

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. In the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date FEBRUARY 7, 2020
Bill No: House Bill 269A

Sponsor: Hochman Vigil,Rehm, Figueroa **Agency Name and Code** AODA 264
Short Title: Creating Domestic Terrorism Cyberterrorism crimes **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$250,000.00	no	General fund and all remaining amounts revert back

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

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(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY: THE SECTIONS AMENDED ARE REFERENCED BELOW IN RED AND THE ACTUAL AMENDMENT IS SET FORTH IN THE AMENDMENT SECTION IN RED AT END OF ANALYSIS.

HB 269 amends the Homeland Security and Emergency Management Act to include domestic terrorism.

The bill amends NMSA Section 9-28-5 (Department Duties) by including a requirement to maintain a New Mexico all source intelligence center, a cross jurisdictional partnership between local, state and federal agencies. The intelligence center is already in existence. The center will support the development of plans, policies and procedures to protect the State from criminal, border and terrorist threats.

The Bill also adds definitions to the Anti-terrorism Law.

Community center is defined as community centers, daycare center and other similar physical locations that exist primarily to supervise children and at which children primarily congregate.

Public accommodation is defined as 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 distinctively private.

School is defined as any 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 and high school, college or university or any combination of those whether public, private or charter.

There are minor grammatical changes to definitions as well that are not substantive in nature.

The bill amends NMSA Section 30-20A-3 (unlawful acts) to increase the punishment for a civil disorder and includes act of terrorism as defined later in the bill from a fourth degree to

a third degree felony. It applies to anyone who teaches demonstrates the use, application or making of any firearm or destructive device or technique capable of causing injury; Anyone who trains, practices or receives instruction.

Within Unlawful Acts, the crime of **terrorism** is created and defined as:

Any Act dangerous to human life that is also a criminal violation of state law with an intent to:

1. intimidate or coerce a civilian population including mass violence in a public accommodation.
2. influence policy of a state or political subdivision.
3. Affect conduct of a state, political subdivision or public accommodation through mass destruction, assassination, kidnapping or an act of violence enumerated in the serious violent offense section of the statutes.

The act of terrorism is subject to a second degree felony, notwithstanding the provision of 31-18-15. A minimum mandatory term is imposed of three years. The penalty CANNOT BE suspended or deferred. Sentencing enhancements are NOT PRECLUDED by the mandatory minimum sentence. **AMENDED BY HCPAC SEE BELOW.**

The Bill amends Unlawful Acts, and creates the crime of Possession of **Terroristic Weapon and Terroristic Threat**.

Possession of a terroristic weapon includes manufacturing, fabricating or possessing in any manner a real or imitation weapon:

1. Designed to or intended to cause death or serious physical injury by use of a toxic or poisonous chemical or their precursors.
2. Involving any biological weapon
3. Designed to release radiation, radioactivity at dangerously high levels.

Possession of a Terroristic weapon is guilty of a third degree felony and also includes a mandatory minimum of three years. The penalty CANNOT BE suspended or deferred. Sentencing enhancements are NOT PRECLUDED by the mandatory minimum sentence. **AMENDED BY HCPAC SEE BELOW.**

Making a Terrorist Threat involving a school, community center or public accommodation and consists of threatening to commit any criminal offense unequivocally, unconditionally and specifically, regardless of whether the threat is online or otherwise, involving violence against a person at a school, community center or public accommodation or to harm a school community center 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 or community center building.
- 4.

The making a terroristic threat is punishable as a second degree felony. **AMENDED BY HCPAC SEE BELOW.**

A separate offense, for the crimes of terrorism, possession of a terroristic weapon or

terroristic threat is defined as occurring on each calendar day. **AMENDED BY HCPAC SEE BELOW.**

The crimes enumerated and added to Unlawful Acts do not preclude prosecution of any other provisions of the law.

The Attorney General and the District Attorney of where the crime took place have concurrent jurisdiction.

A New Section is added to the Anti-Terrorism Act, to require reporting and information sharing of cyberterrorism, terrorism and terroristic threats and any other information prohibited by the Antiterrorism Act, within 24 hours, in writing to the New Mexico All Source Intelligence Center.

The New Mexico All Source Intelligence Center is required to coordinate with federal and state agencies to prevent cyberterrorism, terrorism or terroristic acts threats and activities.

Inspection of Public Records does not include any information on terrorist threats, notice to the All Source Agency or information from federal agencies regarding detection and prevention of cyberterrorism or any other information prohibited by the Antiterrorism Act.

