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**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 convicted of distributing illegal drugs in certain circumstances.

**Highlighted Provisions:**

This bill:

▸ 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

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**58-37-8 (Effective 05/01/24) (Superseded 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 312, 329

**58-37-8 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 310, 312 and 329

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

Section 1. Section **58-37-8** is amended to read:

**58-37-8 (Effective 05/01/24) (Superseded 07/01/24). Prohibited acts -- Penalties.**

- 29 (1) Prohibited acts A -- Penalties and reporting:
- 30 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and
- 31 intentionally:
- 32 (i) produce, manufacture, or dispense, or to possess with intent to produce,
- 33 manufacture, or dispense, a controlled or counterfeit substance;
- 34 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
- 35 arrange to distribute a controlled or counterfeit substance;
- 36 (iii) possess a controlled or counterfeit substance with intent to distribute; or
- 37 (iv) engage in a continuing criminal enterprise where:
- 38 (A) the person participates, directs, or engages in conduct that results in a
- 39 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter
- 40 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled
- 41 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a
- 42 felony; and
- 43 (B) the violation is a part of a continuing series of two or more violations of this
- 44 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation
- 45 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor
- 46 Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are
- 47 undertaken in concert with five or more persons with respect to whom the
- 48 person occupies a position of organizer, supervisor, or any other position of
- 49 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
- 52 controlled substance analog, or gammahydroxybutyric acid as listed in Schedule
- 53 III is guilty of a second degree felony, punishable by imprisonment for not more
- 54 than 15 years, and upon a second or subsequent conviction is guilty of a first
- 55 degree felony;
- 56 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
- 57 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree
- 58 felony, and upon a second or subsequent conviction is guilty of a second degree
- 59 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
- 62 third degree felony.

- 63 (c) (i) [A] Except as provided in Subsection (1)(c)(ii), a person who has been  
64 convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to  
65 imprisonment for an indeterminate term as [provided by law, but if the trier of fact  
66 finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on  
67 the person or in the person's immediate possession during the commission or in  
68 furtherance of the offense, the court shall additionally sentence the person  
69 convicted for a term of one year to run consecutively and not concurrently; and  
70 the court may additionally sentence the person convicted for an indeterminate  
71 term not to exceed five years to run consecutively and not concurrently] described  
72 in Subsection (1)(b) and Title 76, Chapter 3, Punishments.
- 73 (ii) The court shall impose an indeterminate prison term for a person who has been  
74 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony  
75 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
76 during the commission or furtherance of the violation, the person intentionally or  
77 knowingly:
- 78 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in  
79 Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,  
80 or coercive manner;
- 81 (B) used a firearm or had a firearm readily accessible for immediate use, as those  
82 terms are defined in Section 76-10-501; or
- 83 (C) distributed a firearm, as that term is defined in Section 76-10-501, or  
84 possessed a firearm with intent to distribute the firearm.
- 85 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
86 prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 87 (A) details on the record the reasons why it is in the interests of justice not to  
88 impose the indeterminate prison term;
- 89 (B) makes a finding on the record that the person does not pose a significant  
90 safety risk to the public; and
- 91 (C) orders the person to complete the terms and conditions of supervised  
92 probation provided by the Department of Corrections.
- 93 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
94 felony punishable by imprisonment for an indeterminate term of not less than:
- 95 (A) seven years and which may be for life; or  
96 (B) 15 years and which may be for life if the trier of fact determined that the

- 97 defendant knew or reasonably should have known that any subordinate under  
98 Subsection (1)(a)(iv)(B) was under 18 years old.
- 99 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
100 not eligible for probation.
- 101 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
102 offense, was under 18 years old.
- 103 (e) The Administrative Office of the Courts shall report to the Division of Professional  
104 Licensing the name, case number, date of conviction, and if known, the date of birth  
105 of each person convicted of violating Subsection (1)(a).
- 106 (2) Prohibited acts B -- Penalties and reporting:
- 107 (a) It is unlawful:
- 108 (i) for a person knowingly and intentionally to possess or use a controlled substance  
109 analog or a controlled substance, unless it was obtained under a valid prescription  
110 or order, directly from a practitioner while acting in the course of the person's  
111 professional practice, or as otherwise authorized by this chapter;
- 112 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,  
113 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them  
114 to be occupied by persons unlawfully possessing, using, or distributing controlled  
115 substances in any of those locations; or
- 116 (iii) for a person knowingly and intentionally to possess an altered or forged  
117 prescription or written order for a controlled substance.
- 118 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 119 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree  
120 felony; or
- 121 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is  
122 guilty of a class A misdemeanor on a first or second conviction, and on a third or  
123 subsequent conviction if each prior offense was committed within seven years  
124 before the date of the offense upon which the current conviction is based is guilty  
125 of a third degree felony.
- 126 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
127 conviction under Subsection (1)(a), that person shall be sentenced to a one degree  
128 greater penalty than provided in this Subsection (2).
- 129 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
130 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in

