

HOUSE BILL 269

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

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO DOMESTIC TERRORISM; DEFINING "DENIAL OF SERVICE ATTACK"; DEFINING "SCHOOL" ~~Hf1~~→**AND**←~~Hf1~~ Hf1→, ←~~Hf1~~ "COMMUNITY CENTER" Hf1→, **"PLACE OF WORSHIP" AND "PUBLIC ACCOMMODATION"**←~~Hf1~~; 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,

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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;

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

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

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

E. establish security standards for state facilities and for protection of their occupants and develop plans for the continuity of state government operations in the

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event of a threat or act of terrorism or other natural or man-made disaster;

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

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

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

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

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

K. develop and maintain a statewide plan and strategy to manage and allocate federal grant funds required to provide the state's emergency response community with the equipment necessary to respond to an act of terrorism involving

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a weapon of mass destruction; and

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

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

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

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

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

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

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

- (a) bomb;
- (b) grenade;
- (c) rocket having a propellant charge of more than four ounces;
- (d) missile having an explosive or incendiary charge of more than one-quarter ounce;
- (e) mine; or

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(f) similar device;

(2) ~~any~~ a type of weapon that can expel or may be readily converted to expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than six-tenths inch in diameter, except a shotgun, shotgun shell or muzzle loading firearm that is generally recognized as particularly suitable for sporting purposes; or

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

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

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

~~D.~~ E. "law enforcement officer" means ~~any~~ an employee of a police or public safety department administered by the state or ~~any~~ a political subdivision of the state where the employee is responsible for the prevention and

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detection of crime and the enforcement of the penal, traffic or highway laws of this state. "Law enforcement officer" includes [any] a member of the New Mexico national guard; [any] a peace officer of the United States, [any] a state, [any] a political subdivision of a state or the District of Columbia; [any] a member of the New Mexico mounted patrol or the national guard, as defined in 10 U.S.C. Sec. 101(9); [any] a member of the organized militia of [any] a state or territory of the United States, the commonwealth of Puerto Rico or the District of Columbia not included within the definition of national guard; and [any] a member of the armed forces of the United States.

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

Hf1→F. "place of worship" means any physical location of religious assembly;←Hf1

Hf1→F.←Hf1 Hf1→G.←Hf1 "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private; and

Hf1→G.←Hf1 Hf1→H.←Hf1 "school" means any physical location in which instruction is offered by one or more teachers and is discernible as a building or group of buildings

generally recognized as either an elementary, middle, junior high, high school, college or university or any combination of those, whether public, private or charter."

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

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

A. Any person who teaches or demonstrates the use, application or making of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used to commit terrorism as defined in Subsection C of this section in furtherance of a civil disorder is guilty of a ~~[fourth]~~ third degree felony ~~[and shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite term of eighteen months or, in the discretion of the sentencing court, to a fine of not more than five thousand dollars (\$5,000) or both].~~

B. Any person who trains, practices or receives instruction in the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used to commit terrorism as defined in Subsection C of this section in furtherance of a civil disorder is guilty of a ~~[fourth]~~ third degree felony ~~[and shall be sentenced under the provisions of the Criminal Sentencing Act~~

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~~to imprisonment for a definite term of eighteen months or, in the discretion of the sentencing court, to a fine of not more than five thousand dollars (\$5,000) or both].~~

C. Terrorism consists of committing HJC→~~an act dangerous to human life that is also a criminal violation of state law~~←HJC HJC→any act that causes great bodily harm or death←HJC with the intent to:

(1) intimidate or coerce a civilian population, including committing mass violence in a Hfl→place of worship or←Hfl public accommodation;

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

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

Whoever commits terrorism is guilty of a second degree felony HCPAC→~~and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the~~

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Criminal Sentencing Act ←HCPAC.

D. Possessing a terroristic weapon consists of manufacturing, fabricating or possessing, in any manner

HCPAC → and with the intent to commit terrorism pursuant to

Subsection C of this section ←HCPAC, HCPAC → whether real or

imitation, ←HCPAC a weapon:

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

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

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

Whoever commits possessing a terroristic weapon is guilty of a HCPAC → second ←HCPAC HCPAC → third ←HCPAC degree felony

HCPAC → and, notwithstanding the provisions of Section 31-18-15

NMSA 1978, shall be sentenced to a minimum term of imprisonment

of three years, which shall not be suspended or deferred. The

imposition of a minimum, mandatory term of imprisonment

pursuant to the provisions of this subsection shall not be

interpreted to preclude the imposition of sentencing

enhancements pursuant to the provisions of the Criminal

Sentencing Act ←HCPAC.

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E. Making a terroristic threat involving a school, community center Hf1→, place of worship←Hf1 or public accommodation consists of HCPAC→unequivocally, unconditionally and specifically←HCPAC threatening to commit any HJC→criminal offense←HJC HJC→act of terrorism pursuant to Subsection C of this section←HJC, HCPAC→unequivocally, unconditionally and specifically,←HCPAC whether that threat is made online or otherwise, HJC→involving violence←HJC against a person at a school, community center Hf1→, place of worship←Hf1 or public accommodation, or HJC→to harm←HJC HJC→against←HJC a school, community center Hf1→, place of worship←Hf1 or public accommodation with the intent to HJC→HCPAC→commit terrorism pursuant to Subsection C of this section to←HCPAC←HJC:

- (1) cause a reaction to the threat by an official or volunteer agency organized to deal with emergencies;
- (2) place a person in fear of great bodily harm; or
- (3) prevent or interrupt the occupation or use of a school Hf1→~~or community center building~~←Hf1 Hf1→, community center, place of worship or public accommodation←Hf1.

Whoever commits making a terroristic threat involving a school, community center Hf1→, place of worship←Hf1 or public accommodation is guilty of a HCPAC→second←HCPAC HCPAC→third←HCPAC degree felony.

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

HCPAC → ~~G.~~ ← HCPAC HCPAC → ~~F.~~ ← HCPAC The attorney general and the district attorney of the district in which a violation of this section occurs have concurrent jurisdiction to enforce the provisions of this section. This subsection does not prevent a district attorney from another district from exercising jurisdiction when the district attorney of the district in which the violating act occurred is unable to prosecute the case."

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

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

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

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

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

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

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

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

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

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

SECTION 6. Section 30-45-2 NMSA 1978 (being Laws 1989,

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Chapter 215, Section 2) is amended to read:

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

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

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

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

D. "computer program" means a series of

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instructions or statements, in a form acceptable to a computer, [which] that permits the functioning of a computer system in a manner designed to provide appropriate products from a computer system;

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

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

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

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

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

J. "database" means any data or other information

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classified, processed, transmitted, received, retrieved, originated, switched, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer system, computer network or computer software;

K. "denial of service attack" means preventing authorized access to computer resources or delaying time-critical computer operations by HJC→unlawfully←HJC inundating or otherwise overloading a computer network, or HJC→unlawfully←HJC attempting to inundate or otherwise overload a computer service; and

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

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

"[NEW MATERIAL] CYBERTERRORISM.--

A. Cyberterrorism consists of:

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

(2) committing a denial of service attack with

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the intent to intimidate or coerce a civilian population, influence the policy of a state entity or a political subdivision of the state or affect the conduct of a state entity or a political subdivision of the state and the computer network against which the denial of service attack is committed is:

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

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

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

Whoever commits cyberterrorism is guilty of a third degree felony.

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