

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 235

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO CRIMINAL GANG ENFORCEMENT ACT; AMENDING SECTION
2 18-8502, IDAHO CODE, TO FURTHER DEFINE A TERM, TO REVISE DEFINITIONS
3 AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 18-8503, IDAHO
4 CODE, TO INCREASE CERTAIN PUNISHMENTS.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 18-8502, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 18-8502. DEFINITIONS. As used in this chapter:

10 (1) "Criminal gang" means an ongoing organization, association, or
11 group of three (3) or more persons, whether formal or informal, that has a
12 common name or common identifying sign or symbol, whose members individually
13 or collectively engage in or have engaged in a pattern of criminal gang ac-
14 tivity, having as one (1) of its primary activities the commission of one (1)
15 or more of the criminal acts enumerated in subsection (3) of this section.

16 (2) "Criminal gang member" means any person who engages in a pattern of
17 criminal gang activity and who meets two (2) or more of the following crite-
18 ria:

19 (a) Admits to gang membership;

20 (b) Is identified as a gang member;

21 (c) Resides in or frequents a particular gang's area and adopts its
22 style of dress, its use of hand signs, or its tattoos, and associates
23 with known gang members;

24 (d) Has been arrested more than once in the company of identified gang
25 members for offenses that are consistent with usual gang activity;

26 (e) Is identified as a gang member by physical evidence such as pho-
27 tographs or other documentation; or

28 (f) Has been stopped in the company of known gang members four (4) or
29 more times.

30 (3) "Pattern of criminal gang activity" means the commission, at-
31 tempted commission, or solicitation of two (2) or more of the following
32 offenses, provided that the offenses are committed on separate occasions or
33 by two (2) or more gang members:

34 (a) Robbery, as provided in section 18-6501, Idaho Code;

35 (b) Arson, as provided in sections 18-801 through 18-804, Idaho Code;

36 (c) Burglary, as provided in sections 18-1401, 18-1403, 18-1405 and
37 18-1406, Idaho Code;

38 (d) Murder or manslaughter, as provided, respectively, in sections
39 18-4001 and 18-4006, Idaho Code;

40 (e) Any violation of the provisions of chapter 27, title 37, Idaho Code,
41 ~~that involves possession with intent to deliver, distribution, deliv-~~
42 ~~ery or manufacturing of a substance prohibited therein;~~

- 1 (f) Any unlawful use or possession of a weapon, that is a felony bomb or
2 destructive device pursuant to chapter 33, title 18, Idaho Code;
3 (g) Assault and battery, as provided in chapter 9, title 18, Idaho Code;
4 (h) Criminal solicitation, as provided in section 18-2001, Idaho Code;
5 (i) Computer crime, as provided in section 18-2202, Idaho Code;
6 (j) Theft, as provided in sections 18-2401 and 18-2403, Idaho Code;
7 (k) Evidence falsified or concealed and witnesses intimidated or
8 bribed, as provided in sections 18-2601 through 18-2606, Idaho Code;
9 (l) Forgery and counterfeiting, as provided in sections 18-3601
10 through 18-3603 and sections 18-3605 through 18-3616, Idaho Code;
11 (m) Gambling, as provided in section 18-3802, Idaho Code;
12 (n) Kidnapping, as provided in sections 18-4501 through 18-4503, Idaho
13 Code;
14 (o) Mayhem, as provided in section 18-5001, Idaho Code;
15 (p) Prostitution, as provided in sections 18-5601 through 18-5614,
16 Idaho Code;
17 (q) Rape, as provided in sections 18-6101, 18-6108 and 18-6110, Idaho
18 Code;
19 (r) Racketeering, as provided in section 18-7804, Idaho Code;
20 (s) Malicious harassment, as provided in section 18-7902, Idaho Code;
21 (t) Terrorism, as provided in section 18-8103, Idaho Code; ~~or~~
22 (u) Money laundering and illegal investment, as provided in section
23 18-8201, Idaho Code;
24 (v) Sexual abuse of a child under the age of sixteen years, as provided
25 in section 18-1506, Idaho Code;
26 (w) Sexual exploitation of a child, as provided in section 18-1507,
27 Idaho Code;
28 (x) Lewd conduct with minor child under sixteen, as provided in section
29 18-1508, Idaho Code;
30 (y) Sexual battery of a minor child sixteen or seventeen years of age, as
31 provided in section 18-1508A, Idaho Code;
32 (z) Escape or rescue of prisoners, as provided in sections 18-2501
33 through 18-2506, Idaho Code;
34 (aa) Riot, as provided in sections 18-6401 and 18-6402, Idaho Code;
35 (bb) Disturbing the peace, as provided in section 18-6409, Idaho Code;
36 (cc) Malicious injury to property, as provided in section 18-7001,
37 Idaho Code;
38 (dd) Injuring jails, as provided in section 18-7018, Idaho Code;
39 (ee) Injury by graffiti, as provided in section 18-7036, Idaho Code; or
40 (ff) Human trafficking, as provided in sections 18-8602 and 18-8603,
41 Idaho Code.

