

NEW YORK STATE PENAL LAW, SECTION 490 - TERRORISM

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S 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, 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 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. 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.

S 490.01 Liability protection.

1. Any person who makes a qualified disclosure of suspicious behavior shall be immune from civil and criminal liability for reporting such behavior.

2. For purposes of this article, "qualified disclosure of suspicious behavior" means any disclosure of allegedly suspicious behavior of another individual or individuals to any person that is made in good faith and with the reasonable belief that such suspicious behavior constitutes, is indicative of, or is in furtherance of a crime or an act of terrorism.

3. An action alleging that a statement or disclosure by a person of any suspicious transaction, activity or occurrence indicating that an individual may be engaging in or preparing to engage in suspicious behavior which constitutes, is indicative of, or is in furtherance of, a crime or an act of terrorism was not made in good faith and with the reasonable belief that such suspicious behavior constitutes, is indicative of, or is in furtherance of, a crime or an act of terrorism must be pled with particularity pursuant to subdivision (b) of rule three thousand sixteen of the civil practice law and rules.

S 490.05 Definitions.

As used in this article, the following terms shall mean and include:

1. "Act of terrorism":

(a) for purposes of this article means 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) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination or kidnapping; or

(b) for purposes of subparagraph (xiii) of paragraph (a) of subdivision one of section 125.27 of this chapter means 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) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination or kidnapping.

2. "Material support or resources" means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. (a) "Specified offense" for purposes of this article means a class A felony offense other than an offense as defined in article two hundred twenty, a violent felony offense as defined in section 70.02, manslaughter in the second degree as defined in section 125.15, criminal tampering in the first degree as defined in section 145.20, identity

theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, money laundering in support of terrorism in the fourth degree as defined in section 470.21, money laundering in support of terrorism in the third degree as defined in section 470.22, money laundering in support of terrorism in the second degree as defined in section 470.23, money laundering in support of terrorism in the first degree as defined in section 470.24 of this chapter, and includes an attempt or conspiracy to commit any such offense.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, a specified offense shall not mean an offense defined in sections 490.37, 490.40, 490.45, 490.47, 490.50, and 490.55 of this article, nor shall a specified offense mean an attempt to commit any such offense.

4. "Renders criminal assistance" for purposes of sections 490.30 and 490.35 of this article shall have the same meaning as in section 205.50 of this chapter.

5. "Biological agent" means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such micro-organism, virus, infectious substance, or biological product, capable of causing:

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or material of any kind; or

(c) deleterious alteration of the environment.

6. "Toxin" means the toxic material of plants, animals, micro-organisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(b) any poisonous isomer or biological product, homolog, or derivative of such a substance.

7. "Delivery system" means:

(a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(b) any vector.

8. "Vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

9. "Biological weapon" means any biological agent, toxin, vector, or delivery system or combination thereof.

10. "Chemical weapon" means the following, together or separately:

(a) a toxic chemical or its precursors;

(b) a munition or device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or its precursors,

which would be released as a result of the employment of such munition or device;

(c) any equipment specifically designed for use directly in connection with the employment of munitions or devices; or

(d) any device that is designed to release radiation or radioactivity at a level dangerous to human life.

11. "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system, and includes precursors which have been identified for application of verification measures under article VI of the convention in schedules contained in the annex on chemicals of the chemical weapons convention.

12. "Key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

13. "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, serious physical injury or permanent harm to humans or animals, including all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere, and includes toxic chemicals which have been identified by the commissioner of health and included on the list of toxic chemicals pursuant to subdivision twenty of section two hundred six of the public health law.

14. The terms "biological agent", "toxin", and "toxic chemical" do not include any biological agent, toxin or toxic chemical that is in its naturally occurring environment, if the biological agent, toxin or toxic chemical has not been cultivated, collected, or otherwise extracted from its natural source.

15. "Select chemical agent" shall mean a chemical weapon which has been identified in regulations promulgated pursuant to subdivision twenty of section two hundred six of the public health law.

16. "Select biological agent" shall mean a biological weapon which has been identified in regulations promulgated pursuant to subdivision twenty-one of section two hundred six of the public health law.

17. "Chemical weapons convention" and "convention" mean the convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, opened for signature on January thirteenth, nineteen hundred ninety-three.

S 490.10 Soliciting or providing support for an act of terrorism in the second degree.

A person commits soliciting or providing support for an act of terrorism in the second degree when, with intent that material support or resources will be used, in whole or in part, to plan, prepare, carry out or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism, he or she raises, solicits, collects or provides material support or resources.

Soliciting or providing support for an act of terrorism in the second degree is a class D felony.

S 490.15 Soliciting or providing support for an act of terrorism in the first degree.

A person commits soliciting or providing support for an act of

terrorism in the first degree when he or she commits the crime of soliciting or providing support for an act of terrorism in the second degree and the total value of material support or resources exceeds one thousand dollars.

Soliciting or providing support for an act of terrorism in the first degree is a class C felony.

S 490.20 Making a terroristic threat.

1. A person is guilty of making a terroristic threat 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 by murder, assassination or kidnapping, he or she threatens to commit or cause to be committed a specified offense and thereby causes a reasonable expectation or fear of the imminent commission of such offense.

2. It shall be no defense to a prosecution pursuant to this section that the defendant did not have the intent or capability of committing the specified offense or that the threat was not made to a person who was a subject thereof.

Making a terroristic threat is a class D felony.

S 490.25 Crime of terrorism.

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 by murder, assassination or kidnapping, he or she commits a specified offense.

2. Sentencing.

(a) When a person is convicted of a crime of terrorism pursuant to this section, and the specified offense is a class B, C, D or E felony offense, the crime of terrorism shall be deemed a violent felony offense.

