

Senator Karen Mayne proposes the following substitute bill:

CRIMINAL PROVISIONS MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies provisions relating to criminal offenses and penalties in the Utah Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the definition of "continuing criminal enterprise" used in the Utah

Controlled Substances Act;

- ▶ modifies criminal offenses and penalties relating to:

- clandestine drug labs;
- drug distribution resulting in death;
- electronic communications harassment; and
- return of a marriage license to a county clerk;

- ▶ repeals the offense of fornication; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **30-1-11**, as last amended by Laws of Utah 2018, Chapter 148

30 **58-37-2**, as last amended by Laws of Utah 2015, Chapter 258

31 **58-37-8**, as last amended by Laws of Utah 2017, Chapter 330

32 **58-37d-2**, as last amended by Laws of Utah 2013, Chapter 278

33 **58-37d-3**, as last amended by Laws of Utah 2013, Chapters 262 and 413

34 **58-37d-4**, as last amended by Laws of Utah 2008, Chapter 305

35 **58-37d-5**, as last amended by Laws of Utah 2003, Chapter 115

36 **58-37d-6**, as enacted by Laws of Utah 1992, Chapter 156

37 **76-9-201**, as last amended by Laws of Utah 2018, Chapter 444

38 **77-22-2**, as last amended by Laws of Utah 2009, Chapter 6

39 **77-22-2.5**, as last amended by Laws of Utah 2017, Chapter 447

40 REPEALS:

41 **76-7-104**, as enacted by Laws of Utah 1973, Chapter 196



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

44 Section 1. Section **30-1-11** is amended to read:

45 **30-1-11. Return of license after ceremony -- Failure -- Penalty.**

46 (1) The individual solemnizing the marriage shall within 30 days ~~[thereafter]~~ after
47 solemnizing the marriage return the license to the clerk of the county ~~[whence it issued]~~ that
48 issues the license, with a certificate of the marriage over the individual's signature, giving the
49 date and place of celebration and the names of two or more witnesses present at the marriage.

50 (2) An individual described in Subsection (1) who fails to ~~[make the return]~~ return the
51 license is guilty of ~~[a class B misdemeanor]~~ an infraction.

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

53 **58-37-2. Definitions.**

54 (1) As used in this chapter:

55 (a) "Administer" means the direct application of a controlled substance, whether by
56 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject

57 by:

58 (i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent;

59 or

60 (ii) the patient or research subject at the direction and in the presence of the

61 practitioner.

62 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a
63 manufacturer, distributor, or practitioner but does not include a motor carrier, public
64 warehouseman, or employee of any of them.

65 (c) "Consumption" means ingesting or having any measurable amount of a controlled
66 substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a
67 controlled substance.

68 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,
69 partnership, corporation, business trust, association, or other legal entity, and any union or
70 groups of individuals associated in fact although not a legal entity, and includes illicit as well
71 as licit entities created or maintained for the purpose of engaging in conduct which constitutes
72 the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled
73 Substances Act, [~~Chapter 37a, Utah Drug Paraphernalia Act,~~] Chapter 37b, Imitation
74 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter
75 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar
76 purposes, results, participants, victims, methods of commission, or otherwise are interrelated
77 by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing
78 unlawful conduct and be related either to each other or to the enterprise.

79 (e) "Control" means to add, remove, or change the placement of a drug, substance, or
80 immediate precursor under Section 58-37-3.

81 (f) (i) "Controlled substance" means a drug or substance:

82 (A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

83 (B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act,
84 Title II, P.L. 91-513;

85 (C) that is a controlled substance analog; or

86 (D) listed in Section 58-37-4.2.

87 (ii) "Controlled substance" does not include:

88 (A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B,
89 Alcoholic Beverage Control Act;

90 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
91 prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine,
92 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
93 transferred, or furnished as an over-the-counter medication without prescription; or

94 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances
95 including concentrates or extracts, which:

96 (I) are not otherwise regulated by law; and

97 (II) may contain naturally occurring amounts of chemical or substances listed in this
98 chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking
99 Act.

100 (g) (i) "Controlled substance analog" means:

101 (A) a substance the chemical structure of which is substantially similar to the chemical
102 structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance
103 listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act,
104 Title II, P.L. 91-513;

105 (B) a substance which has a stimulant, depressant, or hallucinogenic effect on the
106 central nervous system substantially similar to the stimulant, depressant, or hallucinogenic
107 effect on the central nervous system of controlled substances listed in Schedules I and II of
108 Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and
109 II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

110 (C) A substance which, with respect to a particular individual, is represented or
111 intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system
112 substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
113 nervous system of controlled substances listed in Schedules I and II of Section 58-37-4,
114 substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal
115 Controlled Substances Act, Title II, P.L. 91-513.

