

Senator David L. Buhler proposes to substitute the following bill:

GANG AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Buhler

AN ACT RELATING TO THE CRIMINAL CODE; PROVIDING AN ENHANCED PENALTY AND GROUNDS FOR CERTIFICATION OF JUVENILES FOR THE COMMISSION OF VIOLENT CRIMES TO INTIMIDATE OR TERRORIZE; ADDING GANG RELATED CONDUCT UNDER THE DEFINITION OF UNLAWFUL ACTIVITIES; AND MAKING TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-3-203.1, as last amended by Chapter 12, Laws of Utah 1994

76-10-1602, as last amended by Chapters 65 and 174, Laws of Utah 1997

78-3a-603, as last amended by Chapter 365, Laws of Utah 1997

ENACTS:

76-3-203.4, Utah Code Annotated 1953

76-3-203.6, Utah Code Annotated 1953

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

Section 1. Section **76-3-203.1** is amended to read:

76-3-203.1. Offenses committed by three or more persons -- Enhanced penalties.

(1) (a) A person who commits any offense listed in Subsection (4) in concert with two or more persons is subject to an enhanced penalty for the offense as provided below.

(b) "In concert with two or more persons" as used in this section means the defendant and two or more other persons would be criminally liable for the offense as parties under Section 76-2-202.

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1 (2) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to
2 be subscribed upon the [~~complaint in misdemeanor cases or the~~] information or indictment [~~in~~
3 ~~felony cases~~] notice that the defendant is subject to the enhanced penalties provided under this
4 section. The notice shall be in a clause separate from and in addition to the substantive offense
5 charged.

6 (b) If the subscription is not included initially, the court may subsequently allow the
7 prosecutor to amend the charging document to include the subscription if the court finds the
8 charging documents, including any statement of probable cause, provide notice to the defendant
9 of the allegation he committed the offense in concert with two or more persons, or if the court
10 finds the defendant has not otherwise been substantially prejudiced by the omission.

11 (3) The enhanced penalties for offenses committed under this section are:

12 (a) If the offense is a class B misdemeanor, the convicted person shall serve a minimum
13 term of 90 consecutive days in a jail or other secure correctional facility.

14 (b) If the offense is a class A misdemeanor, the convicted person shall serve a minimum
15 term of 180 consecutive days in a jail or other secure correctional facility.

16 (c) If the offense is a third degree felony, the convicted person shall be sentenced to an
17 enhanced minimum term of three years in prison.

18 (d) If the offense is a second degree felony, the convicted person shall be sentenced to an
19 enhanced minimum term of six years in prison.

20 (e) If the offense is a first degree felony, the convicted person shall be sentenced to an
21 enhanced minimum term of nine years in prison.

22 (f) If the offense is a capital offense for which a life sentence is imposed, the convicted
23 person shall be sentenced to a minimum term of 20 years in prison.

24 (4) Offenses referred to in Subsection (1) are:

25 (a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related
26 offenses;

27 (b) assault and related offenses under Title 76, Chapter 5, Part 1;

28 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2;

29 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;

30 (e) any felony sexual offense under Title 76, Chapter 5, Part 4;

31 (f) sexual exploitation of a minor as defined in Section 76-5a-3;

1 (g) any property destruction offense under Title 76, Chapter 6, Part 1;

2 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;

3 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;

4 (j) theft and related offenses under Title 76, Chapter 6, Part 4;

5 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503,
6 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,
7 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

8 (l) any offense of obstructing government operations under [~~Part 3,~~] Title 76, Chapter 8,
9 Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

10 (m) tampering with a witness or other violation of Section 76-8-508;

11 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

12 (o) any explosives offense under Title 76, Chapter 10, Part 3;

13 (p) any weapons offense under Title 76, Chapter 10, Part 5;

14 (q) pornographic and harmful materials and performances offenses under Title 76, Chapter
15 10, Part 12;

16 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;

17 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

18 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

19 (u) communications fraud as defined in Section 76-10-1801;

20 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency
21 Transaction Reporting Act; and

22 (w) burglary of a research facility as defined in Section 76-10-2002.

23 (5) (a) This section does not create any separate offense but provides an enhanced penalty
24 for the primary offense.

25 (b) It is not a bar to imposing the enhanced penalties under this section that the persons
26 with whom the actor is alleged to have acted in concert are not identified, apprehended, charged,
27 or convicted, or that any of those persons are charged with or convicted of a different or lesser
28 offense.