(b) When a person is convicted of a crime of terrorism pursuant to this section, and the specified offense is a class C, D or E felony offense, the crime of terrorism shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit the offense, whichever is applicable.

(c) When a person is convicted of a crime of terrorism pursuant to this section, and the specified offense is a class B felony offense, the crime of terrorism shall be deemed a class A-I felony offense and the sentence imposed upon conviction of such offense shall be in accordance with section 70.00 of this chapter.

(d) Notwithstanding any other provision of law, when a person is convicted of a crime of terrorism pursuant to this section, and the specified offense is a class A-I felony offense, the sentence upon conviction of such offense shall be life imprisonment without parole; provided, however, that nothing herein shall preclude or prevent a sentence of death when the specified offense is murder in the first degree as defined in section 125.27 of this chapter.

S 490.30 Hindering prosecution of terrorism in the second degree.

A person is guilty of hindering prosecution of terrorism in the second

degree when he or she renders criminal assistance to a person who has committed an act of terrorism, knowing or believing that such person engaged in conduct constituting an act of terrorism.

Hindering prosecution of terrorism in the second degree is a class C felony.

S 490.35 Hindering prosecution of terrorism in the first degree.

A person is guilty of hindering prosecution of terrorism in the first degree when he or she renders criminal assistance to a person who has committed an act of terrorism that resulted in the death of a person other than one of the participants, knowing or believing that such person engaged in conduct constituting an act of terrorism.

Hindering prosecution of terrorism in the first degree is a class B felony.

S 490.37 Criminal possession of a chemical weapon or biological weapon in the third degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the third degree when he or she possesses any select chemical agent or select biological agent under circumstances evincing an intent by the defendant to use such weapon to cause serious physical injury or death to another person.

Criminal possession of a chemical weapon or biological weapon in the third degree is a class C felony.

S 490.40 Criminal possession of a chemical weapon or biological weapon in the second degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the second degree when he or she possesses any chemical weapon or biological weapon with intent to use such weapon to:

1. (a) cause serious physical injury to, or the death of, another person; and
- (b) (i) intimidate or coerce a civilian population;
- (ii) influence the policy of a unit of government by intimidation or coercion; or
- (iii) affect the conduct of a unit of government by murder, assassination, or kidnapping.

2. cause serious physical injury to, or the death of, more than two persons.

Criminal possession of a chemical weapon or biological weapon in the second degree is a class B felony.

S 490.45 Criminal possession of a chemical weapon or biological weapon in the first degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the first degree when he or she possesses:

1. any select chemical agent, with intent to use such agent to:
 - (a) cause serious physical injury to, or the death of, another person; and
 - (b) (i) intimidate or coerce a civilian population;
 - (ii) influence the policy of a unit of government by intimidation or coercion; or
 - (iii) affect the conduct of a unit of government by murder, assassination, or kidnapping.

2. any select chemical agent, with intent to use such agent to cause serious physical injury to, or the death of, more than two other

persons; or

3. any select biological agent, with intent to use such agent to cause serious physical injury to, or the death of, another person.

Criminal possession of a chemical weapon or biological weapon in the first degree is a class A-I felony.

S 490.47 Criminal use of a chemical weapon or biological weapon in the third degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the third degree when, under circumstances evincing a depraved indifference to human life, he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent or select biological agent, and thereby creates a grave risk of death or serious physical injury to another person not a participant in the crime.

Criminal use of a chemical weapon or biological weapon in the third degree is a class B felony.

S 490.50 Criminal use of a chemical weapon or biological weapon in the second degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the second degree when he or she uses, deploys, releases, or causes to be used, deployed, or released, any chemical weapon or biological weapon, with intent to:

1. cause serious physical injury to, or the death of, another person; and

2. (a) intimidate or coerce a civilian population;

(b) influence the policy of a unit of government by intimidation or coercion; or

(c) to affect the conduct of a unit of government by murder, assassination, or kidnapping.

Criminal use of a chemical weapon or biological weapon in the second degree is a class A-II felony.

S 490.55 Criminal use of a chemical weapon or biological weapon in the first degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the first degree when:

1. with intent to:

(a) cause serious physical injury to, or the death of, another person; and

(b) (i) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination, or kidnapping;

he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent and thereby causes serious physical injury to, or the death of, another person who is not a participant in the crime.

2. with intent to cause serious physical injury to, or the death of, more than two persons, he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent and thereby causes serious physical injury to, or the death of, more than two persons who are not participants in the crime; or

3. with intent to cause serious physical injury to, or the death of, another person, he or she uses, deploys, releases, or causes to be used, deployed, or released any select biological agent and thereby causes

serious physical injury to, or the death of, another person who is not a participant in the crime.

Criminal use of a chemical weapon or biological weapon in the first degree is a class A-I felony.

S 490.70 Limitations.

1. The provisions of sections 490.37, 490.40, 490.45, 490.47, 490.50, and 490.55 of this article shall not apply where the defendant possessed or used:

(a) any household product generally available for sale to consumers in this state in the quantity and concentration available for such sale;

(b) a self-defense spray device in accordance with the provisions of paragraph fourteen of subdivision a of section 265.20 of this chapter;

(c) a chemical weapon solely for a purpose not prohibited under this chapter, as long as the type and quantity is consistent with such a purpose; or

(d) a biological agent, toxin, or delivery system solely for prophylactic, protective, bona fide research, or other peaceful purposes.

2. For the purposes of this section, the phrase "purposes not prohibited by this chapter" means the following:

(a) any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other peaceful activity;

(b) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; and

(d) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.