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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/09

SPONSOR Cervantes LAST UPDATED _____ HB 426

SHORT TITLE Street Gang Recruitment Penalties SB _____

ANALYST Hoffmann

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|--------------------------------|------|-------------------|----------------------|------------------|
| Total | | Indeterminate See Narrative | | | Recurring | General Funds |

(Parenthesis () Indicate Expenditure Decreases)

House Bill 426 is a Companion to House Bill 427

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Bernalillo County Metropolitan Court (BCMC)
- Public Defender Department (PDD)
- New Mexico Corrections Department NMCD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 426 proposes to create a new section of the Criminal Code that criminalizes the solicitation or recruitment of another with the intent that the person solicited or recruited (i) knowingly participate in criminal street gang activity, or (ii) promote, further or assist in felonious conduct by members of a criminal street gang.

Pursuant to the bill, whoever commits gang recruitment is guilty of a misdemeanor. Whoever commits gang recruitment of a minor is guilty of a fourth degree felony.

The bill also criminalizes gang recruitment “by threat or violence,” which consists of threatening another with physical violence on two or more separate occasions within a thirty (30) day period, or using physical violence, with the intent to coerce, induce or solicit another to (i) knowingly participate in criminal street gang activity, or (ii) promote, further or assist in felonious conduct by members of a criminal street gang.

Pursuant to the bill, whoever commits gang recruitment by threat or violence is guilty of a fourth degree felony. Whoever commits gang recruitment of a minor by threat or violence is guilty of a third degree felony.

The bill would exclude from the definition of “criminal street gang” a fraternal organization, union, corporation, association or similar group, unless organized for the primary purpose of engaging in criminal activity.

FISCAL IMPLICATIONS

House Bill 426 makes no appropriations.

The Bernalillo County Metropolitan Court states that the bill will potentially result in an increase in the number of defendants that proceed to trial. The extent of the increased caseload – if any – and its potential fiscal impact are inestimable at this time.

The Public Defender Department similarly states that depending on the exercise of charging discretion by prosecutors in the various districts around the state, enactment of this bill could lead to an upswing in the number of trials, thus requiring a concomitant increase in prosecution, defense, court and probation/parole resources. Creation of a new “stack-on” crime with felony consequences makes it more likely that criminal defendants will proceed to trial instead of accepting a plea offer. This will result in an increased caseload and additional court time for the courts and prosecution and Public Defender attorneys, as well as bringing the likelihood of an additional appellate caseload for the Public Defender Department, the Attorney General, and the appellate courts.

The NMCD notes that House Bill 426 could have a minimal to moderate negative fiscal impact on the Department if a large number of persons convicted of these gang-related crimes serve prison sentences and/or probation/parole terms. There is no appropriation in the bill to cover these increased incarceration and probation/parole costs.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

SIGNIFICANT ISSUES

The NMCD notes that House Bill 426 could have a minimal to moderate increase on the Department’s prison population because it could result in prison sentences for those convicted of these new gang recruitment- related crimes. It could also minimally to moderately increase probation and parole caseloads when those convicted of these gang-related crimes are placed on probation and parole.

The NMCD also proposes that this bill might also deter gang-related recruitment and gang-related crime in general, which would result in a minimal to moderate decrease in prison population and in probation and parole caseloads. Clearly, gang recruitment activity and gang-related crimes must be dealt with by this state, and this bill is one way to address this very serious problem.

COMPANIONSHIP, RELATIONSHIP

House Bill 426 is a companion to House Bill 427, which proposes to enhance the basic sentence for crimes committed in the furtherance of criminal street gang activity.

TECHNICAL ISSUES

The Bernalillo County Metro Court comments that due to the inherent difficulty in narrowly defining terms such as “criminal street gang” and “pattern of criminal street gang activity,” criminal gang prevention statutes are targets for constitutional challenges for contravening the First Amendment right to free association by being unduly vague or overly broad.

OTHER SUBSTANTIVE ISSUES

The NMCD states that reducing street gang-related crime and street gang recruitment and membership is essential to reducing the crime rates in this state, and to ultimately reducing the Department’s prison population and probation/parole caseloads.

CH/svb