

STATE OF NEW YORK

7813--A

IN SENATE

February 27, 2018

Introduced by Sens. MURPHY, AMEDORE, CROCI, PHILLIPS, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the executive law, in relation to acts of terrorism and the New York state intelligence center

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 490.00 of the penal law, as added by chapter 300 of
2 the laws of 2001, is amended to read as follows:
3 § 490.00 Legislative findings.

4 The devastating consequences of the recent barbaric attack on the
5 World Trade Center and the Pentagon underscore the compelling need for
6 legislation that is specifically designed to combat the evils of terror-
7 ism. Indeed, the bombings of American embassies in Kenya and Tanzania in
8 1998, the federal building in Oklahoma City in 1995, Pan Am Flight
9 number 103 in Lockerbie in 1988, the 1997 shooting atop the Empire State
10 Building, the 1994 murder of Ari Halberstam on the Brooklyn Bridge
11 [~~and~~], the 1993 bombing of the World Trade Center, and the mass shoot-
12 ings in San Bernardino, California and Charleston, South Carolina in
13 2015, the Orlando nightclub in 2016, the Las Vegas strip in 2017, and at
14 Marjory Stoneman Douglas High School in Parkland, Florida in 2018, among
15 others, will forever serve to remind us that terrorism is a serious and
16 deadly problem that disrupts public order and threatens individual safe-
17 ty both at home and around the world. Terrorism is inconsistent with
18 civilized society and cannot be tolerated.

19 Although certain federal laws seek to curb the incidence of terrorism,
20 there are no corresponding state laws that facilitate the prosecution
21 and punishment of terrorists in state courts. Inexplicably, there is
22 also no criminal penalty in this state for a person who solicits or
23 raises funds for, or provides other material support or resources to,
24 those who commit or encourage the commission of horrific and cowardly
25 acts of terrorism. Nor do our criminal laws proscribe the making of
26 terrorist threats or punish with appropriate severity those who hinder
27 the prosecution of terrorists. Finally, our death penalty statute must

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 be strengthened so that the cold-blooded execution of an individual for
2 terrorist purposes is a capital offense.

3 A comprehensive state law is urgently needed to complement federal
4 laws in the fight against terrorism and to better protect all citizens
5 against terrorist acts and mass shootings. Accordingly, the legislature
6 finds that our laws must be strengthened to ensure that terrorists, as
7 well as those who solicit or provide financial and other support to
8 terrorists, are prosecuted and punished in state courts with appropriate
9 severity.

10 § 2. Subdivision 1 of section 490.05 of the penal law, as added by
11 chapter 300 of the laws of 2001, is amended to read as follows:

12 1. "Act of terrorism":

13 (a) for purposes of this article means: (i) an act or acts constitut-
14 ing a specified offense as defined in subdivision three of this section
15 for which a person may be convicted in the criminal courts of this state
16 pursuant to article twenty of the criminal procedure law, or an act or
17 acts constituting an offense in any other jurisdiction within or outside
18 the territorial boundaries of the United States which contains all of
19 the essential elements of a specified offense, that is intended to:

20 [~~(i)~~] (A) intimidate or coerce a civilian population;

21 [~~(ii)~~] (B) influence the policy of a unit of government by intimid-
22 ation or coercion; or

23 [~~(iii)~~] (C) affect the conduct of a unit of government by murder,
24 assassination or kidnapping; or

25 (ii) the knowing, unlawful discharge of a firearm with the intent to
26 cause physical harm or death to another person, or damage to private or
27 public property:

28 (A) within a distance of one thousand feet from the grounds of a
29 public, parochial or private school; or

30 (B) within a distance of one thousand feet from the grounds of a place
31 of worship; or

32 (C) in a place of business with one or more employees; or

33 (D) within one thousand feet of a mass gathering of more than twenty-
34 five people.

