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HOUSE BILL 741

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO CRIMINAL LAW; PROHIBITING PARTICIPATION IN CRIMINAL STREET GANGS; DECLARING A PLACE WHERE A STREET GANG COMMITS CRIMES A PUBLIC NUISANCE PER SE; PROVIDING FOR CLOSURE, LIABILITY AND ADDITIONAL REMEDIES; ENHANCING THE BASIC SENTENCE FOR CRIMES COMMITTED IN FURTHERANCE OF CRIMINAL STREET GANG ACTIVITY; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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] PARTICIPATION IN CRIMINAL STREET GANGS-- PENALTY.--

A. A person who knowingly and willfully promotes, furthers or assists in the commission of a felony by a criminal street gang is guilty of a misdemeanor and shall be sentenced

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1 in accordance with the provisions of Section 31-19-1 NMSA 1978.

2 B. A person who is convicted of a second or
3 subsequent violation of Subsection A of this section is guilty
4 of a fourth degree felony and shall be sentenced in accordance
5 with the provisions of Section 31-18-15 NMSA 1978.

6 C. As used in this section:

7 (1) "criminal street gang" means an ongoing
8 organization, association or group of three or more persons,
9 whether formal or informal, having as one of its primary
10 activities the commission of felonies, having a common name or
11 identifying sign or symbol and whose members individually or
12 collectively engage in a pattern of criminal street gang
13 activity, but does not include a fraternal organization, union,
14 corporation, association or similar group or entity, unless
15 organized for the primary purpose of engaging in criminal
16 activity; and

17 (2) "pattern of criminal street gang activity"
18 means the commission of two or more felonies within three years
19 of each other on separate occasions by two or more persons for
20 the benefit of, at the direction of or in association with a
21 criminal street gang."

22 Section 2. A new section of Chapter 30, Article 8 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] ABATEMENT OF CENTERS OF CRIMINAL STREET
25 GANG ACTIVITY.--

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1 A. When a civil action to abate a public nuisance
2 is brought exclusively by the attorney general, a district
3 attorney, a city attorney or a county attorney and the public
4 nuisance sought to be abated under the provisions of Section
5 30-8-8 NMSA 1978 is a center of criminal street gang activity,
6 as defined in Paragraph (1) of Subsection G of this section, in
7 addition to injunctive relief and any other remedy provided by
8 law, the remedies and presumptions provided in this section
9 shall apply.

10 B. A center of criminal street gang activity is a
11 public nuisance per se.

12 C. For the purposes of this section, two or more
13 convictions or sentence enhancements resulting from a felony
14 committed for the benefit of, at the direction of or in
15 association with a criminal street gang, occurring at least one
16 week apart within a period of three years arising out of
17 conduct engaged in at the place described in an abatement
18 action, creates a presumption that the place is a center of
19 criminal street gang activity. However, this presumption shall
20 not arise:

21 (1) unless the person against whom the
22 abatement action is brought is shown to have had actual
23 knowledge or to have received written notice from law
24 enforcement officials, no more than thirty days after the date
25 of the convictions, of the convictions upon which the

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1 presumption is based;

2 (2) against a nonprofit or charitable
3 organization conducting its affairs with ordinary care; or

4 (3) against a governmental entity.

5 D. If, in an abatement action brought under Section
6 30-8-8 NMSA 1978, a court concludes that a center of criminal
7 street gang activity exists at the location alleged, the court
8 may, as part of its judgment:

9 (1) hold a member of the criminal street gang
10 who created, maintained or contributed to the nuisance
11 personally liable for payment of damages;

12 (2) direct the removal of all personal
13 property used for the benefit of the criminal street gang from
14 the center of criminal street gang activity and direct the sale
15 of that property in the same manner as personal property is
16 sold when seized under a writ of execution;

17 (3) order the closing of the center of
18 criminal street gang activity for a period of one year and
19 prohibit any person entering it except under conditions
20 specified in the order; and

21 (4) award money damages on behalf of the
22 community or neighborhood injured by that nuisance to the
23 credit of the local government community rehabilitation fund.

24 E. If a judgment entered under the provisions of
25 Subsection D of this section includes the provisions of

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1 Paragraph (4) of that subsection, the court shall include in
2 its judgment a provision to permit the owner to take possession
3 of premises ordered closed if the owner files a bond approved
4 by the court, in an amount equal to the full value of the
5 property, conditioned upon the owner's promise to abate the
6 nuisance immediately and prevent the reoccurrence of the
7 nuisance for one year thereafter.

8 F. Nothing in this section shall be construed to
9 preclude an aggrieved person from seeking any other remedy
10 provided by law or prevent a local governing body from adopting
11 and enforcing laws consistent with this section relating to
12 criminal street gangs. Where local laws duplicate or
13 supplement this section, this section shall be construed as
14 providing alternative remedies and not as preempting the field.

15 G. As used in this section:

16 (1) "center of criminal street gang activity"
17 means a building or place used by two or more members of a
18 criminal street gang for the commission of felonies for the
19 benefit of or at the direction of the criminal street gang;

20 (2) "criminal street gang" means an ongoing
21 organization, association or group of three or more persons,
22 whether formal or informal, having as one of its primary
23 activities the commission of felonies, having a common name or
24 identifying sign or symbol and whose members individually or
25 collectively engage in a pattern of criminal street gang

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1 activity, but does not include a fraternal organization, union,
2 corporation, association or similar group or entity, unless
3 organized for the primary purpose of engaging in criminal
4 activity;

5 (3) "date of the conviction" means the date
6 upon which a plea of guilty or nolo contendere or a judgment of
7 guilty entered in the case charging the crime is final and
8 unappealable; and

9 (4) "pattern of criminal street gang activity"
10 means the commission of two or more felonies within three years
11 of each other on separate occasions by two or more persons for
12 the benefit of, at the direction of or in association with a
13 criminal street gang."