116 (ii) "Controlled substance analog" does not include:

117 (A) a controlled substance currently scheduled in Schedules I through V of Section
118 58-37-4;

- 119 (B) a substance for which there is an approved new drug application;
- 120 (C) a substance with respect to which an exemption is in effect for investigational use
- 121 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355,
- 122 to the extent the conduct with respect to the substance is permitted by the exemption;
- 123 (D) any substance to the extent not intended for human consumption before an
- 124 exemption takes effect with respect to the substance;
- 125 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
- 126 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
- 127 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
- 128 transferred, or furnished as an over-the-counter medication without prescription; or
- 129 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances
- 130 including concentrates or extracts, which are not otherwise regulated by law, which may
- 131 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules
- 132 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 133 (h) (i) "Conviction" means a determination of guilt by verdict, whether jury or bench,
- 134 or plea, whether guilty or no contest, for any offense proscribed by:
 - 135 (A) Chapter 37, Utah Controlled Substances Act;
 - 136 (B) Chapter 37a, Utah Drug Paraphernalia Act;
 - 137 (C) Chapter 37b, Imitation Controlled Substances Act;
 - 138 (D) Chapter 37c, Utah Controlled Substance Precursor Act; or
 - 139 (E) Chapter 37d, Clandestine Drug Lab Act; or
- 140 (ii) for any offense under the laws of the United States and any other state which, if
- 141 committed in this state, would be an offense under:
 - 142 (A) Chapter 37, Utah Controlled Substances Act;
 - 143 (B) Chapter 37a, Utah Drug Paraphernalia Act;
 - 144 (C) Chapter 37b, Imitation Controlled Substances Act;
 - 145 (D) Chapter 37c, Utah Controlled Substance Precursor Act; or
 - 146 (E) Chapter 37d, Clandestine Drug Lab Act.
- 147 (i) "Counterfeit substance" means:
 - 148 (i) any controlled substance or container or labeling of any controlled substance that:
 - 149 (A) without authorization bears the trademark, trade name, or other identifying mark,

150 imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser
151 other than the person or persons who in fact manufactured, distributed, or dispensed the
152 substance which falsely purports to be a controlled substance distributed by any other
153 manufacturer, distributor, or dispenser; and

154 (B) a reasonable person would believe to be a controlled substance distributed by an
155 authorized manufacturer, distributor, or dispenser based on the appearance of the substance as
156 described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled
157 substance; or

158 (ii) any substance other than under Subsection (1)(i)(i) that:

159 (A) is falsely represented to be any legally or illegally manufactured controlled
160 substance; and

161 (B) a reasonable person would believe to be a legal or illegal controlled substance.

162 (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a
163 controlled substance or a listed chemical, whether or not an agency relationship exists.

164 (k) "Department" means the Department of Commerce.

165 (l) "Depressant or stimulant substance" means:

166 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric
167 acid;

168 (ii) a drug which contains any quantity of:

169 (A) amphetamine or any of its optical isomers;

170 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

171 (C) any substance which the Secretary of Health and Human Services or the Attorney
172 General of the United States after investigation has found and by regulation designated
173 habit-forming because of its stimulant effect on the central nervous system;

174 (iii) lysergic acid diethylamide; or

175 (iv) any drug which contains any quantity of a substance which the Secretary of Health
176 and Human Services or the Attorney General of the United States after investigation has found
177 to have, and by regulation designated as having, a potential for abuse because of its depressant
178 or stimulant effect on the central nervous system or its hallucinogenic effect.

179 (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an
180 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes

181 distributing to, leaving with, giving away, or disposing of that substance as well as the
182 packaging, labeling, or compounding necessary to prepare the substance for delivery.

183 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

184 (o) "Distribute" means to deliver other than by administering or dispensing a controlled
185 substance or a listed chemical.

186 (p) "Distributor" means a person who distributes controlled substances.

187 (q) "Division" means the Division of Occupational and Professional Licensing created
188 in Section 58-1-103.

189 (r) (i) "Drug" means:

190 (A) a substance recognized in the official United States Pharmacopoeia, Official
191 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any
192 supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or
193 prevention of disease in humans or animals;

194 (B) a substance that is required by any applicable federal or state law or rule to be
195 dispensed by prescription only or is restricted to administration by practitioners only;

196 (C) a substance other than food intended to affect the structure or any function of the
197 body of humans or other animals; and

198 (D) substances intended for use as a component of any substance specified in
199 Subsections (1)(r)(i)(A), (B), and (C).

200 (ii) "Drug" does not include dietary supplements.

201 (s) "Drug dependent person" means any individual who unlawfully and habitually uses
202 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so
203 dependent upon the use of controlled substances as to have lost the power of self-control with
204 reference to the individual's dependency.

205 (t) "Food" means:

206 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as
207 specified in this chapter, and normally ingested by human beings; and

208 (ii) foods for special dietary uses as exist by reason of a physical, physiological,
209 pathological, or other condition including but not limited to the conditions of disease,
210 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and
211 overweight; uses for supplying a particular dietary need which exist by reason of age including

212 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for
213 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for
214 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional
215 purposes.

216 (u) "Immediate precursor" means a substance which the Attorney General of the United
217 States has found to be, and by regulation designated as being, the principal compound used or
218 produced primarily for use in the manufacture of a controlled substance, or which is an
219 immediate chemical intermediary used or likely to be used in the manufacture of a controlled
220 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the
221 controlled substance.

222 (v) "Indian" means a member of an Indian tribe.

223 (w) "Indian religion" means any religion:

224 (i) the origin and interpretation of which is from within a traditional Indian culture or
225 community; and

226 (ii) which is practiced by Indians.

227 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or
228 community of Indians, including any Alaska Native village, which is legally recognized as
229 eligible for and is consistent with the special programs, services, and entitlements provided by
230 the United States to Indians because of their status as Indians.

