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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/10

SPONSOR Thomas LAST UPDATED \_\_\_\_\_ HB 174

SHORT TITLE Street Gang Participation & Recruiting SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1,000.0- \$10,000.0	\$1,000.0- \$10,000.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB11 and SB13

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Department of Public Safety (DPS)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 174 makes it a misdemeanor to promote, further, or assist in the commission of a felony by a criminal street gang. A second or subsequent violation constitutes a fourth degree felony. HB 174 also makes “gang recruitment” a crime and establishes the following penalties: gang recruitment is a misdemeanor; gang recruitment of a minor is a fourth degree felony; gang recruitment by threat or violence is a fourth degree felony; and gang recruitment of a minor by threat or violence is a third degree felony.

In addition, the bill provides for sentencing enhancements of six months to eight years if one of 29 enumerated felonies was committed for the benefit of, at the direction of, or in association with a criminal street gang. Additional enhancements are required for felonies committed in connection with a criminal street gang that occur within one thousand feet of an elementary, middle, junior high, high, or vocational school; or if the underlying felony is violent or constitutes a sexual offense.

## **FISCAL IMPLICATIONS**

The bill creates a Local Government Community Rehabilitation Fund consisting of appropriations, gifts, grants, and donations. The fund, managed by DFA, will provide revitalization grants to municipalities or counties to revitalize communities and neighborhoods injured by criminal street gang activity.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will 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.

PDD states the enactment of this bill is likely to lead to a not-insubstantial upswing in the number of trials – not to mention the separate evidentiary hearings created by the proposed statute, thus requiring a concomitant increase in prosecution, defense, court and probation/parole resources. Convictions will, of course, require additional Corrections Department (CD) resources. Creation of a new sentencing enhancement will make 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 PDD attorneys, as well as bringing the likelihood of an additional appellate caseload for the PDD, the Attorney General, and the appellate courts – not to mention the additional resources for the CD. Based on the experience of the PDD, the trial burden is likely to add particular pressure on the PDD, DAs and district courts in what are already the busiest districts, the Second and Third Judicial Districts.

## **SIGNIFICANT ISSUES**

PDD also provided the following:

A perfunctory reading of the proposed legislation raises questions of whether constitutional rights to freedom of association are implicated. Thorough examination of this question will require more analysis than could be effectively provided under the deadlines contemplated by this bill-analysis process. Appellate challenges to the new law will be likely if the legislation were enacted. As was the case in death penalty cases, also utilizing separate sentencing proceedings, one can fairly anticipate defense challenges and requests for an entirely new jury panel to hear the sentencing phase; litigation on these sorts of issues will likely proceed for some time.

Further, mandatory sentences remove judicial discretion from the criminal proceeding. As such, the determination of what will be an appropriate sentence must necessarily be made without being able to take into account the individual circumstances of each case. Defendants will all be treated alike, without regard to the peculiar characteristics of their cases. This will 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 will also fall disproportionately on clients of the PDD, thus increasing the concern of the PDD over this issue.

BCMC also notes 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.

**ADMINISTRATIVE IMPLICATIONS**

It is not possible to accurately predict the precise impact of the enactment of such legislation on the affected agencies, but it will be guaranteed to increase caseloads and litigation in this time of fiscal crisis when hiring has been frozen and thus will have a deleterious effect on an agency's ability to perform adequately to satisfy constitutional mandates.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 174 relates to SB11, Gang Recruitment and Activity Penalties and SB13, Gang Activity Sentencing Enhancement.

DW/svb