14 Section 3. [NEW MATERIAL] LOCAL GOVERNMENT COMMUNITY
15 REHABILITATION FUND CREATED--ADMINISTRATION.--The "local
16 government community rehabilitation fund" is created in the
17 state treasury. The fund consists of money credited to the
18 fund pursuant to Section 2 of this act. Money in the fund at
19 the end of a fiscal year shall not revert to any other fund.
20 The department of finance and administration shall administer
21 the fund and money in the fund is appropriated to the
22 department of finance and administration to administer the fund
23 and to reimburse the governing body of a municipality or county
24 in which a public nuisance has been abated as a center of
25 criminal street gang activity for expenses by the county or

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1 municipality for the training of law enforcement officers and
2 planning, construction, maintenance and rehabilitation of
3 communities or neighborhoods that have been injured by criminal
4 street gang activity. The governing body of a municipality or
5 county shall be reimbursed solely for the amount of money
6 damages credited to the fund pursuant to a court judgment and
7 expended for the benefit of the community or neighborhood on
8 whose behalf the money damages were awarded. Disbursements
9 from the fund shall be made by warrant of the secretary of
10 finance and administration pursuant to vouchers signed by the
11 secretary or the secretary's authorized representative.

12 Section 4. A new section of the Criminal Sentencing Act
13 is enacted to read:

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

16 A. Except as otherwise provided in Subsection B or
17 C of this section, when a person knowingly and willfully
18 commits a felony enumerated in Subsection D of this section,
19 for the benefit of, at the direction of or in association with
20 a criminal street gang, the basic sentence of imprisonment
21 prescribed for the offense shall be increased as follows:

22 (1) for a fourth degree felony, an additional
23 one year;

24 (2) for a third degree felony, an additional
25 two years;

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1 (3) for a second degree felony, an additional
2 four years; and

3 (4) for a first degree felony, an additional
4 eight years.

5 B. When a person knowingly and willfully commits a
6 violent felony or sexual offense enumerated in Subsection D of
7 this section for the benefit of, at the direction of or in
8 association with a criminal street gang, the basic sentence of
9 imprisonment prescribed for the offense shall be increased by
10 ten years.

11 C. When a person knowingly and willfully commits a
12 felony enumerated in Subsection D of this section within one
13 thousand feet of an elementary, middle, junior high, high or
14 vocational school for the benefit of, at the direction of or in
15 association with a criminal street gang, the basic sentence of
16 imprisonment prescribed for the offense shall be increased by
17 five years.

18 D. The following felonies are subject to the
19 enhancements imposed pursuant to Subsections A, B and C of this
20 section:

21 (1) murder, pursuant to Section 30-2-1 NMSA
22 1978;

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

25 (3) aggravated assault, pursuant to Section

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1 30-3-2 NMSA 1978;

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

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

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

9 (7) aggravated stalking, pursuant to Section
10 30-3A-3.1 NMSA 1978;

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

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

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

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

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

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

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

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- 1 (15) felony graffiti, pursuant to Section
2 30-15-1.1 NMSA 1978;
- 3 (16) robbery, pursuant to Section 30-16-2 NMSA
4 1978;
- 5 (17) burglary, pursuant to Section 30-16-3
6 NMSA 1978;
- 7 (18) aggravated burglary, pursuant to Section
8 30-16-4 NMSA 1978;
- 9 (19) extortion, pursuant to Section 30-16-9
10 NMSA 1978;
- 11 (20) aggravated fleeing a law enforcement
12 officer, pursuant to Section 30-22-1.1 NMSA 1978;
- 13 (21) harboring or aiding a felon, pursuant to
14 Section 30-22-4 NMSA 1978;
- 15 (22) aggravated assault upon a peace officer,
16 pursuant to Section 30-22-22 NMSA 1978;
- 17 (23) assault with intent to commit a violent
18 felony upon a peace officer, pursuant to Section 30-22-23 NMSA
19 1978;
- 20 (24) aggravated battery upon a peace officer,
21 pursuant to Section 30-22-25 NMSA 1978;
- 22 (25) bribery or intimidation of a witness or
23 retaliation against a witness, pursuant to Section 30-24-3 NMSA
24 1978;
- 25 (26) trafficking in a controlled substance,

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1 pursuant to Section 30-31-20 NMSA 1978;

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

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

6 (29) an attempt to commit any of the felonies
7 listed in this subsection, pursuant to Section 30-28-1 NMSA
8 1978.

9 E. The enhancements provided in Subsections A, B
10 and C of this section shall run consecutive with the basic
11 sentence and shall not be suspended or deferred.

12 F. If more than one enhancement is imposed, the
13 enhancements provided in Subsections A, B and C of this section
14 shall run concurrently.

15 G. As used in this section, "criminal street gang"
16 means an ongoing organization, association or group of three or
17 more persons, whether formal or informal, having as one of its
18 primary activities the commission of one or more of the
19 felonies enumerated in Subsection D of this section, having a
20 common name or identifying sign or symbol and whose members
21 individually or collectively engage in or have engaged in a
22 pattern of criminal street gang activity. "Criminal street
23 gang" does not include a fraternal organization, union,
24 corporation, association or similar group or entity, unless
25 organized for the primary purpose of engaging in criminal

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1 activity.

2 H. As used in this section, "pattern of criminal
3 street gang activity" means the commission of two or more of
4 the felonies enumerated in Subsection D of this section;
5 provided that the offenses occurred within three years of each
6 other and were committed on separate occasions by two or more
7 persons."

8 Section 5. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.