

Senate committee recommends bill to ‘raise the bar’ on use of gang enhancement penalties

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Salt Lake County District Attorney Sim Gill made international headlines last summer when he used Utah’s gang enhancement law to bring increased penalties against the protesters who allegedly damaged his building during a July demonstration.

Those charges — which included a potential life sentence for a woman who allegedly purchased paint that was spread outside of the office as part of the protest — were “clearly not how [the gang enhancement] was intended to be used,” argues Sen. Daniel Thatcher.

On Thursday, a Senate committee unanimously advanced the West Valley City Republican’s proposal to “raise the bar” for use of the gang enhancement by ensuring it applies primarily to violent offenses against people — not property — and by increasing the number of participants who need to be involved in a crime before it could be used.

“What was done was criminal,” Thatcher said of actions taken at the protest last summer. “What was done should be charged as a crime. Unfortunately, because of how broad the gang enhancement law was, they were able to use the gang enhancement law to push that vandalism up to a first-degree felony, which is five to life for painting a building. ... Therefore, we clearly need to review how easily it can be applied.”

The eight people from that protest who faced enhanced penalties eventually saw their charges reduced by the retired judge tasked with overseeing their prosecutions.

Their original charges were made possible by a section in Utah code that allows some criminal penalties to be bumped up a level if prosecutors can show someone committed a crime as part of a criminal gang or “in concert with two or more persons.”

That law was passed in the 1990s to combat organized street gangs — not protesters — but was “significantly” loosened somewhere along the way to make it easier to apply, Thatcher noted.

His bill, SB51, would increase the number of people involved in a crime eligible for enhanced penalties to three and would allow judges, not prosecutors, to apply the enhancement at sentencing.

A number of crimes the Salt Lake County District Attorney’s Office has charged with increased penalties in recent months would not have been eligible for gang enhancement under the new law if it passes, noted Will Carlson, who works in the office.

In addition to the enhanced penalties charged in connection with the protest at the district attorney’s office, “we also filed a first-degree felony against individuals who lit the police car on fire in May, and we also charged a first-degree felony for those who broke into Morgan Jewelers at City Creek Mall and stole over \$500,000 in jewelry,” Carlson told lawmakers during the bill’s hearing on Thursday.

“All three of those situations, if this legislation passes, would not be enhanceable as first-degree felonies,” Carlson added.

Marina Lowe, legislative and policy counsel with the American Civil Liberties Union of Utah, spoke in favor of the bill Thursday, noting that it would “retool the law to make sure that it’s not being applied in a way that is overly expansive.”

Pam Vickery, executive director of the Salt Lake City-based Utah Juvenile Defender Attorneys, also expressed support for the legislation, which she said was important not only for protesters but also for young adults who “really don’t engage in [criminal] behavior unless they’re in a group.”

“The group enhancement piece of this already almost creates an enhanced penalty for young people just based on the way that young people engage in behavior,” she said.

Several people spoke in opposition to the bill, though — including Jeff Buhman, an attorney with the Statewide Association of Prosecutors, who worried the bill would make it more difficult to charge gangs that are “committing violent and sometimes multiple property offenses throughout communities” with enhanced penalties.

“I will note that statewide, prosecutors agree with many of the sentiments expressed today that we need to be careful with how we apply this,” he said. “But I will say also there’s also a lot of concern that we need tools to go after gangs.”

Thatcher said he was not supportive of last-minute efforts to change the bill after a collaborative drafting process that included prosecutors, defense attorneys and other groups.

SB51 passed unanimously out of the Senate Judiciary, Law Enforcement, and Criminal Justice Committee and now moves to the full Senate for further consideration.