

1 **H→ [—FIREARM] DRUG SENTENCING ←H MODIFICATIONS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Andrew Stoddard**

5 Senate Sponsor: Keith Grover

6

LONG TITLE

7 **Committee Note:**

8 The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

9 Legislative Vote: 9 voting for 3 voting against 6 absent

10 **General Description:**

11 This bill addresses the punishment for individuals who use or possess a H→ [firearm]

12a **dangerous weapon ←H** while

13 distributing illegal drugs.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ requires a court to sentence individuals who use or possess a H→ [firearm] **dangerous**

16a **weapon ←H** while

17 distributing drugs to an indeterminate prison term; and

18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides a special effective date.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **58-37-8 (Superseded 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 312,

26 329

27 **58-37-8 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 310,



28 312 and 329

29

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

31 Section 1. Section **58-37-8 (Superseded 07/01/24)** is amended to read:

32 **58-37-8 (Superseded 07/01/24). Prohibited acts -- Penalties.**

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

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

36 (i) produce, manufacture, or dispense, or to possess with intent to produce,
37 manufacture, or dispense, a controlled or counterfeit substance;

38 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
39 arrange to distribute a controlled or counterfeit substance;

40 (iii) possess a controlled or counterfeit substance with intent to distribute; or

41 (iv) engage in a continuing criminal enterprise where:

42 (A) the person participates, directs, or engages in conduct that results in a violation of
43 this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled
44 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,
45 Clandestine Drug Lab Act, that is a felony; and

46 (B) the violation is a part of a continuing series of two or more violations of this
47 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled
48 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,
49 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
50 more persons with respect to whom the person occupies a position of organizer, supervisor, or
51 any other position of management.

52 (b) A person convicted of violating Subsection (1)(a) with respect to:

53 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
54 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
55 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
56 subsequent conviction is guilty of a first degree felony;

57 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
58 marijuana, or a substance listed in Section **58-37-4.2** is guilty of a third degree felony, and

59 upon a second or subsequent conviction is guilty of a second degree felony; or

60 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
61 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
62 felony.

63 (c) (i) ~~[A] Except as provided in Subsection (1)(c)(ii), a person who has been convicted~~
64 ~~of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an~~
65 ~~indeterminate term as [provided by law, but if the trier of fact finds a firearm as defined in~~
66 ~~Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate~~
67 ~~possession during the commission or in furtherance of the offense, the court shall additionally~~
68 ~~sentence the person convicted for a term of one year to run consecutively and not concurrently;~~
69 ~~and the court may additionally sentence the person convicted for an indeterminate term not to~~
70 ~~exceed five years to run consecutively and not concurrently]~~ described in Subsection (1)(b) and
71 Title 76, Chapter 3, Punishments.

72 (ii) If the trier of fact finds beyond a reasonable doubt that a person who commits a
73 first degree or second degree felony violation of Subsection (1)(a)(ii) or (iii) used or possessed
74 a \hat{H} → [firearm] dangerous weapon ← \hat{H} , as defined in Section 76-10-501, during the commission
74a or furtherance of the
75 violation, the court shall impose and may not suspend an indeterminate prison term:

76 (A) for a first degree felony violation, of at least five years and which may be for life;
77 or

78 (B) for a second degree felony violation, of at least one year and which may be up to 15
79 years.

80 (iii) Notwithstanding Subsection (1)(c)(ii)(B), a court may suspend the indeterminate
81 prison term for a person convicted of a second degree felony under Subsection (1)(c)(ii) if the
82 court:

83 (A) details on the record the reasons why it is in the interests of justice not to impose
84 the indeterminate prison term;

85 (B) makes a finding on the record that the person does not pose a significant safety risk
86 to the public; and

87 (C) orders the person to complete the terms and conditions of supervised probation
88 provided by the Division of Adult Probation and Parole.

89 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree

90 felony punishable by imprisonment for an indeterminate term of not less than:

91 (A) seven years and which may be for life; or

92 (B) 15 years and which may be for life if the trier of fact determined that the defendant
93 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
94 was under 18 years old.

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

97 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
98 offense, was under 18 years old.

99 (e) The Administrative Office of the Courts shall report to the Division of Professional
100 Licensing the name, case number, date of conviction, and if known, the date of birth of each
101 person convicted of violating Subsection (1)(a).

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

103 (a) It is unlawful:

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

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

114 (b) A 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 if each prior offense was committed within seven years before the date of the
120 offense upon which the current conviction is based is guilty of a third degree felony.

