

**Representative Curtis Oda** proposes the following substitute bill:

**PROHIBITING GANG ACTIVITY**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon J. Greiner**

House Sponsor: Curtis Oda

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**LONG TITLE**

**General Description:**

This bill amends the Criminal Code regarding loitering by groups that include gang members.

**Highlighted Provisions:**

This bill:

- ▶ provides definitions, including a definition of a criminal street gang and a definition of the offenses of gang loitering;
- ▶ provides that a peace officer may order a person whom a law enforcement officer has reason to believe is a gang member to leave an area where gang loitering is prohibited by the local law enforcement agency;
- ▶ requires that the officer advise the person that failure to leave is a class B misdemeanor and the person is subject to arrest;
- ▶ requires chiefs of police and sheriffs to designate areas in their jurisdictions where peace officers may require persons engaging in gang loitering to disperse;
- ▶ provides that failure to disperse upon the order of an officer is a class B misdemeanor, and that a subsequent failure to disperse is a class B misdemeanor subject to a fine of \$100;
- ▶ provides that if, after being ordered to leave an area due to an act of gang loitering, a





- 57           (a) that is currently in operation;
- 58           (b) that has as one of its primary activities the commission of one or more predicate
- 59 gang crimes;
- 60           (c) that has, as a group, an identifying name or identifying sign or symbol, or both; and
- 61           (d) whose members, acting individually or in concert with other members, engage in or
- 62 have engaged in a pattern of criminal gang activity.
- 63           (2) "Gang loitering" means a person whom a peace officer has reasonable cause to
- 64 believe is a member of a criminal street gang and who is in a public place subject to
- 65 enforcement of a directive under Section 76-9-803 with no apparent purpose other than to:
- 66           (a) establish control over identifiable areas;
- 67           (b) intimidate others from entering those areas; or
- 68           (c) conceal illegal activities.
- 69           (3) "Pattern of criminal gang activity" means committing, attempting to commit,
- 70 conspiring to commit, or soliciting the commission of two or more predicate gang crimes
- 71 within five years.
- 72           (4) (a) "Predicate gang crime" means any criminal offense under Subsection (4)(b) or
- 73 (c) that is committed:
- 74           (i) (A) by two or more persons; or
- 75           (B) by an individual at the direction of, or in association with, a criminal street gang or
- 76 any member of a criminal street gang; and
- 77           (ii) with the specific intent to promote, further, or assist in any criminal conduct by any
- 78 member of a criminal street gang.
- 79           (b) Criminal offenses referred to in Subsection (4)(a) are:
- 80           (i) any criminal violation of the following provisions:
- 81           (A) Title 58, Chapter 37, Utah Controlled Substances Act;
- 82           (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 83           (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
- 84           (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
- 85           (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
- 86           (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;
- 87           (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related

88 offenses:

89 (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

90 (vi) Title 76, Chapter 6, Part 1, Property Destruction;

91 (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

92 (viii) Title 76, Chapter 6, Part 3, Robbery;

93 (ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections

94 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,

95 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;

96 (x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507,

97 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,

98 76-6-518, and 76-6-520;

99 (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;

100 (xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections

101 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

102 (xiii) Section 76-8-508, which includes tampering with a witness;

103 (xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;

104 (xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal

105 proceeding;

106 (xvi) Title 76, Chapter 10, Part 3, which addresses explosives;

107 (xvii) Title 76, Chapter 10, Part 5, Weapons;

108 (xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

109 (xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

110 (xx) Section 76-10-1801, which addresses communications fraud;

111 (xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction

112 Reporting Act;

113 (xxii) Section 76-10-2002, which addresses burglary of a research facility; and

114 (xxiii) Title 41, Chapter 1a, Motor Vehicle Act:

115 (A) Section 41-1a-1313, regarding possession of a motor vehicle without an

116 identification number;

117 (B) Section 41-1a-1315, regarding false evidence of title and registration;

118 (C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;

119 (D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an  
120 identification number; and

121 (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.

122 (c) "Predicate gang crime" also includes:

123 (i) any state or federal criminal offense that by its nature involves a substantial risk that  
124 physical force may be used against another in the course of committing the offense; and

125 (ii) any felony violation of a criminal statute of any other state, the United States, or  
126 any district, possession, or territory of the United States which would constitute any offense in  
127 Subsection (4)(a) if committed in this state.

128 (5) (a) "Public place" means any location or structure to which the public or a  
129 substantial group of the public has access and includes:

130 (i) a sidewalk, street, or highway;

131 (ii) a public park, public recreation facility, or any other area open to the public;

132 (iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or  
133 playhouse, or the parking lot or structure adjacent any of these; and

134 (iv) the common areas of schools, hospitals, apartment houses, office buildings,  
135 transport facilities, and businesses.

