



WASHINGTON STATE
ATTORNEY GENERAL'S OFFICE

2022 DOMESTIC TERRORISM STUDY



2022 Domestic Terrorism Study

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Letter from the Attorney General



Dear Washingtonians,

Domestic violent extremism incidents are on the rise. This should be no surprise to anyone reading the newspaper headlines. In 2021, the FBI conducted approximately 2,700 domestic terrorism investigations, compared to approximately 1,400 in 2020 and the approximately 1,000 in each preceding year from 2017-2019.

Domestic violent extremism encompasses various forms of extremist and political violence like threats, coercion, and intimidation, online disinformation, extremist recruitment and government infiltration efforts, and the general spread of extreme white supremacy and anti-government ideologies. Senior FBI officials state that racially-motivated violent extremists are responsible for the majority of lethal attacks and fatalities perpetrated by domestic terrorists since 2000.

In 2022 the Washington State Legislature asked my office to produce a study on these issues. We must urgently address the factors leading to the rise in violent extremism and white supremacy. For the past six months my team worked diligently, consulting with experts across the country who are renowned in their respective fields. My team also consulted with community organizations rooted in Washington State and included them in the work.

As Attorney General it is my job both to defend the foundations of our democracy, and preserve Constitutionally-protected expression and freedom of association. The beauty of our state lies in its diversity and there is no place for hate. This report is careful to uphold our civil liberties while simultaneously laying out a preventative and public health approach to tackle these urgent challenges.

Sincerely,

A handwritten signature in black ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bob Ferguson
Attorney General

2022 Domestic Terrorism Study



Background

In the 2022 session, the legislature directed the Attorney General’s Office (AGO) to conduct a study, by the end of the year, reviewing federal, state, and local laws relating to acts of domestic terrorism; state and local data collection, tracking, and reporting practices relating to acts of domestic terrorism; and state and local policies regarding responding to domestic terrorism.¹ The six-month study was also tasked with summarizing current laws and policies related to domestic terrorism and identifying best practices for improving and standardizing data collection; strengthening law enforcement, prosecutorial and other local government responses to acts of domestic terrorism; and making recommendations for any necessary statutory changes. The legislature gave the AGO the authority to consult with experts and professionals with expertise in domestic terrorism to complete the study (*See Appendix 1* for Proviso language).

The AGO engaged a team of outside experts, comprised of: The Raben Group, a public policy consulting firm; Rich Stolz, the former executive director of OneAmerica; Cynthia Miller-Idriss, a professor at American University’s School of Public Affairs and Director of the Polarization and Extremism Research Lab; and the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. The Raben Group was tasked with reviewing federal, state, and local laws relating to acts of domestic terrorism. Mr. Stolz led the Office’s community engagement and feedback efforts. Informed by this review and community feedback, and with input from the AGO, Professor Miller-Idriss and ICAP collaboratively drafted the Office’s recommendations (*See Appendix 2* for relevant biographies of the consultant team).



Executive Summary

Informed by extensive review of current relevant laws and regulations, this report’s topline recommendation urges the legislature to create a new Commission on Domestic Violent Extremism (DVE), composed of diverse stakeholders with the broad goal of establishing a comprehensive public health and community-based framework for responding to DVE. This is consistent with both the new U.S. Department of Homeland Security’s approach to prevention (Center for Prevention Programs and Partnerships) and the guidelines and principles outlined in the first U.S. National Strategy for Countering Domestic Terrorism, issued in June 2021 by the White House.² This report’s recommendations outline specific steps the Commission should consider to 1) identify adequate funding and build long-term capacity for a public health and community-based model through existing state agencies and new civic education hubs; 2) improve, standardize, and add transparency to data collection and reporting about DVE; and 3) clarify existing legal tools and explore potential new legislation to address the complex threats posed by DVE. Our hope is that the Commission’s work will result in renewed investment in inter-government and community coordination; increased engagement with outside experts and extremism researchers; significant investment in legal, constitutional, and anti-extremism training; and the careful consideration of existing legal tools and potential legislative reforms.

A note on terminology: “domestic terrorism” (DT) is an undefined term in the Revised Code of Washington, but is defined in the U.S. Code as “activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion;

or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.”³ Although this is a useful working definition, because the statutory term “domestic terrorism” necessarily includes “acts dangerous to human life,” it fails to capture the full scope of the problem Washington State faces, which encompasses other forms of extremist and political violence; threats, coercion, and intimidation; online disinformation; extremist recruitment and government infiltration efforts; and the general spread of extreme white supremacist, anti-government, and other ideologies. Accordingly, rather than exclusively address “domestic terrorism” per se, these recommendations seek to best support Washington State to respond to this panoply of challenges, which together combine to create the threat of—and indeed, are often precursors to—acts of domestic terrorism. Consistent with the approach taken by the FBI and DHS,⁴ we describe this using the umbrella term “domestic violent extremism” or “DVE.” Relatedly, because effective State intervention to address these threats has the potential to implicate speech or association that may be protected by the First Amendment, or the individual right to bear arms protected by the Second Amendment, we include a recommendation that all stakeholders involved in the whole-of-society response outlined herein be trained to have a solid, high-level understanding of constitutional principles that may be implicated by the State’s response to DVE.



Outreach

In the development of the report submitted to the legislature on domestic terrorism, the AGO contracted with Rich Stolz to conduct targeted outreach to identified stakeholders, primarily representatives from organizations with expertise in or experience with issues relevant to the report. Stolz is the former Executive Director of OneAmerica, a statewide, community-based immigrant rights organization, and he has extensive experience in civil rights, community outreach, and policy issues.

Stolz conducted two rounds of outreach. The purpose of the first round of outreach was to scope out community priorities and concerns about the issues raised in a report on domestic terrorism. The second round of outreach involved an initial review of a set of preliminary recommendations prepared by the report authors. Outreach primarily involved one-on-one meetings and interviews, and in some cases Stolz gathered feedback electronically. Stolz then compiled information gathered from this outreach and prepared memos for the report authors and staff from the AGO.

Organizations participating in these rounds of outreach included the American Civil Liberties Union (ACLU) of Washington, the Anti-Defamation League (ADL) Western Region, Asian Counseling and Referral Service (ACRS), Council on American-Islamic Relations (CAIR) Washington, Gairson Law LLC, OneAmerica, Muslim Association of Puget Sound (MAPS) American Muslim Empowerment Network (AMEN), Partners for Change, Unidos of Snohomish County, City of Seattle Office of Immigrant and Refugee Affairs (OIRA), Planned Parenthood Alliance Advocates, and representatives from the Snoqualmie Tribe.

The information gathered through this outreach process is important, illuminating and illustrative. However, there were constraints on the level of outreach possible, given time and resource limitations, and there inevitably are some stakeholders whose views are not incorporated into these outreach findings.

Without attribution, there were some broad themes expressed by participating community members:

- **There was significant support for greater attention to the issue of domestic violent extremism.** Participants reported a significant level of fear among their constituents over the potential use of violence against their communities. There were several specific examples shared by participants providing reproductive health services and serving Jewish, Muslim, immigrant, and

Asian American and Pacific Islander communities. Others expressed significant concerns over the insurrection at the U.S. Capitol on January 6th and echo events that took place in Olympia, WA and confusion over what law enforcement agencies in Washington State may have known in advance of those events and what had been done to hold protesters accountable for reported acts of violence.

- **There was significant concern or ambivalence regarding the term domestic terrorism.** This reflected concerns over how the term has been used in the past to stigmatize Muslim communities and communities of color. It also reflected a desire to more clearly name the rise of White supremacist, anti-government, violent extremism and the threat posed by these organizations against communities of color, government institutions, and institutions essential to a functional democracy. And it reflected interest in looking beyond law enforcement and national security frameworks toward more holistic strategies for public safety and community well-being.
- **There was ambivalence over the need for additional law enforcement tools.** Participants emphasized the need to develop deeper, resilient, and durable trust and relationships with law enforcement to ensure protection against these potential - and realized - threats. Some participants argued for the need for additional tools to help law enforcement counter domestic violent extremism. The majority of participants expressed the view that law enforcement had the tools they already needed, but were failing to use them.

This ambivalence reflected three primary issues.

- First, participants raised concerns over how such policies could be used to further police and surveil communities of color that already feel over-policed and over-surveilled. Some participants cited examples of how lack of due process and transparency had caused harm to individuals inaccurately labeled as terrorist threats.
- Second, participants expressed dissatisfaction and frustration over access to data and information on how existing resources are being used. They raised concerns about providing new tools until there was accurate information on what federal, state, and local law enforcement agencies were currently doing to counter domestic violent extremism.
- Third, participants expressed significant concerns over examples - anecdotal and in the media - of apparent political or ideological alignment between White supremacist, anti-government organizations and individual (including high ranking) law enforcement officials in their own communities. Participants posed questions over whether these alarming affiliations were truly limited to individuals or were more systemic in nature.



2023 Outreach

In April - June 2023, consultants conducted outreach to additional stakeholders to gather further feedback on this report. Individuals and organizations that participated in the second round of outreach received electronic copies of the report in advance of one-on-one interviews with consultants. Organizations participating in these discussions included:

- Faith Action Network of Washington
- Seattle Metropolitan Chamber of Commerce
- Washington State Department of Veterans Affairs
- Puget Sound Energy
- Christ the King Church (Bellingham)
- Yakima YMCA
- YMCA of Palouse
- Washington Association of Sheriffs and Police Chiefs (WASPC)

Broad Themes from the Discussions

- **Limited Focus or Urgency regarding Domestic Violent Extremism.** Most stakeholders participating in this round of outreach did not view domestic violent extremism as an urgent issue impacting their communities (with law enforcement being an important exception). While stakeholders agreed that awareness of domestic violent extremism is important, they more often viewed it as one element of a broader set of public safety concerns. Most stakeholders were unaware of the report, the proposed legislation, or other discussions on this topic in their respective communities.
- **Support for Public Health Approaches.** Stakeholders were largely supportive of public health and prevention-oriented approaches in addressing domestic violent extremism. One participant who works with young people underscored the need for state-wide investment in social emotional learning in the wake of COVID-19, noting that addressing the mental health needs of young people will be critical in the coming years to prevent harm. Another participant in law enforcement noted his approval of a public health approach that would provide resources to parents concerned about their children being radicalized, on the grounds that preventing crime would be preferable to waiting for something to happen. He cautioned, though, that the state should not lose sight of the criminal justice element.
- **Skepticism of Washington State Role.** Stakeholders were uncertain about the role that Washington State could take with respect to preventing domestic violent extremism. Stakeholders posed questions about whether there may be better approaches via federal approaches, multi-state efforts, and coordinated state/local efforts. One stakeholder focused on the complexity of the issue, and expressed hope that a Commission, similar to the one proposed in the report, could help clarify questions of scope which the participant viewed as potentially overbroad.