29 (c) The sentencing judge rather than the jury shall decide whether to impose the enhanced
30 penalty under this section. The imposition of the penalty is contingent upon a finding by the
31 sentencing judge that this section is applicable. In conjunction with sentencing the court shall

1 enter written findings of fact concerning the applicability of this section.

2 (6) The court may suspend the imposition or execution of the sentence required under this
3 section if the court:

4 (a) finds that the interests of justice would be best served; and

5 (b) states the specific circumstances justifying the disposition on the record and in writing.

6 Section 2. Section **76-3-203.4** is enacted to read:

7 **76-3-203.4. Offenses committed to intimidate or terrorize -- Enhanced penalties.**

8 (1) (a) A person who commits, or attempts to commit, any offense listed in Subsection
9 76-3-203.1(4) is subject to an enhanced penalty as provided in Subsection 76-3-203.1(3), if the
10 purpose of the act is to intimidate or terrorize another person or to act in a manner in which a
11 reasonable person would expect the act to intimidate or terrorize that person.

12 (b) For the purpose of this enhancement, "intimidate or terrorize" means to commit an act
13 which would cause a reasonable person to fear for the safety or property of that person or a family
14 or household member.

15 (2) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to
16 be subscribed upon the information or indictment notice that the defendant is subject to the
17 enhanced penalties provided under this section. The notice shall be in a clause separate from and
18 in addition to the substantive offense charged.

19 (b) If the subscription is not included initially, the court may allow the prosecutor to
20 amend the charging document to include the subscription if the court finds that the charging
21 documents, including any statement of probable cause, provide notice to the defendant of the
22 allegation that he committed the offense to intimidate or terrorize another person, or if the court
23 finds that the defendant has not otherwise been substantially prejudiced by the omission.

24 (3) (a) This section does not create any separate offense but provides an enhanced penalty
25 for the primary offense.

26 (b) The sentencing judge rather than the jury shall decide whether to impose the enhanced
27 penalty under this section. The imposition of the penalty is contingent upon a finding by the
28 sentencing judge that this section is applicable. In conjunction with sentencing, the court shall
29 enter written findings of fact concerning the applicability of this section.

30 (4) The court may suspend the imposition or execution of the sentence required under this
31 section if the court:

1 (a) finds that the interests of justice would be best served; and

2 (b) states the specific circumstances justifying the disposition on the record or in writing.

3 Section 3. Section **76-3-203.6** is enacted to read:

4 **76-3-203.6. Certain enhancements not cumulative -- Enhancements may constitute**
5 **element of offense.**

6 (1) The court may not cumulate the enhancements in Section 76-3-203.1 with Section
7 76-3-203.4.

8 (2) Penalties for crimes may be enhanced under this part even if the activity upon which
9 the enhancement is based also constitutes an element of the offense.

10 Section 4. Section **76-10-1602** is amended to read:

11 **76-10-1602. Definitions.**

12 As used in this part:

13 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
14 business trust, association, or other legal entity, and any union or group of individuals associated
15 in fact although not a legal entity, and includes illicit as well as licit entities.

16 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
17 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
18 have the same or similar purposes, results, participants, victims, or methods of commission, or
19 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
20 demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.
21 At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July
22 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this
23 part shall have occurred within five years of the commission of the next preceding act alleged as
24 part of the pattern.

25 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
26 interest in property, including state, county, and local governmental entities.

27 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
28 command, encourage, or intentionally aid another person to engage in conduct which would
29 constitute any offense described by the following crimes or categories of crimes, or to attempt or
30 conspire to engage in an act which would constitute any of those offenses, regardless of whether
31 the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

- 1 (a) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 2 (b) a threat against life or property, Section 76-5-107;
- 3 (c) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 4 (d) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 5 (e) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 6 (f) causing a catastrophe, Section 76-6-105;
- 7 (g) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 8 (h) burglary of a vehicle, Section 76-6-204;
- 9 (i) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 10 (j) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 11 (k) theft, Section 76-6-404;
- 12 (l) theft by deception, Section 76-6-405;
- 13 (m) theft by extortion, Section 76-6-406;
- 14 (n) receiving stolen property, Section 76-6-408;
- 15 (o) theft of services, Section 76-6-409;
- 16 (p) forgery, Section 76-6-501;
- 17 (q) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 18 (r) computer fraud, Title 76, Chapter 6, Part 7;
- 19 (s) bribery or receiving bribe by person in the business of selection, appraisal, or criticism
20 of goods, Section 76-6-508;
- 21 (t) bribery of a labor official, Section 76-6-509;
- 22 (u) defrauding creditors, Section 76-6-511;
- 23 (v) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 24 (w) unlawful dealing with property by fiduciary, Section 76-6-513;
- 25 (x) bribery or threat to influence contest, Section 76-6-514;
- 26 (y) making a false credit report, Section 76-6-517;
- 27 (z) criminal simulation, Section 76-6-518;
- 28 (aa) criminal usury, Section 76-6-520;
- 29 (bb) false or fraudulent insurance claim, Section 76-6-521;
- 30 (cc) sale of a child, Section 76-7-203;
- 31 (dd) bribery to influence official or political actions, Section 76-8-103;

