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HOUSE BILL 426

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING CRIMINAL PENALTIES FOR  
RECRUITING OTHERS TO JOIN A CRIMINAL STREET GANG OR INDUCING  
PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY; ENHANCING  
PENALTIES FOR RECRUITMENT AND INDUCEMENT OF MINORS.

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

(2) promote, further or assist in felonious

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1 conduct by members of a criminal street gang.

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

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

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

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

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

18 E. As used in this section:

19 (1) "criminal street gang" means an ongoing  
20 organization, association or group of three or more persons,  
21 whether formal or informal, having a common name or identifying  
22 sign or symbol, whose members individually or collectively  
23 engage in or have engaged in a pattern of criminal street gang  
24 activity and having as one of its primary activities the  
25 commission of one or more of the following felonies:

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- 1 (a) murder, pursuant to Section 30-2-1  
2 NMSA 1978;
- 3 (b) voluntary manslaughter, pursuant to  
4 Subsection A of Section 30-2-3 NMSA 1978;
- 5 (c) aggravated assault, pursuant to  
6 Section 30-3-2 NMSA 1978;
- 7 (d) assault with intent to commit a  
8 violent felony, pursuant to Section 30-3-3 NMSA 1978;
- 9 (e) aggravated battery, pursuant to  
10 Subsection C of Section 30-3-5 NMSA 1978;
- 11 (f) shooting at a dwelling or occupied  
12 building or shooting at or from a motor vehicle, pursuant to  
13 Section 30-3-8 NMSA 1978;
- 14 (g) aggravated stalking, pursuant to  
15 Section 30-3A-3.1 NMSA 1978;
- 16 (h) kidnapping, pursuant to Section  
17 30-4-1 NMSA 1978;
- 18 (i) sexual exploitation of children by  
19 prostitution, pursuant to Section 30-6A-4 NMSA 1978;
- 20 (j) dangerous use of explosives,  
21 pursuant to Section 30-7-5 NMSA 1978;
- 22 (k) possession of explosives, explosive  
23 devices or incendiary devices, pursuant to Sections 30-7-19 and  
24 30-7-19.1 NMSA 1978;
- 25 (l) criminal sexual penetration in the

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1 first, second or third degree, pursuant to Section 30-9-11 NMSA  
2 1978;

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

5 (n) felony criminal damage to property,  
6 pursuant to Section 30-15-1 NMSA 1978;

7 (o) felony graffiti, pursuant to Section  
8 30-15-1.1 NMSA 1978;

9 (p) robbery, pursuant to Section 30-16-2  
10 NMSA 1978;

11 (q) burglary, pursuant to Section  
12 30-16-3 NMSA 1978;

13 (r) aggravated burglary, pursuant to  
14 Section 30-16-4 NMSA 1978;

15 (s) extortion, pursuant to Section  
16 30-16-9 NMSA 1978;

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

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

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

23 (w) assault with intent to commit a  
24 violent felony upon a peace officer, pursuant to Section  
25 30-22-23 NMSA 1978;

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1 (x) aggravated battery on a peace  
2 officer, pursuant to Section 30-22-25 NMSA 1978;

3 (y) bribery or intimidation of a witness  
4 or retaliation against a witness, pursuant to Section 30-24-3  
5 NMSA 1978;

6 (z) trafficking in a controlled  
7 substance, pursuant to Section 30-31-20 NMSA 1978;

8 (aa) unlawful taking of a motor vehicle,  
9 pursuant to Section 66-3-504 NMSA 1978;

10 (bb) money laundering, pursuant to the  
11 Money Laundering Act; and

12 (cc) an attempt to commit any of the  
13 felonies listed in this paragraph, pursuant to Section 30-28-1  
14 NMSA 1978;

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

19 (3) "pattern of criminal street gang activity"  
20 means the commission of two or more of the felonies enumerated  
21 in Paragraph (1) of this subsection; provided that the offenses  
22 occurred within three years of each other and were committed on  
23 separate occasions by two or more persons."

24 Section 2. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2009.

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