Other items to take into consideration:

- **Even-handedness.** Stakeholders expressed the desire to not politicize the issue of domestic violent extremism, preferring to approach it as a non-partisan issue or a public safety issue. Stakeholders noted that discussions on the topic of domestic violent extremism should not be one-sided, but should be mindful of potential radicalization across the political spectrum.
- **Role of the Internet.** One possible theme emerged regarding the dangers of the internet. One participant in law enforcement flagged the danger of people going down “gopher holes on the internet” that radicalize them.
- **Interest in Further Discussion.** In several instances stakeholders expressed curiosity about the issue, including a desire to better understand domestic violent extremism, and approaches to addressing it. One stakeholder in the business community sought help to better understand how these issues could play out among their constituents, asking at one point if the issue might be analogous to mass school shootings or other public safety crises.



Summary of State, Federal & Local Laws

The AGO contracted with The Raben Group to review federal, state, and representative local domestic terrorism laws including: statutory definitions of and responses to domestic terrorism; state and local collection, analysis, and reporting practices for domestic terrorism data; and a representative sample of recent state and local policy responses to domestic terrorism. Beyond explicit laws on domestic terrorism, laws covering a broader set of anti-government actions such as mass shootings were also discussed.

The Raben Group's key findings are:

- There is no freestanding federal domestic terrorism offense. An individual being prosecuted by the federal government cannot be federally charged with "terrorism" and instead must be charged with other related offenses.
- Twenty-six states and the District of Columbia have terrorism statutes that explicitly or implicitly cover acts of domestic terror. These are: Alabama, Arizona, Arkansas, Connecticut, D.C., Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia.
- Although states have prosecuted some cases under their own terrorism statutes, the federal government has also prosecuted all recent high-profile acts of domestic terrorism and anti-government violence under applicable federal laws, including the Boston marathon bombing; the plot to kidnap Governor Gretchen Whitmer; the Tree of Life Synagogue shooting; the car attack following the Unite the Right Rally in Charlottesville, Virginia; the January 6th insurrection at the United States Capitol; and the 2022 mass shooting at a supermarket in Buffalo, New York.
- State laws contains few provisions, other than enhanced-sentencing statutes, to combat or mitigate the threat of terror. The survey discovered no state laws authorizing preventive measures like community engagement, deradicalization, or similar programming.
- The survey did not uncover any state domestic terrorism data collection legislation or policies other than legislation governing the creation and operation of "fusion" centers.
- Some states have begun to update or modernize their domestic terrorism statutes and policies. For example, in 2021 Washington State adopted a law that allows for the decertification of police officers who affiliate with extremist organizations. New York State recently enacted a state law authorizing a task force to evaluate the role that social media plays in motivating violent extremists, including domestic terrorists; this complements a broader state domestic terrorism task force studying best practices to prevent mass shooting incidents

For the full analysis, *see Appendix 3*.



Recommendations

- 1. Recommendation 1:** The legislature should create a two-year Commission, composed of diverse stakeholders and housed within the AGO, with the broad goal of establishing a comprehensive public health and community-based framework for responding to DVE. The Commission should have the following objectives and structure, as described in more detail in the further recommendations below:
 - a. Objectives:
 - i. To identify community-led and evidence-based solutions to combat disinformation and misinformation, address early signs of radicalization, and develop public health-style responses.
 - ii. To evaluate any future data-tracking recommendations around DVE, including how data is collected, what triggers data collection, and how to ensure data is not disproportionately used against BIPOC (Black, Indigenous, and People of Color) communities or other communities.
 - iii. To evaluate current legal tools, both civil and criminal, and make recommendations for potential new legislation and regulations to address DVE.
 - b. Structure:
 - i. We recommend that this Commission be housed within the AGO.
 - ii. The Commission should include a broad cross section of relevant stakeholders, including civil rights groups, state and local government officials, and law enforcement.
 - iii. The legislature must appropriate funding to support Commission member participation, including resources for dedicated staff and the day-to-day work of the Commission.

- 2. Recommendation 2:** Relying on expert research and data, the Commission should propose specific steps to adopt and fund a public health-style and community-based framework for proactively responding to DVE. The Commission should propose recommendations to address the following:
 - a. Establishing a system through which the Department of Health could work with community groups to support (including with funding) multi-disciplinary intervention teams through which families and others may refer someone they suspect may be on the path of radicalization to violence, recognizing that any intervention would need to be agreed to voluntarily by the referred person. Such efforts may need to be supported by grants and done in conjunction with the Department of Commerce. This system should include at least one dedicated and funded staff position within the Department of Health to bring expertise about DVE into the department.
 - b. Funding and implementing significant training to Department of Corrections probation officers (and related roles) aimed at their role in supporting those under their supervision to be successful in their communities and avoid vulnerabilities to extremism. This training may be developed by nonprofits or other experts experienced in combating DVE. This funding must include a full-time staff position requiring prior expertise in DVE to coordinate training topics, sequencing, and content.

- c. Funding through the Department of Commerce for primary prevention of DVE through the arts, community organizations, faith communities, or other community-based non-profits. This funding must include a full-time staff position requiring prior experience in DVE to help direct and shape the grant program, criteria for selection, and criteria for evaluation.
- d. A plan for the Department of Enterprise Services to develop a statewide training module to help employees recognize red flags and warning signs, initial pathways for off-ramping or intervention conversations, and where to get additional help. If feasible, this training can be shared with community members as requested. This must include a full-time staff position requiring prior experience in DVE.
- e. A plan for the Department of Health to create a state-wide referral list of trained mental health professionals who are skilled in addressing radicalization to violent extremism and to ensure that school, university, and public mental health services are aware of the list.
- f. Funding sources and the creation of Civic Education and Community Support Hubs to invest in civic education by helping communities improve digital literacy, create public civic education tools, combat misinformation and disinformation, identify and respond to radicalization, and provide educational and support resources. This could include increasing capital funding for rural areas to expand and/or improve library facilities or civic education hubs. It could also include working with pre-existing library networks to expand disinformation/ misinformation trainings through the libraries.
- g. Creating a legal training program for relevant officials on constitutional issues implicated by the regulation of DVE activity, including speech or association that may be protected by the First Amendment, and the individual right to bear arms protected by the Second Amendment.
- h. Establishing a dedicated staff team at the state level to coordinate and direct these efforts, manage the work of the Commission, communicate best practices across the state, and coordinate with state and local partners as well as counterpoints nationally and in other states.

The public health model of prevention

A deep and effective public health approach to preventing violent extremism includes investments at the primary, secondary, and tertiary prevention levels. Primary prevention refers to efforts to address radicalization before it takes root, including through broad civic education and media literacy for the entire population focused on helping the public build resilience to harmful online content, propaganda, or false information.

Secondary prevention refers to efforts to mitigate the impacts of already radicalized people and groups, primarily through surveillance, monitoring, arrest, interruption of plots, barricading of doors, hardening of soft targets, etc. These strategies are key to crisis mitigation and violence prevention efforts, but cannot stand on their own as the sole prevention strategy for a community or a region.

Tertiary prevention refers to focused deradicalization efforts, including through prison deradicalization programs and “exit”-type counseling services that aim to help radicalized individuals leave extremist groups. These specialized efforts require significant training and evidence-based approaches aimed at preventing recidivism and are essential for probation officers and related roles.

An effective public health approach to countering violent extremism would require at least four simultaneous categories of effort that are:

- rooted in communities’ needs;
- holistic and whole-of-society;
- rely on evidence-based interventions; and
- focus on building resilient systems, not just resilient individuals.

By following this recommendation, Washington State would become the first in the nation to adopt and implement a public health-style and community-based framework for proactively responding to DVE. But concrete models for a public health-style approach exist beyond our borders, as well as in some local jurisdictions within the United States. These include models of public health-style approaches that emphasize the role of family therapy, law enforcement, education, and the arts, and include examples of approaches that are funded locally, regionally, federally, and through private philanthropic and foundation support. For example:

Yorktown Family Services, Toronto, Canada

Yorktown Family Services is an intervention initiative housed within existing mental health and family therapeutic services. The program provides therapeutic approaches to address and engage people who are on pathways to violent extremism through a specialized integrated care and rapid-access behavioral and social engagement team, called ETA (Estimated Time of Arrival), to support youth and adults who show warning signs of violent radicalization. This includes evidence-based and evidence-informed interventions including mental health therapy, public awareness and capacity building, and other services to treat and divert youth and young adults away from violent ideologies.

Aurora Police Department Crisis Response Team and Targeted Violence Prevention (TVP), Aurora, Colorado

Aurora Police Department Crisis Response Team and Targeted Violence Prevention is an intervention initiative housed within existing law enforcement and emergency response services. As part of a citywide initiative in Aurora, Colorado that pairs trained law enforcement officers with mental health clinicians, Aurora's police department runs a Targeted Violence Prevention Program (TVP) which provides threat assessment and management of behaviors indicating the possibility of a future act of mass targeted violence in a person who is experiencing a mental health crisis or already suffering from a mental illness. By integrating the TVP in the overall crisis response team, Aurora has pioneered the integration of assessment, intervention, and management of mass violence threats with clinical assessment and expertise on the mental health side. This improves the likelihood that individuals in need can be connected with appropriate resources and that they can be referred to treatment that might be able to address the causes and underlying motivations of the identified problematic behaviors.

Mobile Advisory Centers, Germany

The mobile advisory structure in Germany comprises 50 offices with 150 staff members in local sites across the country. Mobile advisory centers serve as professional consulting and counseling centers for anyone who needs advice and guidance on dealing with right-wing extremism, racism, antisemitism and other forms of inequality or hate. Center staff provide training and consultation for schools and other educational partners, youth centers, unions, journalists, faith communities, social services, sports centers, individuals, and other civil society actors, non-profits, and organizations. Each mobile advisory center serves as a one-stop-shop for counseling and consulting needs for mainstream civil society, while working closely with partners who support victims' services (therapeutic and legal needs, for example) and perpetrator accountability (law enforcement, EXIT and deradicalization programs, for example). There are parallel structures to address different types of extremism and ideological radicalization as well.

- 3. Recommendation 3:** Relying on expert research and data, the Commission should propose specific steps to improve, standardize, and add transparency to data collection and reporting on incidents of DVE. The Commission should propose recommendations to address the following:
- a. Undertaking a comprehensive review of the data collection, reporting practices, and overall efficacy of the Washington State Fusion Center, including recommendations for possible additional funding to improve capacity. The Commission should further consider whether to require the Fusion Center to provide a publicly available annual report on DVE, detailing data categories collected and processes in place, to the extent that such information does not compromise ongoing investigations or violate privacy rights. The purpose of this report would be to promote transparency and trust.
 - b. Identifying opportunities for establishing information-sharing relationships with researchers in the private sector with expertise in tracking DVE, both online and offline.
 - c. Establishing clear cross-agency channels and mechanisms for data collection and reporting within legal limits, along with the presence of adequately trained experts within data collection and reporting channels to assess cases and determine next steps in intervention.
 - d. Across state agencies, evaluating and recommending improvements to processes and procedures for publicly communicating information related to domestic extremist activity and threats. The Strategic Intelligence Assessment and Data on Domestic Terrorism, produced by the FBI and Department of Homeland Security (DHS) pursuant to the National Defense Authorization Act, provides a template for a public-facing report along these lines.

