

1 HOUSE BILL 269

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO DOMESTIC TERRORISM; DEFINING "DENIAL OF SERVICE
12 ATTACK"; DEFINING "SCHOOL" AND "COMMUNITY CENTER"; CREATING THE
13 CRIMES OF TERRORISM, CYBERTERRORISM, POSSESSING A TERRORISTIC
14 WEAPON AND MAKING A TERRORISTIC THREAT; PROVIDING PENALTIES;
15 PROVIDING FOR CONCURRENT JURISDICTION OF CRIMES UNDER THE
16 ANTITERRORISM ACT; REQUIRING INFORMATION SHARING AND REPORTING.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 9-28-5 NMSA 1978 (being Laws 2007,
20 Chapter 291, Section 5) is amended to read:

21 "9-28-5. DEPARTMENT DUTIES.--The department shall:

22 A. coordinate the homeland security and emergency
23 management efforts of all state and local government agencies,
24 as well as enlist cooperation from private entities such as
25 health care providers;

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1 B. apply for and accept federal funds for homeland
2 security, administer the funds and develop criteria to allocate
3 grants to local governments, tribes, state agencies and other
4 qualified entities;

5 C. act as liaison between federal, state and local
6 agencies to effect the improved sharing of counterterrorism
7 intelligence, including maintaining the New Mexico all source
8 intelligence center, which is a cross-jurisdictional
9 partnership between local, state and federal agencies to
10 support the development of plans, policies and procedures that
11 protect the state from border, criminal and terrorist threats;

12 D. provide information to the general public and to
13 private businesses that is essential to ensuring their safety
14 and security and provide the governor with timely information
15 relating to emergencies, disasters and acts of terrorism or
16 terrorist threats;

17 E. establish security standards for state
18 facilities and for protection of their occupants and develop
19 plans for the continuity of state government operations in the
20 event of a threat or act of terrorism or other natural or man-
21 made disaster;

22 F. identify the state's critical infrastructures
23 and assist public and private entities with developing plans
24 and procedures designed to implement the protective actions
25 necessary to continue operations;

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1 G. coordinate state agency and local government
2 plans for prevention, preparedness and response with a focus on
3 an all-hazards approach;

4 H. coordinate law enforcement counterterrorism
5 prevention, preparedness and response training on a statewide
6 basis, including training for emergency responders, government
7 officials, health care providers and others as appropriate;

8 I. work with emergency response and emergency
9 management programs and provide assistance in developing and
10 conducting terrorism response exercises for emergency
11 responders, government officials, health care providers and
12 others;

13 J. coordinate law enforcement's and emergency
14 responders' response to an act of terrorism or terrorist
15 threat;

16 K. develop and maintain a statewide plan and
17 strategy to manage and allocate federal grant funds required to
18 provide the state's emergency response community with the
19 equipment necessary to respond to an act of terrorism involving
20 a weapon of mass destruction; and

21 L. perform such other duties relating to homeland
22 security as may be assigned by the governor."

23 SECTION 2. Section 30-20A-2 NMSA 1978 (being Laws 1990,
24 Chapter 66, Section 2) is amended to read:

25 "30-20A-2. DEFINITIONS.--As used in the Antiterrorism

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1 Act:

2 A. "civil disorder" means [~~any~~] a planned act of
3 violence by an assemblage of two or more persons with the
4 intent to cause damage or injury to another individual or [~~his~~]
5 the individual's property;

6 B. "community center" includes community centers,
7 daycare centers and other similar physical locations that exist
8 primarily to supervise children and at which children primarily
9 congregate;

10 [~~B.~~] C. "destructive device" means:

11 (1) [~~any~~] an explosive, incendiary or poison
12 gas:

- 13 (a) bomb;
- 14 (b) grenade;
- 15 (c) rocket having a propellant charge of
16 more than four ounces;
- 17 (d) missile having an explosive or
18 incendiary charge of more than one-quarter ounce;
- 19 (e) mine; or
- 20 (f) similar device;

21 (2) [~~any~~] a type of weapon that can expel or
22 may be readily converted to expel a projectile by the action of
23 an explosive or other propellant, the barrel or barrels of
24 which have a bore of more than six-tenths inch in diameter,
25 except a shotgun, shotgun shell or muzzle loading firearm that

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1 is generally recognized as particularly suitable for sporting
2 purposes; or

3 (3) ~~[any]~~ a part or combination of parts
4 either designed or intended for use in converting or assembling
5 any device described in Paragraphs (1) and (2) of this
6 subsection.