136 (b) "Public place" includes the lobbies, hallways, elevators, restaurants and other  
137 dining areas, and restrooms of any of the locations or structures under Subsection (5)(a).

138 Section 3. Section **76-9-803** is enacted to read:

139 **76-9-803. Gang loitering -- Failure to disperse -- Penalties.**

140 When a peace officer observes one or more persons engaging in gang loitering in any  
141 public place where gang loitering is prohibited by designation made under Section 76-9-805,  
142 the police officer shall:

143 (1) inform the persons whom the peace officer observes who are engaged in gang  
144 loitering that they are within a public area in which gang loitering is prohibited;

145 (2) order each person present whom the officer has reason to believe is a member of a  
146 criminal street gang to disperse and move from within sight and hearing of the location where  
147 the officer issues the order to disperse; and

148 (3) inform each person in the group whom the officer orders to disperse that:

149 (a) failure to disperse is a class B misdemeanor and the person will be subject to arrest

150 if the person fails to promptly obey the peace officer's order to disperse; and

151 (b) engaging in gang loitering at or within the sight or hearing of the location where the  
152 officer issued the order to disperse within eight hours after the person receives the order to  
153 disperse is a class B misdemeanor.

154 Section 4. Section **76-9-804** is enacted to read:

155 **76-9-804. Gang loitering -- Penalties.**

156 (1) (a) Gang loitering is a class B misdemeanor if a person:

157 (i) engages in gang loitering; and

158 (ii) fails to comply with an order to disperse issued under a directive made under  
159 Subsection 76-9-803(2) and in accordance with Section 76-9-803.

160 (b) Any second and subsequent violation of Subsection (1)(a) is a class B misdemeanor  
161 of gang loitering and is subject to a fine of not less than \$100, unless the court finds mitigating  
162 circumstances justifying lesser punishment and makes that finding a part of the court record.

163 (2) (a) Gang loitering is a class B misdemeanor if a person engages in gang loitering:

164 (i) within eight hours of having been previously ordered to disperse under Section  
165 76-9-803, regardless of whether the person complied with that order; and

166 (ii) within sight or hearing of the location where a law enforcement officer issued the  
167 prior order to disperse under Section 76-9-803.

168 (b) A violation of Subsection (2)(a) is subject to a fine of not less than \$100, unless the  
169 court finds mitigating circumstances justifying lesser punishment and makes that finding a part  
170 of the court record.

171 Section 5. Section **76-9-805** is enacted to read:

172 **76-9-805. Designation of areas where gang loitering is prohibited and orders to**  
173 **disperse are authorized.**

174 (1) Sheriffs and chiefs of police shall each, within their respective jurisdictions,  
175 designate by written directive the areas within their jurisdictions that they have determined are  
176 subject to the enforcement of Section 76-9-803 because criminal street gangs have been able to  
177 or are attempting to:

178 (a) establish control over these identifiable areas;

179 (b) intimidate others from entering those areas; or

180 (c) conceal illegal activities.

181 (2) (a) Prior to designating areas subject to enforcement under Section 76-9-803, the  
182 sheriff or chief of police shall consult, as appropriate, with persons who are knowledgeable  
183 about the effects of gang activity in areas where Section 76-9-803 may be enforced.

184 (b) Persons consulted under Subsection (2)(a) may include:

185 (i) members of local law enforcement agencies who have training or experience related  
186 to criminal street gangs;

187 (ii) other agency personnel with particular knowledge of gang activities in the proposed  
188 designated area;

189 (iii) elected and appointed officials of the area where the proposed designated area is  
190 located; and

191 (iv) representatives of community-based organizations.

192 (3) The sheriff or chief of police shall develop and implement procedures for periodic  
193 review and update of area designations made under Subsection (1).

194 Section 6. Section **76-9-806** is enacted to read:

195 **76-9-806. Protection of constitutional rights.**

196 (1) This section does not affect or limit any individual's constitutional right to engage  
197 in collective advocacy activities that are protected by the Utah Constitution or laws of this state  
198 or by the Constitution or laws of the United States.

199 (2) The sheriff or chief of police shall issue a written directive to all agency employees  
200 that provides information on preventing the enforcement of Section 76-9-803 against persons  
201 who are engaged in constitutionally protected collective advocacy activities.

202 Section 7. Section **76-9-807** is enacted to read:

203 **76-9-807. Training for participating law enforcement officers.**

204 The sheriff or chief of police implementing this part shall ensure that all officers  
205 charged with enforcing this part successfully complete appropriate training on identification of  
206 gang members and criminal street gangs.