

GROUP GANG ENHANCEMENT AMENDMENTS

2021 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Stephanie Pitcher

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

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.



28 (1) As used in this section:

29 (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.