Homeland Security in Michigan:
A Cooperative Network of Local, State, and Federal Action

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EXECUTIVE SUMMARY

War on Terrorism: The official War on Terrorism began on Tuesday, September 11, 2001, when terrorists unleashed an air assault on America's military and financial power centers, hijacking four commercial jets and then crashing three of them into the World Trade Center, in New York, and the Pentagon in Washington D.C. The fourth crashed into the Pennsylvania countryside. More than 3,000 people were murdered and the nation suffered an estimated $60 to $100 billion in damages from this terrorist attack.[1]

Federal Response: In response to the September 11 attacks, the United States launched military attacks abroad against terrorist targets and actively reorganized at home to protect U.S. citizens from possible future attacks.

- **Response Abroad:** A full-scale campaign was launched, using all elements of national and international power, to pursue Al Qaeda throughout the world. Two successful military campaigns were launched to overthrow the Taliban regime of Afghanistan (in October 2001) and the Saddam Hussein government of Iraq (in March 2003). However, problems persist as terrorist organizations engage in sabotage, attack military personnel, and seek to destabilize these countries in order to thwart U.S. and allied efforts to establish democratic governments. The war on terrorism has also spread to a number of other regions of the world, from military operations against terrorists in the Philippines to law enforcement cooperation with European allies.
- **Home Front:** The federal government has passed legislation to make it easier for law enforcement officials to track, detain, and prosecute terrorists (USA Patriot Act). In order to better coordinate security and emergency response efforts, the federal government has created a federal Homeland Security Department (HR 5005) and increased funding for antiterrorism efforts throughout the government.

50 State Response: State governments are in a unique position to help facilitate cooperation and bridge the gap between federal and local efforts to combat terrorism. Since September 11, state leaders have assumed increasingly larger leadership roles in response to changing security needs. They have enacted measures to provide greater protection from and an effective response to any future acts of terrorism. Since the terrorist attacks, states have enacted a number of new public acts which address different aspects of potential terrorism.[2] Some of these responses are:

- Creation of state homeland security offices and task forces.
- Increased funding for state security and security of critical infrastructure.
- Enhanced security measures for issuing state driver's licenses and identification cards.

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[1] *N.Y. delegation seeks $54 billion in U.S. aid*, The Washington Times, October 12, 2001.
[2] Jennifer A.D. Smith and L. Cheryl Runyon, "Terrorism Preparedness and Response," *NCSL Terrorism Preparedness*, Special Report, July 2003, p. 5.

- Increased funding and security measures at state borders.
- Improved intelligence gathering and investigation by state law enforcement.
- Creation of new criminal penalties for terrorist acts.
- Improved preparation and assistance for state and local health departments to respond to bioterrorism attacks.

Michigan Legislative Response: In the months that followed the September 11 attacks, the Michigan Legislature passed legislation to respond quickly. Eight bills were passed into law that dealt with antiterrorism and security, seven in 2001 (Public Act Nos. 135, 225, 136, 248, 247, 185, and 186) and one early in 2002 (Public Act No. 24).

On Tuesday, December 11, 2001, a thirty-four bill package of antiterrorism/homeland security legislation, designed to increase security and prevent terrorist attacks in Michigan, was introduced in the Michigan Senate. The next day, on Wednesday, December 12, 2001 a similar package of bills was introduced in the Michigan House. This legislation can be placed into two major categories: 1) anti-terrorism legislation that relates to criminal justice issues, and 2) legislation that relates to emergency management and preparedness.

1) Criminal Justice Legislation: The majority of the bills in these two packages were related to criminal justice and to tracking, arrest, and prosecution of terrorists. Three bills (Senate Bill Nos. 730, 803, 806) involve loosening regulations that deal with search warrants and wiretapping. Only the search warrant bill became law (2002 PA 112). One bill (2002 PA 113) added Chapter LXXXIIIA, entitled, "Michigan Anti-Terrorism Act" to the *Michigan Penal Code* (1931 PA 328). A second bill actually enacted the "Michigan Anti-Terrorism Act" (2002 PA 131). Many bills in both the House and Senate provide increased criminal penalties for certain actions (2002 Public Act Nos. 135, 115, 118, and 117). Other criminal justice bills make additional terrorism activity illegal (2002 PA 116 and 140, 134). Also passed are criminal justice laws that relate to criminal and civil procedure (2002 PA Nos. 120, 119, and 136). Several acts deal with the seizure of terrorist funds and forfeiture of property used in connection with terrorism (2002 PA Nos. 142, 183, 184). New laws that require background checks on students at flight schools and commercial driver license applicants (2002 PA 318 & 258, and 259) were enacted. However, a series of bills (SB 931, HB 5497, and HB 5498) that would have prohibited the state from issuing identification cards to illegal aliens died in committee.

2) Emergency Management and Security: There were several bills that dealt with emergency management and protecting the state's infrastructure. One new act (2002 PA 132) revises powers and duties of the state in the Michigan Emergency Management Act (1976 PA 390). Another act (2002 PA 133) clarifies plans and issues related to the military defense of Michigan. Also, one of these new laws requires hospitals to establish biohazard detection and handling plans (2002 PA 125). Several bills (Senate Bill No. 932, 994 and House Bill No. 5502) that clarify military leave, provide for re-employment for members of the military, and prohibit employers from denying a leave of absence, did not get passed into law. Another bill (Senate Bill No. 951) would have granted immunity from lawsuits, with some exceptions, to military personnel ordered to respond to acts or

threats of terrorism. A bill (Senate Bill No. 933) would have exempted the state and local government security plans from the *Freedom of Information Act* (FOIA) requests, but died in committee Finally, 2002 PA 141 provides for compensation to victims and payment of expenses for governmental terrorism-related offenses.

Michigan Administrative Response: There are a number of programs and initiatives in various areas of state government that focus on combating terrorism and providing security for the state's citizens and infrastructure.

MICHIGAN DEPARTMENT	**PURPOSE**
State Police	
Subdivisions	
Emergency Management Division (EMD)	Responsible for coordinating the state's response to a wide range of emergencies and disasters.
Michigan Homeland Protection Board	An advisory body to the governor responsible for developing, and implementing an effective homeland security strategy.
Operations Center	The 24-hour-a-day command and control center that coordinates state police response to a wide variety of specialized services. The center serves as the control point for the state's Law Enforcement Information Network (LEIN) and the National Alert Warning System (NAWAS) and coordinates the department's emergency mobilizations and specialists' assignments. The Operations Center is the point of first contact when initiating a state emergency management response to a natural disaster or man-made emergency.
Motor Carrier Division	Frequently works with the federal government and other entities to track potential terrorist activities.
Department of Military and Veterans Affairs	Assists in coordinating the role of the military in providing security in Michigan through the Michigan National Guard and specialized teams of military civil support teams.
Department of Transportation (MDOT)	Working on assessing the vulnerability of critical highway infrastructure and developing security counter measures.
Department of Community Health (MDCH)	Federal funding has been provided to assist the state in preventing or coping with a possible bioterrorism attack and other possible public health emergencies. The Michigan Department of Community Health (MDCH) and the Michigan State Police have been working together and with federal health officials to develop a plan for receipt and distribution of a stockpile of

	medicine and equipment to be able to respond to a bioterrorism attack in the state.[3]
Environmental Quality (DEQ) and **Agriculture (MDA)**	The Michigan Department of Environmental Quality (DEQ) and the Michigan Department of Agriculture (MDA) have a role in protecting the environment, specifically the water and food supply, from terrorist attacks or other tampering.
Department of State	The Department of State has made changes to its internal policies and practices in order to improve department vigilance and tracking of suspicious persons and activities.
Governor's Office (Emergency Management Assistance Compact) (EMAC)	An interstate agreement administered by the National Emergency Management Association (NEMA) that streamlines the assistance one governor can lend to another after a natural disaster or terrorist attack by providing a framework for flexible response.

Michigan has received, and continues to receive, several federal grant awards in areas of homeland security.

Below is a list of criticisms and responses to that criticism concerning antiterrorism **criminal justice** efforts:

Criticism	Response
1) Civil Liberties. Critics argue that state antiterrorism legislation is a threat to civil liberties, because it is too broad and could empower law enforcement to harass innocent people of Middle Eastern descent or intimidate organizations such as labor unions or environmental activists involved in peaceful protest. Also, critics say this legislation could result in a series of abuses such as unfair confiscation of property and the use of excessive fines and punishment.	Supporters argue that much of this legislation simply codifies existing criminal procedures and does not threaten the freedoms of American citizens. They say these criticisms rely on overzealous prosecutors and judges who do not protect the constitutional rights of suspects, and juries that are unfair. They argue that these criticisms show more of a general lack of faith in our criminal justice system rather than a criticism of specific antiterrorism legislation. Finally, supporters argue this legislation preserves a judicial check on any law enforcement action, thereby protecting the constitutional rights and civil liberties of suspects.
2) Effectiveness: Critics argue that this legislation is redundant because federal law covers the arrest and prosecution of terrorists. Federal officials will step in once an attack is determined to be terrorism, thereby leaving state law enforcement officials without a great role to play.	Supporters argue that this legislation provides important tools for law enforcement in protecting the public from terrorist attacks. Terrorist acts are criminal acts involving murder, kidnapping, extortion, torture, and bombing. Supporters argue that states have a role to play in tracking and arresting terrorists who commit such criminal acts. Also, supporters argue, this legislation has value because it gives state authorities the ability to arrest and prosecute

[3] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.10.

	terrorist suspects when, for some reason, federal authorities are unable to do so.

Below is a list of criticisms and responses to that criticism concerning **emergency preparedness** efforts:

Criticism	Response
1) Funding and Flexibility: Critics usually fault the federal government for not doing enough in the area of funding and training of emergency response personnel.[4] These critics argue that terrorism is a national issue and it is the responsibility of the federal government to coordinate emergency response and provide adequate funding for state governments. Federal officials argue that there are not enough federal funds to satisfy all the emergency response needs of local and state governments. Congress authorizes several categorical grant programs for such activities as emergency planning, training, equipment and exercises. Critics argue that these grants deny local governments the flexibility they need to use the money most effectively and to tailor spending to local needs. These critics favor the use of federal block grants. Block grants come with fewer mandates and restrictions and give local governments more flexibility in spending federal funds.	Federal officials respond that they do not have the funds available to supply state and local governments with all of the emergency response training and equipment that satisfies the demand. Also, federal officials argue that categorical grants allow Congress to target certain selected needs and they insure that the funds are actually spent on homeland security rather than on other local problems.[5]
2) Inadequate Protection of Infrastructure: The second concern in the area of emergency management involves inadequate funding for security and maintenance of state infrastructures (bridges, food and water supplies, etc.) and the lack of legislative oversight in this area.[6] More than 85% of the nation's critical infrastructures are privately owned and operated, but the responsibility for safeguarding infrastructure networks lies primarily with local, state, and federal governments.[7] Tight budgets and increased security demands after the September 11 attacks have put a	Federal officials argue that the federal government has stepped in to play a major role in protecting state infrastructures from attack. They argue that federal funding for infrastructure protection frees local and state governments to spend their money in other important areas of infrastructure protection and crime prevention. Federal grants for critical infrastructure protection for June 2003 to May 2005, total $5.6 million, with no state matching funds required.[9] In 2002, the Emergency Management Division, which is the lead agency in charge of infrastructure protection from terrorist attack, was funded 74% out of federal funds. Federal officials argue

