

The Mass Shooter Prosecution Act (MSPA)

Background: Mass shootings are acts of terrorism. Yet the gunmen who have taken so many lives—in Uvalde, Buffalo, Highland Park, and others—and wreak havoc on society face no actual federal terrorism charges. This means that, despite the public’s and media’s recognition of these attackers as terrorists, they are not, legally speaking, charged as terrorists.

Furthermore, under current law, the material support statute also enables law enforcement to conduct a thorough and aggressive prosecution of an entire terrorist network. Yet the holes in our terror statutes make it difficult for law enforcement to fully investigate and prosecute a mass shooter’s network in the wake of a shooting. This gives those who provided material support to the mass shooter the time to cover their tracks and plan another shooting.

Applying the New Statute: The MSPA would create a new terror statute, 18 U.S. Code § 2332j, which would make mass shootings a terrorist offense. In order for law enforcement to bring up this charge:

- The attack must have already occurred (i.e. no “threatens, or attempts or conspires to use” language)
- The attack must have resulted in three or more casualties
- The alleged perpetrator must have used a qualified firearm, which consists of semi-automatic rifles and shotguns which pass the 1-characteristic test, and fully-automatic rifles

Uncovering & Charging Broader Networks: Once the above requirements are met, law enforcement is able to charge the mass shooter as a terrorist. The MSPA further amends 18 U.S. Code § 2339A, the material support statute, to include 18 U.S. Code § 2332j as an eligible offense, meaning that those who knowingly materially support a mass shooter are likewise able to be charged as terrorists. This will enable law enforcement, in the wake of an attack, to uncover and charge the broader networks that knowingly and materially supported the attack.

Reporting Requirements: To provide Congressional and public oversight of the application of these new statutes, the MSPA creates a number of new reporting requirements for the Department of Justice:

- The DOJ must report on the age, gender, race, ethnicity, and nationality of all those charged with either this new statute or the existing material support statute
- The DOJ must report on the age, gender, race, ethnicity, and nationality of all those arrested in an investigation in which a wiretap was used

Civil Rights Concerns: To assuage concerns that this statute would be used to target traditionally over-policed communities, this statute has a very narrow use case. The fact that the attack must have actually occurred, in conjunction with the casualty and firearm requirements, mean that this charge can only be raised for the few, extreme cases which are truly terrorist activity. Furthermore, the subsequent data reporting requirements will allow legislators and the public to hold law enforcement accountable for even application of the statute.

Questions? Contact Ben Rutan with Rep. Moulton at ben.rutan@mail.house.gov