

FAQ - Material Support to Designated Entities Act

1) Is the bill unconstitutional?

No. This bill drafted by the Tennessee General Assembly's Office of Legal Services, is neutral both on its face and as applied. It is closely modeled after the federal Designation and Material Support statutes. The federal designation statute addresses foreign terrorist organizations and to date, the U.S. Secretary of State has designated over 45 such organizations. In June 2010, the U.S. Supreme Court held that the federal Material Support statute did not violate First Amendment rights. More recently the federal statute was applied by the 2nd Circuit Court of Appeals in a case involving two individuals convicted for knowingly providing material support to a known designated terrorist group.

Just like the federal statute, the Tennessee bill only addresses those individuals that knowingly provide material support to a known designated entity that is seeking to commit acts of terrorism. Importantly, because of the documented increase in incidents of homegrown terrorism, the Tennessee bill also provides for the designation of domestic terrorists.

The state of Tennessee has a compelling interest to protect its citizens from acts of terrorism. The bill is carefully worded to ensure that it is a focused, targeted and the least intrusive method to meet this compelling state interest and as such, is constitutionally sound.

2) Does the Tennessee bill violate 1st amendment rights?

No. The federal statute in the context of providing material support to a known designated terrorist group, was held to not violate either the right of free speech or the right of association. With regard to the free exercise of religion, the Tennessee bill specifically excludes peaceful religious practice and as such, does not impose ANY burden on religion. The Tennessee bill does not permit a religious justification for violence or criminal activity to exempt the application of the statute.

3) Does the Tennessee bill make mere membership in a designated terrorist entity a crime?

No. Mere membership in a terrorist organization cannot even trigger the designation provisions of the bill. To be designated as a terrorist entity, more must be shown – an actual act of terrorism or the capability and intent to commit an act of terrorism. Even then, there is no criminal penalty associated with the designation. The only act criminalized under the bill concerns those individuals who knowingly provide material support to either

a designated domestic or foreign terrorist entity. Indeed, even individuals who would advocate violence against the state or its residents are not implicated by this bill unless they also engaged in terrorist activity or “retain the capability and intent” to engage in terrorist acts and again, this would only trigger the designation provision. Consistent with the U.S. Supreme Court’s opinion in the *Holder* decision, the Tennessee bill does not “suppress ideas or opinions in the form of ‘pure political speech’”.

4) What type of “knowledge” is required to trigger the prohibited activity addressed by the bill, ie, the prohibition against providing material support?

Just like the federal statute, Section 905 of the Tennessee bill requires that a person “knowingly” provide material support. This is further defined that a person must know that the designated entity has either been previously designated or that the organization has engaged in terrorism.

5) Does this bill modify or nullify the TN Terrorism Prevention Act?

No. The current bill builds on The TN Terrorism Prevention Act. Passed in 2002, the TN Terrorism Prevention Act primarily addresses acts of terrorism that involve weapons of mass destruction such as chemical agents and other hazardous materials. The law defines the term “act of terrorism” which is included in the current bill. While the 2002 law includes an abbreviated provision regarding “material support” this provision is only triggered *after* an act of terrorism has occurred. The current bill, however, seeks to punish the provision of material support and in this way *prevent* the act of terrorism from occurring. The current bill addresses aid or support that makes the terrorist act more likely to occur.

6) What does the bill do?

The bill enables state and local law enforcement to act decisively **BEFORE** acts of terrorism occur. A recent report indicates a significant increase in the number of “class-one” terrorism cases (the highest designation for a terrorism case). The incidence of homegrown terrorism is rising; an August 2010 background report showed 21 U.S. citizens were charged in such cases in 2009 and another 20 were charged in 2010 between January and August. Given the trajectory of the incidence of homegrown terrorist acts, this bill is timely and seeks to protect Tennesseans from this threat.

7) How does the bill work?

The director of Tennessee's office of Homeland Security starts the process by making a recommendation for designation to the Attorney General and the Governor who may then follow the procedures articulated in the bill to make the "designation". A number of criteria must be established in order for the designation to be made and a factual and administrative record must be established.

Once the designation is made, detailed administrative procedures must be followed to ensure that notice of the designation is sufficient. Thereafter, anyone who provides material support or resources (as defined in the bill) knowing that the group has been designated may be prosecuted or fined.

Even after the designation, the bill provides administrative and judicial recourse to appeal the designation. Additionally, the Tennessee General Assembly can revoke any designation it considers improper.

8) Why does the state need this law if we already have a federal statute?

As stated by the bill's sponsors, the top priority of government should be to protect the state's citizens. "The 9/11 attack and subsequent terrorist attacks have turned a new page in our nation's history. All levels of government — national, state and local — must be a part of this effort. This bill seeks to enhance legislation we already have on the books to provide our state and local law enforcement agencies the tools they need to enable them to intervene against those who plan, finance and assist others who commit acts of terrorism before they occur."

State and local law enforcement are often positioned to intervene at an earlier point in time simply because they are closer to potential problems in their communities. The State also has a duty to preserve the safety of its citizens from homegrown terrorism as evidenced by the passage of the 2002 statute. This is precisely why the state of Tennessee and most of the other states have their own version of anti-terrorism statutes.

The federal government has not preempted state action in this area of the law and in fact, has emphasized the collaboration between state and local law enforcement and federal law enforcement. With the documented incidence of homegrown terrorism growing, several former 9/11 Commissioners and U.S. Homeland Security Secretary Janet Napolitano agree that greater participation by state and local law enforcement is needed to foil terror plots.

9) Is the notice provision to the designees sufficient? What about notice to others about the designation?

With regard to the designees, the bill requires personal service of the notice to the designee. Likewise, consistent with the federal statute the Tennessee bill requires publication on the secretary of state's website and in the state administrative register. The issue of whether someone provided material support with knowledge of the designation would still be an issue of proof in any prosecution under the statute.

10) Is there a threat from homegrown terrorists in Tennessee?

Yes. Carlos Bledsoe is one of the recent examples of a self-professed domestic terror attack.