

4/26/84

A bill to implement the International Convention Against the Taking of Hostages.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. The Congress hereby finds that:

(a) the International Convention Against the Taking of Hostages (adopted by the United Nations, December 17, 1979) requires all States parties to it to prohibit the offense of hostage-taking as defined in the Convention;

(b) hostage-taking affects domestic tranquility, interstate and foreign commerce, and foreign relations, endangers national security, and is an offense against the law of nations;

(c) the purpose of this title is to fully implement the International Convention Against the Taking of Hostages.

SEC. 3. (a) Section 1201 of title 18, United States Code, is amended --

(1) by deleting in subsection (a)(3) the words "section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36))" and inserting in lieu thereof "section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))";

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(2) by deleting "or" at the end of subsection (a)(3);

(3) by deleting the comma at the end of subsection (a)(4) and inserting "; or" in lieu thereof;

(4) by adding a new subsection (a)(5) after subsection (a)(4) as follows:

"(5) a threat is made to kill, injure or to continue to detain the person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the person,";

(5) by amending subsection (d) to read as follows:

"(d) Whoever attempts to violate subsection (a)(4) or subsection (a)(5) shall be punished by imprisonment for not more than twenty years.";

(6) by amending subsection (e) to read as follows:

"(e) If the victim of an offense under subsection (a) is an internationally protected person, or if a threat is made to kill, injure, or to continue to detain the victim in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the victim, the United States may exercise jurisdiction over the offense if the offense was committed within the United States; the alleged offender is a national of the United States; the victim or purported victim was a national of the United States; or the offender is

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present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the term "United States" includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Action of 1958, as amended (49 U.S.C. 1301(38)) and the term "national of the United States" has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).";

(7) by amending subsection (f) to read as follows:

"(f) In the course of enforcement of subsection (a)(4) or subsection (a)(5), and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4) or subsection (a)(5), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, Marine Corps, and Air Force, any statute, rule or regulation to the contrary notwithstanding."; and

(8) by inserting a new subsection (g) to read as

follows:

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"(g) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, commonwealth, territory or possession of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law, nor shall anything in subsection (a)(5) of this section be construed as authorizing the United States to exercise jurisdiction over an offense occurring in the United States in which the alleged offender is the parent, child, spouse, brother or sister of any victim or in which the alleged offender and any victim live in the same household and are related by blood or marriage."

(b)(1) The heading of section 1201 of title 18, United States Code, is amended to read as follows:

"§1201. Kidnaping and hostage-taking".

(2) The analysis for chapter 55 of title 18, United States Code, is amended by deleting the item relating to section 1201 and inserting in lieu there of the following new item:

"1201. Kidnapping and hostage-taking."

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EFFECTIVE DATE

SEC. 4. Sections 2 and 3 of this Act shall become effective only when the International Convention Against the Taking of Hostages has come into force and the United States has become a party to it.

ACTION-BY-SECTION ANALYSIS

**An Act for the Prevention and Punishment
of the Crime of Hostage-Taking**

This bill is intended to implement the International Convention Against the Taking of Hostages, a Convention transmitted to the Senate on August 4, 1980. The Senate gave its advice and consent to the Convention's ratification on July 30, 1981 and the President signed the instrument of ratification on September 4, 1981. However, such instrument has not been filed pending passage of the implementing legislation. When the United States becomes a party to the Convention, we will have incurred an obligation to have enacted domestic laws to provide sanctions against those who commit the offense of hostage taking. Thus, this title amends the federal kidnaping statute (18 U.S.C. 1201) to provide for federal jurisdiction over any kidnaping in which a threat is made to kill, injure, or continue to detain the victim in order to compel a third party to do or abstain from doing something, a common ploy of terrorists.

Section one of the bill provides that, on enactment, the title may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking."

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Section two of the bill is a statement of the findings and purposes of the Congress in enacting the legislation. It is based on an exercise of the treaty power and of the power to punish offenses against the law of nations, as well as on the power of Congress under the commerce clause and other provisions of the Constitution.

