

State Domestic Terrorism Laws in the United States:

A Growing Threat to First Amendment Rights

SEPTEMBER 2024

State Domestic Terrorism Laws in the United States:

A Growing Threat to First Amendment Rights



Authors:

Nick Robinson, Senior Legal Advisor
NRobinson@icnl.org

Elly Page, Senior Legal Advisor
epage@icnl.org

September 2024

Table of Contents

1. Executive Summary	2
2. State Terrorism Offenses in the United States	5
A. CRIME OF TERRORISM	5
B. SUPPORT FOR TERRORISM	9
C. TERRORISTIC THREAT	12
3. How State Terrorism Laws are Evolving	14
4. Relationship with Federal Terrorism Policy	18
A. FEDERAL GOVERNMENT'S INFLUENCE ON STATE DOMESTIC TERRORISM POLICIES	18
B. THE INFLUENCE OF STATE DOMESTIC TERRORISM LAWS ON FEDERAL TERRORISM POLICY	19
5. Key Takeaways	21

1. Executive Summary

While U.S. federal law defines “domestic terrorism,” it does not make domestic terrorism a separate federal crime.¹ Instead, the crime of domestic terrorism in the United States, where it exists, falls under a patchwork of state domestic terrorism statutes that vary considerably across the country. Thirty-two states and Washington D.C. currently have the crime of domestic terrorism. Twenty-one states and DC also explicitly criminalize assisting or supporting terrorism in some manner, such as through providing “material support.” Twenty-five states separately criminalize “terroristic threats.”

Most of these state domestic terrorism laws were initially enacted in the wake of the terrorist attacks on September 11, 2001.² Historically, these state laws were rarely enforced as the federal government traditionally took the lead in investigating and prosecuting terrorism cases, regardless of whether they had an international connection.³ However, as the country has become more politically polarized and state officials have identified a broader set of “terrorist” threats, states have begun to take on a more prominent role in crafting and enforcing terrorism policy in the country. For example, in 2023 three states enacted new state terrorism offenses, and in 2024 lawmakers in at least fifteen states were considering bills that would create new domestic terrorism provisions, including several that were introduced in response to national protests over Israel’s invasion of Gaza.⁴ This more assertive approach by states has created threats to civil liberties, including First Amendment protected rights, particularly the freedoms of speech, association, and assembly.

Whether of older or more recent origin, many state anti-terrorism laws have overbroad or vague provisions. The laws also generally carry very high—almost always felony—penalties. As a result, they can be used to investigate, prosecute, and intimidate not only those engaged in activities typically associated with “terrorism,” but also domestic actors with whom the government disagrees, including protesters, activists, and non-profit organizations. Consider these recent examples:

1 Federal law defines “domestic terrorism” at 18 U.S.C. Sec. 2331, but does not provide a penalty. Further, federal law designates a number of specific crimes as federal crimes of terrorism, if carried out with “the aim of to influenc[ing] or affect[ing] the conduct of government by intimidation or coercion, or to retaliate against government conduct”. See 18 U.S.C. § 2332b(g)(5). While federal law mandates enhanced sentencing for offenses that are connected to domestic terrorism, it does not provide for specific penalties for the offense of “domestic terrorism” itself. Federal law though does criminalize providing material support to terrorists 18 U.S.C. 2339A. While this provision has generally been used in the international terrorism context it has also occasionally been used in the domestic terrorism context. For more information see, Rachael Hanna & Eric Halliday, *Discretion without Oversight: The Federal Government’s Powers to Investigate and Prosecute Domestic Terrorism*, 55(3) LOYOLA OF LOS ANGELOS LAW REVIEW 775, 820-822 (2022)

2 32 states and Washington DC have domestic terrorism laws. Of these only 9 states have laws that were not initially enacted between 2001 and 2005. Washington state’s was enacted in 1997 and the remaining were enacted after 2005.

3 For instance, Arizona’s terrorism law—enacted in 2002—went unused until 2016. Illinois’s law, also enacted in 2002, was first used in 2012 against NATO “protesters”. See generally, Lisa Daniels, *Prosecuting Terrorism in State Court*, Lawfare (2016).

4 Arizona HB 2759; Florida HB 1011; Florida HB 465; Georgia SB 523; Idaho S 1220; Idaho H 623; Indiana HB 1294; Iowa HF 2077; Louisiana SB 294; Minnesota SF 5514; Missouri HB 1400; New Jersey A 1547; New Jersey S 572; New York A 8951; Oklahoma HB 3133; South Carolina H 3035; Tennessee HB 2348; West Virginia HB 4994.

- In Georgia, in 2022 and 2023, authorities used the state’s domestic terrorism law to arrest and charge dozens of activists protesting against the construction of a new law enforcement training facility (nicknamed “Cop City”). The activists face up to 35 years in jail under domestic terrorism charges. Prosecutors charged some with committing domestic terrorism based on alleged property destruction. Others were charged with “aiding and abetting” domestic terrorism for allegedly being part of a group that had attempted to occupy part of the forest where the training facility was to be built.
- Law enforcement in Louisiana charged two female environmental activists in 2020 with “terrorizing,” punishable by 15 years in jail, after they engaged in a stunt in which they left a bucket of plastic pellets on the porch of the house of a chemical industry lobbyist. The activists claimed the plastic pellets were from a chemical factory that had dumped them into the Gulf of Mexico.
- In Oklahoma, a local prosecutor charged 5 individuals, including 3 teenagers, with domestic terrorism in 2020 for alleged property destruction connected with a Black Lives Matter demonstration—a charge that critics claim was used to intimidate protesters.
- In the wake of Pro-Palestine street protests, New York lawmakers introduced a bill in 2024 that would create a new felony domestic terrorism offense for blocking roads or sidewalks in a way that deliberately blocks traffic.

