

SB0051S01 compared with SB0051

~~{deleted text}~~ shows text that was in SB0051 but was deleted in SB0051S01.

inserted text shows text that was not in SB0051 but was inserted into SB0051S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Daniel W. Thatcher proposes the following substitute bill:

GROUP GANG ENHANCEMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Stephanie Pitcher

LONG TITLE

~~{Committee Note:~~

~~—————The Government Operations Interim Committee recommended this bill.~~

~~—————Legislative Vote: 9 voting for 1 voting against 6 absent~~

~~{General Description:~~

This bill modifies the sentencing enhancements and applicable offenses for certain crimes committed in concert with multiple people or on behalf of criminal street gangs.

Highlighted Provisions:

This bill:

- ▶ increases the number of additional people necessary for an offense to be enhanced under certain circumstances;

~~{—————} modifies the enhancement from a charging enhancement to a sentencing enhancement;~~

SB0051S01 compared with SB0051

- ‡ ▶ modifies the offenses subject to enhancement under this section;
- ▶ modifies potential enhancements for certain offenses under this section; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-203.1, as last amended by Laws of Utah 2020, Chapter 394

78B-6-1101, as last amended by Laws of Utah 2019, Chapters 81 and 227

78B-6-1107, as last amended by Laws of Utah 2010, Chapter 193

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-3-203.1** is amended to read:

76-3-203.1. Offenses committed in concert with three or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.

- (1) As used in this section:
 - (a) "Criminal street gang" has the same definition as in Section 76-9-802.
 - (b) "In concert with [~~two~~] three or more persons" means:
 - (i) the defendant was aided or encouraged by at least [~~two~~] three other persons in committing the offense and was aware of this aid or encouragement; and
 - (ii) each of the other persons:
 - (A) was physically present; [~~or~~] and
 - (B) participated as a party to any offense listed in Subsection (5).
 - (c) "In concert with [~~two~~] three or more persons" means, regarding intent:
 - (i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and
 - (ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.
- (2) A person [~~who commits any offense listed in Subsection (5) is~~] ~~sentenced~~ who

SB0051S01 compared with SB0051

commits any offense in accordance with this section ~~{may be}~~ is subject to an enhanced penalty [for the offense as provided in Subsection (4)] as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a reasonable doubt that the person acted:

(a) in concert with ~~[two]~~ three or more persons;

(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

~~[(4) The enhanced penalty for a:]~~

~~[(a) class B misdemeanor is a class A misdemeanor;]~~

~~[(b) class A misdemeanor is a third degree felony;]~~

~~[(c) third degree felony is a second degree felony;]~~

~~[(d) second degree felony is a first degree felony; and]~~

~~[(e) first degree felony is an indeterminate prison term of not less than five years in addition to the statutory minimum prison term for the offense, and which may be for life.]~~

~~[(5) Offenses referred to in Subsection (2) are:]~~

~~[(a) any criminal violation of the following chapters of Title 58, Occupations and Professions:]~~

~~[(i) Chapter 37, Utah Controlled Substances Act;]~~

~~[(ii) Chapter 37a, Utah Drug Paraphernalia Act;]~~

~~[(iii) Chapter 37b, Imitation Controlled Substances Act; or]~~

~~[(iv) Chapter 37c, Utah Controlled Substance Precursor Act;]~~

~~[(b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related Offenses;]~~

~~[(c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal Homicide;]~~

~~[(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;]~~

SB0051S01 compared with SB0051

- ~~[(e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;]~~
- ~~[(f) sexual exploitation of a minor as defined in Section 76-5b-201;]~~
- ~~[(g) any property destruction offense under Title 76, Chapter 6, Part 1, Property Destruction;]~~
- ~~[(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;]~~
- ~~[(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;]~~
- ~~[(j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft;]~~
- ~~[(k) any fraud offense under Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;]~~
- ~~[(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;]~~
- ~~[(m) tampering with a witness or other violation of Section 76-8-508;]~~
- ~~[(n) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;]~~
- ~~[(o) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;]~~
- ~~[(p) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;]~~
- ~~[(q) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;]~~
- ~~[(r) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;]~~
- ~~[(s) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;]~~
- ~~[(t) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;]~~
- ~~[(u) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;]~~
- ~~[(v) communications fraud as defined in Section 76-10-1801;]~~
- ~~[(w) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and]~~
- ~~[(x) burglary of a research facility as defined in Section 76-10-2002.]~~

SB0051S01 compared with SB0051

(4) (a) For an offense listed in Subsection (4)(b), a person may be ~~sentenced, and judgment and commitment entered,~~ charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor; and

(ii) for a class A misdemeanor, as a third degree felony.

(b) The following offenses are subject to Subsection (4)(a):

(i) criminal mischief as defined in Section 76-1-106; and

(ii) graffiti as defined in Section 76-1-107.

(5) (a) For an offense listed in Subsection (5)(b), a person may be ~~sentenced, and judgment and commitment entered,~~ charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony; and

(iii) for a third degree felony, as a second degree felony.

(b) The following offenses are subject to Subsection (5)(a):

(i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);

(ii) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;

(iii) tampering with a witness or other violation of Section 76-8-508;

(iv) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;

(v) extortion or bribery to dismiss a criminal proceeding as defined in Section 76-8-509;

(vi) any weapons offense under Title 76, Chapter 10, Part 5, Weapons; and

(vii) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act.

(6) (a) For an offense listed in Subsection (6)(b), a person may be ~~sentenced, and judgment and commitment entered,~~ charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony;

(iii) for a third degree felony, as a second degree felony; and

(iv) for a second degree felony, as a first degree felony.

(b) The following offenses are subject to Subsection (6)(a):

SB0051S01 compared with SB0051

(i) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(ii) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal Homicide;

(iii) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(iv) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

(v) sexual exploitation of a minor as defined in Section 76-5b-201;

(vi) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery; and

(vii) aggravated exploitation of prostitution under Section 76-10-1306.

(7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the individual placed on probation for the higher level of offense.

~~[(6)]~~ (8) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Section 2. Section **78B-6-1101** is amended to read:

78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.

(1) A nuisance is anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action.

(2) A nuisance may include the following:

(a) drug houses and drug dealing as provided in Section 78B-6-1107;

(b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

(c) criminal activity committed in concert with ~~two~~ three or more persons as provided in Section 76-3-203.1;

(d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) party houses that frequently create conditions defined in Subsection (1); and

SB0051S01 compared with SB0051

(g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

(3) A nuisance under this part includes tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

(a) drifts in more than once in each of two or more consecutive seven-day periods; and

(b) creates any of the conditions under Subsection (1).

(4) Subsection (3) does not apply to:

(a) a residential rental unit available for temporary rental, such as for a vacation, or available for only 30 or fewer days at a time; or

(b) a hotel or motel room.

(5) Subsection (3) does not apply to a unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

(6) An action may be brought by a person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.

(8) "Critical infrastructure materials operations" means the same as that term is defined in Section 10-9a-901.

(9) "Manufacturing facility" means a factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.

Section 3. Section **78B-6-1107** is amended to read:

78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.

(1) Every building or place is a nuisance where:

(a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition occurs of any controlled substance, precursor, or analog specified in Title 58, Chapter 37, Utah Controlled Substances Act;

(b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in

SB0051S01 compared with SB0051

Subsection 78B-6-1101(1);

(c) criminal activity is committed in concert with [~~two~~] three or more persons as provided in Section 76-3-203.1;

(d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(g) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

(h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

(2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.

(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).