231 (y) "Manufacture" means the production, preparation, propagation, compounding, or
232 processing of a controlled substance, either directly or indirectly by extraction from substances
233 of natural origin, or independently by means of chemical synthesis or by a combination of
234 extraction and chemical synthesis.

235 (z) "Manufacturer" includes any person who packages, repackages, or labels any
236 container of any controlled substance, except pharmacists who dispense or compound
237 prescription orders for delivery to the ultimate consumer.

238 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,
239 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every
240 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or
241 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,
242 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,

243 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,
244 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any
245 synthetic equivalents of the substances contained in the plant cannabis sativa or any other
246 species of the genus cannabis which are chemically indistinguishable and pharmacologically
247 active are also included.

248 (bb) "Money" means officially issued coin and currency of the United States or any
249 foreign country.

250 (cc) "Narcotic drug" means any of the following, whether produced directly or
251 indirectly by extraction from substances of vegetable origin, or independently by means of
252 chemical synthesis, or by a combination of extraction and chemical synthesis:

253 (i) opium, coca leaves, and opiates;

254 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or
255 opiates;

256 (iii) opium poppy and poppy straw; or

257 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the
258 substance, which is chemically identical with any of the substances referred to in Subsection
259 (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or
260 extracts of coca leaves which do not contain cocaine or ecgonine.

261 (dd) "Negotiable instrument" means documents, containing an unconditional promise
262 to pay a sum of money, which are legally transferable to another party by endorsement or
263 delivery.

264 (ee) "Opiate" means any drug or other substance having an addiction-forming or
265 addiction-sustaining liability similar to morphine or being capable of conversion into a drug
266 having addiction-forming or addiction-sustaining liability.

267 (ff) "Opium poppy" means the plant of the species papaver somniferum L., except the
268 seeds of the plant.

269 (gg) "Person" means any corporation, association, partnership, trust, other institution or
270 entity or one or more individuals.

271 (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after
272 mowing.

273 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,

274 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,
275 or consumption, as distinguished from distribution, of controlled substances and includes
276 individual, joint, or group possession or use of controlled substances. For a person to be a
277 possessor or user of a controlled substance, it is not required that the person be shown to have
278 individually possessed, used, or controlled the substance, but it is sufficient if it is shown that
279 the person jointly participated with one or more persons in the use, possession, or control of
280 any substances with knowledge that the activity was occurring, or the controlled substance is
281 found in a place or under circumstances indicating that the person had the ability and the intent
282 to exercise dominion and control over it.

283 (jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian,
284 pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or
285 otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use
286 in teaching or chemical analysis a controlled substance in the course of professional practice or
287 research in this state.

288 (kk) "Prescribe" means to issue a prescription:

289 (i) orally or in writing; or

290 (ii) by telephone, facsimile transmission, computer, or other electronic means of
291 communication as defined by division rule.

292 (ll) "Prescription" means an order issued:

293 (i) by a licensed practitioner, in the course of that practitioner's professional practice or
294 by collaborative pharmacy practice agreement; and

295 (ii) for a controlled substance or other prescription drug or device for use by a patient
296 or an animal.

297 (mm) "Production" means the manufacture, planting, cultivation, growing, or
298 harvesting of a controlled substance.

299 (nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of
300 property.

301 (oo) "State" means the state of Utah.

302 (pp) "Ultimate user" means any person who lawfully possesses a controlled substance
303 for the person's own use, for the use of a member of the person's household, or for
304 administration to an animal owned by the person or a member of the person's household.

305 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,
306 Utah Criminal Code, shall apply.

307 Section 3. Section 58-37-8 is amended to read:

308 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

317 (iv) engage in a continuing criminal enterprise where~~[-(A)]~~ the person participates,
318 directs, or engages in conduct that results in any violation of any provision of Title 58,
319 Chapters 37, Utah Controlled Substances Act, ~~[37a, Utah Drug Paraphernalia Act,]~~ 37b,
320 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
321 Clandestine Drug Lab Act, that is a felony~~[-and]~~, if the violation:

322 ~~[(B)]~~ (A) ~~[the violation]~~ is a part of a continuing series of two or more violations of
323 Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
324 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
325 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
326 more persons with respect to whom the person occupies a position of organizer, supervisor, or
327 ~~[any other]~~ another position of management~~[-];~~ or

328 (B) results in the death of an individual.

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

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

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

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

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

340 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
341 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
342 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the
343 person or in the person's immediate possession during the commission or in furtherance of the
344 offense, the court shall additionally sentence the person convicted for a term of one year to run
345 consecutively and not concurrently; and the court may additionally sentence the person
346 convicted for an indeterminate term not to exceed five years to run consecutively and not
347 concurrently.

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

352 (e) The Administrative Office of the Courts shall report to the Division of
353 Occupational and Professional Licensing the name, case number, date of conviction, and if
354 known, the date of birth of each person convicted of violating Subsection (2)(a).

