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SENATE BILL 393

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE 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 "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

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

10 B. The purpose of the 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 Gang Enforcement and  
14 Prevention Act is to deter and punish criminal activity  
15 engaged in by criminal gangs. "

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

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

20 A. "criminal 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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1                   B. "pattern of criminal gang activity" means  
2 convictions for the commission of two or more of the following  
3 criminal offenses; provided that at least one of the  
4 convictions occurs within three years of a prior conviction;  
5 and provided further that the convictions are obtained against  
6 two or more members of the same criminal gang:

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

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

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

13                   (4) aggravated assault, as provided in  
14 Section 30-3-2 NMSA 1978;

15                   (5) assault with intent to commit a violent  
16 felony, as provided in Section 30-3-3 NMSA 1978;

17                   (6) aggravated battery, as provided in  
18 Subsection C of Section 30-3-5 NMSA 1978;

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

22                   (8) kidnapping, as provided in Section 30-4-1  
23 NMSA 1978;

24                   (9) dangerous use of explosives, as provided  
25 in Section 30-7-5 NMSA 1978;

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1 (10) criminal sexual penetration, as provided  
2 in Section 30-9-11 NMSA 1978;

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

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

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

11 (14) robbery, as provided in Section 30-16-2  
12 NMSA 1978;

13 (15) burglary, as provided in Subsection A of  
14 Section 30-16-3 NMSA 1978;

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

17 (17) arson, as provided in Section 30-17-5  
18 NMSA 1978;

19 (18) aggravated arson, as provided in Section  
20 30-17-6 NMSA 1978;

21 (19) bringing contraband into a prison or  
22 bringing contraband into a jail, as provided in Section  
23 30-22-14 NMSA 1978;

24 (20) possession of a deadly weapon or an  
25 explosive by a prisoner, as provided in Section 30-22-16 NMSA

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1 1978;

2 (21) assault by a prisoner, as provided in  
3 Section 30-22-17 NMSA 1978;

4 (22) aggravated assault upon a peace officer,  
5 as provided in Section 30-22-22 NMSA 1978;

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

8 (24) bribery or intimidation of a witness or  
9 retaliation against a witness, as provided in Section 30-24-3  
10 NMSA 1978;

11 (25) any felony violation of the Controlled  
12 Substances Act;

13 (26) attempt to commit one of the first,  
14 second or third degree felonies set forth in Paragraphs (1)  
15 through (25) of this subsection, as provided in Section  
16 30-28-1 NMSA 1978;

17 (27) conspiracy to commit one of the felonies  
18 set forth in Paragraphs (1) through (25) of this subsection,  
19 as provided in Section 30-28-2 NMSA 1978; or

20 (28) criminal solicitation of another person  
21 to commit one of the felonies set forth in Paragraphs (1)  
22 through (25) of this subsection, as provided in Section  
23 30-28-3 NMSA 1978. "

24 Section 4. A new section of the Criminal Code is enacted  
25 to read:

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

6           Section 5. A new section of the Criminal Code is enacted  
7 to read:

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

11           A. When a felony, as described in Paragraphs (1)  
12 through (28) of Subsection B of Section 3 of the Gang  
13 Enforcement and Prevention Act, is committed with the intent  
14 to aid and abet a criminal gang with a pattern of criminal  
15 gang activity, the basic sentence of imprisonment prescribed  
16 for the offense in Section 31-18-15 NMSA 1978 shall be  
17 increased by two years. The sentence imposed pursuant to this  
18 subsection shall be the first two years served and shall not  
19 be suspended, deferred or conditionally discharged; provided  
20 that when the offender is a serious youthful offender or a  
21 youthful offender, the sentence imposed pursuant to this  
22 subsection may be increased by two years.

23           B. When a second or subsequent felony, as  
24 described in Paragraphs (1) through (28) of Subsection B of  
25 Section 3 of the Gang Enforcement and Prevention Act, is

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1 committed with the intent to aid and abet a criminal gang with  
2 a pattern of criminal gang activity, the basic sentence of  
3 imprisonment prescribed for the offense in Section 31-18-15  
4 NMSA 1978 shall be increased by four years. The sentence  
5 imposed pursuant to this subsection shall be the first four  
6 years served and shall not be suspended, deferred or  
7 conditionally discharged; provided that when the offender is a  
8 serious youthful offender or a youthful offender, the sentence  
9 imposed pursuant to this subsection may be increased by four  
10 years.

