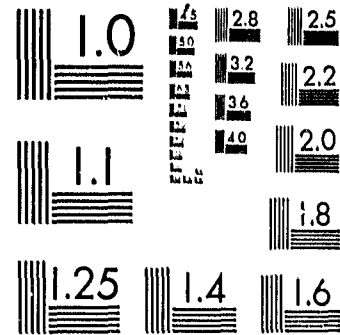


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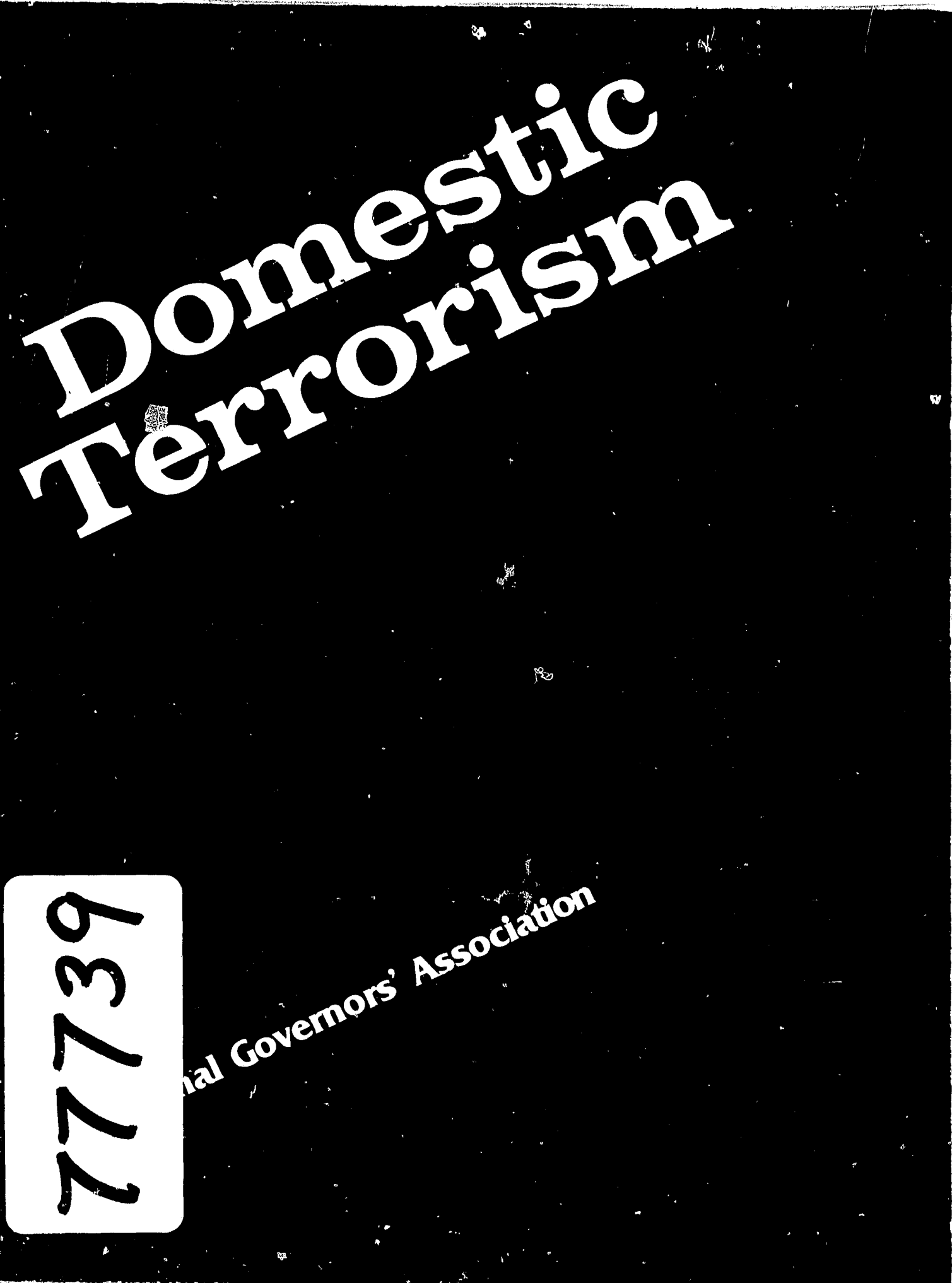
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JULIAN M. CARROLL, Chairman
STEPHEN B. FARBER, Director

DOMESTIC TERRORISM

EMERGENCY PREPAREDNESS PROJECT
CENTER FOR POLICY RESEARCH
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Washington, D.C.

NCJRS

MAR 16 1981

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This publication printed for
Defense Civil Preparedness Agency

May 1979

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TABLE OF CONTENTS

Preface..... 1

Executive Summary.....iii

CHAPTER 1: OVERVIEW OF DOMESTIC TERRORISM

Definitions of Terrorism..... 1

Terrorism Incidence..... 2

Terrorist Groups..... 4

CHAPTER 2: PRESENT AND FUTURE TRENDS

Violence Directed Against the State and Society..... 10

Increasing Degree of Organizational Sophistication..... 11

Increasing Use of High-Level Technology..... 11

Increasing Sophistication in the Choice of Targets..... 12

CHAPTER 3: GUBERNATORIAL/STATE AUTHORITY IN EMERGENCIES

Chart of State Authorities..... 26

CHAPTER 4: STATE CRIMINAL STATUTES ON TERRORISTIC ACTS

Model Penal Code Influence..... 30

State-Level Controversy..... 30

Terroristic Threats - Legal Intent..... 31

Defining Terrorism..... 32

Civilian Disruption..... 32

Penalties..... 33

Constitutional Challenges..... 33

Abstracts of Statutes Concerning Terroristic Acts..... 36

CHAPTER 5: FEDERAL STATUTORY AUTHORITY AND JURISDICTION

Procedural Considerations..... 49

Federal Jurisdiction..... 52

Abstracts of Federal Terrorism - Related Statutes..... 60

CHAPTER 6: FEDERAL EMERGENCY ASSISTANCE FOR TERRORISM MANAGEMENT

Department of State..... 97

Department of Justice..... 98

Federal Bureau of Investigation..... 98

Law Enforcement Assistance Administration..... 99

Immigration and Naturalization Service.....100

Department of the Treasury.....100

Bureau of Alcohol, Tobacco and Firearms.....100

Internal Revenue Service.....101

Customs Service.....101

Secret Service.....101

Department of Transportation.....	102
Federal Aviation Administration.....	103
Coast Guard.....	103
Department of Commerce.....	103
Department of Energy.....	104
Nuclear Emergency Search Team.....	104
Nuclear Regulatory Commission.....	105
Department of Defense.....	105
Department of the Army.....	105
Department of the Navy.....	105
National Guard Bureau.....	106
Federal Emergency Management Agency.....	106

CHAPTER 7: FEDERAL AUTHORITIES RELATED
TO INTERNATIONAL TERRORISM

Abstracts of Federal Statutes Related to International Terrorism.....	111
--	-----

APPENDICES

A. Background Information Regarding State Disaster/Emergency Acts.....	A-1
B. Footnotes for Chart of Gubernatorial and State Disaster/Emergency Acts.....	B-1
C. Council of State Governments' Example State Disaster Act of 1972 and Supplements.....	C-1
D. Immigration and Nationality Act of 1952.....	D-1
E. Federal Aviation Act of 1958.....	E-1
F. United States Code - Insurrection.....	F-1
G. INDEX.....	G-1
H. BIBLIOGRAPHY.....	H-1

PREFACE

This report is submitted in accordance with the Defense Civil Preparedness Agency contract DCPA 01-77-C-0247 with the National Governors' Association (NGA) Center for Policy Research, as amended and extended August 15, 1978, under modification P161-1.

The contract requires that the NGA Emergency Preparedness Project develop and produce six manuals or reports related to state emergency management: a Governor's guide to *Comprehensive Emergency Management*, abstracts of *Federal Emergency Authorities*, a Governor's guide to *National Emergency Assistance Programs*, a final report of the 1978 *Emergency Preparedness Project*, a report on the current status, needs and methods for improving *Disaster Mitigation Management* at the state government level, and this report on *Domestic Terrorism*.

This report contains a review of definitions of terrorism, a discussion of international and domestic trends in terrorism, and identification of terrorist groups which, according to newspaper reports, are active in the United States. The report summarizes Governors' state legislated authorities related to terrorism management, and abstracts federal legislation related to terrorism. The report also identifies sources of assistance provided by federal agencies. A check list which Governors may wish to use in reviewing their terrorism management prerogatives is included in the Executive Summary.

This report does not attempt to point out specific methods of managing terroristic incidents for three reasons: (1) incidents vary widely and it is impossible to reduce their complexities to standard operating procedures; (2) crime control and emergency services offices exist and have operating procedures which may be activated as needed; and (3) given the information provided here, Governors individually can take appropriate steps to ensure that necessary authorities are in force. Also, Governors know where to seek specific assistance should a terrorist incident occur.

We wish to thank DCPA Director Bardyl Tirana, his Special Assistant for Liaison, Angela Novello, and Plans and Operations Director, John McConnell, for their interest in and support of this project.

Special thanks for their cooperation and advice are also due the United States Department of Justice, in particular, Deputy Attorney General Benjamin R. Civiletti and his staff, and Sebastian Mignosa, Section Chief of the Terrorism Section of the Federal Bureau of Investigation (FBI), and his staff.

The NGA Subcommittee on Disaster Assistance was a close advisor to the Emergency Preparedness Project. The subcommittee chairman, Governor Mike O'Callaghan of Nevada, provided expert advice based on his experience as a Governor and as a former regional director of the Office of Emergency Preparedness and Planning. Governor O'Callaghan's administrator, Christy Schaller, also gave invaluable support. Useful advice was also provided by subcommittee members George Jones, representing Governor John Dalton of Virginia; Milton Mitnick, representing Governor Otis R. Bowen of Indiana; Hayden Haynes, representing Governor David L. Boren of Oklahoma; and state representative Bill Stewart, representing Governor Milton J. Shapp of Pennsylvania.

EXECUTIVE SUMMARY

United States foreign policy officials have long been actively concerned with problems posed by the growth of international terrorism. However, in the last five years there has been a noticeable increase in the consequences of terrorist activity in the domestic United States. From January 1, 1977, through December 31, 1977, 106 acts of domestic terrorism occurred in the United States.¹ In addition, state emergency offices reported 17 acts of domestic terrorism between January and June, 1978.²

This relatively recent phenomenon fostered new legislative proposals to combat terrorism. During the 95th Congress (1977-1978), 40 bills were introduced that would affect the federal government's ability to deal with terrorists, both internationally and domestically. Several bills sought to reorganize the Executive Office of the President and certain federal departments to help "effectively combat international and domestic terrorism."³

The Carter Administration instituted a review of the federal government's capabilities to handle terrorism. The National Security Council, in a special study, "confirmed the need for an extremely flexible anti-terrorism program at the federal level that would take into account the changeable nature of the contemporary terrorist threat and the wide range of resources that would have to be marshalled to meet all likely consequences."⁴ To that end, the President established a top level task force to prepare and implement a national program to manage possible terrorist activity within the United States.

In recognition of possible widespread civil disorder due to paramilitary actions of terrorist groups, the government recently reviewed the "emergency preparedness" activities necessary to deal

with the effects of terrorism. The new Federal Emergency Management Agency (FEMA)⁵ will be responsible for coordinating vulnerability analyses and preparedness measures to mitigate the consequences of terrorist acts.

In the international area, a Working Group to Combat Terrorism and its Executive Committee have been operational in some form since 1972.⁶ In 1977, it was reorganized to be responsible for the coordination of the anti-terrorism activities of 31 governmental divisions.

Governors have become increasingly concerned about the growth of domestic terrorism and other hazards involving public protection and safety. Although many terrorist incidents are handled exclusively at the federal level (e.g., protection of diplomats) or exclusively at the local level (e.g., local law enforcement), the increase of highly disruptive terrorist group activities has led to the recognition that state level management plans are also necessary. For example, interference with energy sources or state facilities which could lead to wide-spread panic and/or civilian evacuation would necessarily involve the Governor and the state emergency office.

Accordingly, the National Governors' Association Emergency Preparedness Project established a domestic terrorism study group. As part of its 1978 Emergency Preparedness Project this group examined domestic terrorism in regard to: (1) the current stance of the federal government's management of domestic terrorism, and (2) an analysis of the problems relevant to state government management of such emergencies.

As a first step, the study group analyzed statistics provided by the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). It was discovered that although the total number of incidents has decreased slightly in the past two years, domestic terrorist acts remain highly destructive and dangerous to the civilian population. In 1977, there were 106 incidents of domestic terrorism, of which 95 were bombings and firebombings. There have been 41 terrorist bombings nationwide

since January, 1978, half of which have occurred in New York City. Since 1972, 212 persons have lost their lives; 1,270 have suffered injuries; and domestic bombings have caused \$72,350,000 in damage.

The CIA maintains and reports statistics on international terrorist incidents. These statistics are based upon incidents in which groups based in one country initiate terrorist events in another country. In 1977, the CIA reported 84 such terrorist incidents of which 23 occurred in North America. Of the 61 incidents abroad, many were aimed at American citizens and property. Bombings comprise the largest number of type of incidents.

Some other categories of terrorist attacks are:

- letter bombing;
- kidnapping;
- holding for hostage;
- hijacking;
- arson;
- shootings;
- hoaxes.

The second step in the study was an effort to define "terrorism." The term is defined in different ways; sometimes the definition covers violence for political and social purposes, sometimes not. Many states statutes that outlaw "terroristic" acts and threats do not define "terrorism," leaving these laws vulnerable to charges of vagueness and unenforceability.

The study group noted that three problems grow out of this lack of definitions:

- statistical - a law enforcement agency's statistical base may greatly differ from an academic base, thereby creating problems in comparative research;
- statutory - due to the lack of definitions, the question is whether terrorists are being apprehended and prosecuted for a crime of violence or a "political" crime;
- philosophical - managers who deal with terrorism need to inventory and define the activities around which their policy-making and planning is centered.

The third step in the investigation was to list terrorist groups operating domestically, their numbers, and their organizational structure. There are at least 15 active terrorist groups, usually located in east and west coast urban areas.

Terrorists generally are well educated, organized, and ideologically motivated. In some cases the ideological orientation is towards a specific cause which creates a nationalistic or goal-oriented guerilla group; in other cases, the activities appear to be autonomous criminal behavior aimed at no discernible cause.

Generally, the ideological orientation of guerilla groups has been found to be Marxist. Recently, there have been trends toward anarchism and/or nihilism. Domestic terrorism groups generally have adopted the classic strategy of urban guerilla leaders: to demonstrate (through attacks on law enforcement and government resources) that the government is vulnerable and incapable of protecting individuals and society. Although the great size of the United States and the diversity of its society tend to dilute the effects of terrorist attacks on institutions, the overall effect on society is detrimental.

This ideological orientation of many terrorist groups has led them to attacks on the state and society in general. Since the campus unrest of the late 1960s and early 1970s, collective violence has taken on a new dimension in the United States.

A fourth dimension of terrorism includes the new types of activities that have been or may be pursued. Terrorist groups are generally composed of intelligent and well educated people with strong international links. These groups have become increasingly sophisticated in their use of weaponry and choice of targets.

An emerging concern is that the new target of terrorists may be vital industries, such as utilities, petro-chemical producers, nuclear power plants, public transportation, computerized facilities, and financial institutions. The disruption to the populace that would be caused by such activities has been recognized. Because civil disruption

following such activity would be widespread, the federal government has undertaken an assessment of incident and consequence management.

A fifth inquiry involved the media's role in reporting terrorist incidents. Because terrorist activity is generally "symbolic" in nature, it receives a great deal of media attention. This has caused controversy about the publicity given to terrorist groups.

For example, many authorities feel that the Springer press in Germany greatly added to the notoriety of the Baader-Meinhof Gang by the extensive coverage of its activities. It has been suggested that the government and the press should compromise regarding publicity about groups so that symbolic terrorist actions do not cause societal fear and tension.

The federal government generally seeks voluntary media cooperation to minimize risk to life and to reduce public fears.

The above mentioned factors may require Governors and their state emergency offices to deal with disruptive and dangerous terrorist incidents. Consequently, a sixth step involved an investigation of the state emergency acts of the 57 states, territories, and commonwealths. Each state law was reviewed according to a list of 22 emergency powers selected by the Emergency Preparedness Project as being applicable to the management of terrorist activities.

Each of the Governors have different powers and responsibilities in case of an emergency declaration. A determination of the scope of such powers and responsibilities is necessary for thorough emergency planning and response.

The seventh step was to catalogue all state criminal statutes directly related to terrorism. Only 16 states have enacted statutes that prohibit "terroristic" threats and acts. Of these, 12 prosecute activities causing general civilian disruption.

Although there has been much controversy in state legislatures as to the effectiveness of these twelve statutes, they:

- Classify as a crime a threat to commit violence against any person for the purpose of terrorizing;
- expand the scope of state assault statutes to eliminate the need to prove the effect on the victim, or whether the victim reasonably believed that the threat could be carried out;
- apply to any potential victim;
- do not require that the threat be directly communicated to the victim;
- provide for criminal culpability even if the perpetrator has a benign ultimate purpose;
- proscribe threats which result in civilian disruption.

The eighth step of this inquiry was an examination of the Federal Criminal Code. It was found to have no specific prohibition against terrorist acts and threats; however, a multitude of federal laws, both substantive and procedural, may be used to apprehend and prosecute suspected terrorists. This review resulted in two major findings:

- Many problems remain in gathering intelligence about terrorist groups and their activities;
- Federal-state jurisdictional boundaries in law enforcement and prosecutions are not well understood.

The ninth inquiry concerned the current role the federal government plays in the event of a terrorist incident. It was discovered that the federal government is involved in pre-incident planning, incident management, and preparation for managing the consequences of a terrorist incident.

At least 25 federal agencies and departments have responsibilities related to the handling of a terrorist event. Several deal with continuity of government at the national level, and others make direct assistance available to states for the mitigation, preparedness, response, and recovery aspects of an emergency.

Although many federal organizations are actively involved in terrorism management, only recently has a program been instituted to coordinate their activities. Consequently, Governors and state governments may not be fully aware of the extent and nature of their responsibilities.

Review of State Capabilities

Study findings indicate that an immediate effort should be made by state governments to: (1) examine their own capability to deal with a disruptive terrorist incident and (2) inventory federal government resources available at the state level. In performing such a review, the following questions may be helpful:

- What is the recent incidence of terrorist activity in your state, and what is the future potential?
- Does the Governor have the statutory authority to declare a state of emergency in connection with handling a disruptive terrorist incident?
- Does the state have a Comprehensive Emergency Manager who can act on behalf of the Governor to coordinate these and other emergency matters with the legislature, state planning and budget offices, line agencies, and the state emergency office?
- Are the appropriate state law enforcement authorities able to secure adequate intelligence about terrorist groups operating in your state and their activities?
- Does your state criminal code provide for the prosecution of terrorists for actions, threats, and the causing of civilian disruptions?
- Is pending federal legislation that is relevant to state terrorism management regularly inventoried and addressed by the state?
- Is the state emergency office actively involved in preparing for terrorist events that have public protection dimensions?
- Is there an inventory of the vital public facilities and industries within your state, and have you assessed their vulnerability and/or security?

- Are there adequate, well-trained personnel at both state and local levels to apprehend terrorists and manage disruptive terrorist incidents?
- Do appropriate state agencies and departments have up-to-date information about the role of the federal government in managing terrorist events?
- Has your state taken advantage of training programs provided by the federal government to aid law enforcement?
- Have appropriate federal officials been contacted to establish emergency liaison?
- Is federal intelligence information readily available to the appropriate state law enforcement agency?
- Has an effort been made to cooperate with the media in case of a terrorist incident?

-
1. Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 95th Congress, 2d Sess. 655-664 (1978).
 2. Figures collected from state emergency offices by Emergency Preparedness Project, National Governors' Association.
 3. See S.2236, H.R. 10804.
 4. Statement of Deputy Attorney General Benjamin R. Civiletti "Concerning the Federal Government's Capabilities for Responding to a Domestic Terrorist Incident," Before the House of Representatives Subcommittee on Civil and Constitutional Rights of the Judiciary Committee (August 16, 1978).
 5. Authorized by Reorganization Plan #3, effective September 16, 1978. FEMA's new responsibilities will not affect the present duties of other federal departments and agencies.
 6. Cabinet Committee to Combat Terrorism, established in September, 1972, was abolished in September, 1977. Its Working Group on Terrorism was maintained. The Executive Committee of the Working Group was also formed in September, 1977. See M. Browne and A. Nanes, International Terrorism, p. 2 (1978).

OVERVIEW OF DOMESTIC TERRORISM

The literature concerning both domestic and international terrorism is plentiful. Research done by law enforcement agencies, congressional committees, academics, and investigative departments, has examined statistical issues, the composition and leadership structure of terrorist groups, and their activities. However, comparisons of research are difficult due to debate about the definition of "terrorism."

Definitions of Terrorism

Lack of definition causes three types of problems:

- due to definitional differences and usage needs, a law enforcement agency's statistical base may greatly differ from an academic one; consequently, it may be impossible to compare or use existing statistical surveys meaningfully;
- "terrorism" and "terroristic acts" are usually not defined by law. The question arises, therefore, as to whether a suspect is being prosecuted for a crime of violence or a "political" crime; statutory assumptions vary;
- managers who deal with terrorism need to inventory and define the terroristic activities against which they wish to prepare and implement plans; philosophical definitions of terrorism differ.¹

Some current definitions of "terrorism" are:

- terrorism includes, but is not limited to, the calculated use of violence to obtain political goals through instilling fear, intimidation, or coercion. It usually involves a criminal act, often symbolic in nature and intended to influence an audience beyond the immediate victims.²
- to create a climate of fear and intimidation by means of threats or violent actions causing sustained fear for personal safety in order to achieve social or political goals.³

- an organized pattern of violent behavior designed to influence government policy, or intimidate the population for the purpose of influencing government policy.⁴
- violent, criminal behavior designed primarily to generate fear in the community, or a substantial segment of it, for political purposes.⁵
- violence without a political or ideological dimension.⁶
- "symbolic terrorism" as an isolated event with only local impact.⁷
- "disruptive terrorism" as acts that cause economic, social, political, or national security effects of sufficient magnitude to produce regional or national consequences requiring a coordinated federal response.⁸

Terrorism Incidence

Once working definitions have been established, an effort should be made to distill relevant statistics into meaningful forms for policy-making purposes.

Using the FBI's definition of terrorism as "an organized pattern of violent behavior designed to influence government policy, or intimidate the population for the purpose of influencing government policy," the following statistics were recorded for 1977:

- 106 acts of domestic terrorism, including 54 bombings;
- 29 firebombings;
- 10 attempted bombings;
- 2 attempted firebombings;
- 2 shootings;
- 2 arson;
- 2 bank robberies;
- 2 recoveries;
- 2 hoaxes;
- 1 holding for hostage.⁹

Even though this "official" total is down from 116 for 1976 and 129 for 1975, the drop may reflect reporting variations. The potential consequences of terrorism are increasing in severity.

The 1977 incidents were concentrated heavily in east and west coast population centers, for example:

- 40 - New York (State)
- 32 - California
- 7 - Washington
- 7 - Florida
- 5 - Washington, D.C.
- 4 - Oregon
- 4 - Puerto Rico
- 4 - Illinois
- 1 - Colorado
- 1 - Massachusetts
- 1 - Pennsylvania.¹⁰

A large percentage of international terrorist incidents are aimed at American personnel and business. The National Foreign Assessment Center of the Central Intelligence Agency reported that in 1977:

- 23 incidents of international terrorism occurred in North America;
- 84 incidents of international terrorism were directed at United States citizens and property at home and abroad, of which:
 - 33 were against business facilities or executives;
 - 21 were against diplomatic officials or property;
 - 13 were against private citizens;
 - 10 were against military officials or property;
 - 7 were against government officials or property.
- the categories of attack against the United States citizens and property were:
 - explosive bombing - 35;
 - incendiary bombing - 34;
 - assassination - 5;
 - hijacking - 4;
 - sniping - 4;
 - kidnapping - 4;
 - barricade/hostage - 3;
 - armed attack - 3;
 - letter bombing - 1;
 - other actions - 1.¹¹

Human targets of terrorist groups include United States diplomatic officials, military personnel, business executives, government workers, and private citizens. Property targets include foreign consulates, business facilities, public utilities, oil refineries, government agencies, airlines, and private residences.

Significantly, bombings and the setting of incendiary devices, which would cause the greatest harm to the general population, comprise the largest group of criminal violations. In 1977, 162 people were injured and 22 killed by a single bombing incident.¹² The Bomb

Summary states:

"Since the beginning of 1972, 212 individuals have lost their lives, and 1,270 have suffered injuries in bombing incidents. Additionally, the monetary value of property damage, as a result of these crimes was in excess of \$72,350,000."¹³

Terrorist Groups

Internationally, the most active terrorist groups are the Popular Front for the Liberation of Palestine (PFLP), the Japanese Red Army, the West German Baader-Meinhof Gang, and the Italian Red Brigades.

Recently, the national news media have reported a number of groups who through telephone calls and written statements have taken credit for "terrorist" incidents." Some of these groups are:

- NWLF (New World Liberation Front) - active in California, Oregon, Washington, and Colorado;
- FALN (Fuerzas Armada de Liberacion Nacional Puertorriquena) - active in Chicago, New York City, and Washington, D.C.;¹⁴
- CRIA (Comandos Revolucionarios Independistas Armadas) - active in New York City;
- GJB (George Jackson Brigade) - active in Oregon and Washington State;
- JAR (Jewish Armed Resistance) - active in New York City;
- WUO (Weather Underground Organization) - active nationally;
- CORU (Coordinacion de Organizaciones Revolucionarias) - core group of Cuban exile terrorists active in southeast United States;
- Cuban Commandos, anti-Castro Cubans - active in southeast United States;
- ELF (Environmental Life Force) - active in California;

- Croatian National Resistance - active in Chicago, Illinois area;
- Armenian Group of 28 - active in California;
- KKK (Klu Klux Klan) - active nationally;
- Sam Melville/Jonathan Jackson Unit - active in Massachusetts;
- CRDP (Comandos Revolucionarios del Pueblo) - active in Puerto Rico.

These groups advocate different philosophies and pursue varied goals. For example, the last two known members of the George Jackson Brigade were convicted on eight felony counts, including bombings and robberies, in Federal District Court in Seattle, Washington, on July 12, 1978. They asked their jury to acquit them because they were not guilty of crimes against "the people" and because they "only sought to fight the evils of capitalism."¹⁵ The FALN has a "declared mission of freeing Puerto Rican political prisoners and ending . . . mainland exploitation of the island's resources."¹⁶ The Croatian National Resistance is "seeking to free their Balkan homeland from the rule of Yugoslavia."¹⁷

In the case of international terrorists, a philosophical bent toward Marxism or anarchism is common.¹⁸ It has been noted by some authorities that certain groups are becoming nihilist in ideology.¹⁹

Terrorist groups have been found to be:

- ideologically oriented;
- intelligent;
- located worldwide;

They have:

- support states;
- international links;
- research capacity;
- a high success rate for their activities.

In general, terrorists' personal characteristics include:

- average age of 20;
- both male and female, with the numbers of females increasing recently;
- single or separated;

- middle, upper class;
- urbanites;
- university graduates;
- Marxist and anarchist in ideology;
- recruited at universities;
- students, lawyers, doctors, government employees, sociologists, psychologist. ²⁰

Several recent studies have investigated the structure of terrorist groups to discover the basis of their organization. A recent profile based on the Symbionese Liberation Army (SLA), well-known for its abduction of Patricia Hearst, indicates that three general types of personalities are found in a terrorist group;

- the leader - in many cases found to be an example of a paranoid personality type; a trained Marxist;
- the activist - in many cases an example of an anti-social personality, frequently a former soldier or ex-convict;
- the idealist - usually a young recruit from an academic environment, a "gofer" or minor functionary. ²¹

The major finding from these studies is that terrorist groups are generally well organized and have a designated chain of command which enables them to achieve their objectives as well as escape prosecution.

Although the group profile affirms several types of individuals psychopathology involving deviant behavior, the Report of the Task Force on Disorders and Terrorism of the National Advisory Committee on Criminal Justice Standards and Goals points out that efforts to "improve the social climate" should be the first step taken by government so that criminal and/or deviant behavior is not tolerated or supported by society.

1. Some organizations confine themselves to autonomous criminal activities, whereas others are nationalistic guerilla groups with a well publicized cause.
2. S.2236, introduced in the U.S. Senate by Senator Ribicoff of Connecticut on October 25, 1977.

3. California Penal Code, Title II, §422.5.
4. General working definition in Federal Bureau of Investigation Guidelines; Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 95th Congress, 2d Sess. 216 (1978) (Statement of Mary C. Lawton).
5. U.S. Department of Justice, Law Enforcement Assistance Administration, National Advisory Committee on Criminal Justice Standards and Goals. "Report of a Task Force on Disorders and Terrorism," p. 3.
6. The Italian Red Brigades.
7. U.S. General Services Administration, Federal Preparedness Agency.
8. *Ibid.*
9. Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 95th Congress, 2d Sess. 655-664 (1978).
10. *Ibid.*
11. Includes occupation of facilities without hostage seizure, shootouts with police, sabotage.
12. U.S. Department of Justice. FBI Uniform Crime Reports Bomb Summary, (Washington, D.C., 1977), p. 13.
13. *Ibid.*, p. 2.
14. J. Volz writes that the NWLF and the FALN are viewed as the most dangerous terrorist groups operating in the United States. He also quotes FBI Director William Webster as saying that the FBI had great trouble tracking down U.S. terrorists because their tightly knit underground is "the most difficult we have to investigate." "Hints Cuban Ties to Terror," New York Daily News (July 7, 1978).
15. L. Ledbetter. "Last 2 Jackson Brigade Members Guilty in Bombings and Robberies," New York Times (July 13, 1978).
16. J. Cummings. "Apartment Blast Tied to Radicals," New York Times (October 15, 1978).
17. J. O'Brien, "How Croat Terror Trial 'Blew Up' on Federal Police," Chicago Tribune (October 15, 1978).
18. Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 95th Congress, 2d Sess. 87-89 (1978) (Statement of Dr. Charles Russell).
19. *Ibid.*, p. 860.
20. *Ibid.*, pp. 83-95.
21. *Ibid.*, pp. 757-782.

PRESENT AND FUTURE TRENDS

Although political violence has existed in the United States since the American Revolution, new forms of politically motivated terrorism of significance to Governors are emerging. In the past, such violence commonly resulted from the importation of foreign ideologies and movements, or were relatively spontaneous actions directed primarily at local targets. Generally, this violence was either not directed at government or was intended to influence rather than overthrow government.

"An arresting fact about American violence, and one of the keys to understanding of its history, is that very little of it has been insurrectionary. Most of our violence has taken the form of action by one group of citizens against another group, rather than by citizens against the State."¹

During the last decade, the direction of political violence has changed. The type of terrorism which is most likely to occur today is neither imported nor spontaneous. An examination of recent domestic terroristic acts reveals that a substantial portion is committed by native-born Americans. Further, domestic terrorism in the 1970s has been characterized by:

- violence directed against the state and society in general;
- an increasing degree of organizational sophistication;
- increasing use of high level technology;
- increasing sophistication in the choice of targets;
- sophisticated use of the mass media to further terroristic goals.

These elements clearly distinguish modern terrorism from both traditional American political violence and the recent campus unrest of the 1960s. Furthermore, these characteristics lead directly to the increased involvement of state government in all four phases of emergency

management--mitigation, preparedness, response, and recovery--as they relate to domestic terrorism.

Violence Directed Against the State and Society

Beginning with the campus unrest in the 1960s and early 1970s, collective violence in the United States has become more organized and ideological. A case in point is the development of the Weather Underground Organization (WUO). Originally part of the Students for a Democratic Society (SDS), the WUO went underground in 1970 and began advocating revolutionary violence against the state, mainly in the form of bombing government buildings. The Weather Underground claimed:

"Now we are adapting the classic guerilla strategy of the Viet Cong and the urban guerilla strategy of the Tupamaros [guerilla organization in Uruguay] to our own situation..."²

The classic urban guerilla strategy, articulated by Carlos Marighella in the "Minimanual of the Urban Guerilla," is an outgrowth of the orthodox Marxism practiced by the Russian Bolsheviks, with one difference:

"Instead of an uprising by politically indoctrinated masses led by an indigenous communist party, the urban guerilla's theory of revolution is to demonstrate that the government is incapable of fulfilling its primary purpose, that of providing a stable and ordered society. If this basic function of government is eroded in practice, then the masses will reject the government in power. Rejection will come about through revolution, which will come to fruition when the most visible symbol of government, law enforcement, is shown to be impotent in battling the guerilla."³

In keeping with this philosophy, Marighella's two primary objectives are:

- the physical liquidation of the chiefs and assistants of the armed forces and the police;
- the expropriation of government resources and those belonging to the big capitalists...with small expropriations used for the maintenance of individual urban guerillas and large ones for the sustenance of the revolution itself.⁴

Although the size of the United States and the diversity of the society tend to cushion the country against some of the negative political ramifications of domestic terrorism, the effect on society of individual acts may be pronounced. Personal and financial damage has created distrust and anxiety, particularly in prime target urban areas.

An Increasing Degree of Organizational Sophistication

It was noted in Chapter 1 that terrorist groups are generally well organized and have a predetermined chain of command. Because of this preparation and planning, their criminal activities have a high rate of success.

The nature of terroristic activities changes as the organization becomes more experienced. Generally, the first criminal violations are threats, hoaxes, and bombings which require little planning for implementation. As time goes on, the emphasis may shift to kidnappings for ransom, or strikes at well protected industrial or governmental targets which require much more sophisticated abilities.

Many members of international terrorist groups have undergone extensive training in the Mid-East in weaponry, organization, and planning. This common training has produced extensive cooperation between groups whose objectives and methods may differ. Thus, a neophyte group may gain in acumen by collaborating with a well established organization.