Section three of the bill amends the federal kidnaping statute (18 U.S.C. 1201) to create federal jurisdiction over those kidnapings that also constitute hostage-taking. Section 1201 now prohibits kidnaping when the victim is transported in interstate commerce or is an internationally protected person or when the offense is committed in the special maritime, territorial, or aircraft jurisdiction of the United States. These existing offenses have been left unchanged.

The present federal kidnaping statute creates a rebuttable presumption that a victim who has not been released within twenty-four hours is presumed to have been transported in interstate commerce. The primary purpose of this provision is to allow the Federal Bureau of Investigation to investigate cases in which it is not known whether the victim has been transported in interstate commerce. It should be noted that, under the proposed legislation, the FBI would have the authority to act once a ransom or other demand were received. The rebuttable presumption provision is left in effect, however, in order to allow FBI

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jurisdiction in kidnaping cases in which no ransom or other demand is made and it is not known whether the victim has been transported in interstate commerce.

Subsection 3(a)(1) first makes a technical change in the statute not directly related to the central purpose of the bill but rather designed to remove an obsolete reference to a section of the Federal Aviation Act of 1958. As presently written, 18 U.S.C. 1201(a)(3) proscribes kidnapings that occur in the special aircraft jurisdiction of the United States "as defined in section 101(36) of the Federal Aviation Act of 1958." The definition of the term "special aircraft jurisdiction" is now found in section 101(38) of the Act and subsection 3(a)(1) merely reflects this.

Subsection 3(a)(2) through 3(a)(4) add a new subsection (5) to 18 U.S.C. 1201(a) which sets out the offense of hostage taking. In substance the subsection's definition of the offense tracks its definition in the Hostage Convention, that is, any seizure or detaining of a person, coupled with a threat to kill, to injure or to continue to detain the victim "in order to compel a third party to do or abstain from doing any act." The Convention's description of a third party, namely, "a State, an international inter-governmental organization, a natural or juridical person, or a group of persons," is omitted from the legislation. This was done in order to make clear that attempts to influence third parties not expressly listed in the definition, such as U.S. state governments and unincorporated local governments, would violate the statute. There is no need to

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define "third parties" in the legislation, since the phrase speaks for itself and is intended to have the broadest possible meaning.

The penalty for the new offense of hostage taking is the same as that now prescribed in 18 U.S.C. 1201 for other federal kidnaping offenses, imprisonment for any term of years or for life. Attempted hostage taking is also made an offense by subsection 3(a)(5) of the bill which amends 18 U.S.C. 1201(d) which already covers attempted kidnaping of internationally protected persons. The punishment may extend to imprisonment for up to twenty years.

Subsection 3(a)(6) of the bill amends 18 U.S.C. 1201(e) to provide for extraterritorial jurisdiction over the offense of hostage-taking similar to that already provided in section 1201 for kidnaping an internationally protected person. Congress's power to assert such jurisdiction derives from Article 5 of the Convention and utilizes the well accepted territorial, personal, and passive personality bases for the exercise of legislative jurisdiction under international law.

Subsection 3(a)(7) amends 18 U.S.C. 1201(f) to give the Attorney General the authority to ask for assistance from other civilian and military agencies when necessary to enforce the hostage-taking statute. The Attorney General may request assistance, notwithstanding any statute, rule, or regulation to the contrary, including the Posse Comitatus Act (18 U.S.C. 1385). This authority parallels the authority already existing for other

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exceptionally grave offenses, such as attacks on diplomats (18 U.S.C. 1201(f)), Members of Congress, Cabinet officers and Supreme Court Justices (18 U.S.C. 351 (g)), the President, the Vice President, and high level White House staff members (18 U.S.C. 1751). This authority is not necessary to implement the Convention, and it would, of course, not be used in most situations. Nevertheless, there may be exceptional circumstances, such as mass hostage-takings, in which the Department of Justice would need assistance.

