

**CONTROLLED SUBSTANCES AND  
PARAPHERNALIA**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**Committee Note:**

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

**General Description:**

This bill modifies the Controlled Substances Act regarding controlled substances, drug paraphernalia, and certain plea processes.

**Highlighted Provisions:**

This bill:

- ▶ specifies that a plea in abeyance for the offense of production or distribution of a controlled substance is considered to be a conviction for sentencing enhancement purposes;
- ▶ amends language regarding items used to ingest or inhale controlled substances so the language refers to all controlled substances, rather than specifically marijuana, cocaine, and hashish;
- ▶ clarifies that a person may be charged for an illegal drug or paraphernalia offense and may also be charged for a violation of any other section of the Controlled Substances Act or the Drug Paraphernalia Act; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **58-37-8**, as last amended by Laws of Utah 2007, Chapter 374

33 **58-37a-3**, as enacted by Laws of Utah 1981, Chapter 76

34 **58-37a-5**, as enacted by Laws of Utah 1981, Chapter 76

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

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

38 **58-37-8. Prohibited acts -- Penalties.**

39 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

55 (i) a substance classified in Schedule I or II, a controlled substance analog, or  
56 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and  
57 upon a second or subsequent conviction is guilty of a first degree felony;

58 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree

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

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

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

70 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
71 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
72 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
73 person is not eligible for probation.

74 (2) Prohibited acts B -- Penalties:

75 (a) It is unlawful:

76 (i) for any person knowingly and intentionally to possess or use a controlled substance  
77 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
78 directly from a practitioner while acting in the course of his professional practice, or as  
79 otherwise authorized by this chapter;

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

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

86 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

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

88 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16  
89 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree

90 felony; or

91 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of  
92 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A  
93 misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

120 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not

121 amounting to a violation of Section 76-5-207:

122 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any  
123 measurable amount of a controlled substance; and

124 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
125 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

126 (h) A person who violates Subsection (2)(g) by having in his body:

127 (i) a controlled substance classified under Schedule I, other than those described in  
128 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
129 degree felony;

130 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
131 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

132 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
133 A misdemeanor.

134 (3) Prohibited acts C -- Penalties:

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

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

141 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
142 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
143 be attempting to acquire or obtain possession of, or to procure the administration of any  
144 controlled substance by misrepresentation or failure by the person to disclose his receiving any  
145 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
146 prescription or written order for a controlled substance, or the use of a false name or address;

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

150 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed  
151 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or

152 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
153 so as to render any drug a counterfeit controlled substance.

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

156 (4) Prohibited acts D -- Penalties:

157 (a) Notwithstanding other provisions of this section, a person not authorized under this  
158 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,  
159 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances  
160 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
161 the trier of fact finds the act is committed:

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

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

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

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

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

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

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

174 (viii) in or on the grounds of a library;

175 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds  
176 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

177 (x) in the presence of a person younger than 18 years of age, regardless of where the act  
178 occurs; or

179 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
180 distribution of a substance in violation of this section to an inmate or on the grounds of any  
181 correctional facility as defined in Section 76-8-311.3.

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

183 and shall be imprisoned for a term of not less than five years if the penalty that would  
184 otherwise have been established but for this Subsection (4) would have been a first degree  
185 felony.

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

188 (c) If the classification that would otherwise have been established would have been  
189 less than a first degree felony but for this Subsection (4), a person convicted under this  
190 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
191 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

192 (d) (i) If the violation is of Subsection (4)(a)(xi):

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

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

198 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
199 the mental state required for the commission of an offense, directly or indirectly solicits,  
200 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
201 violation of Subsection (4)(a)(xi).

202 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
203 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
204 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
205 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
206 the location where the act occurred was as described in Subsection (4)(a).

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

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

213 (7) A person may be charged and sentenced for a violation of this section,

214 notwithstanding a charge and sentence for a violation of any other section of this chapter.

215 [~~(6)~~] (8) (a) Any penalty imposed for violation of this section is in addition to, and not  
216 in lieu of, any civil or administrative penalty or sanction authorized by law.

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

220 [~~(7)~~] (9) In any prosecution for a violation of this chapter, evidence or proof which  
221 shows a person or persons produced, manufactured, possessed, distributed, or dispensed a  
222 controlled substance or substances, is prima facie evidence that the person or persons did so  
223 with knowledge of the character of the substance or substances.

224 [~~(8)~~] (10) This section does not prohibit a veterinarian, in good faith and in the course  
225 of his professional practice only and not for humans, from prescribing, dispensing, or  
226 administering controlled substances or from causing the substances to be administered by an  
227 assistant or orderly under his direction and supervision.

