



NEW YORK STATE
BAR ASSOCIATION

Report of the New York State Bar Association **Task Force on Domestic Terrorism and Hate Crimes**

June 2020

New York State Bar Association

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Prologue

This Report of the Task Force on Domestic Terrorism and Hate Crimes is being released during a time of great pain and mourning. People of all races and ages are marching and protesting in cities across the country to express moral indignation at the death of George Floyd and other African-Americans while in police custody and to demand societal change.

The Report also was drafted and released amidst a global health pandemic that has caused the deaths of more than 24,000 individuals in the State of New York alone and more than 108,000 deaths throughout the United States as well as hundreds of thousands of deaths worldwide. Especially in the City of New York, COVID-19 has had a much greater and more devastating impact on people of color.

Pervasive and insidious racism and treating people differently on account of race are grave injustices that no longer can be tolerated. Hate crime legislation, enforcement, training, and education are but collectively one important area of focus to combat racism within our criminal justice system. Just recently, for example, the United States Attorney for the Southern District of Georgia announced that the shooting death of Ahmaud Arbery would be investigated as a hate crime. Civil rights leaders, lawyers, law enforcement, community advocates, and elected and appointed officials need to mobilize to implement legislation and policy changes to directly address police misconduct and violence against people of color. Hopefully, this Report will contribute in some small way to ensuring that people of every skin color, ethnicity, religion, and sexual orientation within our State are safe and protected from hate motivated crime and violence.

As members of the legal profession, we should strive to follow the guidance from Dr. Martin Luther King Jr. in his remarks to New York lawyers in 1965: “I am impelled to wonder who is better qualified to demand an end to this debilitating lawlessness, to better understand the mortal danger to the entire fabric of our democracy when human rights are flaunted. Those of us in the legal profession must rise up and lend our intellect, talent, creativity and problem-solving skills to solve this systemic and chronic injustice in our nation.” This call to action is equally true today.

This Report is dedicated to working together toward a more just and hate-free society.

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I. INTRODUCTION

During the past year, there has been an alarming surge in hate crimes and domestic terrorism across the United States and especially here in the State of New York (the “State”).¹ The New York City Police Department (“NYPD”), for example, reported that for the period January through October 2019, the City of New York (the “City”) recorded 323 hate crimes, a 33% increase compared to the same period in 2018.² Against this backdrop, the New York State Legislature (the “State Legislature”) and law enforcement have taken action to help combat this disturbing and dangerous trend, including the recent enactment of legislation and increased investigative and enforcement efforts.

In response to these efforts and to assist law makers, law enforcement, and victims of hate crimes, in January 2020, the New York State Bar Association (“NYSBA”) under the leadership of NYSBA President Henry M. Greenberg convened a Task Force on Domestic Terrorism and Hate Crimes (the “Task Force”) chaired by Carrie H. Cohen of Morrison & Foerster LLP.³ The Task Force is comprised of leaders of the bench and bar and experts on criminal justice and civil rights.⁴ The Task Force’s mission is to examine the factors that have led to the recent increase in hate crimes, make legislative and policy recommendations, suggest

¹ Southern Poverty Law Center, “The Year in Hate and Extremism 2019” (Mar. 18, 2020) <https://www.splcenter.org/news/2020/03/18/year-hate-and-extremism-2019>.

² Ben Chapman and Katie Honan, “New York City Sees Surge in Hate Crimes,” *The Wall Street Journal* (Oct. 8, 2019).

³ New York State Bar Association, News Releases, “NYSBA Convenes Task Force on Domestic Terrorism and Hate Crimes to Combat Surge in Violence” (Jan. 6, 2020) <https://nysba.org/january-6-2020-nysba-convenes-task-force-on-domestic-terrorism-and-hate-crimes-to-combat-surge-in-violence/>.

⁴ The full membership of the Task Force is set forth at the end of this Report. The Task Force was ably assisted by Amanda L. Gayer and Felicity M. Quigley, Litigation Associates in the New York Office of Morrison & Foerster LLP.

improvements to the federal and state legal system’s response to hate crime, and help to better educate the public on the value of diversity and inclusion.⁵

This Report of the Task Force analyzes the recently passed State legislation that created two new domestic terrorism offenses; considers certain possible legislative amendments to existing criminal statutes that might enhance and clarify current domestic terrorism laws and possible additional amendments to existing New York low-level offenses motivated by hate toward a protected group; evaluates the possible expansion of certain civil causes of action to provide uniformity in avenues for redress; and explores means to provide law enforcement with additional tools to facilitate the investigation and prosecution of hate crimes and domestic terrorism. Lastly, this Report discusses the recent spike in anti-Asian and anti-Semitic related hate crimes arising out of the COVID-19 pandemic and makes recommendations to combat this surge.

II. EXECUTIVE SUMMARY

The Task Force analyzed the newly-enacted New York State Josef Neumann Hate Crimes Domestic Terrorism Act (the “Neumann Act”), New York Penal Law § 485, which recognizes mass killings motivated by hate as acts of terrorism by creating two terrorism offenses: domestic acts of terrorism motivated by hate in the first and second degrees. The Neumann Act also amends the definition of “specified offense” in the hate crimes statute to include terrorism crimes and establishes a Domestic Terrorism Task Force comprised of members of New York government and law enforcement.

⁵ New York State Bar Association, News Releases, “NYSBA Convenes Task Force on Domestic Terrorism and Hate Crimes to Combat Surge in Violence” (Jan. 6, 2020) <https://nysba.org/january-6-2020-nysba-convenes-task-force-on-domestic-terrorism-and-hate-crimes-to-combat-surge-in-violence/>.

The Task Force also considered possible additional legislation to address hate crimes. *First*, the Task Force recommends further study of two possible changes to criminal statutes—it considered but ultimately rejected an amendment to the definition of “civilian population” in current terrorism statutes, and recommends consideration of a proposal to align New York’s definition of “material support or resources” with the federal definition. *Second*, the Task Force considered possible methods of addressing a rise in low-level hate-motivated offenses—it recommends further study of the proposal to attend mandatory counselling or training, and rejects the possibility of adding a rebuttable presumption of intent to § 485. *Third*, the Task Force recommends further study of possible civil causes of action for hate crimes and domestic terrorism, including expanded causes of action under New York State civil rights law, and amendments to New York Not-for-Profit Law, Business Corporation Law, and Limited Liability Law to prevent recovery of property from entities that provide support to terrorist causes. *Fourth*, the Task Force recommends an increase in law enforcement resources to prosecute hate crimes, including making hate crimes a designated offense to facilitate wiretaps and additional training of law enforcement on hate crime issues.