Subsection 3(a)(8) inserts a new subsection (g) at the end of 18 U.S.C. 1201 to make it clear that the new provision on hostage taking is not intended to usurp the authority of state and local law enforcement authorities. It is expected that most kidnappings and hostage-takings will continue to be handled by those authorities and that the federal government will not unnecessarily intervene in situations that local authorities can handle. In addition, the subsection specifically prevents the use of federal investigative and prosecutorial resources in domestic altercations that are traditionally the responsibility of the states. In the unlikely event that terrorists were to take their own relatives hostage in the United States, the exercise of state jurisdiction would satisfy our obligations under the Convention.

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Section four of the bill provides that the Act will not become effective until the Hostages Convention comes into effect for the United States. This is because much of the authority of Congress to prohibit hostage-taking flows from the Convention and the purpose of this act is to implement it.

A bill to prohibit the training, supporting, or inducing of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Prohibition Against the Training or Support of Terrorist Organizations Act of 1984".

SEC. 2. Title 18 of the United States Code is amended by adding the following new chapter after chapter 113:

CHAPTER 113A -- TERRORISM

SEC. 2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups.

§2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups

"(a) Except as provided in subsections (h) and (i), it shall be unlawful for any national of the United States, any permanent resident alien of the United States, or any United States business entity to willfully perform or attempt to perform anywhere in the world any of the following acts:

"(1) serve in, or act in concert with, the armed forces or any intelligence agency of any foreign government, faction, or international terrorist group which is named in a determination in effect under subsection (d);

"(2) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

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"(3) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d); or

"(4) recruit or solicit any person to engage in any activity described in subparagraphs (1) through (3) of this paragraph.

"(b) Except as provided in subsections (h) and (i), it shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to willfully perform or attempt to perform any of the following acts:

"(1) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

"(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d); or

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"(3) recruit or solicit any person to engage in any activity described in subparagraphs (1) or (2) of this paragraph.

"(c) Whoever violates this section shall be fined not more than five times the total compensation received for such violation, or \$100,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(d) Whenever the Secretary of State finds that the acts or likely acts of international terrorism of a foreign government, faction, or international terrorist group are such that the national security, foreign relations, or the physical security of the person or property of a private entity of the United States warrant a ban on the foreign government's, faction's or international terrorist group's receipt of services or other assistance in support of such acts as described in subsections (a) or (b), he may issue a determination naming such foreign government, faction, or international terrorist group for which such finding has been made. If the Secretary of State finds that the conditions which were the basis for any determination issued under this subsection have changed in such a manner as to warrant revocation of such determination, or that the national security or foreign relations of the United States so warrant, he may revoke such determination in whole or in part. Any determination issued pursuant to this subsection shall cease to have any effect one year from the date of its publication unless renewed at or before that time by the Secretary of State. Any determination,

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or the renewal or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately on publication. Any revocation or lapsing of a determination shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

"(e) For the purposes of this section, any finding of fact made in any determination or renewal issued pursuant to subsection (d) shall be conclusive. No question concerning the validity of the issuance of such determination or renewal may be raised by a defendant as a defense in or as an objection to any trial or hearing if such determination or renewal was issued and published in the Federal Register in accordance with subsection (d).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of any determination affecting such person if the act was performed pursuant to an agreement or contract entered into prior to the effective date of the determination.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States --

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

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"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title.

"(h) This section shall not be construed to prohibit the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(i) Nothing in this section shall be construed to create criminal liability for any activities conducted by officials of the United States Government, or their agents, which are properly authorized and conducted in accordance with federal statutes and Executive orders governing such activities.

