

**SUMMARY:****S70002 BALBONI**

BALBONI, BRUNO, ALESİ, BONACIC, BRESLIN, BROWN, CONNOR, DeFRANCISCO, DOLLINGER, ESPADA, FARLEY, FUSCHILLO, GENTILE, GONZALEZ, GOODMAN, HANNON, HASSELL-THOMPSON, HEVESI, HOFFMANN, JOHNSON, KRUGER, KUHL

Amd SS70.02 & 125.27, add Part 4 Title Y-1 SS490.00 - 490.35, Pen L; amd SS200.50, 400.27 & 700.05, rpld S400.27 sub 7 P(a), CP L

Enacts the anti-terrorism act of 2001; provides criminal penalties for a crime of terrorism, soliciting or providing support for an act of terrorism, terroristic threats and hindering prosecution of terrorism; creates new article 490 in the penal law.

CRIMINAL SANCTION IMPACT.

EFF. DATE 09/17/2001

Governor's Program

**BILL TEXT:**

**STATE OF NEW YORK**

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Second Extraordinary Session

**IN SENATE**

September 17, 2001

Introduced by Sens. BALBONI, BRUNO, ALESİ, BONACIC, BRESLIN, BROWN, CONNOR, DEFRANCISCO, DOLLINGER, ESPADA, FARLEY, FUSCHILLO, GENTILE, GONZALEZ, GOODMAN, HANNON, HASSELL-THOMPSON, HEVESI, HOFFMANN, JOHNSON, KRUGER, KUHL, LACHMAN, LACK, LARKIN, LAVALLE, LEIBELL, LIBOUS, MALTESE, MARCELLINO, MARCHI, MARKOWITZ, MAZIARZ, MCGEE, MEIER, MENDEZ, MONTGOMERY, MORAHAN, NOZZOLIO, ONORATO, OPPENHEIMER, PADAVAN, PATERSON, RATH, SALAND, SAMPSON, SANTIAGO, SCHNEIDERMAN, SEWARD, SKELOS, A. SMITH, M. SMITH, SPANO, STACHOWSKI, STAFFORD, STAVISKY, TRUNZO, VELELLA, VOLKER, WRIGHT -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. This act shall be known and may be cited as the "anti-ter-
- 2 rorism act of 2001".
- 3 § 2. Paragraphs (a), (b) and (c) of subdivision 1 of section 70.02 of
- 4 the penal law, paragraphs (a) and (b) as amended by chapter 33 of the
- 5 laws of 1999 and paragraph (c) as amended by chapter 189 of the laws of
- 6 2000, are amended to read as follows:
- 7 (a) Class B violent felony offenses: an attempt to commit the class

8 A-I felonies of murder in the second degree as defined in section  
 9 125.25, kidnapping in the first degree as defined in section 135.25, and  
 10 arson in the first degree as defined in section 150.20; manslaughter in  
 11 the first degree as defined in section 125.20, rape in the first degree  
 12 as defined in section 130.35, sodomy in the first degree as defined in  
 13 section 130.50, aggravated sexual abuse in the first degree as defined

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
 [-] is old law to be omitted.

LBD12199-04-1

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1 in section 130.70, course of sexual conduct against a child in the first  
 2 degree as defined in section 130.75; assault in the first degree as  
 3 defined in section 120.10, kidnapping in the second degree as defined in  
 4 section 135.20, burglary in the first degree as defined in section  
 5 140.30, arson in the second degree as defined in section 150.15, robbery  
 6 in the first degree as defined in section 160.15, criminal possession of  
 7 a dangerous weapon in the first degree as defined in section 265.04,  
 8 criminal use of a firearm in the first degree as defined in section  
 9 265.09, criminal sale of a firearm in the first degree as defined in  
 10 section 265.13, aggravated assault upon a police officer or a peace  
 11 officer as defined in section 120.11, gang assault in the first degree  
 12 as defined in section 120.07, [and] intimidating a victim or witness in  
 13 the first degree as defined in section 215.17, and hindering prosecution  
 14 of terrorism in the first degree as defined in section 490.35.

