

HB0199S02 compared with HB0199

~~{Omitted text}~~ shows text that was in HB0199 but was omitted in HB0199S02

inserted text shows text that was not in HB0199 but was inserted into HB0199S02

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1 **Substance Use Treatment and Enforcement Amendments**

. 2025 GENERAL SESSION

. STATE OF UTAH

. **Chief Sponsor: Tyler Clancy**

. **Senate Sponsor: Brady Brammer**

2

3 **LONG TITLE**

4 **General Description:**

5 This bill addresses treatment and enforcement issues related to substance use.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines terms;

9 ▶ requires a local substance abuse authority to include in the authority's annual plan a
{~~comprehensive~~} list of available substance use {~~services~~} service providers, in a form and format
usable by first responders;

12 ▶ requires a local mental health authority to include in the authority's annual plan a
{~~comprehensive~~} list of available mental health {~~services~~} service providers, in a form and format
usable by first responders;

15 ▶ allows and encourages first responders to offer a referral to substance use or mental health
services to an individual who experiences an intentional or accidental overdose;

17 ▶ addresses requirements for syringe exchange programs and information collected relating to
syringe exchange programs;

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- 19 ▶ allows {~~a substance use disorder~~} an opioid treatment {~~provider~~} program to operate a mobile unit to provide medication to treat substance use withdrawal symptoms or an opioid use disorder, and provides certain requirements for operation of a mobile unit;
- 22 ▶ grants rulemaking authority to the Department of Health and Human Services regarding the requirements for operating a mobile unit to provide medication to treat substance use withdrawal symptoms or an opioid use disorder;
- 25 ▶ amends criminal provisions of the Utah Controlled Substances Act{~~, including the creation of a treatment-mandated felony option for certain convictions~~} ;
- 27 ▶ creates the crime of maintenance of a drug-involved premises;
- 28 ▶ amends provisions regarding civil nuisance actions, including provisions that relate to a nuisance caused by unlawful actions {~~involving~~} related to a controlled substance;
- 30 ▶ repeals intent language; {~~and~~}
- 30 ▶ **adds a coordination clause between this bill and H.B. 355, Critical Infrastructure Materials Amendments, to provide that changes made to Section 76B-6-1101 in H.B. 355 are incorporated into changes this bill makes to that section; and**
- 31 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 This bill provides a coordination clause.

39 **AMENDS:**

40 **10-3-703** , as last amended by Laws of Utah 2020, Chapter 89 , as last amended by Laws of Utah 2020, Chapter 89

41 **17-43-102** , as last amended by Laws of Utah 2023, Chapter 327 , as last amended by Laws of Utah 2023, Chapter 327

42 **17-43-201** , as last amended by Laws of Utah 2023, Chapters 15, 327 , as last amended by Laws of Utah 2023, Chapters 15, 327

43 **17-43-301** , as last amended by Laws of Utah 2024, Chapters 240, 299 , as last amended by Laws of Utah 2024, Chapters 240, 299

44 **17-53-223** , as last amended by Laws of Utah 2020, Chapter 89 , as last amended by Laws of Utah 2020, Chapter 89

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26B-7-117 , as last amended by Laws of Utah 2024, Chapter 250 , as last amended by Laws of Utah 2024, Chapter 250

46 **58-17b-309.7 , as last amended by Laws of Utah 2024, Chapter 240 , as last amended by Laws of Utah 2024, Chapter 240**

47 **58-37-8** , as last amended by Laws of Utah 2024, Chapter 105 , as last amended by Laws of Utah 2024, Chapter 105

45 ~~{58-37f-201 , as last amended by Laws of Utah 2023, Chapters 329, 415 , as last amended by Laws of Utah 2023, Chapters 329, 415}~~

46 ~~{58-37f-704 , as last amended by Laws of Utah 2022, Chapter 116 , as last amended by Laws of Utah 2022, Chapter 116}~~

48 **76-10-801** , as enacted by Laws of Utah 1973, Chapter 196 , as enacted by Laws of Utah 1973, Chapter 196

49 **76-10-803** , as last amended by Laws of Utah 2019, Chapters 81, 227 , as last amended by Laws of Utah 2019, Chapters 81, 227

