

111TH CONGRESS
1ST SESSION

S. 1464

To amend title 18, United States Code, to establish the transfer of any nuclear weapon, device, material, or technology to terrorists as a crime against humanity.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2009

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to establish the transfer of any nuclear weapon, device, material, or technology to terrorists as a crime against humanity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Trafficking
5 Prevention Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) A single, simple nuclear weapon detonated
9 in the heart of an American city would kill 100,000

1 people instantly, and seriously injure tens of thou-
2 sands more. A significant portion of the city would
3 probably become permanently uninhabitable, with lit-
4 tle chance of a successful cleanup.

5 (2) Making such a weapon would not be dif-
6 ficult, by modern technological standards, given 25
7 to 35 pounds of highly enriched uranium.

8 (3) Since the development of the first nuclear
9 weapons, countries around the world have recognized
10 the unique risk that nuclear weapons pose to peace
11 and security.

12 (4) The first treaty limiting the use of nuclear
13 technology was the Limited Test Ban Treaty of
14 1963, which banned the testing of nuclear weapons
15 in the atmosphere, in outer space, and underwater.
16 Since that time, many treaties to limit the use and
17 proliferation of nuclear weapons have been signed.

18 (5) Perhaps the most important of these trea-
19 ties is the Treaty on the Non-Proliferation of Nu-
20 clear Weapons, which restricts almost all of the 188
21 nations that are signatories from developing nuclear
22 weapons. As part of their obligation under the Trea-
23 ty on the Non-Proliferation of Nuclear Weapons,
24 163 countries have reached safeguards agreements
25 with the International Atomic Energy Agency that

1 require a comprehensive system for accounting for
2 nuclear materials and intrusive inspections of their
3 nuclear facilities.

4 (6) These treaties and safeguards agreements
5 reflect the worldwide understanding that nuclear
6 materials in the wrong hands pose a direct threat to
7 peace and prosperity.

8 (7) Chapter VII of the United Nations Charter,
9 article 39 states the following: “The Security Coun-
10 cil shall determine the existence of any threat to the
11 peace, breach of the peace, or act of aggression and
12 shall make recommendations, or decide what meas-
13 ures shall be taken in accordance with Articles 41
14 and 42, to maintain or restore international peace
15 and security.”.

16 (8) In 2004, the United Nations Security Coun-
17 cil unanimously adopted Resolution 1540, binding on
18 all members of the United Nations, which stated in
19 part the following:

20 “The Security Council, . . . Acting under Chapter
21 VII of the Charter of the United Nations, . . .

22 “2. Decides also that all States, in accord-
23 ance with their national procedures, shall adopt
24 and enforce appropriate effective laws which
25 prohibit any non-State actor to manufacture,

1 acquire, possess, develop, transport, transfer or
2 use nuclear, chemical or biological weapons and
3 their means of delivery, in particular for ter-
4 rorist purposes, as well as attempts to engage
5 in any of the foregoing activities, participate in
6 them as an accomplice, assist or finance them;

7 “3. Decides also that all States shall take
8 and enforce effective measures to establish do-
9 mestic controls to prevent the proliferation of
10 nuclear, chemical, or biological weapons and
11 their means of delivery, including by estab-
12 lishing appropriate controls over related mate-
13 rials and to this end shall: . . .

14 “(d) Establish, develop, review and
15 maintain appropriate effective national ex-
16 port and trans-shipment controls over such
17 items, including appropriate laws and reg-
18 ulations to control export, transit, trans-
19 shipment and re-export and controls on
20 providing funds and services related to
21 such export and trans-shipment such as fi-
22 nancing, and transporting that would con-
23 tribute to proliferation, as well as estab-
24 lishing end-user controls; and establishing
25 and enforcing appropriate criminal or civil

1 penalties for violations of such export con-
2 trol laws and regulations;”.

3 (9) Resolution 1540 reflects the general under-
4 standing of the members of the United Nations that
5 the illicit transfer of nuclear weapons and related
6 materials is a “threat to the peace”.

7 (10) The international community has dem-
8 onstrated a growing appreciation of the scope and
9 urgency of the threat posed by nuclear terrorism. At
10 the G–8 Summit held in July 2009 in L’Aquila,
11 Italy, the heads of state assembled agreed that “The
12 threat of terrorists acquiring WMDs continues to be
13 cause for deep concern” and “We are determined to
14 continue working together to ensure that terrorists
15 never have access to those weapons and related ma-
16 terials.”.

17 (11) The President has announced his intention
18 to host a Global Nuclear Security Summit in March
19 2010 in part to “deter, detect, and disrupt attempts
20 at nuclear terrorism”, declaring that the inter-
21 national community “should not wait for an act of
22 nuclear terrorism before working together to collec-
23 tively improve our nuclear security culture, share
24 our best practices and raise our standards for nu-
25 clear security.”.

1 **SEC. 3. STATEMENT OF POLICY REGARDING CRIMES**
 2 **AGAINST HUMANITY.**

3 It is the policy of the United States that the transfer
 4 of a nuclear weapon or device or of nuclear material or
 5 technology with reason to believe that the weapon or de-
 6 vice, or a weapon or device made using the transferred
 7 material or technology, may be used for terrorist purposes,
 8 is a crime against humanity and that individuals are liable
 9 for such acts under customary international criminal law.

