

SOLICITING GANG MEMBERS PROHIBITED

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill amends the Criminal Code regarding criminal actions concerning a street gang's involvement with minors.

Highlighted Provisions:

This bill:

- ▶ defines a criminal street gang;
- ▶ creates the criminal offenses of intimidating a minor to:
 - join a criminal street gang; or
 - leave a criminal street gang;
- ▶ provides that it is an offense for a person affiliated with a criminal street gang to intimidate a minor to commit any misdemeanor criminal offense; and
- ▶ provides an increased penalty for repeatedly recruiting a minor into a gang.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

ENACTS:

76-9-801, Utah Code Annotated 1953

76-9-802, Utah Code Annotated 1953

76-9-803, Utah Code Annotated 1953

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

31 Section 1. Section **76-9-801** is enacted to read:

32 **Part 8. Criminal Street Gang Penalties**

33 **76-9-801. Title.**

34 This part is known as "Criminal Street Gang Penalties."

35 Section 2. Section **76-9-802** is enacted to read:

36 **76-9-802. Definitions.**

37 As used in this part:

38 (1) "Criminal street gang" means an organization, association in fact, or group of three
39 or more persons, whether operated formally or informally:

40 (a) that is currently in operation;

41 (b) that has as one of its primary activities the commission of one or more predicate
42 gang crimes;

43 (c) that has, as a group, an identifying name or identifying sign or symbol, or both; and

44 (d) whose members, acting individually or in concert with other members, engage in or
45 have engaged in a pattern of criminal gang activity.

46 (2) "Intimidate" means the use of force, duress, violence, coercion, menace, or threat of
47 harm for the purpose of causing an individual to act or refrain from acting.

48 (3) "Minor" means a person younger than 18 years of age.

49 (4) "Pattern of criminal gang activity" means:

50 (a) committing, attempting to commit, conspiring to commit, or soliciting the
51 commission of two or more predicate gang crimes within five years;

52 (b) the predicate gang crimes are:

53 (i) committed by two or more persons; or

54 (ii) committed by an individual at the direction of, or in association with a criminal
55 street gang; and

56 (c) the criminal activity was committed with the specific intent to promote, further, or
57 assist in any criminal conduct by members of the criminal street gang.

- 58 (5) (a) "Predicate gang crime" means any of the following offenses:
59 (i) any criminal violation of the following provisions:
60 (A) Title 58, Chapter 37, Utah Controlled Substances Act;
61 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
62 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
63 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
64 (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
65 (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;
66 (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related
67 offenses;
68 (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
69 (vi) Title 76, Chapter 6, Part 1, Property Destruction;
70 (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
71 (viii) Title 76, Chapter 6, Part 3, Robbery;
72 (ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections
73 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,
74 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;
75 (x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507,
76 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,
77 76-6-518, and 76-6-520;
78 (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;
79 (xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections
80 76-8-302, 76-8 303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
81 (xiii) Section 76-8-508, which includes tampering with a witness;
82 (xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;
83 (xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal
84 proceeding;
85 (xvi) Title 76, Chapter 10, Part 3, which addresses explosives;

86 (xvii) Title 76, Chapter 10, Part 5, Weapons;
87 (xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
88 (xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
89 (xx) Section 76-10-1801, which addresses communications fraud;
90 (xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction
91 Reporting Act;
92 (xxii) Section 76-10-2002, which addresses burglary of a research facility;
93 (xxiii) Title 41, Chapter 1a, Motor Vehicle Act:
94 (A) Section 41-1a-1313, regarding possession of a motor vehicle without an
95 identification number;
96 (B) Section 41-1a-1315, regarding false evidence of title and registration;
97 (C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;
98 (D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an
99 identification number; and
100 (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.
101 (b) "Predicate gang crime" also includes:
102 (i) any state or federal criminal offense that by its nature involves a substantial risk that
103 physical force may be used against another in the course of committing the offense; and
104 (ii) any felony violation of a criminal statute of any other state, the United States, or any
105 district, possession, or territory of the United States which would constitute a violation of any
106 offense in Subsection (4)(a) if committed in this state.
107 Section 3. Section **76-9-803** is enacted to read:
108 **76-9-803. Penalties regarding criminal street gang activities.**
109 (1) It is a class B misdemeanor to:
110 (a) solicit, recruit, entice, or intimidate a minor to join a criminal street gang, whether
111 or not the minor actually joins the criminal street gang;
112 (b) conspire to commit any act under Subsection (1)(a) with the intent to cause a minor
113 to join a criminal street gang; or

114 (c) use intimidation to prevent or attempt to prevent a minor from leaving a criminal
115 street gang or ending the minor's affiliation with a criminal street gang.

116 (2) It is a class A misdemeanor for any person who is a member of or actively involved
117 with a criminal street gang to:

118 (a) intimidate or otherwise cause a minor to commit or attempt to commit any
119 misdemeanor criminal offense; or

120 (b) commit a violation of Subsection (1)(a):

121 (i) more than once;

122 (ii) regarding the same minor; and

123 (iii) within a period of 180 days.

124 (3) Prosecution for any offense under this section does not prohibit prosecution for any
125 other criminal offense.

126 Section 4. **Effective date.**

127 If approved by two-thirds of all the members elected to each house, this bill takes effect
128 upon approval by the governor, or the day following the constitutional time limit of Utah
129 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
130 the date of veto override.