Increasing Use of High Level Technology

One of the concerns of government is that terrorists may be able to obtain nuclear materials. Currently, there appears to be a concentration on sophisticated weaponry, e.g., Russian designed Polish "Makarov" police pistols and the Czechoslovakian Nagant, and the development of destructive explosives.

Several physicists have expressed fears of private development of nuclear weapons. In reaction to this concern, the Nuclear Emergency Search Team (NEST) has been authorized to assess nuclear threats under the auspices of the Federal Bureau of Investigation, provide hazard assistance, and assist in neutralizing nuclear explosive devices.

The California Office of Emergency Services has designated four types of nuclear threats to be managed by federal, state, and local agencies:

- dispersal of radioactive material;
- detonation of a conventional bomb salted with any radioactive material;
- detonation of an improvised nuclear explosive device;

- detonation of a stolen nuclear weapon.

Another severe threat would be posed if a terrorist group gained access to biological or chemical weapons. Because of the widespread impact that would result from the use of such weapons, the federal government has undertaken to assess the likelihood of such criminal violations and the vulnerabilities of the system to provide for incident and consequence management.⁵

Increasing Sophistication in the Choice of Targets

In keeping with the general terrorist philosophy of exposing the vulnerability of society, targets tend to be "symbolic" in nature. In the past five years, targets have usually been aircraft, government facilities, and law enforcement facilities and personnel. Recently, however, there has been a shift of focus to energy suppliers, nuclear plants, and other vital industries.

Consequently, there has been a growing interest in plans to protect industries, computerized operations, communications facilities, and monetary and financial systems.

Sophisticated Use of the Mass Media

Terrorist activity, because of its dramatic and theatrical nature, has received much media coverage. It has been suggested that publicity encourages further terrorist activity and provides material for emulation by other groups.

Thus, the issue of the responsibility of the free press arises in regard to the protection of the public. The United States Department of Justice advocates the following stance:

"We recognize that under the First Amendment, the government has no right to prohibit or limit coverage of a newsworthy event....we may, however, seek voluntary media cooperation in minimizing risks to life. We may suggest that certain media actions might exacerbate a dangerous situation. But that is basically the extent of our proper role. Our judgment, based on our experience, is that the mutual cooperation and understanding of law enforcement officials and news men can and must be worked out on the spot in each situation."⁶

Some have suggested that an example of media coverage exacerbating a dangerous situation was the Springer Press coverage of the Baader-Meinhof Gang in West Germany. The coverage added to the terrorists' notoriety and encouraged the subsequent repressive government measures to apprehend and prosecute them.

Consequently, an important consideration at both the federal and state level is to establish liaison with the media to ensure mutual cooperation and understanding..

1. U.S. Department of Justice, Law Enforcement Assistance Administration, National Advisory Committee on Criminal Justice Standards and Goals, "Report of the Task Force on Disorders and Terrorism," p. 1.
2. Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 95th Congress, 2d Sess. 733 (1978).
3. *Ibid.*, p. 735.
4. *Ibid.*, p. 734.
5. *Ibid.*, p. 880 et seq.
6. Statement of Deputy Attorney General Benjamin R. Civiletti Concerning the Federal Government's Capabilities for Responding to a Domestic Terrorist Incident, Before the House of Representatives Subcommittee on Civil and Constitutional Rights of the Judiciary Committee (August 16, 1978).

GUBERNATORIAL/STATE AUTHORITY IN EMERGENCIES

Appropriate state disaster or emergency legislation provides the powers needed by the Governor and state government to mitigate a crisis, respond to it, and manage its aftermath. Due to variously perceived needs, legal authorities for Governors and other state officials to deal with potentially catastrophic terrorist incidents vary between the 57 American states, commonwealths and territories.

States may wish to review their authorities because terrorists are choosing more sophisticated targets, and the potentially catastrophic effects of domestic terrorism could expand. For example, a bombing of a public utility substation, attributed to the NWLF in Sausalito, California on August 29, 1977, heavily damaged three transformers and caused a blackout through most of the city. Quantities of oil leaked into the streets, the sewer system and the San Francisco Bay. This serious incident might have had far worse consequences had there been several bombs targeting additional utilities, energy suppliers, transportation facilities, or public buildings.

This chapter examines differing states' emergency authorities as they relate to terrorism. An analysis of the major emergency statutes for each state reveals most state emergency legislation empowers the Governor to initiate a "state of emergency" which triggers activation of appropriate state response resources.

They run the gamut, however, from whether the definitions of "disaster" and "emergency" are broad enough to include terrorism, to whether the Governor has the authority to evacuate any stricken or threatened area.

Because state legislation varies considerably due to unique needs, demands, or practices, all powers are not equally useful in all states. It is important that each state be satisfied that it has adequate powers based on an analysis of its own current needs. The material presented here may simply provide some helpful information.

As a basis for examining all state laws, the Example State Disaster Act of 1972 with supplements, prepared by the Disaster Project and the Committee on Suggested State Legislation of the Council of State Governments, was analyzed.

The Example State Disaster Act was developed as a model for states to use in updating their disaster/emergency legislation in the mid 1970s.¹ Generally, most state statutes had been enacted during the 1950s to deal with preparedness for military and/or nuclear attack. Generally, this civil defense oriented legislation did not address the problems of natural disasters and emergencies.

The full text of the Example Act is reproduced in APPENDIX C. The Act makes specific provision for special powers.² Such powers had been generally regarded to be inherent in the Governor's position as Chief Executive of the state, or had been assumed because there was a gap in responsibilities of other state agencies and departments. The Example Act also defines "disaster" and "emergency," vests primary responsibility in the Governors, and provides for immunity of state officials from legal liability for acts performed during a declared period of emergency.

Since 1972, 19 states, commonwealths, and territories have adopted some or all of the provisions of the Example Act (See APPENDIX A). Many state statutes that are not modeled on the Example Act have similar provisions nonetheless.

From the Example Act twenty-two essential emergency powers relating to terrorism were identified and all state emergency authorities were then searched for these powers, based on questions developed to illustrate the powers. These are enumerated and amplified below, and summary findings are illustrated in a chart at the end of this chapter.

Frequently, it was difficult to determine the extent to which the state disaster emergency acts authorize certain powers, and some interpretation was necessary. This occurred where the state act contained no provision addressing the power directly, but did contain one or more relevant provisions which could be interpreted to provide statutory authority for that emergency power. However, in no case, was a broad mandate (i.e., "the Governor may do any and all things necessary to effectuate the purposes of this Act") interpreted as statutory authority for any specific gubernatorial power.

Many of the close decisions have been footnoted and qualified, and citations to specific sections of the state act have been given for each affirmative response. (See APPENDIX B).

Other individual state emergency authorities stemming from executive orders, reorganization plans, interagency agreements, and administrative directions were not analyzed.

The following is a commentary on the approach used in the search for each of the 22 powers.

1. Does the act contain a definition of disaster/emergency broad enough to encompass domestic terrorism (i.e., man-made disaster/emergency, non-accidental)?

(Determination: 33 affirmative; 24 negative)

This question is significant in connection with Gubernatorial authority under the act to declare a state of emergency due to a disruptive terrorist act. Under nearly all state acts, such a declaration triggers extraordinary emergency powers for the Governor and state officials, and normally activates all appropriate state resources.

The Example Act states that the cause of the disaster or emergency may be natural or man-made. Some state statutes appear to include only natural disasters, or the state statute makes no reference to causes, but identifies specific kinds of disasters, all of which are natural. Of the state statutes which include man-made causes in the disaster definition, some address only those which are accidental as opposed to intentional.

Significantly, the Example Act lists hostile military or paramilitary action as a cause of disaster. Some state statutes list only military action as a possible cause of emergency. Of those that do so, some explicitly define disaster in terms of actual enemy attack upon the United States, imminent enemy attack upon the United States, or both. The omission of paramilitary action in the definition is important because the more sophisticated terrorist organizations appear to have a paramilitary structure.

Most state laws are unclear about whether the Governor can declare an emergency when only a credible threat of disaster from a terrorist incident exists. Some state statutes limit the definition to actual occurrence of damage. The Example Act includes the imminent threat as well as the actual occurrence of widespread or severe damage.

Some state statutes do not contain a definition of disaster, yet confer upon the Governor the authority to declare a disaster or emergency situation.

2. Does the act vest primary responsibility in the Governor for meeting the danger of disaster?

(Determination: 35 affirmative; 22 negative)

This question is designed to determine whether responsibility for managing a disaster or emergency is clearly fixed in the Governor. Many of the state acts are unclear whether the Governor or the director of emergency services is primarily responsible. Sometimes a board with oversight authority is required. Frequently, the act is silent as to responsibility.

The Governor is deemed to have primary emergency authority if the state act stipulates that the Governor "shall be responsible for carrying out the provisions of this chapter." Commonly, this statement is coupled with an authorization for the Governor to take direct operational control of state emergency functions in the event of a disaster.

3. Does the act free the state, its employees and appointees from liability for death or injury to persons or for damage to property during a disaster/emergency?

(Determination: 38 affirmative; 19 negative)

The Example Act does not contain a broad immunity clause, although the majority of state acts do have such a provision. Some states have purposely repealed the immunity provision, and one state explicitly consents to be sued in the state act. Of the states lacking the immunity provision, some may have other statutory or common law authority to bring about the same result.

The Example Act contains an immunity provision in connection with debris and wreckage. One state lacking a general immunity provision has enacted limited immunity in connection with debris removal.

4. Does the act create a contingency fund for disaster/emergencies?

(Determination: 10 affirmative; 47 negative)

The Example Act contains a financing alternative which includes the creation of a contingency fund to be used solely for disaster or emergency purposes. The Governor may be directly authorized to expend the funds, or prior approval of a board composed of key legislators may be required.

This contingency fund is not to be confused with a Governor's general fund which may be used for many purposes including a disaster or emergency.

5. Does the act provide authority or funding for personnel and administration of the state emergency office?

(Determination: 42 affirmative; 10 negative)

Frequently state acts establish the state emergency office and identify the relationship of its director to the Governor. Many state acts also authorize employees, materials, and supplies for the office. A few state acts also provide funding for the emergency office.

6. Does the act authorize the Governor to declare a state of disaster/emergency, thereby triggering availability of emergency resources and/or emergency Gubernatorial power?

(Determination: 46 affirmative; 11 negative)

Emergency powers are usually available to the Governor, but some powers are activated only by a Gubernatorial emergency declaration. State acts vary as to the number and content of such powers. Some statutes specify none at all. Some of the older state civil defense statutes permit a declaration only upon actual or imminent attack against the United States. Frequently, the emergency powers thereby activated relate only to maintaining civil order and carrying out major defense functions such as air raid warnings and blackouts.

7. Does the act empower the Governor to issue emergency executive orders having the full force and effect of law?

(Determination: 41 affirmative; 16 negative)

Frequently, the state act confers this power upon the Governor without requiring emergency declaration. The Governor is simply authorized to make the necessary rules, orders, and regulations to carry out the

purposes of the act. This provision, standing alone, has not been interpreted to give full force and effect of law to those executive orders. Many state acts give the Governor authority to enforce executive orders during an emergency. In some cases, a separate provision provides sanctions for the violation of executive orders or regulations at any time including during an emergency. In both situations, executive orders have been interpreted as having the full force and effect of law.

8. Does the act authorize the Governor to enter into mutual aid agreements with foreign states or nations?

(Determination: 38 affirmative; 19 negative)

This power is commonly conferred upon the Governor without regard to an emergency declaration. Many states do not grant such power under the disaster or emergency act, but do so in a separate statute enacting the Interstate Civil Defense and Disaster Compact. However, legislative certification may still be required. Where the power is explicitly conferred under a state act, or where the Interstate Civil Defense and Disaster Compact is incorporated into the state disaster or emergency act and explicitly authorizes the Governor to enter into such agreements, the Governor is considered to have this emergency power. Although "foreign states" means any state of the United States, some state acts permit agreements with foreign nations as well.

9. Does the act authorize the Governor to suspend any state regulatory statute which hinders emergency action?

(Determination: 26 affirmative; 31 negative)

This power is significant where red tape must be cut to activate critical health services, food and shelter arrangements or repairs. For example, housing or zoning regulations may interfere with the need for emergency temporary shelter. Frequently the power is not conferred upon the Governor, but the state act automatically suspends any laws, rules, or regulations inconsistent with emergency orders during the emergency declaration period.

10. Does the act authorize the Governor to utilize all available resources of state and local government during an emergency?

(Determination: 49 affirmative; 8 negative)

Some state acts omit any reference to local governments, making it unclear whether those resources are available to the Governor. This provision is often coupled with language directing the officers and personnel of state and local government to cooperate with the Governor and extend such services and facilities as he may require. An affirmative response to this question is indicated only where both state and local resources are available to the Governor.

11. Does the act authorize the Governor to evacuate any stricken or threatened area within the state during a disaster/emergency?

(Determination: 25 affirmative; 32 negative)

This question is interpreted to mean that the Governor has authority under the state act to direct and compel an evacuation during an emergency. State acts are frequently silent about evacuation authority. Some acts limit the Governor's power by authorizing him only to recommend or assist evacuations.

12. Does the act authorize the Governor to commandeer private property during a disaster/emergency?

(Determination: 37 affirmative; 20 negative)

This power is an important substitute for complex state condemnation procedures during emergencies. The power may be useful in acquiring emergency housing or shelter, in acquiring sites for operations centers, or in acquiring any resources needed in a crisis. Most state acts contain such a provision, but in a few cases the power is confined to periods of national war emergency.

13. Does the act authorize the Governor to make provision for use and availability of temporary housing during a disaster/emergency?

(Determination: 29 affirmative; 28 negative)

Where the state act contains no explicit section authorizing the Governor to provide for temporary housing, the power is frequently conferred by one or more sections mentioning emergency housing. For example, one act incorporates the power into the Governor's evacuation authority:

"[the Governor has power to...] take such steps as are necessary for the receipt and care of evacuees."

Another act incorporates the power into a provision dealing with control and utilization of public agencies, i.e., the Governor has the power to direct state and local governments to take measures for emergency housing.

14. Does the act authorize the Governor to make agreements with the federal government for housing units during a disaster/emergency?

(Determination: 27 affirmative; 30 negative)

This power is interpreted as including any kind of contractual arrangements with the federal government for temporary housing units. State acts which contain a general provision authorizing the Governor to accept equipment, materials, or supplies from the federal government by way of gift, grant, or loan are considered insufficient because their provision does not contemplate purchase or lease. The issue here is whether the Governor may actively enter into contractual agreements for temporary housing, necessitating the obligation of state funds rather than mere acceptance of a gift, grant, or housing loan.

15. Does the act authorize the Governor to assist political subdivisions to acquire sites for temporary housing during a disaster/emergency?

(Determination: 13 affirmative; 44 negative)

This authority is a significant corollary to the Governor's power to provide for the use and availability of temporary housing. Although units may be ready and available, state actions may be necessary to acquire housing sites.

16. Does the act authorize the Governor to clear debris and wreckage threatening public health or safety during a disaster/emergency?

(Determination: 13 affirmative; 44 negative)

This power is significant where state government must enter private land. The Example Act incorporates indemnification procedures in this provision and provides for state immunity as well.

17. Does the act authorize the Governor to consider, on a continuing basis, steps that could be taken toward disaster/emergency mitigation?

(Determination: 27 affirmative; 30 negative)

The question here is whether the act specifically authorizes the Governor to consider hazard mitigation. It is not a derivative power. Some state acts authorize the director of the state emergency office to consider mitigation issues, and require that the state disaster plan contain measures for disaster mitigation. The question here is whether or not the act explicitly vests this power in the Governor.

18. Does the act authorize the Governor to suspend state standards, regulations, or controls if they are inadequate, and place in effect new ones to protect public safety?

(Determination: 9 affirmative; 48 negative)

This question relates directly to the mitigation powers of the Governor. The broad power to replace inadequate standards or controls with new ones may be necessary when a Governor learns of a dangerous vulnerability and desires to motivate needed change. The Example Act provides for legislative rejection and judicial review of any standard promulgated by a Governor.

19. Where there is no disaster contingency fund (or it is insufficient), does the act authorize the Governor to use monies appropriated for other purposes to meet disaster needs?

(Determination: 12 affirmative; 45 negative)

The issue here is whether the Governor has access to emergency funds without prior formal action by the legislature. The Governor is frequently empowered to shift appropriations between agencies after affected agencies' normal funds have been exhausted. Sometimes the state act requires consent of a financing board composed of selected legislators. An affirmative response is indicated where the Governor has access to other appropriations, provided formal action by the legislature is not needed.

20. Does the act authorize the Governor to borrow from the federal government or other sources during a disaster/emergency?

(Determination: 43 affirmative; 14 negative)

The Example Act incorporates Gubernatorial borrowing power into its financing provision and restricts the repayment term to a period of two years. Where state acts contain a general provision authorizing the Governor to accept funds from the federal government by way of loan, such provision is considered sufficient. Some state acts require that the Governor first get consent from a disaster funding board.

21. Does the act authorize the Governor to apply to the federal government for community disaster loans for local governments?

(Determination: 17 affirmative; 40 negative)

The question here is whether the Governor has explicit statutory authority to apply to the federal government for loans for local governments that have suffered tax base losses following a major disaster. These loans are intended to pass from the federal government through the Governor to the affected local government. The funds are not for individuals. A general provision in the state act authorizing the Governor to accept federal funds is insufficient. The Example Act sets certain limitations on the amount which can be borrowed. It also permits the Governor to recommend cancellation of the debt to the federal government if local government revenues are insufficient following a disaster.

22. Does the act authorize the Governor to accept grants from the federal government to aid disaster victims, and to administer those grants?

(Determination: 41 affirmative; 16 negative)

A general provision in a state act authorizing the Governor to accept federal grants funds is sufficient for the purposes of this question. The funds are earmarked for individuals who need financial assistance to meet disaster-related expenses or serious needs. States which adopted the Example act frequently set a limit upon the total amount an individual or family may receive.

23. Martial Law

All state emergency acts were searched for this power and only one (Utah)³ authorizes the Governor to declare martial law. In Utah and all the other states, this power arises from the state constitution.⁴ For this reason, this power was not included in the following chart or in APPENDIX B.

1. Many state statutes not modeled on the Example Act have similar provisions nonetheless.
2. See questions #6-22.
3. UCA §63-5-3(b).
4. All 50 states and the District of Columbia constitutionally authorize the Governor to initiate martial law during a crisis. L. Hoegh, Government Authority in Support of Crisis Relocation, Part I - State, (Lexington, KY, 1977), pp. 32, 90.

GUBERNATORIAL/STATE AUTHORITIES IN EMERGENCIES

ACT PROVIDES FOR:	Alabama	Alaska	American Samoa	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	
	1. Disaster Definition Encompasses Terrorism	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
2. Primary Responsibility in Governor																				
3. Freedom of State from Liability																				
4. Disaster Contingency Fund																				
5. Funding for Administration of State Emergency Office																				
6. Declare Disaster/Emergency								*												
7. Issue Emergency Orders		*																		
8. Enter into Mutual Aid Agreements				*		*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
9. Suspend State Regulatory Statutes			*																	
10. Utilize State and Local Resources			*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
11. Evacuate Affected Areas															*	*	*	*	*	*
12. Commandeer Private Property			*																	
13. Provide for Temporary Housing																				
14. Make Agreements with Federal Government for Temporary Housing									*	*	*	*	*	*	*	*	*	*	*	*
15. Assist in Site Acquisition for Temporary Housing										*	*	*	*	*	*	*	*	*	*	*
16. Remove Debris and Wreckage									*	*	*	*	*	*	*	*	*	*	*	*
17. Consider Mitigation Measures																				
18. Replace State Standards for Mitigation																				
19. Use Non-contingency Funds					*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
20. Borrow Money from Federal Government or Other Sources	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
21. Apply for Federal Disaster Loans for Local Governments																				
22. Accept Federal Aid for Disaster Victims								*	*	*	*	*	*	*	*	*	*	*	*	*

● Denotes power found in state emergency or disaster statute.

□ Denotes power not found in state statute.

	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Northern Mariana Isl.	Ohio	Oklahoma	Oregon	Panama Canal Zone	Pennsylvania	Puerto Rico	Rhode Island	South Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Virgin Islands	Washington	West Virginia	Wisconsin	Wyoming
	*						*			*		*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
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	*						*			*		*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

* Denotes qualification to determination. See footnotes in APPENDIX B.

STATE STATUTES ON TERRORISTIC ACTS

Specific statutory authority for the apprehension and prosecution¹ of terrorists has been enacted in a number of states due, in part, to the increased occurrence of collective violence during the 1960s. These laws enable the state attorney general or the district attorney to charge and try defendants for acts that cause fear and intimidation. Significantly, many of these statutes proscribe penalties for causing general civilian alarm and disruption. For example, making threats that result in the evacuation of buildings and transportation facilities is now a criminal offense in several states.

The 16 criminal statutes which outlaw terroristic acts are analyzed and abstracted in this chapter. They exist alongside other state criminal laws under which a terrorist may be prosecuted, such as murder, kidnapping, and assault.

According to the state statutes, terroristic acts may include some form of:

- Shooting or projecting an object at a transportation facility occupied by passengers;
- Using a burning symbol or flambeau to terrorize others;
- Sending or transporting explosives to terrorize;
- Assault with a deadly weapon while in disguise;
- Causing public disruption or serious inconvenience.

Most of the state terroristic act statutes make terroristic threatening a distinct and punishable crime. Consequently, terroristic threats are punishable where the situation may not permit prosecution under other criminal statutes; and, where another criminal statute has been violated, a terroristic threat may constitute a secondary offense.

American Law Institute, Model Penal Code Influence

Generally, state terroristic threat statutes reflect the influence of the American Law Institute Model Penal Code (MPC), (Proposed Official Draft of May 4, 1962). §211.3 of the Code, Terroristic Threats, states:

"A person is guilty of a felony in the third degree if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience."

The Commentary to this section states, in part, that the offense of terroristic threatening has been separated from that of coercion.

"Where, as in the present section, the object is to prevent serious alarm for personal safety, such as may arise from letters or anonymous telephone calls threatening death, kidnapping, or bombing, the class of threats can be narrowly defined, and the gravity of the offense can be related both to the seriousness of the threat and the disturbing character of the psychological result intended or risked by the actor. Moreover, in the case of terroristic threats there is no occasion to exempt from criminal liability on the ground of the actor's possibly benign ultimate purpose, as is appropriate in connection with the offense of coercion." (emphasis added)

Under §211.3, a person is guilty of an offense if he threatens to commit any crime of violence with the required intent. Several state statutes specify, in lieu of "any crime of violence," that the person threatens to cause death, serious physical injury, or substantial property damage.²

State-Level Controversy

Opinion differs among states about the need for making terroristic threatening a crime.

Those opposed argue that:

- effective prosecution is available under other state criminal laws;
- these statutes may create more problems than they cure, namely constitutional attack or appeal on the grounds of vagueness, overbreadth, and denial of the First Amendment rights.

Proponents point out that:

- they make threats to commit any crime of violence to terrorize another a crime;
- they expand the scope of state assault statutes to eliminate the necessity of proving either the effect on the victim; or whether the victim reasonably believed that the threat would be carried out;
- they apply to any potential victim, not just a government or public employee;
- they do not require that the threat be directly communicated to the victim;
- they provide for criminal culpability even if the perpetrator has a benign ultimate purpose;
- they forbid threats which result in civilian disruption.³

Terroristic Threats - Intent

Arguably, one who threatens to commit any crime of violence with intent to terrorize is guilty of the offense of terroristic threatening. Generally, the criminal law defines "intent" as follows:

- General Intent: an awareness of all factors constituting the crime, i.e., the act being committed, the result that will occur, and any circumstances that must exist for the crime to be complete.
- Specific Intent: the doing of an act with a specific objective.

In many cases, the offense of "terroristic threatening" has been an offshoot of general assault and harassment statutes. Assault is usually a specific intent crime. The requirements of specific intent for the commission of a criminal act is important in two respects:

- Evidence: the prosecution must produce evidence that tends to prove the existence of specific intent; specific intent cannot be presumed from the doing of an act;
- Defenses: certain defenses, such as involuntary intoxication, are available in cases involving specific intent.

The MPC uses alternative classifications in defining "intent," as noted in §211.3:

- Purposely and Knowingly: a person acts purposely with respect to his conduct when it is his conscious object to engage in conduct of that nature or to cause such result; a person acts knowingly with respect to the nature of his conduct when he knows that his conduct is of that nature and he acts knowingly with respect to the result of his conduct when he knows that his conduct will necessarily cause that result.

- Recklessness: a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a prohibited result will follow, and such disregard constitutes culpability of a high degree.

Consequently, to determine the type of intent necessary to establish criminal culpability, the origination of the state statute, MPC based or otherwise, should be analyzed.

Defining Terrorism

The word "terrorize" is left undefined in the MPC proposal as well as in most state terroristic threat statutes. The courts of each state are determining the definition in cases challenging the statute on constitutional grounds. The emerging definition of "terrorize" is typically stated in general terms, such as to reduce another to extreme fear, or fear that agitates body and mind, by means of violence or threats.⁴

California has recently enacted a terroristic threat statute defining "terrorize" as meaning "to create a climate of fear and intimidation by means of threats or violent action causing sustained fear for personal safety in order to achieve social or political goals."⁵ Several cases reported in other states involve the terrorist threat offense only in connection with other crimes, such as assault, battery, or attempted murder, where no political or social goals were intended by the offender.⁶

Some of the 16 state statutes do not define terrorism but specify only that the threat to commit a violent crime be done with intent to place any person in fear of imminent serious bodily injury.⁷

Civilian Disruption

Threatening to commit any crime of violence with purpose to terrorize another, or in reckless disregard of the risk of causing terror, or to cause the evacuation of a building, place of assembly, or facility of public transportation is an offense under the MPC proposed legislation.

Several states enacted this legislation in varied forms during the campus unrest of the 1960s to penalize actions intended to cause serious public inconvenience,⁸ such as street barricades and occupation of public buildings.

Some state statutes classify the causing of any reaction by an official or volunteer emergency response agency as an offense.⁹

Penalties

The penalty for terroristic threatening varies from state to state. Most states categorize the offense as a felony, as suggested in the MPC proposal. Terms of imprisonment for a felony conviction generally range from one to five years, with some statutes fixing a minimum determinate term. Fines range from none to \$10,000.

Frequently, the terroristic threat statute separates the penalties, making it a lesser offense to threaten a violent crime with intent to terrorize another, and a greater offense to threaten a violent crime with intent to cause evacuation of a building or to cause serious public inconvenience. In cases of a lesser offense, the crime is classified as a criminal misdemeanor.

Constitutional Challenges

Several state terroristic threat statutes have been attacked, unsuccessfully, on the ground that they conflict with the United States Constitution and applicable state constitutions. No such case has reached the United States Supreme Court.

Challenges include the following points:

- The statute is void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment;¹⁰
- The statute is void for overbreadth in violation of the First Amendment;¹¹
- The statute cannot be uniformly enforced.

The first argument is generally based on the failure of the statute to define "threat" and "terrorize." Consequently, it fails to give fair and adequate warning of the conduct outlawed.¹²

The response to this argument has been that all the state or federal constitution requires is a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."¹³

The First Amendment challenges have generally been asserted on the ground that the statute is overbroad, that is, sweeps certain kinds of constitutionally protected speech into its parameters and limits free speech.

The courts have replied that the Constitution does not protect the "right" to make terroristic threats,¹⁴ and the statute prohibits only those threats. Communication of threats by an indifferent person for the purpose of warning or prediction is not forbidden by the statute.¹⁵

Another related challenge is that the language of the statute is so broad that it conflicts with the offense of simple assault. One court responded that:

"...the terroristic threats statute prohibits the communication of a threat to commit a crime of violence designed to terrorize the victim. When the communication of the threat is done to terrorize another the crime is complete. The communication of a terroristic threat is not punishable under the simple assault statute and one may be guilty of simple assault without violating the terroristic threats statute."¹⁶

In reaction to these challenges, some states have included a "severability" clause. This clause states that even if a court strikes down any section of the statute as unconstitutional, the remainder of the statute will continue in force; i.e., the invalidity of one clause will not affect other provisions or applications of the act which can be given effect without the invalid provision or application.¹⁷

1. See chapter on Federal Statutory Authority and Jurisdiction.
2. See statutes of Arkansas, California, Delaware and Hawaii.
3. See T. Reardon and M. Lipson, Proposed Terroristic Threat Laws for California, (State of California, Office of the Attorney General, March 17, 1977).
4. State v. Gunzelman, 210 Kan. 481, 502 p. 2d 705 (1972), quoting Armstrong v. Ellington, 312 F. Supp. 1119 (W.D. Tenn. 1970).
5. California Code, Penal, §422.5.
6. See, e.g., Lanthrip v. State, 235 Ga. 10, 218 S.E. 2d 771 (1975); State v. Gunzelman, Id.
7. See also statutes of New Hampshire, Texas, and Utah.
8. See Interference with Public Property: The Morrill Hall Act, 54 Minn. L. Rev. 1067 (1970).
9. See statutes of Texas and Utah. See also W. Steele, The Impact of the New Penal Code on First Amendment Freedoms, 38 Texas Bar Journal 245 (1975).

10. Masson v. State, 320 F. Supp. 669 (N.D. Ga. 1970); Lanthrip v. State, Id.; State v. Gunzelman, Id.
11. State v. Porter, Me., 384 A. 2d 429 (1978). See also Thornhill v. Alabama, 310 U.S. 88, 60 S Ct. 736, 84 L. Ed. 1093 (1940).
12. State v. Gunzelman, Id.; See also, J. Ghent, Validity and Construction of Terroristic Threat Statutes, 58 A.L.R. 3d 533.
13. Lanthrip v. State, Id.; See also, United States v. Petrillo, 322 U.S. 1, 7; 67 S. Ct. 1538, 1542; 91 L. Ed. 1877.
14. Lanthrip v. State, Id.; See also, Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S. Ct. 766, 769; 86 L. Ed. 1031, 1035 (1942).
15. State v. Porter, Id.
16. Lanthrip v. State, Id.
17. See California Code, Penal, §422.

Abstracts of State Statutes Concerning Terroristic ActsARKSANSAS CRIMINAL CODE
TITLE 41

- Terroristic Threatening
ARK. STAT. ANN. §41-1608 states:
(1) A person commits the offense of terroristic threatening if with the purpose [of] terrorizing another person he threatens to cause death or serious physical injury or substantial property damage to another person.
(2) Terroristic threatening is a class D felony."¹
- Terroristic Act - Definition
ARK. STAT. ANN. §41-1651 states:
"For the purpose of this Act [§§ 41-1651, 41-1652], a person commits a terroristic act when, while not in the commission of a lawful act, he shoots at or in any manner projects an object with the intent to cause injury to persons or property at a conveyance which is being operated or which is occupied by passengers."²
- Terroristic Act - Penalty
ARK. STAT. ANN. §41-1652 states:
"Hereafter, any person who shall commit a terroristic act as defined in Section 1 [§41-1651] hereof, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars (\$500) nor more than Twenty-Five Hundred Dollars (\$2500) or by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than five (5) years, or by both such fine and imprisonment."³

1. Amended by 1975 Ark. Acts, No. 280, §1608.
2. Amended by 1975 Ark. Acts, No. 312, §1.
3. Amended by 1975 Ark. Acts, No. 312, §2.

CALIFORNIA PENAL CODE
TITLE 11.5

- Terroristic Threats - Felony
§422¹ states:
"Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with intent to terrorize another or with reckless disregard of the risk of terrorizing another, and who thereby either:
(a) Causes another person reasonably to be in sustained fear for his or hers or their immediate family's safety;
(b) Causes the evacuation of a building, place of assembly, or facility used in public transportation;
(c) Interferes with essential public services; or
(d) Otherwise causes serious disruption of public activities, is guilty of a felony and shall be punished by imprisonment in the state prison."

• Terrorize.

§422.5² states:
"As used in this title, 'terrorize' means to create a climate of fear and intimidation by means of threats or violent action causing sustained fear for personal safety in order to achieve social or political goals."

1. Added by 1977 Cal. Stats., c. 1146, §1.
2. Ibid.

DELAWARE - CRIMES AND CRIMINAL PROCEDURE
Title 11

- Terroristic Threatening
DEL. CODE tit. 11, §621¹ states:
"A person is guilty of terroristic threatening when:
(1) He threatens to commit any crime likely to result in death or in serious injury to person or property.
(2) He makes false statements:
(a) Intending to cause evacuation of building, place of assembly, or facility of public transportation;
(b) Intending to cause serious inconvenience; or
(c) In reckless disregard of the risk of causing terror or serious inconvenience.
Terroristic threatening is a class A misdemeanor."
- Sentence for Misdemeanors
DEL. CODE tit. 11, §4206² states:
"(a) The sentence for a class A misdemeanor shall be fixed by the court and shall not exceed 2 years imprisonment and such fine or other conditions as the court may order; provided, however, that the court shall require a person convicted of issuing a worthless check under §900 of this title to make restitution to the person to whom the worthless check was issued."

1. As amended by 58 Del. Laws, c. 497, §1.
2. As amended by 58 Del. Laws, c. 497, §2; 59 Del. Laws, c. 44, §1.

CRIMINAL CODE OF GEORGIA
Title 26

• Terroristic Threats and Acts

GA. CODE ANN. §26-1307¹ states:

"(a) A person commits a terroristic threat when he threatens to commit any crime of violence, or to burn or damage property, with the purpose of terrorizing another, or of causing the evacuation of a building, place of assembly, or facility of public transportation, or otherwise causing serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. No person shall be convicted under this section on the uncorroborated testimony of the party to whom the threat is communicated.

(b) A person commits a terroristic act when he uses a burning or flaming cross, or other burning or flaming symbol or flambeau with the intent to terrorize another or another's household.

(c) A person convicted of a terroristic threat or act shall be punished by a fine of not more than \$1,000 or by imprisonment for not less than one nor more than five years, or by both."

