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Explanation of Senate Bill No. 38

S.B. 38 makes various changes concerning crimes relating to acts of terrorism, weapons of mass destruction, biological agents, chemical agents, radioactive agents and other lethal agents, toxins and delivery systems for use as weapons. At least 33 other states have recently passed anti-terrorism legislation.

Section 6 of this bill defines an "act of terrorism." Most states which have enacted legislation concerning acts of terrorism have used a definition of "act of terrorism" that is based on the definition in 18 U.S.C. § 3077, which provides that an:

"act of terrorism" means an activity that –

(A) 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

(B) appears to be intended --

(i) to intimidate or coerce a civilian population;

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

or

(iii) to affect the conduct of a government by assassination or kidnapping;

The definition in section 6 of this bill is similar to the U.S.C. definition, but differs by adding subsection 1 and by adding paragraph (c) of subsection 2, which broadly lists certain common acts of terrorism that other states have prohibited. Section 6 defines an "act of terrorism" as:

1. Any act of undeclared war; or

2. Any act that involves the use or the threatened or attempted use of sabotage, fear or violence and is intended to:

(a) Intimidate or coerce a civilian population;

(b) Disrupt, affect or influence the conduct or policy of a governmental entity by intimidation or coercion; or

(c) Retaliate against a governmental entity or cause widespread panic or civil unrest through the substantial destruction, contamination, impairment or disruption of:

(1) Public infrastructure, communications, transportation, utilities or services; or

(2) Natural resources or the environment.

Other states, including Alaska, Connecticut, Louisiana, Maine, Utah and Vermont, have enacted legislation which creates felonies related to damaging or destroying infrastructure, transportation, public energy, water, health and food supplies. The provisions of section 1 of this bill when read with the definition of an "act of terrorism" in section 6 of this bill covers all of these threats without having to create separate offenses for each of these acts. For example, if the prosecution proves that a person committed an act which resulted in contaminating the water supply of a city with the intent to cause widespread panic or civil unrest through the substantial contamination of

natural resources or the environment, the person may be prosecuted, convicted and sentenced for committing the offense with the intent to commit an act of terrorism. Because this bill provides increased penalties for committing certain acts of terrorism, proving that a person committed an offense with the intent to commit an act of terrorism will result in the person receiving harsher penalties.

For example, **section 1** of this bill provides an additional penalty for felonies committed with the intent to commit certain acts of terrorism. Several other states, including Connecticut, Florida, Minnesota and Ohio, also enhance penalties for crimes committed with the intent to commit an act of terrorism. **Subsection 1 of section 1** provides that any person who commits a felony with the intent to commit, cause, aid, conceal or further an act of terrorism shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section must run consecutively with the sentence prescribed by statute for the crime. **Subsection 3 of section 1** adds that this subsection provides an additional, rather than a separate, penalty. Thus, if a person is prosecuted, convicted and sentenced pursuant to another specific statute, the penalty as provided by the other statute may be doubled. For example, pursuant to NRS 202.170 a person who willfully poisons any spring, well or reservoir of water is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years. If the prosecution proves the person willfully poisoned a spring, well or reservoir with the intent to commit, cause, aid, further or conceal an act of terrorism, the person may be punished by imprisonment of not less than 4 years and a maximum term of not more than 30 years.

Subsection 2 of section 1 provides that in lieu of an additional term of imprisonment as provided in subsection 1, if a felony that resulted in death or substantial bodily harm to the victim was committed with the intent to commit, cause, aid, further or conceal an act of terrorism, and the person who committed the felony intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person, the felony may be deemed a category A felony and the person who committed the felony may be punished by imprisonment in the state prison for life without the possibility of parole; for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served. **Subsection 3 of section 1** provides that this subsection creates an alternative penalty, rather than a separate offense. Thus, if a person is prosecuted, convicted and sentenced pursuant to another specific statute, the penalty in subsection 2 of section 1 may be substituted for the penalty provided for in the other statute. For example, if a person is convicted of poisoning a spring, well or reservoir of water with the intent to commit, cause, aid, further or conceal an act of terrorism, rather than being punished by imprisonment for a term of not less than 2 years and a maximum term of not more than 15 years pursuant to NRS 202.170, the person may be punished by imprisonment for life, with or without the possibility of parole, or for a definite term of 50 years.

Subsection 4 of section 1 provides that additional or alternative penalties may not be added to the penalty provided in section 14 of this act. Section 14 prohibits committing, aiding, materially supporting or concealing a terrorist act so the additional or alternative penalties would be duplicative.

Section 2 of this bill makes a technical amendment to NRS 193.169 to provide that if a person is sentenced to an additional or alternative term of imprisonment pursuant to section 1 of this bill, the person must not be sentenced to an additional or alternative term of imprisonment pursuant to any other section of NRS which permits additional or alternative penalties.

