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Local Prosecutors' Response to Terrorism

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Executive Summary

INTRODUCTION

Since September 11, 2001, 45 states and the District of Columbia have enacted anti-terrorism legislation. The various laws cover a wide range of activities and motivations, and in some instances, create new classes of offenses or overlap federal legislation. The enactment of anti-terrorism legislation at the local level has implications for prosecutors' role in homeland security; however, exactly what this role will be, is unclear. In fact, this raises four key questions:

1. What are the new or changed responsibilities given to prosecutors under their states' anti-terrorism legislation?¹
2. How are these responsibilities implemented at the local level, and to what extent have these new responsibilities changed local priorities?
3. What are the challenges associated with integrating local, state, and federal prosecution of terrorism-related acts, and how are these challenges overcome?
4. What are the challenges associated with responding to homeland security threats and the strategies used to overcome these challenges?

To answer these questions, the American Prosecutors Research Institute (APRI) conducted an exploratory study to examine how prosecutors can best respond to terrorism in a post-911 legislative environment. The study consisted of a statutory review of the new/amended state anti-terrorism legislation, a survey of the 112 largest jurisdictions in the country, and case studies of five local prosecutors' offices. The goal of the study is to ensure that prosecutors have the most current information about the enforcement of anti-terrorism statutes in order to ensure that the local efforts complement and not conflict with federal efforts.

¹ Anti-terrorism legislation was defined as legislation aimed at preventing and punishing acts of terrorism or providing support for terrorism, supporting intelligence gathering, and ensuring homeland security.

OVERVIEW OF THE PROJECT METHODOLOGY

Following the legislative sessions of early 2002, the National District Attorneys Association conducted a preliminary review of state anti-terrorism legislation codified after September 11, 2001. APRI used this review to conduct a comprehensive statutory analysis of new or amended legislation enacted between September 2001 and October 2003. Content analyses of the state statutes yielded four major types of legislation:

1. Newly created criminal offenses,
2. Enhancements/amendments to existing offenses,
3. Added responsibilities for local prosecutors, and
4. Enhancement/changes to intelligence gathering responsibilities and capabilities.

The passage of anti-terrorism legislation at the state level has the potential to impact local prosecutors, who are responsible for enforcing state laws. As such, APRI designed a survey to examine local prosecutors' involvement in homeland security and the ways in which their offices' organizational structure has changed to facilitate their involvement. Other issues explored in the survey include how prosecutors are using new/amended anti-terrorism laws, specific challenges in applying new and amended laws, and training needs related to homeland security. The survey was administered to the 112 largest jurisdictions in the country.²

APRI used the survey results to define criteria to measure the level of prosecutorial involvement in homeland security in order to identify five sites for more intensive case study. APRI selected the following five local prosecutors' offices, which, according to their survey results, were actively engaged in homeland security efforts:

- Monmouth County, New Jersey Prosecutor's Office;
- Los Angeles County, California District Attorney's Office;

² APRI received 70 completed surveys for an overall response rate of 62.5 percent.

- Queens County, New York District Attorney's Office;
- Franklin County, Ohio Prosecuting Attorney's Office; and
- Bucks County, Pennsylvania District Attorney's Office.

INVOLVEMENT IN HOMELAND SECURITY

Shortly after 9/11, policymakers began reviewing existing laws to ensure punishment of terrorist acts and to deter potential terrorists from carrying out their criminal acts. The result was an assortment of new and amended legislation. Between September 2001 and October 2003, 45 states created a total of 144 new offenses and amended 167 existing statutes. State statutes that address terrorism are critical for helping prosecutors' offices understand what, if any, role they play in responding to homeland security. Hence, it is important that prosecutors become aware of the available statutes. Among the prosecutors' offices surveyed, 71 percent indicated they were aware of their state's new legislation and 48 percent were aware of the amended legislation.

An essential component in the war on terrorism for local prosecutors is involvement in homeland security issues. Of the 70 local prosecutors' offices that responded to the survey, 71 percent reported being involved with homeland security at the local, state, and/or federal level. At the local level, prosecutors' offices are actively involved in prevention of terrorism and responding to terrorist threats. At the state and federal level, local prosecutors are more involved with detection, planning, and investigation.

Some prosecutors' offices, recognizing that they had a role to play in homeland security issues, made changes within their offices in order to implement their new or changed responsibilities. The most frequent change made by local prosecutors was the participation on an anti-terrorism task force (59 percent), followed by coordinating efforts with the U.S. Attorney's Office (57 percent). Creating a specialized unit or designating prosecutors to handle terrorism-

related cases is a significant change that few local prosecutors' offices have yet to make – only 15 percent of the surveyed offices. This may be due in part to the fact that most prosecutors do not view their responsibilities as having been significantly affected. In fact, 52 percent of the prosecutors' offices that responded to APRI's survey indicated that their ability to respond to terrorism has not changed, as compared with 11 percent who felt it was now easier (the remainder were unsure). Moreover, many of the prosecutors' offices, as evidenced by the case studies, already have specialized units (such as organized crime, economic crime, etc.) that are uniquely situated to handle terrorism crimes as result of their familiarity with complex cases and the fact that many of the “precursor crimes” (e.g., offenses that may be precursors to terrorist offenses such as identity theft, money laundering, counterfeit identification, etc.) are already handled by specialized units.

Each jurisdiction studied by APRI had implemented some type of specialized terrorism unit or had designated personnel specifically handle terrorism-related cases. Three of the jurisdictions also instituted policy/practice changes. In particular, Los Angeles and Queens County both have designated staff to work exclusively on terrorism issues. The Los Angeles County District Attorney's Office has detailed several investigators to work full-time on task forces. Several Queens County and Bucks County investigators have been assigned to various task forces and some are cross-deputized as U.S. Customs agents. In addition, there are specialized attorneys who prosecute precursor crimes in Queens County. Monmouth County initiated an innovative organizational change when the County Prosecutor established an Office of Homeland Security, Research, and Planning within the investigative division of the office in 2002. The mission of the new office is “to develop and implement strategies which will help recognize, prepare for, protect against, prevent, respond to, and recover from terrorist attacks

within the County of Monmouth or in other areas affecting Monmouth County.”³ Monmouth County has also instituted a four-hour mandatory training program on terrorism for all employees.

PROSECUTORS’ USE OF ANTI-TERRORISM LEGISLATION

Emphasis on Precursor Crimes

Prompted by the 9/11 terrorist attacks, some states amended their legislation to explicitly link previous criminal offenses to terrorism. As a result of these legislative changes, the most common role of the local prosecutor in the nation’s effort to fight terrorism seems to be the investigation, enforcement, and prosecution of precursor crimes. Four of the five prosecutors’ offices studied by APRI have made concerted efforts to use their state’s new/amended anti-terrorism legislation to connect precursor crimes to terrorism. In particular, the strategies that have been adopted by the various prosecutors’ offices studied focus on disrupting potential terrorism plans through criminal prosecution of state offenses (e.g., identity theft, fraudulent documents, and money laundering) and by using state legislation to help build intelligence for federal investigative and prosecutorial efforts.

Of the jurisdictions that reported prosecuting terrorism-related precursor crimes prior to 9/11, 60 percent have prosecuted more of these crimes, while 40 percent have prosecuted the same amount since 9/11. Specifically, among prosecutors who are involved in homeland security, many report an increased emphasis on the following crimes:

- Identity theft (36 percent),
- Counterfeit driver’s license (23 percent),

³ Monmouth County Prosecutor’s Division of Investigation General Order establishing the Office of Homeland Security, Research, and Planning. June 27, 2002. Number GO-09-2002.

- Money laundering (16 percent),
- High tech/computer crimes (14 percent), and
- Security offenses (10 percent).

One pattern that quickly emerges from the investigative and enforcement efforts of precursor crimes suggests that there may be a continuum of intensity in the prosecutor's level of involvement in enforcing, investigating, and prosecuting these offenses. In other words, some offices have adopted a support role; others have taken a dual support and action role, whereas others have implemented an action role. Interestingly, this pattern seems to coincide with the prosecutors' offices' perceptions about the "target richness" of their respective jurisdictions. Those offices that have chosen a support role perceive their jurisdiction to have no or few possible targets, those in a dual support/action role believe there are some medium to high profile targets, and those who have taken an active role view their jurisdiction as target rich, with many high profile targets.

Support Role. In response to the 9/11 attacks, the Bucks County, Pennsylvania District Attorney's Office has put in place mechanisms that allow them to support the enforcement, investigation, and prosecution of precursor crimes and terrorism-related offenses, particularly in terms of their involvement with enforcement and investigative task forces. All 16 investigators in the office have been cross-designated as U.S. Marshals to help support enforcement and investigation efforts. Prosecutors attend the State Attorney General's monthly task force meeting and consult with the U.S. Attorney's Office on terrorism prosecution but to date have not been called upon to handle any precursor crimes. In addition, the District Attorney's Office has assigned three of its investigators to help the FBI with its watch list.

Dual Support & Action Role. The Franklin County Prosecuting Attorney, through its gang unit, provides support to the U.S. Attorney in his efforts to respond to terrorism. The gang unit was selected because members of the unit are specially trained for intensive intelligence gathering and investigation, which the prosecutor believes can help bolster the efforts of federal law enforcement. In addition, the gang unit screens its own cases, and the prosecutors have been instructed to review cases for information that may indicate the offenses are precursor crimes related to terrorism.

Two examples of how the Franklin County Prosecuting Attorney's Office has played a dual support and action role are 1) their involvement with the U.S. Attorney's Office in the investigation and arrest of a trucker who threatened to blow up the Brooklyn Bridge in New York, and 2) the prosecution of a local resident who threatened to bomb a local shopping mall. The Prosecuting Attorney's Office also identified an emerging trend in burglaries that they believed could be related to terrorism, namely an increase in the number of burglaries and theft of night vision binoculars and guns with telescopes. This information was provided to the U.S. Attorney's Office, and the prosecutor's office is working with local and federal law enforcement to continue to develop intelligence on this trend to determine if it is indeed related to terrorism.

The County Prosecutor's Office in Monmouth County, New Jersey has adopted a different approach to its dual support/action role. As the chief law enforcement officer in the county, the County Prosecutor's Office determined that one of its major contributions to enforcement and investigation would be to serve as a conduit of information between various agencies. The county has established municipal counter terrorism coordinators who coordinate leads that come from residents and law enforcement in the various municipalities. This

information is passed to the county's terrorism coordinator, who is a member of the County Prosecutor's staff.

As information comes in from the municipal coordinators, the county coordinator reviews it, makes follow-up inquiries (as needed), and then sends the information to the state and federal task forces for review. Leads returned by the state or federal task forces may be investigated by the local police department or the County Prosecutor's Office. In addition, information is entered into a statewide database that can be cross-referenced against similar information from other sources. The database contains information on terrorism, gangs, and organized crime. Much of the information entered related to terrorism as a result of the County Prosecutor's Office investigations focus on precursor crimes such as fraudulent documents. This allows the County Prosecutor to identify any patterns, gather intelligence, and provide information to the state and federal task forces. The County Prosecutor's office has also been involved in hundreds of investigations of anthrax scares and other terrorism-related hoaxes.

Action Role. The investigative and prosecutorial aspect of the Queens County, New York District Attorney's Office response to terrorism is intensely focused on fraudulent identification documents and identity theft. In the first five months after the 9/11 attacks, the Governor of New York created the Fraudulent Identification Task Force (FIDTF) to target the illegal manufacture, sale, and distribution of forged or fraudulent identification documents such as passports, drivers' licenses, non-driver photo identification cards, and other identification documents. The Queens County District Attorney's Office participated in two FIDTF operations. The first focused on Department of Motor Vehicle (DMV) operations and the second focused on the Taxi and Limousine Commission (TLC).

As a result of the FIDTF operations at the DMV, the District Attorney's Office and its partners screened 450 cases, made 420 arrests, seized 2,000 documents, and confiscated equipment used to make fraudulent documents during the four-month investigation. In addition, the District Attorney's Office worked with the DMV to change its policies regarding the replacement of out-of-state drivers' licenses to require a more rigorous review of identification documents. The TLC operation yielded 500 arrests of persons suspected of falsifying their identification in order to obtain taxi/limousine licenses.

Another initiative by the Queens County District Attorney's Office involved the review of airport personnel security badges. The airport task force conducted criminal history background checks on all 40,000 employees at JFK and La Guardia international airports. The checks revealed that 127 persons had used falsified or fraudulent identification documents to obtain their security badges. Criminal charges were filed in 97 of the cases. Using a newly amended statute that made the offering of a false instrument for identification a Class E felony, carrying a penalty of up to four years in prison, the Queens County District Attorney's Office successfully prosecuted 35 of the cases as of the time of this study. In addition, immigration violations were filed in 22 of the cases. Since the concentrated effort began, precursor crimes such as identity theft and falsification of identification documents has become a significant part of the prosecutor's office caseload – growing from around one percent to between 11 and 13 percent of the total cases filed.

The Los Angeles County District Attorney's Office has also taken an active role in local and federal investigation and prosecution of precursor crimes and terrorist-related activities. An investigator from the organized crime division and three prosecutors were originally assigned to

work on precursor crimes exclusively.⁴ The investigator is assigned to the FBI Joint Terrorism Task Force (JTTF) and is involved in intelligence gathering and case development. This coordinated investigative effort maximizes the benefits of local and federal legislation. For example, for many cases, it is easier and quicker to obtain search warrants through the state rather than the federal courts.

In addition, from the investigator's work on the task force, which includes surveillance, interviewing suspects through consensual encounters, and arrests for involvement in precursor or lesser crimes, criminal cases are identified and screened locally and federally. The prosecutors in the organized crime division may evaluate cases and discuss prosecution with the U.S. Attorney's Office. Most of the precursor crimes, such as selling counterfeit merchandise, money laundering, credit card fraud, and fraudulent documents, are prosecuted by the District Attorney's Office. Overall, approximately 75 percent of the terrorism-related cases have resulted in either state or federal prosecution.

Increased Penalties and Criminalization of Offenses

One specific purpose for amending state legislation was to increase penalties for some terrorism-related offenses. Even with these enhanced penalties, only five percent of responding jurisdictions indicated that they have used new and/or amended legislation to enhance sentencing in terrorism-related convictions. In addition, 15 percent of the responding offices indicated that the legislative changes have not changed their pre-existing sentencing structure and 61 percent have yet to have the opportunity to use the statutes.

⁴ At the time of the study, the Los Angeles County Board of Supervisors had just approved funding for the District Attorney's Office to hire 10 additional investigators, who will work exclusively on terrorism and terrorism-related cases.

Legislators also responded to the 9/11 attacks by criminalizing certain behaviors that had not been deemed criminal prior to 9/11. For example, many states had pre-existing statutes that dealt with threats, hoaxes, and false reports. Nevertheless, 33 states enacted new laws and 40 states amended an existing law to deal with these activities. Even though prosecutors applaud the efforts of legislators to criminalize certain behaviors, 77 percent of local prosecutors' offices have yet to encounter a situation in which they could take advantage of the new and/or amended statutes. In fact, only 15 percent of responding jurisdictions claimed that the new anti-terrorism statutes adequately addressed their needs such as improving intelligence gathering abilities. When considering only those jurisdictions that had an opportunity to use their state's new or amended statutes, 67 percent claimed that the statutes adequately addressed the needs of prosecutors. Overall, prosecutors are unsure about the effectiveness and utility of the new/amended legislation. Of those prosecutors' offices that have experience using their state's new/amended legislation and were able to comment on the effectiveness, most stated that the legislation gave them more options (in the form of available charges and penalties) and has improved their evidence/intelligence gathering resources. Prosecutors who felt the statutes were ineffective indicated that the statutes are too limited in scope to receive regular use by prosecutors.

COORDINATION WITH OTHER AGENCIES

Involvement on Anti-Terrorism Task Forces

A key element of a comprehensive response to homeland security is coordination between local, state, and federal law enforcement agencies and prosecutors' offices.

Participation on Anti-Terrorism Task Forces (ATTF) and/or Joint Terrorism Task Forces (JTTF)

is the primary means of coordination with other agencies for prosecutors' offices.⁵ APRI's survey revealed that 59 percent of the offices surveyed reported serving on some type of anti-terrorism task force in response to the new legislation. The prosecutor's level of involvement on these task forces varies from attending meetings to involvement in joint investigations to co-location of staff. For some offices, participation on task forces falls on the prosecutor's investigative staff, whereas for others, an assistant prosecutor or the chief prosecutor handles this responsibility.

The Los Angeles County District Attorney's Office assigned one investigator to work full-time with the JTTF. The investigator works with the JTTF to help obtain state search warrants when needed, helps review cases to make recommendations as to who should prosecute the case (i.e., the U.S. Attorney's Office or the District Attorney's Office), and works closely with the prosecutors on all cases to be prosecuted. At the time of APRI's study, the District Attorney's Office had received funding from the County Board of Supervisors to place 10 additional investigators on the JTTF.

The Queens County District Attorney's Office has also participated in many different local, state, and federal task forces. These task forces include:

- **Fraudulent Identification Task Force:** created by the governor to target the manufacture, sale, and distribution of fraudulent identity documents and consisting of representatives from local, state, and federal law enforcement, state Office of Public Security, Department of Motor Vehicles, Port Authority of New York, the New York Inspector General's Office, ICES, U.S. Department of Transportation, U.S. Secret Service, U.S. Postal Inspection, and the Social Security Administration Inspector General's Office.
- **Airport Security Identification Display Area Task Force:** to conduct identity and criminal background checks on all airport personnel who have access to secure and restricted areas; task force members included many of the same from the FIDTF as well as the Immigration and Customs Enforcement, the TSA, and the U.S. Attorney's Office.

⁵ The ATTF is headed by the U.S. Attorney's Office and focuses on investigation and prosecution, whereas the JTTF is headed by the FBI and focuses primarily on investigation.

- El Dorado Task Force: focused on locating criminal offenders scheduled for deportation.
- JTTF: assignment of three prosecutors⁶ to screen and charge fraudulent identity document cases and intelligence gathering.
- Anti-Terrorism Working Group: created and run by the U.S. Attorney's Offices in the Eastern and Southern Districts of New York to coordinate the efforts of local law enforcement agencies and prosecutors in the New York City metropolitan area with regard to fraudulent identification and money laundering.

Information Sharing

The ability to have access to timely and accurate information is another instrument used by local prosecutors to coordinate their efforts with other agencies. In general, information sharing at the local level between local justice officials has been considered sufficient, even though improvements can be made. In contrast, information sharing between federal law enforcement agencies and local agencies has been more limited. A recent Homeland Security Advisory Council report finds that considerable work needs to be done to ensure that proper information is exchanged between federal and local enforcement agencies.⁷

All of the jurisdictions studied receive terrorism alerts and regular communication through electronic mail servers and facsimiles. A large percentage of survey respondents (70 percent) reported being involved in intelligence sharing with local, state, and federal agencies. Of those jurisdictions, 46 percent report information to state or federal agencies on investigative targets and 44 percent report on potential threats. Only 17 percent of the jurisdictions report security alerts, this may be due to the fact that terrorism is heavily monitored at the federal level and most information about security alerts received by local prosecutors may have come from the federal government.

⁶ As a result of limited resources, the Queens County District Attorney's Office has been forced to reduce the number of full-time prosecutors assigned to the JTTF from three to one, who is on-call 24 hours a day, 7 days a week.

⁷ Fiorill, Joe. "U.S. Panel Seeks Broad Information-Sharing Changes to Improve Anti-terrorism Efforts." Available http://www.nti.org/d_newswire/issues/2004_12_13.html#6C00626D. Retrieved December 14, 2004.

The Monmouth County Prosecutor's Office has focused much of its efforts on information sharing through the creation of municipal counter-terrorism coordinators who serve on the frontline of information gathering. The municipal coordinators provide information to the county coordinator, in the County Prosecutor's Office, who in turns acts as the liaison with the state Office of Counter-Terrorism and the FBI. The County Prosecutor's Office operates as a clearinghouse of information, filtering intelligence data through local, state, and federal levels.

CHALLENGES FACING LOCAL PROSECUTORS

Intelligence Gathering and Information Sharing

One goal of APRI's study was to gather information about the challenges facing local prosecutors as they begin to prosecute terrorism cases under new state laws. The most frequently cited challenges involved investigative issues, such as intelligence gathering and information sharing with federal agencies, and case processing issues, such as obtaining resources to conduct more intense screening and investigative work, as well as the volume of work involved with terrorism-related cases. Additionally, loopholes in the legislation, discovery issues, legal challenges, and judicial interpretation of the statutes were listed as challenges by nearly a third of the prosecutors.

Many of the legislative changes were designed to make it easier for investigators to gather intelligence. However, according to the survey results, only eight percent of responding offices reported that the new and/or amended statutes adequately addressed the needs of investigators. Among those offices that had used the new/amended statutes, the number of prosecutors who thought the statutes adequately addressed the needs of their investigators increased from 10 percent to nearly 44 percent. More than three-quarters of the jurisdictions that

reported using the new and/or amended statutes experienced no change when it came to their ability to perform most investigative activities such as intelligence gathering, conducting wiretaps, accessing mobile phone or pager records, using public space for videotaping, or issuing search warrants on bank records.

Investigations

Legislative changes in response to the war on terror have impacted how law enforcement agencies conduct their investigations. APRI asked local prosecutors' offices if the changes within law enforcement (such as increased participation in anti-terrorism task forces or fewer investigative resources for certain types of offenses) have placed more demands on their investigators or prosecutors. More than half (56 percent) of the jurisdictions did not see changes in law enforcement as placing more demands on their prosecutors or investigators. Among the jurisdictions that did see an increase in demand on their prosecutors or investigators, the most frequently identified demand was an increased caseload and strained resources. Other demands include allocating more resources to investigations and screening of cases, following up on the increased number of violations, and an increase in pre-charge work.

As a result of their increased involvement in terrorism-related investigations, prosecutors' offices report that they have encountered the following challenges:

- Multi-jurisdictional issues: information exchange/coordination with local, state, and federal enforcement agencies and inter-/intra-state issues.
- Case processing issues: volume of work involved, proving the crime, identifying the perpetrator, security clearance, and witness cooperation.
- Investigative issues: evidence collection, intelligence gathering, obtaining multi-jurisdictional search warrants, information sharing with federal agencies, contaminated evidence, and finding witnesses.
- Legal issues: elements of the statute, discovery issues, legal challenges, judicial interpretation of the statute, and loop holes in legislation.

- Other issues: lack of law enforcement training, media/publicity limiting the jury pool and other challenges.

Training

Seventy-two percent of the responding offices believe that prosecutors in their office have not received adequate training to handle terrorism cases. However, since so few jurisdictions have actually had the opportunity to investigate or prosecute a terrorist incident under their state's new or amended statutes, this finding must be interpreted with care. Some jurisdictions treat terrorism the same as other cases and therefore do not see a need for additional training. Others attribute their lack of training to insufficient funding or limited opportunities.

Methods for Overcoming Challenges

To overcome the investigative and multi-jurisdictional challenges, most prosecutors became involved in task forces and increased their efforts to share and obtain information. In the case study sites, the prosecutors report instituting regular meetings with the U.S. Attorneys' Offices to discuss cases and make decisions about prosecution. More than half also indicated that they had used training for law enforcement to help overcome problems with investigations as well as the multi-jurisdictional issues they faced.

Another tool in the fight against terrorism is the use of or participation in joint investigations with state or federal agencies. APRI's survey revealed that slightly more than 38 percent of respondents have participated in joint investigations or prosecutions of terrorist crimes/incidents with state and/or federal agencies.

CONCLUSION

Local prosecutors have made concerted efforts to play a vital role in the war on terrorism. New and amended state anti-terrorism legislation has both increased and changed prosecutors' responsibilities in regards to how they investigate and prosecute terrorism cases. These changes, particularly an increased focus on precursor crimes, have presented many challenges for local prosecutors as they have attempted to implement their new responsibilities.

States' responses to 9/11 through their enactment of anti-terrorism legislation undoubtedly have implications for local prosecutors who are charged with enforcing state laws. What are the new or changed responsibilities given to prosecutors under this new or amended legislation? Overall, prosecutors' primary responsibilities have not been affected by the legislation, but in 45 states, prosecutors now have additional criminal offenses to prosecute or investigate. Many of these new offenses focus on threats, hoaxes, and false reports as well as actual incidents of terrorism.

The second question that arises from the study is how prosecutors have implemented their new or changed responsibilities at the local level and the extent to which the responsibilities have affected local priorities. Most prosecutors (71%) report that they are involved with homeland security at the local, state, and/or federal level. At the state and local levels, prosecutors have changed their process for screening, investigating, and prosecuting certain criminal offenses (i.e., precursor crimes) and have placed more emphasis on intelligence gathering. Additionally, prosecutors have implemented information sharing networks or become part of federal information sharing networks.

The third question to be answered focuses on the challenges local prosecutors face with regards to integrating local, state, and federal prosecution of terrorism-related acts and how these

challenges are overcome. APRI's study found that very few prosecutors had experience in this area. In fact, only 16 percent of the offices surveyed had prosecuted a terrorism-related case. Among those offices that did have experience, the most significant challenge faced was in the area of investigations. In terms of investigative challenges, prosecutors cited multi-jurisdictional investigations, evidence collection, intelligence gathering, and information sharing with federal agencies as the most significant.

In general, the most significant finding of the study was that only a few prosecutors had developed a well-defined role for their office in responding to terrorism. This may be due in part to the fact that many prosecutors had not used the new or amended legislation as of one year ago when the survey was administered. Until prosecutors have had the opportunity to gain experience with the new/amended legislation, it would be premature to draw conclusions about the utility of the new or amended legislation. However, as more prosecutors use the legislation it will be important to further study whether or not the various statutes are lacking elements deemed critical by prosecutors to help them respond to terrorism.

Another recurring theme throughout the findings deals with information sharing. Although the majority of prosecutors view this as a critical element of a terrorism response, most also felt that information sharing was more of a "one-way" street and a significant challenge to be addressed. Clearly, the information generated at the local level is vital for federal anti-terrorism efforts, but as prosecutors have more opportunity to use their statutes, particularly for precursor crimes, information at the federal level will be vital to local prosecutors in helping to establish links. Further research is needed to fully explore the challenges of information sharing and strategies for its improvement.

Finally, the survey findings and the results of the case studies seem to indicate that defining the local prosecutor's role in responding to terrorism will be evolutionary. The largest prosecutors' offices in the country—those offices generally found in target-rich environments and most likely to have the resources to dedicate to homeland security—vary dramatically in the extent to which they are working to address terrorism. A few, as highlighted in this study, have initiated comprehensive and innovative anti-terrorism strategies with limited resources and very little access to specialized training. As these experiences are shared, and as more prosecutors have an opportunity to use their new/amended statutes, it is believed that more prosecutors will begin to define their roles.

Chapter 1

Introduction

Local prosecutors have long been recognized as enforcers of state laws and order maintainers.⁸ In carrying out these roles, prosecutors' responsibilities include creating safe communities by holding offenders accountable for their actions. In the past century, the local prosecutorial function has evolved dramatically in keeping with the changing environmental context in which prosecutors operate.⁹ This evolution has included purview over an ever increasing number and variety of criminal offenses, efforts to prevent and treat criminal activity, increased investigative responsibilities, and provision of assistance to victims of crime, to cite just a few of the major changes in prosecution.

Today, the topic of terrorism is woven into our political and social discourse. The 9/11 attacks on the World Trade Center and the Pentagon has served to move terrorism from the periphery to the forefront of our collective public consciousness.¹⁰ Post-9/11 terrorism concerns extend to our nation's prosecutors as well. As the people's attorney, prosecuting criminal offenses on behalf of the state, the prosecutor's role is likely to evolve again with the widespread enactment of new legislation aimed at preventing, criminalizing, or enhancing penalties for terroristic activities or activities that support terrorism. Many American states have sought to join the federal government in the fight against terrorism by creating new legislation aimed specifically at crimes related to terrorism.¹¹

⁸ National Research Council. *What's Changing in Prosecution? Report of a Workshop*, Washington, D.C.: National Academy Press, 2002.

⁹ Jacoby, Joan E. "The American Prosecutor in Historical Context," *The Prosecutor*, 31 (May/June 1997): 33-38.

¹⁰ Turk, Austin T. "Confronting Enemies Foreign and Domestic: An American Dilemma." *Criminology & Public Policy* 1 (July 2002): 345-350.

¹¹ Lyons, Donna. *States Enact New Terrorism Crimes and Penalties*. NCSL State Legislative Report: Analysis of State Actions on Important Issues, 27 (November 2002): 1-5.

In 2002, the National District Attorneys Association (NDAA) completed a summary of state anti-terrorism statutes passed since September 11, 2001.¹² Using this report along with updates to state legislation using the National Conference of State Legislatures (NCSL) website,¹³ the American Prosecutors Research Institute (APRI) found that 45 states had enacted new terrorism legislation aimed at creating a new offense regarding terrorist acts. An example of a newly created offense could be found in the state of New Jersey under Assembly Bill 911, which criminalizes the act of providing material support or resources for terrorism.¹⁴ Laws such as these create new offenses that are clearly separate from other existing offenses.

Forty states had enacted legislation that amends pre-existing laws in order to create a more effective prosecutorial tool. The state of New York enacted such an amendment through Assembly Bill 1297, which “expands the death penalty list of aggravating factors to include the use of a chemical, biological, or radiological weapon.”¹⁵ Legislation of this type is designed to enhance penalties for a pre-existing offense.

A smaller number of states (14) enacted legislation designed to enhance or change intelligence gathering responsibilities and capabilities. Texas Public Law 2003,c.1312 is an example of such legislation. This law “requires the governor to direct a statewide homeland security strategy” and “designates the department of public safety as the repository for collecting criminal intelligence information about terrorist activity.”¹⁶ Laws of this type usually involve structural or procedural changes within state intelligence gathering agencies.

¹² Miranda, Teresa P. *Overview of State Criminal Legislation Passed in Response to 9/11/01*, National District Attorney’s Association, 2002.

¹³ National Conference of State Legislatures. “Terrorism Crime and Penalties.” Available <http://www.ncsl.org/programs/cj/terrorismcrime.htm>. Retrieved December 6, 2004.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

Four states enacted new or amended laws designed to create or enhance a state's first response abilities and safety in the event of a terrorist attack. For example, Texas Public Law 2003,c.1022 "authorizes the temporary quarantine if an environmental or toxic agent is introduced into the environment – including by means of terrorism."¹⁷ This would allow for a first responder contingency to isolate those individuals and areas that have been exposed to the agent, thereby decreasing the chances for further exposure. Legislation of this type is often employed to create and/or update a state's ability to respond quickly and effectively to a terrorist attack within its borders.

RESEARCH ON LEGISLATIVE CHANGES

States have an important role in efforts to respond to the terrorist threat in the United States. Given that such violence is criminal conduct, state criminal enforcement is relevant. Domestic terrorism is a threat, and the states have a primary responsibility to protect citizens.¹⁸

State anti-terrorism laws are relatively new; hence, there is little research that documents how prosecutors are enforcing these laws or the new challenges created by the laws. Of particular concern are issues surrounding proof of motivation, access to information, information sharing between local and federal agencies, and concurrent jurisdiction with federal prosecutors. In order to ensure that local prosecutors are equipped and prepared to effectively bolster the efforts of the federal government and take on appropriate roles in homeland security. These issues must be addressed , and are the focus of APRI's study of local prosecutors' offices response to terrorism.

¹⁷ Ibid.

¹⁸ Donohue, Laura K., and Juliette N. Kayyem. "Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security," *Studies in Conflict and Terrorism* 25 (January-February 2002):1-18.

Although empirical research remains sparse on these issues, an attempt to address the challenge of information sharing between local and federal law enforcement agencies has been made. In 2002, the Community Oriented Policing Services (COPS) in conjunction with the U.S. Department of Justice and the Police Executive Research Forum (PERF) hosted a two-day forum designed to bring together local and federal law enforcement executives from across the nation in an attempt to identify challenges remaining in constructing a successful line of dialogue. At the end of the two days, the PERF staff identified seven priority areas of concern:¹⁹

- Promoting effective local-federal partnerships
- Security clearances and information sharing
- Joint terrorism task forces
- FBI strategies
- Intelligence
- Multi-jurisdictional information sharing
- Training and awareness

The sharing of information in particular, amounts to a critical area of concern for local prosecutors and federal officials alike.²⁰

RESEARCH ON LOCAL CRIMINAL JUSTICE RESPONSE TO HOMELAND SECURITY

In order for local prosecutors to delve into the world of homeland security, their efforts must support and not conflict with those of federal prosecutors. Research on counter-terrorism

¹⁹ Murphy, Gerald R., and Martha R. Plotkin. *Protecting Your Community From Terrorism: Strategies for Local Law Enforcement*. Volume 1: Local-Federal Partnerships. Washington, D.C.: Police Executive Research Forum, 2003. Available <http://www.cops.usdoj.gov/mime/open.pdf?Item=1362>.

²⁰ Fiorill, Joe, "U.S. Panel Seeks Broad Information-Sharing Changes to Improve Antiterrorism Efforts" *Global Security Newswire*, December 13, 2004. Available http://www.nti.org/d_newswire/issues/print.asp?story_id=6C00626D-18A6-4F3C-B550-FE2BBD4950EB. Retrieved December 13, 2004.

law and policy can provide a useful framework for interpreting what prosecutors' responsibilities should be, how to focus priorities, and what challenges prosecutors face. As a result of the surge in attention paid to anti-terrorism legislation since 9/11, state anti-terrorism legislation has provided local prosecutors with tools to punish those who commit criminal acts that serve as precursors to a terrorist attack.²¹

The increasing prominence of precursor crimes, defined as crimes such as identity theft/counterfeit drivers licenses; racketeering/money laundering; providing material support for terrorism; obtaining information regarding a vulnerable target; use of commercial transportation to commission of a felony; and disorderly conduct at an airport, within the prosecutorial community comes about largely from new and amended legislation that often serves to enhance the penalties for existing crimes. Legislation of this sort has also been said to prohibit "expressive activity in furtherance of the terrorist organizations' aims."²² For the local prosecutor who is involved, a significant burden is placed upon his/her shoulders with the addition of precursor crimes because of the need to prove a terrorist motivation on the part of the defendant.²³

In recent years, America has been beset by a growing number of terrorist hoaxes. In 1998 alone, there were 145 hoaxes involving chemical and biological substances.²⁴ In the post-9/11 environment and as a result of anthrax incidents, legislators have increasingly demonstrated that such threats and hoaxes will be punished. Since 9/11, the number of states with laws

²¹ Miranda, Teresa P. *Overview of State Criminal Legislation Passed in Response to 9/11/01*, National District Attorney's Association, 2002.

²² Donohue, Laura K., and Juliette N. Kayyem. "Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security," *Studies in Conflict and Terrorism* 25 (January-February 2002):1-18.

²³ McMillion, Rhonda, "Measuring the Legal Response: ABA task force gives input to Congress on anti-terrorism legislation," *ABA Journal* December 2001.

²⁴ Donohue, Laura K., and Juliette N. Kayyem. "Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal Law Enforcement, and National Security," *Studies in Conflict and Terrorism* 25 (January-February 2002):1-18.

criminalizing terrorist hoaxes has risen, placing local prosecutors “on the frontline with respect to hoaxes, threats and false reports.”²⁵

Prosecuting precursor crimes arguably provides some level of deterrence and hence, aids in the prevention process; however, local prevention efforts cannot end there. Local law enforcement personnel must also contribute through the gathering and dissemination of intelligence regarding potential terrorists.

Local law enforcement can acquire this type of intelligence from within their communities as well as through the federal government. For this to happen, the general public and local law enforcement communities will have to work together. While no empirical study currently exists to verify this claim, it has been argued that a possible solution can be realized through the implementation of law enforcement initiatives such as community policing, which aims at bringing law enforcement and the public together thereby helping local law enforcement to “build stronger bonds with their diverse communities as they continue to address crime, fear and the terrorist threat.”²⁶

Although there have been numerous efforts since 9/11 to improve information sharing, most policymakers and law enforcement agencies recognize that more is needed to improve the nation’s response to terrorism. Anecdotal reports from local law enforcement and local prosecutors indicate that intelligence sharing remains largely a “one-way” street, with local agencies giving far more than they receive. This point was recently underscored by a federal advisory panel reporting on the current state of the intelligence community. The report recommends the implementation of more federal resources for state and local intelligence

²⁵ Miranda, Teresa P. *Overview of State Criminal Legislation Passed in Response to 9/11/01*, National District Attorney’s Association, 2002.

²⁶ Davies, Heather J., and Gerald R. Murphy. *Protecting your Community From Terrorism: Strategies for Local Law Enforcement*. Volume 2: Working With Diverse Communities. Washington, D.C.: Police Executive Research Forum, 2004. Available <http://www.mipt.org/pdf/Protecting-Your-Community-From-Terrorism-Vol2.pdf>.

programs as well as the creation of a more efficient system by which intelligence would be disseminated from one agency to another at all levels of government and between all levels of enforcement agencies.²⁷

OVERVIEW OF APRI'S TERRORISM STUDY

In an attempt to address several of the issues raised in the literature, APRI conducted a study of local prosecutors' response to terrorism by examining state anti-terrorism legislation and how it impacts prosecutors. The exploratory study consisted of a review of new state anti-terrorism legislation and amendments to existing statutes; a survey, designed to measure prosecutors' experience with new legislation and the role they play in homeland security; and a series of in-depth case studies of five prosecutors' offices.

The methodology used by APRI for each of these tasks is discussed in the second chapter. The third chapter focuses on the findings of the statutory analysis and highlights patterns across states as well as findings from the survey with regard to effectiveness and utility of the new or amended statutes. The fourth chapter details the survey results. In this chapter, the results of the descriptive analyses are presented and the initial findings with regard to research questions are discussed. The fifth chapter discusses the major roles identified as part of the case studies and describes how the five prosecutors' offices have operationalized these roles into strategies. Chapter 6 presents APRI's conclusions regarding the new and/or changed responsibilities given to prosecutors, changes in policy and practice, the challenges facing local prosecutors, and the policy implications of the study findings.