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

356 (a) It is unlawful:

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

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

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

- 367 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:
368 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
369 or
370 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
371 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
372 conviction is guilty of a third degree felony.
- 373 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
374 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
375 penalty than provided in this Subsection (2).
- 376 (d) (i) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
377 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
378 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 379 (ii) Upon a third conviction under Subsection (2)(d)(i), the person is guilty of a class A
380 misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree
381 felony.
- 382 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
383 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
384 any public jail or other place of confinement shall be sentenced to a penalty one degree greater
385 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
386 substances as listed in:
- 387 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
388 indeterminate term as provided by law, and the court:
- 389 (A) [~~the court~~] shall additionally sentence the person convicted to a term of one year to
390 run consecutively and not concurrently; and
391 (B) [~~the court~~] may additionally sentence the person convicted for an indeterminate
392 term not to exceed five years to run consecutively and not concurrently; and
- 393 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
394 indeterminate term as provided by law, and the court shall additionally sentence the person
395 convicted to a term of six months to run consecutively and not concurrently.
- 396 (f) Any person convicted of violating Subsection (2)(a)(ii) or(iii) is:
397 (i) on a first conviction, guilty of a class B misdemeanor;

- 398 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 399 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 400 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 401 amounting to a violation of Section 76-5-207:
- 402 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 403 body any measurable amount of a controlled substance; and
- 404 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
- 405 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 406 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 407 (i) a controlled substance classified under Schedule I, other than those described in
- 408 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 409 degree felony;
- 410 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 411 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
- 412 degree felony; or
- 413 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
- 414 A misdemeanor.
- 415 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 416 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
- 417 whether or not the injuries arise from the same episode of driving.
- 418 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 419 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 420 of birth of each person convicted of violating Subsection (2)(a).
- 421 (3) Prohibited acts C -- Penalties:
- 422 (a) It is unlawful for any person knowingly and intentionally:
- 423 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 424 license number which is fictitious, revoked, suspended, or issued to another person or, for the
- 425 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
- 426 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
- 427 person;
- 428 (ii) to acquire or obtain possession of, to procure or attempt to procure the

429 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
430 be attempting to acquire or obtain possession of, or to procure the administration of any
431 controlled substance by misrepresentation or failure by the person to disclose receiving any
432 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
433 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

446 (4) Prohibited acts D -- Penalties:

447 (a) Notwithstanding other provisions of this section, a person not authorized under this
448 chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or
449 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this
450 Subsection (4) if the trier of fact finds the act is committed:

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

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

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

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

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

460 (vi) in or on the grounds of a library when the library is open to the public;
461 (vii) within any area that is within 100 feet of any structure, facility, or grounds
462 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);
463 (viii) in the presence of a person younger than 18 years of age, regardless of where the
464 act occurs; or
465 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
466 distribution of a substance in violation of this section to an inmate or on the grounds of any
467 correctional facility as defined in Section 76-8-311.3.

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

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

474 (c) ~~[H] Except for a violation of Subsection (2)(g), if the classification that would~~
475 otherwise have been established would have been less than a first degree felony but for this
476 Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than
477 the maximum penalty prescribed for that offense. ~~[This Subsection (4)(c) does not apply to a~~
478 ~~violation of Subsection (2)(g).]~~

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

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

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

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

489 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
490 mistakenly believed the individual to be 18 years of age or older at the time of the offense or

491 was unaware of the individual's true age; nor that the actor mistakenly believed that the
492 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
493 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

504 (ii) from a conviction that is separate from [~~any other~~] another conviction used to
505 enhance the current charge.

506 (7) A person may be charged and sentenced for a violation of this section,
507 notwithstanding a charge and sentence for a violation of [~~any other~~] another section of this
508 chapter.

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

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

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

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

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

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

526 (b) any law enforcement officer acting in the course and legitimate scope of the
527 officer's employment.

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

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

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

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

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

542 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
543 a preponderance of the evidence[-Hf] and, if the defense is established, [it] the defense is a
544 complete defense to the charges.

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

547 (i) was engaged in medical research; and

548 (ii) was a holder of a valid license to possess controlled substances under Section
549 58-37-6.

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

552 (14) It is an affirmative defense that the person possessed, in the person's body, a

553 controlled substance listed in Section 58-37-4.2 if:

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

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

557 (15) (a) The application of any increase in penalty under this section to a violation of
558 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

559 (b) This Subsection (15) takes precedence over any conflicting provision of this
560 section.

561 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
562 listed in Subsection (16)(b) that the person:

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

566 (ii) reports in good faith the overdose event to a medical provider, an emergency
567 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911
568 emergency call system, or an emergency dispatch system, or the person is the subject of a
569 report made under this Subsection (16);

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

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

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

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

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

- 584 (i) the possession or use of less than 16 ounces of marijuana;
- 585 (ii) the possession or use of a scheduled or listed controlled substance other than
- 586 marijuana; and
- 587 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
- 588 Imitation Controlled Substances Act.

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

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

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

597 (19) If a minor who is under 18 years of age is found by a court to have violated this
598 section, the court may order:

599 (a) the minor to complete a screening as defined in Section 41-6a-501;

600 (b) the minor to complete an assessment as defined in Section 41-6a-501 if the
601 screening indicates an assessment to be appropriate; and

602 (c) the minor to complete an educational series as defined in Section 41-6a-501 or
603 substance use disorder treatment as indicated by an assessment.

604 Section 4. Section 58-37d-2 is amended to read:

605 **58-37d-2. Purpose.**

606 The clandestine production of methamphetamine, other amphetamines, phencyclidine,
607 narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated
608 tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack"
609 cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the
610 western states and Utah. These highly technical illegal operations create substantial dangers to
611 the general public and environment from fire, explosions, and the release of toxic chemicals.
612 By their very nature these activities often involve a number of persons in a conspiratorial
613 enterprise to bring together all necessary components for clandestine production, to thwart
614 regulation and detection, and to distribute the final product. Therefore, the Legislature enacts

615 the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory
616 operations. With regard to the controlled substances specified herein, this act shall control,
617 notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled
618 Substances Act.

