

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;
- ▶ 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:



28 AMENDS:

29 **76-3-203.1**, as last amended by Laws of Utah 2020, Chapter 394

30 **78B-6-1101**, as last amended by Laws of Utah 2019, Chapters 81 and 227

31 **78B-6-1107**, as last amended by Laws of Utah 2010, Chapter 193



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

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

35 **76-3-203.1. Offenses committed in concert with three or more persons or in**
36 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

37 (1) As used in this section:

38 (a) "Criminal street gang" has the same definition as in Section **76-9-802**.

39 (b) "In concert with [~~two~~] three or more persons" means:

40 (i) the defendant was aided or encouraged by at least [~~two~~] three other persons in
41 committing the offense and was aware of this aid or encouragement; and

42 (ii) each of the other persons:

43 (A) was physically present; [~~or~~] and

44 (B) participated as a party to any offense listed in Subsection (5).

45 (c) "In concert with [~~two~~] three or more persons" means, regarding intent:

46 (i) other persons participating as parties need not have the intent to engage in the same
47 offense or degree of offense as the defendant; and

48 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the
49 minor were an adult.

50 (2) A person [~~who commits any offense listed in Subsection (5) is~~] sentenced in
51 accordance with this section may be subject to an enhanced penalty [~~for the offense as provided~~
52 ~~in Subsection (4)] if the trier of fact finds beyond a reasonable doubt that the person acted:~~

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

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

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

58 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to

59 be subscribed upon the information or indictment notice that the defendant is subject to the
60 enhanced penalties provided under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 [~~(e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;]~~

82 [~~(f) sexual exploitation of a minor as defined in Section [76-5b-201](#);]~~

83 [~~(g) any property destruction offense under Title 76, Chapter 6, Part 1, Property
84 Destruction;]~~

85 [~~(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,
86 Burglary and Criminal Trespass;]~~

87 [~~(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;]~~

88 [~~(j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail
89 Theft;]~~

90 ~~[(k) any fraud offense under Title 76, Chapter 6, Part 5, Fraud, except Sections~~
91 ~~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,~~
92 ~~76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;]~~

93 ~~[(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,~~
94 ~~Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,~~
95 ~~76-8-308, and 76-8-312;]~~

96 ~~[(m) tampering with a witness or other violation of Section 76-8-508;]~~

97 ~~[(n) retaliation against a witness, victim, informant, or other violation of Section~~
98 ~~76-8-508.3;]~~

99 ~~[(o) extortion or bribery to dismiss criminal proceeding as defined in Section~~
100 ~~76-8-509;]~~

101 ~~[(p) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;]~~

102 ~~[(q) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;]~~

103 ~~[(r) pornographic and harmful materials and performances offenses under Title 76,~~
104 ~~Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;]~~

105 ~~[(s) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;]~~

106 ~~[(t) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;]~~

107 ~~[(u) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;]~~

108 ~~[(v) communications fraud as defined in Section 76-10-1801;]~~

109 ~~[(w) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency~~
110 ~~Transaction Reporting Act; and]~~

111 ~~[(x) burglary of a research facility as defined in Section 76-10-2002.]~~

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

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

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

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

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

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

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

- 121 (i) for a class B misdemeanor, as a class A misdemeanor;
- 122 (ii) for a class A misdemeanor, as a third degree felony; and
- 123 (iii) for a third degree felony, as a second degree felony.
- 124 (b) The following offenses are subject to Subsection (5)(a):
- 125 (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);
- 126 (ii) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,
- 127 Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,
- 128 76-8-308, and 76-8-312;
- 129 (iii) tampering with a witness or other violation of Section 76-8-508;
- 130 (iv) retaliation against a witness, victim, informant, or other violation of Section
- 131 76-8-508.3;
- 132 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section
- 133 76-8-509;
- 134 (vi) any weapons offense under Title 76, Chapter 10, Part 5, Weapons; and
- 135 (vii) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act.
- 136 (6) (a) For an offense listed in Subsection (6)(b), a person may be sentenced, and
- 137 judgment and commitment entered, as follows:
- 138 (i) for a class B misdemeanor, as a class A misdemeanor;
- 139 (ii) for a class A misdemeanor, as a third degree felony;
- 140 (iii) for a third degree felony, as a second degree felony; and
- 141 (iv) for a second degree felony, as a first degree felony.
- 142 (b) The following offenses are subject to Subsection (6)(a):
- 143 (i) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related
- 144 Offenses;
- 145 (ii) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal
- 146 Homicide;
- 147 (iii) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,
- 148 Trafficking, and Smuggling;
- 149 (iv) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 150 (v) sexual exploitation of a minor as defined in Section 76-5b-201;
- 151 (vi) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery; and

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

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

155 [~~6~~] (8) It is not a bar to imposing the enhanced penalties under this section that the
156 persons with whom the actor is alleged to have acted in concert are not identified, apprehended,
157 charged, or convicted, or that any of those persons are charged with or convicted of a different
158 or lesser offense.

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

160 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

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

164 (2) A nuisance may include the following:

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

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

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

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

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

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

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

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

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

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

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

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

182 (b) a hotel or motel room.

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

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

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

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

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

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

197 **78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group**
198 **criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.**

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

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

203 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
204 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in
205 Subsection 78B-6-1101(1);

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

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

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

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

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

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

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

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