[4] *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Council on Foreign Relations Inc., 2003.
[5] *State and Local Preparedness for Terrorism: Selected Policy Issues*, CRS Report for Congress, Updated December 19, 2002, p.8.
[6] *Task Force on Protecting Democracy*, National Conference of State Legislatures, Final Report, July 2002.
[7] *Infrastructure Security in States*, Council of State Governments, Homeland Security Brief, April 2003.

strain on local and state law enforcement and other security personnel.[8]	that certain grants that go through EMD do require a higher percentage of state funding, however, overall, the federal government provides the majority of funds for heightened anti-terrorism security efforts to protect state infrastructure.
3) Problems of Cooperation in Emergency Management: The third area of concern involves problems associated with the coordination of emergency response, caused, at least in part, by structures of federalism. State governments have a unique role to play in facilitating cooperation between different units of government. There is a debate concerning how best to improve the coordination between state and federal agencies and who should be most active in providing leadership in this area. Some critics argue that the Michigan Legislature needs to do more to understand how these systems work and thereby clarify its important role in making emergency management in Michigan run effectively.	Supporters argue that Michigan Legislature took some positive steps by passing legislation that improves coordination between state agencies within Michigan and between neighboring state governments. Supporters also point out that Michigan agencies have been working closely with federal agencies to coordinate local, state and federal administrative action in response to terrorism attacks, and the state legislators are currently doing all that they can to provide assistance to emergency management personnel. Since the September 11 attacks, Michigan officials have been meeting with federal officials with greater frequency and intensity in order to improve Michigan's ability to respond to a possible terrorist attack.[10]

Conclusion

Policymakers continue to debate the appropriate response to terrorism on American soil. Some argue that the best way to fight terrorism is to track and arrest terrorists before they are able to strike. Others worry that an excessive focus on criminal justice could detract from the rescue and response mission of government authorities participating in the emergency management system and could threaten civil liberties. FEMA and other federal agencies have taken the lead in coordinating emergency response and have been working closely with state agencies to create appropriate response plans in case of a terrorist attack. Since September 11 this coordination between state and federal authorities has become more active and intense. Critics worry that communication and coordination between emergency response personnel at different levels of government (local, state, and federal) need to be improved and that not enough training and equipment is being given to first responders. Traditionally, terrorism has been a national concern handled by federal officials, but as concern about terrorist attacks in America rise, the role of state law enforcement and emergency personnel will continue to evolve.

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[8] *Emergency Stretched Police Thin*, National Conference of State Legislatures (2002).
[9] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.
[10] *Michigan's Anti-Terrorism Strategy Approved by U.S. Justice Department*, Office of the Governor Press Release, October 16, 2001, pgs. 2.

INTRODUCTION: WAR ON TERRORISM

War on Terrorism

Generally, terror is defined as "intense fear" and terrorism is defined as "the use of force or threats to demoralize, intimidate or subjugate."[11] U.S. government agencies define terrorism as politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents. International terrorism is defined as terrorism involving the citizens or property of more than one country. A terrorist group is defined by 22 U.S.C. 2656f as a group which practices or which has significant subgroups which practice terrorism.[12]

World Trade Center on September 11, 2001, after the second plane crashes into the South Tower.

Terrorism is not a new threat to the United States. The September 11 attacks, and the subsequent anthrax attacks, are only the most recent and perhaps the most dramatic attacks that the U.S. has suffered. Bombings of the U.S.S. Cole, Oklahoma City, the World Trade Center in 1993, and the U.S. Embassies in Kenya and Tanzania in 1998 show that terrorism has been an ongoing and serious threat to the United States.[13] Terrorist activities supported by sophisticated planning, technology, and possible access to biological, chemical and nuclear weapons raises the stakes and makes the threat of terrorism even more imminent and important.

For the United States, the current War on Terrorism began on Tuesday, September 11, 2001, when terrorists unleashed a horrific air assault on America's military and financial power centers, hijacking four commercial jets and then crashing three of them into the World Trade Center in New York, and the Pentagon in Washington D.C. The fourth crashed into the Pennsylvania countryside because some of the passengers resisted. Over 3,000 people were murdered and the nation suffered an estimated $60 to $100 billion in damages from this terrorist attack.[14] The terrorists involved were part of a loosely organized, self-financed, international

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[11] *Webster's New World Dictionary*, Third College Edition, 1994.
[12] *Terrorism: Middle Eastern Groups and State Sponsors*, CRS Report for Congress, 1999, p. 30.
[13] *Terrorism, the Future, and U.S. Foreign Policy*, Congressional Research Service, The Library of Congress, March 6, 2003, 1.
[14] *N.Y. delegation seeks $54 billion in U.S. aid*, The Washington Times, October 12, 2001.

terrorist organization known as Al Qaeda.[15] This began what is known as the War on Terrorism, which is an effort to destroy terrorist organizations and oppose those countries that sponsor terrorism. This effort also involves defending the homeland of the United States and protecting its citizens from future terrorist attacks.

Foreign and Domestic Response

In response to the September 11 attacks, the United States launched military attacks abroad against terrorist targets and actively reorganized at home to protect U.S. citizens from possible future attacks. A full-scale campaign was launched, using all elements of national and international power, to go after Al Qaeda. The campaign involved rallying the international community, especially law enforcement and intelligence components, to shut down Al Qaeda cells and financial networks throughout the world.

Two major operations were launched, one against the Taliban regime of Afghanistan (in October 2001) and the other against the Saddam Hussein government of Iraq (in March 2003). The Taliban was removed from power and all known Al Qaeda training sites in Afghanistan were destroyed. In Iraq, Hussien's long dictatorship was quickly brought to an end in a matter of weeks. However, problems persist as terrorist organizations commit sabotage, attack military personnel, and seek to destabilize these countries in order to thwart U.S. and allied efforts to establish democratic governments.

President Bush rallies the fire fighters at "Ground Zero" days after the September 11th attacks.

The War on Terrorism has also spread to other regions of the world in the areas of military operations and law enforcement. U.S. military forces have been dispatched to Yemen, the Philippines and the former Soviet Republic of Georgia to assist and train foreign militaries to fight terrorists. In the area of law enforcement, the United States has stepped up intelligence-sharing and law enforcement cooperation with other governments to root out terrorist cells. Such cells have been operating not only in regimes that support anti-American terrorism but also in nations that are allies to the United States, and even within U.S. borders.

Finally, on the home front, local, state, and federal governments have responded in a variety of ways to protect the citizens and the infrastructure of the United States from potential future terrorist attacks. The federal government has passed legislation to make it easier for law enforcement officials to track, detain, and prosecute terrorists. In order

[15] *Terrorism, the Future, and U.S. Foreign Policy*, Congressional Research Service, The Library of Congress, March 6, 2003, 1.

to better coordinate security and emergency response efforts, the federal government has created a federal Homeland Security Department, and increased funding for antiterrorism efforts throughout the government. State and local governments have also put greater focus on combating terrorism and making first responders more effective should a terrorist attack occur.

U.S. Marine watches a statue of Saddam Hussein being torn down in Baghdad, Iraq.

FEDERAL RESPONSE

Emergency Response Fund

Shortly after the September 11 attacks, Congress appropriated a $40 billion Emergency Response Fund to wage war against terrorism, aid the reconstruction efforts in New York and Virginia, compensate victims, and strengthen national defenses at home. A total of $10.6 billion was dedicated to homeland security, which has allowed the federal government to do the following: 1) increase the number of sky marshals on airlines, 2) acquire medicine to treat millions of people for bacterial infection in case of a bioterror attack, 3) deploy hundreds of Coast Guard cutters, aircraft, and small boats to patrol the ports and protect them from internal or external threats, 4) acquire equipment for certain major mail sorting facilities to find and destroy anthrax and other biological agents of terror, 5) and station 8,000 National Guard members troops at baggage screening checkpoints in major airports.[16] Also, this fund helped support the largest criminal investigation in United States history. This criminal investigation has been greatly assisted by another act of Congress, the USA Patriot Act, signed into law by the President on October 26, 2001.[17]

USA Patriot Act

The USA Patriot Act was passed in order to assist law enforcement efforts to track, detain, arrest and prosecute terrorists. The final bill that passed both houses of Congress was H.R. 3162, which resolved differences between House and Senate versions.[18] The USA Patriot Act deals with four general areas:

> **1) Criminal Laws:** gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes.[19]

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[16] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), accessed June of 2003, p. 4.
[17] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), accessed June of 2003, p.4.
[18] *The USA Patriot Act: A Legal Analysis*, CRS Report for Congress, April 15, 2002.
[19] *The USA Patriot Act: A Legal Analysis*, CRS Report for Congress, April 15, 2002.

2) Money Laundering: empowers treasury officials with regulatory powers to combat corruption of US financial institutions for foreign money laundering purposes.[20] Specifically, the law increases penalties for money laundering, empowers the federal government to freeze the financial assets of terrorist organizations, and provides regulatory oversight to insure that financial institutions verify the identities of persons opening accounts and disclose suspicious transactions.[21]

Giant Masks of President Bush, Vice President Dick Cheney and Defense Secretary Donald H. Rumsfeld are displayed by Anti-War Protesters.

3) Immigration and Detention: seeks to close U.S. borders to foreign terrorists and to detain and remove those terrorists who are within U.S. borders.[22] The powers of the Immigration and Naturalization Service (INS) were enhanced to detain or remove suspected terrorists at the nation's borders.

4) First Responders: authorizes grants that will enhance state and local governments ability to respond to and prevent terrorism, and expands information-sharing among law enforcement authorities at different levels of government.[23]

Transportation Security

On November 19, 2001, President George W. Bush signed into law the *Aviation and Transportation Security Act*, which among other things, established the Transportation Security Administration (TSA) within the federal Department of Transportation. This act federalized airport security workers and provided uniform standards as well as oversight from the federal government. The TSA is responsible for providing airport and airline security and insuring a secure and safe air travel system.[24]

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[20] *The USA Patriot Act: A Legal Analysis*, CRS Report for Congress, April 15, 2002.
[21] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), last accessed June of 2003, p. 4.
[22] *The USA Patriot Act: A Legal Analysis*, CRS Report for Congress, April 15, 2002.
[23] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), last accessed June of 2003, p. 4.
[24] *Securing the Homeland, Strengthening the Nation*, Office of the President of the United States (2003), last accessed June of 2003, p. 23.

Homeland Security Department

To coordinate homeland security efforts after the September 11 attacks, President George W. Bush, in Executive Order No. 13228 of October 8, 2001, established the Office of Homeland Security (OHS) within the Executive Office of the President and a Homeland Security Council (HSC), under his chairmanship. On June 6, 2002, President Bush proposed the establishment of a Homeland Security Department. The President's action was viewed as an effort to move beyond the coordination efforts of OHS to a stronger administrative structure for managing consolidated programs concerned with border security and effective response to domestic terrorism. The bill (HR 5005) eventually passed both houses of Congress and was signed into law (P.L. 107-296) by the President on November 25, 2002.[25]

Secretary Tom Ridge announces the Homeland Security Advisory System designed to measure and evaluate terrorist threats.

