

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2025 REGULAR 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** February 11, 2025  
**Bill No:** SB 330-280

**Sponsor:** Nicholas A. Paul  
**Short Title:** Street Gang Activity Sentencing

**Agency Name and Code Number:** LOPD-280  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 329** “Recruitment of Child into Gangs”  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: SB 330 seeks to alter the basic sentence for gang related crimes. In a bifurcated proceeding “separate from a trial or guilty plea proceeding,” SB 330 would require New Mexico trial courts to find beyond a reasonable doubt that the crime committed was “at the direction of or in association with a criminal street gang...” SB 330 provides a list of 29 different felonies that would be subject to this new statute. Thus, if a defendant is on trial for 1 or more of these 29 felonies and there is a suspicion that the crime(s) were committed due to gang activity, after a conviction at trial or under a guilty plea on the underlying felony(ies), the prosecutors would then have to conduct a separate trial proving *beyond a reasonable doubt* that the underlying crime was gang related.

If such a finding is made, SB 330 would provide different sentencing enhancements for different degrees of underlying felonies, the highest being an 8-year enhancement for a first-degree felony. It also provides that the enhancement time is mandatory prison time (cannot be suspended or deferred in favor of probation), “shall” run consecutive to the underlying felony, but shall run concurrent to any additional enhancements under this proposed section.

SB 330 would provide definitions for “criminal street gang” and “pattern of criminal street gang activity.” These definitions presumably contain the necessary elements the prosecution would have to separately prove to determine if enhancements would apply.

**FISCAL IMPLICATIONS**

“Criminal street gang” is a broad category, essentially defined as “an ongoing organization, association or group of 3 or more persons” who commit crimes together. Applying this broad definition to defendants who have committed one of the 29 felonies would yield a high number of *enhancement trials*, whether there is an initial trial or a plea deal. Addressing such a broad concept will most likely require a “battle of experts,” exponentially increasing litigation costs.

SB 330 would require the State to conduct two trials any time gang-affiliation was alleged for 29 existing felony charges, in order to obtain an enhanced sentence for gang related crimes. This creates an enormous fiscal implication for the Courts, the District Attorneys’ office, the public defenders, police force (specifically detectives and gang experts), and the Department of Corrections and likely probation and parole.

Because of the complexity of a bifurcated proceeding and the likely involvement of gang experts in the enhancement phase, it is likely that such cases would need to be handled by senior-level felony Public Defender attorneys (Trial Attorneys). Depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed LOPD FTEs for the office as well as a need for funds for contract counsel compensation. A Trial attorney's mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. If several higher-penalty *enhancement trials* result, LOPD may need to hire more trial attorneys with greater experience. LOPD will also need to rely on defense experts in almost every enhancement trial to rebut the implication that crimes were gang-related.

A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, "A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment." [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf)

While the LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

Because of the need for a separate trial to enhance the sentences, it would likely also create more appealed cases which would increase the number of appeals for the public defenders' appellate office, the Attorney General's office, and the Court of Appeals.

## **SIGNIFICANT ISSUES**

SB 330 does not state whether the same factfinder will decide the factual issue of whether the crime was gang related or whether a new jury will need to be impaneled or whether the judge will be the fact finder. Unless the right to a jury is waived, the Sixth Amendment requires a jury to find any fact that can increase a sentence, so even in plea cases jury trials will be required for the enhancement findings. *See Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Also, there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Punishment has been one of the preferred methods to address damaging and unwanted behavior. However, decades of empirical work about the effects of punishment (including incarceration and capital punishment) on violent crime actually show that there is no conclusive evidence that stricter punishment deters criminal conduct. The research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished. And it's not just violent crime. A large review of the empirical work comes to a similar conclusion for corporate misconduct: there is no conclusive evidence that punishment deters corporate crime. Also, most people and organizations do not have a proper understanding of how the law is enforced, and thus there is a large discrepancy between objective and subjective deterrence,

meaning that how the law is enforced in reality is not how it is experienced and understood by norm addressees. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail.

Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

## **PERFORMANCE IMPLICATIONS**

Currently, prosecutors often pursue aggravating circumstances either during the initial trial (if such evidence is cross-admissible) or immediately after the verdict, relying on the same jury (or judge in a bench trial.) The parties are on notice beforehand of the possibility and may object and tailor a different procedure, case by case.

Logistically, SB 330 mandates that these findings occur in “a hearing separate from a trial or guilty plea proceeding,” precluding a combined presentation of evidence. It is unclear whether the second trial would occur immediately after conviction or months later. Because no party knows whether there will be a conviction at the end of the first trial, it is logical to assume that the parties will not prepare for the second trial until after the convictions, lest they waste unnecessary resources. It also would not make sense for the court to set aside time on its busy docket *for in case* it is necessary. The parties would also need time to subpoena the same or new witnesses for the enhancement trial. The performance implications for all stakeholders would be significant.

## **ADMINISTRATIVE IMPLICATIONS**

*See Performance Implications.*

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

None known.

## **TECHNICAL ISSUES**

*See Performance Implications.*

## **OTHER SUBSTANTIVE ISSUES**

None at this time.

## **ALTERNATIVES**

This could be proposed as other enhancements which require a separate jury finding as to the specific factual question. *See* NMSA 1978, § 31-18B-3 (2007) (enhancing hate crimes). However, even enacting the SB 330 like this statute would the fiscal implications noted above but not to the extreme that SB 330 would.

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

Status quo.

## **AMENDMENTS**