1. Amended by 1968 Ga. Laws, pp. 1249, 1281.

HAWAII PENAL CODE
Title 37

• Terroristic Threatening

HAW. REV. STAT. §707-715¹ states:

"(1) A person commits the offense of terroristic threatening if he threatens, by word or conduct, to cause bodily injury to another person or serious damage to property of another:

- (a) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or
(b) With intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threatening is a misdemeanor."

• Sentence of Imprisonment for Misdemeanors

HAW. REV. STAT. §706-663² states:

"A person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor."

• Fines

HAW. REV. STAT. §706-460³ states:

"A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$10,000, when the conviction is of a class A felony or a class B felony;
(2) \$5,000, when the conviction is of a class C felony;
(3) \$1,000, when the conviction is of a misdemeanor;
(4) \$500, when the conviction is of a petty misdemeanor or a violation;
(5) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
(6) Any higher or lower amount specifically authorized by statute."

1. Amended by 1972 HAW. SESS. LAWS, c. 9, pt. of §1.
2. Ibid.
3. Ibid.

IOWA CRIMINAL CODE

• Terrorism

IOWA CODE ANN. §806¹ states:

"A person commits a Class D felony when the person does any of the following with intent to inspire or provoke fear or anger in another:

1. Shoots, throws, launches, or discharges a dangerous weapon at or into any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person, and thereby places the occupants therein in reasonable apprehension of serious injury.
2. Threatens to commit a forcible felony under circumstances raising a reasonable expectation that the threat will be carried out."

1. See also IOWA CODE ANN. §689.10 [CRIMINAL SYNDICALISM].

KANSAS CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE
Title 21

• Terroristic Threats

KAN. STAT. ANN. §21-3419¹ states:
"A terroristic threat is any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly or facility of transportation, or in wanton disregard of the risk of causing such terror or evacuation.
A terroristic threat is a class E felony."

• Penalties

KAN. STAT. ANN. §21-4501² states:
"...(e) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one (1) year and the maximum of which shall be five (5) years;"

1. As amended by 1969 Kan. Sess. Laws, ch. 180, §24-3419.
2. As amended by 1969 Kan. Sess. Laws, c. 180, §24-4501.

MAINE CRIMINAL CODE
Title 17A

• Terrorizing

ME. REV. STAT., tit. 17A, §210¹ states:
"1. A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is:

- A. To place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed; or
- B. To cause evacuation of a building, place of assembly or facility of public transport.

2. Violation of subsection 1, paragraph A, is a Class D crime.
Violation of subsection 1, paragraph B, is a Class C crime."

1. 1977 Me. Acts, c. 510, §45; c. 671, §23, 24.

MICHIGAN PENAL CODE
ANARCHY AND CRIMINAL SYNDICALISM

• Definition

MICH. COMP. LAWS. ANN. §750.46 states:
"Criminal syndicalism is hereby defined as the doctrine which advocates crime, sabotage, violence or other unlawful acts of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony punishable as provided in this chapter."

• Advocacy of Criminal Syndicalism - Penalty

MICH. COMP. LAWS. ANN. §750.47¹ states:
"Any person who by word of mouth or writing, advocates or teaches the duty, necessity or propriety of crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political reform; or prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written matter in any form, containing or advocating, advising, or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence or other unlawful methods of terrorism; or openly, willfully and deliberately justifies by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence or other unlawful methods of terrorism with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism; or organizes or helps to organize, or becomes a member of or voluntarily assembles with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism, or who commits or attempts to commit crime, sabotage, violence or other unlawful methods of terrorism for the purpose of accomplishing industrial or political reform, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by a fine of not more than \$5,000.00."

• Sending or Transporting Explosives

MICH. COMP. LAWS. ANN. §750.204a² states:
"A person who, with the intent to terrorize, frighten, intimidate, threaten, harass [sic], molest, or annoy any other person, sends or transports a device which is so constructed as to represent, or is presented as, an explosive, incendiary device, or bomb, is guilty of a felony. An offense is committed under this section if the device is sent from or received in this state, and may be prosecuted in the jurisdiction from where it was sent or received."

1. As amended by 1950 Mich. Pub. Acts, Ex. Sess., No. 41, §47.
2. As added by 1973 Mich. Pub. Acts, No. 202, §1.

- Intimidation or Harassment

MICH. COMP. LAWS ANN. §750.205a³ states:

"A person who knowingly delivers or places a device with the intent to terrorize, frighten, intimidate, threaten harass, molest, or annoy any other person, when the device is so constructed as to represent, or is presented as, an explosive, incendiary, or bomb, is guilty of a felony."

3. As added by 1973 Mich. Pub. Acts, No. 202, §1.

MINNESOTA CRIMINAL CODE OF 1963

- Terroristic Threats

MINN. STAT. ANN. §609.713¹ states:

"Subdivision 1. Whoever threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience may be sentenced to imprisonment for not more than five years.

Subd. 2. Whoever communicates to another with purpose to terrorize another or in reckless disregard of the risk of causing such terror, that explosives or an explosive device or any incendiary device is present at a named place or location, whether or not the same is in fact present, may be sentenced to imprisonment for not more than three years."

1. As amended by 1971 Minn. Laws, c. 845, §19.

NEW HAMPSHIRE CRIMINAL CODE

Title 58

- Criminal Threatening

N.H. REV. STAT. ANN. §631.4 states:

"A person is guilty of an offense when,

I. By physical conduct, he purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or
 II. He threatens to commit any crime against the person of another with a purpose to terrorize any person; or
 III. He threatens to commit any crime of violence with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience.

IV. The offense is a misdemeanor, except a violation of paragraph III, which is a class B felony."¹

- Penalties

N.H. REV. ANN. §625.11 states:

"...(2) Class B felonies are crimes so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but not in excess of seven years.

IV. A misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment not in excess of one year; provided, however, that a crime defined by statute outside of this code is a misdemeanor when committed by a corporation or an unincorporated association if the maximum fine therein provided is more than fifty dollars but not more than two hundred dollars.

V. A violation is an offense so designated by statute within or outside this code and, except as provided in this paragraph, any offense defined outside of this code for which there is not other penalty provided other than a fine or fine and forfeiture or other civil penalty. In the case of a corporation or an unincorporated association, offenses defined outside of this code are violations if the amount of any such fine provided does not exceed fifty dollars."²

1. Amended by 1971 N.H. Laws, 518:1.

2. Amended by 1973 N.H. Laws, 370:26-28.

NORTH DAKOTA CRIMINAL CODE
Title 12.1

- Terrorizing

N.D. CENT. CODE §12.1-17.04 states:

"A person is guilty of a class C felony if he:

1. Threatens to commit any crime of violence or act dangerous to human life; or
2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false, with intent to keep another human being in sustained fear for his or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience."¹

- Penalties

N.D. CENT. CODE §12.1-32.01 states:

"Offenses are divided into six classes, which are denominated and subject to maximum penalties, as follows:

- ...3. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed..."

1. Amended by 1973 N.D. Sess. Laws, c. 116, §17.

PENNSYLVANIA CRIMINAL CODE

Chapter 18, Assault

Chapter 11, Authorized Disposition of Offenders

- Terroristic Threats

PA. CONS. STAT. ANN. §2706¹ (Purdon) states:

"A person is guilty of a misdemeanor of the first degree if he threatens to commit any crime of violence with intent to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience."

- Sentence of Imprisonment

PA. CONS. STAT. ANN. §1104² (Purdon) states:

"A Person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

- (1) Five years in the case of a misdemeanor of the first degree..."

- Fines

PA. CONS. STAT. ANN. §1101³ (Purdon) states:

"A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:
...(3) \$10,000, when the conviction is of a misdemeanor of the first degree..."

1. As amended by 1972 Pa. Laws, No. 334, §1.
2. Ibid.
3. Ibid.

TENNESSEE CRIMINAL OFFENSES
Title 37

- Mask and Intimidation

TENN. CODE ANN. §39-2801 states:

"Any person or persons, masked or in disguise, who shall prowl, or travel, or ride, or walk through the country or any town to the disturbance of the peace, or to the alarming of the citizens of any portion of this state, shall be guilty of a misdemeanor and fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and imprisoned in the county jail of the county wherein convicted, in the discretion of the jury trying the case."

- Assault With A Deadly Weapon While In Disguise

TENN. CODE ANN. §39-2803¹ states:

"If any person, so prowling, traveling, riding, or walking through the towns or country of this state, masked or in disguise, shall assault another with a deadly weapon, he shall be deemed guilty of an assault with intent to commit murder in the first degree and, on conviction thereof, shall suffer imprisonment in the penitentiary for a period of not less than ten (10) years nor more than twenty-one (21) years."

1. Amended by 1977 Tenn. Pub. Acts, ch. 338, §1.

TEXAS PENAL CODE
Title 5

- Terroristic Threat
TEXAS CODE ANN., PENAL, (Vernon) §22.07 states:
"(a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:
(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
(2) place any person in fear of imminent serious bodily injury; or
(3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place.

(b) An offense under this section is a Class B misdemeanor unless it is committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor."
- Class A Misdemeanor
TEXAS CODE ANN., PENAL, (Vernon) §12.21 states:
"An individual adjudged guilty of a Class A misdemeanor shall be punished by:
(1) a fine not to exceed \$2,000;
(2) confinement in jail for a term not to exceed one year; or
(3) both such fine and imprisonment."
- Class B Misdemeanor
TEXAS CODE ANN., PENAL, (Vernon) §12.22 states:
"An individual adjudged guilty of a Class B misdemeanor shall be punished by:
(1) a fine not to exceed \$1,000;
(2) confinement in jail for a term not to exceed 180 days; or
(3) both such fine and imprisonment."

UTAH CRIMINAL CODE
Title 76

- Terroristic Threat
UTAH CODE ANN. §76-5-107¹ states:
"(1) A person commits terroristic threat if he threatens to commit any offense involving violence with intent:
(a) To cause action of any sort by an official or volunteer agency organized to deal with emergencies; or
(b) To place a person in fear of imminent serious bodily injury; or
(c) To prevent or interrupt the occupation of a building, room; place of assembly; place to which the public has access; or aircraft, automobile, or other form of conveyance.

(2) Terroristic threat is a class B misdemeanor unless the actor's intent is to prevent or interrupt the occupation of a building, a place to which the public has access, or a facility of public transportation operated by a common carrier, in which event terroristic threat is a third degree felony."
- Felony Conviction
UTAH CODE ANN. §76-3-203² states:
"A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:
...(3) In the case of a felony of the third degree, for a term not to exceed five years but if the trier of fact finds a firearm or a facsimile or the representation of a firearm was used in the commission or furtherance of the felony, the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;..."
- Misdemeanor Conviction
UTAH CODE ANN. §76-3-204³ states:
"A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:
...(2) In the case of a class B misdemeanor, for a term not exceeding six months;..."
- Fines
UTAH CODE ANN. §76-3-301⁴ states:
"A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:
...(2) \$5,000 when the conviction is a felony of the third degree;
(3) \$1,000 when the conviction is of a Class A misdemeanor;
(4) \$299 when the conviction is of a class B or C misdemeanor or infraction..."

1. Amended by 1973 Utah Laws, ch. 196, §76-5-107.
2. Ibid. §76-3-203; 1976 Utah Laws, ch. 9, §1; 1977 Utah Laws, ch. 88, §1.
3. Amended by 1973 Utah Laws, ch. 196, §76-3-204.
4. Amended by 1973 Utah Laws, ch. 196, §76-3-301.

FEDERAL STATUTORY AUTHORITY AND JURISDICTION

Before discussing federal statutory authority and jurisdiction relating to domestic terrorism, there are three related issues which bear notice:

- the implementation of criminal procedural rules regarding the apprehension and prosecution of terrorists;
- the procedures for carrying out foreign and domestic intelligence by government departments and agencies; and
- the protection and preservation of the constitutional rights of United States citizens while those intelligence activities are carried out.

Criminal procedural rules affect both the judiciary and law enforcement officials from investigation through post-conviction action.

Whether a case is tried in federal or state court may be determinative because the federal government has a separate procedural code from that of each state. For example, a state may have imposed stricter standards on law enforcement agencies or vice versa; thus, if a state supreme court has mandated tighter rules in regard to search and seizure, evidence admissible in federal court may not be admissible in the state court.¹

The question arises as to whether special procedural rules should be developed to deal with suspects who are involved in extremely violent, terrorist activity. Some of the measures that have been discussed are separate pre-trial release rules, institution of different trial procedures to provide for security, and a revision of sentencing rules for offenders.

During the 95th Congress, an amendment was proposed to the Bail Reform Act of 1966. Although it was not enacted, it was a first attempt to single out terrorists as particularly "dangerous," and a judge could prohibit the release of such person if that would pose a danger to the community.

Effective intelligence has been called the "first line of defense" in managing terrorism.² During the 95th Congress there was a great deal of controversy over the extent and management of federal intelligence activities. In particular, the Congress considered electronic surveillance in regard to foreign intelligence gathering.

Some of the recent technological advances in surveillance include:

- electronic eavesdropping equipment for communications;
- optical/imaging technologies, including photographic television and night vision devices;
- computers and data processors;
- sensors;
- radiolocation devices;
- voice stress analyzers and polygraphs;
- microwave transmission and reception technology.³

18 USC §2156 provides for the application for interception of wire or oral communications authorizations. §2156(a)-(g) denotes the offense under which the application may be made.

S.1566, which was enacted as Public Law 95-511 on October 25, 1978, permits the President, acting through the attorney general, to authorize electronic surveillance for foreign intelligence purposes within the United States without a court order. The Act sets forth the conditions under which this may be accomplished.

The Act requires that each application submitted to the attorney general include:

- the identity of the officer making the application;
- the authority conferred on the attorney general by the President and the approval of the attorney general to make the application;
- the identity, if known, of the subject of the surveillance;
- the facts and circumstances justifying belief that the target of the surveillance is a foreign power or an agent of a foreign power;
- a description of the information sought;
- a statement of the period of time for which the surveillance is required;

- a statement of procedures to be taken to minimize intrusion into the privacy of the United States persons.

Until this statute was enacted, only the President had an exemption from the court order requirement. Under the Omnibus Crime Control and Safe Streets Act of 1968,⁴ the exemption is allowed if the interception is for "national security purposes."

In addition, two identical bills were submitted during the 95th Congress to the Senate and House of Representatives to establish a statutory basis for the national intelligence activities of the United States. Entitled the "National Intelligence Reorganization and Reform Act of 1978," S.2525 and H.R.11245 were referred to their respective committees on intelligence.

In reaction to public concern over infringement of constitutional rights by governmental intelligence agencies, the Department of Justice has established guidelines to control the collection of information within the United States.

The Federal Bureau of Investigation's (FBI) intelligence activities⁵ are determined by those guidelines for domestic security. The Central Intelligence Agency's (CIA) activities are partially authorized by Executive Order 11905.⁶ Executive Order 12036⁷ is also utilized by intelligence agencies for the collection and dissemination of intelligence on the foreign aspects of international terrorism.

According to Deputy Attorney General Benjamin R. Civiletti, the Department of Justice guidelines are:

"...designed to assure that the focus remains on violent or criminal activity, not on the exercise of First Amendment rights. They carefully restrict the investigative efforts which may be directed at groups suspected of terrorism until such time as there is a sound factual basis for believing the group, or individuals, are actually engaging in terrorist acts or are plainly planning such acts."⁸

Discussion concerning the protection of civil liberties has centered around possible governmental violations of First, Fourth, and Fifth Amendment rights.

Because the Supreme Court has recognized a "right to privacy,"⁹ it has been suggested that "In addition to the promulgation of legislation and standard governing surveillance technology, other types of controls are possible. Direct supervision by administrative personnel, congressional oversight, and investigation by private organizations and governmental commissions contribute to the accountability of surveillance practices and operations."¹⁰

Federal Jurisdiction

Federal criminal statutes are diverse. Some deal with conduct which is peculiarly terroristic, while others proscribe conduct which is only criminal, but in which the terrorist may engage to accomplish his purposes. The federal law contains no special prohibition against terroristic acts or threats, as do some state codes. During the 95th Congress several bills were introduced which would amend the United States Code to provide special sanctions for terrorists.

The federal government has investigative and prosecutorial jurisdiction over a wide range of criminal acts. Once the violation of federal law triggers jurisdictional authority, the investigative and law enforcement resources of the Federal Bureau of Investigation and other appropriate enforcement agencies become available, and prosecution for the offense may proceed through the Office of the United States Attorney.

Jurisdiction: State or Federal: As noted in Chapter 4, "terroristic acts" and criminal acts directed toward a terrorist end are in many cases already violations of state law. Depending upon the particular circumstances of the case, a terrorist incident could involve either the violation of state criminal law or the violation of federal criminal law. Violation of state criminal law invokes the police power of the state; violation of federal law invokes federal law enforcement authority. More commonly, however, a terrorist incident will involve violation of both state and federal criminal law, creating concurrent jurisdiction between state and federal authorities over the offense. In this situation, both state and federal enforcement authorities have power under the respective criminal codes to investigate the offense and to institute prosecution proceedings.

Some examples of similar state-federal criminal laws are:

- kidnapping;
- murder;
- manslaughter;
- bombing;
- arson;
- armed robbery.

Whether concurrent jurisdiction arises can only be determined on a case-by-case basis. Two relevant factors regarding law enforcement responsibility for a given incident are:

- the capability and willingness of state or federal authorities to act;
- the importance of the state or federal interest sought to be protected under the criminal statute.¹¹

Under this scheme, state authorities should have primary responsibility where:

- they are willing to act;
- they have resources adequate to meet the situation;
- the federal interest to be protected is not paramount.¹²

If concurrent jurisdiction is present:

" ...the federal government can either act or defer to state jurisdiction and action, depending on the nature of the incident and the capabilities of local authorities... even where state jurisdiction prevails, the federal government provides law enforcement assistance and support to local authorities upon request. Conversely, where federal jurisdiction is exercised, state and local agencies provide assistance.¹³

The choice between federal or state action is made by the prosecuting authority.¹⁴ However, successive prosecutions are possible, even where federal and state laws proscribe essentially the same offense without contravening the 5th Amendment prohibition of double jeopardy.¹⁵

The Reach of Federal Jurisdiction: In establishing the republic's federal-state relationships, the framers of the Constitution did not grant police power to the federal government.¹⁶ This power is reserved to the states under the Tenth Amendment.¹⁷

The powers that Congress does have are enumerated ones, spelled out primarily in Article I, Section 8 of the Constitution. For example, Congress has the power to:

- lay and collect taxes;
- to raise and support armies;
- to establish post offices.

In addition, the Constitution gives Congress the power to make all laws "necessary and proper" for carrying into execution its enumerated powers.

Although Congress does not possess the general police power reserved to the states, it may accomplish the same ends by the exercise of its granted powers. For example, every state has enacted laws proscribing kidnapping in furtherance of public safety. Congress has enacted a kidnapping statute¹⁸ which tends toward the same end, but which is constitutionally permissible only because it rests upon federal jurisdictional "pegs" written into the statute. One such peg is the power granted to Congress to regulate interstate commerce. Consequently, there is federal jurisdiction for the offense when the victim is "willfully transported in interstate or foreign commerce."¹⁹

Therefore, federal law may reach the same activities as does state law provided that the subject falls within the enumerated powers granted to the federal government.²⁰ The net result is that there is practically no offense covered under state law which is not also a federal offense if the federal jurisdictional ingredient is present.²¹ Examples are homicide, burglary, robbery, rape, kidnapping, forgery and fraud.²²

In addition, there are federal criminal statutes which are designed to protect distinctly federal interests. Federal espionage laws²³ and conspiracies to injure the property of a foreign government²⁴ are examples.

Federal criminal laws applicable to a broad range of terroristic activities are included in this chapter. Some of the employed bases for federal jurisdiction over a criminal offense are:

Commerce Power: The power to regulate interstate and foreign commerce, granted to Congress by Article I, Section 8 of the Constitution is the broadest and most widely used basis for federal jurisdiction. It is the source of the national police power to secure any social, economic, or moral ends so far as they may be achieved by the regulation of commerce.²⁵

The broad interpretation of the commerce power evolved in the Supreme Court and culminated in a 1941 case holding that the ends which induce Congress to enact a law are irrelevant to its constitutionality.²⁶ The primary inquiry is whether the law proscribes a governing rule applicable to interstate or foreign commerce.²⁷ If the law does, it is valid even if it is directed at purely local concerns.

The Civil Rights Act of 1964, portions of which are included herein, illustrates the breadth of the commerce power. In achieving its purpose to alleviate racial and religious discrimination in public establishments,²⁸ it provides sanctions for discriminating practices. The only requirement is that the establishment's operations "affect" commerce.²⁹ This means that the federal government can regulate conduct in motels that lodge transient guests, restaurants that serve interstate travelers, and cafeterias selling a substantial portion of food which has moved in interstate commerce.³⁰ The Civil Rights Act of 1964 has withstood constitutional challenges³¹ and confirmed the authority of the federal government to reach all aspects of commerce in furtherance of the general safety and welfare.

Taxing Power: Article I, Section 8 of the Constitution gives Congress the "power to lay and collect taxes." The Supreme Court has found that this power is exhaustive, embracing every conceivable power of taxation, reaching every subject, and exercisable by Congress at discretion.³² One important limitation on the power is that the tax must be a tax, i.e., it must be productive of revenue. However, consistent with the commerce power doctrine, the tax may be used to promote a non-revenue objective in addition to the raising of revenue.³³

For example, the National Firearms Act,³⁴ portions of which are included herein, defines certain types of firearms and imposes a tax on transfers as well as regulating other activities.

Revenue production need not be the overriding objective of the act. It makes no difference that discouragement or suppression of the activity which is taxed rather than revenue production is a partial, predominant, or overriding objective.³⁵ The motives of Congress in imposing the tax are immaterial.³⁶ The regulations imposed on firearms arguably facilitate enforcement of the tax, even though their real justification may be simply to restrict and control the use of them.

Necessary and Proper: The reach of federal statutes aimed at furtherance of enumerated powers granted to Congress is enlarged by the "necessary and proper" clause of the Constitution.³⁷ For example, Congress has the power to establish post offices. By implementation of the "necessary and proper" clause, Congress has the power to control and protect them too. Use of the mails in furtherance of a criminal objective is the federal jurisdictional ingredient of several statutes included in this chapter.³⁸

The Property Power: The property power provides another basis for federal jurisdiction over a criminal offense. The Supreme Court interpretation of this power is two-pronged because the power is conferred in two separate provisions of the Constitution.³⁹

In one provision, Congress has the exclusive legislative power over "federal enclaves," e.g., military bases and arsenals.⁴⁰ In the other, Congress is granted the power to make all needful rules and regulations respecting property belonging to the United States.⁴¹

The federal espionage statute,⁴² included herein, imposes penalties for the gathering and transmitting of defense information from federal enclaves.

Foreign Affairs: The power to legislate in the area of foreign affairs is an exception to the doctrine of enumerated powers because the Constitution does not contain a clause confirming a foreign affairs power for the federal government.⁴³

However, the power has been recognized by the Supreme Court as implicit in the Constitution and it has been interpreted broadly.⁴⁴ Additionally, the "necessary and proper" clause gives Congress the power to legislate on matters vested by the Constitution in the federal government and its officers.

Examples of congressional legislation in the area of foreign affairs are the statutes protecting internationally protected persons⁴⁵ and punishing "conspiracies to injure the property of a foreign government."⁴⁶

Amendments: Several amendments to the Constitution contain enforcement clauses providing that Congress shall have power to enforce, by appropriate legislation, the provision of that amendment.⁴⁷ For example, Congress may make it a federal crime to interfere with the 15th Amendment's voting rights, as legislated in "federally protected activities."⁴⁸

1. According to Mapp v. Ohio, a state may promulgate stricter standards than the federal government, but not looser ones. See 367 U.S. 643 (1961).
2. Hearings on S.2236 Before the Senate Committee on Governmental Affairs, 5th Congress, 2d Sess. 138 (1978) (Statement of Robert H. Kupperman).
3. F. Kaiser and G. Becker, Privacy and Surveillance Technology in a Democracy, p. 4 (1977).
4. 42 U.S.C. §3701 et seq.
5. See 28 U.S.C. §531.
6. 41 F.R. §7703 (1976)
7. 43 F.R. §3674 (1978).
8. Statement of Deputy Attorney General Benjamin R. Civiletti Concerning the Federal Government's Capabilities for Responding to a Domestic Terrorist Incident, Before the House of Representatives Subcommittee on Civil and Constitutional Rights of the Judiciary Committee (August 16, 1978).
9. See Olmstead v. United States, 277 U.S. 438 (1928); Mapp v. Ohio, 367 U.S. 643 (1961).
10. F. Kaiser and G. Becker, Privacy and Surveillance Technology in a Democracy, p. 7-8 (1977).

11. L. B. Schwartz, Federal Criminal Jurisdiction and Prosecutor's Discretion, 13 Law and Contemporary Problems 64, 73 (1948).
12. Hypothetical example of state authority: hostage taking situation where the only federal interest is use of the mails to further terroristic objective; hypothetical example of federal authority: nuclear material misappropriation, aircraft hijacking.
13. Statement of Deputy Attorney General, Benjamin R. Civiletti, Concerning the Federal Government's Capabilities for Responding to a Domestic Terrorist Incident, Before the House of Representatives Subcommittee on Civil and Constitutional Rights of the Judiciary Committee (August 16, 1978).
14. L. B. Schwartz, supra note 1, at 71.
15. L. B. Schwartz, supra note 1, at 70-71.
16. I.e., they did not grant Congress the power to make laws to further public health, safety, morals or welfare. See B. Schwartz, Constitutional Law, at 45 (1972).
17. U.S. Const. Amend. X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
18. 18 U.S.C. §1201 et seq.
19. 18 U.S.C. §1201(a)(1).
20. B. Schwartz, supra note 6, at 45.
21. N. Abrams, Consultant's Report on Jurisdiction (1968), U.S. National Commission on Reform of Federal Criminal Laws, Working Papers, at 33, (1970).
22. Supra. at 33.
23. 18 U.S.C. §793-794.
24. 18 U.S.C. §956.
25. B. Schwartz, supra note 6, at 103.
26. United States v. Darby, 312 U.S. 100, 61 S. Ct. 451, 85 L. Ed. 609 (1941).
27. B. Schwartz, supra note 6, at 103.
28. Heart of Atlanta Motel v. United States, 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964).
29. B. Schwartz, supra note 6, at 106.
30. Id.
31. Katzenbach v. McClung, 379 U.S. 294, 85 S. Ct. 377, 13 L. Ed. 2d 290 (1964).
32. D. Engdahl, Constitutional Power: Federal and State, at 122 (1974).
33. Id., at 123.

34. 26 U.S.C. §5801 et seq.
35. D. Engdahl, supra note 22, at 126.
36. Id., at 132.
37. U.S. Const., Art. I, §8.
38. See 18 U.S.C. §876.
39. D. Engdahl, supra note 22, at 161-215.
40. U.S. Const., Art. I, §8.
41. U.S. Const., Art. IV, §3.
42. 18 U.S.C. §793-794.
43. D. Engdahl, supra note 22, at 216-219.
44. Id.
45. 18 U.S.C. §§112, 878, 1116.
46. 18 U.S.C. §956.
47. U.S. Const., Amend. XIII, XIV, XV, XIX, XXIII, XXIV, XXVI.
48. D. Engdahl, supra note 22, at 238.

Abstracts of Federal Terrorism-Related Statutes

The following statutes, all taken from the Federal Criminal Code, may be used to prosecute those who engage in terroristic activities. They are representative of the scope of federal criminal laws, ranging from murder to espionage. The citation is to the public law and the United States Code. The sectional citation is to the United States Code.

CRIMES AND CRIMINAL PROCEDURE
AIRCRAFT AND MOTOR VEHICLES
Act of July 14, 1956, c. 595, 70 Stat. 539
[18 U.S.C. 32]

• Destruction of Aircraft or Aircraft Facilities

§32¹ states:

"Whoever willfully sets fire to, damages, destroys, disables, or wrecks any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce; or
Whoever willfully sets fire to, damages, destroys, disables, or wrecks any aircraft engine, propeller, appliance, or spare part with intent to damage, destroy, or wreck any such aircraft; or
Whoever, with like intent, willfully places or causes to be placed any destructive substance in, upon, or in proximity to any such aircraft, or any aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material used or intended to be used in connection with the operation of any such aircraft, or any cargo carried or intended to be carried on any such aircraft, or otherwise makes or causes to be made any such aircraft, aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material unworkable or unusable or hazardous to work or use; or
Whoever, with like intent, willfully sets fire to, damages, destroys, disables, or wrecks, or places or causes to be placed any destructive substance in, upon, or in proximity to any shop, supply, structure, station, depot, terminal, hanger, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus used or intended to be used in connection with the operation, loading, unloading of any such aircraft ready for flight, or otherwise makes or causes to be made any such shop, supply, structure, station, depot, terminal, hanger, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine or apparatus unworkable or unusable or hazardous to work or use; or
Whoever, with like intent, willfully incapacitates any member of the crew of any such aircraft; or
Whoever willfully attempts to do any of the aforesaid acts or things--
shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both."

1. Reference to United States Code.

CRIMES AND CRIMINAL PROCEDURE
CIVIL DISORDERS
Pub. L. 90-284, 82 Stat. 90-91 (1968)
[18 U.S.C. 231 et seq.]

• Civil Disorders

§231¹ states:

"(a)(1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct of performance of any federally protected function; or
(2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or
(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function--
Shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties."

• Definitions

§232 states:

"For purposes of this chapter:

- (1) The term "civil disorder" means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual...
(4) The term "firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.
(5) The term "explosive or incendiary device" means
(A) dynamite and all other forms of high explosives,
(B) any explosive bomb, grenade, missile, or similar device, and

1. Reference to United States Code.

(C) any incendiary bomb or grenade, fire bomb, or similar device, including any device which (i) consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual acting alone.

CRIMES AND CRIMINAL PROCEDURE
 FEDERALLY PROTECTED ACTIVITIES
 Pub. L. 90-284, 82 Stat. 73 (1968)
 [18 U.S.C. 245]

• Federally Protected Activities

§245¹ states:

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from--

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been--

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air:

1. Reference to United States Code.

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda foundation, or other facility which services the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from

(A) participating, without discrimination on account of race, color, religion, or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located in a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State."

CRIMES AND CRIMINAL PROCEDURES

ESPIONAGE

Act of June 25, 1948, c. 645, 62 Stat. 736, 737

[18 U.S.C. 793-794]

• Gathering, Transmitting, or Losing Defense Information

§793¹ states:

"(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

1. Reference to United States Code.

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully receives the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer--
Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of this conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy." ²

• Gathering or Delivering Defense Information to Aid Foreign Government

§794 states:

"(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy." ³

2. As amended by Act of September 23, 1950, c. 1024, 64 Stat. 1003.

3. As amended by Act of September 3, 1954, c. 1261, 68 Stat. 1219.

EXPLOSIVES AND OTHER DANGEROUS ARTICLES
Act of June 25, 1948, c. 645, 62 Stat. 738
[18 U.S.C. 831 et seq.]

• Definitions

§831 ¹ states: "As used in this chapter--

(1) Unless otherwise indicated, "carrier" means any person engaged in the transportation of passengers or property by land, as a common contract, or private carrier, or freight forwarder as those terms are used in the Interstate Commerce Act, as amended, and officers, agents, and employees of such carriers.

(2) "Person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, assignee, or personal representative thereof.

(3) "For-hire carrier" includes common and contract carriers.

(4) "Shipper" shall be construed to include officers, agents, and employees of shippers.

(5) "Interstate and foreign commerce" means commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States.

(6) The term "United States" means all the States and the District of Columbia.

(7) "State" includes the District of Columbia.

(8) "Detonating fuzes" means fuzes used in military service to detonate the explosive charges of military projectiles, mines, bombs, or torpedoes.

(9) "Fuzes" means the devices used in igniting the explosive charges of projectiles.

(10) "Fuses" means the slow-burning fuses used commercially to convey fire to an explosive combustible mass.

(11) "Fusees" means the fusees ordinarily used on steamboats, railroads, and motor carriers as night signals.

(12) "Radioactive materials" means any materials or combination of materials that spontaneously emit ionizing radiation.

(13) "Etiologic agents" means the causative agent of such diseases as may from time to time be listed in regulations governing etiologic agents prescribed by the Interstate Commerce Commission under section 834 of this chapter.

1. Citations are to United States Code.

• Transportation of Dangerous Articles
 § 832 states:

"(a) Any person who knowingly transports, carries, or conveys within the United States, any dangerous explosives, such as and including dynamite, blasting caps, detonating fuzes, black powder, gunpowder, or other like explosive, or any radioactive materials, or etiologic agents on or in any passenger car or passenger vehicle of any description operated in the transportation of passengers by any for-hire carrier engaged in interstate or foreign commerce, by land, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; *Provided, however,* That such explosives, radioactive materials, or etiologic agents may be transported on or in such car or vehicle whenever the Interstate Commerce Commission finds that an emergency requires an expedited movement, in which case such emergency movements shall be made subject to such regulations as the Commission may deem necessary or desirable in the public interest in each instance: *Provided further,* That under this section it shall be lawful to transport on or in any such car or vehicle small quantities of explosives, radioactive materials, etiologic agents or other dangerous commodities of the kinds, in such amounts, and under such conditions as may be determined by the Interstate Commerce Commission to involve no appreciable danger to persons or property: *And provided further,* That it shall be lawful to transport on or in any such car or vehicle such fuses, torpedoes, rockets, or other signal devices as may be essential to promote safety in the operation of any such car or vehicle on or in which transported. This section shall not prevent the transportation of military forces with their accompanying munitions of war on passenger-equipment cars or vehicles.

