

**Representative Andrew Stoddard** proposes the following substitute bill:

**DRUG SENTENCING MODIFICATIONS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

Senate Sponsor: Keith Grover

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**LONG TITLE**

**General Description:**

This bill addresses the sentencing for an individual ~~who uses or has a dangerous weapon readily accessible for immediate use while~~ convicted of distributing illegal drugs in certain circumstances .

**Highlighted Provisions:**

This bill:

~~requires a court in certain circumstances to sentence an individual who uses or has a dangerous weapon readily accessible for immediate use while distributing illegal drugs to an indeterminate prison term]~~ requires a court, with certain exceptions, to sentence an individual convicted of distributing drugs to an indeterminate prison term if the individual, while distributing the drugs, intentionally or knowingly:

- had a dangerous weapon readily accessible for immediate use; or
- distributed a firearm or possessed a firearm with intent to distribute the firearm ;

and

▸ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**2nd Sub. H.B. 68**



19 **Other Special Clauses:**

20           This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23           **58-37-8 (Superseded 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 312,

24 329

25           **58-37-8 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 310,

26 312 and 329

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

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 Section **58-37-8 (Superseded 07/01/24)** is amended to read:

30 **58-37-8 (Superseded 07/01/24). Prohibited acts -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

70 (ii) The court shall impose and may not suspend an indeterminate prison term for a  
71 person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first  
72 degree felony or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
73 during the commission or furtherance of the violation, the person ~~is~~ **intentionally or knowingly**  
73a ~~is~~ **intentionally or knowingly** :

74 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in Section  
75 76-10-501, that is not a firearm, in an angry, threatening, intimidating, or coercive manner; ~~is~~ **intentionally or knowingly**  
75a ~~is~~ **intentionally or knowingly**

76 (B) used a firearm or had a firearm readily accessible for immediate use, as those terms  
77 are defined in Section 76-10-501 ~~is~~ **intentionally or knowingly** ; or

77a (C) **distributed a firearm, as that term is defined in Section 76-10-501, or possessed a**  
77b **firearm with intent to distribute the firearm.** ~~is~~ **intentionally or knowingly**

78 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
79 prison term for a person convicted under Subsection (1)(c)(ii) if the court:

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

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

84 (C) orders the person to complete the terms and conditions of supervised probation  
85 provided by the Department of Corrections.

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

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

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

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

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

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

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

100 (a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (g) The Administrative Office of the Courts shall report to the Division of Professional  
149 Licensing the name, case number, date of conviction, and if known, the date of birth of each

150 person convicted of violating Subsection (2)(a).

151 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

176 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

221 (ii) the actor mistakenly believed that the location where the act occurred was not as  
222 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
223 described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 (iii) The court may waive the notice requirement in the interest of justice for good

274 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

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

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

280 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

304 (iv) remains at the location of the person experiencing the overdose event until a

305 responding law enforcement officer or emergency medical service provider arrives, or remains  
306 at the medical care facility where the person experiencing an overdose event is located until a  
307 responding law enforcement officer arrives;

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

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

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

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

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

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

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

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

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

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

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

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

334 (c) an educational series as defined in Section [41-6a-501](#) or substance use disorder  
335 treatment as indicated by an assessment.

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

337 **58-37-8 (Effective 07/01/24). Prohibited acts -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

365 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
366 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree

367 felony.

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

377 (ii) The court shall impose and may not suspend an indeterminate prison term for a  
 378 person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first  
 379 degree felony or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
 380 during the commission or furtherance of the violation, the person ~~Ŷ~~ → **intentionally or knowingly**  
 380a ←Ŷ :

381 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in Section  
 382 76-10-501, that is not a firearm, in an angry, threatening, intimidating, or coercive manner; ~~Ŷ~~ → [or]  
 382a ←Ŷ

383 (B) used a firearm or had a firearm readily accessible for immediate use, as those terms  
 384 are defined in Section 76-10-501 ~~Ŷ~~ → [ ] ; or

384a (C) distributed a firearm, as that term is defined in Section 76-10-501, or possessed a  
 384b firearm with intent to distribute the firearm. ←Ŷ

385 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
 386 prison term for a person convicted under Subsection (1)(c)(ii) if the court:

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

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

391 (C) orders the person to complete the terms and conditions of supervised probation  
 392 provided by the Department of Corrections.

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

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

396 (B) 15 years and which may be for life if the trier of fact determined that the defendant  
 397 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)

398 was under 18 years old.

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

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

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

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

407 (a) It is unlawful:

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

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

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

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

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

420 or

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

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

428 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled

429 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
430 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

458 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

483 (4) Prohibited acts D -- Penalties:

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

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

490 (ii) in a public or private vocational school or postsecondary institution or on the

491 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

492 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or

493 facility's hours of operation;

494 (iv) in a public park, amusement park, arcade, or recreation center when the public or

495 amusement park, arcade, or recreation center is open to the public;

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

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

498 (vii) within an area that is within 100 feet of any structure, facility, or grounds included

499 in Subsections (4)(a)(i) through (vi);

500 (viii) in the presence of a person younger than 18 years old, regardless of where the act

501 occurs; or

502 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or

503 distribution of a substance in violation of this section to an inmate or on the grounds of a

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

505 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony

506 and shall be imprisoned for a term of not less than five years if the penalty that would

507 otherwise have been established but for this Subsection (4) would have been a first degree

508 felony.

509 (ii) Imposition or execution of the sentence may not be suspended, and the person is

510 not eligible for probation.

511 (c) If the classification that would otherwise have been established would have been

512 less than a first degree felony but for this Subsection (4), a person convicted under this

513 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that

514 offense.

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

516 (A) the person may be sentenced to imprisonment for an indeterminate term as

517 provided by law, and the court shall additionally sentence the person convicted for a term of

518 one year to run consecutively and not concurrently; and

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

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

521 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with

522 the mental state required for the commission of an offense, directly or indirectly solicits,  
523 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
524 violation of Subsection (4)(a)(ix).

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

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

528 (ii) the actor mistakenly believed that the location where the act occurred was not as  
529 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
530 described in Subsection (4)(a).

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

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

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

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

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

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

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

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

550 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a  
551 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
552 substance or substances, is prima facie evidence that the person or persons did so with

553 knowledge of the character of the substance or substances.

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

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

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

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

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

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

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

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

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

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

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

584 charges.

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

587 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

641 (c) an educational series as defined in Section [41-6a-501](#) or substance use disorder  
642 treatment as indicated by an assessment.

643 **Section 3. Effective date.**

644 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

645 (2) The actions affecting Section [58-37-8](#) (Effective 07/01/24) take effect on July 1,

646 2024.