

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 149 (Second 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>
<b>EXPENDITURES:</b>					
Correction			<i>*See Assumptions and Methodology*</i>		
Probation			<i>*See Assumptions and Methodology*</i>		
Judicial			<i>*See Assumptions and Methodology*</i>		
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> 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 proposed offenses would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence lengths.

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 enacts new Article 2D, Terrorism, in G.S. Chapter 14. The act also defines an act of violence as murder in the first or second degree, manslaughter, any felony offense in G.S. Chapter 14 including an assault or use of violence or force, any felony offense including the threat or use of any explosive or incendiary device, or any offense including the threat or use of a nuclear, biological, or chemical weapon of mass destruction. The act specifies that continuing criminal enterprise (CCE) is defined in G.S. 14-7.20(c).

In addition, the proposed legislation makes a person guilty of the separate offense of terrorism if the person commits an act of violence or is engaged in a continuing criminal enterprise with the intent to: (1) intimidate the civilian population at large, or an identifiable group of the civilian population; or (2) influence, through intimidation the conduct or activities of the U.S. government, a state, or any local government. The act makes the offense of terrorism a felony punishable (1) one class higher than the underlying offense, except that a violation is a Class B1 felony if the underlying offense is a Class B1 or Class A felony; or (2) as a Class D felony if the violation is based on continuing criminal enterprise. The act specifies that each offense is separate from the underlying offense, and does not merge. Furthermore, the act makes a person who causes or attempts to cause another to participate in an act of terrorism guilty of a Class D felony.

The proposed legislation also provides that all real and personal property used, or intended for use, derived from, or realized through a violation of proposed Article 2D is subject to legal seizure and forfeiture.

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

*SOURCE: BILL DIGEST H.B. 149 (04/05/201)*

## **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**

**I. Subsection (c) of G.S. 14-50** makes terrorism a separate, companionate offense to the underlying act of violence, or continuing criminal enterprise (CCE). The offense of terrorism is generally classified one class higher<sup>1</sup> than the underlying act of violence. However, terrorism is

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<sup>1</sup> The bill does not specify how the “one class higher” provision applies when the act of violence is a Class B2 felony or a Class C felony. It is assumed that a Class B2 felony act of violence yields a Class B1 felony terrorism offense, and that a Class C felony act of violence yields a Class B2 felony terrorism offense.

classified as a Class B1 felony when the underlying act of violence is a Class A or B1 felony. If the underlying act is a CCE, the terrorism offense is a Class D felony.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of the bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

Under the definition of “act of violence” in G.S. 14-50.2(a), all Class A through B2 felonies as well as certain felonies from Class C through I would potentially support the new offense of terrorism (given the requisite *mens rea, or guilty mind*). Therefore, G.S. 14-50.2(c) in effect creates a new offense of terrorism for each felony Class between B1 and H, as follows:

### **Class B1 Terrorism**

Every felony within Class A, B1, or B2 committed with terroristic intent would support a separate Class B1 felony terrorism offense. The proposed offense thus creates a pool of potential offenders who commit Class A, B1, or B2 felony with terroristic intent.

There were 82 Class A, 127 Class B1, and 292 Class B2 felonies in FY 2009-10. However, it is not known how many of these offenders would qualify for the additional Class B1 felony; as a result, the impact of this proposed change cannot be determined. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

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

When the offense class for the proposed offense would be one class higher (if the base offense is a Class B2 felony), convictions for the proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class B1 felony (an average estimated time served of 235 months); however, impact would be outside the ten-year projection period based on the sentence lengths for Class B1 and Class B2 felonies.

### **Class B2 Terrorism**

The Class C felonies that would support a Class B2 felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence or force against another person; and (2) those including either the threat or use of an explosive or

incendiary device.<sup>2</sup> There were 430 convictions for Class C felonies in FY 2009-10.<sup>3</sup> However, it is not known how many of these convictions would qualify as acts of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class B2 felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class C felony (an average estimated time served of 88 months<sup>4</sup>). Impact on the prison population would begin in year eight of the projection period and would continue outside the ten-year projection period.

