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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Sharer LAST UPDATED _____ HB _____

SHORT TITLE Street Gang Recruitment Penalties SB 537

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$368.2	\$736.4	\$1,104.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 538.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 537 both defines and criminalizes street gang recruitment. Street gang recruitment is defined as the solicitation or recruitment of another with the intent that the person (solicited or recruited) knowingly participate in a pattern of criminal street gang activity; or promote, further or assist in felonious conduct by members of a criminal street gang. Street gang recruitment by threat or violence 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 knowingly participate in a pattern of criminal street gang activity; or promote, further or assist in felonious conduct by members of a criminal street gang.

This bill makes it a misdemeanor to commit gang recruitment, a fourth degree felony to commit gang recruitment of a minor, a third degree felony to commit gang recruitment of a minor by threat or violence, and a fourth degree felony to commit gang recruitment by threat or violence. The bill also defines the term “criminal street gang”, clarifying that one of the gang’s primary

activities is the commission of one or more of 29 felony crimes delineated in the bill.

The bill specifically excludes fraternities, unions, and similar groups and entities from the definition of a criminal street gang, unless those groups are organized for the primary purpose of engaging in criminal activity.

The effective date of the bill is July 1, 2011.

FISCAL IMPLICATIONS

It is difficult to attribute a specific cost to the activities being criminalized in this bill 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 PDD suggests that creation of a “stack-on” crime with felony consequences makes it more likely that defendants will proceed to trial instead of accepting a plea offer. Thus, costs would include prosecution of an offender and then potentially incarceration. The estimates in the table above are based on data derived from the AOC and the NMCD and include those for prosecution, defense and judicial time, plus an average of \$7,500 in jury costs, assuming ten felony cases a year go to trial, as well as costs incurred by the NMCD once an offender is convicted and incarcerated at the average rate of \$38,000 per year per inmate (assuming no suspension, deferral or meritorious deduction). However, since this bill is designed and may be expected to have a deterrent effect on crime, the costs set out have been reduced by 20 percent to reflect a deterrent in that amount.

Additionally, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

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.

A 2008 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.

The NMCD advises:

Clearly, gang recruitment activity and gang-related crimes must be dealt with by this state, and this bill is one way to address this very serious problem.

On the other hand, the AOC reports:

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.

The PDD also calls attention to this potential problem:

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

PERFORMANCE IMPLICATIONS

The PDD comments that it is not possible to accurately predict the precise impact of the enactment of such legislation on the Public Defender Department, but it is likely to increase caseloads in a time when hiring has been frozen due to fiscal considerations and thus would have a deleterious effect on the Department’s abilities to perform adequately to satisfy constitutional mandates.

ADMINISTRATIVE IMPLICATIONS

The NMCD notes that if the bill raises the prison population and probation/parole caseloads, Department staff will have increased workloads. However, if the bill deters crime and ultimately reduces the prison population and probation/parole caseloads, it may very well reduce staff workloads.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 537 relates to SB 538, which provides for enhancement of a basic sentence for criminal street gang-related activities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AODA reports there will continue to be no criminal penalty for the recruitment of individuals into criminal street gangs. To fight the increasing problem of gangs in our society, it is important to try to stop them at their source – the ability to recruit new members.

MD/bym