

ASSEMBLY BILL 250: DOES NEVADA'S RESPONSE TO THE TERRORIST THREAT CREATE MORE QUESTIONS THAN ANSWERS?¹

Statutes Affected: NEV. REV. STAT. 193.169, 200.030, 200.033, 202.441-444, 202.446, 202.448, 207.360, 171.080, 179.121; 450B.180; 630.253; 631.342; 632.343.

Adds new sections to NEV. REV. STAT. Chapters 193, 202, 463.

Statutes of Nevada: Assemb. B. 250, 72d Sess. (Nev. 2003) (Perkins); 2003 Nev. Stat. 470.

I. Introduction

The events of September 11, 2001 affected many citizens in a manner reminiscent of those who survived the Pearl Harbor attacks of December 7, 1941. However, there is at least one significant difference between the two tragedies: while the primary target of the Pearl Harbor attack was a military target, the greatest number of casualties from the September 11th attacks came from the World Trade Center in New York, a civilian target. This difference has forced state and federal governments, as well as the general population, to face a stark, yet not-so-new reality in national security. Civilians are no longer immune from terrorist objectives. To prevent this tragedy from repeating, Congress enacted laws that defined terrorism and provided for its prevention and response. States across the nation were also encouraged to enact statutes to complement the federal statutes.

II. Provisions of AB 250

As enacted, Assembly Bill 250 creates or amends provisions in over fifteen sections of the NEVADA REVISED STATUTES with the aim of preventing and responding to terrorist activity. First and foremost, the Bill defines an act of terrorism as the use or attempted use of sabotage, coercion, or violence intended to cause great bodily harm or death to the general population or cause substantial destruction to buildings, infrastructure or natural resources.² Coercion does not include an act of civil disobedience.³

The Bill further mandates that any person who commits a felony with the intent to cause, aid, further or conceal an act of terrorism must be punished by a prison term equal to, and in addition to, the term for the underlying felony.⁴ If any such felony results in a death or substantial bodily harm, the crime will be charged as a category A felony punishable by life in prison with or without the possibility of parole or for a definite term of fifty years.⁵

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² 2003 Nev. Stat. 470 § 7(1).

³ *Id.* at § 7(2).

⁴ *Id.* at § 2.

⁵ *Id.* at § 15.

Other provisions of the Bill provide that first-degree murder includes murder committed in the perpetration or attempted perpetration of an act of terrorism.⁶ Furthermore, committing, assisting or concealing an act of terrorism or providing material support for an act of terrorism is a category A felony.⁷ The state may recover personal property used as an instrumentality in crimes involving acts of terrorism.⁸

The Bill requires hotels and resorts to develop emergency contingency plans that will be filed with the local emergency service providers.⁹ Likewise, personnel in the medical profession, including emergency medical technicians, physicians, nurses and dentists are to complete training regarding the medical implications of acts of terrorism.¹⁰ The training must include a section on weapons of mass destruction.¹¹

Many of these provisions are currently in force. The provisions regarding the hotel emergency response plans are effective October 1, 2003.¹²

III. Analysis

Three provisions contained within Assembly Bill 250 warranted significant discussion from supporters and opponents alike. Each side sought clarification of the definitions, intent and limitations of the provisions. Each of the Bill's provisions revealed the tensions between those who aim to provide a society free from terrorist activity, and those whose concerns for civil liberties remain paramount. Each of the contentions revolved around language that could be construed as overbroad and overinclusive.

A. Civil Disobedience

Gary Peck of the American Civil Liberties Union of Nevada expressed strong concern with the expansive reach of the definition of terrorism included in Senate Bill 38.¹³ His largest concerns stemmed from the need to protect the right to engage in traditionally accepted rights of civil disobedience.¹⁴ Although he expressed no specific distrust for individuals in any governmental offices, he noted that loose language such as was included in Senate Bill 38 could allow those who engage in traditionally-accepted civil disobediences to be prosecuted as terrorists.¹⁵ He urged adoption of the language in Assembly Bill 250, which included a disclaimer that terrorism does not include acts of civil disobedience.¹⁶

⁶ *Id.* at § 5.

⁷ *Id.* at § 2.

⁸ *Id.* at § 27.

⁹ *Id.*

¹⁰ *Id.* at § 29.

¹¹ *Id.*

¹² *Id.* at § 27.

¹³ *Minutes of S. Comm. on Judiciary for Apr. 30, 2003: Hearing on Assemb. B. No. 250 Before S. Comm. on Judiciary*, 2003 Leg., 72d Sess. 9 (Nev. 2003) (statement of Gary Peck, Lobbyist, American Civil Liberties Union referring to S. B. 38 (First Reprint), 72d Sess. (Nev. 2003) [hereinafter *Minutes of S. Comm. on Judiciary for Apr. 30, 2003*]).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Assemb B. 250 (Second Reprint) § 7(2), 72d Sess. (Nev. 2003); 2003 Nev. Stat. 470 § 7(2).

