



WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

TO: SENATOR JAMES BAUMGART
FROM: Ronald Sklansky, Senior Staff Attorney
RE: 2001 Senate Bill 363
DATE: January 22, 2002

This memorandum, prepared at your request, responds to a series of questions you have raised regarding 2001 Senate Bill 363. Specifically, you have, in general, asked questions regarding the meaning and effect of language proposed in Senate Bill 363, relating to explosives, destructive devices, detonators, and weapons of mass destruction.

A. Provisions of Senate Bill 363

The pertinent provisions of Senate Bill 363 in proposed s. 947.07, Stats., provide that:

1. Whoever manufactures, buys, sells, offers to sell, transfers, distributes, or possesses an explosive or a destructive device is guilty of a Class C felony.
2. Whoever manufactures, buys, sells, offers to sell, transfers, distributes or possesses a detonator with intent to commit a crime is guilty of a Class C felony.
3. Whoever manufactures, buys, sells, offers to sell, transfers, distributes, uses, or possesses a device component with intent that the device component be used to construct or assemble a destructive device is guilty of a Class C felony.
4. Whoever uses an explosive or a destructive device is guilty of a Class B felony.
5. Whoever uses a detonator with intent to commit a crime is guilty of a Class B felony.

[See proposed s. 947.07 (2) (a), (b), and (d) and (3) (a) and (b), Stats.]

The definition of the term "destructive device" in part means a device that contains an explosive and is designed or configured to cause substantial bodily harm, death, or property damage, including a

missile having an explosive charge of more than one-quarter ounce. [See proposed s. 947.07 (1) (c), Stats.]

The term “explosive” is defined in part to mean any chemical compound, other substance, or mechanical system that is intended to produce an explosion capable of causing substantial bodily harm, death, or property damage. [See proposed s. 947.07 (1) (f), Stats.]

The term “detonator” is defined in part to mean a device containing an exploding charge used to initiate detonation in an explosive or a destructive device, or any device capable of initiating or setting off an explosive charge including an impact device, a timing mechanism, a primer, primer or detonating cord, a detonating cap or detonating cord, a detonating cap, or detonating cord delay connectors. [See proposed s. 947.07 (1) (d), Stats.]

In general, the prohibitions on the manufacture, trade, possession or use of explosives, destructive devices or detonators does not apply to the following individuals:

1. Persons acting under federal or state licenses or permits.
2. Members of the armed forces.
3. Law enforcement officers or firefighters.
4. Persons conducting research or education.

[See proposed s. 947.07 (6), Stats.]

Finally, the criminal prohibitions contained in the statute do not apply to the manufacture, trade, or possession of ammunition for firearms or components for ammunition for firearms that are designed to shoot no more than one shot without manual reloading. [See proposed s. 947.07 (7) (c), Stats.]

B. Discussion

You have asked how the prohibitions of proposed s. 947.07, Stats., will affect the typical resident of Wisconsin who is not otherwise exempted from the provisions of the statute because of licensure, a permit, membership in the armed forces, status as a law enforcement officer or firefighter, or status as a person conducting research or education.

With respect to the issue of the manufacture, trade, possession, or use of a detonator, the impact of the proposed statute is clear. Only a person who commits an act with a detonator “with intent to commit a crime” will be guilty of a felony. Since the typical citizen does not act with the intent to commit a crime, the provisions of the proposed statute relating to a detonator should provide no obstacle to these individuals.

The effect of the remaining prohibitions is not altogether clear because the statutory definitions may, in some respects, be ambiguous. For example, the term “explosive” is defined to mean in part any chemical compound or mechanical system that is intended to produce an explosion capable of causing substantial bodily harm, death, or property damage. This language could include gunpowder or a firearm because either might be considered an item “intended to produce an explosion capable of

causing substantial bodily harm, death, or property damage.” Similarly, the term “destructive device” may include a device (a firearm) that contains an explosive (gunpowder) that is designed or configured to cause substantial bodily harm, death, or property damage and may include a missile (ammunition) having an explosive charge of more than one-quarter ounce. Consequently, if the terms “explosive” and “destructive device” include gunpowder, ammunition, and a firearm, then whoever manufactures, buys, sells, offers to sell, transfers, distributes, possesses, or uses gunpowder, ammunition or a firearm, may be guilty of committing a felony, with one exception. [Compare s. 941.31 (1), Stats., which provides that whoever makes or trades any explosive compound or offers to do the same, either with intent to use the explosive to commit a crime or knowing that another intends to use it to commit a crime, is guilty of a Class C felony.]