Section 3 of this bill revises NRS 200.030 to provide that murder committed with the intent to commit, cause, aid, further or conceal an act of terrorism is murder of the first degree. At least 14 other states, including Arizona, Florida, Idaho, Maine, Minnesota and New York, have enacted similar legislation. NRS 200.030 provides that a person convicted of murder of the first degree is guilty of a category A felony and shall be punished by imprisonment in the state prison: (1) for life without the possibility of parole; (2) for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or (2) for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

Section 4 of this bill revises NRS 200.033 to provide that murder committed with the intent to commit, cause, aid, further or conceal an act of terrorism is an aggravating circumstance for the purposes of the death penalty. At least 13 other states, including Florida, New Jersey, Utah and Virginia, have enacted similar legislation. To show that a person is eligible for the death penalty, the prosecution must prove that one or more aggravating circumstances exist and that the aggravating circumstances outweigh the mitigating factors. Section 4 of this bill now provides that the intent to commit, cause, aid, further or conceal an act of terrorism may be used as an aggravating circumstance to determine whether a person is eligible for the death penalty.

Section 5 of this bill is directory language which provides that several new sections have been added to chapter 202 of NRS regarding weapons of mass destruction, biological agents, chemical agents, radioactive agents and other lethal agents, toxins and delivery systems. Sections 6 to 13, inclusive, and 17, 18 and 19 of this bill define several terms. The definition of an "act of terrorism," is discussed above. The other definitions will be discussed below in the context of sections 14 to 21, inclusive, of this bill.

Section 14 creates the crime of terrorism. Other states, including Alabama, Arizona, Connecticut, Iowa, Louisiana, Maine and Michigan, have enacted specific legislation to create the crime of terrorism, providing penalties not only for committing acts of terrorism but also for providing material support for acts of terrorism. **Subsection 1** of section 14 of this bill prohibits a person from committing, causing, aiding, furthering or concealing an act of terrorism, attempting to commit, cause, aid, further or conceal an act of terrorism, or conspiring with, soliciting or assisting another person to commit an act of terrorism. **Subsection 1** also prohibits a person from providing material support with the intent that such material support be used, in whole or in part, to commit, cause, aid,

further or conceal an act of terrorism; or aid a terrorist or conceal a terrorist from detection or capture. Thus, if a person provides money, passports, poison and transportation to the person who willfully poisons any spring, well or reservoir of water with the intent to commit an act of terrorism, both persons may be prosecuted, convicted and sentenced pursuant to section 14. Section 9 of this bill is based on the New York and Michigan definitions of "material support or resources" and defines the term "material support" to mean:

1. Currency, securities, negotiable instruments or financial services, assistance or support of any kind.
2. Housing, lodging or facilities of any kind used for training, living or concealment.
3. Information, instruction or training of any kind.
4. Personnel, support staff or services or assistance of any kind.
5. Any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin, any delivery system for use as a weapon or any firearm, explosive or other weapon of any kind.
6. Any means of transportation.
7. Any means of oral, written or electronic communication.
8. A license, passport, certificate, permit or document of any kind used for identification, authority or access, whether or not obtained validly.
9. Any other related services, assistance or property of any kind.

Subsection 2 of section 14 provides that a person who violates any provision of section 14 is guilty of a category A felony and shall be punished for life without the possibility of parole; for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served; and shall further be punished by a fine of at least \$50,000 but not more than \$100,000.

Subsection 3 of section 14 provides that in addition to any other penalty, the court shall order the person to pay restitution to each victim for any injuries that are a result of the violation and to the State of Nevada or a local government for any costs that arise from the violation. Other states, including Florida, Massachusetts and Pennsylvania, have also enacted legislation requiring persons who commit acts of terrorism to pay restitution.

Subsection 4 of section 14 provides that a person may be prosecuted, convicted and sentenced for a violation of section 14 as well as a violation of any other statute based upon the same act or transaction. Both the United States Supreme Court and the Nevada Supreme Court have held that "cumulative sentences would be permissible . . . where the legislature specifically authorized cumulative sentences." Talacon v. State, 102 Nev. 294, 298 (1986); see Missouri v Hunter, 103 S. Ct. 673, 679 (1983). Thus, for example, this provision allows the person who willfully poisons any spring, well or reservoir of water with the intent to commit an act of terrorism to be prosecuted, convicted and sentenced pursuant to NRS 202.170 and section 14 of this bill.

