

1 **CRIMINAL OFFENSE PENALTIES**

2 **AMENDMENT**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jon J. Greiner**

6 House Sponsor: Ronda Rudd Menlove

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

11 **General Description:**

12 This bill amends the Criminal Code to provide an increased penalty for crimes
13 committed in relation to a criminal street gang.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides that the enhanced penalty for committing a crime with other persons
17 applies also if a defendant commits a crime:
- 18 • for the benefit of, at the direction of, or in association with a criminal street
19 gang; or
 - 20 • to gain any benefit in the defendant's relationship to a criminal street gang; and
- 21 ▶ amends related sections affected by these changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **76-3-203.1**, as last amended by Laws of Utah 2005, Chapter 93
- 29 **76-9-802**, as enacted by Laws of Utah 2008, Chapter 15
- 30 **78A-6-703**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 31 **78B-6-1101**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 **78B-6-1107**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33

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

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

36 **76-3-203.1. Offenses committed in concert with two or more persons -- Notice --**
37 **Enhanced penalties.**

38 (1) (a) A person who commits any offense listed in Subsection (4) is subject to an
39 enhanced penalty for the offense as provided in Subsection (3) if the trier of fact finds beyond a
40 reasonable doubt that the person acted:

41 (i) in concert with two or more persons[-];

42 (ii) for the benefit of, at the direction of, or in association with any criminal street gang;

43 or

44 (iii) to gain recognition, acceptance, membership, or increased status with a criminal
45 street gang.

46 (b) As used in this section:

47 (i) "Criminal street gang" has the same definition as in Section 76-9-802.

48 ~~[(b)]~~ (ii) "In concert with two or more persons" ~~[as used in this section]~~ means the
49 defendant was aided or encouraged by at least two other persons in committing the offense and
50 was aware that he was so aided or encouraged, and each of the other persons:

51 ~~[(+)]~~ (A) was physically present; or

52 ~~[(+)]~~ (B) participated as a party to any offense listed in Subsection (4).

53 (c) For purposes of Subsection (1)(b)(ii)~~(B)~~:

54 (i) other persons participating as parties need not have the intent to engage in the same
55 offense or degree of offense as the defendant; and

56 (ii) a minor is a party if the minor's actions would cause him to be a party if he were an
57 adult.

58 (2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to

59 be subscribed upon the information or indictment notice that the defendant is subject to the
60 enhanced penalties provided under this section.

61 (3) The enhanced penalty for a:

62 (a) class B misdemeanor is a class A misdemeanor;

63 (b) class A misdemeanor is a third degree felony;

64 (c) third degree felony is a second degree felony;

65 (d) second degree felony is a first degree felony; and

66 (e) first degree felony is an indeterminate prison term of not less than nine years and

67 which may be for life.

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

69 (a) any criminal violation of Title 58, Chapter 37, Utah Controlled Substance Act, 37a,

70 Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, or 37c, Utah

71 Controlled Substance Precursor Act, regarding drug-related offenses;

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

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

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

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

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

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

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

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

80 (j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail

81 Theft;

82 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504,

83 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,

84 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

85 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,

86 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

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

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

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

- 90 (p) any weapons offense under Title 76, Chapter 10, Part 5;
- 91 (q) pornographic and harmful materials and performances offenses under Title 76,
- 92 Chapter 10, Part 12;
- 93 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;
- 94 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- 95 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 96 (u) communications fraud as defined in Section 76-10-1801;
- 97 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency
- 98 Transaction Reporting Act; and
- 99 (w) burglary of a research facility as defined in Section 76-10-2002.

