

1 **DRUG DEALING PENALTY AMENDMENT**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Joseph L. Hull**

5 AN ACT RELATING TO CRIMINAL LAW; AMENDING A PROVISION ENHANCING
6 PENALTIES FOR DRUG OFFENSES COMMITTED IN THE PRESENCE OF A JUVENILE.

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **58-37-8**, as last amended by Chapter 139, Laws of Utah 1998

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

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

12 **58-37-8. Prohibited acts -- Penalties.**

13 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

22 (A) the person participates, directs, or engages in conduct which results in any violation
23 of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

24 (B) the violation is a part of a continuing series of two or more violations of Title 58,
25 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five
26 or more persons with respect to whom the person occupies a position of organizer, supervisor, or
27 any other position of management.

- 28 (b) Any person convicted of violating Subsection (1)(a) with respect to:
- 29 (i) a substance classified in Schedule I or II or a controlled substance analog is guilty of
- 30 a second degree felony and upon a second or subsequent conviction is guilty of a first degree
- 31 felony;
- 32 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree
- 33 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or
- 34 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a
- 35 second or subsequent conviction is guilty of a third degree felony.
- 36 (c) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony
- 37 punishable by imprisonment for an indeterminate term of not less than seven years and which may
- 38 be for life. Imposition or execution of the sentence may not be suspended, and the person is not
- 39 eligible for probation.
- 40 (2) Prohibited acts B -- Penalties:
- 41 (a) It is unlawful:
- 42 (i) for any person knowingly and intentionally to possess or use a controlled substance,
- 43 unless it was obtained under a valid prescription or order, directly from a practitioner while acting
- 44 in the course of his professional practice, or as otherwise authorized by this Subsection (2);
- 45 (ii) for any owner, tenant, licensee, or person in control of any building, room, tenement,
- 46 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
- 47 by persons unlawfully possessing, using, or distributing controlled substances in any of those
- 48 locations; or
- 49 (iii) for any person knowingly and intentionally to possess an altered or forged prescription
- 50 or written order for a controlled substance.
- 51 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:
- 52 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
- 53 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
- 54 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
- 55 felony; or
- 56 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of
- 57 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
- 58 misdemeanor.

59 (c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
60 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any
61 public jail or other place of confinement shall be sentenced to a penalty one degree greater than
62 provided in Subsection (2)(b).

63 (d) Upon a second or subsequent conviction of possession of any controlled substance by
64 a person, that person shall be sentenced to a one degree greater penalty than provided in this
65 Subsection (2).

66 (e) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
67 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
68 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of
69 a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third
70 degree felony.

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

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

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

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

75 (3) Prohibited acts C -- Penalties:

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

77 (i) to use in the course of the manufacture or distribution of a controlled substance a
78 license number which is fictitious, revoked, suspended, or issued to another person or, for the
79 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a
80 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

81 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration
82 of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to
83 acquire or obtain possession of, or to procure the administration of any controlled substance by
84 misrepresentation or failure by the person to disclose his receiving any controlled substance from
85 another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order
86 for a controlled substance, or the use of a false name or address;

87 (iii) to make any false or forged prescription or written order for a controlled substance,
88 or to utter the same, or to alter any prescription or written order issued or written under the terms
89 of this chapter; or

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

94 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

95 (4) Prohibited acts D -- Penalties:

96 (a) Notwithstanding other provisions of this section, a person not authorized under this
97 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
98 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act,
99 is upon conviction subject to the penalties and classifications under Subsection (4)(b) if the act is
100 committed:

101 (i) in a public or private elementary or secondary school or on the grounds of any of those
102 schools;

103 (ii) in a public or private vocational school or postsecondary institution or on the grounds
104 of any of those schools or institutions;

105 (iii) in those portions of any building, park, stadium, or other structure or grounds which
106 are, at the time of the act, being used for an activity sponsored by or through a school or institution
107 under Subsections (4)(a)(i) and (ii);

108 (iv) in or on the grounds of a preschool or child-care facility;

109 (v) in a public park, amusement park, arcade, or recreation center;

110 (vi) in a church or synagogue;

111 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse,
112 or parking lot or structure adjacent thereto;

113 (viii) in a public parking lot or structure;

114 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i)
115 through (viii); or

116 (x) [~~with~~] in the presence of a person younger than 18 years of age, regardless of where
117 the act occurs.

118 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and shall
119 be imprisoned for a term of not less than five years if the penalty that would otherwise have been
120 established but for this subsection would have been a first degree felony. Imposition or execution

121 of the sentence may not be suspended, and the person is not eligible for probation.

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

125 (d) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly
126 believed the individual to be 18 years of age or older at the time of the offense or was unaware of
127 the individual's true age; nor that the actor mistakenly believed that the location where the act
128 occurred was not as described in Subsection (4)(a) or was unaware that the location where the act
129 occurred was as described in Subsection (4)(a).

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

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

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

137 (7) In any prosecution for a violation of this chapter, evidence or proof which shows a
138 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
139 substance or substances, is prima facie evidence that the person or persons did so with knowledge
140 of the character of the substance or substances.

141 (8) This section does not prohibit a veterinarian, in good faith and in the course of his
142 professional practice only and not for humans, from prescribing, dispensing, or administering
143 controlled substances or from causing the substances to be administered by an assistant or orderly
144 under his direction and supervision.

145 (9) Civil or criminal liability may not be imposed under this section on:

146 (a) any person registered under the Controlled Substances Act who manufactures,
147 distributes, or possesses an imitation controlled substance for use as a placebo or investigational
148 new drug by a registered practitioner in the ordinary course of professional practice or research;
149 or

150 (b) any law enforcement officer acting in the course and legitimate scope of his
151 employment.

152 (10) If any provision of this chapter, or the application of any provision to any person or
153 circumstances, is held invalid, the remainder of this chapter shall be given effect without the
154 invalid provision or application.

Legislative Review Note
as of 12-23-98 8:14 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel