

1 SENATE BILL 538

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 William E. Sharer

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; ENHANCING THE BASIC SENTENCE
12 FOR CRIMES COMMITTED IN FURTHERANCE OF CRIMINAL STREET GANG
13 ACTIVITY.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. 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 one year;

6 (2) for a third degree felony, an additional
7 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 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 consecutively with the basic sentence
8 and 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, who
17 associate under a common name or have an identifying sign or
18 symbol and whose members individually or collectively engage in
19 or have engaged in a pattern of criminal street gang activity.
20 "Criminal street gang" does not include a fraternal
21 organization, union, corporation, association or similar group
22 or entity, unless organized for the primary purpose of engaging
23 in criminal 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 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.

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