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SENATE BILL 537

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RAYMOND L. KYSAR

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE STREET GANG ENFORCEMENT AND PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR INDUCING MINORS TO PARTICIPATE IN A PATTERN OF CRIMINAL GANG ACTIVITY; PROVIDING CRIMINAL PENALTIES FOR PARTICIPATING 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 "Street 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

Underscored material = new  
[bracketed material] = delete

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[bracketed material] = delete

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

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

16 Section 3. A new section of the Criminal Code is enacted  
17 to read:

18 "[NEW MATERIAL] DEFINITIONS. --As used in the Street Gang  
19 Enforcement and Prevention Act:

20 A. "criminal street gang" means an organization,  
21 association or group of three or more persons:

22 (1) that has a common name or a common  
23 identifying sign or symbol; and

24 (2) whose members engage in a pattern of  
25 criminal gang activity; and

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[bracketed material] = delete

1           B. "pattern of criminal gang activity" means the  
2 commission of two or more of the following criminal offenses;  
3 provided, that at least one of the offenses occurs within three  
4 years of a prior offense; and provided further, that the  
5 criminal offenses are committed by two or more members of the  
6 same criminal street gang:

7                   (1) murder, as provided in Section 30-2-1 NMSA  
8 1978;

9                   (2) assault with intent to commit a violent  
10 felony, as provided in Section 30-3-3 NMSA 1978;

11                   (3) kidnapping, as provided in Section 30-4-1  
12 NMSA 1978;

13                   (4) aggravated battery, as provided in  
14 Subsection C of Section 30-3-5 NMSA 1978;

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

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

20                   (7) dangerous use of explosives, as provided in  
21 Section 30-7-5 NMSA 1978;

22                   (8) criminal sexual penetration, as provided in  
23 Section 30-9-11 NMSA 1978;

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

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1 (10) aggravated burglary, as provided in  
2 Section 30-16-4 NMSA 1978;

3 (11) aggravated arson, as provided in Section  
4 30-17-6 NMSA 1978;

5 (12) attempt to commit one of the felonies set  
6 forth in Paragraphs (1) through (11) of this subsection, as  
7 provided in Section 30-28-1 NMSA 1978;

8 (13) conspiracy to commit one of the felonies  
9 set forth in Paragraphs (1) through (11) of this subsection, as  
10 provided in Section 30-28-2 NMSA 1978; or

11 (14) criminal solicitation of another person to  
12 commit one of the felonies set forth in Paragraphs (1) through  
13 (11) of this subsection, as provided in Section 30-28-3 NMSA  
14 1978. "

15 Section 4. A new section of the Criminal Code is enacted  
16 to read:

17 "[NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A  
18 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY.--A person who uses  
19 threats, intimidation or persuasion to induce another person  
20 less than eighteen years of age to participate in a pattern of  
21 criminal gang activity is guilty of a third degree felony. "

22 Section 5. A new section of the Criminal Code is enacted  
23 to read:

24 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL STREET GANG--  
25 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

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Underscored material = new  
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1           A. When a separate finding of fact by the court or  
2 jury shows that a noncapital felony was committed in association  
3 with a criminal street gang with the specific intent to assist  
4 the criminal street gang with a pattern of criminal gang  
5 activity, the basic sentence of imprisonment prescribed for the  
6 offense in Section 31-18-15 NMSA 1978 shall be increased by two  
7 years. The sentence imposed pursuant to this subsection shall  
8 be the first two years served and shall not be suspended or  
9 deferred.

10           B. For a second or subsequent noncapital felony  
11 committed in association with a criminal street gang with the  
12 specific intent to assist the criminal street gang with a  
13 pattern of criminal gang activity, the basic sentence of  
14 imprisonment prescribed for the offense in Section 31-18-15 NMSA  
15 1978 shall be increased by four years. The sentence imposed  
16 pursuant to this subsection shall be the first four years served  
17 and shall not be suspended or deferred.

18           C. If the case is tried before a jury and if a prima  
19 facie case is established showing that the offense was committed  
20 in association with a criminal street gang with the specific  
21 intent to assist the criminal street gang with a pattern of  
22 criminal gang activity, the court shall submit the issue to the  
23 jury by special interrogatory.