The exception referred to in the previous paragraph is contained in proposed s. 947.07 (7) (c), Stats., and states that the statute’s prohibitions do not apply to the manufacture, purchase, sale, offer to sell, transfer, distribution or possession of ammunition for firearms or components for ammunition for firearms that are designed to shoot no more than one shot without manual reloading. Obviously, the effect of this exception depends on the meaning of the phrase “firearms that are designed to shoot no more than one shot without manual reloading.” The phrase may be referring to ammunition used in any firearm other than a machine gun. For example, the definition of the term “machine gun” in s. 941.27 (1) (a), Stats., provides that a machine gun is any weapon that 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. Perhaps the exception contained in Senate Bill 363 can be read to apply to the ammunition for any firearm that is not the fully automatic weapon described in s. 941.27, Stats. However, the definition in s. 941.27, Stats., only applies to ss. 941.25 and 941.26, Stats. It is possible that the exception in the bill could be read to apply only to ammunition for firearms that require the operator to insert ammunition into the firearm after each shot. If so, a person using ammunition for any other type of firearm conceivably could place the individual in jeopardy of committing a felony described in this memorandum. [In contrast, see s. 941.31 (2) (a), Stats., which provides that the term “improvised explosive device” used in that statute does not include ammunition for any rifle, pistol, or shotgun. Section 941.31, Stats., is repealed in Senate Bill 363.]

In summary, you have suggested a concern for the ability of Wisconsin residents to continue to possess, transfer, and use ammunition and firearms if proposed s. 947.07, Stats., is enacted into law. Because the meaning of the provisions of s. 947.07, Stats., is not entirely clear, amendments to Senate Bill 363 may be required to specifically describe the limits of the proposal.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:jal;tlu



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JAMES BAUMGART
FROM: Ronald Sklansky, Senior Staff Attorney
RE: Senate Amendment __ (LRBa1220/1) to 2001 Senate Bill 363
DATE: February 7, 2002

This memorandum briefly describes Senate Amendment __ (LRBa1220/1) to 2001 Senate Bill 363.

In part, Senate Bill 363 proposes to create s. 947.07, Stats., to prohibit a person from undertaking various activities with a destructive device or an explosive. The bill treats these activities as serious felonies.

Because of concerns regarding the breadth of the language in the bill that prohibits various activities in connection with a destructive device or an explosive, Senate Amendment __ (LRBa1220/1) has been drafted to clarify the bill. Under the amendment, the prohibitions in the bill will *not* apply to a person using: (1) a firearm; (2) a safety or signaling device; or (3) ammunition, or a component of ammunition, that is intended for use in a firearm or in a safety or signaling device. A firearm means a handgun, machine gun, rifle or shotgun. A safety or signaling device includes a starter pistol, flare gun or line-throwing gun. A component of ammunition includes a primer used for reloading a shell.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:rv;ksm

