

LAWS OF NEW YORK, 2001 CHAPTER 300

AN ACT to amend the penal law and the criminal procedure law, in relation to criminal penalties for a crime of terrorism, soliciting or providing support for an act of terrorism, terroristic threats, and hindering prosecution of terrorism and to repeal certain provisions of the criminal procedure law relating thereto. Became a law September 17, 2001, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present. The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "antiterrorism act of 2001". § 2. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraphs (a) and (b) as amended by chapter 33 of the laws of 1999 and paragraph (c) as amended by chapter 189 of the laws of 2000, are amended to read as follows:

- a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, rape in the first degree as defined in section 130.35, sodomy in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, criminal possession of a dangerous weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, [and] intimidating a victim or witness in the first degree as defined in section 215.17, and hindering prosecution of terrorism in the first degree as defined in section 490.35.
- b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12 [and], criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15 and hindering prosecution of terrorism in the second degree as defined in section 490.30.
- c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); assault in the second degree as defined in section 120.05, stalking in the first degree, as defined in subdivision one of section 120.60, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66,

criminal possession of a weapon in the third degree as defined in subdivision four, five, six, seven or eight of section 265.02, [and] intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20. § 3. Subparagraph (xii) of paragraph (a) of subdivision 1 of section 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is amended and a new subparagraph (xiii) is added to read as follows: (xii) the intended victim was a judge as defined in subdivision twenty-three of section 1.20 of the criminal procedure law and the defendant killed such victim because such victim was, at the time of the killing, a judge; [and] or (xiii) the victim was killed in furtherance of an act of terrorism, as defined in paragraph (b) of subdivision one of section 490.05 of this chapter; and

§ 4. Part 4 of the penal law is amended by adding a new title Y-1 to read as follows:

TITLE Y-1

ARTICLE 490

TERRORISM

Section 490.00 Legislative findings.

490.05 Definitions.

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

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

490.20 Making a terroristic threat. 490.25 Crime of terrorism.

490.30 Hindering prosecution of terrorism in the second degree.

490.35 Hindering prosecution of terrorism in the first degree.

§ 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.

§ 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, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
- 3. "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 of this chapter, and includes an attempt or conspiracy 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§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.

§ 5. Subdivisions 4 and 7 of section 200.50 of the criminal procedure law, as amended by chapter 107 of the laws of 2000, are amended to read as follows:

4. A statement in each count that the grand jury, or, where the accusatory instrument is a superior court information, the district attorney, accuses the defendant or defendants of a designated offense, provided that in any prosecution under article four hundred eighty-five of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 485.05 of the penal law, followed by the phrase "as a hate crime", and provided further that in any prosecution under section 490.25 of the penal law, the designated offense shall be the specified offense, as defined in subdivision three of section 490.05 of the penal law, followed by the phrase "as a crime of terrorism"; and

7. A plain and concise factual statement in each count which, without allegations of an evidentiary nature,(a) asserts facts supporting every element of the offense charged and the defendant's or defendants' commission thereof with sufficient precision to clearly apprise the defendant or defendants of the conduct which is the subject of the accusation; and (b) in the case of any armed felony, as defined in subdivision forty-one of section 1.20, states that such offense is an armed felony and specifies the particular implement the defendant or defendants possessed, were armed with, used or displayed or, in the case of an implement displayed, specifies what the implement appeared to be; and (c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person; and (d) in the case of a crime of terrorism, as defined in section 490.25 of the penal law, specifies, as applicable, that the defendant or defendants acted 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; and

§ 6. Paragraph (d) of subdivision 7 of section 400.27 of the criminal procedure law, as added by chapter 1 of the laws of 1995, is amended to read as follows:

(e) Whenever the people intend to offer evidence of an aggravating factor set forth in this subdivision, the people must within a reasonable time prior to trial file with the court and serve upon the defendant a notice of intention to offer such evidence. Whenever the people intend to offer evidence of the aggravating factor set forth in paragraph [(b)] (a) of this subdivision, the people shall file with the notice of intention to offer such evidence a statement setting forth the date and place of each of the alleged offenses in paragraph [(b)] (a) of this subdivision. The provisions of section 400.15 of this chapter, except for subdivisions one and two thereof, shall be followed.

§ 7. Paragraph (a) of subdivision 7 of section 400.27 of the criminal procedure law is REPEALED and paragraphs (b), (c) and (d) are re-lettered paragraphs (a), (b) and (c).

§ 8. Subdivision 8 of section 700.05 of the criminal procedure law is amended by adding a new paragraph (q) to read as follows:

(q) Soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10 of the penal law, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15 of the penal law, making a terroristic threat as defined in section 490.20 of the penal law, crime of terrorism as defined in section 490.25 of the penal law, hindering prosecution of terrorism in the second degree as defined in section 490.30 of the penal law, and hindering prosecution of terrorism in the first degree as defined in section 490.35 of the penal law.

§ 9. If any item, clause, sentence, subparagraph, subdivision, section or other part of this act, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

§ 10. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.