24           D. If the case is tried by the court and if a prima  
25 facie case is established showing that the offense was committed

Underscored material = new  
[bracketed material] = delete

1 in association with a criminal street gang with the specific  
2 intent to assist the criminal street gang with a pattern of  
3 criminal gang activity, the court shall decide the issue and  
4 shall make a separate finding of fact thereon. "

5 Section 6. EFFECTIVE DATE. -- The effective date of the  
6 provisions of this act is July 1, 1997.

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1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
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5 March 15, 1997  
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7 Mr. President:  
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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10

11 SENATE BILL 537  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO NOT PASS, but that  
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16 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
17 SENATE BILL 537  
18

19 DO PASS, and thence referred to the FINANCE COMMITTEE.  
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21 Respectfully submitted,  
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25 \_\_\_\_\_  
Fernando R. Macias, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

1 (Chief Clerk) (Chief Clerk)

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3 Date \_\_\_\_\_

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6 The roll call vote was 5 For 2 Against

7 Yes: 5

8 No: Lopez, Payne

9 Excused: Sanchez

10 Absent: None

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12 S0537JU1

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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 537

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE GANG ENFORCEMENT AND  
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"[NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds and declares that it is the

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

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

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

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

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

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

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

25 B. "pattern of criminal gang activity" means

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

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

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

10 (3) kidnapping, as provided in Section 30-4-1 NMSA  
11 1978;

12 (4) shooting at a dwelling or occupied building or  
13 shooting at or from a motor vehicle, as provided in Section 30-3-8  
14 NMSA 1978;

15 (5) dangerous use of explosives, as provided in  
16 Section 30-7-5 NMSA 1978;

17 (6) criminal sexual penetration, as provided in  
18 Section 30-9-11 NMSA 1978;

19 (7) robbery, as provided in Section 30-16-2 NMSA  
20 1978;

21 (8) larceny, as provided in Section 30-16-1 NMSA  
22 1978, when the value of the property stolen is more than two  
23 hundred fifty dollars (\$250);

24 (9) aggravated burglary, as provided in Section 30-  
25 16-4 NMSA 1978;

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1 (10) aggravated arson, as provided in Section 30-17-  
2 6 NMSA 1978;

3 (11) any felony violation of the Controlled  
4 Substances Act;

5 (12) voluntary manslaughter, as provided in  
6 Subsection A of Section 30-2-3 NMSA 1978;

7 (13) graffiti to real or personal property, as  
8 provided in Subsection C of Section 30-15-1.1 NMSA 1978;

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

12 (15) bribery or intimidation of a witness or  
13 retaliation against a witness, as provided in Section 30-24-3 NMSA  
14 1978;

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

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

19 (18) assault with intent to commit a violent felony,  
20 as provided in Section 30-3-3 NMSA 1978;

21 (19) aggravated assault, as provided in Section 30-  
22 3-2 NMSA 1978;

23 (20) aggravated assault upon a peace officer, as  
24 provided in Section 30-22-22 NMSA 1978;

25 (21) attempt to commit one of the first, second or

1 third degree felonies set forth in Paragraphs (1) through (11) of  
2 this subsection, as provided in Section 30-28-1 NMSA 1978;

3 (22) conspiracy to commit one of the felonies set  
4 forth in Paragraphs (1) through (20) of this subsection, as  
5 provided in Section 30-28-2 NMSA 1978; or

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

9 Section 4. A new section of the Criminal Code is enacted to  
10 read:

11 "[NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A  
12 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY.--A person who uses  
13 threats, intimidation or persuasion to induce another person less  
14 than eighteen years of age to participate in a pattern of criminal  
15 gang activity is guilty of a third degree felony."

16 Section 5. A new section of the Criminal Code is enacted to  
17 read:

18 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG--ALTERATION  
19 OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

20 A. When a felony, as described in Paragraphs (2) through  
21 (23) of Subsection B of Section 3 of the Gang Enforcement and  
22 Prevention Act, is committed with the intent to aid and abet a  
23 criminal gang with a pattern of criminal gang activity, the basic  
24 sentence of imprisonment prescribed for the offense in Section  
25 31-18-15 NMSA 1978 shall be increased by two years. The sentence

Underscored material = new  
[bracketed material] = delete

1 imposed pursuant to this subsection shall be the first two years  
2 served and shall not be suspended or deferred.

3 B. When a second or subsequent felony, as described in  
4 Paragraphs (2) through (23) of Subsection B of Section 3 of the  
5 Gang Enforcement and Prevention Act, is committed with the intent  
6 to aid and abet a criminal gang with a pattern of criminal gang  
7 activity, the basic sentence of imprisonment prescribed for the  
8 offense in Section 31-18-15 NMSA 1978 shall be increased by four  
9 years. The sentence imposed pursuant to this subsection shall be  
10 the first four years served and shall not be suspended or deferred.

11 C. If the case is tried before a jury and if a prima  
12 facie case is established showing that the felony was committed  
13 with the intent to aid and abet a criminal gang with a pattern of  
14 criminal gang activity, the court shall submit the issue to the  
15 jury by special interrogatory.

16 D. If the case is tried by the court and if a prima facie  
17 case is established showing that the felony was committed with the  
18 intent to aid and abet a criminal gang with a pattern of criminal  
19 gang activity, the court shall decide the issue and shall make a  
20 separate finding of fact thereon. "

21 Section 6. EFFECTIVE DATE. -- The effective date of the  
22 provisions of this act is July 1, 1997.