Finally, the Task Force notes a surge in anti-Asian and anti-Semitic hate crimes amid the COVID-19 pandemic, as well as a rise in hate-motivated attacks associated with COVID-19 via online platforms. These attacks and incidents highlight the urgent need for law enforcement and lawmakers to take action to curb hate crimes.

III. NEWLY ENACTED NEUMANN HATE CRIMES ACT

On April 3, 2020, the New York State Josef Neumann Hate Crimes Domestic Terrorism Act (the “Neumann Act”) was signed into law by Governor Andrew M. Cuomo. The Neumann Act was drafted and passed in the aftermath of the Munsey, New York, stabbings motivated by

anti-Semitic hate, during which a Rabbi and several synagogue members were attacked in the Rabbi's home. One of the parishioners, Josef Neumann, ultimately died from his wounds. As explained by the legislative findings, the new law recognizes that crimes motivated by hate and intolerance, such as those in Munsey, New York, as well as throughout our country in "El Paso, Texas; Pittsburgh, Pennsylvania; Sutherland Springs, Texas; Orlando, Florida; and Charleston, South Carolina," also are acts of terrorism, and sought to strengthen existing laws "to provide clear recognition of the gravity of hate crimes and the compelling importance of preventing their recurrence." N.Y. Penal Law § 485.00. The new law further recognizes that these "mass killings are often apolitical, motivated by hatred of a specific group coupled with a desire to inflict mass casualties." *Id.*

The Neumann Act creates two new terrorism offenses: domestic acts of terrorism motivated by hate in the first and second degrees. These offenses are applicable to crimes motivated by hate that are carried out against five or more persons. The Neumann Act also mandates the creation of a Domestic Terrorism Task Force and a statewide curriculum to combat anti-Semitism and other forms of hate and intolerance.

The Neumann Act will take effect November 1, 2020 and essentially makes what would have been a mass murder or attempted mass murder as a hate crime into a crime of terrorism. This section of the Report explains the key provisions of the Neumann Act, followed by analysis of the legislation with regard to New York's existing hate crime and domestic terrorism laws, and then describes several other key amendments and details of the Neumann Act's creation of a Domestic Terrorism Task Force.

A. Domestic Acts of Terrorism Motivated by Hate in the Second Degree, Penal Law § 490.27

Statutory Text:

A person is guilty of the crime of domestic act of terrorism motivated by hate in the second degree when, acting with the intent to cause the death of, or serious physical injury to, five or more other persons, in whole or in substantial part because of the perceived race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of such other persons, regardless of whether that belief or perception is correct, he or she, as part of the same criminal transaction, attempts to cause the death of, or serious physical injury to, such five or more persons, provided that the victims are not participants in the criminal transaction.

Domestic act of terrorism motivated by hate in the second degree is a class A-1 felony.

To be convicted of Domestic Act of Terrorism Motivated by Hate in the Second Degree, a person must, as part of the same criminal transaction:

- a) attempt to cause the death of, or serious physical injury to, five or more non-participants in the criminal transaction; and
- b) act with the intent to cause the death of, or serious physical injury to, such five or more non-participants in the criminal transaction; and
- c) act in whole or substantial part because of the perceived race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of such other persons.

Sentencing:

As outlined in the newly added Penal Law § 490.27, Domestic Act of Terrorism Motivated by Hate in the Second Degree is a class A-1 felony. The Neumann Act did not make any changes in Articles 60 or 70 of the Penal Law. Therefore, the sentencing exposure for this crime is the same as other A-1 felonies without special conditions, meaning that the minimum

sentence is 15 years to life imprisonment and the maximum sentence is 25 years to life imprisonment, pursuant to Penal Law §§ 70.00(2)-(3).

B. Domestic Acts of Terrorism Motivated by Hate in the First Degree, Penal Law § 490.28

Statutory Text:

A person is guilty of the crime of domestic act of terrorism motivated by hate in the first degree when, acting with the intent to cause the death of, or serious physical injury to, five or more other persons, in whole or in substantial part because of the perceived race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of such other person or persons, regardless of whether that belief or perception is correct, he or she, as part of the same criminal transaction:

1. causes the death of at least one other person, provided that the victim or victims are not a participant in the criminal transaction; and
2. causes or attempts to cause the death of four or more additional other persons, provided that the victims are not a participant in the criminal transaction; and
3. the defendant was more than eighteen years old at the time of the commission of the crime.

Domestic act of terrorism motivated by hate in the first degree is a class A-1 felony.

To be convicted of Domestic Act of Terrorism Motivated by Hate in the First Degree, a person must, as part of the same criminal transaction:

- a) act with the intent to cause the death of, or serious physical injury to, five or more non-participants in the criminal transaction; and
- b) act in whole or substantial part because of the perceived race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of such other person or persons; and
- c) cause the death of at least one non-participant in the criminal transaction (note: for the first-degree crime, it does not appear that the intended victims at whom the defendant's hate was directed need to be the actual victims); and

- d) cause or attempt to cause the death of four or more additional non-participants in the criminal transaction; and
- e) be 18 years or older at the time of the commission of the crime.

Sentencing:

As outlined in the newly added Penal Law § 490.28, Domestic Act of Terrorism Motivated by Hate in the First Degree is an A-1 felony and “notwithstanding any other provision of law” a person convicted of this offense must be sentenced to life imprisonment without the possibility of parole. However, it is worth noting that the Neumann Act amended neither Penal Law § 60.06 nor § 70.00(5), both of which pertain to authorizing and imposing the disposition of a sentence of life without parole for certain enumerated crimes.

C. Comparison of the Neumann Act to Existing State Hate Crimes and Terrorism Laws

The Neumann Act is an enhancement to the existing State hate crimes and terrorism laws. The new law amends the legislative findings of the hate crimes law, Penal Law § 485.00, and incorporates the hate crimes element of intent, Penal Law §§ 485.05(1)(a) and (b). The practical difference between the domestic acts of terrorism motivated by hate laws and the current hate crimes laws is that the new law, the Neumann Act, requires an increased sentence of life without the possibility of parole after a conviction on domestic acts of terrorism motivated by hate in the first degree. Under the current hate crimes law, which still exists and was not repealed with the enactment of the Neumann Act, a sentence of life without the possibility of parole is not available. Relatedly, murder in the first degree, under the theory that a person kills more than one persons in the same criminal transaction, Penal Law § 125.27(1)(a)(viii), also is punishable by a prison term of life without the possibility of parole.