Federal Emergency Management Agency (FEMA)

State and local governments exercise primary authority in responding to the consequences of terrorism and the federal government provides assistance as required. FEMA's role is to lead other agencies in protecting public health and safety, restoring essential government services, and providing emergency relief to state and local governments, businesses, and individuals after a terrorist attack. Two months after the September 11 attacks, under Presidential Directive (PDD) 39, the President formalized FEMA's lead role in managing federal agencies' after a domestic terrorist attack and required FEMA to take several actions to increase its effectiveness, and that of other responsible agencies and the states in responding to domestic terrorism.[26]

Office of Justice Programs (OJP)

The OJP provides funds to state and local governments to enhance their ability to respond to acts of terrorism involving weapons of mass destruction (WMD). The OJP provides funds to Michigan for the purchase of specialized equipment for fire, emergency medical, hazardous materials response, and law enforcement agencies. These equipment purchases include: 1) personal protective equipment, 2) chemical, biological or radiological detection equipment, 3) decontamination equipment, and 4) communications

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[25] *Homeland Security: Department Organization and Management-Legislative Phase*, Congressional Research Service, Library of Congress, Updated February 25, 2003.

[26] *Combating Terrorism: FEMA Continues to Make Progress in Coordinating Preparedness and Response*, United States General Accounting Office (GAO), March 2001.

equipment. The 2002 Michigan Domestic Preparedness Equipment Grant totals $8,958,000, including $400,000 for WMD response training programs.[27]

President's 2003 Budget

The Administration of George W. Bush and the Department of Homeland Security have laid out the following plan to deal with domestic homeland land security.[28]

President George W. Bush, surrounded by Congressional leaders, signs the Homeland Security Appropriations Act of 2004 at the Department of Homeland Security in Washington, D.C., Wednesday, Oct. 1, 2003.

1) First Responders Support: The Bush Administration's 2003 budget proposes to spend $3.5 billion on enhancing homeland security response capabilities of first responders. Also, the White House wants to reform the Federal Emergency Management Agency (FEMA) in order to streamline the flow of resources to states and localities, improve the equipment and training of first responders, and improve federal coordination with first responders.

2) Defense Against Biological Terrorism: The administration's budget proposes $5.9 billion to defend against biological terrorism. The White House hopes to fight bioterrorism by enhancing medical communications, improving specialized federal capabilities to respond, coordinating better with state and local governments and private industry, and stockpiling pharmaceuticals in case of emergency. Finally, the White House puts more focus on scientific research and the development of new vaccines, medicines and diagnostic tests.

3) Security for America's Borders: The administration's 2003 budget proposes $11 billion for border security, including $380 million for the Immigration and Naturalization Service (INS) to construct a modernized entry-exit visa system, in order to more effectively track the arrival and departure of non-citizens. The budget also increases the inspection budget for the Customs Service, for hiring additional personnel and buying new technology that will assist in inspecting shipments of goods that enter the United States. Finally, the budget increases

[27] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.2.
[28] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), accessed June 2003.

funding for the Coast Guard for homeland security-related missions, such as protecting ports and coastal areas and interdiction activities.

4) Using 21st Century Technology to Defend the Homeland: The administration's 2003 budget requests significant funding for cyberspace security and to use information technology to more effectively share information and intelligence between federal agencies and among federal, state, and local, governments. In order to do this it must have the right system of communication infrastructure that bridges gaps between the communications systems of different levels of governments and the private sector.

5) Transportation Security: The administration's 2003 budget requests $4.8 billion to fulfill the mandates established by the *Aviation and Transportation Security Act*. The Office of Homeland Security hopes to improve coordination among the Transportation Security Administration (TSA) and other federal, state, and local agencies as well as airports and the airline industry.

6) Federal Law Enforcement: The administration's 2003 budget will allow the FBI to add more than 300 special agents and other investigative staff to conduct surveillance of terrorists and collect intelligence information about terrorist activities. It will also add more than 130 FBI special agents to combat cyber-crime and protect United States banking, finance, energy, transportation, and other critical systems from disruption by terrorists. Finally, it provides the Drug Enforcement Agency with more than 25 financial crime investigators to help identify and shut down the sources of money that support the terrorist cells.

7) Citizen Corps: The Citizen Corps will enable Americans to participate directly in homeland security efforts in their own communities. Citizen Corps will be coordinated by the Federal Emergency Management Agency (FEMA). The administration's 2003 budget requests $144 million in matching funds to support the formation and training of local Citizen Corps councils. These councils will develop community action plans and coordinate community volunteers to assist in various areas of law enforcement and emergency response.

8) Department of Defense and Intelligence Community: The President's 2003 budget includes a request for $4.6 billion dedicated to the physical security of Department of Defense facilities and personnel inside the United States. Also, $1.3 billion is requested for maintaining combat air patrols within U.S. airspace.

9) Protecting Critical Infrastructure: The administration has been working with local and state governments and private companies to protect the nation's high risk targets and critical infrastructure systems, such as nuclear power plants, ports, hydroelectric dams, telecommunications, border crossings, and chemical facilities.

This plan provides a blueprint of the administration's goals and priorities. This is useful in understanding the perspective of the administration, and where the focus will be for future homeland security efforts.[29]

STATE LEVEL RESPONSE: 50 STATE OVERVIEW

Introduction: The Increasing Role of State Governments

National security experts suggest that the success of homeland security depends upon increased cooperation and collaboration among all levels of government. America has a system of federalism, which involves the sharing of governing power between the states and the federal government. The Tenth Amendment to the U.S. Constitution prescribes that all power not specifically given to the federal government belongs to the states or to the people.

The American system is one of overlapping governmental units. Fostering effective cooperation between the thousands of governmental jurisdictions within this country can create complex challenges. State governments are in a unique position to help facilitate that cooperation and help bridge the gap between federal and local efforts to combat terrorism. Before the September 11 attacks, counterterrorism efforts remained mainly in the federal domain. However, since then, state leaders have assumed increasingly larger leadership roles in response to changing security needs. They have enacted measures to provide greater protection from and an effective response to any future acts of terrorism. Since the terrorist attacks, states have enacted a number of new public acts which address different aspects of potential terrorism.[30]

State Offices of Homeland Security and Task Forces

An important way that states have responded has been through structural changes within state governments. All fifty states have established offices of homeland security. According to the Council of State Governments, nineteen states have created new positions, offices, or agencies to spearhead homeland security since the September 11 attacks. The remaining thirty-one states incorporated these additional responsibilities into existing entities.[31]

At least seven states have elevated their new homeland security office to cabinet-level departments, including Alabama, Massachusetts, New York, Missouri, Tennessee, Wyoming, and Virginia. An almost equal number placed this position within their State Department of Military Affairs. Several states placed their homeland security office within the Governor's Office. Finally, more states selected placement in their

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[29] *Securing the Homeland Strengthening the Nation*, Office of the President of the United States (2003), last accessed June of 2003.
[30] Jennifer A.D. Smith and L. Cheryl Runyon, "Terrorism Preparedness and Response," *NCSL Terrorism Preparedness*, Special Report, July 2003, p. 5.
[31] *State Official's Guide to Homeland Security*, The Council of State Governments, 2003.

Department of Public Safety or Emergency Management than any other structure, with at least eighteen states having done so thus far.

In addition to a homeland security office, many states established advisory groups to assess security issues. These antiterrorism task forces or councils generally consist of department and agency representatives and help facilitate a united coordinated response. While eight states already had active antiterrorism planning forces in place before the September 11 attacks, at least thirty-seven others have since created similar entities.[32] In many states, these groups helped examine the state's terrorism preparedness and response capabilities in the days following the attacks. Many have also helped identify critical infrastructure and potential targets, and assess areas of state vulnerability.

In October 2001, Michigan's highest ranking policymakers had in-depth briefings from law enforcement and emergency management personnel on Michigan's response to the September 11, 2001 terrorist attacks. Pictured here is then-Attorney General Jennifer Granholm and Secretary of State Candice Miller speaking to the press.

Funding for State Security

State governments have responded to terrorism on many fronts, including enacting important security measures. States have spent billions of dollars on funding homeland security improvements. Some of these expenditures have been based on expectations of federal assistance that has not yet been approved.[33] While federal grants are providing funding in many areas, most states have found that the high price of new homeland security measures can pose challenging policy choices. Some states have resorted to tax increases to help cover these costs. In 2002, Pennsylvania increased taxes on the gaming commission to help finance their homeland security efforts. Minnesota's legislature increased the phone use surcharge in an effort to raise similar funds.[34]

State Driver's Licenses and Identification Cards

Many states have enhanced the security measures for issuing state driver's licenses and identification cards, which are the most common forms of identification in America. Citizens use them to board airplanes, rent vehicles, and write checks. Each state has its

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[32] *State Official's Guide to Homeland Security*, The Council of State Governments, 2003.
[33] "Economic Recovery Requires State and Federal Cooperation, State Legislatures Say," *NCSL News*, February 10, 2003, p. 2.
[34] "Homeland Security: Who Pays?" Chad S. Foster, *State Government News*, Vol. 46, No. 1, January 2003, p. 24.

own standard for issuing licenses with individual state identification and residency requirements. Five of the six hijackers on board American Airlines Flight 77, the plane that crashed into the Pentagon, fraudulently received driver's licenses from Virginia.[35] Forty-one states considered legislation concerning driver's license security during the 2001-2002 legislative session, and twenty-one of those states successfully enacted such legislation.[36]

Since September 11, a number of states have tightened their licensing standards. In Virginia, a notarized affidavit is no longer an acceptable proof of residency or identity. North Carolina now requires not only proof of residency, but a social security number or taxpayer identification number as well. New Jersey has recently joined the states of California and Wyoming in verifying immigration status of applicants with an INS database. Before the terrorist attacks, eight states already refused to issue driver's licenses to individuals who were illegally in the United States (Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, New Jersey, and South Carolina). Michigan and Rhode Island now require proof that applicants are in the country legally. At the present time, however, four states still issue licenses to residents whether or not they have legal status in the country (North Carolina, Tennessee, Utah and Virginia). A bill with similar provisions was passed in Texas in 2001, but vetoed by the governor.[37] In addition, several states have enacted legislation that ties the expiration date of an individual's driver's license to the expiration of their immigration visa (Arizona, Florida, Kentucky, Minnesota, and Ohio).

Currently seven states collect fingerprints from applicants applying for or renewing driver's licenses (California, Colorado, Florida, Georgia, Hawaii, Texas, and West Virginia). Of these states, only Georgia uses these prints for verification when issuing replacement licenses. [38] Another state, West Virginia, is the only state using the biometric identifier of facial recognition technology for identification verification. This technology measures the bone structure of the applicants' face and compares it against a stored template of facial characteristics.[39] Twenty-nine states now use digital images on licenses which allow the computer storage of drivers' pictures. Oklahoma has begun the process of issuing all drivers licenses in digitized format. It is considered nearly impossible to alter a digitized license. By 2004, all new licenses in Oklahoma will be produced in digitized format.[40]

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[35] *State Official's Guide to Homeland Security*, The Council of State Governments, 2003, p. ix.