- 131 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 132 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each  
133 prior offense was committed within seven years before the date of the offense  
134 upon which the current conviction is based.
- 135 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree  
136 felony if each prior offense was committed within seven years before the date of  
137 the offense upon which the current conviction is based.
- 138 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior  
139 boundaries of property occupied by a correctional facility as defined in Section  
140 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty  
141 one degree greater than provided in Subsection (2)(b), and if the conviction is with  
142 respect to controlled substances as listed in:
- 143 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
144 indeterminate term as provided by law, and:
- 145 (A) the court shall additionally sentence the person convicted to a term of one year  
146 to run consecutively and not concurrently; and
- 147 (B) the court may additionally sentence the person convicted for an indeterminate  
148 term not to exceed five years to run consecutively and not concurrently; and
- 149 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
150 indeterminate term as provided by law, and the court shall additionally sentence  
151 the person convicted to a term of six months to run consecutively and not  
152 concurrently.
- 153 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 154 (i) on a first conviction, guilty of a class B misdemeanor;
- 155 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 156 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 157 (g) The Administrative Office of the Courts shall report to the Division of Professional  
158 Licensing the name, case number, date of conviction, and if known, the date of birth  
159 of each person convicted of violating Subsection (2)(a).
- 160 (3) Prohibited acts C -- Penalties:
- 161 (a) It is unlawful for a person knowingly and intentionally:
- 162 (i) to use in the course of the manufacture or distribution of a controlled substance a  
163 license number which is fictitious, revoked, suspended, or issued to another  
164 person or, for the purpose of obtaining a controlled substance, to assume the title

- 165 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,  
166 dentist, veterinarian, or other authorized person;
- 167 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
168 administration of, to obtain a prescription for, to prescribe or dispense to a person  
169 known to be attempting to acquire or obtain possession of, or to procure the  
170 administration of a controlled substance by misrepresentation or failure by the  
171 person to disclose receiving a controlled substance from another source, fraud,  
172 forgery, deception, subterfuge, alteration of a prescription or written order for a  
173 controlled substance, or the use of a false name or address;
- 174 (iii) to make a false or forged prescription or written order for a controlled substance,  
175 or to utter the same, or to alter a prescription or written order issued or written  
176 under the terms of this chapter; or
- 177 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed  
178 to print, imprint, or reproduce the trademark, trade name, or other identifying  
179 mark, imprint, or device of another or any likeness of any of the foregoing upon  
180 any drug or container or labeling so as to render a drug a counterfeit controlled  
181 substance.
- 182 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
183 misdemeanor.
- 184 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
185 degree felony.
- 186 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 187 (4) Prohibited acts D -- Penalties:
- 188 (a) Notwithstanding other provisions of this section, a person not authorized under this  
189 chapter who commits any act that is unlawful under Subsection (1)(a) or Section  
190 58-37b-4 is upon conviction subject to the penalties and classifications under this  
191 Subsection (4) if the trier of fact finds the act is committed:
- 192 (i) in a public or private elementary or secondary school or on the grounds of any of  
193 those schools during the hours of 6 a.m. through 10 p.m.;
- 194 (ii) in a public or private vocational school or postsecondary institution or on the  
195 grounds of any of those schools or institutions during the hours of 6 a.m. through  
196 10 p.m.;
- 197 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
198 facility's hours of operation;