50 **78B-6-1101** , as last amended by Laws of Utah 2021, Chapter 207 , as last amended by Laws of Utah 2021, Chapter 207

51 **78B-6-1102** , as enacted by Laws of Utah 2008, Chapter 3 , as enacted by Laws of Utah 2008, Chapter 3

52 **78B-6-1102.5** , as enacted by Laws of Utah 2010, Chapter 99 , as enacted by Laws of Utah 2010, Chapter 99

53 **78B-6-1103** , as last amended by Laws of Utah 2011, Chapter 185 , as last amended by Laws of Utah 2011, Chapter 185

54 **78B-6-1106** , as enacted by Laws of Utah 2008, Chapter 3 , as enacted by Laws of Utah 2008, Chapter 3

55 **78B-6-1107** , as last amended by Laws of Utah 2021, Chapter 207 , as last amended by Laws of Utah 2021, Chapter 207

56 **78B-6-1108** , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

57 **78B-6-1109** , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

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78B-6-1110 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

59 78B-6-1111 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

60 78B-6-1112 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

61 78B-6-1113 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

62 78B-6-1114 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

63 ENACTS:

64 26B-5-121 , Utah Code Annotated 1953 , Utah Code Annotated 1953

64 ~~{58-17b-309.8 , Utah Code Annotated 1953 , Utah Code Annotated 1953}~~

65 76-10-803.1 , Utah Code Annotated 1953 , Utah Code Annotated 1953

66 REPEALS:

67 78B-6-1105 , as renumbered and amended by Laws of Utah 2008, Chapter 3 , as renumbered and amended by Laws of Utah 2008, Chapter 3

68 **Utah Code Sections affected by Coordination Clause:**

69 78B-6-1101 , as last amended by Laws of Utah 2021, Chapter 207 , as last amended by Laws of Utah 2021, Chapter 207

70

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

72 Section 1. Section **10-3-703** is amended to read:

73 **10-3-703. Criminal penalties for violation of ordinance -- Civil penalties prohibited --**

Exceptions.

73 (1)

- . (a) The governing body of a municipality may impose a criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301, by a term of imprisonment up to six months, or by both the fine and term of imprisonment.

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(b) Notwithstanding Subsection (1)(a), a municipality may not impose a criminal penalty greater than an infraction for a violation pertaining to an individual's pet, as defined in Section 4-12-102, or an individual's use of the individual's residence unless:

80 (i) the violation:

81 (A) is a nuisance as that term is defined in [~~Subsection 78B-6-1101(1)~~] Section 78B-6-1101; and

83 (B) threatens the health, safety, or welfare of the individual or an identifiable third party; or

85 (ii) the municipality has imposed a fine on the individual for a violation that involves the same residence or pet on three previous occasions within the past 12 months.

87 (c) Subsection (1)(b) does not apply to municipal enforcement of a building code or fire code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.

89 (2)

. (a) Except as provided in Subsection (2)(b), the governing body may prescribe a civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301.

92 (b) A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.

94 (3)

. (a) Except as provided in Subsection (3)(b) or Section 77-7-18, a municipal officer or official who is not a law enforcement officer described in Section 53-13-103 or a special function officer described in Section 53-13-105 may not issue a criminal citation for a violation that is punished as a misdemeanor.

98 (b) Notwithstanding Subsection (1) or (3)(a), the following may issue a criminal citation for a violation that is punished as a misdemeanor if the violation threatens the health and safety of an animal or the public:

101 (i) a fire officer described in Section 53-7-102; or

102 (ii) an animal control officer described in Section 11-46-102.

103 (4) A municipality may not issue more than one infraction within a 14-day time period for a violation described in Subsection (1)(b) that is ongoing.

107 Section 2. Section **17-43-102** is amended to read:

108 **17-43-102. Definitions.**

As used in this chapter:

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- 108 (1) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
110 (2) "Division" means the Division of Integrated Healthcare within the department.
111 (3) "First responder" means:
112 (a) a law enforcement officer, as that term is defined in Section 53-13-103;
113 (b) emergency medical service personnel, as that term is defined in Section 53-2d-101;
114 (c) an emergency medical technician, as that term is defined in Section 53-2e-101;
115 (d) an advanced emergency medical technician, as that term is defined in Section 53-2e-101;
117 (e) a firefighter, as that term is defined in Section 53B-8c-102; {or}
118 (f) a dispatcher, as that term is defined in Section 53-6-102{:}; or
121 (g) a mobile outreach social worker.