What is the Strategic Intelligence Assessment and Data on Domestic Terrorism?

For the past two years, the federal National Defense Authorization Act has required the FBI and DHS, in consultation with the Director of National Intelligence, to produce a strategic intelligence assessment on domestic terrorism, including a discussion of activities, certain data on domestic terrorism matters, and recommendations. In October 2022, the agencies reported that:

Preventing terrorist attacks remains a top priority for both the FBI and the DHS, and the FBI serves as the lead investigative agency on terrorism matters. The threat posed by international and domestic threat actors has evolved significantly since 9/11. One of the most significant terrorism threats to the Homeland we face today is posed by lone offenders and small groups of individuals who commit acts of violence motivated by a range of ideological beliefs and/or personal grievances. Of these actors, domestic violent extremists represent one of the most persistent threats to the United States today. These individuals are often radicalized online and look to conduct attacks with easily accessible weapons. Many of these violent extremists are motivated and inspired by a mix of ideological, socio-political and personal grievances against their targets.⁵

The report, which the AGO proposes as a template for recommended periodic inter-agency reporting at the state level, provides the agencies' strategic intelligence assessments on DVE, a detailed discussion of the agencies' procedures and methods to address DVE threats, as well as data on DVE incidents and FBI investigations.

Data currently included in the Strategic Intelligence Assessment and Data on Domestic Terrorism are useful but limited. Data sets addressed in the report include descriptions of completed or attempted DT incidents; identifications of each FBI assessment and investigation with a nexus to DT; data on arrests and criminal charges with a nexus to DT; referrals of DT incidents by or to state, local, tribal, or territorial governments (SLTT) and foreign governments; the number of intelligence products associated with each DT investigative classification; and information about the agencies' staff and resources deployed for work on DT-related matters. However, with respect to arguably the most important tracking metric—completed or attempted DT incidents in the

United States—the Strategic Intelligence Assessment and Data on Domestic Terrorism explains that “[m]any incidents are rooted in state and local level criminal activity, and there is currently no mandatory incident reporting requirement for these incidents to be reported to the federal government.”⁶ Likewise, the report notes that DHS’s and FBI’s ability to track and document ideologically motivated DVE-related crimes, as well as hate crimes, is limited by the lack of any mandatory incident reporting requirements for SLTT law enforcement agencies. The patchwork nature of this federal DT incident traffic effort underscores the need for better tracking, coordination, and data sharing at the SLTT level.

Consistent with findings made by non-governmental research and advocacy organizations that have documented sharply rising levels of antisemitism, Islamophobia, anti-LGBTQI+ hate, anti-AANHPI (Asian American and Native Hawaiian Pacific Islander) hate, and other forms of hate,⁷ the limited federal data reflect a significantly heightened DVE threat landscape compared to recent years. For example:

- Investigations with a DT nexus: As of the end of FY 2021, the FBI was conducting approximately 2,700 DT investigations, compared to approximately 1,400 pending at the end of FY 2020 and the approximately 1,000 pending each year for FY 2017-2019. A significant portion of the FY 2021 investigations were “directly related to the unlawful activities during the January 2021 siege on the U.S. Capitol.”⁸
- Arrests with a DT nexus: The number of federal arrests with a DT nexus increased significantly in FY 2021. In FY 2021, the FBI, often in coordination with partner agencies, arrested approximately 800 DT subjects, compared to 180 such arrests in FY 2020. Again, a significant portion of the arrests were directly related to the January 2021 attack on the U.S. Capitol.
- Hate Crimes: In its latest reporting, the Hate Crime Statistics Program of the FBI’s Uniform Crime Reporting (UCR) Program recorded 8,263 hate crime incidents in 2020, compared to 7,314 in 2019, a 13-percent increase year-over-year and the highest level in 12 years.⁹
- Referrals of DT Incidents to the FBI: In FY 2021, the FBI received approximately 8,375 referrals of possible DT incidents, compared to approximately 5,669 such referrals in FY 2020.

In responding to the legislature’s request for current data collection practices, the AGO reached out to the Fusion Center and the FBI for additional information. Please see Endnote 4 for the data shared pursuant to this request.

4. **Recommendation 4:** The Commission should conduct and publish a review of Washington State’s existing civil and criminal codes to create a toolkit of potential legal options to respond to DVE.¹⁰ Additionally, the Commission should conduct a study, with significant community input, both to review legal options under existing laws and regulations and to explore potential new legislation and/or regulations. We recommend that the Commission refrain from proposing new criminal laws defining and penalizing “domestic terrorism,” in light of evidence-based community concern that these types of laws have the potential to be applied disproportionately against BIPOC communities. To the extent the Commission considers proposing any new DVE-related criminal penalties, they should be narrowly crafted to address specific DVE-related conduct and drafted carefully to avoid the potential disproportionate application to marginalized and vulnerable communities. Issue areas this work should encompass include:
 - a. Mandatory training to improve law enforcement readiness to address DVE;
 - b. Additional state law tools, and particularly those that support civil remedies, to combat DVE;
 - c. Legislation prohibiting private paramilitary activity that interferes with government proceedings, infringes on others’ constitutional rights, or usurps law enforcement authority, including civil mechanisms to enjoin such activity;

- d. Legislation disqualifying those who engage in extremist activity from public employment or service, or from working as armed private security guards, or serving as law enforcement or private security trainers;
- e. Legislation in the model of the bipartisan federal Domestic Terrorism Prevention Act that would authorize and fund joint investigation and reporting on DVE incidents. Such a bill could create an inter-agency task force to analyze and combat extremist infiltration of state law enforcement and other state agencies.
- f. Licensure and training of private security guards;
- g. Review of criteria for granting tax-exempt status to nonprofit organizations to ensure that unauthorized militia or private paramilitary organizations and other extremist organizations are not improperly obtaining and operating under tax-exempt status;
- h. Potential amendments to regulations of firearms ranges; for example, to prohibit individuals who engage in extremist activity from receiving grant funds from the Firearms Range Account, RCW 79A.25.210, and to prohibit firearms ranges from being used for unlawful paramilitary training.



Additional Recommendations from the Office of the Attorney General (AGO)

Over the course of this work the AGO received several additional recommendations for proposed legislation that it would like to include here. There was not sufficient time to share these with the outreach team, so these are solely recommended by the AGO.

1. Recommendation 1: Create a Journalism Fellowship Program.

In a similar vein with the recommendation on Civic Education and Community Support Hubs to combat misinformation and disinformation, the AGO believes that local news outlets have an important role to play. California Governor Gavin Newsom signed into law a \$25 million, state-funded fellowship program this spring that aims to support and strengthen local reporting in underserved and historically underrepresented areas across the state.¹¹ The program pays for 40 fellows who receive an annual stipend of \$50,000 to supplement their salaries. The AGO recommends that a similar program be created for Washington State.

2. Recommendation 2: Protect Election Workers.

In the 2022 Session Engrossed Substitute Senate Bill 5628 regarding cyber harassment of election officials (among others) made that harassment a class C felony, if the method of communication (of the threat) is electronic. The bill also added election officials to the list of people eligible for the Address Confidentiality Program (ACP) under RCW 40.24.030. ACP removes personal addresses from public databases. Unfortunately, this bill only applies if the harassment is done electronically. Given the importance of protecting our elections systems from domestic violence extremism, we recommend the legislature pass Substitute Bill 5148, "Concerning the Harassment of Election Officials" and explicitly call out harassment of an election official as a Class C Felony. Pursuant to the bill draft, "election official" includes any staff member of the Office of the Secretary of State or staff member of the County Auditor's Office, regardless of whether they are employed on a temporary or part-time basis, whose duties relate to voter registration or the processing of votes. In addition, given the limited capacity of County Prosecutors to prosecute these cases, we urge the legislature to provide more funding for that work.

3. Recommendation 3: Provide Additional Security Funding for Elected Officials.

Elected officials across the country also face an array of violent threats. The Legislature should create a fund for elected officials to have additional security, at sensitive locations, and around political events and public gatherings that may pose a risk to their safety. This would help staff fund the critical security and protections needed, be it for additional security at an event or for physical security at their offices, like additional locks, cameras, and bulletproof glass.

Endnotes

1: 2022 Wash. Legis. Serv. Ch. 297 (S.S.B. 5693) (WEST).

2: <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

3: 18 U.S.C. § 2331(5).

4: See Federal Bureau of Investigation & Department of Homeland Security, Strategic Intelligence Assessment and Data on Domestic Terrorism (October 2022), at 4 <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2022.pdf/view> (“The FBI and DHS use the term “domestic violent extremism” to refer to DT threats. The word “violent” is important because mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics does not constitute violent extremism and may be constitutionally protected.”).

5: Federal Bureau of Investigation & Department of Homeland Security, Strategic Intelligence Assessment and Data on Domestic Terrorism (October 2022), <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2022.pdf/view>.

6: *Id.* at 20.

7: See Cynthia Miller-Idriss & Bill Braniff, *The State of Hate-Fueled Violence in America*, Expert Presentation at the White House United We Stand Summit (Sept. 15, 2022) (reviewing data drawn from the START PIRUS dataset and reports by the Anti-Defamation League (ADL), Council on American-Islamic Relations (CAIR), STOP AAPI Hate, Human Rights First, and the Center on Countering Digital Hate).

8: 2022 Strategic Intelligence Assessment and Data on Domestic Terrorism, *supra* n.2, at 20.

9: FBI Uniform Crime Reporting, Hate Crimes Statistics Program, <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/ucr/hate-crime/services/cjis/ucr/publications#Hate-Crime%20Statistics>.

10: These include but are not limited to civil and criminal laws governing, for example, hate crimes (RCW 9A.36.078, 9A.36.080, 9A.36.083); threats against the governor, lieutenant governor, and their families (RCW 9A.36.078); criminal conspiracy and attempt (RCW 9A.28.040, 9A.28.020); obstructing governmental operation (RCW 9A.76); intimidating a public servant (RCW 9A.76.180); obstructing a law enforcement officer (RCW 9A.76.020); impersonating of law enforcement (RCW 9A.60.045); criminal mischief, failure to disperse, and disorderly conduct (RCW 9A.84.010-.030); interference with health care facilities or providers (RCW 9A.50); harassment and stalking (RCW Ch. 9A.46); private paramilitary activity (RWC §§ 9A.48.120, 38.40.120); terrorist acts (RCW 70.74.285); and public nuisance (RCW <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/ucr/hate-crime/services/cjis/ucr/publications#Hate-Crime%20Statistics> 7.48.130).

11: [California’s news desert response a model Washington should follow](#).

Appendix 1: 2022 Domestic Terrorism Proviso Language

(38)(a) \$125,000 of the general fund—state appropriation for fiscal year 2023 is provided solely for a study regarding state and local responses to acts or potential acts of domestic terrorism in Washington state.

