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## FISCAL IMPACT REPORT

SPONSOR Brandt LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 1/29/2025  
BILL  
SHORT TITLE Add Racketeering Crimes NUMBER Senate Bill 70  
ANALYST Tolman

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	At least \$56.4	At least \$112.8	At least \$155.1	At least \$324.3	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 86 and Senate Bill 74

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Law Office of the Public Defender (LOPD)  
New Mexico Attorney General (NMAG)  
New Mexico Sentencing Commission (NMSC)  
Department of Public Safety (DPS)

## SUMMARY

### Synopsis of Senate Bill 70

Senate Bill 70 (SB70) amends the Racketeering Act to add these offenses to the list of offenses constituting racketeering:

- 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.

SB70 expands the definition of “enterprise” to include criminal gangs, defined to mean three or more persons having a common identifying signal or identifiable leadership and who continuously or regularly associate in the commission of criminal activities.

The bill also creates two new crimes, making it unlawful to:

- Solicit or coerce another person, including a minor, into becoming or continuing as a member of an enterprise or participating in a racketeering activity of an enterprise, which constitutes a third-degree felony; and
- When 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, which constitutes a first-degree felony.

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 any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$56.2 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. SB70 is anticipated to increase the time individuals spend incarcerated, although as to the addition of 11 offenses that constitute racketeering, the impact is not quantifiable.

SB70 also creates two new crimes, soliciting or coercing a person to become a member of an enterprise or engage in a racketeering, which is a third-degree felony, and being in a leadership position while knowingly engaged in a racketeering activity, which is a first-degree felony. Both crimes will increase incarceration and incarceration costs. Based on estimates of actual time served provided by the New Mexico Sentencing Commission (NMSC), actual time served for the third-degree felony is 2.5 years. Assuming that one person is incarcerated for this crime per year, the cost in FY26 is \$28.2 thousand, increasing in FY26 to \$56.4 thousand, and FY27 to \$70.5 thousand. As to the new first-degree felony, the average length of stay is 14.63 years. Assuming, again, that one person is incarcerated for this crime per year, the cost in FY25 is \$28.2 thousand, increasing in FY26 to \$56.4 thousand, and in FY27 to \$84.6 thousand.

## **SIGNIFICANT ISSUES**

The Administrative Office of the District Attorneys (AODA) notes that SB70 provides law

enforcement and prosecutors more tools to address organized crime, since the added crimes are those that are frequently committed by organized crime such as prison gangs and sex traffickers. AODA also notes that the added definition of *criminal gang* seems to be in line with definitions used by federal law enforcement agencies and could aid prosecutors in situations where a gang is conducting criminal activity but does not meet the pre-existing definition of *enterprise* as the statute is currently written.

The Administrative Office of the Courts notes that the U.S. Department of Justice's Criminal Resource Manual defines *criminal street gang* to constitute five or more members, while The City of Albuquerque Code requires at least three members.

NMSC notes that the additional crimes contemplated by SB70 do not seem to correspond with the purpose of the Racketeering Act (Section 30-42-2), which 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." Related to this, NMSC notes that adding the definition of "criminal gang" to the definition of "enterprise" appears to be an awkward fit, given that the other entities in the definition are "a sole proprietorship, partnership, corporation, business, labor union, association, or other legal entity or a group of individuals."

The Law Office of the Public Defender (LOPD) notes that the two new crimes added in Section 30-42-4 cover otherwise existing criminal conduct and remove the element of pattern of racketeering activity. For example, SB70 creates a third-degree felony, "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." However, LOPD points out that this new crime omits a requirement that solicitation or coercion be part of a pattern of racketeering activity, a requirement that exists in all the other existing crimes under the Act and ensures that racketeering does not cover isolated, singular incidents. Similarly, the bill also creates another crime, which is a first-degree felony, "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," which also does not require that the conduct be part of a pattern of racketeering activity.

LOPD also notes that the new crime created by SB70 regarding "finance or supervision" overlaps with Subsections A and B of Section 30-42-4, which currently punishes the use of investing of proceeds derived from racketeering activity and the acquisition or maintenance of an interest in or control of an enterprise. Furthermore, Subsection C already specifies that a person associated with an enterprise is guilty of a second-degree felony for directly or indirectly conducting or participating in a pattern of racketeering activity, which would likely cover the act of supervision specified in the new crime created by SB70.

LOPD also notes that including conspiracy in the new crime created by SB70 that is a first-degree felony could overlap with existing Subsection D of Section 30-42-4, which makes it unlawful for a person "to conspire to violate" the Racketeering Act, a third degree felony. If a court finds this situation to create ambiguity in the statute, then the rule of lenity may require the imposition of the lesser third-degree felony penalty. LOPD further notes that the new crime of conspiring to commit racketeering activity by someone in a leadership position would constitute a first-degree felony when solicitation, coercion, and the existing crimes would otherwise impose at most second degree felonies.

Furthermore, LOPD notes that the State is already able to charge someone with “conspiracy to commit racketeering” by relying on the existing Conspiracy statute, NMSA 1978, § 30-28-2. In such cases, conspiracy to commit racketeering must involve an enterprise and a pattern of racketeering activity (*See, e.g., State v. Catt*, 2019-NMCA-013, ¶ 17, 435 P.3d 1255).

## **PERFORMANCE IMPLICATIONS**

The Administrative Office of the Courts (AOC) notes that SB70 could impact performance-based budgeting by the agency if the bill has an impact on the following performance measures: on cases disposed of as a percent of cases filed and percent change in case filings by case type.

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

House Bill 86 and Senate Bill 74 propose to add human trafficking to the list of crimes defining racketeering.

## **OTHER SUBSTANTIVE ISSUES**

LOPD notes enterprises engaged in racketeering activity are designed to profit from those activities. Some of the additional offenses added by SB70 to constitute racketeering, such as escape from jail or sexual assault, are already crimes, are not those crimes typically committed for profit, and committed as a pattern of activity.

RT/SL2/sgs