[36] "Driver's License Security Issues," Testimony of Senator Betty Karnette, California State Senate, on Behalf of the National Conference of State Legislature Before the Subcommittee on Highways and Transit, September 5, 2002.

[37] "State Driver's Licensing: Security Concerns," Reed F. Morris, James B. Reed, and Melissa Savage, NCSL Report, January 2001.

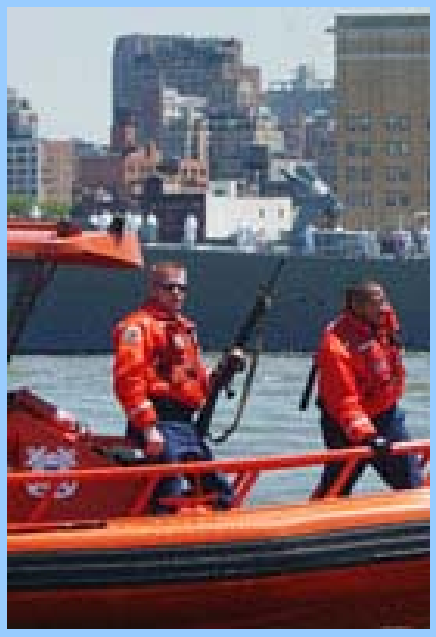
[38] *Driver's License Integrity*, The Council of State Governments and The National Council of State Legislatures, June 2002, p. 16.

[39] "Standardizing Driver's Licenses: Security, Privacy, and Other Issues," A Focus Report by the House Research Organization, Texas House of Representatives, May 31, 2002.

[40] "Homeland Security," Legislative Brief, Oklahoma State Senate, October 2002, p. 3.

Security at Public Buildings

Following the terrorist attacks, security was strengthened at most state buildings, and especially at state capitols. At least sixteen states now have metal detectors installed at the public entrances to state capitol buildings.[41] Many states have limited public access to one or two entrances. Other states have added further security measures. Kentucky began requiring visitors to show a photo ID and limiting them to designated tours.[42] Oklahoma installed closed circuit television in their capitol building along with new exterior doors and locks.[43] Georgia's statehouse is one of the most secure, with not only television cameras and alarms, but also a fence around the capitol patrolled by armed guards.[44] Perhaps the most preparation-oriented capitol in the country today is California, where security staff regularly simulates bombing and terrorist threats for both legislators and their staffs.[45]



Two Coast Guard Officers on patrol in New York City.

Border Security

The states have also responded to the increased border security needs presented by possible terrorism. While the United States has a 7,500-mile land and air border with its neighbors Canada and Mexico, border security today involves much more than just natural land boundaries. Border points of entry now include land borders, sea ports, international airports, and international mail and courier services.

The State of New York's Office of Public Security and the New York State Police have convened an International New York State Border Law Enforcement Task Force comprised of state, Canadian, and U.S. agencies. The task force is working on enhancing the security of New York's 500 mile Canadian border while still allowing robust trade to continue. The New York State Police have also hired 120 new state troopers to serve near the northern border to increase inspections and maintain border security.[46] Many other northern states, including Michigan, have deployed additional state National Guard troops to help support security forces at their Canadian borders. The governors of both

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[41] "States Take Measured Approach to Protecting Democracy, Say New NCSL Report," NCSL News, April 19, 2002.
[42] "Security Measures in State Capitols," National Council of State Legislatures, February, 2002.
[43] "Homeland Security," Legislative Brief, Oklahoma State Senate, October 2002, p. 2.
[44] "State Responses to a National Crisis," National Conference of State Legislatures, 2001
[45] "Keeping Our Capitols Secure," *State Legislatures*, Vol. 27, No. 1, January, 2001.
[46] "New York State's Response to Terrorism, New York State Office of Public Security, 2003.

Texas and California have met with Mexican leaders to formulate agreements to enhance border security measures as well.

State Measures for Enhanced Intelligence Gathering

Connecticut State Police Tactical Unit in a training exercise.

In an effort to thwart terrorist activity in the future, states have made intelligence gathering and investigation an important priority. Many states have worked to enhance timely information sharing that has been shown to be vital to the success of homeland security efforts. Some states have created new intelligence gathering networks. A Florida law has created the Domestic Security and Counter-Terrorism Intelligence Center and database to collect and analyze information that can be used by all law enforcement agencies. The California Anti-Terrorism Information Center built after September 11 serves a similar function. Georgia established the Georgia Information Sharing and Analysis Center (GISAC), which is an antiterrorism intelligence unit.[47] New York unveiled the first-in-the-nation Counter-Terrorism Network for law enforcement. It is a network that distributes alerts, advisories, and intelligence relevant to terrorism to more than 300 terminals in local, county, state and Federal law enforcement agencies throughout the state.[48] Arizona is also establishing a state intelligence/information center for crime and terrorism as well.

State Criminal Law Changes Concerning Terrorism

Many states have passed legislation to create penalties for new crimes and terrorist acts. At least thirty-three states have enacted laws that amend their criminal codes concerning terrorism. In 2002, fifteen of these states and the District of Columbia passed laws that define an act of terrorism or establish the crime of terrorism.[49] At least four additional states, Maryland, New Hampshire, Oregon, and Rhode Island, have introduced similar legislation in 2003.[50]

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[47] *State and Local Actions for Homeland Security*, Office of Homeland Security, July 2002, p. 27.
[48] "New York State's Response to Terrorism, New York State Office of Public Security, 2003.
[49] Alabama, Connecticut, District of Columbia, Georgia, Iowa, Louisiana, Maine, Michigan, Minnesota, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, and Virginia.
[50] "2003 Enacted and Pending Legislation," National Conference of State Legislatures, May 19, 2003.

Thirty-eight states allow capital punishment in America. Immediately following September 11, New York made murder committed during a terrorist act a capital crime. Recent legislation in at least 12 other states[51] specifically refers to the death penalty, or in states which make it a capital crime, first degree or aggravated murder.[52] Some states had previously enacted statutes that might define terrorist-related murder as a capital crime. Aircraft hijacking or piracy was already a capital crime in Georgia and Mississippi. Thirteen other states[53] stipulate that acts using explosives or weapons of mass destruction are instances in which the death penalty may be given.[54]

Several states that do not have the death penalty have also strengthened penalties for terrorist activities. Minnesota has enacted legislation which added terrorism-related death to the definition of first degree murder. Similarly, Michigan now imposes life without parole for death-related terrorist acts. The legislature in Maine created the crime of terrorist murder, which requires a life sentence if convicted, with no statute of limitations. In addition, Michigan and New Jersey also eliminated the statute of limitations concerning crimes of terrorism.[55]

Some states, including Connecticut, Florida, Ohio, Minnesota, and Indiana, have passed laws that enhance the penalties for crimes connected with terrorist acts. In addition, at least ten states have enacted legislation that establishes penalties for giving support, resources, or assistance to terrorists. Georgia, Idaho, Michigan, New Jersey, Ohio, and Utah have made certain terrorist crimes subject to the state's racketeering or criminal enterprise statutes. Finally, the three states of Indiana, Michigan, and Virginia have passed laws that stipulate that terrorist acts are crimes subject to forfeiture and seizure laws.[56]

State Bioterrorism Efforts

The anthrax attacks of October 2001 forced state legislators to evaluate the risk of biological and chemical terrorism within their states. These incidents highlighted the importance of state and local health departments and their response capabilities. In recent legislative sessions, states have been actively introducing bills to be in a better position to respond to any futures attacks. A number of issues have been addressed such as: quarantine policies, security issues, information disclosure, heightening criminal penalties, and stockpiling needed pharmaceuticals.

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[51] Florida, Georgia, Idaho, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and Virginia.
[52] "NCSL State Legislative Report: States Enact New Terrorism Crimes and Penalties," Donna Lyons, Vol. 27, No. 19, November 2002.
[53] Alabama, California, Colorado, Delaware, Illinois, Indiana, Kentucky, Nevada, Oregon, Pennsylvania, South Carolina, South Dakota, and Utah.
[54] "Protecting Democracy America's Legislatures Respond: An Overview of State Activity in Response to September 11," National Conference of State Legislatures, April 2002, p. 7.
[55] "NCSL State Legislative Report: States Enact New Terrorism Crimes and Penalties," Donna Lyons, Vol. 27, No. 19, November 2002.
[56] "NCSL State Legislative Report: States Enact New Terrorism Crimes and Penalties," Donna Lyons, Vol. 27, No. 19, November 2002.

Several states have successfully enacted such legislation, including the following examples. In 2002, Georgia, Minnesota, and New Hampshire established laws which address isolation and quarantine procedures and the reporting requirements of certain health conditions. Utah also enacted legislation that year requiring health providers to notify the health department for suspected exposure or conditions resulting from bioterrorism. Indiana passed a measure requiring training for administering needed pharmaceuticals in the case of a terrorist attack and the monitoring of certain disease outbreaks.[57] Several states have ordered the stockpiling of potassium iodide in the event of a nuclear plant emergency. Before September 11, only four states had ordered such stockpiling. However, recently at least seven other states are implementing such policies. These tablets can reduce the risk of thyroid cancer in the event of radiation exposure.[58]

New York State Health Department Scientists Test Specimens for the Presence of Anthrax.

Some states have enacted new legislation specifically related to weapons of mass destruction, including North Carolina, Pennsylvania, Tennessee, Utah, and Maine.[59] Other states have also increased penalties for crimes committed using such weapons. In April 2003, Colorado allowed the death penalty to be extended to crimes using a chemical, biological, or radiological weapon when using an explosive or incendiary device.[60]

Since 1986, federal law has required that states and communities have a disaster response plan in place. Most of these address natural disasters, but at least twenty-three states have integrated terrorism into the emergency response plans. Other states have added a terrorism annex or written a specific terrorist response plan for their state.[61]

To help develop consistent security policies, the National Governors Association invited seven states and one territory to take part in a year long bioterrorism policy academy in

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[57] "Biological and Chemical Terrorism," National Conference of State Legislatures, January 2003, Vol. 7, pp. 4-5.
[58] *State Legislatures*, NCSL, Vol 28, No. 4, April 2002, p. 12.
[59] Lyons, Donna, "States Enact New Terrorism Crimes and Penalties," *NCSL State Legislative Report*, Vol. 27, No. 19, November 2002.
[60] Colorado Revised Statutes § 18-1.3-1201, (CO H.B.03-1297)
[61] "If Disaster Strikes Today, Are you Ready to Lead? A Governor's Primer on All-Hazards Emergency Management," National Emergency Management Association, 2003.

2001. Georgia, Indiana, Iowa, Ohio, Pennsylvania, Utah, West Virginia, and the U.S. Virgin Islands participated in this intensive program which provided technical assistance to help states enhance their security policies. Funded by FEMA, DOJ, and the Centers for Diesease Control (CDC), the academy assisted states in developing definitive action plans that stress coordination between the key players involved in case of a future terrorist incident. One of the goals of this endeavor was to create model policies and programs that other states can adopt and implement.[62]

[62] "NGA Center for Best Practices to Host Homeland Security and Bioterrorism Summit in Savannah." National Governors Association, October 25, 2002.