In addition, there were 27 Class C drug trafficking convictions in FY 2009-10.<sup>5</sup> It is not known how many of these offenders, if any, would qualify for the additional Class B2 felony. 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. Impact would occur as a result of the difference in sentence length for a Class B2 felony (an average estimated time served of 184 months) compared to a Class C drug trafficking felony (an average estimated time served of 162 months). For Class C drug trafficking convictions, the long-term impact on the prison population would occur outside the ten-year projections period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

### **Class C Terrorism**

The Class D felonies that would support a Class C felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence of force against another person; (2) those including either the threat or use of an explosive or incendiary device; and (3) those including the threatened use of a nuclear, biological, or chemical weapon of mass destruction.<sup>6</sup> There were 963 convictions for Class D felonies in FY 2009-10. It is not known how many of these convictions would qualify as acts of violence under G.S. 14-

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<sup>2</sup>Currently, no Class C felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 143-215.94X(c)(1).

<sup>3</sup> This number excludes habitual felony convictions in which the underlying felony offense was a Class F through I felony.

<sup>4</sup> *Ibid.*

<sup>5</sup> 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).

<sup>6</sup> Currently, no Class D felonies include as an element the actual use of a nuclear, biological or chemical weapon or mass destruction, as contemplated under G.S. 14-50.2(a). *See* G.S. 14-288.23, -288.24. It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* 14-88.

50.2(a) or were committed with the terroristic intent required to support the additional Class C felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class C felony (an average estimated time served of 88 months<sup>7</sup>) compared to a Class D felony (an average estimated time served of 63 months). Impact on the prison population would begin in year six of the projection period and would continue outside the ten-year projection period.

In addition, there were 28 Class D drug trafficking convictions in FY 2009-10.<sup>8</sup> It is not known how many of these offenders, if any, would qualify for the additional Class C felony. The proposed offense would have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. For Class D drug trafficking convictions (with an average estimated time served of 119 months) that are consecutive to the additional Class C felony sentence (with an average estimated time served of 88 months<sup>9</sup>), the impact on the prison population would begin in year ten of the projection period and would continue outside the ten-year projection period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

### **Class D Terrorism**

The Class E felonies that would support a Class D felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence of force against another person; and (2) those including either the threat or use of an explosive or incendiary device.<sup>10</sup> There were 1,425 convictions for Class E felonies in FY 2009-10. It is not known how many of these convictions would qualify as acts of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class E felony. Under Structured Sentencing, with the exception of extraordinary mitigation, offenders convicted of Class B1-D offenses are required to receive an active sentence; a period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

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 D convictions (with the exception of extraordinary mitigation). The proposed offense also would have impact on the prison population

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<sup>7</sup>This average excludes habitual felony convictions in which the underlying felony offense was a Class F through I felony.

<sup>8</sup>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).

<sup>9</sup>This average excludes habitual felony convictions in which the underlying felony offense was Class F through I.

<sup>10</sup>Currently, no Class E felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 14-32.2(b)(2).

whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class D felony (an average estimated time served of 63 months) compared to a Class E felony (an average estimated time served of 27 months). Impact on the prison population would begin in year three of the projection period.

All persons who engage in a CCE under G.S. 14-7.20 with the requisite terroristic intent would also qualify for Class D felony terrorism. The Administrative Office of the Courts does not have an offense code for this CCE offense.<sup>11</sup> The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In addition, there were 39 Class E drug trafficking convictions in FY 2009-10.<sup>12</sup> It is not known how many of these offenders, if any, would qualify for the additional Class D felony. The proposed offense would have impact on the prison population when the sentence for the proposed offense would be served consecutive to the sentence for the base offense. For Class E drug trafficking convictions (with an average estimated time served of 76 months) that are consecutive to the additional Class D felony sentence (with an average estimated time served of 63 months), the impact on the prison population would begin in year seven of the projection period and would continue outside the ten-year projection period. A period of Post-Release Supervision is required following release from prison for offenders convicted of Class B1-E felonies.

### **Class E Terrorism**

The Class F felonies that would support a Class E felony terrorism offense if committed with terroristic intent include (1) those within G.S. Chapter 14 that include an assault or use of violence or force against another person; and (2) those including either the threat or use of an explosive or incendiary device.<sup>13</sup> There were 2,285 convictions for Class F felonies in FY 2009-10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a) or were committed with the terroristic intent required to support the additional Class E felony.

Impact on the prison population will occur if Class F convictions are accompanied by Class E terrorism convictions under the proposed statute because of a higher rate of active sentences and longer average estimated time served for Class E felonies.<sup>14</sup> The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would

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<sup>11</sup>The AOC does have an offense code for the continuing criminal enterprise offense in G.S. 90-95.1, Continuing Criminal Enterprise, which applies to controlled substance offenses. However, because the bill does not include G.S. 90-95.1 in the definition of CCE G.S. 14-50.2(a), it is assumed that these offenses are not included. (There were no convictions under 90-95.1 in FY 2009/10.)

