

GANG PENALTY ENHANCEMENT AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Joseph L. Hull

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING PROVISIONS REGARDING THE GANG ENHANCEMENT PENALTIES.

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

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~~] participated as parties to the offense under Section 76-2-202.

(c) In determining if a convicted person committed an offense in concert with two or more persons, the standard of proof applied by the sentencing judge shall be the preponderance of the evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503, 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;

- (l) any offense of obstructing government operations under Part 3, Title 76, Chapter 8, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- (m) tampering with a witness or other violation of Section 76-8-508;
- (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
- (o) any explosives offense under Title 76, Chapter 10, Part 3;
- (p) any weapons offense under Title 76, Chapter 10, Part 5;
- (q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;
- (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;
- (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (u) communications fraud as defined in Section 76-10-1801;
- (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and
- (w) burglary of a research facility as defined in Section 76-10-2002.

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

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

(c) (i) The sentencing judge rather than the jury shall decide whether to impose the enhanced penalty under this section.

(ii) The imposition of the penalty is contingent upon a finding by the sentencing judge by a preponderance of the evidence that this section is applicable.

(iii) In conjunction with sentencing the court shall enter written findings of fact concerning the applicability of this section.

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

- (a) finds that the interests of justice would be best served; and
- (b) states the specific circumstances justifying the disposition on the record and in writing.