(b) In conducting the study, the office must review laws and policies regarding domestic terrorism, including but not limited to:

(i) Federal, state, and local laws regarding acts of domestic terrorism, including how a criminal incident is determined to be an act of domestic terrorism;

(ii) State and local data collection, tracking, and reporting practices as related to acts of domestic terrorism; and

(iii) State and local policies regarding responding to acts of domestic terrorism.

(c) By December 15, 2022, the office must submit a report to the appropriate committees of the legislature that includes but is not limited to:

(i) A summary of current laws and policies as identified in (b) of this subsection;

(ii) Recommended best practices for:

(A) Standardizing and improving data collection, tracking, and reporting on acts of domestic terrorism at the state and local level; and

(B) Strengthening law enforcement, prosecutorial, and other local government responses to a potential act of domestic terrorism; and

(iii) Recommendations for any statutory changes that may be necessary for clarity and consistency.

(d) The office may consult with experts or professionals involved or having expertise in the topic of domestic terrorism to complete the study.

Appendix 2: Consultant Team Biographies

Mary McCord

Mary McCord is Executive Director of the Institute for Constitutional Advocacy and Protection (ICAP) and a Visiting Professor of Law at Georgetown University Law Center. At ICAP, McCord leads a team that brings constitutional impact litigation at all levels of the federal and state courts across a wide variety of areas including First Amendment rights, immigration, criminal justice reform, and combating the rise of private paramilitaries. McCord was the Acting Assistant Attorney General for National Security at the U.S. Department of Justice from 2016 to 2017 and Principal Deputy Assistant Attorney General for National Security from 2014 to 2016. Previously, McCord was an Assistant U.S. Attorney for nearly 20 years at the U.S. Attorney's Office for the District of Columbia. Among other positions, she served as a Deputy Chief in the Appellate Division, overseeing and arguing hundreds of cases in the U.S. and District of Columbia Courts of Appeals, and Chief of the Criminal Division, where she oversaw all criminal prosecutions in federal district court.

McCord is a statutorily designated amicus curiae for the Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review. McCord served as legal counsel to the U.S. House of Representatives Task Force 1-6 Capitol Security Review appointed by Speaker Nancy Pelosi after the January 6, 2021, attack on the U.S. Capitol. McCord also served on the Columbus Police After Action Review Team tasked with evaluating how the Columbus, Ohio, Police Department responded to the 2020 summer protests. McCord has written about domestic terrorism, unlawful militia activity, public safety, and the rule of law for publications including the *Washington Post*, *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *The Atlantic*, *Slate*, *Lawfare*, and *Just Security*. She has appeared on NPR, PBS, CNN, MSNBC, ABC, and other media outlets.

McCord received the Oliver White Hill Courageous Advocate Award from the Virginia Trial Lawyers' Association in 2018, based on her work with ICAP litigating against white supremacist and private militias that attended the Unite the Right rally in Charlottesville, Virginia, in 2017. McCord graduated from Georgetown University Law School and served as a law clerk for Judge Thomas Hogan of the U.S. District Court for the District of Columbia.

Cynthia Miller-Idriss

Cynthia Miller-Idriss is an award-winning author and scholar of extremism and radicalization. She directs the Polarization and Extremism Research & Innovation Lab (PERIL) in the Center for University Excellence (CUE) at the American University in Washington, DC, where she is also Professor in the School of Public Affairs and in the School of Education. Dr. Miller-Idriss has testified before the U.S. Congress and regularly briefs policy, security, education and intelligence agencies in the U.S., the United Nations, and other countries on trends in domestic violent extremism and strategies for prevention and disengagement. She serves on the international advisory board of the Center for Research on Extremism (C-REX) in Oslo, Norway and is a member of the Southern Poverty Law Center (SPLC)'s Tracking Hate and Extremism Advisory Committee.

A globally-recognized expert on far right youth and preventative interventions, Dr. Miller-Idriss is the author, co-author, or co-editor of six books, including *Hate in the Homeland: The New Global Far Right*, published by Princeton University Press in October 2020. In addition to her academic work, Miller-Idriss writes frequently for mainstream audiences, both as an opinion columnist for MSNBC and in additional essays, with recent by-lines in *The New York Times*, *The Atlantic*, *Foreign Affairs*, *The Washington Post*, *The Boston Globe*, *CNN*, *The Hill*, *Politico*, *The Guardian*, *Le Monde*, *Salon*, and [more](#). She appears regularly in the media as an expert source and political commentator, including regular appearances on [Fareed Zakaria GPS](#) as well as other [CNN](#) news programs, *PBS News Hour*, NPR's [Morning Edition](#) and [All Things Considered](#), MSNBC's [Hardball with Chris Matthews](#), NBC's [Evening News with Lester Holt](#), C-SPAN's [Washington Journal](#), NBC's [The Today Show](#), ABC's [Good Morning America](#), and in global news outlets in over a dozen countries, including *BBC News*, *Deutsche Welle*, *France 24*, *al Jazeera* and more.

Dr. Miller-Idriss frequently advises or consults with foundations and organizations seeking expertise on radicalization and extremism, and has provided expert consultation in legal cases involving radicalization and extremist violence.

Emily Chiang

Emily Chiang is an experienced changemaker, creative problem solver, and strategic thinker deeply committed to equity. She brings twenty years of advocacy and policy reform experience and has deep ties to many organizations working for social justice. Before joining The Raben Group, Emily served as a public policy manager with Facebook. There, she worked to understand how the technology of the future will impact our lives — while also building connective tissue across teams and advocating for ethical, equitable, and privacy-oriented innovation. Her work supported the advanced research teams at Facebook Reality Labs, including augmented reality, hyper-realistic avatars, and human-computer interfaces.

As the legal director of the ACLU of Washington, one of the country's largest ACLU affiliates, Emily oversaw all litigation filed in Washington state and coordinated advocacy efforts with government agencies and other nonprofits. She led the office's legal strategy on everything from criminal justice reform to free speech, immigrant rights, reproductive freedom, LGBTQ rights, and racial justice. Emily's department worked in community, with community, and on behalf of community. One of her proudest achievements was leading the legal team that helped end the Trump administration's ban on refugees.

During her tenure as an associate professor at the [University of Utah S.J. Quinney College of Law](#), Emily created and directed the Public Policy Clinic and taught a number of courses, including Constitutional Law; and Equality, Race, and the Law. Her clinic made the issue of shutting down the school to prison pipeline a topic of state-wide conversation and her students provided legal analysis and testimony on a number of bills before the state legislature.

Prior to her stint in academia, Emily also worked at Cravath, Swaine & Moore LLP, where she was the lead associate on the team that successfully sued for public defense reform in Montana; the Brennan Center for Justice; and the ACLU's National Legal Department, where she was a staff attorney with the Racial Justice Program. She earned her bachelor's degree from Yale University and her Juris Doctor from Harvard University School of Law, where she was also an editor on the Harvard Law Review. Emily has watched every single movie in the Fast and Furious franchise.

Rich Stolz

Rich Stolz previously served as OneAmerica's Executive Director. During his tenure, OneAmerica has cemented its status as one of the most effective organizing, advocacy, and civic engagement organizations in Washington State. Stolz was born in Seoul, South Korea. Stolz's family moved to the United States when he was three, and he was raised by his mother in Redwood City, California. Stolz first cut his teeth in organizing while a student at Stanford University to create ethnic studies programs. In 1994, he organized to defeat proposition 187, an anti-immigrant ballot measure in California. Prior to OneAmerica, Stolz worked at the [Center for Community Change](#), a national organization based in Washington, D.C. During that time, he focused on the intersection of policy, politics, and organizing across a broad spectrum of issues impacting low-income communities and communities of color, including jobs and income support policy, immigration policy, infrastructure investment, and environmental justice. He has lived and organized in communities as diverse as Portland, Maine; Montgomery, Alabama; Tucson, Arizona; Washington, D.C.; and Seattle, Washington. Throughout his life, he has been deeply influenced by the civil rights movement and liberation theology in the context of Catholic social teaching. Together, these experiences affirmed his calling to social justice and human rights organizing and activism. In 2013, Stolz was honored by President Barack Obama as a Cesar Chavez Champion of Change alongside other leaders in the immigrant rights movement.

Alex Aronson

Alex Aronson is Managing Director at the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center. He leads ICAP's legal policy, development, and communications efforts, and helps oversee the operations of the Institute.

Prior to joining ICAP, Alex served as chief counsel to Senator Sheldon Whitehouse on the U.S. Senate Committee on the Judiciary, and as staff director for the Subcommittee on Federal Courts, Oversight, Federal Rights, and Agency Action. In that capacity, he led the Senator's executive and judicial branch oversight work, steered legislative efforts to improve judicial ethics and access to justice, and maintained an active amicus curiae practice in the U.S. Supreme Court. He also served as

the Senator's lead counsel on two Supreme Court confirmations and advised on two presidential impeachment trials. Alex previously served as an attorney in the Appellate Section of the Civil Rights Division of the U.S. Department of Justice, a litigation associate at Covington & Burling LLP, and a law clerk to Judge Albert Diaz on the Fourth Circuit Court of Appeals. Before law school, Alex led a nonprofit focused on improving voting access for underrepresented communities in Oregon.

A greater Boston native, Alex is a 2012 graduate of Stanford Law School, where he was Senior Editor of the Stanford Law Review and took part in Stanford's Community Law and Supreme Court Litigation Clinics. He received his B.A., magna cum laude, from the University of Pennsylvania.

Zachary Jonas

Zach Jonas is a senior associate in The Raben Group's Government Affairs and Policy Counsel practice area. Before joining Raben, Zach served the people of New Hampshire for seven years as a community organizer and activist.

Zach is a graduate magna cum laude of the Georgetown University Law Center and was elected to membership in the Order of the Coif. He was also an editor of the Georgetown Law Journal, where his student note on the relationship between the Supreme Court and Congress won the 2022 GLJO Student Note Contest. During his time at Georgetown, he served as a law clerk on the Senate Homeland Security and Governmental Affairs Committee and participated in the Federal Legislation Clinic.

Appendix 3: Legal Review Conducted by The Raben Group



To: Washington State Office of the Attorney General

From: The Raben Group; Emily Chiang; Zach Jonas; Nikita Sibley

Date: August 30, 2022

Survey of Federal, State, and Local Domestic Terrorism Laws and Policies

Executive Summary

The Raben Group reviewed federal, state, and representative local domestic terrorism laws including: statutory definitions of and responses to domestic terrorism; state and local collection, analysis, and reporting practices for domestic terrorism data; and a representative sample of recent state and local policy responses to domestic terrorism.

