



**House  
Legislative  
Analysis  
Section**

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**ANTI-TERRORISM LAWS**

**Senate Bill 930 as enrolled  
Public Act 113 of 2002  
Sponsor: Sen. Dan L. DeGrow**

**Senate Bill 936 as enrolled  
Public Act 114 of 2002  
Sponsor: Sen. Bill Bullard, Jr.**

**Senate Bill 939 as enrolled  
Public Act 115 of 2002  
Sponsor: Sen. John J.H. Schwarz, M.D.**

**Senate Bill 942 as enrolled  
Public Act 117 of 2002  
Sponsor: Sen. Bev Hammerstrom**

**Senate Bill 946 as enrolled  
Public Act 137 of 2002  
Sponsor: Sen. William Van Regenmorter**

**Senate Bill 948 as enrolled  
Public Act 119 of 2002  
Sponsor: Sen. Mike Goschka**

**Senate Bill 949 as enrolled  
Public Act 120 of 2002  
Sponsor: Sen. Loren Bennett**

**Senate Bill 995 as enrolled  
Public Act 122 of 2002  
Sponsor: Sen. Don Koivisto**

**Senate Bill 997 as enrolled  
Public Act 124 of 2002  
Sponsor: Sen. Burton Leland**

**House Bill 5495 as enrolled  
Public Act 131 of 2002  
Sponsor: Rep. Jim Howell**

**House Bill 5520 as enrolled  
Public Act 143 of 2002  
Sponsor: Rep. Douglas Bovin**

**House Bill 5509 as enrolled  
Public Act 136 of 2002  
Sponsor: Rep. Nancy Quarles**

**House Bill 5512 as enrolled  
Public Act 141 of 2002  
Sponsor: Rep. Gilda Jacobs**

**House Committee: Criminal Justice  
Senate Committee: Judiciary**

**House Bill 5513 as enrolled  
Public Act 142 of 2002  
Sponsor: Rep. Charles LaSata**

**House Committee: Insurance and  
Financial Services  
Senate Committee: Judiciary**

**Second Analysis (9-16-02)**

**Senate Bills 930, 936, 939, 942, 946, 948, 949, 995 and 996  
House Bills 5495, 5509, 5512, 5513 and 5520 (9-16-02)**

***THE APPARENT PROBLEM:***

Prior to last September, terrorism was, for many Americans, the subject of action movies or news articles about events in foreign countries. However, since the events of September 11, 2001, when terrorists destroyed the World Trade Center, damaged the Pentagon, and crashed four jumbo jets, terrorism has become very real. For those in law enforcement

who are charged with enforcing laws and preserving public safety, September 11<sup>th</sup> became a wake-up call to examine municipal and school emergency plans; the safety of governmental infrastructures such as water supplies, the food supply, power plants, and governmental buildings; places where large crowds gather such as stadiums, bus and train stations, and

schools; and especially, the adequacy of existing laws to deter terrorist threats and to punish terrorist acts.

After scrutinizing Michigan laws, many felt that existing laws needed to be revised to more adequately address the threat of acts of terrorism against Michigan targets. As part of a bi-partisan, bi-cameral approach addressing the issues revolving around possible acts of terrorism on Michigan soil, the adoption of a multi-bill package of legislation has been recommended.

### ***THE CONTENT OF THE BILLS:***

The bills are part of a multi-bill package that would, among many provisions, create the Michigan Anti-Terrorism Act, establish penalties, require reimbursement to municipalities to recover certain costs associated with terrorist acts, remove the statute of limitations for crimes of terrorism, prohibit the “laundering” of money acquired through acts of terrorism, require restitution to victims and reimbursements to governmental agencies, and allow the seizure of property and assets of persons involved in terrorism. The bills would take effect April 22, 2002, with the exception of Senate Bill 936 and House Bill 5513, which would take effect May 1, 2002. All of the bills, except for House Bill 5513, are tie-barred to Senate Bill 930. Senate Bill 930 is tie-barred to House Bill 5495. Specifically, the bills would do the following:

Senate Bill 930 would create the "Michigan Anti-Terrorism Act" as Chapter 83-A of the Michigan Penal Code (MCL 750.543a et. al.). The bill would prescribe criminal penalties for various violations involving an "act of terrorism".

An “act of terrorism” would mean a wilful and deliberate act that is all of the following:

- an act that would be a "violent felony" under Michigan law, whether or not committed in Michigan ("violent felony" would mean a felony in which an element was the use, attempted use, or threatened use of physical force against a person, or the use, attempted use, or threatened use of a harmful biological substance or device, a harmful radioactive substance or device, an explosive device, or an incendiary device);
- an act that the person knew or had reason to know was dangerous to human life (“dangerous to human life” would mean that which caused a substantial likelihood of death or serious injury or that was a

violation of Section 349 or 350 of the penal code); and,

- an act that was intended to intimidate or coerce a civilian population or influence or affect the conduct of a government or a unit of government through intimidation or coercion.

Terrorism. The bill would prohibit a person from knowingly and with premeditation committing an act of terrorism. Terrorism would be a felony punishable by imprisonment for life or any term of years, a fine of not more than \$100,000, or both. If a death were caused by the terrorist act, however, the bill would require a penalty of imprisonment for life without the opportunity for parole.

Soliciting or Providing Material Support or Resources. The bill would prohibit a person from knowingly raising, soliciting, or collecting "material support or resources" intending that the support or resources be used, in whole or in part, to plan, prepare, carry out, or avoid apprehension for committing an act of terrorism against the United States, its citizens, this state, a political subdivision of the state, or a local unit of government.

The bill also would prohibit a person from knowingly providing material support or resources to a person, knowing that the person would use the support or resources, in whole or in part, to plan, prepare, carry out, facilitate, or avoid apprehension for committing an act of terrorism against the United States or its citizens, this state, a political subdivision of the state, or a local unit of government.

A violation of either prohibition would be a felony punishable by up to 20 years imprisonment, a fine of not more than \$20,000, or both.

"Material support or resources" would mean currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, any other kind of physical assets or intangible property, and expert services or expert assistance.

Making a Terrorist Threat. A person would be guilty of making a terrorist threat or of making a false report of terrorism if he or she did either of the following:

- threatened to commit an act of terrorism and communicated that threat to any other person.

- Knowingly made a false report of an act of terrorism and communicated it to another.

A violation would be a felony punishable by up to 20 years imprisonment, a fine of not more than \$20,000, or both. The bill specifies that it would not be a defense to a prosecution for making a terrorist threat that the defendant did not have the intent or capability of committing the act of terrorism or that the threat was not made to a person who was a subject or intended victim or target of the act.

Hindering Prosecution of Terrorism. A person would be guilty of "hindering prosecution of terrorism" if he or she knowingly committed an act that "renders criminal assistance" to a person who had committed an act of terrorism. Hindering prosecution of terrorism would be a felony punishable by imprisonment for life or any term of years, a fine of not more than \$100,000, or both. This provision would not apply to conduct for which a person could be punished as if he or she had committed the offense committed by another person as allowed under Section 39 of the Code of Criminal Procedure.

"Renders criminal assistance" would mean that a person, with the intent to prevent, hinder, or delay the discovery or apprehension of, or the filing of a criminal charge against, another person whom he or she knew or believed had committed a violation of the bill or was being sought by law enforcement officials for committing a violation of the bill, or with the intent to assist a person in profiting or benefiting from committing a violation of the bill, did any of the following:

- Harbored or concealed that other person.
- Warned that other person of impending discovery or apprehension.
- Provided the person with money, transportation, a weapon, a disguise, fake identification documents, or any other means of avoiding discovery or apprehension.
- Prevented or obstructed, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of that other person or in the filing of a criminal charge against that other person.
- Suppressed, by any act of concealment, alteration, or destruction, any physical evidence that could aid in the discovery or apprehension of that other person or

in the filing of a criminal charge against that other person.

- Aided that other person to protect or expeditiously profit from an advantage derived from the crime.

The bill is tie-barred to House Bill 5495.

House Bill 5495 would amend the Michigan Penal Code (MCL 750.543c) to define "terrorist organization" as an organization that, on the bill's effective date, had been designated by the U.S. State Department as engaging in or sponsoring an act of terrorism.

The bill also states that it would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same criminal transaction as the violation of Chapter 83-A (the anti-terrorism act). Further, a prosecuting agency could not prosecute any person or seize any property for conduct presumptively protected by the First Amendment to the U.S. Constitution in a manner that violated any constitutional provision.

Senate Bill 936. Grand juries differ from the more common trial juries that determine the guilt of a defendant. The primary function of a grand jury is to review the evidence of a criminal case and determine whether or not there exists probable cause to indict a suspect (that is, to charge him or her with a crime). Since grand juries only determine whether probable cause exists, there is no need for the prosecuting attorney to present all of the evidence collected. Often, the prosecuting attorney presents the minimum amount of evidence necessary to secure an indictment.

