

**GROUP GANG ENHANCEMENT AMENDMENTS**

2021 FIRST SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: Stephanie Pitcher

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**LONG TITLE**

**General Description:**

This bill amends the offenses subject to enhancement for crimes committed in concert with multiple people.

**Highlighted Provisions:**

This bill:

- ▶ amends the offenses subject to enhancement for crimes committed in concert with multiple people; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**76-3-203.1**, as last amended by Laws of Utah 2021, Chapter 207

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*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 in concert with three or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.**

(1) As used in this section:

(a) "Criminal street gang" [~~has the same definition as~~] means the same as that term is

30 defined in Section 76-9-802.

31 (b) "In concert with three or more persons" means:

32 (i) the defendant was aided or encouraged by at least three other persons in committing  
33 the offense and was aware of this aid or encouragement; and

34 (ii) each of the other persons:

35 (A) was physically present; and

36 (B) participated as a party to any offense listed in Subsection (4), (5), or (6).

37 (c) "In concert with three or more persons" means, regarding intent:

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

40 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the  
41 minor were an adult.

42 (2) A person who commits any offense in accordance with this section is subject to an  
43 enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a  
44 reasonable doubt that the person acted:

45 (a) in concert with three or more persons;

46 (b) for the benefit of, at the direction of, or in association with any criminal street gang  
47 as defined in Section 76-9-802; or

48 (c) to gain recognition, acceptance, membership, or increased status with a criminal  
49 street gang as defined in Section 76-9-802.

50 (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to  
51 be subscribed upon the information or indictment notice that the defendant is subject to the  
52 enhanced penalties provided under this section.

53 (4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

54 (i) for a class B misdemeanor, as a class A misdemeanor; and

55 (ii) for a class A misdemeanor, as a third degree felony.

56 (b) The following offenses are subject to Subsection (4)(a):

57 (i) criminal mischief as defined in Section 76-6-106; and

- 58 (ii) graffiti as defined in Section 76-6-107.
- 59 (5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:
- 60 (i) for a class B misdemeanor, as a class A misdemeanor;
- 61 (ii) for a class A misdemeanor, as a third degree felony; and
- 62 (iii) for a third degree felony, as a second degree felony.
- 63 (b) The following offenses are subject to Subsection (5)(a):
- 64 (i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(2);
- 65 (ii) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,
- 66 Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307,
- 67 76-8-308, and 76-8-312;
- 68 (iii) tampering with a witness or other violation of Section 76-8-508;
- 69 (iv) retaliation against a witness, victim, informant, or other violation of Section
- 70 76-8-508.3;
- 71 (v) extortion or bribery to dismiss a criminal proceeding as defined in Section
- 72 76-8-509;
- 73 (vi) any weapons offense under Title 76, Chapter 10, Part 5, Weapons; and
- 74 (vii) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act.
- 75 (6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:
- 76 (i) for a class B misdemeanor, as a class A misdemeanor;
- 77 (ii) for a class A misdemeanor, as a third degree felony;
- 78 (iii) for a third degree felony, as a second degree felony; and
- 79 (iv) for a second degree felony, as a first degree felony.
- 80 (b) The following offenses are subject to Subsection (6)(a):
- 81 (i) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related
- 82 Offenses;
- 83 (ii) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal
- 84 Homicide;
- 85 (iii) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,

86 Trafficking, and Smuggling;

87 (iv) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

88 (v) sexual exploitation of a minor as defined in Section 76-5b-201;

89 (vi) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery; and

90 (vii) aggravated exploitation of prostitution under Section 76-10-1306.

91 (7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the  
92 individual placed on probation for the higher level of offense.

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

97 Section 2. **Effective date.**

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