- 1 (ee) threats to influence official or political action, Section 76-8-104;
- 2 (ff) receiving bribe or bribery by public servant, Section 76-8-105;
- 3 (gg) receiving bribe or bribery for endorsement of person as public servant, Section
- 4 76-8-106;
- 5 (hh) official misconduct, Sections 76-8-201 and 76-8-202;
- 6 (ii) obstructing justice, Section 76-8-306;
- 7 (jj) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 8 (kk) false or inconsistent material statements, Section 76-8-502;
- 9 (ll) false or inconsistent statements, Section 76-8-503;
- 10 (mm) written false statements, Section 76-8-504;
- 11 (nn) tampering with a witness, retaliation against a witness or informant, or bribery,
- 12 Section 76-8-508;
- 13 (oo) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 14 (pp) tampering with evidence, Section 76-8-510;
- 15 (qq) intentionally or knowingly causing one animal to fight with another, Subsection
- 16 76-9-301(1)(f);
- 17 (rr) delivery to common carrier, mailing, or placement on premises of an incendiary
- 18 device, Section 76-10-307;
- 19 (ss) construction or possession of an incendiary device, Section 76-10-308;
- 20 (tt) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 21 (uu) unlawful marking of pistol or revolver, Section 76-10-521;
- 22 (vv) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 23 (ww) forging or counterfeiting trademarks, trade name, or trade device, Section
- 24 76-10-1002;
- 25 (xx) selling goods under counterfeited trademark, trade name, or trade devices, Section
- 26 76-10-1003;
- 27 (yy) sales in containers bearing registered trademark of substituted articles, Section
- 28 76-10-1004;
- 29 (zz) selling or dealing with article bearing registered trademark or service mark with intent
- 30 to defraud, Section 76-10-1006;
- 31 (aaa) gambling, Section 76-10-1102;

- 1 (bbb) gambling fraud, Section 76-10-1103;
- 2 (ccc) gambling promotion, Section 76-10-1104;
- 3 (ddd) possessing a gambling device or record, Section 76-10-1105;
- 4 (eee) confidence game, Section 76-10-1109;
- 5 (fff) distributing pornographic material, Section 76-10-1204;
- 6 (ggg) inducing acceptance of pornographic material, Section 76-10-1205;
- 7 (hhh) dealing in harmful material to a minor, Section 76-10-1206;
- 8 (iii) distribution of pornographic films, Section 76-10-1222;
- 9 (jjj) indecent public displays, Section 76-10-1228;
- 10 (kkk) prostitution, Section 76-10-1302;
- 11 (lll) aiding prostitution, Section 76-10-1304;
- 12 (mmm) exploiting prostitution, Section 76-10-1305;
- 13 (nnn) aggravated exploitation of prostitution, Section 76-10-1306;
- 14 (ooo) sexual exploitation of a minor, Section 76-5a-3;
- 15 (ppp) communications fraud, Section 76-10-1801;
- 16 (qqq) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
17 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, or Title
18 58, Chapter 37c, Utah Controlled Substance Precursor Act;
- 19 (rrr) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
20 Securities Act;
- 21 (sss) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
22 Land Sales Practices Act;
- 23 (ttt) false claims for public assistance under Section 35A-1-502, 76-8-1203, 76-8-1204,
24 or 76-8-1205;
- 25 (uuu) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
26 Procurement Code;
- 27 (vvv) any act prohibited by the criminal provisions of the laws governing taxation in this
28 state;
- 29 (www) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
30 Offenses;
- 31 (xxx) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized

1 Recording Practices Act;

2 (yyy) deceptive business practices, Section 76-6-507;

3 (zzz) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19, Money

4 Laundering and Currency Transaction Reporting Act;

5 (aaaa) any act illegal under the laws of the United States and enumerated in Title 18,

6 Section 1961 (1)(B), (C), and (D) of the United States Code;

7 (bbbb) any act prohibited by the criminal provisions of Title 19, Environmental Quality

8 Code, Sections 19-1-101 through 19-7-109;

9 (cccc) taking, destroying, or possessing wildlife or parts of wildlife for the primary

