

Effective 5/7/2025

76-3-203.1 Enhanced penalty for offenses committed in or for a certain group.

- (1) As used in this section:
 - (a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.
 - (b) "In concert with two or more individuals" means:
 - (i) the actor was aided or encouraged by at least two other individuals in committing an offense and was aware of this aid or encouragement; and
 - (ii) each of the other individuals:
 - (A) was physically present; and
 - (B) participated as a party to an offense listed in Subsection (6) or (7).
 - (c) "In concert with two or more individuals" means, regarding intent:
 - (i) any other individual participating as a party need not have the intent to engage in the same offense or degree of offense as the actor; 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.
 - (d) "Organized criminal group" means a group of three or more individuals, whether operating formally or informally, that:
 - (i) has as one of the group's purposes the commission of criminal offenses; and
 - (ii) whose members collectively engage in committing criminal offenses for the financial or other material benefit of the members or group.
 - (e) "Principal place of residence" means the single location where an individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning, as evidenced by:
 - (i) the intent expressed by the individual; and
 - (ii) acts of the individual that are consistent or inconsistent with the intent expressed by the individual.
- (2) An actor who commits an offense listed in Subsection (6) is subject to an enhanced penalty for the offense as provided in Subsection (5) if the trier of fact finds beyond a reasonable doubt that the actor acted:
 - (a) in concert with two or more individuals;
 - (b) for the benefit of, at the direction of, or in association with a criminal street gang or other organized criminal group; or
 - (c) to gain recognition, acceptance, membership, or increased status with a criminal street gang or other organized criminal group.
- (3) An actor who commits an offense listed in Subsection (7) is subject to an enhanced penalty for the offense as provided in Subsection (5) if the trier of fact finds beyond a reasonable doubt that the actor:
 - (a)
 - (i) acted in concert with two or more individuals; and
 - (ii)
 - (A) traveled more than 50 miles from the actor's principal place of residence for the purpose of the actor committing an offense listed in Subsection (7); or
 - (B) had previously been convicted of an offense listed in Subsection (7), or an offense in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to an offense under Subsection (7);
 - (b) acted for the benefit of, at the direction of, or in association with a criminal street gang or other organized criminal group; or

- (c) acted to gain recognition, acceptance, membership, or increased status with a criminal street gang or other organized criminal group.
- (4) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the actor is subject to the enhanced penalties provided under this section.
- (5) For an offense listed in Subsection (6) or (7), an actor may be charged as follows:
 - (a) for a class B misdemeanor, as a class A misdemeanor;
 - (b) for a class A misdemeanor, as a third degree felony;
 - (c) for a third degree felony, as a second degree felony; and
 - (d) for a second degree felony, as a first degree felony.
- (6) The offenses referred to in Subsection (2) are:
 - (a) an offense described in Chapter 5, Part 1, Assault and Related Offenses;
 - (b) an offense described in Chapter 5, Part 2, Criminal Homicide;
 - (c) a felony offense described in Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
 - (d) a felony offense described in Chapter 5, Part 4, Sexual Offenses, other than enticing a minor under Section 76-5-417, lewdness under Section 76-5-419, or lewdness involving a child under Section 76-5-420;
 - (e) a felony violation of aiding prostitution as described in Section 76-5d-206;
 - (f) exploiting prostitution as described in Section 76-5d-207;
 - (g) aggravated exploitation of prostitution under Section 76-5d-208;
 - (h) robbery as described in Section 76-6-202;
 - (i) burglary as described in Subsection 76-6-202(3)(b);
 - (j) aggravated burglary as described in Section 76-6-203;
 - (k) burglary of a research facility as described in Section 76-6-207;
 - (l) aggravated robbery as described in Section 76-6-302;
 - (m) an offense described in Chapter 11, Weapons; and
 - (n) transporting or harboring aliens as described in Section 76-14-209.
- (7) The offenses referred to in Subsection (3) are:
 - (a) criminal solicitation of a minor as described in Section 76-4-205;
 - (b) an offense described in Chapter 6, Part 1, Property Destruction;
 - (c) an offense described in Chapter 6, Part 4, Theft;
 - (d) an offense described in Chapter 6, Part 6, Retail Theft;
 - (e) an offense described in Chapter 6, Part 11, Identity Fraud Act;
 - (f) communications fraud as described in Section 76-6-525; and
 - (g) an offense described in Chapter 9, Part 16, Money Laundering and Currency Transaction Reporting Act.
- (8) A court may, if not otherwise prohibited from doing so by another section of the code, suspend a sentence imposed under this section and place the actor on probation.
- (9) It is not a bar to imposing the enhanced penalties under this section that the individuals with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those individuals are charged with or convicted of a different or lesser offense.

Amended by Chapter 173, 2025 General Session
Amended by Chapter 174, 2025 General Session
Amended by Chapter 178, 2025 General Session
Amended by Chapter 208, 2025 General Session