In Michigan, Chapter VII of the Code of Criminal Procedure governs grand jury proceedings. The code prohibits a person from publishing or making known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry except as otherwise provided by law. This prohibition does not apply to communications between prosecuting officers for the purposes of presenting evidence before the grand jury, for the purpose of reviewing evidence presented to the grand jury for prospective prosecution, or for any other purpose involving the execution of a public duty.

Senate Bill 936 would amend the code (MCL 767.19f) to also exclude from that prohibition communications between law enforcement officers in cases involving violations of Chapter 83-A of the

Michigan Penal Code (terrorism), which would be added by Senate Bill 930.

Further, this provision of law currently applies only to applications and petitions for and orders of immunity, and to any transcript of testimony which may be delivered to a witness in relation to his or her grant of immunity, except that the witness could be privileged to disclose the document, order and transcript to his or her attorney. The bill would specify that the application of this provision would not be limited to the above situations.

Senate Bill 939 would amend the Michigan Penal Code (MCL 750.543r) to prohibit a person from obtaining or possessing an architectural or engineering diagram, security plan, or other similar information of a vulnerable target, with the intent to commit an offense that was prohibited under Chapter 83-A (terrorism), which would be added by Senate Bill 930. A violation would be a felony punishable by imprisonment for up to 20 years or a fine of not more than \$20,000, or both.

- “Vulnerable target” is defined in Section 212a of the penal code. [Both House Bill 5511 and Senate Bill 940 (Public Acts 140 and 116, respectively), which are also part of the anti-terrorist legislation, add to the list of structures and facilities that would constitute a vulnerable target.]

Senate Bill 942 would amend the Michigan Penal Code (MCL 750.543p) to add a section to Chapter 83-A (terrorism). Michigan law already contains various provisions that criminalize certain activities involving the use of computers. Under the bill, a person could not use the Internet or a telecommunications device or system or other electronic device or system so as to disrupt the functions of the public safety, educational, commercial, or governmental operations within Michigan with the intent to commit a willful and deliberate act that was all of the following:

- an act that would be a felony under Michigan laws, whether committed within the state or not;
- an act that the person knew or had reason to know was dangerous to human life as that term is defined in Section 543b of the penal code; and,
- an act that was intended to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government through intimidation or coercion.

A violation would be a felony punishable by up to 20 years imprisonment, a fine of not more than \$20,000, or both.

“Computer network”, “computer system”, “Internet”, and “telecommunication device” would mean those terms as defined elsewhere in the penal code. “Electronic device” would mean any instrument, equipment, or device having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. “Electronic system” would include, but not be limited to, a computer system or computer network, digital broadcast system, or satellite network.

Senate Bill 946 and House Bill 5520. Senate Bill 946 would amend the sentencing guidelines provision of the Code of Criminal Procedure (MCL 777.31 et. al.) to create offense variable 20 (terrorism) and revise the application of several other offense variables; House Bill 5520 would amend the code (MCL 777.22) to require offense variable 20 to be scored for all crime categories and to add conspiracy or solicitation to commit a homicide to the scoring of offense variables 5 and 6.

Under Senate Bill 946, an “act of terrorism” would mean that term as defined in Section 543b of the Michigan Penal Code (which would be added by Senate Bill 930).

To score offense variable 20, the court would have to determine which of the following applied and assign the number of points attributable to the one with the highest number:

- The offender committed an act of terrorism by using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device (100 points). “Incendiary device” would include gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device. The other terms are defined in Section 200h of the Michigan Penal Code (MCL 750.200h).
- The offender committed an act of terrorism without using any of the above (50 points).
- The offender supported an act of terrorism (25 points)
- The offender did not commit or support an act of terrorism (0 points).

The bill would add to the scoring of offense variable 1 (aggravated use of a weapon) whether the victim was subjected or exposed to a harmful biological substance or device, harmful chemical substance or device, harmful radioactive material or device, incendiary device, or explosive device (20 points). Offense variable 7 (aggravated physical abuse) would be amended to 1) delete the reference to terrorism; 2) include conduct designed to substantially increase the fear and anxiety a victim suffered during the offense; and 3) count each person who had been placed in danger of injury or loss of life as a victim. Offense variable 19 (threat to security of a penal institution or court or interference with the administration of justice) would be amended to include interference with the rendering of emergency services by force or threat of force.

Senate Bill 948. Currently, under the Code of Criminal Procedure, an indictment for murder, first-degree criminal sexual conduct, or a violation of Chapter 33 of the Michigan Penal Code (Explosives, Bombs, and Harmful Devices) that is punishable by imprisonment for life may be found and filed at any time. (That is, there is no statute of limitation on the prosecution of those crimes.) The bill would amend the code (MCL 767.24) to provide for no statute of limitations on violations of the proposed “Michigan Anti-terrorism Act” that were punishable by imprisonment for life.

