in paragraph (3)--

[[Page 110 STAT. 1283]]

(i) by striking ``at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and"; and

(ii) by striking ``or" at the end of the paragraph;

(C) in paragraph (4)--

(i) by striking ``nuclear material for peaceful purposes" and inserting ``nuclear material or nuclear byproduct material"; and

(ii) by striking the period at the end of the paragraph and inserting ``; or"; and

(D) by adding at the end the following new paragraph:

``(5) either--

``(A) the governmental entity under subsection (a)(5) is the United States; or

``(B) the threat under subsection (a)(6) is directed at the United States."; and

(3) in subsection (f)--

(A) in paragraph (1)--

(i) in subparagraph (A), by striking ``with an isotopic concentration not in excess of 80 percent plutonium 238"; and

(ii) in subparagraph (C), by striking ``uranium" and inserting ``enriched uranium, defined as uranium";

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

``(2) the term `nuclear byproduct material' means any material containing any radioactive isotope created through an

irradiation process in the operation of a nuclear reactor or accelerator;"

(D) in paragraph (4), as redesignated, by striking "and" at the end;

(E) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following new paragraphs:

"(6) the term `national of the United States' has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(7) the term `United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States."

SEC. 503. REPORT TO CONGRESS ON THEFTS OF EXPLOSIVE MATERIALS FROM ARMORIES.

(a) Study.--The Attorney General and the Secretary of Defense shall jointly conduct a study of the number and extent of thefts from military arsenals (including National Guard armories) of firearms, explosives, and other materials that are potentially useful to terrorists.

(b) Report to the Congress.--Not later than 6 months after the date of enactment of this Act, the Attorney General and the Secretary of Defense shall jointly prepare and transmit to the Congress a report on the findings of the study conducted under subsection (a).

[[Page 110 STAT. 1284]]

Subtitle B--Biological Weapons Restrictions

SEC. 511. <<NOTE: 42 USC 262 note.>> ENHANCED PENALTIES AND CONTROL OF BIOLOGICAL AGENTS.

(a) Findings.--The Congress finds that--

(1) certain biological agents have the potential to pose a

severe threat to public health and safety;

(2) such biological agents can be used as weapons by individuals or organizations for the purpose of domestic or international terrorism or for other criminal purposes;

(3) the transfer and possession of potentially hazardous biological agents should be regulated to protect public health and safety; and

(4) efforts to protect the public from exposure to such agents should ensure that individuals and groups with legitimate objectives continue to have access to such agents for clinical and research purposes.

(b) Criminal Enforcement.--Chapter 10 of title 18, United States Code, is amended--

(1) in section 175(a), by inserting ``or attempts, threatens, or conspires to do the same," after ``to do so,";

(2) in section 177(a)(2), by inserting ``threat," after ``attempt,"; and

(3) in section 178--

(A) in paragraph (1), by striking ``or infectious substance" and inserting ``infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product";

(B) in paragraph (2)--

(i) by inserting ``the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule" after ``means";

(ii) by striking ``production--" and inserting ``production, including--";

(iii) in subparagraph (A), by inserting ``or biological product that may be engineered as a result of biotechnology" after ``substance"; and

(iv) in subparagraph (B), by inserting ``or biological product" after ``isomer"; and

(C) in paragraph (4), by inserting `` , or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology," after ``organism".

(c) Terrorism.--Section 2332a(a) of title 18, United States Code, is amended by inserting `` , including any biological agent, toxin, or vector (as those terms are defined in section 178)" after ``destruction".

(d) Regulatory Control of Biological Agents.--

(1) List of biological agents.--

(A) In general.--The Secretary shall, through regulations promulgated under subsection (f), establish and maintain a list of each biological agent that has the potential to pose a severe threat to public health and safety.

[[Page 110 STAT. 1285]]

(B) Criteria.--In determining whether to include an agent on the list under subparagraph (A), the Secretary shall--

(i) consider--

(I) the effect on human health of exposure to the agent;

(II) the degree of contagiousness of the agent and the methods by which the agent is transferred to humans;

(III) the availability and effectiveness of immunizations to prevent and treatments for any illness resulting from infection by the agent; and

(IV) any other criteria that the Secretary considers appropriate; and

(ii) consult with scientific experts representing appropriate professional groups.