The Computer Crimes Act is amended as follows:

1. Denial of Service Attack means preventing authorized access to computer resources or delaying time critical computer operations by inundating or otherwise overloading a computer network or attempting to inundate or otherwise overload a computer service.

A New Section is added to Computer Crimes Act creating Cyberterrorism.

Cyberterrorism consists of 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 affect conduct or commit a denial of service attack and the computer network against which denial of a service attack is committed is:

1. Administered or operated by a governmental agency.
2. Utility provider
3. Financial institution as defined by NMSA 58-16-3

Cyberterrorism is punishable as a third degree felony.

A separate offense is defined as on each calendar days.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

The Bill specifically allows application of other crimes in terrorism cases, however, adding a “conspiracy” charge under NMSA 30-20A-3 Unlawful Acts would assist all law enforcement agencies.

The new definition as set out in NMSA 30-20A-3 of terrorism, terroristic weapon and terroristic threat should be included in the definition section of the Anti Terrorism Act NMSA Section 30-20A-2 for purpose of clarity.

Definition of Community Center: In researching the Terrorism Acts around the country and Federal law there was not a definition of community center that was limited and focused solely on where children are supervised.

Definition of Public Accommodation: Does not include private locations or accommodations. Churches and synagogues are not public accommodations. By limiting the definition to “public” may allow a crime when committed in a church for example not be charged as a crime.

The added definitions set forth in the Unlawful Acts section do not include persons who fund a potential terrorist act.

The definition of “Separate Acts” should be included in the Terrorism Act. The limited scope of the definition to a daily act, leaves open the possibility of multiple acts in differing locations would be considered one separate act. **AMENDED BY HCPAC SEE BELOW.**

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The bill aims to target domestic terrorism. The Department of Homeland Security is charged with coordinating between federal and state agencies combat the threat of terrorism. The Department’s statutory duties are broad enough to include the detailed additions set forth here.

AMENDMENTS

- 1. PUNISHMENT FOR A COMMISSION OF AN ACT OF TERRORISM. THE MANDATORY MINIMUM OF THREE YEARS HAS BEEN REMOVED; AND THE LANGUAGE PROHIBITING A SUSPENDED OR DEFERRED SENTENCE HAS BEEN STRICKEN.**
- 2. POSSESSION OF A TERRORISTIC WEAPON IS AMENDED TO INCLUDE AN INTENT PROVISION; AND LANGUAGE RELATING TO WHETHER THE TERRORISTIC WEAPON IS REAL OR FAKE HAS BEEN STRICKEN.**
- 3. PUNISHMENT FOR POSSESSION OF A TERRORISTIC WEAPON WAS AMENDED FROM A SECOND DEGREE FELONY TO A THIRD DEGREE**

- FELONY; AND THE MANDATORY MINIMUM LANGUAGE OF THREE YEARS HAS BEEN STRICKEN, AS WELL AS THE LANGUAGE PROHIBITING A SUSPENDED OR DEFERRED SENTENCE.
4. DEFINITION OF MAKING A TERRORISTIC THREAT HAS BEEN AMENDED TO MOVE THE LANGUAGE “UNEQUIVOCALLY, UNCONDITIONALLY AND SPECIFICALLY” PRIOR TO AND TO MODIFY THE EXISTING LANGUAGE ‘THREATENING TO COMMIT ANY CRIMINAL OFFENSE.’
 5. THE CRIME OF MAKING A TERRORISTIC THREAT IS BETTER DEFINED TO ADD LANGUAGE REFERENCING WHAT THE INTENT IS FOR ... TO “COMMIT TERRORISM PURSUANT TO SUBSECTION C OF THIS SECTION TO....” THE THREE TYPES OF ELEMENTS ARE STILL INCLUDED IN THE ORIGINAL BILL FORM.
 - a. CAUSE A REACTION...
 - b. PLACE A PERSON IN FEAR...
 - c. PREVENT OR INTERRUPT THE OCCUPATION OR USE OF A SCHOOL, OR COMMUNITY CENTER BUILDING.
 6. THE CRIME OF MAKING A TERRORISTIC THREAT WAS AMENDED TO A THIRD DEGREE FELONY.
 7. THE BILL ORIGINALLY DEFINED A SEPARATE OFFENSE AS AN ACT COMMITTED ON EACH CALENDAR DAY. ALL SUCH LANGUAGE HAS BEEN STRICKEN.