"(j) for the purposes of this section--

"(1) the term 'foreign government' has the meaning given it in section 1116(b) (2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, body of insurgents, or other group which seeks to overthrow the government of, become the government of, or otherwise

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assert control over or influence any foreign country or territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms:

"(4) the term 'group' means an association of persons, whether or not a legal entity;

"(5) the term 'international terrorist group' means a group which engages in international terrorism;

"(6) the term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c));

"(7) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plan or intention of governments, organization, or persons, in whole or in part by covert means;

"(8) the term 'United States business entity' means any sole proprietorship, partnership, company, association, or corporation organized under the laws of, or having its principal place of business within, the United States, any State, the District of Columbia, or any territory or possession of the United States;

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"(9) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(10) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in Section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

"(11) the term 'private entity of the United States' means

"(A) an individual who is

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company or association composed in whole or in part of nationals or permanent resident aliens of the United States; or

"(D) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and any foreign subsidiary of such corporation."

SEC. 3. The chapter analysis of part I of title 18 is amended by adding the following new item after the item relating to chapter 113:

"113A. Terrorism.....2331".

SEC. 4. Section 3238 of title 18, United States Code, is amended by --

(1) striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 2331 of this title which is committed out of the jurisdiction of any particular State or district may be in any district.

Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title."

SEC. 5. Section 11 of title 18 is amended by striking out the phrase "as used in this title except in sections 112, 878, 970, 1116, and 1201," and inserting in lieu thereof: "as used in this title except in sections 112, 878, 970, 1116, 1201, and 2331,".

~~Section-by-Section~~ Analysis

The Prohibition Against Training or Support of
Terrorist Organizations Act of 1984

The bill adds a new chapter 113A to title 18 to insert a new section 2331 entitled "Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups." This section is designed to prevent the harming of our foreign relations by United States nationals or businesses, or by other persons within the United States, who seek to provide training and technology to certain governments that support terrorism or to international terrorist groups. The Secretary of State is given the authority to name the forbidden recipients of such training and technology if he determines that their acts or support for international terrorism are such a threat to our national security, foreign relations, or the physical security of the persons or property of private United States entities that they should not benefit from American expertise used for such reprehensible ends. It is expected that few governments or groups will be named and the section is not intended to interfere with the legitimate international trade in which many United States suppliers of services and technology engage. Rather, it is intended to complement the provisions of the Arms Export Control Act (AECA), 22 U.S.C. 2778, which authorize the Executive Branch to control the importation and exportation of "defense articles and defense services" and to provide foreign policy guidance to United States persons involved in such importing and exporting.

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Pursuant to the AECA, and comparable authority previously granted to the President under section 414 of the Mutual Security Act of 1974, the Secretary of State promulgated the International Traffic in Arms Regulations (ITAR), 22 CFR subchapter M. While the regulations specify a number of articles and technical data in relation thereto which are subject to control, the provisions in the ITAR do not generally encompass the "mercenary" type of activities, such as serving in the armed forces or intelligence agencies or providing training, logistical, and support services to such groups, which would be covered by the new section.

Subsection (a) of the new section 2331 makes it unlawful for any United States national, permanent resident alien, or business entity to perform any of several enumerated acts in aid of a foreign government, foreign faction, or international terrorist group named in a Secretary of State determination that is published in the Federal Register. The prohibited acts are to serve in or to act in concert with the armed forces or an intelligence agency of one of the named governments, factions, or groups; to provide training for their armed forces or intelligence agencies; to provide logistical, mechanical, maintenance or similar services for their armed forces or intelligence agencies; or to recruit or solicit any person to do any of the above. It also covers the provision of such services to the agents of such armed forces or intelligence agencies. The subsection also provides for extraterritorial jurisdiction over a violation

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inasmuch as harm to our foreign relations or world peace can occur when Americans provide such aid overseas as well as domestically.