Overbroad state domestic terrorism laws have sparked widespread concerns that “terrorism” charges can be used to target disfavored speech. In response to these concerns, Republican lawmakers in North Dakota enacted a law in 2023 that limited the definition of “domestic terrorism” to certain acts committed in cooperation with a federally designated international terrorist organization. The sponsors of the law were inspired by concerns that the FBI was going to investigate conservative parents for “terrorism” based on threatening comments they had made at school board meetings. The lawmakers wanted to make clear the crime of “terrorism” should be reserved for foreign, not domestic, threats.

Although political violence in the United States is a real problem, state domestic terrorism laws are arguably unnecessary. Indeed, federal policymakers have resisted enacting a specific crime of domestic terrorism, in part because of First Amendment concerns. In prominent cases of mass violence, such as the Oklahoma City Bombing, the Boston Marathon Bombing, or the church shooting in Charleston, the federal government successfully convicted the perpetrators without needing terrorism charges. Instead, they relied on a variety of laws that already criminalize violence.⁵

⁵ Federal prosecutions for terrorism offenses in the U.S. may involve a host of other criminal charges, such as those for crimes related to weapons, explosives, threats, attacks on federal officials or facilities, hate crimes, arson, and material support to terrorists. CRS, Domestic Terrorism: Overview of Federal Criminal Law and Constitutional Issues, 2-47 (2021).

Besides being arguably unnecessary, state domestic terrorism laws can cause serious unintended consequences. As this report will show, the overbroad and vague provisions of state domestic terrorism laws create significant First Amendment and free expression concerns. This is in addition to other constitutional and policy issues these laws raise, such as how they can be used to justify unconstitutional searches or surveillance in potential violation of the Fourth Amendment of the U.S. Constitution.

Part I of this report builds off a first-of-its-kind ICNL database of all U.S. state domestic terrorism laws. It analyzes the state crimes of domestic terrorism, as well as offenses related to support for terrorism and terroristic threats. It finds that this legislation often has far broader, vaguer, and more draconian provisions than commonly understood. Since these laws are already on the books, state authorities can far too easily turn to them to target individuals and groups with whom they disagree in a politicized manner.

Part II examines the evolution of these state terrorism laws, including their changing motivations. It finds that the reasons for the enactment and amendment of these laws have changed significantly, creating concern that they will be used in a range of new contexts not historically associated with terrorism.

Part III explores the relationship between state domestic terrorism laws and the federal government's domestic terrorism policies. While the federal government is often understood as taking the lead in "terrorism" cases—given their national security implications—this report unearths both contemporary and historical examples of how terrorism policy in the U.S. is often driven not by federal, but rather state policymakers. This finding calls for rethinking how the federal government approaches domestic terrorism.

The report ends with key takeaways about the threat state domestic terrorism laws pose to our expressive rights, including the freedoms of speech, association, and assembly.



As this report will show, the overbroad and vague provisions of state domestic terrorism laws create significant First Amendment and free expression concerns.

2. State Terrorism Offenses in the United States

This part breaks down three types of state terrorism offenses in the United States: (1) the crime of terrorism, (2) support for terrorism, and (3) terroristic threats. It provides a brief analysis of each, including key concerns about civil liberties.

A. CRIME OF TERRORISM

In states with the crime of terrorism, the offense generally requires that an individual (1) commit a predicate criminal offense with (2) a specific intent.

Intent

The intent requirement of the crime of terrorism often follows a general pattern. For example, in many states, one must intend to commit the offense to influence government policy through intimidation or coercion or to intimidate or coerce a civilian population.⁶ These provisions mirror similar language in the 2001 U.S. Patriot Act, which defines domestic terrorism, but does not create a punishable offense.

This intent requirement might seem like an important safeguard against abuse. However, in the context of protests or other political activism, the vagueness of this intent requirement frequently seems all too easy for authorities to claim to meet. For example, authorities might argue that a participant in a rowdy protest that blocks traffic is attempting to influence government policy through intimidation or to coerce a civilian population.

The Supreme Court has held that the First Amendment “requires that a penal statute define [a] criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory treatment.” Yet, in many contexts, it is not obvious that the intent requirement of terrorism is defined clearly enough that an ordinary person can understand when it is triggered. Lawyers challenged the intent requirement in the Georgia domestic terrorism law in 2023, claiming that “attempting by word or expressive action to alter, change, or coerce government policy is a quintessential act of free speech,” and so the provision is unconstitutionally vague and overbroad.

Predicate Offense

In contrast with the intent requirement, the predicate offense for the crime of terrorism varies considerably amongst states. In Michigan, for instance, the predicate offense requires that a person commits a violent felony with premeditation that the person knows is dangerous to human life. By contrast, in Tennessee the predicate crime can be literally any crime, including a relatively minor offense like obstructing a sidewalk or disorderly conduct.

⁶ See ICNL State Domestic Terrorism Law Database.

Although many states list serious, violent crimes such as homicide or kidnapping as a predicate offense, these lists also often include crimes that could capture activity that is not generally thought of as connected with “terrorism”. Consider these examples:

- In Oklahoma, a predicate offense for terrorism includes any act of violence that results in damage to property or the threat of such violence.⁷ This could include even minor property damage.
- In Arkansas, a predicate offense for terrorism includes causing damage to a public monument. This provision was added after Black Lives Matter protesters toppled Confederate monuments during protests in 2020.
- In Florida and some other states, assault on an officer would meet the predicate offense for domestic terrorism.⁸ At some protests, it is not uncommon for there to be scuffles between police officers and protesters in which a demonstrator could be charged with assaulting a police officer.
- In Kansas and several other states, the crime of rioting—which is often itself overbroad and has a long history of use by authorities to charge nonviolent protesters⁹—is a predicate offense for the crime of terrorism.¹⁰
- In Alabama, “stalking” is a predicate offense. As such, a protester who repeatedly demonstrated against a public official in different locations could potentially be charged with terrorism.
- In Nevada, an act of “coercion” is a predicate offense if it is intended to cause substantial “impairment” of “any building or infrastructure, communications, transportation, utilities or services” or “any natural resource or the environment.” As such, this offense could potentially be used to target activists blocking a road or obstructing the construction of a fossil fuel pipeline.