(L) No person shall knowingly transport, carry or convey within the United States liquid nitroglycerin, fulminate in bulk in dry condition, or other similarly dangerous explosives, or radioactive materials, or etiologic agents, on or in any car or vehicle of any description operated in the transportation of passengers or property by any carrier engaged in interstate or foreign commerce, by land, except under such rules and regulations as the Commission shall specifically prescribe with respect to the safe transportation of such commodities. The Commission shall from time to time determine and prescribe what explosives are "other similarly dangerous explosives", and may prescribe the route or routes over which such explosives, radioactive materials, or etiologic agents shall be transported. Any person who violates this provision, or any regulation prescribed hereunder by the Interstate Commerce Commission, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from a violation of this section, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(c) Any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense which is escorted by personnel specially designated by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, for the purpose of national security, shall be exempt from the requirements of sections 831-835 of this chapter and the rules and regulations prescribed thereunder. In the case of any shipment of radioactive materials made by or under the direction or supervision of the Atomic Energy Commission or the Department of Defense, which is not so escorted by specially designated personnel, certification upon the bill of lading by or under the authority of the Atomic Energy Commission or the Department of Defense, as the case may be, that the shipment contains radioactive materials shall be conclusive as to content, and no further description shall be necessary or required; but each package, receptacle, or other container in such unescorted shipment shall on the outside thereof be plainly marked "radioactive materials", and shall not be opened for inspection by the carrier.

• Marking Packages
 § 833 states:

"Any person who knowingly delivers to any carrier engaged in interstate or foreign commerce by land or water, and any person who knowingly carries on or in any car or vehicle of any description operated in the transportation of passengers or property by any carrier engaged in interstate or foreign commerce, by land, any explosive, or other dangerous article, specified in or designated by the Interstate Commerce Commission pursuant to section 834 of this chapter, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or any person who so delivers any such article without informing such carrier in writing of the true character thereof, at the time such delivery is made, or without plainly marking on the outside of every package containing explosives or other dangerous articles the contents thereof, if such marking is required by regulations prescribed by the Interstate Commerce Commission, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from the violation of this section, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

• Regulations
 § 834 states:

"(a) The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles, including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and

poisonous substances which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

(f) Whoever knowingly violates any such regulations shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

- Administration

§ 835 states:

"(a) The Interstate Commerce Commission is authorized and directed to administer, execute, and enforce all provisions of sections 831-835, inclusive, of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration, and to employ such officers and employees as may be necessary to carry out these functions.

(b) The Commission is authorized to make such studies and conduct such investigations, obtain such information, and hold such hearings as it may deem necessary or proper to assist it in exercising any authority provided in sections 831-835, inclusive, of this chapter. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(c) In administering and enforcing the provisions of sections 831-835, inclusive, of this chapter and the regulations prescribed thereunder the Commission shall have and exercise all the powers conferred upon it by the Interstate Commerce Act, including procedural and investigative powers and the power to examine and inspect records and properties of carriers engaged in transporting explosives and other dangerous articles in interstate or foreign commerce and the records and properties of shippers to the extent that such records and properties pertain to the packing and shipping of explosives and other dangerous articles and the nature of such commodities."

IMPORTATION, MANUFACTURE, DISTRIBUTION, AND STORAGE OF EXPLOSIVE MATERIALS

Pub. L. 91-452, 84 Stat. 952, 953, 956 (1970)
(18 U.S.C. 841 et seq.)

- Definitions

§841¹ states:

"As used in this chapter--...

(c) "Explosive materials" means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, "explosives" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term "explosive" is defined in subsection (j) of such section 844.

(e) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of numbered 8 test blasting cap when unconfined.

(f) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors."

- Unlawful Acts

§842 states:

"(a) It shall be unlawful for any person--

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly--

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person

1. Reference to United States Code.

who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by law of the State in which he resides; or (B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides...

(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

(i) It shall be unlawful for any person--

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marijuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who had been adjudicated as a mental defective or who has been to a mental institution; to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

• Penalties

§844 states:

"(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both. . .

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten

years, or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than \$20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than \$5,000. or both.

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than \$20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than \$1,000, or both.

(h) Whoever--

(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than \$10,000, or both; and if personal injury results shall be imprisoned for not more

than twenty years or fined not more than \$20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion."²

2. 18 U.S.C. 232 states:

"(5) The term 'explosive or incendiary device' means--
(A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile, or similar device, and (c) any incendiary bomb or grenade, fire bomb, or similar device, including any device that (i) consists of or includes a breakable container including a flammable liquid, or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual alone."

CRIMES AND CRIMINAL PROCEDURE
EXTORTION

Act of June 25, 1948, c. 645, 62 Stat. 740
[18 U.S.C. 873]

• Blackmail

§873¹ states:

"Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than \$2,000 or imprisoned not more than one year, or both."

1. Reference to United States Code.

CRIMES AND CRIMINAL PROCEDURE
EXTORTION

Act of June 25, 1948, c. 645, 62 Stat. 741
[18 U.S.C. 875 et seq.]

• Interstate Communications

§875¹ states:

"(a) Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communications containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than \$500 or imprisoned not more than two years, or both."

• Mailing Threatening Communications

§876² states:

"Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

1. Reference to United States Code.

2. As amended by Pub. L. 91-375, 84 Stat. 777 (1970).

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than \$500 or imprisoned not more than two years, or both."

• Mailing Threatening Communications From Foreign Country

§877³ states:

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than \$500 or imprisoned not more than two years, or both.

3. As amended by Pub. L. 91-375, 84 Stat. 777 (1970).

GUN CONTROL ACT OF 1968, AS AMENDED
PUB.L. 90-351, 82 Stat. 226 (1968)
(18 U.S.C. 921 et seq.)

1. Abstract of Statute

• Definitions

§921¹ states:

"(a) As used in this chapter--

(3) The term "firearm" means

(A) Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B) The frame or receiver of any such weapon;

(C) Any firearm muffler or firearm silencer; or

(D) Any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means--

(A) Any explosive, incendiary, or poison gas--

(i) Bomb,

(ii) Grenade,

(iii) Rocket having a propellant charge of more than four ounces,

(iv) Missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) Mine, or

(vi) Device similar to any of the devices described in the preceding clauses;

(B) Any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) Any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of §4684(2), §4685, or §4686 of Title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes."

1. Reference to U.S. Code.

• Unlawful Acts

§922 states:

"(a) It shall be unlawful--

(1) For any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;

(2) For any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) This paragraph and subsection (b) (3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

(B) This paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) Nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) For any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph

(A) Shall not preclude any person who lawfully acquires a firearm by bequest or interstate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State,

(B) Shall not apply to the transportation or receipt of a rifle or shotgun obtained in conformity with the provisions of subsection (b) (3) of this section, and

(C) Shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) For any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

(5) For any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity); except that this paragraph shall not apply to

(A) The transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by interstate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and

(B) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(6) For any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce to persons other than licensed importer, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter.

CONTINUED

1 OF 3

Without written notice to the carrier, delivering, or causing to be delivered any firearm or ammunition to a carrier for transportation in interstate or foreign commerce is a Federal offense with certain exceptions.

(g) It shall be unlawful for any person--

- (1) Who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) Who is a fugitive from justice;
 - (3) Who is an unlawful user of or addicted to marijuana or any depressant or stimulant drug (as defined in §201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in §4731(a) of the Internal Revenue Code of 1954); or
 - (4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;
- to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person--

- (1) Who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) Who is a fugitive from justice;
 - (3) Who is an unlawful user of or addicted to marijuana or any depressant or stimulant drug (as defined in §201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in §4731(a) of the Internal Revenue Code of 1954); or
 - (4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;
- to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(1) Except as provided in §925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

● Penalties

§924 states:

"(a) Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than \$5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or an ammunition in interstate or foreign commerce shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

(c) Whoever--

- (1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or
- (2) Carries a firearm unlawfully during the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony."

NEUTRALITY ACT

Act of June 25, 1948, c. 645, 62 Stat. 743
[18 U.S.C. 956 et seq.]

- Conspiracy to Injure Property of Foreign Government

§956¹ states:

"(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

(b) Any indictment or information under this section shall describe the specific property which it was the object of this conspiracy to injure or destroy."

- Possession of Property in Aid of Foreign Government

§957 states:

"Whoever, in aid of any foreign government, knowingly and willfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than \$1,000 or imprisoned not more than ten years, or both."

- Expedition Against Friendly Nation

§960 states:

"Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both."

1. Reference to United States Code.

CRIMES AND CRIMINAL PROCEDURES

FUGITIVE FROM JUSTICE

Act of June 25, 1948, c. 645, 62 Stat. 755
[18 U.S.C. 1071 et seq.]

- Concealing Person From Arrest

§1071¹ states:

"Whoever harbors or conceals any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; except that if the warrant or process issued on a charge of felony, or after conviction of such person of any offense, the punishment shall be a fine of not more than \$5,000, or imprisonment for not more than five years, or both."

- Flight to Avoid Prosecution or Giving Testimony

§1073² states:

Whoever moves or travels in interstate or foreign commerce with intent either

(1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or

(2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, or

(3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the

1. Reference to United States Code.

2. As amended by Act of April 6, 1956, c. 177, 70 Stat. 100; Pub. L. 87-368, 75 Stat. 795 (1961); Pub. L. 91-452, 84 Stat. 932 (1970).

Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated."

• Flight to Avoid Prosecution for Damaging or Destroying Any Building or Property

§1074³ states:

"(a) Whoever moves or travels in interstate or foreign commerce with intent either

(1) to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or

(2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: *Provided, however,* That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any offense over which they would have jurisdiction in the absence of such section."

3. Added by Pub. L. 86-449, 74 Stat. 86 (1960).

CRIMES AND CRIMINAL PROCEDURE

MURDER, MANSLAUGHTER

Act of June 25, 1948, c. 645, 62 Stat. 756

[18 U.S.C. 1111, 1112, 1114]

• Murder

§1111¹ states:

"(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

1. Reference to United States Code.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any terms of years or for life."

• Manslaughter

§1112² states:

"(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary--Upon a sudden quarrel or heat of passion.

Involuntary--In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

Whoever is guilty of involuntary manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both."

• Protection of Officers and Employees of the United States

§1114³ states:

"Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication of prevention of the introduction or dissemination of animal diseases,

2. Ibid.

any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, or of the Department of Labor or of the Department of the Interior, or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of the title."

3. Reference to United States Code as amended by Pub. L. 90-449, 82 Stat. 611 (1968); Pub. L. 91-375, 84 Stat. 777 (1970); Pub. L. 91-513, 84 Stat. 1282 (1970); Pub. L. 91-596, 84 Stat. 1607 (1970); Pub. L. 93-481, 88 Stat. 1456 (1974); Pub. L. 94-284, 90 Stat. 514 (1976); Pub. L. 94-582, 90 Stat. 2883 (1976); Pub. L. 95-87, 91 Stat. 520 (1977).

CRIMES AND CRIMINAL PROCEDURE
KIDNAPPING

Act of June 25, 1948, c. 645, 62 Stat. 760
[18 U.S.C. 1201 et seq.]

• Kidnapping

§1201¹ states:

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

- (1) the person is willfully transported in interstate or foreign commerce;
- (2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
- (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101 (32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (32)); or
- (4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title,

shall be punished by imprisonment for any term of years or for life.

1. Reference to United States Code.

(b) With respect to subsection (a) (1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

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

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is 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 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 (34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a) (4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding."^{2/}

• Ransom money

§1202 states:

"Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1291 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than \$10,000 or imprisoned not more than ten years..."

2. As amended by Act of August 6, 1956, c. 971, 70 Stat. 143; Pub. L. 92-539, 86 Stat. 1072 (1972); Pub. L. 94-467, 90 Stat. 1998 (1976).

CRIMES AND CRIMINAL PROCEDURE
RACKETEERING

Act of June 25, 1948, c. 645, 62 Stat. 793
[18 U.S.C. 1951]

• Interference With Commerce By Threats or Violence

§1951¹ states:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section--

(1) The term "robbery" means the unlawful taking or obtaining or personal property from the person or in the presence of another of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce with the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction."

1. Reference to United States Code.

CRIMES AND CRIMINAL PROCEDURE
RIOTS

Pub. L. 90-284, 82 Stat. 75-76 (1968)
[18 U.S.C. 2101-2102]

• Riots

§2101¹ states:

"(a)(1) Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television, with intent--

(A) to incite a riot; or

(B) to organize, promote, encourage, participate in, or carry on a riot; or

(C) to commit any act of violence in furtherance of a riot; or

1. Reference to United States Code.

(D) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot;

and who either during the course of any such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraph (A), (B), (C), or (D) of this paragraph--

Shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(b) In any prosecution under this section, proof that a defendant engaged or attempted to engage in one or more of the overt acts described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subsection (a) and

(1) has traveled in interstate or foreign commerce, or

(2) has use of or used any facility of interstate or foreign commerce, including but not limited to, mail, telegraph, telephone, radio, or television, to communicate with or broadcast to any person or group of persons prior to such overt acts, such travel or use shall be admissible proof to establish that such defendant traveled in or used such facility of interstate or foreign commerce."

• Definitions

§2102 states:

"(a) As used in this chapter, the term "riot" means a public disturbance involving

(1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or

(2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

(b) As used in this chapter, the term "to incite a riot", or "to organize, promote, encourage, participate in, or carry on a riot", includes, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written

(1) advocacy of ideas or

(2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts."

CRIMES AND CRIMINAL PROCEDURE
FINES, PENALTIES, FORFEITURES
Act of June 25, 1948, c. 645, 62 Stat. 839
[18 U.S.C. 3611]

• Firearms Possessed by Convicted Felons

§3611¹ states:

"A judgment of conviction for transporting a stolen motor vehicle in interstate or foreign commerce or for committing or attempting to commit a felony in violation of any law of the United States involving the use of threats, force, or violence or perpetrated in whole or in part by the use of firearms, may, in addition to the penalty provided by law for such offenses, order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of the defendant at the time of his arrest.

The court may direct the delivery of such firearms or ammunition to the law-enforcement agency which apprehended such person, for its use or for any other disposition in its discretion."

1. Reference to United States Code.

COMMON CARRIER
OBSCENE OR HARASSING TELEPHONE CALLS
Act of June 19, 1934, c. 652, as added
Pub. L. 90-299, 82 Stat. 112 (1968)
[47 U.S.C. 223]

• Obscene or Harassing Telephone Calls

§223¹ states:

"Whoever--

(1) in the District of Columbia or in interstate or foreign communication by means of telephone--

(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse threaten, or harass any person at the called number;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(2) knowingly permits any telephone under his control to be used for any purpose prohibited by this section, shall be fined not more than \$500 or imprisoned not more than six months, or both."

1. Reference to United States Code.

NATIONAL FIREARMS ACT, AS AMENDED
PUB. L. 90-618, 82 Stat. 1227
[26 U.S.C. 5801 et seq.]

1. Abstract of Statute

• Definitions

§5845 states: "For the purpose of this chapter--

(a) The term "firearm" means

(1) A shotgun having a barrel or barrels of less than 18 inches in length;

(2) A weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length;

(3) A rifle having a barrel or barrels of less than 16 inches in length;

(4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length;

(5) Any other weapon, as defined in subsection (e);

(6) A machinegun;

(7) A muffler or a silencer for any firearm whether or not such firearm is included within this definition; and

(8) A destructive device.

The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(e) The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) The term "destructive device" means

- (1) Any explosive, incendiary, or poison gas
 - (A) Bomb,
 - (B) Grenade,
 - (C) Rocket having a propellant charge of more than four ounces,
 - (D) Missile having an explosive or incendiary charge of more than one-quarter ounce,
 - (E) Mine, or
 - (F) Similar device;
- (2) Any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and
- (3) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of §4684(2), §4685, or §4686 of Title 10 of the United States' Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes."

• Transfer Tax

§5811 states:

"(a) There shall be levied, collected, and paid on firearms transferred a tax at the rate of \$200 for each firearm transferred, except, the transfer tax on any firearm classified as any other weapon under §5845(e) shall be at the rate of \$5 for each such firearm transferred.

(b) The tax imposed by subsection (a) of this section shall be paid by the transferor.

(c) The tax imposed by subsection (a) of this section shall be payable by the appropriate stamps prescribed for payment by the Secretary."

• Transfers

§5812 states:

"(a) A firearm shall not be transferred unless

- (1) The transferor of the firearm has filed with the Secretary a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary;

- (2) Any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form;
- (3) The transferee is identified in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph;
- (4) The transferor of the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe;
- (5) The firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; and
- (6) The application form shows that the Secretary has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

(b) The transferee of a firearm shall not take possession of the firearm unless the Secretary has approved the transfer and registration of the firearm to the transferee as required by subsection (a) of this section."

• Making Tax

§5821 states:

"(a) There shall be levied, collected, and paid upon the making of a firearm a tax at the rate of \$200 for each firearm made.

(b) The tax imposed by subsection (a) of this section shall be paid by the person making the firearm.

(c) The tax imposed by subsection (a) of this section shall be payable by the stamp prescribed for payment by the Secretary."

• Making

§5822 states: "No person shall make a firearm unless he has

- (a) Filed with the Secretary a written application, in duplicate, to make and register the firearm on the form prescribed by the Secretary;

- (b) Paid any tax payable on the making and such payment is evidenced by the proper stamp affixed to the original application form;

- (c) Identified the firearm to be made in the application form in such manner as the Secretary may by regulations prescribe;

- (d) Identified himself in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; and

(e) Obtained the approval of the Secretary to make and register the firearm and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law."

• Registration of Firearms

§5841 states:

"(a) The Secretary shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record. The registry shall include--

- (1) Identification of the firearm;
- (2) Date of registration; and
- (3) Identification and address of person entitled to possession of the firearm.

(b) Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall, prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) A person shown as possessing a firearm by the records maintained by the Secretary pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968 shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

(e) A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request."

• Identification of Firearms

§5842 states:

"(a) Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the Secretary may by regulations prescribe.

(b) Any person who possesses a firearm, other than a destructive device, which does not bear the serial number and other information required by subsection (a) of this section shall identify the firearm with a serial number assigned by the Secretary and any other information the Secretary may by regulations prescribe.

(c) Any firearm classified as a destructive device shall be identified in such manner as the Secretary may by regulations prescribe."

• Importation

§5844 states: "No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is--

- (1) Being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or
- (2) Being imported or brought in for scientific or research purposes; or
- (3) Being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer; except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm."

• Prohibited Acts

§5861 states: "It shall be unlawful for any person--

- (a) To engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by §5801 for his business or having registered as required by §5802; or
- (b) To receive or possess a firearm transferred to him in violation of the provisions of this chapter; or
- (c) To receive or possess a firearm made in violation of the provisions of this chapter; or
- (d) To receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or
- (e) To transfer a firearm in violation of the provisions of this chapter; or
- (f) To make a firearm in violation of the provisions of this chapter; or

(g) To obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

(h) To receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or

(i) To receive or possess a firearm which is not identified by a serial number as required by this chapter; or

(j) To transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

(k) To receive or possess a firearm which has been imported or brought into the United States in violation of §5844; or

(l) To make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false."

• Penalties

§5871 states: "Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than \$10,000, or be imprisoned not more than ten years, or both, and shall become eligible for parole as the Board of Parole shall determine."

FEDERAL EMERGENCY ASSISTANCE FOR TERRORISM MANAGEMENT

This chapter provides a brief overview of federal agency programs that provide anti-terrorism assistance. Many federal agencies and departments are actively involved in various aspects of intrafederal and federal-state terrorism management. Throughout the text of this chapter, organizations that have federal-state programs are noted by an asterisk(*), with a reference at the bottom of the page to the National Emergency Assistance Programs (NEAP) guide which is a companion publication describing the programs in detail.

The primary federal organizations dealing with terrorism management are the Department of State's Committee to Combat Acts of Terrorism, The National Security Council (NSC), and the Department of Justice.

The Committee to Combat Terrorism* was reorganized in 1977 to coordinate, through its Working Group's Executive Committee, the activities of 31 federal organizations.¹ This group focuses primarily on the protection of foreign diplomatic personnel in the United States, and American officials working and traveling abroad.

The 31 member agencies of the Working Group may provide assistance in the form of terrorist incident information, technical assistance about security precautions, public information, and participation in educational seminars.

The Committee to Combat Acts of Terrorism operates under the auspices of the NSC. The NSC has recently developed a program to coordinate the domestic anti-terrorism activities of federal agencies and departments. The program has four phases:

- Reaction - anti-terrorism operations in response to specific major acts of terrorism;
- Deterrence - prosecution, and protection and security efforts of the public and private sector to discourage terroristic acts;

*NEAP, p. 253.

- Prevention - international initiatives to discourage any country from condoning or permitting terrorism and to encourage sanctions to make terrorism unattractive as a form of political action;
- Prediction - intelligence efforts, which in the United States are undertaken only under strict guidelines, to support the other three aspects of the program.²

If the President chose to participate in the management of a terrorist incident, he would do so through the Special Coordination Committee of the NSC.

Department of Justice

The Department of Justice is one of the 31 members of the Working Group of the Committee to Combat Acts of Terrorism. Generally, it is responsible for overseeing the federal response to acts of domestic terrorism.

The Attorney General of the United States, through an appointed Deputy Attorney General, makes major policy decisions and legal judgments related to each terrorist incident as it occurs.

Federal Bureau of Investigation (FBI)*: §533 of Public Law 89-554³ provides for the appointment of officials by the Attorney General to:

- detect and prosecute crimes against the United States;
- assist in the protection of the President;
- conduct investigations under the control of the Departments of Justice and State.

The FBI has been designated as the primary operational agency for the management of terrorist incidents. When one occurs, the first reaction is generally from the special-agent-in-charge in the incident area. The special agent is under the supervision of the director of the FBI.

The FBI maintains a liaison with each Governor's office, and renews it with each change of administration. There is a special-agent-in-charge at 59 field offices throughout the United States.

Due to the presence of concurrent jurisdiction in many cases, the FBI cooperates with state and local law enforcement authorities on a continuing basis.

*NEAP, pp. 220-222.

§534 of Public Law 89-554 authorizes the Attorney General to appoint officials to acquire, preserve, and exchange identification records with states, cities, and penal institutions. Under the authority of this legislation, the FBI offers assistance through the Fingerprint Identification Division and the National Crime Information Center (NCIC).

The Fingerprint Identification Division provides assistance in identifying criminals. It also will assist in identifying victims of a major disaster through a specialized team that travels to the disaster scene at a moments notice.

The NCIC provides a permanent, computerized control index to documented files of state and local criminal justice agencies. It operates 24 hours a day and supplies information on wanted persons, missing persons, stolen property, and criminal histories.

The FBI is also granted the sole authority to investigate violations of the Atomic Energy Act of 1954.⁴ Pursuant to that act and the Federal Response Plan for Peacetime Nuclear Emergencies (FRPPNE), the FBI is the lead investigative agency when a threat is made which involves the misuse of a nuclear weapon, special nuclear materials, or dangerous radioactive material. In this effort, they cooperate with the Departments of Energy and Defense, the Nuclear Regulatory Commission, and the Environmental Protection Agency, as well as several states that have established nuclear threat emergency response plans.⁵

Law Enforcement Assistance Administration (LEAA)*: The Omnibus Crime Control and Safe Streets Act⁶ authorizes LEAA to provide the following assistance to states:

- planning grants;
- grants to encourage states and units of general local government to carry out programs to improve and strengthen law enforcement and criminal justice;
- the National Institute of Law Enforcement and Criminal Justice; and
- the FBI Law Enforcement Training Program.

*NEAP, p. 223.

The technical assistance that LEAA offers to government and law enforcement personnel includes project grants, advisory services and counseling, training, and distribution of technical information.

LEAA has funded the Special Operations and Research Staff (SOARS) of the FBI. This group, which is located at the FBI's Quantico, Virginia facility, is authorized to travel both nationally and internationally to observe terroristic incidents. Although the unit is not operational, it has expertise in weaponry, tactics, sociology, psychology, criminology, and the law. Its resources are available to the FBI's agents, new agents in training, and other law enforcement personnel.

Under §§402(c) and 515(b) of the Crime Control Act of 1973, LEAA is authorized to provide assistance for research in the terrorism area, both domestic and international. Consequently, LEAA has sponsored a great deal of study, particularly the 1976 Report of the Task Force on Disorders and Terrorism.

Immigration and Naturalization Service (INS): As a bureau of the Department of Justice, the INS is authorized to administer the provisions of the Immigration and Nationality Act (See APPENDIX D). This law states the conditions under which aliens may be excluded or deported from the United States.

The INS has four regional offices in the United States and 37 district offices worldwide. In addition, the Border Patrol is responsible for protecting the national security of the United States.

Department of the Treasury

Four bureaus of the Department of the Treasury are involved in terrorism management at the federal level.

Bureau of Alcohol, Tobacco and Firearms (BATF): The bureau is responsible for enforcing and administering all federal laws in regard to firearms and explosives. In particular, the Gun Control Act of 1968 and the act dealing with the importation, manufacture, distribution, and storage of explosive materials provide penalties for designated illegal acts and authorize the Secretary of the Treasury, through BATF, to publish lists outlining the prohibited firearms and explosives usage.

The bureau has seven regional offices and has personnel stationed throughout the country.

Internal Revenue Service (IRS): The IRS is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, and explosives.

In 1976, the Internal Revenue Code [26 USC 1 et seq. §104] was amended to provide for the following exclusion:

"(a) Except in the case of amounts attributable to (and not in excess of) deductions allowed under §213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include--...

(5) Amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States."

The IRS has seven regional offices and 61 district offices.

United States Customs Service: The Customs Service is authorized to collect revenue from imports and enforces customs and related laws. There are nine customs regions, 45 district offices, and approximately 300 designated ports of entry.

In addition to the enforcement of federal laws, the Customs Service enforces the state law at the appropriate port of entry, e.g., New York State liquor taxation.

If the port of entry is very small and has little traffic, the INS Border Patrol will be deputized as customs agents or vice versa.

The Customs Service, in addition to seizing and apprehending persons violating customs laws, cooperates with other government agencies in administering and enforcing statutory and regulatory requirements related to international trade.

United States Secret Service: The Secret Service, in addition to its charge to protect the President and Vice President, is authorized to protect visiting heads of foreign states or foreign governments within the United States.

The Secret Service has 63 district offices throughout the United States.

Department of Transportation

One particular concern of officials interested in terrorism management is the number of hijackings on both domestic and international aircraft. In 1977, there were 30 airline hijackings worldwide, of which five involved United States carriers. According to Brock Adams, Secretary of the Department of Transportation, this "...is almost double the total for 1976, and more than any year since the 1968-72 peak. So far this year, there have been 14 hijackings--11 involving foreign airlines."⁷

However, no United States hijacking since 1973 has involved real firearms or explosives because of the strict Federal Aviation Administration regulations regarding airport security.

Three international conventions that deal with skyjacking have been supported by the United States:

- The 1963 Tokyo Convention, which requires countries to return an aircraft and passengers if they have been hijacked;
- The 1970 Hague Convention, which provides for either the extradition or prosecution of hijackers; and
- The 1971 Montreal Convention, which requires that any kind of aviation sabotage be dealt with by prosecution or extradition of the offenders.

According to the Report of the Task Force on Disorders and Terrorism, the three conventions have proved to be "weak" legal instruments and many countries have not signed them.⁸

However, on July 17, 1978, leaders of seven western industrial countries resolved to act jointly to suspend air traffic to and from countries that fail to turn over hijackers and hijacked aircraft quickly.

The agreement, signed by the United States, West Germany, France, Britain, Japan, Canada, and Italy stated in part:

"In cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the heads of state and governments are jointly resolved that their governments should take immediate action to cease all flights to that country. At the same time, their governments will initiate action to halt all incoming flights from that country or from any country by the airlines of the country concerned."⁹

The interest of the government in aircraft piracy led to several bills, introduced during the 95th Congress, that dealt with hijacking and sabotage and a provision that would implement the Montreal Convention's decisions as law. None of these bills were enacted.

Federal Aviation Administration (FAA)*: The Federal Aviation Act of 1958 [See APPENDIX E] provides for the Administration of the FAA to issue regulations for airport and air transportation security. The Act also provides for criminal penalties for violations of those rules and regulations.

The FAA has 14 regional offices. It conducts regular inspections of airports for security and provides technical guidance for improving civil aviation security programs.

In particular, it sponsors programs to aid airport development by providing financial assistance, providing personnel and services during a major disaster, and airlift planning for emergencies.

United States Coast Guard*: The Coast Guard, according to the Act of August 4, 1949,¹⁰ has law enforcement responsibilities on the high seas. §1 states that the Coast Guard has the authority to prevent, detect, and suppress violations of the laws of the United States within its jurisdiction. The Code of Federal Regulations defines the jurisdiction of the Coast Guard.

The Coast Guard is involved in preparedness planning to aid state and local governments during civil disturbances. It may also aid other federal or civil law enforcement agencies in anti-terrorist operations if safety on the high seas and port security is involved.

Department of Commerce

The Commerce Working Group on Terrorism (CWGT) was established within the Industry and Trade Administration of the Department of Commerce in November, 1976.

The CWGT works closely with the Special Coordination Committee of the National Security Council. It gives assistance, both verbal and written, to corporations and businesses. Assistance has included:

*NEAP, pp. 260-262.

*NEAP, pp. 269-271.

- threat assessments;
- crisis management guidelines;
- incident analyses;
- statistical compilations;
- information on terrorist groups; and
- the nature and scope of unofficial and official assistance during and after an incident.

Although much of this assistance has been given to multinational corporations operating abroad, the CWGT has undertaken to serve businesses at home as well.

Department of Energy (DOE)*

The Department of Energy is involved in nuclear materials management and security. By the Energy Reorganization Act of 1974,¹¹ certain functions of the Atomic Energy Commission were transferred to the Energy Research and Development Administration (later DOE) and others to the Nuclear Regulatory Commission.

Through the Interagency Radiological Assistance Program, DOE will provide scientific, medical, and technical assistance when there is a loss of control over radioactive materials. It will also aid organizations in preparing radiological response plans.

Nuclear Emergency Search Team (NEST)*: The NEST operation is provided by the DOE Office of Military Application. It has interagency agreements with the FBI and the Department of the Army.

NEST, through the Interagency Radiological Assistance Plan (IRRAP), will assess nuclear threats, conduct searches under the auspices of the FBI, provide hazard assistance, and assist in neutralizing nuclear explosive devices.

Generally, the DOE IRRAP regional office will react first. If the state, local, and IRRAP resources are inadequate, NEST will become involved. A call by any authorized official, e.g., state governors' representatives, will activate IRRAP and/or NEST resources.

*NEAP, pp. 117-139.

*NEAP, p. 127.

Nuclear Regulatory Commission (NRC)*

The Energy Reorganization Act of 1974 provided for the establishment of the Office of Nuclear Material Safety and Safeguards within NRC. That office is responsible for licensing and regulating facilities and materials associated with the processing, transport, and handling of nuclear materials; licensing operators of production facilities; reviewing and assessing provisions for safety and safeguards against threats, thefts, and sabotage; and recommending research on safety and safeguard measures.

The Office of State Programs provides programs to assist the states in regulation of nuclear materials and facilities. For example, NRC provides training assistance and advisory counseling for radiation control and radiation emergency response plan assistance.

Executive Order 11490, as amended by Executive Order 11953,¹² assigns the NRC specific functions in regard to search and recovery planning for nuclear materials. In particular, §1450(b)(3) states that NRC shall:

Implement contingency plans, developed in consultation and coordination with ERDA [DOE] and other departments and agencies as appropriate, for dealing with thefts, threats, and sabotage relating to special nuclear materials, high level radioactive wastes, and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended, and participate in the execution of the plans where necessary to protect the public health and safety and the common defense and security.

The Department of Energy Organization Act¹³ transferred the functions of ERDA to DOE. §309(b) transferred the functions of the Division of Military Application and ERDA's Military Liaison Committee to DOE.

Department of Defense (DOD)

Three divisions of DOD have been actively involved in terrorism management. They have developed operational response plans in cooperation with the Departments of Justice and Energy.

Department of the Army*: The Army explosive ordnance teams will disarm any unexploded ordnance that is hazardous to the public. The Army will also coordinate the Marine and Air Force ordnance teams.

*NEAP, pp. 236-237.

*NEAP, p. 91.

All local police resources must be exhausted before the Army will respond to an authorized request. However, once the Army becomes involved, teams are dispatched to deal with any terrorist activities that involve explosive ordnances, and to disarm any unexploded ornanace which is hazardous to civil or military personnel or equipment.

A note of interest here is that the Washington Post reported on September 15, 1978 that the Army is training an anti-terrorist unit for possible overseas action at the request of a foreign government.

The Department of the Navy*: The Navy will disarm any explosive ordnance that is found under a lake, river, or ocean.

National Guard Bureau (NGB)

Each state provides for Gubernatorial usage of National Guard personnel during a crisis by initiation of martial law or a state emergency proclamation.

Additionally, 10 USC 331-335 [See APPENDIX F] authorizes the President to provide federal troops or requisition other state troops during an insurrection.

Federal Emergency Management Agency (FEMA)

States that manage all types of emergencies with limited personnel have found it difficult to operate effectively when they must coordinate with multiple federal agencies.

On June 19, 1978, after strong pressure from state and local officials and civil defense and emergency organizations, the President submitted Reorganization Plan #3 of 1978 to Congress. The proposal was considered for 60 days without disapproval. Therefore, a new Federal Emergency Management Agency (FEMA) will be activated by April, 1979. Its director will report to the President and chair an Emergency Management Committee comprised of the assistants to the President for National Security Affairs, Domestic Affairs and Policy, and Intergovernmental Relations, and the Director of the Office of Management and Budget.

*NEAP, p. 116.

FEMA includes the Federal Insurance Administration (FIA) from the Department of Housing and Urban Development; the U.S. Fire Administration (formerly the National Fire Prevention and Control Administration) from the Department of Commerce; and the Federal Emergency Broadcast System oversight responsibility from the Executive Office of the President.

Parts of other programs to be consolidated into FEMA include the Defense Civil Preparedness Agency (DCPA) from the Department of Defense; the Federal Disaster Assistance Administration (FDAA) from HUD; the Federal Preparedness Agency (FPA) from the General Services Administration; the National Weather Service Community Preparedness Program from the Department of Commerce; the Dam Safety Coordination Program and the Earthquake Hazard Reduction Office, both from the Executive Office of the President; and two emerging functions not assigned to any agency: Federal Response to Consequences of Terrorist Incidents and Coordination of Emergency Warning.