Subsection 1 of section 15 of this bill prohibits a person from knowingly hindering, delaying or obstructing the prosecution of a terrorist. Other states, including Alabama, Arizona, Louisiana and Michigan, have also enacted legislation to prohibit such acts. **Section 12** of this bill defines "terrorist" to mean a person who commits, causes, aids, furthers or conceals an act of terrorism or attempts to commit, cause, aid, further or conceal an act of terrorism. **Subsection 2 of section 15** provides that a person who violates any provision of section 15 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$10,000. **Subsection 3 of section 15** expressly provides that the defendant may be prosecuted, convicted and sentenced pursuant to more than one statute, allowing a person to be prosecuted, convicted and sentenced pursuant to this section and section 14 of this bill if, for example, the person provides material support with the intent that such material support be used, in whole or in part, to conceal an act of terrorism or conceal a terrorist from detection or capture.

Section 16 makes a technical amendment to NRS 202.441, providing that NRS 202.441 to 202.448, inclusive, and sections 6 to 15, inclusive, of this act will be codified together in NRS. **Sections 7, 11, 13, 17, 18 and 19** of this bill define several terms that are used in sections 20 and 21 of this bill.

Section 7 of this bill defines the term "chemical agent" to mean any chemical substance, material or product, or any component or compound thereof, which is naturally occurring, cultivated, engineered, processed, extracted or manufactured and which is capable of causing death or substantial bodily harm; substantial deterioration of food, water, equipment, supplies or material of any kind; or substantial damage to natural resources or the environment.

Section 8 of this bill defines the term "for use as a weapon" to mean having the capability to be used in a harmful or threatening manner. The term does not include any act that is done lawfully for a prophylactic, protective or peaceful purpose.

Section 10 of this bill defines "oral, written or electronic communication" to include, without limitation, any of the following:

1. A letter, note or any other type of written correspondence.
2. An item of mail or a package delivered by any person or postal or delivery service.
3. A telegraph or wire service, or any other similar means of communication.
4. A telephone, cellular phone, satellite phone, pager or facsimile machine, or any other similar means of communication.
5. A radio, television, cable, closed circuit, wire, wireless, satellite or other audio or video broadcast or transmission, or any other similar means of communication.
6. An audio or video recording or reproduction, or any other similar means of communication.
7. An item of electronic mail, a modem, computer network or the Internet, or any other similar means of communication.

Section 11 of this bill defines "radioactive agent" to mean any radioactive substance, material or product, or any component or compound thereof, which is naturally occurring, cultivated, engineered, processed, extracted or manufactured and which is capable of causing death or substantial bodily harm; substantial deterioration of food, water, equipment, supplies or material of any kind; or substantial damage to natural resources or the environment.

Section 13 defines "weapon of mass destruction" to mean any weapon or device that is designed or intended to create a great risk of death or substantial bodily harm to more than one person.

Sections 17, 18 and 19 revise the definitions of "biological agent," "delivery system" and "toxin" to replace the references to federal law. The definitions in these sections are based upon the federal definitions provided in 18 U.S.C. § 178.

Section 17 defines "biological agent" to mean any micro-organism, virus, infectious substance or other biological substance, material or product, or any component or compound thereof, which is naturally occurring, cultivated, engineered, processed, extracted or manufactured and which is capable of causing death or substantial bodily harm; substantial deterioration of food, water, equipment, supplies or material of any kind; or substantial damage to natural resources or the environment.

Section 18 defines "delivery system" to mean any apparatus, equipment, implement, device or means of delivery which is specifically designed to send, disperse, release, discharge or disseminate any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent or any toxin.

Section 19 defines "toxin" to mean any toxic substance, material or product, or any component or compound thereof, which is naturally occurring, cultivated, engineered, processed, extracted or manufactured and which is capable of causing death or substantial bodily harm; substantial deterioration of food, water, equipment, supplies or material of any kind; or substantial damage to natural resources or the environment.

Section 20 of this bill revises NRS 202.446. Currently, NRS 202.446 provides that a person shall not knowingly develop, produce, stockpile, transfer, acquire, retain or possess a biological agent, toxin or delivery system for use as a weapon or assist another person to do any of these acts. Section 20 of this bill revises NRS 202.446 to expand its scope to also prohibit certain acts involving weapons of mass destruction and any chemical agent, radioactive agent or other lethal agent. Several other states, including Connecticut, Idaho, Maine, Michigan, Pennsylvania, South Carolina and Utah, have also enacted legislation relating to weapons of mass destruction, toxins and biological, chemical and radioactive agents.

Subsection 1 of section 20 provides that a person shall not knowingly develop, manufacture, produce, assemble, stockpile, transfer, transport, acquire, retain, store, test or possess any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin or any delivery system for use as a weapon. Subsection 1 also provides that a person shall not knowingly send, deliver,

disperse, release, discharge, disseminate or use any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin or any delivery system with the intent to cause harm, whether or not such harm actually occurs or under circumstances reasonably likely to cause harm, whether or not such harm actually occurs. This provision covers such circumstances as sending anthrax through the mail in an envelope, allowing prosecution and conviction even if the envelope is never opened. Subsection 2 of section 20 prohibits a person from attempting, soliciting or conspiring to do any of the acts prohibited in subsection 1.