- 199 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
200 amusement park, arcade, or recreation center is open to the public;
- 201 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 202 (vi) in or on the grounds of a library when the library is open to the public;
- 203 (vii) within an area that is within 100 feet of any structure, facility, or grounds  
204 included in Subsections (4)(a)(i) through (vi);
- 205 (viii) in the presence of a person younger than 18 years old, regardless of where the  
206 act occurs; or
- 207 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
208 distribution of a substance in violation of this section to an inmate or on the  
209 grounds of a correctional facility as defined in Section 76-8-311.3.
- 210 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
211 and shall be imprisoned for a term of not less than five years if the penalty that  
212 would otherwise have been established but for this Subsection (4) would have  
213 been a first degree felony.
- 214 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
215 not eligible for probation.
- 216 (c) If the classification that would otherwise have been established would have been less  
217 than a first degree felony but for this Subsection (4), a person convicted under this  
218 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for  
219 that offense.
- 220 (d) (i) If the violation is of Subsection (4)(a)(ix):
- 221 (A) the person may be sentenced to imprisonment for an indeterminate term as  
222 provided by law, and the court shall additionally sentence the person convicted  
223 for a term of one year to run consecutively and not concurrently; and
- 224 (B) the court may additionally sentence the person convicted for an indeterminate  
225 term not to exceed five years to run consecutively and not concurrently; and
- 226 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with  
227 the mental state required for the commission of an offense, directly or indirectly  
228 solicits, requests, commands, coerces, encourages, or intentionally aids another  
229 person to commit a violation of Subsection (4)(a)(ix).
- 230 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 231 (i) the actor mistakenly believed the individual to be 18 years old or older at the time  
232 of the offense or was unaware of the individual's true age; or

- 233 (ii) the actor mistakenly believed that the location where the act occurred was not as  
234 described in Subsection (4)(a) or was unaware that the location where the act  
235 occurred was as described in Subsection (4)(a).
- 236 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 237 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
238 guilty or no contest to a violation or attempted violation of this section or a plea  
239 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the  
240 equivalent of a conviction, even if the charge has been subsequently reduced or  
241 dismissed in accordance with the plea in abeyance agreement.
- 242 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
243 conviction that is:
- 244 (i) from a separate criminal episode than the current charge; and  
245 (ii) from a conviction that is separate from any other conviction used to enhance the  
246 current charge.
- 247 (7) A person may be charged and sentenced for a violation of this section, notwithstanding  
248 a charge and sentence for a violation of any other section of this chapter.
- 249 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of,  
250 a civil or administrative penalty or sanction authorized by law.
- 251 (b) When a violation of this chapter violates a federal law or the law of another state,  
252 conviction or acquittal under federal law or the law of another state for the same act  
253 is a bar to prosecution in this state.
- 254 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person  
255 or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
256 substance or substances, is prima facie evidence that the person or persons did so with  
257 knowledge of the character of the substance or substances.
- 258 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
259 veterinarian's professional practice only and not for humans, from prescribing,  
260 dispensing, or administering controlled substances or from causing the substances to be  
261 administered by an assistant or orderly under the veterinarian's direction and supervision.
- 262 (11) Civil or criminal liability may not be imposed under this section on:
- 263 (a) a person registered under this chapter who manufactures, distributes, or possesses an  
264 imitation controlled substance for use as a placebo or investigational new drug by a  
265 registered practitioner in the ordinary course of professional practice or research;
- 266 (b) a law enforcement officer acting in the course and legitimate scope of the officer's

- 267 employment; or
- 268 (c) a healthcare facility, substance use harm reduction services program, or drug  
269 addiction treatment facility that temporarily possesses a controlled or counterfeit  
270 substance to conduct a test or analysis on the controlled or counterfeit substance to  
271 identify or analyze the strength, effectiveness, or purity of the substance for a public  
272 health or safety reason.
- 273 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
274 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide  
275 traditional ceremonial purposes in connection with the practice of a traditional Indian  
276 religion as defined in Section 58-37-2.
- 277 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
278 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or  
279 transported by an Indian for bona fide traditional ceremonial purposes in connection  
280 with the practice of a traditional Indian religion.
- 281 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
282 defense under this Subsection (12) as soon as practicable, but not later than 10  
283 days before trial.
- 284 (ii) The notice shall include the specific claims of the affirmative defense.
- 285 (iii) The court may waive the notice requirement in the interest of justice for good  
286 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely  
287 notice.
- 288 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a  
289 preponderance of the evidence. If the defense is established, it is a complete defense  
290 to the charges.
- 291 (13) (a) It is an affirmative defense that the person produced, possessed, or administered  
292 a controlled substance listed in Section 58-37-4.2 if the person was:
- 293 (i) engaged in medical research; and
- 294 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- 295 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a  
296 controlled substance listed in Section 58-37-4.2.
- 297 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled  
298 substance listed in Section 58-37-4.2 if:
- 299 (a) the person was the subject of medical research conducted by a holder of a valid  
300 license to possess controlled substances under Section 58-37-6; and