Currently, most of the federal research and response planning for the consequences of terrorist incidents is being done by FPA under the authority of Executive Orders 10421, 11051, and 11490. Incidents considered include attacks that cause major property damage, extensive loss of life, severe disruptions to resources, disruptions to the continuity of government, or situations of considerable political significance. Little coordinated federal-state planning for terrorist consequence management has been undertaken.

This is the first time that mitigation programs are being stressed in a coordinated manner at the federal level. It is hoped that FEMA will develop a strong capacity to coordinate the hundreds of emergency-related programs throughout the federal government and national voluntary organizations.

The establishment of FEMA can provide an important foundation for a comprehensive national emergency management system wherein federal, state, and local emergency management organizations become equal partners.

1. See M. Browne and A. Nanes, International Terrorism, p. 2 (1978).

2. Statement of Deputy Attorney General Benjamin R. Civiletti Concerning the Federal Government's Capabilities for Responding to a Domestic Terrorist Incident, Before the House of Representatives Subcommittee on Civil and Constitutional Rights of the Judiciary Committee (August 16, 1978).
3. Pub. L. 89-554, 80 Stat. 616 (1966).
4. Act of August 1, 1946, c. 724, as added; August 30, 1954, c. 1073, 68 Stat. 921.
5. See state emergency office plans of California and Indiana.
6. Pub. L. 90-351, 82 Stat. 197 (1968).
7. Statement of Brock Adams, Secretary of Transportation, Concerning International Terrorism, Before the Aviation Subcommittee of the House of Representatives Committee on Public Works and Transportation (July 18, 1978).
8. Report of the Task Force on Disorders and Terrorism, Disorders and Terrorism (Washington, D.C., 1978), p. 438.
9. The New York Times, July 18, 1978.
10. Act of August 4, 1949, c. 393, 63 Stat. 496.
11. Pub. L. 93-438, 88 Stat. 1233 (1974).
12. 34 F.R. 17567 (1969), as amended by 42 F.R. 2492 (1977).
13. Pub. L. 95-91, 91 Stat. 565 (1977).

FEDERAL AUTHORITIES RELATED TO INTERNATIONAL TERRORISM

There are five significant federal acts which are related to terrorism and the conduct of foreign affairs.

The Act for the Prevention and Punishment of Internationally Protected Persons was enacted in October, 1976. It implemented two treaties that had been ratified by the Senate and the United States:

- The Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extension that are of International Significance was adopted by the Organization of American States in 1971 and came into force on October 16, 1973. Senate ratification--June 12, 1972; United States ratification--October 20, 1976.
- The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents was approved by the United Nations' General Assembly on December 14, 1973. Senate ratification--October 28, 1975; United States ratification--October 27, 1976.1

The Export Administration Act of 1969, as amended, gives the President the authority to restrict the export of goods and technology which would prove detrimental to the United States. In particular, §204(B) authorizes the President, as a last resort, to impose export controls on countries that aid and harbor international terrorists.

During the 95th Congress, a particular concern was the exportation of nuclear materials and technology.² However, only Public Law 95-92 was enacted. It extends the authorities of this act, and improves the administration of export controls.

The Trade Act of 1974 states in §2462(a)(7) that a country shall not receive the designation of "beneficiary developing country" if it aids, abets, or gives sanctuary to international terrorists.

The Foreign Assistance Act of 1961 provides for the termination of assistance to countries which grant sanctuary to international terrorists.

§262(d) of the International Bank for Reconstruction and Development Act authorizes the government to advance the cause of human rights by channeling assistance away from such countries which provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

The following statutes have been selected for inclusion in this chapter because of their direct relationship to the federal government's management of international terrorism. The citation is to the public law and the United States Code. The sectional citation is to the United States Code.

1. M. Browne and A. Nanes, International Terrorism, p. 5 (1978).
2. See H.R.3540.

ACT FOR THE PREVENTION AND PUNISHMENT OF CRIMES
AGAINST INTERNATIONALLY PROTECTED PERSONS, AS AMENDED
PUB. L. 94-467, 90 Stat. 1997-2000 (1976)
[18 U.S.C. 112, 878, 1116]

1. Abstract of Statute

• Murder or Manslaughter of Foreign Officials,
Official Guests, or Internationally Protected Persons

§1116¹ states:

"(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under §§1111, 1112, and 1113 of this title, except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than 20 years.

(b) For the purposes of this section:

(1) "Family" includes--

(A) A spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or

(B) Any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) "Foreign government" means the government of a foreign country, irrespective of recognition by the United States.

(3) "Foreign official" means--

(A) A Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) Any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) "Internationally protected person" means--

(A) A Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) Any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

(5) "International organization" means a public international organization designated as such pursuant to §1 of the International Organizations Immunities Act (22 U.S.C. 288).

(6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(c) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is 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 United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of §§5 and 7 of this title and §101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(34)).

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding." 2/

• Protection of Foreign Officials, Official Guests, and Internationally Protected Persons
§112 states:

"(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) Whoever willfully--

- (1) Intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;
- (2) Attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or
- (3) Within the United States but outside the District of Columbia and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by--

(A) A foreign government, including such use as a mission to an international organization;

(B) An international organization;

(C) A foreign official; or

(D) An official guest;

congregates with two or more other persons with intent to violate any other provision of this section; shall be fined not more than \$500 or imprisoned not more than six months, or both.

(c) For the purpose of this section "foreign government", "foreign official", "internationally protected person", "international organization", and "official guest" shall have the same meanings as those provided in §1116(b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is 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 United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of §§5 and 7 of this title, and §101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (34)).

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding." 3/

• Threats and Extortion Against Foreign Officials, Official Guests, or Internationally Protected Persons

§878 states:

"(a) Whoever knowingly and willfully threatens to violate §112, §1116, or §1201 by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person shall be fined not more than \$5,000 or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(b) Whoever in connection with any violation of subsection (a) or actual violation of §112, §1116, or §1201 makes any extortionate demand shall be fined not more than \$20,000 or imprisoned not more than twenty years, or both.

(c) For the purpose of this section "foreign official", "internationally protected person", and "official guest" shall have the same meanings as those provided in §1116(a) of this title.

(d) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is 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 United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of §§5 and 7 of this title and §101(34) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (34))."

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1. Reference to United States Code.
 2. Added by Public Law 92-539, 86 Stat. 1071 (1972) and subsequently amended.
 3. Amended by Public Law 92-539, 86 Stat. 1072 (1972) and subsequently amended.

EXPORT ADMINISTRATION ACT OF 1969, AS AMENDED
 PUB. L. 91-184, 83 Stat. 841 (1968)
 [50 U.S.C. App. 2401 et seq.]

1. Abstract of Statute

• Congressional Declaration of Policy

§2402¹ states: "The Congress makes the following declarations:

- (1) It is the policy of the United States both
- (A) To encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and
- (B) To restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States....

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls."

• Effectuate Policies

§2403 states:

"... (b) (1) To effectuate the policies set forth in §3 of this Act [§2402 of this Appendix], the President may prohibit or curtail the exportation, except under such rules and regulations as he shall prescribe, of any articles, materials, or supplies, including technical data or any other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. To the extent necessary to achieve effective enforcement of this Act [§§2401 to 2413 of this Appendix], these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. In curtailing the exportation of any articles, materials, or supplies to effectuate the policy set forth in §3(2)(A) of this Act [§2402(A) of this Appendix], the President is authorized and directed to allocate a portion of export licenses on the basis of factors other than a prior history of exportation."

• Violations and Penalties - Generally; Subsequent Offenses

§2405 states:

"(a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act [§§2401 to 2413

-
1. Reference to United States Code.

of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than \$25,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act [§§2401 to 2413 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes, shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both.

(c)(1) The head of any department or agency exercising any functions under this Act [§§2401 to 2413 of this Appendix], or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$10,000 for each violation of this Act [§§2401 to 2413 of this Appendix], or any regulation, order, or license issued under this Act [§§2401 to 2413 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed."

- Administration of Export Administration Act

Executive Order No. 12002, 42 F.R. 35623 (1977)

"By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C.App. 2401, et seq.) [§2401 et seq. of this Appendix], and as President of the United States of America, it is hereby ordered as follows:

§1. Except as provided in §2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C.App. 2401, et seq.) [§2401 et seq. of this Appendix], hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

§2(a) The power, authority and discretion conferred upon the President in §§4(h) and 4(1) of the Act [subsection (h) and (1) of this section] are received by the President.

(b) The power, authority and discretion conferred upon the President in §3(8) of the Act [§2402(8) of this Appendix], which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to international terrorists through cooperation and agreement, are delegated to the Secretary of State.

TRADE ACT OF 1974, AS AMENDED
PUB. L. 93-618, 88 Stat. 2066 (1975)
[19 U.S.C. 2461 et seq.]

1. Abstract of Statute

- Authority to Extend Preference

§2461¹ states: "The President may provide duty-free treatment for any eligible article from any beneficiary developing country, in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for--

(1) The effect such action will have on furthering the economic development of developing countries;

(2) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries; and

(3) The anticipated impact of such action on United States producers of like or directly competitive products."

- Beneficiary Developing Countries

§2462 states:

"(a)(1) For purposes of this subchapter, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order by the President of the United States designating such country as a beneficiary developing country for purposes of this subchapter. Before the President designates any country as a beneficiary developing country for purposes of this subchapter, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision...

(3) For purposes of this subchapter, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, the President may by Executive order provide that all members of such association other than members which are barred from designation under subsection (b) of this section shall be treated as one country for purposes of this subchapter.

(b) No designation shall be made under this section with respect to any of the following:

Australia	European Economic Community
Austria	Member States
Canada	Finland
Czechoslovakia	Germany (East)

Hungary	Poland
Iceland	Republic of
Japan	South Africa
Monaco	Sweden
New Zealand	Switzerland
Norway	Union of Soviet Socialist
	Republics

In addition, the President shall not designate any country a beneficiary developing country under this section...

(7) If such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

Paragraphs (4), (5), (6), and (7) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor."

1. Reference to United States Code.

FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED
 PUB. L. 87-195, 75 Stat. 460 (1961)
 [22 U.S.C. 2151 et seq.]

1. Abstract of Statute

- Termination of Assistance to Countries which Grant Sanctuary to International Terrorists; Period of Ineligibility; National Security Exception; Report by President

§2781¹ states:

"(a) Except where the President finds national security to require otherwise, the President shall terminate all assistance under this chapter to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism and the President may not thereafter furnish assistance to such government until the end of one year period beginning on the date of such termination, except that if during its period of ineligibility for assistance under this section such government aids or abets, by granting sanctuary from prosecution to, any other individuals or group which has committed an act of international terrorism, such government's period of ineligibility shall be extended for an additional year for each such individual or group.

(b) If the President finds that national security justifies a continuation of assistance to any government described in subsection (a) of this section, he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate."

1. Reference to United States Code.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, AS AMENDED
 PUB. L. 95-118, 91 Stat. 1069 (1977)
 [22 U.S.C. 262c-g, 282-286, 290g-9, 10.]

1. Abstract of Statute

• Human Rights and United States Assistance Policies

§262(d)¹ states:

"(a) The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, and the Asian Development Bank, shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in--

(1) A consistent pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or

(2) Provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

(f) The United States Executive Directors of the institutions listed in subsection (a) of this section are authorized and instructed to oppose any loan, any extension of financial assistance to any country described in subsection (a)(1) or (2) of this section, unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country."

1. Reference to United States Code.

APPENDIX A

STATE EMERGENCY STATUTES - PRELIMINARY INFORMATION

This appendix contains the background information for each state disaster/emergency act as abstracted in Chapter 3. All 57 states, territories and commonwealths are annotated according to:

- a. Name of Act with Citation - \$a gives the formal name of the state act and its statutory citation;
- b. Year Enacted - \$b notes the year the state disaster/emergency act was passed;
- c. Amendments - \$c denotes whether the basic statutory authority has been amended;
- d. State Organizational Type - \$d states the organizational structure of the state emergency office vis a vis the state government;
- e. Is 1972 CSG Example Act adopted? - \$e indicates whether the Council of State Governments Example State Disaster Act of 1972 has been enacted by the state.

1. Alabama
 - a. Alabama Civil Defense Act of 1955, Code of Alabama, Title 31, Chapter 9.
 - b. 1955
 - c. No amendments
 - d. Governor to civilian department (w/in exec.)
 - e. No
2. Alaska
 - a. Alaska Disaster Act, Alaska Statutes, Title 26, Chapter 23¹
 - b. 1977
 - c. None
 - d. Governor to Department of Military Affairs
 - e. Yes
3. Arizona
 - a. Emergency Services, Arizona Revised Statutes, Sec. 26-301 et seq.
 - b. 1971
 - c. As amended, through 1977
 - d. Governor to Adjutant General
 - e. No
4. Arkansas
 - a. Arkansas Emergency Services Act, Arkansas Statutes, Sec. 11-1935 et seq.

5. California
 - a. California Emergency Services Act, California Code, Government §§8550-8668
 - b. 1970
 - c. As amended, through 1977
 - d. Governor to civilian department (w/in exec.)
 - e. No
6. Colorado
 - a. Colorado Disaster Emergency Act of 1973, Colorado Revised Statutes, Sec. 28-2-101 et seq.
 - b. 1973
 - c. As amended, through 1975
 - d. Governor to Adjutant General
 - e. Yes
7. Connecticut
 - a. Civil Preparedness, Connecticut General Statutes Annotated Title 28
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to Civil Preparedness Director, w/in military department
 - e. No
8. Delaware
 - a. Civil Defense, Delaware Code Annotated, Title 20, Chapter 31
 - b. 1953
 - c. As amended, through 1975
 - e. No
9. Florida
 - a. State Disaster Preparedness Statute of 1974, Florida Statutes Annotated, Title 16, Chapter 252
 - b. 1974
 - c. As amended, through 1977
 - d. Governor to civilian department
 - e. Yes
10. Georgia
 - a. Georgia Civil Defense Act of 1951, 25 Code of Georgia Annotated, Chapter 86-18
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to Adjutant General
 - e. No
11. Hawaii
 - a. Civil Defense and Emergency Act, Hawaii Revised Statutes, Title 10, Chapter 128
 - b. 1951
 - c. As amended, through 1976
 - d. Governor delegated to civilian department
 - e. No

12. Idaho
 - a. Idaho Disaster Preparedness Act of 1975, Idaho Code, Title 46, Chapter 10
 - b. 1975
 - c. None
 - d. Governor to Adjutant General to Bureau Chief (w/in military division)
 - e. Yes
13. Illinois
 - a. The Illinois Emergency Services and Disaster Agency Act of 1975, Illinois Annotated Statutes, Chapter 127, Sec. 1101 et seq.
 - b. 1975
 - c. None
 - d. Governor delegated to civilian department
 - e. Yes
14. Indiana
 - a. Civil Defense and Disaster Law of 1975, Burns Indiana Statutes Annotated, Title 10, Art. 4, Chapter 1 (10-4-1-1 et seq.)
 - b. 1975
 - c. As amended, through 1978
 - d. Governor to civilian department (w/in exec.)
 - e. Yes
15. Iowa
 - a. Disaster Services and Public Disorders, Iowa Code Annotated, Chapter 29C
 - b. 1976
 - c. None
 - d. Governor to Adjutant General
 - e. Yes
16. Kansas
 - a. Kansas Emergency Preparedness Act, Kansas Statutes Annotated, Chapter 48, Article 9
 - b. 1975
 - c. None
 - d. Governor to Adjutant General
 - e. Yes
17. Kentucky
 - a. Disaster and Emergency Services, Kentucky Revised Statutes, Title V, Chapter 39
 - b. 1952
 - c. As amended, through 1976
 - d. Governor to Adjutant General
 - e. No
18. Louisiana
 - a. Louisiana Disaster Act of 1974, Louisiana Statutes Annotated, Revised Statutes, Title 29, §701 et seq.
 - b. 1974
 - c. As amended, through 1975
 - d. Governor to Adjutant General
 - e. Yes

19. Maine
 - a. Maine Civil Emergency Preparedness Act, Maine Revised Statutes Annotated, Title 37-A, §51 et seq.
 - b. 1972
 - c. As amended, through 1977
 - d. Governor to Adjutant General
 - e. Yes
20. Maryland
 - a. Maryland Civil Defense and Disaster Preparedness Act, Annotated Code of Maryland, Article 16A
 - b. 1951
 - c. As amended, through 1975
 - d. Governor to civilian department
 - e. No
21. Massachusetts
 - a. Civil Defense, Massachusetts General Laws Annotated, Title V, Appendix to Chapter 33, §13
 - b. 1950
 - c. As amended, through 1970
 - d. Governor to Council overseeing department
 - e. No
22. Michigan
 - a. Emergency Preparedness Act, (Michigan Statutes Annotated §4.824(11) et seq.), Michigan Compiled Laws, §30.401 et seq.
 - b. 1976
 - c. None
 - d. Governor delegated to State Police
 - e. Yes
23. Minnesota
 - a. Minnesota Civil Defense Act of 1951, Minnesota Statutes Annotated, §12.01 et seq.
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to civilian department
 - e. No
24. Mississippi
 - a. Mississippi Civil Defense Law, Mississippi Code, §33-15-1 et seq.
 - b. 1952
 - c. As amended, through 1962
 - d. Governor to Council (w/in exec. branch)
 - e. No
25. Missouri
 - a. Civil Defense, Vernon's Annotated Missouri Statutes, §44.010 et seq.
 - b. 1951
 - c. As amended, through 1971
 - d. Governor to Adjutant General
 - e. No

26. Montana
 - a. Montana Civil Defense Act of 1951, Revised Codes of Montana, Title 77, Chapters 23, 24
 - b. 1951
 - c. As amended, through 1974
 - d. Governor to department of military affairs
 - e. No
27. Nebraska
 - a. Nebraska Disaster and Civil Defense Act of 1973, Revised Statutes of Nebraska, §81-829.36, et seq.
 - b. 1973
 - c. None
 - d. Governor to Adjutant General
 - e. Yes
28. Nevada
 - a. Nevada Civil Defense Act of 1953, Nevada Revised Statutes, Title 36, Chapter 414
 - b. 1953
 - c. As amended, through 1971
 - d. Governor to civilian department (w/in exec. branch)
 - e. No
29. New Hampshire
 - a. Civil Defense Act, New Hampshire Revised Statutes Annotated, Title VIII, Chapter 107
 - b. 1953
 - c. As amended, through 1975
 - d. Governor with Council overseeing department
 - e. No
30. New Jersey
 - a. National Defense, New Jersey Statutes Annotated, Appendix A, Emergency and Temporary Acts, Chapter 9
 - b. 1941
 - c. As amended, through 1977
 - d. Governor to civilian department
 - e. No
31. New Mexico
 - a. State Civil Emergency Preparedness Act, New Mexico Statutes, Chapter 9, Article 13
 - b. 1953
 - c. As amended, through 1973
 - d. Governor to Adjutant General
 - e. No
32. New York
 - a. New York State Defense Emergency Act, Title 26, Chapter 1, Article 3, McKinney's Unconsolidated Laws of New York Annotated, §9120 et seq.
 - b. 1951
 - c. As amended, through 1975
 - d. Governor to Council overseeing department
 - e. No

33. North Carolina
 - a. North Carolina Civil Preparedness Act of 1977, General Statutes of North Carolina, Chapter 166A
 - b. 1977
 - c. None
 - d. Governor to civilian department
 - e. Yes
34. North Dakota
 - a. North Dakota Disaster Act of 1973, North Dakota Century Code, Title 37, Chapter 37-17
 - b. 1973
 - c. As amended, through 1975
 - d. Governor to Adjutant General
 - e. Yes
35. Ohio
 - a. Civil Defense, Page's Ohio Revised Code Annotated, Title 59, Chapter 5915
 - b. 1953
 - c. As amended, through 1976
 - d. Governor to Adjutant General
 - e. No
36. Oklahoma
 - a. Oklahoma Civil Defense and Emergency Resources Management Act of 1967, Oklahoma Statutes Annotated, Title 63, §663 et seq.
 - b. 1967
 - c. As amended, through 1976
 - d. Governor to civilian department (w/in exec. branch)
 - e. No
37. Oregon
 - a. Civil Defense and Disaster Relief, Oregon Revised Statutes, Chapter 401
 - b. 1949
 - c. As amended, through 1977
 - d. Governor to civilian department (w/in exec. branch)
 - e. Yes
38. Pennsylvania
 - a. State Council of Civil Defense Act of 1951, Purdon's Pennsylvania Statutes Annotated, Title 71, §1689
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to Council
 - e. No
39. Rhode Island
 - a. Rhode Island Defense Civil Preparedness Act, General Laws of Rhode Island, Title 30, Chapter 15
 - b. 1973
 - c. As amended, through 1975
 - d. Governor to civilian department (w/in exec. branch)
 - e. Yes

40. South Carolina
 - a. Disaster Preparedness, Code of Laws of South Carolina, Title 25, Chapter 6
41. South Dakota
 - a. Emergency and Disaster Service, South Dakota Codified Laws, Title 33, Chapter 33-15
 - b. 1977
 - c. None
 - d. Governor to Adjutant General
 - e. No
42. Tennessee
 - a. Civilian Defense, Tennessee Code Annotated, Title 7, Chapter 6
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to Adjutant General
 - e. No
43. Texas
 - a. Texas Disaster Act of 1975, Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 6889-7
 - b. 1975
 - c. As amended, through 1977
 - d. Governor to civilian department (w/in exec. branch)
 - e. Yes
44. Utah
 - a. State Council of Defense Act, Utah Code Annotated, Title 63, Chapter 5
 - b. 1941
 - c. As amended, through 1957
 - d. Governor in partnership with state Council of Defense
 - e. No
45. Vermont
 - a. Vermont Civil Defense Act of 1951, Vermont Statutes Annotated, Title 20, Chapter 1
 - b. 1951
 - c. As amended, through 1975
 - d. Governor to civilian department
 - e. No
46. Virginia
 - a. Commonwealth of Virginia Emergency Services and Disaster Law of 1973, Code of Virginia, Title 44, Chapter 3.2, §44-146.13 et seq.
 - b. 1973
 - c. As amended, through 1978
 - d. Governor to civilian department
 - e. No

47. Washington
 - a. Washington Emergency Services Act, Revised Code of Washington Annotated, Title 38, Chapter 38.52
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to civilian department (w/in exec. branch)
 - e. No
48. West Virginia
 - a. Emergency Services, West Virginia Code, Chapter 15, Article 5
 - b. 1973
 - c. As amended, through 1978
 - d. Governor to civilian department (w/in exec. branch)
 - e. Yes
49. Wisconsin
 - a. Emergency Government, Wisconsin Statutes Annotated, Chapter 22.16
 - b. Unknown
 - c. As amended, through 1975
 - d. Governor to civilian department
 - e. No
50. Wyoming
 - a. Wyoming Disaster and Civil Defense Act, Wyoming Statutes Annotated, Title 19, Chapter 5
 - b. 1951
 - c. As amended, through 1977
 - d. Governor to military department (Adjutant General)
 - e. No
51. District of Columbia
 - a. Office of Civil Defense, District of Columbia Code, Title 6, Chapter 12
 - b. 1950
 - c. As amended, through 1977
 - d. Governor to civilian department (w/in exec. branch)
 - e. No
52. American Samoa
 - a. None; Emergency Rules, American Samoa Code, Title 3, §§1987-88
 - b. 1961
 - c. As amended, through 1972
 - d. Not indicated
 - e. No
53. Puerto Rico
 - a. Puerto Rico Civil Defense Act of 1951, Laws of Puerto Rico Annotated, Title 25, Chapter 7, §130 et seq.
 - b. 1951
 - c. As amended, through 1963
 - d. Governor to civilian department (w/in exec. branch)
 - e. No

54. Guam
 - a. None
 - b. None
 - c. None
 - d. None
 - e. No
55. Virgin Islands
 - a. Virgin Islands Disaster Emergency Act of 1973, Virgin Islands Code, Title 23, Chapter 12
 - b. 1973
 - c. As amended, through 1976
 - d. Governor to civilian department
 - e. Yes
56. Northern Mariana Islands
 - a. None; see Code of the Trust Territory Pacific Islands
 - b. N/A
 - c. N/A
 - d. High Commissioner
 - e. No
57. Panama Canal Zone
 - a. None; see Canal Zone Code, Title 2, §235
 - b. N/A
 - c. N/A
 - d. N/A
 - e. No

¹Responses to criteria are based on the Alaska Disaster Act cited above. However, a disruptive terrorist threat coming from a paramilitary organization is apparently not covered by the Alaska Disaster Act, but by the Alaska Civil Defense Statute, Alaska Statutes, Title 26, Chapter 20.

APPENDIX B

This appendix lists each of the 22 powers for which state emergency statutes were reviewed. Each power is presented in the form of the question asked in reviewing the statute. The answer for each state, commonwealth and territory is then given in the form of a "yes" or "no" reply. When the answer is affirmative the applicable legal citation is provided. Pertinent qualifications are asterisked and footnoted at the end of each section.

1. DISASTER DEFINITION ENCOMPASSES TERRORISM

Does the Act contain a definition of disaster/emergency broad enough to encompass domestic terrorism (man-made disaster/emergency, non-accidental).

1.	Alabama	NO	CA §§31-9-3, 31-9-8
2.	Alaska	NO*	
3.	Arizona	YES*	ARS § 26-301(7)
4.	Arkansas	YES	AS §11-1936(b)
5.	California	YES*	Cal. Code, Gov §8558
6.	Colorado	YES	CRS §28-2-103(1)
7.	Connecticut	YES	CGSA §28-1(b)
8.	Delaware	NO*	
9.	Florida	YES	FSA §252.34(5)
10.	Georgia	YES*	CGA 86-1803(a)
11.	Hawaii	YES*	10 HRS §§128-2, 128-7
12.	Idaho	YES	IC §46-1002(3), (4)
13.	Illinois	YES	IAS, Ch. 127 §1104(b)
14.	Indiana	YES	BISA 10-4-1-3(3)
15.	Iowa	NO*	
16.	Kansas	YES	KSA 48-904(d)
17.	Kentucky	YES	KRS 39.400, 39.401, 39.409
18.	Louisiana	NO*	
19.	Maine	YES	37-A MRSA §53.2
20.	Maryland	NO	

21.	Missouri	NO*	
22.	Michigan	YES	MCLA §30.402(f)
23.	Minnesota	NO*	
24.	Mississippi	NO	
25.	Missouri	NO*	
26.	Montana	NO	
27.	Nebraska	YES	RSN § 81-829.39(3)
28.	Nevada	NO	
29.	New Hampshire	NO *	
30.	New Jersey	YES	NJSA, App. A: 9-33.1
31.	New Mexico	NO	
32.	New York	YES *	
33.	North Carolina	YES	GSNC §166A-4(3)
34.	North Dakota	YES	NDCG §37-17.1-04.1
35.	Ohio	YES	PORCA §5915.01 (G)
36.	Oklahoma	NO *	
37.	Oregon	NO *	
38.	Pennsylvania	YES *	71 P.S §1689.102
39.	Rhode Island	YES	GLRI §30-15-3(1)
40.	South Carolina	YES	CLSC §25-6-10(c)
41.	South Dakota	NO *	
42.	Tennessee	YES	TCA §7-601(i)
43.	Texas	YES	VTCS, Art 6889-7, Sec. 4(1)
44.	Utah	YES	UCA §63-5-8B
45.	Vermont	NO *	
46.	Virginia	YES	CV §44-146.16(1), (2), (5)
47.	Washington	YES	RCW §38.52.010 (7)
48.	West Virginia	YES	WVC § 15-5-2 (a)
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-102(a)(i)
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	YES	
54.	Guam	NO	LPR, T.25 §§132(a), 136
55.	Virgin Islands	YES	
56.	Northern Marianas	NO	VIC, T.23 §1124
57.	Canal Zone	NO	

Alaska:

Alaska has modified the CSG Example Act definition of disaster so that its Disaster Act applies only to natural and non-military man-made disasters. Terrorist threats coming from paramilitary organizations like the Red Brigades or PLO would, therefore, not be covered by Alaska's Civil Defense Statute, Alaska Statutes, Title 26, Chapter 20. Legislative authority for emergency gubernatorial powers necessitated by a disruptive paramilitary terrorists threat would be based on the latter statute alone.

Arizona and California:

Statute creates three degrees of emergency: War emergency, emergency, and local emergency. This analysis uses the middle-level "emergency".

Delaware:

Terms not defined. DCA §§3102(3), 3125(a).

Georgia:

Terms not defined. 25CGA 86-1803, 1807. Civil Defense definition probably encompasses terrorist threats.

Hawaii:

10 HRS §§128-2, 128-7 together give rise to 'the threat of any form of hos tile action upon the State.

Iowa:

Also, "public disorder" and "public disorder emergency" do not appear to contemplate the disastrous consequences of a terrorist threat.

Louisiana:

Hostile "paramilitary" action has been omitted from the definition as have such arguably purposeful man-made catastrophes as contamination, epidemic, riot, and infestation. The definition appears to contemplate only natural and accidental man-made catastrophe. LSA-RS 29:704.

Massachusetts:

Terms not defined. MGLA, 33 App. §13-5, providing for proclamation of state of emergency appears to encompass terrorist threats.

Minnesota:

Requires the actual occurrence of a major disaster (MSA §12.31) which, by definition, necessitates immediate and serious impairment to the health and safety of persons. MSA §12.03, Subd. 2. The threat to personal health and safety is not within the definition, although the threat against property is. Id.

Missouri: "Emergency" means attack on U.S. or natural disaster. "Disaster" encompasses terroristic threat, but a state of emergency can only be declared upon actual attack or the occurrence of a natural disaster. VAMS §§ 44.010(3), (4); 44.100.1(1).

New Hampshire: The "civil defense" definition (BHRSA §107.2.I) is broad enough, but an emergency can only be declared upon attack on the U.S. or subsequent to a natural disaster, NHRSA §107:8.

New York: Definition of "attack" appears all inclusive. Mck. Unconsol. Laws §9103.2.

Oklahoma: "Disaster" undefined. Not clear that the threat of disaster can provoke a Disaster Emergency. 63 OKl.St. Ann. §683.3C.

Oregon: The disaster definition, ORS §401.030(2), is broad enough, but is applicable only to the Civil Defense Act, ORS §401.010-40. 190, which does not provide for emergency powers. Emergency is defined in a separate enactment, ORS §401.510, but is limited to actual or imminent natural disasters, the occurrence of which gives rise to gubernatorial emergency power when so declared.

Pennsylvania: Although "extreme emergency" depends on factors not foreseen and not known to exist when appropriation bills were enacted.

South Dakota: Requires an actual catastrophe producing phenomena which necessitate state resources. The threat of catastrophe is not contemplated. SDCL 33-15=1 (7), (8).

Vermont: The definition of "civil defense" is broad enough but proclamation of a state of emergency is predicated on natural disaster or attack upon the U.S., VSA T.20, §2, §9.

2. PRIMARY RESPONSIBILITY OF GOVERNOR

Does the Act vest primary responsibility in the Governor for meeting the dangers of disaster?*

1.	Alabama	NO	
2.	Alaska	YES	AS §26.23.020(a)
3.	Arizona	NO	
4.	Arkansas	YES	AS §11-1941(a)
5.	California	NO	
6.	Colorado	YES	CRS § 28-2-104(1)
7.	Connecticut	NO	
8.	Delaware	YES	20 DCA §3104(a)
9.	Florida	YES	FSA §252.36(1)
10.	Georgia	YES	CGA 86-1806(a)
11.	Hawaii	YES	10 HRS §128-5
12.	Idaho	NO	
13.	Illinois	YES	IAS, Ch. 127 §1107(a)
14.	Indiana	YES	BISA 10-4-1-6(a)
15.	Iowa	NO	
16.	Kansas	YES	KSA 48-924(a)
17.	Kentucky	NO	
18.	Louisiana	NO*	
19.	Maine	NO	
20.	Maryland	YES	ACM, Art. 16A, §6(a)
21.	Massachusetts	NO	
22.	Michigan	YES	MCLA §30.403(1)
23.	Minnesota	YES	MSA §12.21, Subd. 1
24.	Mississippi	YES	MC § 33-15-11(a)
25.	Missouri	YES	VAMS §44.022.1
26.	Montana	YES	RCM §77-2304
27.	Nebraska	YES	RSN §81-829.40(1)
28.	Nevada	YES	NRS §414.060(1)
29.	New Hampshire	YES	NHRSA §107:6
30.	New Jersey	YES	NJSA, App. A: 9-48

31.	New Mexico	YES	NMS §9-13-19
32.	New York	NO *	
33.	North Carolina	YES	GSNC §166A-5(1)
34.	North Dakota	YES	NDCC §37-17.1-05.1
35.	Ohio	NO	
36.	Oklahoma	YES	63 OKL. St. Ann. §683.8(a)
37.	Oregon	YES	ORS §401.060(1)
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §§30-15-7, 30-15-9(A)
40.	South Carolina	YES	CLSC §25-6-30
41.	South Dakota	NO *	
42.	Tennessee	YES	TCA §7-607
43.	Texas	YES	VTGS, Art. 6889-7, Sec. 5(a)
44.	Utah	NO	
45.	Vermont	YES	VSA T.20 §8(a)
46.	Virginia	NO	
47.	Washington	YES	RCW §38.52.050(1)
48.	West Virginia	YES	WVC §15-5-5
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-104(a)
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §135
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(a)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Louisiana: It is shared with the governing authority of local governmental subdivisions. LSA - R.S. 29: 705(a).

New York: Civil Defense Commission has responsibility; the Governor's Chief of Staff plus three appointees are on the commission. Mck. Uncond. Laws §9120. A state defense council oversees the commission; § 9112.

South Dakota: Adjutant General is vested, subject to control of Governor. SDCL §33-15-22.

3. FREEDOM OF STATE FROM LIABILITY

Does the Act free the state, its employees, and appointees from liability for death or injury to persons or for damage to property occurring during a disaster/emergency?

