

1 **CRIMINAL PROVISIONS MODIFICATIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Paul Ray

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7 **LONG TITLE**

8 **Committee Note:**

9 The Criminal Code Evaluation Task Force recommended this bill.

10 **General Description:**

11 This bill modifies provisions relating to criminal offenses and penalties in the Utah  
12 Code.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ modifies criminal offenses and penalties relating to:
  - 17 • clandestine drug labs;
  - 18 • drug distribution resulting in death;
  - 19 • electronic communications harassment; and
  - 20 • return of a marriage license to a county clerk;
- 21 ▶ repeals the offense of fornication;
- 22 ▶ repeals provisions allowing the Department of Public Safety to enforce the  
23 Clandestine Drug Lab Act; and
- 24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **30-1-11**, as last amended by Laws of Utah 2018, Chapter 148

32 **58-37-8**, as last amended by Laws of Utah 2017, Chapter 330

33 **58-37d-2**, as last amended by Laws of Utah 2013, Chapter 278

34 **58-37d-3**, as last amended by Laws of Utah 2013, Chapters 262 and 413

35 **58-37d-4**, as last amended by Laws of Utah 2008, Chapter 305

36 **58-37d-5**, as last amended by Laws of Utah 2003, Chapter 115

37 **58-37d-6**, as enacted by Laws of Utah 1992, Chapter 156

38 **76-9-201**, as last amended by Laws of Utah 2018, Chapter 444

39 **77-22-2**, as last amended by Laws of Utah 2009, Chapter 6

40 **77-22-2.5**, as last amended by Laws of Utah 2017, Chapter 447

41 REPEALS:

42 **58-37d-9**, as last amended by Laws of Utah 1999, Chapter 21

43 **76-7-104**, as enacted by Laws of Utah 1973, Chapter 196



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

46 Section 1. Section **30-1-11** is amended to read:

47 **30-1-11. Return of license after ceremony -- Failure -- Penalty.**

48 (1) The individual solemnizing the marriage shall within 30 days ~~[thereafter]~~ after  
49 solemnizing the marriage return the license to the clerk of the county ~~[whence it issued]~~ that  
50 issues the license, with a certificate of the marriage over the individual's signature, giving the  
51 date and place of celebration and the names of two or more witnesses present at the marriage.

52 (2) An individual described in Subsection (1) who fails to ~~[make the return]~~ return the  
53 license is guilty of ~~[a class B misdemeanor]~~ an infraction.

54 Section 2. Section **58-37-8** is amended to read:

55 **58-37-8. Prohibited acts -- Penalties.**

56 (1) Prohibited acts A -- Penalties and reporting:

57 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
58 intentionally:

- 59 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
60 manufacture, or dispense, a controlled or counterfeit substance;
- 61 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
62 arrange to distribute a controlled or counterfeit substance;
- 63 (iii) possess a controlled or counterfeit substance with intent to distribute; or  
64 (iv) engage in a continuing criminal enterprise where~~[-(A)]~~ the person participates,  
65 directs, or engages in conduct that results in any violation of any provision of Title 58,  
66 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,  
67 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,  
68 Clandestine Drug Lab Act, that is a felony~~[-and]~~, if the violation:
- 69 ~~[(B)]~~ (A) [the violation] is a part of a continuing series of two or more violations of  
70 Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,  
71 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,  
72 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or  
73 more persons with respect to whom the person occupies a position of organizer, supervisor, or  
74 ~~[any other]~~ another position of management~~[-]; or~~
- 75 (B) results in the death of an individual.
- 76 (b) Any person convicted of violating Subsection (1)(a) with respect to:
- 77 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
78 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
79 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or  
80 subsequent conviction is guilty of a first degree felony;
- 81 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
82 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and  
83 upon a second or subsequent conviction is guilty of a second degree felony; or
- 84 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
85 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree  
86 felony.
- 87 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
88 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
89 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the

90 person or in the person's immediate possession during the commission or in furtherance of the  
91 offense, the court shall additionally sentence the person convicted for a term of one year to run  
92 consecutively and not concurrently; and the court may additionally sentence the person  
93 convicted for an indeterminate term not to exceed five years to run consecutively and not  
94 concurrently.

95 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
96 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
97 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
98 person is not eligible for probation.

99 (e) The Administrative Office of the Courts shall report to the Division of  
100 Occupational and Professional Licensing the name, case number, date of conviction, and if  
101 known, the date of birth of each person convicted of violating Subsection (2)(a).

