

1 **GROUP GANG ENHANCEMENT AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

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5 **LONG TITLE**

6 **General Description:**

7 This bill modifies the sentencing enhancements and applicable offenses for certain  
8 crimes committed in concert with multiple people or on behalf of criminal street gangs.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ increases the number of additional people necessary for an offense to be enhanced
- 12 under certain circumstances;
- 13 ▶ modifies the enhancement from a charging enhancement to a sentencing
- 14 enhancement;
- 15 ▶ modifies the offenses subject to enhancement under this section;
- 16 ▶ modifies potential enhancements for certain offenses under this section; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

- 24 **76-3-203.1**, as last amended by Laws of Utah 2020, Chapter 394
- 25 **78B-6-1101**, as last amended by Laws of Utah 2019, Chapters 81 and 227
- 26 **78B-6-1107**, as last amended by Laws of Utah 2010, Chapter 193

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

29 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~~] sentenced in  
46 accordance with this section may be subject to an enhanced penalty [~~for the offense as provided~~  
47 ~~in Subsection (4)] if the trier of fact finds beyond a reasonable doubt that the person acted:~~
- 48 (a) in concert with [~~two~~] three or more persons;
- 49 (b) for the benefit of, at the direction of, or in association with any criminal street gang  
50 as defined in Section 76-9-802; or
- 51 (c) to gain recognition, acceptance, membership, or increased status with a criminal  
52 street gang as defined in Section 76-9-802.
- 53 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to  
54 be subscribed upon the information or indictment notice that the defendant is subject to the  
55 enhanced penalties provided under this section.
- 56 [~~(4) The enhanced penalty for a:]~~
- 57 [~~(a) class B misdemeanor is a class A misdemeanor;~~]
- 58 [~~(b) class A misdemeanor is a third degree felony;~~]
- 59 [~~(c) third degree felony is a second degree felony;~~]
- 60 [~~(d) second degree felony is a first degree felony; and]~~
- 61 [~~(e) first degree felony is an indeterminate prison term of not less than five years in~~  
62 ~~addition to the statutory minimum prison term for the offense, and which may be for life.]~~
- 63 [~~(5) Offenses referred to in Subsection (2) are:]~~

- 64           ~~[(a) any criminal violation of the following chapters of Title 58, Occupations and~~  
65 ~~Professions;]~~
- 66           ~~[(i) Chapter 37, Utah Controlled Substances Act;]~~
- 67           ~~[(ii) Chapter 37a, Utah Drug Paraphernalia Act;]~~
- 68           ~~[(iii) Chapter 37b, Imitation Controlled Substances Act; or]~~
- 69           ~~[(iv) Chapter 37c, Utah Controlled Substance Precursor Act;]~~
- 70           ~~[(b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related~~  
71 ~~Offenses;]~~
- 72           ~~[(c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal~~  
73 ~~Homicide;]~~
- 74           ~~[(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,~~  
75 ~~Trafficking, and Smuggling;]~~
- 76           ~~[(e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;]~~
- 77           ~~[(f) sexual exploitation of a minor as defined in Section 76-5b-201;]~~
- 78           ~~[(g) any property destruction offense under Title 76, Chapter 6, Part 1, Property~~  
79 ~~Destruction;]~~
- 80           ~~[(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,~~  
81 ~~Burglary and Criminal Trespass;]~~
- 82           ~~[(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;]~~
- 83           ~~[(j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail~~  
84 ~~Theft;]~~
- 85           ~~[(k) any fraud offense under Title 76, Chapter 6, Part 5, Fraud, except Sections~~  
86 ~~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,~~  
87 ~~76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;]~~
- 88           ~~[(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,~~  
89 ~~Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,~~  
90 ~~76-8-308, and 76-8-312;]~~
- 91           ~~[(m) tampering with a witness or other violation of Section 76-8-508;]~~
- 92           ~~[(n) retaliation against a witness, victim, informant, or other violation of Section~~  
93 ~~76-8-508.3;]~~
- 94           ~~[(o) extortion or bribery to dismiss criminal proceeding as defined in Section~~

- 95 ~~76-8-509;~~
- 96 ~~[(p) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;]~~
- 97 ~~[(q) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;]~~
- 98 ~~[(r) pornographic and harmful materials and performances offenses under Title 76,~~
- 99 ~~Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;]~~
- 100 ~~[(s) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;]~~
- 101 ~~[(t) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;]~~
- 102 ~~[(u) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;]~~
- 103 ~~[(v) communications fraud as defined in Section 76-10-1801;]~~
- 104 ~~[(w) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency~~
- 105 ~~Transaction Reporting Act; and]~~
- 106 ~~[(x) burglary of a research facility as defined in Section 76-10-2002.]~~
- 107 (4) (a) For an offense listed in Subsection (4)(b), a person may be sentenced, and
- 108 judgment and commitment entered, 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 76-1-106; and
- 113 (ii) graffiti as defined in Section 76-1-107.
- 114 (5) (a) For an offense listed in Subsection (5)(b), a person may be sentenced, and
- 115 judgment and commitment entered, as follows:
- 116 (i) for a class B misdemeanor, as a class A misdemeanor;
- 117 (ii) for a class A misdemeanor, as a third degree felony; and
- 118 (iii) for a third degree felony, as a second degree felony.
- 119 (b) The following offenses are subject to Subsection (5)(a):
- 120 (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);
- 121 (ii) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,
- 122 Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,
- 123 76-8-308, and 76-8-312;
- 124 (iii) tampering with a witness or other violation of Section 76-8-508;
- 125 (iv) retaliation against a witness, victim, informant, or other violation of Section

126 76-8-508.3:

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

128 76-8-509:

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

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

131 (6) (a) For an offense listed in Subsection (6)(b), a person may be sentenced, and

132 judgment and commitment entered, as follows:

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

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

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

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

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

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

139 Offenses;

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

141 Homicide;

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

143 Trafficking, and Smuggling;

144 (iv) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

145 (v) sexual exploitation of a minor as defined in Section 76-5b-201;

146 (vi) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery; and

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

148 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the

149 individual placed on probation for the higher level of offense.

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

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

155 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

156 (1) A nuisance is anything that is injurious to health, indecent, offensive to the senses,

157 or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment  
158 of life or property. A nuisance may be the subject of an action.

159 (2) A nuisance may include the following:

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

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

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

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

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

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

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

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

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

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

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

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

177 (b) a hotel or motel room.

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

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

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

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

186 (9) "Manufacturing facility" means a factory, plant, or other facility including its  
187 appurtenances, where the form of raw materials, processed materials, commodities, or other

188 physical objects is converted or otherwise changed into other materials, commodities, or  
189 physical objects or where such materials, commodities, or physical objects are combined to  
190 form a new material, commodity, or physical object.

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

192 **78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group**  
193 **criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.**

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

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

198 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title  
199 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in  
200 Subsection 78B-6-1101(1);

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

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

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

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

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

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

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

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