1.	Alabama	YES	CA 31-9-16
2.	Alaska	NO	(see Civil Def. Stat. §20.26.140)
3.	Arizona	YES	ARS §26-314
4.	Arkansas	YES	AS §11-1949
5.	California	YES	Cal. Code GOV §8655
6.	Colorado	NO	CRS §28-2-303
7.	Connecticut	YES	CGSA §28-13
8.	Delaware	YES	20 DCA §3114, 3130
9.	Florida	YES	FSA §252.48
10.	Georgia	YES	CGA 86-1817
11.	Hawaii	YES	10 HRS §128-18
12.	Idaho	YES	IC §46-1017
13.	Illinois	YES	IAS, Ch. 127 §1117
14.	Indiana	YES	BISA 10-4-1-8(a)
15.	Iowa	NO *	
16.	Kansas	YES	KSA 48-915
17.	Kentucky	NO *	
18.	Louisiana	YES	LSA - R.S. 29:709(K)
19.	Maine	YES	37-A MRSA §61
20.	Maryland	NO	
21.	Massachusetts	YES	MGLA, 33 App. §13-12
22.	Michigan	YES	MCLA §30.411(3)
23.	Minnesota	NO	
24.	Mississippi	YES	MC §33-15-21(a)
25.	Missouri	NO	
26.	Montana	YES	RCM §77-2308
27.	Nebraska	YES	RSN §81-829.55(1)
28.	Nevada	YES	NRS §414.110(1)
29.	New Hampshire	YES	NHRSA §107:12
30.	New Jersey	YES	NJSA, App. A:9-52

31. New Mexico	NO	
32. New York	YES	McK. Unconsol. Laws §9193
33. North Carolina	YES	GSNC §166A-14(a)
34. North Dakota	YES	NDCC §37-17.1-16
35. Ohio	YES	PORCA §5915.10(A)
36. Oklahoma	YES	63 OKL. St. Ann. §683.14(b)
37. Oregon	YES	ORS §401.170
38. Pennsylvania	YES	71 P.S. §1689.11
39. Rhode Island	YES	GLRI §30-15-15(A)
40. South Carolina	NO	
41. South Dakota	YES	SDCL §33-15-38
42. Tennessee	YES	TCA §7-630
43. Texas	NO	
44. Utah	YES	UCA §63-5-16
45. Vermont	NO	
46. Virginia	YES	VC §44-146.23
47. Washington	NO *	
48. West Virginia	YES	WVC §15-5-11(a)
49. Wisconsin	NO	
50. Wyoming	YES	WSA §19-5-112
51. District of Columbia	YES	DCC §6-1204
52. American Samoa	NO	
53. Puerto Rico	NO	
54. Guam	NO	
55. Virgin Islands	NO	
56. Northern Marianas	NO	
57. Canal Zone	N)	

Iowa: Only during debris and wreckage removal ICA 290, 6(4).

Kentucky: Purposely repealed. KRS 39.428.

Washington: The state consents to be sued under the ACT, RCW §38.52.180(2).

4. DISASTER CONTINGENCY FUND

Does the act create a contingency fund for disasters/emergencies?

1. Alabama	YES	CA 31-9-24
2. Alaska	NO	
3. Arizona	NO	
4. Arkansas	YES	AS §11-1941(c)
5. California	NO	
6. Colorado	YES	CRS §28-2-106(2)
7. Connecticut	NO	
8. Delaware	NO	
9. Florida	NO	
10. Georgia	NO	
11. Hawaii	NO*	
12. Idaho	NO	
13. Illinois	NO	
14. Indiana	YES	BISA 10-4-1-22(b)
15. Iowa	YES	ICA 29C.20
16. Kansas	NO	
17. Kentucky	NO	
18. Louisiana	NO	
19. Maine	NO	
20. Maryland	NO	
21. Massachusetts	NO	
22. Michigan	YES	MCLA §30.418(1)
23. Minnesota	NO	
24. Mississippi	NO	
25. Missouri	NO	
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.42(2)
28. Nevada	NO	
29. New Hampshire	NO	
30. New Jersey	NO	
31. New Mexico	NO	
32. New York	NO	

33. North Carolina	NO	
34. North Dakota	NO	
35. Ohio	NO	
36. Oklahoma	NO	
37. Oregon	NO	
38. Pennsylvania	NO	
39. Rhode Island	NO	
40. South Carolina	NO	
41. South Dakota	YES	SDCL §33-15-23
42. Tennessee	NO	
43. Texas	YES	VTCS, Art. 6889-7, Sec. 7(c)
44. Utah	NO	
45. Vermont	NO	
46. Virginia	NO	
47. Washington	NO	
48. West Virginia	NO	
49. Wisconsin	NO	
50. Wyoming	NO	
51. D.C.	NO	
52. American Samoa	NO	
53. Puerto Rico	NO	
54. Guam	NO	
55. Virgin Islands	YES	VIC, T.23 §1127(b)
56. Northern Marianas	NO	
57. Canal Zone	NO	

Hawaii: However, the Governor's contingency fund is available for civil defense functions. 10 HRS 128-11(4).

5. FUNDING FOR ADMINISTRATION OF STATE EMERGENCY OFFICE

Does the act provide funding or authority for personnel and administration of the state emergency office (Division of Disaster Emergency Services)?

1. Alabama	YES	CA 31-9-24
2. Alaska	NO	
3. Arizona	NO	
4. Arkansas	YES	AS §11-1941
5. California	YES	Cal. Code GOV §8566
6. Colorado	YES	CRS §28-2-115
7. Connecticut	YES	CGSA §28-2(b)
8. Delaware	YES	20 DCA §3103
9. Florida	YES	FSA §252.37(2)
10. Georgia	YES	CGA 86-1806(b)(8)
11. Hawaii	YES	10 HRS §128-10(11)
12. Idaho	NO	
13. Illinois	NO	
14. Indiana	YES	BISA 10-4-1-6(b)(6)
15. Iowa	YES	ICA 29C.8(4)
16. Kansas	YES	KSA 48-919
17. Kentucky	YES	KRS 39.407(7)
18. Louisiana	YES	LSA - R.S. 29:707(A)
19. Maine	YES	37-A MRSA §54
20. Maryland	YES	ACM, Art. 16A, §4(b)
21. Massachusetts	YES	MGLA, 33 App. §13-2
22. Michigan	NO	
23. Minnesota	YES	MSA §12.11
24. Mississippi	YES	MC §33-15-7(b)
25. Missouri	YES	VAMS §§44.020, 44.0224.2
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.41(1)
28. Nevada	YES	NRS §414.040
29. New Hampshire	YES	NHRSA §107:3
30. New Jersey	YES	NJSA, App. A:9-37
31. New Mexico	NO	

32. New York	YES	McK. Unconsol. Laws \$9120.4, \$9111.3
33. North Carolina	NO	
34. North Dakota	YES	NDCC §37-17.1-06-1
35. Ohio	NO	
36. Oklahoma	YES	63 OKL. St. Ann. 683.4
37. Oregon	YES	ORS §401.040
38. Pennsylvania	YES	71 P.S. §1689.3
39. Rhode Island	YES	GLRI §30-15-5
40. South Carolina	YES	CLSC §25-6-20
41. South Dakota	YES*	SDCL §33-15-5
42. Tennessee	YES	TCA §7-605
43. Texas	YES	VTCS, Art. 6889-7, Sec. 6(a)
44. Utah	YES	UCA §63-5
45. Vermont	YES	VSA, T.20 §3(c)
46. Virginia	YES	VC §44-146.18
47. Washington	YES	RCW §38.52.030(2)
48. West Virginia	YES	WVC §15-5-3
49. Wisconsin	NO	
50. Wyoming	YES	WSA §19-5-105(b)
51. D.C.	YES	DCC §6-1203(e)
52. American Samoa	NO	
53. Puerto Rico	YES	LPR, T.25 §133(b)
54. Guam	NO	
55. Virgin Islands	NO	
56. Northern Marianas	NO	
57. Canal Zone	NO	

South Dakota: Not clear in which provision of the statute the division of emergency and disaster services is created.

6. DECLARATION OF DISASTER/EMERGENCY

Does the Act authorize the Governor to declare a disaster/emergency situation, thereby triggering availability of emergency resources and/or emergency gubernatorial power?

1. Alabama	YES	CA §31-9-8
2. Alaska	YES	AS §26.23.020(c), (e)
3. Arizona	YES	ARS §26-303(D)
4. Arkansas	YES	AS §11-1941(d)
5. California	YES	Cal. Code GOV §8625
6. Colorado	YES	CRS §28-2-104
7. Connecticut	YES	CGSA §28-9
8. Delaware	YES*	20 DCA §3125(a)
9. Florida	YES	FSA §252.36(2), (3)
10. Georgia	YES	CGA 86-1807(a), (b)
11. Hawaii	YES	10 HRS §128-7
12. Idaho	YES	IC §46-1008(2)
13. Illinois	YES	IAS, Ch. 127 §1108(a)
14. Indiana	YES	BISA 10-4-1-7(a)
15. Iowa	YES	ICA 29C.6(1)
16. Kansas	YES	KSA 48-924
17. Kentucky	YES	KRS 39.409
18. Louisiana	YES	LSA - R.S. 29:705(B), (C)
19. Maine	YES	37-A MRSA §57.1
20. Maryland	NO*	
21. Massachusetts	YES	MGLA, 33 App. §13-5
22. Michigan	YES*	MCLA §30.403(3), §30.404(1)
23. Minnesota	YES	MSA §12.31
24. Mississippi	YES*	MC §33-15-13(a)
25. Missouri	YES	VAMS 44.100.1
26. Montana	YES*	RCM §77-2404(1)
27. Nebraska	YES*	RSN §81-829.40(3)
28. Nevada	YES*	NRS §414.070
29. New Hampshire	YES*	NHRSA §107:8
30. New Jersey	YES*	NJSA, App. A:9-51(a)(2)

31.	New Mexico	NO	
32.	New York	YES	
33.	North Carolina	YES	GSNC §166A-6(a)
34.	North Dakota	YES	NDCC §37-17.1-05.3
35.	Ohio	NO	
36.	Oklahoma	YES *	OKL. St. Ann. §683.9
37.	Oregon	YES	ORS §401.520
38.	Pennsylvania	YES	71 P.S. §1689.103
39.	Rhode Island	YES	GLRI §30-15-9
40.	South Carolina	YES	CLSC §25-6-30(2)
41.	South Dakota	YES	SDCL §33-15-8(2)
42.	Tennessee	YES	TCA §7-615
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(d)
44.	Utah	NO *	
45.	Vermont	YES *	VSA §T.20 §9
46.	Virginia	YES	VC §44-146.17(7)
47.	Washington	NO	
48.	West Virginia	YES	WVC §15-5-6
49.	Wisconsin	YES	WSA §22.16(3)(b)(1)
50.	Wyoming	NO	
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §136
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(c)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Delaware: Triggers extraordinary powers over activities of persons (public assembly, curfews, use of fire-arms, alcohol, etc.) Emergency resources are apparently available without a declaration of emergency.

Maryland: No triggering occurs. AMC, Art. 16A.

Mississippi: Only upon actual enemy attack against the U.S.

Montana: Only following an attack on the U.S.

Nevada: Only upon actual attack on the U.S. or after a natural disaster has occurred.

New Hampshire: Requires an "attack" which triggers extraordinary powers of the state commission, Mck. Unconsol. Laws §9129. But the Governor may himself execute any powers of the commission. Mck. Unconsol. Laws. §9191.

New York: Requires actual or imminent attack upon United States.

Oklahoma: Governor must convene state council of defense; Governors and council must jointly determine that emergency exists. UCA §63-5-3.

7. ISSUE EMERGENCY ORDERS

Does the Act empower the Governor to issue emergency executive orders, having the full force and effect of law?*

1.	Alabama	YES	CA §31-9-8(1)
2.	Alaska	YES	AS §26.23.020(b)
3.	Arizona	NO	
4.	Arkansas	YES	AS §11-1941(b)
5.	California	YES	Cal. Code GOV §8567 (a)
6.	Colorado	YES	CRS §28-2-104(2)
7.	Connecticut	YES	CGSA §28-9(h)
8.	Delaware	YES	20 DCA §§3104(b)(1), 3112
9.	Florida	YES	FSA §252.36(1)
10.	Georgia	YES	CGA 86-1806(1), 86-1807(c)(1)
11.	Hawaii	YES	10 HRS §128-27
12.	Idaho	YES	IC §46-1008(1)
13.	Illinois	YES	IAS, Ch. 127 §1121(a)
14.	Indiana	YES	BISA 10-4-1-6(b)(1), 10-4-1-15(b)
15.	Iowa	NO	
16.	Kansas	YES	KSA 48-925(b)
17.	Kentucky	YES	KRS 39.427(2)
18.	Louisiana	YES	LSA - R.S. 29:705(A)
19.	Maine	YES	37-A MRSAS§57.1A, 69
20.	Maryland	NO	

21.	Massachusetts	YES	MGLA, 33App. §13-8
22.	Michigan	YES	MCLA, §30.403 (2)
23.	Minnesota	YES	MSA §12.32
24.	Mississippi	YES	MC §33-15-31(b)
25.	Missouri	YES	VAMS §§44.022.3(1), 44.130
26.	Montana	YES	RCM §77-2404(3)
27.	Nebraska	NO	
28.	Nevada	YES	NRS §§414.060.3(a), 414.070.1
29.	New Hampshire	YES	NHRSA §§107:6I, 107:8(a)
30.	New Jersey	YES	NJSA, App. A:9-45, 9-49(h), 9-50
31.	New Mexico	NO	
32.	New York	YES	McK. Unconsol. Laws §9121.3D.p, 9121.4, 9112, 9191
33.	North Carolina	NO	
34.	North Dakota	YES	NDCC §37-17.1-05.2
35.	Ohio	YES	PORCA §5915.05
36.	Oklahoma	YES	63 OKL. St. Ann. §683.9(b)
37.	Oregon	YES	ORS §§401.060(2)(b), 401.660, 401.990
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15-7(1)
40.	South Carolina	YES	GLSC §25-6-30(1)
41.	South Dakota	NO	
42.	Tennessee	YES	TCA §§7-608, 7-615(a), 7-617
43.	Texas	YES	VTCS Art. 6889-7, Sec. 5(b)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §§8(b)(1), 9(1), 24
46.	Virginia	YES	VC §44-146-17(1)
47.	Washington	YES	RCW §§38.52.050, 38.52.150
48.	West Virginia	YES	WVC §§15-5-5(1), 15-5-6(a)
49.	Wisconsin	YES	WSA §§22.16(3)(b)(5), 22.16(14)
50.	Wyoming	NO	
51.	District of Columbia	NO	
52.	American Samoa	NO*	
53.	Puerto Rico	YES	LPR, T.25 §§135(b)(1), 141
54.	Guam	NO	
55.	Virgin Islands	NO	
56.	Northern Marianas	NO*	
57.	Canal Zone	NO	

The power to make, amend, and rescind the necessary orders is insufficient. The Act must state that such orders have the force of law, or give the Governor power to enforce orders, or prescribe sanctions for violations of orders.

American Samoa: An agency may adopt such rules upon imminent peril to the public safety.

Northern Marianas: District Administrators have such power. ITTC §108.

8. ENTER INTO MUTUAL AID AGREEMENTS

Does the Act authorize the Governor to enter into mutual aid agreements with foreign states (or nations)?

1.	Alabama	YES	CA §31-9-6(9)
2.	Alaska	YES	AS §§26.23.120,130
3.	Arizona	YES	ARS §26-309(C)
4.	Arkansas	NO *	
5.	California	YES	Cal. Code GOV §8619
6.	Colorado	NO	
7.	Connecticut	YES *	CGSA §28-4
8.	Delaware	YES	20 DCA §3104(b)(11)
9.	Florida	YES	FSA §252.40(2)
10.	Georgia	YES	CGA86-1806(b)(10)
11.	Hawaii	YES	10 HRS 128-10(3)
12.	Idaho	YES	IC §46-1010
13.	Illinois	YES	IAS, Ch. 127, §1107(c)(5)
14.	Indiana	NO *	
15.	Iowa	YES	ICA 29C.6(7)
16.	Kansas	YES	KSA 48-930(c)
17.	Kentucky	NO *	
18.	Louisiana	NO *	
19.	Maine	YES	37-A MRSA §57.1F
20.	Maryland	NO	
21.	Massachusetts	NO *	

22. Michigan	YES	MCLA §30.404(4)
23. Minnesota	YES	MSA §12.21, Subd. 3(5)
24. Mississippi	YES	MC §33-15-11(b)(10)
25. Missouri	YES	VAMS §44.022.3(3)
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.56
28. Nevada	NO	
29. New Hampshire	YES	NHRSA §107:6(v)
30. New Jersey	YES	NJSA, App. A:9-46, 9-59
31. New Mexico	YES	NMS §9-13-19B(5)
32. New York	YES	McK. Unconsol. Laws §9121.3.E.v. 9121.5, 9191
33. North Carolina	YES	GSNC §166A-10(a)
34. North Dakota	NO	
35. Ohio	YES	PORCA §5915.04
36. Oklahoma	YES	63 OKL. St. Ann. §683.8(d)(5)
37. Oregon	YES	ORS §401.060(2)(g)
38. Pennsylvania	NO	
39. Rhode Island	NO *	
40. South Carolina	NO	
41. South Dakota	NO *	
42. Tennessee	YES	TCA §7-609
43. Texas	YES	VTCS, Art. 6889-7 Sec. 10
44. Utah	NO *	
45. Vermont	YES	VSA, T.20 §8(b)(7)
46. Virginia	YES	VC §44-146.17(5)
47. Washington	YES	RCW §38.52.050(3)(e)
48. West Virginia	YES	WVC §15-5-5(5)
49. Wisconsin	YES	WSA §22.16(3)(b)(2)
50. Wyoming	YES	WSA §19-5-104(c)(v)
51. District of Columbia	YES	DCC §6-1207
52. American Samoa	NO	
53. Puerto Rico	YES	LPR, T.25 §135(b)(8)
54. Guam	NO	
55. Virgin Islands	YES	VIC, T.23 §1104
56. Northern Marianas	NO	
57. Canal Zone	NO	

Arkansas, Indiana,
Louisiana & Rhode
Island:

However, the Interstate Civil Defense and Disaster Compact is enacted.

Connecticut:

Civil preparedness director statutorily so authorized with approval of Governor.

Kentucky:

Adjutant General is so empowered, pursuant to executive order of Governor. KRS 39.407(9).

Massachusetts:

Directors of local organizations are so empowered, subject to approval of Governor. MGLA, 33 App. §13-14.

South Dakota:

The Adjutant General is so authorized, with approval of Governor.

Utah:

The Act authorizes the council of state defense to do so, with approval of Governor. UCA §63-54(j). However, the Interstate Civil Defense and Disaster Compact empowers the Governor to enter into mutual aid agreements with certain states. UCA §39-51.

9. SUSPEND STATE REGULATORY STATUTES

Does the Act authorize the Governor to suspend any state regulatory statute which hinders emergency action?

1. Alabama	YES	CA §31-9-13
2. Alaska	YES	AS §26.23.020(g)(1)
3. Arizona	NO*	
4. Arkansas	YES	AS §11-1941(g)(1)
5. California	YES	Cal. Code GOV §§8571, 8654(a)(3)
6. Colorado	YES	CRS §28-2-104(7)(a)
7. Connecticut	YES	CGSA §28-9(a), §28-9a(3)
8. Delaware	YES	20 DCA §3112(b)
9. Florida	YES	FSA §252.36(5)(a)
10. Georgia	YES	CGA 86-1807(c)(5)(a)
11. Hawaii	YES	10 HRS §128-8(4)
12. Idaho	YES	IC §46-1008(5)(a)
13. Illinois	YES	IAS, Ch. 127 §1108(a)(1)

14.	Indiana	YES	BISA 10-4-1-7(d)(1)
15.	Iowa	YES *	ICA 29C.6(2); ICA 29C.6(6)
16.	Kansas	YES	KSA 48-925(c)(1)
17.	Kentucky	NO	
18.	Louisiana	YES	LRS - R.S. 29:705(E)(1)
19.	Maine	NO *	
20.	Maryland	NO	
21.	Massachusetts	NO *	
22.	Michigan	YES	MCLA §30.405(1)(a)
23.	Minnesota	NO *	
24.	Mississippi	NO *	
25.	Missouri	NO *	
26.	Montana	NO *	
27.	Nebraska	YES	RSN §81-829.40(6)(a)
28.	Nevada	NO *	
29.	New Hampshire	NO	
30.	New Jersey	YES	NJSA, App. A : 9-47
31.	New Mexico	NO	
32.	New York	NO	
33.	North Carolina	YES	GSNC §166A-6(c)(4)
34.	North Dakota	YES	NECC §37-17.1-05.6.a.
35.	Ohio	NO	
36.	Oklahoma	NO	
37.	Oregon	NO	
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15-19(E)(1)
40.	South Carolina	YES	CLSC §25-6-30(3)
41.	South Dakota	NO	
42.	Tennessee	NO	
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(1)
44.	Utah	NO	
45.	Vermont	NO	
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	YES	WVC §15-5-6(g)
49.	Wisconsin	NO	
50.	Wyoming	NO	

51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO*	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(f)(1)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Arizona: Only during a national war emergency. ARS §§26-201(8), 26-303(A)(1).

Iowa: With regard to temporary housing.

Maine: The Act suspends inconsistent laws, rules and regulations, per force. 37-A MRSA §62-A.2.A(3).

Massachusetts: The Act suspends inconsistent laws, rules, etc., per force. MGLA, 33 App. §13-8A.

Minnesota: The Act suspends inconsistent laws, rules, etc.; per force. MSA, §12.21, Subd. 3(1); MSA §12.32.

Mississippi: The Act suspends inconsistent laws, rules, etc., per force. MC §33-15-31(b).

Missouri: The Act suspends inconsistent laws, rules, etc., per force. VAMS. §44.110.2.

Montana: The Act suspends inconsistent laws, rules, etc., per force. RCM §77-2404(3).

Nevada: But the Governor has broad power to procure materials and perform services without regard to the limitations of existing law. NRS §414.070(2), (3).

Puerto Rico: Inconsistent laws, rules, etc., are suspended per force. LPR, T.25, §141(a).

10. UTILIZE STATE AND LOCAL RESOURCES

Does the Act authorize the Governor to utilize all available resources of state and local government during an emergency?

1.	Alabama	YES	CA 31-9-8(7)
2.	Alaska	YES	AS §26.23.020(g)(2)
3.	Arizona	YES	ARS §26-303(E)
4.	Arkansas	YES	AS §11-1941(g)(2)
5.	California	YES *	Cal. Code GOV §8628

6.	Colorado	YES	CRS §28- 2-104(7)(b)
7.	Connecticut	YES*	CGSA §28-9, 28-9(b)
8.	Delaware	YES	20 DCA §§3104(b)(3), (b)(9)
9.	Florida	YES	FSA §252.36(5)(b)
10.	Georgia	YES	CGA 86-1807(c)(5)(b)
11.	Hawaii	YES	10 HRS §128-10(5)
12.	Idaho	YES	IC §46-1008(5)(b)
13.	Illinois	YES	IAS, Ch. 127 §1108(a)(2)
14.	Indiana	YES	BISA 10-4-1-6(b)(5), 10-4-1-7(d)(z)
15.	Iowa	YES	ICA 29C.6(10)
16.	Kansas	YES	KSA 48-925(c)(2)
17.	Kentucky	NO *	
18.	Louisiana	YES	LSA - R.S. 29:705(E)(2)
19.	Maine	YES	37-A MRSA §66
20.	Maryland	YES	ACM, Art. 16A, §10
21.	Massachusetts	YES	MGLA 33 App. §§13-16
22.	Michigan	YES	MCLA §30.405(1)(b)
23.	Minnesota	YES	MSA §12.23
24.	Mississippi	YES	MC §§33-15-11(b)(7), 33-15-29
25.	Missouri	YES	VAMS §44.110.1
26.	Montana	YES	RCM §77-2304
27.	Nebraska	YES	RSN §§81-829.40(6)(b), 81-829.60
28.	Nevada	YES	NRS §414.140
29.	New Hampshire	YES	NHRSA §107:15
30.	New Jersey	YES	NJSA, App. A :9-34
31.	New Mexico	YES	NMS §9-13-23
32.	New York	YES	McK. Unconsol. Laws §9121.3.F.x, 9129.1, 9136, 9112, 9113, 9191
33.	North Carolina	YES	GSNC §§166A-5(1)(a)(6), 166A-6(b)(1)
34.	North Dakota	YES	NDCC §§37-17.1-05.6.b, 37-17.1-09
35.	Ohio	YES	PORCA §5915.08
36.	Oklahoma	YES	63 OKL. St. Ann. §683.18
37.	Oregon	YES	ORS §401.070
38.	Pennsylvania	NO*	
39.	Rhode Island	YES	GLRI §30-15-9 (E)(2)
40.	South Carolin.	YES	CLSC §25-6-30(4)

41.	South Dakota	YES	SDCL §§33-15-8.1, 33-15-21
42.	Tennessee	YES	TCA §7-624
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(2)
44.	Utah	NO *	
45.	Vermont	YES	VSA, T.20 §9(5)
46.	Virginia	YES	VC §44-146.24
47.	Washington	YES	RCW §38.52.110(1)
48.	West Virginia	YES	WVC §§15-5-6(h), 15-5-16
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-111
51.	District of Columbia	NO *	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §135(b)(5)
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23, §1125(f)(2)
56.	Northern Marianas	NO	
57.	Canal Zone	YES	CZC, T.2 §235

Arizona & California:

State resources only.

Connecticut:

Civil preparedness forces and functions of state and local organizations.

District of Columbia:

The Office of Emergency Preparedness has such power. DCC §26-1203(h); Title I, App. Org. Ord. No. 51.

Kentucky:

Adjutant General, with approval of Governor, is so empowered. KRS. 39.407(6).

Pennsylvania:

But the civil defense council is so empowered. 71 P.S. §1689:6.

Utah:

But the state council of defense is so empowered. UCA §63-5-5(a).

11. EVACUATE AFFECTED AREAS

Does the Act authorize the Governor to evacuate any stricken or threatened area within the state during a disaster/emergency?

1.	Alabama	YES	CA §31-9-8(4)
2.	Alaska	YES	AS §26.23.020(g)(5)
3.	Arizona	NO	
4.	Arkansas	YES	AS §11-1941(g)(5)
5.	California	NO	
6.	Colorado	YES	CRS §28-2-104(7)(e)
7.	Connecticut	YES	CGSA §28-9(f)
8.	Delaware	NO	
9.	Florida	YES	FSA §252.36(5)(e)
10.	Georgia	YES	CGA 86-1807(c)(5)(e)
11.	Hawaii	YES	10 HRS §128-6(8)(I)
12.	Idaho	YES	IC §46-1008(5)(e)
13.	Illinois	NO*	
14.	Indiana	NO*	
15.	Iowa	YES	ICA 29C.6(13)
16.	Kansas	YES	KSA 48-925(c)(5)
17.	Kentucky	NO	
18.	Louisiana	YES	LSA - R.S. 29:705(E)(5)
19.	Maine	NO	
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	YES	MCLA §30.405(1)(e)
23.	Minnesota	NO	
24.	Mississippi	NO	
25.	Missouri	NO	
26.	Montana	NO	
27.	Nebraska	YES	RSN §81-829.40(6)(e)
28.	Nevada	YES	NRS §414.070(4)
29.	New Hampshire	YES	NHRSA §107:8(c)
30.	New Jersey	YES	NJSA, App. A:9-45(h)

31.	New Mexico	NO	
32.	New York	YES	
33.	North Carolina	YES	McK. Unconsol. Laws §9121.3.B.1., 9129.2, 9191
34.	North Dakota	YES	GSNC §166A-6(c)(3)
35.	Ohio	NO	NDCC §37-17.1-05.5.e
36.	Oklahoma	YES	63 OKL. St. Ann. §683.9(c)
37.	Oregon	NO	
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15-9(E)(5)
40.	South Carolina	YES	CLSC §27-6-30(7)
41.	South Dakota	NO	
42.	Tennessee	NO	
43.	Texas	NO*	
44.	Utah	NO	
45.	Vermont	NO	
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	YES	WVC §15-5-6(e)
49.	Wisconsin	NO	
50.	Wyoming	NO	
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(f)(5)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Illinois: Power only to recommend evacuation. IAS, Ch. 127, §1108(a)(5).

Indiana: Power only to assist in the evacuation. BISA 10-4-7(d)(5).

Texas: Power only to recommend evacuation. VTCS. Art. 6889-7, §5(g)(5).

12. COMMANDEER PRIVATE PROPERTY

Does the Act authorize the Governor to commandeer private property during disaster/emergency?

1.	Alabama	YES	CA 31-9-8(3)
2.	Alaska	YES	AS §26.23.020 (g)(4)
3.	Arizona	NO *	
4.	Arkansas	YES	AS §11-1941(g)(4)
5.	California	YES	Cal. Code GOV §8572
6.	Colorado	YES	CRS §28-2-104(7)(d)
7.	Connecticut	YES	CGSA §28-11
8.	Delaware	YES	20DCA §3104(b)(3)
9.	Florida	YES	FSA §252.36 (5)(d)
10.	Georgia	YES	CGA 86-1807(c)(2), (c)(5)(d)
11.	Hawaii	YES	10 HRS §128-10(10)
12.	Idaho	YES	IC §46-1008(5)(d)
13.	Illinois	YES	IAS, Ch. 127 §1108(a)(4)
14.	Indiana	YES	BISA 10-4-1-7(d)(4)
15.	Iowa	YES	ICA 29C.6(12)
16.	Kansas	YES	KSA 48-925(c)(4)
17.	Kentucky	YES	KRS 39.409(2)
18.	Louisiana	YES	LSA - R.S. 29:705(E)(4)
19.	Maine	YES	37-A MRSA §58
20.	Maryland	NO	
21.	Massachusetts	YES	MGLA, 33 App. §13-5(b)
22.	Michigan	YES	MCLA §30.405(1)(d)
23.	Minnesota	YES	MSA §12.34, Subd. 2
24.	Mississippi	YES	MC §33-15-13(a)(3)
25.	Missouri	YES	VAMS §44.100.1(4)(c)
26.	Montana	NO	
27.	Nebraska	YES	RSN §81-829.40 (6)(b)
28.	Nevada	YES	NRS §414.070(3)
29.	New Hampshire	YES	NHRSA §107:7
30.	New Jersey	YES	NJSA, App. A:9-34, 9-51(a)(3)

31.	New Mexico	NO	
32.	New York	YES	
33.	North Carolina	YES	McK. Unconsol. Laws §9129.1, 9129.2, 9191
34.	North Dakota	YES	GSNC §116A-6(c)(8)
35.	Ohio	NO	NDCC §37-17.1-05.6.d
36.	Oklahoma	NO	
37.	Oregon	NO	
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15-9(E)(5)
40.	South Carolina	NO	
41.	South Dakota	NO	
42.	Tennessee	YES	TCA §7-615(A)(b)
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(4)
44.	Utah	NO *	
45.	Vermont	YES	VSA, T.20§11(3)
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	YES	WVC §15-5-6(c)
49.	Wisconsin	YES	WSA §22.16(3)(b)(4)
50.	Wyoming	NO	
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §136(c)
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(f)(4)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Arizona: Permitted only during national war emergency. ARS §26-303(A)(2).

Utah: But the state council of defense is so empowered. UCA §63-5-11.

13. PROVIDE FOR TEMPORARY HOUSING

Does the act authorize the Governor to make provisions for use and availability of temporary housing during a disaster/emergency?

1.	Alabama	YES	CA 31-9-8(4)
2.	Alaska	YES	AS §26.23.020(g)(9)
3.	Arizona	NO	
4.	Arkansas	YES	AS §11-1941(g)(9)
5.	California	YES	Cal. Code GOV §8654(a)
6.	Colorado	YES	CRS §28-2-104
7.	Connecticut	YES	CGSA §28-9(f), (g)
8.	Delaware	NO	
9.	Florida	YES	FSA 252.36(5)(i)
10.	Georgia	YES	CGA §86-1807(c)(5)(i)
11.	Hawaii	YES	10 HRS §128-10(5), 128-10(10)
12.	Idaho	YES	IC §46-1008(n)(10)
13.	Illinois	YES	LAS, Ch. 127 §1108(a)(10)
14.	Indiana	YES	BISA 10-4-7(d)(2)
15.	Iowa	YES	ICA 29C.6(2)
16.	Kansas	YES	KSA 48-925(c)(9)
17.	Kentucky	NO	
18.	Louisiana	YES	LSA - R.S. 29:705(E)(9)
19.	Maine	YES	37-A MRSA §62-A.2
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	YES	MCLA §30.405(1)(i)
23.	Minnesota	NO	
24.	Mississippi	NO	
25.	Missouri	YES	VAMS §44.100.1(4)(e)
26.	Montana	YES	RCM §77-2404(2)(b)
27.	Nebraska	YES	RSN §81-829.40(6)(e)
28.	Nevada	NO	
29.	New Hampshire	NO	
30.	New Jersey	NO	

31.	New Mexico	NO	
32.	New York	YES	McK. Uncon. Laws. §§9121.3.A.a, 9129.2, 9191
33.	North Carolina	NO	
34.	North Dakota	YES	NDCC §37.17.1-05.6.i
35.	Ohio	NO	
36.	Oklahoma	NO	
37.	Oregon	NO	
38.	Pennsylvania	NO	
39.	Rhode Island	YES	.GLRI §30-15-9(E)(9)
40.	South Carolina	NO	
41.	South Dakota	NO	
42.	Tennessee	NO	
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(9)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §34
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	YES	WVC §15-5-6(j)
49.	Wisconsin	NO	
50.	Wyoming	NO	
51.	D.C.	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1125(f)(9)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

14. MAKE AGREEMENT WITH FEDERAL GOVERNMENT FOR TEMPORARY HOUSING

Does the act authorize the governor to make agreements with the federal government for housing units during a disaster/emergency [purchase, lease]?

