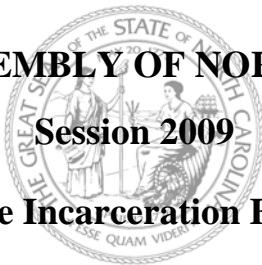


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1406 (First Edition)
SHORT TITLE: Make Terrorism a Crime.
SPONSOR(S): Representatives Neumann and Killian

Table with fiscal impact data for FY 2009-10 to FY 2013-14. Includes sections for Expenditures (Correction, Probation, Judicial), Additional Prison Beds, and Principal Department(s) Affected (Department of Correction; Judicial Branch). Effective date: December 1, 2009.

BILL SUMMARY:

Amends G.S. Chapter 14 by creating new Article 36C, entitled Terrorism, with new G.S. 14-288.25 through G.S. 14-288.29. Defines an act of terrorism as an act of violence committed with the intent to intimidate the civilian population at large or to influence, through intimidation, the conduct or activities of the government of the United States, a state, a county, or a city. New G.S. 14-288.26 makes it a Class B1 felony to commit or conspire to commit, or aid and abet the commission of an act of terrorism if the base offense of the act is a Class B1 or Class A felony. Also makes it a Class C felony to commit or conspire to commit or aid and abet the commission of an act of terrorism if the base offense is a Class B2 felony or a lesser offense. It is a Class D felony to solicit, invite, recruit encourage or otherwise cause or attempt to cause another to participate in act of terrorism. New G.S. 14-288.27 makes it a violation of new G.S. 14-288.26 to recklessly assist, or provide land or other resources or aid in the training of anyone intending to commit an act or terrorism. New G.S. 14-288.28 sets forth the factors that may constitute probable cause for search and seizure of the evidence of criminal activity related to unlawful paramilitary activity, acts of terrorism, or a continuing criminal enterprise in a closed community compound, which is defined in new G.S. 14-288.25(4) as a community with limited public access reputed to be bound together by a common purpose or ideology. New G.S. 14-288.29 provides that all real and personal property used, or intended for use, derived from or realized through a violation of new Article 36C is subject to legal seizure and forfeiture. Applies to offenses committed on or after December 1, 2009

Source: Bill Digest H.B. 1406 (04/09/0200).

ASSUMPTIONS AND METHODOLOGY:

General

The North Carolina Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Section 1. Section 14-288.25, Definitions, defines the following terms for purposes of Article 36C:

- “Act of violence” – (Per G.S. 14.7.7, Persons defined as violent habitual felons) An act that is a Class A through E felony (or a repealed, superseded,¹ or out-of-state offense substantially equivalent thereto).
- “Act of terrorism” – An act of violence committed with the intent to intimidate the civilian population or influence, through intimidation, the conduct or activities of the government of the United States or a state, county or city.
- “Base offense” – An act of violence committed with the intent required to commit an act of terrorism.

Article 36C creates three felony offenses in two statutes, G.S. 14-288.26, Acts of terrorism prohibited; penalty, and G.S. 14-288.27, Aiding and abetting training for acts of terrorism prohibited; penalty. As follows:

¹ Notwithstanding the definition of violent felony in G.S. 14-7.7(b), an offense that has been repealed or superseded at the time the act is committed would not appear to be subject to prosecution.

1. Class B1 Terrorism:

Article 36C makes it a Class B1 felony to commit, conspire to commit, or aid and abet the commission of an act of terrorism (G.S. 14-288.26(a)), or to recklessly assist, provide land or other resources for, or otherwise aid the training of one or more persons intending to commit an act of terrorism (G.S. 14-288.27), when the base offense is a Class A or B1 felony. The new offense is separate from, and does not merge with, the base offense.

The proposed offense creates a pool of potential offenders who are associated with a Class A or B1 felony offense, when one or more participant harbors the requisite *mens rea* to engage in an act of terrorism under G.S. 14-288.25. The proposed offense would cover some offenders who neither share nor know of the terroristic intent, reaching those who “recklessly” assist, provide land or resources for, or aid the training of a person harboring the required intention.