²⁷ Fiorill, Joe, "U.S. Panel Seeks Broad Information-Sharing Changes to Improve Antiterrorism Efforts" *Global Security Newswire*, December 13, 2004. Available http://www.nti.org/d_newswire/issues/print.asp?story_id=6C00626D-18A6-4F3C-B550-FE2BBD4950EB. Retrieved December 13, 2004.

CHAPTER 2 PROJECT METHODOLOGY

PROJECT GOALS AND RESEARCH QUESTIONS

Since the 9/11 terrorist attacks on the World Trade Center and the Pentagon (and as of October 2003), 45 of the 50 states have either created or amended legislation aimed at preventing and punishing terroristic acts in their state. Presumably, these legislative changes will enhance the role local prosecutors play in homeland security as well as complement the roles and responsibilities of federal prosecutors. However, the legislative changes that have occurred potentially create new roles for prosecutors, and as part of the NIJ-funded *Prosecutors for the 21st Century Study Group* prosecutors cited homeland security and terrorism as areas for more intensive study.²⁸

As a result, in early 2002, the National District Attorneys Association (NDAA) conducted a cursory review of anti-terrorism legislation to aid in the development of a policy statement for its membership and convened a national conference to discuss the issues facing prosecutors in their efforts to aid in the war on terrorism. As an outgrowth of these efforts, APRI proposed an exploratory study that would shed new light on how prosecutors can best respond to terrorism. The goal of this study was to assess local prosecutors' enforcement of new state legislation, changes in prosecutorial responsibilities in a post-September 11th environment, changes in priorities and the practical implications of these changes, and new challenges encountered, particularly those that affect the integration of local, state, and federal efforts. The study attempted to accomplish these goals by addressing the following research questions:

²⁸ The *Prosecutors for the 21st Century Study Group* was conducted by APRI as part of an effort to define goals and objectives for prosecutors and translate these into quantifiable performance measures. One outcome of the study group was the development of a research agenda, which articulated a number of topics of interest to prosecutors that have not been thoroughly or empirically studied.

5. What are the new or changed responsibilities given to prosecutors under their states' anti-terrorism legislation?²⁹
6. How are these responsibilities implemented at the local level, and to what extent have these new responsibilities changed local priorities?
7. What are the challenges associated with integrating local, state, and federal prosecution of terrorism-related acts, and how are these challenges overcome?
8. What are the challenges associated with responding to homeland security threats and the strategies used to overcome these challenges?

METHODOLOGY

In an effort to address the above mentioned research questions, APRI performed a comprehensive statutory review of anti-terrorism legislation enacted or amended since September 11, 2001 through October 2003, disseminated a survey to the nation's largest local prosecutors' offices, and conducted in-depth case studies. Each research technique used is detailed below.

Statutory Review and Policy Analyses

Following the legislative sessions of early 2002, an NDAA policy attorney reviewed state terrorism legislation codified after September 11, 2001 in all 50 states for legal and process issues considered most likely to impact local prosecutors. APRI staff used this initial statute review as the basis for a more comprehensive statutory analysis of new or amended legislation enacted between September 2001 and October 2003. Content analyses of the statutes yielded four major types of legislation:

5. Newly created criminal offenses,
6. Enhancements/amendments to existing offenses,
7. Added responsibilities for local prosecutors, and

²⁹ Anti-terrorism legislation was defined as legislation aimed at preventing and punishing acts of terrorism, supporting intelligence gathering, and ensuring homeland security.

8. Enhancement/changes to intelligence gathering responsibilities and capabilities.

APRI used the categories to develop a typology of legislation in the form of two separate matrices. The first matrix, titled Key Elements of Anti-Terrorism Legislation, illustrates which states have passed new or amended legislation, statutes that add responsibilities for prosecutors, or statutes that address intelligence gathering. In addition, statutes that coincide with a particular type of legislation are identified by individual states. The second matrix, titled State Criminal Anti-Terrorism Legislation, is organized by the 50 states, pertinent state legislation as identified by NDAA, and the four major types of legislation. APRI divided the state legislation into the following four categories: 1) statutes that criminalize precursor crimes, 2) statutes directed at threats, hoaxes, and false reports, 3) statutes that punish actual incidents of terrorism, and 4) statutes designed to enhance the ability to investigate and prosecute terrorist incidents. Both matrices are posted on APRI's website for prosecutors to reference and are included in Appendix A of this report.

Prosecutor Survey

APRI used a judgment sample to survey the 112 largest jurisdictions in the country.³⁰ A judgment sample was used because it was believed that prosecutors in large jurisdictions would have the most experience with the new and/or amended state legislation. Furthermore, the intent of the survey was not to generalize the results to all local prosecutors' offices in the country.

The survey questions focused on the legal framework and organizational structure in which local prosecutors operate. Specifically, APRI used the survey to quantify prosecutors' experience with the new legislation and involvement in homeland security, to identify the challenges facing prosecutors in applying new and existing laws, and to elicit details about

³⁰ A jurisdiction was defined as large if it had a population equal to or greater than 500,000.

training needs related to homeland security. In addition, the survey was used as a tool to select offices for case study. Some of the variables used to measure an office's response to anti-terrorism legislation are listed below:

- Awareness of new state statutes
- Number of cases investigated and/or prosecuted under new and/or amended statutes
- Number of cases resolved by type of disposition
- Number and type of staff involved in terrorism-related cases
- Prosecution of precursor crimes related to terrorism and how such crimes are determined to be related to terrorism
- Procedural/organizational changes in the office in response to the 9/11 attacks
- Participation in anti-terrorism task forces
- Types and frequency of information sharing with other local, state, and federal law enforcement agencies
- Perceived impact of the new legislation on ability to respond to terrorism
- Perceived challenges and value of new intelligence gathering methods

For the purpose of the study, APRI used the FBI's definition of terrorism: an act of terrorism is any criminal act committed with the specific intent to intimidate or coerce a civilian population; influence the policy of any government by intimidation or coercion; affect the conduct of any government; or substantially impair public services including transportation, communications, and utilities.³¹ A precursor crime was defined as any criminal offense that may directly assist in the commission of a terrorist act.

The survey instrument was divided into the following seven sections:

- Background information on the jurisdiction

³¹ FBI "Terrorism 2000/2001." Available http://www.fbi.gov/publications/terror/terror2000_2001.htm. Retrieved April 14, 2004.

- Experience with state legislation
- Organizational changes
- Challenges facing local prosecutors
- Methods used to overcome challenges
- Coordination with other agencies
- Training needs.

Surveys were mailed or faxed to all 112 offices and participants were given 14 days to complete and return the survey. A second mailing/faxing was conducted immediately after the 14-day response period elapsed to those offices that had not responded. Those offices were given an additional 14 days to respond. Surveys were distributed a third and final time via facsimile the day after the second deadline to nonrespondents. This time, nonrespondents were given 10 days to complete the survey.

Overall, 70 jurisdictions completed the survey, which produced a response rate of 62.5 percent. Exhibit 2-1 shows the response rate by population range.

**Exhibit 2-1
Response Rate by Population Range**

	Offices Surveyed	Response Rate
< 500,000	1	0% (n=0)
500,000 - 699,999	37	62% (n=23)
700,000 - 899,999	26	54% (n=14)
900,000 - 999,999	11	64% (n=7)
1 million - 3 million	33	67% (n=22)
> 3 million	4	100% (n=4)

N=112

APRI conducted descriptive analyses in the form of frequencies on the variables in the survey to discover general response patterns as well as a series of cross-tabulations to determine patterns in experiences/perceptions with the new legislation and other contextual variables (see Chapter 4 for a summary of the results).

CASE STUDIES

Based on the survey results, APRI selected 13 criteria to perform categorical analyses in which to select five jurisdictions for intensive case studies. The 13 criteria were placed in a matrix along with the 27 jurisdictions that reported on their completed survey that they had investigated and/or prosecuted some type of terrorist offense under their state's new and/or amended terrorism statutes (see Chapter 4). Jurisdictions were given a point for each criterion they indicated meeting, for example, a specialized terrorism unit. Factors analyzed for case study selection included the following:

1. Office investigated and/or prosecuted some type of terrorist offense under their state's new and/or amended terrorism statutes
2. Office was involved in homeland security.
3. State had terrorism legislation prior to September 11, 2001.
4. Office had prosecuted precursor crimes related to terrorism.
5. Office experienced an increase in the number of precursor crimes prosecuted.
6. Office had a specialized terrorism/homeland security unit.
7. Office had a protocol for handling terrorism cases.
8. Office considered the new and/or amended statutes effective in combating terrorism.
9. Office believed that the terrorism statutes addressed the needs of prosecutors.
10. Office believed that the terrorism statutes addressed the needs of investigators.
11. Office is involved in intelligence sharing with local, state, and/or federal agencies.

12. Personnel participated in joint investigations or prosecutions of terroristic crimes with state and/or federal agencies.
13. Office serves on an Anti-Terrorism Task Force or committees dedicated to responding to or investigating terrorism.

After an initial review of the above-mentioned criteria, the list of 27 jurisdictions was narrowed to nine. If a state had more than one jurisdiction that scored in the top nine, only the highest scoring jurisdiction in that state was considered for selection. APRI then conducted telephone interviews to clarify some of their survey responses and to further investigate the extent to which the offices met the selection criteria. This process led to the selection of the final five sites.³²

The five sites (Monmouth County, New Jersey; Los Angeles County, California; Queens County, New York; Franklin County, Ohio; and Bucks County, Pennsylvania) were selected because they appeared to have the most comprehensive response to terrorism. Also, jurisdictions such as Queens County and Los Angeles County are heavily populated and have several vulnerable targets. Each jurisdiction indicated being involved on some type of terrorism task force; sharing intelligence with local, state, and/or federal agencies; and either having a specialized terrorism unit/attorneys or office protocol for handling terrorism.

APRI conducted an intensive site visit to each of the five jurisdictions selected. APRI developed a site visit protocol and interview guide to standardize the interviews across sites. The interview guide covered the following topics:

- Specialized terrorism unit
- Case processing issues

³² Ideally, to increase the generalizability of the study results, APRI would have selected significantly more offices for case study. However, because of the exploratory nature of the study and the amount of resources available, the conduct of additional case studies was not possible. Future research efforts may consider additional case studies, thereby increasing the overall sample and reducing external validity issues.

- Office protocol for terrorism-related offenses
- Challenges encountered and methods used to overcome them
- Information sharing with local, state, and/or federal agencies
- Partnerships or involvement in anti-terrorism task forces
- Overall strengths and weaknesses of the office's response to terrorism and how their efforts could be improved.

The site visits consisted of in-depth interviews with the chief prosecutor, assistant prosecutors responsible for handling terrorism-related cases, investigators, law enforcement officers, U.S. Attorneys, and members of anti-terrorism task forces.

Analytic Techniques

The information collected from the case studies was analyzed through content analyses and pattern matching. APRI further operationalized the selection criteria into 13 different criteria for content analyses. The site reports produced by APRI to memorialize the site visits, along with the interview notes, and where available, external documents collected during the site visits, were reviewed by the principal investigator to count the number of times references were made to the concepts or words.

With frequency distributions of core concepts developed for each site, APRI conducted cross-site comparisons to identify whether or not any patterns emerged from the case studies in terms of how prosecutors have defined their role. From the 13 criteria, APRI identified five dominant patterns/strategies that define the local prosecutors' role in responding to terrorism:

- Local investigation, enforcement, and prosecution of pre-cursor crimes
- Active involvement in federal, state, and local task forces
- Development and use of information sharing networks

- Creation of new organizational structures, policies, and training in support of anti-terrorism efforts
- Coordination with emergency management services and other first responders

Of the five prosecutor's offices selected for case study, three (Monmouth County, New Jersey; Los Angeles County, California; and Queens County, New York) used elements from each of the five strategies listed above as part of their overall effort to respond to terrorism. The remaining two sites (Franklin County, Ohio and Bucks County, Pennsylvania) concentrated their efforts in fewer areas. Across the five areas, there are a number of similarities between sites, and for this reason, Chapter 5 is organized by the different strategies that emerged from the case studies rather than by each site.

CHAPTER 3

STATE AND LOCAL ANTI-TERRORISM LEGISLATION

In the wake of 9/11, policymakers at all levels of government began reviewing the laws in place to ensure punishment for terrorists and to deter would-be terrorists from carrying out their criminal activities. The result was an array of new and amended legislation. Between September 2001 and October 2003, 45 states passed 67 new statutes concerning terrorism, creating an aggregated total of 144 new offenses at the state level. In addition, the states passed 167 amendments to existing statutes.

An analysis of the statutes passed and amended revealed four major classes of legislation:

1. Statutes that criminalize precursor crimes (i.e., those crimes that may be precursors to terrorist incidents such as identity theft, money laundering, sale of illegal drugs, loitering, and sale of counterfeit merchandise);
2. Statutes directed at threats, hoaxes, and false reports;
3. Statutes that punish actual incidents of terrorism; and
4. Statutes designed to enhance the ability of enforcement agencies to investigate and prosecute incidents of terrorism.

Some of the new statutes also mandate the creation of a state agency to oversee homeland security issues and task forces to address terrorism. Many of the amended statutes cover the same areas as the new legislation, but the amended legislation generally focuses on sentencing enhancements for terrorist-motivated crimes. Some also address intelligence gathering techniques such as wiretaps and search warrants.

APRI prepared two matrices based on the statutory analyses, which are included in Appendix A. The first matrix shows which states enacted new statutes, amended statutes, added prosecutorial responsibilities, or enhanced intelligence gathering. The second matrix enumerates the content of the legislation.

Statutes That Criminalize Precursor Crimes

In late 2001, the National District Attorneys Association (NDAA) began to explore how the emphasis on homeland security might impact local prosecutors, and in doing so, began developing a policy statement. In this statement, NDAA laid the foundation for the adoption of the term “precursor” crime as a means to define those criminal offenses that would be prosecuted locally that may be precursors to terrorist incidents.³³

APRI’s review of the legislation found that states enacted a total of 35 new laws and amended 37 existing types of statutes dealing with precursor crimes.³⁴ The offenses criminalized or amended to include terroristic motivation include the following:

- Identity theft
- Counterfeit driver’s licenses or obtaining a driver’s license through use of false information
- Racketeering
- Money laundering
- Providing material support for terrorism
- Obtaining information regarding a vulnerable target
- Use of commercial transportation in the commission of a felony
- Disorderly conduct at an airport
- Possession of hazardous materials
- Security offenses

In large part, the states already had laws codified dealing with identity theft. In fact, 11 states amended their statutes to include terror motivation, to elevate the class of offense (e.g.,

³³ F.S. § 322.212(d) (effective 10/1/01).

³⁴ The numbers provided in this section are based on an analysis of statutes passed between September 2001 and October 2003.

from a C felony to a B felony), and to enhance the penalty. Eight states amended existing racketeering laws, five states amended their counterfeit driver's licenses and another five amended their money laundering statutes.

Most of the new laws enacted focused on identity theft and providing material support for terrorism (11 states each). Four states enacted new laws dealing with hazardous materials.

Statutes Directed at Threats, Hoaxes, and False Reports

As with precursor crimes, many states had existing statutes dealing with threats, hoaxes, and false reports. Nevertheless, 33 states enacted new laws dealing with these activities. The most common statute enacted dealt with threats involving terrorism or weapons of mass destruction (enacted by 11 states). Eight states passed laws that criminalize hoaxes, and seven states criminalized the possession of imitation bombs or imitation weapons of mass destruction. In addition, six states passed laws regarding falsely reporting an incident.

In total, 40 states amended an existing law that dealt with threats, hoaxes, and false reports. The majority of states that passed amendments focused on falsely reporting a terrorist incident (n=16). Twelve states amended statutes to include the making of terroristic threats (n=12). Five states, with existing legislation regarding hoaxes, passed amendments to the statutes that dealt with the possession of an imitation bomb or weapon of mass destruction.

Statutes That Punish Actual Incidents of Terrorism

By the nature of their definition, many of the crimes that fall into the category of "precursor crimes" were already state offenses prior to 9/11, and as such, one would not necessarily expect to find a large number of new statutes being enacted. On the other hand, these state laws may not have included explicit language regarding terrorism, so might expect to see amended statutes that include language regarding terrorism. In fact, it would appear that

relatively few states had statutes that punish actual incidents of terrorism prior to September 11, 2001, compared with states that had existing precursor crime statutes: between September 2001 and October 2003, states had created a total of 58 laws and amended another 57 existing statutes.

The two most common new statutes enacted defined terrorism as a specific offense (enacted by 18 states) and created a weapons of mass destruction offense (enacted by 17 states). Among the amended statutes, murder was the most commonly amended (by 16 states) to include terroristic motivation and frequently to enhance the sentence. Weapons of mass destruction, criminal mischief, computer crimes, using telecommunications to commit terrorism, and poisoning food or water were the next most frequent amendments.

Statutes That Enhance Investigation and Prosecution

Changes in criminal code will influence enforcement and prosecution with regard to terrorism but the impact of that change is not yet fully understood. One of the major questions that must be answered before the utility and effectiveness of the new/amended laws can be assessed is whether or not the statutes create new responsibilities or add more tools to help investigators and prosecutors. Among the statutes enacted or amended, 10 primary topics were identified:

- Asset forfeiture;
- DNA evidence;
- Other evidence;
- Use of Grand Juries;
- Obstruction of terrorism prosecution;
- Pleas and sentencing;
- Statute of limitations;
- Wiretaps, search warrants, and subpoenas; and

- Public health law violations.

In total, 16 states enacted new statutes dealing with one of the topics identified above, and 32 amended existing statutes. The most common new law enacted focused on the obstruction of terrorism prosecution (enacted by eight states). Such laws give prosecutors and law enforcement more leverage with suspects and defendants to ensure their cooperation. Sixteen states amended their statutes with regard to wiretaps, search warrants, and subpoenas.

EXPERIENCE WITH NEW LEGISLATION AND ITS EFFECTIVENESS

State statutes that deal with terrorism are critical for helping prosecutors' offices understand what, if any, role they play in responding to homeland security. As such, it is important that prosecutors are aware of the available statutes. Among the prosecutors' offices surveyed, 71 percent indicated they knew of new legislation and 48 percent reported they were aware of amended legislation.

Further analysis of the survey results, as part of the statutory review, revealed that not all prosecutors' offices that responded to the survey were familiar with their state's anti-terrorism legislation. For example, California enacted two new statutes and passed seven new amendments. However, one prosecutor's office (out of the eight from California in the survey sample) reported that their state had not passed new anti-terrorism legislation; similarly, three of the eight prosecutors' offices from California reported that there were no amendments made to existing statutes. There were similar findings in six other states, which would indicate that at least some local prosecutors' offices are not knowledgeable about the tools available to them in responding to homeland security.

