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HOUSE BILL 227

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

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 a separate finding of fact shows that a
felony enumerated in Subsection B of this section was committed
for the benefit of, at the direction of or in association with
a criminal street gang and with a specific intent to promote,
further or assist in criminal conduct by gang members, the
basic sentence of imprisonment prescribed for the offense shall**

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1 be increased as follows:

2 (1) for a fourth degree felony, an additional
3 two years;

4 (2) for a third degree felony, an additional
5 four years;

6 (3) for a second degree felony, an additional
7 six years; and

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

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

12 (1) homicide, pursuant to Section 30-2-1 NMSA
13 1978;

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

16 (3) aggravated assault, pursuant to Section
17 30-3-2 NMSA 1978;

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

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

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

25 (7) aggravating stalking, pursuant to Section
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1 30-3A-3.1 NMSA 1978;

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

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

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

8 (11) possession of explosives, explosive
9 devices or incendiary devices, pursuant to Sections 30-7-19 and
10 30-7-19.1 NMSA 1978;

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

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

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

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

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

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

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

25 (19) aggravated assault upon a peace officer,

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1 pursuant to Section 30-22-22 NMSA 1978;

2 (20) assault with intent to commit a violent
3 felony upon a peace officer, pursuant to Section 30-22-23 NMSA
4 1978;

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

7 (22) bribery or intimidation of a witness or
8 retaliation against a witness, pursuant to Section 30-24-3 NMSA
9 1978;

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

12 (24) money laundering, pursuant to the Money
13 Laundering Act; and

14 (25) an attempt, conspiracy or solicitation to
15 commit any of the above felonies listed in Paragraphs (1)
16 through (24) of this subsection, pursuant to Section 30-28-1,
17 30-28-2 or 30-28-3 NMSA 1978.

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

21 D. As used in this section, "criminal street gang"
22 means an ongoing organization, association or group of three or
23 more persons, whether formal or informal, having as one of its
24 primary activities the commission of one or more of the
25 felonies enumerated in Subsection B of this section, having a

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1 common name or identifying sign or symbol and whose members
2 individually or collectively engage in or have engaged in a
3 pattern of criminal gang activity.

4 E. As used in this section, "pattern of criminal
5 gang activity" means the commission of, attempted commission
6 of, conspiracy to commit or solicitation to commit two or more
7 of the felonies enumerated in Subsection B of this section by
8 members of a criminal street gang; provided that the offenses
9 occurred within three years of each other and were committed on
10 separate occasions or by two or more persons. "