102 (2) Prohibited acts B -- Penalties and reporting:

103 (a) It is unlawful:

104 (i) for any person knowingly and intentionally to possess or use a controlled substance  
105 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
106 directly from a practitioner while acting in the course of the person's professional practice, or as  
107 otherwise authorized by this chapter;

108 (ii) for any owner, tenant, licensee, or person in control of any building, room,  
109 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to  
110 be occupied by persons unlawfully possessing, using, or distributing controlled substances in  
111 any of those locations; or

112 (iii) for any person knowingly and intentionally to possess an altered or forged  
113 prescription or written order for a controlled substance.

114 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

115 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

116 or

117 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty  
118 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
119 conviction is guilty of a third degree felony.

120 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a

121 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater  
122 penalty than provided in this Subsection (2).

123 (d) (i) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
124 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
125 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

126 (ii) Upon a third conviction under Subsection (2)(d)(i), the person is guilty of a class A  
127 misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree  
128 felony.

129 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
130 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
131 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
132 than provided in Subsection (2)(b), and if the conviction is with respect to controlled  
133 substances as listed in:

134 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
135 indeterminate term as provided by law, and the court:

136 (A) [~~the court~~] shall additionally sentence the person convicted to a term of one year to  
137 run consecutively and not concurrently; and

138 (B) [~~the court~~] may additionally sentence the person convicted for an indeterminate  
139 term not to exceed five years to run consecutively and not concurrently; and

140 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
141 indeterminate term as provided by law, and the court shall additionally sentence the person  
142 convicted to a term of six months to run consecutively and not concurrently.

143 (f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

144 (i) on a first conviction, guilty of a class B misdemeanor;

145 (ii) on a second conviction, guilty of a class A misdemeanor; and

146 (iii) on a third or subsequent conviction, guilty of a third degree felony.

147 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
148 amounting to a violation of Section 76-5-207:

149 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
150 body any measurable amount of a controlled substance; and

151 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,

152 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

153 (h) A person who violates Subsection (2)(g) by having in the person's body:

154 (i) a controlled substance classified under Schedule I, other than those described in  
155 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
156 degree felony;

157 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
158 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
159 degree felony; or

160 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
161 A misdemeanor.

162 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
163 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)  
164 whether or not the injuries arise from the same episode of driving.

165 (j) The Administrative Office of the Courts shall report to the Division of Occupational  
166 and Professional Licensing the name, case number, date of conviction, and if known, the date  
167 of birth of each person convicted of violating Subsection (2)(a).

168 (3) Prohibited acts C -- Penalties:

169 (a) It is unlawful for any person knowingly and intentionally:

170 (i) to use in the course of the manufacture or distribution of a controlled substance a  
171 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
172 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
173 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
174 person;

175 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
176 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
177 be attempting to acquire or obtain possession of, or to procure the administration of any  
178 controlled substance by misrepresentation or failure by the person to disclose receiving any  
179 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
180 prescription or written order for a controlled substance, or the use of a false name or address;

181 (iii) to make any false or forged prescription or written order for a controlled substance,  
182 or to utter the same, or to alter any prescription or written order issued or written under the

183 terms of this chapter; or

184 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed  
185 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
186 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
187 so as to render any drug a counterfeit controlled substance.

188 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
189 misdemeanor.

190 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
191 degree felony.

192 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

193 (4) Prohibited acts D -- Penalties:

194 (a) Notwithstanding other provisions of this section, a person not authorized under this  
195 chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or  
196 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this  
197 Subsection (4) if the trier of fact finds the act is committed:

198 (i) in a public or private elementary or secondary school or on the grounds of any of  
199 those schools during the hours of 6 a.m. through 10 p.m.;

200 (ii) in a public or private vocational school or postsecondary institution or on the  
201 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

202 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
203 facility's hours of operation;

204 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
205 amusement park, arcade, or recreation center is open to the public;

206 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;

207 (vi) in or on the grounds of a library when the library is open to the public;

208 (vii) within any area that is within 100 feet of any structure, facility, or grounds  
209 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

210 (viii) in the presence of a person younger than 18 years of age, regardless of where the  
211 act occurs; or

212 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
213 distribution of a substance in violation of this section to an inmate or on the grounds of any

214 correctional facility as defined in Section 76-8-311.3.

215 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
216 and shall be imprisoned for a term of not less than five years if the penalty that would  
217 otherwise have been established but for this Subsection (4) would have been a first degree  
218 felony.

219 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
220 not eligible for probation.

221 (c) ~~[H] Except for a violation of Subsection (2)(g), if the classification that would~~  
222 otherwise have been established would have been less than a first degree felony but for this  
223 Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than  
224 the maximum penalty prescribed for that offense. ~~[This Subsection (4)(c) does not apply to a~~  
225 ~~violation of Subsection (2)(g).]~~

226 (d) (i) If the violation is of Subsection (4)(a)(ix):

227 (A) the person may be sentenced to imprisonment for an indeterminate term as  
228 provided by law, and the court shall additionally sentence the person convicted for a term of  
229 one year to run consecutively and not concurrently; and

230 (B) the court may additionally sentence the person convicted for an indeterminate term  
231 not to exceed five years to run consecutively and not concurrently; and

232 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
233 the mental state required for the commission of an offense, directly or indirectly solicits,  
234 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
235 violation of Subsection (4)(a)(ix).

