
HOUSE BILL 2759

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Overstreet, Shea, Buys, Condotta, Taylor, and McCune

Read first time 02/01/12. Referred to Committee on Judiciary.

1 AN ACT Relating to creating the Washington state preservation of
2 liberty act condemning the unlawful detention of United States citizens
3 and lawful resident aliens under the national defense authorization act
4 for fiscal year 2012; adding a new section to chapter 42.20 RCW; adding
5 a new section to chapter 38.40 RCW; creating new sections; and
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** This act may be known and cited as the
9 Washington state liberty preservation act.

10 NEW SECTION. **Sec. 2.** The Washington state legislature finds the
11 following:

12 (1) The congress of the United States passed the national defense
13 authorization act, 2011 P.L. 112-81, ("2012 NDAA") for fiscal year 2012
14 on December 15, 2011;

15 (2) The president of the United States of America signed the 2012
16 NDAA into law on December 31, 2011;

17 (3) Section 1022 of the 2012 NDAA requires the armed forces of the
18 United States to detain, pending disposition according to the law of

1 war, any person involved in, or whom provided substantial support to,
2 terrorism or belligerent acts against the United States, and whom is a
3 member of al-Qaeda or an associated force;

4 (4) Section 1022 (4)(b)(1) and (2) of the 2012 NDAA excludes United
5 States citizens, and lawful resident aliens for conduct occurring
6 within the United States, from its mandatory detention provisions but
7 is only applicable to that section of the 2012 NDAA;

8 (5) Section 1022 (4)(b)(1) of the 2012 NDAA specifically provides
9 that, "The requirement to detain a person in military custody under
10 this section does not extend to citizens of the United States";

11 (6) Section 1022 of the 2012 NDAA specifically provides that, "The
12 requirement to detain a person in military custody under this section
13 does not extend to lawful resident aliens of the United States . . .";

14 (7) By contrast, section 1021 of the 2012 NDAA purports to
15 authorize, but does not require, the president of the United States to
16 utilize the armed forces of the United States to detain persons the
17 president suspects were part of, or substantially supported, al-Qaeda,
18 the Taliban, or associated forces and to dispose of such detained
19 persons according to the law of war, which may include, but is not
20 limited to: (a) Indefinite detention without charge or trial until the
21 end of hostilities authorized by the 2001 authorization for use of
22 military force against terrorists, 2001 P.L. 107-40, (b) prosecution
23 through a military commission, or (c) transfer to a foreign country or
24 foreign entity;

25 (8) Additionally, section 1021 of the 2012 NDAA purports to enlarge
26 the scope of those persons the office of the president may indefinitely
27 detain beyond those responsible for the September 11, 2001, terrorist
28 attacks, and those who harbored them, as purportedly authorized by the
29 2001 authorization for use of military force against terrorists, to now
30 include "[a] person who was a part of or substantially supported al-
31 Qaeda, the Taliban, or associated forces that are engaged in
32 hostilities against the United States or its coalition partners,
33 including any person who has committed a belligerent act or has
34 directly supported such hostilities in aid of such enemy forces";

35 (9) However, section 1021, unlike section 1022 of the 2012 NDAA,
36 makes no specific exclusion for United States citizens and lawful
37 resident aliens for conduct occurring within the United States;

1 (10) While section 1021 of the 2012 NDAA seeks to preserve existing
2 law and authorities pertaining to the detention of United States
3 citizens, lawful resident aliens of the United States, and any other
4 person captured in the United States, it does not specify what such
5 existing law or authorities are;

6 (11) President Obama issued a signing statement upon signing the
7 NDAA into law indicating that he "will not authorize the indefinite
8 military detention without trial of American citizens";

9 (12) The clear language of, and omission of an exclusion in,
10 section 1021 of the 2012 NDAA combined with the language of President
11 Obama's signing statement indicates that while the president claims he
12 will not authorize the indefinite military detention without trial of
13 American citizens, he believes that the office of president now
14 possesses the authority to do so;

15 (13) Furthermore, the specific exclusion of application to United
16 States citizens and lawful resident aliens contained in section 1022 of
17 the 2012 NDAA, and the absence of such exclusion in section 1021 of the
18 NDAA, strongly implies that the provisions of section 1021 are intended
19 to apply to United States citizens and lawful resident aliens, whether
20 or not they are captured in the United States in the context of the
21 following facts:

22 (a) The office of the president of the United States, under both
23 the administrations of George W. Bush and Barack H. Obama, has asserted
24 the 2001 authorization for the use of military force against terrorists
25 allows the office of the president to indefinitely detain without
26 charge United States citizens and lawful resident aliens captured in
27 the United States;