Overall, prosecutors are unsure about the effectiveness and utility of the new and amended legislation. In fact, 52 percent of the prosecutors' offices that responded to APRI's

survey indicated that their ability to respond to terrorism has not changed, as compared with 11 percent who felt it was now easier (the remainder were unsure). It is important to note that most prosecutors' offices have not had an opportunity to use the statutes and thus, did not comment on the utility. Of those prosecutors' offices that have new or amended statutes and felt they had enough experience to comment on the effectiveness, most pointed to the fact that the new/amended legislation gives them more options (in the form of available charges and penalties) and has improved their evidence/intelligence gathering resources. Prosecutors who felt the statutes were ineffective indicated that the statutes are too limited in scope to receive regular use by prosecutors. The next chapter, which focuses on the survey results, provides additional detail about prosecutors' experiences with their anti-terrorism statutes.

CHAPTER 4

PROSECUTORS' EXPERIENCE WITH HOMELAND SECURITY: SURVEY RESULTS

To better understand how prosecutors' roles have changed in a post-9/11 environment and the extent to which they have used the new/amended anti-terrorism legislation in their states, APRI conducted a survey of the 112 largest jurisdictions in the country. The survey examined local prosecutors' involvement in homeland security and the ways in which their offices' organizational structure has changed to facilitate their involvement. The survey also explored how prosecutors are using new/amended anti-terrorism laws, specific challenges in applying new and existing laws, and training needs related to homeland security. It is important to note that since the laws have only been in effect for a couple of years and prosecutors' knowledge of and experience with their state's anti-terrorism statutes is limited, it may be premature to make any assumptions about the overall effectiveness of the state legislative response.

For the purpose of this study, APRI defined an act of terrorism as any criminal act committed with the specific intent to intimidate or coerce a civilian population; influence the policy of any government by intimidation or coercion; affect the conduct of any government; or substantially impair public services including transportation, communications, and utilities.³⁵

INVOLVEMENT IN HOMELAND SECURITY

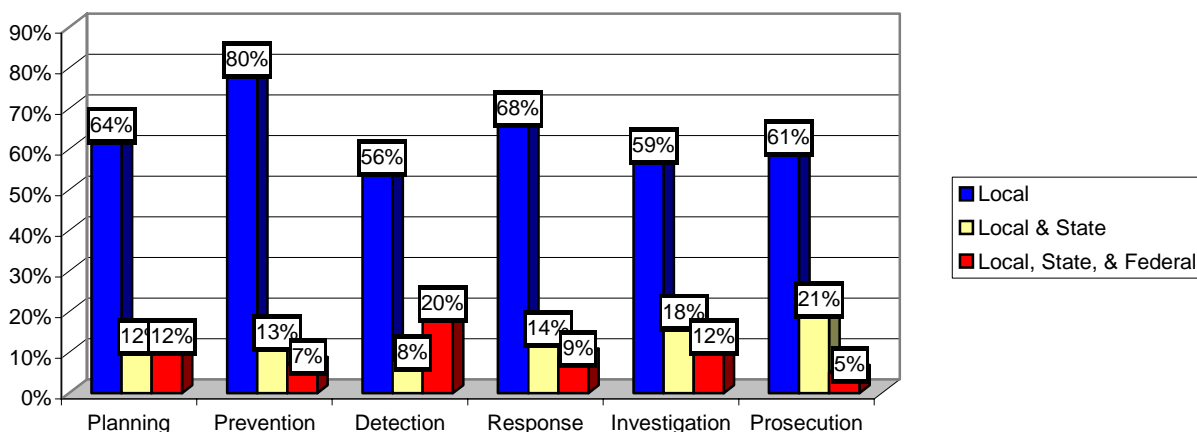
Involvement in homeland security issues is an essential component for local prosecutors if they are to play an influential role in the war on terrorism. Of the 70 local prosecutors' offices that responded to the survey, 71 percent reported being involved with homeland security at the local, state, and/or federal level. Exhibit 4-1 outlines the six capacities (planning, prevention,

³⁵ FBI "Terrorism 2000/2001." Available http://www.fbi.gov/publications/terror/terror2000_2001.htm. Retrieved April 14, 2004.

detection, response, investigation, and prosecution) and government levels in which prosecutors are involved in homeland security. Not surprisingly, local prosecutors are overwhelmingly involved in homeland security issues on the local level, primarily focusing on prevention. However, when it comes to a collaborative effort between all three levels, prosecutors are more involved with detection, planning, and investigation issues. Planning issues include, but are not limited to, assessing potential vulnerable targets and providing training to law enforcement officers.

Exhibit 4-1

Capacity Involved in Homeland Security



In direct response to the new and/or amended anti-terrorism statutes, many local prosecutors made changes within their offices. As displayed in Exhibit 4-2, participating on an anti-terrorism task force (59 percent) was the most frequent change made by prosecutors, followed by coordination with the U.S. Attorney’s Office. It is noteworthy that 26 percent of responding jurisdictions stated that they did not make any office changes in response to anti-terrorism legislation.

Exhibit 4-2³⁶

Top Five Office Changes Made in Response to New or Amended Statutes

Office Change	Percent
Participation in anti-terrorism task force	59%
Coordination with U.S. Attorney's Office	57%
Coordination and information sharing within office	34%
No change	26%
Change in office policies/protocol	23%
More emphasis on intelligence gathering	23%

Another way that local prosecutors' offices made organizational changes is by establishing specialized terrorism units. According to APRI's survey, nearly 15 percent of the jurisdictions reported having a specialized terrorism/homeland security unit. With the exception of the five case study sites, APRI was unable to determine whether these specialized units were created in direct response to the new anti-terrorism legislation or whether jurisdictions had these units prior to 9/11. Exhibit 4-3 displays the sum, median, minimum and maximum number of prosecutors and investigators assigned to a terrorism unit. Based on the survey, there was a median of one prosecutor and two investigators assigned to a specialized terrorism unit. The greatest number of prosecutors in one unit was three and the highest number of investigators in a unit was eight.

Exhibit 4-3

Number of Prosecutors and Investigators Assigned to Specialized Unit

	Sum	Median	Minimum	Maximum
Prosecutors	13	1.00	1	3
Investigators	22	2.00	1	8

Twenty-one percent of the jurisdictions reported having a protocol for handling terrorism cases. Of those jurisdictions, 71 percent directed their protocol towards investigation and prosecution, while 29 percent directed theirs toward handling evidence. Nearly 12 percent

³⁶ See Appendix B for a complete listing of office changes.

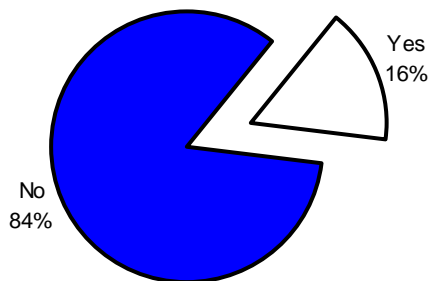
focused on other activities such as coordination and crisis management. Less than 6 percent of the protocols focused on witness protection.

PROSECUTORS' USE OF ANTI-TERRORISM LEGISLATION

Although many states had terrorism legislation prior to the 9/11 terrorist attacks, some states made amended their legislation to explicitly link previous criminal offenses to terrorism. In response to these legislative changes, prosecutors have shifted some of their efforts to investigating and prosecuting precursor crimes³⁷. The investigation and prosecution of precursor crimes such as money laundering, fraudulent identification documents, and identity theft may be where local prosecutors have the greatest impact on the war on terrorism (see Chapter 5). However, according to Exhibit 4-4, only 16 percent of responding offices stated that they had prosecuted precursor crimes related to terrorism. Of the jurisdictions that reported prosecuting terrorism-related precursor crimes, 60 percent have prosecuted more of these crimes since 9/11, while 40 percent have prosecuted the same amount.

Exhibit 4-4

Prosecuted Terrorism-Related Precursor Crimes



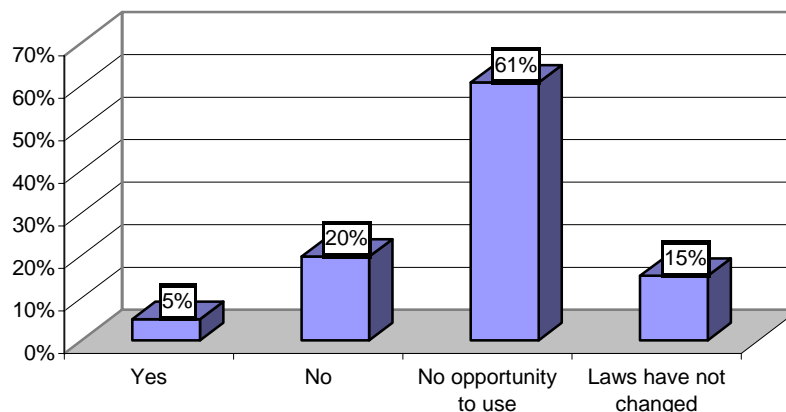
³⁷ It should be noted that the survey asked prosecutors to report the number of investigations and prosecutions only on those precursor crimes that were believed to be terrorism-related.

Based on comments to open-ended questions on the survey, some of the increase in priority on precursor crimes by local prosecutors can be attributed to priority changes in U.S. Attorney's Offices. As U.S. Attorney's Offices have become more involved in international terrorism, cases that may have been handled by them in the past have been given to local prosecutors. In addition to paying more attention to precursor crimes, some prosecutors have also increased the intensity of their intelligence gathering. As a result, several prosecutors are meeting more frequently with law enforcement officials as well as with members of their anti-terrorism task force.

One specific purpose for amending state legislation was to increase penalties for some terrorism-related offenses. Even with these enhanced penalties, Exhibit 4-5 shows that only five percent of responding jurisdictions indicated that they have used new and/or amended legislation to enhance sentencing in terrorism-related convictions. Fifteen percent of the responding offices indicated that the legislative changes have not changed the pre-existing sentencing structure and 61 percent have yet to have the opportunity to use the statutes.

Exhibit 4-5

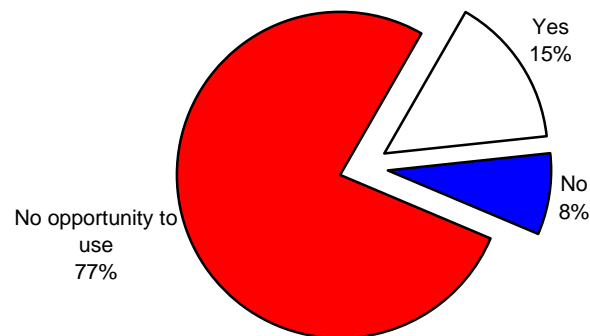
Office Has Used New and/or Amended Legislation to Enhance Sentencing



Legislators also responded to the 9/11 attacks by criminalizing certain behaviors that had not been deemed criminal prior to 9/11. So far, even though prosecutors applaud the efforts of legislators, 77 percent of local prosecutors' offices have not encountered a situation in which they could take full advantage of the new and/or amended statutes (Exhibit 4-6). In fact, only 15 percent of responding jurisdictions asserted that new anti-terrorism statutes adequately address their needs such as improving intelligence gathering abilities.

Exhibit 4-6

New and/or Amended Statutes Adequately Address the Needs of Prosecutors



When considering only those jurisdictions that had an opportunity to use their state's new or amended statutes, 67 percent claimed that the statutes adequately addressed prosecutor needs. These prosecutors cited improved intelligence gathering capabilities such as roving wiretaps and additional charging capability, which gives them more leverage when it comes to filing charges.

In the aftermath of 9/11, it is reasonable to expect local prosecutors who are involved in homeland security to assign a higher priority to crimes believed to be associated with terrorism. Since precursor crimes are offenses most likely to be handled at the local level, it is not surprising to see, as Exhibit 4-7 illustrates, that prosecutors assign a higher priority to identity

theft (36 percent), counterfeit driver's license (23 percent), money laundering (16 percent), high tech/computer crimes (14 percent), and security offenses (10 percent).

Exhibit 4-7³⁸

Top Five Crimes Assigned a Higher Priority for Prosecution

Type of Crime	Percent
Identity theft	36%
Counterfeit driver's license/identification	23%
Racketeering/money laundering	16%
High tech/computer crimes	14%
Security offenses	10%

COORDINATION WITH OTHER AGENCIES

Local prosecutors rely on more than just new legislation as a tool to combat terrorism. To be truly successful in fighting terrorism and to avoid duplicating efforts, prosecutors must coordinate their efforts with other agencies. Participating on an anti-terrorism task force is arguably one of the most important steps a local prosecutor's office can take in its efforts to coordinate with other agencies. Anti-terrorism task forces, whether headed by the FBI or the U.S. Attorney's Office, present a more formal and consistent method for local, state, and federal agencies to share information and collaborate on specific tasks related to combating terrorism in America. APRI's survey revealed that 64 percent of respondents serve on an anti-terrorism task force or committee dedicated to responding to or investigating terrorism. Of those jurisdictions that are involved in an anti-terrorism task force, 36 percent meet monthly, while 33 percent meet quarterly, and 26 percent meet as issues dictate or as needs arise.

Since historically, terrorism-related offenses have been handled at the federal level, it is fitting that the majority of the agencies involved on an anti-terrorism task force are within the

³⁸ See Appendix B for a complete listing.

federal government. As shown in Exhibit 4-8, seven of the top ten agencies on an anti-terrorism task force are federal agencies. The FBI, the largest federal investigative agency, is identified as the most frequently represented agency on an anti-terrorism task force (69 percent), followed by the U.S. Attorney’s Office and the local police/Sheriff’s Office (both at 66 percent), the ATF (57 percent) and the state police/highway patrol at 50 percent.

Exhibit 4-8³⁹
Top Ten Agencies on Anti-Terrorism Task Force

Agency	Percent
Federal Bureau of Investigation	69%
U.S. Attorney’s Office	66%
Local Police/Sheriff’s Office	66%
Bureau of Alcohol, Tobacco, Firearms & Explosives	57%
State Police/Highway Patrol	50%
Bureau of Immigration and Customs Enforcement	48%
Prosecutors from other jurisdictions	47%
Department of Homeland Security	45%
Drug Enforcement Administration	41%
U.S. Customs and Border Protection	38%

Another important aspect of coordinating with other agencies is information sharing. A large percentage of respondents (70 percent) reported being involved in intelligence sharing with local, state, and federal agencies. Exhibit 4-9 shows that for those jurisdictions that are involved in information sharing, 46 percent report information on investigative targets to state or federal agencies and 44 percent report potential threats. Only 17 percent of the jurisdictions report security alerts, perhaps because terrorism is heavily monitored at the federal level and any information about security alerts received by local prosecutors in fact comes from the federal government.

³⁹ See Appendix B for a complete listing of task force representatives.

Exhibit 4-9
Homeland Security Information
Provided to State or Federal Agencies

Information Shared	Percent
Investigative targets	46%
Potential threats	44%
Case outcomes	42%
Case development	27%
Security alerts	17%
Other types of information	4%

CHALLENGES FACING LOCAL PROSECUTORS

One goal of APRI’s study was to gather information about the challenges facing local prosecutors as they begin to prosecute terrorism cases under new state laws. APRI’s survey contained 21 variables to identify challenges local prosecutors have either encountered or anticipate encountering as a result of investigating or prosecuting terrorist acts under their states’ new or amended anti-terrorism statutes. For analysis purposes, 20 of the 21 variables were collapsed into five new variables: multi-jurisdictional, case processing, investigative, legal, and other issues.⁴⁰

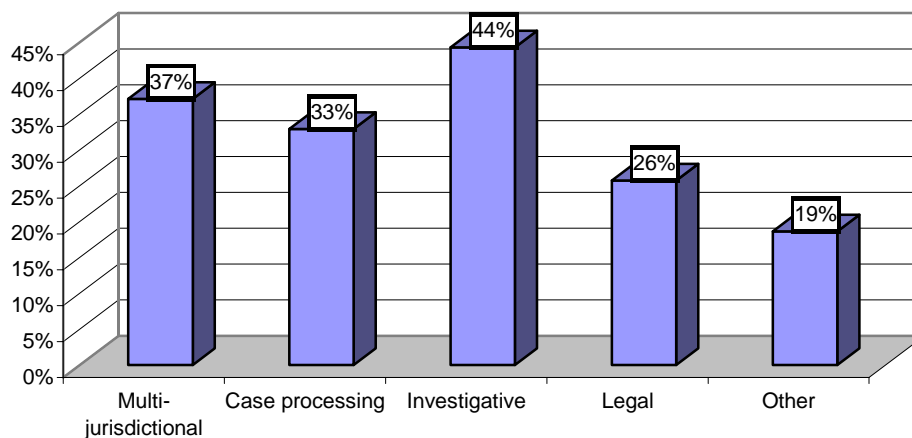
- Multi-jurisdictional issues were broadly defined in terms of information exchange/coordination between different levels of local, state, and federal law enforcement and inter-/intra-state issues.
- Case processing issues consisted of volume of work involved, proving the crime, identifying the perpetrator, security clearance, and witness cooperation.
- Investigative issues were comprised of evidence collection, intelligence gathering, obtaining multi-jurisdictional search warrants, information sharing with federal agencies, contaminated evidence, and finding witnesses.
- Legal issues contained elements of the statute, discovery issues, legal challenges, judicial interpretation of the statute, and loop holes in legislation.
- Other issues included lack of law enforcement training, media/publicity limiting the jury pool and other challenges.

⁴⁰ The variable Not Applicable was not included.

As Exhibit 4-10 illustrates, investigative issues are the most frequently cited challenges prosecutors have encountered or anticipate encountering (44 percent). Case processing issues are considered a challenge by 33 percent of the responding offices, specifically, the volume of work associated with terrorism cases and identifying the actual perpetrators. Legal issues included discovery issues and legal challenges, respectively. Interestingly, most of the surveyed jurisdictions that reported having these challenges also reported having multi-jurisdictional issues.⁴¹

Exhibit 4-10

Challenges Encountered or Anticipate Encountering for Jurisdictions with New or Amended Statutes

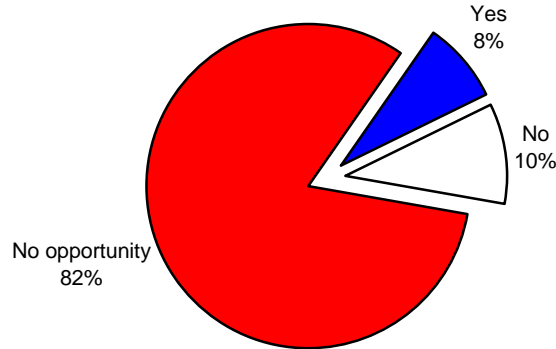


Many of the legislative changes were designed to make it easier for investigators to gather intelligence. Only eight percent of responding offices reported that the new and/or amended statutes adequately addressed the needs of investigators (Exhibit 4-11). Among those offices that had used the new/amended statutes, the number of prosecutors who thought the statutes adequately addressed the needs of their investigators increased from 10 percent to nearly 44 percent.

⁴¹ See Appendix B for more details.

Exhibit 4-11

New and/or Amended Statutes Adequately Address the Needs of Investigators



As shown in Exhibit 4-12, more than three-quarters of the jurisdictions that reported using the new and/or amended statutes experienced no change when it came to their ability to perform most investigative activities such as intelligence gathering, conducting wiretaps, accessing mobile phone or pager records, using public space for videotaping, or issuing search warrants on bank records.