121 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
122 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
123 penalty than provided in this Subsection (2).

124 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
125 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
126 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

127 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
128 offense was committed within seven years before the date of the offense upon which the
129 current conviction is based.

130 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
131 if each prior offense was committed within seven years before the date of the offense upon
132 which the current conviction is based.

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

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

140 (A) the court shall additionally sentence the person convicted to a term of one year to
141 run consecutively and not concurrently; and

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

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

147 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

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

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

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

151 (g) The Administrative Office of the Courts shall report to the Division of Professional

152 Licensing the name, case number, date of conviction, and if known, the date of birth of each
153 person convicted of violating Subsection (2)(a).

154 (3) Prohibited acts C -- Penalties:

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

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

161 (ii) to acquire or obtain possession of, to procure or attempt to procure the
162 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
163 attempting to acquire or obtain possession of, or to procure the administration of a controlled
164 substance by misrepresentation or failure by the person to disclose receiving a controlled
165 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
166 prescription or written order for a controlled substance, or the use of a false name or address;

167 (iii) to make a false or forged prescription or written order for a controlled substance,
168 or to utter the same, or to alter a prescription or written order issued or written under the terms
169 of this chapter; or

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

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

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

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

179 (4) Prohibited acts D -- Penalties:

180 (a) Notwithstanding other provisions of this section, a person not authorized under this
181 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
182 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier

183 of fact finds the act is committed:

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

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

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

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

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

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

194 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
195 in Subsections (4)(a)(i) through (vi);

196 (viii) in the presence of a person younger than 18 years old, regardless of where the act
197 occurs; or

198 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
199 distribution of a substance in violation of this section to an inmate or on the grounds of a
200 correctional facility as defined in Section 76-8-311.3.

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

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

207 (c) If the classification that would otherwise have been established would have been
208 less than a first degree felony but for this Subsection (4), a person convicted under this
209 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
210 offense.

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

212 (A) the person may be sentenced to imprisonment for an indeterminate term as
213 provided by law, and the court shall additionally sentence the person convicted for a term of

214 one year to run consecutively and not concurrently; and

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

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

221 (e) It is not a defense to a prosecution under this Subsection (4) that:

222 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of
223 the offense or was unaware of the individual's true age; or

224 (ii) the actor mistakenly believed that the location where the act occurred was not as
225 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
226 described in Subsection (4)(a).

227 (5) A violation of this chapter for which no penalty is specified is a class B
228 misdemeanor.

229 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
230 guilty or no contest to a violation or attempted violation of this section or a plea which is held
231 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
232 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
233 abeyance agreement.

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

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

237 (ii) from a conviction that is separate from any other conviction used to enhance the
238 current charge.

239 (7) A person may be charged and sentenced for a violation of this section,
240 notwithstanding a charge and sentence for a violation of any other section of this chapter.

241 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
242 of, a civil or administrative penalty or sanction authorized by law.

243 (b) When a violation of this chapter violates a federal law or the law of another state,
244 conviction or acquittal under federal law or the law of another state for the same act is a bar to

245 prosecution in this state.

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

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

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

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

258 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
259 employment; or

260 (c) a healthcare facility, substance use harm reduction services program, or drug
261 addiction treatment facility that temporarily possesses a controlled or counterfeit substance to
262 conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the
263 strength, effectiveness, or purity of the substance for a public health or safety reason.

264 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
265 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
266 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
267 as defined in Section 58-37-2.

268 (b) In a prosecution alleging violation of this section regarding peyote as defined in
269 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
270 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
271 traditional Indian religion.

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

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

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

278 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
279 a preponderance of the evidence. If the defense is established, it is a complete defense to the
280 charges.

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

283 (i) engaged in medical research; and

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

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

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

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

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

292 (15) The application of any increase in penalty under this section to a violation of
293 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
294 Subsection (15) takes precedence over any conflicting provision of this section.

295 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
296 listed in Subsection (16)(b) that the person or bystander:

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

300 (ii) reports, or assists a person who reports, in good faith the overdose event to a
301 medical provider, an emergency medical service provider as defined in Section 26B-4-101, a
302 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
303 person is the subject of a report made under this Subsection (16);

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

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

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

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

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

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

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

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

323 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not
324 include seeking medical assistance under this section during the course of a law enforcement
325 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

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

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

331 (19) If a minor who is under 18 years old is found by a court to have violated this
332 section or Subsection [76-5-102.1\(2\)\(b\)](#) or [76-5-207\(2\)\(b\)](#), the court may order the minor to
333 complete:

334 (a) a screening as defined in Section [41-6a-501](#);

335 (b) an assessment as defined in Section [41-6a-501](#) if the screening indicates an
336 assessment to be appropriate; and

337 (c) an educational series as defined in Section [41-6a-501](#) or substance use disorder

338 treatment as indicated by an assessment.