7 The term "destructive device" shall not include ~~[any]~~ a
8 device that is neither designed nor redesigned for use as a
9 weapon;

10 ~~[G.]~~ D. "firearm" means ~~[any]~~ a weapon that can
11 expel or is designed to or may readily be converted to expel a
12 projectile by the action of an explosion, the frame or receiver
13 of any such weapon, ~~[any]~~ a firearm muffler or firearm
14 silencer. "Firearm" includes ~~[any]~~ a handgun, rifle or
15 shotgun; ~~and~~

16 ~~D.]~~ E. "law enforcement officer" means ~~[any]~~ an
17 employee of a police or public safety department administered
18 by the state or ~~[any]~~ a political subdivision of the state
19 where the employee is responsible for the prevention and
20 detection of crime and the enforcement of the penal, traffic or
21 highway laws of this state. "Law enforcement officer" includes
22 ~~[any]~~ a member of the New Mexico national guard; ~~[any]~~ a peace
23 officer of the United States, ~~[any]~~ a state, ~~[any]~~ a political
24 subdivision of a state or the District of Columbia; ~~[any]~~ a
25 member of the New Mexico mounted patrol or the national guard,

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1 as defined in 10 U.S.C. Sec. 101(9); [~~any~~] a member of the
2 organized militia of [~~any~~] a state or territory of the United
3 States, the commonwealth of Puerto Rico or the District of
4 Columbia not included within the definition of national guard;
5 and [~~any~~] a member of the armed forces of the United States.

6 "Law enforcement officer" also means [~~any~~] a person or entity
7 acting as a contractor for any other law enforcement officer,
8 police or public safety department described in this section;

9 F. "public accommodation" means any establishment
10 that provides or offers its services, facilities,
11 accommodations or goods to the public, but does not include a
12 bona fide private club or other place or establishment that is
13 by its nature and use distinctly private; and

14 G. "school" means any physical location in which
15 instruction is offered by one or more teachers and is
16 discernible as a building or group of buildings generally
17 recognized as either an elementary, middle, junior high, high
18 school, college or university or any combination of those,
19 whether public, private or charter."

20 SECTION 3. Section 30-20A-3 NMSA 1978 (being Laws 1990,
21 Chapter 66, Section 3) is amended to read:

22 "30-20A-3. UNLAWFUL ACTS--PENALTY.--

23 A. Any person who teaches or demonstrates the use,
24 application or making of any firearm, destructive device or
25 technique capable of causing injury or death to any person with

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1 the intent that the knowledge or skill taught, demonstrated or
2 gained be unlawfully used to commit terrorism as defined in
3 Subsection C of this section in furtherance of a civil disorder
4 is guilty of a [~~fourth~~] third degree felony [~~and shall be~~
5 ~~sentenced under the provisions of the Criminal Sentencing Act~~
6 ~~to imprisonment for a definite term of eighteen months or, in~~
7 ~~the discretion of the sentencing court, to a fine of not more~~
8 ~~than five thousand dollars (\$5,000) or both].~~

9 B. Any person who trains, practices or receives
10 instruction in the use of any firearm, destructive device or
11 technique capable of causing injury or death to any person with
12 the intent that the knowledge or skill taught, demonstrated or
13 gained be unlawfully used to commit terrorism as defined in
14 Subsection C of this section in furtherance of a civil disorder
15 is guilty of a [~~fourth~~] third degree felony [~~and shall be~~
16 ~~sentenced under the provisions of the Criminal Sentencing Act~~
17 ~~to imprisonment for a definite term of eighteen months or, in~~
18 ~~the discretion of the sentencing court, to a fine of not more~~
19 ~~than five thousand dollars (\$5,000) or both].~~

20 C. Terrorism consists of committing an act
21 dangerous to human life that is also a criminal violation of
22 state law with the intent to:

23 (1) intimidate or coerce a civilian
24 population, including committing mass violence in a public
25 accommodation;

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1 (2) influence the policy of a state
2 entity or political subdivision of the state; or

3 (3) affect the conduct of a state entity,
4 political subdivision of the state or public accommodation by
5 mass destruction, assassination, kidnapping or an act of
6 violence enumerated as a serious violent offense in Section
7 33-2-34 NMSA 1978.