1. Alabama	YES	CA 31-9-8(3)
2. Alaska	YES	AS §26.23.100(a)(1)
3. Arizona	YES	ARS §26-312
4. Arkansas	YES	AS §11-1951(b)
5. California	YES	Cal. Code GOV §§8647, 8654(a)(1)
6. Colorado	NO	
7. Connecticut	YES	CGSA §28-9a(1)
8. Delaware	YES	20 DCA §3104(b)(11)
9. Florida	YES*	FSA 252.49(1)
10. Georgia	YES	CGA 86-1806(b)(10), §86-1818(a)
11. Hawaii	NO*	
12. Idaho	NO	
13. Illinois	NO*	
14. Indiana	NO	
15. Iowa	YES	ICA 29C.6(2)
16. Kansas	YES	KSA 48-916(a)
17. Kentucky	NO	
18. Louisiana	NO	
19. Maine	YES	37-A MRSA §62-A.2.A(1)
20. Maryland	YES	ACM, Art. 16A, §9(d)
21. Massachusetts	YES	MGLA, 33 App. §13-7(1), §13-15
22. Michigan	NO	
23. Minnesota	YES	MSA §12.36; §12.22 Subd. 2
24. Mississippi	YES	MC §§33-15-13(a)(2), 33-15-11(b)(10)
25. Missouri	NO	
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.69(1)
28. Nevada	NO	
29. New Hampshire	NO	
30. New Jersey	YES	NJSA, App. A:9-35
31. New Mexico	NO	

32. New York	YES	Mck. Unconsol. Laws §9126, 9191
33. North Carolina	NO	
34. North Dakota	YES	NDCC §37.17.1-19
35. Ohio	NO	
36. Oklahoma	NO	
37. Oregon	YES	ORS §401.610
38. Pennsylvania	NO	
39. Rhode Island	YES	CLRI §30-15.6-1(a)
40. South Carolina	NO	
41. South Dakota	YES	SDCL §33-15-25.1
42. Tennessee	NO	
43. Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(9)
44. Utah	NO	
45. Vermont	YES	VSA, T.20 §34
46. Virginia	NO	
47. Washington	NO	
48. West Virginia	NO	
49. Wisconsin	NO	
50. Wyoming	NO	
51. D.C.	NO	
52. American Samoa	NO	
53. Puerto Rico	NO	
54. Guam	NO	
55. Virgin Islands	YES	VIC, T.23 §1132(a)
56. Northern Marianas	NO	
57. Canal Zone	NO	

Florida: Statutorily vested in Division of Disaster Preparedness.
Hawaii: Possibly under 10 HRS 128-10(8)
Illinois: ⁴IAS, Ch. 127, §1120 covers only a gift or grant of materials, not, e.g., the purchase or lease of temporary housing.

15. ASSIST IN SITE ACQUISITION FOR TEMPORARY HOUSING

Does the act authorize the governor to assist political subdivisions to acquire sites for temporary housing during a disaster/emergency?

1. Alabama	NO	
2. Alaska	YES	AS §26.23.100(a)(2)
3. Arizona	NO	
4. Arkansas	NO	
5. California	YES	Cal. Code GOV §8654(a)(2)
6. Colorado	NO	
7. Connecticut	YES	CGSA §28-9a(2)
8. Delaware	NO	
9. Florida	NO	
10. Georgia	NO*	
11. Hawaii	NO	
12. Idaho	NO	
13. Illinois	NO	
14. Indiana	NO	
15. Iowa	YES	ICA 29C.6(2)
16. Kansas	NO	
17. Kentucky	NO	
18. Louisiana	NO	
19. Maine	YES	37-A MRSA §62-A.2.A(2)
20. Maryland	NO	
21. Massachusetts	NO	
22. Michigan	NO	
23. Minnesota	NO	
24. Mississippi	NO	
25. Missouri	NO	
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.69(2)
28. Nevada	NO	
29. New Hampshire	NO	
30. New Jersey	NO	

31. New Mexico	NO	
32. New York	NO	
33. North Carolina	NO	
34. North Dakota	YES	NDCC §37.17.1-19
35. Ohio	NO	
36. Oklahoma	NO	
37. Oregon	YES	ORS §401.610
38. Pennsylvania	NO	
39. Rhode Island	YES	GLRI §30-15.6-1(b)
40. South Carolina	NO	
41. South Dakota	NO	
42. Tennessee	NO	
43. Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(10)
44. Utah	NO	
45. Vermont	YES	VSA, T.20 §34(a)(2)
46. Virginia	NO	
47. Washington	NO	
48. West Virginia	NO	
49. Wisconsin	NO	
50. Wyoming	NO	
51. D.C.	N/A	
52. American Samoa	NO	
53. Puerto Rico	NO	
54. Guam	NO	
55. Virgin Islands	YES	VIC, T.23 §1132(a)
56. Northern Marianas	NO	
57. Canal Zone	NO	

Georgia: Unless under the broad mandate of CGA 86-1807(c)(4).

16. REMOVE DEBRIS AND WRECKAGE

Does the act authorize the governor to clear debris and wreckage threatening public health or safety during a disaster/emergency?

1.	Alabama	NO	
2.	Alaska	YES	AS §26.23.110(a)(1)
3.	Arizona	NO	
4.	Arkansas	NO	
5.	California	NO	
6.	Colorado	NO	
7.	Connecticut	YES	CGSA §28-9c(a)
8.	Delaware	NO	
9.	Florida	YES	FSA §252.36(5)(1)
10.	Georgia	NO*	
11.	Hawaii	YES*	10 HRS §128-8(2)
12.	Idaho	NO	
13.	Illinois	NO	
14.	Indiana	NO	
15.	Iowa	YES	ICA 29C.6(4)
16.	Kansas	NO	
17.	Kentucky	NO	
18.	Louisiana	NO	
19.	Maine	YES	37-A MRSA §62-A.4
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	NO	
23.	Minnesota	NO	
24.	Mississippi	NO	
25.	Missouri	NO	
26.	Montana	NO	
27.	Nebraska	NO	
28.	Nevada	NO	
29.	New Hampshire	NO	
30.	New Jersey	NO	

31.	New Mexico	NO	
32.	New York	YES	Mck. Unconsol. Laws. §9121.3.F.x, 9191
33.	North Carolina	NO	
34.	North Dakota	YES	NDCC §37-17.1-21
35.	Ohio	NO	
36.	Oklahoma	NO	
37.	Oregon	YES	ORS §401.650
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15.4-1
40.	South Carolina	NO	
41.	South Dakota	NO	
42.	Tennessee	NO	
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(13)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §36
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	NO	
49.	Wisconsin	NO	
50.	Wyoming	NO	
51.	D.C.	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1134
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Georgia: Unless under the broad mandate of CGA 86-1807(c)(4).
Hawaii: ²Provided the governor declares the condition a public nuisance.

17. CONSIDER MITIGATION MEASURES

Does the act authorize the governor to consider on a continuing basis steps that could be taken toward disaster/emergency mitigation?*

1.	Alabama	YES	CA 31-5 -o
2.	Alaska	YES	AS §26.23.150(a)
3.	Arizona	NO	
4.	Arkansas	YES	AS §11-1947(a)
5.	California	YES	Cal. Code GOV §§8569, 8570
6.	Colorado	YES	CRS §28-2-110(4)
7.	Connecticut	NO	
8.	Delaware	YES	20 DCA §3104(b)(3)
9.	Florida	YES	FSA §252.44(1)
10.	Georgia	YES	CGA 86-1806(b)(3), (b)(12)
11.	Hawaii	NO	
12.	Idaho	NO	
13.	Illinois	YES	IAS, Ch. 127 §1107(c)
14.	Indiana	YES	BISA 10-4-1-24(a)
15.	Iowa	NO	
16.	Kansas	NO	
17.	Kentucky	NO	
18.	Louisiana	NO	
19.	Maine	YES	37-A MRSA §57.1
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	NO	
23.	Minnesota	YES	MSA §12.21, Subd. 3
24.	Mississippi	YES	MC §33-15-11(b)(3)
25.	Missouri	NO	
26.	Montana	NO	
27.	Nebraska	YES	RSN §81-829.43(1)
28.	Nevada	YES	NRS §414.060
29.	New Hampshire	YES	NHRSA §107:6
30.	New Jersey	NO	

31.	New Mexico	NO	
32.	New York	NO	
33.	North Carolina	NO	
34.	North Dakota	YES	NDCC §37-17.1-11.1
35.	Ohio	NO	
36.	Oklahoma	YES	63 OKL. St. Ann. §683.8(d)(3)
37.	Oregon	YES	ORS §401.060
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15-7(3)
40.	South Carolina	NO	
41.	South Dakota	NO	
42.	Tennessee	NO	
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 12(a)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §8(b)(3)
46.	Virginia	YES	VC §44-146.22
47.	Washington	YES	§38.52.050
48.	West Virginia	YES	WVC §15-5-20(a)
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-104(c)
51.	D.C.	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1129(a)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

The question is restricted to the governor alone. See CSG Example Act, §12(a). Some states may only authorize the division of emergency services to make such considerations. See CSG Example Act, §§6(b), 6(b)(4), 6(b)(5).

18. REPLACE STATE STANDARDS FOR MITIGATION

Does the act authorize the governor to suspend the state standards, regulations, or controls if they are inadequate and place in effect new ones to protect public safety?

1. Alabama	YES	CA 31-9-6
2. Alaska	NO	
3. Arizona	NO	
4. Arkansas	YES	AS §11-1947(d)
5. California	NO	
6. Colorado	YES	CRS §28-2-110(4)
7. Connecticut	YES	CGSA §28-9(a)
8. Delaware	YES	20 DCA §3112(b)
9. Florida	NO	
10. Georgia	NO	
11. Hawaii	NO	
12. Idaho	NO	
13. Illinois	NO	
14. Indiana	YES	BISA 10-4-1-24(d)
15. Iowa	NO	
16. Kansas	NO	
17. Kentucky	NO	
18. Louisiana	NO	
19. Maine	NO	
20. Maryland	NO	
21. Massachusetts	NO	
22. Michigan	NO	
23. Minnesota	NO	
24. Mississippi	NO	
25. Missouri	NO	
26. Montana	NO	
27. Nebraska	YES	RSN §81-829.43(4)
28. Nevada	NO	
29. New Hampshire	NO	
30. New Jersey	NO	

31. New Mexico	NO	
32. New York	NO	
33. North Carolina	NO	
34. North Dakota	YES	NDCC §37-17.1-11.4
35. Ohio	NO	
36. Oklahoma	NO	
37. Oregon	NO	
38. Pennsylvania	NO	
39. Rhode Island	NO	
40. South Carolina	NO	
41. South Dakota	NO	
42. Tennessee	NO	
43. Texas	YES	VTCS, Art. 6889-7, Sec. 12(d)
44. Utah	NO	
45. Vermont	NO	
46. Virginia	NO	
47. Washington	NO	
48. West Virginia	NO	
49. Wisconsin	NO	
50. Wyoming	NO	
51. D.C.	NO	
52. American Samoa	NO	
53. Guam	NO	
54. Puerto Rico	NO	
55. Virgin Islands	YES	VIC, T.23 §1129(d)
56. Northern Marianas	NO	
57. Canal Zone	NO	

19. USE NON-CONTINGENCY FUNDS

Where there is no contingency fund (or it is insufficient), does the act authorize the governor to use monies appropriated for other purposes to meet disaster needs?

1. Alabama	NO	
2. Alaska	YES	AS §26.23.050(b)
3. Arizona	NO	
4. Arkansas	NO	
5. California	NO	
6. Colorado	YES*	CRS §28-2-106(4)
7. Connecticut	NO	
8. Delaware	NO	
9. Florida	YES	FSA §252.37(2)
10. Georgia	YES	CGA 86-1807(c)(5)(j)
11. Hawaii	NO*	
12. Idaho	NO	
13. Illinois	NO*	
14. Indiana	NO	
15. Iowa	NO	
16. Kansas	NO	
17. Kentucky	NO	
18. Louisiana	YES*	LSA - R.S. 29:708(C)
19. Maine	YES	37-A MRSA §71
20. Maryland	NO	
21. Massachusetts	NO	
22. Michigan	NO	
23. Minnesota	NO*	
24. Mississippi	NO	
25. Missouri	NO	
26. Montana	NO	
27. Nebraska	NO	
28. Nevada	NO	
29. New Hampshire	NO	
30. New Jersey	NO	

31. New Mexico	NO	
32. New York	NO	
33. North Carolina	YES	GSNC §166A-6(c)(5)
34. North Dakota	NO	
35. Ohio	NO	
36. Oklahoma	YES	63 OKL. St. Ann. §663
37. Oregon	YES	ORS §401.600
38. Pennsylvania	YES	71 P.S. §1689.101
39. Rhode Island	YES	GLRI §30-15-10(C)
40. South Carolina	NO	
41. South Dakota	NO	
42. Tennessee	NO	
43. Texas	NO	
44. Utah	NO*	
45. Vermont	NO	
46. Virginia	YES	VC §44-146.28(a)
47. Washington	NO	
48. West Virginia	NO	
49. Wisconsin	NO	
50. Wyoming	NO	
51. D.C.	NO	
52. American Samoa	NO	
53. Guam	NO	
54. Puerto Rico	NO	
55. Virgin Islands	YES	VIC, T.23 §1127(c)
56. Northern Marianas	NO	
57. Canal Zone	NO	

Colorado: With concurrence of disaster emergency council.

Hawaii: But appropriations needed for civil defense take priority over other appropriations from the general fund. 10 HRS §128-11(d).

Illinois: Governor must call extraordinary session of General Assembly. IAS, Ch. 127, §1110(b).

Louisiana: With concurrence of disaster emergency board.

Minnesota: But governor is empowered to contract, and the Commissioner of Finance must encumber funds for the contract liability.

Utah: But the governor may borrow necessary funds, which borrowing has priority over all other state obligations. UCA §63-5-3(c).

20. BORROW MONEY FROM FEDERAL GOVERNMENT OR OTHER SOURCES

Does the act authorize the governor to borrow from the federal government or other sources during a disaster/emergency?

1.	Alabama	YES	CA 31-9-18
2.	Alaska	YES*	AS §26.23.050
3.	Arizona	YES	ARS §26-312
4.	Arkansas	YES	AS §11-1951(b), (c)
5.	California	YES	Cal. Code GOV §8647
6.	Colorado	NO	
7.	Connecticut	YES	CGSA §28-15
8.	Delaware	YES	20 DCA §3115
9.	Florida	YES	FSA §252.49(1)
10.	Georgia	YES	CGA 86-1818
11.	Hawaii	NO	
12.	Idaho	NO	
13.	Illinois	NO	
14.	Indiana	YES	BISA 10-4-1-18
15.	Iowa	YES	ICA 29C.13
16.	Kansas	YES	KSA 48-916
17.	Kentucky	YES	KRS 39.430
18.	Louisiana	YES*	LSA - R.S. 29:708(C)
19.	Maine	YES	37-A MRSA §62
20.	Maryland	YES	ACM, Art. 16A, §9(b), (c)
21.	Massachusetts	YES	MGLA, 33 App. §13-15
22.	Michigan	NO	
23.	Minnesota	YES	MSA §§12.22, 12.36
24.	Mississippi	YES	MC §33-15-27
25.	Missouri	YES	VAMS §44.028
26.	Montana	YES	RCM §77.2309

27.	Nebraska	YES	RSN §81-829.58, §81-829.59
28.	Nevada	YES	NRS §414.130
29.	New Hampshire	YES	NHRSA §107:14
30.	New Jersey	YES	NJSA, App. A:9-35, 9-62, 9-63
31.	New Mexico	YES	NMS §9-13-22
32.	New York	YES	Mc.K. Unconsol. Laws §9195, 9191
33.	North Carolina	YES	GSNC §166A-9
34.	North Dakota	YES	NDCC §33-17.1-18
35.	Ohio	NO	
36.	Oklahoma	YES	63 OKL. St. Ann. §683.17(b)
37.	Oregon	YES	ORS §401.100
38.	Pennsylvania	YES	71 P.S. §1689.9
39.	Rhode Island	YES	GLRI §30-15-10(C)
40.	South Carolina	NO	
41.	South Dakota	YES	SDCL §§33-15-25, 33-15-25.1
42.	Tennessee	YES	TCA §§7-625, 7-626
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 7(e)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §17
46.	Virginia	YES	VC §44-146.27
47.	Washington	YES	RCW §38.52.100
48.	West Virginia	YES	WVC §15-5-13
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-110
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §142
54.	Guam	NO	
55.	Virgin Islands	YES	VIC. T.23 §§1102, 1127(c)
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

Alaska: In situations involving natural disasters along. Apparently non-military man-made disasters are excluded. Paramilitary man-made disasters are covered by AS 26.20 and borrowing from the federal government is authorized by AS 26.20.150.

Louisiana: With concurrence of disaster emergency funding board.

31.	New Mexico	NO	
32.	New York	NO	
33.	North Carolina	NO	
34.	North Dakota	YES	NDCC §37-17.1-20
35.	Ohio	NO	
36.	Oklahoma	NO	
37.	Oregon	YES	ORS §401.630
38.	Pennsylvania	NO	
39.	Rhode Island	YES	GLRI §30-15.5-1
40.	South Carolina	NO	
41.	South Dakota	YES	SDCL §33-15-25.1
42.	Tennessee	NO	
43.	Texas	YES	VTCS, Art. 6889-7, Sec. 5(g)(12)
44.	Utah	NO	
45.	Vermont	YES	VSA, T.20 §35
46.	Virginia	NO	
47.	Washington	NO	
48.	West Virginia	NO	
49.	Wisconsin	NO	
50.	Wyoming	NO	
51.	District of Columbia	NO	
52.	American Samoa	NO	
53.	Puerto Rico	NO	
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1133
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

The act must state explicitly that the governor has authority to apply to the federal government for loans on behalf of political subdivisions. A general provision empowering the governor to accept offers of funds by way of loan from the federal government is insufficient.

21. APPLY FOR FEDERAL DISASTER LOANS FOR LOCAL GOVERNMENT

Does the act authorize the governor to apply to the federal government for community disaster loans for local governments?*

1.	Alabama	NO	
2.	Alaska	YES	AS §26.23.080
3.	Arizona	NO	
4.	Arkansas	NO	
5.	California	YES	Cal. Code, GOV §8654(b)(4)
6.	Colorado	NO	
7.	Connecticut	YES	CGSA §28-9b
8.	Delaware	NO	
9.	Florida	NO	
10.	Georgia	NO	
11.	Hawaii	NO	
12.	Idaho	NO	
13.	Illinois	NO	
14.	Indiana	NO	
15.	Iowa	YES	ICA 29C.6(3)
16.	Kansas	NO	
17.	Kentucky	NO	
18.	Louisiana	NO	
19.	Maine	YES	37-A MRSA §62-A.3
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	NO	
23.	Minnesota	YES	MSA §12.301
24.	Mississippi	NO	
25.	Missouri	NO	
26.	Montana	NO	
27.	Nebraska	YES	RSN §81-829.71
28.	Nevada	NO	
29.	New Hampshire	NO	
30.	New Jersey	YES	NJSA, App. A:9-35

CONTINUED

2 OF 3

22. ACCEPT FEDERAL AID FOR DISASTER VICTIMS

Does the act authorize the governor to accept grants from the federal government to aid disaster victims, and to administer those grants?

1.	Alabama	YES	CA 31-9-18
2.	Alaska	YES	AS §26.23.090
3.	Arizona	YES	ARS §26-312
4.	Arkansas	YES	AS §11-1951(b)
5.	California	YES	Cal. Code GOV §8654(b)(1)
6.	Colorado	NO	
7.	Connecticut	YES	CGSA §28-9d
8.	Delaware	YES	20 DCA §3115
9.	Florida	NO	
10.	Georgia	YES	CGA 86-1807(c)(5)(1)
11.	Hawaii	YES	10 HRS §128-10(8)
12.	Idaho	NO	
13.	Illinois	YES	IAS, Ch. 127 §1120
14.	Indiana	YES	BISA §10-4-1-18
15.	Iowa	YES	ICA 29C.6(5)
16.	Kansas	YES	KSA 48-938
17.	Kentucky	YES	KRS §39.430
18.	Louisiana	NO	
19.	Maine	YES	37-A MRSA §62-A.1
20.	Maryland	NO	
21.	Massachusetts	NO	
22.	Michigan	YES	MCLA §30.416
23.	Minnesota	YES	MSA §12.22, Subd. 1, 3; §12.36
24.	Mississippi	YES	MC §§33-15-11(b)(12), 33-15-27(a)
25.	Missouri	YES	VAMS §44.028
26.	Montana	YES	RCM §77-2309
27.	Nebraska	YES	RSN §81-829.72
28.	Nevada	YES	NRS §414.130
29.	New Hampshire	YES	NHRSA §107:14
30.	New Jersey	YES	NJSA, App. A:9-35, 9-62

31.	New Mexico	YES	NMS §9-13-22
32.	New York	YES	McK. Unconsol. Laws §9195, 9191
33.	North Carolina	YES	GSNC §166A-9
34.	North Dakota	YES	NDCC §37-17.1-18
35.	Ohio	NO	
36.	Oklahoma	YES	63 OKL. St. Ann. §683.17(b)
37.	Oregon	YES	ORS §401.640
38.	Pennsylvania	YES	71 P.S. §1689.9
39.	Rhode Island	YES	GLRI §30-15.7-1
40.	South Carolina	NO	
41.	South Dakota	YES	SDCL §§33-15-25, 33-15-25.1
42.	Tennessee	YES	TCA §7-625
43.	Texas	YES	VTCS, Art. 6889-7 Sec. 5(g)(15)
44.	Utah	NO	
45.	Vermont	YES	VSA T.20 §37
46.	Virginia	YES	VC §44-146.27(b)
47.	Washington	YES	RCW §§38.52.030 (7) 38.52.100
48.	West Virginia	YES	WVC §15-5-13
49.	Wisconsin	NO	
50.	Wyoming	YES	WSA §19-5-110
51.	District of Columbia	NO *	
52.	American Samoa	NO	
53.	Puerto Rico	YES	LPR, T.25 §142
54.	Guam	NO	
55.	Virgin Islands	YES	VIC, T.23 §1135
56.	Northern Marianas	NO	
57.	Canal Zone	NO	

District of Columbia: The Office of Emergency Preparedness is so empowered. DCC §6-1203(g).

The Example State Disaster Act of 1972, and supplements, developed by the Council of State Governments, are reproduced in this Appendix. As noted in Chapter 3, the Act was developed as a model for states, most of which have recently repealed or amended their disaster/emergency legislation to incorporate some or all of the Example Act.

EXAMPLE STATE DISASTER ACT OF 1972

Section 1. Short Title

This Act shall be cited as the [name of State] Disaster Act of 1972.

Section 2. Purposes

The purposes of this Act are to:

1. reduce vulnerability of people and communities of this State to damage, injury, and loss of life and property resulting from natural or manmade catastrophes, riots, or hostile military or paramilitary action;
2. prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
3. provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
4. clarify and strengthen the roles of the Governor, State agencies, and local governments in prevention of, preparation for, and response to and recovery from disasters;
5. authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
6. authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this State, and similar state-local, interstate, Federal-state and foreign activities in which the State and its political subdivisions may participate;
7. provide a disaster management system embodying all aspects of pre-disaster preparedness and post-disaster response; and
8. assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.

Section 3. Limitations

Nothing in this Act shall be construed to:

1. interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

2. interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

3. affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but State, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

4. limit, modify, or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Act.

Section 4. Definitions

As used in this Act:

1. "disaster" means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action;
2. "political subdivision" means any county, city, town, village, or other unit of local government; and
3. "unorganized militia" means all able-bodied male and female persons between the ages of [16] and [50] years.

Section 5. The Governor and Disaster Emergencies

(a) The Governor is responsible for meeting the dangers to the State and people presented by disasters.

(b) Under this act, the Governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) [If desired, use this subsection to authorize establishment of a Governor's Disaster Emergency Council to advise him on matters relating to disasters. If a council is established it may be particularly helpful to include representation of local governments.]

(d) A disaster emergency shall be declared by executive order or proclamation of the Governor if he finds a disaster has occurred or that this occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than [30 days] unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the State Office of Disaster Emergency Services, the [State records-keeping agency] and the [local records-keeping agency] in the area to which it applies.

(e) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the State, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty.* To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred upon the Governor by law, he may:

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of State business, or the orders, rules, or regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the State Government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the State;

(3) transfer the direction, personnel, or functions of State departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency;

(5) direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; and

(9) make provision for the availability and use of temporary emergency housing.

*If State police or highway patrols or agencies having similar functions are not otherwise available to the Governor for disaster duty, a provision should be added making them available.

Section 6. State Division of Disaster Emergency Services

(a) A Division of Disaster Emergency Services is hereby established in the Office of the Governor. The Division shall have a Director appointed by and to serve at the pleasure of the Governor. The Division shall have a planning officer and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(b) The Division of Disaster Emergency Services shall prepare and maintain a State Disaster Plan and keep it current, which plan may include:

(1) prevention and minimization of injury and damage caused by disaster;

(2) prompt and effective response to disaster;

(3) emergency relief;

(4) identification of areas particularly vulnerable to disasters;

(5) recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semi-permanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(8) preparation and distribution to the appropriate State and local officials of State catalogs of Federal, State, and private assistance programs;

(9) organization of manpower and chains of command;

(10) coordination of Federal, State, and local disaster activities;

(11) coordination of the State Disaster Plan with the disaster plans of the Federal Government; and

(12) other necessary matters.

(c) The Division of Disaster Emergency Services shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under Section 8. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply, and may suggest or require revisions.

(d) In preparing and revising the State Disaster Plan, the Division of Disaster Emergency Services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the Division shall encourage them also to seek advice from these sources.

(e) The State Disaster Plan or any part thereof may be incorporated in regulations of the Division of Disaster Emergency Services or executive orders which have the force and effect of law.

(f) The Division of Disaster Emergency Services shall:

(1) determine requirements of the State and its political subdivisions for food, clothing, and other necessities in event of an emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) promulgate standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate training programs and programs of public information;

(7) make surveys of industries, resources, and facilities within the State, both public and private, as are necessary to carry out the purposes of this Act;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(9) establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the Governor, executive orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(12) cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

Section 7. Financing [Alternative # 1]

(a) It is the intent of the Legislature and declared to be the policy of the State that funds to meet disaster emergencies shall always be available.

(b) The [Disaster] Emergency Funding Board* is established composed of the President [Pro Tem] of the Senate, the Speaker of the House and the Chairman of the [appropriate financial] committee of each House.

(c) A [Disaster] Contingency Fund is established which shall receive monies appropriated thereto by the Legislature. [Monies in the [Disaster] Contingency Fund shall remain therein until expended.]

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to State and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, he may [with the concurrence of the [Disaster] Emergency Funding Board,] make funds available from the [Disaster] Contingency Fund. If monies available from the Fund are insufficient, and if the Governor finds that other sources of money to cope with the disaster are not available or are insufficient, the Governor, with the concurrence of the [Disaster] Emergency Funding Board, may transfer and expend monies appropriated for other purposes or borrow for a term not to exceed [2] years from the United States Government or other public or private source.

(e) Nothing contained in this Section shall be construed to limit the Governor's authority to apply for, administer, and expend grants, gifts, or payments in aid of disaster prevention, preparedness, response, or recovery.

Section 7. Financing [Alternative #2]

(a) It is the intent of the Legislature and declared to be the policy of the State that funds to meet disaster emergencies shall always be available.

(b) The [Disaster] Emergency Funding Board* is established, composed of the President [Pro Tem] of the Senate, the Speaker of the House, and the Chairman of the [appropriate financial] committee of each House.

(c) It is the legislative intent that the first recourse shall be to funds regularly appropriated to State and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, [with the concurrence of the [Disaster] Emergency Funding Board.] he may make funds available by transferring and expending monies appropriated for other purposes or may borrow for a term not to exceed [2] years from the United States Government or any other public or private source.

[Action pursuant to this subsection shall be only with the concurrence of the [Disaster] Emergency Funding Board.]

(d) Nothing contained in this Section shall be construed to limit the Governor's authority to apply for, administer, and expend any grants, gifts, or payments, in aid of disaster prevention, preparedness, response, or recovery.

*Another alternative as indicated by the bracketing is to leave out the term Disaster and employ a Contingency Fund and Emergency Funding Board which would cover other emergencies in addition to disasters. Some States already have this type of agency.

Section 8. Local and Interjurisdictional Disaster Agencies and Services

(a) Each political subdivision [and unincorporated place]* within this State shall be within the jurisdiction of and served by the Division of Disaster Emergency Services and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county.

(c) The Governor shall determine which municipal corporations need disaster agencies of their own and require that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its

borders but shall not have jurisdiction within a municipality having its own disaster agency. The Division of Disaster Emergency Services shall publish and keep current a list of municipalities required to have disaster agencies under this subsection.

(d) Any provision of this Act or other law to the contrary notwithstanding, the Governor may require a political subdivision to establish and maintain a disaster agency jointly with one or more contiguous political subdivisions, if he finds that the establishment and maintenance of an agency or participation therein is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(f) The Mayor, Chairman of the County Board of Supervisors, or other principal executive officer of each political subdivision in the State shall notify the Division of Disaster Emergency Services of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the service is obtained, and furnish additional information relating thereto as the Division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(h) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

*A few States have areas of sparse population that are not within the territorial limits of any county or incorporated unit of local government.

Section 9. Establishment of Interjurisdictional Disaster Planning and Service Areas

(a) If the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this subsection shall be based

on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on an unjurisdictional basis, such as:

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the counties in a multicounty area;
- (5) other relevant conditions or circumstances.

(b) If the Governor finds that a vulnerable area lies only partly within this State and includes territory in another State or States or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship, mutual aid, or an area organization for disaster, he shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact, any resulting agreement or agreements may be considered supplemental agreements pursuant to Article VI of that compact.

(c) If the other jurisdiction or jurisdictions with which the Governor proposes to cooperate pursuant to subsection (b) hereof have not enacted that compact, he may negotiate special agreements with the jurisdiction or jurisdictions. Any agreement, if sufficient authority for the making thereof does not otherwise exist, becomes effective only after its text has been communicated to the Legislature and provided that neither House of the Legislature has disapproved it by adjournment of the next ensuing session competent to consider it or within thirty days of its submission, whichever is longer.

Section 10. Intergovernmental Arrangements

(a) This State enacts into law and enters into the Interstate Civil Defense and Disaster Compact with all States, as defined therein, bordering this State, which States have enacted or shall hereafter enact the compact in the form substantially as follows.*

[Insert exact text of Interstate Civil Defense and Disaster Compact.]

*If the State has already enacted the Interstate Civil Defense and Disaster Compact, the provision should read "... in the form substantially contained in section__ of the State code." In such case the text of the compact need not be included in this Act.

†A similar clause is contained in the Interstate Civil Defense and Disaster Compact.

Clause (d) is included in the example statute because, first, it makes it unnecessary for there to be a partner to put it into effect and, secondly, it covers licenses which are issued by political subdivisions in some States (e.g., Maryland).

(b) The Governor may enter into the compact with any State which does not border this State if he finds that joint action with the State is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recover.

(c) Nothing in subsections (a) and (b) shall be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this State with other States.

(d) If any person holds a license, certificate, or other permit issued by any State or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this State to meet an emergency or disaster, and this State shall give due recognition to the license, certificate, or other permit.†

Section 11. Local Disaster Emergencies

(a) A local disaster emergency may be declared only by the principal executive officer of a political subdivision. It shall not be continued or renewed for a period in excess of [7] days except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the [chief local records-keeping agency].

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance thereunder.

(c) No interjurisdictional agency or official thereof may declare a local disaster emergency, unless expressly authorized by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

Section 12. Disaster Prevention

(a) In addition to disaster prevention measures as included in the State, local, and interjurisdictional disaster plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority and competence they have, State agencies, including but not limited to those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of disaster prevention-related matters. The Governor, from time to time, shall make recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The [appropriate State agency], in conjunction with the Division of Disaster Emergency Services, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences thereof.

(c) If the Division of Disaster Emergency Services believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor. If the Governor upon review of the recommendation finds after public hearing that the changes are essential, he shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the Governor, he shall so inform the Legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The Governor, at the same time that he makes his recommendations pursuant to subsection (c), may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the Legislature or amended by the Governor. During the time it is in effect, the standard or control contained in the Governor's regulation shall be administered and given

Section 13. Compensation

(a) Each person within this State shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the State and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this State and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the State or any subdivision or agency thereof, except pursuant to statute or local law or ordinance.

Section 14. Communications

The Division of Disaster Emergency Services shall ascertain what means exist for rapid and efficient communications in times of disaster emergencies. The Division shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive State or State-Federal telecommunications or other communications system or network. In studying the character and feasibility of any system or its several parts, the Division shall evaluate the possibility of multipurpose use thereof for general State and local governmental purposes. The Division shall make recommendations to the Governor as appropriate.

Section 15. Mutual Aid

(a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the Division of Disaster Emergency Services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In passing upon local disaster plans, the Governor shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the Governor to require an interjurisdictional agreement or arrangement pursuant to Section 9 of this Act that the area involved and political subdivisions therein have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this Section, the Governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

Section 16. Weather Modification

The Division of Disaster Emergency Services shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the Division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall direct the officer or agency empowered to issue permits for weather modification operations to suspend the issuance of the permits. Thereupon, no permits may issue until the Division informs the officer or agency that the danger has passed.

Section 17. Effective Date

This act shall take effect [immediately].

SUPPLEMENTS TO:

THE EXAMPLE STATE DISASTER ACT OF 1972

Temporary Housing for Disaster Victims and Site Acquisition and Preparation

Introduction. Temporary housing assistance for major disaster victims is the subject of Section 404(a) of the Disaster Relief Act of 1974, and provides in part:

Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster, without charge to the United States.

Any number of large-scale major disasters have demonstrated that one of the most severe, and most difficult to resolve, problems confronting both the States and local communities and volunteer agencies is the one of rehousing families evicted as a consequence of a major disaster. A few examples are Wilkes-Barre in the aftermath of Agnes, the Buffalo Creek disaster in West Virginia, and the Southeast and Midwest tornadoes of 1974.