MICHIGAN LEGISLATIVE RESPONSE

Michigan Response After September 11

On October 17, 2001, state leaders gathered together to be briefed on Michigan's response to the September 11 attacks, and to iron out a package of proposals that became antiterrorism/homeland security legislation. This group of officials included the Lt. Governor, Attorney General, Secretary of State, Justices of the Supreme Court, legislative leaders, state department directors and other top state officials. Michigan has had an antiterrorism task force in place since 1996 and already has an antiterror strategy approved by the U.S. Department of Justice. This task force, led by the Michigan Department of State Police, worked with Michigan policymakers to put together a list of 30 proposals, most of which later became legislation.[63] This legislation was introduced in December 2001.

Homeland Security Legislation Introduced Prior to December 2001

In the months that followed the September 11 attacks, the Michigan Legislature passed legislation to respond quickly to those attacks and to the anthrax attacks that occurred in October 2001. Eight bills were passed into law that dealt with anti-terrorism and security, before the major antiterrorism packages were introduced in December 2001. In the area of criminal justice and security, this legislation increased criminal penalties for acts of terrorism and the threat of terrorism, prohibited the carrying of firearms on commercial airport property, and empowered legislative sergeants at arms with greater law enforcement authority. In the area of emergency management, this legislation entered Michigan into the Interstate Emergency Management Assistance Compact, which will be discussed in greater detail later in this document.

Immediate Response to Terrorism in 2001

1) SB 497 (2001 PA 135): Amends MCL §§ 750.200h, et seq. Makes terrorism and the threat of terrorism a crime. The original bill dealt solely with enhancing penalties for discharging a firearm while intoxicated. The bill was amended to include a prohibition against the making of terrorist threats.

2) SB 502 (2001 PA 225): Adds MCL § 259.80f. Amends Aeronautics Code to prohibit and provide penalties for possessing or carrying a firearm on any commercial airport property and to include a felony violation in the sentencing guidelines.

3) SB 505 (2002 PA 24): Amends MCL §§ 777.12. Amends Code of Criminal Procedure to prohibit, and provide penalties for, possessing or carrying a firearm on any commercial airport property.

4) SB 675 (2001 PA 136): Amends MCL §§ 777.12, et seq. Sentencing guidelines for terrorism-related activity, as well as for felonious driving (including driving under the influence).

5) SB 715 (2001 PA 248): Creates new act. Enters Michigan into the Interstate Emergency Management Assistance Compact.

6) HB 5189 (2001 PA 247): Creates new act. Interstate Emergency Management Assistance Compact.

continued…

[63] *Michigan Leaders Briefed on State Response to September 11 Attacks; Highlight Tough Penalties for Those Who Make False Terrorist Threats*, Michigan.gov, October 17, 2001.

House and Senate Homeland Security Legislation (2001-2002)

On Tuesday, December 11, a 34 bill package of antiterrorism/homeland security legislation, designed to increase security and prevent terrorist attacks in Michigan, was introduced in the Michigan Senate. The next day, on Wednesday, December 12, a similar package of bills was introduced in the Michigan House. This legislation covers a variety of areas that can be placed into two major categories: 1) antiterrorism legislation that relates to criminal justice issues, and 2) legislation that relates to emergency management and preparedness.

1) Criminal Justice Legislation

The majority of the bills in these two packages were related to criminal justice and tracking, arrest, and prosecution of terrorists. Three bills dealt with loosening regulations on search warrants and wiretapping. The search warrant bill became law but the wiretapping bills died in the Michigan House.[64]

Perhaps the most important criminal justice bill added Chapter LXXXIII-A, entitled, "Michigan Anti-Terrorism Act" to the *Michigan Penal Code* (1931 PA 328).[65] This act defines terrorism and sets penalties for terrorist activities, including providing criminal support for terrorism or hindering an investigation of terrorism. The act also makes it a crime to knowingly make a false report of terrorism. The bill was signed into law by the governor along with the search warrant bill in April 2002. A second, separate bill actually "enacted" the "Michigan Anti-Terrorism Act."[66]

Many new bills in both the House and Senate provided increased criminal penalties for: knowingly placing a harmful substance in the food or water supply[67], targeting a public building with the intent to

7) HB 5341 (2001 PA 185): Creates new act. Provides for arrest powers for House and Senate sergeants at arms.

8) HB 5342 (2001 PA 186): Creates new act. Exempts legislative sergeant at arms from certain certification requirements of commission on law enforcement standards act.

House Homeland Security/Antiterrorism Legislation 2001-2002

1. HB 5495 (2002 PA 131): Adds Chapter LXXXIII-A (MCL §§ 750.1 – 750.568). Enacts Michigan Anti-Terrorism Act.

2. HB 5496 (2002 PA 132): Amends MCL §§ 30.403, et seq. and adds and repeals certain statutes. Revises powers and duties in Emergency Management Act.

3. HB 5497: Died in Senate Transportation and Tourism Committee. Amends MCL §§ 257.51a. Prohibits issuance of driver's license to an illegal alien.

4. HB 5498: Died in House Transportation Committee. Amends MCL §§ 28.291. Prohibits issuance of state identification cards to illegal aliens.

5. HB 5499: Died in House Criminal Justice Committee. Amends MCL § 777.16t. Includes crime of threat or false report of terrorism in sentencing guidelines.

continued…

[64] Senate Bill Nos. 730, 803, 806.
[65] Senate Bill No. 930 (2002 PA 113).
[66] House Bill No. 5495 (2002 PA 131).
[67] House Bill No. 5507 (2002 PA 135).

terrorize,[68] transporting hazardous materials without a hazmat endorsement,[69] and using the Internet or other electronic or telecommunication system to disrupt critical infrastructures.[70]

Other criminal justice bills make additional terrorism activity illegal. These bills expand the definition of vulnerable target in the *Michigan Penal Code* (1931 PA 328) to include stadiums, critical transportation infrastructures, and public service providers.[71] One bill prohibits the possession of an imitation explosive with the intent to intimidate or frighten,[72] while another allows communications between law enforcement officers regarding grand jury testimony and exhibits in cases involving violations of the "Michigan Anti-Terrorism Act," Chapter LXXXIIIA of the *Michigan Penal Code* (1931 PA 328).

Criminal justice laws that relate to criminal and civil procedure were also passed. One new law requires restitution to all governmental entities for terrorist activities[73] and another eliminates the statute of limitations for terrorist crimes.[74] Other criminal justice bills deal with money laundering and racketeering and change these laws so that they apply to groups that support terrorism.[75]

The seizure of terrorist funds is also considered a criminal justice measure, although it is carried out by federal and state treasury departments. One new act provides for the seizure and forfeiture of property used in connection with a terrorism-related offense.[76] Several other laws deal with the seizure of funds of terrorist organizations. One would have required banks to seize funds of terrorist organizations[77] while another imposes the same requirements on credit

6. HB 5500: Died in House Criminal Justice Committee Amends MCL § 769.1f. Requires restitution to all governmental entities for terrorist activities.

7. HB 5501 (2002 PA 133): Amends MCL § 32.505, et seq. and adds sec. 372a. This bill does the following:
a) Authorizes procedure for granting immunity to military personnel ordered to respond to acts or threats of terrorism.
b) Restricts access to real property used for military purposes.
c) Clarifies plans for defense of state.

8. HB 5502: Died in House Veterans Affairs Committee. Amends MCL § 32.273. Clarifies military leaves and reemployment protection for members of the military called to active service.

9. HB 5503: Died in House Transportation Committee. Amends MCL § 259.85 and adds sec. 85a. Requires background checks on flight school applicants.

10. HB 5504 (2002 PA 259): Amends MCL § 257.312f and adds sec. 312. Requires criminal background checks on commercial driver license applicants.

continued…

[68] 2002 PA 115.
[69] 2002 PA 118.
[70] 2002 PA 117.
[71] 2002 PA 116 & 140.
[72] 2002 PA 134.
[73] 2002 PA 120.
[74] 2002 PA 119.
[75] 2002 PA 136.
[76] 2002 PA 142.
[77] 2002 PA 183.

unions.[78]

Laws that handle personal identification and background checks met with mixed results. New laws that require flight schools to conduct background checks on applicants were enacted.[79] A bill requiring criminal background checks on commercial driver license applicants was also passed.[80] However, a series of controversial bills that would have prohibited the state from issuing identification cards to illegal aliens died in committee.[81]

2) Emergency Management and Security

There were a few bills introduced concerning emergency management and protecting the state's infrastructure which also met with mixed results. One new act revises powers and duties of the state in the *Michigan Emergency Management Act* (1976 PA 390).[82] One bill would have exempted the state and local government security plans from *Freedom of Information Act* (FOIA) requests but died in committee.[83] Another act authorizes procedures for granting immunity to military personnel, who are ordered to respond to terrorism, restricts access to real property used for military purposes, and clarifies plans for defense of Michigan.[84] Finally, a new act requires hospitals to establish biohazard detection and handling plans.[85]

Several bills that clarify military leave,[86] provide for re-employment for members of the military,[87] and prohibit employers from denying leave of absence[88] did not get passed into law. Another bill would have granted immunity, with some exceptions, to military personnel ordered to respond to acts or threats of

11. HB 5505: Died in House Criminal Justice Committee. Amends MCL § 267.19f. Exempts state police communications in terrorism cases from grand jury information protection.

12. HB 5506 (2002 PA 134): Amends MCL 750.204a. Prohibits possession of an imitation explosive with intent to frighten or intimidate.

13. HB 5507 (2002 PA 135): Amends MCL § 750.436. Increases penalties for knowingly placing a harmful substance in food or water supply.

14. HB 5508: Died in House Criminal Justice Committee. Amends MCL § 750.159g. Includes reference to terrorism in Racketeer Influenced and Corrupt Organizations (RICO) Act.

15. HB 5509 (2002 PA 136): Amends MCL § 750.411j. Includes terrorism in definition of "specified criminal offense" for money laundering.

16. HB 5510: Died in House Criminal Justice Committee. Adds MCL § 750.411t. Provides penalties for targeting a public building with intent to terrorize or threaten.

continued…

[78] 2002 PA 184.
[79] 2002 PA 318 & 258.
[80] 2002 PA 259.
[81] SB 931, HB 5497, and HB 5498.
[82] 2002 PA 132.
[83] Senate Bill No. 933.
[84] 2002 PA 133.
[85] 2002 PA 125.
[86] Senate Bill No. 932.
[87] Senate Bill No. 994.
[88] House Bill No. 5502.

terrorism.[89] Finally, provide compensation to victims and payment of expenses for governmental terrorism-related offenses.[90]

Homeland Security Legislation (2003-2004)

During the current Michigan Legislature only two antiterrorism bills have been introduced and both relate to criminal justice issues. These bills prohibit the manufacture, delivery or possession of harmful electronic or electromagnetic devices.[91]

MICHIGAN ADMINISTRATIVE RESPONSE

Coordination with Federal Government

In 1996, the U.S. Department of Justice approved Michigan's antiterror strategy and terrorism threat assessment plan. The plan was developed by the Michigan State Police Emergency Management Division (EMD), with information and support from emergency management programs throughout the state, and was approved by the Michigan Anti-Terrorism Task Force. The task force is made up of representatives from the Michigan State Police, the Michigan National Guard, and the state departments of Environmental Quality, Agriculture, Natural Resources and Community Health. Also, the task force has representatives from the U.S. Department of Defense, U.S. Environmental Protection Agency, U.S. Public Health Service, and the Federal Bureau of Investigation (FBI). Since its inception, the task force has met quarterly to share information, coordinate local, state, and federal preparedness efforts, and make recommendations to the governor and state police. Since the September 11 attacks, the task force has been meeting more frequently to insure Michigan's response is coordinated across all agencies and levels of government.[92]

17. HB 5511 (2002 PA 140): Amends MCL § 750.212a. Expands definition of vulnerable target in Michigan Penal Code (1931 PA 328) to include stadiums, critical transportation infrastructures, and public service providers.