42 SECTION 2. That Section 18-8503, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 18-8503. PUNISHMENT. (1) An adult, or any juvenile waived to adult
45 court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of
46 any felony or misdemeanor enumerated in section 18-8502(3), Idaho Code, that
47 is knowingly committed for the benefit or at the direction of, or in asso-
48 ciation with, any criminal gang or criminal gang member, in addition to the

1 punishment provided for the commission of the underlying offense, shall be
2 punished as follows:

3 (a) Any adult, or any juvenile waived to adult court pursuant to section
4 20-508 or 20-509, Idaho Code, who is convicted of a misdemeanor shall
5 be punished by an additional term of imprisonment in the county jail for
6 not more than one (1) year.

7 (b) Any adult, or any juvenile waived to adult court pursuant to section
8 20-508 or 20-509, Idaho Code, who is convicted of a felony shall be pun-
9 ished by an extended term of not ~~more~~ less than two (2) years and not more
10 than five (5) years in prison.

11 (c) If the underlying offense described in section 18-8502(3), Idaho
12 Code, is a felony and committed on the grounds of, or within one thou-
13 sand (1,000) feet of, a public or private elementary, secondary or vo-
14 cational school during hours when the facility is open for classes or
15 school-related programs or when minors are using the facility, the ex-
16 tended term shall be not less than ~~one~~ two (±2) years and not more than
17 four five (45) years in prison.

18 (2) This section does not create a separate offense but provides an ad-
19 ditional penalty for the primary offense, the imposition of which is contin-
20 gent upon the finding of the prescribed facts.

21 (3) The court shall not impose an extended penalty pursuant to this sec-
22 tion unless:

23 (a) The indictment or information charging the defendant with the pri-
24 mary offense alleges that the primary offense was committed knowingly
25 for the benefit or at the direction of, or in association with, a crim-
26 inal gang or criminal gang member with the specific intent to promote,
27 further or assist the activities of the criminal gang; and

28 (b) The trier of fact finds the allegation to be true beyond a reason-
29 able doubt.

30 (4) Except in a case of a juvenile who has been waived to adult court
31 pursuant to section 20-508 or 20-509, Idaho Code, the imposition or execu-
32 tion of the sentences provided in this section may not be suspended.

33 (5) An extended sentence provided in this section shall run consec-
34 utively to the sentence provided for the underlying offense.

35 (6) Unless waived to adult court pursuant to section 20-508 or 20-509,
36 Idaho Code, a juvenile who is adjudicated of any felony or misdemeanor enu-
37 merated in section 18-8502(3), Idaho Code, that is knowingly committed for
38 the benefit or at the direction of, or in association with, any criminal gang
39 or criminal gang member shall be sentenced according to the provisions of
40 section 20-520, Idaho Code.