15 (b) Class C violent felony offenses: an attempt to commit any of the  
 16 class B felonies set forth in paragraph (a); aggravated sexual abuse in  
 17 the second degree as defined in section 130.67, assault on a peace offi-  
 18 cer, police officer, fireman or emergency medical services professional  
 19 as defined in section 120.08, gang assault in the second degree as  
 20 defined in section 120.06, burglary in the second degree as defined in  
 21 section 140.25, robbery in the second degree as defined in section  
 22 160.10, criminal possession of a weapon in the second degree as defined  
 23 in section 265.03, criminal use of a firearm in the second degree as  
 24 defined in section 265.08, criminal sale of a firearm in the second  
 25 degree as defined in section 265.12 [and], criminal sale of a firearm  
 26 with the aid of a minor as defined in section 265.14, soliciting or  
 27 providing support for an act of terrorism in the first degree as defined  
 28 in section 490.15 and hindering prosecution of terrorism in the second  
 29 degree as defined in section 490.30.

30 (c) Class D violent felony offenses: an attempt to commit any of the  
 31 class C felonies set forth in paragraph (b); assault in the second  
 32 degree as defined in section 120.05, stalking in the first degree, as  
 33 defined in subdivision one of section 120.60, sexual abuse in the first  
 34 degree as defined in section 130.65, course of sexual conduct against a  
 35 child in the second degree as defined in section 130.80, aggravated  
 36 sexual abuse in the third degree as defined in section 130.66, criminal  
 37 possession of a weapon in the third degree as defined in subdivision  
 38 four, five, six, seven or eight of section 265.02, [and] intimidating a  
 39 victim or witness in the second degree as defined in section 215.16,  
 40 soliciting or providing support for an act of terrorism in the second  
 41 degree as defined in section 490.10, and making a terroristic threat as  
 42 defined in section 490.20.

43 § 3. Subparagraph (xii) of paragraph (a) of subdivision 1 of section  
 44 125.27 of the penal law, as added by chapter 1 of the laws of 1995, is  
 45 amended and a new subparagraph (xiii) is added to read as follows:

46 (xii) the intended victim was a judge as defined in subdivision twen-  
 47 ty-three of section 1.20 of the criminal procedure law and the defendant  
 48 killed such victim because such victim was, at the time of the killing,  
 49 a judge; [and] or  
 50 (xiii) the victim was killed in furtherance of an act of terrorism, as

51 defined in paragraph (b) of subdivision one of section 490.05 of this  
 52 chapter; and  
 53 § 4. Part 4 of the penal law is amended by adding a new title Y-1 to  
 54 read as follows:

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1 TITLE Y-1  
 2 ARTICLE 490  
 3 TERRORISM

- 4 Section 490.00 Legislative findings.  
 5 490.05 Definitions.  
 6 490.10 Soliciting or providing support for an act of terrorism  
 7 in the second degree.  
 8 490.15 Soliciting or providing support for an act of terrorism  
 9 in the first degree.  
 10 490.20 Making a terroristic threat.  
 11 490.25 Crime of terrorism.  
 12 490.30 Hindering prosecution of terrorism in the second degree.  
 13 490.35 Hindering prosecution of terrorism in the first degree.

14 § 490.00 Legislative findings.  
 15 The devastating consequences of the recent barbaric attack on the  
 16 World Trade Center and the Pentagon underscore the compelling need for  
 17 legislation that is specifically designed to combat the evils of terror-  
 18 ism. Indeed, the bombings of American embassies in Kenya and Tanzania in  
 19 1998, the federal building in Oklahoma City in 1995, Pan Am Flight  
 20 number 103 in Lockerbie in 1988, the 1997 shooting atop the Empire State  
 21 Building, the 1994 murder of Ari Halberstam on the Brooklyn Bridge and  
 22 the 1993 bombing of the World Trade Center, will forever serve to remind  
 23 us that terrorism is a serious and deadly problem that disrupts public  
 24 order and threatens individual safety both at home and around the world.  
 25 Terrorism is inconsistent with civilized society and cannot be toler-  
 26 ated.

27 Although certain federal laws seek to curb the incidence of terrorism,  
 28 there are no corresponding state laws that facilitate the prosecution  
 29 and punishment of terrorists in state courts. Inexplicably, there is  
 30 also no criminal penalty in this state for a person who solicits or  
 31 raises funds for, or provides other material support or resources to,  
 32 those who commit or encourage the commission of horrific and cowardly  
 33 acts of terrorism. Nor do our criminal laws proscribe the making of  
 34 terrorist threats or punish with appropriate severity those who hinder  
 35 the prosecution of terrorists. Finally, our death penalty statute must  
 36 be strengthened so that the cold-blooded execution of an individual for  
 37 terrorist purposes is a capital offense.

38 A comprehensive state law is urgently needed to complement federal  
 39 laws in the fight against terrorism and to better protect all citizens  
 40 against terrorist acts. Accordingly, the legislature finds that our  
 41 laws must be strengthened to ensure that terrorists, as well as those  
 42 who solicit or provide financial and other support to terrorists, are  
 43 prosecuted and punished in state courts with appropriate severity.

44 § 490.05 Definitions.  
 45 As used in this article, the following terms shall mean and include:  
 46 1. "Act of terrorism":  
 47 (a) for purposes of this article means an act or acts constituting a  
 48 specified offense as defined in subdivision three of this section for  
 49 which a person may be convicted in the criminal courts of this state  
 50 pursuant to article twenty of the criminal procedure law, or an act or  
 51 acts constituting an offense in any other jurisdiction within or outside  
 52 the territorial boundaries of the United States which contains all of

53 the essential elements of a specified offense, that is intended to:

54 (i) intimidate or coerce a civilian population;

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

3 (iii) affect the conduct of a unit of government by murder, assassi-  
4 nation or kidnapping; or

5 (b) for purposes of subparagraph (xiii) of paragraph (a) of subdivi-  
6 sion one of section 125.27 of this chapter means activities that involve  
7 a violent act or acts dangerous to human life that are in violation of  
8 the criminal laws of this state and are intended to:

9 (i) intimidate or coerce a civilian population;

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

12 (iii) affect the conduct of a unit of government by murder, assassi-  
13 nation or kidnapping.

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

19 3. "Specified offense" for purposes of this article means a class A  
20 felony offense other than an offense as defined in article two hundred  
21 twenty, a violent felony offense as defined in section 70.02,  
22 manslaughter in the second degree as defined in section 125.15, criminal  
23 tampering in the first degree as defined in section 145.20 of this chap-  
24 ter, and includes an attempt or conspiracy to commit any such offense.

25 4. "Renders criminal assistance" for purposes of sections 490.30 and  
26 490.35 of this article shall have the same meaning as in section 205.50  
27 of this chapter.

28 § 490.10 Soliciting or providing support for an act of terrorism in the  
29 second degree.

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

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

38 § 490.15 Soliciting or providing support for an act of terrorism in the  
39 first degree.

40 A person commits soliciting or providing support for an act of terror-  
41 ism in the first degree when he or she commits the crime of soliciting  
42 or providing support for an act of terrorism in the second degree and  
43 the total value of material support or resources exceeds one thousand  
44 dollars.

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

47 § 490.20 Making a terroristic threat.

48 1. A person is guilty of making a terroristic threat when with intent  
49 to intimidate or coerce a civilian population, influence the policy of a  
50 unit of government by intimidation or coercion, or affect the conduct of  
51 a unit of government by murder, assassination or kidnapping, he or she  
52 threatens to commit or cause to be committed a specified offense and  
53 thereby causes a reasonable expectation or fear of the imminent commis-  
54 sion of such offense.

55 2. It shall be no defense to a prosecution pursuant to this section

56 that the defendant did not have the intent or capability of committing

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1 the specified offense or that the threat was not made to a person who  
2 was a subject thereof.

3 Making a terroristic threat is a class D felony.

4 § 490.25 Crime of terrorism.

5 1. A person is guilty of a crime of terrorism when, with intent to  
6 intimidate or coerce a civilian population, influence the policy of a  
7 unit of government by intimidation or coercion, or affect the conduct of  
8 a unit of government by murder, assassination or kidnapping, he or she  
9 commits a specified offense.

10 2. Sentencing.

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

15 (b) When a person is convicted of a crime of terrorism pursuant to  
16 this section, and the specified offense is a class C, D or E felony  
17 offense, the crime of terrorism shall be deemed to be one category high-  
18 er than the specified offense the defendant committed, or one category  
19 higher than the offense level applicable to the defendant's conviction  
20 for an attempt or conspiracy to commit the offense, whichever is appli-  
21 cable.

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

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

34 § 490.30 Hindering prosecution of terrorism in the second degree.

35 A person is guilty of hindering prosecution of terrorism in the second  
36 degree when he or she renders criminal assistance to a person who has  
37 committed an act of terrorism, knowing or believing that such person  
38 engaged in conduct constituting an act of terrorism.

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

41 § 490.35 Hindering prosecution of terrorism in the first degree.

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

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

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

52 4. A statement in each count that the grand jury, or, where the accu-  
53 satory instrument is a superior court information, the district attor-  
54 ney, accuses the defendant or defendants of a designated offense,  
55 provided that in any prosecution under article four hundred eighty-five  
56 of the penal law, the designated offense shall be the specified offense,

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1 as defined in subdivision three of section 485.05 of the penal law,  
 2 followed by the phrase "as a hate crime", and provided further that in  
 3 any prosecution under section 490.25 of the penal law, the designated  
 4 offense shall be the specified offense, as defined in subdivision three  
 5 of section 490.05 of the penal law, followed by the phrase "as a crime  
 6 of terrorism"; and

7 7. A plain and concise factual statement in each count which, without  
 8 allegations of an evidentiary nature,

9 (a) asserts facts supporting every element of the offense charged and  
 10 the defendant's or defendants' commission thereof with sufficient preci-  
 11 sion to clearly apprise the defendant or defendants of the conduct which  
 12 is the subject of the accusation; and

13 (b) in the case of any armed felony, as defined in subdivision forty-  
 14 one of section 1.20, states that such offense is an armed felony and  
 15 specifies the particular implement the defendant or defendants  
 16 possessed, were armed with, used or displayed or, in the case of an  
 17 implement displayed, specifies what the implement appeared to be; and

18 (c) in the case of any hate crime, as defined in section 485.05 of the  
 19 penal law, specifies, as applicable, that the defendant or defendants  
 20 intentionally selected the person against whom the offense was committed  
 21 or intended to be committed; or intentionally committed the act or acts  
 22 constituting the offense, in whole or in substantial part because of a  
 23 belief or perception regarding the race, color, national origin, ances-  
 24 try, gender, religion, religious practice, age, disability or sexual  
 25 orientation of a person; and

26 (d) in the case of a crime of terrorism, as defined in section 490.25  
 27 of the penal law, specifies, as applicable, that the defendant or  
 28 defendants acted with intent to intimidate or coerce a civilian popu-  
 29 lation, influence the policy of a unit of government by intimidation or  
 30 coercion, or affect the conduct of a unit of government by murder,  
 31 assassination or kidnapping; and

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

35 (d) Whenever the people intend to offer evidence of an aggravating  
 36 factor set forth in this subdivision, the people must within a reason-  
 37 able time prior to trial file with the court and serve upon the defend-  
 38 ant a notice of intention to offer such evidence. Whenever the people  
 39 intend to offer evidence of the aggravating factor set forth in para-  
 40 graph [~~(b)~~] (a) of this subdivision, the people shall file with the  
 41 notice of intention to offer such evidence a statement setting forth the  
 42 date and place of each of the alleged offenses in paragraph [~~(b)~~] (a) of  
 43 this subdivision. The provisions of section 400.15 of this chapter,  
 44 except for subdivisions one and two thereof, shall be followed.

45 § 7. Paragraph (a) of subdivision 7 of section 400.27 of the criminal  
 46 procedure law is REPEALED and paragraphs (b), (c) and (d) are relettered  
 47 paragraphs (a), (b) and (c).

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

50 (q) Soliciting or providing support for an act of terrorism in the  
 51 second degree as defined in section 490.10 of the penal law, soliciting  
 52 or providing support for an act of terrorism in the first degree as  
 53 defined in section 490.15 of the penal law, making a terroristic threat  
 54 as defined in section 490.20 of the penal law, crime of terrorism as  
 55 defined in section 490.25 of the penal law, hindering prosecution of  
 56 terrorism in the second degree as defined in section 490.30 of the penal

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1 law, and hindering prosecution of terrorism in the first degree as  
 2 defined in section 490.35 of the penal law.