While the Neumann Act adds two new crimes to the article on terrorism, Penal Law Article 490, it does not change any of the existing crimes of terrorism. Rather, it creates a new terrorism charge that treats mass killings motivated by hate as terrorism. Although the existing terrorism offense, Penal Law § 490.25, still covers such hate motivated actions as terrorism crimes, bringing charges under the new Neumann Act eliminates the need to prove the traditional terrorism elements of intent to “intimidate or coerce a civilian population,” “influence the policy of a unit of government by intimidation or coercion,” or “affect the conduct of a unit of government by murder, assassination or kidnapping.” A possible rationale for this change is that an intent to murder multiple people of a protected class is of such gravity that it would naturally constitute an intent to intimidate or coerce a civilian population, thus qualifying it as a terrorism offense. Lastly, there is no substantive difference in sentencing exposure between murder as an act of terrorism (which carries a required sentence of life without the possibility of parole) and domestic acts of terrorism motivated by hate in the first degree.

D. Other Legislative Changes Under the Neumann Act

The Neumann Act also makes several other noteworthy amendments. In particular, the Neumann Act amends the definition of “specified offense” in the hate crimes statute (Penal Law § 485.05(3)) to include the terrorism crimes of Penal Law § 490.10 (soliciting or providing support for an act of terrorism in the second degree); § 490.15 (soliciting or providing support for an act of terrorism in the first degree); § 490.20 (making a terroristic threat); § 490.25 (crime of terrorism); § 490.30 (hindering prosecution of terrorism in the second degree); § 490.35 (hindering prosecution of terrorism in the first degree); § 490.37 (criminal possession of a chemical weapon or biological weapon in the third degree); § 490.40 (criminal possession of a chemical weapon or biological weapon in the second degree); § 490.45 (criminal possession of a

chemical weapon or biological weapon in the first degree); § 490.47 (criminal use of a chemical weapon or biological weapon in the third degree); § 490.50 (criminal use of a chemical weapon or biological weapon in the second degree); and § 490.55 (criminal use of a chemical weapon or biological weapon in the first degree).

The Neumann Act also amends the list of specified offenses under the wiretap section of Criminal Procedure Law § 700.05 to include the crimes of domestic acts of terrorism motivated by hate in the first and second degrees.

E. Creation of Domestic Terrorism Task Force

The Neumann Act also creates a Domestic Terrorism Task Force (the “Neumann Act Task Force”) to “examine, evaluate and determine how to prevent mass shootings by domestic terrorists, consisting of nine members, each to serve until two years after the effective date of this act.” The membership of the Neumann Act Task Force shall consist of:

- the Commissioner of the New York State Division of Criminal Justice Services (“DCJS”);
- the Superintendent of the New York State Police (“State Police”);
- three appointees by the Governor;
- one appointee by the Temporary President of the Senate;
- one appointee by the Minority Leader of the Senate;
- one appointee by the Speaker of the Assembly; and
- one appointee by the Minority Leader of the Assembly.

The appointments shall be made within 60 days of the effective date of the Act—by approximately December 31, 2020. The Neumann Act Task Force will be chaired by the

Commissioner of the DCJS and will meet quarterly.⁶ The Neumann Act Task Force shall undertake the following: (a) study mass shooting incidents; (b) recommend practices to identify potential mass shooters and prevent mass shooting incidents; and (c) recommend procedures to provide for the security of locations likely to be targeted by a mass shooter. In order to accomplish these tasks, the Neumann Act Task Force may establish advisory committees and request studies, surveys, and analysis from any state department, commission, agency, or public authority. Finally, the Neumann Act Task Force shall provide a preliminary report to the Governor and State Legislature within thirteen months of the effective date of the Act and a final report with recommendations and legislative proposals within twenty-two months of the effective date of the Act.

Lastly, separate but related to the Neumann Act Task Force's work, the Neumann Act establishes the creation of a statewide curriculum to combat anti-Semitism and other forms of hate and intolerance.

IV. CONSIDERATION OF POSSIBLE ADDITIONAL LEGISLATION

A. Definitions in Existing Criminal Statutes

The Task Force considered potential legislative recommendations with respect to existing criminal statutes that would enhance and clarify the current domestic terrorism laws and found two potential legislative changes that it recommends be studied further by the Neumann Act Task Force. In order to provide fulsome detail of the issues the Task Force considered and to aid others who may consider similar issues, including the Neumann Act Task Force, this Report includes not only legislative proposals to the Penal Law that the Task Force recommends for

⁶ Statutory members of the Neumann Act Task Force were well represented on this Task Force, which includes members who serve or have served in leadership positions at both the DCJS and the State Police.

further study but also possible amendments that the Task Force considered, but ultimately rejected. First, the Task Force considered whether to amend the definition of “civilian population” in Penal Law § 490.25(1), but this change may not be advisable as it could generate new problems and the current statute appears to be working sufficiently. Second, the Task Force believes it could be useful to align New York law’s definition of “material support or resources” with the definition under federal law and recommends further study of this suggestion.

1. Definition of “Civilian Population”

As discussed above, the newly enacted Neumann Act creates two new terrorism offenses: domestic acts of terrorism motivated by hate in the first and second degrees. The new offenses essentially create a new terrorism charge that treats mass killings motivated by hate as terrorism. The legislative findings of the Neumann Act indicate a concern that the “current law emphasizes the political motivation of an act over its catastrophic effect and does not adequately recognize the harm to public order and individual safety that hate crimes cause.”

While the Neumann Act amended the legislative findings of the hate crimes statute, Penal Law § 485.00, it is likely that the reference to the “current law” that “emphasizes the political motivation of an act over its catastrophic effect” is a reference to the terrorism laws codified in Penal Law Article 490. A person commits a crime of terrorism in violation of Penal Law § 490.25(1) when the person commits a specified offense and has the additional intent to “intimidate or coerce a civilian population,” “influence the policy of a unit of government by intimidation or coercion,” or “affect the conduct of a unit of government by murder, assassination or kidnapping.” Such intent is the hallmark of a terrorism offense and is what separates terrorism offenses from ordinary crimes and hate crimes. The new offenses of domestic acts of terrorism motivated by hate in the first and second degrees in the Neumann Act

eliminate the need to prove the traditional terrorism elements of intent. The rationale for such a substitution is that an intent to murder multiple people of a protected class is of such gravity that it would naturally constitute an intent to intimidate or coerce a civilian population, thus qualifying as a terrorism offense.

One concern with the legislative findings of the Neumann Act is that they may create the misimpression that the “current law,” the previously existing terrorism offenses, do not apply to crimes motivated by hate against protected classes. Such a concern is especially present when a terrorism offense motivated by hate is committed and the number of victims is less than five, thus not qualifying as conduct that can be charged under the Neumann Act. However, this concern and interpretation of the Neumann Act and its legislative intent to exclude the use of terrorism offenses for hate crimes would be misplaced. The existing terrorism laws have consistently been interpreted as applying to terrorism offenses motivated by hatred of a protected class. Protected classes of individuals are civilian populations and when the evidence indicates that the underlying intent is to intimidate or coerce a subset of the population, then a terrorism charge under previously existing laws may be appropriate.