35 (b) for purposes of subparagraph (xiii) of paragraph (a) of subdivi-
36 sion one of section 125.27 of this chapter means: (i) activities that
37 involve a violent act or acts dangerous to human life that are in
38 violation of the criminal laws of this state and are intended to:

39 [~~(i)~~] (A) intimidate or coerce a civilian population;

40 [~~(ii)~~] (B) influence the policy of a unit of government by intimid-
41 ation or coercion; or

42 [~~(iii)~~] (C) affect the conduct of a unit of government by murder,
43 assassination or kidnapping[~~+~~]; or

44 (ii) the knowing, unlawful discharge of a firearm with the intent to
45 cause physical harm or death to another person, or damage to private or
46 public property:

47 (A) within a distance of one thousand feet from the grounds of a
48 public, parochial or private school; or

49 (B) within a distance of one thousand feet from the grounds of a place
50 of worship; or

51 (C) in a place of business with one or more employees; or

52 (D) within one thousand feet of a mass gathering of more than twenty-
53 five people.

54 § 3. Subdivision 1 of section 490.25 of the penal law, as added by
55 chapter 300 of the laws of 2001, is amended to read as follows:

1 1. A person is guilty of a crime of terrorism when, with intent to
2 intimidate or coerce a civilian population, influence the policy of a
3 unit of government by intimidation or coercion, or affect the conduct of
4 a unit of government, school, house of worship or business or mass gath-
5 ering by murder, assassination or kidnapping, he or she commits a speci-
6 fied offense.

7 § 4. The executive law is amended by adding a new article 26-A to read
8 as follows:

9 ARTICLE 26-A

10 NEW YORK STATE INTELLIGENCE CENTER

11 Section 730. The New York state intelligence center.

12 731. Definitions.

13 732. Operation of center.

14 733. Collection of criminal intelligence information.

15 734. Confidentiality and immunity from service of process;
16 penalties.

17 735. Receipt of information; immunity from liability.

18 736. Collection of information prohibited; exceptions; over-
19 sight.

20 737. Fusion operation centers of the New York state intelligence
21 center.

22 § 730. The New York state intelligence center. 1. There is hereby
23 established a New York state intelligence center in the division of
24 state police.

25 2. The New York state intelligence center shall receive; process;
26 collect; integrate; evaluate; analyze; fuse; disseminate; maintain and
27 share intelligence information and other information to support govern-
28 mental agencies and private organizations in detecting, preventing,
29 investigating, responding to and recovering from criminal and terrorist
30 activity in compliance with applicable state and federal laws, rules and
31 regulations.

32 3. It shall be the major purpose of the New York state intelligence
33 center to:

34 (a) receive, process, collect, integrate, evaluate, analyze, fuse,
35 disseminate, maintain and share intelligence information in a timely
36 manner;

37 (b) receive, process, collect, integrate, evaluate, analyze, fuse,
38 disseminate, maintain and share all terrorism related intelligence;
39 conduct threat and vulnerability assessments; and disseminate intelli-
40 gence accordingly;

41 (c) ensure, and enhance connectivity of federal, state, and local
42 partners to the New York state intelligence center, as well as to
43 regional and local fusion centers in support of information sharing and
44 analysis in accordance with the national strategy for information shar-
45 ing and safeguarding;

46 (d) expand outreach and information-sharing efforts beyond the law
47 enforcement community, to include fire, public health, EMS, emergency
48 management, the private sector, and other relevant and affected entities
49 as individuals in accordance with the national strategy for information
50 sharing and safeguarding;

51 (e) augment private sector outreach efforts to critical infrastructure
52 sectors and at-risk businesses;

53 (f) increase public awareness and suspicious activity reporting
54 through ongoing outreach and education on security issues, to include
55 community organizations, private security partners, and the general
56 public;

1 (g) enhance statewide, regional and local planning efforts to ensure
2 ongoing information sharing and to identify information sharing gaps
3 through needs assessments in accordance with the national strategy for
4 information sharing and safeguarding;

5 (h) ensure the presence and security of information, as well as, tech-
6 nology and systems to facilitate information security, and appropriate
7 information sharing and analysis;

