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HOUSE BILL 174

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Jack E. Thomas

AN ACT

RELATING TO CRIMINAL LAW; PROHIBITING PARTICIPATION IN AND  
RECRUITING FOR CRIMINAL STREET GANGS; ENHANCING THE BASIC  
SENTENCE FOR CRIMES COMMITTED IN FURTHERANCE OF CRIMINAL STREET  
GANG ACTIVITY; PROVIDING PENALTIES; CREATING A FUND; 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 AND RECRUITMENT FOR  
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  
in accordance with the provisions of Section 31-19-1 NMSA 1978.

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

5           C. A person who commits gang recruitment is guilty  
6 of a misdemeanor and shall be sentenced in accordance with the  
7 provisions of Section 31-19-1 NMSA 1978.

8           D. A person who commits gang recruitment of a minor  
9 is guilty of a fourth degree felony and shall be sentenced in  
10 accordance with the provisions of Section 31-18-15 NMSA 1978.

11           E. A person who commits gang recruitment by threat  
12 or violence is guilty of a fourth degree felony and shall be  
13 sentenced in accordance with the provisions of Section 31-18-15  
14 NMSA 1978.

15           F. A person who commits gang recruitment of a minor  
16 by threat or violence is guilty of a third degree felony and  
17 shall be sentenced in accordance with the provisions of Section  
18 31-18-15 NMSA 1978.

19           G. As used in this section:

20                 (1) "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 (2) "gang recruitment" means soliciting or  
6 recruiting a person into a criminal street gang with the intent  
7 of having the solicited or recruited person:

8 (a) knowingly participate in a pattern  
9 of criminal street gang activity; or

10 (b) promote, further or assist in the  
11 commission of a felony by a criminal street gang;

12 (3) "gang recruitment by threat or violence"  
13 means soliciting or recruiting a person into a criminal street  
14 gang by using physical violence on one or more separate  
15 occasions or threatening that person with the use of physical  
16 violence on two or more separate occasions within a thirty-day  
17 period, with the intent of having the solicited or recruited  
18 person:

19 (a) knowingly participate in a pattern  
20 of criminal street gang activity; or

21 (b) promote, further or assist in the  
22 commission of a felony by a criminal street gang; and

23 (4) "pattern of criminal street gang activity"  
24 means the commission of two or more felonies within three years  
25 of each other on separate occasions by two or more persons for

1 the benefit of, at the direction of or in association with a  
2 criminal street gang."

3 Section 2. [NEW MATERIAL] LOCAL GOVERNMENT COMMUNITY  
4 REHABILITATION FUND CREATED--ADMINISTRATION.--The "local  
5 government community rehabilitation fund" is created in the  
6 state treasury. The fund consists of appropriations, gifts,  
7 grants and donations. Money in the fund at the end of a fiscal  
8 year shall not revert to any other fund. The department of  
9 finance and administration shall administer the fund, and money  
10 in the fund is appropriated to the department of finance and  
11 administration to administer the fund and to provide  
12 revitalization grants to governing bodies of municipalities or  
13 counties for planning, construction, maintenance and  
14 rehabilitation of communities or neighborhoods that have been  
15 injured by criminal street gang activity. The governing body  
16 of a municipality or county may be awarded a grant solely for  
17 the amount of money expended for the benefit of the community  
18 or neighborhood injured by criminal street gang activity.  
19 Disbursements from the fund shall be made by warrant of the  
20 secretary of finance and administration pursuant to vouchers  
21 signed by the secretary or the secretary's authorized  
22 representative.

23 Section 3. A new section of the Criminal Sentencing Act  
24 is enacted to read:

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

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1 CRIMES.--

2 A. Except as otherwise provided in Subsection B or  
3 C of this section, when a person knowingly and willfully  
4 commits a felony enumerated in Subsection D of this section,  
5 for the benefit of, at the direction of or in association with  
6 a criminal street gang, the basic sentence of imprisonment  
7 prescribed for the offense shall be increased as follows:

8 (1) for a fourth degree felony, an additional  
9 six to eighteen months;

10 (2) for a third degree felony, an additional  
11 eighteen to twenty-four months;

12 (3) for a second degree felony, an additional  
13 three to four years; and

14 (4) for a first degree felony, an additional  
15 six to eight years.

16 B. When a person knowingly and willfully commits a  
17 violent felony or sexual offense enumerated in Subsection D of  
18 this section for the benefit of, at the direction of or in  
19 association with a criminal street gang, the basic sentence of  
20 imprisonment prescribed for the offense shall be increased by  
21 an additional six to ten years.

22 C. When a person knowingly and willfully commits a  
23 felony enumerated in Subsection D of this section within one  
24 thousand feet of an elementary, middle, junior high, high or  
25 vocational school for the benefit of, at the direction of or in

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1 association with a criminal street gang, the basic sentence of  
2 imprisonment prescribed for the offense shall be increased by  
3 an additional three to five years.

4 D. The following felonies are subject to the  
5 enhancements imposed pursuant to Subsections A, B and C of this  
6 section:

7 (1) murder, pursuant to Section 30-2-1 NMSA  
8 1978;

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

11 (3) aggravated assault, pursuant to Section  
12 30-3-2 NMSA 1978;

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

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

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

20 (7) aggravated stalking, pursuant to Section  
21 30-3A-3.1 NMSA 1978;

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

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

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

3 (11) possession of explosives, explosive  
4 devices or incendiary devices, pursuant to Sections 30-7-19 and  
5 30-7-19.1 NMSA 1978;

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

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

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

12 (15) felony graffiti, pursuant to Section  
13 30-15-1.1 NMSA 1978;

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

16 (17) burglary, pursuant to Section 30-16-3  
17 NMSA 1978;

18 (18) aggravated burglary, pursuant to Section  
19 30-16-4 NMSA 1978;

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

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

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

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

3 (23) assault with intent to commit a violent  
4 felony upon a peace officer, pursuant to Section 30-22-23 NMSA  
5 1978;

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

8 (25) bribery or intimidation of a witness or  
9 retaliation against a witness, pursuant to Section 30-24-3 NMSA  
10 1978;

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

13 (27) unlawful taking of a motor vehicle,  
14 pursuant to Section 30-16D-1 NMSA 1978;

15 (28) money laundering, pursuant to the Money  
16 Laundering Act; and

17 (29) an attempt to commit any of the felonies  
18 listed in this subsection, pursuant to Section 30-28-1 NMSA  
19 1978.

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

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

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1           G. As used in this section, "criminal street gang"  
2 means an ongoing organization, association or group of three or  
3 more persons, whether formal or informal, having as one of its  
4 primary activities the commission of one or more of the  
5 felonies enumerated in Subsection D of this section, having a  
6 common name or identifying sign or symbol and whose members  
7 individually or collectively engage in or have engaged in a  
8 pattern of criminal street gang activity. "Criminal street  
9 gang" does not include a fraternal organization, union,  
10 corporation, association or similar group or entity, unless  
11 organized for the primary purpose of engaging in criminal  
12 activity.

13           H. As used in this section, "pattern of criminal  
14 street gang activity" means the commission of two or more of  
15 the felonies enumerated in Subsection D of this section;  
16 provided that the offenses occurred within three years of each  
17 other and were committed on separate occasions by two or more  
18 persons."

19           Section 4. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2010.