619 Section 5. Section **58-37d-3** is amended to read:

620 **58-37d-3. Definitions.**

621 (1) As used in this chapter:

622 (a) (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily
623 injury when triggered by the action of a person making contact with the device.

624 (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip
625 wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines
626 or wires with hooks attached, and devices for the production of toxic fumes or gases.

627 (b) "Clandestine laboratory operation" means the:

628 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location
629 for the illegal manufacture of specified controlled substances;

630 (ii) transportation or arranging for the transportation of chemicals, supplies, or
631 equipment for the illegal manufacture of specified controlled substances;

632 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of
633 specified controlled substances;

634 (iv) activity of compounding, synthesis, concentration, purification, separation,
635 extraction, or other physical or chemical processing of a substance, including a controlled
636 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
637 holding a substance that is a product of any of these activities, when the substance is to be used
638 for the illegal manufacture of specified controlled substances;

639 (v) illegal manufacture of specified controlled substances; or

640 (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or
641 produced by the illegal manufacture of specified controlled substances.

642 (c) "Controlled substance precursor" means those chemicals designated in Title 58,
643 Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in
644 Subsections **58-37c-3(1)(kk)** and (ll).

645 (d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:

646 (i) (A) without authorization bears the trademark, trade name, or other identifying
647 mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or
648 dispenser other than the person or persons who in fact manufactured, distributed, or dispensed
649 the substance which falsely purports to be an opioid distributed by another manufacturer,
650 distributor, or dispenser; and

651 (B) a reasonable person would believe to be an opioid distributed by an authorized
652 manufacturer, distributor, or dispenser based on the appearance of the substance as described
653 under Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or

654 (ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and
655 (B) a reasonable person would believe to be a legal or illegal opioid.

656 ~~[(d)]~~ (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping,
657 spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or
658 water so that the material may enter the environment, be emitted into the air, or discharged into
659 any waters, including groundwater.

660 ~~[(e)]~~ (f) "Hazardous or dangerous material" means a substance that because of its
661 quantity, concentration, physical characteristics, or chemical characteristics may cause or
662 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a
663 substantial present or potential future hazard to human health or the environment when
664 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

665 ~~[(f)]~~ (g) "Illegal manufacture of specified controlled substances" means in violation of
666 Title 58, Chapter 37, Utah Controlled Substances Act, the:

667 (i) compounding, synthesis, concentration, purification, separation, extraction, or other
668 physical or chemical processing for the purpose of producing methamphetamine, other
669 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,
670 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled
671 Substances Act, lysergic acid diethylamide, ~~[or]~~ mescaline, tetrahydrocannabinol, or counterfeit
672 opioid;

673 (ii) conversion of cocaine or methamphetamine to their base forms; or

674 (iii) extraction, concentration, or synthesis of ~~[marijuana as that drug is defined in~~
675 Section ~~58-37-2~~ tetrahydrocannabinol.

676 (h) "Opioid" means the same as that term is defined in Section 58-37f-303.

677 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section
678 58-37-3.6.

679 (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this
680 chapter.

681 Section 6. Section 58-37d-4 is amended to read:

682 **58-37d-4. Prohibited acts -- Second degree felony.**

683 (1) It is unlawful for any person to knowingly or intentionally:

684 (a) possess a controlled substance or a controlled substance precursor with the intent to
685 engage in a clandestine laboratory operation;

686 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine
687 laboratory operation;

688 (c) sell, distribute, or otherwise supply a controlled substance, controlled substance
689 precursor [~~chemical~~], laboratory equipment, or laboratory supplies, knowing or having
690 reasonable cause to believe any of these items will be used for a clandestine laboratory
691 operation;

692 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled
693 Substance Precursor Act, knowing or having reasonable cause to believe that the material
694 distributed or received will be used for a clandestine laboratory operation;

695 (e) conspire with or aid another to engage in a clandestine laboratory operation;

696 (f) produce or manufacture, or possess with intent to produce or manufacture a
697 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah
698 Controlled Substances Act;

699 (g) transport or convey a controlled or counterfeit substance with the intent to
700 distribute or to be distributed by the person transporting or conveying the controlled or
701 counterfeit substance or by [~~any other~~] another person regardless of whether the final
702 destination for the distribution is within this state or [~~any other~~] another location; or

703 (h) engage in compounding, synthesis, concentration, purification, separation,
704 extraction, or other physical or chemical processing of any substance, including a controlled
705 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
706 holding a substance that is a product of any of these activities, knowing or having reasonable
707 cause to believe that the substance is a product of any of these activities and will be used in the

708 illegal manufacture of specified controlled substances.

709 (2) A person who violates [~~any provision of~~] Subsection (1) is guilty of a second
710 degree felony punishable by imprisonment for an indeterminate term of not less than [3] three
711 years nor more than 15 years.

