

Part 9 Prohibition of Gang Activity

76-9-901 Title.

This part is known as "Prohibition of Gang Activity."

Enacted by Chapter 86, 2009 General Session

76-9-902 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 substantial activities the commission of one or more predicate gang crimes;
 - (c) that has, as a group, an identifying name or an 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) "Gang loitering" means a person remains in one place under circumstances that would cause a reasonable person to believe that the purpose or effect of that behavior is to enable or facilitate a criminal street gang to:
 - (a) establish control over one or more identifiable areas;
 - (b) intimidate others from entering those areas; or
 - (c) conceal illegal activities.
- (3) "Pattern of criminal gang activity" means committing, attempting to commit, conspiring to commit, or soliciting the commission of two or more predicate gang crimes within five years, if the predicate gang crimes are committed:
 - (a)
 - (i) by two or more persons; or
 - (ii) by an individual at the direction of or in association with a criminal street gang; and
 - (b) with the specific intent to promote, further, or assist in any criminal conduct by members of a criminal street gang.
- (4)
 - (a) "Predicate gang crime" means any of the following offenses:
 - (i) any criminal violation of:
 - (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;
 - (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
 - (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;
 - (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related offenses;
 - (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (vi) Title 76, Chapter 6, Part 1, Property Destruction;
 - (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
 - (viii) Title 76, Chapter 6, Part 3, Robbery;

- (ix) any felony offense under Title 76, Chapter 6, Part 4, 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;
- (x) 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;
- (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- (xii) 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;
- (xiii) Section 76-8-508, which includes tampering with a witness;
- (xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;
- (xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;
- (xvi) Title 76, Chapter 10, Part 3, Explosives;
- (xvii) Title 76, Chapter 10, Part 5, Weapons;
- (xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- (xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (xx) Section 76-10-1801, which addresses communications fraud;
- (xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;
- (xxii) Section 76-10-2002, which addresses burglary of a research facility; and
- (xxiii) 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 vehicle without an identification number; and
 - (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.
- (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 any offense in Subsection (4)(a) if committed in this state.
- (5)
 - (a) "Public place" means any location or structure to which the public or a substantial group of the public has access, and includes:
 - (i) a sidewalk, street, or highway;
 - (ii) a public park, public recreation facility, or any other area open to the public;
 - (iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or playhouse, or the parking lot or structure adjacent to any of these; and
 - (iv) the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and businesses.
 - (b) "Public place" includes the lobbies, hallways, elevators, restaurants and other dining areas, and restrooms of any of the locations or structures under Subsection (5)(a).

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76-9-903 Gang loitering -- Failure to disperse -- Penalties.

- (1) When a law enforcement officer observes a person whom the officer reasonably believes to be a member of a criminal street gang engaging in gang loitering in the presence of one or more other persons in any public place where gang loitering is prohibited under Section 76-9-905, the police officer shall:
 - (a) inform all the persons that they are within an area in which loitering by a group containing one or more criminal street gang members is prohibited;
 - (b) order all the persons in the group to disperse and remove themselves from within sight and hearing of the location where the officer issues the order to disperse; and
 - (c) inform the persons that any person in the group will be subject to being charged with a criminal offense and will also be subject to arrest if the person fails to promptly obey the order to disperse.
- (2) The officer under Subsection (1) shall also advise the persons the officer is directing to disperse that each of the persons directed to disperse is subject to being charged with a criminal offense and will also be subject to arrest if the person is again, within eight hours after the current order to disperse is made:
 - (a) present in a public place with a group that includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and
 - (b) within sight or hearing of the location where the law enforcement officer is currently issuing the order to disperse.

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76-9-904 Failure to disperse -- Penalties.

- (1)
 - (a) Failure to comply with an order issued under Subsection 76-9-903(1)(b) to disperse is a class B misdemeanor of failure to disperse.
 - (b) Any second and subsequent violation of Subsection (1)(a) is a class B misdemeanor of failure to disperse and is subject to a fine of not less than \$100, unless the court finds mitigating circumstances justifying a lesser punishment and makes that finding a part of the court record.
- (2)
 - (a) A person is guilty of a class B misdemeanor of subsequent failure to disperse who:
 - (i) is present in a public place with or as part of a group of two or more persons, and that group includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and
 - (ii) is within sight or hearing of a location where a law enforcement officer issued an order to the person to disperse under Section 76-9-903 within the prior eight hours.
 - (b) A violation of Subsection (2)(a) is subject to a fine of not less than \$100, unless the court finds mitigating circumstances justifying a lesser punishment and makes that finding a part of the court record.

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76-9-905 Designation of areas where orders to disperse are authorized and gang loitering is prohibited.

- (1) Municipal and county legislative bodies shall, within their respective jurisdictions, designate the areas within their jurisdictions that they have determined are subject to the enforcement of Section 76-9-903 because criminal street gangs have been able to or are attempting to:

- (a) establish control over these identifiable areas;
 - (b) intimidate others from entering those areas; or
 - (c) conceal illegal activities conducted in those areas.
- (2)
- (a) Prior to designating areas subject to enforcement under Section 76-9-903, the legislative body shall consult, as appropriate, with persons who are knowledgeable about the effects of gang activity in areas where Section 76-9-903 may be enforced.
 - (b) Persons consulted under Subsection (2)(a) may include:
 - (i) members of local law enforcement agencies who have training or experience related to criminal street gangs;
 - (ii) other agency personnel with particular knowledge of gang activities in the proposed designated area;
 - (iii) elected and appointed officials of the area where the proposed designated area is located; and
 - (iv) representatives of community-based organizations.
 - (3) The municipal or county legislative body shall develop and implement procedures for periodic review and update of area designations it makes under Subsection (1).

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76-9-906 Protection of constitutional rights.

- (1) This section does not affect or limit any individual's constitutional right to engage in collective advocacy activities that are protected by the constitution or laws of this state or by the constitution or laws of the United States.
- (2) The sheriff or chief of police shall issue a written directive to all agency employees that provides information on preventing the enforcement of Section 76-9-903 against persons who are engaged in constitutionally protected collective advocacy activities.

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76-9-907 Training for participating law enforcement officers.

The sheriff or chief of police implementing this part shall ensure that all officers charged with enforcing this part successfully complete appropriate training on identification of gang members and criminal street gangs.

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