Senate Bill 949 and House Bill 5512. Under existing Michigan law, a court is required to order a defendant convicted of a crime to make full restitution to his or her victim. In addition, the court may order the defendant, as part of the sentence for a conviction of certain offenses, to also reimburse a governmental unit for its expenses related to the incident: for instance, the defendant could be ordered to reimburse a city for ambulance or fire services it provided, and for the expenses incurred by the county or city for prosecuting the crime.

Senate Bill 949 would amend the Code of Criminal Procedure (MCL 769.1f) to also require a court to impose these governmental reimbursement costs on a person who violated, or attempted to violate, the Anti-terrorism Act (Chapter 83-A of the Michigan Penal Code, which would be added by Senate Bill 930). A court would also have to impose costs on a person who violated, or attempted to violate, Sections 327, 327a, and 328 of Chapter 33 of the penal code (explosives, bombs, and harmful devices), and Section 436 of the penal code (poisoning food, water supplies, pharmaceuticals, etc.). Reimbursement would have to be made to the appropriate

government entity. “Government entity” would mean the state of Michigan, a local unit of government, or the U.S. government.

Further, the code specifies the expenses for which reimbursement may be ordered. Currently, expenses include salaries or wages of law enforcement personnel involved in the arrest, investigation, report writing, etc.; salaries or wages of fire department and emergency medical service personnel for time spent in responding to and providing fire fighting, rescue, and emergency medical services; the cost of medical supplies lost or expended while providing fire fighting and emergency medical services; and salaries or wages for prosecution personnel for time spent investigating and prosecuting the crime resulting in conviction.

Senate Bill 949 would also allow a court to order reimbursement for the costs associated with extradition, including, but not limited to, transportation costs and the salaries or wages of law enforcement and prosecution personnel for processing the extradition and returning the person to the state.

House Bill 5512 would amend the Michigan Penal Code (MCL 750.543x) by adding to Chapter LXXXIII-A, the Michigan Anti-Terrorism Act. Under the bill, a court would have to require a person who violated the Anti-Terrorism Act to make restitution to a victim and to reimburse any governmental entity for its expenses incurred as a result of the violation as provided in the Crime Victim’s Rights Act and the Code of Criminal Procedure (MCL 780.766 et al and MCL 769.1f, respectively).

Senate Bill 995 would amend the Code of Criminal Procedure (777.16z) to specify the following:

- Terrorism without causing a death would be a Class A felony against a person with a maximum term of imprisonment for life.
- Hindering prosecution of terrorism would be a Class A felony against the public order with a maximum term of imprisonment for life.
- Soliciting material support for terrorism or terrorist acts would be a Class B felony against the public safety with a maximum term of imprisonment of 20 years.

- Threat or false report of terrorism would be a Class B felony against the public order with a maximum term of imprisonment of 20 years.
- Use of Internet or telecommunications to commit terrorism would be a Class B felony against the public safety with a maximum term of imprisonment of 20 years.
- Surveillance of a vulnerable target with intent to commit terrorism would be a Class B felony against the public safety with a maximum term of imprisonment of 20 years.

In addition to being tie-barred to Senate Bill 930, the bill is tie-barred to Senate Bills 939 and 942.

Senate Bill 997. Under the Michigan Penal Code, “racketeering” means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit, for financial gain, an offense listed in the definition. The bill would amend the code (MCL 750.159g) to include a violation of the proposed “Michigan Anti-terrorism Act” (which would be created by Senate Bill 930) as a predicate offense in the code’s definition of racketeering.

House Bill 5509 Money laundering is the disguising or concealing of illicit income in order to make it appear legitimate. Public Act 284 of 1994 amended the Michigan Penal Code to criminalize as “money laundering” certain acts involving the proceeds or substituted proceeds of specified criminal offenses. “Specified criminal offenses” currently include certain drug offenses, Medicaid fraud, bribery, embezzlement, extortion, securities fraud, murder, forgery, etc.

The bill would amend the Michigan Penal Code (MCL 750.411j) to add a violation of Chapter LXXXIII-A of the code, which concerns terrorism, to the list of offenses that constitute a “specified criminal offense”. Therefore, under the code, it would be a criminal offense to knowingly receive or acquire a monetary instrument or other property that constituted the proceeds or substituted proceeds of an action or activity in violation of the anti-terrorism provisions contained within Chapter LXXXIII-A of the penal code (which would be added by Senate Bill 930), or to knowingly conduct a financial transaction meeting certain conditions that involved money or property derived from a terrorist act.