18. HB 5512 (2002 PA 141): Adds MCL § 750.543x. Provides for compensation to victims and payment of expenses for government response for terrorism-related offense.

19. HB 5513 (2002 PA 142): Amends MCL § 600.4701 and MCL § 600.4702. Provides for seizure and forfeiture of property used in connection with a terrorism-related offense.

20. HB 5514: Died in House Criminal Justice Committee. Adds MCL § 750.411t. Provides penalties for use of the Internet or other electronic or telecommunication system to disrupt critical infrastructures or governmental operations.

21. HB 5515: Died in House Transportation Committee. Amends MCL § 480.17c. Increases penalties for transportation of hazardous materials without hazmat endorsement.

22. HB 5516 (2002 PA 183): Adds sec. 4406 to 1999 PA 276. Requires banks to seize funds of terrorist organizations.

continued…

[89] Senate Bill No. 951.
[90] House Bill No. 5512 (2002 PA 141).
[91] House Bill Nos. 4513 and 4514.
[92] *Michigan's Anti-Terrorism Strategy Approved by U.S. Justice Department*, Office of the Governor, Press Release, October 16, 2001, p. 1-2.

Emergency Management Division of MSP

There are a number of programs and initiatives in various areas of the state government that focus on combating terrorism and providing security for the state's citizens and infrastructure. The Emergency Management Division (EMD) of the Michigan State Police (MSP) is responsible for coordinating the state's response to a wide range of emergencies and disasters. The EMD provides oversight of programs for training, hazard mitigation, emergency planning, disaster training exercises, and public information. The division is also responsible for developing the Michigan Emergency Management Plan, which details emergency and disaster response policies for all state agencies. The EMD receives programmatic and financial support from the Federal Emergency Management Agency (FEMA), and the EMD serves as the state's liaison with FEMA during response and recovery operations associated with federal disaster declarations. Working with the Office of the Governor, other state and federal agencies, and 110 local emergency management programs, the EMD examines trends in order to anticipate and mitigate future threats to the safety and security of Michigan communities.[93]

State Office of Homeland Security

The EMD has taken numerous actions to promote homeland security in the state. The EMD has created a Homeland Security Section within the division to serve as the focal point for coordinating and implementing homeland security efforts. The EMD has also revised plans (Michigan Emergency Management Plan (MEMP) and Michigan Hazard Mitigation Plan (MHMP) in order to put greater focus training to prevent and cope with an attack utilizing weapons of mass destruction.[94]

On April 15, 2003, Governor Jennifer Granholm issued Executive Order No. 2003-6 which restructured Michigan's Homeland Security system.

23. HB 5517 (2002 PA 184): Adds MCL § 490.16c. Requires credit unions to seize the funds of terrorist organizations.

24. HB 5518 (2002 PA 185): Adds MCL § 491.1135. Requires savings and loans associations to seize funds of terrorist organizations.

25. HB 5519: Died in House Insurance and Financial Services. Adds sec. 514 to 1996 PA 354. Requires savings banks to seize funds of terrorist organizations.

26. HB 5520 (2002 PA 143): Amends MCL § 777.22. Includes terrorism crimes in sentencing guidelines.

Senate Homeland Security/Anti-Terrorism Legislation 2001-2002

1. SB 730 (2002 PA 112): Amends MCL §§ 780.654 and 780.655. Amends existing procedures concerning search warrant procedures. Allows a magistrate to suppress an affidavit establishing grounds for issuing a search warrant and a tabulation of property seized pursuant to a search warrant.

continued…

[93] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.2.
[94] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.3.

It established a new Michigan Homeland Protection Board as an advisory body to the governor within the department of state police. This board replaced the previously established Michigan Homeland Security Task Force.[95] The Homeland Protection Board is charged to "develop, implement, and revise as needed, an effective and coordinated homeland security strategy."[96] In addition, this order reaffirmed that the director of the department of state police shall continue to serve as the State Director of Homeland Security.

The chairperson of the Michigan Homeland Protection Board is the director of the department of state police. The Assistant Adjutant General for Homeland Security acts as the board's executive secretary. Other members of the board include the directors of the following departments: Military and Veterans Affairs, Agriculture, Civil Rights, Community Health, Environmental Quality, Information Technology, and Transportation.

Governor Granholm's executive order also created the position of Assistant Adjutant General for Homeland Security within the Department of Military and Veterans Affairs. The assistant adjutant general is the chief advisor to the governor and the executive branch concerning homeland security.

The Michigan Homeland Security Advisory Council, a subsidiary of the Homeland Protection Board, was also established within the department of state police. This council was created to "advise the Board and to provide input, advice, and recommendations to the Board on any issues deemed necessary by the Board."[97] The Deputy State Director of Emergency Management chairs the council and serves along with the Assistant Adjutant General for Homeland Security and other members as directed by the Homeland Protection Board. The council may appoint advisory groups consisting of government officials and private citizens to assist in the development of homeland security

2. SB 803: Died in House. Creates a new statute and repeals certain statutes. Permits the interception of wire, oral, or electronic communication pursuant to authorization by a court of appeals or circuit court judge, and approval of the Attorney General, in the investigation of certain offenses.

3. SB 806: Died in House. Amends MCL § 777.17. Adds felony violations of Senate Bill No. 803 to the sentencing guidelines.

4. SB 930 (2002 PA 113): Amends 1931 PA 328 MCL § 750.1 - 750.568 by adding ch. LXXXIII-A. Adds Chapter LXXXIII A to the Michigan Penal Code (1931 PA 328). The new chapter is entitled "Michigan Anti-Terrorism Act."

5. SB 931: Died in House Transportation Committee. Amends MCL §§ 28.291, et seq. Prohibits issuing state identification cards to illegal aliens.

6. SB 932: Died in Senate Senior Citizens and Veterans Affairs Committee. Amends MCL § 32.273. Provides re-employment protection for members of the military called to active service and clarifies military leaves.

7. SB 933: Died in Senate Judiciary Committee. Amends MCL § 15.243. Exempts the state and local government security plans from Freedom of Information Act (FOIA) requests.

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[95] The Michigan Homeland Security Task Force was created by Executive Directive No. 2002-1 by Governor John Engler on January 28, 2002. Under this prior directive, the State Director of Emergency Management was the Director of Homeland Security and served as the Governor's advisor in this area.
[96] Executive Order No. 2003-6, Governor Jennifer Granholm, Section III(B), April 15, 2003.
[97] Executive Order No. 2003-6, Governor Jennifer Granholm, Section III(I), April 15, 2003.

efforts.

Emergency Management Assistance Compact (EMAC)

EMAC, introduced in 1993, is an interstate agreement administered by the National Emergency Management Association (NEMA) that streamlines the assistance one governor can lend to another after a natural disaster or terrorist attack by providing a framework for flexible response. EMAC legislation was introduced in the House (HB 5189 (2001 PA 247)) and the Senate (SB 715 (2001 PA 248)) and eventually signed into law on January 9, 2001. Michigan became the 43rd state to join EMAC. Michigan is part of FEMA Region V. The state of Wisconsin has been designated the region's principal state for EMAC.[98]

Special Operations Division of MSP

The Michigan State Police Operations Center is the 24-hour-a-day command and control center. The center coordinates state police activities and the department's response to a wide variety of requests for information and specialized law enforcement services. The center serves as the control point for the state's Law Enforcement Information Network (LEIN) and National Alert Warning System (NAWAS) and coordinates the department's emergency mobilizations and specialists' assignments. The operations center is the point of first contact when initiating a state emergency management response to a natural disaster or man-made emergency.[99]

Motor Carrier Division of MSP

The MSP Motor Carrier Division frequently works with the federal government and other entities to track potential terrorist activities. Following the attacks of September 11, 2001, the Federal Motor Carrier Safety Administration (FMCSA) called upon the MSP Motor Carrier Division to assist in efforts in tracking the transportation of hazardous materials. The concern is that terrorists will use hazardous materials as weapons.

8. SB 934 (2002 PA 318): Amends MCL § 259.85 and adds MCL § 259.85a. Requires flight schools to conduct background checks on applicants.

9. SB 935: Died in Senate Transportation and Tourism Committee. Amends MCL § 259.312f and adds MCL § 259.312g. Requires a criminal background check on commercial driver license applicants.

10. SB 936 (2002 PA 114): Amends MCL § 767.19f. Clarifies the use of police communications in terrorism cases.

11. SB 937: Died in Senate Judiciary Committee. Amends MCL § 750.204a. Prohibits the possession of an imitation explosive with the intent to intimidate or frighten.

12. SB 938: Died in Senate Judiciary Committee. Amends MCL § 750.436. Increases the penalties for knowingly placing a harmful substance in the food or water supply.

13. SB 939 (2002 PA 115): Adds MCL § 750.543r. Provides penalties for targeting a public building with the intent to terrorize.

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[98] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.5.
[99] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.6.

The FMCSA implemented a program for all motor carriers carrying hazardous materials to be visited by FMCSA agents and have their identities and files checked. The MSP Motor Carrier Division was called upon to assist in the efforts.[100] The MSP Motor Carrier Division also works with other state agencies and Canada. For example, since September 11, 2001, the MSP Motor Carrier Division, FMSCA, U.S. Customs, Transport Canada, and the Michigan National Guard have worked together to increase detection of hazardous materials and enforcement of regulations on the Ambassador Bridge.[101]

Michigan Department of Military and Veterans Affairs

The Michigan Department of Military and Veterans Affairs assists in coordinating the role of the military in providing security in Michigan through the Michigan National Guard and specialized teams of military civil support teams. The Michigan National Guard plays a valuable role in providing safety and security to Michigan citizens during times of crisis. Immediately following the September 11 attacks, Michigan National Guard members were placed at the state's commercial airports and international border crossings to preserve order and prevent other possible attacks.[102] In regard to civil support teams, Michigan was selected to receive a Weapons of Mass Destruction Civil Support Team (WMD-CST), which is a specialized military team trained to respond to chemical and biological attacks. This brings the total number of these teams to 32 nationwide. Their job is to identify the danger, be it chemical, nuclear, or biological, advise local authorities on how to handle it, and prepare for any other military units on the way.[103]

14. SB 940 (2002 PA 116): Amends MCL § 750.212a. Expands the definition of vulnerable target in the Michigan Penal Code (1931 PA 328) to include: 1. stadiums, 2. critical transportation infrastructures, and 3. public service providers.