Penalty

While there are clear problems of overbreadth in many state terrorism statutes, penalties for the crime of terrorism are usually severe and almost always a felony. In Florida, the offense is punishable by at least up to 30 years in jail, in Tennessee by up to 60 years in jail, and in Kansas, Arizona, Oklahoma, and several other states by up to life in prison.¹¹ In many states, there is not only a severe maximum penalty, but also a significant

7 Other states also include property destruction as a predicate. For example, Minnesota and Pennsylvania include property destruction as a predicate offense, where the value of the property is more than \$1,000. See ICNL State Domestic Terrorism Law Database.

8 For example, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, and Tennessee also include assault as a predicate offense. See ICNL State Domestic Terrorism Law Database.

9 See Nick Robinson, Rethinking the Crime of Rioting in Minnesota Law Review (2022).

10 Pennsylvania, Oklahoma, and South Dakota are among other states also include “riot” as a predicate offense for terrorism. See ICNL State Domestic Terrorism Law Database.

11 See ICNL State Domestic Terrorism Law Database.

mandatory minimum sentence for committing a crime of terrorism. In Virginia, the mandatory minimum is 5 years in jail, and in Nevada, it is at least 50 years in jail. In New York and several other states that have adopted a more graduated approach, domestic terrorism is punished by a penalty the next level up from the penalty for the predicate offense.¹²

While policymakers may have adopted steep penalties for these crimes because they believed they would be used in situations that most people recognize as terrorism, they can also be used in a variety of other contexts not normally associated with terrorism, many with First Amendment implications. Prosecutors can use these steep penalties for the offense of terrorism to charge a defendant with multiple overlapping or adjacent crimes, including some with high penalties. Defendants may then feel pressured to plea to a lesser offense, whether or not they are actually guilty, because they do not want to risk facing such prolonged jail time.

Application

State officials have used these laws' broad provisions and draconian penalties against activists and protesters in a number of contexts. In Georgia, over 40 protesters were arrested under terrorism charges at the end of 2022 and early 2023, arising out of demonstrations against a planned law enforcement facility on public forest land (labeled "Cop City" by protesters). In Georgia, the predicate crime for terrorism is a felony intended to cause serious bodily harm or to disable or destroy critical infrastructure. Critical infrastructure is defined broadly in the state to include any publicly or privately owned "facilities, systems, functions, or assets" providing services to the public. The penalty for domestic terrorism is a felony punishable by not less than five years in jail and up to life imprisonment or the death penalty.

In an indictment handed down by the Georgia Attorney General's office in July 2023, 61 defendants, including a legal observer from the Southern Poverty Law Center, were charged with racketeering for engaging together to prevent the construction of the training center. During a music festival on the forest land

¹² North Carolina, Ohio, and Texas take a similar graduated approach as New York in respect to penalties. See [ICNL State Domestic Terrorism Law Database](#).



While policymakers may have adopted steep penalties for these crimes because they believed they would be used in situations that most people recognize as terrorism, they can also be used in a variety of other contexts not normally associated with terrorism, many with First Amendment implications.

in March 2023, at least a hundred people had walked to the construction site, where some knocked over a fence, threw rocks, and burned equipment. For many of the defendants charged with racketeering, the indictment stated that they joined the group at the construction site, “thereby aiding and abetting in the offense of arson and domestic terrorism.” In the same indictment, five individuals were charged with domestic terrorism arising out of a separate protest in January 2023 that was sparked by the law enforcement killing of a protester occupying the forest. The indictment alleged that these five attempted to commit arson against critical infrastructure—namely police vehicles, a bank, and a skyscraper—as they were arrested with accelerant. The ACLU accused prosecutors in Georgia of sending a “chilling message” with their “excessively punitive” and “overreaching” charges against Cop City activists.

In Oklahoma, in 2020, a local prosecutor brought terrorism charges against five individuals—including three teenagers—involved in property destruction related to racial justice protests. In the state, “an act of violence resulting in damage to property” is a predicate crime of terrorism, which is, in turn, punishable by life in prison. The director of Black Lives Matter Oklahoma City claimed the extreme penalties connected with these charges were an attempt to intimidate demonstrators and characterized the charges as “an abuse and an overreach of power.”

In New York City, police arrested a group of fourteen protesters for domestic terrorism in 2023. The protesters were demonstrating against the killing of a homeless man who had been threatening passengers on the subway. Because the protesters delayed a subway train, police claimed they had engaged in first degree tampering, a predicate offense under the state’s domestic terrorism statute. In New York State, first-degree tampering includes intentionally disrupting a common carrier or public utility, like the subway. Prosecutors ultimately declined to press charges.

Even if a person is not ultimately convicted or even prosecuted for a terrorism offense, being arrested for the crime of terrorism can have serious repercussions. In Georgia, for example, persons arrested for a felony can be kept up to 90 days in jail without bail before needing to be indicted. Some non-violent protesters who were charged with terrorism in relation to the Cop City protests were held by authorities in 2023 just up to this 90-day limit. This created personal hardships, including the potential loss of employment, while exposing them to the dangers that come with confinement in the U.S. prison system, such as disease and assault. More generally, felony arrests can also trigger eviction and loss of custody of one’s child.¹³ Thus, in states with overbroad terrorism laws, law enforcement can significantly punish individuals simply by arresting them for terrorism, even if charges are not ultimately brought.

¹³ Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 810-12 (2015) (discussing the myriad of consequences of arrest outside of the formal criminal justice system process).

B. SUPPORT FOR TERRORISM

While federal law does not specifically create a criminal offense of domestic terrorism, it does include penalties for individuals who provide “material support” to federally designated terrorist organizations or to those who facilitate terrorist acts.¹⁴ As defined by federal law, “material support” may take a range of forms, including “any property... or service,” including lodging, training, or “expert advice.”¹⁵

Most state domestic terrorism statutes contain similar provisions to the federal material support law, establishing penalties for individuals who support a terrorist organization or an act of terrorism as defined by state law.¹⁶ However, as discussed below, since the underlying definition of terrorism is broader in many states than the federal definition, these provisions often cast a wider net than federal law.¹⁷ Further, state laws that target coordinated criminal action, such as conspiracy and racketeering laws, can also be used in combination with state domestic terrorism laws in ways that may chill individuals’ legitimate speech and associative activities.

In *Holder v. Humanitarian Law Project*, the U.S. Supreme Court in 2010 upheld a finding that a U.S. nonprofit would have provided “material support” to two foreign terrorist organizations if they went forward with their plans to provide them with trainings on resolving conflicts peacefully. Significantly, despite the Supreme Court affirming a broad reading of “material support” in the international context, it was careful to make clear that “We . . . do not suggest that Congress could extend the same prohibition on material support at issue here to domestic organizations.” Indeed, the Supreme Court has explained in cases like *New York Times v. Sullivan* (1964) and *Counterman v. Colorado* (2023) that broad theories of liability should be limited when they threaten to have a chilling effect on speech and in cases like *NAACP v. Claiborne Hardware Co.* (1982) the Court has made clear that the First Amendment prohibits mere “guilt by association.”

Support to Terrorist Organizations

A number of state terrorism statutes make it a felony offense to provide support to a terrorist organization.¹⁸ Many of these states define “terrorist organization” as a foreign terrorist organization, as designated by the federal government.¹⁹ For example, under Florida law, providing “material support or resources” to a federally designated terrorist organization is a felony punishable by up to 30 years in jail. The law’s definition of “material support or resources” mirrors the broad federal definition.

14 18 U.S.C. § 2339B(a)(1) (outlawing providing material support to a foreign terrorist organization); 18 U.S.C. § 2339A(a) (outlawing providing material support or resources knowing or intending that they are to be used in preparation for, or in carrying out, a violation of certain crimes)

15 18 U.S.C. § 2339A(b)

16 For instance, in FL, IL, ID, IA, MO, ND, OH, TN, and TX.

17 Some states, including Kansas, Indiana, and Virginia, do not define “material support” at all.

18 These include AZ, AR, DC, FL, IL, IN, MI, MO, NJ, and VA. See [ICNL State Domestic Terrorism Law Database](#).

19 Such as in [Arizona](#) and [Florida](#).

In October 2023, at the urging of Governor Ron DeSantis, the head of Florida's state university system ordered public universities to disband campus groups linked to a national pro-Palestinian student organization, Students for Justice in Palestine (SJP), claiming they were in violation of Florida's material support provision. The administration pointed to language in a toolkit disseminated by the national wing of the SJP shortly after Hamas's October 7, 2023, attack on Israel that said, "Palestinian students in exile are PART of this movement, not in solidarity with this movement," as evidence that student groups were providing material support to Hamas (a US-designated terrorist organization). Critics stated that the statement was protected speech under the First Amendment, and rights groups sued to challenge the order; so far, none of the student groups have been disbanded.

Some states define "terrorist organization" to encompass a much broader class of organizations than just federally designated terrorist groups. Indiana, for example, makes it a felony to knowingly commit any "offense" with the intent to benefit or further the interests of a "terrorist organization." The state defines "terrorist organization" broadly as a formal or informal group with 3 or more members that promotes, participates in, or assists "terrorism." "Terrorism" in Indiana is defined to include the unlawful use of force or violence (or the mere threat thereof) to intimidate or coerce a government or civilian population. As such, someone who commits any offense, such as blocking traffic as part of a protest, could commit "terrorist organization activity" if blocking traffic benefited an informal group where some members used force or violence, such as a group of protesters, where one or more members had committed vandalism.

Other states ban material support to organizations that have threatened to commit violence but have not actually done so. New Jersey, for example, punishes by up to 10 years in jail knowingly providing material support to an "organization that... has threatened to commit an act of terrorism." It is not clear what is meant by an "organization" threatening to commit an act of terrorism versus a member of the organization. Nor is threat defined and so it can potentially capture First Amendment protected speech.²⁰

20 For more on what threats are protected under the First Amendment see this report's section on "Terroristic Threats".



Some states define "terrorist organization" to encompass a much broader class of organizations than just federally designated terrorist groups. Indiana, for example, makes it a felony to knowingly commit any "offense" with the intent to benefit or further the interests of a "terrorist organization."

Support for Acts of Terrorism

While many states criminalize providing “material support” for “terrorist organizations,” many others also or separately criminalize providing “material support” for acts of terrorism. Since states frequently have broad definitions of “terrorism,” as discussed above, the material support offense can capture activity not generally associated with terrorism.

In Tennessee, for instance, it is a predicate offense of terrorism to commit any offense.²¹ As such, under Tennessee law, knowingly providing material support or resources for an act of terrorism, such as providing a water bottle to someone involved in an unlawful sit-in that is deemed to be attempting to influence government policy by intimidation, is a felony punishable by up to 60 years in jail.²²

Other states expand their material support provisions in other ways. In Florida, for instance, one does not actually have to provide material support to a person who commits an act of terrorism. Instead, merely attempting or conspiring to provide material support is a felony offense.²³

The combination of broad underlying definitions of “terrorism” and sweeping definitions of “support” can capture activity that many would view as very far removed from actual terrorism. Yet the penalties for these crimes can be amongst the harshest in our criminal justice system.

Other Forms of Coordinated Unlawful Activity

State laws that criminalize coordinated criminal action, such as conspiracy, aiding and abetting, and racketeering, also expand the potential net of state terrorism statutes. They can cover and punish with severe penalties the conduct of individuals who did not plan to engage in domestic terrorism violations and are only loosely connected with them.

Criminal conspiracy, where one agrees with another person to commit or assist in committing a crime, can cast a notoriously wide net. For example, during mass protests in Washington DC at President Trump’s inauguration in January 2017, a small number of those present damaged property. Yet over 200 protesters were charged with conspiracy to riot, under the theory that by being part of the crowd, they were assisting those committing property damage. In several states, including Oklahoma, conspiring to riot is a predicate offense for domestic terrorism. As such, simply being part of a mass protest where some individuals commit property destruction could lead to domestic terrorism charges. In Oklahoma, this is punishable by life in prison.

²¹ Tenn. Code § 39-13-803.

²² Tenn. Code § 39-13-807.

²³ Fla. Statute 775.33(2)(c).

Other forms of indirect participation, like aiding and abetting or attempt, can also trigger terrorism offenses. For example, in Georgia, prosecutors claimed that individuals who were part of a group of Cop City protesters that occupied forest land and overran police aided and abetted those who also committed property destruction and so aided and abetted domestic terrorism.

State racketeering laws, which have been used to prosecute organized crime, can also be used to charge protesters and activists with state terrorism crimes. In Georgia, for example, Cop City protesters were charged under the state's racketeering law under the theory that those who were occupying forest land to prevent the construction of a law enforcement training facility were part of a criminal enterprise furthering a terrorist offense.

C. TERRORISTIC THREAT

Twenty-five states have a crime of terroristic threat. This offense is sometimes part of the crime of terrorism itself. In New Jersey, for example, the crime of terrorism is defined to include not only committing a specified offense, but also threatening to commit it. In other states, the offense of terroristic threat is a separate crime, but was enacted as part of a broader anti-terrorism statute that also includes the crime of terrorism.²⁴ In still other states, it is a standalone crime that sometimes predates the state's crime of terrorism.²⁵ Although there can be compelling reasons to criminalize certain threats of violence, the offense of terroristic threat can encompass constitutionally protected expressive activity—often with harsh penalties.

While the First Amendment broadly protects free speech, the Supreme Court has created certain exemptions, including ruling that “true threats” can be criminalized. The Court has characterized “true threats” as “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”

Many instances of threatening language do not meet this standard, and so are protected by the First Amendment. In *Watts v. United States (1969)*, the Supreme Court overturned the conviction of a Vietnam War protester for stating at a rally, “I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” The Court found that Watts’ language was not a true threat to the life of President Lyndon B. Johnson as his rhetoric was simply “political hyperbole.”

Yet, some states’ “terroristic threat” offenses can cover protected speech. For example, in Arizona, it is a felony offense “to threaten to commit an act of terrorism and communicate the threat to any other person.” The statute goes on to make clear, “It is not a defense to a prosecution under this section that the person did not have the intent or ca-

²⁴ See, for example, New York state.

²⁵ For example, in Minnesota the current crime of threatening violence with the intent to “terrorize” dates from at least 1971.

pability of committing the act of terrorism.” This would seem to capture instances, like *Watts*, where a person is engaged in political hyperbole. A terroristic threat in Arizona is punishable by a minimum of 2 years and up to 8 years in jail.

Concerns about the overbroad use of terroristic threat offenses are not hypothetical. Law enforcement in Louisiana charged two environmental activists in 2020 with “terrorizing,” punishable by 15 years in jail, after they left a bucket of plastic pellets on the porch of a chemical industry lobbyist. The activists, Anne Rolfes and Kate McIntosh, left a lengthy note explaining that the plastic pellets (or “nurdles”) were some of the billions that they claimed Formosa Plastics had dumped off the coast of Texas. At the time, Formosa Plastics was at the permitting stage for a new plastics plant in “cancer alley” in Louisiana, and the activists explained that “We have delivered this package of nurdles as a reminder – Louisiana does not need anymore pollution, plastics or otherwise.” The note also stated that “The plastic nurdles should not be removed from bags” or left around “children or pets” and to call Formosa Plastics for “disposal instructions.”

Under Louisiana law, the crime of terrorizing includes communicating information that a “circumstance dangerous to human life exists or is about to exist, with the intent of causing members of the general public to be in sustained fear for their safety.” Law enforcement claimed “it was obvious” the women were trying to instill fear in the homeowners, and both activists were arrested for “terrorizing.” While prosecutors later dropped the charges, their arrest sent a chilling message about how terroristic threat offenses can be used in politicized contexts.

Even when there is a terroristic threat that may meet the Supreme Court standard of “true threat,” the penalties can be disproportionately severe. For example, the crime of “terrorism” in New Jersey includes threatening to commit an enumerated crime with the purpose of terrorizing five or more people. As such, merely threatening an enumerated crime, such as assault, could be considered terrorism, which carries a mandatory minimum sentence of 30 years in jail.

3. How State Terrorism Laws Are Evolving

Most state domestic terrorism laws were enacted in the immediate wake of the September 11th attacks in the U.S. by al-Qaeda in 2001.²⁶ Yet, many of these state laws have more recent origins or have been more recently amended.

The reasons for state lawmakers' push for domestic terrorism legislation post-9/11 have been diverse. Some states enacted terrorism laws years after the September 11th attacks, but still in response to America's broader "global war on terror."²⁷ Other states have enacted terrorism legislation in response to mass shootings. Lawmakers in Georgia, for example, enacted a domestic terrorism law in response to the Charleston, South Carolina, mass shooting of black churchgoers in 2015. In Florida, lawmakers broadened the state's domestic terrorism law in 2017 after a mass shooting at a gay nightclub.