Lack of adequate authority on the part of state and local governments to act as required by Section 404(a) [a carryover from the Disaster Assistance Act of 1970] has required special sessions by some Legislatures, delayed the housing of many families, and created financial hardships for others. For example, these problems confronted, inter alia, Idaho, Illinois and Missouri during 1973 and 1974.

This Supplement to the Example Act is intended expressly to overcome this lack of adequate authority. It is keyed to the Example State Disaster Act of 1972 as a supplementary authority which will enable the Governor of a State, acting in concert with a political subdivision stricken by a major disaster, immediately to take steps to temporarily house disaster victims. In addition to the specific provision of Section 404(a) of the Disaster Relief Act of 1974 above, this Example Act seeks to provide an accommodation with the interim regulations of HUD on Federal Disaster Assistance (39FR28212 et seq.).

Section 1 of the act confers specific authority upon the Governor to assist political subdivisions to activate temporary housing measures whenever, under Section 5(d) of the Example Act, he has declared a disaster emergency, or when the President, under Section 301 of P.L. 93-288, has declared a major disaster at the Governor's request to:

(a) obtain, by purchase, lease or otherwise, temporary housing units offered by any agency of the U.S. and to make them available to political subdivisions. This subsection makes explicit the Governor's authority and removes any doubt as to the State's authority to "pass through" units to subdivisions.

(b) assist political subdivisions to acquire and prepare sites for placement of temporary housing by:

(1) advancing or lending funds from any appropriation made available by the Legislature and any other funds. This authority is supplementary to Section 7 of the Example Act. It goes further than Section 7 in that, for the purposes of temporary housing, it specifically makes available for site acquisition and preparation any funds that might be available to the Governor.

(2) making explicit the "pass through" authority of the Governor.

(3) authorizing the Governor, if other arrangements are inadequate to discharge the state functions, to enter in a partnership with local units of government for site acquisition and preparation. This authority is necessary because in many instances subdivision charter or constitutional debt (or other) restraints won't permit action without this authority, or the subdivision lacks resources which it can use to obtain sites and to prepare them.

States may need to examine carefully their constitutions and the charters and laws under which their political subdivisions operate to ascertain any conflicts in the authority of this subsection. This is especially pertinent to the last clause authorizing the Governor to pledge the credit of the State in partnership for temporary housing purposes.

Subsection (c) recognizes that for the immediate aftermath of a large-scale disaster, compliance with the fire regulations, construction, water and sewage, zoning, transportation of housing units (mobile or modular—for disaster victims needing temporary housing within the State or across the State for victims in sister States), and other requirements may cause unjustifiable delays or impose greater evils in sheltering disaster victims. Temporary removal of the impediments permits the subdivision to act while making necessary arrangements to meet the normal health and safety requirements.

Section 2 specifically authorizes a political subdivision to discharge its functions under the act.

Sections 3, 4, and 5 are self-explanatory.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. Whenever the Governor has proclaimed a disaster emergency
2 under the laws of this State, or the President has declared an emergency or a
3 major disaster to exist in this State, the Governor is authorized:

4 (1) To enter into purchase, lease, or other arrangements with any agen-
5 cy of the United States for temporary housing units to be occupied by disaster
6 victims and to make such units available to any political subdivision of the State.

7 (2) To assist any political subdivision of this State which is the locus of
8 temporary housing for disaster victims to acquire sites necessary for such tempo-
9 rary housing and to do all things required to prepare such site to receive and
10 utilize temporary housing units by: (a) advancing or lending funds available to
11 the Governor from any appropriation made by the Legislature or from any other
12 source, (b) "passing through" funds made available by any agency, public or
13 private, or (c) becoming a co-partner with the political subdivision for the execu-
14 tion and performance of any temporary housing for disaster victims project and
15 for such purposes to pledge the credit of the State on such terms as he deems

16 appropriate having due regard for current debt transactions of the State.

17 (3) Under such regulations as he shall prescribe, to temporarily suspend
18 or modify for not to exceed 60 days any public health, safety, zoning, transpor-
19 tation (within or across the State), or other requirement of law or regulation
20 within this State when by proclamation he deems such suspension or modifica-
21 tion essential to provide temporary housing for disaster victims.

1 Section 2. Any political subdivision of this State is expressly authorized to
2 acquire, temporarily or permanently, by purchase, lease, or otherwise, sites re-
3 quired for installation of temporary housing units for disaster victims, and to
4 enter into whatever arrangements (including purchase of temporary housing
5 units and payment of transportation charges) which are necessary to prepare or
6 equip such sites to utilize the housing units.

1 Section 3. The Governor is authorized to make rules and regulations neces-
2 sary to carry out the purposes of this act.

1 Section 4. Nothing contained in this act shall be construed to limit the
2 Governor's authority to apply for, administer, and expend any grants, gifts, or
3 payments in aid of disaster prevention, preparedness, response, or recovery.

1 Section 5. "Major disaster," "emergency," and "temporary housing" as
2 used in this act shall have the same meaning as the terms are defined, or used, in
3 the Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143).

Community Disaster Loans

Introduction. This provision is intended to offer financial assistance to local units of government that suffer a disastrous loss of tax bases as the result of a major disaster. To be eligible for such financial aid, the local government must demonstrate to the Governor its inability to operate efficiently and effectively without assistance. The State is required by the FDAA Regulations to administer such loans in the same fashion, for example, as it now does project applications under both P.L. 91-606 and P.L. 93-288.

Loans shall not exceed 25 percent of the annual operating budget of the local government for the fiscal year in which the major disaster occurs. No loan made under this section shall be for a period more than three years, unless otherwise approved by the administrator. The local government must repay the loan; but if the revenues collected by the local government during the period of three fiscal years are insufficient to meet the costs of operation, the loan shall be cancelled.

Loans to a local government made under this provision shall not reduce or otherwise affect any grants or other assistance under the Disaster Relief Act of 1974.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. Whenever, at the request of the Governor, the President has
2 declared a "major disaster" to exist in this State, the Governor is authorized:

3 (1) Upon his determination that a local government of the State will
4 suffer a substantial loss of tax and other revenues from a major disaster and has
5 demonstrated a need for financial assistance to perform its governmental func-
6 tions, to apply to the federal government, on behalf of the local government, for
7 a loan; and to receive and disburse the proceeds of any approved loan to any
8 applicant local government.

9 (2) To determine the amount needed by any applicant local govern-
10 ment to restore or resume its governmental functions, and to certify the same to
11 the federal government, *provided*, however, that no application amount shall
12 exceed 25 percent of the annual operating budget of the applicant for the fiscal
13 year in which the major disaster occurs.

14 (3) To recommend to the federal government, based upon his review,
15 the cancellation of all or any part of repayment when, in the first three full fiscal
16 year period following the major disaster, the revenues of the local government
17 are insufficient to meet its operating expenses, including additional disaster-
18 related expenses of a municipal operation character.

Debris and Wreckage Removal in Disaster Emergencies or Major Disasters

Introduction. With the declaration of a disaster emergency by the Governor or the declaration of a major disaster or emergency by the President, the Governor is authorized to use any facilities available to order the removal of debris and wreckage which may threaten public health or safety from publicly or privately owned land or water. The Governor is also authorized to accept funds from the federal government for debris and wreckage removal from publicly or privately owned land or water following the declaration of a major disaster by the President.

There is the condition, however, that the authority under this act shall not be exercised unless the affected local area, corporation, organization, or individual shall first obtain an unconditional authorization for such removal; and in the case of removal of debris or wreckage from private property, there must be agreement to indemnify the state government against any claim arising from such removal.

Whenever the Governor provides for the removal of debris or wreckage as authorized by this act, all employees of state agencies or individuals appointed by the State are authorized to enter upon private land or waters to perform such tasks.

Except in cases of willful misconduct, gross negligence, or bad faith, persons performing duties under this act shall not be liable for death of or injury to persons or damage to property.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. Whenever the Governor has declared a disaster emergency to
2 exist under the laws of this State, or the President, at the request of the Govern-
3 or, has declared a major disaster or emergency to exist in this State, the Govern-
4 or is authorized:

5 (1) Notwithstanding any other provision of law, through the use of
6 state departments or agencies, or the use of any of the State's instrumentalities,
7 to clear or remove from publicly or privately owned land or water, debris and
8 wreckage which may threaten public health or safety, or public or private prop-
9 erty, in any disaster emergency declared by the Governor or major disaster as
10 declared by the President.

11 (2) To accept funds from the federal government and utilize such
12 funds to make grants to any local government for the purpose of removing
13 debris or wreckage from publicly or privately owned land or water.

1 Section 2.

2 (a) Authority under this act shall not be exercised unless the affected local
3 government, corporation, organization, or individual shall first present an uncon-
4 ditional authorization for removal of such debris or wreckage from public and
5 private property and, in the case of removal of debris or wreckage from private
6 property, shall first agree to indemnify the state government against any claim
7 arising from such removal.

8 (b) Whenever the Governor provides for clearance of debris or wreckage
9 pursuant to subsection (1) or (2) of Section 1, employees of the designated state
10 agencies or individuals appointed by the State are authorized to enter upon
11 private land or waters and perform any tasks necessary to the removal or clear-
12 ance operation.

13 (c) Except in cases of willful misconduct, gross negligence, or bad faith, any
14 state employee or agent complying with orders of the Governor and performing
15 duties pursuant thereto under this act shall not be liable for death of or injury to
16 persons or damage to property.

1 Section 3. The Governor is authorized to make rules and regulations to
2 carry out the purposes of this act.

State Financial Participation in Grants to Disaster Victims

Introduction. Section 408 of the Disaster Relief Act of 1974 is entirely new. It authorizes a State to make grants to disaster-stricken persons to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster. The Governor of a State is designated by the law to administer the grant programs authorized by this section.

Seventy-five percent of the funds necessary to carry this program into effect is provided by the federal government. The remaining 25 percent is to be provided by the State. When a State is unable immediately to pay its share of the funds, the federal government is authorized to advance such sum as needed to the State which will repay the federal government "when such State is able to do so."

Some States with adequate contingent or other funds available to meet disaster situations resulting from the declaration of a major disaster may need this type of legislation only to specifically arm the Governor with authority to conduct such a program. On the other hand, there are States without such funds, and perhaps without authority to make such funds available, that must have this type of legislation in order to become eligible, under this provision [Section 408] of the Disaster Relief Act of 1974 for federal aid.

This act also provides the necessary legislative authority to a State to disburse federal and state funds to disaster victims following a major disaster declaration, and for the Governor to prescribe procedures and regulations necessary to administer the program.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. Whenever the President, at the request of the Governor, has
2 declared a major disaster to exist in this State, the Governor is authorized:

3 (1) Upon his determination that financial assistance is essential to meet
4 disaster-related necessary expenses or serious needs of individuals or families
5 adversely affected by a major disaster that cannot be otherwise adequately met
6 from other means of assistance, to accept a grant by the federal government to
7 fund such financial assistance, subject to such terms and conditions as may be
8 imposed upon the grant.

9 (2) To enter into an agreement with the federal government, or any
10 officer or agency thereof, pledging the State to participate in the funding of the
11 financial assistance authorized in subsection (1), in an amount not to exceed 25
12 percent thereof and, if state funds are not otherwise available to the Governor,
13 to accept an advance of the state share from the federal government to be repaid
14 when the State is able to do so.

1 Section 2. Notwithstanding any other provision of law or regulation, the
2 Governor is authorized to make financial grants to meet disaster-related neces-
3 sary expenses or serious needs of individuals or families adversely affected by a
4 major disaster which cannot otherwise adequately be met from other means of
5 assistance, which shall not exceed \$5,000 in the aggregate to an individual or
6 family in any single major disaster declared by the President.

1 Section 3. The Governor shall make such regulations as are necessary for
2 carrying out the purposes of this act, including, but not limited to, standards of
3 eligibility for persons applying for benefits; procedures for applying and adminis-
4 tration; methods of investigation, filing, and approving applications; and forma-
5 tion of local or statewide boards to pass upon applications and procedures for
6 appeals.

1 Section 4. Any person who fraudulently or willfully makes a misstatement
2 of fact in connection with an application for financial assistance under this act
3 shall, upon conviction of each offense, be subject to a fine of not more than
4 \$5,000, or imprisonment for not more than one year, or both.

APPENDIX D

The Immigration and Nationality Act provides the basic authority for the Immigration and Naturalization Service (INS) to exclude or deport aliens. Some of the enumerated grounds for exclusion or deportation are:

- espionage, sabotage, activity subversive to national security;
- advocating anarchy;
- affiliation with the Communist Party.

IMMIGRATION AND NATIONALITY ACT, AS AMENDED
Act of June 27, 1952, c. 477, 66 Stat. 166
[8 U.S.C. 1101 et seq.]

- Excludable Aliens
§1182¹ states:
"(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:...
- (9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to the date of application for admission to the United States unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission to the United States. Any alien who would be excludable because the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of Title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of Title 18, by reason of the punishment which might have

1. Citation to United States' Code.

been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.

(10) Aliens who have been convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more;...

(17) Aliens who have been arrested and deported, or who have fallen into distress and have been removed pursuant to this chapter or any prior act, or who have been removed as alien enemies, or who have been removed at Government expense in lieu of deportation pursuant to section 1252(b) of this title, unless prior to their embarkation or reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their applying or reapplying for admission;...

(28) Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provisions of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 786 of Title 50, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (G) of this paragraph;

(I) Any alien who is within any of the classes described in subparagraphs (B)-(H) of this paragraph because of a membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely

when under sixteen years of age, by operation or law, of for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise admissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry

(A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security,

(B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means, or

(C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 786 of Title 50;..."

• Immediate Deportation

§ 1227 states:

"(a) Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported to the country whence he came, in accommodations of the same class in which he arrived, on the vessel or aircraft bringing him, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. The cost of the maintenance including detention expenses and expenses incident

to detention of any such alien while he is being detained, as well as the transportation expenses of his deportation from the United States, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed if

- (1) the alien was in possession of a valid, unexpired immigrant visa, or
- (2) if the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and
 - (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or
 - (B) in the event such application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or
- (3) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority."

• Inspection by Immigration Officers

§ 1225 states:

"(a) The inspection, other than physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this

chapter and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as well aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 1182 of this title. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpoena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 1323(d) of this title, who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer for further inquiry.

(c) Any alien (including an alien crewman) who may appear to the examining immigration officer or to the special inquiry officer during the examination before either of such officers to be excludable under paragraphs (27), (28), or (29) of section 1182(a) of this title shall be temporarily excluded, and no further inquiry by a special inquiry officer shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection

therewith and such an inquiry or further inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer. Nothing in this subsection shall be regarded as requiring an inquiry before a special inquiry officer in the case of an alien crewman."

- Exclusion of Aliens

§ 1226 states:

"(a) A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses. He shall have authority in any case to determine whether an arriving alien who has been detained for further inquiry under section 1225 of this title shall be allowed to enter or shall be excluded and deported. The determination of such special inquiry officer shall be based only on the evidence produced at the inquiry. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer under this section shall be conducted in accordance with this section, the applicable provisions of sections 1225 and 1357(b) of this title, and such regulations as the Attorney General shall prescribe, and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such inquiry, which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such inquiry, shall be kept."

- Deportable Aliens

§ 1251 states:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who--

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States;

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) has failed to comply with the provisions of section 1305 of the title unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 1306 (c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provisions of sections 611 to 621 of Title 22, or has been convicted under section 1546 of Title 18;

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 786 of Title 50, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety, of the unlawful assaulting or killing of any officer or officers (either or specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display any written or printed matter of the character described in paragraph (G) of this subdivision;

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 1182 (a) of this title, unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of

section 1182(a) of this title, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 786 of Title 50 have such knowledge or reason to believe) that such organization was a Communist organization;...

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semi-automatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun;"

The Federal Aviation Act of 1958, as amended, provides the authority for the Administrator of the Federal Aviation Administration (FAA) to promote aircraft security. In particular, it provides in §1301(35)(i) for penalties for "aircraft piracy."

FEDERAL AVIATION ACT OF 1958, AS AMENDED¹
 PUB. L. 85-726 (1958)
 [49 U.S.C. §1301 et seq.]

1. Abstract of Statute

• Screening Procedures for Passengers; Promulgation and Amendment of Regulations by Administrator; Reports to Congress; Exempted Air Transportation Operations

§1356 states:

"(a) The Administrator shall prescribe or continue in effect reasonable regulations requiring that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation. One year after August 5, 1974, or after the effective date of such regulations, whichever is later, the Administrator may alter or amend such regulations, requiring a continuation of such screening only to the extent deemed necessary to assure security against acts of criminal violence and aircraft piracy in air transportation and intrastate air transportation. The Administrator shall submit semiannual reports to the Congress concerning the effectiveness of screening procedures under this subsection and shall advise the Congress of any regulations or amendments thereto to be prescribed pursuant to this subsection at least 30 days in advance of their effective date, unless he determines that an emergency exists which requires that such regulations or amendments take effect in less than 30 days and notifies the Congress of his determination.

(b) The Administrator may exempt from the provisions of this section, in whole or in part, air transportation operations other than those scheduled passenger operations performed by air carriers engaging in interstate, overseas, or foreign air transportation under a certificate of public convenience and necessity issued by the Civil Aeronautics Board under §1371 of this title or under a foreign air carrier permit issued by the Board under §1372 of this title."

• Air Transportation Security

§1357 states:

"(a)(1) The Administrator of the Federal Aviation Administration shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures, or governing the design, materials, and construction of aircraft, as he may deem necessary to protect persons and property aboard aircraft, operating in air transportation against acts of criminal violence and aircraft piracy.

(2) In prescribing and amending rules and regulations under paragraph (1) of this subsection, the Administrator shall--

(A) Consult with the Secretary of Transportation, the Attorney General, and such other Federal, State, and local agencies as he may deem appropriate;

(B) Consider whether any proposed rule or regulation is consistent with protection of passengers in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy and the public interest in the promotion of air transportation and intrastate air transportation;

(C) To the maximum extent practicable, require uniform procedures for the inspection, detention, and search of persons and property in air transportation and intrastate air transportation to assure their safety and to assure that they will receive courteous and efficient treatment, by air carriers, their agents and employees, and by Federal, State, and local law enforcement personnel engaged in carrying out any air transportation security program established under this section; and

(D) Consider the extent to which any proposed rule or regulation will contribute to carrying out the purposes of this section.

(b. Regulations prescribed under subsection (a) of this section shall require operators of airports regularly serving air carriers certificated by the Civil Aeronautics Board to establish air transportation security programs providing a law enforcement presence and capability at such airports adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy. Such regulations shall authorize such airport operators to utilize the services of qualified State, local, and private law enforcement personnel whose services are made available by their employers. In any case in which the Administrator determines, after receipt of notification from an airport operator in such form as the Administrator may prescribe, that qualified State, local, and private law enforcement personnel are not available in sufficient numbers to carry out the provisions of subsection (a) of this section, the Administrator may, by order, authorize such airport operator to utilize, on a reimbursable basis, the services of--

(1) Personnel employed by any other Federal department or agency, with the consent of the head of such department or agency; and

(2) Personnel employed directly by the Administrator;

at the airport concerned in such numbers and for such period of time as the Administrator may deem necessary to supplement such State, local, and private law enforcement personnel. In making the determination referred to in the preceding sentence the Administrator shall take into consideration--

(A) The number of passengers enplaned at such airport;

(B) The extent of anticipated risk of criminal violence and aircraft piracy at such airport or to the air carrier aircraft operations at such airport; and

(C) The availability at such airport of qualified State or local law enforcement personnel.

(c) The Administrator may provide training for personnel employed by him to carry out any such air transportation security program established under this section and for other personnel, including State, local, and private law enforcement personnel, whose services may be utilized in carrying out any such air transportation security program. The Administrator shall prescribe uniform standards with respect to training provided personnel whose services are utilized to enforce any such air transportation security program, including State, local, and private law enforcement personnel, and uniform standards with respect to minimum qualifications for personnel eligible to receive such training.

(d)(1) The Administrator shall conduct such research (including behavioral research) and development as he may deem appropriate to develop, modify, test, and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

(2) Notwithstanding §552 of Title 5 relating to freedom of information, the Administrator shall prescribe such regulations as he may deem necessary to prohibit disclosure of any information obtained or developed in the conduct of research and development activities under this subsection if, in the opinion of the Administrator, the disclosure of such information--

(A) Would constitute an unwarranted invasion of personal privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(B) Would reveal trade secrets or privileged or confidential commercial or financial information obtained from any person; or

(C) Would be detrimental to the safety of persons traveling in air transportation.

Nothing in this subsection shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(e)(1) Except as otherwise specifically provided by law, no power, function, or duty of the Administrator of the Federal Aviation Administration shall have exclusive responsibility for the direction of any law enforcement activity affecting the safety of persons aboard aircraft in flight involved in the commission of an offense under §1472(i) or (n) of this title. Other Federal departments and agencies shall, upon request by the Administrator, provide such assistance as may be necessary to carry out the purposes of this paragraph.

(3) For the purposes of this subsection, an aircraft is considered in flight from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation.

(f) For the purposes of this section, the term "law enforcement personnel" means individuals--

- (1) Authorized to carry and use firearms,
- (2) Vested with such police power of arrest as the Administrator deems necessary to carry out this section, and
- (3) Identifiable by appropriate indicia of authority."

• Criminal Penalties

§1472 states:

"(a) Any person who knowingly and willfully violates any provision of this chapter (except subchapters III, V, VI, VII, and VIII of this chapter), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under subchapter IV of this chapter, for which no penalty is otherwise provided in this section or in §1474 of this title, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than \$500, and for any subsequent offense to a fine of not more than \$2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense....

(c) A person shall be subject of a fine of not exceeding \$5,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment, who--

- (1) With intent to interfere with air navigation within the United States, exhibits within the United States any light or signal at such place or in such manner that it is likely to be mistaken for a true light or signal established pursuant to this chapter, or for a true light or signal in connection with an airport or other air navigation facility; or
- (2) After due warning by the Administrator, continues to maintain any misleading light or signal; or
- (3) Knowingly removes, extinguishes, or interferes with the operation of any such true light or signal...

(h)(1) In carrying out his responsibilities under this chapter, the Secretary of Transportation may exercise the authority vested in him by §1804 of this title to provide by regulation for the safe transportation of hazardous materials by air.

(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this chapter. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of §232 of Title 18) or any ammunition therefor.

• Definitions

§1301(35) states: "The term "special aircraft jurisdiction of the United States" includes--

- (a) Civil aircraft of the United States;
- (b) Aircraft of the national defense forces of the United States;
- (c) Any other aircraft within the United States;
- (d) Any other aircraft outside the United States;
 - (i) That has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or
 - (ii) Having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) Other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States; while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(i)(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished--

- (A) By imprisonment for not less than 20 years; or
- (B) If the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) As used in this subsection, the term "aircraft piracy" means any seizure or exercise of control by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft within the special aircraft jurisdiction of the United States. [emphasis added]

(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed...."

§1472(w)(2) states: "A person commits "an offense", as defined in the Convention for the suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he--

(A) Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

(B) Is an accomplice of a person who performs or attempts to perform any such act.

(j) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, assaults, intimidates, or threatens any flight crew member or flight attendant (including any steward or stewardess) of such aircraft, so as to interfere with the performance by such member or attendant of his duties, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be imprisoned for any term of years or for life....

(1)(1) Whoever, while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight, or any person who has on or about his person, or who has placed, attempted to place, or attempted to have placed aboard such aircraft any bomb, or similar explosive or incendiary device, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(2) Whoever willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, shall commit an act prohibited by paragraph (1) of this subsection, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, who are authorized or required within their official capacities to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry deadly or dangerous weapons in air transportation or intrastate air transportation; nor shall it apply to persons transporting weapons contained in baggage which is not accessible to passengers in flight if the presence of such weapons has been declared to the air carrier....

(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished--

(A) By imprisonment for not less than 20 years; or

(B) If the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) A person commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he--

(A) Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

(B) Is an accomplice of a person who performs or attempts to perform any such act.

(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.

(o) Violations of subsections (i) through (n), inclusive, of this section shall be investigated by the Federal Bureau of Investigation of the Department of Justice."

• Authority to Refuse Transportation; Grounds; Agreements for Carriage of Persons or Property Deemed to Include Agreements to Refuse Carriage Upon Refusal of Consent to Search

§1511 states:

"(a) The Administrator shall, by regulation, require any air carrier, intrastate air carrier, or foreign air carrier to refuse to transport--

(1) Any person who does not consent to a search of his person, as prescribed in §1356(a) of this title, to determine whether he is unlawfully carrying a dangerous weapon, explosive, or other destructive substance, or

(2) Any property of any person who does not consent to a search or inspection of such property to determine whether it unlawfully contains a dangerous weapon, explosive, or other destructive substance.

Subject to reasonable rules and regulations prescribed by the Administrator, any such carrier may also refuse transportation of a passenger or property when, in the opinion of the carrier, such transportation would or might be inimical to safety of flight.

(b) Any agreement for the carriage of persons or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier for compensation or hire shall be deemed to include an agreement that such carriage shall be refused when consent to search such persons or inspect such property for the purposes enumerated in subsection (a) of this section is not given."

• Suspension of Air Services by President; Grounds; Authority of President Deemed Condition to Issuance of Certificate of Public Convenience and Necessity, etc.; Unlawful Activities
§1514 states:

"(a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, or if he determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend

(1) The right of any air carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and

(2) The right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding §1502 of this title, the President's authority to suspend rights under this section shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section."

• Security Standards in Foreign Air Transportation; Notice to Foreign Nations by Secretary of State of Standards Requirements; Determination by Secretary of Transportation and Notice to Foreign Nations of Compliance with Minimum Standards and Necessary Remedial Measures; Effect of Failure to Take Remedial Measures
§1515 states:

"(a) Not later than 30 days after August 5, 1974, the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to §1372 of this title, of the provisions of subsection (b) of this section.

(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to §1372 of this title, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation, he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such convention. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation."

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1. Amended by Air Transportation Security Act of 1974, Pub. L. 93-316, 88 Stat. 415 (1974); Anti-Hijacking Act of 1974, Pub. L. 93-366, 88 Stat. 409 (1974).

This statute, dealing with insurrection, provides for the President to aid state governments in suppressing civil disorders that may lead to insurrection. Aid is generally through the tasking of the National Guard.

GENERAL MILITARY LAW
INSURRECTION

Act of August 10, 1956, c. 1041, 70 A Stat. 15
[10 U.S.C. 331 et seq.]

• Federal Aid to State Governments

§331¹ states:

"Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection."

• Use of Militia and Armed Forces to Enforce Federal Authority

§332 states:

"Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion."

• Interference With State and Federal Law

§333 states:

"The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it--
(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution."

• Proclamation to Disperse

§334 states:

"Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time."

1. Reference to United States' Code.

APPENDIX G

INDEX

"A"

Act for the Prevention and Punishment of Internationally Protected Persons..... 109,111
Aircraft..... 60,102
American Law Institute..... 30
American
 Revolution..... 9
 Violence..... 9,10
Anarchism..... 5,6,D-1
Anti-terrorism..... iii,iv
Apprehension..... 49
Armenian Group of 28..... 5
Army, Department of the..... 105
Arson..... v,2,53
Assassination..... 111
Assault..... 31
Atomic Energy Act..... 98
Atomic Energy Commission..... 104
Attorney General of the United States..... 49,98

"B"

Baader-Meinhof Gang..... vii, 13
Bail Reform Act..... 49
Barricade..... 3
Biological..... 12
Bomb Summary..... 4

Bombings..... v

Bureau of Alcohol, Tobacco and Firearms..... 100

Business

 Executives..... 3

 Facilities..... 3

"C"

Cabinet Committee to Combat Terrorism..... iv, 97

California..... 32

Carter Administration..... iii

Central Intelligence Agency..... iv, 3

Civil Defense..... 16

Civil Disorders..... iii, 9, 10, 61, 106, F-1

Civil Rights Act of 1964..... 55, 62

Civilian Disruption..... vii, viii, 15, 29

Coast Guard..... 103

Commandos Revolucionarios Independistas Armados (CRIA)..... 4

Commandos Revolucionarios del Pueblo (CRDP)..... 5

Commerce, Department of..... 103

Commerce Power..... 55

Comprehensive Emergency Manager..... ix

Congress, 95th..... iii, 49

Coordination de Organizaciones Revolucionarias (CORU)..... 4

Consequence Management..... iv, 106

Constitutional..... 33, 54

Contingency fund..... 20, 28

Continuity of government..... viii

Council of State Governments..... 16, C-1

Criminal offense procedure..... 31, 49

Croatian National Resistance..... 5

Cuban Commandos..... 4

Customs Service..... 101

"D"

Debris..... 16, 24

Declarations

 Gubernatorial..... vii

 Presidential..... viii

Department of Commerce..... 103

Department of Defense..... 105

Department of Energy..... 104

Department of Energy Organization Act..... 104

Department of Justice..... 49, 98

Department of State..... iv, 97

Department of Transportation..... 102

Diplomatic

 Officials..... 3, 111

 Property..... 3

Disaster/emergency legislation..... 15, C-1

Disruptive terrorism..... 2, 9, 15

Domestic terrorism..... iii, 2

"E"

Emergency Act..... vii, 15

Emergency preparedness..... iii, 106

Energy, Department of..... 104

Energy Reorganization Act of 1974..... 104

Energy suppliers..... vi, 12

Environmental Life Force (ELF)..... 4

Espionage..... 64

Evacuation..... 21, 26

Example State Disaster Act of 1972..... 16, C-1

Executive orders..... 21, 26

Explosives..... v, 2, 3, 4, 67, 71, 100

Export Administration Act..... 115

Extortion..... 74, 75

"F"

Federal Aviation Administration (FAA).....	103
Federal Bureau of Investigation (FBI).....	iv,2,98
Federal Criminal Code.....	viii,49
Federal Emergency Management Agency (FEMA).....	iv,106
Federal Preparedness Agency (FPA).....	107
Federally Protected Activities.....	62
Firearms.....	55,77 90,91,100
Firebombings.....	v,2,3,4
Foreign Assistance Act of 1961.....	119
Fuerzas Armada de Liberacion Nacional Puertorriquena (FALN).....	4,5
Fugitive from justice.....	83
Funding	
Contingency.....	23,26
Personnel and administration.....	19,26

"G"

General Services Administration (GSA).....	107
George Jackson Brigades (GJB).....	4,5
Governor	
Responsibility, duty, power.....	vii,15
Declaration.....	vii
Government	
Officials.....	3
Property.....	3
Grants.....	99
Gun Control Act of 1968.....	77

"H"

Hague Convention.....	102
High-level technology.....	vii,11
Hijacking.....	102,E-1
Hoaxes.....	v,2

Hostage.....	v,2,3
House of Representatives.....	13
Housing	
Temporary.....	21,22,26
Units.....	21,22,26

"I"

Italian Red Brigades.....	4
Immigration and Nationality Act.....	100,D-1
Immigration and Naturalization Service (INS).....	100
Immunity.....	18,26
Incendiary bombings.....	3
Incident management.....	iv,98
Industry.....	vi,ix,112
Intelligence.....	viii,ix,49,98
Internal Revenue Service (IRS).....	101
International Bank for Reconstruction and Development Act.....	120
International terrorism.....	iii,3,4
Insurrection.....	9,106,F-1

"J"

Japanese Red Army.....	4
Jewish Armed Resistance (JAR).....	4
Jurisdiction.....	52

"K"

Kidnapping.....	v,3,86
Ku Klux Klan (KKK).....	5

"L"

Law enforcement	
Agency.....	98, 99
Personnel.....	98, 99
Law Enforcement Assistance Administration (LEAA).....	99
Legislation.....	38, 70
Letter bombing.....	v, 3
Loans.....	24, 26

"M"

Manslaughter.....	84
Marighella, Carlos.....	10
Martial Law.....	25
Marxist.....	vi, 5, 6, 10
Media.....	vii, ix, 12
Military	
Officials.....	3
Property.....	3
Mitigation.....	iv
Model Penal Code.....	30
Montreal Convention.....	102
Murder.....	84
Mutual aid agreements.....	20, 26

"N"

National Firearms Act.....	91
National Guard Bureau (NGB).....	106
National Security Council (NSC).....	iii
The Neutrality Act.....	82
New World Liberation Front (NWLF).....	4
Nihilism.....	vi, 5
Nuclear	
Facilities.....	vi, 12
Power.....	vi, 12

Nuclear Emergency Search Team (NEST).....	104
Nuclear Regulatory Commission (NRC).....	105

"O"

Omnibus Crime Control and Safe Streets Act of 1968.....	99
Organizational sophistication.....	11

"P"

Paramilitary.....	iii
Planning.....	106
Popular Front for the Liberation of Palestine (PFLP).....	4
Preparedness.....	iv, 106
President.....	iii
Press.....	vii, x, 12
Puerto Rico.....	5

"R"

Racketeering.....	88
Radioactive materials.....	105
Recovery.....	iv, 106
Recoveries.....	2
Reorganization Plan #3.....	iv, 106
Response.....	98
Riots.....	88

"S"

Sam Melville/Jonathan Jackson Unit.....	5
Secret Service (SS).....	101
Senate.....	109
Sniping.....	3
Shootings.....	v, 2
Springer Press.....	vii, 12

State Criminal Code..... 36
 State emergency office..... iii,iv
 Students for a Democratic Society (SDS)..... 10
 Surveillance
 Electronic..... 49
 Suspension..... 20,26
 Symbionese Liberation Army (SLA)..... 6
 Symbolic terrorism..... 2

"T"

Targets..... 12
 Telephone usage..... 90
 Terrorism
 definitions..... 2
 domestic..... 1
 groups..... 4
 personality characteristics..... 5
 Terroristic
 acts..... 29
 threats..... 30
 Threats..... 30
 Tokyo Convention..... 102
 Trade Act of 1974..... 117
 Training..... 99
 Transportation..... 102
 Treasury, Department of..... 100

"U"

Unenforceability..... 33
 Urban guerilla..... 10
 Utilities..... vi,12

"V"

Vagueness..... 33

"W"

Weapons..... 11
 Weather Underground Organization (WUO)..... 10
 Wiretaps..... 50
 Working Group to Combat Terrorism..... iv, 97

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