10 **SEC. 4. CRIMINAL OFFENSE.**

11 (a) OFFENSE.—Chapter 113B of title 18, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing new section:

14 **“§ 2332i. Transfer of nuclear weapons, devices, mate-**
 15 **rial, or technology**

16 “(a) UNLAWFUL CONDUCT.—

17 “(1) IN GENERAL.—It shall be unlawful for any
 18 person to knowingly transfer to any organization or
 19 person described in paragraph (2)—

20 “(A) any weapon that is designed or in-
 21 tended to release radiation or radioactivity at a
 22 level dangerous to human life, or that uses a
 23 nuclear reaction in order to create an explosion;

24 “(B) any device or other object that is ca-
 25 pable of endangering, and is designed or in-

1 tended to endanger, human life through the re-
2 lease of radiation or radioactivity;

3 “(C) any nuclear material or nuclear by-
4 product material; or

5 “(D) any sensitive nuclear technology.

6 “(2) ORGANIZATIONS AND PERSONS DE-
7 SCRIBED.—The organizations and persons referred
8 to in paragraph (1) are—

9 “(A) any organization designated by the
10 Secretary of State under section 219(a)(1) of
11 the Immigration and Nationality Act as a for-
12 eign terrorist organization; and

13 “(B) any other person, if the transferor
14 knew or had reasonable grounds to believe that
15 the weapon, device, material, or technology
16 transferred would be used in preparation for, or
17 in carrying out, a Federal crime of terrorism or
18 an act of international terrorism, whether or
19 not such a crime or act occurs.

20 “(3) EFFECT ON INTERNATIONAL LAW.—Noth-
21 ing in this section shall be construed to apply with
22 respect to activities undertaken by the military
23 forces of a country in the exercise of their official
24 duties.

1 “(b) JURISDICTION.—Conduct prohibited by sub-
2 section (a) is within the jurisdiction of the United States
3 if—

4 “(1) the offense occurs in or affects interstate
5 or foreign commerce;

6 “(2) the offense occurs outside of the United
7 States and is committed by a national of the United
8 States;

9 “(3) the offense occurs outside of the United
10 States and the recipient of the weapon, device, mate-
11 rial, or technology that is the subject of the offense
12 has at any time conspired, attempted, or threatened
13 to commit a Federal crime of terrorism or an act of
14 international terrorism against the United States
15 Government, any property of the United States, a
16 United States national, or an instrumentality of the
17 interstate or foreign commerce of the United States;

18 “(4) a financial institution or other person
19 doing business in the United States, or any other fi-
20 nancial institution or other person that is under the
21 control of an entity organized under the laws of the
22 United States, provides funds or any form of financ-
23 ing in furtherance of the offense; or

24 “(5) an offender aids or abets any person over
25 whom jurisdiction exists under this subsection in

1 committing an offense under this section or con-
2 spires with any person over whom jurisdiction exists
3 under this subsection to commit an offense under
4 this section.

5 “(c) CRIMINAL PENALTIES.—

6 “(1) IN GENERAL.—Any person who violates, or
7 attempts or conspires to violate, subsection (a) shall
8 be fined not more than \$2,000,000 and imprisoned
9 for a term of not less than 25 years or for life.

10 “(2) SPECIAL CIRCUMSTANCES.—If the death
11 of another results from the use of the weapon, de-
12 vice, material, or technology that is the subject of
13 the person’s violation of subsection (a), the person
14 shall be fined not more than \$2,000,000 and pun-
15 ished by imprisonment for life.

16 “(d) DEFINITIONS.—For purposes of this section—

17 “(1) an institution or person is under the ‘con-
18 trol’ of another entity if that other entity owns a
19 majority of the equity interest in that institution or
20 person;

21 “(2) the term ‘Federal crime of terrorism’ has
22 the meaning given that term in section 2332b(g)(5);

23 “(3) the term ‘international terrorism’ has the
24 meaning given that term in section 2331(1);

1 “(4) the terms ‘nuclear material’ and ‘nuclear
2 byproduct material’ have the meanings given those
3 terms in section 831(f) of this title; and

4 “(5)(A) the term ‘sensitive nuclear technology’
5 means any information (including information incor-
6 porated in a production facility or utilization facility
7 or important component part thereof) which is not
8 available to the public and which is important to the
9 design, construction, fabrication, operation or main-
10 tenance of a uranium enrichment or nuclear fuel re-
11 processing facility or a facility for the production of
12 heavy water, or detonators, charges, or other compo-
13 nents necessary to ignite or facilitate the detonation
14 of a weapon, device, or object described in subpara-
15 graph (A) or (B) of subsection (a)(1);

16 “(B) the terms ‘production facility’ and ‘utiliza-
17 tion facility’ have the meanings given those terms in
18 section 11 of the Atomic Energy Act of 1954 (42
19 U.S.C. 2014).”.

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for chapter 113B of title 18, United States Code,
22 is amended by adding at the end the following new item:

“2332i. Transfer of nuclear weapons, devices, material, or technology.”.

1 **SEC. 5. INTERNATIONAL ORGANIZATIONS AND BILATERAL**
2 **AND MULTILATERAL FORA.**

3 (a) UNITED NATIONS.—The Secretary of State shall
4 direct the Permanent Representative of the United States
5 to the United Nations to seek the adoption in the General
6 Assembly of a resolution recognizing that the transfer of
7 a nuclear weapon or device, material, or technology, with
8 reason to believe that the weapon or device, or a weapon
9 or device made using the transferred material or tech-
10 nology, may be used for terrorist purposes, is a crime
11 against humanity.

12 (b) BILATERAL AND MULTILATERAL FORA.—The
13 Secretary of State shall direct the representatives of the
14 United States to bilateral and multilateral fora to urge
15 their foreign counterparts to seek the enactment in their
16 home countries of national laws recognizing that the
17 transfer of a nuclear weapon or device, material, or tech-
18 nology, with reason to believe that the weapon or device,
19 or a weapon or device made using the transferred material
20 or technology, may be used for terrorist purposes, is a
21 crime against humanity.

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