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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/2006

SPONSOR Swisstack LAST UPDATED _____ HB 60

SHORT TITLE Street Gang Activity Sentencing Enhancements SB _____

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 65 - Penalties for Street Gang Recruitment

SOURCES OF INFORMATION

LFC Files

Attorney General's Office (AGO) – 2005 analysis of HB 227aa

Administrative Office of the Courts (AOC) - 2005 analysis of HB 227aa

Responses Received From

Corrections Department (CD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 60 enacts a new section in the Criminal Sentencing Act that defines “criminal street gangs” and “pattern of criminal gang activity” with and details increases in basic sentencing for those found to have committed the listed crimes in support of such gang activity.

FISCAL IMPLICATIONS

House Bill 60 does not include an appropriation. However, both the CD and the PDD indicate that HB 60 will have an impact on operating budgets. The impact, however, is as yet indeterminate.

Correction Department

The Corrections Department indicates the bill could have a moderate to substantial recurring im-

pact on the CD operating budget if large numbers of persons convicted of gang-related crimes come into the prison system and serve longer sentences.

The cost per client in Probation and Parole for a standard supervision program is \$1,527 per year. The cost per client in Intensive Supervision programs is \$4,256 per year. The cost per client in department-operated Community Corrections programs is \$4,495 per year. The cost per client in privately-operated Community Corrections programs is \$10,022 per year. The cost per year for male and female residential Community Corrections programs is \$22,019.

However, the bill could also have a very positive fiscal impact on the Department if the bill deters gang activity, gang-related crimes, and criminal activity in general and thereby reduces.

Public Defender Department

This bill will substantially affect the workload of the Department's felony trial attorneys wherever these cases are brought because of the necessity to defend against both the underlying crime and the existence and involvement of a criminal street gang in the crime and necessity to prove a pattern of criminal gang activity.

The cost of litigation under this section will be high. The bill requires mini-trials on the issue of whether a street gang exists and whether it has engaged in a pattern of criminal gang activity.

SIGNIFICANT ISSUES

HB 227 creates a new section in the sentencing act that defines "criminal street gangs" and "pattern of criminal gang activity" with increases in basic sentencing for those found to have committed the crimes below in support of such gang activity.

1. Homicide
2. Voluntary manslaughter
3. Aggravated assault
4. Assault with intent to commit a violent felony
5. Aggravated battery
6. Shooting at a building, at or from a motor vehicle
7. Aggravated stalking
8. Kidnapping
9. Sexual exploitation of children by prostitution
10. Dangerous use of explosives
11. Possession of explosives
12. Criminal sexual penetration
13. Criminal sexual contact of a minor
14. Robbery
15. Burglary
16. Aggravated burglary
17. Extortion
18. Aggravated fleeing a law enforcement officer
19. Harboring or aiding a felon
20. Aggravated assault upon a peace officer
21. Assault with intent to commit a violent felony upon a peace officer
22. Aggravated battery upon a police officer
23. Bribery or intimidation of a witness

24. Trafficking in a controlled substance
25. Unlawful taking of a motor vehicle
26. Money laundering
27. Any attempt to commit any of the above felonies

When a separate finding of fact, proved beyond reasonable doubt, is made by the jury or a judge that the crime was committed for the benefit of, at the direction of or in association with a criminal street gang and with specific intent to promote, further or assist in criminal conduct by gang members. The bill enhanced the

1. An additional one year for a 4th degree felony
2. An additional two years for a 3rd degree felony
3. An additional three years for a 3rd degree felony resulting in death
4. An additional four years for a 2nd degree felony
5. An additional six years for a 2nd degree felony resulting in death
6. An additional eight years for a 1st degree felony

Subsection C of the HB 60 makes it mandatory that the enhancements run consecutive to the basic sentence and are not to be suspended or deferred.

RELATED TO: HB 65

TECHNICAL ISSUES

The Public Defender Department indicates that the language in subsection A of the bill (“for the benefit of, at the direction of or in association with”) is subject to a constitutional challenge for vagueness and over breadth. There may also be multiple enhancement problems with the bill as some of crimes listed (trafficking, armed robbery) are already self-enhancing. The bill dilutes the basic principal that a person is liable for his own conduct and makes him criminally liable for the status of others as gang members.

OTHER SUBSTANTIVE ISSUES

Corrections Department

This bill should also address prison gangs, or what the Corrections Department refers to as “Security Threat Groups,” which by Department policy is defined as follows:

Security Threat Group (STG): Any group of inmates, organization or association, whether formal or informal, whose members individually and/or collectively engage in a pattern of criminal activity; and/or a pattern of activity which violates institutional regulations; and/or a pattern of activity the intent of which is to exploit or coerce other inmates, that is reasonably believed to pose a threat to the physical safety of other inmates, and/or pose a threat to the ability of other inmates to feel free from threats and coercion, and/or pose a threat to the safety of staff or the community, to include any perpetration of criminal activity.

Security Threat Group (Prison Gang) activity, although primarily negatively impacting institutions and probation and parole caseloads, prison gangs have exhibited an effect on impressionable youth, and have exhibited violent tendencies in communities through criminal behavior.

Public Defender Department

The bill has considerable “guilt by association” ramifications. While it will be used against ring leaders, it will also be used against people with marginal involvement but who also may be swept up in the definition of criminal street gang that is proved by the activities of others.

“For the benefit of” and “in association with” a criminal street gang may be unconstitutionally vague and overbroad. There may also be multiple enhancement problems with the bill as some of crimes listed (trafficking, armed robbery) are already self-enhancing.

ALTERNATIVES

The CD indicates adding, changing, or amending the following:

Proposed additions of crimes related directly to Prisons and Jails

Assault on a jail, pursuant to Section 30-22-19 NMSA 1978

Escape from penitentiary, pursuant to Section 30-22-9 NMSA 1978

Graffiti to real or personal property, pursuant to Section 30-15-1.1 NMSA 1978;

Bringing contraband into places of imprisonment pursuant to Section 30-22-14 NMSA 1978;

Possession of a deadly weapon or an explosive by a prisoner, pursuant to Section 30-22-16 NMSA 1978;

Assault by prisoner, pursuant to Section 30-22-17;

Alternatives

Prospective revision of the Bill title to read Criminal Gang – Department policy would need minor revisions to meet the standard of the criminal gang definition.

BMC/mt