28 (b) The United States supreme court has not decided whether the
29 2001 authorization for the use of military force against terrorists
30 allows the office of the president to indefinitely detain without
31 charge United States citizens and lawful resident aliens captured in
32 the United States;

33 (c) United States Senator, Carl Levin, declared in colloquy on the
34 floor of the United States senate that the original 2012 NDAA provided
35 that section 1021, then section 1031 prior to final drafting,
36 specifically would not apply to United States citizens, but that the
37 office of the president of the United States had requested that such
38 restriction be removed from the 2012 NDAA;

1 (d) During debate within the Senate and before the passage of the
2 2012 NDAA, United States Senator, Mark Udall, introduced an amendment
3 intended to forbid the indefinite detention of United States citizens,
4 which was rejected by a vote of 38-60;

5 (e) United States Senators John McCain and Lindsey Graham declared
6 in colloquies on the floor of the United States senate that section
7 1021 of the 2012 NDAA authorized the indefinite detention of United
8 States citizens captured within the United States by the armed forces
9 of the United States;

10 (f) United States Senator Lindsey Graham further declared in
11 colloquy on the floor of the United States senate that the United
12 States homeland is now part of "the battlefield";

13 (g) Retired four star marine generals Charles C. Krulak and Joseph
14 P. Hoar stated publicly that as a result of the indefinite detention
15 provision of the 2012 NDAA that "due process would be a thing of the
16 past," and "this provision would expand the battlefield to include the
17 United States";

18 (h) Retired four star marine generals Charles C. Krulak and Joseph
19 P. Hoar also stated publicly that the mandate of military custody for
20 most terrorism suspects "would violate not only the spirit of the
21 postreconstruction act limiting the use of the armed forces for
22 domestic law enforcement but also our trust with service members, who
23 enlist believing that they will never be asked to turn their weapons on
24 fellow Americans";

25 (14) Policing the citizenry of the United States of America by the
26 armed forces of the United States, as purportedly authorized by the
27 2012 NDAA, is contrary to the fundamental principles of our republic,
28 and is generally repugnant to a free society;

29 (15) Section 1021 of the 2012 NDAA as it purports to authorize (a)
30 detainment of United States citizens and legal resident aliens captured
31 within the United States of America without charge, (b) military
32 tribunals for United States citizens and legal resident aliens captured
33 within the United States of America, and (c) the transfer of United
34 States citizens and legal resident aliens captured within the United
35 States of America to foreign jurisdictions, is violative of the
36 following rights enshrined in the Constitution of the United States of
37 America: Article I, section 9, clause 2's right to seek Writ of *Habeas*
38 *Corpus*; the First Amendment's right to petition the government for a

1 redress of grievances; the Fourth Amendment's right to be free from
2 unreasonable searches and seizures; the Fifth Amendment's right to be
3 free from charge for an infamous or capitol crime until presentment or
4 indictment by a grand jury; the Fifth Amendment's right to be free from
5 deprivation of life, liberty, or property, without due process of law;
6 the Sixth Amendment's right in criminal prosecutions to enjoy a speedy
7 trial by an impartial jury in the state and district where the crime
8 shall have been committed; the Sixth Amendment's right to be informed
9 of the nature and cause of the accusation; the Sixth Amendment's right
10 to confront witnesses; the Sixth Amendment's right to counsel; the
11 Eighth Amendment's right to be free from excessive bail and fines, and
12 cruel and unusual punishment; the Fourteenth Amendment's right to be
13 free from deprivation of life, liberty, or property, without due
14 process of law;

15 (16) Section 1021 of the 2012 NDAA as it purports to authorize (a)
16 detainment of United States citizens and legal resident aliens captured
17 within the United States of America without charge or trial, (b)
18 military tribunals for United States citizens and legal resident aliens
19 captured within the United States of America, and (c) the transfer of
20 United States citizens and legal resident aliens captured within the
21 United States of America to foreign jurisdictions, is violative of the
22 following rights enshrined in the Washington state Constitution:
23 Article I, section 1: "...governments...are established to protect and
24 maintain individual rights."; Article I, section 3: "No person shall
25 be deprived of life, liberty, or property, without due process of law;"
26 Article I, section 7: "No person shall be disturbed in his private
27 affairs, or his home invaded, without authority of law;" Article I,
28 section 10: "Justice in all cases shall be administered openly, and
29 without unnecessary delay;" Article I, section 13: "The privilege of
30 the writ of habeas corpus shall not be suspended, unless in case of
31 rebellion or invasion the public safety requires it;" Article I,
32 section 14: "Excessive bail shall not be required, excessive fines
33 imposed, nor cruel punishment inflicted;" Article I, section 18: "The
34 military shall be in strict subordination to the civil power;" Article
35 I, section 21: "The right of trial by jury shall remain inviolate...;"
36 Article I, section 22: "In criminal prosecutions the accused shall
37 have the right to appear and defend in person, or by counsel, to demand
38 the nature and cause of the accusation against him, to have a copy