236 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
237 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
238 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
239 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
240 the location where the act occurred was as described in Subsection (4)(a).

241 (5) Any violation of this chapter for which no penalty is specified is a class B  
242 misdemeanor.

243 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
244 guilty or no contest to a violation or attempted violation of this section or a plea which is held

245 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,  
246 even if the charge has been subsequently reduced or dismissed in accordance with the plea in  
247 abeyance agreement.

248 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
249 conviction that is:

250 (i) from a separate criminal episode than the current charge; and

251 (ii) from a conviction that is separate from [~~any other~~] another conviction used to  
252 enhance the current charge.

253 (7) A person may be charged and sentenced for a violation of this section,  
254 notwithstanding a charge and sentence for a violation of [~~any other~~] another section of this  
255 chapter.

256 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in  
257 lieu of, any civil or administrative penalty or sanction authorized by law.

258 (b) Where violation of this chapter violates a federal law or the law of another state,  
259 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
260 prosecution in this state.

261 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a  
262 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
263 substance or substances, is prima facie evidence that the person or persons did so with  
264 knowledge of the character of the substance or substances.

265 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
266 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or  
267 administering controlled substances or from causing the substances to be administered by an  
268 assistant or orderly under the veterinarian's direction and supervision.

269 (11) Civil or criminal liability may not be imposed under this section on:

270 (a) any person registered under this chapter who manufactures, distributes, or possesses  
271 an imitation controlled substance for use as a placebo or investigational new drug by a  
272 registered practitioner in the ordinary course of professional practice or research; or

273 (b) any law enforcement officer acting in the course and legitimate scope of the  
274 officer's employment.

275 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,

276 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide  
277 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
278 as defined in Subsection 58-37-2(1)(w).

279 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
280 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
281 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
282 connection with the practice of a traditional Indian religion.

283 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
284 defense under this Subsection (12) as soon as practicable, but not later than 10 days before  
285 trial.

286 (ii) The notice shall include the specific claims of the affirmative defense.

287 (iii) The court may waive the notice requirement in the interest of justice for good  
288 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

289 (d) The defendant shall establish the affirmative defense under this Subsection (12) by  
290 a preponderance of the evidence~~[-ff]~~ and, if the defense is established, [it] the defense is a  
291 complete defense to the charges.

292 (13) (a) It is an affirmative defense that the person produced, possessed, or  
293 administered a controlled substance listed in Section 58-37-4.2 if the person:

294 (i) was engaged in medical research; and

295 (ii) was a holder of a valid license to possess controlled substances under Section  
296 58-37-6.

297 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed  
298 a controlled substance listed in Section 58-37-4.2.

299 (14) It is an affirmative defense that the person possessed, in the person's body, a  
300 controlled substance listed in Section 58-37-4.2 if:

301 (a) the person was the subject of medical research conducted by a holder of a valid  
302 license to possess controlled substances under Section 58-37-6; and

303 (b) the substance was administered to the person by the medical researcher.

304 (15) (a) The application of any increase in penalty under this section to a violation of  
305 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

306 (b) This Subsection (15) takes precedence over any conflicting provision of this

307 section.

308 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
309 listed in Subsection (16)(b) that the person:

310 (i) reasonably believes that the person or another person is experiencing an overdose  
311 event due to the ingestion, injection, inhalation, or other introduction into the human body of a  
312 controlled substance or other substance;

313 (ii) reports in good faith the overdose event to a medical provider, an emergency  
314 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911  
315 emergency call system, or an emergency dispatch system, or the person is the subject of a  
316 report made under this Subsection (16);

317 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
318 actual location of the overdose event that facilitates responding to the person experiencing the  
319 overdose event;

320 (iv) remains at the location of the person experiencing the overdose event until a  
321 responding law enforcement officer or emergency medical service provider arrives, or remains  
322 at the medical care facility where the person experiencing an overdose event is located until a  
323 responding law enforcement officer arrives;

324 (v) cooperates with the responding medical provider, emergency medical service  
325 provider, and law enforcement officer, including providing information regarding the person  
326 experiencing the overdose event and any substances the person may have injected, inhaled, or  
327 otherwise introduced into the person's body; and

328 (vi) is alleged to have committed the offense in the same course of events from which  
329 the reported overdose arose.

330 (b) The offenses referred to in Subsection (16)(a) are:

331 (i) the possession or use of less than 16 ounces of marijuana;

332 (ii) the possession or use of a scheduled or listed controlled substance other than  
333 marijuana; and

334 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
335 Imitation Controlled Substances Act.

336 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
337 include seeking medical assistance under this section during the course of a law enforcement

338 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

339 (17) If any provision of this chapter, or the application of any provision to any person  
340 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
341 invalid provision or application.

342 (18) A legislative body of a political subdivision may not enact an ordinance that is  
343 less restrictive than any provision of this chapter.

344 (19) If a minor who is under 18 years of age is found by a court to have violated this  
345 section, the court may order:

346 (a) the minor to complete a screening as defined in Section 41-6a-501;

347 (b) the minor to complete an assessment as defined in Section 41-6a-501 if the  
348 screening indicates an assessment to be appropriate; and

349 (c) the minor to complete an educational series as defined in Section 41-6a-501 or  
350 substance use disorder treatment as indicated by an assessment.

351 Section 3. Section 58-37d-2 is amended to read:

352 **58-37d-2. Purpose.**

353 The clandestine production of methamphetamine, other amphetamines, phencyclidine,  
354 narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated  
355 tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack"  
356 cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the  
357 western states and Utah. These highly technical illegal operations create substantial dangers to  
358 the general public and environment from fire, explosions, and the release of toxic chemicals.  
359 By their very nature these activities often involve a number of persons in a conspiratorial  
360 enterprise to bring together all necessary components for clandestine production, to thwart  
361 regulation and detection, and to distribute the final product. Therefore, the Legislature enacts  
362 the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory  
363 operations. With regard to the controlled substances specified herein, this act shall control,  
364 notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled  
365 Substances Act.

366 Section 4. Section 58-37d-3 is amended to read:

367 **58-37d-3. Definitions.**

368 (1) As used in this chapter:

369 (a) (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily  
370 injury when triggered by the action of a person making contact with the device.

371 (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip  
372 wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines  
373 or wires with hooks attached, and devices for the production of toxic fumes or gases.

374 (b) "Clandestine laboratory operation" means the:

375 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location  
376 for the illegal manufacture of specified controlled substances;

377 (ii) transportation or arranging for the transportation of chemicals, supplies, or  
378 equipment for the illegal manufacture of specified controlled substances;

379 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of  
380 specified controlled substances;

381 (iv) activity of compounding, synthesis, concentration, purification, separation,  
382 extraction, or other physical or chemical processing of a substance, including a controlled  
383 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container  
384 holding a substance that is a product of any of these activities, when the substance is to be used  
385 for the illegal manufacture of specified controlled substances;

386 (v) illegal manufacture of specified controlled substances; or

387 (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or  
388 produced by the illegal manufacture of specified controlled substances.

389 (c) "Controlled substance precursor" means those chemicals designated in Title 58,  
390 Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in  
391 Subsections [58-37c-3\(1\)\(kk\)](#) and (ll).

392 (d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:

393 (i) (A) without authorization bears the trademark, trade name, or other identifying  
394 mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or  
395 dispenser other than the person or persons who in fact manufactured, distributed, or dispensed  
396 the substance which falsely purports to be an opioid distributed by another manufacturer,  
397 distributor, or dispenser; and

398 (B) a reasonable person would believe to be an opioid distributed by an authorized  
399 manufacturer, distributor, or dispenser based on the appearance of the substance as described

400 under Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or

401 (ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and

402 (B) a reasonable person would believe to be a legal or illegal opioid.

403 ~~[(d)]~~ (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping,

404 spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or

405 water so that the material may enter the environment, be emitted into the air, or discharged into

406 any waters, including groundwater.

407 ~~[(e)]~~ (f) "Hazardous or dangerous material" means a substance that because of its

408 quantity, concentration, physical characteristics, or chemical characteristics may cause or

409 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a

410 substantial present or potential future hazard to human health or the environment when

411 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

412 ~~[(f)]~~ (g) "Illegal manufacture of specified controlled substances" means in violation of

413 Title 58, Chapter 37, Utah Controlled Substances Act, the:

414 (i) compounding, synthesis, concentration, purification, separation, extraction, or other

415 physical or chemical processing for the purpose of producing methamphetamine, other

416 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,

417 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled

418 Substances Act, lysergic acid diethylamide, ~~[(g)]~~ mescaline, tetrahydrocannabinol, or counterfeit

419 opioid;

420 (ii) conversion of cocaine or methamphetamine to their base forms; or

421 (iii) extraction, concentration, or synthesis of [~~marijuana as that drug is defined in~~

422 ~~Section 58-37-2]~~ tetrahydrocannabinol.