- 301 (b) the substance was administered to the person by the medical researcher.
- 302 (15) The application of any increase in penalty under this section to a violation of
- 303 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.
- 304 This Subsection (15) takes precedence over any conflicting provision of this section.
- 305 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
- 306 listed in Subsection (16)(b) that the person or bystander:
- 307 (i) reasonably believes that the person or another person is experiencing an overdose
- 308 event due to the ingestion, injection, inhalation, or other introduction into the
- 309 human body of a controlled substance or other substance;
- 310 (ii) reports, or assists a person who reports, in good faith the overdose event to a
- 311 medical provider, an emergency medical service provider as defined in Section
- 312 26B-4-101, a law enforcement officer, a 911 emergency call system, or an
- 313 emergency dispatch system, or the person is the subject of a report made under
- 314 this Subsection (16);
- 315 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
- 316 actual location of the overdose event that facilitates responding to the person
- 317 experiencing the overdose event;
- 318 (iv) remains at the location of the person experiencing the overdose event until a
- 319 responding law enforcement officer or emergency medical service provider
- 320 arrives, or remains at the medical care facility where the person experiencing an
- 321 overdose event is located until a responding law enforcement officer arrives;
- 322 (v) cooperates with the responding medical provider, emergency medical service
- 323 provider, and law enforcement officer, including providing information regarding
- 324 the person experiencing the overdose event and any substances the person may
- 325 have injected, inhaled, or otherwise introduced into the person's body; and
- 326 (vi) is alleged to have committed the offense in the same course of events from which
- 327 the reported overdose arose.
- 328 (b) The offenses referred to in Subsection (16)(a) are:
- 329 (i) the possession or use of less than 16 ounces of marijuana;
- 330 (ii) the possession or use of a scheduled or listed controlled substance other than
- 331 marijuana; and
- 332 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
- 333 Imitation Controlled Substances Act.
- 334 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not

335 include seeking medical assistance under this section during the course of a law  
336 enforcement agency's execution of a search warrant, execution of an arrest warrant,  
337 or other lawful search.

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

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

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

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

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

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

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

352 **58-37-8 (Effective 07/01/24). Prohibited acts -- Penalties.**

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

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

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

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

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

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

362 (A) the person participates, directs, or engages in conduct that results in a  
363 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter  
364 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled  
365 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a  
366 felony; and

367 (B) the violation is a part of a continuing series of two or more violations of this  
368 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation

369 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor  
370 Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are  
371 undertaken in concert with five or more persons with respect to whom the  
372 person occupies a position of organizer, supervisor, or any other position of  
373 management.

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

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

380 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
381 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree  
382 felony, and upon a second or subsequent conviction is guilty of a second degree  
383 felony; or

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

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

397 (ii) The court shall impose an indeterminate prison term for a person who has been  
398 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony  
399 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
400 during the commission or furtherance of the violation, the person intentionally or  
401 knowingly:

402 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in

- 403                    Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,  
404                    or coercive manner;
- 405                    (B) used a firearm or had a firearm readily accessible for immediate use, as those  
406                    terms are defined in Section 76-10-501; or
- 407                    (C) distributed a firearm, as that term is defined in Section 76-10-501, or  
408                    possessed a firearm with intent to distribute the firearm.
- 409                    (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
410                    prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 411                    (A) details on the record the reasons why it is in the interests of justice not to  
412                    impose the indeterminate prison term;
- 413                    (B) makes a finding on the record that the person does not pose a significant  
414                    safety risk to the public; and
- 415                    (C) orders the person to complete the terms and conditions of supervised  
416                    probation provided by the Department of Corrections.
- 417                    (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
418                    felony punishable by imprisonment for an indeterminate term of not less than:
- 419                    (A) seven years and which may be for life; or
- 420                    (B) 15 years and which may be for life if the trier of fact determined that the  
421                    defendant knew or reasonably should have known that any subordinate under  
422                    Subsection (1)(a)(iv)(B) was under 18 years old.
- 423                    (ii) Imposition or execution of the sentence may not be suspended, and the person is  
424                    not eligible for probation.
- 425                    (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
426                    offense, was under 18 years old.
- 427                    (e) The Administrative Office of the Courts shall report to the Division of Professional  
428                    Licensing the name, case number, date of conviction, and if known, the date of birth  
429                    of each person convicted of violating Subsection (1)(a).
- 430                    (2) Prohibited acts B -- Penalties and reporting:
- 431                    (a) It is unlawful:
- 432                    (i) for a person knowingly and intentionally to possess or use a controlled substance  
433                    analog or a controlled substance, unless it was obtained under a valid prescription  
434                    or order, directly from a practitioner while acting in the course of the person's  
435                    professional practice, or as otherwise authorized by this chapter;
- 436                    (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,

