

**HINDERING PROSECUTION OF TERRORISM  
IN THE FIRST DEGREE  
Penal Law § 490.35  
(Committed on or after September 17, 2001)**

The (*specify*) count is Hindering Prosecution of Terrorism in the First Degree.

Under our law, a person is guilty of Hindering Prosecution of Terrorism in the First Degree when he or she renders criminal assistance to a person who has committed an act of terrorism that resulted in the death of a person other than one of the participants, knowing or believing that such person engaged in conduct constituting an act of terrorism.

The following terms used in that definition have a special meaning:

A person **RENDERS CRIMINAL ASSISTANCE** when, with intent to prevent, hinder, or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he or she knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefitting from the commission of a crime, he or she:

*Select appropriate factor(s):*

1. Harbors or conceals such person; or
2. Warns such person of impending discovery or apprehension; or
3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in

the discovery or apprehension of such person or in the lodging of a criminal charge against him or her; or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him or her; or

6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.<sup>1</sup>

An ACT OF TERRORISM means an act or acts constituting (specify the offense<sup>2</sup>)<sup>3</sup> that is intended to:

- (i) intimidate or coerce a civilian population;
- (ii) influence the policy of a unit of government by intimidation or coercion; or
- (iii) affect the conduct of a unit of government by murder, assassination or kidnapping.<sup>4</sup>

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<sup>1</sup>See Penal Law §§ 490.05(4) and 205.50.

<sup>2</sup> Here, insert appropriate Class A felony offense (other than an offense defined in Penal Law article 220), violent felony offense, manslaughter in the second degree, criminal tampering in the first degree, or an attempt or conspiracy to commit same. See Penal Law § 490.05(3).

<sup>3</sup> At this point, the statutory definition of “Act of terrorism” [Penal Law §490.05(1)] states: “[a specified offense] for which a person may be convicted in the criminal courts of this state pursuant to article twenty of the criminal procedure law, or an act or acts constituting an offense in any other jurisdiction within or outside the territorial boundaries of the united states which contains all of the essential elements of a specified offense.” This portion of the statutory definition is excised at this point but included at the end of the definition.

<sup>4</sup> Penal Law §490.05(1).

[Select appropriate alternative:

I

The act or acts must constitute an offense for which the actor can be convicted in the criminal courts of this state.<sup>5</sup>

*NOTE: If there is an issue as to whether a person may be convicted in the criminal courts of this state for the alleged specified offense, the Court must charge the applicable provision of CPL article 20. If there is no such issue, the Court may charge as follows:*

Under our law, with certain exceptions not applicable here, a person may be convicted in the criminal courts of this state for (specify).

II

The act or acts must constitute (specify the offense) in (specify the jurisdiction in which the offense was allegedly committed) and must contain all of the essential elements of (specify) as defined by the law of New York.

*NOTE: If there is an issue as to whether the acts constitute an offense in the subject jurisdiction and contain all the essential elements of the specified offense, then the Court must define the elements of both offenses. If there is no such issue, the Court may charge as follows:*

The act or acts alleged here constitute an offense in (specify subject jurisdiction) and contain all the essential elements

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<sup>5</sup> At this point the statutory definition adds: “pursuant to article twenty of the criminal procedure law.”

of (*specify the offense*) as defined by the law of New York.]<sup>6</sup>

Under our law, a person commits (*name and define the specified offense*).

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following two elements:

1. That on or about (*date*), in the county of (*county*), the defendant (*defendant's name*), rendered criminal assistance to (*specify*) who had committed an act of terrorism that resulted in the death of a person other than one of the participants; and
2. That the defendant did so knowing or believing that (*specify*) engaged in conduct constituting an act of terrorism.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

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<sup>6</sup> See Penal Law §490.05(1).