Subsection (b) is designed to cover persons who are not United States nationals or permanent resident aliens but who use the United States as a base to supply the technology of terrorism to certain other countries, foreign factions or international terrorist groups. It makes it unlawful to provide training in the United States to the armed forces or an intelligence agency of a foreign government, foreign faction, or international terrorist group named by the Secretary of State; to provide in the United States logistical, mechanical, maintenance or similar support services to their armed forces or intelligence agencies; or in the United States to recruit or solicit any person to do any of the above acts. It also covers the agents of such groups.

Subsection (c) sets out the penalty for a violation of the new section. It would extend to a fine of \$100,000 or an amount five times the total compensation received, whichever is greater, or imprisonment for up to ten years, or both, for each offense.

Subsection (d) is the triggering mechanism to implement the prohibitions of subsections (a) and (b). It provides that the Secretary of State, when he concludes that it is warranted in the interests of national security, foreign relations, or the physical security of the person or property of United States private entities, may issue a determination naming a foreign government, foreign faction, or terrorist group as one for which

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there is a ban on the provision of services described in subsections (a) and (b). Any determination is to be published in the Federal Register and becomes effective immediately. Actual knowledge of the determination, or its renewal if any, is not, however, an element of the offense and need not be proven. This subsection also provides for revocation of the determination by similar publication in the Federal Register. The section specifically vests the authority in the Secretary of State as he is the official primarily responsible for the execution of the President's authority to conduct foreign relations. The subsection provides for an automatic lapsing of the restriction after a period of one year unless the Secretary of State renews it. Revocation or lapsing of the restriction does not preclude criminal prosecution for any prohibited conduct engaged in while the determination was in effect.

As indicated, it is expected that few governments, factions or terrorist groups will be named pursuant to this section, which is limited to addressing the problems of United States nationals or business entities providing the technology of terrorism for use abroad and of the United States being used by foreigners for such a purpose. The fact that a foreign government, faction, or terrorist group is not listed in a determination under this section is of no significance in other contexts. For example, the fact that a government, faction, or group is not named in, or is removed from, a Secretary of State determination under the new section 2331 of title 18 would have no bearing on whether an

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Executive Branch official could certify under the provisions of the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq., that it was a proper target for surveillance under the terms of the Act, nor would the omission or removal of such a group from a determination in any way affect any order of the Foreign Intelligence Surveillance Court authorizing surveillance of it.

Subsection (e) provides that any finding of fact made in a Secretary of State determination or renewal under subsection (d) shall be conclusive and no question concerning the validity of the determination or renewal may be raised by a defendant at a trial or hearing.

Subsection (f) provides for an affirmative defense for any act committed by a person outside of the United States within thirty days of a determination affecting his activities if the act is performed pursuant to an agreement or other contractual relationship entered into prior to the effective date of the determination. This underscores the fact that the section is not designed to interfere with legitimate overseas business interests and that there are persons who make their livings by exporting military and intelligence training and expertise. Moreover, the failure of these persons to perform services already agreed upon could, in certain overseas situations, expose them to physical danger. Therefore, once the Secretary of State makes his determination that such activities with respect to a particular country or group adversely affect our national security or

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foreign relations, or the physical security of the person or property of United States private entities; a provider of such services would have thirty days to terminate this overseas activity and must cease affected operations in the United States at once.

Subsection (g) provides for the criminal forfeiture of property constituting or derived from the proceeds obtained as a result of a violation of the section and of property used or intended to be used in the commission of a violation. The procedures used in the forfeiture action are to be governed by the provisions of 18 U.S.C. 1963, the RICO forfeiture provisions.

Subsection (h) provides that the section shall not be construed to prohibit the providing of medical supplies or medical training for humanitarian purposes.

Subsection (i) provides that properly authorized and conducted activities of the federal government are excluded from the section's coverage.