Qualifying “base offenses” are limited to first-degree murder (G.S. 14-17), first degree rape or sexual offense and incest (G.S. 14-27.2, 14-27.2A, 14-27.4, 14-27.4A, 14-27.7A, 14-178(b)) and offenses related to possession, manufacture, or use of a nuclear, biological or chemical weapons of mass destruction (G.S. 14-288.21, 14-288.22).

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed bill.* Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B1 felony offenders are required to receive an active sentence. In FY 2007-08, the average estimated time served for an offender convicted of a Class B1 felony offense was 261 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

In FY 2007/08, there were 100 Class A and 151 Class B1 convictions under Structured Sentencing.² *It is not known how many of these convictions also would be eligible for conviction of the proposed offense; as a result, the impact of this proposed change cannot be determined.* Since the offense class for the proposed offense would be the same as (if the base offense is a Class B1 felony) or one class lower (if the base offense is a Class A felony) than the base offense, convictions for the proposed offense would only have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. *Given the length of sentences for Class A (life without parole or death) and Class B1 (an average estimated time served of 261 months) convictions, there would be no short-term impact (i.e., within the ten-year projection period) for this proposed change.*

Inchoate murder and sex offenses (e.g., conspiracy, solicitation, attempt) are classified as Class B2 or below and, therefore, would not appear to qualify as a Class A or B1 “base offense” for purposes of the Class B1 terrorism offense. However, it is unclear how the law would be applied as to these offenses. Certain inchoate offenses related to weapons of mass destruction are Class B1 felonies under G.S. 14-288.21 and 14-288.22(b).

² In FY 2007/08, there was one violent habitual felon conviction, which requires an underlying Class A-E felony. Violent habitual felons are sentenced to life without parole and are not classified under Structured Sentencing. It is not clear how violent habitual felon convictions would be classified under the proposed bill.

2. Class C Terrorism.

Article 36C makes it a Class C felony to commit, conspire to commit, or aid and abet the commission of an act of terrorism (G.S. 14-288.26(b)), or to recklessly assist, provide land or other resources for, or otherwise aide the training of one or more persons intending to commit an act of terrorism (G.S. 14-288.27), when the base offense is any Class B2 through E felony. The new offense is separate from, and does not merge with, the base offense.

The proposed offense creates a pool of potential offenders who are associated with a Class B2 through E felony offense in which one or more participant harbors the requisite *mens rea* to engage in an act of terrorism under G.S. 14-288.25. The proposed offense would cover offenders who do not share, or know of, the terroristic intent, reaching even those who recklessly assist, provide land or resources for, or otherwise aid the training of a person harboring the required intention.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed bill.* Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2007/08 the average estimated time served for an offender convicted of a Class C offense was 95 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

Convictions under Structured Sentencing

As shown in Table 1, in FY 2007/08 there were 2,867 convictions under Structured Sentencing for Class B2 through E felonies. *It is not known how many of these convictions also would be eligible for conviction of the proposed offense; as a result, the impact of this proposed change cannot be determined.*

Table 1

Offense Class	FY 2007/08 Convictions for Structured Sentencing Offenses		Proposed: Estimated Time Served Assuming	
	# of Convictions	Average Estimated Time Served	Consecutive Sentencing (+95 months)	Concurrent/ Consolidated Sentencing
Class B2	297	190	285	190
Class C	449	100	195	100
Class D	833	71	166	95
Class E	1,288	30	125	95
TOTAL	2,867			

Note: This table excludes habitual felon convictions in which the underlying felony offense was a Class F through Class I felony. These data reflect all Class B2 through E felony convictions, including both complete and inchoate offenses within these offense classes.

For convictions under Structured Sentencing in which the offense class for the proposed offense would be a lower offense class (if the base offense is a Class B2 felony) or the same offense class (if the base offense is a Class C felony), convictions for the proposed offense would only have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense (*see* Table 1).

