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FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/07
 LAST UPDATED 2/24/07 HB 50/aHJC

SPONSOR Swisstack

SHORT TITLE Providing Criminal Penalties for Gang Recruitment SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB151
 Companion to HB49

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public Defender Department (PDD)

No Response Received From
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Committee Amendment inserts the word knowingly so that gang recruitment consists of the solicitation or recruitment of another with the intent that the person solicited or recruited) knowingly participate in a pattern of criminal gang activity and gang recruitment by threat or violence consists of threatening another with physical violence on two or more separate occasions within a thirty-day period, or using physical violence, with the intent to coerce, induce or solicit another to knowingly participate in a pattern of criminal gang activity.

The following new language is added to the list of felonies for primary gang activities:

- felony criminal damage to property, pursuant to Section 30-15-1 NMSA 1978
- felony graffiti, pursuant to Section 30-15-1.1 NMSA 1978

Synopsis of Bill

This House Bill 50 proposes to create a new crime for recruiting others to join criminal street gang or for inducing participation in criminal street gang activity. It also provides increased penalties for recruitment and inducement of minors.

The bill provides two distinct definitions of “gang recruitment.” The first is by the solicitation of others to engage in a pattern of gang activity or to engage in felonious conduct. The penalty for gang recruitment by solicitation of an adult is a misdemeanor; recruitment by solicitation of a minor is a fourth degree felony.

The second delineation of recruitment is by threat or violence. This is defined as “threatening another with physical violence on two or more separate occasions within a thirty-day period, or using physical violence with the intent to coerce, induce or solicit another” to commit the crime defined in this bill.

FISCAL IMPLICATIONS

There is always a possibility that more criminal defendants will proceed to trial instead of accepting a plea offer when penalties are enhanced. This may result in an increased case load and additional court time for Public Defender Department attorneys.

SIGNIFICANT ISSUES

Subsection C of the bill defines “criminal street gang.” No guidance is given on whether proving the existence of a gang must be proven by the prosecution or disproven by the defendant.

Subsection D additionally defines “pattern of criminal gang activity” as the commission or attempted commission of two or more of the Bill’s enumerated felonies. Again, no guidance is given on whether proving that these prior felonies were committed in furtherance of gang activities must be done by the prosecution or disproven by the defendant.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB151

Duplicates HB49

EO/mt