

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3244

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2009

Mr. SCHIFF introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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:

1           (1) A single, simple nuclear weapon detonated  
2           in the heart of an American city would kill 100,000  
3           people instantly, and seriously injure tens of thou-  
4           sands more. A significant portion of the city would  
5           probably become permanently uninhabitable, with lit-  
6           tle chance of a successful cleanup.

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

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

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

20          (5) Perhaps the most important of these trea-  
21          ties is the Treaty on the Non-Proliferation of Nu-  
22          clear Weapons, which restricts almost all of the 188  
23          nations that are signatories from developing nuclear  
24          weapons. As part of their obligation under the Trea-  
25          ty on the Non-Proliferation of Nuclear Weapons,

1 153 countries have reached safeguards agreements  
2 with the International Atomic Energy Agency that  
3 require a comprehensive system for accounting for  
4 nuclear materials and intrusive inspections of their  
5 nuclear facilities.

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

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

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

22 “The Security Council, . . . Acting under Chapter  
23 VII of the Charter of the United Nations, . . .

24 “2. Decides also that all States, in accord-  
25 ance with their national procedures, shall adopt

1 and enforce appropriate effective laws which  
2 prohibit any non-State actor to manufacture,  
3 acquire, possess, develop, transport, transfer or  
4 use nuclear, chemical or biological weapons and  
5 their means of delivery, in particular for ter-  
6 rorist purposes, as well as attempts to engage  
7 in any of the foregoing activities, participate in  
8 them as an accomplice, assist or finance them;

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

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

1           lishing end-user controls; and establishing  
2           and enforcing appropriate criminal or civil  
3           penalties for violations of such export con-  
4           trol laws and regulations;”.

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

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

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

1 our best practices, and raise our standards for nu-  
2 clear security”.

3 **SEC. 3. STATEMENT OF POLICY REGARDING CRIMES**  
4 **AGAINST HUMANITY.**

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

12 **SEC. 4. CRIMINAL OFFENSE.**

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

16 **“§ 2332i. Transfer of nuclear weapons, devices, mate-**  
17 **rial, or technology**

18 “(a) UNLAWFUL CONDUCT.—

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

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

1           “(B) any device or other object that is ca-  
2           pable of endangering, and is designed or in-  
3           tended to endanger, human life through the re-  
4           lease of radiation or radioactivity;

5           “(C) any nuclear material or nuclear by-  
6           product material; or

7           “(D) any sensitive nuclear technology.

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

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

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

22           “(3) EFFECT ON INTERNATIONAL LAW.—Noth-  
23           ing in this section shall be construed to apply with  
24           respect to activities undertaken by the military

1 forces of a country in the exercise of their official  
2 duties.

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

6 “(1) the offense occurs in or affects interstate  
7 or foreign commerce;

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

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

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



1           “(5) an offender aids or abets any person over  
2 whom jurisdiction exists under this subsection in  
3 committing an offense under this section or con-  
4 spires with any person over whom jurisdiction exists  
5 under this subsection to commit an offense under  
6 this section.

7           “(c) CRIMINAL PENALTIES.—

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

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

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

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

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

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

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

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

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

22           (b) CONFORMING AMENDMENT.—The table of sec-  
23 tions for chapter 113B of title 18, United States Code,  
24 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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