8 Whoever commits terrorism is guilty of a second degree
9 felony and, notwithstanding the provisions of Section 31-18-15
10 NMSA 1978, shall be sentenced to a minimum term of imprisonment
11 of three years, which shall not be suspended or deferred. The
12 imposition of a minimum, mandatory term of imprisonment
13 pursuant to the provisions of this subsection shall not be
14 interpreted to preclude the imposition of sentencing
15 enhancements pursuant to the provisions of the Criminal
16 Sentencing Act.

17 D. Possessing a terroristic weapon consists of
18 manufacturing, fabricating or possessing, in any manner,
19 whether real or imitation, a weapon:

20 (1) designed to or intended to cause death or
21 serious physical injury by the release, dissemination or impact
22 of toxic or poisonous chemicals or their precursors;

23 (2) involving any biological agent, disease or
24 disease organism; or

25 (3) designed to release radiation or

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1 radioactivity at a level dangerous to human life, other than a
2 person engaged in the manufacture of such weapons for lawful
3 purposes.

4 Whoever commits possessing a terroristic weapon is guilty
5 of a second degree felony and, notwithstanding the provisions
6 of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
7 term of imprisonment of three years, which shall not be
8 suspended or deferred. The imposition of a minimum, mandatory
9 term of imprisonment pursuant to the provisions of this
10 subsection shall not be interpreted to preclude the imposition
11 of sentencing enhancements pursuant to the provisions of the
12 Criminal Sentencing Act.

13 E. Making a terroristic threat involving a school,
14 community center or public accommodation consists of
15 threatening to commit any criminal offense, unequivocally,
16 unconditionally and specifically, whether that threat is made
17 online or otherwise, involving violence against a person at a
18 school, community center or public accommodation, or to harm a
19 school, community center or public accommodation with the
20 intent to:

21 (1) cause a reaction to the threat by an
22 official or volunteer agency organized to deal with
23 emergencies;

24 (2) place a person in fear of great bodily
25 harm; or

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1 (3) prevent or interrupt the occupation or use
2 of a school or community center building.

3 Whoever commits making a terroristic threat involving a
4 school, community center or public accommodation is guilty of a
5 second degree felony.

6 F. Prosecution pursuant to this section shall not
7 prevent prosecution pursuant to any other provision of law when
8 the conduct also constitutes a violation of that other
9 provision. A separate offense occurs on each calendar day on
10 which an act constituting terrorism, possessing a terroristic
11 weapon or making a terroristic threat involving a school or
12 community center is committed.

13 G. The attorney general and the district attorney
14 of the district in which a violation of this section occurs
15 have concurrent jurisdiction to enforce the provisions of this
16 section. This subsection does not prevent a district attorney
17 from another district from exercising jurisdiction when the
18 district attorney of the district in which the violating act
19 occurred is unable to prosecute the case."

20 SECTION 4. A new section of the Antiterrorism Act is
21 enacted to read:

22 "[NEW MATERIAL] REPORTING AND INFORMATION SHARING.--

23 A. When a state entity receives information of
24 cyberterrorism as provided in the Computer Crimes Act,
25 terroristic threats, terrorist acts or any other information

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1 prohibited by the Antiterrorism Act, the state entity shall,
2 within twenty-four hours, send written notice of the possible
3 violation of the Antiterrorism Act to the New Mexico all source
4 intelligence center.

5 B. The New Mexico all source intelligence center
6 shall coordinate with federal entities, state entities and
7 political subdivisions of the state to detect and prevent
8 cyberterrorism as provided in the Computer Crimes Act,
9 terrorism and terroristic acts, threats and activities.

10 C. The following information is not subject to
11 inspection pursuant to the Inspection of Public Records Act:

12 (1) information a state entity receives
13 regarding cyberterrorism, terroristic threats, terrorist acts
14 or any other information prohibited by the Antiterrorism Act;

15 (2) notice sent from the state entity to the
16 New Mexico all source intelligence center regarding
17 cyberterrorism, terroristic threats, terrorist acts or any
18 other information prohibited by the Antiterrorism Act; and

19 (3) information that the New Mexico all source
20 intelligence center, other state entities and any political
21 subdivision of the state receives from federal entities
22 regarding the detection and prevention of cyberterrorism,
23 terrorism and terroristic threats, terrorist acts or any other
24 information prohibited by the Antiterrorism Act."

