

GROUP GANG ENHANCEMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Stephanie Pitcher

LONG TITLE

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 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:

30 **76-3-203.1. Offenses committed in concert with three or more persons or in**
31 **relation to a criminal street gang -- Notice -- Enhanced penalties.**

32 (1) As used in this section:

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

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

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

37 (ii) each of the other persons:

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

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

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

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

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

45 (2) A person [~~who commits any offense listed in Subsection (5) is~~] who commits any
46 offense in accordance with this section is subject to an enhanced penalty [~~for the offense as~~
47 ~~provided in Subsection (4)] as provided in Subsection (4), (5), or (6) if the trier of fact finds
48 beyond a reasonable doubt that the person acted:~~

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

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

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

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

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

58 ~~[(a) class B misdemeanor is a class A misdemeanor;]~~
59 ~~[(b) class A misdemeanor is a third degree felony;]~~
60 ~~[(c) third degree felony is a second degree felony;]~~
61 ~~[(d) second degree felony is a first degree felony; and]~~
62 ~~[(e) first degree felony is an indeterminate prison term of not less than five years in~~
63 ~~addition to the statutory minimum prison term for the offense, and which may be for life.]~~
64 ~~[(5) Offenses referred to in Subsection (2) are:]~~
65 ~~[(a) any criminal violation of the following chapters of Title 58, Occupations and~~
66 ~~Professions:]~~
67 ~~[(i) Chapter 37, Utah Controlled Substances Act;]~~
68 ~~[(ii) Chapter 37a, Utah Drug Paraphernalia Act;]~~
69 ~~[(iii) Chapter 37b, Imitation Controlled Substances Act; or]~~
70 ~~[(iv) Chapter 37c, Utah Controlled Substance Precursor Act;]~~
71 ~~[(b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related~~
72 ~~Offenses;]~~
73 ~~[(c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal~~
74 ~~Homicide;]~~
75 ~~[(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,~~
76 ~~Trafficking, and Smuggling;]~~
77 ~~[(e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;]~~
78 ~~[(f) sexual exploitation of a minor as defined in Section [76-5b-201](#);~~
79 ~~[(g) any property destruction offense under Title 76, Chapter 6, Part 1, Property~~
80 ~~Destruction;]~~
81 ~~[(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,~~
82 ~~Burglary and Criminal Trespass;]~~
83 ~~[(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;]~~
84 ~~[(j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail~~
85 ~~Theft;]~~

86 ~~[(k) any fraud offense under Title 76, Chapter 6, Part 5, Fraud, except Sections~~
87 ~~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,~~
88 ~~76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;]~~

89 ~~[(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,~~
90 ~~Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,~~
91 ~~76-8-308, and 76-8-312;]~~

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

93 ~~[(n) retaliation against a witness, victim, informant, or other violation of Section~~
94 ~~76-8-508.3;]~~

95 ~~[(o) extortion or bribery to dismiss criminal proceeding as defined in Section~~
96 ~~76-8-509;]~~

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

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

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

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

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

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

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

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

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

108 (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

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

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

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

112 (i) criminal mischief as defined in Section 76-6-106; and

113 (ii) graffiti as defined in Section 76-6-107.

114 (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:

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

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

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

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

119 (i) burglary, if committed in a dwelling as defined in Subsection [76-6-202\(2\)](#);

120 (ii) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,

121 Obstructing Governmental Operations, except Sections [76-8-302](#), [76-8-303](#), [76-8-307](#),

122 [76-8-308](#), and [76-8-312](#);

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

124 (iv) retaliation against a witness, victim, informant, or other violation of Section

125 [76-8-508.3](#);

126 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section

127 [76-8-509](#);

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

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

130 (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:

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

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

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

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

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

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

137 Offenses;

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

139 Homicide;

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

141 Trafficking, and Smuggling;

- 142 (iv) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 143 (v) sexual exploitation of a minor as defined in Section 76-5b-201;
- 144 (vi) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery; and
- 145 (vii) aggravated exploitation of prostitution under Section 76-10-1306.
- 146 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the
- 147 individual placed on probation for the higher level of offense.

148 ~~[(6)]~~ (8) It is not a bar to imposing the enhanced penalties under this section that the
 149 persons with whom the actor is alleged to have acted in concert are not identified, apprehended,
 150 charged, or convicted, or that any of those persons are charged with or convicted of a different
 151 or lesser offense.

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

153 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

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

157 (2) A nuisance may include the following:

- 158 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 159 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 160 (c) criminal activity committed in concert with ~~[two]~~ three or more persons as provided
- 161 in Section 76-3-203.1;
- 162 (d) criminal activity committed for the benefit of, at the direction of, or in association
- 163 with any criminal street gang as defined in Section 76-9-802;
- 164 (e) criminal activity committed to gain recognition, acceptance, membership, or
- 165 increased status with a criminal street gang as defined in Section 76-9-802;
- 166 (f) party houses that frequently create conditions defined in Subsection (1); and
- 167 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

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

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

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

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

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

175 (b) a hotel or motel room.

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

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

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

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

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

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

190 **78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group**
191 **criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.**

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

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

196 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
197 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in

198 Subsection 78B-6-1101(1);

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

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

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

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

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

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

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

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