

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 174, 194 & 195

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

AN ACT

RELATING TO CRIMINAL LAW; CREATING NEW CRIMES OF GANG
RECRUITMENT AND GANG RECRUITMENT BY THREAT OR VIOLENCE;
PROVIDING INCREASED PENALTIES FOR RECRUITMENT OF MINORS;
ENHANCING THE BASIC SENTENCE FOR CRIMES COMMITTED IN
FURTHERANCE OF CRIMINAL STREET GANG ACTIVITY; CREATING A FUND.

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 GANG RECRUITMENT.--

A. Gang recruitment consists of the solicitation or
recruitment of another with the intent that the person
solicited or recruited:

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

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1 (2) promote, further or assist in felonious
2 conduct by members of a criminal street gang.

3 B. Whoever commits gang recruitment is guilty of a
4 misdemeanor. Whoever commits gang recruitment of a minor is
5 guilty of a fourth degree felony.

6 C. Gang recruitment by threat or violence consists
7 of threatening another with physical violence on two or more
8 separate occasions within a thirty-day period, or using
9 physical violence, with the intent to coerce, induce or solicit
10 another to:

11 (1) knowingly participate in a pattern of
12 criminal street gang activity; or

13 (2) promote, further or assist in felonious
14 conduct by members of a criminal street gang.

15 D. Whoever commits gang recruitment by threat or
16 violence is guilty of a fourth degree felony. Whoever commits
17 gang recruitment of a minor by threat or violence is guilty of
18 a third degree felony.

19 E. Prosecution pursuant to this section shall not
20 prevent prosecution pursuant to any other provision of law when
21 the conduct also constitutes a violation of that other
22 provision.

23 F. As used in this section:

24 (1) "criminal street gang" means an ongoing
25 organization, association or group of three or more persons,

1 whether formal or informal, having a common name or identifying
2 sign or symbol, whose members individually or collectively
3 engage in or have engaged in a pattern of criminal street gang
4 activity and having as one of its primary activities the
5 commission of one or more of the felonies enumerated in
6 Subsection B of Section 2 of this 2010 act.

7 (2) "criminal street gang" does not include a
8 fraternal organization, union, corporation, association or
9 similar group or entity, unless organized for the primary
10 purpose of engaging in criminal activity; and

11 (3) "pattern of criminal street gang activity"
12 means the commission of two or more of the felonies enumerated
13 in Subsection B of Section 2 of this 2010 act; provided that
14 the offenses occurred within three years of each other and were
15 committed on separate occasions by two or more persons."

16 Section 2. A new section of the Criminal Sentencing Act
17 is enacted to read:

18 "[NEW MATERIAL] ALTERATION OF BASIC SENTENCE--GANG-RELATED
19 CRIMES.--

20 A. When, in a hearing separate from the trial or
21 guilty plea proceeding, it is proven beyond a reasonable doubt
22 to a jury or to the judge if the defendant's right to a jury
23 trial has been waived that a felony enumerated in Subsection B
24 of this section was knowingly committed for the benefit of, at
25 the direction of or in association with a criminal street gang

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1 with the intent to promote, further or assist in criminal
2 conduct by gang members, the basic sentence of imprisonment
3 prescribed for the offense shall be increased as follows:

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

6 (2) for a third degree felony, an additional
7 eighteen months to two years;

8 (3) for a third degree felony resulting in
9 death, an additional three years;

10 (4) for a second degree felony, an additional
11 four to six years;

12 (5) for a second degree felony resulting in
13 death, an additional six years; and

14 (6) for a first degree felony, an additional
15 eight years.

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

18 (1) murder, pursuant to Section 30-2-1 NMSA
19 1978;

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

22 (3) aggravated assault, pursuant to Section
23 30-3-2 NMSA 1978;

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

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

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

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

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

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

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

14 (11) possession of explosives, explosive
15 devices or incendiary devices, pursuant to Sections 30-7-19 and
16 30-7-19.1 NMSA 1978;

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

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

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

23 (15) felony graffiti, pursuant to Section
24 30-15-1.1 NMSA 1978;

25 (16) robbery, pursuant to Section 30-16-2 NMSA

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1 1978;

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

4 (18) aggravated burglary, pursuant to Section
5 30-16-4 NMSA 1978;

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

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

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

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

14 (23) assault with intent to commit a violent
15 felony upon a peace officer, pursuant to Section 30-22-23 NMSA
16 1978;

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

19 (25) bribery or intimidation of a witness or
20 retaliation against a witness, pursuant to Section 30-24-3 NMSA
21 1978;

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

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

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1 (28) money laundering, pursuant to the Money
2 Laundering Act; and

3 (29) an attempt to commit any of the felonies
4 listed in this subsection, pursuant to Section 30-28-1 NMSA
5 1978.

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

9 D. If more than one enhancement is imposed, the
10 enhancements provided in Subsection A of this section shall run
11 concurrently.

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

24 F. As used in this section, "pattern of criminal
25 street gang activity" means the commission of two or more of

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1 the felonies enumerated in Subsection B of this section;
2 provided that the offenses occurred within three years of each
3 other and were committed on separate occasions by two or more
4 persons."

5 Section 3. [NEW MATERIAL] LOCAL GOVERNMENT COMMUNITY
6 REHABILITATION FUND--CREATED--PURPOSE.--

7 A. The "local government community rehabilitation
8 fund" is created in the state treasury to provide
9 revitalization grants to local governments for gang
10 intervention and prevention programs and for the planning,
11 construction, maintenance or rehabilitation of communities or
12 neighborhoods that have been negatively impacted by criminal
13 street gang activity.

14 B. The department of finance and administration
15 shall administer the fund and develop criteria for grant
16 applications by local governments. Money in the fund is
17 subject to appropriation to the department and consists of any
18 appropriations, gifts, grants and donations. Balances in the
19 fund shall not revert at the end of any fiscal year.

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