1 thereof, to testify in his own behalf, to meet the witnesses against
2 him face to face, to have compulsory process to compel the attendance
3 of witnesses in his own behalf, to have a speedy public trial by an
4 impartial jury of the county in which the offense is charged to have
5 been committed and the right to appeal in all cases...;" Article I,
6 section 27: "...No person shall be convicted of treason unless on the
7 testimony of two witnesses to the same overt act, or confession in open
8 court;" Article I, section 29: "The provisions of this Constitution
9 are mandatory, unless by express words they are declared to be
10 otherwise;" Article I, section 30: "The enumeration in this
11 Constitution of certain rights shall not be construed to deny others
12 retained by the people;" and Article I, section 32: "A frequent
13 recurrence to fundamental principles is essential to the security of
14 individual right and the perpetuity of free government"; and

15 (17) As required by Article VI of the United States Constitution,
16 the members of the Washington state legislature have taken an oath to
17 uphold both the Constitution of the United States of America and the
18 Constitution of the state of Washington.

19 NEW SECTION. **Sec. 3.** The Washington state legislature intends the
20 following:

21 (1) To condemn in no uncertain terms section 1021 of the 2012 NDAA
22 as it purports to repeal the spirit of the postreconstruction act and
23 authorize the president of the United States to utilize the armed
24 forces of the United States to police United States citizens and lawful
25 resident aliens within the United States of America, indefinitely
26 detain United States citizens and lawful resident aliens captured
27 within the United States of America without charge until the end of
28 hostilities authorized by the 2001 authorization for use of military
29 force, subject American citizens and lawful resident aliens captured
30 within the United States of America to military tribunals, and transfer
31 American citizens and lawful resident aliens captured within the United
32 States of America to a foreign country or foreign entity.

33 (2) To affirm it is indisputable that the threat of terrorism is
34 real, and that the full force of appropriate, and constitutional, law
35 must be used to defeat this threat. However, winning the war against
36 terror cannot come at the great expense of eviscerating the unalienable
37 rights recognized by and protected in the United States Constitution

1 and the Constitution of the state of Washington. Indeed, undermining
2 those constitutional rights serves only to concede to the terrorists'
3 demands of changing the fabric of what has made the United States of
4 America a republic granting the greatest number of people the greatest
5 amount of liberty, justice, security, opportunity, prosperity,
6 happiness, peace, and good ever known or experienced by humankind
7 throughout the history of the world.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.20 RCW
9 to read as follows:

10 No state or local official or employee, or agent of the state of
11 Washington, or employee of a corporation providing services to the
12 state of Washington, or member of the national guard or state defense
13 forces acting in his or her capacity as a state or local official or
14 employee, or agent of the state of Washington, or employee of a
15 corporation providing services to the state of Washington, or member of
16 the national guard or state defense forces, shall knowingly cooperate
17 with an investigation or detainment of a United States citizen or
18 lawful resident alien located within the United States of America by
19 the armed forces of the United States of America, except for (1) an
20 investigation or detainment by the United States coast guard when it is
21 not operating as a service in the navy, (2) an investigation or
22 detainment by national guard units or state defense forces while under
23 the authority of the governor of the state of Washington, or (3) an
24 internal investigation or detainment by the armed forces of the United
25 States of America of active duty members of the armed forces of the
26 United States of America.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 38.40 RCW
28 to read as follows:

29 No member of the armed forces of the United States of America, nor
30 any person acting directly with, or on behalf of, the armed forces of
31 the United States of America, shall be permitted to conduct within the
32 boundaries of the state of Washington, an investigation or detainment
33 of a United States citizen or lawful resident alien located within the
34 state of Washington except for (1) an investigation or detainment by
35 the United States coast guard when it is not operating as a service in
36 the navy, (2) an investigation or detainment by national guard units or

1 state defense forces while under the authority of the governor of the
2 state of Washington, or (3) an internal investigation or detainment by
3 the armed forces of the United States of America of active duty members
4 of the armed forces of the United States of America.

5 NEW SECTION. **Sec. 6.** The provisions of this act shall be
6 construed liberally to effectuate the intent, purposes, and policies of
7 this act.

8 NEW SECTION. **Sec. 7.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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