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

104 Section 2. Section **76-9-802** is amended to read:

105 **76-9-802. Definitions.**

106 As used in this part:

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

109 (a) that is currently in operation;

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

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

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

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

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

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

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

- 121 (b) the predicate gang crimes are:
- 122 (i) committed by two or more persons; or
- 123 (ii) committed by an individual at the direction of, or in association with a criminal
- 124 street gang; and
- 125 (c) the criminal activity was committed with the specific intent to promote, further, or
- 126 assist in any criminal conduct by members of the criminal street gang.
- 127 (5) (a) "Predicate gang crime" means any of the following offenses:
- 128 (i) any criminal violation of the following provisions:
- 129 (A) Title 58, Chapter 37, Utah Controlled Substances Act;
- 130 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 131 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
- 132 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
- 133 (ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
- 134 (iii) Title 76, Chapter 5, Part 2, Criminal Homicide;
- 135 (iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related
- 136 offenses;
- 137 (v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 138 (vi) Title 76, Chapter 6, Part 1, Property Destruction;
- 139 (vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- 140 (viii) Title 76, Chapter 6, Part 3, Robbery;
- 141 (ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, or under Part 6, Retail
- 142 Theft, except Sections 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1,
- 143 76-6-409.3, 76-6-409.6, 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;
- 144 (x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507,
- 145 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,
- 146 76-6-518, and 76-6-520;
- 147 (xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- 148 (xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections
- 149 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- 150 (xiii) Section 76-8-508, which includes tampering with a witness;
- 151 (xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;

- 152 (xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal
- 153 proceeding;
- 154 (xvi) Title 76, Chapter 10, Part 3, [~~which addresses explosives~~] Explosives;
- 155 (xvii) Title 76, Chapter 10, Part 5, Weapons;
- 156 (xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- 157 (xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 158 (xx) Section 76-10-1801, which addresses communications fraud;
- 159 (xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction
- 160 Reporting Act;
- 161 (xxii) Section 76-10-2002, which addresses burglary of a research facility;
- 162 (xxiii) Title 41, Chapter 1a, Motor Vehicle Act:
- 163 (A) Section 41-1a-1313, regarding possession of a motor vehicle without an
- 164 identification number;
- 165 (B) Section 41-1a-1315, regarding false evidence of title and registration;
- 166 (C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;
- 167 (D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an
- 168 identification number; and
- 169 (E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.
- 170 (b) "Predicate gang crime" also includes:
- 171 (i) any state or federal criminal offense that by its nature involves a substantial risk that
- 172 physical force may be used against another in the course of committing the offense; and
- 173 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 174 any district, possession, or territory of the United States which would constitute a violation of
- 175 any offense in Subsection (4)(a) if committed in this state.
- 176 Section 3. Section **78A-6-703** is amended to read:
- 177 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**
- 178 **Factors considered by juvenile court for waiver of jurisdiction to district court.**
- 179 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges
- 180 the commission of an act which would constitute a felony if committed by an adult, the
- 181 juvenile court shall conduct a preliminary hearing.
- 182 (2) At the preliminary hearing the state shall have the burden of going forward with its

183 case and the burden of establishing:

184 (a) probable cause to believe that a crime was committed and that the defendant
185 committed it; and

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

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

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

193 (b) whether the alleged offense was committed by the minor in concert with two or
194 more persons, for the benefit of, at the direction of, or in association with any criminal street
195 gang, or to gain recognition, acceptance, membership, or increased status with a criminal street
196 gang, under circumstances which would subject the minor to enhanced penalties under Section
197 76-3-203.1 were [he] the minor an adult;

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

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

202 (e) the maturity of the minor as determined by considerations of [his] the minor's
203 home, environment, emotional attitude, and pattern of living;

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

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

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

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

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

213 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is

214 discretionary with the court.

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

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

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

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

225 (a) certifying that finding; and

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

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

231 (9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions
232 relating to proceedings in juvenile cases are applicable to the hearing held under this section to
233 the extent they are pertinent.

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

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

240 (12) When a minor has been certified to the district court under this section or when a
241 criminal information or indictment is filed in a court of competent jurisdiction before a
242 committing magistrate charging the minor with an offense described in Section 78A-6-702, the
243 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile
244 court over the minor is terminated regarding that offense, any other offenses arising from the

245 same criminal episode, and any subsequent misdemeanors or felonies charged against [him] the
246 minor, except as provided in Subsection (14).