712 Section 7. Section **58-37d-5** is amended to read:

713 **58-37d-5. Prohibited acts -- First degree felony.**

714 (1) A person who violates Subsection **58-37d-4**(1)(a), (b), (e), (f), or (h) is guilty of a
715 first degree felony if the trier of fact also finds any one of the following conditions occurred in
716 conjunction with that violation:

717 (a) possession of a firearm;

718 (b) use of a booby trap;

719 (c) illegal possession, transportation, or disposal of hazardous or dangerous material or
720 while transporting or causing to be transported materials in furtherance of a clandestine
721 laboratory operation, there was created a substantial risk to human health or safety or a danger
722 to the environment;

723 (d) intended laboratory operation was to take place or did take place within 500 feet of
724 a residence, place of business, church, or school;

725 (e) clandestine laboratory operation actually produced any amount of a specified
726 controlled substance or a counterfeit opioid; or

727 (f) intended clandestine laboratory operation was for the production of cocaine base or
728 methamphetamine base.

729 (2) If the trier of fact finds that two or more of the conditions listed in Subsections
730 (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for
731 the first degree felony:

732 (a) probation shall not be granted;

733 (b) the execution or imposition of sentence shall not be suspended; and

734 (c) the court shall not enter a judgment for a lower category of offense.

735 Section 8. Section **58-37d-6** is amended to read:

736 **58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance**
737 **precursor or clandestine laboratory equipment.**

738 The trier of fact may infer that [~~the~~] a defendant intended to engage in a clandestine

739 laboratory operation if the defendant:

740 (1) is in illegal possession of a controlled substance precursor; or

741 (2) illegally possesses or attempts to illegally possess a controlled substance or

742 controlled substance precursor and is in possession of any one of the following pieces of

743 equipment:

744 (a) glass reaction vessel;

745 (b) separatory funnel;

746 (c) glass condenser;

747 (d) analytical balance; [or]

748 (e) heating mantle[-];

749 (f) pill press machine or similar device;

750 (g) closed loop extraction system;

751 (h) extraction tube; or

752 (i) rotary evaporator.

753 Section 9. Section **76-9-201** is amended to read:

754 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

755 (1) As used in this section:

756 (a) "Adult" means [~~a person~~] an individual 18 years of age or older.

757 (b) "Electronic communication" means [~~any~~] a communication by electronic,

758 electro-mechanical, or electro-optical communication device for the transmission and reception

759 of audio, image, or text but does not include broadcast transmissions or similar

760 communications that are not targeted at [~~any~~] a specific individual.

761 (c) "Electronic communication device" includes a telephone, a facsimile machine,

762 electronic mail, a pager, a computer, or [~~any other~~] another device or medium that can be used

763 to communicate electronically.

764 (d) "Minor" means [~~a person~~] an individual who is younger than 18 years of age.

765 (e) "Personal identifying information" means the same as that term is defined in

766 Section [76-6-1102](#).

767 (2) A person is guilty of electronic communication harassment and subject to

768 prosecution in the jurisdiction where the communication originated or was received if with

769 intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications

770 of another, the person:

771 (a) (i) makes repeated contact by means of electronic communications, regardless of
772 whether a conversation ensues; or

773 (ii) after the recipient has requested or informed the person not to contact the recipient,
774 and the person repeatedly or continuously:

775 (A) contacts the electronic communication device of the recipient; or

776 (B) causes an electronic communication device of the recipient to ring or to receive
777 other notification of attempted contact by means of electronic communication;

778 (b) makes contact by means of electronic communication and insults, taunts, or
779 challenges the recipient of the communication or any person at the receiving location in a
780 manner likely to provoke a violent or disorderly response;

781 (c) makes contact by means of electronic communication and threatens to inflict injury,
782 physical harm, or damage to any person or the property of any person; or

783 (d) causes disruption, jamming, or overload of an electronic communication system
784 through excessive message traffic or other means utilizing an electronic communication
785 device[~~;~~~~or~~].

786 [~~(e) electronically publishes, posts, or otherwise discloses personal identifying~~
787 ~~information of another person, in a public online site or forum, without that person's~~
788 ~~permission.~~]

789 (3) A person who electronically publishes, posts, or otherwise discloses personal
790 identifying information of another individual in a public online site or forum with the intent to
791 abuse, threaten, or disrupt the other individual's electronic communication and without the
792 other individual's permission is guilty of electronic communication harassment.

793 [~~(3)~~] (4) (a) (i) Electronic communication harassment committed against an adult is a
794 class B misdemeanor, except under Subsection [~~(3)~~] (4)(a)(ii).

795 (ii) A second or subsequent offense under Subsection [~~(3)~~] (4)(a)(i) is [a]:

796 (A) a class A misdemeanor if all prior violations of this section were committed
797 against adults; and

798 (B) a third degree felony if [~~any~~] a prior violation of this section was committed against
799 a minor.

800 (b) (i) Electronic communication harassment committed against a minor is a class A

801 misdemeanor, except as provided under Subsection ~~[(3)]~~ (4)(b)(ii).

802 (ii) A second or subsequent offense under Subsection ~~[(3)]~~ (4)(b)(i) is a third degree
803 felony, regardless of whether ~~[any]~~ a prior violation of this section was committed against a
804 minor or an adult.

805 ~~[(4)]~~ (5) (a) Except as provided under Subsection ~~[(4)]~~ (5)(b), criminal prosecution
806 under this section does not affect an individual's right to bring a civil action for damages
807 suffered as a result of the commission of ~~[any of the offenses]~~ an offense under this section.