A recent example of just such an incident and charge is the 2019 conviction of James Jackson in New York County. In that case, Jackson was charged with murder as a crime of terrorism as well as murder as a hate crime for murdering an African-American man, Timothy Caughman, with the intent to spur a larger race war, and thus intimidate and coerce the African-American population in New York County and across the country. Such a charge is consistent with the definition of “civilian population” as interpreted by the New York Court of Appeals in *People v. Morales*, 20 N.Y.3d 240 (2012). In that case, the Court defined “civilian population” to “encompass a variety of communities depending on how the relevant ‘area’ is defined and

who lives within that territory. Conceivably, it could range from the residents of a single apartment building to a neighborhood, city, county, state or even a country.” *Id.* at 247.

The First Department in *Morales* provided further insights regarding the definition of “civilian population,” noting that in light of the legislative findings, Penal Law § 490.25(1), the definition is most naturally read as requiring an “intention to create a pervasively terrorizing effect on people living in a given area, directed either to all residents of the area or to all residents of the area who are members of some broadly defined class, such as a gender, race, nationality, ethnicity, or religion.” *People v. Morales*, 86 A.D.3d. 147, 157 (2011). The Court of Appeals in *Morales*, however, was explicit that the definition must be tied to the original legislative intent of the terrorism statute to prosecute “terrorists,” so that the definition would not include a narrowly defined group of particular individuals whom the criminal actors happen to regard as adversaries, such as, in *Morales*, a rival gang. *People v. Morales*, 20 N.Y.3d at 247-48.

The Task Force considered avenues to avoid any future misinterpretation of the previously existing terrorism statute by considering ways to define “civilian population” in the Penal Law so as to ensure that protected classes are included. Specifically, the Task Force gave due consideration to proposing the following definition of civilian population:

A civilian population includes a group of persons occupying a given area, either all persons occupying the given area or all persons occupying the given area who are members of an identifiable class, such as one based on perceived race, color, national origin, ancestry, ethnicity, gender, religion, religious practice, age, disability, sexual orientation or political affiliation.

The above considered definition might provide clarity to law enforcement in making charging decisions and to the courts in subsequent proceedings. One potential downside of proceeding with a codified definition, however, is that it may unduly restrict future interpretations of what constitutes a civilian population and its applicability to future scenarios.

The lack of a statutory definition provides for a certain elasticity within the law to respond and adapt to an uncertain future and one in which the common understanding of civilian population may change. For instance, a specific definition of civil population might exclude application to groups such as students and faculty of a school, employees of a business, or police officers in a precinct who were victims of a mass shooting, bombing, or other attack.

Indeed, other states with similar terrorism laws and statutory language to New York's language have interpreted civilian population to include narrower subsets of a given population than a codified definition would provide. *See People v. Yaryan*, No. 286690, 2010 WL 173641 (Mich. Ct. App. Jan. 19, 2010) (congregants of a particular church); *State v. Laber*, No. 12CA24, 2013 WL 3283218, at *3 (Ohio Ct. App. June 11, 2013) (members of the judicial system threatened by defendant); *State v. Knotts*, 233 W. Va. 665 (2014) (employees of a credit union deemed a civilian population); *Cf. Morales*, 86 A.D.3d at 160 (citing *People v. Jordi*, 418 F.3d 1212, 1214 (11th Cir. 2005) (defendant who sought to dissuade physicians from performing abortions by bombing abortion clinics was subject to harsher sentence for intent to "intimidate or coerce a civilian population")). Although twenty-two other states have terrorism-related statutes that specify intent to intimidate or coerce "a civilian population," few of these states' courts have construed or defined the term "civilian population." Further, while any proposed definition of civilian population would be intended to be a non-exclusive listing of subsets of populations that are entitled to protection under the statute, and would not be intended to exclude other subsets of the population, such as students, employees, or police officers, there is a concern that a listing of some subsets might later be used to defend against application of the law to subsets not specifically referenced in the proposed definition.

On balance and after due consideration, the Task Force does not recommend any legislative proposal to define civilian population in Penal Law § 490.25(1) as doing so may create new and additional issues, the current statute appears to be working sufficiently, and the current law provides desired flexibility.

2. Definition of “Material Support or Resources”

The Task Force also considered whether to amend the Penal Law definition of “material support or resources” to include the terms “any property, tangible or intangible, or service” and “expert advice or assistance,” and, for the reasons explained below, supports the following language to amend Penal Law § 490.05:

“Material Support or Resources” means any property, tangible or intangible, or service, including currency or other financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

The Task Force also supports the following related definitions to the proposed amendment above to Penal Law § 490.05:

(a) “personnel” meaning “one or more individuals who may be or include oneself;” (b) “training” meaning “instruction or teaching designed to impart a specific skill, as opposed to general knowledge;” and (c) “expert advice or assistance” meaning “advice or assistance derived from scientific, technical, or other specialized knowledge.”

While the Task Force supports these amendments for the reasons set forth below, they would benefit from further study before formally being proposed to the State Legislature.

Essentially, the suggested amendments set forth above would bring State definitions in line with federal definitions, which were amended several years after New York had initially passed its terrorism statute. Specifically, the State enacted anti-terrorism laws under article 490

on September 17, 2001, just days after the terrorist attacks of September 11, 2001. Many of the definitions included in that article, including the definition of “material support and resources,” were copied from the then-existing federal terrorism definitions contained in 18 U.S.C. § 2339, but they have not been further amended to keep pace with corresponding amendments to comparable federal law.

Since 2001, the federal terrorism statute has been amended several times, including in 2004 when the definition of material support was changed to include the terms “any property, tangible or intangible, or service” and to define “personnel” as “one or more individuals who may be or include oneself,” “training” as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge,” and “expert advice or assistance” as “advice or assistance derived from scientific, technical, or other specialized knowledge.” The definitions were intended to counter arguments of constitutional vagueness and provided needed clarity as to what conduct would be considered criminal versus conduct that was protected speech or association.⁷ New York’s definition of material support has not kept pace, however, retaining essentially the same language since its initial enactment in 2001.

