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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Sharer LAST UPDATED _____ HB _____

SHORT TITLE Gang Activity Sentence Enhancements SB 538

ANALYST Segura

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	N/A			

(Parenthesis () Indicate Revenue Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General's Office (AGO)
- NM Sentencing Commission (NMSC)
- Administrative Office of the Courts (AOC)
- New Mexico Corrections Department (NMCD)

Administrative Office District Attorney (AODA)
Department of the Public Defender (PDD)

SUMMARY

Senate Bill 538 proposes a new section to the Criminal Sentencing Act. The bill increases or enhances the basic sentences of certain crimes, 29 crimes designated in this bill, when a separate finding is made by the jury or court that the crime was knowingly committed for the benefit of, at the direction of or in association with a criminal street gang and with intent to promote, further or assist in criminal conduct by gang members.

The bill requires that the enhancements must run consecutively to the basic sentence and shall not be suspended or deferred. If more than one enhanced sentence is imposed, the enhancements shall run concurrently.

The bill also defines the term “criminal street gang,” but excludes fraternities, unions and similar groups or entities unless organized for the primary purpose of engaging in criminal activity.

FISCAL IMPLICATIONS

Senate Bill 538 contains no appropriation. According to NMCD indicates the bill could have a moderate to substantial fiscal impact on the Department if large number of persons convicted of gang-related crimes come into prison and serve longer sentences due to the gang-related sentence enhancements.

The PDD state 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 trails. This would require a concomitant increase in prosecution, defense, court and probation/parole resources. In addition, this will result in an increased caseload and additional court time for the courts and prosecution and the Public Defender Department, the Attorney General, and the appellate courts.

SIGNIFICANT ISSUES

The NMCD raises the concern that the classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned operated prison to \$31,239 per year in a contract private prison, where primarily only level III or medium custody inmates are housed. The cost to house a female inmate at a private owned operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract private facility.

The PDD indicates that the proposed legislation raises questions of whether constitutional rights of freedom of association are implicated and whether the already-existing crime of conspiracy does not already provide prosecutors with an adequate “stack-on” charge the instances contemplated by the legislation. PDD state that possible Appellate challenges to law would likely if Senate Bill 538 were enacted.

ALTERNATIVES

NMCD proposes an alternative to this legislation by appropriating funds to provide gang prevention and efforts throughout the state; focus on community intervention into the gang problem rather than increasing criminal penalties for gang activity. Some experts believe that gang members are not deterred from criminal acts by sentence enhancements.

RS/mew