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

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

21 Section 6. A new section of the Criminal Code is enacted  
22 to read:

23 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG-- DUTY OF  
24 DISTRICT ATTORNEY TO PROSECUTE.-- If at any time, either after  
25 sentence or conviction, it appears that a person convicted of

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1 a felony described in Paragraphs (1) through (28) of  
2 Subsection B of Section 3 of the Gang Enforcement and  
3 Prevention Act committed the felony while engaging in a  
4 pattern of criminal gang activity, it is the duty of the  
5 district attorney of the district in which the present  
6 conviction was obtained to file an information charging that  
7 person pursuant to the provisions of the Gang Enforcement and  
8 Prevention Act. "

9 Section 7. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4  
5 February 22, 1999

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7 Mr. President:

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9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
10 referred  
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13 SENATE BILL 393

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15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the  
17 JUDICIARY COMMITTEE.

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19 Respectfully submitted,  
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Shannon Robinson, Chairman

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

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Howes, Stockard, Smith

Absent: None

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 March 10, 1999

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8 Mr. President:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 SENATE BILL 393

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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.  
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18 Respectfully submitted,

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24 Michael S. Sanchez, Chairman  
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Adopted \_\_\_\_\_ Not

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2 (Chief Clerk)

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6 Date \_\_\_\_\_

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9 The roll call vote was 4 For 3 Against

10 Yes: 4

11 No: McSorley, Tsosie, Sanchez

12 Excused: Aragon

13 Absent: None

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

March 12, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 393

Amendment sponsored by Senator Pauline B. Eisenstadt

1. On page 1, line 15, after "ACTIVITY" insert "  
PROVIDING INCREASES IN A BASIC SENTENCE OF IMPRISONMENT WHEN A  
CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR  
THEIR PROPERTY".

2. On page 1, line 20, strike "This" and insert in lieu  
thereof "Sections 1 through 6 of this".

3. On page 8, between lines 8 and 9, insert the following  
new section:

"Section 7. A new section of the Criminal Sentencing Act

FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 393

Page 16

is enacted to read:

"NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS  
AGAINST A PERSON OR HIS PROPERTY BECAUSE OF THE ACTUAL OR  
PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY,  
GENDER OR SEXUAL ORIENTATION OF THE PERSON--ALTERATION OF BASIC  
SENTENCE--SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or jury shows that an offender committed a petty misdemeanor in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may be increased by thirty days not to exceed one hundred eighty days. The sentence imposed pursuant to the provisions of this subsection shall be the first thirty days served and may be suspended or deferred.

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 393

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B. When an offender commits a second or subsequent petty misdemeanor in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may be increased by sixty days not to exceed one hundred eight days. The sentence imposed pursuant to the provisions of this subsection shall be the first sixty days served and may be suspended or deferred.

C. When a separate finding of fact by the court or jury shows that an offender committed a misdemeanor in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may be increased by ninety days not to exceed three hundred sixty-four

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

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days. The sentence imposed pursuant to the provisions of this subsection shall be the first ninety days served and may be suspended or deferred.

D. When an offender commits a second or subsequent misdemeanor in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may be increased by one hundred eighty days not to exceed three hundred sixty-four days. The sentence imposed pursuant to the provisions of this subsection shall be the first one hundred eighty days served and may be suspended or deferred.

E. When a separate finding of fact by the court or jury shows that an offender committed a noncapital felony in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 393

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orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by one year. The sentence imposed pursuant to the provisions of this subsection shall be the first year served and may be suspended or deferred. When the offender is a youthful offender, the sentence imposed pursuant to the provisions of this subsection may be increased by one year.

F. When an offender commits a second or subsequent noncapital felony in which a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by three years. The sentence imposed pursuant to the provisions of this subsection shall be the first three years served and may be suspended or deferred. When the offender is a youthful offender, the sentence imposed pursuant to the provisions of this subsection may be increased by three

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FIRST SESSION

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years.

G. If the case is tried before a jury and if a prima facie case has been established showing that in the commission of the offense a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that in the commission of the offense a person was intentionally injured or his property was intentionally damaged because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person, whether or not the offender's belief or perception was correct, the court shall decide the issue and shall make a separate finding of fact regarding the issue."

4. Renumber the succeeding section accordingly.

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FIRST SESSION

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Pauline B. Eisenstadt

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

March 11, 1999

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 393

Amendment sponsored by Senator L. Skip Vernon

1. On page 8, line 6, strike "file an information charging" and insert in lieu thereof "charge".

L. Skip Vernon

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

SF1/SB 393

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

(Chief Clerk)

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Date \_\_\_\_\_

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