Amending New York Penal Law’s definition of material support to conform with current federal law would enhance New York’s ability to prosecute terrorism offenses—both domestic and international—in several ways. First, New York terrorism investigations and prosecutions would benefit from such an amendment by reducing ambiguity and ensuring that future prosecutions would comply with the rigor of first amendment protections. Second, adding a service like “expert advice or assistance” would strengthen law enforcement’s ability to target

⁷ See *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) (finding that the revised definitions in the federal material support statutes (the same definition that the Task Force is proposing be incorporated into the State material support statutes) are not unconstitutionally vague and do not violate the First Amendment).

individuals for providing expert or technical services in furtherance of domestic terrorism acts, such as computer programming, coding, hacking, or other technical services that have become more prevalent in domestic extremism.

In sum, the suggested amendments would conform state law to federal law with respect to how material support is defined and provide expanded options for holding terrorists and those who support them—both domestic and international—accountable for their conduct. Despite the Task Force’s belief that State law should be amended to conform with federal law as set forth above and for the reasons explained above, the Task Force recognizes that such recommendation could benefit from further study, particularly of federal case law addressing the definitions and relevant pending litigation. The Task Force thus recommends that the Neumann Act Task Force consider this proposal more in-depth as part of their work.

B. Low-Level Criminal Offenses Motivated by Hate Toward a Protected Group

The Task Force also considered possible amendments to existing New York statutes addressing low-level offenses motivated by hate toward a protected group. The Task Force is particularly concerned about the alarming recent increase in such offenses across the State. By way of just one example, there were 126 anti-Semitic hate crimes in 2019 in Brooklyn alone. While hate crimes are often seemingly minor misdemeanors and property crimes that do not inflict serious injury (for example, almost 60% of the 2019 anti-Semitic crimes in Brooklyn were property offenses), their cumulative effect on communities can be quite severe—creating an atmosphere of terror and exclusion that renders community members fearful in their daily lives.

The Task Force also undertook a fifty-state survey of hate crimes laws for guidance and studied two possible changes to the New York law: as more fully set forth below, it rejected one, and suggests further study of the other possible changes.

1. Rebuttable Presumption of Intent in Penal Law § 485

The Task Force researched the constitutionality of creating a rebuttable presumption of intent to attack a protected class or its members, and whether other state hate crime laws include such a rebuttable presumption. Only the State of Washington has a rebuttable presumption of intent in its hate crimes law and even then only in specific, enumerated circumstances (*e.g.*, burning of a cross or placement of a swastika). A more generalized rebuttable presumption of intent for Penal Law § 485 violations would likely face significant constitutional challenges.

The Supreme Court has long held that a rebuttable presumption is constitutional only if “there is a rational connection between the basic facts that the prosecution proved and the ultimate fact presumed, and the latter is more likely than not to flow from the former.” *County Court of Ulster County, N.Y. v. Allen*, 442 U.S. 140, 165 (1979). In *Ulster County*, the Court held that a New York statutory presumption that permitted a defendant to be convicted of illegal possession of weapons upon proof that he had been present in a vehicle where the weapons were found out in open view was constitutionally valid because it was “surely rational to infer that each of the respondents was fully aware of the presence.” *Id.*

A number of New York criminal statutes include rebuttable presumptions of intent that have been found to fit within the criteria of constitutionality established by *Ulster*. For example, Penal Law § 265.15(4) provides that “[t]he possession by any person of any dagger, dirk, stiletto, dangerous knife or any other weapon, instrument, appliance or substance designed, made or adapted for use primarily as a weapon, is presumptive evidence of intent to use the same unlawfully against another.” Penal Law § 265.15(4). Notably, Penal Law § 265.15(4) has been limited by courts to the list of weapons specifically enumerated in the statute. *See Egan v. New*

York City, No. 16 Civ. 1479, 2018 WL 4926445 (S.D.N.Y. Oct. 10, 2018) (holding that statutory inference of intent did not apply to defendant’s possession of a laser pointer).

In the context of state hate crime statutes, however, the State of Washington is alone among the fifty states in having a rebuttable presumption of intent incorporated into its hate crime statute. Specifically, Washington State’s hate crime statute provides that “unless evidence exists which explains to the trier of fact’s satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person’s perception of the victim’s race, color, religion . . . if the person commits one of the following acts.” Wash. Rev. Code. Ann. 9A.36.080 (West). The enumerated acts include, among other things, burning a cross on an African-American’s property, defacing the property of a person of Jewish heritage with a swastika, and defacing religious real property with words, symbols, or items that are derogatory to persons of the faith associated with that property.

Thus, in order for a rebuttable presumption of intent to withstand constitutional scrutiny, it would need to be limited (as it is in the State of Washington) to concrete and specific factual circumstances in which intent would likely not be difficult to prove. Importing a more generalized rebuttable presumption of intent would likely not be constitutional and any rebuttable presumption of intent would place Penal Law § 485 as an outlier among state hate crime statutes. Accordingly, and after careful consideration, the Task Force does not recommend adding a rebuttable presumption of intent to Penal Law § 485.

2. Mandatory Program, Training, or Counseling Session as Part of a § 485 Sentence

Penal Law § 485.10(5) provides as follows:

In addition to any of the dispositions authorized by this chapter, the court may require as part of the sentence imposed upon a person convicted of a hate crime pursuant to this article, that the defendant complete a program, training session or counseling session directed at hate crime prevention and education, where the court determines such program, training session or counseling session is appropriate, available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

As hate crimes often are motivated by ignorance of, or misconceptions about, the targeted class, the Task Force believes education—about other communities and core values such as diversity and inclusion—must be a key component of a comprehensive law enforcement response to hate crimes. Education and counseling may be especially appropriate responses to hate crimes given that such crimes often are committed by young and/or mentally ill offenders.

Accordingly, the Task Force strongly proposes further study of the feasibility of changing “may” to “must” in Penal Law § 485.10(5), so that every offender sentenced under § 485 would be required to “complete a program, training session or counseling session directed at hate crime prevention and education.” Further, to expand options for sentencing courts, the Task Force proposes further study of the feasibility of removing the requirement that courts choose a local program, by deleting this language: “and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.” Such a modification would allow courts to choose national, online programs (for example, by organizations like the Anti-Defamation League or the Southern Center for Human Rights) to fulfill the sentencing requirement. This change also could support the creation of a State-wide education program specific to the State’s diverse communities and responsive to patterns in hate

crimes committed in the State. As with other recommendations for further study, the Task Force recommends that the Neumann Act Task Forces consider these suggestions as well.

C. Civil Causes of Action for Hate Crimes and Acts of Domestic Terrorism

The Task Force also considered the expansion of State civil causes of actions for hate crimes and acts of domestic terrorism. Although the State Legislature recently enacted the Neumann Act, discussed above, which creates two additional domestic terrorism offenses, a statewide curriculum to combat anti-Semitism and other forms of hate and intolerance, and the Neumann Act Task Force, the Legislature did not consider any proposed reforms to the civil laws to address the issue of violence motivated by discrimination or hate. Accordingly, the Task Force considered if there were any civil law legislative proposals to further combat and deter hate crime and acts of domestic terrorism and recommends further study of the proposed possible amendments to the State’s civil laws as set forth below.

