

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 1328  
Judiciary

(Delegate Zirkin, *et al.*)

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**Crimes - Representation of Destructive Device - Substance Representing  
Toxic Material**

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This bill expands the scope of the felony of manufacturing, possessing, transporting, or placing a device representing a destructive device with the intent to terrorize by including the manufacture, possession, transport, or placement of a substance that represents a toxic material under the current law prohibition and related provisions.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund incarceration expenditures due to the expanded scope of an existing prohibition. Revenues would not be affected.

**Local Effect:** Potential minimal increase in revenues due to the expanded scope of an existing prohibition because these cases would be heard in the circuit courts. Expenditures would not be affected.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person may not manufacture, possess, transport, or place a device that is constructed to represent a destructive device with the intent to terrorize, frighten, intimidate, threaten, or harass.

“Destructive device” means explosive material, incendiary material, or toxic material that is: (1) combined with a delivery or detonating apparatus so as to be capable of inflicting injury to persons or damage to property; or (2) deliberately modified, containerized, or otherwise equipped with a special delivery, activation, or detonation component that

gives the material destructive characteristics of a military ordinance. Destructive device includes a bomb, grenade, mine, shell, missile, flamethrower, poison gas, Molotov cocktail, pipe bomb, and petroleum-soaked ammonium nitrate.

A person who violates this prohibition is guilty of a felony and on conviction is subject to imprisonment for up to 10 years and/or a fine of up to \$10,000.

In addition to the criminal penalty, a court may order a person convicted or found to have committed a delinquent act under this prohibition to pay restitution to various governmental entities for actual response costs, as well as to the owner or tenant of a property for the actual value of any goods, services, or income lost as a result of an evacuation of the property.

“Toxic material” means material that is capable of causing death or serious bodily injury almost immediately on being absorbed through the skin, inhaled, or ingested. Toxic material includes: (1) nerve gas, mustard gas, cyanide gas, chlorine gas, sulphuric acid, or their precursors; and (2) a biological substance containing a disease organism or microorganism.

**Background:** This bill is in response to general and specific concerns that have arisen nationally relating to threats of terrorism since September 11, 2001. Generally, State efforts have centered on creating specific statutory crimes for terrorist acts and providing appropriate penalties for making false threats or creating fear.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill’s increased incarceration penalty due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

## **Additional Information**

**Prior Introductions:** HB 539 of 2003, a similar bill, passed the House, had a hearing before the Senate Judicial Proceedings Committee, and had no further action taken on it.

**Cross File:** None.

**Information Source(s):** Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2004  
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