Subsection (j) provides definitions for such items as "foreign government," "faction," "international terrorist group," "international terrorism," "national of the United States," and "permanent resident alien of the United States." Where possible, existing statutory definitions for these terms are employed. For example, "foreign government" is defined by reference to 18 U.S.C. 1116(b)(2) which defines the term as the "government of a foreign country, irrespective of recognition by the United

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States." Because the focus of the new section is on international terrorism, an "international terrorist group" is defined as one which engages in "international terrorism," which term in turn is defined by reference to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 (c)).^{1/} That section casts the definition in terms of violent acts or acts dangerous to human life that would be a criminal violation if committed within the jurisdiction of the United States or of any state and are intended to intimidate or coerce a civilian population or influence or affect the policies of a government by intimidation, coercion, kidnaping or murder.

1/ 50 U.S.C. 1801 (c) provides:

"(c) 'International terrorism' means activities that --

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended --

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnaping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum."

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The term "United States business entity" defines those American business groups which cannot furnish services or training proscribed by section 2331 to a foreign government, foreign faction, or international terrorist group listed in a Secretary of State determination or renewal issued pursuant to subsection (d). It includes any foreign sole proprietorship, partnership, company, association or corporation whose principal place of business is within the United States. While any foreign business whose principal place of business is outside the United States would not be covered, any American national or permanent resident alien who works for such a foreign corporation would, however, still be personally precluded from furnishing such services on behalf of his employer to any named country, faction, or group.

Additionally, under the prohibition of section 2 of title 18, U.S.C., any American national or permanent resident alien who aids, abets, counsels, commands, induces or procures the commission of a violation of section 2331 or who willfully causes an act to be done which, if directly performed by him or another would violate section 2331, would be punishable as a principal. Hence, any such person who knowingly participates in the negotiation process to provide the prohibited services or who manages, supervises, or otherwise assists in the provision of such services, even while in a country other than where the named government, faction, or group is located, would also violate section 2331. Likewise, if an American national or permanent

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resident alien hired a third person to perform the prohibited services for a named group, he would be in violation of 18 U.S.C. 2, even if the person hired -- such as an alien -- was not himself prohibited from performing the services.

"Private entity of the United States" is defined so as to include as the possible victims of terrorist attacks any national or permanent resident alien of the United States, any employee or contractor of the United States Government (regardless of nationality) if the act of terrorism is brought about by virtue of such relationship to the United States, any unincorporated association of United States nationals or permanent resident aliens, and any corporation incorporated within the United States and its foreign subsidiaries. Thus the term "private entity" is intended to protect the commercial, religious, educational, and recreational activities and interests engaged in by the American people outside the United States. Where the "victim" of the terrorist activity overseas is the U.S. Government, its property, or its officials, such coverage is primarily encompassed within the terms "national security" or "foreign relations" of the United States. The three criteria, however, are not totally separate and overlap in many respects. Together, however, they are intended to describe the totality of the overseas interests of both the nation and its people. Foreign subsidiaries of U.S. corporations are specifically covered because they are often the targets of terrorist attacks.

Section 4 of the bill provides that a trial with respect to any offense under the new section committed outside of the United States may be held in any district. It permits the defendant to file a motion under the Rules of Criminal Procedure for a change of venue.

Section 5 of the bill makes the definition of "foreign government" in section 11 of title 18, United States Code, nonapplicable to the new section.

4/20/84

A bill to permit the payment of rewards for information concerning terrorist acts.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Act for Rewards for Information Concerning Terrorist Acts".

SEC. 2. (a) Title 18 of the United States Code is amended by adding the following new chapter after chapter 203:

"CHAPTER 204 - REWARDS FOR INFORMATION

CONCERNING TERRORIST ACTS

"Sec. 3071. Information for which rewards authorized; maximum amount.

"Sec. 3072. Determination of entitlement; consultation; Presidential approval; conclusiveness.

"Sec. 3073. Aliens; waiver of admission requirements.

"Sec. 3074. Hearings; rules and regulations.

"Sec. 3075. Protection of identity.

"Sec. 3076. Exception of governmental officials.

"Sec. 3077. Authorization for appropriations.

"Sec. 3078. Eligibility for witness security program.

"Sec. 3079. Definitions.

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"Sec. 3071. Information for which rewards authorized; maximum amount

"Any individual who furnishes information--

"(a) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or

"(b) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

"(c) leading to the prevention, frustration or favorable resolution of an act of terrorism against a United States person or property

--may be rewarded in an amount not to exceed \$500,000.

"Sec. 3072. Determination of entitlement; consultation; Presidential approval; conclusiveness

"The Attorney General shall with respect to acts of terrorism primarily within the territorial jurisdiction of the United States, and the Secretary of State shall with respect to acts of terrorism primarily outside the territorial jurisdiction of the United States, determine whether an individual furnishing information pursuant to section 3071 is entitled to a reward and the amount to be paid. Before making a reward under this chapter in a matter over which there is

federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General. A reward of \$100,000 or more may not be made without the approval of the President or his designee. A determination made by the Attorney General, the Secretary of State, or the President under this chapter shall be final and conclusive and no court shall have power or jurisdiction to review it.

"Sec. 3073. Aliens; waiver of admission requirements

"If the information which would justify a reward under this chapter is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act [8 U.S.C. sec. 1101 et seq.].

"Sec. 3074. Hearings; rules and regulations

"The Attorney General and the Secretary of State, respectively, are authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter. The provisions of subchapter II, chapter 5 of title 5 United States Code do not apply to this chapter.

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"Sec. 3075. Protection of identity

"Any reward granted under this chapter shall be certified by the Attorney General or the Secretary of State, respectively. If it is determined that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General or the Secretary of State, respectively, may take such measures in connection with the payment of the reward as deemed necessary to effect such protection.

"Sec. 3076. Authorization for appropriations

"Such sums as necessary are authorized to be appropriated for the purpose of this chapter.

"Sec. 3077. Exception of governmental officials

"No officer or employee of any governmental entity who, while in the performance of his official duties, furnishes the information described in section 3071 shall be eligible for any monetary reward under this chapter.

"Sec. 3078. Eligibility for witness security program

"Any individual who furnishes information which would justify a reward under this chapter and his immediate family may, in the discretion of the Attorney General, participate in the Attorney General's witness security program authorized under Title V of the Organized Crime Control Act of 1970.

"Sec. 3079. Definitions

"As used in this chapter the term--

"(a) 'Act of terrorism' means an activity that--

"(1) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

"(2) appears to be intended--

"(A) to intimidate or coerce a civilian population;

"(B) to influence the policy of a government by intimidation or coercion; or

"(C) to affect the conduct of a government by assassination or kidnaping.

"(b) 'United States person' means--

"(1) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(22)];

"(2) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(20)];

"(3) any person within the United States;

"(4) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(5) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

"(6) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and a foreign subsidiary of such corporation.

"(c) 'United States property' means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any federal or State governmental entity of the United States.

"(d) 'United States'--

"(1) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

"(2) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

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"(e) 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

"(f) 'government entity' includes the government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal or other political subdivision of a foreign country.

"(g) 'Attorney General' means the Attorney General of the United States or that official designated by the Attorney General to perform his responsibilities under this chapter.

"(h) 'Secretary of State' means the Secretary of State or that official designated by the Secretary of State to perform his responsibilities under this chapter."

(b) The chapter analysis of Part II of title 18, United States Code, is amended by adding after the item relating to chapter 203 the following new item:

"204. Rewards for information concerning terrorist acts....3071".

Section-by-Section Analysis

Act for Rewards for Information Concerning Terrorism

This bill deals with rewards for persons who provide information concerning acts of terrorism. It adds a new chapter 204 to title 18 entitled "Rewards for Information Concerning Terrorist Acts." The new chapter consists of nine sections, 3071-3079. The chapter is closely related to and patterned after a similar reward provision for persons who provide information concerning the unauthorized acquisition or manufacture of atomic weapons and special nuclear materials, 50 U.S.C. 47a-47f. It provides for a determination by the Attorney General or the Secretary of State that certain persons are entitled to rewards for furnishing information about specific acts of terrorism. Rewards would be paid out of funds appropriated either for the Department of Justice or the Department of State depending upon which Department approved the reward.