House Bill 5513. Public Act 104 of 1988 created a general forfeiture law that provides for the forfeiture

to the government of property used for or obtained through the commission of any of some 60 crimes, including arson, bribery, burglary, embezzlement, securities fraud, larceny, robbery, Medicaid fraud, and distribution of obscene material to a minor. The bill would amend the Revised Judicature Act (MCL 600.4700 and 600.4702) to add a violation of Chapter LXXXIII-A of the Michigan Penal Code, regarding acts of terrorism, to the definition of a “crime” for which property could be forfeited.

The RJA allows certain personal and real property to be subject to seizure by, and forfeiture to, a local unit of government or the state. In addition to what is currently allowed, if the crime was an act of terrorism in violation of Chapter LXXXIII-A of the penal code, real or personal property meeting any of the following conditions would also be subject to seizure and forfeiture:

- The property contributed directly and materially to the commission of the crime;
- The property was used in the preparation of the crime;
- The property was used to conceal the crime;
- The property was used to escape from the scene of the crime; or,
- The property was used to conceal the identity of one or more of the individuals who committed the crime.

**BACKGROUND INFORMATION:**

On March 29, 2002, the governor signed 30 anti-terrorism bills into law. Besides the bills covered by this analysis, the following House and Senate Bills were also identified as being part of the bi-partisan legislative response to address the issues raised by September 11<sup>th</sup>: House Bills 4037, 5041, 5295, 5349, 5496, 5501, 5506, 5507, and 5511, and Senate Bills 940, 943, 994, 996, and 1005. Further, House Bill 5270 and Senate Bill 730, which amended laws pertaining to search warrant affidavits, were also considered to be part of the anti-terrorism legislation and part of last fall’s revision of the domestic violence laws. However, Senate Bill 1358, which became Public Act 506 of 2002, further amended the section of law revised by those two bills.

## ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bills would establish special provisions for various offenses involving acts of terrorism or threatened terrorism. The fiscal impact of the bills would depend on how they affected prosecutorial charging practices, numbers of convictions, and lengths of time served. If relatively few sentences were affected by the bills, the annual costs to the state correctional system would be commensurately low. However, the bills provide for maximum sentences of from 20 years to life, so cumulative costs under the bills could be significant. If one assumed that an offender served 15 years at an average annual cost of about \$28,000, the cost of his or her incarceration would be \$420,000. Costs for local authorities, however, could be offset by seizure and sale of property involved in terrorism and for reimbursement of costs of emergency response, prosecution, and extradition. In addition, various bills also provide for imposition of penal fines, which are constitutionally dedicated to local libraries. (9-16-02)

## ***ARGUMENTS:***

### ***For:***

Senate Bill 930 would create the Michigan Anti-Terrorism Act. The bill would narrowly define an “act of terrorism”. In order to apply the act’s provisions, a crime would have to meet several standards. A crime, besides being willful, deliberate, and premeditated, would have to 1) constitute a violent felony (which must meet the level of physical force or harmful biological, chemical, or radioactive substances or devices being used against a person or persons); 2) be dangerous to human life; and, 3) have the element of intimidation or coercion of a civilian population or of influencing or affecting the conduct of a government or unit of government through that intimidation or coercion. It is obvious, therefore, that even a violent crime such as a murder, armed robbery, or sexual assault would not meet all the criteria. Even a crime involving the placement or detonation of a bomb would not necessarily meet the criteria so as to be charged as a crime of terrorism. It is also reasonable to assume that prosecutors and juries would be judicious in their application of such a criminal charge so as to only include those individuals or organizations targeting a larger population with the intent of bringing down our government, severely crippling the ability of government to function efficiently, or to keep the population in a state of fear and terror.

### ***Response:***

Not everyone would agree that the bill’s definition of an act of terrorism is crystal clear or as narrowly defined as purported to be. In fact, though the bill is said to be addressing terrorism, such as the forces behind the September 11<sup>th</sup> attacks, it could be applied to environmental groups protesting the demolition of the rainforests, placements of nuclear dumps, and air and water pollution; animal rights activists; activists who target meetings of the World Trade Organization; labor union activists; and certain militia groups. Where members of those groups generally do not use tactics that include the use of radioactive materials or bio-weapons, their protests have on occasion resulted in some physical violence that could trigger application of Senate Bill 930 and various other provisions contained in the anti-terrorism package. Couldn’t hate crimes be reclassified as acts of terrorism, or bombings of abortion clinics be prosecuted as an act of terrorism? And what is to protect an individual from an overzealous prosecutor? Juries, too, can be unpredictable; is it wise to place complete trust in a jury’s ability to discern which crime should or shouldn’t be prosecuted as a terrorist act? Closer scrutiny should be given to language that could result in the limitation of free speech or the inadvertent “capturing” of protesters who are not in the same category as true terrorists.