228 [~~(9)~~] (11) Civil or criminal liability may not be imposed under this section on:

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

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

234 [~~(10)~~] (12) (a) Civil or criminal liability may not be imposed under this section on any  
235 Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for  
236 bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian  
237 religion as defined in Subsection 58-37-2(1)(w).

238 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
239 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
240 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
241 connection with the practice of a traditional Indian religion.

242 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
243 defense under this Subsection [~~(10)~~] (12) as soon as practicable, but not later than ten days  
244 prior to trial.

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

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

248 (d) The defendant shall establish the affirmative defense under this Subsection [~~(10)~~  
249 (12)] by a preponderance of the evidence. If the defense is established, it is a complete defense  
250 to the charges.

251 [~~(11)~~] (13) If any provision of this chapter, or the application of any provision to any  
252 person or circumstances, is held invalid, the remainder of this chapter shall be given effect  
253 without the invalid provision or application.

254 Section 2. Section **58-37a-3** is amended to read:

255 **58-37a-3. "Drug paraphernalia" defined.**

256 As used in this chapter[~~:"Drug]~~, "drug paraphernalia" means any equipment, product,  
257 or material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture,  
258 compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain,  
259 conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the human  
260 body in violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is  
261 not limited to:

262 (1) kits used, or intended for use, in planting, propagating, cultivating, growing, or  
263 harvesting any species of plant which is a controlled substance or from which a controlled  
264 substance can be derived;

265 (2) kits used, or intended for use, in manufacturing, compounding, converting,  
266 producing, processing, or preparing a controlled substance;

267 (3) isomerization devices used, or intended for use, to increase the potency of any  
268 species of plant which is a controlled substance;

269 (4) testing equipment used, or intended for use, to identify or to analyze the strength,  
270 effectiveness, or purity of a controlled substance;

271 (5) scales and balances used, or intended for use, in weighing or measuring a controlled  
272 substance;

273 (6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited,  
274 dextrose and lactose, used, or intended for use to cut a controlled substance;

275 (7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other

- 276 impurities from marihuana;
- 277 (8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to
- 278 compound a controlled substance;
- 279 (9) capsules, balloons, envelopes, and other containers used, or intended for use to
- 280 package small quantities of a controlled substance;
- 281 (10) containers and other objects used, or intended for use to store or conceal a
- 282 controlled substance;
- 283 (11) hypodermic syringes, needles, and other objects used, or intended for use to
- 284 parenterally inject a controlled substance into the human body; and
- 285 (12) objects used, or intended for use to ingest, inhale, or otherwise introduce
- 286 [~~marihuana, cocaine, hashish, or hashish oil~~] a controlled substance into the human body,
- 287 including but not limited to:
- 288 (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
- 289 screens, permanent screens, hashish heads, or punctured metal bowls;
- 290 (b) water pipes;
- 291 (c) carburetion tubes and devices;
- 292 (d) smoking and carburetion masks;
- 293 (e) roach clips: meaning objects used to hold burning material, such as a marihuana
- 294 cigarette, that has become too small or too short to be held in the hand;
- 295 (f) miniature cocaine spoons and cocaine vials;
- 296 (g) chamber pipes;
- 297 (h) carburetor pipes;
- 298 (i) electric pipes;
- 299 (j) air-driven pipes;
- 300 (k) chillums;
- 301 (l) bongs; and
- 302 (m) ice pipes or chillers.

303 Section 3. Section **58-37a-5** is amended to read:

304 **58-37a-5. Unlawful acts.**

305 (1) It is unlawful for any person to use, or to possess with intent to use, drug

306 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,

307 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,  
308 inhale or otherwise introduce a controlled substance into the human body in violation of this  
309 chapter. Any person who violates this subsection is guilty of a class B misdemeanor.

310 (2) It is unlawful for any person to deliver, possess with intent to deliver, or  
311 manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia  
312 will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,  
313 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,  
314 inhale, or otherwise introduce a controlled substance into the human body in violation of this  
315 act. Any person who violates this subsection is guilty of a class A misdemeanor.

316 (3) Any person 18 years of age or over who delivers drug paraphernalia to a person  
317 under 18 years of age who is three years or more younger than the person making the delivery  
318 is guilty of a third degree felony.

319 (4) (a) It is unlawful for any person to place in this state in any newspaper, magazine,  
320 handbill, or other publication any advertisement, knowing that the purpose of the advertisement  
321 is to promote the sale of drug paraphernalia.

322 (b) Any person who violates this Subsection (4) is guilty of a class B misdemeanor.

323 (5) A person may be charged and sentenced for a violation of this section,  
324 notwithstanding a charge and sentence for a violation of any other section of this chapter.

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**Legislative Review Note**  
as of 6-21-07 7:12 AM

**Office of Legislative Research and General Counsel**

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**H.B. 12 - Controlled Substances and Paraphernalia**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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