

LFC Requester:	Scott Sanchez
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**AGENCY BILL ANALYSIS
2024 SPECIAL SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{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 July 18, 2024
Bill No: SB 5

Sponsor: _____
Short Racketeering
Title: _____

Agency Name and Code NM Sentencing Commission (354)
Number: _____
Person Writing Douglas Carver
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 5 amends Section 30-42-3, the definitions section of the Racketeering Act, to add the following 11 crimes to the existing 26 that can be charged under the Act:

- sexual exploitation of children;
- criminal sexual penetration;
- criminal sexual contact;
- dog fighting and cockfighting;
- escape from jail;
- escape from penitentiary;
- assisting escape;
- bringing contraband into places of imprisonment;
- tampering with public records;
- impersonating a peace officer; and
- human trafficking.

SB 5 also adds a definition of "criminal gang" to the Act. A "criminal gang" is defined as "three 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." "Criminal gang" is also added to the list of entities who can be considered in the definition of an "enterprise" under the Act.

Additionally, SB 5 adds two new subsections to Section 30-42-4, the section of the Act that concerns activities prohibited under the Act. The first of these new subsections would make it 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. The penalty is a third degree felony. The second new subsection makes it 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. This penalty is a first degree felony.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The statutory purpose of the Racketeering Act (Section 30-42-2) is “to eliminate the infiltration and illegal acquisition of legitimate economic enterprise by racketeering practices and the use of legal and illegal enterprises to further criminal activities.” It is not clear that the additional crimes contemplated for the Act by SB 5 correspond with the purpose of the Act.

Similarly, adding “criminal gang”, as defined in SB 5, into the definition of “enterprise” is an awkward fit. The other enterprises in the definition are “a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals.” “Criminal gang”, defined in the bill as “three 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” is a different sort of group.

It is difficult to determine what the effect of passing SB 5 would be on the state’s prison population, but the increased crimes that could be considered racketeering and the penalties included in the bill could lead to more people being incarcerated by the Corrections Department. The average per day cost to incarcerate someone in the state’s prison system is \$156.45/day; this average includes private and public facilities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS