

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 149 (First Edition)

SHORT TITLE: Terrorism/State Offense.

SPONSOR(S): Representatives Killian and Torbett

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction					
Probation					
Judicial					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

FISCAL SUMMARY:

Since the proposed bill creates new offenses, 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.

The Administrative Office of the Courts (AOC) also cannot project the number of defendants who would be charged with the new offenses under the proposed legislation. The new charges would increase the complexity of the cases. In addition, the potential increase in prison time that could result from convictions under the new charges would be expected to increase the vigor of the defense.

BILL SUMMARY:

The proposed legislation amends G.S. Chapter 14 by creating new Article 36C, entitled Terrorism, enacting G.S. 14-288.25 through G.S. 14-288.29. The act 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. The act 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 an 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 of 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 within 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.

The proposed legislation is effective December 1, 2011, and applies to offenses committed on or after that date.

Source: Bill Digest H.B. 149 (02/21/2011).

ASSUMPTIONS AND METHODOLOGY:

General

The 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

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:

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 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 a Class A or B1 felony. Under the new G.S. 14-288.25, a base offense, or underlying offense, is defined as “an act of violence committed with the intent required to commit an act of terrorism.” 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* (“guilty mind”) 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 weapon 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, all Class B1 offenders are required to receive an active sentence. In FY 2009-10, the average estimated time served for an offender convicted of a Class B1 offense was 235 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

In FY 2009-10, there were 82 Class A and 127 Class B1 convictions under Structured Sentencing.¹ 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

¹ In FY 2009/10, there were four violent habitual felony convictions, 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 felony convictions would be classified under the proposed bill.

average estimated time served of 235 months) convictions, any impact resulting from consecutive sentences would be long-term (*i.e.*, outside the ten-year projection period).

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 expressly classified as Class B1 felonies under G.S. 14-288.21 and 14-288.22(b) and would thus be included in the qualifying base offenses discussed above.)

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* (“guilty mind”) 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 2009-10 the average estimated time served for an offender convicted of a Class C offense was 83 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 2009-10 there were 3,110 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 2009-10 Convictions for Structured Sentencing Offenses		Proposed: Estimated Time Served Assuming	
	# of Convictions	Average Estimated Time Served	Consecutive Sentencing (+83 months)	Concurrent/ Consolidated Sentencing
Class B2	292	195	278	195
Class C	430	100	183	100
Class D	963	70	153	83
Class E	1,425	29	112	83
TOTAL	3,110			

Note: This table excludes habitual felony 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 195 months for Class B2 felonies.
- If the sentence for the proposed offense is consecutive to a Class C felony, impact on the prison population would begin in year seven of the projection period (based on the average estimated time served of 83 months for Class C felonies) 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 2009-10), 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).

This data does not include 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 under the definition in G.S. 14-288.25. However, it is unclear how the law would be applied as to these offenses.

Convictions for Drug Trafficking Offenses

Drug trafficking offenses are included in this analysis, because 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. As shown in Table 2, in FY 2009-10 there were 94 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 2009-10 Convictions for Drug Trafficking Offenses		Proposed: Estimated Time Served Assuming	
	# of Convictions	Average Estimated Time Served	Consecutive Sentencing (+83 months)	Concurrent/ Consolidated Sentencing
Class C	27	163	246	163
Class D	28	120	203	120
Class E	39	76	159	83
TOTAL	94			

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 seven 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 76 months).

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 2009-10, there were 3,319 convictions under Structured Sentencing for Class A through E felonies² and 94 Class C through E convictions for drug trafficking offenses. However, it is not known how

² This number excludes habitual felony convictions in which the underlying felony offense was a Class F through Class I felony.

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 2009-10 the average estimated time served for an offender convicted of a Class D offense was 63 months. A nine-month period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies.

Generally, solicitation of a felony is punished two classes lower than the substantive offense (G.S. 14-2.6). The total number of persons convicted of solicitation to commit a Class A through E felony in FY 2009-10 is not known. It is also not known what portion of these offenders would meet the additional *mens rea* (“guilty mind”) requirement for acts of terrorism under G.S. 14-288.25.

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.

New Offenses:

The proposed legislation would create new Class B1, C, and D felony offenses. Many of these charges would apply to defendants already charged with other offenses.

In calendar year 2010, the following offenses were charged under Structured Sentencing:

Offense Class[^]	Defendants Charged[*]
A	374
B1	1,557
B2	412
A/B2 (murder - class not yet specified)	328
C	5,604
D	5,709
E	6,878
Total	20,862

[^]Some offenses are charged as different offense classes depending on a threshold value. If the data did not allow AOC to determine whether the offense class would fall in the A-E category, defendants charged with the offense were excluded from the table.

^{*}AOC data is charge and case-based, not defendant based. Defendants are approximated using same county, same name, and same offense. Thus, defendants charged with more than one offense may be duplicated.

Also in 2010, 4,806 defendants were charged with drug trafficking offenses. AOC cannot determine from the data what portion of these charges would fall under the A – E requirement set forth in the bill for a base offense.

AOC cannot project the number of defendants who would be charged with the new B1, C, or D offenses under the proposed legislation. The new charges would increase the complexity of the cases. In addition, the potential increase in prison time that could result from convictions under the new charges would be expected to increase the vigor of the defense. These factors would impact the time spent on these cases and court resources in terms of superior court judges, court reporters, deputy clerks, assistant district attorneys, and other DA office staff. AOC expects an increase in workload due to a more vigorous defense of an offender facing a longer prison sentence or, in the case of some Class E defendants, facing a mandatory active sentence under this bill.

Probable Cause for Searching Closed Community Compounds:

This proposal would not create any new crimes, but it has the potential to increase charges for existing crimes or for the new offenses proposed in this bill through the increased discovery and prosecution of certain criminal activity through search and seizure.

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; John Poteat

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

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