25 SECTION 5. Section 30-45-1 NMSA 1978 (being Laws 1989,

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1 Chapter 215, Section 1) is amended to read:

2 "30-45-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 45
3 NMSA 1978 may be cited as the "Computer Crimes Act"."

4 SECTION 6. Section 30-45-2 NMSA 1978 (being Laws 1989,
5 Chapter 215, Section 2) is amended to read:

6 "30-45-2. DEFINITIONS.--As used in the Computer Crimes
7 Act:

8 A. "access" means to program, execute programs on,
9 intercept, instruct, communicate with, store data in, retrieve
10 data from or otherwise make use of any computer resources,
11 including data or programs of a computer, computer system,
12 computer network or database;

13 B. "computer" includes an electronic, magnetic,
14 optical or other high-speed data processing device or system
15 performing logical, arithmetic or storage functions and
16 includes any property, data storage facility or communications
17 facility directly related to or operating in conjunction with
18 such device or system. The term does not include an automated
19 typewriter or typesetter or a single display machine in and of
20 itself, designed and used solely within itself for word
21 processing, or a portable hand-held calculator or any other
22 device ~~[which]~~ that might contain components similar to those
23 in computers but in which the components have the sole function
24 of controlling the device for the single purpose for which the
25 device is intended;

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1 C. "computer network" means the interconnection of
2 communication lines and circuits with a computer or a complex
3 consisting of two or more interconnected computers;

4 D. "computer program" means a series of
5 instructions or statements, in a form acceptable to a computer,
6 ~~[which]~~ that permits the functioning of a computer system in a
7 manner designed to provide appropriate products from a computer
8 system;

9 E. "computer property" includes ~~[a]~~ financial
10 instrument, data, databases, computer software, computer
11 programs, documents associated with computer systems and
12 computer programs, or copies, whether tangible or intangible,
13 and data while in transit;

14 F. "computer service" includes computer time; the
15 use of the computer system, computer network, computer programs
16 or data prepared for computer use; data contained within a
17 computer network; and data processing and other functions
18 performed, in whole or in part, by the use of computers,
19 computer systems, computer networks or computer software;

20 G. "computer software" means a set of computer
21 programs, procedures and associated documentation concerned
22 with the operation and function of a computer system;

23 H. "computer system" means a set of related or
24 interconnected computer equipment, devices and software;

25 I. "data" means a representation of information,

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1 knowledge, facts, concepts or instructions [~~which are~~] that is
2 prepared and [~~are~~] is intended for use in a computer, computer
3 system or computer network;

4 J. "database" means any data or other information
5 classified, processed, transmitted, received, retrieved,
6 originated, switched, stored, manifested, measured, detected,
7 recorded, reproduced, handled or utilized by a computer,
8 computer system, computer network or computer software;

9 K. "denial of service attack" means preventing
10 authorized access to computer resources or delaying time-
11 critical computer operations by inundating or otherwise
12 overloading a computer network, or attempting to inundate or
13 otherwise overload a computer service; and

14 [~~K-~~] L. "financial instrument" includes any check,
15 draft, warrant, money order, note, certificate of deposit,
16 letter of credit, bill of exchange, credit or debit card,
17 transaction, authorization mechanism, marketable security or
18 any other computerized representation thereof."

19 **SECTION 7.** A new section of the Computer Crimes Act is
20 enacted to read:

21 "[NEW MATERIAL] CYBERTERRORISM.--

22 A. Cyberterrorism consists of:

23 (1) committing any of the acts prohibited by
24 the Computer Crimes Act with the intent to intimidate or coerce
25 a civilian population, influence the policy of a state entity

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1 or a political subdivision of the state or affect the conduct
2 of a state entity or a political subdivision of the state; or
3 (2) committing a denial of service attack with
4 the intent to intimidate or coerce a civilian population,
5 influence the policy of a state entity or a political
6 subdivision of the state or affect the conduct of a state
7 entity or a political subdivision of the state and the computer
8 network against which the denial of service attack is committed
9 is:

10 (a) administered or operated by a
11 federal entity, state entity or a political subdivision of the
12 state;

13 (b) a utility provider, including a
14 provider of electricity or water; or

15 (c) a financial institution as defined
16 in Paragraph (23) of Subsection A of Section 58-16-3 NMSA 1978.

17 Whoever commits cyberterrorism is guilty of a third degree
18 felony.

19 B. A separate offense occurs on each calendar day
20 on which an act constituting cyberterrorism is committed."