808 (b) This section does not create ~~[any]~~ a civil cause of action based on electronic
809 communications made for legitimate business purposes.

810 Section 10. Section 77-22-2 is amended to read:

811 **77-22-2. Investigations -- Right to subpoena witnesses and require production of**
812 **evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed**
813 **court -- Disclosure of information.**

814 (1) As used in this section, "prosecutor" means the ~~[attorney general, county attorney,~~
815 ~~district attorney, or municipal attorney]~~ the same as that term is defined in Section 77-22-4.5.

816 (2) (a) In any matter involving the investigation of a crime or malfeasance in office, or
817 any criminal conspiracy or activity, the prosecutor may, upon application and approval of the
818 district court and for good cause shown, conduct a criminal investigation.

819 (b) The application and statement of good cause shall state whether or not ~~[any other]~~
820 another investigative order related to the investigation at issue has been filed in another court.

821 (3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

822 (i) subpoena witnesses;

823 (ii) compel their attendance and testimony under oath to be recorded by a suitable
824 electronic recording device or to be given before any certified court reporter; and

825 (iii) require the production of books, papers, documents, recordings, and any other
826 items that ~~[constitute]~~ are evidence or may be relevant to the investigation.

827 (b) The prosecutor shall:

828 (i) apply to the district court for each subpoena; and

829 (ii) show that the requested information is reasonably related to the criminal
830 investigation authorized by the court.

831 (4) (a) The prosecutor shall state in each subpoena:

- 832 (i) the time and place of the examination;
- 833 (ii) that the subpoena is issued in aid of a criminal investigation; and
- 834 (iii) the right of the person subpoenaed to have counsel present.
- 835 (b) The examination may be conducted anywhere within the jurisdiction of the
- 836 prosecutor issuing the subpoena.
- 837 (c) The subpoena need not disclose the names of possible defendants.
- 838 (d) Witness fees and expenses shall be paid as in a civil action.
- 839 (5) (a) At the beginning of each compelled interrogation, the prosecutor shall
- 840 personally inform each witness:
- 841 (i) of the general subject matter of the investigation;
- 842 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question
- 843 or produce any evidence of a communicative nature that may result in self-incrimination;
- 844 (iii) that any information provided may be used against the witness in a subsequent
- 845 criminal proceeding; and
- 846 (iv) of the right to have counsel present.
- 847 (b) If the prosecutor has substantial evidence that the subpoenaed witness has
- 848 committed a crime that is under investigation, the prosecutor shall:
- 849 (i) inform the witness in person before interrogation of that witness's target status; and
- 850 (ii) inform the witness of the nature of the charges under consideration against the
- 851 witness.
- 852 (6) (a) (i) The prosecutor may make written application to any district court showing a
- 853 reasonable likelihood that publicly releasing information about the identity of a witness or the
- 854 substance of the evidence resulting from a subpoena or interrogation would pose a threat of
- 855 harm to a person or otherwise impede the investigation.
- 856 (ii) Upon a finding of reasonable likelihood, the court may order the:
- 857 (A) interrogation of a witness be held in secret;
- 858 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of
- 859 the person subpoenaed, and the substance of the evidence obtained be kept secret; and
- 860 (C) record of testimony and other subpoenaed evidence be kept secret unless the court
- 861 for good cause otherwise orders.
- 862 (b) After application, the court may by order exclude from any investigative hearing or

863 proceeding any persons except:

864 (i) the attorneys representing the state and members of their staffs;

865 (ii) persons who, in the judgment of the attorneys representing the state, are reasonably
866 necessary to assist in the investigative process;

867 (iii) the court reporter or operator of the electronic recording device; and

868 (iv) the attorney for the witness.

869 (c) This chapter does not prevent attorneys representing the state or members of their
870 staff from disclosing information obtained pursuant to this chapter for the purpose of furthering
871 any official governmental investigation.

872 (d) (i) If a secrecy order has been granted by the court regarding the interrogation or
873 disclosure of evidence by a witness under this subsection, and if the court finds a further
874 restriction on the witness is appropriate, the court may order the witness not to disclose the
875 substance of the witness's testimony or evidence given by the witness to others.

876 (ii) Any order to not disclose made under this subsection shall be served with the
877 subpoena.

878 (iii) In an appropriate circumstance the court may order that the witness not disclose
879 the existence of the investigation to others.

880 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court
881 that one or more of the following risks exist:

882 (A) disclosure by the witness would cause destruction of evidence;

883 (B) disclosure by the witness would taint the evidence provided by other witnesses;

884 (C) disclosure by the witness to a target of the investigation would result in flight or
885 other conduct to avoid prosecution;

886 (D) disclosure by the witness would damage a person's reputation; or

887 (E) disclosure by the witness would cause a threat of harm to any person.

888 (e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction
889 to a witness not to disclose the substance of testimony or evidence provided and the
890 prosecuting agency proves by a preponderance of the evidence that a witness has violated that
891 order, the court may hold the witness in contempt.

892 (ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not
893 infringe on the attorney-client relationship between the witness and the witness's attorney or on

894 [~~any other~~] another legally recognized privileged relationship.

895 (7) (a) (i) The prosecutor may submit to any district court a separate written request
896 that the application, statement of good cause, and the court's order authorizing the investigation
897 be kept secret.

898 (ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government
899 Records Access and Management Act, but need not contain any information that would
900 compromise any of the interest listed in Subsection (7)(c).