Some states have adopted new domestic terrorism legislation in response to protest movements. In 2021, for instance, Arkansas amended its definition of domestic terrorism to include damage to public monuments in the wake of Black Lives Matter protests in which demonstrators had toppled Confederate monuments.

In 2023, Texas, Oregon, and North Dakota all enacted new terrorism laws. The justifications, though, were tellingly quite different. Lawmakers in Texas, for example, claimed they introduced their legislation because the state did not already have a state domestic terrorism law, so it was filling a gap, and came after Governor Abbott had designated Mexican drug cartels as terrorist organizations in 2022.

In Oregon, lawmakers claimed they introduced their legislation in response to attacks by right-wing groups against the electric grid and to respond to the rise of political violence in

²⁶ Only Washington State had a crime of terrorism before the 9/11 attacks. It was enacted in 1997.

²⁷ A handful of states, including Kentucky and Oklahoma, either enacted or amended domestic terrorism legislation based on a model law, entitled "Andy's law" that created a civil cause of action against those who support terrorism and strengthen state domestic terrorism offenses. The bill was named after Andy Long who was killed outside a military recruitment center in Little Rock, Arkansas by a self-proclaimed jihadist in 2009 during the Iraq and Afghan wars.



Some states have adopted new domestic terrorism legislation in response to protest movements. In 2021, for instance, Arkansas amended its definition of domestic terrorism to include damage to public monuments in the wake of Black Lives Matter protests in which demonstrators had toppled Confederate monuments.

the country after the storming of the U.S. Capitol by President Trump’s supporters on January 6, 2021.

Meanwhile, in North Dakota, lawmakers introduced their domestic terrorism law out of concern that the crime of terrorism was being “weaponized” against conservative voices. Representative Cole Christensen, a Republican lawmaker who co-sponsored the bill, stated:

The thing that prompted this bill was a letter that was sent out by the National School Board Association asking the FBI and Department of Justice to investigate parents as domestic terrorists. These parents were raising questions and concerns at their local school board meetings. We see this in the media, terms like this, being weaponized for merely participating in the political process. And this deadly label lynching has led to the weaponization of government against American citizens.²⁸

In response, the North Dakota bill, which became law, defines domestic terrorism to only include certain violent crimes done in cooperation with federally designated international terrorist organizations to make clear to law enforcement and others that the crime of domestic terrorism should only be applied to those engaged in crimes with these international terrorist groups.²⁹

Other lawmakers have introduced state terrorism legislation that has not yet been enacted but could point to how the perceived threat of terrorism in the country is evolving. In North Carolina, a 2017 bill, introduced after environmental protests, would have classified certain demonstrations that block roadways as “economic terrorism,” punishable by a felony. After white supremacists clashed with counter-protesters in Charlottesville, Virginia lawmakers introduced a bill in 2018 that would have allowed state authorities to designate “domestic terrorist organizations” and prohibit more than three members of such a group from assembling together. In 2023, West Virginia lawmakers introduced a bill that was a response to antifa and racial justice protesters. Among other measures, anyone who participated in a “violent protest” could be “identified as a terrorist/terrorist group” and face up to 10 years in prison for participating in a “terrorist violent mass action.” The same year, lawmakers in Georgia introduced a bill in the wake of the Cop City protests that would have broadened the predicate offense for domestic terrorism to include any criminal offense and create a new offense for material support of terrorism.

These legislative initiatives seem to be on the rise. In the 2024 legislative session, at least 15 states have considered changes to their domestic terrorism laws, mostly to

28 House Judiciary, North Dakota Legislature, Testimony on HB 1334, Feb. 8, 2023, available at <https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20231110/-1/28972?startposition=20230208101604> (Representative Cole Christensen testimony)

29 *Id.*

expand their scope, of which two have so far been enacted.³⁰ Many of these proposals have targeted recent pro-Palestine protests on college campuses. For example, a bill that was enacted in Tennessee in May 2024 bans entities receiving public funds, including universities, from providing forums (including printing and electronic platforms) to a designated terrorist organization or to a group or organization that a public entity “reasonably should know receives financial or other support from a designated entity.” During hearings about the bill, lawmakers claimed that Palestine solidarity protests were linked to “foreign terrorist organizations”. A bill in Iowa introduced in 2024 would deny state financial aid to any student who “endorses or promotes” terrorism or the actions of a federally designated foreign terrorist group, as well as cancel the registration of any student groups at a public university that does the same. Meanwhile, lawmakers in Missouri and Oklahoma proposed terrorism legislation in 2024 motivated by a desire to combat drug cartels and criminal gangs.

Concerns about “terrorism” have been used not only to justify state domestic terrorism statutes, but also related laws that can target activists and protesters. Following 9/11, the U.S. adopted national laws creating new protections for “critical infrastructure” and codifying a definition of “terrorism” (foreign or domestic) to include an act that is “potentially destructive of critical infrastructure.”³¹ Some states followed suit soon after 9/11, enacting provisions to protect public utilities from acts of sabotage as part of broader “counterterrorism” laws.³² Many more states adopted such laws, however, in the wake of mass protests against construction of the Dakota Access Pipeline. After 2017, at least 19 states adopted laws that create steep criminal penalties for broadly defined offenses near “critical infrastructure.” These laws, which are often explicitly promoted by fossil fuel companies, often define “critical infrastructure” broadly—although always including fossil fuel pipelines—and penalize not only acts of sabotage, but trespass onto infrastructure property or impeding infrastructure construction. As such, they can and have been used to target non-violent fossil fuel protesters, including environmentalists, indigenous communities, and landowners. For example, in Louisiana, authorities used one of these laws to arrest environmentalists protesting near the construction of a fossil fuel pipeline even though they had permission from the landowner of the property to be there.

