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HOUSE BILL 49

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

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, proved beyond a
reasonable doubt to a jury or to the judge if the defendant's
right to a jury trial has been waived, 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,

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1 further or assist in criminal conduct by gang members, the
2 basic sentence of imprisonment prescribed for the offense shall
3 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) robbery, pursuant to Section 30-16-2 NMSA
22 1978;

23 (15) burglary, pursuant to Section 30-16-3
24 NMSA 1978;

25 (16) aggravated burglary, pursuant to Section

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1 30-16-4 NMSA 1978;

2 (17) extortion, pursuant to Section 30-16-9
3 NMSA 1978;

4 (18) aggravated fleeing a law enforcement
5 officer, pursuant to Section 30-22-1.1 NMSA 1978;

6 (19) harboring or aiding a felon, pursuant to
7 Section 30-22-4 NMSA 1978;

8 (20) aggravated assault upon a peace officer,
9 pursuant to Section 30-22-22 NMSA 1978;

10 (21) assault with intent to commit a violent
11 felony upon a peace officer, pursuant to Section 30-22-23 NMSA
12 1978;

13 (22) aggravated battery upon a peace officer,
14 pursuant to Section 30-22-25 NMSA 1978;

15 (23) bribery or intimidation of a witness or
16 retaliation against a witness, pursuant to Section 30-24-3 NMSA
17 1978;

18 (24) trafficking in a controlled substance,
19 pursuant to Section 30-31-20 NMSA 1978;

20 (25) unlawful taking of a motor vehicle,
21 pursuant to Section 66-3-504 NMSA 1978;

22 (26) money laundering, pursuant to the Money
23 Laundering Act; and

24 (27) an attempt to commit any of the above
25 felonies, pursuant to Section 30-28-1 NMSA 1978.

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

4 D. If more than one enhancement is imposed, the
5 enhancements provided in Subsection A of this section shall run
6 concurrently.

7 E. As used in this section, "criminal street gang"
8 means an ongoing organization, association or group of three or
9 more persons, whether formal or informal, having as one of its
10 primary activities the commission of one or more of the
11 felonies enumerated in Subsection B of this section, having a
12 common name or identifying sign or symbol and whose members
13 individually or collectively engage in or have engaged in a
14 pattern of criminal gang activity.

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

21 Section 2. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2007.

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