- 437 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them  
438 to be occupied by persons unlawfully possessing, using, or distributing controlled  
439 substances in any of those locations; or
- 440 (iii) for a person knowingly and intentionally to possess an altered or forged  
441 prescription or written order for a controlled substance.
- 442 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 443 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree  
444 felony; or
- 445 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is  
446 guilty of a class A misdemeanor on a first or second conviction, and on a third or  
447 subsequent conviction if each prior offense was committed within seven years  
448 before the date of the offense upon which the current conviction is based is guilty  
449 of a third degree felony.
- 450 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
451 conviction under Subsection (1)(a), that person shall be sentenced to a one degree  
452 greater penalty than provided in this Subsection (2).
- 453 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
454 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in  
455 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 456 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each  
457 prior offense was committed within seven years before the date of the offense  
458 upon which the current conviction is based.
- 459 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree  
460 felony if each prior offense was committed within seven years before the date of  
461 the offense upon which the current conviction is based.
- 462 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior  
463 boundaries of property occupied by a correctional facility as defined in Section  
464 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty  
465 one degree greater than provided in Subsection (2)(b), and if the conviction is with  
466 respect to controlled substances as listed in:
- 467 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
468 indeterminate term as provided by law, and:
- 469 (A) the court shall additionally sentence the person convicted to a term of one year  
470 to run consecutively and not concurrently; and

- 471 (B) the court may additionally sentence the person convicted for an indeterminate  
472 term not to exceed five years to run consecutively and not concurrently; and  
473 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
474 indeterminate term as provided by law, and the court shall additionally sentence  
475 the person convicted to a term of six months to run consecutively and not  
476 concurrently.
- 477 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:  
478 (i) on a first conviction, guilty of a class B misdemeanor;  
479 (ii) on a second conviction, guilty of a class A misdemeanor; and  
480 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 481 (g) The Administrative Office of the Courts shall report to the Division of Professional  
482 Licensing the name, case number, date of conviction, and if known, the date of birth  
483 of each person convicted of violating Subsection (2)(a).
- 484 (3) Prohibited acts C -- Penalties:
- 485 (a) It is unlawful for a person knowingly and intentionally:  
486 (i) to use in the course of the manufacture or distribution of a controlled substance a  
487 license number which is fictitious, revoked, suspended, or issued to another  
488 person or, for the purpose of obtaining a controlled substance, to assume the title  
489 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,  
490 dentist, veterinarian, or other authorized person;  
491 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
492 administration of, to obtain a prescription for, to prescribe or dispense to a person  
493 known to be attempting to acquire or obtain possession of, or to procure the  
494 administration of a controlled substance by misrepresentation or failure by the  
495 person to disclose receiving a controlled substance from another source, fraud,  
496 forgery, deception, subterfuge, alteration of a prescription or written order for a  
497 controlled substance, or the use of a false name or address;  
498 (iii) to make a false or forged prescription or written order for a controlled substance,  
499 or to utter the same, or to alter a prescription or written order issued or written  
500 under the terms of this chapter; or  
501 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed  
502 to print, imprint, or reproduce the trademark, trade name, or other identifying  
503 mark, imprint, or device of another or any likeness of any of the foregoing upon  
504 any drug or container or labeling so as to render a drug a counterfeit controlled