15. SB 941: Died in Senate Judiciary Committee. Amends MCL §§ 600.4701 and 600.4702. Provides for seizure and forfeiture of property used in connection with a terrorism-related offense.

16. SB 942 (2002 PA 117): Adds MCL § 750.543p. Provides penalties for use of the Internet or other electronic or telecommunication system/device to disrupt critical infrastructures.

17. SB 943 (2002 PA 118): Amends MCL § 480.17c. Increases penalties for transportation of hazardous materials (Hazmat) without a Hazmat endorsement.

18. SB 944: Died in Senate Banking and Financial Institutions Committee. Adds MCL § 487.4406. Requires banks to seize funds of terrorist organizations.

19. SB 945: Died in Senate Banking and Financial Institutions Committee. Adds MCL § 490.16c. Requires credit unions to seize funds of terrorist organizations.

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[100] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.7.
[101] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.7.
[102] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.9.
[103] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.9.

The Role of Other Michigan Departments

The Michigan Department of Transportation (MDOT) is working on assessing the vulnerability of critical highway infrastructure and developing security countermeasures. MDOT is also working on training and coordinating with other state and federal officials concerning border crossings, military deployment, and preserving an efficient transportation system during a massive terrorist attack or natural disaster. The MDOT Bureau of Aeronautics has assisted airport managers in improving airport security and assisted flight schools in complying with background checks of prospective students.[104]

Federal funding from the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) has been provided for Michigan to assist the state in preventing or coping with a bio-terrorism attack and other public health emergencies. Also, the CDC has purchased and stockpiled several collections of pharmaceuticals and equipment at various undisclosed locations around the country to be used in response to a chemical or biological attack. To receive the stockpile, each state must develop plans for handling it. The Michigan Department of Community Health (MDCH) and the Michigan State Police have been working together with federal health officials to develop a plan for receipt and distribution of a stockpile.[105]

The Michigan Department of Environmental Quality (DEQ) and the Michigan Department of Agriculture (MDA) have a role in protecting the environment, specifically the water and food supply, from terrorist attacks and tampering. The DEQ provides tests, warnings, and advice to water utilities concerning the security of water systems. The United States Department of Agriculture (USDA) has provided funding to support Michigan's efforts to strengthen and protect its food supply infrastructure. The MDA supplements federal efforts to provide surveillance of

20. SB 946 (2002 PA 137): Amends MCL §§ 777.31, et seq. Includes terrorism crimes in sentencing guidelines.

21. SB 947: Died in Senate Health Policy Committee. Amends MCL § 333.21513. Requires hospitals to establish biohazard detection and handling plan.

22. SB 948 (2002 PA 119): Amends MCL § 767.24. Eliminates statute of limitations for terrorist crimes.

23. SB 949 (2002 PA 120): Amends MCL § 769.1f. Requires restitution to all governmental entities for terrorist activities.

24. SB 950: Died in Senate Judiciary Committee. Amends MCL § 750.411a. Prohibits terrorism threats and false reports and provides penalties for such violations.

25. SB 951: Died in Senate Senior Citizens and Veterans Affairs Committee. Amends MCL §§ 32.505, et seq. This bill:
a) Authorizes procedure for granting immunity to military personnel ordered to respond to acts or threats of terrorism.

b) Restricts access to real property used for military purposes.

c) Clarifies plans for the defense of the state.

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[104] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.6.
[105] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p.10.

the food supply by requiring and enforcing tighter regulations on milk tank trunks, the use of crop dusters, and providing enhanced inspections of international borders, regional airports, and offshore vessels. The MDA also has implemented plans to improve consumer and industry education and awareness of terrorist threats to Michigan's food supply and has provided scientific and laboratory support to watch for and develop appropriate mitigation strategies to prevent pesticide or pathogen contamination.[106]

The Michigan Department of State has made changes to its internal policies and practices in order to improve department vigilance and tracking of suspicious persons and activities. In the spring of 2002, the Department of State strengthened its requirements for issuing a commercial drivers license (CDL) Hazardous Material (HAZMAT) endorsement. 2002 PA 259 changed the state law to mirror the federal law (USA PATRIOT Act), in order to provide greater scrutiny of HAZMAT drivers. Also, in order to help track legally present foreigners here on temporary visas, the state will tie the expiration date of driver licenses and personal ID cards to the expiration date of the visa the person holds.[107]

Federal Grants for Michigan

Michigan continues to receive several federal grant awards in areas of homeland security. Most of these federal funds cover the years 2002 – 2005. These grants include $8.9 million that goes directly to local fire fighters for equipment and vehicles. These federal grants require that local governments with a population of over 50,000 must match 10 to 30 percent of the federal funding with a local government contribution.[108]

Also, a series of grants are handled by the state departments. None of these grants require matching

26. SB 952: Died in Senate Judiciary Committee. Amends MCL § 750.411j. Includes terrorism in definition of "specified criminal offense" for money laundering.

27. SB 953: Died in Senate Judiciary Committee. Amends MCL §§ 30.403, etc. and repeals certain statutes. Revises powers and duties in the Emergency Management Act.

28. SB 994 (2002 PA 121): Amends MCL § 32.273. Employers are prohibited from denying employees a leave of absence for the purpose of entering into active service, active state service, or the services of the United States.

29. SB 995 (2002 PA 122): Amends MCL 777.16z. Add felony violations proposed by Senate Bill No. 930 to the sentencing guidelines.

30. SB 996 (2002 PA 123): Amends MCL § 777.16v. Deletes the current sentencing guidelines designations for poisoning food, drink, medicine or wells and, instead, would include revised poisoning violations in the sentencing guidelines.

31. SB 997 (2002 PA 124): Amends MCL § 750.159g. Adds to the list of "racketeering" offenses an "act of terrorism" as described in Senate Bill No. 930.

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[106] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p. 10-14

[107] *Michigan Homeland Security Readiness Report*, Michigan Department of State Police, Emergency Management Division (August, 2002), p. 15.

[108] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.

funds on the part of the state. Federal grants that go to the Michigan Department of State Police include: $9 million for first responder preparedness, including equipment and training, and additional installments of $15.9 million and $36.5 million beginning in 2003 and extending until 2005.[109] Also, $5.6 million has been provided for infrastructure protection, which includes providing extra security personnel to guard eligible facilities such as public utilities and power plants. In addition, $4.1 million has been provided to prepare for a weapon of mass destruction (WMD) attack, including training state and local emergency personnel on how to respond. Finally, $12.3 million has been provided for urban areas security initiatives, which is money designed to go to urban areas such as Detroit and Wayne County in order to assist them with training and equipment to respond to a terrorist attack.[110]

The Michigan Community Health Department will receive two major federal grants in the years 2003 and 2004. The first is $25.3 million for public health preparedness in response to a bioterrorist attack.[111] The second grant is for $16.1 million for bioterrorism hospital preparedness. It is designed to assist in establishing bioterrorism planning regions which will allocate funding to local hospitals and health care entities.[112]

CONCERNS OVER THE GOVERNMENT'S RESPONSE

Congress and state legislatures passed a variety of antiterrorism legislation, mostly in the areas of criminal justice and coordinating emergency preparedness efforts. The following section summarizes some of the concerns that critics have over the government's response to the threat of terrorism.

32. SB 1005 (2002 PA 125): Amends MCL § 333.21513. Requires hospital or health facility owner/operator to assure that the hospital develops and maintains a plan for biohazard detection and handling.

33. SB 1006 (2002 PA 258): Amends MCL § 259.85. Requires that an extensive background check be conducted on any flight school applicant in Michigan.

34. SB 1007 (2002 PA 247): Amends MCL § 487.3101 - 487.3804 by adding sec. 514. Requires banks to seize the funds of terrorist organizations and report information to the Michigan Attorney General.

Homeland Security Legislation Introduced in 2003-2004:

1. HB 4513: Amends MCL § 750.200h. Defines and prohibits the use of a harmful electromagnetic device.

2. HB 4514: Amends MCL § 750.200i et seq. Amends MCL § 750.200h. Defines and prohibits the use of a harmful electromagnetic device.

Source: Michigan Legislature.org

[109] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.
[110] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.
[111] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.
[112] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.

Criminal Justice Efforts

The Michigan Legislature's antiterrorism response involved criminal justice legislation such as electronic surveillance (wiretapping), identity security (driver's license identification), seizure and forfeiture of assets and punishment for terrorism. Michigan's legislation was very similar to legislation introduced in the majority of other states.[113] Some of this legislation was passed into law and some died. Concerns related to this legislation generally involve the threat to civil liberties and also possible problems involved with effectiveness.

Protesters burn the American flag at a protest of the Patriot Act and other anti-terrorism efforts in Seattle, Washington in June 2003.

1) Threat to Civil Liberties

Civil libertarians argue that during a national crisis, the federal government often passes legislation that infringes upon civil liberties. The Red Scare of the 1920s and the internment of Japanese Americans during World War II are examples of federal government overreaction in response to generalized fears.[114] Civil libertarians believe that state laws also may violate certain constitutional protections. Therefore, civil libertarians frown upon duplicative state legislation that, for example, defines terrorism (2002 PA 113) or requires banks to seize the funds of terrorists (2002 PA 183). Civil libertarians argue that since these laws already exist under federal statute, these duplicative criminal laws could add another layer of potential abuse to civil liberties.[115]

Critics worry that the language that defines terrorist groups is overly broad and could empower an overzealous prosecutor to go after innocent groups such as labor unions or environmental activists involved in peaceful protest.[116] Critics worry that this legislation could result in a series of abuses such as unfair confiscation of property, and the use of excessive fines and punishment that could give prosecutor's leverage against innocent

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[113] *Task Force on Protecting Democracy*, National Conference of State Legislatures, Final Report, July 2002.

[114] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura and Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p.11.

[115] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura and Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p. 11.

[116] *Anti-Terrorism Laws*, House Legislative Analysis Section 9-16-02, p. 7.

parties.[117] Critics also worry that vague definitions of terrorism could give prosecutors the power to apply anti-terrorism statutes to a wider variety of violations than originally intended.[118]

Supporters argue that there are procedural safeguards in place that protect the freedom and property of innocent people. Supporters say that these criticisms seem to reflect a general lack of faith in our criminal justice system rather than a criticism of specific legislation. They argue that as long as prosecutors uphold the law, judges do their duty in protecting due process rights of suspects, and jurors are fair, than this anti-terrorism legislation should not infringe upon civil liberties.[119] Also, supporters argue that under the *Revised Judicature Act*, a mechanism exists for a person who neither had prior knowledge of nor consented to the commission of a crime to ask the court to return the seized property. Currently, the prosecution has the burden of proof to show probable cause that the property was subject to forfeiture. Thus, supporters believe that existing laws do not make it easy for the government to seize the property of innocent people.[120]

Critics also argue that pro-law enforcement forces had controversial legislation added to the homeland security package because they saw the post September 11 period as a window of opportunity. They argue that the September 11 attacks created a crisis atmosphere where the threat of terrorism captured the attention of the public and pushed away fears of government infringing upon civil liberties. However, many of these controversial bills, for example the wiretapping (SB 803) and ID card prohibitions for illegal aliens (HB 5497, HB 5498 and SB 931), died even during the post-September 11 legislative session. Thus, supporters argue that the system of checks and balances worked, in that, controversial legislation received similar scrutiny as it received in previous sessions.

