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HOUSE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

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

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

A. coordinate the homeland security and emergency  
management efforts of all state and local government agencies,  
as well as enlist cooperation from private entities such as  
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 any act that  
21 causes great bodily harm or death with the intent to:

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

25 (2) influence the policy of a state

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

7 Whoever commits terrorism is guilty of a second degree  
8 felony.

9 D. Possessing a terroristic weapon consists of  
10 manufacturing, fabricating or possessing, in any manner and  
11 with the intent to commit terrorism pursuant to Subsection C of  
12 this section, a weapon:

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

16 (2) involving any biological agent, disease or  
17 disease organism; or

18 (3) designed to release radiation or  
19 radioactivity at a level dangerous to human life, other than a  
20 person engaged in the manufacture of such weapons for lawful  
21 purposes.

22 Whoever commits possessing a terroristic weapon is guilty  
23 of a third degree felony.

24 E. Making a terroristic threat involving a school,  
25 community center or public accommodation consists of



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1 unequivocally, unconditionally and specifically threatening to  
2 commit any act of terrorism pursuant to Subsection C of this  
3 section, whether that threat is made online or otherwise,  
4 against a person at a school, community center or public  
5 accommodation, or against a school, community center or public  
6 accommodation with the intent to:

7 (1) cause a reaction to the threat by an  
8 official or volunteer agency organized to deal with  
9 emergencies;

10 (2) place a person in fear of great bodily  
11 harm; or

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

14 Whoever commits making a terroristic threat involving a  
15 school, community center or public accommodation is guilty of a  
16 third degree felony.

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

24 **SECTION 4.** A new section of the Antiterrorism Act is  
25 enacted to read:

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

2           A. When a state entity receives information of  
3 cyberterrorism as provided in the Computer Crimes Act,  
4 terroristic threats, terrorist acts or any other information  
5 prohibited by the Antiterrorism Act, the state entity shall,  
6 within twenty-four hours, send written notice of the possible  
7 violation of the Antiterrorism Act to the New Mexico all source  
8 intelligence center.

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

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

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

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

23                   (3) information that the New Mexico all source  
24 intelligence center, other state entities and any political  
25 subdivision of the state receives from federal entities

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1 regarding the detection and prevention of cyberterrorism,  
2 terrorism and terroristic threats, terrorist acts or any other  
3 information prohibited by the Antiterrorism Act."

4 SECTION 5. Section 30-45-1 NMSA 1978 (being Laws 1989,  
5 Chapter 215, Section 1) is amended to read:

6 "30-45-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 45  
7 NMSA 1978 may be cited as the "Computer Crimes Act"."

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

10 "30-45-2. DEFINITIONS.--As used in the Computer Crimes  
11 Act:

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

17 B. "computer" includes an electronic, magnetic,  
18 optical or other high-speed data processing device or system  
19 performing logical, arithmetic or storage functions and  
20 includes any property, data storage facility or communications  
21 facility directly related to or operating in conjunction with  
22 such device or system. The term does not include an automated  
23 typewriter or typesetter or a single display machine in and of  
24 itself, designed and used solely within itself for word  
25 processing, or a portable hand-held calculator or any other

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1 device [~~which~~] that might contain components similar to those  
2 in computers but in which the components have the sole function  
3 of controlling the device for the single purpose for which the  
4 device is intended;

5 C. "computer network" means the interconnection of  
6 communication lines and circuits with a computer or a complex  
7 consisting of two or more interconnected computers;

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

13 E. "computer property" includes [~~⌘~~] financial  
14 instrument, data, databases, computer software, computer  
15 programs, documents associated with computer systems and  
16 computer programs, or copies, whether tangible or intangible,  
17 and data while in transit;

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

24 G. "computer software" means a set of computer  
25 programs, procedures and associated documentation concerned

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1 with the operation and function of a computer system;

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

4 I. "data" means a representation of information,  
5 knowledge, facts, concepts or instructions [~~which are~~] that is  
6 prepared and [~~are~~] is intended for use in a computer, computer  
7 system or computer network;

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

13 K. "denial of service attack" means preventing  
14 authorized access to computer resources or delaying time-  
15 critical computer operations by unlawfully inundating or  
16 otherwise overloading a computer network, or unlawfully  
17 attempting to inundate or otherwise overload a computer  
18 service; and

19 [~~K-~~] L. "financial instrument" includes any check,  
20 draft, warrant, money order, note, certificate of deposit,  
21 letter of credit, bill of exchange, credit or debit card,  
22 transaction, authorization mechanism, marketable security or  
23 any other computerized representation thereof."

24 SECTION 7. A new section of the Computer Crimes Act is  
25 enacted to read:

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1           "[NEW MATERIAL] CYBERTERRORISM.--

2                   A. Cyberterrorism consists of:

3                           (1) committing any of the acts prohibited by  
4 the Computer Crimes Act with the intent to intimidate or coerce  
5 a civilian population, influence the policy of a state entity  
6 or a political subdivision of the state or affect the conduct  
7 of a state entity or a political subdivision of the state; or

8                           (2) committing a denial of service attack with  
9 the intent to intimidate or coerce a civilian population,  
10 influence the policy of a state entity or a political  
11 subdivision of the state or affect the conduct of a state  
12 entity or a political subdivision of the state and the computer  
13 network against which the denial of service attack is committed  
14 is:

15                                   (a) administered or operated by a  
16 federal entity, state entity or a political subdivision of the  
17 state;

18                                   (b) a utility provider, including a  
19 provider of electricity or water; or

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

22           Whoever commits cyberterrorism is guilty of a third degree  
23 felony.

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

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