<sup>12</sup>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).

<sup>13</sup>Currently, no Class F felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 14-288.8

<sup>14</sup>Due to certain Class F offenses, Class F convictions actually resulted in higher active sentence rates with longer average estimated time served than Class E convictions in FY 2009/10. This is an anomaly. Historically, as the severity of the offense class increases, the active rates and estimated time served increases.

occur as a result of the difference in sentence length for a Class E felony (an average estimated time served of 27 months) compared to a Class F felony (an average estimated time served of 18 months). Impact on the prison population would begin in year two of the projection period and would continue outside the ten-year projection period. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

### **Class F Terrorism**

The Class G felonies that would support Class F felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another; and (2) that include either the threat or use of an explosive or incendiary device.<sup>15</sup> There were 3,831 convictions for Class G felonies in FY 2009-10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class F felony.

Impact on the prison population will occur if Class G convictions are accompanied by Class F terrorism convictions under the proposed statute because of the higher rate of active sentences (54 percent for Class F compared to 42 percent for Class G) and longer average estimated time served (15 months compared to 18 months for Class F). The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class F felony (an average estimated time served of 18 months) compared to a Class G felony (an average estimated time served of 15 months). Impact on the prison population would begin in year two of the projection period and would continue outside the ten-year projection period.

### **Class G Terrorism**

The Class H felonies that would support a Class G felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another person; (2) that include either the threat or use of an explosive or incendiary device.<sup>16</sup> There were 12,531 convictions for Class H felonies in FY 2009-10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class G felony.

Impact on the prison population will occur if Class H convictions are accompanied by Class G terrorism convictions under the proposed statute because of the higher rate of active sentences (42 percent for Class G compared to 36 percent for Class H) and longer average estimated time served (11 months compared to 15 months for Class G). The proposed offense would have impact on the

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<sup>15</sup>Currently, no Class G felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 14-69.1, -69.2.

<sup>16</sup>No Class H felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense's status as an "act of violence" under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.,* G.S. 14-69.1, -69.2.

prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class G felony (an average estimated time served of 15 months) compared to a Class H felony (an average estimated time served of 11 months). Impact on the prison population would begin in year one of the projection period and would continue throughout the ten-year projection period.

**Note:** Article 4A (Prohibited Secret Societies and Activities) of G.S. Chapter 14 contains three Class H felonies that involve an act intended to intimidate individuals or groups: (1) G.S. 14-12.12, Placing burning or flaming cross on property of another or on public street or highway or on any public place; (2) G.S. 14-12.13, Placing exhibit with intention of intimidating, etc., another; and (3) G.S. 14-12.14, Placing exhibit while wearing mask, hood, or other disguise (*See* G.S. 14-12.15). However, based on the essential elements of these offenses, none would appear to qualify as an “act of violence” supporting a terrorism offense under the proposed bill. Even the offense of cross-burning as defined in G.S. 14-12.12(b) does not necessarily involve “the threat or use of an explosive or incendiary device” as contemplated by G.S. 14-50.2(a). Rather, it prohibits the placement of “any manner of exhibit in which a burning or flaming cross real *or simulated*, is a whole or part (emphasis added).” Because the offense covers simulated cross-burnings, the threat or use of an incendiary device is a *sine qua non* of this offense. Moreover, none of these Article 4A offenses has been assigned an offense code by the Administrative Office of the Courts. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

### **Class H Terrorism**

The Class I felonies that would support a Class G felony terrorism offense if committed with terroristic intent include those (1) within G.S. Chapter 14 that include an assault or use of violence or force against another person; (2) that include either the threat or use of an explosive or incendiary device.<sup>17</sup> There were 7,555 convictions for Class I felonies in FY 2009-10. It is not known how many of these convictions would qualify as an act of violence under G.S. 14-50.2(a), or were committed with the terroristic intent required to support the additional Class H felony.

Impact on the prison population will occur if Class I convictions are accompanied by Class H terrorism convictions under the proposed statute because of the higher rate of active sentences (36 percent for Class H compared to 17 percent for Class I) and longer average estimated time served (seven months compared to eleven months for Class H). The proposed offense would have impact on the prison population whether the sentence for the proposed offense would be served consecutive to or concurrent/consolidated with the sentence for the base offense. Impact would occur as a result of the difference in sentence length for a Class H felony (an average estimated time served of eleven months) compared to a Class I felony (an average estimated time served of seven months). Impact on the prison population would begin in year one of the projection period and would continue throughout the ten-year projection period.