423 (h) "Opioid" means the same as that term is defined in Section 58-37f-303.

424 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section

425 58-37-3.6.

426 (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this

427 chapter.

428 Section 5. Section **58-37d-4** is amended to read:

429 **58-37d-4. Prohibited acts -- Second degree felony.**

430 (1) It is unlawful for any person to knowingly or intentionally:

431 (a) possess a controlled substance or a controlled substance precursor with the intent to  
432 engage in a clandestine laboratory operation;

433 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine  
434 laboratory operation;

435 (c) sell, distribute, or otherwise supply a controlled substance, controlled substance  
436 precursor [~~chemical~~], laboratory equipment, or laboratory supplies, knowing or having  
437 reasonable cause to believe any of these items will be used for a clandestine laboratory  
438 operation;

439 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled  
440 Substance Precursor Act, knowing or having reasonable cause to believe that the material  
441 distributed or received will be used for a clandestine laboratory operation;

442 (e) conspire with or aid another to engage in a clandestine laboratory operation;

443 (f) produce or manufacture, or possess with intent to produce or manufacture a  
444 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah  
445 Controlled Substances Act;

446 (g) transport or convey a controlled or counterfeit substance with the intent to  
447 distribute or to be distributed by the person transporting or conveying the controlled or  
448 counterfeit substance or by [~~any other~~] another person regardless of whether the final  
449 destination for the distribution is within this state or [~~any other~~] another location; or

450 (h) engage in compounding, synthesis, concentration, purification, separation,  
451 extraction, or other physical or chemical processing of any substance, including a controlled  
452 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container  
453 holding a substance that is a product of any of these activities, knowing or having reasonable  
454 cause to believe that the substance is a product of any of these activities and will be used in the  
455 illegal manufacture of specified controlled substances.

456 (2) A person who violates [~~any provision of~~] Subsection (1) is guilty of a second  
457 degree felony punishable by imprisonment for an indeterminate term of not less than [3] three  
458 years nor more than 15 years.

459 Section 6. Section **58-37d-5** is amended to read:

460 **58-37d-5. Prohibited acts -- First degree felony.**

461 (1) A person who violates Subsection **58-37d-4(1)(a), (b), (e), (f), or (h)** is guilty of a

462 first degree felony if the trier of fact also finds any one of the following conditions occurred in  
463 conjunction with that violation:

464 (a) possession of a firearm;

465 (b) use of a booby trap;

466 (c) illegal possession, transportation, or disposal of hazardous or dangerous material or  
467 while transporting or causing to be transported materials in furtherance of a clandestine  
468 laboratory operation, there was created a substantial risk to human health or safety or a danger  
469 to the environment;

470 (d) intended laboratory operation was to take place or did take place within 500 feet of  
471 a residence, place of business, church, or school;

472 (e) clandestine laboratory operation actually produced any amount of a specified  
473 controlled substance or a counterfeit opioid; or

474 (f) intended clandestine laboratory operation was for the production of cocaine base or  
475 methamphetamine base.

476 (2) If the trier of fact finds that two or more of the conditions listed in Subsections  
477 (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for  
478 the first degree felony:

479 (a) probation shall not be granted;

480 (b) the execution or imposition of sentence shall not be suspended; and

481 (c) the court shall not enter a judgment for a lower category of offense.

482 Section 7. Section **58-37d-6** is amended to read:

483 **58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance**  
484 **precursor or clandestine laboratory equipment.**

485 The trier of fact may infer that [~~the~~] a defendant intended to engage in a clandestine  
486 laboratory operation if the defendant:

487 (1) is in illegal possession of a controlled substance precursor; or

488 (2) illegally possesses or attempts to illegally possess a controlled substance or  
489 controlled substance precursor and is in possession of any one of the following pieces of  
490 equipment:

491 (a) glass reaction vessel;

492 (b) separatory funnel;

- 493 (c) glass condenser;  
494 (d) analytical balance; [~~or~~]  
495 (e) heating mantle[-]; or  
496 (f) pill press machine or similar device.

497 Section 8. Section **76-9-201** is amended to read:

498 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

499 (1) As used in this section:

500 (a) "Adult" means [~~a person~~] an individual 18 years of age or older.

501 (b) "Electronic communication" means [~~any~~] a communication by electronic,  
502 electro-mechanical, or electro-optical communication device for the transmission and reception  
503 of audio, image, or text but does not include broadcast transmissions or similar  
504 communications that are not targeted at [~~any~~] a specific individual.

505 (c) "Electronic communication device" includes a telephone, a facsimile machine,  
506 electronic mail, a pager, a computer, or [~~any other~~] another device or medium that can be used  
507 to communicate electronically.

