

# STATE OF NEW YORK

7813

## IN SENATE

February 27, 2018

Introduced by Sens. MURPHY, AMEDORE, CROCI, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

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 Bernadino, 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) an individual who, knowingly discharges or attempts to discharge  
26 a firearm:

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

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

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

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

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

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

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

41 (ii) an individual who, knowingly discharges or attempts to discharge  
42 a firearm:

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

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

47 (C) in a place of business with one or more employees.

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

50 1. A person is guilty of a crime of terrorism when, with intent to  
51 intimidate or coerce a civilian population, influence the policy of a  
52 unit of government by intimidation or coercion, or affect the conduct of  
53 a unit of government, school, house of worship or business by murder,  
54 assassination or kidnapping, he or she commits a specified offense.

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

ARTICLE 26-ANEW YORK STATE INTELLIGENCE CENTERSection 730. The New York state intelligence center.731. Definitions.732. Operation of center.733. Collection of criminal intelligence information.734. Confidentiality and immunity from service of process; penalties.735. Receipt of information; immunity from liability.736. Collection of information prohibited; exceptions; oversight.

§ 730. The New York state intelligence center. 1. There is hereby established a New York state intelligence center in the division of homeland security and emergency services.

2. The New York state intelligence center shall collect; integrate; evaluate; analyze; disseminate; and maintain criminal intelligence information and other information to support governmental agencies and private organizations in detecting, preventing, investigating, and responding to criminal and terrorist activity in compliance with applicable state and federal laws and regulations, including 28 CFR 23.

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

(a) receive, process, and disseminate homeland security information to stakeholders in a timely manner;

(b) collect, fuse, and analyze all terrorism related intelligence; conduct threat and vulnerability assessments; and disseminate intelligence accordingly;

(c) ensure, and enhance connectivity of federal, state, and local partners to the New York state intelligence center, as well as to regional and local fusion centers in support of information sharing and analysis;

(d) expand outreach and information-sharing efforts beyond the law enforcement community, to include fire, public health, EMS, emergency management, the private sector, and other stakeholders;

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

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

(g) enhance statewide, regional and local planning efforts to ensure ongoing information sharing and to identify information sharing gaps through needs assessments;

(h) ensure the presence and security of information technology and systems to facilitate information sharing and analysis;

(i) conduct training and exercises to build and test information sharing and intelligence capabilities;

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

(k) provide further support to statewide initiatives that foster the sharing of information and intelligence;

(l) obtain security clearances for key personnel and policymakers whose duties require access to classified information;

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

1 (n) prevent acts of terrorism involving the discharge or attempted  
2 discharge of a firearm;

3 (i) within a distance of one thousand feet from the grounds of a  
4 public, parochial or private school;

5 (ii) within a distance of one thousand feet from the grounds of a  
6 place of worship; or

7 (iii) in a place of business with one or more employees; and

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

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

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

13 2. "Criminal intelligence information" means data that has been evalu-  
14 ated and determined to be relevant to the identification and criminal  
15 activity of individuals or organizations that are reasonably suspected  
16 of involvement in criminal activity. "Criminal intelligence information"  
17 shall not include criminal investigative files.

18 3. "Division" means division of homeland security and emergency  
19 services.

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

22 2. The division shall cooperate, subject to applicable state and  
23 federal laws and regulations, including 28 CFR 23, with:

24 (a) the division of state police;

25 (b) local, state, or federal government agencies; and

26 (c) private organizations.

27 § 733. Collection of criminal intelligence information. The New York  
28 state intelligence center may collect criminal intelligence information  
29 only if:

30 1. reasonable suspicion exists that the subject of the criminal intel-  
31 ligence information is involved with or has knowledge of possible crimi-  
32 nal or terrorist activity; and

33 2. the criminal intelligence information is relevant to the criminal  
34 or terrorist activity.

35 § 734. Confidentiality and immunity from service of process; penal-  
36 ties. 1. Papers, records, documents, reports, materials, databases, or  
37 other evidence or information relative to criminal intelligence or any  
38 terrorism investigation in the possession of the New York state intelli-  
39 gence center shall be confidential and shall not be subject to the free-  
40 dom of information law. The division shall conduct an annual review of  
41 information contained in any database maintained by the New York state  
42 intelligence center. Data determined to not have a nexus to terrorist  
43 activity shall be removed from such database. A reasonable suspicion  
44 standard shall be applied when determining whether or not information  
45 has a nexus to terrorist activity.

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

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

54 4. Any person who knowingly disseminates information in violation of  
55 this section is guilty of a class A misdemeanor.

1 5. Any person who knowingly disseminates information in violation of  
2 this section is guilty of a class D felony if such dissemination results  
3 in death or serious bodily injury to another person.

4 § 735. Receipt of information; immunity from liability. 1. No cause of  
5 action for defamation, invasion of privacy, or negligence shall arise  
6 against any person for reason of that person's furnishing of information  
7 concerning any suspected, anticipated, or completed criminal violation  
8 when the information is provided to or received from the division or any  
9 federal or state governmental entity established for the purposes of  
10 detecting and preventing acts of terrorism.

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

14 3. This section shall not provide immunity for those disclosing or  
15 furnishing false information with malice or willful intent to injure any  
16 person.

17 4. This section does not abrogate or modify in any way common law or  
18 statutory privilege or immunity heretofore enjoyed by any person or  
19 entity.

20 § 736. Collection of information prohibited; exceptions; oversight. 1.  
21 The division shall not collect, maintain or share with any other law  
22 enforcement agency, information about the political, religious or social  
23 associations, views or activities of a person unless:

24 (a) the information directly relates to an investigation of criminal  
25 conduct; and

26 (b) there are reasonable grounds to believe that the subject of the  
27 information is involved in the criminal conduct.

28 2. Information about a person's political, religious or social associ-  
29 ations, views or activities that is collected or maintained by the divi-  
30 sion shall be destroyed if:

31 (a) a criminal charge, to which the information is material or direct-  
32 ly related, is not brought against the person within a reasonable period  
33 of time;

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

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

39 3. The division shall establish and enforce a written policy governing  
40 the collection, maintenance and destruction of information in accordance  
41 with the provisions of this section.

42 4. The division shall provide an annual report to the attorney general  
43 describing:

44 (a) all information collected, maintained or shared by the agency on  
45 the political, religious or social associations, views or activities of  
46 a person;

47 (b) the reasons for collecting or maintaining the information;

48 (c) the alleged criminal conduct to which the information relates; and

49 (d) the grounds for believing that the subject of the information is  
50 involved in the criminal conduct.

51 5. The attorney general shall have access to the files and records of  
52 a law enforcement agency to oversee and monitor compliance with this  
53 section. The attorney general may investigate citizen complaints regard-  
54 ing the collection, maintenance or sharing of information by the divi-  
55 sion in violation of this section.

1     § 5. If any item, clause, sentence, subparagraph, subdivision, section  
2 or other part of this act, or the application thereof to any person or  
3 circumstances shall be held to be invalid, such holding shall not  
4 affect, impair or invalidate the remainder of this act, or the applica-  
5 tion of such section or part of a section held invalid, to any other  
6 person or circumstances, but shall be confined in its operation to the  
7 item, clause, sentence, subparagraph, subdivision, section or other part  
8 of this act directly involved in such holding, or to the person and  
9 circumstances therein involved.

10    § 6. This act shall take effect immediately.