Subsection 3 of section 20 provides that a person who violates any provision of section 20 is guilty of a category A felony and shall be punished based on whether the crime resulted in substantial bodily harm or death. If the crime does not result in substantial bodily harm or death, the person shall be punished: (1) by: imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall further be punished by a fine of not more than \$20,000; or (2) by imprisonment in the state prison for a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served, and shall further be punished by a fine of not more than \$20,000. If the crime results in substantial bodily harm or death, the person shall be punished: (1) by imprisonment in the state prison for life without the possibility of parole, and shall further be punished by a fine of not more than \$50,000; (2) by imprisonment in the state prison for life, with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served, and shall further be punished by a fine of not more than \$50,000; or (3) by imprisonment in the state prison for a definite term of 40 years, with eligibility for parole beginning when a minimum of 20 years has been served, and shall further be punished by a fine of not more than \$50,000.

Subsection 4 of section 20 provides that in addition to any other penalty, the court shall order the person to pay restitution to each victim for any injuries that are a result of the violation; and to the State of Nevada or a local government for any costs that arise from the violation.

Subsection 5 of section 20 expressly provides that the defendant may be prosecuted, convicted and sentenced pursuant to more than one statute, allowing a person to be prosecuted, convicted and sentenced pursuant to this section and section 14 of this bill if the person commits the act with the intent to commit an act of terrorism.

Subsection 6 of section 20 provides that the provisions of section 20 do not apply to any act that is committed in a lawful manner and in the course of a lawful business, event or activity. This provision allows businesses, research labs, hospitals and medical personnel to continue lawful activities.

Section 21 of this bill revises NRS 202.448 to prohibit threats, false information and hoaxes concerning acts of terrorism, weapons of mass destruction, toxins and any biological, chemical or radioactive agent. Other states, including Alaska, Arizona, California, Connecticut, Idaho, Maine, Michigan, Pennsylvania, South Carolina and Utah, have enacted legislation relating to such threats, false information and hoaxes.

Currently, NRS 202.448 provides that a person shall not, through the use of any means of oral, written or electronic communication, knowingly make any threat or convey any false information concerning the presence, delivery, dispersion, release or use of a biological agent or toxin. Subsection 1 of section 21 revises NRS 202.448, expanding its scope to also prohibit threats or conveying false information concerning acts of terrorism, any weapon of mass destruction, any chemical, radioactive or other lethal agent or any toxin. Subsection 2 of section 21 prohibits a person from knowingly carrying out a hoax involving any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin or any delivery system. Specifically, subsection 2 provides that a person shall not knowingly develop, manufacture, produce, assemble, transfer, transport, acquire, retain, store, test, possess, deliver, disperse, release, discharge or use any substance, material or product that another person reasonably could believe is any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin or any delivery system, whether or not the substance, material or product is such a weapon, agent, toxin or delivery system.

Subsection 3 of section 21 provides that a person who violates any provision of section 21 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000. Subsection 4 expressly provides that the defendant may be prosecuted, convicted and sentenced pursuant to more than one statute, allowing a person to be prosecuted, convicted and sentenced pursuant to this section and section 14 of this bill if the person commits the act with the intent to commit an act of terrorism. Subsection 5 provides that the provisions of this section do not apply to any act that is committed in a lawful manner and in the course of a lawful business, event or activity.

Section 22 of this bill revises NRS 207.360 to provide that a violation of NRS 202.446 or section 14 of this bill may be prosecuted, convicted and sentenced pursuant to the statutes that prohibit racketeering activity. Other states, including Georgia and Idaho, have enacted legislation relating to terrorism and racketeering. This is added to provide another avenue to prosecute an organized group that commits an act of terrorism or that is involved with any weapon of mass destruction, any biological agent, chemical agent, radioactive agent or other lethal agent, any toxin or any delivery system pursuant to NRS 202.446.

Section 23 of this bill revises NRS 62.040 to provide that a child must be prosecuted as an adult for committing an offense or attempted offense with the intent to commit, cause, aid, further or conceal an act of terrorism, and any other related offense arising out of the same facts as that offense or attempted offense.

Section 24 of this bill revises NRS 171.080 to provide that there is no statute of limitations within which a prosecution for a violation of section 14 of this bill must be commenced. It may be commenced at any time after the violation is committed.

Section 25 of this bill revises NRS 179.121 to provide that certain property is subject to forfeiture if the property is used during the commission of or attempted commission of any felony committed with the intent to commit, cause, aid, further or conceal an act of terrorism or any violation of NRS 202.446 or section 14 of this act.

Section 26 provides that this act becomes effective upon passage and approval.