- If the sentence for the proposed offense is consecutive to a Class B2 felony, long-term impact (outside the ten-year projection period) would occur based on the average estimated time served of 190 months for Class B2 felons.
- If the sentence for the proposed offense is consecutive to a Class C felony, impact on the prison population would begin in year 8 of the projection period (based on the average estimated time served of 95 months for Class C felons) and would continue outside the ten-year projection period.
- For convictions under Structured Sentencing in which the offense class for the proposed offense would be a higher offense class (if the base offense is a Class D or E felony), convictions for the proposed offense would have impact on the prison population when the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Since an active sentence is not required for all Class E felony convictions (51% received an active sentence in FY 2007/08), additional impact would occur for any Class E convictions that would now receive an active sentence as required for all Class C convictions (with the exception of extraordinary mitigation).

These data do not include those inchoate forms of Class D and E felony offenses (*e.g.*, conspiracy, solicitation, attempt) which would be classified below Class E under G.S. Chapter 14, Articles 1 (Felonies and Misdemeanors) and 2 (Principals and Accessories). It appears that these inchoate offenses would not qualify as a “base offense” for an act of terrorism under the definition in G.S. 14-288.25. However, it is unclear how the law would be applied as to these offenses.

Convictions Outside of Structured Sentencing

Simply put, an act of terrorism is defined as an act of violence and an act of violence is defined as a Class A through E felony offense. The vast majority of offenses falling under this group of classifications are sentenced under Structured Sentencing (“the grid”). Drug trafficking is an act of violence that is not sentenced under Structured Sentencing, and thus does not use the sentencing ranges but instead each of the drug trafficking offenses has a sentence of a set length of active punishment.

As shown in Table 2, in FY 2007/08 there were 108 Class C through E convictions for drug trafficking offenses. It is not known how many of these convictions also would be eligible for conviction of the proposed offense; as a result, the impact of this proposed change cannot be determined.

Table 2

Offense Class	FY 2007/08 Convictions for Drug Trafficking Offenses		Proposed: Estimated Time Served Assuming	
	# of Convictions	Average Estimated Time Served	Consecutive Sentencing (+95 months)	Concurrent/Consolidated Sentencing
Class C	15	166	261	166
Class D	55	130	225	130
Class E	38	84	179	95
TOTAL	108			

Note: Drug trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h).

For Class C, D, and E convictions for drug trafficking offenses, long-term impact (*i.e.*, outside the ten-year projection period) on the prison population would occur when the sentence for the proposed offense would be served consecutive to the base offense (*see* Table 2). Impact on the prison population would begin in year 7 of the projection period when the sentence for the proposed offense would be concurrent/consolidated with the sentence for a Class E base offense (based on an average estimated time served of 84 months).

3. Soliciting, etc., Terrorism.

Subsection (c) of G.S. 14-288.26 would make it a Class D felony to solicit, invite, recruit, encourage, or otherwise cause or attempt to cause another person to participate in one or more acts of terrorism. Subsection (c) lacks the language providing that this new offense is separate from, and does not merge with, the base offense.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. In FY 2007/08, there were 3,118 convictions under Structured Sentencing for Class A through E felonies³ and 108 Class C through E convictions for drug trafficking offenses. However, it is not known how many offenders might be convicted and sentenced under the proposed bill for soliciting, inviting, recruiting, encouraging or otherwise causing or attempting to cause another person to participate in a Class A through E felony for the purpose of intimidating the civilian population or influencing government conduct or activities through intimidation. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2007/08 the average estimated time served for an offender convicted of a Class D offense was 71 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

Unless otherwise specified by statute, solicitation to commit a felony is punished two classes lower than the substantive offense (G.S. 14-2.6). The proposed Class D offense would thus increase the existing classification of solicitation to commit a Class C through E felony, if the offender harbored the requisite *mens rea*. The AOC typically does not have specific offense codes for solicitation offenses; as a result, the total number of persons convicted of solicitation to commit a Class A through E felony is not known.

G.S. 14-288.28, Probable cause for searching closed community compounds.