247 (13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any
248 other offense arising out of the same criminal episode, the district court retains jurisdiction
249 over the minor for all purposes, including sentencing.

250 (14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice
251 Services regain jurisdiction and any authority previously exercised over the minor when there
252 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

253 Section 4. Section **78B-6-1101** is amended to read:

254 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Judgment.**

255 (1) A nuisance is anything which is injurious to health, indecent, offensive to the
256 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
257 enjoyment of life or property. A nuisance may be the subject of an action.

258 (2) A nuisance may include the following:

259 (a) drug houses and drug dealing as provided in Section 78B-6-1107;

260 (b) gambling as provided in Title 76, Chapter 10, Part 11;

261 (c) criminal activity committed in concert with two or more persons, for the benefit of,
262 at the direction of, or in association with any criminal street gang, or to gain recognition,
263 acceptance, membership, or increased status with a criminal street gang, as provided in Section
264 76-3-203.1;

265 (d) party houses which frequently create conditions defined in Subsection (1); and

266 (e) prostitution as provided in Title 76, Chapter 10, Part 13.

267 (3) A nuisance under this part includes tobacco smoke that drifts into any residential
268 unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

269 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

270 (b) creates any of the conditions under Subsection (1).

271 (4) Subsection (3) does not apply to:

272 (a) residential rental units available for temporary rental, such as for vacations, or
273 available for only 30 or fewer days at a time; or

274 (b) hotel or motel rooms.

275 (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as

276 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

277 (6) An action may be brought by any person whose property is injuriously affected, or
278 whose personal enjoyment is lessened by the nuisance.

279 (7) "Agricultural operation" means any facility for the production for commercial
280 purposes of crops, livestock, poultry, livestock products, or poultry products.

281 (8) "Manufacturing facility" means any factory, plant, or other facility including its
282 appurtenances, where the form of raw materials, processed materials, commodities, or other
283 physical objects is converted or otherwise changed into other materials, commodities, or
284 physical objects or where such materials, commodities, or physical objects are combined to
285 form a new material, commodity, or physical object.

286 Section 5. Section **78B-6-1107** is amended to read:

287 **78B-6-1107. Nuisance -- Right of action to abate nuisances -- Drug houses and**
288 **drug dealing -- Gambling -- Group criminal activity -- Prostitution -- Weapons.**

289 (1) Every building or place is a nuisance where:

290 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or
291 acquisition occurs of any controlled substance, precursor, or analog specified in Title 58,
292 Chapter 37, Controlled Substances;

293 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
294 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in
295 Subsection 78B-6-1101(1);

296 (c) criminal activity is committed in concert with two or more persons, for the benefit
297 of, at the direction of, or in association with any criminal street gang, or to gain recognition,
298 acceptance, membership, or increased status with a criminal street gang, as provided in Section
299 76-3-203.1;

300 (d) parties occur frequently which create the conditions of a nuisance as defined in
301 Subsection 78B-6-1101(1);

302 (e) prostitution or promotion of prostitution is regularly carried on by one or more
303 persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

304 (f) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

305 (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that
306 the defendant is lawfully entitled to possession of a controlled substance.

307 (3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of
308 the nuisance as defined in Subsection (1).

Legislative Review Note
as of 10-3-08 11:45 AM

Office of Legislative Research and General Counsel

S.B. 19 - Criminal Offense Penalties Amendment

**Revised
Fiscal Note**

2009 General Session
State of Utah

State Impact

Enactment of this bill will require ongoing General Fund appropriations of \$51,800 to the Courts. Approximately \$30,500 of ongoing General Fund revenue will be generated. The net impact to the State is a cost of \$21,300 from ongoing General Funds.

	<u>2009 Approp.</u>	<u>2010 Approp.</u>	<u>2011 Approp.</u>	<u>2009 Revenue</u>	<u>2010 Revenue</u>	<u>2011 Revenue</u>
General Fund	\$0	\$51,800	\$51,800	\$0	\$30,500	\$30,500
Total	\$0	\$51,800	\$51,800	\$0	\$30,500	\$30,500

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