- 505 substance.
- 506 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
507 misdemeanor.
- 508 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
509 degree felony.
- 510 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 511 (4) Prohibited acts D -- Penalties:
- 512 (a) Notwithstanding other provisions of this section, a person not authorized under this  
513 chapter who commits any act that is unlawful under Subsection (1)(a) or Section  
514 58-37b-4 is upon conviction subject to the penalties and classifications under this  
515 Subsection (4) if the trier of fact finds the act is committed:
- 516 (i) in a public or private elementary or secondary school or on the grounds of any of  
517 those schools during the hours of 6 a.m. through 10 p.m.;
- 518 (ii) in a public or private vocational school or postsecondary institution or on the  
519 grounds of any of those schools or institutions during the hours of 6 a.m. through  
520 10 p.m.;
- 521 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
522 facility's hours of operation;
- 523 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
524 amusement park, arcade, or recreation center is open to the public;
- 525 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 526 (vi) in or on the grounds of a library when the library is open to the public;
- 527 (vii) within an area that is within 100 feet of any structure, facility, or grounds  
528 included in Subsections (4)(a)(i) through (vi);
- 529 (viii) in the presence of a person younger than 18 years old, regardless of where the  
530 act occurs; or
- 531 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
532 distribution of a substance in violation of this section to an inmate or on the  
533 grounds of a correctional facility as defined in Section 76-8-311.3.
- 534 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
535 and shall be imprisoned for a term of not less than five years if the penalty that  
536 would otherwise have been established but for this Subsection (4) would have  
537 been a first degree felony.
- 538 (ii) Imposition or execution of the sentence may not be suspended, and the person is

- 539 not eligible for probation.
- 540 (c) If the classification that would otherwise have been established would have been less  
541 than a first degree felony but for this Subsection (4), a person convicted under this  
542 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for  
543 that offense.
- 544 (d) (i) If the violation is of Subsection (4)(a)(ix):
- 545 (A) the person may be sentenced to imprisonment for an indeterminate term as  
546 provided by law, and the court shall additionally sentence the person convicted  
547 for a term of one year to run consecutively and not concurrently; and
- 548 (B) the court may additionally sentence the person convicted for an indeterminate  
549 term not to exceed five years to run consecutively and not concurrently; and
- 550 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with  
551 the mental state required for the commission of an offense, directly or indirectly  
552 solicits, requests, commands, coerces, encourages, or intentionally aids another  
553 person to commit a violation of Subsection (4)(a)(ix).
- 554 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 555 (i) the actor mistakenly believed the individual to be 18 years old or older at the time  
556 of the offense or was unaware of the individual's true age; or
- 557 (ii) the actor mistakenly believed that the location where the act occurred was not as  
558 described in Subsection (4)(a) or was unaware that the location where the act  
559 occurred was as described in Subsection (4)(a).
- 560 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 561 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
562 guilty or no contest to a violation or attempted violation of this section or a plea  
563 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the  
564 equivalent of a conviction, even if the charge has been subsequently reduced or  
565 dismissed in accordance with the plea in abeyance agreement.
- 566 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
567 conviction that is:
- 568 (i) from a separate criminal episode than the current charge; and
- 569 (ii) from a conviction that is separate from any other conviction used to enhance the  
570 current charge.
- 571 (7) A person may be charged and sentenced for a violation of this section, notwithstanding  
572 a charge and sentence for a violation of any other section of this chapter.

- 573 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of,  
574 a civil or administrative penalty or sanction authorized by law.
- 575 (b) When a violation of this chapter violates a federal law or the law of another state,  
576 conviction or acquittal under federal law or the law of another state for the same act  
577 is a bar to prosecution in this state.
- 578 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person  
579 or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
580 substance or substances, is prima facie evidence that the person or persons did so with  
581 knowledge of the character of the substance or substances.
- 582 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
583 veterinarian's professional practice only and not for humans, from prescribing,  
584 dispensing, or administering controlled substances or from causing the substances to be  
585 administered by an assistant or orderly under the veterinarian's direction and supervision.
- 586 (11) Civil or criminal liability may not be imposed under this section on:
- 587 (a) a person registered under this chapter who manufactures, distributes, or possesses an  
588 imitation controlled substance for use as a placebo or investigational new drug by a  
589 registered practitioner in the ordinary course of professional practice or research;
- 590 (b) a law enforcement officer acting in the course and legitimate scope of the officer's  
591 employment;or
- 592 (c) a healthcare facility, substance use harm reduction services program, or drug  
593 addiction treatment facility that temporarily possesses a controlled or counterfeit  
594 substance to conduct a test or analysis on the controlled or counterfeit substance to  
595 identify or analyze the strength, effectiveness, or purity of the substance for a public  
596 health or safety reason.
- 597 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
598 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide  
599 traditional ceremonial purposes in connection with the practice of a traditional Indian  
600 religion as defined in Section 58-37-2.
- 601 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
602 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or  
603 transported by an Indian for bona fide traditional ceremonial purposes in connection  
604 with the practice of a traditional Indian religion.
- 605 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
606 defense under this Subsection (12) as soon as practicable, but not later than 10