339 Section 2. Section **58-37-8 (Effective 07/01/24)** is amended to read:

340 **58-37-8 (Effective 07/01/24). Prohibited acts -- Penalties.**

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

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

344 (i) produce, manufacture, or dispense, or to possess with intent to produce,
345 manufacture, or dispense, a controlled or counterfeit substance;

346 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
347 arrange to distribute a controlled or counterfeit substance;

348 (iii) possess a controlled or counterfeit substance with intent to distribute; or

349 (iv) engage in a continuing criminal enterprise where:

350 (A) the person participates, directs, or engages in conduct that results in a violation of
351 this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled
352 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,
353 Clandestine Drug Lab Act, that is a felony; and

354 (B) the violation is a part of a continuing series of two or more violations of this
355 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled
356 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,
357 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
358 more persons with respect to whom the person occupies a position of organizer, supervisor, or
359 any other position of management.

360 (b) A person convicted of violating Subsection (1)(a) with respect to:

361 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
362 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
363 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
364 subsequent conviction is guilty of a first degree felony;

365 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
366 marijuana, or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony, and
367 upon a second or subsequent conviction is guilty of a second degree felony; or

368 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a

369 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
370 felony.

371 (c) (i) ~~[A] Except as provided in Subsection (1)(c)(ii), a person who has been convicted~~
372 ~~of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an~~
373 ~~indeterminate term as [provided by law, but if the trier of fact finds a firearm as defined in~~
374 ~~Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate~~
375 ~~possession during the commission or in furtherance of the offense, the court shall additionally~~
376 ~~sentence the person convicted for a term of one year to run consecutively and not concurrently;~~
377 ~~and the court may additionally sentence the person convicted for an indeterminate term not to~~
378 ~~exceed five years to run consecutively and not concurrently] described in Subsection (1)(b) and~~
379 Title 76, Chapter 3, Punishments.

380 (ii) If the trier of fact finds beyond a reasonable doubt that a person who commits a
381 first degree or second degree felony violation of Subsection (1)(a)(ii) or (iii) used or possessed
382 a \hat{H} → [firearm] dangerous weapon ← \hat{H} , as defined in Section 76-10-501, during the commission
382a or furtherance of the
383 violation, the court shall impose and may not suspend an indeterminate prison term:

384 (A) for a first degree felony violation, of at least five years and which may be for life;

385 or

386 (B) for a second degree felony violation, of at least one year and which may be up to 15
387 years.

388 (iii) Notwithstanding Subsection (1)(c)(ii)(B), a court may suspend the indeterminate
389 prison term for a person convicted of a second degree felony under Subsection (1)(c)(ii) if the
390 court:

391 (A) details on the record the reasons why it is in the interests of justice not to impose
392 the indeterminate prison term;

393 (B) makes a finding on the record that the person does not pose a significant safety risk
394 to the public; and

395 (C) orders the person to complete the terms and conditions of supervised probation
396 provided by the Division of Adult Probation and Parole.

397 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
398 felony punishable by imprisonment for an indeterminate term of not less than:

399 (A) seven years and which may be for life; or

400 (B) 15 years and which may be for life if the trier of fact determined that the defendant
401 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
402 was under 18 years old.

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

405 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
406 offense, was under 18 years old.

407 (e) The Administrative Office of the Courts shall report to the Division of Professional
408 Licensing the name, case number, date of conviction, and if known, the date of birth of each
409 person convicted of violating Subsection (1)(a).

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

411 (a) It is unlawful:

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

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

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

422 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

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

425 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
426 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
427 conviction if each prior offense was committed within seven years before the date of the
428 offense upon which the current conviction is based is guilty of a third degree felony.

429 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
430 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater

431 penalty than provided in this Subsection (2).

432 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
433 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
434 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

435 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
436 offense was committed within seven years before the date of the offense upon which the
437 current conviction is based.

438 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
439 if each prior offense was committed within seven years before the date of the offense upon
440 which the current conviction is based.

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

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

448 (A) the court shall additionally sentence the person convicted to a term of one year to
449 run consecutively and not concurrently; and

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

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

455 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

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

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

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

459 (g) The Administrative Office of the Courts shall report to the Division of Professional
460 Licensing the name, case number, date of conviction, and if known, the date of birth of each
461 person convicted of violating Subsection (2)(a).

