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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 1/26/24

SPONSOR Brandt

BILL
NUMBER Senate Bill 102

SHORT TITLE Racketeering Act Changes

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	FY 27	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD		At least \$53.1	At least \$103.4	At least \$172.6	At least \$329.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to HB116, HB128 and SB6

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Senate Bill 102

Senate Bill 102 (SB102) amends the Racketeering Act to add these offenses to the list of offenses constituting racketeering:

- Sexual exploitation of children;
- Criminal sexual penetration;
- Criminal sexual contact;
- Dog fighting and cockfighting;
- Escape from jail;
- Escape from penitentiary;
- Assisting escape;
- Bringing contraband into places of imprisonment;
- Tampering with public records;
- Impersonating a peace officer; and
- Human trafficking.

SB102 expands the definition of “enterprise” to include criminal gangs, defined to mean three or more persons having a common identifying signal or identifiable leadership and who continuously or regularly associate in the commission of criminal activities. The bill also creates two new crimes, making it unlawful to:

- Solicit or coerce another person, including a minor, into becoming or continuing as a member of an enterprise or participating in a racketeering activity of an enterprise, which constitutes a third degree felony; and
- When in a leadership position within an enterprise to knowingly finance, supervise, or conspire to commit, through the direction of members of the enterprise, any racketeering activity, which constitutes a first degree felony.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. SB102 is anticipated to increase the time individuals spend incarcerated, although as to the addition of 10 offenses that constitute racketeering, the impact is not quantifiable.

SB102 also creates two new crimes, soliciting or coercing a person to become a member of an enterprise or engage in a racketeering, which is a third degree felony, and being in a leadership position while knowing engaged in a racketeering activity, which is a first degree felony. Both crimes will increase incarceration and incarceration costs. Based on estimates of actual time served provided by the New Mexico Sentencing Commission (NMSC), actual time served for the third degree felony is 2.5 years. Assuming that one person is incarcerated for this crime per year, the cost in FY25 is \$26.59 thousand, increasing in FY26 to \$50.2 thousand, and FY27 to \$66.46 thousand. As to the new first degree felony, the average length of stay is 3.48 years. Assuming, again, that one person is incarcerated for this crime per year, the cost in FY25 is \$26.59 thousand, increasing in FY26 to \$53.2 thousand, and in FY27 to \$79.8 thousand.

SIGNIFICANT ISSUES

NMSC calls attention to the statutory purpose of the act, which is “to eliminate the infiltration and illegal acquisition of legitimate economic enterprise by racketeering practices and the use of legal and illegal enterprises to further criminal activities.” It questions whether the additional crimes being added to the act correspond with this purpose. In a similar vein, NMSC comments that adding “criminal gang” to the definition of “enterprise” is an awkward fit, given that the

other entities in the definition are “a sole proprietorship, partnership, corporation, business, labor union, association, or other legal entity or a group of individuals.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to HB116, which amends the Racketeering Act to add only human trafficking to the list of crimes that define racketeering (which is one of 10 crimes being added to that act by SB102).

In addition, it also relates to HB128 and SB6, which both add trafficking cannabis products to the Racketeering Act.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts notes that the definition of “criminal street gang” in the U.S. Department of Justice’s Criminal Resource Manual requires the participation of at least five persons, while the City of Albuquerque Code requires at least three.

AMENDMENTS

NMCD suggests the definition of “criminal gang” include as common identifiers “name,” “tattoo,” “style of dress,” and “use of hand signals.”

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