Our key findings are:

- There is no freestanding federal domestic terrorism offense. An individual being prosecuted by the federal government cannot be federally charged with “terrorism” and instead must be charged with other related offenses.
- Twenty-six states and the District of Columbia have terrorism statutes that explicitly or implicitly cover acts of domestic terror. These are: Alabama, Arizona, Arkansas, Connecticut, D.C., Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia.¹
- Although states have prosecuted some cases under their own terrorism statutes, the federal government has also prosecuted all recent high-profile acts of domestic terrorism and anti-government violence under applicable federal laws, including the Boston marathon bombing; the plot to kidnap Governor Gretchen Whitmer, the Tree-of-Life Synagogue shooting; the car attack following the Unite-the-Right Rally in Charlottesville, Virginia; the January 6th insurrection at the United States Capitol; and the 2022 mass shooting at a supermarket in Buffalo, New York.
- American state law contains few provisions, other than enhanced-sentencing statutes, to combat or mitigate the threat of terror. Our survey discovered no state laws authorizing preventative measures like community engagement, deradicalization, or similar programming.
- Our research did not uncover any state domestic terrorism data collection legislation or policies other than legislation governing the creation and operation of “fusion” centers.
- State fusion centers and FBI joint terrorism task forces have been deemed largely ineffective by U.S. Senate investigators. State fusion centers in several states have also been accused of violating privacy and civil rights by surveilling political targets, including racial justice and environmental activists.

¹ A representative listing of these state domestic terror laws can be found below. See *infra* App’x A. Several states not listed here have anti-terrorism laws that are more limited in scope, often applying only to the use of weapons of mass destruction. Because the definition of terror is imprecise and difficult to delineate, some analysts might include those laws in a listing of state domestic terror laws. See, e.g., Donna Lyons, *States Enact New Terrorism Crimes and Penalties*, *Nat’l Conf. of State Legislatures* (Nov. 2002), <https://www.ncsl.org/Portals/1/documents/cj/terrorismcrimes.pdf>. We have decided to limit our discussion to laws that cover a broader set of anti-government actions, including mass shootings, because the public understanding of the terrorist threat has expanded significantly beyond the use of weapons of mass destruction in recent years. Moreover, all the states examined here specifically define “terrorism” in their statutory schemes and, with the exception of Nevada and Vermont, closely model their definition on the federal definition of domestic terror.

- Some states have begun to update or modernize their domestic terrorism statutes and policies. For example, in 2021 Washington State adopted a law that allows for the decertification of police officers who affiliate with extremist organizations. New York State recently enacted a state law authorizing a task force to evaluate the role that social media plays in motivating violent extremists, including domestic terrorists; this complements a broader state domestic terrorism task force studying best practices to prevent mass shooting incidents.
- Our research did not reveal any municipal laws targeting terrorism.

This memo provides an overview of the methodology Raben used (Part I) and an analysis of the federal and state domestic terrorism legislation currently in effect including definitions, penalty enhancements, the criminalization of support activities, civil liberties protections, forfeiture clauses, domestic terrorism data collection, analysis, and distribution, and state emergency planning (Part II). It also covers local domestic terrorism laws (Part III) and other recent federal, state, and local domestic terrorism policy developments (Part IV). All referenced state legislation is available in Appendix A, which provides an illustrative overview of state domestic terrorism laws.²

I. Methodology

The Raben Group based its initial research on the Institute for Constitutional Advocacy and Protection’s (ICAP) guide to protests and public safety, which contains a listing of every state statute that explicitly defines the crime of terrorism.³ Raben conducted a comprehensive survey in the WestLaw Edge service of each of those statutes and the surrounding codes, collecting any statute with related subject matter. Any pending legislation flagged by Westlaw as potentially modifying existing terrorism statutes was also reviewed, analyzed, and summarized in Part IV where appropriate.

Raben also keyword searched the state codes for the terms “terror” and “terrorism” to discover statutes outside of the criminal code that might be related to domestic terrorism. Certain statutory provisions, notably freestanding short titles, were excluded. Relevant and illustrative statutes were collected into Appendix A and analyzed for the discussion below.

Additionally, Raben keyword searched the twenty-five state codes not listed in the ICAP guide for the terms “terror” and “terrorism” to confirm that they did not have relevant domestic terrorism statutes.

Given the substantial number of localities in the United States, Raben evaluated a group of representative municipalities for any domestic terrorism provisions. The final list included thirty-nine cities. Nine of these were chosen for size, geographic representativeness, and recent major terrorist attacks: New York, Los Angeles, Chicago, Houston, Phoenix, Philadelphia, Boston, Oklahoma City, and Orlando. Additionally, the largest cities in states facing increased domestic terrorism activity were surveyed, including the largest cities in Idaho, Illinois, Michigan, Minnesota, Montana, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wisconsin.⁴ Each city’s code was keyword searched for the terms “terror,” “terrorism,” and “terrorist.”

Finally, the Raben Group conducted a broad survey of news sources in the Bloomberg Government tool to find any additional domestic terrorism initiatives at the state or local level that were not reflected in the other sources. A comprehensive listing of the keyword searches used is available in Appendix B.

II. Federal and State Domestic Terrorism Laws

This Section provides an overview and brief analysis of federal and state domestic terrorism laws, including provisions that:

- define domestic terrorism;
- prescribe enhanced penalties for specific acts of terrorism, including crimes of violence, terroristic threatening, attacks on critical infrastructure, and the construction, possession, and use of weapons of

² See *infra* App’x A.

³ See Instit. for Const. Advoc. & Prot., Protests & Public Safety: A Guide for Cities & Citizens 40 n. 164.

⁴ For a full listing of the cities surveyed, see *infra* note 85. These states were selected on the recommendation of ICAP and Dr. Cynthia Miller-Idriss.

mass destruction (WMD);

- criminalize support activities, including provision of material support and hindering prosecution of terrorism;
- expressly protect civil liberties;
- allow forfeiture, restitution, and civil causes of action against convicted terrorists in some instances;
- enable state law enforcement to create “fusion centers” or otherwise gather information about domestic terrorists; and
- provide for the inclusion of terrorist attacks in state emergency planning, mitigation, and response efforts.

Although the surveyed state statutes vary in their particulars, most create a crime of “terrorism” based on a definition found in federal law. Under this definition, terrorism involves the commission of an underlying offense—generally a violent act like kidnapping or murder—with the specific intent to coerce or intimidate the civilian population or affect the policy or conduct of a unit of government. This tracks with the accepted scholarly definition of terrorism as a political tactic employing violence to achieve political and ideological goals through psychological warfare against governments and civilian populations.⁵

In this memo, the term “domestic terrorism statutes” refers to laws that define and criminalize acts undertaken by American nationals in the United States with the specific intent described above.⁶ Many states do not label their statutes as “domestic terrorism statutes”: while some use this label,⁷ many instead criminalize “terrorism” generally, including any covered act on American soil, without regard to the nationality or organizational membership of the perpetrator.⁸ Some states have additional laws penalizing certain acts related to foreign terrorist organizations,⁹ but this memo will not cover those laws because they do not relate to acts of domestic terrorism. Other state laws incorporate the definition of domestic terrorism described above but cover ancillary issues like victim compensation, insurance, and divestment from sponsors of foreign terror.¹⁰ These laws will not be included in the analysis below. Finally, the 25 states not covered in this memo also have statutes that criminalize specific acts, like the use of weapons of mass destruction, that might be considered terrorism. However, because these statutes do not meet the specific intent requirement outlined above, they will not be examined at length in this memo.¹¹

State governments sometimes prosecute the perpetrators of terrorist attacks under state law, including some state terrorism statutes,¹² and terrorism investigations frequently involve cooperation between federal, state, and local law enforcement. However, the federal government has also concurrently prosecuted all recent, high-profile prosecutions of domestic terrorists under federal law.¹³ These include the Boston bombing, the plot to kidnap Michigan Governor

5 See Edward Orehek & Anna Vazeou-Nieuwenhuis, *Understanding the Terrorist Threat*, 1 *Pol’y Insights from the Behavioural and Brain Sci.’s* 248 (2014).

6 There are two exceptions to this definition included in this memo: Vermont and Nevada. Neither follow the federal definition of domestic terrorism and focus instead on the commission of mass casualty events or attacks against critical infrastructure. However, both include coercion of the civilian population in their definition of terrorism, and Vermont specifically refers to these acts as “domestic terrorism.” See Nev. Rev. Stat. 202.4415; Vt. Stat. tit. 13, 1703. These exceptions highlight the difficulty in accurately defining or delineating the concept of domestic terrorism. See *supra* note 1.

7 See, e.g., Ga. Code 16-11-220(2) (defining “domestic terrorism”).

8 See, e.g., Conn. Gen. Stat. 53a-300 (defining “act[s] of terrorism”).

9 See Fla. Stat. 775.32–34.

10 For example, many states have laws requiring schools to prepare for and report acts of terrorism; most states have victims compensation and veterans benefits acts, which may provide support to victims of violent crimes, including acts of foreign and domestic terror, and veterans of the “war on terror.” State racketeering statutes may also explicitly or implicitly cover certain terrorist activities. A number of states also have “divestment from terror” statutes requiring various state funds, often pension funds, to divest from state sponsors of terror.

11 See sources cited and accompanying text, *supra* note 1.

12 See Denise Lavoie, *Man Sentenced to Second Life Term in Charlottesville Car Attack*, *AP News* (July 15, 2019), <https://apnews.com/article/va-state-wire-us-news-ap-top-news-virginia-charlottesville-08c7dbeb08ef4ad5874cd719e7cfc6b3>; *Case against accused Buffalo mass shooter proceeds in court*, *AP News* (July 7, 2022), <https://apnews.com/article/buffalo-supermarket-shooting-crime-shootings-hate-crimes-090ebfe29a8ea621ec5fbfaad6fa867d>; Mitch Smith, *Jury Convicts Men of Supporting Plot to Kidnap Michigan Governor*, *N.Y. Times* (Oct 26, 2022), <https://www.nytimes.com/2022/10/26/us/michigan-wolverine-watchmen-trial.html>.

13 See Lisa Daniels, *Prosecuting Terrorism in State Court*, *LAWFARE* (Oct. 26, 2016, 11:33 AM), <https://www.lawfareblog.com/prosecuting-terrorism-state-court>.

Gretchen Whitmer, the Tree-of-Life Synagogue shooting, the car attack following the Unite-the-Right Rally in Charlottesville, Virginia,¹⁴ the January 6th insurrection at the United States Capitol,¹⁵ and the recent mass shooting at a supermarket in Buffalo, New York.¹⁶ As noted above, state prosecutors frequently undertake concurrent prosecutions for these and similar terrorist attacks, but sometimes decline to do so or decline to use their state terrorism statutes to do so. The reasons for these decisions may include resource disparities between federal and state prosecutors, the existence of particularly strong federal incentives to prosecute political violence, and the specific intent required in court to prove many state terrorism offenses, which may make it easier to prosecute the offense under other state laws including murder statutes.¹⁷ Free-standing state domestic terrorism prosecutions are less common and often focus on school shooters or those who threaten school shootings.¹⁸

A. Defining Domestic Terror

The federal government defines domestic terrorism in 18 U.S.C. § 2331(5) as a specific intent crime covering activities that . . . involve acts dangerous to human life that are a violation of the criminal laws of the United States or . . . any State . . . [and] appear to be intended

...

