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FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 02/04/10
LAST UPDATED _____ HB 194
SHORT TITLE Gang Recruitment Penalties SB _____
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$350.0	\$750.0	\$1,100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 11

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
New Mexico Sentencing Commission (NMSC)
Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 194 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 (1) knowingly participate in criminal street gang activity, or (2) promote, further, or assist in felonious conduct by members of a criminal street gang.

Whoever commits gang recruitment is guilty of a misdemeanor. Whoever commits gang recruitment of a minor is guilty of a fourth degree felony.

HB 194 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-day period, or using physical violence, with the intent to coerce, induce or solicit another to (1) knowingly participate in a pattern of criminal street gang activity, or (2) promote, further, or assist in felonious conduct by members of a criminal street gang.

Whoever commits gang recruitment by threat or violence is guilty of a fourth degree felony. Whoever commits gang recruitment by threat or violence of a minor is guilty of a third degree felony.

HB 194 provides a definition of a “criminal street gang” and a definition of “pattern of criminal street gang activity”.

FISCAL IMPLICATIONS

It is difficult to attribute a specific cost to the new section of the criminal code since there is no current evidence of the frequency of commission. However, it is reasonable to assume there would be expenditures attributable to the new crime. The first cost would be for the case to wind its way through the courts and then potentially incarceration. Annual state prison incarceration for FY08 at the Southern New Mexico Correctional Facility was \$44,000. If ten persons were convicted annually the cost would be \$440 thousand. However, such a law is expected to have a deterrent effect on crime and if the deterrent amounted to 20 percent the cost is lowered to approximately \$350,000 without consideration for court costs.

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission offers the following information.

According to recent literature, since 1999, numerous states have followed the lead of the state of California by enacting legislation to criminalize a variety of gang activities such as gang solicitation and recruitment, witness intimidation, and drive-by shootings. (Bjerregaard, Antigang Legislation and It’s Potential Impact: the Promises and the Pitfalls, 2003. Criminal Justice Policy Review).

A recent study by the NM Statistical Analysis Center at the University of New Mexico, demonstrates the need for systematic data collection on gang crime in NM. 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 (see attached report).

The Public Defender adds.

A perfunctory reading of the proposed legislation raises questions of whether constitutional rights to freedom of association are implicated and whether the existing crime of conspiracy does not already provide prosecutors with an adequate “stack-on” charge the instances contemplated by the legislation. Thorough examination of these questions requires more analysis than could be effectively provided under the deadlines contemplated by this bill-analysis process. Appellate challenges to law would be likely if the legislation were enacted.

MW/mt