

<b>LFC Requester:</b>	<b>Sanchez, Scott</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/23/24  
**Bill No:** SB 102

**Sponsor:** Sen. Craig W. Brandt  
**Short Title:** Racketeering Act Changes

**Agency Name and Code**    AOC 218  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HB 116 and SB 8, also amending Section 30-42-3 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: SB 102 amends statutory sections within the Racketeering Act, Section 30-42-1 NMSA 1978 et. seq., as follows:

- **Section 30-42-3 NMSA 1978:** adds to the list of offenses constituting “racketeering,” sexual exploitation of children (Sections 30-6A-3 and 30-6A-4 NMSA 1978), criminal sexual penetration (Section 30-9-11 NMSA 1978), criminal sexual contact (Sections 30-9-12 and 30-9-13 NMSA 1978), dog fighting and cockfighting (Section 30-18-9 NMSA 1978), escape from jail (Section 30-22-8 NMSA 1978), escape from penitentiary (Section 30-22-9 NMSA 1978), assisting escape (Section 30-22-11 NMSA 1978), bringing contraband into places of imprisonment (Section 30-22-14 NMSA 1978), tampering with public records (Section 30-26-1 NMSA 1978), impersonating a peace officer (Section 30-27-2.1 NMSA 1978) and human trafficking (Section 30-52-1 NMSA 1978). Amends the definition of “enterprise” to include criminal gangs. Defines “criminal gang” to mean 3 or more persons having a common identifying sign or symbol or an identifiable leadership and who continuously or regularly associate in the commission of criminal activities.
- **Section 30-42-4 NMSA 1978:** provides that it is unlawful for a person to solicit or coerce another person, including a minor, into becoming or continuing as a member of an enterprise or participating in the racketeering activity of an enterprise, and provides a third degree felony penalty. Provides that it is unlawful for a person who is in a leadership position within an enterprise to knowingly finance, supervise or conspire to commit, through the direction of members of the enterprise, any racketeering activity, and provides a first degree felony penalty.

**FISCAL IMPLICATIONS**

There will 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 and forfeiture proceedings, and appeals from convictions. 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.

**SIGNIFICANT ISSUES**

- 1) The U.S. Department of Justice’s Criminal Resource Manual defines “criminal street

gang” to mean

...an ongoing association of five or more persons that has as one of its primary purposes the commission of criminal offenses described in the previous sentence, its members have engaged in a continuing series of such offenses within the past five years, and such activities affect interstate or foreign commerce. 18 U.S.C.A. § 521(a) (West Supp. 1995).

See <https://www.justice.gov/archives/jm/criminal-resource-manual-114-criminal-street-gangs#:~:text=A%20criminal%20street%20gang%20is,years%2C%20and%20such%20activities%20affect> .

The City of Albuquerque Code, Section 11-9-1-4 defines “criminal street gang” to mean

Any ongoing organization, association in fact, or group of three or more persons, whether formally or informally organized, or any sub-group or affiliated group thereof, having as one of its primary activities the commission of one or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity for a one-year period.

See [https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-100669](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-100669) .

- 2) Section 30-42-4(H) NMSA 1978 provides that the provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property forfeited pursuant to the Racketeering Act.

Under Section 31-27-4(A) NMSA 1978, within the Forfeiture Act, a person’s property is subject to forfeiture under state law if:

A. A person's property is subject to forfeiture pursuant to state law if:

- (1) the person was arrested for an offense to which forfeiture applies;
- (2) the person is convicted by a criminal court of the offense; and
- (3) the state establishes by clear and convincing evidence that the property is

subject to forfeiture as provided in Subsection B of this section.

Subsection B provides that following a conviction, a court may order the person to forfeit: (1) property the person acquired through commission of the offense; 2) property directly traceable to property acquired through the commission of the offense; and 3) any instrumentality the person used in the commission of the offense.

Pursuant to Section 31-27-6(B) NMSA 1978, the district courts have jurisdiction over forfeiture proceedings.

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

**ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with HB 116 and SB 8, also amending Section 30-42-3 NMSA 1978.

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**