3 § 9. If any item, clause, sentence, subparagraph, subdivision, section  
4 or other part of this act, or the application thereof to any person or  
5 circumstances shall be held to be invalid, such holding shall not  
6 affect, impair or invalidate the remainder of this act, or the applica-  
7 tion of such section or part of a section held invalid, to any other  
8 person or circumstances, but shall be confined in its operation to the  
9 item, clause, sentence, subparagraph, subdivision, section or other part  
10 of this act directly involved in such holding, or to the person and  
11 circumstances therein involved.  
12 § 10. This act shall take effect immediately.

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**SPONSORS MEMO:**

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S70002

**SPONSOR:** BALBONI

**TITLE OF BILL:** 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

**PURPOSE:**

The bill would establish appropriately severe criminal penalties for persons who commit terrorist acts, make terrorist threats or who render assistance to terrorists in New York State, by creating six penal law offenses: i) soliciting or providing support for an act of terrorism in the first and second degrees; ii) crime of terrorism iii) making a terroristic threat; and iv) hindering prosecution of terrorism in the first and second degrees.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill names the act as the "Anti-Terrorism Act of 2001."

Section 2 of the bill amends section 70.02 of the penal law to include on the list of violent felony offenses the penal law offenses created under section four of the bill.

Section 3 of the bill amends section 125.27 of the penal law to make a person who murders another person in furtherance of an act of terrorism eligible for the death penalty.

Section 4 of the bill adds to the penal law a new Article 490 titled the "Anti-Terrorism Act of 2001." The six new penal law offenses created under this section are:

\*

**SOLICITING OR PROVIDING SUPPORT FOR AN ACT OF TERRORISM IN THE FIRST AND SECOND DEGREES.** A person is guilty of the second degree offense when he or she raises, solicits, collects or provides material support or resources with intent that such will be used to plan, prepare, carry

out or aid in either an act of terrorism or the concealment of, or escape from, an act of terrorism. A person is guilty of the first degree offense when he or she commits the second degree offense and the value of the material support or resources exceeds \$1,000. The offenses are punished as class D and C violent felony offenses respectively.

\*

**MAKING A TERRORISTIC THREAT.** A person is guilty of this offense when he or she with intent to intimidate or coerce a civilian population, influences 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, 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. This offense is punished as a class D violent felony.

\*

**CRIME OF TERRORISM.** A person is guilty of this offense when he or she with intent to: (i) intimidate or coerce a civilian population; (ii) influence the policy of a unit of government by intimidation or coercion; (iii) or affect the conduct of a unit of government by murder, assassination or kidnapping, commits a specified offense. The punishment for this offense shall be one category higher than that for the underlying specified offense. However, when the underlying specified offense is a class A-I felony offense, then the punishment shall be life imprisonment without parole, provided that nothing shall prevent a sentence of death if the specified offense is murder in the first degree.

\*

**HINDERING PROSECUTION OF TERRORISM IN THE FIRST AND SECOND DEGREES.**

A person is guilty of the second degree offense when he or she renders criminal assistance to a person who has committed an act of terrorism, knowing or believing that the person has engaged in such conduct. A person is guilty of the first degree offense when the act of terrorism results in the death of a person other than one of the participants. The offenses are punished as class C and B violent felony offenses respectively.

For purposes of these new offenses, "act of terrorism" is defined as an act or acts constituting a specified offense in this state or in any other jurisdiction 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. A "specified offense" is any class A felony offense (other than a drug offense), a violent felony offense, manslaughter in the second degree, criminal tampering in the first degree, and an attempt or conspiracy to commit any such offense. "Material support or resources" means financial or other types of assistance, including the provision of lodging, weapons or transportation.

Section 5 of the bill amends criminal procedure law § 200.50 regarding the form and content of an indictment to expressly provide that when charging an offense subject to Article 490, the accusatory statement shall name the specified offense (enumerated in penal law section 490.05(3)) followed by the phrase "as a crime of terrorism."

Sections 6 and 7 of the bill make changes that conform with section 3 of the bill in relation to making a person who murders another person in furtherance of an act of terrorism, eligible for the death penalty.