508 (d) "Minor" means [~~a person~~] an individual who is younger than 18 years of age.

509 (e) "Personal identifying information" means the same as that term is defined in  
510 Section [76-6-1102](#).

511 (2) A person is guilty of electronic communication harassment and subject to  
512 prosecution in the jurisdiction where the communication originated or was received if with  
513 intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications  
514 of another, the person:

515 (a) (i) makes repeated contact by means of electronic communications, regardless of  
516 whether a conversation ensues; or

517 (ii) after the recipient has requested or informed the person not to contact the recipient,  
518 and the person repeatedly or continuously:

519 (A) contacts the electronic communication device of the recipient; or

520 (B) causes an electronic communication device of the recipient to ring or to receive  
521 other notification of attempted contact by means of electronic communication;

522 (b) makes contact by means of electronic communication and insults, taunts, or  
523 challenges the recipient of the communication or any person at the receiving location in a

524 manner likely to provoke a violent or disorderly response;

525 (c) makes contact by means of electronic communication and threatens to inflict injury,  
526 physical harm, or damage to any person or the property of any person; or

527 (d) causes disruption, jamming, or overload of an electronic communication system  
528 through excessive message traffic or other means utilizing an electronic communication  
529 device~~;~~or.

530 ~~[(e) electronically publishes, posts, or otherwise discloses personal identifying  
531 information of another person, in a public online site or forum, without that person's  
532 permission.]~~

533 (3) A person who electronically publishes, posts, or otherwise discloses personal  
534 identifying information of another individual in a public online site or forum with the intent to  
535 abuse, threaten, or disrupt the other individual's electronic communication and without the  
536 other individual's permission is guilty of electronic communication harassment.

537 ~~[(3)]~~ (4) (a) (i) Electronic communication harassment committed against an adult is a  
538 class B misdemeanor, except under Subsection ~~[(3)]~~ (4)(a)(ii).

539 (ii) A second or subsequent offense under Subsection ~~[(3)]~~ (4)(a)(i) is [a]:

540 (A) a class A misdemeanor if all prior violations of this section were committed  
541 against adults; and

542 (B) a third degree felony if ~~[any]~~ a prior violation of this section was committed against  
543 a minor.

544 (b) (i) Electronic communication harassment committed against a minor is a class A  
545 misdemeanor, except as provided under Subsection ~~[(3)]~~ (4)(b)(ii).

546 (ii) A second or subsequent offense under Subsection ~~[(3)]~~ (4)(b)(i) is a third degree  
547 felony, regardless of whether ~~[any]~~ a prior violation of this section was committed against a  
548 minor or an adult.

549 ~~[(4)]~~ (5) (a) Except as provided under Subsection ~~[(4)]~~ (5)(b), criminal prosecution  
550 under this section does not affect an individual's right to bring a civil action for damages  
551 suffered as a result of the commission of ~~[any of the offenses]~~ an offense under this section.

552 (b) This section does not create ~~[any]~~ a civil cause of action based on electronic  
553 communications made for legitimate business purposes.

554 Section 9. Section ~~77-22-2~~ is amended to read:

555           **77-22-2. Investigations -- Right to subpoena witnesses and require production of**  
556 **evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed**  
557 **court -- Disclosure of information.**

558           (1) As used in this section, "prosecutor" means the [~~attorney general, county attorney,~~  
559 ~~district attorney, or municipal attorney~~] the same as that term is defined in Section 77-22-4.5.

560           (2) (a) In any matter involving the investigation of a crime or malfeasance in office, or  
561 any criminal conspiracy or activity, the prosecutor may, upon application and approval of the  
562 district court and for good cause shown, conduct a criminal investigation.

563           (b) The application and statement of good cause shall state whether or not [~~any other~~]  
564 another investigative order related to the investigation at issue has been filed in another court.

565           (3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

566           (i) subpoena witnesses;

567           (ii) compel their attendance and testimony under oath to be recorded by a suitable  
568 electronic recording device or to be given before any certified court reporter; and

569           (iii) require the production of books, papers, documents, recordings, and any other  
570 items that [~~constitute~~] are evidence or may be relevant to the investigation.

571           (b) The prosecutor shall:

572           (i) apply to the district court for each subpoena; and

573           (ii) show that the requested information is reasonably related to the criminal  
574 investigation authorized by the court.

575           (4) (a) The prosecutor shall state in each subpoena:

576           (i) the time and place of the examination;

577           (ii) that the subpoena is issued in aid of a criminal investigation; and

578           (iii) the right of the person subpoenaed to have counsel present.

579           (b) The examination may be conducted anywhere within the jurisdiction of the  
580 prosecutor issuing the subpoena.

