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FISCAL IMPACT REPORT

SPONSOR Swisstack DATE TYPED 02/08/05 HB 226/aHJC

SHORT TITLE Street Gang Activity Penalty SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 227

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Corrections Department
 Public Defender Department

No Response Received

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment makes several changes to the provisions relating to the new crimes of gang recruitment and gang recruitment by threat or violence. The amendment:

- Changes the definitions of “gang recruitment” and “gang recruitment by threat or violence” by removing the provisions that include solicitation or recruitment of another with the intent that the person solicited or recruited actively participate in a criminal street gang;

- Adds burglary, pursuant to Section 30-16-3 NMSA 1978, and unlawful taking of a motor vehicle, pursuant to Section 66-3-504 NMSA 1978, to the list of offenses used to define “criminal street gang;”
- Removes “conspiracy to commit or solicitation to commit” from the definition of “pattern of criminal gang activity.”

Synopsis of Original Bill

House Bill 226 creates the new crimes of gang recruitment and gang recruitment by threat or violence and establishes the penalties for violations of the law.

Significant Issues

House Bill 226 defines “gang recruitment” and “gang recruitment by violence,” making it illegal to recruit a person, or to use threats of violence or actual violence to coerce a person, into participating in a street gang or gang activity. The bill establishes penalties as follows:

Gang recruitment: misdemeanor;

Gang recruitment of a minor: fourth degree felony;

Gang recruitment by threat or violence: fourth degree felony;

Gang recruitment of a minor by threat or violence: third degree felony.

The bill also defines “criminal street gang” and “pattern of criminal gang activity” for the purpose of implementing the new section of the criminal code.

FISCAL IMPLICATIONS

The total fiscal impact to the state is indeterminate and would depend on the volume and complexity of trials related to new criminal violations.

The Public Defender Department writes that this bill could have significant costs because of the inherent complexities of trying individuals for violations. The department notes that the bill would require “mini-trials” on the issue of whether a street gang exists as well as whether it has engaged in a pattern of criminal gang activity. Both the Public Defender Department and the AODA anticipate that expert witnesses would be required in many or all trials, which would increase the costs of a trial.

The Corrections Department notes that this bill could lead to an increase in the prison population since it creates new crimes. However, it also notes that the penalties may serve as a deterrent to gang activity, which could have the effect of reducing the prison population.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill relates to House Bill 227, which enhances the basic sentence for crimes committed to further gang activity.

OTHER SUBSTANTIVE ISSUES

The Public Defender Department writes that the bill has considerable guilt-by-association ramifications, noting that the law could be used against people with marginal involvement in gang activity.

The Public Defender Department also writes that the bill's language making it illegal to "promote, further or assist in felonious conduct by members of a criminal street gang" may be unconstitutionally broad and vague as it has no requirement of knowledge or intent. The AODA also anticipates a constitutional challenge to this bill, noting that similar legislation was passed in California in 1988.

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