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FISCAL IMPACT REPORT

SPONSOR Swisstack ORIGINAL DATE 1/18/08
LAST UPDATED _____ HB 105
SHORT TITLE Gang Activity Sentencing Enhancement SB _____
ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
Bernalillo County Metropolitan Court
New Mexico Corrections Department (NMCD)
New Mexico Sentencing Commission (NMSC)
Department of Public Safety (DPS)

No Responses Received From

Administrative Office of the Courts
Administrative Office of the District Attorneys

SUMMARY

Synopsis of Bill

House Bill 105 proposes to add a new section to the Criminal Sentencing Act to enhance basic sentences by one to eight years for certain enumerated crimes when those crimes have been committed for the benefit 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 proposed legislation provides that the fact of street gang involvement must be submitted to the jury, unless jury trial is waived, and must be proven beyond a reasonable doubt. The following are the 28 denoted crimes for which penalties will be enhanced: murder; voluntary manslaughter; aggravated assault; assault with intent to commit a violent felony; aggravated battery; shooting at a dwelling or occupied building or shooting at or from a motor vehicle; aggravated staling; kidnapping; sexual exploitation of children by prostitution; dangerous use of explosives; possession of explosives; criminal sexual penetration in the first, second or third degree; criminal sexual contact with a minor; felony criminal damage to property; felony graffiti; robbery;

burglary; aggravated burglary, extortion; aggravated fleeing a law enforcement officer; harboring or aiding a felon; aggravated assault upon a peace officer; assault with intent to commit a violent felony upon a peace officer; aggravated battery upon a peace officer; bribery or intimidation of a witness or retaliation against a witness; trafficking in a controlled substance; unlawful taking of a motor vehicle; and money laundering. Also, contained within this crime is the attempt to commit any of the 28 enumerated crimes. The enhanced portion of the sentence is to be served consecutively with the basic sentence and can not be suspended or deferred. The proposed legislation defines “criminal street gang” as an ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the 28 denoted crimes, having common name or identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of criminal street gang activity.

FISCAL IMPLICATIONS

NMCD reports the proposed legislation could have moderate to substantial negative fiscal impact on the department if a large number of persons convicted of gang-related crimes come into the prison or serve longer sentences. NMCD notes there is no appropriation in the proposed legislation to cover increased incarceration costs.

Based on FY06 actual expenditures, the average annual cost to incarcerate an individual in a NMCD correctional facility is \$31,239, and the average annual cost of probation and parole/community corrections client is \$1,343.

SIGNIFICANT ISSUES

NMCD reports to the extent that large numbers of the designated crimes are proven in court to be street gang-related, the proposed legislation could have moderate to substantial impact on the department’s prison population because it will increase prison sentences for those convicted of street gang-related crimes. However, NMCD notes the proposed legislation could also deter gang-related crime and crime in general, which would ultimately result in a decreased prison population and probation/parole caseloads.

NMSC reports according to recent literature, since 1999, numerous states have followed the state of California by enacting legislation to criminalize a variety of gang activities, such as gang solicitation and recruitment, witness identification and drive-by shootings. Also, a recent study by the New Mexico Statistical Analysis Center at the University of New Mexico demonstrates the need for systematic data collection on gang crime in New Mexico. A lack of record keeping and standard documentation on gangs makes it difficult to compare gang crime and the proportion of crime attributable to gangs.

DPS states the lack of deterrent and the message to organized crime groups and gangs is that there is not penalty for operating and directing criminal activity in New Mexico. DPS states the level of crime associated with gangs will continue to increase at a far greater cost to society.

PERFORMANCE IMPLICATIONS

PDD states that there is always a potential of increased workload for the department when new crimes are created, or sentencing schemes are enhanced; however, the proposed legislation is not

likely to result in a large increase in litigation and any additional caseload would be absorbed through the ordinary course of business.

ADMINISTRATIVE IMPLICATIONS

NMCD states if the proposed legislation raises prison population, the department staff will have increased workloads; however, if the bill ultimately reduces the prison population it will reduce staff workloads.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 105 has a companionship with House Bill 106.

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