581           (c) The subpoena need not disclose the names of possible defendants.

582           (d) Witness fees and expenses shall be paid as in a civil action.

583           (5) (a) At the beginning of each compelled interrogation, the prosecutor shall  
584 personally inform each witness:

585           (i) of the general subject matter of the investigation;

586 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question  
587 or produce any evidence of a communicative nature that may result in self-incrimination;

588 (iii) that any information provided may be used against the witness in a subsequent  
589 criminal proceeding; and

590 (iv) of the right to have counsel present.

591 (b) If the prosecutor has substantial evidence that the subpoenaed witness has  
592 committed a crime that is under investigation, the prosecutor shall:

593 (i) inform the witness in person before interrogation of that witness's target status; and

594 (ii) inform the witness of the nature of the charges under consideration against the  
595 witness.

596 (6) (a) (i) The prosecutor may make written application to any district court showing a  
597 reasonable likelihood that publicly releasing information about the identity of a witness or the  
598 substance of the evidence resulting from a subpoena or interrogation would pose a threat of  
599 harm to a person or otherwise impede the investigation.

600 (ii) Upon a finding of reasonable likelihood, the court may order the:

601 (A) interrogation of a witness be held in secret;

602 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of  
603 the person subpoenaed, and the substance of the evidence obtained be kept secret; and

604 (C) record of testimony and other subpoenaed evidence be kept secret unless the court  
605 for good cause otherwise orders.

606 (b) After application, the court may by order exclude from any investigative hearing or  
607 proceeding any persons except:

608 (i) the attorneys representing the state and members of their staffs;

609 (ii) persons who, in the judgment of the attorneys representing the state, are reasonably  
610 necessary to assist in the investigative process;

611 (iii) the court reporter or operator of the electronic recording device; and

612 (iv) the attorney for the witness.

613 (c) This chapter does not prevent attorneys representing the state or members of their  
614 staff from disclosing information obtained pursuant to this chapter for the purpose of furthering  
615 any official governmental investigation.

616 (d) (i) If a secrecy order has been granted by the court regarding the interrogation or

617 disclosure of evidence by a witness under this subsection, and if the court finds a further  
618 restriction on the witness is appropriate, the court may order the witness not to disclose the  
619 substance of the witness's testimony or evidence given by the witness to others.

620 (ii) Any order to not disclose made under this subsection shall be served with the  
621 subpoena.

622 (iii) In an appropriate circumstance the court may order that the witness not disclose  
623 the existence of the investigation to others.

624 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court  
625 that one or more of the following risks exist:

626 (A) disclosure by the witness would cause destruction of evidence;

627 (B) disclosure by the witness would taint the evidence provided by other witnesses;

628 (C) disclosure by the witness to a target of the investigation would result in flight or  
629 other conduct to avoid prosecution;

630 (D) disclosure by the witness would damage a person's reputation; or

631 (E) disclosure by the witness would cause a threat of harm to any person.

632 (e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction  
633 to a witness not to disclose the substance of testimony or evidence provided and the  
634 prosecuting agency proves by a preponderance of the evidence that a witness has violated that  
635 order, the court may hold the witness in contempt.

636 (ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not  
637 infringe on the attorney-client relationship between the witness and the witness's attorney or on  
638 [~~any other~~] another legally recognized privileged relationship.

639 (7) (a) (i) The prosecutor may submit to any district court a separate written request  
640 that the application, statement of good cause, and the court's order authorizing the investigation  
641 be kept secret.

642 (ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government  
643 Records Access and Management Act, but need not contain any information that would  
644 compromise any of the interest listed in Subsection (7)(c).

645 (b) With the court's permission, the prosecutor may submit to the court, in camera, any  
646 additional information to support the request for secrecy if necessary to avoid compromising  
647 the interests listed in Subsection (7)(c).

648 (c) The court shall consider all information in the application and order authorizing the  
649 investigation and any information received in camera and shall order that all information be  
650 placed in the public file except information that, if disclosed, would pose:

- 651 (i) a substantial risk of harm to a person's safety;  
652 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or  
653 (iii) a serious impediment to the investigation.

654 (d) Before granting an order keeping secret documents and other information received  
655 under this section, the court shall narrow the secrecy order as much as reasonably possible in  
656 order to preserve the openness of court records while protecting the interests listed in  
657 Subsection (7)(c).

658 Section 10. Section 77-22-2.5 is amended to read:

659 **77-22-2.5. Court orders for criminal investigations for records concerning an**  
660 **electronic communications system or service or remote computing service -- Content --**  
661 **Fee for providing information.**

662 (1) As used in this section:

663 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,  
664 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,  
665 radio, electromagnetic, photoelectronic, or photooptical system.