- 607 days before trial.
- 608 (ii) The notice shall include the specific claims of the affirmative defense.
- 609 (iii) The court may waive the notice requirement in the interest of justice for good  
610 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely  
611 notice.
- 612 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a  
613 preponderance of the evidence. If the defense is established, it is a complete defense  
614 to the charges.
- 615 (13) (a) It is an affirmative defense that the person produced, possessed, or administered  
616 a controlled substance listed in Section 58-37-4.2 if the person was:
- 617 (i) engaged in medical research; and
- 618 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- 619 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a  
620 controlled substance listed in Section 58-37-4.2.
- 621 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled  
622 substance listed in Section 58-37-4.2 if:
- 623 (a) the person was the subject of medical research conducted by a holder of a valid  
624 license to possess controlled substances under Section 58-37-6; and
- 625 (b) the substance was administered to the person by the medical researcher.
- 626 (15) The application of any increase in penalty under this section to a violation of  
627 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.  
628 This Subsection (15) takes precedence over any conflicting provision of this section.
- 629 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
630 listed in Subsection (16)(b) that the person or bystander:
- 631 (i) reasonably believes that the person or another person is experiencing an overdose  
632 event due to the ingestion, injection, inhalation, or other introduction into the  
633 human body of a controlled substance or other substance;
- 634 (ii) reports, or assists a person who reports, in good faith the overdose event to a  
635 medical provider, an emergency medical service provider as defined in Section  
636 53-2d-101, a law enforcement officer, a 911 emergency call system, or an  
637 emergency dispatch system, or the person is the subject of a report made under  
638 this Subsection (16);
- 639 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
640 actual location of the overdose event that facilitates responding to the person

- 641 experiencing the overdose event;
- 642 (iv) remains at the location of the person experiencing the overdose event until a  
643 responding law enforcement officer or emergency medical service provider  
644 arrives, or remains at the medical care facility where the person experiencing an  
645 overdose event is located until a responding law enforcement officer arrives;
- 646 (v) cooperates with the responding medical provider, emergency medical service  
647 provider, and law enforcement officer, including providing information regarding  
648 the person experiencing the overdose event and any substances the person may  
649 have injected, inhaled, or otherwise introduced into the person's body; and
- 650 (vi) is alleged to have committed the offense in the same course of events from which  
651 the reported overdose arose.
- 652 (b) The offenses referred to in Subsection (16)(a) are:
- 653 (i) the possession or use of less than 16 ounces of marijuana;
- 654 (ii) the possession or use of a scheduled or listed controlled substance other than  
655 marijuana; and
- 656 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
657 Imitation Controlled Substances Act.
- 658 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
659 include seeking medical assistance under this section during the course of a law  
660 enforcement agency's execution of a search warrant, execution of an arrest warrant,  
661 or other lawful search.
- 662 (17) If any provision of this chapter, or the application of any provision to any person or  
663 circumstances, is held invalid, the remainder of this chapter shall be given effect without  
664 the invalid provision or application.
- 665 (18) A legislative body of a political subdivision may not enact an ordinance that is less  
666 restrictive than any provision of this chapter.
- 667 (19) If a minor who is under 18 years old is found by a court to have violated this section or  
668 Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to  
669 complete:
- 670 (a) a screening as defined in Section 41-6a-501;
- 671 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an  
672 assessment to be appropriate; and
- 673 (c) an educational series as defined in Section 41-6a-501 or substance use disorder  
674 treatment as indicated by an assessment.

675 Section 3. **Effective date.**

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

677 (2) The actions affecting Section 58-37-8 (Effective 07/01/24) take effect on July 1, 2024.