10 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, or Section

11 23-20-4; [and]

12 (dddd) false claims for medical benefits, kickbacks, and any other act prohibited by False

13 Claims Act, Sections 26-20-1 through 26-20-12[-];

14 (eeee) felony discharge of a firearm, Section 76-10-508;

15 (ffff) any offense committed in concert with two or more persons which is subject to an

16 enhanced penalty under Section 76-3-203.1;

17 (gggg) any offense committed on or about school premises by the use of a firearm which

18 is subject to an enhanced penalty under Section 76-3-203.2;

19 (hhhh) any hate crime which is subject to an enhanced penalty under Section 76-3-203.3;

20 and

21 (iiii) any offense which is subject to an enhanced penalty under Section 76-3-203.4.

22 Section 5. Section **78-3a-603** is amended to read:

23 **78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing --**

24 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

25 (1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges the

26 commission of an act which would constitute a felony if committed by an adult, the juvenile court

27 shall conduct a preliminary hearing.

28 (2) At the preliminary hearing the state shall have the burden of going forward with its

29 case and the burden of establishing:

30 (a) probable cause to believe that a crime was committed and that the defendant committed

31 it; and

1 (b) by a preponderance of the evidence, that it would be contrary to the best interests of
2 the minor or of the public for the juvenile court to retain jurisdiction.

3 (3) In considering whether or not it would be contrary to the best interests of the minor or
4 of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may
5 base its decision on, the finding of one or more of the following factors:

6 (a) the seriousness of the offense and whether the protection of the community requires
7 isolation of the minor beyond that afforded by juvenile facilities;

8 (b) whether the alleged offense was committed by the minor;

9 (i) in concert with two or more persons under circumstances which would subject the
10 minor to enhanced penalties under Section 76-3-203.1 were he an adult; or

11 (ii) to intimidate or terrorize another person under circumstances which would subject the
12 minor to enhanced penalties under Section 76-3-203.4 were he an adult;

13 (c) whether the alleged offense was committed in an aggressive, violent, premeditated, or
14 willful manner;

15 (d) whether the alleged offense was against persons or property, greater weight being given
16 to offenses against persons, except as provided in Section 76-8-418;

17 (e) the maturity of the minor as determined by considerations of his home, environment,
18 emotional attitude, and pattern of living;

19 (f) the record and previous history of the minor;

20 (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile
21 court;

22 (h) the desirability of trial and disposition of the entire offense in one court when the
23 minor's associates in the alleged offense are adults who will be charged with a crime in the district
24 court;

25 (i) whether the minor used a firearm in the commission of an offense; and

26 (j) whether the minor possessed a dangerous weapon on or about school premises as
27 provided in Section 76-10-505.5.

28 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is
29 discretionary with the court.

30 (5) (a) Written reports and other materials relating to the minor's mental, physical,
31 educational, and social history may be considered by the court.

1 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the
2 court shall require the person or agency preparing the report and other material to appear and be
3 subject to both direct and cross-examination.

4 (6) At the conclusion of the state's case, the minor may testify under oath, call witnesses,
5 cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

6 (7) If the court finds the state has met its burden under Subsection (2), the court may enter
7 an order:

8 (a) certifying that finding; and

9 (b) directing that the minor be held for criminal proceedings in the district court.

10 (8) If an indictment is returned by a grand jury, the preliminary examination held by the
11 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed
12 in accordance with this section regarding the additional consideration referred to in Subsection
13 (2)(b).

14 (9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating
15 to proceedings in juvenile cases are applicable to the hearing held under this section to the extent
16 they are pertinent.

17 (10) A minor who has been directed to be held for criminal proceedings in the district
18 court is not entitled to a preliminary examination in the district court.

19 (11) A minor who has been certified for trial in the district court shall have the same right
20 to bail as any other criminal defendant and shall be advised of that right by the juvenile court
21 judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

22 (12) When a minor has been certified to the district court under this section or when a
23 criminal information or indictment is filed in a court of competent jurisdiction before a committing
24 magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of
25 the Division of Youth Corrections and the jurisdiction of the juvenile court over the minor is
26 terminated regarding that offense, any other offenses arising from the same criminal episode, and
27 any subsequent misdemeanors or felonies charged against him, except as provided in Subsection
28 (14).

29 (13) A minor may be convicted under this section on the charges filed or on any other
30 offense arising out of the same criminal episode.

31 (14) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections

- 1 regain jurisdiction and any authority previously exercised over the minor when there is an
- 2 acquittal, a finding of not guilty, or dismissal of the charges in the district court.