666 (ii) "Electronic communication" does not include:

- 667 (A) any wire or oral communication;  
668 (B) any communication made through a tone-only paging device;  
669 (C) any communication from a tracking device; or  
670 (D) electronic funds transfer information stored by a financial institution in a  
671 communications system used for the electronic storage and transfer of funds.

672 (b) "Electronic communications service" means any service which provides for users  
673 the ability to send or receive wire or electronic communications.

674 (c) "Electronic communications system" means any wire, radio, electromagnetic,  
675 photooptical, or photoelectronic facilities for the transmission of wire or electronic  
676 communications, and any computer facilities or related electronic equipment for the electronic  
677 storage of the communication.

678 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).

- 679 (e) "Prosecutor" has the same definition as in Section ~~[77-22-2]~~ 77-22-4.5.
- 680 (f) "Remote computing service" means the provision to the public of computer storage  
681 or processing services by means of an electronic communications system.
- 682 (g) "Sexual offense against a minor" means:
- 683 (i) sexual exploitation of a minor ~~[as defined in Section 76-5b-201]~~ or attempted sexual  
684 exploitation of a minor in violation of Section 76-5b-201;
- 685 (ii) a sexual offense or attempted sexual offense committed against a minor in violation  
686 of Title 76, Chapter 5, Part 4, Sexual Offenses;
- 687 (iii) dealing in or attempting to deal in material harmful to a minor in violation of  
688 Section 76-10-1206;
- 689 (iv) enticement of a minor or attempted enticement of a minor in violation of Section  
690 76-4-401; or
- 691 (v) human trafficking of a child in violation of Section 76-5-308.5.
- 692 (2) When a law enforcement agency is investigating a sexual offense against a minor,  
693 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under  
694 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or  
695 service or remote computing service has been used in the commission of a criminal offense, a  
696 law enforcement agent shall:
- 697 (a) articulate specific facts showing reasonable grounds to believe that the records or  
698 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and  
699 material to an ongoing investigation;
- 700 (b) present the request to a prosecutor for review and authorization to proceed; and
- 701 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703  
702 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing  
703 service provider that owns or controls the Internet protocol address, websites, email address, or  
704 service to a specific telephone number, requiring the production of the following information,  
705 if available, upon providing in the court order the Internet protocol address, email address,  
706 telephone number, or other identifier, and the dates and times the address, telephone number,  
707 or other identifier ~~[was]~~ is suspected of being used in the commission of the offense:
- 708 (i) names of subscribers, service customers, and users;
- 709 (ii) addresses of subscribers, service customers, and users;

710 (iii) records of session times and durations;  
711 (iv) length of service, including the start date and types of service utilized; and  
712 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
713 including any temporarily assigned network address.

714 (3) A court order issued under this section shall state that the electronic  
715 communications system or service or remote computing service provider shall produce any  
716 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation  
717 of the suspected criminal activity or offense as described in the court order.

718 (4) (a) An electronic communications system or service or remote computing service  
719 provider that provides information in response to a court order issued under this section may  
720 charge a fee, not to exceed the actual cost, for providing the information.

721 (b) The law enforcement agency conducting the investigation shall pay the fee.

722 (5) The electronic communications system or service or remote computing service  
723 provider served with or responding to the court order may not disclose the court order to the  
724 account holder identified pursuant to the court order for a period of 90 days.

725 (6) If the electronic communications system or service or remote computing service  
726 provider served with the court order does not own or control the Internet protocol address,  
727 websites, or email address, or provide service for the telephone number that is the subject of  
728 the court order, the provider shall notify the investigating law enforcement agency that [it] the  
729 provider does not have the information.

730 (7) There is no cause of action against any provider or wire or electronic  
731 communication service, or [its] the provider or service's officers, employees, agents, or other  
732 specified persons, for providing information, facilities, or assistance in accordance with the  
733 terms of the court order issued under this section or statutory authorization.

734 (8) (a) A court order issued under this section is subject to the provisions of Title 77,  
735 Chapter 23b, Access to Electronic Communications.

736 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,  
737 Access to Electronic Communications, apply to providers and subscribers subject to a court  
738 order issued under this section.

739 (9) [Every] A prosecutorial agency shall annually on or before February 15 report to  
740 the Commission on Criminal and Juvenile Justice:

741 (a) the number of requests for court orders authorized by the prosecutorial agency;

742 (b) the number of orders issued by the court and the criminal offense, pursuant to

743 Subsection (2), each order was used to investigate; and

744 (c) if the court order led to criminal charges being filed, the type and number of

745 offenses charged.

746 Section 11. **Repealer.**

747 This bill repeals:

748 Section **58-37d-9, Department of Public Safety enforcement authority.**

749 Section **76-7-104, Fornication.**