History of Senate Bill 363

SENATE BILL 363

An Act to repeal 343.237 (3) (d), 940.20 (2m) (a) 2., 940.20 (4), 940.20 (5), 940.203, 940.205, 940.207, 941.31, 943.013, 943.015, 947.012 (1) (a), 947.0125 (2) (a), 947.0125 (2) (b) and 947.015; to renumber 947.02, 947.04, 947.06 and 968.40 (1); to renumber and amend 440.475 (1), 939.648 (2) (c), 940.41, 940.42, 940.43, 940.44, 940.45, 940.46, 940.47, 940.48, 940.49, 946.64, 968.26 and 968.30 (5); to consolidate, renumber and amend 940.20 (2m) (a) (intro.) and 1.; to amend 48.685 (5) (bm) 4., 59.54 (6), 115.31 (2g), 118.19 (4) (a), 165.55 (3), 165.70 (1) (b), 301.048 (2) (bm) 1. a., 786.36 (4), 895.01 (1) (g), 895.035 (4a) (a) 2., 938.396 (2) (j), 938.78 (3), 939.22 (21) (k), 939.22 (21) (L), 939.31, 939.32 (1) (c), 939.632 (1) (e) 1., 939.632 (1) (e) 3., 939.648 (2) (intro.), (a) and (b) (intro.), 939.648 (3) and (4), 940.20 (2), 940.20 (2m) (title), 940.20 (2m) (b), 940.20 (6) (b) (intro.), 940.201 (1) (b), 941.26 (1) (a), 941.26 (2) (a), 941.26 (3), 941.27 (2), 941.38 (1) (b) 11., 941.38 (1) (b) 12., 943.011 (1) (b), 943.017 (2m) (a) 2., 943.05, 943.201 (1) (a), 946.82 (4), 968.27 (intro.), 968.28, 968.30 (1) (intro.), 968.30 (4) (intro.), 968.30 (7) (d) (intro.), 968.31 (3), 969.02 (4m), 969.03 (2m), 969.08 (10) (b), 971.37 (1m) (a) 2. and 973.055 (1) (a) 1.; to repeal and recreate 968.31 (2m) (intro.); and to create 165.25 (2m), 440.475 (1) (b), 440.475 (1) (c), 939.22 (21) (Lo), 939.32 (1) (f) and (g), 939.32 (1) (h), 939.648 (2) (c) 3., 940.204, 941.375, 941.38 (1) (b) 12o., 943.0135, 943.20 (3) (e), 946.605 (1c), 946.605 (1e), 946.64 (2), 946.64 (3), 946.78, 946.79, 947.03, 947.05, 947.07, 947.08, 968.26 (2), 968.265, 968.27 (14m), 968.275, 968.30 (6m), 968.30 (11), 968.31 (2) (am), 968.31 (2g), 968.40 (1) (a) and 971.367 of the statutes; relating to: prohibitions related to explosives, destructive devices, detonators, or weapons of mass destruction; increased penalties for crimes committed with intent to terrorize; causing bodily harm or threatening to cause bodily harm to a public officer or employee and threatening to damage the property of a public officer or employee; communicating with or harassing or intimidating jurors; threatening to cause bodily harm or property damage; providing or soliciting material support for acts of terrorism; money laundering; making false statements to financial institutions and the definition of personal identification document; prohibitions related to automatic weapons; theft of a firearm or a machine gun; interfering with disarmament of an explosive or a destructive device; crimes that may entail the interception of wire, electronic, or oral communication, interception of communications in emergency situations, roving electronic surveillance, and providing assistance to persons authorized to engage in electronic surveillance; grand jury authority; John Doe proceedings; court orders for disclosure of the existence of depository accounts with financial institutions; court orders for disclosure regarding subscribers of electronic communications services; access to license and identification card photographs; the procedure for making a legal name change; and providing penalties. (FE) 2002

01-08. S. Introduced by Senators Baumgart, Darling and Roessler; cosponsored by Representatives Kaufert, Freese, Hahn, Hines, Jeskewitz, Ladwig, M. Lehman, Lippert, D. Meyer, Musser, Olsen, Ott, Owens, Petrowski, Ryba, Urban and Vrakas.

01-08. S. Read first time and referred to committee on
Judiciary, Consumer Affairs, and Campaign Finance
Reform 488

01-18. S. Representative Petrowski withdrawn as a cosponsor 511

01-22. S. Senator Roessler withdrawn as a coauthor 519

01-22. S. Senator Darling withdrawn as a coauthor 519

**DRAFTING INSTRUCTIONS FOR
FIREARM AND AMMUNITION PROVISIONS
OF
SENATE BILL 363**

See Pages 5, 6 & 7

Possession and use of explosives and destructive devices, threats of destructive devices and facsimile destructive devices.

(1) in this section:

(a) "Bomb" includes a destructive device capable of being exploded, initiated or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property.

(b) "communicates" means conveys in person or by written or electronic means, including but not limited to, telephone, electronic mail, internet, facsimile, telex and similar transmissions.