1. New York City Human Rights Law: Causes of Action for Discrimination or Hate Based Violence

In 1991, the City enacted one of the most comprehensive civil rights statutes in the United States, the New York City Human Rights Law (“NYCHRL”). In the decades since, the City has expanded the scope and reach of the NYCHRL with the intent that it would cover additional categories of people and be more protective and expansive than the New York *State* Human Rights Law or federal civil rights law. Thereafter, the New York City Council (the “Council”) enacted several amendments designed to formally and unequivocally reject the assumption that the NYCHRL’s purposes were identical to that of counterpart civil rights statutes. In its place, the Council instructed the courts—reflected in text and legislative history—that the NYCHRL’s provisions should be construed *more broadly* and with *greater remedial*

effect than federal civil rights laws and the State Human Rights Law. *See* Administrative Code § 8–130, as amended by the Restoration Act in 2005 (emphasis added). *See also Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 74, 872 N.Y.S.2d 27, 36–37 (2009); *Ortiz-Moss v. New York City Dep't of Transp.*, 623 F. Supp. 2d 379, 403 (S.D.N.Y. 2008) (“It appears that the 2005 amendment of the New York City Human Rights Law is, in certain respects, meant to be more protective than the parallel federal and state statutes.”).

The NYCHRL is embodied in Title 8 of the Administrative Code of the City of New York and offers aggrieved persons a very broad range of potential relief, obtainable through a private right of action in court or, administratively, via a filing with the City’s Commission on Human Rights. Specifically, inasmuch as it relates to discrimination or hate-based violence, the NYCHRL provides:

Except as otherwise provided by law, *any person claiming to be a person aggrieved by an unlawful discriminatory practice as defined in chapter 1 of this title or by an act of discriminatory harassment or violence as set forth in chapter 6 of this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate*, unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence—.... § 8-502(a) (emphases added).

The bases for this right to a cause of action are the following “act[s] of discriminatory harassment or violence:”

No person shall *by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to such other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, marital status, partnership status, disability or alienage or citizenship status* § 8-603(a) (emphases added); and

No person shall *knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, marital status, partnership status, or whether children are, may be, or would be residing with such victim, disability or alienage or citizenship status* § 8-603(b) (emphases added).

2. Amendments to State Civil Rights Law to Expand Causes of Action

The protections afforded under the NYCHRL, interpreted in a manner consistent with the NYCHRL's intentionally expansive approach, would give rise to meritorious actions that would not otherwise exist under current State civil rights laws. To date, there has been no visible action in the State Legislature to study, address, or seek public input on the civil-law implications of recent incidents of domestic terrorism, much less to consider harmonizing and expanding state civil rights laws. The State Legislature focused almost exclusively on changes to the criminal law to address recent hate crimes and domestic terrorism. Although the Task Force recognizes that amending the State civil rights laws to be consistent with the NYCHRL would involve significant amendments to the State civil rights law and could have broad implications, doing so would afford all citizens of the state the same protections currently enjoyed by citizens of the City. Consequently, the Task Force recommends that the proposed amendment be discussed and submitted for consideration to all relevant stakeholders, including but not limited to, the State Legislature and the Neumann Act Task Force. This study and consideration can, if consensus is

reached, allow for the enactment of amendments to the State civil rights law in the next Legislative session.

3. Amendments to New York Not-for-Profit Law, Business Corporation Law, and Limited Liability Law Related to Financial Support to Terrorists and Terrorist Groups

The Task Force also undertook to evaluate whether there is a gap in the New York Penal Law with regard to criminal conduct by organizations that provide financial and material support to terrorists or terrorism organizations. *See Humanitarian Law Project*, 561 U.S. 1 (holding that the federal government may prohibit providing non-violent material support for terrorist organizations including legal services and advice without violating the free speech clause of the First Amendment). Accordingly, the Task Force compared 18 U.S.C. § 2339B (providing material support or resources to designated foreign terrorist organizations) and New York Penal Law Articles 490.10 and 490.15 (soliciting or providing support for an act of terrorism) and found that though the statutory schemes are different, the same criminal conduct is adequately addressed by both statutes.⁸

Dissolution of for-profit and not-for-profit corporations, however, is purely a state function and often terrorists or terrorism organizations are funded through seemingly benign corporations or charities. The Task Force thus reviewed New York Not-for-Profit Law, New York Business Corporation Law, and New York Limited Liability Law and found several areas to address possible changes, particularly grounds for dissolution. The Task Force thus proposes the following amendments to the New York Not-for-Profit Law §§ 1101 and 1109, Business

⁸ There is an evidentiary difference between an “act of terrorism” and a “designated foreign terrorist organization.” For instance, financial support to a group like ISIS under federal law only requires that the defendant know that the support is going to ISIS. Under State law, however, proof that a defendant knew that it was going to ISIS *and* that the support would further an “act of terrorism” committed by ISIS is required.

Corporation Law §§ 1101 and 1109, and Limited Liability Law §§ 702 and 704 as set forth below.

The proposed amendments set forth below are intended to allow the New York State Attorney General to dissolve domestic or foreign entities that are used to provide material or financial support to terrorists or terrorist organizations. Additionally, the proposed amendments will bar those organizations' members, donors, and shareholders from obtaining the return of the dissolved entity's property.

First, the Task Force recommends that Not-for-Profit Law § 1101(a) and Business Corporation Law § 1101(a), which delineate grounds for dissolution of not-for-profit corporations and for-profit corporations, respectively, be revised to add the following ground for dissolution:

(3) That the corporation has been used or attempted to be used to provide financial or material support to terrorists, acts of terrorism as defined in Penal Law § 490.05, or foreign terrorist organizations as defined in 18 U.S.C. § 2339B(g)(6).

To the same end, the Task Force recommends that Limited Liability Company Law § 720 be amended to add the following language:

The Attorney General is authorized to commence and maintain a dissolution action under this provision if the company has been used or attempted to be used to provide financial or material support to terrorists, acts of terrorism as defined in Penal Law § 490.05, or foreign terrorist organizations as defined in 18 U.S.C. § 2339B(g)(6).

Second, the Task Force recommends that the following language be added to Not-for-Profit Law § 1109(c) and Business Corporation Law § 1109(c) in order to prevent a terrorist organization's supporters from recovering funds from a not-for-profit or for-profit corporation dissolved on the grounds that it provided material support to terrorism:

If the dissolution is based on NPL §1101 (a)(3) [or BCL §1101 (a)(3)], all property shall be distributed in accordance with *cy pres* rules in the NPL or *cy pres* principles in general for for-profit corporations. No property shall be returned to any donor or paid to any other interested party or person.