8 (i) conduct training and exercises to build and test intelligence
9 collection and management of information sharing and intelligence capa-
10 bilities;

11 (j) promote the hiring, training and use of intelligence analysts in
12 support of state homeland security strategy;

13 (k) provide further support to statewide and federal initiatives that
14 foster and promote the collection, management and safeguarding of the
15 sharing of information and intelligence;

16 (l) facilitate the obtainment of security clearances for key personnel
17 and policymakers whose duties require access to classified information;

18 (m) improve situational awareness by providing classified briefings
19 and information to cleared personnel;

20 (n) prevent acts of terrorism as defined pursuant to federal law and
21 article four hundred ninety of the penal law;

22 (o) expand information sharing and collaboration through the estab-
23 lishment of partnerships with academic institutions involved in homeland
24 security, terrorism studies, intelligence and related fields of study.

25 § 731. Definitions. As used in this article:

26 1. "Collect" means to solicit or receive.

27 2. "Intelligence information" means data that has been evaluated and
28 determined to be relevant to the identification of criminal and/or
29 terrorist activity of individuals or organizations that are reasonably
30 suspected of involvement in such activity.

31 3. "Division" means division of state police.

32 § 732. Operation of center. 1. The division shall operate the New York
33 state intelligence center under the direction of the governor.

34 2. The division shall cooperate, subject to applicable state and
35 federal laws, rules and regulations with:

36 (a) the division of homeland security and emergency services;

37 (b) local, state, or federal government agencies including but not
38 limited to:

39 (i) representatives of New York state agencies, including but not
40 limited to, the division of homeland security and emergency services;
41 the division of military and naval affairs and its component commands;
42 the department of education; the metropolitan transportation authority;
43 the department of correctional services; the division of criminal
44 justice services; the department of financial services; the department
45 of motor vehicles; the division of parole; and such other and further
46 entities as the superintendent of state police deems prudent;

47 (ii) representatives of local government and schools, including but
48 not limited to, the police department of the city of New York; the
49 police department of the city of Albany; the police department of the
50 city of Buffalo; the department of education of the city of New York;
51 the Albany city school district; the Buffalo city school district; the
52 department of environmental protection of the city of New York; the
53 Schenectady county probation department; and such other and further
54 entities as the superintendent of state police deems prudent;

55 (iii) invited representatives of the federal government, including but
56 not limited to, the United States department of homeland security; the

1 federal bureau of investigation; the United States department of
2 justice; the drug enforcement administration; the bureau of alcohol,
3 tobacco, firearms, explosives; the United States border patrol; the
4 United States customs and border protection; U.S. immigration and
5 customs enforcement; the school security administration; the office of
6 the United States attorney for the northern district of New York; the
7 office of the United States attorney for the southern district of New
8 York; the office of the United States attorney for the western district
9 of New York; and such other and further entities as the superintendent
10 of state police deems prudent; and

11 (c) private organizations.

12 § 733. Collection of intelligence information. The New York state
13 intelligence center may collect intelligence information if:

14 1. reasonable suspicion exists that the subject of the intelligence
15 information is involved with or has knowledge of possible criminal or
16 terrorist activity; or

17 2. the intelligence information is relevant to criminal or terrorist
18 activity or may reasonably lead to information relevant to criminal or
19 terrorist activity.

20 § 734. Confidentiality and immunity from service of process; penal-
21 ties. 1. Papers, records, documents, reports, materials, databases, or
22 other evidence or information relative to intelligence or any terrorism
23 investigation in the possession of the New York state intelligence
24 center shall be confidential and shall not be subject to the freedom of
25 information law. The division shall conduct an annual review of informa-
26 tion contained in any database maintained by the New York state intelli-
27 gence center. Data determined to not have a nexus to terrorist activity
28 shall be removed from such database. A reasonable suspicion standard
29 shall be applied when determining whether or not information has a nexus
30 to terrorist activity.

31 2. No person, having access to information maintained by the New York
32 state intelligence center, shall be subject to subpoena in a civil
33 action in any court of the state to testify concerning a matter of which
34 he has knowledge pursuant to his access to criminal intelligence infor-
35 mation maintained by the New York state intelligence center.

