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HOUSE BILL 402

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE GANG ENFORCEMENT AND PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR INDUCING MINORS TO PARTICIPATE 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 "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 right of every person to be secure and protected from intimidation and physical harm caused by the criminal

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

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

14 Section 3. A new section of the Criminal Code is enacted
15 to read:

16 "[NEW MATERIAL] DEFINITIONS. -- As used in the Gang
17 Enforcement and Prevention Act:

18 A. "criminal gang" means an organization,
19 association or group of three or more persons:

20 (1) that has a common name or a common
21 identifying sign or symbol; and

22 (2) whose members engage in a pattern of
23 criminal gang activity; and

24 B. "pattern of criminal gang activity" means
25 convictions for the commission of two or more of the following

1 criminal offenses; provided that at least one of the
2 convictions occurs within three years of a prior conviction;
3 and provided further that the convictions are obtained against
4 two or more members of the same criminal gang:

5 (1) murder in the first degree, as provided
6 in Subsection A of Section 30-2-1 NMSA 1978;

7 (2) murder in the second degree, as provided
8 in Subsection B of Section 30-2-1 NMSA 1978;

9 (3) voluntary manslaughter, as provided in
10 Subsection A of Section 30-2-3 NMSA 1978;

11 (4) aggravated assault, as provided in
12 Section 30-3-2 NMSA 1978;

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

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

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

20 (8) kidnapping, as provided in Section 30-4-1
21 NMSA 1978;

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

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

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1 (11) criminal damage to property, as provided
2 in Section 30-15-1 NMSA 1978, when the damage to the property
3 amounts to more than one thousand dollars (\$1,000);

4 (12) graffiti to real or personal property,
5 as provided in Subsection C of Section 30-15-1.1 NMSA 1978;

6 (13) larceny, as provided in Section 30-16-1
7 NMSA 1978, when the value of the property stolen is more than
8 two hundred fifty dollars (\$250);

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

11 (15) burglary, as provided in Subsection A of
12 Section 30-16-3 NMSA 1978;

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

15 (17) arson, as provided in Section 30-17-5
16 NMSA 1978;

17 (18) aggravated arson, as provided in Section
18 30-17-6 NMSA 1978;

19 (19) bringing contraband into a prison or
20 bringing contraband into a jail, as provided in Section
21 30-22-14 NMSA 1978;

22 (20) possession of a deadly weapon or an
23 explosive by a prisoner, as provided in Section 30-22-16 NMSA
24 1978;

25 (21) assault by a prisoner, as provided in

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1 Section 30-22-17 NMSA 1978;

2 (22) aggravated assault upon a peace officer,
3 as provided in Section 30-22-22 NMSA 1978;

4 (23) aggravated battery upon a peace officer,
5 as provided in Subsection C of Section 30-22-25 NMSA 1978;

6 (24) bribery or intimidation of a witness or
7 retaliation against a witness, as provided in Section 30-24-3
8 NMSA 1978;

9 (25) any felony violation of the Controlled
10 Substances Act;

11 (26) attempt to commit one of the first,
12 second or third degree felonies set forth in Paragraphs (1)
13 through (25) of this subsection, as provided in Section
14 30-28-1 NMSA 1978;

15 (27) conspiracy to commit one of the felonies
16 set forth in Paragraphs (1) through (25) of this subsection,
17 as provided in Section 30-28-2 NMSA 1978; or

18 (28) criminal solicitation of another person
19 to commit one of the felonies set forth in Paragraphs (1)
20 through (25) of this subsection, as provided in Section
21 30-28-3 NMSA 1978. "

22 Section 4. A new section of the Criminal Code is enacted
23 to read:

24 "[NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A
25 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY.--A person who uses

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1 threats, intimidation or persuasion to induce another person
2 less than eighteen years of age to participate in a pattern of
3 criminal gang activity is guilty of a third degree felony. "

4 Section 5. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2001.

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