

## Part 8 Criminal Street Gang Penalties

### 76-9-801 Title.

This part is known as "Criminal Street Gang Penalties."

Enacted by Chapter 15, 2008 General Session

### 76-9-802 Definitions.

As used in this part:

- (1) "Criminal street gang" means an organization, association in fact, or group of three or more persons, whether operated formally or informally:
  - (a) that is currently in operation;
  - (b) that has as one of its primary activities the commission of one or more predicate gang crimes;
  - (c) that has, as a group, an identifying name or identifying sign or symbol, or both; and
  - (d) whose members, acting individually or in concert with other members, engage in or have engaged in a pattern of criminal gang activity.
- (2) "Intimidate" means the use of force, duress, violence, coercion, menace, or threat of harm for the purpose of causing an individual to act or refrain from acting.
- (3) "Minor" means a person younger than 18 years of age.
- (4) "Pattern of criminal gang activity" means:
  - (a) committing, attempting to commit, conspiring to commit, or soliciting the commission of two or more predicate gang crimes within five years;
  - (b) the predicate gang crimes are:
    - (i) committed by two or more persons; or
    - (ii) committed by an individual at the direction of, or in association with a criminal street gang; and
  - (c) the criminal activity was committed with the specific intent to promote, further, or assist in any criminal conduct by members of the criminal street gang.
- (5)
  - (a) "Predicate gang crime" means any of the following offenses:
    - (i) Title 41, Chapter 1a, Motor Vehicle Act:
      - (A) Section 41-1a-1313, regarding possession of a motor vehicle without an identification number;
      - (B) Section 41-1a-1315, regarding false evidence of title and registration;
      - (C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;
      - (D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an identification number; or
      - (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number;
    - (ii) any criminal violation of the following provisions:
      - (A) Title 58, Chapter 37, Utah Controlled Substances Act;
      - (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
      - (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
      - (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
    - (iii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
    - (iv) Title 76, Chapter 5, Part 2, Criminal Homicide;
    - (v) Sections 76-5-301 through 76-5-304, which address kidnapping and related offenses;

- (vi) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
  - (vii) Title 76, Chapter 6, Part 1, Property Destruction;
  - (viii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
  - (ix) Title 76, Chapter 6, Part 3, Robbery;
  - (x) any felony offense under Title 76, Chapter 6, Part 4, Theft, or under Title 76, Chapter 6, Part 6, Retail Theft, except Sections 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6, 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;
  - (xi) 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;
  - (xii) Title 76, Chapter 6, Part 11, Identity Fraud Act;
  - (xiii) 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;
  - (xiv) Section 76-8-508, which includes tampering with a witness;
  - (xv) Section 76-8-508.3, which includes retaliation against a witness or victim;
  - (xvi) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;
  - (xvii) Title 76, Chapter 10, Part 3, Explosives;
  - (xviii) Title 76, Chapter 10, Part 5, Weapons;
  - (xix) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
  - (xx) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
  - (xxi) Section 76-10-1801, which addresses communications fraud;
  - (xxii) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;
- or
- (xxiii) Section 76-10-2002, which addresses burglary of a research facility.
- (b) "Predicate gang crime" also includes:
- (i) any state or federal criminal offense that by its nature involves a substantial risk that physical force may be used against another in the course of committing the offense; and
  - (ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of any offense in Subsection (4)(a) if committed in this state.

Amended by Chapter 157, 2009 General Session

Amended by Chapter 356, 2009 General Session

**76-9-803 Penalties regarding criminal street gang activities.**

- (1) It is a class B misdemeanor to:
- (a) solicit, recruit, entice, or intimidate a minor to join a criminal street gang, whether or not the minor actually joins the criminal street gang;
  - (b) conspire to commit any act under Subsection (1)(a) with the intent to cause a minor to join a criminal street gang; or
  - (c) use intimidation to prevent or attempt to prevent a minor from leaving a criminal street gang or ending the minor's affiliation with a criminal street gang.
- (2) It is a class A misdemeanor for any person who is a member of or actively involved with a criminal street gang to:
- (a) intimidate or otherwise cause a minor to commit or attempt to commit any misdemeanor criminal offense; or
  - (b) commit a violation of Subsection (1)(a):

- (i) more than once;
  - (ii) regarding the same minor; and
  - (iii) within a period of 180 days.
- (3) Prosecution for any offense under this section does not prohibit prosecution for any other criminal offense.

Enacted by Chapter 15, 2008 General Session

**76-9-804 Convicted criminal gang offender -- Prohibition.**

- (1) A person who has been convicted of a crime for which the penalty was enhanced under Section 76-3-203.1 may not, except where a greater penalty is applicable under this title, possess a dangerous weapon as defined in either Section 76-1-601 or 76-10-501, ammunition, or a facsimile of a firearm within five years after the conviction.
- (2) A violation of Subsection (1) is a class A misdemeanor.

Enacted by Chapter 313, 2009 General Session