### ***For:***

Senate Bill 930 and House Bill 5495 would address many of the issues connected with a crime of terrorism, such as making it a crime to harbor a terrorist, help a terrorist to escape, raise material resources for terrorist activities, and make a false report of a terrorist threat or act. Yet, a person’s constitutional rights would still be protected from violations. However, to protect against unfairly “capturing” people who do not know they are renting an apartment to a terrorist, or giving money to a terrorist group that pretended to be a charitable organization, the House bill would define a terrorist organization as being one that has been designated as such by the federal government (so an individual would not carry the burden of conducting an in-depth investigation into the financial or political activities of a domestic- or foreign-based organization) and Senate Bill 930 would include the elements of knowledge and intent. These are not easy elements for a prosecution to establish. Further, it must be remembered that before a person can be convicted of the charge of committing a terrorist act, the

prosecution must still meet the burden of proving these elements and standards beyond a reasonable doubt.

**For:**

The events of September 11, 2001, in which terrorists destroyed the World Trade Center in New York City and damaged the Pentagon, has taken not only an emotional toll on survivors and witnesses, but has resulted in a huge financial toll, also. Survivors have been faced with medical costs and financial hardship due to lost wages. Spouses and dependant children have lost a source of income. Business owners have suffered the loss of offices, equipment, and income that the business would have generated. Municipalities sending rescue teams to the WTC site lost employees and emergency response vehicles, and now some of the same municipalities have expended great sums of money to search for human remains and clear the site of the debris. Many believe that those responsible for causing such devastation and destruction should also be held financially responsible.

Though current state law requires a court to order a defendant convicted of a crime to make full restitution to any victims, a court has the discretion to order reimbursement to municipalities for any costs incurred in relation to the crime, such as prosecution costs and expenses related to the use of emergency services. Senate Bill 949 and House Bill 5512 would make restitution to victims and reimbursements to municipalities mandatory for conviction of a terrorist act. Unlike a crime committed by a single individual or a small group of like-minded individuals, a terrorist act is generally committed by persons who are a part of a much larger and often well-funded organization. Even if the actual perpetrator were killed in the commission of the crime, the change in the law, along with the changes contained in House Bill 5513 (which would trigger the legal seizure and forfeiture of assets in relation to crimes of terrorism), could mean that assets belonging to terrorist organizations could be seized and utilized to pay for the destruction caused by their members. Of course, no amount of money could ever replace the lives lost or undo the injuries to persons harmed by a terrorist act. But, seizing the assets of terrorist organizations or requiring monetary restitution and reimbursement to be made could deplete their resources – resources that may otherwise be used to fund additional terrorist acts.

**For:**

Perhaps one of the more powerful disincentives to the war on drugs and other crimes has been the authority of the government to seize property (which includes cash, houses, and cars) that has been used in the commission of certain crimes. In light of the recent terrorist attack of September 11, 2001, some feel that the state should be allowed to seize property and financial assets of people involved in the planning and execution of terrorist actions in the state.

House Bill 5513 would allow state or local governments to also seize property used to support the commission of terrorist activities. Like the drug trade, significant amounts of money are needed to fund terrorist activities. Allowing the seizure of vehicles, land, houses, other buildings, and cash could put a serious crimp in the ability of terrorist organizations to bring their destructive plans to fruition.

**Response:**

This sounds like a good policy for assets located in the state, but terrorists generally operate across state lines. Further, it isn't clear who would benefit from the seized assets.

**Rebuttal:**

Under various state and federal laws, mechanisms do exist for the seizure and forfeiture of property located in other states that is owned or utilized by criminals operating in this state. Further, the general forfeiture laws specify the distribution of forfeiture proceeds in a descending order of priority. After satisfying outstanding security interests of a party with no prior knowledge of the crime, any court-ordered restitution, claims by victims not covered by restitution orders, and payment of expenses of the proceedings for the forfeiture and sale of the property, the remaining balance goes to the local government that was substantially involved in the forfeiture. Three-quarters of this money is required to go for law enforcement and one-quarter for implementation of the Crime Victim's Rights Act.

**Against:**

The newly enacted federal USA Patriot Act establishes the right of property owners to contest confiscation of property under a law relating to confiscation of assets of suspected terrorists. However, House Bill 5513 doesn't seem to address the unlawful seizure of property in connection to a terrorist act. Couldn't this result in the unfair confiscation of property belonging to people who had no knowledge that their property was being utilized to further terrorist activities?