Similarly, the Task Force recommends that Limited Liability Company Law § 704 be amended to add the following language:

(d) If the dissolution is based on the grounds that the company has been used or attempted to be used to provide financial or material support to terrorists, acts of terrorism as defined in Penal Law § 490.05, or foreign terrorist organizations as defined in 18 U.S.C. § 2339B(g)(6), all property shall be distributed in accordance with *cy pres* principles in general. No property shall be returned to any donor or member or paid to any other interested party or person, except creditors, who are not members.

By enabling the New York State Attorney General to dissolve entities that are used to provide material or financial support to terrorism, and bar those organizations' members, donors, and shareholders from recovering the dissolved entity's property, these proposed amendments would inhibit the funding of terror organizations under the guise of for-profit and not-for-profit corporations and limited liability companies.

D. Law Enforcement Tools and Allocation of Additional Law Enforcement Resources

The Task Force further explored means to provide law enforcement with additional tools to facilitate investigation and prosecution of hate crimes. The Task Force was informed by discussions with the State Police and the NYPD's Racially and Ethnically Motivated Extremism Unit and Legislative Affairs Unit and consultation with New York State and City policy personnel who specialize in hate crimes. Based on these discussions, the Task Force identified two areas that generate obstacles for law enforcement. The Task Force believes the legislation proposed below could fill gaps and strengthen law enforcement tools thereby helping to prevent hate crime and domestic terrorism.

1. Wiretaps: Hate Crime as a Designated Offense

Eavesdropping and video surveillance are two of the most powerful and effective tools available to law enforcement to disrupt criminal activity. These tools may be used only if stringent requirements, set forth in Article 700 of the New York Criminal Procedure Law (“CPL”), are satisfied, and those tools only may be used to gather evidence concerning the most significant crimes, a list of which is set forth in CPL § 700.05(8). Effective use of these tools, under judicial supervision, can enable evidence of a crime to be obtained during the preliminary or planning stages, allowing criminal plots to be disrupted before they cause harm to others.

Terrorism and related offenses, Penal Law §§ 490.10 through 490.55, already are classified as designated offenses pursuant to CPL § 700.05(8)(q). In addition, the new domestic terrorism offenses under the recently-enacted Neumann Act (Domestic Terrorism statutes, Penal Law §§ 490.27 (domestic act of terrorism motivated by hate in the second degree) and 490.28 (domestic act of terrorism motivated by hate in the first degree)), also were added to the designated offenses list. Offenses under the Hate Crimes Statute, Penal Law § 485.05, however, are not classified as designated offenses.

Given the serious nature of these crimes, and attempt and conspiracy to commit these crimes, it is important to provide law enforcement access to sufficient investigative tools to further the Task Force’s goal of helping to prevent violent acts through early intervention and disruption. For the reasons set forth below, the Task Force recommends adding the offenses under the Hate Crimes Statute, Penal Law § 485.05, to the list of offenses that would support eavesdropping and video surveillance warrants.

First, hate crimes and domestic terrorism offenses increasingly are being driven by hate groups. These groups are engaged in communications with their members in furtherance of the

messages of hate that they espouse, and these communications may address plots to harm or kill people or damage property. Thus, eavesdropping and video surveillance authority could, if approved by a court in an appropriate case, enable law enforcement to infiltrate and disrupt these heinous crimes during the planning stages before great harm occurs. In recognition of the importance of disrupting the most serious plots before they can harm others, terrorism offenses are listed as designated offenses. As the Neumann Act recognized, hate crimes by domestic actors, particularly those determined to harm or kill others, can strike fear into the public as much as, or more than, an attack from a foreign terrorist.

Second, eavesdropping and video surveillance authority may be necessary to allow prosecutors' offices to effectively investigate a hate crime or domestic terrorism plot. Many of the hate groups cross state lines or, at a minimum, county boundaries, and they are secretive organizations, making it difficult for traditional law enforcement techniques to be used to disrupt their groups' planning of criminal activity.

Hate crimes prosecuted under one section of the Penal Law, § 485.05, require proof of certain specified offenses. Generally, prosecutors can initiate wiretaps for the designated offenses underlying a hate crime, but there may be instances where predicate crimes are not designated offenses and including hate crimes as a designated offense will fill that gap. The Task Force thus recommends adding hate crimes under Penal Law § 485.05 to the list of designated offenses that would enable the issuance of eavesdropping and video surveillance warrants to effectively combat these serious and often deadly crimes.

2. Allocation of Resources to Hate Crime Training for Law Enforcement

The Task Force also identified a need for additional training resources for law enforcement personnel. Prosecutors and law enforcement officers, particularly those outside the City, may have limited exposure to hate crimes and may have difficulty identifying hate crimes, investigating them properly, and prosecuting wrongdoers when identified. Currently, however, there is no centralized repository of investigative and prosecutorial resources to share across the State and no State-wide training available.

The Task Force therefore recommends allocating State resources to organizations (including the DCJS and the New York Prosecutors' Training Institute ("NYPTI")) to train local prosecutors and law enforcement officers on tools available to combat hate crime and best practices for investigating and prosecuting hate crimes. The funding also could be allocated to establishing a central repository (potentially under the auspices of the DCJS) of case-related material for future reference.

The Task Force also recommends that the New York State Attorney General update its "Hate Crime: Manual for Prosecutors" and "Guidance to Law Enforcement Officials and Prosecutors in the Investigation and Prosecution of Hate Crimes in New York State" (collectively the "NYAG Hate Crime Manuals"). The NYAG Hate Crime Manuals aim to provide all prosecutors in the State with guidance and best practices on prosecuting hate crimes. The NYAG Hate Crime Manuals have been met with a positive reception, particularly by prosecutors outside of the City who have more limited resources and exposure to effectively identify, investigate, and prosecute hate crimes. Thus, updating and distributing the NYAG Hate Crime Manuals to all State prosecutors would be an effective way to increase knowledge and best practices on prosecuting hate crimes State-wide.

Consequently, the Task Force believes that its recommendation to increase and ensure adequate funding to the DCJS and the NYPTI to help lead efforts to train Assistant District Attorneys, Assistant Attorneys General, and law enforcement agents and officers, combined with establishing a central repository of hate crime case-related material and updating and distributing the NYAG Hate Crime Manuals to prosecutors across the State would provide additional tools to law enforcement personnel to effectively combat these heinous crimes.