Exhibit 4-12

Impact New and/or Amended Statutes Have Had On a Jurisdiction’s Ability to Perform Certain Tasks

Investigative Activity	Easier	Harder	No Change	N
Intelligence Gathering	24%	-	76%	37
Conduct Wire Taps	11%	-	89%	35
Conduct Pen Registers	5%	-	95%	37
Access Mobile Phone/Pager Records	18%	-	83%	40
Access Computer/e-mail/Instant Messenger Records	16%	-	84%	38
Access Financial Records	8%	-	93%	39
Issue Search Warrants on Bank Records	8%	-	92%	39
Track Suspects (e.g., GPS Tracking etc.)	6%	-	94%	36
Creation of DNA Databases	11%	3%	87%	37
Use of Public Space Video Taping	11%	-	89%	36
Prove Rules of Evidence	-	3%	97%	36
Identity Verification Procedures and Records of Department of Motor Vehicles	8%	-	92%	38

Other	-	-	100%	11
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Legislative changes in response to the war on terror have impacted how law enforcement agencies conduct their investigations. APRI asked local prosecutors if the changes within law enforcement have (such as increased participation in anti-terrorism task forces or fewer investigative resources for certain types of offenses) placed more demands on their investigators or prosecutors. More than half (56 percent) of the jurisdictions did not see changes in law enforcement as placing more demands on their prosecutors or investigators. Among the remaining jurisdictions, the most frequently identified demand has been an increased caseload and/or strained resources. Other demands include allocating more effort and/or resources to investigations and screenings, following up on the increased number of violations, and an increase in pre-charge work.

Seventy-two percent of the responding offices believe that prosecutors in their office have not received adequate training to handle terrorism cases. However, since so few jurisdictions have actually had the opportunity to investigate or prosecute a terrorist incident under their state’s new or amended statutes, this finding must be interpreted with care. Some jurisdictions treat terrorism the same as other cases and therefore do not see a need for additional training. Others attribute their lack of training to insufficient funding or limited opportunities.

METHODS FOR OVERCOMING CHALLENGES

Exhibit 4-13 highlights methods used by prosecutors to overcome the various types of challenges they have encountered or anticipate encountering. Based on the average percent, prosecutors were more likely to participate in a task force as a means of addressing most challenges. It was also the first choice when dealing with investigative, legal, and other issues

such as lack of law enforcement training. Information sharing between agencies was the second most used method.

Exhibit 4-13
Methods Used by Prosecutors to Overcome Challenges
Encountered or Anticipate Encountering

Method	Type of Challenge					Avg. Percent
	Multi-jurisdictional	Case processing	Investigation	Legal	Other	
Training for law enforcement officers	65%	48%	52%	50%	46%	52.2%
Training for prosecutors	46%	30%	29%	33%	31%	33.8%
Training for investigators	39%	22%	26%	28%	15%	26.0%
Information sharing between agencies	62%	48%	55%	50%	54%	53.8%
Formation of partnerships	39%	26%	36%	33%	39%	34.6%
Participation on task force	54%	44%	55%	56%	62%	54.2%
Coordination with U.S. Attorney's Office	54%	35%	48%	50%	54%	48.2%
Coordination with law enforcement	62%	39%	52%	44%	46%	48.6%

Another tool in the fight against terrorism is the use of or participation in joint investigations with state or federal agencies. APRI's survey revealed that slightly more than 38 percent of respondents have participated in joint investigations or prosecutions of terrorist crimes/incidents with state and/or federal agencies.

In an attempt to quantify the level of information sharing and the governments' ability at all levels to assess the effectiveness of their efforts, APRI examined the types of data/statistics collected on homeland security threats, investigations, and prosecutions and the extent to which this information is reported either uniformly or to a centralized management information system. Seventy-one percent of respondents do not report terrorism related statistics on a regular basis.

However, 13 percent of respondents regularly report on case dispositions while 10 percent report on charges filed.

CONCLUSION

Local prosecutors have made concerted efforts to play a vital role in the war on terrorism. New and amended state anti-terrorism legislation has both increased and changed prosecutors' responsibilities in regards to how they investigate and prosecute terrorism cases. These changes, particularly an increased focus on precursor crimes, have presented many challenges for local prosecutors as they have attempted to implement their new responsibilities. Although prosecutors welcome the new and amended legislation, many have yet to have the opportunity to take advantage of the statutes.

CHAPTER 5

CASE STUDIES OF FIVE LOCAL PROSECUTORS' OFFICES' RESPONSE TO TERRORISM

The multitude of statutes and amendments enacted at the state level in response to the attacks of 9/11 laid the foundation for state and local roles in ensuring homeland security. Although local prosecutors may prosecute domestic terrorist attacks, they understand that large scale, international terrorist attacks traditionally fall under the federal government's jurisdiction despite the fact that these attacks occur in local communities. Nevertheless, across the country, local prosecutors have identified a number of means by which they can respond to terrorism locally and assist in national homeland security efforts.

As noted in the previous chapters, prosecutors' experience with new or amended state legislation is limited, and many prosecutors are still trying to define their role in homeland security. Nonetheless, APRI identified five local prosecutors' offices that were actively engaged in homeland security efforts and from whom a great deal could be learned:

- Monmouth County, New Jersey Prosecutor's Office;
- Los Angeles County, California District Attorney's Office;
- Queens County, New York District Attorney's Office;
- Franklin County, Ohio Prosecuting Attorney's Office; and
- Bucks County, Pennsylvania District Attorney's Office.

OVERVIEW OF CASE STUDY SITES

Monmouth County is located in central New Jersey and, with a population of 629,836,⁴² is one of the largest counties in the state. Monmouth County is 16 miles from downtown Manhattan via waterway, and nearly 200,000 of the county's residents commute into New York City on a daily basis. The close proximity of the county to New York City increases its

⁴² U.S. Census Bureau website (population based on 2002 estimates) <http://quickfacts.census.gov>

vulnerability to terrorist attacks and, as demonstrated after the 9/11 attacks, the likelihood that the local prosecutor will be called upon to respond to attacks that may occur in New York City. Another interesting fact about Monmouth County (and the rest of New Jersey) is that the prosecutor's office serves as the chief law enforcement office in the county.

Los Angeles County, California is the largest county in the United States with an estimated population of 9,871,506.⁴³ Not only is Los Angeles County the largest county in the U.S., but it also houses the largest local prosecutorial agency in the country. The Los Angeles County District Attorney's Office is responsible for a jurisdiction that covers more than 4,000 square miles and prosecutes felony and misdemeanor crimes in 78 of the 88 cities⁴⁴ within the county. Los Angeles County is home to one of the nation's largest seaports, seven professional sports teams, numerous historic sites, 20 museums, eight universities and colleges, an international airport, and is a haven for celebrities and tourists.

With more than eight million residents, New York City is by far the largest city in the United States. Queens County is one of the five boroughs that comprise New York City and is less than 15 miles from downtown Manhattan. Queens County, with more than 2.25 million people, is the second largest of the boroughs. Queens County is a very ethnically diverse county; according to the 2000 U.S. Census, 46 percent of the population describe themselves as foreign-born persons and nearly 54 percent of the residents speak a language other than English at home.⁴⁵ In addition, several potentially high profile terrorist targets along with New York City's two major airports (JFK and LaGuardia), are located in Queens County.

⁴³ Based on 2003 estimates. U.S. Census Bureau website <http://quickfacts.census.gov/qfd/states/06/06037.html>.

⁴⁴ Ten cities, including the city of Los Angeles, have their own city prosecutors who prosecute misdemeanor offenses within the city limits.

⁴⁵ U.S. Census Bureau website <http://quickfacts.census.gov/qfd/states/36/36081.html>.

Franklin County is located in the heart of Ohio and is home to the state capital, Columbus. According to the U.S. Census Bureau, Franklin County has an estimated population of nearly 1,088,944 million people, which makes it the 29th largest county in the United States. Columbus, with more than 725,000 residents, is the 14th largest city in the country. The county is home to headquarters of numerous financial institutions and insurance companies, as well as Ohio State University.

Bucks County, located in southeastern Pennsylvania, has 613,110 residents that inhabit 608 square miles. Geographically, Bucks County lies between New York City and Washington, D.C. and is less than one hour outside Philadelphia. Many county residents commute to Philadelphia daily. The northern part of the county is highlighted by the 5,283-acre Nockamixon State Park, which surrounds the 1,450-acre Lake Nockamixon. The county is also known for its many historic sites and museums, particularly along the Delaware River.

A review of various homeland security efforts implemented by these local prosecutors reveals several commonalities as well as unique and innovative strategies. Among the patterns that emerged in local prosecutors' role are:

- Local investigation, enforcement, and prosecution of precursor crimes
- Active involvement in federal, state, and local task forces
- Development and use of information sharing networks
- Creation of new organizational structures and policies
- Coordination with emergency management services and other first responders

In addition, with these new strategies and the new legislation come a variety of challenges that prosecutors are working to resolve. This chapter describes the experiences of the five

jurisdictions selected for case study in terms of how they have implemented the various strategies, the challenges they face, and how they are working to overcome the challenges.

LOCAL INVESTIGATION, ENFORCEMENT, AND PROSECUTION

As noted earlier, the investigation, enforcement, and prosecution of international terrorism generally falls within the purview of the FBI and the U.S. Attorneys' Offices, whereas crimes that provide material support for terrorism or help terrorists operate in the United States (crimes that APRI has defined as precursor crimes) often fall under local jurisdiction. APRI's study found indeed that the most common role of the local prosecutor in the nation's effort to fight terrorism seems to be the investigation, enforcement, and prosecution of precursor crimes. In particular, the strategies that have been adopted by the various prosecutors' offices studied focus on disrupting potential terrorism plans through criminal prosecution of state offenses and by using state legislation to help build intelligence for federal investigative and prosecutorial efforts.

Of the five prosecutors' offices studied by APRI, four had established a concentrated effort to define precursor crimes—some using existing statutes and others using new/amended state anti-terrorism legislation. Both the Queens County, New York District Attorney's Office and the Los Angeles County, California District Attorney's Office are using their legislative mandates to aggressively pursue precursor crimes. In Monmouth County, New Jersey, the County Prosecutor's Office acts as a conduit of information from the local municipalities and law enforcement agencies to the state Office of Counter-Terrorism and the FBI's Joint Terrorism Task Force (JTTF). The office also coordinates and conducts investigations at the local level. The Franklin County, Ohio Prosecuting Attorney's Office provides investigative and prosecutorial support to a coordinated local and federal effort to identify and prosecute alleged

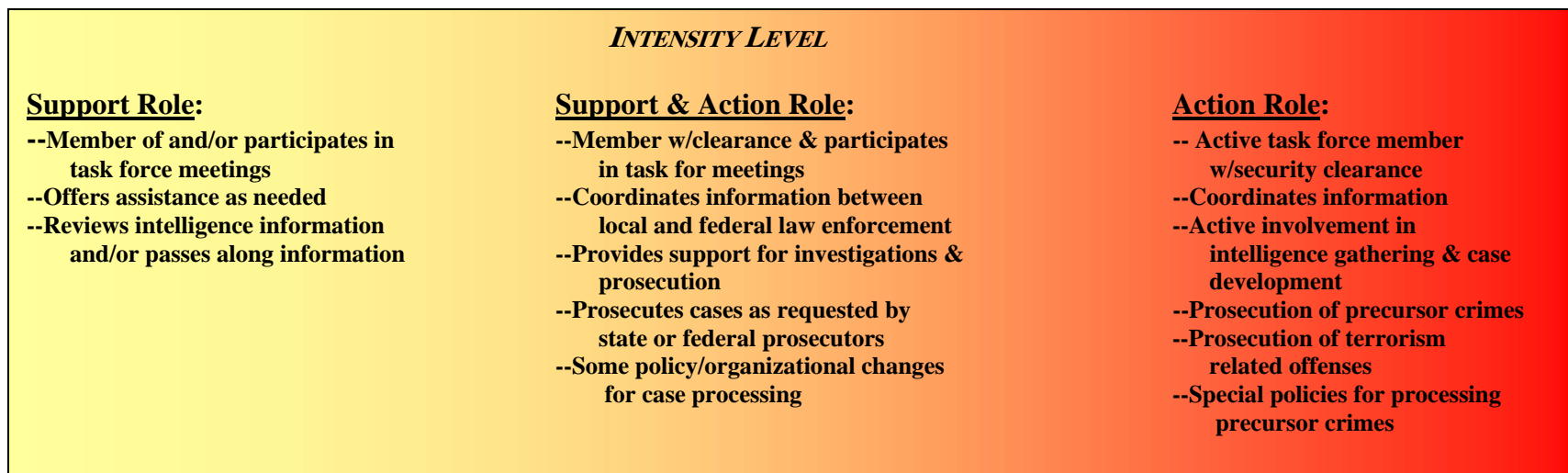
terrorists. Like the Prosecuting Attorney's Office in Franklin County, Ohio, the District Attorney's Office in Bucks County, Pennsylvania provides support to the state and federal efforts, but at the time of this study the office had not been tasked with any specific investigation tasks.

One pattern that emerges quickly from the investigative and enforcement efforts suggests that there may be a continuum of intensity of the prosecutor's involvement in enforcement, investigation, and prosecution (insert Exhibit 5-1). In other words, some offices have adopted a support role, others have taken a dual support and action role, whereas others have implemented an action role. Interestingly, this pattern seems to coincide with the prosecutors' offices' perceptions about the "target richness" of their respective jurisdictions. Those offices that have chosen a support role perceive their jurisdiction to have no or very few possible targets, those in a dual support/action role believe there are some medium to high profile targets, and those who have taken an active role view their jurisdiction as target rich, with many possible high profile targets.

The following sections describe how each of the case study sites falls into the enforcement, investigation, and prosecution framework.

Support Role. In response to the 9/11 attacks, the Bucks County, Pennsylvania District Attorney's Office has put in place mechanisms that allow them to support the enforcement, investigation, and prosecution of precursor crimes and terrorism-related offenses, particularly in terms of their involvement with enforcement and investigative task forces. All 16 investigators in the office have been cross-designated as U.S. Marshals to help support enforcement and investigation efforts. Prosecutors attend the State Attorney General's monthly task force meeting and consult with the U.S. Attorney's Office on terrorism prosecution but to date have

Exhibit 5-1
Intensity of Prosecutor Involvement in the Enforcement, Investigation,
and Prosecution of Pre-Cursor Crimes



not been called upon to handle any precursor crimes. In addition, the District Attorney's Office has assigned three of its investigators to help the FBI with its watch list.

The District Attorney in Bucks County has also established a terrorism unit with two prosecutors. Because there has not been a significant volume of precursor or terrorism-related cases, both prosecutors also handle other types of cases and spend relatively little time on terrorism. One of the prosecutors was also put on-call, 24 hours a day, 7 days a week to provide legal assistance to law enforcement and process search warrants for terrorism-related offenses.

Dual Support & Action Role. The Franklin County Prosecuting Attorney, through its gang unit, provides support to the U.S. Attorney in his efforts to respond to terrorism. The gang unit was selected because members of the unit are specially trained for intensive intelligence gathering and investigation, which the prosecutor believes can help bolster the efforts of federal law enforcement. In addition, the gang unit screens its own cases, and the prosecutors have been instructed to review cases for information that may indicate the offenses are precursor crimes related to terrorism.

Two examples of how the Franklin County Prosecuting Attorney's Office has played a dual support and action role are 1) their involvement with the U.S. Attorney's Office in the investigation and arrest of a trucker who threatened to blow up the Brooklyn Bridge in New York, and 2) the prosecution of a local resident who threatened to bomb a local shopping mall. The case of the trucker was brought to the Prosecuting Attorney's attention by local law enforcement, who during a routine traffic stop identified the trucker as a person of interest to the FBI. Upon review of the case, the prosecutor contacted the U.S. Attorney's Office and provided support in a federal prosecution. In the case of the resident who threatened to blow up a local

shopping mall, the prosecutor reviewed the case with the U.S. Attorney, and ultimately it was decided that the case should be prosecuted locally.

The Prosecuting Attorney's Office also identified an emerging trend in burglaries that they believed could be related to terrorism, namely an increase in the number of burglaries and theft of night vision binoculars and guns with telescopes. This information was provided to the U.S. Attorney's Office, and the prosecutor's office is working with local and federal law enforcement to continue to develop intelligence on this trend to determine if it is indeed related to terrorism.

The County Prosecutor's Office in Monmouth County, New Jersey has adopted a different approach to its dual support/action role. As the chief law enforcement officer in the county, the County Prosecutor's Office determined that one of its major contributions to enforcement and investigation would be to serve as a conduit of information between various agencies. The county has established municipal counter terrorism coordinators who coordinate leads that come from residents and law enforcement in the various municipalities. This information is passed to the county's terrorism coordinator, who is a member of the County Prosecutor's staff.

As information comes in from the municipal coordinators, the county coordinator reviews it, makes follow-up inquiries (as needed), and then sends the information to the state and federal task forces for review. Leads returned by the state or federal task forces may be investigated by the local police department or the County Prosecutor's Office. In addition, information is entered into a statewide database that can be cross-referenced against similar information from other sources. The database contains information on terrorism, gangs, and organized crime. Much of the information entered related to terrorism as a result of the County Prosecutor's

Office investigations focus on precursor crimes such as fraudulent documents. This allows the County Prosecutor to identify any patterns, gather intelligence, and provide information to the state and federal task forces.

The County Prosecutor's office has also been involved in hundreds of investigations of anthrax scares and other terrorism-related hoaxes.

Action Role. The investigative and prosecutorial aspect of the Queens County, New York District Attorney's Office response to terrorism is intensely focused on fraudulent identification documents and identity theft. In the first five months after the 9/11 attacks, the Governor of New York created the Fraudulent Identification Task Force (FIDTF) to target the illegal manufacture, sale, and distribution of forged or fraudulent identification documents such as passports, drivers' licenses, non-driver photo identification cards, and other identification documents. The Queens County District Attorney's Office participated in two FIDTF operations. The first focused on Department of Motor Vehicle (DMV) operations and the second focused on the Taxi and Limousine Commission (TLC).

As a result of the FIDTF operations at the DMV, the District Attorney's Office and its partners screened 450 cases, made 420 arrests, seized 2,000 documents, and confiscated equipment used to make fraudulent documents during the four-month investigation. In addition, the District Attorney's Office worked with the DMV to change its policies regarding the replacement of out-of-state drivers' licenses to require a more rigorous review of identification documents. The TLC operation yielded 500 arrests of persons suspected of falsifying their identification in order to obtain taxi/limousine licenses.

Another initiative by the Queens County District Attorney's Office involved the review of airport personnel security badges. The airport task force conducted criminal history

background checks on all 40,000 employees at JFK and La Guardia international airports. The checks revealed that 127 persons had used falsified or fraudulent identification documents to obtain their security badges. Criminal charges were filed in 97 of the cases. Using a newly amended statute that made the offering of a false instrument for identification a Class E felony, carrying a penalty of up to four years in prison, the Queens County District Attorney's Office successfully prosecuted 35 of the cases as of the time of this study. In addition, immigration violations were filed in 22 of the cases.

