HOUSE BILL 70

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

INTRODUCED BY

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AN ACT

RELATING TO DOMESTIC TERRORISM; DEFINING "DENIAL OF SERVICE ATTACK"; DEFINING "SCHOOL", "COMMUNITY CENTER", "PLACE OF WORSHIP" AND "PUBLIC ACCOMMODATION"; 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
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
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 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
   (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. "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. "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
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

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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;

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

G. "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

H. "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 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 any act that causes great bodily harm or death with the intent to:

(1) intimidate or coerce a civilian
population, including committing mass violence in a place of
worship or 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 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.

D. Possessing a terroristic weapon consists of
manufacturing, fabricating or possessing, in any manner and
with the intent to commit terrorism pursuant to Subsection C of
this section, 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 third degree felony.

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

(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, community center, place of worship or public accommodation.

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

F. 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 .218967.1
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.

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 terrorist 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,
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 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 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 unlawfully inundating or otherwise overloading a computer network, or unlawfully attempting to inundate or otherwise overload a computer service; and

[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 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."