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HOUSE BILL 105

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO CRIMINAL SENTENCING; ENHANCING THE BASIC SENTENCE FOR CRIMES COMMITTED IN FURTHERANCE OF CRIMINAL STREET GANG ACTIVITY.

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

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

"[NEW MATERIAL] ALTERATION OF BASIC SENTENCE--GANG-RELATED CRIMES.--

A. When, in a hearing separate from the trial or guilty plea proceeding, it is proven beyond a reasonable doubt to a jury or to the judge if the defendant's right to a jury trial has been waived that a felony enumerated in Subsection B of this section was knowingly committed for the benefit of, at the direction of or in association with a criminal street gang

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1 with the intent to promote, further or assist in criminal  
2 conduct by gang members, the basic sentence of imprisonment  
3 prescribed for the offense shall be increased as follows:

4 (1) for a fourth degree felony, an additional  
5 one year;

6 (2) for a third degree felony, an additional  
7 two years;

8 (3) for a third degree felony resulting in  
9 death, an additional three years;

10 (4) for a second degree felony, an additional  
11 four years;

12 (5) for a second degree felony resulting in  
13 death, an additional six years; and

14 (6) for a first degree felony, an additional  
15 eight years.

16 B. The following felonies are subject to the  
17 enhancements imposed pursuant to Subsection A of this section:

18 (1) murder, pursuant to Section 30-2-1 NMSA  
19 1978;

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

22 (3) aggravated assault, pursuant to Section  
23 30-3-2 NMSA 1978;

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

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

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

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

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

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

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

14 (11) possession of explosives, explosive  
15 devices or incendiary devices, pursuant to Sections 30-7-19 and  
16 30-7-19.1 NMSA 1978;

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

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

21 (14) felony criminal damage to property,  
22 pursuant to Section 30-15-1 NMSA 1978;

23 (15) felony graffiti, pursuant to Section  
24 30-15-1.1 NMSA 1978;

25 (16) robbery, pursuant to Section 30-16-2 NMSA

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1 1978;

2 (17) burglary, pursuant to Section 30-16-3

3 NMSA 1978;

4 (18) aggravated burglary, pursuant to Section  
5 30-16-4 NMSA 1978;

6 (19) extortion, pursuant to Section 30-16-9  
7 NMSA 1978;

8 (20) aggravated fleeing a law enforcement  
9 officer, pursuant to Section 30-22-1.1 NMSA 1978;

10 (21) harboring or aiding a felon, pursuant to  
11 Section 30-22-4 NMSA 1978;

12 (22) aggravated assault upon a peace officer,  
13 pursuant to Section 30-22-22 NMSA 1978;

14 (23) assault with intent to commit a violent  
15 felony upon a peace officer, pursuant to Section 30-22-23 NMSA  
16 1978;

17 (24) aggravated battery upon a peace officer,  
18 pursuant to Section 30-22-25 NMSA 1978;

19 (25) bribery or intimidation of a witness or  
20 retaliation against a witness, pursuant to Section 30-24-3 NMSA  
21 1978;

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

24 (27) unlawful taking of a motor vehicle,  
25 pursuant to Section 66-3-504 NMSA 1978;

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1 (28) money laundering, pursuant to the Money  
2 Laundering Act; and

3 (29) an attempt to commit any of the felonies  
4 listed in this subsection, pursuant to Section 30-28-1 NMSA  
5 1978.

6 C. The enhancements provided in Subsection A of  
7 this section shall run consecutive with the basic sentence and  
8 shall not be suspended or deferred.

9 D. If more than one enhancement is imposed, the  
10 enhancements provided in Subsection A of this section shall run  
11 concurrently.

12 E. As used in this section, "criminal street gang"  
13 means an ongoing organization, association or group of three or  
14 more persons, whether formal or informal, having as one of its  
15 primary activities the commission of one or more of the  
16 felonies enumerated in Subsection B of this section, having a  
17 common name or identifying sign or symbol and whose members  
18 individually or collectively engage in or have engaged in a  
19 pattern of criminal street gang activity.

20 F. As used in this section, "pattern of criminal  
21 street gang activity" means the commission of two or more of  
22 the felonies enumerated in Subsection B of this section;  
23 provided that the offenses occurred within three years of each  
24 other and were committed on separate occasions by two or more  
25 persons."

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1           Section 2.   EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2008.

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