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Terrorism at Home: A Quick Look at Applicable Federal and State Criminal Laws

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Summary

Terrorists' attacks on the World Trade Center, the Pentagon, the Murrah Federal Building in Oklahoma City and the American Embassies in Kenya and Tanzania have stimulated demands that the terrorists responsible and those like them be brought to justice. American criminal law already proscribes many of these acts of terrorism and there have been proposals to expand that coverage. The conduct we most often associate with terrorism – bombings, assassinations, armed assaults, kidnapping, threats – are generally outlawed by both federal and state law. The federal approach builds upon individual national interests: the protection of federal officers, ensuring the safety of foreign diplomatic officials, guaranteeing the safety and integrity of the mails and the channels of interstate and foreign commerce, and honoring our international obligations.

Crime within the United States, however, has traditionally been the domain of state law. It is therefore not surprising that the reach of state criminal law, concerning terrorism as well as other matters, is more comprehensive than that of the federal laws which supplement it. Where federal law condemns presidential assassination, state law prohibits murdering anyone.

This report and a companion, CRS Report RS21034, *Terrorism Abroad: A Quick Look at Applicable Federal and State Criminal Law*, are abbreviated from portions of CRS Report 95-1050, *Terrorism At Home and Abroad: Applicable Federal and State Criminal Laws*, stripped of its footnotes and appendices.

Introduction: More than a few federal criminal laws reach the politically motivated acts of physical violence and property destruction that are the part and parcel of terrorism. Ted Kaczynski, the Unabomber, was charged with and pled guilty to violations of federal explosives laws. As a result of bombing the Murrah Federal Building in Oklahoma City, Timothy McVeigh and Terry Nichols were indicted and convicted under federal laws outlawing the murder of federal law enforcement officers, bombing federal buildings, and the use of weapons of mass destruction. Charges against the terrorists involved in the 1993 bombing of the World Trade Center included violations of federal laws outlawing the interstate transportation of explosives for unlawful use; bombing motor vehicles used in

interstate commerce, property used in an activity affecting interstate commerce, and federal property; possession of a bomb during the commission of a federal crime of violence; assault on federal officers; foreign travel in furtherance of a crime of violence; and conspiracy. Each of the terrorists might also have been tried in state court for murder, assault, and explosives offenses at the very least.

Bombings: No comprehensive federal explosive statute exists, but the weave of federal law covering explosives is so extensive that most terrorist bombings will fall under at least one and sometimes more than one federal law; many of which carry escalated penalties if death or serious bodily injury results. The proscriptions come in three stripes: those that deal with the interstate transportation of explosives; those that outlaw the use of explosives for purposes of intimidation or extortion; and those that proscribe bombing certain types of property – federal property, commercial motor vehicles and their facilities, railroad property, aircraft or aircraft facilities, property being exported, and particularly, property used in, activities affecting, interstate or foreign commerce.

Bombings and fire bombings are crimes under the laws of every state in the Union, usually under the state's arson statutes. At common law, setting fire to someone else's house constituted arson. Although a few states still limit their arson statutes to destruction by fire and punish explosives offenses separately, most – in order to accommodate destruction by devices that are both explosive and incendiary – have redrawn their arson laws to reach property destruction accomplished by either fire or explosives. In addition, at least sixteen states have supplemented their explosives provisions with laws that address catastrophic use of fire, explosives or other destructive forces.

Murder and Armed Assaults: Many federal bombing statutes carry increased penalties when the bombs are used to commit a murder or assault, but many others condemn homicide or the infliction of physical injury regardless of the means used. The assassination of a visiting foreign dignitary violates federal law whether it is accomplished with a car bomb or a rifle. A list of some of the federal homicide and assault statutes which, under the proper conditions, would reach a terrorist bombing or other terrorist attack appears below:

- death or injury resulting from the destruction of aircraft or aircraft facilities within the special aircraft jurisdiction of the U.S., 18 U.S.C. 32, 34
- death or injury resulting from destruction of interstate motor carriers or their facilities, 18 U.S.C. 33, 34
- death or injury resulting from violence at an international airport, 18 U.S.C. 37
- death or injury result from animal enterprise terrorism involving interstate or foreign travel or use of the mail or the facilities of interstate or foreign commerce, 18 U.S.C. 43
- assault upon a federal officer, employee, or member of the U.S. armed forces during or because of the performance of their duties, 18 U.S.C. 111
- assault upon foreign dignitaries, 18 U.S.C. 112
- assault within the special maritime or territorial jurisdiction of the U.S. 18 U.S.C. 113, 114
- murder or assault committed to influence, impede or retaliate against a federal official, 18 U.S.C. 115
- death or injury resulting from chemical weapons offenses, 18 U.S.C. 229, 229A
- death or injury resulting from conspiracies to violate civil rights, 18 U.S.C. 241

• death or injury resulting from interference with federally protected civil rights, 18 U.S.C. 245
• death or injury resulting from certain obstruction of the free exercise of religion by others, 18 U.S.C. 247
• death or injury resulting from interference with access to abortion clinics, 18 U.S.C. 248
• murder or assault upon a Member of Congress, the Supreme Court or the Cabinet, 18 U.S.C. 351
• death resulting from nuclear material offenses, 18 U.S.C. 831
• death or injury resulting from the interstate transportation of explosives for criminal use, 18 U.S.C. 844(d)
• death or injury resulting from the bombing of federal property, 18 U.S.C. 844(f)
• death or injury resulting from bombing property used in, or used in an activity affecting, interstate or foreign commerce, 18 U.S.C. 844(i)
• homicide committed while in possession of a firearm or dangerous weapon within a federal building, 18 U.S.C. 930
• murder within U.S. special maritime and territorial jurisdiction, 18 U.S.C. 1111
• manslaughter within U.S. special maritime and territorial jurisdiction, 18 U.S.C. 1112
• killing a federal officer, employee, or member of the U.S. armed forces during or because of the performance of their duties, 18 U.S.C. 1114
• killing foreign dignitaries, 18 U.S.C. 1116
• death resulting from a kidnapping in which the victim is transported in interstate commerce; is a foreign dignitary; is a federal official, employee or member of the U.S. armed forces; or which occurs in U.S. special maritime, special aircraft, or territorial jurisdiction, 18 U.S.C. 1201
• death resulting from a hostage taking committed to compel federal governmental action or abstention or in which the victim or offender is a foreign national, 18 U.S.C. 1203
• death or injury resulting from tampering with consumer products, 18 U.S.C. 1365
• murder or assault committed against witness in federal proceedings, 18 U.S.C. 1512, 1513
• death or injury resulting from mailing letter bombs or other injurious articles, 18 U.S.C. 1716
• murder or assault upon the President, one in the line of Presidential succession, or a senior White House official, 18 U.S.C. 1751
• death resulting from wrecking a train used in interstate or foreign commerce, 18 U.S.C. 1992
• death or injury resulting from stalking which occurs within the U.S. special maritime or territorial jurisdiction or which involves travel in interstate or foreign commerce, 18 U.S.C. 2261A
• death resulting from acts of violence committed against maritime navigation facilities, 18 U.S.C. 2280
• death resulting from acts of violence committed against fixed maritime platforms, 18 U.S.C. 2281
• death resulting from the use of weapons of mass destruction against federal property or which affects interstate or foreign commerce, 18 U.S.C. 2332a
• death or injury resulting from acts of international terrorism transcending national boundaries which involves the use of the mails or facilities in interstate or foreign commerce; which affects interstate or foreign commerce; which is committed against

a federal officer or employer or member of the U.S. armed forces; which is committed against federal property or within U.S. special maritime or territorial jurisdiction, 18 U.S.C. 2332b

• death or injury resulting from air piracy or attempted air piracy committed within U.S. special aircraft jurisdiction, 49 U.S.C. 46502