New G.S. 14-288.28 provides a list of circumstances which, either individually or in tandem, may provide probable cause for law enforcement to search all structures within a closed community compound (defined by statute), and to seize evidence of criminal activity related to unlawful paramilitary activity, acts of terrorism, and/or a continuing criminal enterprise. This section does not create any new crimes but may enlarge the instances in which criminal activity is discovered and prosecuted through search and seizure.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond*. Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

³ This number excludes habitual felon convictions in which the underlying felony offense was a Class F through Class I felony.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁴

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

This bill creates the potential for new Class B1, C, and D felony charges. *AOC cannot determine the number of charges that would result under this bill.* However, due to the level of the offenses, each new charge could substantially impact the court system. For each new charge, costs would vary depending on the level of the offense, on the mode of disposition of the case (trial, plea, etc.) and on indigency (Office of Indigent Defense – OIDS).

	Cost per Charge to the Court System	
	AOC	OIDS
Class B1 felony	\$3,222 to \$23,573	\$1,860
Class C felony	\$2,261 to \$17,218	\$1,245
Class D felony	\$1,594 to \$15,118	\$1,140

The low end of the AOC cost range is for a disposition by plea, the high end is for a disposition by trial. Indigent defense costs are based on the average hours billed for indigent defendants in an offense class, regardless of how the case was disposed, at \$75 per hour.

⁴ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Acts of Terrorism

This bill would create a separate offense to be charged if a person commits an A through E felony with the intent of intimidating the civilian population at large or to influence through intimidation the conduct of a government. The separate offense would also be charged for conspiracy, aiding and abetting, or adding and abetting training of persons intending to commit A through E felonies with the aforementioned intentions.

Base Felony	Charge	Additional Offense Charge
Class B1 or A	Class B1 or A	Class B1
Class B1 or A (conspiracy)	Class B2	Class B1
Class B2, C, D, or E	Class B2, C, D, or E	Class C
Class B2, C, D, or E (conspiracy)	Class C, D, E, or F	Class C

AOC cannot determine the number of current charges that would be considered acts of terrorism under this bill. An examination of some existing statutes that target similar activity reveals few charges:

- 14-49 Malicious use of an explosive: 11 Class D felony charges (injury to a person), no Class E felony charges (places of worship/government buildings) in 2008
- 14-288.21 through 288.24 Nuclear/biological/chemical weapon: One Class A or B1 felony charge (unlawful use), no charges for B1 felony offense (manufacture/possess/sell), no Class D felony charges (false report/perpetrate hoax) in 2008
- 14-17 Murder by means of nuclear, biological, or chemical weapon of mass destruction: Class A felony offense (charges unknown)

In addition to the offenses listed above, it is possible that some offenses currently charged as murder, kidnapping, assault on law enforcement personnel, or other violent crimes would qualify as acts of terrorism under this bill.

Soliciting/Inciting Acts of Terrorism

This bill would create a new Class D felony offense, also includes aiding and abetting training for acts of terrorism. *AOC cannot determine the number of new charges that would result from this provision.*

Probable Cause

This bill would set out factors for probable cause for search and seizure in a closed community compound. To the extent that the new provisions result in additional charges, there would be an impact on the court system. *The amount of the impact cannot be projected.*

Seizure of Property

This provision could result in new actions under G.S. 14-2.3(b) or other new court hearings to address property the defendant must forfeit. Any additional workload would impact the court system, but *the amount of the impact is unknown.*

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

In their analysis, AOC assumes that conspiracy to commit a base offense will be charged, as under current law, as one level lower than the underlying offense. AOC also assumes that the level of the additional charge for the act of terrorism will be based on the level of offense of the underlying offense, not on the

level of the conspiracy offense charge. Thus, conspiracy to commit a Class B1 felony would be charged as a Class B2 felony offense plus a Class B1 offense for an act of terror, and conspiracy to commit a Class E felony would be charged as a Class F felony plus a Class C felony for an act of terror. It is possible, however, that the proposed statute could be interpreted differently, resulting in different charges.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Danielle Seale, Denise Thomas

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: May 12, 2009



Signed Copy Located in the NCGA Principal Clerk's Offices