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<sup>17</sup>No Class I felonies include as an element the use or threat of use of a nuclear, biological or chemical weapon of mass destruction, as contemplated under G.S. 14-50.2(a). It is assumed that an offense’s status as an “act of violence” under G.S. 14-50.2(a) is based on the elements of the offense, rather than the facts of a given case. *See, e.g.*, G.S. 14-163.



**II. Subsection (d) of G.S. 14-50.2** makes 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. This is a stand-alone offense which does not require the actual commission of a companionate act of violence. Accordingly, subsection (d) lacks the language of subsection (c) providing that the offense is separate from the underlying 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. 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 qualifying act of violence 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 felony qualifying as an act of violence under G.S. 14-50.2. It is also not known what portion of these offenders would meet the additional *mens rea*, or “*guilty mind*”) requirement under the statute.

### **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 under 14-50.2(c)**

The proposed legislation would create new Class B1 through H felony charges against some defendants charged with Class A through I felonies under current statutes. For offenders already charged with Class A, or B1 felony offenses, the new Class B1 charge of terrorism would result in a longer sentence upon conviction if the sentences were run consecutively rather than concurrently. For offenders charged with Class C or lower felony offenses, a conviction for the new charge of terrorism would represent an increase in sentence length even if run concurrently with a conviction for the base offense. For offenders charged with Class E or lower base offenses, depending on their prior record, the new, elevated terrorism charge could also impact whether they defendant could receive a non-active sentence under Structured Sentencing.

In calendar year 2010, the following felony offenses were charged under Structured Sentencing and drug trafficking:

<b>Offense Class</b>	<b>Defendants Charged*</b>
A	374
B1	1,557
B2	412
C	5,604
D	5,709
E	6,878
F	5,641
G	8,434
H	75,245
I	51,852
Unspecified	17,567

\*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.

AOC cannot project the number of defendants who would be charged with the new elevated felony 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 or lower felony defendants, facing a mandatory active sentence under this bill.

**New Class D solicitation offenses under 14-50.2(d)**

Under current G.S. 14-2.6, Punishment for solicitation to commit a felony or misdemeanor, which states, a person that solicits the commission a felony is guilty of a felony that is two (2) classes lower than the felony solicited. The proposed 14-50.2(d) would provide that for solicitation of terrorism offenses, the penalty would be a Class D felony. See table and bullet points below:

- Under the existing solicitation statute, a person soliciting the commission of a Class A or B1 felony would be guilty of a Class C felony; under the proposed terrorism solicitation language of this bill, that person would be guilty of a Class D felony.
- Under the proposed terrorism solicitation statute, a person convicted of soliciting the commission of a Class E, F, G, H, or I felony would be guilty of a Class D felony.

<b>Underlying Offense</b>	<b>Separate Terrorism Offense</b>	<b>Solicitation Class* (Current Law)</b>	<b>Solicitation Class (Proposed)</b>
Class A felony	Class B1 felony	Class C felony	Class D felony
Class B1 felony	Class B1 felony	Class C felony	Class D felony
Class B2 felony	Class B1 felony	Class C felony	Class D felony
Class C felony	Class B2 felony	Class D felony	Class D felony
Class D felony	Class C felony	Class E felony	Class D felony
Class E felony	Class D felony	Class F felony	Class D felony
Class F felony	Class E felony	Class G felony	Class D felony
Class G felony	Class F felony	Class H felony	Class D felony
Class H felony	Class G felony <i>or</i> Class D felony if violation of 14-7.20	Class I felony <i>or</i> Class F felony if underlying offense is violation of 14-7.20	Class D felony
Class I felony	Class H felony	Class 1 misdemeanor	Class D felony

\*Based on terrorism offense class, not underlying offense class

AOC cannot project the number of new or enhanced terrorism solicitation charges that would result from the proposed legislation. Due to the difference in offense class between the current solicitation statute and the proposal, AOC anticipates an increase in workload to process many of these charges. 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 defendants who would have been charged with Class E or lower felonies under current law, facing a mandatory active sentence under this bill.

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

**DATE:** April 6, 2011



**Signed Copy Located in the NCGA Principal Clerk's Offices**