Section 8 of the bill adds the new terrorism offenses created by the bill to the list of designated offenses for which law enforcement authorities may obtain eavesdropping or video surveillance warrants.

Section 9 of the bill sets forth a severability clause.

Section 10 of the bill provides that the act shall take effect immediately.

**EXISTING LAW:**

Although certain federal laws seek to deter the incidence of terrorism, there are no corresponding laws in New York State. Unlike federal laws and laws in several other states, our laws do not adequately facilitate the prosecution and punishment of terrorists. There is no specific criminal penalty for persons who solicit or provide support for an act of terrorism or who make terroristic threats. There is also no explicit penalty for persons who commit serious offenses in furtherance of terrorism - acts that purport 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. Additionally, current law punishes those who hinder prosecutions by rendering criminal assistance to alleged felons, but fails to provide an appropriately severe penalty for those who hinder the prosecution of S terrorists.

In death penalty cases, whether a defendant committed murder in furtherance of an act of terrorism is currently a factor that is considered during the sentencing phase. However, a defendant who commits murder in furtherance of an act of terrorism cannot be prosecuted for first degree murder - and is thus not eligible for the death penalty - unless some aggravating factor other than terrorism exists.

**STATEMENT IN SUPPORT:**

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 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 a civilized society and cannot be tolerated.

The forces of evil that committed these atrocious and horrifying acts must be brought to justice and held accountable. We must combat terrorism with increased vigilance, develop mechanisms to deny sanctuary and financial support for terrorists, and work cooperatively with other jurisdictions to ensure that New York does not become a safe haven or launching point for terrorists acts. By establishing appropriately severe criminal penalties for persons who (i) commit terrorist acts, (ii) make terrorist threats or (iii) render assistance to terrorists, the bill aids in the fight against terrorists and better protects all citizens from terrorism.

To accomplish its goals, the bill creates six penal law offenses. First, recognizing that at the root of many terrorist attacks is the money raised by supporters of terrorists, the bill establishes two offenses - "soliciting or providing support for an act of terrorism" in the first and second degrees. These new offenses punish anyone who raises, solicits, collects or provides "material support or resources" for a terrorist. As with its federal counterpart, the bill's definition of "material support or resources" is not limited to money, but includes transportation, lodging, weapons and other types of assistance commonly

given to terrorists. Also punished are those whose assistance aids in the concealment of, or an escape from, an act of terrorism, and the penalty is raised by one offense category when the amount or value of assistance exceeds \$1,000. Second, in response to an insidious trend that is disrupting our institutions and everyday lives, the bill establishes the crime of "making terroristic threats". Modeled on laws in other jurisdictions, the offense punishes anyone who in furtherance of terrorism threatens to commit or cause to be committed one of the enumerated, serious felonies. To ensure that only conduct which truly terrorizes or alarms civilians is punished, a person is guilty of this offense when he or she causes a reasonable expectation or fear of the imminent commission of the serious felony.

Third, the bill makes "crime of terrorism" an explicit offense in the penal law to punish anyone who in furtherance of terrorism commits one of the enumerated, serious felonies. The main feature of this offense is the sentencing provision, which appropriately enhances current penalties when the underlying felony is committed by a terrorist. Fourth, the bill creates two offenses -- hindering prosecution of terrorism in the first and second degree -- which punish those who render criminal assistance to terrorists. The types of criminal assistance that would be covered by this offense include harboring or concealing a terrorist, warning a terrorist of impending discovery or apprehension, or suppressing any physical evidence which might aid in the discovery or apprehension of a terrorist.

The bill also strengthens the death penalty statute to make it possible for persons to be charged with, and prosecuted for, murder in the first degree when they commit a murder in furtherance of terrorism. Lastly, to further enhance public safety, the bill adds the new terrorism crimes to a list of designated offenses, thereby enabling law enforcement authorities to obtain eavesdropping and video surveillance warrants.

Terrorism is a serious and deadly problem that threatens individual safety both at home and around the world. A comprehensive state law is thus urgently needed in New York to complement federal counter terrorist efforts and eliminate terrorism, while bringing terrorists and their supporters to justice. The bill enacts fundamental reforms and sends a powerful message that New York will do everything possible to wipe out the evils of terrorism.

**BUDGET IMPLICATIONS:**

None.

