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HOUSE BILL 546

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY
MIMI STEWART

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE STREET GANG ENFORCEMENT AND PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR INDUCING MINORS TO PARTICIPATE IN A PATTERN OF CRIMINAL GANG ACTIVITY; PROVIDING CRIMINAL PENALTIES FOR PARTICIPATING IN A PATTERN OF CRIMINAL GANG ACTIVITY.

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] SHORT TITLE. -- This act may be cited as the "Street Gang Enforcement and Prevention Act". "

Section 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds and declares that it is the

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1 right of every person to be secure and protected from
2 intimidation and physical harm caused by the criminal activities
3 of violent groups and individuals. The legislature also finds
4 that the citizens of New Mexico are concerned about the increase
5 in criminal activity that can be attributed to criminal street
6 gangs. This criminal activity presents a clear and present
7 danger to public safety and is not the type of activity that is
8 protected by the constitution of the United States or the
9 constitution of the state of New Mexico.

10 B. The purpose of the Street Gang Enforcement and
11 Prevention Act is not to interfere with constitutionally
12 protected rights of freedom of speech and freedom of
13 association. Rather, the purpose of the Street Gang Enforcement
14 and Prevention Act is to deter and punish criminal activity
15 engaged in by individuals involved in criminal street gangs. "

16 Section 3. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] DEFINITIONS. --As used in the Street Gang
19 Enforcement and Prevention Act:

20 A. "criminal street gang" means an organization,
21 association or group of three or more persons:

22 (1) that has a common name or a common
23 identifying sign or symbol; and

24 (2) whose members engage in a pattern of
25 criminal gang activity; and

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1 B. "pattern of criminal gang activity" means the
2 commission of two or more of the following criminal offenses;
3 provided, that at least one of the offenses occurs within three
4 years of a prior offense; and provided further, that the
5 criminal offenses are committed by two or more members of the
6 same criminal street gang:

7 (1) murder, as provided in Section 30-2-1 NMSA
8 1978;

9 (2) aggravated assault, as provided in Section
10 30-3-2 NMSA 1978;

11 (3) assault with intent to commit a violent
12 felony, as provided in Section 30-3-3 NMSA 1978;

13 (4) kidnapping, as provided in Section 30-4-1
14 NMSA 1978;

15 (5) aggravated battery, as provided in
16 Subsection C of Section 30-3-5 NMSA 1978;

17 (6) aggravated battery upon a peace officer, as
18 provided in Subsection C of Section 30-22-25 NMSA 1978;

19 (7) shooting at a dwelling or occupied building
20 or shooting at or from a motor vehicle, as provided in Section
21 30-3-8 NMSA 1978;

22 (8) dangerous use of explosives, as provided in
23 Section 30-7-5 NMSA 1978;

24 (9) criminal sexual penetration, as provided in
25 Section 30-9-11 NMSA 1978;

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1 (10) robbery, as provided in Section 30-16-2
2 NMSA 1978;

3 (11) aggravated burglary, as provided in
4 Section 30-16-4 NMSA 1978;

5 (12) aggravated arson, as provided in Section
6 30-17-6 NMSA 1978;

7 (13) attempt to commit one of the felonies set
8 forth in Paragraphs (1) through (12) of this subsection, as
9 provided in Section 30-28-1 NMSA 1978;

10 (14) conspiracy to commit one of the felonies
11 set forth in Paragraphs (1) through (12) of this subsection, as
12 provided in Section 30-28-2 NMSA 1978; or

13 (15) criminal solicitation of another person to
14 commit one of the felonies set forth in Paragraphs (1) through
15 (12) of this subsection, as provided in Section 30-28-3 NMSA
16 1978. "

17 Section 4. A new section of the Criminal Code is enacted
18 to read:

19 " [NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A
20 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY.--A person who uses
21 threats, intimidation or persuasion to induce another person
22 less than eighteen years of age to participate in a pattern of
23 criminal gang activity is guilty of a third degree felony. "

24 Section 5. A new section of the Criminal Code is enacted
25 to read:

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1 " [NEW MATERIAL] PARTICIPATION IN A CRIMINAL STREET GANG--
2 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED. --

3 A. When a separate finding of fact by the court or
4 jury shows that a noncapital felony was committed by an
5 individual in association with a criminal street gang with the
6 specific intent to assist the criminal street gang with a
7 pattern of criminal gang activity, the basic sentence of
8 imprisonment prescribed for the offense in Section 31-18-15 NMSA
9 1978 shall be increased by two years. The sentence imposed
10 pursuant to this subsection shall be the first two years served
11 and shall not be suspended, deferred or conditionally
12 discharged; provided, that when the offender is a serious
13 youthful offender or a youthful offender, the sentence imposed
14 pursuant to this subsection may be increased by two years.

15 B. For a second or subsequent noncapital felony
16 committed by an individual in association with a criminal street
17 gang with the specific intent to assist the criminal street gang
18 with a pattern of criminal gang activity, the basic sentence of
19 imprisonment prescribed for the offense in Section 31-18-15 NMSA
20 1978 shall be increased by four years. The sentence imposed
21 pursuant to this subsection shall be the first four years served
22 and shall not be suspended, deferred or conditionally
23 discharged; provided, that when the offender is a serious
24 youthful offender or a youthful offender, the sentence imposed
25 pursuant to this subsection may be increased by four years.

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C. If the case is tried before a jury and if a prima facie case is established showing that the offense was committed by an individual in association with a criminal street gang with the specific intent to assist the criminal street gang with a pattern of criminal gang activity, the court shall submit the issue to the jury by special interrogatory.

D. If the case is tried by the court and if a prima facie case is established showing that the offense was committed by an individual in association with a criminal street gang with the specific intent to assist the criminal street gang with a pattern of criminal gang activity, the court shall decide the issue and shall make a separate finding of fact thereon. "

Section 6. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

February 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 546

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 3, line 2, strike "commission" and insert in
lieu thereof "conviction".

2. On page 3, line 3, strike "offense" and insert in lieu
thereof "convictions".

3. On page 3, line 4, strike "offense" and insert in lieu
thereof "conviction".

4. On page 3, line 5, strike "offenses and insert in lieu
thereof "convictions" and strike "committed by" and insert in lieu
thereof "obtained against".,

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: M P. Garcia

Excused: Carpenter, Luna, Mallory, Rios, Sanchez

Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 3, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 546, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Abeyta, Bird, Coll, Knowles, Marquardt

Absent: None

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