462 (3) Prohibited acts C -- Penalties:

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

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

469 (ii) to acquire or obtain possession of, to procure or attempt to procure the
470 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
471 attempting to acquire or obtain possession of, or to procure the administration of a controlled
472 substance by misrepresentation or failure by the person to disclose receiving a controlled
473 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
474 prescription or written order for a controlled substance, or the use of a false name or address;

475 (iii) to make a false or forged prescription or written order for a controlled substance,
476 or to utter the same, or to alter a prescription or written order issued or written under the terms
477 of this chapter; or

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

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

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

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

487 (4) Prohibited acts D -- Penalties:

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

492 (i) in a public or private elementary or secondary school or on the grounds of any of

493 those schools during the hours of 6 a.m. through 10 p.m.;

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

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

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

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

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

502 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
503 in Subsections (4)(a)(i) through (vi);

504 (viii) in the presence of a person younger than 18 years old, regardless of where the act
505 occurs; or

506 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
507 distribution of a substance in violation of this section to an inmate or on the grounds of a
508 correctional facility as defined in Section 76-8-311.3.

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

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

515 (c) If the classification that would otherwise have been established would have been
516 less than a first degree felony but for this Subsection (4), a person convicted under this
517 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
518 offense.

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

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

523 (B) the court may additionally sentence the person convicted for an indeterminate term

524 not to exceed five years to run consecutively and not concurrently; and

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

529 (e) It is not a defense to a prosecution under this Subsection (4) that:

530 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of
531 the offense or was unaware of the individual's true age; or

532 (ii) the actor mistakenly believed that the location where the act occurred was not as
533 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
534 described in Subsection (4)(a).

535 (5) A violation of this chapter for which no penalty is specified is a class B
536 misdemeanor.

537 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
538 guilty or no contest to a violation or attempted violation of this section or a plea which is held
539 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
540 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
541 abeyance agreement.

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

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

545 (ii) from a conviction that is separate from any other conviction used to enhance the
546 current charge.

547 (7) A person may be charged and sentenced for a violation of this section,
548 notwithstanding a charge and sentence for a violation of any other section of this chapter.

549 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
550 of, a civil or administrative penalty or sanction authorized by law.

551 (b) When a violation of this chapter violates a federal law or the law of another state,
552 conviction or acquittal under federal law or the law of another state for the same act is a bar to
553 prosecution in this state.

554 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a

555 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
556 substance or substances, is prima facie evidence that the person or persons did so with
557 knowledge of the character of the substance or substances.

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

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

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

566 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
567 employment; or

568 (c) a healthcare facility, substance use harm reduction services program, or drug
569 addiction treatment facility that temporarily possesses a controlled or counterfeit substance to
570 conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the
571 strength, effectiveness, or purity of the substance for a public health or safety reason.

572 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
573 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
574 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
575 as defined in Section 58-37-2.

576 (b) In a prosecution alleging violation of this section regarding peyote as defined in
577 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
578 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
579 traditional Indian religion.

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

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

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

586 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
587 a preponderance of the evidence. If the defense is established, it is a complete defense to the
588 charges.

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

591 (i) engaged in medical research; and

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

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

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

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

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

600 (15) The application of any increase in penalty under this section to a violation of
601 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
602 Subsection (15) takes precedence over any conflicting provision of this section.

603 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
604 listed in Subsection (16)(b) that the person or bystander:

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

608 (ii) reports, or assists a person who reports, in good faith the overdose event to a
609 medical provider, an emergency medical service provider as defined in Section 53-2d-101, a
610 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
611 person is the subject of a report made under this Subsection (16);

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

615 (iv) remains at the location of the person experiencing the overdose event until a
616 responding law enforcement officer or emergency medical service provider arrives, or remains

617 at the medical care facility where the person experiencing an overdose event is located until a
618 responding law enforcement officer arrives;

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

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

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

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

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

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

631 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
632 include seeking medical assistance under this section during the course of a law enforcement
633 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

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

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

639 (19) If a minor who is under 18 years old is found by a court to have violated this
640 section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to
641 complete:

642 (a) a screening as defined in Section 41-6a-501;

643 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
644 assessment to be appropriate; and

645 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
646 treatment as indicated by an assessment.

647 Section 3. **Effective date.**

- 648 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.
- 649 (2) The actions affecting Section [58-37-8](#) (Effective 07/01/24) takes effect on July 1,
- 650 2024.