36 3. No person or agency receiving information from the New York state
37 intelligence center shall release or disseminate that information with-
38 out prior authorization from the New York state intelligence center.

39 4. Any person who knowingly disseminates information in violation of
40 this section is guilty of a class D felony.

41 5. Any person who knowingly disseminates information in violation of
42 this section is guilty of a class B felony if such dissemination results
43 in death or serious bodily injury to another person.

44 § 735. Receipt of information; immunity from liability. 1. No cause of
45 action for defamation, invasion of privacy, or negligence shall arise
46 against any person for reason of that person's furnishing of information
47 concerning any suspected, anticipated, or completed criminal violation
48 when the information is provided to or received from the division or any
49 federal or state governmental entity established for the purposes of
50 detecting and preventing acts of terrorism.

51 2. No person shall be subject to such cause of action for cooperating
52 with, or furnishing evidence or information regarding any suspected
53 criminal violation to, the division.

54 3. This section shall not provide immunity for those disclosing or
55 furnishing false information with malice or willful intent to injure any
56 person.

1 4. This section does not abrogate or modify in any way common law or
2 statutory privilege or immunity heretofore enjoyed by any person or
3 entity.

4 § 736. Collection of information prohibited; exceptions; oversight. 1.
5 The division shall not collect, maintain or share with any other law
6 enforcement agency, information about the political or religious associ-
7 ations, views or activities of a person unless:

8 (a) the information directly relates to an investigation of criminal
9 or terrorist activity; or

10 (b) there are reasonable grounds to believe that the subject of the
11 information is involved in the criminal or terrorist activity; or

12 (c) there are reasonable grounds to believe that the subject of the
13 information will lead to information relevant to criminal or terrorist
14 activity.

15 2. Information about a person's political or religious associations,
16 views or activities that is collected or maintained by the division
17 shall be destroyed if:

18 (a) a criminal charge, to which the information is material or direct-
19 ly related, is not brought against the person within five years from the
20 date of the collection of the information;

21 (b) a criminal charge, to which the information is material or direct-
22 ly related, was brought and has resulted in a dismissal, failure to
23 prosecute, or acquittal; or

24 (c) the information was collected or maintained in violation of subdi-
25 vision one of this section.

26 § 737. Fusion operation centers of the New York state intelligence
27 center. 1. The New York state intelligence center shall operate no less
28 than three fusion operation centers to perform its proscribed roles,
29 duties and functions as described in this article. Such fusion operation
30 centers shall operate in accordance with this article and all relevant
31 federal laws, rules and regulations pertaining to fusion centers and the
32 national strategy for information sharing and safeguarding. Where any
33 portion of this article shall be deemed inconsistent with relevant
34 federal laws, rules and regulations pertaining to fusion centers and the
35 national strategy for information sharing and safeguarding, the super-
36 intendent of state police, by regulation, may amend the practices,
37 roles, duties and functions of the New York state intelligence center to
38 be consistent with such federal laws, rules and regulations pertaining
39 to fusion centers and the national strategy for information sharing and
40 safeguarding, so as to continue the sharing of information and intelli-
41 gence with federal authorities.

42 2. The New York state intelligence center shall operate fusion opera-
43 tion centers in Albany county, Erie county, the city of New York, and
44 such other and further locations as the superintendent of state police
45 deems prudent and within budget appropriations therefor.

46 § 5. If any item, clause, sentence, subparagraph, subdivision, section
47 or other part of this act, or the application thereof to any person or
48 circumstances shall be held to be invalid, such holding shall not
49 affect, impair or invalidate the remainder of this act, or the applica-
50 tion of such section or part of a section held invalid, to any other
51 person or circumstances, but shall be confined in its operation to the
52 item, clause, sentence, subparagraph, subdivision, section or other part
53 of this act directly involved in such holding, or to the person and
54 circumstances therein involved.

55 § 6. This act shall take effect immediately.