(c) "Destructive device" means:

1. a bomb, incendiary device, or anything that can explode or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over- pressure device, or any other device capable of causing damage, injury, or death;
2. a weapon of mass destruction;
3. a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

(d) "detonator" means a device containing an exploding charge used to initiate detonation in an explosive or any device capable of initiating or setting off an explosive charge including, but not limited to, impact or an impact device, a timing mechanism, electricity, a primer, primer or detonating cord, a detonating cap or device of any kind, detonating waves, electric blasting caps, blasting caps for use with safety fuses, shock tube initiator, and detonating cord delay connectors, or any other device capable of initiating an explosive or destructive device.

(e) "Device" means an object, contrivance, container, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of serving any purpose in an explosive or destructive device.

(f) "Explosive" means any chemical compound or other substance or mechanical system intended for the purpose of producing an explosion capable of causing injury to persons or damage to property or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonator may produce an explosion capable of causing injury to persons or damage to property, including but not limited to, the list of explosive materials published and periodically updated by the Bureau of Alcohol, Tobacco and Firearms. However, the term explosive shall not include fireworks as defined by s. 167.10, or the items described in s. 167.10(1)(a)-(n) unless such devices are used as a component of an explosive device. *(Also add DOT class 3 explosives)*

(g) "Facsimile device," means a replica or imitation of an explosive, incendiary device, overpressure device, detonator or destructive device, an object that bears a reasonable resemblance to or can reasonably be perceived to be such an item, or an object that is represented to be such an item. Facsimiles do not include an actual destructive, incendiary or overpressure device, explosive or detonator.

(h) "Incendiary" means any material that:

1. causes, or is capable of causing, fire when it is lit or ignited; and
2. is used to ignite an ignitable liquid, fuel or compound in an unlawful manner.

(i) "Incendiary device" means a destructive device, however possessed or delivered, and by whatever name called, containing or holding an ignitable liquid, fuel or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

(j) "Over-pressure device" means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in a manner capable of causing death, bodily harm, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

(k) "Parts" means a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

(l) "Poisonous gases" means a toxic chemical or its precursors that through its chemical action or properties on life processes, causes death or injury to human beings or other living organisms. However, the term does not include:

- 1 riot control agents, smoke and obscuration materials, or medical products which are manufactured, possessed, transported, or used in accordance with the laws of this State or the United States; or
2. pepperspray as permitted under s. 941.xxx; or
3. pesticides, as used in agriculture and household products, when used for lawful purposes.

(m) "weapon of mass destruction" means:

1. toxic or poisonous gases or chemicals or their precursors or any device that is designed, intended or capable of causing death, disease or serious bodily injury through the release, dissemination, or impact of toxic or poisonous gases or chemicals or their precursors;
2. Any device involving a disease organism;

3. A biological agent including any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance or biological product, capable of causing death, disease or other biological malfunction in a human, an animal, a plant or other living organism or a deterioration of food, water, equipment, supplies or material of any kind or deleterious alteration of the environment or any device containing such items;

4. Any device that is designed or intended to release radiation or radioactivity at a level dangerous to human life.

It may be desirable to add some additional definitions regarding "Toxic chemical," "Toxin" and "vector."

(2) Whoever makes, buys, possesses, sells, offers to sell, transfers, gives, distributes, possesses with intent to distribute, or transports, an explosive, detonator or destructive device, or places, sends or delivers an explosive, detonator or destructive device anywhere is guilty of a class C felony. Where the destructive device is a weapon of mass destruction the person is guilty of a Class A felony.

This statute is intended to prohibit possession, etc., of explosives, detonators and destructive devices regardless of intent. Under current law it is a felony to simply possess, etc., 1) an "improvised explosive device" (essentially a pipe bomb or overpressure device); and 2) an explosive with intent to commit a crime. This proposal would expand that to all explosives and destructive devices. A general exception would need to be created for such material possessed lawfully under state or federal law and used for a lawful purpose. If this approach is not followed then we would want to retain the improvised explosive device statute or similar language.