Section 3071 provides that any person who furnished information of one of three types may be given a reward of up to \$500,000. Whether a reward is paid is totally discretionary with the Attorney General or the Secretary of State although in certain cases involving large rewards the President or his designee must make the final determination. The three types of information that may warrant the payment of a reward are, first, that which leads to the arrest or conviction in any country of any person for the actual commission of an act of terrorism against a United States person or United States property; second, information leading to the arrest or conviction in any country of

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any person for a conspiracy or an attempt to commit an act of terrorism against a United States person or United States property; and third, information leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property.

Section 3072 provides that the Attorney General shall make the determination as to whether a particular person is entitled to a reward when the act of terrorism is primarily within the territorial jurisdiction of the United States. The Secretary of State shall make the determination when the act of terrorism is primarily outside the territorial jurisdiction of the United States, but if such activity is subject to federal criminal prosecution the Secretary is required to advise and consult with the Attorney General. Rewards of \$100,000 or more may only be made after the Attorney General or the Secretary of State, respectively, receives the approval of the President, a feature also found in the Atomic Weapons and Special Nuclear Materials Act. The President is authorized to delegate his authority.

Section 3073 is included because an alien who provides information concerning terrorism may be in severe danger of retaliation in his own country. Hence, this section provides that if the information for which a reward is authorized is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may admit the alien and members of his immediate family into the United States as permanent resident aliens notwithstanding the requirements of the Immigration and

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Nationality Act. It is anticipated that not many individuals will be admitted under this provision and that the Attorney General will use extreme caution in exercising this authority.

Section 3074 authorizes the Attorney General and the Secretary of State, respectively, to hold hearings and make necessary rules for carrying out the provisions of the chapter. However, neither is required to establish set rules or to follow such rules in all cases but may decide appropriate cases on an ad hoc basis. The provisions of the Administrative Procedure Act, the Privacy Act, and the Freedom of Information Act are specifically made inapplicable to this chapter.

Section 3075 provides that if necessary to protect the recipient and his family, any necessary protective action may be taken in connection with the paperwork necessary to accomplish the payment of the reward. For example, information concerning his identity may be sealed and withheld from public and unnecessary internal disclosures.

Section 3076 authorizes the appropriation of funds necessary for purposes of the chapter.

Section 3077 provides that government employees who furnish information concerning terrorism in the performance of their official duties are not eligible for a monetary reward under this chapter. They would, however, be eligible for the provisions allowing admission into the United States (Section 3073) and participation in the Witness Security Program (Section 3078).

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Section 3078 provides that an individual who furnishes information which would justify a reward under this chapter may be given the benefit of the Witness Security Program in the discretion of the Attorney General.

Section 3079 contains definitions that apply to the new chapter. The definition of "terrorism" is taken from the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801(c)(1) and (2). As in that act, the definition of "terrorism" is cast in terms of violent or dangerous acts that would be crimes if committed in the United States and that are committed to intimidate or coerce a civilian population or to influence the policy or conduct of a government or political subdivision of a government by intimidation or coercion.

The term "United States person" is defined to include citizens, persons owing permanent allegiance to the United States, any person in the United States, permanent resident aliens, United States government employees or contractors who are victims or intended victims of terrorism because of their employment, various business entities consisting in whole or in part of United States nationals and permanent resident aliens, and United States corporations and their foreign subsidiaries.

The term "United States property" is defined to include all real or personal property within the United States regardless of ownership, and any real or personal property outside of the

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United States, the actual or beneficial ownership of which rests in a federal or State governmental entity of the United States or in a United States person.

The Attorney General and the Secretary of State are defined to include their respective designees.