2) Effectiveness

Critics argue that state legislation for tracking and prosecuting terrorists is unnecessary because federal law enforcement would always take over any terrorist investigation, and prosecute terrorists in federal courts.[121] Therefore, when a terrorist act occurs federal authorities would step in and prosecute terrorists under federal law. Terrorist acts are criminal acts, involving murder, kidnapping extortion, torture, and bombing. Historically, states have executed jurisdiction over these specific criminal acts. However, terrorist acts often entail more than mere criminality. They encompass issues of national security and foreign affairs, which do not fall under state jurisdiction.[122] Before and after September 11, states mimicked federal efforts to combat terrorism in various realms such

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[117] *Anti-Terrorism Laws*, House Legislative Analysis Section 9-16-02, p. 10.
[118] *Anti-Terrorism Laws*, House Legislative Analysis Section 9-16-02, p. 10.
[119] *Anti-Terrorism Laws*, House Legislative Analysis Section 9-16-02, p. 7.
[120] *Anti-Terrorism Laws*, House Legislative Analysis Section 9-16-02, p. 9.
[121] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura. And Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p. 11.
[122] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura. And Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p.2.

as prohibiting financial support and increasing punishment for terrorist activities.[123] After September 11, Michigan passed legislation in many of these areas, including: seizing terrorists funds (2002 PA 142, etc.), adding penalties (2002 PA 116, etc.) and increasing punishment (2002 PA 135, etc.) for terrorist activity, and in seeking to define terrorism (2002 PA 113).

Supporters argue that such legislation does have real value even if it parallels federal efforts, in that it gives state authorities the ability to arrest and detain terrorist suspects and to even prosecute suspects when for some reason federal authorities are unable.[124] There may be some types of domestic terrorism that federal agencies would not be interested in prosecuting, or may not have the time and resources available to prosecute.[125] Also, supporters argue that even if terrorists are never prosecuted under these new state laws, passing the legislation may have a positive role in easing people's concerns, restoring public confidence, and deterring possible future terrorist attacks.

Emergency Preparedness Efforts

The second major area of concern involves the difficulties with coordinating emergency preparedness efforts at all levels of government. Critics are worried that there is not enough funding and training for emergency response personnel, that there is inadequate focus on the protection of infrastructures, and that there are lingering problems involved with coordinating the efforts of local, state, and emergency personnel.

1) Inadequate Funding and Flexibility for Emergency Personnel

The issue of inadequate funding and lack of flexibility in spending the funds for emergency response personnel are concerns often voiced to government officials.[126] Critics argue that fire departments across the country lack enough personnel, radios and breathing apparatuses to respond effectively and police departments do not have the protective gear necessary to safely secure a site following an attack with weapons of mass destruction. Critics say that public health labs in most states lack the basic equipment and expertise to adequately respond to chemical or biological attacks.[127] Critics usually fault the federal government for not doing enough in the area of funding and training of first responders.[128] These critics argue that terrorism is a national issue and it is the responsibility of the federal government to coordinate emergency management and provide adequate funding for state governments. Federal officials argue that there are not

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[123] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura. And Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p.3.

[124] *Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security*. Donohue, Laura. And Kayyem, Juliette. Harvard University, Cambridge, Massachusetts, USA (May 2001), p.3.

[125] *Anti-Terrorism Laws*, House Legislative Analysis Section, 9-16-02, pgs. 10-11.

[126] *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Council on Foreign Relations Inc., 2003.

[127] *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Council on Foreign Relations Inc., 2003.

[128] *Emergency Responders: Drastically Underfunded, Dangerously Unprepared*, Council on Foreign Relations Inc., 2003.

enough federal funds to satisfy all the emergency response needs of local and state governments.

Congress authorizes several categorical grant programs for such activities as emergency planning, training, equipment and exercises. This means that states and localities that receive this funding may only use the funds for specific activities designated by the federal government. Critics argue that these grants deny local governments the flexibility they need to use the money most effectively and to tailor spending to local needs. These critics favor the use of federal block grants. Block grants come with fewer mandates and restrictions and give local governments more flexibility in spending federal funds. Supporters of categorical grants say that these grants allows Congress to target certain selected needs and they insure that the funds are actually spent on homeland security rather than on other local problems. [129]

2) Inadequate Protection & Maintenance of Infrastructure

A second concern is in the area of emergency management involves inadequate funding and oversight of security and maintenance for state infrastructures. Infrastructure security covers protection of the following: physical infrastructure such as roads, bridges, energy supply, and water transportation systems, protection of agricultural infrastructure, including food and water supply, protecting borders and points of entry (airports, etc.), and finally, it covers cyber-security and information security.[130] More than 85% of the nation's critical infrastructures are privately owned and operated. But the responsibility for safeguarding infrastructure networks that crisscross the United States lies primarily with local, state, and federal governments.[131] State law enforcement, private companies and even the National Guard have been used to add increased protection to state infrastructure. These response measures are paid through a variety of local, state, and federal funding sources. Tight budgets and increased security demands after the September 11 attacks have put a strain on local and state law enforcement and other security personnel.[132]

The federal government has stepped in to play a major role in protecting state infrastructures from attack. Supporters argue that federal funding for infrastructure protection frees local and state governments to spend their money in other important areas of infrastructure protection and crime prevention. Federal grants to Michigan for critical infrastructure protection for June 2003 to May 2005, total $5.6 million, with no state matching funds required.[133] In 2002, the Emergency Management Division, which is the lead agency in charge of infrastructure protection from terrorist attack, was funded 74% out of federal funds. The remaining 11% of the EMD budget is paid for by the state

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[129] *State and Local Preparedness for Terrorism: Selected Policy Issues*, CRS Report for Congress, Updated December 19, 2002, p.8.
[130] *Task Force on Protecting Democracy*, National Conference of State Legislatures, Final Report, July 2002.
[131] *Infrastructure Security in States*, Council of State Governments, Homeland Security Brief, April 2003.
[132] *Emergency Stretched Police Thin*, National Conference of State Legislatures (2002).
[133] *Homeland Security Funding-Update*, Memorandum to House Veterans Affairs and Homeland Security Committee, House Fiscal Agency, June 19, 2003.

and 15% is paid by private organizations. Certain grants that go through EMD do require a higher percentage of state funding, however, overall, the federal government provides the majority of funds for heightened anti-terrorism security efforts to protect state infrastructure.

3) Problems of Cooperation in Emergency Management

The third area of concern involves problems associated with the coordination of emergency response, caused, at least in part, by structures of federalism. State governments have a unique role to play in facilitating cooperation between different units of government. Supporters argue that Michigan Legislature took some positive steps by passing legislation that improves coordination between state agencies within Michigan and between neighboring state governments. The package of legislation included legislation to enter Michigan into the Emergency Management Assistance Compact (EMAC) (Public Act Nos. 247 and 248) and legislation that revises Michigan's *Emergency Management Act* (2002 PA 132). The EMAC is an interstate agreement that streamlines assistance one state can give another. This legislation made Michigan the 43rd state to join EMAC.[134] The *Emergency Management Act* prescribes the powers and duties of Michigan government officials during the time of a state emergency. Supporters argue that passage of these three public acts is a good first step in refining Michigan's emergency response.

There is a debate concerning how best to improve the coordination between state and federal agencies and who should be most active in providing leadership in this area. Critics argue that the Michigan Legislature needs to do more to understand how these systems work and thereby clarify its important role in making emergency management in Michigan run effectively. Supporters argue that Michigan agencies have been working closely with federal agencies to coordinate local, state and federal administrative action in response to terrorism attacks, and the state legislators are currently doing all that they can to provide assistance to emergency management personnel. In 1996 an anti-terrorism plan submitted by Michigan was approved by the U.S. Justice Department, and since then, representatives from a number of federal departments have worked on a task force with Michigan officials to design and update anti-terrorism response plans.[135] Since the September 11 attacks, Michigan officials have been meeting with federal officials with greater frequency and intensity in order to improve Michigan's ability to respond to a possible terrorist attack.[136]

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[134] Michigan Homeland Security Readiness Report, Michigan Department of State Police, Emergency Management Division, September 2002, p. 5.

[135] *Michigan's Anti-Terrorism Strategy Approved by U.S. Justice Department*, Office of the Governor Press Release, October 16, 2001, p. 2.

[136] *Michigan's Anti-Terrorism Strategy Approved by U.S. Justice Department*, Office of the Governor Press Release, October 16, 2001, pgs. 2.

CONCLUSION

Policymakers continue to debate the appropriate response to terrorism on American soil. Some believe homeland security efforts should focus on tracking, detaining, and prosecuting terrorists. Others put more focus on emergency response efforts.[137] Some worry that an excessive focus on criminal justice could detract from the rescue and response mission of government authorities participating in the emergency management system, and could threaten civil liberties. Others argue that the best way to fight terrorism is to track and arrest terrorists before they are able to strike. Currently, legislative bodies have focused on criminal justice efforts. In recent 2002 Michigan antiterrorism legislation the majority of the legislation dealt with enhancing criminal justice efforts. At the federal level, in the wake of September 11, Congress seemed to focus on criminal justice legislation such as the USA Patriot Act (2001). However, as time passed, Congress seemed to pay more attention to emergency response efforts, as exhibited in the creation of the new Homeland Security Department (2002).

In the area of emergency management, federal, state, and local governments have responded mostly through administrative action. FEMA and other federal agencies have taken the lead in coordinating emergency response and have been working closely with state agencies to create appropriate response plans in case of a terrorist attack. Since September 11, this coordination between state and federal authorities has become more active and intense. Critics worry that communication and coordination between emergency response personnel at different levels of government (local, state, and federal) need to be improved and that not enough training and equipment is being given to first responders. Traditionally, terrorism has been a national concern handled by federal officials, but as concern about terrorist attacks in America rises, the role of state law enforcement and emergency personnel will continue to evolve.

[137] *State and Local Preparedness for Terrorism: Selected Policy Issues*, CRS Report for Congress, Updated December 19, 2002, p. 21.

Legislative Service Bureau's Legislative Research Division Publications

The following is a list of recently released publications by the Legislative Research Division. If you would like a copy of the following reports, please contact us at 517-373-0472 or write to us at P.O. Box 30036, Lansing, Michigan, 48909-7536.

- *A Citizen's Guide to State Government*, Standard Booklet, June 2003.
- *Blood Alcohol Concentration Debate*, Research Report, Vol. 21, No. 8, Revised December 2002.
- *Capital Punishment*, Research Report, Vol. 4, No. 6, Revised September 2002.
- *Casino Gaming and the Role of the Michigan Legislature*, Research Report, Vol. 16, No. 1, Revised October 2001.
- *Compensation of Michigan Legislators*, Research Report, Vol. 12, No. 5, Revised December 2002.
- *Forensic DNA Databases: Ramifications for Michigan*, Research Report, Vol. 22, No. 3, July 2002.
- *Historical Districts in Michigan: Enabling Legislation & Appeals Process*, Research Report, Vol. 23, No. 4, June 2003.
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