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

...

occur primarily within the territorial jurisdiction of the United States.¹⁹

Although this definition is broad, it excludes attacks on U.S. soil committed by Americans with ties to foreign terrorist organizations.²⁰ It also excludes mass-casualty events, like mass shootings, that are not motivated by the specific intent to coerce or intimidate civilian populations and governments (including acts motivated by racial animus that might be covered by separate hate crimes laws).²¹

A majority of states with terrorism statutes incorporate the federal definition of terrorism from 18 U.S.C. § 2331(5). Many state statutes modify this definition, often specifying the particular “activities” that constitute terrorism by listing certain offenses. For example, the Alabama code defines terrorism as

- (1) ACT OF TERRORISM. An act or acts constituting a specified offense . . . that is intended to do the following:
 - a. Intimidate or coerce a civilian population.

14 See *id.*

15 See Capitol Breach Cases, *United States Attorney’s Office: District of Columbia, Dep’t of Just.*, <https://www.justice.gov/usao-dc/capitol-breach-cases>, (last visited Aug. 12, 2022).

16 See Buffalo Mass Shooting Suspect Pleads Not Guilty to Federal Hate, Firearms Charges, *Reuters* (July 18, 2022, 12:15 PM), <https://www.reuters.com/world/us/buffalo-mass-shooting-suspect-be-arraigned-federal-hate-firearms-charges-2022-07-18/>.

17 See Daniels, *supra* note 12.

18 See Katherine Fiegenbaum, Domestic Terrorism Charge Against Orleans County Student Marks Rare Use of 2018 Law, *VT Digger* (June 10, 2022), <https://vtdigger.org/2022/06/10/domestic-terrorism-charge-against-orleans-county-student-marks-rare-use-of-2018-law/>; Jennifer Conlin et. al, Suspect in Michigan School Shooting Faces Murder and Terrorism Charges, *N.Y. Times* (Dec. 1, 2021), <https://www.nytimes.com/2021/12/01/us/ethan-crumbley-michigan-high-school-shooting.html>; Brad Dress, Florida Police Say Students May Have Thwarted a Potential Mass Shooting by Reporting Snapchat Messages, *The Hill* (Dec. 10, 2021, 10:27 AM), <https://thehill.com/homenews/state-watch/585277-florida-police-say-students-may-have-thwarted-a-potential-mass-shooting/?rl=1>.

19 18 U.S.C. § 2331(5).

20 See Lisa N. Sacco, Cong. Rsch. Serv., R44921, Domestic Terrorism: An Overview 2–5 (2017).

21 See *id.*

- b. Influence the policy of a unit of government by intimidation or coercion.
- c. Affect the conduct of a unit of government by murder, assassination, or kidnapping.
- ...

(4) SPECIFIED OFFENSE. A Class A felony [which includes murder and the following first degree offenses: kidnapping, rape, sodomy, sexual abuse, human trafficking, burglary, arson, and robbery], manslaughter, kidnapping in the second degree, assault in the first or second degree, stalking, intimidating a witness, criminal tampering, endangering the food supply, endangering the water supply or any attempt or conspiracy to commit any of these offenses.²²

Like the federal definition, this language defines terrorism as a specific intent crime requiring the commission of a (usually violent) offense *and* an intent to use that crime to intimidate or coerce a civilian population or influence or affect government policy. The listed crimes vary by state but generally include different combinations of the violent offenses listed in the Alabama statute above. Most states with domestic terrorism statutes incorporate some version of this language into their state codes.²³

States sometimes define specific terrorism offenses that do not require intent. These include categorizing as terrorism any attack on critical infrastructure, including food supplies, water supplies, telecommunications, transportation infrastructure, energy facilities, government buildings, and hospitals.²⁴

B. Criminalizing Acts of Terror

Federal domestic terror law creates no freestanding “terrorism” offense.²⁵ Instead, “federal law creates dozens of ‘terrorism’ crimes applicable to specific circumstances—such as using a bomb, biological agent, or radiological dispersal device” but does not directly penalize violent terrorist acts using firearms or vehicles when those acts are not committed on behalf of foreign terrorist organizations.²⁶

State domestic terror laws differ from the federal law primarily because they do create freestanding crimes under which a terrorist may be charged, convicted, and sentenced. These laws fall into several broad subcategories. First, most state domestic terrorism laws include sentence enhancements for the crime underlying the terrorist act. Second, many states created new terrorism offenses for attacks on certain targets. Third, many states have enacted laws that criminalize activities performed in support of terrorism. Finally, some states have enacted statutes explicitly providing for the protection of civil liberties in their domestic terrorism statutory schemes.

1. Sentence Enhancements on Underlying Offenses

The majority of states that criminalize terrorism use a system of sentence enhancing statutes that punish terrorists more severely than non-terrorist offenders who commit the same underlying offense. For example, the Ohio terrorism statute prescribes particular offenses that, when committed with intent to intimidate or coerce the civilian population or influence government conduct or policy, become acts of terrorism subject to sentencing as “an offense one degree higher than the most serious underlying specified offense the defendant committed.”²⁷ The statute also contains even harsher sentences for specific categories of murder, providing for mandatory life imprisonment without parole.²⁸

Almost all of the state statutory domestic terrorism schemes reviewed for this memo include provisions that operate in the same fashion, either by increasing the “class” of the offense to a higher sentencing level²⁹ or by including

22 Ala. Code. § 13A-10-151.

23 See, e.g., Ariz. Rev. Stat. § 13-2301.12; Ark. Code. § 5-54-205(a). The full listing of these statutes can be found in Appendix A, *infra*.

24 See, e.g., Nev. Rev. Stat. § 202.4415; S.D. Codified Laws § 22-8-14.

25 See Berris et. al, Cong. Rsch. Serv., R46829, Domestic Terrorism: Overview of Federal Criminal Law and Constitutional Issues 1 (2021); Instit. for Const. Advoc. & Prot., *supra* note 3, at 39.

26 See *id.*; 18 U.S.C. § 2331(5).

27 See Ohio Rev. Code §§ 2909.24(A), (B)(1)–(2).

28 See *id.* at (B)(3)–(4).

29 See, e.g., Fla. Stat. § 775.31(1).

specific, harsher penalties (for example, life without parole or a longer-than-normal term of years) in the terrorism statute.³⁰

Whether an individual offender may be charged for both an underlying offense and the crime of terrorism arising from the same course of criminal conduct depends on state law and procedures. Some states, including New Jersey³¹ and Virginia,³² specifically allow for separate criminal charges on both the terrorism offense and the underlying crime. For example, an individual who committed first degree murder with terrorist intent in New Jersey could be convicted for both first degree murder and terrorism and receive consecutive life sentences.

In states without specific statutes authorizing these multiple separate sentences, whether an individual offender may be simultaneously sentenced for a terrorist offense and an underlying offense may depend on application of the *Blockburger* test and its state equivalents, which generally prohibit multiple sentencing for the same course of criminal conduct unless each crime contains an element that is not present in the other.³³ These tests would also govern whether individuals may be charged under both terrorism and hate crimes statutes (if applicable) for the same criminal conduct.

2. *Creating New Terrorism Offenses*

State statutory schemes sometimes create new offenses related to specific terrorist activities that may or may not be covered by other underlying offenses. For example, many states outlaw the possession, construction, and use of weapons of mass destruction, a category including chemical, biological, nuclear, and explosive weapons.³⁴ This offense is similar to one found in federal domestic terrorism law.³⁵ These states also outlaw making threats or false reports of WMD.³⁶ Similarly, many states outlaw terroristic threatening—making threats to commit a specified offense with terrorist intent.³⁷

Some states create entirely separate offenses for attacks on critical infrastructure, mirroring a similar federal domestic terrorism law.³⁸ These include attacks against public transportation, energy facilities, food and water supplies, agricultural areas, health care facilities, communications infrastructure, and computer networks.³⁹

3. *Criminalizing Support Activities*

Many state domestic terror schemes create additional offenses to criminalize actions taken in support of terrorism. The most commonly criminalized support activity is “material support” of terrorism. This offense, which is also present in federal domestic terrorism law,⁴⁰ includes soliciting with the intent to provide or actually providing terrorists with financial support, lodging, training,⁴¹ false documentation, communications equipment, weapons, transportation, and other similar assets with intent that the material support be used to further acts of terrorism.⁴² These statutes usually exempt the provision of medical, and sometimes religious or legal, services to terrorists.⁴³ Several states create “tiered” material support offenses, providing that financial or other support exceeding a certain dollar value will be treated as a more serious offense than assistance amounting to a lesser dollar value.⁴⁴ Some states, and federal law,⁴⁵ also explicitly criminalize money laundering or fundraising in support of terrorism.⁴⁶

30 See, e.g., Ga. Code § 16-11-221.

31 See N.J. Stat. § 2C:38-2.f-g.

32 See Va. Code § 18.2-46.10.

33 See *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

34 See, e.g., 18 Pa. Cons. Stat. § 2716.

35 See 18 U.S.C. § 2332a.

36 See, e.g., 18 Pa. Cons. Stat. § 2715.

37 See, e.g., N.Y. Penal Code § 490.20.

38 See 18 U.S.C. § 2332f.

39 See, e.g., Conn. Gen. Stat. § 53a-304; see Ga. Code §§ 16-11-220–21; Conn. Gen. Stat. § 53a-301.

40 See 18 U.S.C. § 2339A.

41 Washington state prohibits individuals from training others to use devices or techniques capable of causing significant harm to others if done to further a “civil disorder.” Wash. Rev. Code Ann. § 9A.48.120. Our research did not reveal any cases involving this statute.

42 See, e.g., Ala. Code § 13A-10-151(2), 153.

43 See, e.g., Ala. Code § 13A-10-151(2).

44 See, e.g., Iowa Code § 708A.4.

45 See 18 U.S.C. §§ 2332d, 2339c.

46 See Ohio Rev. Code § 2909.29.

Many states criminalize “hindering prosecution of terrorism,” an offense prohibiting others from helping terrorists avoid discovery, evade apprehension, or disrupt or delay resulting trials.⁴⁷ States sometimes provide for differing classifications of the “hindering” offense, which may turn on whether the underlying terrorist offense caused any deaths⁴⁸ or whether the hinderer was a close family relation of the terrorist.⁴⁹ Federal law similarly outlaws “harboring or concealing” terrorists.⁵⁰

C. Protecting Civil Liberties

Some states provide explicitly that their anti-terrorism laws will not infringe on the rights of individuals under the federal and sometimes state constitutions.⁵¹ These may describe particular rights not to be infringed, including free speech, peaceful assembly, and the right to petition the government for redress.⁵² Idaho also notes that its anti-terrorism statutes will not infringe on the constitutional right to bear arms.⁵³

D. Forfeiture, Restitution, and Civil Causes of Action

Some states maintain statutory provisions to allow governments and individuals to recoup financial losses resulting from terrorist acts. In some states, these include seizure and forfeiture of any property used or intended for use in the commission of terrorist offenses.⁵⁴ These statutes allow the state to confiscate and sell any personal property belonging to the perpetrator and used in the commission of the terrorist act.