“Critical infrastructure” laws also often criminalize those who conspire with or support anyone who violates one of these laws. For example, a 2023 critical infrastructure law in North Carolina penalizes those who lend “material support” to those who violate the

30 Arizona HB 2759; Florida HB 1011; Florida HB 465; Georgia SB 523; Idaho S 1220; Idaho H 623; Indiana HB 1294; Iowa HF 2077; Louisiana SB 294 (enacted); Minnesota SF 5514; Missouri HB 1400; New Jersey A 1547; New Jersey S 572; New York A 8951; Oklahoma HB 3133; South Carolina H 3035; Tennessee HB 2348 (enacted); West Virginia HB 4994.

31 See Critical Infrastructure Protection Act. The post-9/11 Homeland Security Act expressly defines “terrorism” (foreign or domestic) to include an act that is “potentially destructive of critical infrastructure” now 6 USC 101.

32 See, e.g., Minnesota Anti-Terrorism Act of 2002, now Minnesota Statutes 609.594, creating a new misdemeanor for trespass at a critical public service facility, utility, or pipeline. In Minnesota, anti-pipeline protesters have been arrested under this provision.

law, such as by impeding the construction of a pipeline through a protest. These broader conspiracy provisions can be used to arrest and prosecute organizers of protests or those who are simply supporting the efforts of these protests where some demonstrators may engage in trespass.

Similar to “critical infrastructure” laws, in the 2000s many states used terrorism rhetoric when adopting laws targeting animal rights activists and other so-called “eco-terrorists,” although only a handful of these laws explicitly used the word “terrorism”.³³ The 2006 U.S. Animal Enterprise Terrorism Act has also been used by federal authorities to target animal rights activists (though, despite its name, the law does not create a “terrorism” offense). The use of the term “terrorism” in these laws or by authorities likely helped justify overbroad government surveillance and harassment. A 2010 Justice Department Inspector General report, for example, criticized as a waste of resources and an abuse of power a number of FBI Joint Terrorism Task Force investigations of animal rights, peace, and social justice advocates for treating trespassing, nonviolent civil disobedience, and vandalism as “acts of terrorism.”

In recent years, the label of terrorism has been applied by federal officials and politicians against members of a diverse range of groups. This includes Black Lives Matter activists, abortion activists, environmental activists, anti-government proponents, Trump supporters, white supremacists, individuals associated with antifa, and pro-Palestine protesters. The broad set of potential targets for anti-terrorism laws articulated by federal and state authorities has significant First Amendment implications. In the years after 9/11, the government surveilled and investigated Muslim, South Asian, and Arab Americans as potential “terrorists” based on often thin evidence and racial or religious stereotyping. Having overbroad and vague state domestic terrorism laws on the books provides the opportunity for authorities to investigate and prosecute disfavored groups in a politicized manner.

³³ A list of these state laws can be found in Dara Lovitz, *Animal Lovers and Tree Huggers are the New Cold-Blooded Criminals?: Examining the Flaws of Ecoterrorism Bills*, 3 J. of Animal Law 79, 84 at FN 31 (2007)

4. Relationship with Federal Terrorism Policy

Combatting terrorism in the U.S. is generally thought of as a national security issue, and so the federal government has historically taken the lead in investigating and prosecuting terrorism cases. However, as this report has documented, state authorities have taken a prominent role in developing and enforcing their own domestic terrorism laws. Given this assertive role, the federal government needs to adjust its domestic terrorism policies to safeguard against overbroad use of the crime of domestic terrorism at the state level. Meanwhile, we should expect that federal domestic terrorism policy itself may increasingly be influenced by state policies, often with concerning consequences for civil liberties and free expression.

A. FEDERAL GOVERNMENT'S INFLUENCE ON STATE DOMESTIC TERRORISM POLICIES

The federal government's counter-terrorism efforts can interact with the more assertive use of state domestic terrorism laws by state officials in concerning and dangerous ways. Amidst the Cop City protests in Atlanta, Georgia, the Department of Homeland Security (DHS) shared a public terrorism advisory bulletin with local law enforcement that alleged "domestic violent extremists" at Cop City had engaged in activity like "property damage."³⁴ Georgia law enforcement then pointed to DHS's labeling of Cop City protesters "domestic violent extremists" as a justification to arrest dozens of protesters under the state's domestic terrorism law.

There is a clear danger that the federal government labeling individuals "domestic violent extremists" may encourage states to bring domestic terrorism charges against these individuals, even when these individuals are engaged in conduct that many would not consider terrorism. Since there is no federal criminal offense of domestic terrorism, the federal government uses its own unclear, inconsistent, and overbroad definition of "domestic violent extremism." DHS, for example, has frequently defined "domestic violent extremist" as a U.S. actor "who seeks to further social or political goals, wholly or in part, through unlawful acts of force or violence." Yet, such a broad definition can capture many protests where there could be "unlawful acts of violence," such as shoving between law enforcement and protesters or protesters committing acts of relatively minor vandalism.

The federal government's development and expansion of counter-terrorism infrastructure since 9/11 also gives state governments tools and intelligence to bring state domestic terrorism charges in dubious and often politicized circumstances. Consider how fusion centers have impeded First Amendment rights. Fusion centers were initially created by

³⁴ DHS and the FBI have tightened their definition of domestic violent extremists in some documents, such as an October 2022 strategic assessment report to Congress, by limiting it to those engaged in "unlawful acts of force or violence *dangerous to human life*" (emphasis added).

the Department of Homeland Security to share counter-terrorism information between local and federal law enforcement in the wake of the 9/11 attacks. However, these centers have been frequently accused of being used to track nonviolent protesters and issue law enforcement bulletins that mischaracterize their activities. For instance, a fusion center was used in 2018 to investigate and disseminate information under “suspicious activity reports” on nonviolent protesters of a natural gas pipeline project in Oregon. Law enforcement reportedly built dossiers on pipeline activists who were not engaged in any criminal conduct, which included social media profiles and information provided by private security employed by the company constructing the pipeline project. Similarly, a Brennan Center report found that during the 2020 Black Lives Matter protests, fusion centers repeatedly issued bulletins mischaracterizing nonviolent protests as threats, “often citing rumors or disinformation spread by anonymous social media posters or right-wing media sites.” Joint terrorism taskforces, set up to investigate terrorism, have also been used to target activists, including protesters at Standing Rock demonstrating against a planned fossil fuel pipeline on Indigenous land.

