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:

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

§ 490.00 Legislative findings.

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

Although certain federal laws seek to curb the incidence of terrorism, there are no corresponding state laws that facilitate the prosecution and punishment of terrorists in state courts. Inexplicably, there is also no criminal penalty in this state for a person who solicits or raises funds for, or provides other material support or resources to, those who commit or encourage the commission of horrific and cowardly acts of terrorism. Nor do our criminal laws proscribe the making of terrorist threats or punish with appropriate severity those who hinder 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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be strengthened so that the cold-blooded execution of an individual for terrorist purposes is a capital offense.

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

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

1. "Act of terrorism":

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

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

[~~(ii)~~] **(B)** influence the policy of a unit of government by intimidation or coercion; or

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

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

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

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

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

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

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

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

[~~(ii)~~] **(B)** influence the policy of a unit of government by intimidation or coercion; or

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

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

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

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

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

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

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

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

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

ARTICLE 26-A

NEW YORK STATE INTELLIGENCE CENTER

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

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

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

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

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

(b) receive, process, collect, integrate, evaluate, analyze, fuse, disseminate, maintain and share 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 in accordance with the national strategy for information sharing and safeguarding;

(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 relevant and affected entities as individuals in accordance with the national strategy for information sharing and safeguarding;

(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 in accordance with the national strategy for information sharing and safeguarding;

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

(i) conduct training and exercises to build and test intelligence collection and management of 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 and federal initiatives that foster and promote the collection, management and safeguarding of the sharing of information and intelligence;

(l) facilitate the obtainment of 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;

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

(o) expand information sharing and collaboration through the establishment of partnerships with academic institutions involved in homeland security, terrorism studies, intelligence and related fields of study.

§ 731. Definitions. As used in this article:

1. "Collect" means to solicit or receive.

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

3. "Division" means division of state police.

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

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

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

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

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

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

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

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

(c) private organizations.

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

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

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

§ 734. Confidentiality and immunity from service of process; penalties. 1. Papers, records, documents, reports, materials, databases, or other evidence or information relative to intelligence or any terrorism investigation in the possession of the New York state intelligence center shall be confidential and shall not be subject to the freedom of information law. The division shall conduct an annual review of information contained in any database maintained by the New York state intelligence center. Data determined to not have a nexus to terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity.

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

3. No person or agency receiving information from the New York state intelligence center shall release or disseminate that information without prior authorization from the New York state intelligence center.

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

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

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

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

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

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

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

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

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

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

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

(a) a criminal charge, to which the information is material or directly related, is not brought against the person within five years from the date of the collection of the information;

(b) a criminal charge, to which the information is material or directly related, was brought and has resulted in a dismissal, failure to prosecute, or acquittal; or

(c) the information was collected or maintained in violation of subdivision one of this section.

§ 737. Fusion operation centers of the New York state intelligence center. 1. The New York state intelligence center shall operate no less than three fusion operation centers to perform its proscribed roles, duties and functions as described in this article. Such fusion operation centers shall operate in accordance with this article and all relevant federal laws, rules and regulations pertaining to fusion centers and the national strategy for information sharing and safeguarding. Where any portion of this article shall be deemed inconsistent with relevant federal laws, rules and regulations pertaining to fusion centers and the national strategy for information sharing and safeguarding, the superintendent of state police, by regulation, may amend the practices, roles, duties and functions of the New York state intelligence center to be consistent with such federal laws, rules and regulations pertaining to fusion centers and the national strategy for information sharing and safeguarding, so as to continue the sharing of information and intelligence with federal authorities.

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

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

§ 6. This act shall take effect immediately.