901 (b) With the court's permission, the prosecutor may submit to the court, in camera, any
902 additional information to support the request for secrecy if necessary to avoid compromising
903 the interests listed in Subsection (7)(c).

904 (c) The court shall consider all information in the application and order authorizing the
905 investigation and any information received in camera and shall order that all information be
906 placed in the public file except information that, if disclosed, would pose:

907 (i) a substantial risk of harm to a person's safety;

908 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

909 (iii) a serious impediment to the investigation.

910 (d) Before granting an order keeping secret documents and other information received
911 under this section, the court shall narrow the secrecy order as much as reasonably possible in
912 order to preserve the openness of court records while protecting the interests listed in
913 Subsection (7)(c).

914 Section 11. Section **77-22-2.5** is amended to read:

915 **77-22-2.5. Court orders for criminal investigations for records concerning an**
916 **electronic communications system or service or remote computing service -- Content --**
917 **Fee for providing information.**

918 (1) As used in this section:

919 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
920 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
921 radio, electromagnetic, photoelectronic, or photooptical system.

922 (ii) "Electronic communication" does not include:

923 (A) any wire or oral communication;

924 (B) any communication made through a tone-only paging device;

925 (C) any communication from a tracking device; or

926 (D) electronic funds transfer information stored by a financial institution in a
927 communications system used for the electronic storage and transfer of funds.

928 (b) "Electronic communications service" means any service which provides for users
929 the ability to send or receive wire or electronic communications.

930 (c) "Electronic communications system" means any wire, radio, electromagnetic,
931 photooptical, or photoelectronic facilities for the transmission of wire or electronic
932 communications, and any computer facilities or related electronic equipment for the electronic
933 storage of the communication.

934 (d) "Internet service provider" has the same definition as in Section 76-10-1230.

935 (e) "Prosecutor" has the same definition as in Section ~~[77-22-2]~~ 77-22-4.5.

936 (f) "Remote computing service" means the provision to the public of computer storage
937 or processing services by means of an electronic communications system.

938 (g) "Sexual offense against a minor" means:

939 (i) sexual exploitation of a minor ~~[as defined in Section 76-5b-201]~~ or attempted sexual
940 exploitation of a minor in violation of Section 76-5b-201;

941 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
942 of Title 76, Chapter 5, Part 4, Sexual Offenses;

943 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
944 Section 76-10-1206;

945 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
946 76-4-401; or

947 (v) human trafficking of a child in violation of Section 76-5-308.5.

948 (2) When a law enforcement agency is investigating a sexual offense against a minor,
949 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
950 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
951 service or remote computing service has been used in the commission of a criminal offense, a
952 law enforcement agent shall:

953 (a) articulate specific facts showing reasonable grounds to believe that the records or
954 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and
955 material to an ongoing investigation;

956 (b) present the request to a prosecutor for review and authorization to proceed; and

957 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703
958 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing
959 service provider that owns or controls the Internet protocol address, websites, email address, or
960 service to a specific telephone number, requiring the production of the following information,
961 if available, upon providing in the court order the Internet protocol address, email address,
962 telephone number, or other identifier, and the dates and times the address, telephone number,
963 or other identifier [~~was~~] is suspected of being used in the commission of the offense:

964 (i) names of subscribers, service customers, and users;

965 (ii) addresses of subscribers, service customers, and users;

966 (iii) records of session times and durations;

967 (iv) length of service, including the start date and types of service utilized; and

968 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
969 including any temporarily assigned network address.

970 (3) A court order issued under this section shall state that the electronic
971 communications system or service or remote computing service provider shall produce any
972 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation
973 of the suspected criminal activity or offense as described in the court order.

974 (4) (a) An electronic communications system or service or remote computing service
975 provider that provides information in response to a court order issued under this section may
976 charge a fee, not to exceed the actual cost, for providing the information.

977 (b) The law enforcement agency conducting the investigation shall pay the fee.

978 (5) The electronic communications system or service or remote computing service
979 provider served with or responding to the court order may not disclose the court order to the
980 account holder identified pursuant to the court order for a period of 90 days.

981 (6) If the electronic communications system or service or remote computing service
982 provider served with the court order does not own or control the Internet protocol address,
983 websites, or email address, or provide service for the telephone number that is the subject of
984 the court order, the provider shall notify the investigating law enforcement agency that [~~it~~] the
985 provider does not have the information.

986 (7) There is no cause of action against any provider or wire or electronic

987 communication service, or [its] the provider or service's officers, employees, agents, or other
988 specified persons, for providing information, facilities, or assistance in accordance with the
989 terms of the court order issued under this section or statutory authorization.

990 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
991 Chapter 23b, Access to Electronic Communications.

992 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
993 Access to Electronic Communications, apply to providers and subscribers subject to a court
994 order issued under this section.

995 (9) [Every] A prosecutorial agency shall annually on or before February 15 report to
996 the Commission on Criminal and Juvenile Justice:

997 (a) the number of requests for court orders authorized by the prosecutorial agency;

998 (b) the number of orders issued by the court and the criminal offense, pursuant to

999 Subsection (2), each order was used to investigate; and

1000 (c) if the court order led to criminal charges being filed, the type and number of
1001 offenses charged.

1002 Section 12. **Repealer.**

1003 This bill repeals:

1004 Section **76-7-104, Fornication.**