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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/13/2025

SPONSOR Paul

BILL
NUMBER Senate Bill 330

SHORT TITLE Street Gang Activity Sentencing

ANALYST Dinces

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	At least \$29.0	At least \$82.2	At least \$111.2	Recurring	General Fund
LOPD	No fiscal impact	\$137.5	\$137.5	\$275.0	Recurring	General Fund
Total	No fiscal impact	At least \$166.5	At least \$219.7	At least \$386.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 70 and 329

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Corrections Department (NMCD)

Agency Analysis was Solicited but Not Received From
 Law Office of the Public Defender (LOPD)

SUMMARY

Synopsis of Senate Bill 330

Senate Bill 330 (SB330) would alter the basic sentences for gang-related crime when the state proves at trial or to a judge beyond a reasonable doubt that the crime was knowingly committed for the benefit and the direction of a criminal street gang. An additional one year is added for a fourth-degree felony, an additional two years for a three-degree felony, an additional four years for a second-degree felony, an additional six year for a second-degree felony resulting in death, and an additional eight years for first-degree felony.

The effective date of this bill is July 1, 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.

SB330 would increase the severity of sentences for offenders convicted of gang-related felonies, with additional years added to sentences depending on the degree of felony and the outcomes of the crime, leading to longer prison sentences. The cumulative effect of these extended sentences could result in an increase in the prison population. At the FY24 expenditure level, the average cost per inmate is \$56.8 thousand annually, or approximately \$156 per day. Given current trends in inflation and rising operational costs, the future average cost per inmate will exceed the current estimate.

NMSC notes the average increase in length of stay per one year sentencing enhancement is 0.796 years for serious violent offenses and 0.525 years for other crimes. Based on this data, we would expect the sentencing enhancements in SB330 to increase sentence lengths by between 0.525 years (for fourth-degree felonies) to 6.368 years (for first degree serious violent felonies) when the elements for gang-related offenses set out in the bill are satisfied.

When calculating the marginal cost of additional sentence lengths, over the next two years, there will be increased costs for fourth- and third-degree felony convictions that lead to an estimated cost of at least an additional \$29 thousand in FY26 and \$82.2 thousand in FY27.

AOC highlights 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, hearings held to determine whether an enumerated felony offense was knowingly committed for the benefit of, at the direction of or in association with a criminal street gang with the intent to promote, further or assist in criminal conduct by gang members, for purposes of sentence enhancement, 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.

Furthermore, more severe penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services. LFC assumes LOPD may need a half-time position to address more defendants going to trial. This cost is estimated at \$137.5 thousand per year.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, punishment has

grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, 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. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

AOC includes specific concerns listed below:

1. SB330 calls for a hearing separate from a trial or guilty plea proceeding to be held to litigate the question of whether a SB330, Section 1(B) enumerated felony was knowingly committed for the benefit of, at the direction of or in association with a criminal street gang with the intent to promote, further or assist in criminal conduct by gang members, for the purpose of determining whether sentence enhancement is required. These required hearings will claim judicial resources, both fiscal and administrative.
2. More severe penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

ADMINISTRATIVE IMPLICATIONS

AOC continues to highlight, because the agency uses 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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB330 relates to SB70 and SB329, defining “criminal gang” and “criminal street gang,” respectively. Furthermore, the definition of “criminal street gang” provided in SB330 does not match the definition of the same term provided in SB329, which creates the crime of soliciting or recruiting a child into a criminal street gang.

TECHNICAL ISSUES

AOC highlights definition discrepancies between SB70, SB229, and SB330 regarding criminal gang and criminal street gang:

SB330 defines “criminal street gang” to mean “an ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the felonies enumerated in Subsection B of this section, who associate under a common name or have an identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of criminal street gang activity. ‘Criminal street gang’ does not include a fraternal organization, union, corporation, association or similar group or entity, unless organized

for the primary purpose of engaging in criminal activity.

This differs from SB329 and SB70:

2025's SB329 defines "criminal street gang" to mean "an ongoing group, club, organization or association of three or more persons that has as one of its primary purposes the commission of one or more of the criminal offenses described in the Criminal Code." ... 2025's SB70 defines "criminal gang" to mean "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".

OTHER SUBSTANTIVE ISSUES

According to DPS:

Gangs are often involved in violent and serious crimes such as murder, robbery, kidnapping, and drug trafficking. This bill provides a necessary tool to address the systemic nature of gang violence by increasing penalties for gang-related crimes. This, in turn, could reduce violent crime rates in New Mexico and make communities safer.

SB330 specifically includes enhancements for crimes committed against peace officers, such as aggravated assault or battery upon an officer. This bill strengthens the safety of law enforcement who face increased risks when engaging with criminal street gangs.

SB330 stipulates that enhancements will run consecutively with the basic sentence, making it more difficult for criminals to reduce their time served through plea bargaining or other methods. This bill ensures that individuals who commit serious gang-related crimes receive a more significant punishment.

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