Another option: Whoever makes, buys, possesses, sells, offers to sell, transfers, gives, distributes, possesses with intent to distribute, transports, carries or displays an explosive, detonator or destructive device, or places, sends or delivers an explosive, detonator or destructive device anywhere with intent to commit a crime or to alarm, intimidate, threaten, terrify or harass another person, or knowing that another intends to use the explosive, detonator or destructive device to commit a crime or to alarm, intimidate, threaten, terrify or harass another person, is guilty of a class C felony. Where the destructive device is a weapon of mass destruction the person is guilty of a Class A felony.

(3) Whoever uses or attempts to use an explosive, detonator or destructive device is guilty of a class B felony. Where the destructive device is a weapon of mass destruction the person is guilty of a Class A felony.

This statute would simply make it a crime to use or attempt to use an explosive, detonator or destructive device. While there are many lawful uses of such devices, that issue is best dealt with by creating exceptions for lawful use.

Another option: Whoever uses or attempts to use an explosive, detonator or destructive device to commit a crime or with intent to alarm, intimidate, threaten, terrify or harass another person, or cause evacuation of any building, school, place of assembly, vehicle, train, watercraft, airplane or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of such causing evacuation or inconvenience is guilty of a Class B felony. Where the destructive device is a weapon of mass destruction the person is guilty of a Class A felony.

(4) Whoever, with intent to alarm, intimidate, threaten, terrify or harass another person, makes, possesses, transfers, distributes, possesses with intent to distribute, transports, carries, displays or places, sends or delivers a facsimile device anywhere is guilty of a class D felony.

This statute is intended to deal with Hoax devices. A facsimile is defined as a device which is 1) a replica or imitation of an explosive, incendiary device, overpressure device, detonator or destructive device, or 2) an object that bears a reasonable resemblance to or can reasonably be perceived to be such an item; or 3) or an object that is represented to be such an item.

Another option: Whoever makes, possesses, transfers, distributes, possesses with intent to distribute, transports, carries, displays or places, sends or delivers a facsimile device with intent to cause another to believe that the facsimile device is an actual explosive, incendiary device, overpressure device, detonator or destructive device is guilty of a Class D felony.

(5) Whoever intentionally communicates, directly or indirectly, a threat or false information, knowing such to be false, concerning a past, present or future placement of an explosive, detonator or destructive device, or an alleged attempt made, being made or to be made to damage or destroy any property or to cause death, disease or injury to any person by means of an explosive, destructive device or fire, or communicates such threat or false information with the intent to cause evacuation of any building, school, place of assembly, vehicle, train, watercraft, airplane or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of such causing evacuation or inconvenience is guilty of a class D felony.

This statute is a slight rewording of the existing bomb scare statute to expand it to include threats regarding other devices. This is a general threat statute regarding explosives and destructive devices and mirrors a proposed statute regarding making threats without reference to the use of a destructive device.

(6) Whoever uses or attempts to use a destructive device (or weapon of mass destruction) with intent to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person, or to cause damage to public natural resources including public parkland, surface waters, ground water, and wildlife is guilty of a Class B felony. If the destructive device is a weapon of mass destruction the person is guilty of a Class A felony.

This statute is intended to deal with the use of destructive devices to damage natural resources. It could be limited to weapons of mass destruction as it is unlikely that a firebomb or explosive would cause substantial or widespread harm. If the option of simply making it a crime to use or attempt to use a destructive device without regard to a person's intent is adopted (see above) then this statute is probably unnecessary. Otherwise, an expansion of the statutory language to include water supplies or public utilities may be warranted.

(7) Whoever communicates to another person, directly or indirectly, a threat to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person, or to cause damage to public natural resources including public parkland, surface waters, ground water, and wildlife by use of a destructive device (or weapon of mass destruction) is guilty of a Class B felony.

This is intended to specifically deal with a threat to agriculture or natural resources. A threat by implication carries with it some threat of fear, etc. In addition, the current bomb threat statute does not impose an intent element of causing fear, etc. It may also be expanded to include threats directed at water treatment facilities and public utilities. This proposal could also be limited to threats regarding weapons of mass destruction.

Another option: Whoever, with intent to alarm, intimidate, threaten, terrify or harass another person, communicates, directly or indirectly, a threat to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person, or to cause damage to public natural resources including public parkland, surface waters, ground water, and wildlife by use of a destructive device (or weapon of mass destruction) is guilty of a Class B felony.

(8) (a) In any action or proceeding involving explosives, detonators or destructive devices, photographs, electronic imaging, video tapes, or other identification or analysis of the explosives, detonator or destructive device identified by a explosive ordnance disposal technician or person qualified as an expert in the field of explosives, detonators, or destructive devices is admissible in any civil or criminal trial in lieu of production of the actual item. Evidence transferred to the clerk of court by a explosive ordnance disposal technician for safekeeping must not be destroyed except pursuant to a court order issued by a court of competent jurisdiction.

(b) If explosives, detonator, or destructive device that has been rendered inert and safe is introduced into evidence in any criminal or civil trial, the clerk of court may retain custody or transfer custody of the explosive, detonator or destructive device to a explosive ordnance

disposal technician for safekeeping only after the explosive, detonator or destructive device has been preserved as evidence by photograph, video tape, or other suitable means of identification.

(c) Nothing in sections (8)(a) or (8)(b) prohibits a explosive ordnance disposal technician, law enforcement officer, or fire official from taking any action that will render an explosive, detonator, destructive device, or other object which is suspected of being an explosive, detonator or destructive device, safe without prior approval of a court when the action is in the performance of his or her duties and is intended to protect lives or property which are in, or reasonably believed to be in, imminent danger.

This provision is simply to ensure that actual destructive devices do not need to be introduced at a trial and that the police may render safe (which may include actual destruction) in the process of rendering safe for the protection of the public.

(9) The provisions of this section do not apply to the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties or any private person who is otherwise engaged in lawful activity within the scope of his or her employment.

Another option for the private person exception would be to exempt the possession of various explosive and other materials when legally possessed pursuant to state or federal law AND used for a lawful purpose. It may then be necessary to perhaps define lawful purpose. For example, we would want to allow persons engaged in legitimate blasting work to continue their work. They would be authorized to possess explosives and would be performing a lawful function. However, merely legally possessing explosives may not be a sufficient exception as someone who is licensed, etc., may not use for a lawful purpose. In addition, there are obviously a number of legitimate uses for biological, chemical and radioactive devices.

The following are 2 examples of such statutes:

a. South Carolina

The provisions of this article do not apply to the lawful use of:

(1) fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their intended purposes;

(2) pesticides which are manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7, Title 2, the federal Insecticide, Fungicide, and Rodenticide Act and the Environmental Pesticide Control Act of 1972;

(3) explosives, blasting agents, detonators, and other objects regulated and controlled by the South Carolina Explosives Control Act;

(4) ammunition for small arms and firearms;

(5) components of ammunition for small arms and firearms;

(6) ammunition reloading equipment;

(7) the use of small arms propellant when used in war reenactments;

(8) firearms, as defined in Section 16-8-10; or

(9) fireworks and explosives which are permitted to be sold, possessed, or used under Chapter 35 of Title 23.

(E) The provisions of this article do not apply to the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties.

b. Federal

18 USC 229F

(7) Purposes not prohibited by this chapter. - The term "purposes not prohibited by this chapter" means the following:

(A) Peaceful purposes. - Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity.

(B) Protective purposes. - Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

(C) Unrelated military purposes. - Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm.

(D) Law enforcement purposes. - Any law enforcement purpose, including any domestic riot control purpose....

NOTE:

The above proposed statute is intended to create new offenses regarding destructive devices and in so doing eliminate existing statutes on explosives and molotov cocktails. The conduct covered by those statutes would now be included in the proposed statute.

The definitions in this statute are drawn from federal law and the laws of various other states including South and North Carolina, Florida and California as well as federal law. Slight modifications have been made to 1) avoid even lengthier definitions 2) to correct some technical terms after consulting with persons knowledgeable regarding explosives and incendiary devices.

The statute is intended to cover the use or threatened use of explosives, detonators and "destructive devices" as well as facsimiles of such devices. Destructive devices are broadly defined to include bombs, incendiary devices, overpressure devices and weapons of mass destruction.