B. THE INFLUENCE OF STATE DOMESTIC TERRORISM LAWS ON FEDERAL TERRORISM POLICY

State governments taking a more assertive role in pursuing their own domestic terrorism policies can also shape future federal action on domestic terrorism.

This is particularly apparent in states explicitly trying to change federal terrorism policy. After Texas enacted its terrorism law in 2023 in the name of fighting drug cartels and the governor labeled several of the cartels terrorist organizations under state law, Florida’s legislature passed a resolution calling on the federal government to officially designate drug cartels foreign terrorist organizations. Meanwhile, 21 Republican state attorney generals signed an open letter in 2023 calling for the federal government to designate drug cartels as terrorist organizations. Such a federal designation would not only significantly affect US federal domestic terrorism policy, but also several states that use the federal designation of terrorist or-



Law enforcement reportedly built dossiers on pipeline activists who were not engaged in any criminal conduct, which included social media profiles and information provided by private security employed by the company constructing the pipeline project.

ganizations in their state domestic terrorism laws.³⁵ The designation of drug cartels as terrorist organizations, however, could have a range of unintended consequences. For example, workers at a nonprofit might be charged with providing material support to a terrorist organization if they engage with local gang members in a U.S. city connected with drug cartels in an attempt to try to diffuse violence, as they could be viewed as providing “assistance” or “expert advice” to the cartel.

Meanwhile, lawmakers in North Dakota were, in part, attempting to shift federal terrorism policy by defining terrorism under their state laws as only involving “international terrorism.” In doing so, these lawmakers explicitly wanted to signal to the federal government that its terrorism policy should only be focused on foreign threats out of concern that the Biden administration might target domestic conservative activists as “terrorists.”

While states can help to ratchet down the scope of federal domestic terrorism policies, they may be more likely to ratchet it up—normalizing the use of terrorism infrastructure and charges against a range of potential threats not normally associated with terrorism. In this scenario, states might play a significant role in normalizing terrorism charges against groups as disparate as drug cartels, pro-life activists, pro-choice activists, Covid lockdown protesters, white nationalists, environmentalists, or racial justice protesters, including for conduct that many might not normally associate with terrorism.

35 For example, both Arizona and Florida use federally designated terrorist organizations in their material support of terrorism statutes. See [ICNL State Domestic Terrorism Law Database](#).

5. Key Takeaways

This report has analyzed state domestic terrorism laws, their evolution, and their interaction with federal terrorism policy. Below are five key takeaways for policymakers:

- **States are developing their own domestic terrorism laws and policies.** While many focus on federal terrorism policies, 32 states and Washington, DC, now have state domestic terrorism laws, with more bills being introduced each year to either further expand these preexisting laws or create state terrorism laws where they do not already exist.
- **State domestic terrorism laws raise serious First Amendment concerns.** Many of these state laws have either overbroad and/or vague definitions of terrorism, material support, or terroristic threat. The predicate acts for terrorism are often sweeping, threatening to normalize criminalizing as “terrorism” a broad set of activities not usually associated with terrorism, including potentially nonviolent forms of activism and civil disobedience. The silencing effect of these laws on protected First Amendment activity can become even more pronounced when combined with other offenses already on the books in many states, such as conspiracy, aiding and abetting, or racketeering.
- **State domestic terrorism laws are unnecessary.** There is no federal crime of terrorism in large measure because of First Amendment concerns and worries about how it could be used in a discriminatory manner. Instead, federal authorities routinely prosecute acts or attempted acts of political violence using other preexisting laws. Similarly, many states do not have a crime of terrorism and do not seem more susceptible to terrorism as a result.
- **The motivations for state domestic terrorism laws are evolving.** While the initial wave of state domestic terrorism laws were enacted in the wake of the attacks on 9/11, the conception of what is “terrorism”



Summary of Key Takeaways

- States are developing their own domestic terrorism laws and policies. It is not only the federal government.
- State domestic terrorism laws raise serious First Amendment concerns. The crimes created by these laws are often sweeping or vaguely defined, which can have a chilling effect.
- State domestic terrorism laws are unnecessary. Authorities can and do use preexisting laws to prosecute political violence.
- The changing political environment around terrorism increases the discretion of state authorities to bring terrorism charges against disfavored political groups.
- State domestic terrorism laws interact with federal domestic terrorism policies in ways that are often poorly understood and frequently dangerous.

continues to evolve in many U.S. states. Coupled with already overbroad and vague state domestic terrorism laws, this changing political environment provides authorities increased discretion to bring terrorism charges against disfavored political groups, including on both the political right and left, for acts many might not consider terrorism.

- **State domestic terrorism laws interact with federal domestic terrorism policies in ways that are often poorly understood and frequently dangerous.** States have used federal counter-terrorism infrastructure to bring state domestic terrorism charges in cases that have clear implications for expressive rights, such as against Cop City protesters in Georgia. At the same time, states are attempting to broaden federal terrorism policy in ways that could help normalize the use of terrorism charges nationally against a range of individuals and groups with concerning implications for civil liberties.



1660 L Street NW, Suite 600, Washington, DC 20036 USA
www.icnl.org | facebook.com/ICNLIAlliance | twitter.com/ICNLIAlliance