Many states also allow for restitution, especially in cases of terroristic threats.⁵⁵ Restitution allows government agencies and individuals affected by terrorist threats to sue a convicted terrorist for costs incurred during the response to the terrorist act. For example, a school and local emergency responders might recover the cost of an evacuation in response to a terroristic bomb threat against that school.

Finally, some states and the federal government⁵⁶ provide that prosecution under terror statutes does not preclude civil action against terrorists by persons injured during a terrorist act.⁵⁷ Some states simply guarantee that damages will remain available while others allow for multiple damages, costs, and attorneys’ fees in such cases.⁵⁸

E. Domestic Terrorism Data Collection and Intelligence Analysis (“Fusion Centers”)

Federal and state governments engage in varying levels of data collection and intelligence analysis related to terrorism. The federal Department of Homeland Security (DHS) has responsibility under the Homeland Security Act of 2002 to facilitate the collection, analysis, and dissemination of terrorism-related intelligence between the federal, state, and local governments; DHS has chosen to carry out this statutory mandate by funding the establishment of state and major-urban-area intelligence fusion centers that collect, analyze, and disseminate intelligence on terrorism, criminal matters, and public safety.⁵⁹ According to DHS,

“[f]usion centers contribute to the Information Sharing Environment . . . through their role in receiving threat information from the federal government; analyzing that information in the context of their local environment; disseminating that information to local agencies; and gathering tips, leads, and suspicious

47 See, e.g., Mich. Comp. Laws §§ 750.543b(f), .543h.

48 See Ala. Code § 13-A-10-154.

49 See Ark. Code § 5-54-208.

50 See 18 U.S.C. § 2339.

51 See, e.g., Ga. Code § 16-11-224.

52 See Idaho Code § 18-8102; Mich. Comp. Laws § 750.543z.

53 See Idaho Code § 18-8102.

54 See, e.g., N.C. Gen. Stat. § 14-10.1(d).

55 See, e.g., 18 Pa. Cons. Stat. § 2706(b).

56 See 18 U.S.C. § 2333

57 See, e.g., N.C. Gen. Stat. § 14-10.1(e).

58 See *id.*

59 See Homeland Security Act of 2002, Pub. L. No. 107-296; see also Majority and Minority Staff Report, S. Comm. on Homeland Sec. & Governmental Affs. Permanent Subcomm. on Investigations, 112th Cong., Federal Support for and Involvement in State and Local Fusion Centers 10 (2012) (*hereinafter* PSI Report).

activity reporting . . . from local agencies and the public.”⁶⁰

Fusion centers include federal, state, and local government entities, as well as private sector actors like critical infrastructure operators.⁶¹ The FBI also plays a role in collecting and disseminating terrorism intelligence with state and local entities through its Joint Terrorism Task Forces (JTTF).⁶² JTTFs are “multi-jurisdictional task forces managed by the FBI, . . . includ[ing] other federal and [state, local, tribal, and territorial] law enforcement partners which together act as an integrated force to combat terrorism.”⁶³ There are nearly 200 JTTFs⁶⁴ and approximately 80 state and major-urban-area fusion centers⁶⁵ in the United States, covering all 50 states.

Several states have specific legislation authorizing the operation of statewide fusion centers, which collect, analyze, and distribute information related not only to terrorism but also general criminal activity within the state.⁶⁶ The state statutes establishing these centers mandate information sharing between local, state, and federal agencies on terrorist threats and provide for the classification and secure storage of such data.⁶⁷ Other states established their fusion centers without explicit authorizing statutes.⁶⁸ Fusion centers are primarily funded by state governments, which have considerable authority over their day-to-day operations.⁶⁹

Both JTTFs and fusion centers have been criticized for ineffectiveness and purported violations of civil liberties. As early as 2012, a report by the U.S. Senate Permanent Subcommittee on Investigations found that state fusion centers lacked oversight, were largely ineffective in performing their counterterrorism mission, and frequently violated DHS guidelines intended to protect Americans’ civil liberties and privacy.⁷⁰ According to PSI, “despite reviewing 13 months’ worth of reporting originating from fusion center[s] . . . , the Subcommittee investigation could identify no reporting which uncovered a terrorist threat, nor could it identify a contribution such fusion center reporting made to disrupt an active terrorist plot.”⁷¹ Most of the reporting was about criminal activity related to drugs or smuggling.⁷² The terrorism-related reporting conducted by the fusion centers was based on older news releases and media accounts or duplicated reporting by FBI sources.⁷³

More recent investigations by several news outlets revealed that the South Western Oregon Joint Task Force and Oregon’s TITAN Fusion Center surveilled peaceful protestors opposed to the construction of a natural gas pipeline, collecting information about nonviolent, noncriminal First Amendment activities.⁷⁴ Oregon’s fusion center also reportedly placed the civil rights director of the Oregon Department of Justice under surveillance after he used the hashtag #BlackLivesMatter.⁷⁵ Other fusion centers have come under significant criticism for tracking racial justice demonstrators and

60 See National Network of Fusion Centers Fact Sheet, Dep’t of Homeland Sec., <https://www.dhs.gov/national-network-fusion-centers-fact-sheet> (last visited Aug. 8, 2022)

61 See Fusion Centers and Joint Terrorism Task Forces, Dep’t of Homeland Sec., <https://www.dhs.gov/fusion-centers-and-joint-terrorism-task-forces> (last visited Aug. 8, 2022).

62 See Joint Terrorism Task Forces, Fed. Bureau of Investigation, <https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces> (last visited Aug. 8, 2022).

63 See Fusion Centers and Joint Terrorism Task Forces, *supra* note 61.

64 See *id.*

65 See Fusion Center Locations and Contact Information, Dep’t of Homeland Sec., <https://www.dhs.gov/fusion-center-locations-and-contact-information> (last visited Aug. 8, 2022).

66 See, e.g., Fla. Stat. § 943.0321.

67 See Kan. Stat. § 48-3703.

68 See Nick Morgan, Four Jordan Cove Opponents Sue State Over Secret Surveillance, *Mail Tribune* (June 2, 2022, 3:12 PM), <https://www.mailtribune.com/crime-courts-and-emergencies/2022/06/01/four-local-women-sue-state-over-secret-surveillance/>.

69 Alice Speri, The Defund Police Movement Takes Aim at Fusion Centers and Mass Surveillance, *The Intercept* (Apr. 21, 2021, 7:00 AM) <https://theintercept.com/2021/04/21/maine-defund-police-fusion-centers-mass-surveillance/>.

70 See PSI Report, *supra* note 59, at 2–3.

71 See *id.* at 2.

72 See *id.* at 3.

73 See *id.*

74 See Jason Wilson & Will Parrish, Revealed: FBI and Police Monitoring Oregon Anti-Pipeline Activists, *The Guardian* (Aug. 8, 2019, 2:00 AM), <https://www.theguardian.com/us-news/2019/aug/08/fbi-oregon-anti-pipeline-jordan-cove-activists>; Maxine Bernstein, Lawsuit: Oregon’s Anti-Terrorism Center Lacks Authority, Collects Intelligence on Protestors, *The Bulletin* (Dec. 14, 2021), https://www.bendbulletin.com/localstate/crimeandjustice/lawsuit-oregon-s-anti-terrorism-center-lacks-authority-collects-intelligence-on-protesters/article_00fcca5a-b46b-5912-ac10-588579bf38fe.html.

75 See Andrew Dorn, Johnson Says Oregon DOJ Didn’t Show ‘Loyalty’ In Civil Rights Case, *Oregon Public Broadcasting*, (Oct. 17, 2017), <https://www.opb.org/radio/programs/think-out-loud/article/oregon-civil-rights-attorney-settlement-erious-johnson-interview/>.

Black cultural events,⁷⁶ environmental activists and gun owners,⁷⁷ and in some cases for attempting to evade state freedom of information laws.⁷⁸ In some states, these incidents have led to lawsuits⁷⁹ and state legislative action⁸⁰ to disband or establish more effective oversight over fusion centers.

These critiques of state surveillance dovetail with critiques of the FBI's domestic terrorism efforts, which have been criticized for surveilling racial justice activists under the "Black Identity Extremism" domestic terrorism category.⁸¹

F. Emergency Planning

Many states have emergency management statutes governing emergency and homeland security planning and response. While most of these statutes specifically reference terrorism, they do so as one in a list of many potential disasters that state emergency management and homeland security agencies must prepare for.⁸² Because these statutes only tangentially relate to domestic terrorism, only a few relevant examples are included in Appendix A.

Some states task emergency planning agencies with specific preparation and mitigation duties,⁸³ although these laws appear targeted at disaster planning and response rather than community engagement and de-escalation programming for populations at risk of radicalization. Other states have statutorily-created homeland security advisory boards intended to advise the executive or the legislature on best practices for mitigating, preventing, and responding to terror and other disaster situations.⁸⁴

III. Local Domestic Terror Laws

The Raben Group conducted a search of the municipal codes of thirty-nine major cities in the United States.⁸⁵ The first six cities were included because they are six of the largest cities in the country; the next three are smaller but experienced major terrorist events in recent decades; and the remaining thirty are located in states that have faced increased threats from domestic terrorism in recent decades.

None of the cities searched had any ordinances or codes related to fighting domestic terror. Several referenced terrorism in their emergency planning codes, which task municipal emergency management agencies with preparing for and reacting to major terrorist attacks.⁸⁶

IV. Recent Federal, State, and Local Policy Developments

In Spring 2022, the U.S. House of Representatives passed H.R. 350, the Domestic Terrorism Prevention Act of

76 See, e.g., Michael German, The FBI Targets a New Generation of Black Activists, Brennan Ctr. for Justice (June 26, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/fbi-targets-new-generation-black-activists>; Isaiah Holmes, A Look at Milwaukee PD's Fusion Center, *Wisconsin Examiner* (Mar. 30, 2021, 7:00 AM), <https://wisconsinexaminer.com/2021/03/30/a-look-at-milwaukee-pds-fusion-center/>; Mara Hvistendahl, Austin Fusion Center Spied on Nonpolitical Cultural Events, *The Intercept* (Nov. 30, 2020, 12:00 PM), <https://theintercept.com/2020/11/30/austin-fusion-center-surveillance-black-lives-matter-cultural-events/>.

77 See Speri, *supra* note 69.

78 See Will Parrish, Minnesota Law Enforcement Agency Blocks Release of Public Records About Surveilling Pipeline Opponents, *The Intercept* (Aug. 7, 2021, 11:04 AM), <https://theintercept.com/2021/08/07/minnesota-pipeline-line-3-public-records/>.

79 See Bernstein, *supra* note 74.

80 See Rachel Ohm, Lawmakers Critical of First Report out of Maine Police Fusion Center, *Portland Press Herald* (Apr. 6, 2022), <https://www.pressherald.com/2022/04/01/lawmakers-critical-of-first-report-on-cases-handled-by-state-police-intelligence-agency/>.

