

**NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.**

**FISCAL IMPACT REPORT**

SPONSOR: Garcia, MH                      DATE TYPED: 2/15/01    HB 402  
 SHORT TITLE: Gang Enforcement & Prevention Act                      SB \_\_\_\_\_  
 ANALYST: Rael

**APPROPRIATION**

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE**

Revenue Impact		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
See Narrative				Recurring	Intensive Supervision Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**

Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Public Defender (PD)  
 Attorney General (AG)

**SUMMARY**

Synopsis of Bill

The Gang Enforcement and Prevention Act creates a new criminal offense. The bill provides that it is a third degree felony for a person to use threats, intimidation or persuasion to induce another person less than eighteen years of age to participate in a pattern of criminal gang activity.

Significant Issues

This will has possible constitutional freedom of speech and association issues. (See Substantive Issues)

**FISCAL IMPLICATIONS**

## **House Bill 402 -- Page 2**

The Department roughly estimates that approximately two-thirds (2/3) of the persons convicted of the new offense will be sentenced to prison for the offense while approximately one-third (1/3) will be sentenced to probation. Since the offense is entirely new, it is almost impossible to estimate the number of new convictions each year. However, given that the offense is defined somewhat narrowly, the Department roughly estimates there will be from five (5) to thirty (30) new convictions each year.

The private prison annual cost of incarcerating an inmate based upon Fiscal Year 00 actual expenditures is \$21,670 per year for males. The cost per client to house a female inmate at the privately operated facility in Grants is \$24,348 per year. Any net increase in inmate population will be housed at a private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,536 per year. The cost per client in Intensive Supervision programs is \$3,922 per year. The cost per client in Department-Operated Community Corrections programs is \$5,519 per year. The cost per client in Privately-Operated Community Corrections programs is \$10,724 per year. There will be a minimal increase in revenue due to the additional Probation and Parole supervision fees that are collected, as well as any additional fines collected for the new offense.

### **ADMINISTRATIVE IMPLICATIONS**

The Department of Public Safety reports that any fiscal impact on the department would be due to acquiring expertise in gang enforcement.

It will cost the judicial information system \$400 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. New laws and new amendments to existing laws have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **TECHNICAL ISSUES**

The Attorney General recommends that the term "induce" in section 4 be changed to "cause". Courts are used to dealing with "cause" and the use of this verb may eliminate a challenge for vagueness.

The Public Defender believes that phrase "pattern of criminal gang activity" is ambiguously defined. An ambiguous definition could lead to over-enforcement, under-enforcement and could lead to extensive appeals.

### **OTHER SUBSTANTIVE ISSUES**

The bill could violate the protections of the first amendment and New Mexico's more protective Article II, Section 17 (free speech and association). One can imagine innumerable situations where a person encourages a youth to join a group, not knowing or even caring that at least two if its members have recent felony records: e.g., Alcoholics Anonymous groups, offender therapy groups, any therapy group, a church youth group or a support group. It cannot constitutionally be a crime to encourage a minor to engage in this non-criminal, constitutionally-protected association.

FAR/njw