Since the concentrated effort began, precursor crimes such as identity theft and falsification of identification documents has become a significant part of the prosecutor's office caseload – growing from around one percent to between 11 and 13 percent of the total cases filed.

The Los Angeles County District Attorney's Office has also taken an active role in local and federal investigation and prosecution of precursor crimes and terrorist-related activities. An investigator from the organized crime division and three prosecutors were originally assigned to work on precursor crimes exclusively.⁴⁶ The investigator is assigned to the FBI JTTF and is involved in intelligence gathering and case development. This coordinated investigative effort maximizes the benefits of local and federal legislation. For example, for many cases, it is easier and quicker to obtain search warrants through the state rather than the federal courts.

In addition, from the investigator's work on the task force, which includes surveillance, interviewing suspects through consensual encounters, and arrests for involvement in precursor or lesser crimes, criminal cases are identified and screened locally and federally. The prosecutors in the organized crime division may evaluate cases and discuss prosecution with the U.S.

⁴⁶ At the time of the study, the Los Angeles County Board of Supervisors had just approved funding for the District Attorney's Office to hire 10 additional investigators, who will work exclusively on terrorism and terrorism-related cases.

Attorney's Office. Most of the precursor crimes, such as selling counterfeit merchandise, money laundering, credit card fraud, and fraudulent documents, are prosecuted by the District Attorney's Office. Overall, approximately 75 percent of the terrorism-related cases have resulted in either state or federal prosecution.

ACTIVE INVOLVEMENT IN FEDERAL, STATE, AND LOCAL TASK FORCES

A key element of a comprehensive response to homeland security is coordination between local, state, and federal law enforcement agencies and prosecutors' offices. The Anti-Terrorism Task Forces (ATTF) and the Joint Terrorism Task Forces (JTTF) organized by federal agencies serve as the primary instrument for coordination in all of the case study sites.⁴⁷ However, like the intensity of enforcement, investigation, and prosecution efforts, the level of local prosecutor involvement varies from attending meetings to joint investigations and co-location of staff.

The Los Angeles County District Attorney's Office is an active member of the California Anti-Terrorism Information Center (CATIC), created by the governor to collect, analyze, develop, and disseminate terrorism-related intelligence throughout the state and to the State Bureau of Investigation.⁴⁸ One investigator from the District Attorney's organized crime division is detailed to CATIC to assist local agencies in evaluating crimes ranging from various types of fraud to drug trafficking to possession of explosive chemicals. The District Attorney's investigator helps local agencies determine if the crimes are related to terroristic activities.

Another investigator from the organized crime division is assigned to work full-time with the JTTF. The investigator has top-secret clearance and participates in investigations. As part of

⁴⁷ The ATTF is headed by the U.S. Attorney's Office and focuses on investigation and prosecution, whereas the JTTF is headed by the FBI and focuses primarily on investigation.

⁴⁸ CATIC merged with JTTF after APRI completed its site visit to Los Angeles County.

the investigative process, the investigator works with the JTTF to help obtain state search warrants when needed, helps review cases to make recommendations as to who should prosecute the case (i.e., the U.S. Attorney's Office or the District Attorney's Office), and works closely with the prosecutors on all cases to be prosecuted locally.

As noted earlier, the Queens County District Attorney's Office has organized and participated in many different local, state, and federal task forces aimed at preventing possible terrorists from obtaining fraudulent identification documents; changing policies and practices to guard against identity theft, fraud, and security breaches; and prosecuting precursor crimes.

These various task forces include:

- **Fraudulent Identification Task Force:** created by the governor to target the manufacture, sale, and distribution of fraudulent identity documents and consisting of representatives from local, state, and federal law enforcement, state Office of Public Security, Department of Motor Vehicles, Port Authority of New York, the New York Inspector General's Office, ICES, U.S. Department of Transportation, U.S. Secret Service, U.S. Postal Inspection, and the Social Security Administration Inspector General's Office.
- **Airport Security Identification Display Area Task Force:** to conduct identity and criminal background checks on all airport personnel who have access to secure and restricted areas; task force members included many of the same from the FIDTF as well as the Immigration and Customs Enforcement, the TSA, and the U.S. Attorney's Office.
- **El Dorado Task Force:** focused on locating criminal offenders scheduled for deportation.
- **JTTF:** assignment of three prosecutors⁴⁹ to screen and charge fraudulent identity document cases and intelligence gathering.
- **Anti-Terrorism Working Group:** created and run by the U.S. Attorney's Offices in the Eastern and Southern Districts of New York to coordinate the efforts of local law enforcement agencies and prosecutors in the New York City metropolitan area with regard to fraudulent identification and money laundering.

The approach to task forces in Monmouth County differs significantly from the other prosecutors' offices studied. As noted earlier, the County Prosecutors' Offices in New Jersey are

⁴⁹ As a result of limited resources, the Queens County District Attorney's Office has been forced to reduce the number of full-time prosecutors assigned to the JTTF from three to one, who is on-call 24 hours a day, 7 days a week.

the chief law enforcement offices in the county. The approach, as alluded to earlier, includes 53 municipal counter-terrorism coordinators who serve on the frontline of information regarding terroristic threats in the county's municipalities. The municipal coordinators provide information to the county coordinator, in the County Prosecutor's Office, who in turn acts as the liaison with the state Office of Counter-Terrorism and the FBI. The role of the County Prosecutor's coordinator is to facilitate a two-way information sharing stream (discussed in more detail later in this chapter).

In addition, the County Prosecutor's Office has been instrumental in developing the Monmouth County Emergency Response Team (MOCERT), which is working to combine SWAT teams in the county. The MOCERT will result in five multi-jurisdictional teams that will work in conjunction with the state Office of Homeland Security in the event of a terrorist attack.

Another unique feature of the Monmouth County task force approach, which is discussed in detail later in this chapter, is the coordination of first responders to maximize the resources, manpower, and equipment needed should a terrorist attack occur. Following September 11, 2001, the County Office of Emergency Management (OEM) elected to become part of the County Prosecutor's Office. The head of the OEM, along with the County Prosecutor's counter-terrorism coordinator, holds regular meetings with first responders and other agencies involved in the response to terrorism such as the state Department of Health and the U.S. Navy, to discuss the emergency preparedness plans and training needs.

Finally, the county prosecutor assigned to handle terrorism cases and the counter-terrorism coordinator are active participants in the Newark JTTF. Immediately following 9/11, the County Prosecutor's Office, along with four other counties in New Jersey, was asked to assist

in the FBI evidence response team. The Monmouth County Prosecutor's Office was responsible for processing the abandoned vehicle of the Flight 93 hijacker at Newark International Airport.

Prosecutors in the Franklin County Prosecuting Attorney's Office work closely with both the Anti-Terrorism Advisory Council (ATAC), formerly the ATTF, and the JTTF. As part of its role in the ATAC, the Prosecuting Attorney's Office coordinates local law enforcement efforts, handles pending cases dealing with intelligence, and provides referrals to the task force for investigation. The ATAC was formed in early 2002 as a joint venture of the U.S. Attorney's Office, the State Attorney General's Office, the Franklin County Prosecuting Attorney's Office, the Columbus Police Department, and the Franklin County Sheriff's Office and currently has more than 30 members.

Much of the ATAC's focus is on protecting the county's infrastructure and vulnerable targets; however, as a member, the Prosecuting Attorney's Office is responsible for assisting the Council in obtaining search warrants, issuing subpoenas, and gathering intelligence. Minor and/or precursor crimes that cannot be prosecuted federally are handled by the local prosecutor. The focus of the JTTF, and the Franklin County Prosecuting Attorney's Office involvement, is on information sharing.

The Bucks County District Attorney's Office also participates in the U.S. Attorney's ATAC. One prosecutor is assigned to the ATAC to consult with the U.S. Attorney's Office on terrorism prosecution. As a member of the ATAC, the District Attorney's Office is focused on obtaining information that can be shared with the general public. At the time of the study, no one from the District Attorney's Office had obtained a security clearance, and as such, they have not been called upon to provide more in-depth investigative assistance.

DEVELOPMENT AND USE OF INFORMATION SHARING NETWORKS

Perhaps the single greatest concern among policymakers and law enforcement agencies is access to timely and accurate information. Historically and generally speaking, information sharing at the local level between local justice officials has been sufficient, although some jurisdictions are better than others. On the other hand, information sharing between federal enforcement agencies and local agencies has been poor, and despite the best intentions of all involved, a recent Homeland Security Advisory Council report finds that there is much work to be done to ensure that the proper information is being exchanged between federal and local enforcement agencies.⁵⁰

Two of the offices studied by APRI (Franklin County and Bucks County) are part of an information system and have good relationships with the U.S. Attorney's Office. Much of the information shared comes from the local jurisdiction and is provided to the ATAC or JTTF. All of the jurisdictions studied receive terrorism alerts and regular communication through electronic mail servers and facsimile.

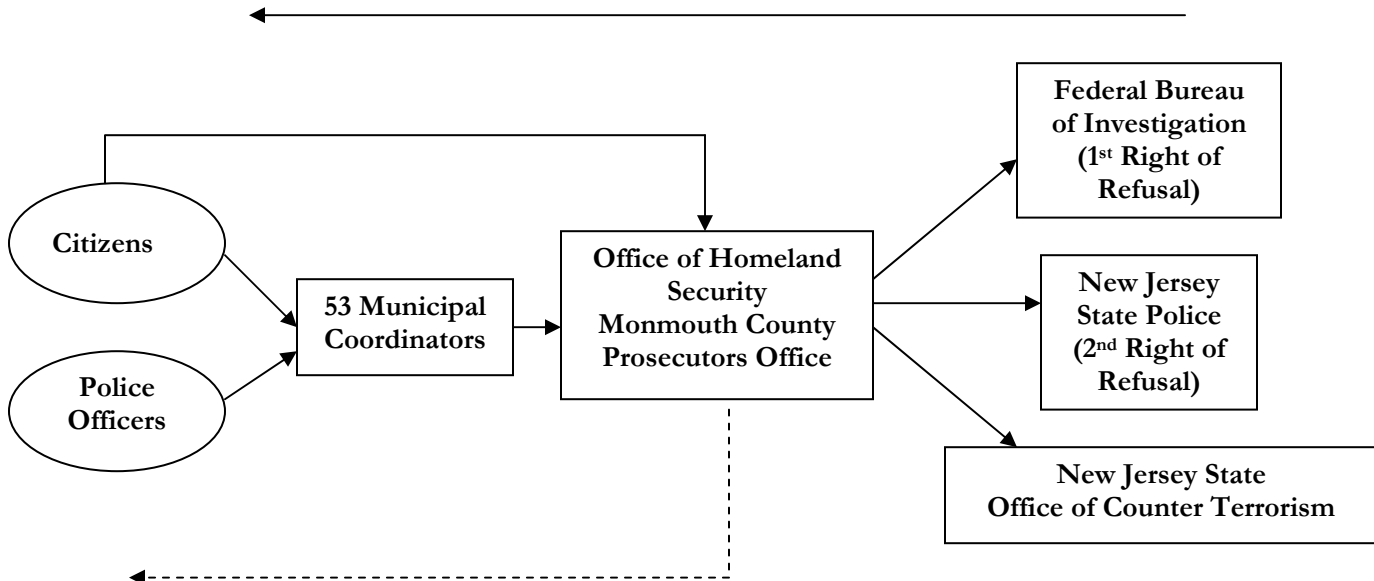
The information sharing networks in Monmouth County, Los Angeles County, and Queens County are extensive. The prosecutor's office in Monmouth County has based a significant portion of its terrorism efforts on information sharing. The County Prosecutor's Office operates as a clearinghouse of information, filtering intelligence data through local, state, and federal levels. As shown in Exhibit 5-2, information from citizens or municipal police officers goes first to the municipal coordinators who pass it to the Monmouth County Prosecutor's Office of Homeland Security (MCPOHS) coordinator. The MCPOHS coordinator reviews the information and passes it along to the New Jersey State Office of Counter Terrorism.

⁵⁰ Fiorill, Joe. "U.S. Panel Seeks Broad Information-Sharing Changes to Improve Anti-terrorism Efforts." Available http://www.nti.org/d_newswire/issues/2004_12_13.html#6C00626D. Retrieved December 14, 2004.

The information is also simultaneously forwarded to the FBI, which has the first right of refusal, and then to the New Jersey State Police. The MCPOHS will return any information that he receives to the municipal coordinators.

**EXHIBIT 5-2
MONMOUTH COUNTY INFORMATION NETWORK**

Any leads, requests for further investigations, or alerts from the FBI, NJ State Police, and/or the NJ Office of Counter-Terrorism are passed to the OHS and as permitted to municipal coordinators, police officers and citizens.



The OHS follows up with the municipal coordinator, officers, and citizens on all leads that have been submitted to the OHS.

Information provided to the New Jersey Office of Counter Terrorism is entered into a statewide database called MEMEX that can be cross-referenced against any similar data being submitted from other sources. MEMEX contains information on terrorist, gang, and organized crime activity throughout the state. This information can be cross-referenced with the County Prosecutor’s database, called MOSAIC. The MOSAIC system contains case-specific

information on all criminal offenses and allows for automatic cross-referencing of aliases, nicknames, names, crimes, dates, etc.

In addition to the comprehensive information network and information management systems, the Monmouth County Prosecutor's Office serves as a conduit of information provided by the FBI or state. The Coordinator reviews all alerts and disseminates information, as appropriate, to the municipal coordinators and local law enforcement.

In Los Angeles County and Queens County, much of the information sharing is done through the various task forces in which the prosecutors' offices participate. In both Los Angeles and Queens County, several prosecutors and investigators have secret and top-secret clearance and are able to receive critical information.

CREATION OF NEW ORGANIZATIONAL STRUCTURES AND POLICIES

All of the jurisdictions have implemented a specialized terrorism unit or designated personnel specifically for terrorism. The most significant organizational changes made to help them respond to terrorism were in the Los Angeles County District Attorney's Office, the Queens County District Attorney's Office, and the Monmouth County Prosecutor's Office. The organizational changes made in these offices also involved changes in policy/practice.

Because of the complex nature of terrorist groups and activities, the Los Angeles County District Attorney's Office designated three attorneys and two investigators in the organized crime division to work on terrorism issues and precursor crimes. As discussed earlier, the investigators are involved in case development and serve as liaisons between the prosecutor's office and other task forces. The investigator assigned to the JTTF is involved in case screening and processing in terms of obtaining search warrants, issuing subpoenas, etc. The prosecutors

assigned to terrorism conduct their own screening of cases and are responsible for any terrorism-related offense that might be prosecuted locally. They are also responsible for prosecuting money laundering, counterfeit merchandise, fraud cases, and other precursor crimes.

Like Los Angeles, the Queens County District Attorney has also designated staff to work exclusively on terrorism issues. Several investigators from the District Attorney's Office have been detailed to various task forces and cross-deputized as U.S. Customs agents. In addition, there are specialized attorneys who prosecute precursor crimes.

A key element of the Queens County District Attorney's Office strategy related to policy and practice focuses on training. The District Attorney's Office has focused on both internal and external training as well as obtaining training for its staff. Internally, the terrorism prosecutors and investigators have provided guidance to other line personnel on precursor crimes to ensure that the screening process used officewide incorporates knowledge about what to look for to indicate a terrorism connection. Externally, the prosecutor's office has provided informal training to the judiciary and the defense bar on the disposition of precursor crimes and why the District Attorney's Office is pursuing these crimes so vehemently. The Queens County District Attorney's Office has also trained other prosecutors' offices in the state on how to develop cases involving fraudulent identification documents. Finally, the Kennedy Airport Management Committee asked the District Attorney's Office to train the airport's upper management and executive on how to recognize forged identification documents in an effort to protect air cargo, the airport, and passengers.

One of the most innovative organizational changes occurred in Monmouth County, New Jersey. The first change occurred in 2002, when the County Prosecutor established an Office of Homeland Security, Research, and Planning within the investigative division of the office. The

mission of the new office is “to develop and implement strategies which will help recognize, prepare for, protect against, prevent, respond to, and recover from terrorist attacks within the County of Monmouth or in other areas affecting Monmouth County.”⁵¹ Within the Office of Homeland Security, the County Prosecutor created three units:

1. Research and Planning Squad, responsible for filtering information via the Internet and electronic fax system between 53 municipalities in the county and state and federal authorities. The Squad is also responsible for gathering intelligence information from the military; federal, state, and local law enforcement; other government agencies; and private entities in the county.
2. Office of Emergency Management (OEM), which was originally a stand-alone county agency. In planning the response to terrorism, the County Prosecutor and the head of the OEM felt that emergency management would be better positioned in the prosecutor’s office to “coordinate resources, manpower, equipment, and financial assistance from county, state, and federal agencies in the event of a catastrophic event.”⁵²
3. Monmouth County Emergency Response Team (MOCERT), which consists of personnel trained to respond to emergency situations. The MOCERT works to combine SWAT teams in the county into five multi-jurisdictional teams that will work directly with the County Prosecutor’s Office of Homeland Security.

In total, the Office of Homeland Security employs one detective, two agents, and one director full-time. The office focuses solely on homeland security issues; staff are not assigned any other duties, with the exception of staff in the OEM.

The Monmouth County Prosecutor’s Office has also instituted a four-hour mandatory training program for all employees of the office on terrorism as well as for all new employees. Within the OHS, staff have received training from the FBI on terrorist groups, terrorist tactics, and other characteristics of terrorism. The OHS staff then provided training to all personnel in the prosecutor’s office on identifying potential terrorist connections in cases such as drugs or identity theft.

⁵¹ Monmouth County Prosecutor’s Division of Investigation General Order establishing the Office of Homeland Security, Research, and Planning. June 27, 2002. Number GO-09-2002.

⁵² <http://www.prosecutor.com.monmouth.nj.us/units/oem.htm>. Retrieved July 20, 2004

The OHS staff also provides training at the police academy and to others as requested by the New Jersey Office of Counter-Terrorism and the FBI. Finally, OHS provides training and holds seminars for hospitals, schools, and other community organizations on how to respond to terrorism and how to protect the community against terrorism.

COORDINATION WITH EMERGENCY MANAGEMENT AND OTHER FIRST RESPONDERS

Prosecutors have a long history of collaborating with local, state, and federal law enforcement agencies and other criminal justice agencies. The terrorist attacks of 9/11 changed not only the nature of law enforcement partnerships with other first responders such as fire departments and public health departments, but also changed how a few prosecutors view their relationship with other first responders.

The prosecutors' offices in Monmouth County and Bucks County both have developed working relationships with emergency services and other first responders in their response to homeland security. As discussed above, the Monmouth County Prosecutor's Office has taken the most dramatic step by placing the county's OEM under the auspices of the prosecutor's office. Together, the prosecutor and the OEM conduct training for first responders on hazardous materials and weapons of mass destruction. The OEM regularly drills first responders and critiques their efforts to improve response times in the event of a disaster.