**Response:**

Under other provisions of the Revised Judicature Act, a mechanism does exist for a person who neither had prior knowledge of nor consented to the commission of a crime to ask the court to return the seized property. Currently, the prosecution has the burden of proof to show probable cause that the property was subject to forfeiture. These existing provisions would also apply to seizures and forfeitures of property related to terrorist activities. Further, the main bill in the anti-terrorism package contains detailed definitions of what types of activities would constitute helping or assisting in terrorist acts. Therefore, sufficient protections should exist in current laws and the proposed anti-terrorism bills to capture only those who are actively engaging in or supporting terrorist activities.

**For:**

Cyber attacks are increasing in frequency and veracity. According to a recent *Washington Post* article (January 28, 2002), there were over 52,600 security breaches and attacks in 2000; a 50 percent increase. Such attacks can wipe out critical files and programs or give access to confidential information about businesses or individuals such as financial information and Social Security numbers. On a more insidious level, cyber attacks could jeopardize the safety and security of air traffic controls, programs that keep trains from colliding, software programs that monitor and regulate water treatment plants, and so on. The Internet and telecommunications systems can also be used as a means to pass along directives to terrorists who have infiltrated the state to initiate a preplanned attack. Senate Bill 942 would establish an appropriate penalty (up to 20 years in prison and/or a \$20,000 fine) for anyone who would use the Internet or any telecommunications to further terrorism.

Further, one element needed in order for prosecution under the bill is that the person committed an act that he or she knew was dangerous to human life as defined in a provision created by Senate Bill 930. The term “dangerous to human life” is defined in SB 930 as “that which causes a substantial likelihood of death or serious injury or that is a violation of Section 349 or 350.” Section 349 of the penal code prohibits kidnapping and Section 350 prohibits the enticing or taking of a child under 14 years of age with the intent to detain or conceal the child from his or her parent or legal guardian. It may seem unusual at first glance that these two offenses would be included in anti-terrorism legislation, and also be placed in a bill pertaining to Internet and telecommunications

transmissions, but kidnapping of governmental officials, high level corporate executives, and even media personnel (e.g., Daniel Pearl of the *Wall Street Journal*) have been tactics used by terrorist organizations for decades. The terrorists connected to the abduction and murder of Daniel Pearl used emails and images of Mr. Pearl transmitted over the Internet to bring attention to their actions. As to the provision regarding children, civil wars in some western African countries have given rise to the kidnapping and mutilation of children by rebel armies as a means to subdue villages, and it is not inconceivable that the minor children of governmental or influential leaders of this country could be held for ransom (to raise funds for terrorist activities) or to coerce the parent or a governmental entity to act in a desirable manner. Again, in such scenarios, the Internet and telecommunications systems can be instrumental in formulating and initiating plans, and in propagating fear, communicating demands, etc., so as to reap the desired results. Though difficult to imagine such activities happening in Michigan, far better to have laws on the books to deal with any possible terrorism-related activity.

The bill would provide a stiff penalty for cyber or telecommunications disruptions and attacks, or use of those systems to put a terrorist plan into action, that hopefully will deter a terrorist from even considering such an attack, or that will adequately punish someone who still implements a terrorist plan.

**For:**

Several of the bills, though short in content, would have significant ramifications. Senate Bill 948 would remove the statute of limitation for acts of terrorism. Therefore, like murder, a person could always be charged with the crime no matter how many years have passed. This is important because it could take several years to gather enough evidence to indict a particular person, or to build a case. Also, it removes the temptation to commit a crime and then “lay low” for the requisite number of years until a statute of limitation expires. Senate Bill 997 would include terrorism as a predicate offense for triggering the state’s racketeering laws. Individuals should not be allowed to financially profit from causing fear and death.

Senate Bill 936 would allow certain grand jury information to be shared with other law enforcement officials. Currently, no information arising from testimony or exhibits – except for certain communication between prosecutors and applications for and grants of immunity – can be shared outside of

the grand jury. However, sometimes a witness will disclose to the grand jury that a murder is about to take place or a drug deal is planned. This information, though, cannot be shared with other law enforcement officials, even though it means that a crime could be prevented.

Because of the nature and intent of acts of terrorism, and the destruction and disruption to many lives that such an act could inflict, Senate Bill 936 would create a narrow exception to the secrecy regarding grand jury testimony and allow information relating to a terrorist act to be shared with other law enforcement officials such as prosecutors, police, or the FBI. Such a concept is not totally foreign; confidentiality provisions that protect communications between a person and certain professionals, such as mental health professionals, do not apply to knowledge of a threat against a third person revealed during a counseling session.

