

Senator Todd D. Weiler proposes the following substitute bill:

FIREARM MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill addresses the punishment for individuals who use or possess a firearm while distributing illegal drugs.

Highlighted Provisions:

This bill:

- ▶ requires a court to sentence individuals who use or possess a firearm while distributing drugs to an indeterminate prison term; 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58-37-8 (Superseded 07/01/24), as last amended by Laws of Utah 2023, Chapters 312, 329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 Section **58-37-8 (Superseded 07/01/24)** is amended to read:

58-37-8 (Superseded 07/01/24).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

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

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

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

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

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

(iv) engage in a continuing criminal enterprise where:

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

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

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

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

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

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

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

69 (ii) If the trier of fact finds beyond a reasonable doubt that a person who commits a
70 first degree or second degree felony violation of Subsection (1)(a)(ii) or (iii) used or possessed
71 a firearm, as defined in Section 76-10-501, during the commission or furtherance of the
72 violation, the court shall impose and may not suspend an indeterminate prison term:

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

74 or

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

77 (iii) Notwithstanding Subsection (1)(c)(ii)(B), a court may suspend the indeterminate
78 prison term for a person convicted of a second degree felony under Subsection (1)(c)(ii) if the
79 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 Division of Adult Probation and Parole.

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) If the trier of fact finds beyond a reasonable doubt that a person who commits a
378 first degree or second degree felony violation of Subsection (1)(a)(ii) or (iii) used or possessed
379 a firearm, as defined in Section 76-10-501, during the commission or furtherance of the
380 violation, the court shall impose and may not suspend an indeterminate prison term:

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

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

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

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

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

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

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

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

397 (B) 15 years and which may be for life if the trier of fact determined that the defendant

398 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
399 was under 18 years old.

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

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

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

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

408 (a) It is unlawful:

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

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

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

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

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

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

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

429 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
430 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
431 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

459 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

484 (4) Prohibited acts D -- Penalties:

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

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

- 491 (ii) in a public or private vocational school or postsecondary institution or on the
492 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;
- 493 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
494 facility's hours of operation;
- 495 (iv) in a public park, amusement park, arcade, or recreation center when the public or
496 amusement park, arcade, or recreation center is open to the public;
- 497 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 498 (vi) in or on the grounds of a library when the library is open to the public;
- 499 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
500 in Subsections (4)(a)(i) through (vi);
- 501 (viii) in the presence of a person younger than 18 years old, regardless of where the act
502 occurs; or
- 503 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
504 distribution of a substance in violation of this section to an inmate or on the grounds of a
505 correctional facility as defined in Section 76-8-311.3.
- 506 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
507 and shall be imprisoned for a term of not less than five years if the penalty that would
508 otherwise have been established but for this Subsection (4) would have been a first degree
509 felony.
- 510 (ii) Imposition or execution of the sentence may not be suspended, and the person is
511 not eligible for probation.
- 512 (c) If the classification that would otherwise have been established would have been
513 less than a first degree felony but for this Subsection (4), a person convicted under this
514 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
515 offense.
- 516 (d) (i) If the violation is of Subsection (4)(a)(ix):
- 517 (A) the person may be sentenced to imprisonment for an indeterminate term as
518 provided by law, and the court shall additionally sentence the person convicted for a term of
519 one year to run consecutively and not concurrently; and
- 520 (B) the court may additionally sentence the person convicted for an indeterminate term
521 not to exceed five years to run consecutively and not concurrently; and

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

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

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

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

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

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

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

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

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

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

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

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

551 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
552 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled

553 substance or substances, is prima facie evidence that the person or persons did so with
554 knowledge of the character of the substance or substances.

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

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

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

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

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

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

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

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

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

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

583 (d) The defendant shall establish the affirmative defense under this Subsection (12) by

584 a preponderance of the evidence. If the defense is established, it is a complete defense to the
585 charges.

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

588 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

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

615 responding law enforcement officer arrives;

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

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

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

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

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

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

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

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

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

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

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

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

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

644 **Section 3. Effective date.**

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

646 (2) The actions affecting Section [58-37-8](#) (Effective 07/01/24) takes effect on July 1,
647 2024.