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HOUSE BILL 226

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING CRIMINAL PENALTIES FOR
RECRUITING OTHERS TO JOIN A CRIMINAL STREET GANG OR INDUCING
PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY; ENHANCING
PENALTIES FOR RECRUITMENT AND INDUCEMENT OF MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted
to read:

"NEW MATERIAL GANG RECRUITMENT. --

A. Gang recruitment consists of the solicitation or
recruitment of another with the intent that the person
solicited or recruited:

(1) actively participate in a criminal street
gang;

(2) participate in a pattern of criminal gang

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1 activity; or

2 (3) promote, further or assist in felonious
3 conduct by members of a criminal street gang.

4 Whoever commits gang recruitment is guilty of a
5 misdemeanor. Whoever commits gang recruitment of a minor is
6 guilty of a fourth degree felony.

7 B. Gang recruitment by threat or violence consists
8 of threatening another with physical violence on two or more
9 separate occasions within a thirty-day period, or using
10 physical violence, with the intent to coerce, induce or solicit
11 another to:

12 (1) actively participate in a criminal street
13 gang;

14 (2) participate in a pattern of criminal gang
15 activity; or

16 (3) promote, further or assist in felonious
17 conduct by members of a criminal street gang.

18 Whoever commits gang recruitment by threat or violence is
19 guilty of a fourth degree felony. Whoever commits gang
20 recruitment of a minor by threat or violence is guilty of a
21 third degree felony.

22 C. As used in this section, "criminal street gang"
23 means an ongoing organization, association or group of three or
24 more persons, whether formal or informal, having a common name
25 or identifying sign or symbol, whose members individually or

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1 collectively engage in or have engaged in a pattern of criminal
2 gang activity and having as one of its primary activities the
3 commission of one or more of the following felonies:

4 (1) homicide, pursuant to Section 30-2-1 NMSA
5 1978;

6 (2) voluntary manslaughter, pursuant to
7 Subsection A of Section 30-2-3 NMSA 1978;

8 (3) aggravated assault, pursuant to Section
9 30-3-2 NMSA 1978;

10 (4) assault with intent to commit a violent
11 felony, pursuant to Section 30-3-3 NMSA 1978;

12 (5) aggravated battery, pursuant to Subsection
13 C of Section 30-3-5 NMSA 1978;

14 (6) shooting at a dwelling or occupied
15 building or shooting at or from a motor vehicle, pursuant to
16 Section 30-3-8 NMSA 1978;

17 (7) aggravated stalking, pursuant to Section
18 30-3A-3.1 NMSA 1978;

19 (8) kidnapping, pursuant to Section 30-4-1
20 NMSA 1978;

21 (9) sexual exploitation of children by
22 prostitution, pursuant to Section 30-6A-4 NMSA 1978;

23 (10) dangerous use of explosives, pursuant to
24 Section 30-7-5 NMSA 1978;

25 (11) possession of explosives, explosive

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1 devices or incendiary devices, pursuant to Sections 30-7-19 and
2 30-7-19.1 NMSA 1978;

3 (12) criminal sexual penetration in the first,
4 second or third degree, pursuant to Section 30-9-11 NMSA 1978;

5 (13) criminal sexual contact of a minor,
6 pursuant to Section 30-9-13 NMSA 1978;

7 (14) robbery, pursuant to Section 30-16-2 NMSA
8 1978;

9 (15) aggravated burglary, pursuant to Section
10 30-16-4 NMSA 1978;

11 (16) extortion, pursuant to Section 30-16-9
12 NMSA 1978;

13 (17) aggravated fleeing a law enforcement
14 officer, pursuant to Section 30-22-1.1 NMSA 1978;

15 (18) harboring or aiding a felon, pursuant to
16 Section 30-22-4 NMSA 1978;

17 (19) aggravated assault upon a peace officer,
18 pursuant to Section 30-22-22 NMSA 1978;

19 (20) assault with intent to commit a violent
20 felony upon a peace officer, pursuant to Section 30-22-23 NMSA
21 1978;

22 (21) aggravated battery on a peace officer,
23 pursuant to Section 30-22-25 NMSA 1978;

24 (22) bribery or intimidation of a witness or
25 retaliation against a witness, pursuant to Section 30-24-3 NMSA

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1 1978;

2 (23) trafficking in a controlled substance,
3 pursuant to Section 30-31-20 NMSA 1978;

4 (24) money laundering, pursuant to the Money
5 Laundering Act; and

6 (25) an attempt, conspiracy or solicitation to
7 commit any of the above felonies, pursuant to Section 30-28-1,
8 30-28-2 or 30-28-3 NMSA 1978.

9 D. As used in this section, "pattern of criminal
10 gang activity" means the commission of, attempted commission
11 of, conspiracy to commit or solicitation to commit two or more
12 of the felonies enumerated in Subsection C of this section by
13 members of a criminal street gang; provided that the offenses
14 occurred within three years of each other and were committed on
15 separate occasions or by two or more persons. "