The statute exempts "the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties or any private person who is otherwise engaged in lawful activity within the scope of his or her employment." As discussed above, this could be expanded to include

Threats to public officials

(1) In this subsection:

- (a). "Family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.
- (b). "Public officer" and "public employee" means those persons defined under s. 939.22(30).
- (c). "communicates" means conveys in person or by written or electronic means, including but not limited to, telephone, electronic mail, internet, facsimile, telex and similar transmissions.

(2) Whoever intentionally causes bodily harm or communicates a threat to cause bodily harm to the person or family member of any public officer or employee under all of the following circumstances is guilty of a Class D felony:

- (a). At the time of the act or threat, the actor knows or should have known that the victim is a public officer or public employee or a member of his or her family.
- (b). The public officer or employee is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.
- (c). There is no consent by the person harmed or threatened.

This is nothing more than an expansion of existing law to all public officials and employees.

Anti-Terrorism Legislation (SB 363)

Background:

After the unfortunate and despicable acts of September 11th, the President called on all the states to be better prepared to handle a terrorist attack - - Senate Bill 363 was proposed by the Wisconsin Attorney General to comply with this directive.

In order to formulate a comprehensive and bi-partisan plan, the bill was drafted in concert with Republican Representative Dean Kaufert, Attorney General Jim Doyle and the legal experts within the Department of Justice and the non-partisan staff at the Legislative Reference Bureau and Legislative Council.

Timeline:

- SB 363 was introduced January 1, 2002 on a bi-partisan basis with Representative Kaufert
 - Of the 20 individuals that signed on to be co-authors of the bill 18 were Republicans

- On or about January 18, 2002 - Concerns are raised over the effect the bill would have on legal gun and ammunition ownership
 - While the language of the bill was open to interpretation the non-partisan drafters were directed to ensure that legal gun ownership would not be impacted (see attached drafting instructions)

 - Legislative staff tried to accomplish this goal by including as part of the draft that an individual must **have the intent to commit a crime** with any of the listed items before being considered a terrorist act.
 - This means that simply owning ammunition or a primer would not by itself be a criminal - ONLY if that individual intended to commit a crime with those items. This is standard law enforcement language.

- On January 25, 2002 - Due to the level of misinformation distributed about SB 363, Senator Baumgart removed his name from the bill, and encouraged all co-signers to follow suit, effectively killing the legislation

- On February 7, 2002 - an amendment was introduced by Senator Baumgart to address the problems identified in the earlier draft. This version clearly exempts legal gun and ammunition ownership from the bill

OTHER KEY PROVISIONS TO COUNTER TERRORISM IN SB 363:

1. Defines Terrorist threat in a general sense
2. Broadens definition of threat to public officials to include their families and the families of members of a jury

3. Includes penalties for providing support to terrorist
4. Allows pictures of explosive devices to be used as evidence
 - o Law enforcement must have the device in custody - this is simply to avoid having to bring the explosive into the courtroom - Pictures of hunters with their guns would NOT have been used as evidence

STATEMENT:

Senate Bill 363 was proposed with the Attorney General and a bi-partisan coalition of legislators to deal with any real terrorist threat in our state. It was never intended to ban guns or ammunition for law-abiding citizens. Any attempt to mislead the public about this fact is unwarranted and only guaranteed that nothing would be passed to deal with this issue. This resulted in a serious disservice to the public and to law enforcement officials.

Any shortcomings in the original draft of the bill would have been addressed and the end result would have been an effective law that would have allowed our Attorney General and our public safety personnel to deal with potential problems as they occurred. Lost in all the rhetoric about making gun and ammunition ownership illegal was the fact that it was just not true.

It is my hope to be a part of this solution when the State Legislature convenes in 2003. As a result of the short sighted political misinformation provided over Senate Bill 363, our state is more vulnerable than it should be. As a life long hunter and fisher myself, I would never support or propose legislation that would harm any of these recreational activities in Wisconsin. As a United States Army veteran, I do have a special appreciation of the needs to protect our citizens. It is time for politics as usual take a back seat to the need to band together to counter the potential terrorist threat that continues to shape our way of life in Wisconsin, this nation and throughout the world.

ATTACHED:

1. Drafting Instructions
2. Bill History
3. Text of the SB 363
4. Legislative Council Memo on SB 363
5. Senate Amendment #1
6. Legislative Council Memo on SA1 to SB 363