(e) Regulation of Transfers of Listed Biological Agents.--The Secretary shall, through regulations promulgated under subsection (f), provide for--

(1) the establishment and enforcement of safety procedures for the transfer of biological agents listed pursuant to subsection (d)(1), including measures to ensure--

(A) proper training and appropriate skills to handle such agents; and

(B) proper laboratory facilities to contain and dispose of such agents;

(2) safeguards to prevent access to such agents for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

(4) appropriate availability of biological agents for research, education, and other legitimate purposes.

(f) Regulations.--The Secretary shall carry out this section by issuing--

(1) proposed rules not later than 60 days after the date of enactment of this Act; and

(2) final rules not later than 120 days after the date of enactment of this Act.

(g) Definitions.--For purposes of this section--

(1) the term "biological agent" has the same meaning as in section 178 of title 18, United States Code; and

(2) the term "Secretary" means the Secretary of Health and Human Services.

Subtitle C--Chemical Weapons Restrictions

SEC. 521. CHEMICAL WEAPONS OF MASS DESTRUCTION; STUDY OF FACILITY FOR TRAINING AND EVALUATION OF PERSONNEL WHO RESPOND TO USE OF CHEMICAL OR BIOLOGICAL WEAPONS IN URBAN AND SUBURBAN AREAS.

(a) Chemical Weapons of Mass Destruction.--Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332b as added by section 702 of this Act the following new section:

``Sec. 2332c. Use of chemical weapons

``(a) Prohibited Acts.--

``(1) Offense.--A person shall be punished under paragraph (2) if that person, without lawful authority, uses, or attempts or conspires to use, a chemical weapon against--

``(A) a national of the United States while such national is outside of the United States;

``(B) any person within the United States; or

``(C) any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States.

``(2) Penalties.--A person who violates paragraph (1)--

``(A) shall be imprisoned for any term of years or for life; or

``(B) if death results from that violation, shall be punished by death or imprisoned for any term of years or for life.

``(b) Definitions.--As used in this section--

``(1) the term `national of the United States' has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

``(2) the term `chemical weapon' means any weapon that is designed or intended to cause widespread death or serious bodily

injury through the release, dissemination, or impact of toxic or poisonous chemicals or precursors of toxic or poisonous chemicals.

(b) <<NOTE: 50 USC 1522 note.>> Study of Facility for Training and Evaluation of Personnel Who Respond To Use of Chemical or Biological Weapons in Urban and Suburban Areas.--

(1) Findings.--The Congress finds that--

(A) the threat of the use of chemical and biological weapons by Third World countries and by terrorist organizations has increased in recent years and is now a problem of worldwide significance;

(B) the military and law enforcement agencies in the United States that are responsible for responding to the use of such weapons require additional testing, training, and evaluation facilities to ensure that the personnel of such agencies discharge their responsibilities effectively; and

(C) a facility that recreates urban and suburban locations would provide an especially effective environment

[[Page 110 STAT. 1287]]

in which to test, train, and evaluate such personnel for that purpose.

(2) Study of facility.--

(A) In general.--The President shall establish an interagency task force to determine the feasibility and advisability of establishing a facility that recreates both an urban environment and a suburban environment in such a way as to permit the effective testing, training, and evaluation in such environments of government personnel who are responsible for responding to the use of chemical and biological weapons in the United States.

(B) Description of facility.--The facility considered under subparagraph (A) shall include--

(i) facilities common to urban environments (including a multistory building and an underground rail transit system) and to suburban environments;

(ii) the capacity to produce controllable releases of chemical and biological agents from a variety of urban and suburban structures, including laboratories, small buildings, and dwellings;

(iii) the capacity to produce controllable releases of chemical and biological agents into sewage, water, and air management systems common to urban areas and suburban areas;

(iv) chemical and biocontaminant facilities at the P3 and P4 levels;

(v) the capacity to test and evaluate the effectiveness of a variety of protective clothing and facilities and survival techniques in urban areas and suburban areas; and

(vi) the capacity to test and evaluate the effectiveness of variable sensor arrays (including video, audio, meteorological, chemical, and biosensor arrays) in urban areas and suburban areas.

(C) Sense of congress.--It is the sense of Congress that the facility considered under subparagraph (A) shall, if established--

(i) be under the jurisdiction of the Secretary of Defense; and

(ii) be located at a principal facility of the Department of Defense for the testing and evaluation of the use of chemical and biological weapons during any period of armed conflict.

(c) Clerical Amendment.--The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item added by section 702 of this Act

that relates to section 2332b the following new item:

``2332c. Use of chemical weapons.".