B. Weapons of Mass Destruction

As presented to the Senate Judiciary Committee, Assembly Bill 250 defined “weapons of mass destruction” as “any weapon or device that is designed or intended to create a great risk of death or substantial bodily harm to more than one person.”¹⁷ As Lucille Lusk, lobbyist for Nevada Concerned Citizens observed, “More than one is two . . .”¹⁸ She advocated a change in the provision to include “large numbers of people.”¹⁹ While there was temptation to attempt to pin down the exact number that would constitute a large number of persons, the committee resisted this effort. The committee decided that the definition of “large numbers of people” could be argued in court according to the particular circumstances.²⁰ In some cases, four would be a large number, while in other cases ten would constitute a large number.²¹

While this wording allows for flexibility to be dictated by the circumstances surrounding the act in question, that same flexibility could be unnerving to the Bill’s opponents. It is difficult to know, prior to prosecution, if the simple use of a handgun or knife could be construed to be a weapon of mass destruction.²² A particularly zealous prosecutor may take an expansive view of this general term, and seek heavy penalties for crimes that were not contemplated within these antiterrorism provisions.

C. Hotel Emergency Response Plans

Section 26 of the Second Reprint, which was preserved in the final Bill, required that resorts and hotels develop emergency response plans in the event of terrorist activity.²³ Each hotel is required to file its plan with the local fire department and police department.²⁴ Senator Terry Care noted that the Bill did not require the same plans of other possible areas of population concentration, such as shopping mall, schools, airports or the Thomas and Mack Center.²⁵ Although the Bill in final form never addressed these areas, each of these types of places shares information with the emergency response agencies in order to aid their own planning.²⁶ Failure to comply with these requirements does not carry any criminal sanction, but would subject the hotel to discipline by the Nevada Gaming Control Board.²⁷

¹⁷ *Minutes of S. Comm. on Judiciary for Apr. 30, 2003, supra* note 13 at 8 (statement of Lucille Lusk, Lobbyist, Nevada Concerned Citizens referring to Nev. Assemb. B. 250 (Second Reprint)).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 9 (statement of Ben R. Graham, Lobbyist, Clark Co. District Attorney, Nevada District Attorneys’ Association referring to Nev. Assemb. B. 250 (Second Reprint)).

²¹ *Id.*

²² *Id.* at 14 (statement of Paul A. Grace, Lobbyist, Nevada State Rifle and Pistol Association referring to Nev. Assemb. B. 250 (Second Reprint)).

²³ *Id.* at 15 (statement of Stephen W. Driscoll, Lobbyist, City of Sparks, referring to Nev. Assemb. B. 250 (Second Reprint)).

²⁴ 2003 Nev. Stat. 470 § 27.

²⁵ *Minutes of S. Comm. on Judiciary for Apr. 30, 2003, supra* note 13 at 16 (statement of Sen. Terry Care).

²⁶ *Id.* (statement of Stephen Driscoll, referring to Nev. Assemb. B. 250 (Second Reprint)).

²⁷ *Id.* at 17.

D. Miscellaneous Provisions

Concerns regarding overbroad language were not limited to the above matters. Section 22 of the Bill drew criticism and ultimate revision due to a provision that included the words “to frighten” as a possible goal of terrorism.²⁸ Dr. Richard Siegel, President of the American Civil Liberties Union, argued that such broad language could make this term indistinguishable from a general threat, and would allow prosecutors to classify nearly any threat as an act of terrorism.²⁹ Likewise, the Bill’s references to the destruction of property raised issues regarding how arson could be separated from the definition of terrorism.³⁰ Finally, Dr. Siegel attacked the penalties for aiding and concealing the planning or execution of terrorist acts.³¹ Such language could warrant prosecutions for very indirect acts.³² For instance, immigrants who give money to private organizations have been prosecuted for funding terrorist operations, despite their lack of knowledge of the organization’s affiliation with such operations.³³

IV. Conclusion

The primary concerns of organizations advocating for the preservation of civil liberties were addressed in this Bill, albeit likely not to their satisfaction. Notably, the Nevada legislature avoided a potentially embarrassing and troublesome statute by eliminating the reference to “more than one person” in the definition of weapon of mass destruction. The resulting definition more closely comports with the federal definition. Nevertheless, the public will certainly become more acquainted with the provisions of Assembly Bill 250 as prosecution under these provisions may expand to activities not conventionally considered terrorist activities.

²⁸ *Id.* at 11 (statement of Dr. Richard Siegel, President of the American Civil Liberties Union, referring to Nev. Assemb. B. 250 (Second Reprint)).

²⁹ *Id.*

³⁰ *Id.* at 12.

³¹ *Id.* at 13.

³² *Id.*

³³ *Id.*