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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/07

SPONSOR Taylor LAST UPDATED _____ HB _____

SHORT TITLE Street Gang Activity Sentencing Enhancement SB 145

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB49

Relates to HB50 and HB151

SOURCES OF INFORMATION

LFC Files

Responses Received From

Second Judicial District Attorney
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Corrections Department (CD)

SUMMARY

Synopsis of Bill

Senate Bill 145 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:

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

FISCAL IMPLICATIONS

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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Duplicates House Bill 49, except that it provides no specific effective date. The bill also relates to House Bill 50 and Senate Bill 151 which create a new crime of Street Gang Recruitment and associated penalties.

TECHNICAL ISSUES

By listing the “predicate” felonies in subsection B and including a statutory citation for each, the bill makes its list exclusive. Pursuant to State v. Loretto, 2006-NMCA-142 (Oct. 5, 2006), and State v. Bennett, 2003-NMCA-147, 134 N.M. 705, 82 P.3d 72, when a statute lists specific crimes, the list is exclusive and no other crimes can be incorporated by the courts. Typical gang crimes not included in this bill include crimes committed by inmates, drug crimes other than trafficking, and unauthorized graffiti. Because those and other crimes are not enumerated, they would not be subject to this enhancement.

OTHER SUBSTANTIVE ISSUES

The Second Judicial District Attorney notes that as the bill is currently drafted Subsection D is unclear as to whether this subsection applies solely to enhancements provided by this statute, or is also applicable to other enhancements such as firearm, habitual or hate. Clarification on this point is needed. Under current law the other three enhancements can be run consecutively to each other and frequently in gang-related prosecution two or more enhancements are involved. If left as currently worded, using this enhancement when another enhancement is involved would render this statute ineffective.

AMENDMENTS

The Second Judicial District Attorney suggests that the public would be better served with additions to the enumerated crimes listed above. The crimes of property damage and vandalism have seen a dramatic increase in numbers in the past two years. A suggestion would be to add the crimes of felony graffiti, criminal damage to property and receiving /transferring stolen property. Additionally, the ages of gang members range from the early teens to late twenties. Frequently an older gang member is in the company of a juvenile gang member, thus a crime often charged in gang cases is contributing to the delinquency of a minor. This crime should also be added to the enumerated crimes listed above.

Subsection A as currently worded is duplicative in nature, listing both general and specific intent requirements for enhancement of the enumerated crimes listed in Subsection B. A suggestion would be to remove the language “...and with a specific intent to promote, further or assist in criminal conduct by gang members...”. This would make this bill consistent with the language in Section 31-18-16 NMSA (1978), which allows an enhancement of sentence for use of a firearm while in the commission of a felony without the specific intent. This also simplifies the process for the jury by allowing a decision to be made on a special jury form (such as the firearm enhancement mentioned above) rather than a uniform jury instruction with elements, which would require drafting by the appropriate committee, submission for appropriate review and approval, commentary, amendments, before eventual enactment by the Supreme Court.

A further suggestion would be to amend the language "pursuant to" to "as provided in", when referring to the specific Section of enumerated crimes. This language change would be consistent with Section 30-42-3 NMSA (1978) Racketeering Act. The language then remains more inclusive than exclusive.

OTHER SUBSTANTIVE ISSUES

New Mexico will be the only state in the Southwest region not to enact gang legislation. New Mexico will remain open to migration of gangs in the Southwestern region, as well as, Mexico.

EO/csd