

Amendment No. 589

Assembly Amendment to Senate Bill No. 142	(BDR 15-723)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NCA/BAW



Date: 5/1/2009

S.B. No. 142—Establishes the crime of criminal gang recruitment. (BDR 15-723)



SENATE BILL NO. 142—SENATOR MCGINNESS

FEBRUARY 17, 2009

Referred to Committee on Judiciary

SUMMARY—Establishes the crime of criminal gang recruitment. (BDR 15-723)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; establishing the crime of criminal gang recruitment; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill establishes the crime of criminal gang recruitment, which is committed when an adult uses or threatens to use physical violence against a child or against another person, or causes or threatens to cause damage to the property of the child or the property of another person, with the specific intent to coerce, induce or solicit the child: (1) to become a member of a criminal gang; (2) to remain a member of a criminal gang and not withdraw or disassociate himself from the criminal gang; or (3) to rejoin a criminal gang of which he is no longer a member or from which he has withdrawn or disassociated himself. The provisions of **section 2** are patterned after similar statutory provisions in other states, such as Alaska, Arizona, Illinois, Indiana, Kansas, Kentucky, Maryland, Montana, South Carolina, Texas, Virginia and Washington.

Section 1 of this bill provides that a person who commits the crime of criminal gang recruitment is not subject to the additional penalty under existing law for crimes committed for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang. (NRS 193.168)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 193.168 is hereby amended to read as follows:
193.168 1. Except as otherwise provided in ***subsection 5*** and NRS 193.169, any person who is convicted of a felony committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang, shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. In determining the length of the additional penalty imposed, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;

- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

➤ The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

2. The sentence prescribed by this section:

- (a) Must not exceed the sentence imposed for the crime; and
- (b) Runs consecutively with the sentence prescribed by statute for the crime.

3. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

4. The court shall not impose an additional penalty pursuant to this section unless:

(a) The indictment or information charging the defendant with the primary offense alleges that the primary offense was committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang; and

(b) The trier of fact finds that allegation to be true beyond a reasonable doubt.

5. The court shall not impose an additional penalty pursuant to this section if the primary offense is a violation of section 2 of this act.

6. Except as otherwise provided in this subsection, the court shall not grant probation to or suspend the sentence of any person convicted of a felony committed for the benefit of, at the direction of, or in affiliation with , a criminal gang if an additional term of imprisonment may be imposed for that primary offense pursuant to this section. The court may, upon the receipt of an appropriate motion, reduce or suspend the sentence imposed for the primary offense if it finds that the defendant rendered substantial assistance in the arrest or conviction of any other principals, accomplices, accessories or coconspirators to the crime, or of any other persons involved in the commission of a felony which was committed for the benefit of, at the direction of, or in affiliation with , a criminal gang. The agency which arrested the defendant must be given an opportunity to support or oppose such a motion before it is granted or denied. If good cause is shown, the motion may be heard in camera.

~~6.7~~ 7. In any proceeding to determine whether an additional penalty may be imposed pursuant to this section, expert testimony is admissible to show particular conduct, status and customs indicative of criminal gangs, including, but not limited to:

- (a) Characteristics of persons who are members of criminal gangs;
 - (b) Specific rivalries between criminal gangs;
 - (c) Common practices and operations of criminal gangs and the members of those gangs;
 - (d) Social customs and behavior of members of criminal gangs;
 - (e) Terminology used by members of criminal gangs;
 - (f) Codes of conduct, including criminal conduct, of particular criminal gangs;
- and
- (g) The types of crimes that are likely to be committed by a particular criminal gang or by criminal gangs in general.

~~7.7~~ 8. As used in this section, "criminal gang" means any combination of persons, organized formally or informally, so constructed that the organization will continue its operation even if individual members enter or leave the organization, which:

- (a) Has a common name or identifying symbol;

(b) Has particular conduct, status and customs indicative of it; and
(c) Has as one of its common activities engaging in criminal activity punishable as a felony, other than the conduct which constitutes the primary offense.

Sec. 2. Chapter 201 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An adult commits the crime of criminal gang recruitment if the adult uses or threatens to use physical violence against a child or against another person, or causes or threatens to cause damage to the property of the child or the property of another person, with the specific intent to coerce, induce or solicit the child:

(a) To become a member of a criminal gang;

(b) To remain a member of a criminal gang and not withdraw or disassociate himself from the criminal gang; or

(c) To rejoin a criminal gang of which he is no longer a member or from which he has withdrawn or disassociated himself.

2. An adult who commits the crime of criminal gang recruitment is guilty of a category ~~D~~ E felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) "Adult" means a person who is 18 years of age or older.

(b) "Child" means a person who is less than 18 years of age.

(c) "Criminal gang" has the meaning ascribed to it in NRS 193.168.