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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/10

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 195

SHORT TITLE Gang Activity Sentencing Enhancement SB \_\_\_\_\_

ANALYST Weber

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>			Additional costs would appear in outlying years	See Fiscal Impact	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 13

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorney (AODA)

Public Defender Department (PDD)

New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 195 provides enhanced sentences for any of the 29 felonies enumerated in the bill when it is proven beyond a reasonable doubt that the defendant knowingly committed any of the enumerated felonies for the benefit of, at the direction of or in association with a criminal street gang, as that term is defined in the bill, with the intent to promote, further or assist in criminal conduct by gang members.

The basic sentence of an enumerated felony would be enhanced under this bill as follows:

1. An additional one (1) year for a fourth degree felony;
2. An additional two (2) years for a third degree felony;
3. An additional three (3) years for a third degree felony resulting in death;
4. An additional four (4) years for a second degree felony;
5. An additional six (6) years for a second degree felony resulting in death; and
6. An additional eight (8) years for a first degree felony.

The bill mandates that the enhanced sentenced shall run consecutive to the basic sentence and shall not be suspended or deferred.

### **FISCAL IMPLICATIONS**

Both the AODA and PDD anticipate a significant upturn in court cases along with the associated costs as defendants would proceed to trial rather than accept a plea offer. This would result in an increased caseload and additional court time for the courts and prosecution and Public Defender attorneys, as well as bringing the likelihood of an additional appellate caseload for the Public Defender Department, the Attorney General, and the appellate courts.

NMCD adds that the bill could have moderate to substantial increased incarceration costs if large numbers of persons convicted of gang-related crimes come into prison and serve longer sentences. There is no appropriation in the bill to cover these increased incarceration costs for the Department but the costs will not begin until the enhanced years accrue.

The contract/private prison annual cost of incarcerating an inmate is \$29,853 per year for males. The cost per client to house a female inmate at a privately operated facility is \$34,183 per year. State facilities average \$45,060 annually.

The cost per client in Probation and Parole for a standard supervision program is \$1,412 per year. The cost per client in Intensive Supervision programs is \$4,601 per year. The cost per client in Community Corrections is \$3,684 per year. The cost per client per year for male and female residential Community Corrections programs is \$24,775.

However, if the enhanced sentences act as a deterrent to crime then the costs could be moderated.

### **SIGNIFICANT ISSUES**

The PDD offers the following commentary.

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. Appellate challenges to the new law would 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 would likely proceed for some time.

Further, 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.