

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/07
 LAST UPDATED 1/29/07 HB 49/aHCPAC/aHJC

SPONSOR Swisstack

SHORT TITLE Street Gang Activity Sentencing Enhancement SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB145

Relates to HB50
 Relates to SB151

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds that the following two new felonies: felony criminal damage to property, pursuant to Section 30-15-1 NMSA 1978 and felony graffiti, pursuant to Section 30-15-1.1 NMSA 1978; are subject to the enhancements imposed. It also makes several language revisions to the alteration of gang related crimes basic sentence with the underlined changes. When a separate finding of fact, proved beyond a reasonable doubt to a jury or to the judge if the defendant's right to a jury trial has been waived, that a felony enumerated in Subsection B of this section was knowingly committed for the benefit of, at the direction of or in association with a criminal street gang and with the intent to promote, further or assist in criminal conduct by gang members, the basic sentence of imprisonment prescribed for the offense shall be increased.

Synopsis of HCPAC Amendment

The Consumer and Public Affairs Committee amendment clarifies which entities do not constitute a criminal street gang and adds the following language to page 5 line 14: “but “criminal street gang” does not include a fraternal organization, union, corporation, association or similar entity, unless organized for the primary purpose of engaging in criminal activity”.

Synopsis of Original Bill

House Bill 49 enhances the basic sentence for crimes committed in furtherance of criminal street gang activity, when a finding of fact shows that a felony listed in Subsection B of the bill was committed for the benefit of, at the direction of, or in association with a criminal street gang and with a specific intent to promote, further or assist in criminal conduct by gang members.

The basic sentence of imprisonment is increased as follows:

- An additional one year for a fourth degree felony
- An additional two years for a third degree felony
- An additional three years for a third degree felony resulting in death
- An additional four years for a second degree felony
- An additional six years for a second degree felony resulting in death
- An additional eight years for a first degree felony

The following felonies are subject to the enhanced penalty, as provided in Subsection B of the bill:

1. Homicide
2. Voluntary manslaughter
3. Aggravated assault
4. Assault with intent to commit a violent felony
5. Aggravated battery
6. Shooting at a dwelling or occupied building, or shooting 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, explosive devices or incendiary devices
12. Criminal sexual penetration in the first, second or third degree
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 peace officer
23. Bribery or intimidation of a witness or retaliation against a witness
24. Trafficking in a controlled substance
25. Unlawful taking of a motor vehicle

- 26. Money laundering
- 27. An attempt to commit any of the above felonies

FISCAL IMPLICATIONS

There would also be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

EO/nt