

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/18/08

SPONSOR Swisstack LAST UPDATED _____ HB 106

SHORT TITLE Gang Recruitment Penalty Enhancement SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

No Responses Received From

Children, Youth and Families Department

SUMMARY

Synopsis of Bill

House Bill 106 proposes to create a new crime for recruiting others to join criminal street gangs or for inducing participation in criminal street gang activity. The proposed legislation provides increased penalties for recruitment and inducement of minors. The proposed legislation provides two distinct definitions of “gang recruitment.” The first definition is by the solicitation of others to engage in a patter of gang activity or to engage in felonious conduct. The penalty for gang recruitment by solicitation of an adult is a misdemeanor and recruitment by solicitation of a minor is a fourth degree felony. The second definition is threatening another with physical violence on tow or more separate occasions within a 30 day period, or using physical violence with the intent to coerce, induce or solicit another to knowingly participate in a pattern of criminal street gang activity or promote, further or assist in felonious conduct by members of a criminal street gang. The penalty for gang recruitment by threat or violence is a fourth degree felony and gang recruitment of a minor by threats or violence is a third degree felony.

FISCAL IMPLICATIONS

AODA states the addition of a new crime would mean minimal administrative cost to update statutory changes. A budgetary response may be needed to cover any extra time needed to prosecute the new cases.

NMCD reports the proposed legislation could have a minimal to moderate negative fiscal impact on the department if a large number of persons convicted of these gang recruitment-related crimes serve prison sentences and/or probation/parole terms. NMCD notes there is no appropriation in the proposed legislation to cover increases in cost for incarceration and probation/parole services.

Based on FY06 actual expenditures, the average annual cost to incarcerate an individual in a NMCD correctional facility is \$31,239, and the average annual cost of probation and parole/community corrections client is \$1,343.

AOC states as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, court room availability and jury fees. AOC notes there will be 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.

SIGNIFICANT ISSUES

AODA notes that New Mexico has no law to dissuade the recruitment of members into gangs which perpetuate felonious activity. Gang members can recruit and solicit, with and without violence, minors into their gangs without threat of repercussion. Minors are often more vulnerable to influence by threats and violence.

NMCD states the proposed legislation could have minimal to moderate increase on the department's prison population because it could result in prison sentences for those convicted of these new gang recruitment-related crimes. It could minimally to moderately increase probation and parole caseloads when those convicted of these gang recruitment-related crimes are placed on probation and parole. NMCD also notes the proposed legislation might deter gang-related recruitment and gang-related crime in general, which would result in a minimal to moderate decrease in prison population and probation/parole caseloads.

NMSC reports according to recent literature, since 1999, numerous states have followed the state of California by enacting legislation to criminalize a variety of gang activities, such as gang solicitation and recruitment, witness identification and drive-by shootings. Also, a recent study by the New Mexico Statistical Analysis Center at the University of New Mexico demonstrates the need for systematic data collection on gang crime in New Mexico. A lack of record keeping and standard documentation on gangs makes it difficult to compare gang crime and the proportion of crime attributable to gangs.

PERFORMANCE IMPLICATIONS

PDD states that there is always a potential of increased workload for the department when new

crimes are created, or sentencing schemes are enhanced; however, the proposed legislation is not likely to result in a large increase in litigation and any additional caseload would be absorbed through the ordinary course of business.

AOC notes the proposed legislation may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

NMCD states if the proposed legislation raises the prison population and probation/parole caseloads, the department staff will have increased workloads. However, if the proposed legislation ultimately reduces the prison population and probation/parole caseloads, it may very well reduce staff workloads.

AOD reports 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 106 has a companionship with House Bill 105.

RPG/mt