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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Paul **ORIGINAL DATE** 02/16/2025

**BILL**

**SHORT TITLE** Recruitment of Child into Gangs **NUMBER** Senate Bill 329

**ANALYST** Lobaugh

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	\$0 to \$1,365.0	\$0 to \$1,365.0	\$0 to \$2,730	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 70 and 330.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Children, Youth and Families Department (CYFD)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Sentencing Commission (NMSC)

#### Agency Analysis was Solicited but Not Received From

Public Defender Department (PDD)

## SUMMARY

### Synopsis of Senate Bill 329

Senate Bill 329 (SB329) adds a new section to the state Criminal Code creating the crime of solicitation or recruitment of a child into a criminal street gang. SB329 defines a criminal street gang as an ongoing group, club, organization, or association of three or more people that has as one of its primary purposes the commission of a criminal offense as described in the state Criminal Code.

Under SB329, a child is a person under age 18 and the intent must be to have the child promote, further, assist, or participate in a criminal offense. SB329 also defines threatening a person with physical violence, with the intent to coerce or induce a child to actively participate in a criminal street gang, as a form of solicitation or recruitment.

If a solicited or recruited child is 13 through 17 years of age, SB329 classifies the offense of soliciting or recruiting a child into a criminal street gang as a fourth-degree felony with a basic sentence of 18 months imprisonment.

If the solicited or recruited child is under 13 years of age, SB329 classifies the offense of soliciting or recruiting a child into a criminal street gang as a third-degree felony with a basic sentence of three years imprisonment.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the length of time served in prison that might result from this bill. Increase of felony degree or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher.

SB329 would create a new fourth-degree felony and third-degree felony in the state Criminal Code. The creation of any new crime will likely increase the population of New Mexico prisons and jails, consequently increasing long-term costs to state and county general funds.

The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate is \$56.8 thousand annually, or approximately \$156 per day. However, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC staff estimates a marginal cost (or added cost per each additional inmate) of \$27.3 thousand annually, or approximately \$75 per day.

NMCD reports, "It is unknown how prevalent the actions of recruiting a child into street gangs is in the state of New Mexico." If 50 individuals statewide were incarcerated under the charge of solicitation or recruitment of a child into a criminal street gang, the total marginal cost of incarcerating those individuals would be \$1.4 million annually.

SB329 does not contain an appropriation.

## SIGNIFICANT ISSUES

A 2024 LFC program evaluation report, *Policy Spotlight: Update on Crime in New Mexico and Bernalillo County*, noted that the 2nd Judicial District and District Attorney reported 781 juvenile criminal cases in 2023 (a 38 percent increase from the prior year) and projected 894 juvenile criminal cases for 2024 (a 14 percent increase from the prior year). The 2024 LFC program evaluation report also noted that, although juvenile criminal cases have increased, demographic data show that two-thirds of felonies are committed by men between the ages of 24 and 42 years.

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. The LFC program evaluation team has found in the 2nd Judicial District (Bernalillo County) that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and when felonies rose in 2020, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than increased penalties alone.

## **PERFORMANCE IMPLICATIONS**

The state Department of Public Safety (DPS) reports SB329 would allow law enforcement agencies to pursue charges with clearly defined penalties against gang recruiters more effectively. The Administrative Office of the District Attorneys (AODA) reports SB329 would “help in furtherance of gang prosecutions.”

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB329 relates to Senate Bill 70, which, among other things, adds a definition of “criminal gang” to the state Racketeering Act, and Senate Bill 330, which enhances the basic sentence for crimes committed in furtherance of criminal street gang activity.

## **TECHNICAL ISSUES**

Subsection B.(1) of Section 1 says that the fourth-degree felony for soliciting or recruiting a child into a criminal street gang is applicable when the child is from thirteen to eighteen years of age whereas Subsection C.(1) of Section 1 defines a child as a person who is under eighteen years of age. Language in Subsection B.(1) of Section 1 may need to say “from thirteen through seventeen years of age” instead in order to make the language consistent with Subsection C.(1) of Section 1.