

Superseded 5/10/2016

76-3-203.1 Offenses committed in concert with two 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 or more persons" means:
 - (i) the defendant was aided or encouraged by at least two 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
 - (B) participated as a party to any offense listed in Subsection (5).
 - (c) "In concert with two 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 subject to an enhanced penalty for the offense as provided in Subsection (4) if the trier of fact finds beyond a reasonable doubt that the person acted:
 - (a) in concert with two 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;
 - (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, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
 - (m) tampering with a witness or other violation of Section 76-8-508;
 - (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
 - (o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;
 - (p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;
 - (q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;
 - (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;
 - (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
 - (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
 - (u) communications fraud as defined in Section 76-10-1801;
 - (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and
 - (w) burglary of a research facility as defined in Section 76-10-2002.
- (6) 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.