The OEM has also included a prosecutor and the OHS coordinator in the development of the Emergency Operations Plan, which describes roles and responsibilities of various entities in responding to an emergency. The development of the operations plan is a multi-agency effort and includes representatives from the county Department of Public Health, the military, schools,

hospitals, the Sheriff's Department, and representatives of the 53 municipal governments and law enforcement.

The Bucks County District Attorney's Office also works with the county Emergency Management Department and the county Major Incident Response Team (MIRT). The Emergency Management Department provides training for local law enforcement and prosecutors and other first responders on how to respond to a terrorist event. The Department also works with the District Attorney's Office to educate the public on how to respond to an attack. The MIRT covers five counties in the area and provides "train-the trainer" sessions on hazardous materials and coordinates the response to hazmat incidents.

It is clear from the experiences in these five jurisdictions and the lengths to which the prosecutors' office have gone to respond to homeland security that the local prosecutor's role can be quite varied. It is important to note that all five of the offices studied initiated their homeland security responses using their existing resources. Yet in each office, significant changes occurred that placed them in a better position to respond to terrorism, whether by assigning staff to a federal task force or creating and maintaining a computerized management information system. Nevertheless, all of the prosecutors' offices studied felt that funding, access to training, and access to information were challenges that need to be recognized and addressed – a theme that was consistent among all prosecutors who responded to the survey.

CHAPTER 6

SUMMARY OF FINDINGS

Efforts to protect the homeland and to identify and punish terrorists are clearly multi-faceted and involve the coordinated work of all levels of government. As the nation works to put together a comprehensive response, a number of questions become evident with regard to the role of the local prosecutor—questions that this study sought to answer.

First and foremost, the states' response to 9/11 through their enactment of anti-terrorism legislation undoubtedly has implications for local prosecutors who are charged with enforcing state laws. What are the new or changed responsibilities given to prosecutors under this new or amended legislation? Overall, prosecutors' primary responsibilities have not been affected by the legislation, but in 45 states, prosecutors now have additional criminal offenses to prosecute or investigate. Many of these new offenses focus on threats, hoaxes, and false reports as well as actual incidents of terrorism.

More significantly, 14 states passed new or amended legislation, establishing or facilitating new task forces or departments to address homeland security. For local prosecutors, involvement in these state or local task forces is an added responsibility. In fact, 59 percent of the offices surveyed reported serving on an anti-terrorism task force in response to the new legislation. The prosecutor's level of involvement in these task forces varies, as evidenced by the experiences of the five case study offices. For some offices, participation in task forces falls on the prosecutor's investigative staff; whereas for others, this responsibility falls to an assistant prosecutor or the chief prosecutor.

In terms of other responsibilities affected by the new or amended legislation, prosecutors report an increased emphasis on precursor crimes such as identity theft, fraudulent documents,

and money laundering. The increased emphasis has come in the form of more intensive investigation to determine if there is a connection to terrorism and enforcement programs such as those undertaken by the Queens County and the Los Angeles County District Attorneys' Offices.

The second question that arises from the study is how prosecutors have implemented their new or changed responsibilities at the local level and the extent to which the responsibilities have affected local priorities. Most prosecutors (71%) report that they are involved with homeland security at the local, state, and/or federal level. At the state and local levels, prosecutors have changed their process for screening, investigating, and prosecuting certain criminal offenses (i.e., precursor crimes) and have placed more emphasis on intelligence gathering. Additionally, prosecutors have implemented information sharing networks or become part of federal information sharing networks.

One of the more significant changes that could be made by local prosecutors to implement their new or changed responsibilities is the creation of a specialized unit or designation of specialized prosecutors to handle cases related to terrorism. However, few offices have done so – only 15 percent. This may be due in part to the fact that most prosecutors do not view their responsibilities as having been significantly affected. Moreover, many of the prosecutors' offices already have a specialized unit (such as organized crime, economic crime, etc.), which already handled precursor crimes.

The third question to be answered focuses on the challenges local prosecutors face with regards to integrating local, state, and federal prosecution of terrorism-related acts and how these challenges are overcome. APRI's study found that very few prosecutors had experience in this area. In fact, only 16 percent of the offices surveyed had prosecuted a terrorism-related case. Among those offices that did have experience, the most significant challenge faced was in the

area of investigations. In terms of investigative challenges, prosecutors cited multi-jurisdictional investigations, evidence collection, intelligence gathering, and information sharing with federal agencies as the most significant.

To overcome the investigative and multi-jurisdictional challenges, most prosecutors became involved in task forces and increased their efforts to share and obtain information. In the case study sites, the prosecutors report instituting regular meetings with the U.S. Attorneys' Offices to discuss cases and make decisions about prosecution. More than half also indicated that they had used training for law enforcement to help overcome problems with investigations as well as the multi-jurisdictional issues they faced.

The final question to be addressed deals with additional challenges facing prosecutors in their efforts to respond to terrorism. Among the most frequently cited were case processing issues, such as obtaining resources to conduct more intense screening and investigative work, as well as the volume of work involved with terrorism-related cases. Additionally, loopholes in the legislation, discovery issues, legal challenges, and judicial interpretation of the statutes were listed as challenges by nearly a third of the prosecutors. As with the other challenges faced, prosecutors were most likely to use training, increased information sharing, and task forces to address their case processing issues.

In general, the most significant finding of the study was that only a few prosecutors had developed a well-defined role for their office in responding to terrorism. This may be due in part to the fact that many prosecutors had not used the new or amended legislation as of one year ago when the survey was administered. Until prosecutors have had the opportunity to gain experience with the new/amended legislation, it would be premature to draw conclusions about the utility of the new or amended legislation. However, as more prosecutors use the legislation it

will be important to further study whether or not the various statutes are lacking elements deemed critical by prosecutors to help them respond to terrorism.

Another recurring theme throughout the findings deals with information sharing. Although the majority of prosecutors view this as a critical element of a terrorism response, most also felt that information sharing was more of a “one-way” street and a significant challenge to be addressed. Clearly, the information generated at the local level is vital for federal anti-terrorism efforts, but as prosecutors have more opportunity to use their statutes, particularly for precursor crimes, information at the federal level will be vital to local prosecutors in helping to establish links. Further research is needed to fully explore the challenges of information sharing and strategies for its improvement.

Finally, the survey findings and the results of the case studies seem to indicate that defining the local prosecutor’s role in responding to terrorism will be evolutionary. The largest prosecutors’ offices in the country—those offices generally found in target-rich environments and most likely to have the resources to dedicate to homeland security—vary dramatically in the extent to which they are working to address terrorism. A few, as highlighted in this study, have initiated comprehensive and innovative anti-terrorism strategies with few resources and little access to specialized training. As these experiences are shared, and as more prosecutors have an opportunity to use their new/amended statutes, it is believed that more prosecutors will begin to define their roles.

APPENDIX A

STATUTORY MATRICES

**KEY ELEMENTS OF ANTI-TERRORISM STATUTES
PASSED IN RESPONSE TO SEPTEMBER 11, 2001
(SEPTEMBER 2001 THROUGH DECEMBER 2003)**

STATE	NEWLY CREATED CRIMINAL OFFENSES/LAW REGARDING ANTI-TERRORISM	ENHANCEMENTS TO EXISTING OFFENSES OR AMENDMENTS TO EXISTING LAW	ADDED RESPONSIBILITIES TO LOCAL PROSECUTORS	ENHANCEMENTS/CHANGES TO INTELLIGENCE GATHERING RESPONSIBILITIES AND CAPABILITIES
Alabama	Code of Ala. § 13A-10-152 Code of Ala. § 13A-10-153 Code of Ala. § 13A-10-154			
Alaska	Alaska Stat. § 11.46.475 Alaska Stat. § 11.56.807	Alaska Stat. § 11.41.100 (a) (4-5) Alaska Stat. § 11.46.480(a) Alaska Stat. § 11.46.480(b) Alaska Stat. § 11.46.482 (d) Alaska Stat. § 11.46.484(b) Alaska Stat. § 11.46.486 Alaska Stat. § 11.56.810(1)(D) Alaska Stat. § 11.56.810 (2) Alaska Stat. § 11.56.820(2)		
Arizona	A.R.S. § 13-2925 (A) (1&2) A.R.S. § 13-2925 (B) A.R.S. § 13-2925 (C)	A.R.S. § 13-107(A) A.R.S. § 13-1105(A)(2) A.R.S. § 13-2301(C)(8) A.R.S. § 13-2308.01(A)(5) A.R.S. § 13-2308.01(A)(6)(a-g) A.R.S. § 13-2308.01(A)(4) A.R.S. § 13-2317(A)(2) A.R.S. § 13-2317(B) A.R.S. § 13-2317(C) A.R.S. § 13-2317(D) A.R.S. § 13-2317 (E) A.R.S. § 13-2512(B) A.R.S. § 13-3012(10) A.R.S. § 13-3102(A)(13) A.R.S. § 13-3102(A)(15) A.R.S. § 13-3704		A.R.S. § 13-3012(10)
Arkansas				
California	Cal Pen Code § 422.1 Cal Pen Code § 11418.1	Cal Pen Code § 189 Cal Pen Code § 296 Cal Pen Code § 667.5 Cal Pen Code § 787 Cal Pen Code § 11417(a)(1) Cal Pen Code § 11418(b)(2)		Cal Pen Code § 296

		Cal Pen Code § 11418(3)&(4) Cal Pen Code § 11418(d)(2) Cal Pen Code § 11419(a) Cal Pen Code § 1192.7		
Colorado		C.R.S. § 18-1.3-1201		
Connecticut	Conn. Gen. Stat. § 53-209a Conn. Gen. Stat. § 53a-165aa Conn. Gen. Stat. § 53a-180aa Conn. Gen. Stat. § 53a-300 Conn. Gen. Stat. § 53a-301 Conn. Gen. Stat. § 53a-302 Conn. Gen. Stat. § 53a-303 Conn. Gen. Stat. § 53a-304	Conn. Gen. Stat. § 53a-61aa Conn. Gen. Stat. § 53a-62 Conn. Gen. Stat. § 53a-180 Conn. Gen. Stat. § 54-41b		Conn. Gen. Stat. § 54-41b
Delaware		11 Del. C. 621(a)(3) 11 Del. C. 621(b) 11 Del. C. 1245		
District of Columbia ¹				
Florida	Fla. Stat. § 92.605 Fla. Stat. § 775.30 Fla. Stat. § 775.31 Fla. Stat. § 860.065	Fla. Stat. § 322.212 (1) (d) Fla. Stat. § 782.04 Fla. Stat. § 859.01 Fla. Stat. § 790.163 Fla. Stat. § 790.165 Fla. Stat. § 790.166 Fla. Stat. § 934.07(1)(a) Fla. Stat. § 934.07(2)(a) Fla. Stat. § 934.09(7)(a)(1) Fla. Stat. § 934.08(1)(B) Fla. Stat. § 934.22(2)(f)(3) Fla. Stat. § 934.22(3)(a)(4) Fla. Stat. § 937.07		Fla. Stat. § 92.605 Fla. Stat. § 934.07(1)(a) Fla. Stat. § 934.07(2)(a) Fla. Stat. § 934.09(7)(a)(1) Fla. Stat. § 934.08(1)(B) Fla. Stat. § 934.22(2)(f)(3) Fla. Stat. § 934.22(3)(a)(4) Fla. Stat. § 937.07
Georgia	O.C.G.A. § 16-4-10(a) O.C.G.A. § 16-4-10(b) O.C.G.A. § 16-12-125(a) O.C.G.A. § 16-12-126(a)(b) O.C.G.A. § 16-12-127 O.C.G.A. § 16-12-128	O.C.G.A. § 16-10-28(b) O.C.G.A. § 16-10-28(c) O.C.G.A. § 16-11-37(b)(3) O.C.G.A. § 16-11-37(a) O.C.G.A. § 16-11-37(d) O.C.G.A. § 16-11-37(c) O.C.G.A. § 16-11-64 O.C.G.A. § 16-11-66.1 O.C.G.A. § 16-12-123(a)(1)(A-C) O.C.G.A. § 16-12-123(b) O.C.G.A. § 16-14-3(8)(B)		O.C.G.A. § 16-11-64 O.C.G.A. § 16-11-66.1
Hawaii				
Idaho	Idaho Code § 18-3322 Idaho Code § 18-8106	Idaho Code § 18-4003 Idaho Code § 18-7803 Idaho Code § 18-8102		

		Cal Pen Code § 11418(3)&(4) Cal Pen Code § 11418(d)(2) Cal Pen Code § 11419(a) Cal Pen Code § 1192.7		
Colorado		C.R.S. § 18-1.3-1201		
Connecticut	Conn. Gen. Stat. § 53-209a Conn. Gen. Stat. § 53a-165aa Conn. Gen. Stat. § 53a-180aa Conn. Gen. Stat. § 53a-300 Conn. Gen. Stat. § 53a-301 Conn. Gen. Stat. § 53a-302 Conn. Gen. Stat. § 53a-303 Conn. Gen. Stat. § 53a-304	Conn. Gen. Stat. § 53a-61aa Conn. Gen. Stat. § 53a-62 Conn. Gen. Stat. § 53a-180 Conn. Gen. Stat. § 54-41b		Conn. Gen. Stat. § 54-41b
Delaware		11 Del. C. 621(a)(3) 11 Del. C. 621(b) 11 Del. C. 1245		
District of Columbia ¹				
Florida	Fla. Stat. § 92.605 Fla. Stat. § 775.30 Fla. Stat. § 775.31 Fla. Stat. § 860.065	Fla. Stat. § 322.212 (1) (d) Fla. Stat. § 782.04 Fla. Stat. § 859.01 Fla. Stat. § 790.163 Fla. Stat. § 790.165 Fla. Stat. § 790.166 Fla. Stat. § 934.07(1)(a) Fla. Stat. § 934.07(2)(a) Fla. Stat. § 934.09(7)(a)(1) Fla. Stat. § 934.08(1)(B) Fla. Stat. § 934.22(2)(f)(3) Fla. Stat. § 934.22(3)(a)(4) Fla. Stat. § 937.07		Fla. Stat. § 92.605 Fla. Stat. § 934.07(1)(a) Fla. Stat. § 934.07(2)(a) Fla. Stat. § 934.09(7)(a)(1) Fla. Stat. § 934.08(1)(B) Fla. Stat. § 934.22(2)(f)(3) Fla. Stat. § 934.22(3)(a)(4) Fla. Stat. § 937.07
Georgia	O.C.G.A. § 16-4-10(a) O.C.G.A. § 16-4-10(b) O.C.G.A. § 16-12-125(a) O.C.G.A. § 16-12-126(a)(b) O.C.G.A. § 16-12-127 O.C.G.A. § 16-12-128	O.C.G.A. § 16-10-28(b) O.C.G.A. § 16-10-28(c) O.C.G.A. § 16-11-37(b)(3) O.C.G.A. § 16-11-37(a) O.C.G.A. § 16-11-37(d) O.C.G.A. § 16-11-37(c) O.C.G.A. § 16-11-64 O.C.G.A. § 16-11-66.1 O.C.G.A. § 16-12-123(a)(1)(A-C) O.C.G.A. § 16-12-123(b) O.C.G.A. § 16-14-3(8)(B)		O.C.G.A. § 16-11-64 O.C.G.A. § 16-11-66.1
Hawaii				
Idaho	Idaho Code § 18-3322 Idaho Code § 18-8106	Idaho Code § 18-4003 Idaho Code § 18-7803 Idaho Code § 18-8102		

		Idaho Code § 18-8103		
Illinois	720 ILCS 5/16 G-30 720 ILCS 5/29 D-15 720 ILCS 5/29 D-20 720 ILCS 5/29 D-25 720 ILCS 5/29 D-30(a) 720 ILCS 5/29 D-35(a) 720 ILCS 5/29 D-35(b) 720 ILCS 5/29 D-45 720 ILCS 5/29 D-65	720 ILCS 5/16G-10 720 ILCS 5/16G-15 725 ILCS 215/2(a) 720 ILCS 5/29B-1 720 ILCS 545/7 730 ILCS 5/5-4-3 735 ILCS 5/8-802 725 ILCS 215/2(a) 730 ILCS 5/3-6-3(a)(2)(i) 720 ILCS 5/9-1 720 ILCS 5/14-3(g-5) 725 ILCS 5/108-4(B) 725 ILCS 5/108A-6(a) 725 ILCS 5/108B-3(b)		730 ILCS 5/5-4-3 (2003) 720 ILCS 5/14-3(g-5) (2003) 725 ILCS 5/108-4(B) (2003) 725 ILCS 5/108 A-6(a) (2003) 725 ILCS 5/108 B-3(b) (2003)
Indiana	Burns Ind. Code Ann. 35-38-1-2.5 Burns Ind. Code Ann. 35-43-5-3.6 Burns Ind. Code Ann. 35-47.5-5-6 Burns Ind. Code Ann. 35-47-12-3	Burns Ind. Code Ann. 35-43-5-1 Burns Ind. Code Ann. 35-43-5-3.5 Burns Ind. Code Ann. 35-44-2-2 Burns Ind. Code Ann. 35-45-1-3 Burns Ind. Code Ann. 35-45-15-5 Burns Ind. Code Ann. 35-47-12-2		
Iowa	Iowa Code 708A.3 Iowa Code 708A.4 Iowa Code 708A.1A Iowa Code 708A.5 Iowa Code 126.24 Iowa Code 715A.10			
Kansas	K.S.A. § 21-4221 K.S.A. § 21-4222	K.S.A. 2002 Supp. 21-3436 K.S.A. 2003 Supp. 21-3419		
Kentucky	KRS § 508(1)(a)&(b) KRS § 527			
Louisiana	La. R.S. 14:128.2 La. R.S. 14:128.1 La. R.S. 14:100.13 La. R.S. 14:100.14 La. R.S. 14:100.12 (1) La. R.S. 14:67.16 (G) La. R.S. 14:67.22	La. R.S. 15:1308 La. R.S. 14:30 (A)(1)		La. R.S. 15:1308
Maine	17 MRS 803-A	- 17 MRS 208(b)(1)		
Maryland	Md. Criminal Law Code Ann. § 17-601 Md. Criminal Law Code Ann. § 16-813.1 Md. Health – General Code Ann. § 17-603	Md. Criminal Law Code Ann. § 8-301 Md. Criminal Law Code Ann. § 8-301(b) Md. Courts and Judicial Proceedings Code Ann. § 10-408		Md. Criminal Law Code Ann. § 10-408

Massachusetts	ALM GL ch. 266 § 102C ALM GL ch. 269 § 12F	ALM GL ch. 269 § 14(b)(1) ALM GL ch. 269 § 14(b)(2) ALM GL ch. 269 § 14(c) ALM GL ch. 266 § 102A1/2(a) & (b)		
Michigan	MCLS § 750.159g MCLS § 750.543K(1)(a)&(b) MCLS § 750.543r MCLS § 750.543m MCLS § 750.543f MCLS § 750.543p MCLS § 750.543h	MCLS § 257.310 MCLS § 257.310(8) MCLS § 257.310(9) MCLS § 480.17c (2) MCLS § 750.159g MCLS § 750.436		
Minnesota	Minn. Stat. § 609.712 Subd. 3 (2002) Minn. Stat. § 609.712 Subd. 4 (2002) Minn. Stat. § 609.712 Subd. 5 (2002) Minn. Stat. § 609.712 Subd. 2 (2002) Minn. Stat. § 609.594 Subd. 2 (2002) Minn. Stat. § 609.6055 Subd. 2 (2002) Minn. Stat. § 609.119 (1) (2002)	Minn. Stat. § 609.185(a)(7) (2002)		
Mississippi	Miss. Code Ann. § 97-27-12 Miss. Code Ann. § 97-45-19	Miss. Code Ann. § 97-27-11 Miss. Code Ann. § 97-37-21 Miss. Code Ann. § 97-37-25 Miss. Code Ann. § 97-45-3		
Missouri	§ 304.373 R.S. Mo. § 569.072 R.S. Mo. § 576.080 R.S. Mo. § 578.008 R.S. Mo.	§ 574.105 R.S. Mo. § 570.030(3)(3)(1)&(m) R.S. Mo. § 571.020(1)(2) R.S. Mo. § 574.115 R.S. Mo.		
Montana				
Nebraska	R.R.S. Neb. § 29-1819.02 ² R.R.S. Neb. § 29-1819.03 ³	R.R.S. Neb. § 28-101 R.R.S. Neb. § 28-519 R.R.S. Neb. § 28-1213(7)(a) R.R.S. Neb. § 28-1221		
Nevada	NRS § 202.445 NRS § 239C.030 NRS § 239C.210 NRS § 239C.270 NRS § 205.605 NRS § 205.606	NRS § 171.080 NRS § 179.121 NRS § 200.030 NRS § 200.033 NRS § 202.446 NRS § 202.448 NRS § 205.465 NRS § 207.345 NRS § 207.360 NRS § 483.530		
New Hampshire	RSA 638:29 RSA 644:2-a	RSA 106-H:13(II) RSA 539 RSA 631:4 RSA 631:4(D)(e) RSA 631:4(D)(f)		

		RSA 644:3(I) RSA 644:3(II) RSA 644:3(III)		
New Jersey	N.J. Stat. § 2C:38-2 N.J. Stat. § 2C:38-3(a)(1&2) N.J. Stat. § 2C:38-3(b) N.J. Stat. § 2C:38-4 N.J. Stat. § 2C:38-5	N.J. Stat. § 2A:156A-8 N.J. Stat. § 2C:1-6 N.J. Stat. § 2C:11-3(a)(3) N.J. Stat. § 2C:11-3(c)&(e)(4) N.J. Stat. § 2C:12-3 N.J. Stat. § 2C:17-2 N.J. Stat. § 2C:17-7 N.J. Stat. § 2C:21-25(e) N.J. Stat. § 2C:33-3 N.J. Stat. § 2C:38-5 N.J. Stat. § 2C:41-1 N.J. Stat. § 2C:43-7.2		N.J. Stat. § 2A:156 A-8
New Mexico				
New York	NY CLS CPL § 490.10 NY CLS CPL § 490.20 NY CLS CPL § 490.25 NY CLS CPL § 490.35	NY CLS CPL § 125.27 NY CLS CPL § 240.50 NY CLS CPL § 240.55 NY CLS CPL § 240.60 NY CLS CPL § 700.051(8)		NY CLS CPL § 700.051(8)
North Carolina	N.C. Gen. Stat. § 14-288.21 N.C. Gen. Stat. § 14-288.22 N.C. Gen. Stat. § 14-288.23 N.C. Gen. Stat. § 14-288.24 (a&b)	N.C. Gen. Stat. § 14-17		
North Dakota		N.D. Cent. Code § 12.1-06.1-089		
Ohio	Ohio Code § 2909.22 (A) Ohio Code § 2927.24 (C)(1&2) Ohio Code § 2909.23 Ohio Code § 2909.24 Ohio Code § 2917.33(A) Ohio Code § 3701.23 Ohio Code § 3701.232 (1)	Ohio Code § 2933.51 to 2933.66 Ohio Code § 2927.24 (B)(1&2) Ohio Code § 2917.31(A)(6-9) Ohio Code § 2917.32 Ohio Code § 2917.31(E)(3) Ohio Code § 3701.352 Ohio Code § 3707.99 Ohio Code § 2921.32 Ohio Code § 3701.99 Ohio Code § 2903.01(B) Ohio Code § 2929.04(A)(10)		
Oklahoma	21 Okl. St. § 1993(A) 21 Okl. St. § 1993(B) 21 Okl. St. § 1993(C) 21 Okl. St. § 1268.1(3) 21 Okl. St. § 1268.4 21 Okl. St. § 12681.1(2) 21 Okl. St. § 1268.2 21 Okl. St. § 1268.1 (4)	21 Okl. St. § 11-10(B) 21 Okl. St. § 11-10(A)		

	21 Okl. St. § 1268.5 21 Okl. St. § 1268.3 21 Okl. St. § 1268.6 (A)&(B) 21 Okl. St. § 1268.2			
Oregon		ORS § 807.500		
Pennsylvania	18 Pa. C.S. § 2716	18 Pa. C.S. § 2706(d) 18 Pa. C.S. § 2715 18 Pa. C.S. § 3302 18 Pa. C.S. § 4905 18 Pa. C.S. § 4906 18 Pa. C.S. § 5111 18 Pa. C.S. § 5516 18 Pa. C.S. § 5708		18 Pa. C.S. § 5708
Rhode Island		Section 11-49.1-2 R.I. Gen. Laws Section 11-49-1-3 R.I. Gen. Laws Section 30-15-3 of R.I. Gen. Laws		
South Carolina	S.C. Code Ann. § 16-23-715 S.C. Code Ann. § 17-30-70(A)(2)	S.C. Code Ann. § 14-7-1630(4) & (5) S.C. Code Ann. § 16-8-10(4) S.C. Code Ann. § 16-16-20 S.C. Code Ann. § 16-23-710(18) S.C. Code Ann. § 16-23-710(19) S.C. Code Ann. § 16-23-720(D) S.C. Code Ann. § 16-23-730 S.C. Code Ann. § 16-263-720(E)		S.C. Code Ann. § 17-30-70(A)(2)
South Dakota	S.D. Codified Laws § 22-14A-24 S.D. Codified Laws § 22-14A-25 S.D. Codified Laws § 22-8-12 S.D. Codified Laws § 22-30A-8.2 S.D. Codified Laws § 22-30A-8.4 S.D. Codified Laws § 22-30A-8.5			
Tennessee	Tenn. Code Ann. § 39-13-803(1) Tenn. Code Ann. § 39-13-804(a) Tenn. Code Ann. § 39-13-805 Tenn. Code Ann. § 39-13-806 Tenn. Code Ann. § 39-13-807 Tenn. Code Ann. § 39-13-808(a) Tenn. Code Ann. § 39-13-808(c)	Tenn. Code Ann. § 39-13-202(a)(2) Tenn. Code Ann. § 39-13-204(i)(15) Tenn. Code Ann. § 39-14-602 Tenn. Code Ann. § 40-35-114 Tenn. Code Ann. § 55-50-602		
Texas	Tex. Code Crim. Proc. Art. 13.28 Tex. Bus. & Com. Code § 35.58, subchapter D Tex. Health & Safety Code § 508.004	Tex. Penal Code § 19.03 Tex. Penal Code § 28.03 Tex. Penal Code § 22.07 Tex. Code Crim. Proc. Art. 18.20, Section 1		
Utah	Utah Code Ann. § 76-10-402 Utah Code Ann. § 76-10-403	Utah Code Ann. § 76-10-1602 Utah Code Ann. § 76-9-105 Utah Code Ann. § 75-5-107 Utah Code Ann. § 76-6-105 Utah Code Ann. § 76-5-202		

		Utah Code Ann. § 76-6-106 Utah Code Ann. § 76-8-419 Utah Code Ann. § 76-10-204		
Vermont	13 V.S.A. § 3502 13 V.S.A. § 3502(g) 13 V.S.A. § 3503			
Virginia	Va. Code Ann. § 18.2-152.3:1 Va. Code Ann. § 18.2-46.5 Va. Code Ann. § 18.2-46.6 Va. Code Ann. § 18.2-46.7 Va. Code Ann. § 18.2-52.1 Va. Code Ann. § 19.2-10.1 Va. Code Ann. § 46.2-328.1	Va. Code Ann. § 18.2-46.6(b) Va. Code Ann. § 18.2-46.6(c) Va. Code Ann. § 18.2-31 Va. Code Ann. § 19.2-61 Va. Code Ann. § 19.2-66 Va. Code Ann. § 19.2-70.2 Va. Code Ann. § 18.2-204.1 Va. Code Ann. § 46.2-341.16:1 Va. Code Ann. § 18.2-204.01 Va. Code Ann. § 18.2-186.3 Va. Code Ann. § 18.2-152.4 Va. Code Ann. § 18.2-152.6 Va. Code Ann. § 18.2-152.7 Va. Code Ann. § 46.2-105.2		Va. Code Ann. § 19.2-10.1
Washington	Rev. Code Wash. (ARCW) § 9A.56.320	Rev. Code Wash. (ARCW) § 9A.56.290 Rev. Code Wash. (ARCW) § 9A.60.020 Rev. Code Wash. (ARCW) § 9A.56.290 Rev. Code Wash. (ARCW) § 46.20.0921 Rev. Code Wash. (ARCW) § 9A.82.010		
West Virginia	W. Va. Code § 61-6-17 W. Va. Code § 61-6-24	W. Va. Code § 61-3-29		
Wisconsin	Wis. Stat. § 939.03(1)(e) Wis. Stat. § 939.23(1)(f) Wis. Stat. § 943.203 Wis. Stat. § 946.79 Wis. Stat. § 947.017	Wis. Stat. § 943.201(1)(a) Wis. Stat. § 943.201(2) Wis. Stat. § 946.82 (4) Wis. Stat. § 343.237 Wis. Stat. 970.03(11) Wis. Stat. 970.03(13) Wis. Stat. § 973.06		
Wyoming	Wyo. Stat. § 1-40-102			

¹ No research done on Council actions in the District of Columbia.

² This is a new law not an offense.

³ This is a new law not an offense.

Chart covers time period Sept. 2001-Oct. 2003

1 = New offenses/laws

2 = Enhancements/amendments to existing offenses (expands offense or enhances penalties)

3 = Added responsibilities for prosecutors

4 = Enhancements/changes to intelligence gathering

	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD
PRECURSOR CRIMES																				
Identity theft (includes use of false information regarding identification to obtain credit)									2				1, 2	1, 2				1		2
Counterfeit driver's licenses/or obtaining driver's license through use of false information)									2									1		1
Racketeering										2		2								
Money laundering			1, 2										2	2						
Providing material support for terrorism	1		2									1	1		1			1		
Obtaining information regarding a vulnerable target																				
Use of commercial transportation for commission of a felony									1											
Disorderly conduct at an airport														2						
Hazardous materials									2											1
Security offenses					2					1			2							
THREATS, HOAXES, FALSE REPORTS																				
Falsely reporting an incident (false warning)		2			2		1, 2	2	2	2			1	2						
Hoaxes		1	1		2		1			2				1						
Imitation bombs/weapons of mass destruction					1		1		2					1				1		
Hazardous substance		2																		
False exposure								2												
Terroristic threats (involving terrorism or weapons of mass destruction)		1, 2					1, 2			2			1		1	2	1			
ACTUAL INCIDENTS																				
Terrorism	1		2				1		1	1, 2		1	1		1			1		
Facilitating/furthering terrorism			2						1											
Poisoning food or water		2	2				1		2							1				
Weapons of mass destruction			2		2		1		2	2		1			1		1			
Causing a catastrophe																				1
Murder charges		2	2		2				2			2						2		
Elevated aggravated assault																				2
Computer crimes & using telecommunications to commit terrorism							1													
Using Internet or telecommunications to commit terrorism																				
Criminal mischief		1, 2	2				1													
Livestock/Agricultural terrorism														2		1, 2				
Conspiracy		2																		
Transportation security										2										
Damaging highways or bridges																				
INVESTIGATION and PROSECUTION																				
Asset forfeiture													1, 3							
DNA					2, 4								2							
Evidence									1				2							
Grand jury													2, 3							
Jurisdiction					1, 3															
Obstruction of terrorism prosecution	1		2				1						1		1			1		
Pleas & sentencing					2	2							2							
Statute of limitations			2										1							
Wiretaps/search warrants/subpoena duces tecum			2, 4				2, 4		1, 2, 4	2, 4			2, 4					2, 4		2, 4
Public health laws (violations)																				

Chart covers time period Sept. 2001-Oct. 2003

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- 4 = Enhancements/changes to intelligence gathering

	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	
PRECURSOR CRIMES																					
Identity theft (includes use of false information regarding identification to obtain credit)				1			2	1, 2	1								1, 2		2		
Counterfeit driver's licenses/or obtaining driver's license through use of false information)		2						2													
Racketeering		2						2		2											
Money laundering					2					2											
Providing material support for terrorism		1			1					1		1			1						
Obtaining information regarding a vulnerable target		1																			
Use of commercial transportation for commission of a felony																					
Disorderly conduct at an airport																					
Hazardous materials		1	1		1, 2												2				
Security offenses								1								1					
THREATS, HOAXES, FALSE REPORTS																					
Falsely reporting an incident (false warning)		1		2	2			2	2	2		2	1		1, 2			2			
Hoaxes	2								2	2			1			1				2	
Imitation bombs/weapons of mass destruction			1				2								1			2			
Hazardous substance																					
False exposure				1																	
Terroristic threats (involving terrorism or weapons of mass destruction)	2		1		2				2	2		1			1			2		2	
ACTUAL INCIDENTS																					
Terrorism		1						1		1		1			1	1				1	
Facilitating/furthering terrorism			1					1							1						
Poisoning food or water		2			1										2						
Weapons of mass destruction	1		1	2			2	2	1	1			1		1	1		1	2	1, 2	
Causing a catastrophe										2								2			
Murder charges			2					2		2		2	2		2	1					
Elevated aggravated assault																					
Computer crimes & using telecommunications to commit terrorism				1, 2										2						2	
Using Internet or telecommunications to commit terrorism		1																			
Criminal mischief			1				2			2						2					
Livestock/Agricultural terrorism					1				1												
Conspiracy										2											
Transportation security	1																				
Damaging highways or bridges																					
INVESTIGATION and PROSECUTION																					
Asset forfeiture								2													
DNA			2																		
Evidence																					
Grand jury																				2	
Jurisdiction																					
Obstruction of terrorism prosecution		1								1		1			2					2	
Pleas & sentencing			2				1			2											
Statute of limitations								2		2											
Wiretaps/search warrants/subpoena duces tecum										2, 4		2, 4			2, 4			2, 4		1, 4	
Public health laws (violations)															1, 2						

Chart covers time period Sept. 2001-Oct. 2003

- 1 = New offenses/laws
- 2 = Enhancements/amendments to existing offenses (expands offense or enhances penalt
- 3 = Added responsibilities for prosecutors
- 4 = Enhancements/changes to intelligence gathering

	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
PRECURSOR CRIMES										
Identity theft (includes use of false information regarding identification to obtain credit)	1		1			2	1, 2		1, 2	
Counterfeit driver's licenses/or obtaining driver's license through use of false information)		2				1	2			
Racketeering				2			2		2	
Money laundering										
Providing material support for terrorism		1								
Obtaining information regarding a vulnerable target										
Use of commercial transportation for commission of a felony										
Disorderly conduct at an airport										
Hazardous materials						2				
Security offenses										
THREATS, HOAXES, FALSE REPORTS										
Falsely reporting an incident (false warning)				2				1		
Hoaxes					1			1		
Imitation bombs/weapons of mass destruction				2	1	2				
Hazardous substance										
False exposure										
Terroristic threats (involving terrorism or weapons of mass destruction)				2	1			1	1, 2	
ACTUAL INCIDENTS										
Terrorism	1	1				1				
Facilitating/furthering terrorism										
Poisoning food or water					1					
Weapons of mass destruction		1		1	1	1				
Causing a catastrophe				2						
Murder charges		2	2	2		2				
Elevated aggravated assault										
Computer crimes & using telecommunications to commit terrorism		2	2			1, 2				
Using internet or telecommunications to commit terrorism										
Criminal mischief				2				2		
Livestock/Agricultural terrorism			2		1	1				
Conspiracy										
Transportation security										
Damaging highways or bridges				2						
INVESTIGATION and PROSECUTION										
Asset forfeiture										
DNA										
Evidence									2	
Grand jury										
Jurisdiction										
Obstruction of terrorism prosecution										
Pleas & sentencing		2								
Statute of limitations										
Wiretaps/search warrants/subpoena duces tecum						1, 2, 4				
Public health laws (violations)			1							

**APPENDIX B
ADDITIONAL SURVEY DETAILS**

Office Changes Made in Response to New and/or Amended Anti-Terrorism Statutes

Type of Office Change	Percent
Participation on anti-terrorism task forces	59%
Coordination with the U.S. Attorney's Office	57%
Coordination and information sharing within the office	34%
No change	26%
Change in office policies/protocol	23%
More emphasis on intelligence gathering	23%
Change in how cases are assigned to prosecutors and investigators	13%
Increased community outreach activities	13%
Increased training requirements	13%
Developed new screening methods/criteria	10%
Created specialized terrorism/homeland security unit	10%
Prioritization of cases	10%
Increased funding stream	7%
More emphasis on crime prevention and analysis	3%
Other	3%

Crimes to Which the Office Has Assigned a Higher Priority

Type of Crime	Percent
Identity theft	36%
Counterfeit driver's license/identification	23%
Racketeering/money laundering	16%
High tech/computer crimes	14%
Security offenses	10%
Other	10%
Drug offenses	6%
Obtaining information about a vulnerable target	6%
Possessing hazardous materials	6%
Providing material support for terrorism	6%
Robbery/burglary/theft of services	1%

Agencies Represented on a Task Force

Agency	Percent
Federal Bureau of Investigation	69%
U.S. Attorney's Office	66%
Local Police/Sheriff's Office	66%
Bureau of Alcohol, Tobacco, Firearms & Explosives	57%
State Police/Highway Patrol	50%
Bureau of Immigration and Customs Enforcement	48%
Prosecutors from other jurisdictions	47%
Department of Homeland Security	45%
Drug Enforcement Administration	41%
U.S. Customs and Border Protection	38%
Fire Department and EMS	33%
State Attorney General	33%
U.S. Treasury Department	33%
U.S. Coast Guard	31%
Transportation Security Administration	26%
National Guard	24%
Federal Emergency Management Agency	22%
Public Health Department (local and/or state agency)	22%
Department of Public Transportation (local and/or state agency)	21%
Department of Public Works (local and/or state agency)	16%
Local hospitals	14%
Financial Institutions (e.g., banks)	12%
Other	12%

Multi-jurisdictional Issues and Challenges Encountered or Anticipate Encountering

Type of Challenge	Multi-jurisdictional Issues
Case processing issues*	69%
Investigation issues*	92%
Legal issues*	54%
Other issues**	35%

* Statistically significant ($p < 001$).

** Statistically significant ($p < .05$).