V. HATE CRIMES RELATED TO COVID-19

In addition to the overall rise in hate crime that spurred recent legislative action and creation of this Task Force, early 2020 has seen a surge of hate crimes directed toward at people of Asian descent, motivated by anti-Chinese and anti-Asian bias amid the COVID-19 pandemic. A spread of misinformation about the virus, and mislabeling of COVID-19 as the “Chinese virus” or the “Wuhan virus,” has contributed to discriminatory biases and acts of hate toward people of Asian descent.

The State Police is aware of at least four COVID-related hate crime reports.⁹ All of them are NYPD cases.

- a) A report made on March 10, 2020 involved an allegation that the suspect punched an Asian woman who was not wearing a face mask in Manhattan. The suspect allegedly yelled, “Where is your corona mask, you Asian bitch” as she punched the victim. This report is being investigated by NYPD Special Victims Hate Crime Task Force (“HCTF”). At the time of publication, the case is pending and no arrest had been made.

⁹ These statistics were current as of April 6, 2020.

- b) A report made on March 19, 2020 involved an allegation of a drive-by in Brooklyn during which a vehicle's occupants shouted racial slurs at an elderly female Asian pedestrian. The report was investigated (and eventually closed) by NYPD HCTF. The complainant did not respond to NYPD follow-up attempts and no criminal offense was identified.
- c) A report made on March 19, 2020 involved an allegation that an Asian woman was spat on while at the 34th Street Penn Station 2/3 Subway platform. The suspect was not identified. The report was investigated (and eventually closed) by NYPD HCTF.
- d) A report made on March 23, 2020 involved an alleged e-mail threat made against the Chinese Embassy in Washington D.C. The e-mail was forwarded by the Chinese Embassy to the Consulate General of the People's Republic of China in New York City, for situational awareness. The threat consisted of derogatory anti-Asian language and threats of an attack on the Chinese Embassy. The complaint was referred to the U.S. Secret Service, which identified the sender who was located in Arlington, Texas. The Secret Service interviewed the suspect but determined there was no credible threat and no arrest was made. The NYPD investigation was closed.

Beyond these incidents, news reports indicate that the NYPD HCTF has investigated at least eleven cases involving Asian victims of reported hate crimes.¹⁰ The four cases described

¹⁰ These statistics were current as of April 6, 2020.

above are likely included within that eleven. State Police are not aware of any reported COVID-related hate crime instances outside of the City.

News stories and research reports indicate that COVID-related hate is widespread and reaches far beyond the City, including a surge of anti-Chinese sentiment online. Research by the Network Contagion Research Institute, an independent group that tracks misinformation and hate spread through social media, found a rise in derogatory terms for Chinese people and slurs towards minority groups in February 2020, amid the spread of COVID-19.¹¹ In addition to hateful language, researchers noted the spread of conspiracy theories about Chinese people, including claims that COVID-19 is a bioweapon created by the Chinese government and spread by Chinese people.¹² That report noted that while these theories may first appear in fringe internet subcultures, they often spread to mainstream social media platforms including Twitter, Instagram, and Reddit.¹³ The spread of COVID-related hate and disinformation on mainstream online platforms coincides with an uptick in in-person anti-Asian discrimination and hate crimes like the ones described above.

In addition to anti-Asian hate, recent months also have seen an uptick in anti-Semitic conspiracy theories blaming people of Jewish descent for the spread of COVID-19. The FBI reports that with the surge in remote video conferencing in light of COVID-19 stay-at-home orders, it has seen a surge of hate-motivated cyber harassment by uninvited participants who

¹¹ Savvas Zannettou, *et al.*, *Weaponized Information Outbreak: A Case Study on COVID-19, Bioweapon Myths, and the Asian Conspiracy Meme*, Network Contagion Research Institute (Apr. 8, 2020), <https://ncri.io/reports/weaponized-information-outbreak-a-case-study-on-covid-19-bioweapon-myths-and-the-asian-conspiracy-meme/>.

¹² *Id.*

¹³ *Id.*

hijack video conferences—a phenomenon dubbed “Zoombombing.”¹⁴ In New York, a recent video speech to the student body of Yeshiva University was Zoombombed with Nazi photographs and anti-Semitic rhetoric, and a man yelling racial epithets intruded upon a New York high school class’s video conference during a remote lesson.¹⁵ In Massachusetts, a Jewish student group’s webinar on anti-Semitism was Zoombombed by a neo-Nazi displaying swastika tattoos.¹⁶ During a Torah lesson in Los Angeles, uninvited participants yelled “Hitler did nothing wrong” and “Heil Hitler.”¹⁷ Indeed, recent demonstrations against stay-at-home orders have been infiltrated by hate groups, including white supremacist groups and other anti-Semitic and anti-immigration hate groups.¹⁸

The Task Force is deeply concerned by these acts of hate linked to COVID-19 and related stay-at-home orders, which highlight the power and insidiousness of misinformation spread through online platforms as well as charged rhetoric. The Task Force recommends further exploration of possible means to combat the spread of misinformation and hate online, and to prevent and prosecute anti-Asian and anti-Semitic attacks linked to COVID-19, including through updating and distributing the NYAG Hate Crime Manuals. As the Neumann Act mandates the creation of the Neumann Act Task Force as well as a State-wide curriculum, this Task Force hopes that hate crimes related to COVID-19 are addressed by the Neumann Act Task Force with some urgency.

¹⁴ Taylor Lorenz, “‘Zoombombing’: When Video Conferences Go Wrong,” *New York Times* (Mar. 20, 2020).

¹⁵ Christopher Mathias, “Anti-Semitic Trolls Disrupt Jewish University’s Gathering on Zoom,” *Huffington Post* (Apr. 1, 2020).

¹⁶ Michael Bloch and Roberta Kaplan, “Zoombombing: New Medium, Same Old Hate,” LinkedIn (Apr., 16, 2020).

¹⁷ *Id.*

¹⁸ Neil MacFarquhar, “The Coronavirus Becomes a Battle Cry for U.S. Extremists,” *New York Times* (May 3, 2020).

VI. CONCLUSION

Although significant progress has been made throughout the State to address the rise of hate crimes and domestic terrorism, including the recent enactment of State legislation that creates two new domestic terrorism offenses, the Task Force believes that additional legislative proposals would significantly bolster these efforts. The legislative suggestions outlined in this Report would provide a more comprehensive legislative framework that would ensure accountability across the spectrum of criminal offenses, facilitate investigations and prosecutions, rehabilitate offenders through training and education, provide additional avenues of redress for victims of discrimination, hate crimes, and domestic terrorism, and prevent terrorist groups and supporters from continuing to receive material support from New York-based entities. Especially in light of the recent surge in hate crimes arising out of the COVID-19 pandemic, time is of the essence.

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