81 See German, *supra* note 76.

82 See, e.g., D.C. Code § 7-2231.03.

83 See *id.*

84 See, e.g., Ga. Code §§ 38-3-40–42.

85 The cities surveyed were: New York, NY; Los Angeles, CA; Houston, TX; Phoenix, AZ; Philadelphia, PA; Boston, MA; Oklahoma City, OK; Orlando, FL; Boise ID, Meridian, ID; Nampa, ID; Aurora, IL; Naperville, IL; Detroit, MI; Grand Rapids, MI; Ann Arbor, MI; Minneapolis, MN; St. Paul, MN; Rochester, MN; Billings, MT; Missoula, MT; Fargo, N.D.; Bismarck, N.D.; Columbus, OH; Cleveland, OH; Cincinnati, OH; Portland, OR; Eugene, OR; Salem, OR; Sioux Falls, S.D.; Rapid City, S.D.; Seattle, WA; Spokane, WA; Tacoma, WA; Milwaukee, WI; Madison, WI; Green Bay, WI.

86 See e.g., NYC Charter, Chap. 19-A, Sec. 497(a).

2022.⁸⁷ H.R. 350 would have formalized and refocused federal law enforcement responses to domestic terrorism. H.R. 350 failed in the Senate, 47 to 47, amid Republican criticism that the bill duplicated existing authority, was “like the patriot act for American citizens,” and “insult[ed] our police and soldiers as White supremacists and neo-Nazis.”⁸⁸

The Act would have created new offices in the Department of Homeland Security, the Department of Justice, and the FBI with authority to gather intelligence, prosecute, and investigate domestic terrorism.⁸⁹ The bill also would have: required each office to have at least one employee dedicated to “ensuring compliance with civil rights and civil liberties” and required that all employees undergo “annual anti-bias training”;⁹⁰ created a joint biannual reporting requirement for all three agencies, including a qualitative and quantitative analysis of domestic terrorist incidents, specifically white supremacist incidents, and associated law enforcement actions;⁹¹ required the domestic terrorism offices established by the law to undergo law-enforcement training on best practices to combat domestic terrorism and to focus on the “most significant domestic terrorism threats” as determined by the number of incidents from each category of domestic terrorism;⁹² and created an interagency task force to analyze and combat “White supremacist and neo-Nazi infiltration” of the armed services and federal law enforcement.⁹³

In 2021, Washington state passed SB 5051,⁹⁴ a law that, in part, allows the Criminal Justice Training Commission (CJTC) to deny, suspend, or revoke a peace officer’s certification if that officer was affiliated with extremist organizations.⁹⁵ The law also expanded the CJTC to create a majority of community and non-law enforcement members.⁹⁶ Administrative regulations promulgated by the CJTC broadly define “extremist organization[s]” as seeking to: 1) undermine democratic processes through violence; 2) promote governmental changes through violence; 3) promote, espouse, or engage in violence to marginalize certain protected classes or advance racist ideologies; or 4) advocate an ideology holding that local law enforcement supersedes other governmental authorities.⁹⁷ The bill faced intense opposition from police unions.⁹⁸

Although 2021 had the most certification cases on record and 2022 tied with 2020 for the second-most certification cases on record, the CJTC’s public database of certification cases shows no successful decertifications or denials of certifications since the law’s passage in spring 2021.⁹⁹ Of the 100 publicly reported cases in the CJTC database from May 2021 to August 2022, sixty-eight are still pending, twenty are under review, and twelve were closed without decertification.¹⁰⁰

In May 2022, New York Governor Kathy Hochul, responding to the threat of domestic terrorism following the recent mass shooting at a Buffalo supermarket, signed an executive order that created a task force on social media and violent extremism to study, investigate, and make recommendations relating to the role that social media companies may play in promoting acts of violence, especially hate crimes and acts of terrorism.¹⁰¹ New York has also revived its

87 See H.R. 350, 117th Cong. (2022).

88 See Clare Foran & Ted Barrett, *Senate Republicans Block Domestic Terrorism Prevention Bill in Key Vote*, CNN (May 26, 2022, 12:37 PM), <https://www.cnn.com/2022/05/26/politics/senate-domestic-terrorism-bill-vote/index.html> (quoting Senators John Thune and Rand Paul); Tyler Olson, *Texas School Shooting: Domestic Terrorism Bill Stalls in Senate After Tragedies in Buffalo, Uvalde*, Fox News (May 26, 2022, 12:32pm), <https://www.foxnews.com/politics/texas-school-shooting-senate-domestic-terrorism-law-gun-control-buffalo> (quoting Senator Josh Hawley).

89 See H.R. 350 § 3(a)(1)–(3).

90 See *id.* at § 3(a)(4)(B)–(C).

91 See *id.* at § 3(b).

92 §§ 3(d), 4,

93 See *id.* at § 5.

94 See Peace Officers and Corrections Officers—State Oversight and Accountability, 2021 Wash. Sess. Laws Ch. 323, 12–15, § 8.

95 Gene Johnson, *Washington Lawmakers OK Proposal Easing Decertification of Law Enforcement Officers*, King5.com (Apr. 21, 2021, 10:08 PM).

96 Melissa Santos, *New WA Police Accountability Law Can Now Include Past Misconduct*, Crosscut (Mar. 31, 2022, 8:31 AM), <https://crosscut.com/politics/2022/03/new-wa-police-accountability-law-can-now-include-past-misconduct>.

97 See Wash. Admin. Code § 139-01-310(11).

98 See Jim Patrick, *Huge Win: Washington Removes Requirement Making Police Give Access to Their Personal Social Media for Recertification*, Law Enforcement Today (Sept. 4, 2021), <https://www.lawenforcementtoday.com/washington-police-giving-access-to-social-media-for-recertification-reversed/>.

99 See *Washington State Criminal Justice Training Commission Officer Certification Cases*, Data.WA.gov, <https://data.wa.gov/stories/s/WSCJTC-Certification-Database/3xkp-u89m> (last visited Aug. 30, 2022).

100 See *id.*

101 See Chris Gelardi, *The State Police Sent You a Friend Request*, N.Y. Focus (June 13, 2022), <https://www.nysfocus.com/2022/06/13/fake-accounts-state-police-social-media-monitoring/>; N.Y. Exec. Law § 70-c.

domestic terrorism task force (which was nominally established in 2020) to develop recommendations and best practices on combatting domestic terror, hate crimes, and mass shootings.¹⁰² Some of those best practices will be sent to the new domestic terrorism unit in the state homeland security agency's Office of Counter Terrorism, which is intended to "intervene in the radicalization process" and train law enforcement, mental health professionals, and school officials on how to identify ongoing radicalization.¹⁰³ These steps by the New York Assembly appear to be some of the first state legislative enactments in the country targeted at mitigating terrorism through the use of community engagement and deradicalization rather than criminal penalties.

Maryland's legislative budget committees requested in 2021 that the state Department of Emergency Management convene an ad hoc task force to recommend how federal Homeland Security Grant Program funding could be best used to prevent and counter domestic terrorism.¹⁰⁴ These recommendations including engaging public health professionals to intervene and prevent radicalization, examining the impact of social media on radicalization, encouraging and facilitating earlier reporting of emerging threats to bolster prevention, and creating a task force or coordinating group to continue and align efforts across the terrorism prevention space.¹⁰⁵ A bill to establish a permanent Domestic Terrorism task force was introduced but did not advance to passage in 2021.¹⁰⁶

Other states and local governments have also established domestic terrorism task forces to help coordinate and respond to acts of domestic terror. These include Texas's Domestic Terrorism Task Force and the Monroe County Threat Assessment and Management program in upstate New York, both of which collect, analyze, and distribute intelligence with a focus on law enforcement and related preventative measures.¹⁰⁷

New York legislators introduced a bill in 2021 to automatically categorize as domestic terrorism knife and firearms attacks in certain public places motivated by race, religion, and other categories traditionally associated with hate crimes legislation.¹⁰⁸

In 2021, Oklahoma legislators proposed including "doxing" (the involuntary release of personal information on the internet for harassment purposes) in the definition of terrorism.¹⁰⁹

Idaho legislators in 2022 proposed a number of changes to that state's terror laws, most notably by adding a definition of "domestic terrorist" and specifically limiting that definition to individuals actually *convicted* of the crime of terrorism within the state,¹¹⁰ which the sponsors argue will "prevent an Idahoan from being labeled a domestic terrorist or terrorist in Idaho without constitutionally protected due process."¹¹¹

Georgia legislators proposed in 2021 to create a legislative Joint Committee on Domestic Terrorism, which would consider legislative matters and receive reports from state law enforcement related to domestic terrorism.¹¹² The bill would have required the Georgia Bureau of Investigation to monitor, investigate, collect, and share data on domestic terrorism, and would have given the Bureau substantial power to search, arrest, and investigate, with and without warrants, to carry out this information-gathering mandate.¹¹³

102 See Joshua Solomon, N.Y. Domestic Terrorism Task Force Set to Meet for First Time on June 15, *Albany Times Union* (May 31, 2022, 4:25 PM), <https://www.timesunion.com/state/article/Domestic-Terrorism-Task-Force-set-to-meet-for-17204291.php>.

103 *Id.*

104 See Task Force on Preventing & Countering Domestic Terrorism, *Maryland.gov*, <https://msa.maryland.gov/msa/mdmanu-al/14dem/html/demd.html> (last visited Sept. 13, 2022).

105 See *Md. Dep't of Emergency Mgmt.*, Joint Chairman's Report - State Operating Budget Bill Domestic Terrorism Taskforce 2-3 (2021).

106 See H.B. 1227, 2021 Leg., 442nd Sess. (Md. 2021).

107 See Teessa Weinberg, Domestic Terrorism Task Force Looks at Ways to Prevent Crimes Before They Occur, *Fort Worth Star-Telegram* (Aug. 30, 2019, 7:47 PM); Wendy Wright, Monroe County's Threat Assessment and Management Program to Be Used as Model for New York State, *Spectrum News 1* (June 23, 2022, 8:18 PM), <https://spectrumlocalnews.com/nys/rochester/news/2022/06/23/nys-to-model-monroe-county-s-threat-assessment-and-management-program>.

108 See A.B. 6580, 244th Leg., 2021-2022 Reg. Sess. (N.Y. 2021).

109 S.B. 9, 158th Leg., 1st Reg. Sess. (Okla. 2021).

110 See S.B. 1398, 66th Leg., 2d. Reg. Sess. (Idaho 2022).

111 See Statement of Purpose, S. 66-1398, 2d Reg. Sess. (Idaho 2022).

112 See H.B. 716, 156th Leg., 2021-22 Reg. Sess. (Ga. 2021), at § 4.

113 See *id.* at § 5.

Conclusion

There is little evidence that state-based efforts to combat domestic terrorism with enhanced criminal penalties, dedicated surveillance, or attempts to exclude so-called extremists from law enforcement have been effective in light of the federal government's jurisdiction over all significant cases and the propensity for these types of state efforts to be misused against social justice advocates. But given recent events and legislative developments in New York state and elsewhere, the state policy landscape is ripe for innovative thinking on community-based efforts to prevent domestic terrorism and inoculate against disinformation.