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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/09
LAST UPDATED 02/25/09 **HB** 427/aHCPAC

SPONSOR Cervantes

SHORT TITLE Street Gang Activity Sentencing Enhancement **SB** _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	Indeterminate See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

House Bill 427 is a Companion to House Bill 426

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 HCPAC Amendment

House Bill 427 as amended by the House Consumer and Public Affairs Committee adds “motorcycle or car club whose primary purpose is to provide a community service” to the list of organizations that are not included in the section 1 definition of “criminal street gangs.”

Synopsis of Original Bill

House Bill 427 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:

House Bill 427/aHCPAC – Page 2

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. Felony Criminal Damage to Property
15. Graffiti
16. Robbery
17. Burglary
18. Aggravated burglary
19. Extortion
20. Aggravated fleeing a law enforcement officer
21. Harboring or aiding a felon
22. Aggravated assault upon a peace officer
23. Assault with intent to commit a violent felony upon a peace officer
24. Aggravated battery upon a peace officer
25. Bribery or intimidation of a witness or retaliation against a witness
26. Trafficking in a controlled substance
27. Unlawful taking of a motor vehicle
28. Money laundering
29. An attempt to commit any of the above felonies

FISCAL IMPLICATIONS

House Bill 427 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 NMCD notes that House Bill 427 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.

However, the bill could also have a very positive fiscal impact on the NMCD if the bill deters gang activity, gang-related crimes, and criminal activity in general and thereby reduce the number of convicted felons sent to the Department for imprisonment or placed on probation or parole.

SIGNIFICANT ISSUES

The Public Defender Department offers the following two comments on House Bill 427.

A perfunctory reading of the proposed legislation raises questions of whether constitutional rights to freedom of association are implicated. Thorough examination of this question would require more analysis than could be effectively provided under the deadlines contemplated by this bill-analysis process. Appellate challenges to the new law would be likely if the legislation were enacted.

Mandatory sentences remove judicial discretion from the criminal proceeding. As such, the determination of what would be an appropriate sentence must necessarily be made without being able to take into account the individual circumstances of each case. Defendants would all be treated alike, without regard to the peculiar characteristics of their cases. This would inevitably result in more trials and sentences that are “rubber stamps,” rather than informed by the individual facts of each defendant’s circumstances. The effects of this bill would also fall disproportionately on clients of the Public Defender Department, thus increasing the concern of the Department over this issue.

COMPANIONSHIP, RELATIONSHIP

House Bill 427 is a companion to House Bill 426, which proposes a new section of the Criminal Code to define crimes related to recruiting for criminal street gangs.

TECHNICAL ISSUES

The Bernalillo County Metro Court comments that no guidance is given on whether proving the existence of a gang must be proven by the prosecution or disproven by the defendant