**For:**

Terrorism, like the illegal drug trade, requires significant amounts of money to operate successfully. And, like their counterparts in the drug trade, terrorists use seemingly legal businesses, charities, and investments to "launder" or hide money acquired through illegal activities and which is generally intended to finance more illegal activities. Terrorist organizations, like many illegal enterprises, often must bribe or hire individuals to accomplish their goals. The recipients of these bribes or payments, like individuals involved in the drug trade, must in turn hide these payments from state and federal authorities or make these sums of money appear to have been legitimately acquired. Current state and federal laws already trigger penalties for money laundering for many crimes, including drug offenses, robberies, counterfeiting, and so on. Some of these offenses are committed by members of terrorist organizations in order to accumulate revenue to fund terrorist activities, and those funds would already be subject to penalties under the money laundering provisions since they were obtained in the commission of crimes designated as "specified criminal offenses".

It is believed, though, that adding terrorism-related activities as a specified criminal offense would enable law enforcement agencies to better intercept the acquisition of resources by terrorist organizations and so stop terrorist acts before they happen. By adding terrorism to the list of specified criminal offenses, House Bill 5509 would allow law enforcement agencies to track organized patterns involving sums of money that were supplied to

individuals or groups by terrorist organizations for the commission of terrorist acts and that were subsequently also laundered to appear legitimate. Therefore, this could be an additional tool for law enforcement to use to expose and crack terrorist organizations, as well as perhaps aid in thwarting planned attacks.

(To provide timely alerts as to possible money laundering activities taking place in Michigan, Enrolled House Bills 5516-5518 and Senate Bill 1007, which are also part of the anti-terrorism legislation, amended various banking laws to require financial institutions to file with the Department of State Police a duplicate copy of any transaction required to be filed under provisions of the USA Patriot Act. The Patriot Act also requires financial institutions to establish anti-money laundering programs and establishes minimum standards for such a program. Further, according to an Office of Insurance and Financial Services bulletin released in April of this year, under provisions of the federal Bank Secrecy Act, some insurance entities are considered to be financial institutions. The U.S. Department of Treasury is developing a similar regulation regarding anti-money laundering programs that will pertain to insurers.)

**Against:**

Many of the bills would increase penalties for existing crimes or create new penalties for new crimes. Most of these penalties specify ridiculously high monetary fines that have little chance of being collected. Further, most of the penalties require life sentences or near life sentences and may be ordered to be served consecutively to any other sentences for convictions arising from the same criminal event. It must be noted that the bills create the possibility of abuse from prosecutors using a threat of charging under any or several of these bills to intimidate or coerce a suspect to confess or plead to a lesser charge rather than take his or her chances with a jury on the charge of terrorism.

**Against:**

These bills, and especially Senate Bill 930, are unnecessary since the federal government addressed many of the same issues in the USA Patriot Act enacted last fall.

**Response:**

On the contrary, federal agencies do not always have jurisdiction to investigate or prosecute crimes. There may be some types of domestic terrorism that happen solely within the state's boundaries to only the state's citizens that federal agencies would not be interested in prosecuting, or may not have the resources to

tackle. Even if a crime falls within federal jurisdiction, the federal government may not be able to move on the case in as timely a manner as the state could. Further, there is a tradition of dual sovereignty, of parallel laws. Since the 14<sup>th</sup> amendment of the U.S. Constitution gives states the right to protect their citizens, there is no reason why the state should be reticent about enacting laws to adequately protect Michigan residents.

***Against:***

The bills seem to rely primarily on a deterrent effect and so contain penalties that would imprison someone for most, if not all, of his or her life. However, like the Kamikaze pilots of World War II, today's suicide bombers are not deterred by such measures. Therefore, the bills may do little more than pacify a nervous public.

***Against:***

The provisions of Senate Bill 939, which would make possession of a blueprint, an architectural or engineering diagram, security plan, and so forth, of a "vulnerable target" with an intent to commit a terrorist act, a felony with a harsh punishment, are quite troublesome. For starters, as amended by House Bill 5511 and Senate Bill 940, the list of structures, facilities, and buildings designated as a "vulnerable target" practically encompasses everything except a residential dwelling. How is one to differentiate between an architecture buff or train enthusiast who enjoys studying buildings or trains and rail yards from someone who could be plotting to destroy that structure? Though this bill also includes the element of proving "intent", in a day when people are afraid and nerves are on end, it is not inconceivable that a jury's fears could be played upon by an unscrupulous or overly ambitious prosecutor to convince a jury that an innocent love or fascination with a particular building or buildings was really the beginning of a plot to destroy that structure and anyone in it.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.