Federal statutes describing explosives and firearms offenses overlap somewhat because for purposes of the general restrictions of 18 U.S.C. 921 to 930, "destructive devices" are defined as firearms. Consequently, the laws such as those which ban possession of a firearm in a federal building, 18 U.S.C. 930, or carrying a firearm during the commission of a federal crime of violence, 18 U.S.C. 924(c), apply with equal force to both bombs and other "firearms." In fact, both the Unabomber and the terrorists convicted of the 1993 bombing of the World Trade Center were convicted under 18 U.S.C. 924(c) of carrying a firearm (*i.e.* a bomb) during the commission of a federal crime of violence. A bombing, assassination or attempted assassination that results in death may be prosecuted as homicide in the state in which it occurs, and one that results in injury will ordinarily violate the assault laws of the state in which it occurs. Firearms used by terrorists may also run afoul of state restrictions on carrying concealed weapons, on possession of firearms by various convicted felons, and on possession of machine guns, silencers, armor piercing ammunition and the like.

Poisoning: Congress has enacted broad legislation forbidding product contamination, and has passed laws covering biological weapons, chemical weapons nuclear materials, as well as poison gas and other weapons of mass destruction. Under state law proscriptions against reckless endangerment, and in the case of death, homicide provisions, are available to prosecute terrorists who engage in product tampering or releasing cataclysmic forces.

Kidnapping: Federal kidnapping and hostage taking laws are far less sweeping than the federal explosives or assault provisions laws. They extend only to kidnappings where the victim is transported in interstate or foreign commerce or taken in an aircraft hijacking; where the kidnapping occurs within a federal enclave or "Indian country;" where the victim is a foreign dignitary, federal officer or employee, or member of the armed forces; where the offender is a foreign national or flees the United States; or where the hostage is taken with an eye to influencing federal governmental action. In contrast, state kidnapping laws apply whenever a kidnapping occurs within a given state, and often reserve their most severe penalties for the kinds of abductions most likely implicated when terrorists are involved, *i.e.*, kidnapping for hostage purposes, to terrorize, or to compel some form of governmental action or inaction.

Threats: Although there are a number of federal threat statutes, including those that proscribe threats communicated by mail or telephone, the prosecution of threats is primarily a matter of state law. Federal law, however, does feature a number of threat statutes, even though they are relatively infrequently violated. Some cover false rumors; others are extortionate threats; several track provisions, like the civil rights laws or the obstruction of justice statutes, which outlaw physical violence or property damage as well; and some simply outlaw threats. The states have a complementary range of threat statutes. Most outlaw false alarms, particularly bomb scares, as well as varying forms of conduct inducing another's fear of physical injury, property damage or both. A majority also have provisions forbidding intimidation based on racial, religious or ethnic grounds. Of all of

the threat statutes, those proscribing stalking, the newest strain, are perhaps the most prevalent.

General Crimes: Under federal law and the laws of most states there is a distinct class of crimes like conspiracy which builds or rests upon other crimes. Sometimes, these "piggyback" crimes, like solicitation or attempt, are embryonic forms of other crimes. Other times, as in the case of money laundering, they are the byproducts of other crimes. In some instances they establish criminal liability where it would not otherwise exist; in others they enlarge the penalties imposed. Conspirators are liable not only for their criminal agreement but any foreseeable crimes committed by their confederates in furtherance of the common scheme. Anyone who commands or aids and abets a federal crime is an accessory before the fact, treated as a principal, and subject to the same penalties as his accomplice who commits the crime. Unlike most state criminal codes, federal law features no general attempt provision, although sundry attempts or "endeavors" to commit several federal crimes have been outlawed as part of the definition of the specific offenses. There is likewise no general federal solicitation – attempted conspiracy – statute, but Congress has passed a fairly sweeping solicitation to violence provision.

The federal racketeering and money laundering provisions are less universal. The racketeering provisions which condemn the patterned use of violent crimes to conduct the affairs of an enterprise whose activities affect interest commerce, and the money laundering sections which condemn use of the proceeds from predicate crimes to promote further offenses, become relevant whenever crimes of violence fund, or are funded by, other offenses.

Consistent with the federal approach, most states impose criminal liability upon accessories before the fact and many treat conduct involving accessories after the fact as a separate crime. Similarly, general conspiracy statutes are common, but in contrast to federal law, the states have enacted generally applicable attempt provisions and often general solicitation statutes as well. State racketeering laws are less common and state money laundering laws are rare.

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