122 Section 3. Section **17-43-201** is amended to read:

123 **17-43-201. Local substance abuse authorities -- Responsibilities.**

- 121 (1)
. (a)
. (i) In each county operating under a county executive-council form of government under Section
17-52a-203, the county legislative body is the local substance abuse authority, provided
however that any contract for plan services shall be administered by the county executive.
125 (ii) In each county operating under a council-manager form of government under Section
17-52a-204, the county manager is the local substance abuse authority.
127 (iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county
legislative body is the local substance abuse authority.
129 (b) Within legislative appropriations and county matching funds required by this section, and under the
direction of the division, each local substance abuse authority shall:
131 (i) develop substance use prevention and treatment services plans;
132 (ii) provide substance use services to residents of the county; and
133 (iii) cooperate with efforts of the division to promote integrated programs that address an individual's
substance use, mental health, and physical healthcare needs, as described in Section 26B-5-102.
136 (c) Within legislative appropriations and county matching funds required by this section, each local
substance abuse authority shall cooperate with the efforts of the department to promote a system
of care, as defined in Section 26B-5-101, for minors with or at risk for complex emotional and
behavioral needs, as described in Section [~~26B-1-202~~] 26B-5-101.

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- 141 (2)
- . (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to:
- 143 (i) provide substance use prevention and treatment services; or
- 144 (ii) create a united local health department that provides substance use treatment services, mental health services, and local health department services in accordance with Subsection (3).
- 147 (b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of substance use services.
- 149 (c) Each agreement for joint substance use services shall:
- 150 (i)
- . (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined substance abuse authorities and as the custodian of money available for the joint services; and
- 153 (B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from the money for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;
- 157 (ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined substance abuse authorities;
- 160 (iii)
- . (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined substance abuse authorities; and
- 163 (B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined substance abuse authorities; and
- 167 (iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.
- 171 (d) An agreement for joint substance use services may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

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(3) A county governing body may elect to combine the local substance abuse authority with the local mental health authority created in Part 3, Local Mental Health Authorities, and the local health department created in Title 26A, Chapter 1, Part 1, Local Health Department Act, to create a united local health department under Section 26A-1-105.5. A local substance abuse authority that joins a united local health department shall comply with this part.

181 (4)

(a) Each local substance abuse authority is accountable to the department and the state with regard to the use of state and federal funds received from those departments for substance use services, regardless of whether the services are provided by a private contract provider.

185 (b) Each local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the department regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance use programs and services. The department shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

192 (5) Each local substance abuse authority shall:

193 (a) review and evaluate substance use prevention and treatment needs and services, including substance use needs and services for individuals incarcerated in a county jail or other county correctional facility;

196 (b) annually prepare and submit to the division a plan approved by the county legislative body for funding and service delivery that includes:

198 (i) provisions for services, either directly by the substance abuse authority or by contract, for adults, youth, and children, including those incarcerated in a county jail or other county correctional facility; [~~and~~]

201 (ii) primary prevention, targeted prevention, early intervention, and treatment services; and

203 (iii) in a form and format usable by a first responder, {~~a comprehensive list~~} an inclusive list of providers of substance use services available for individuals within the local substance abuse authority's jurisdiction;

206 (c) establish and maintain, either directly or by contract, programs licensed under Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities;

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- (d) appoint directly or by contract a full or part time director for substance use programs, and prescribe the director's duties;
- 210 (e) provide input and comment on new and revised rules established by the division;
- 211 (f) establish and require contract providers to establish administrative, clinical, procurement, personnel, financial, and management policies regarding substance use services and facilities, in accordance with the rules of the division, and state and federal law;
- 215 (g) establish mechanisms allowing for direct citizen input;
- 216 (h) annually contract with the division to provide substance use programs and services in accordance with the provisions of Title 26B, Chapter 5, Health Care - Substance Use and Mental Health;
- 219 (i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;
- 222 (j) promote or establish programs for the prevention of substance use within the community setting through community-based prevention programs;
- 224 (k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;
- 226 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Special Districts, and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
- 230 (m) for persons convicted of driving under the influence in violation of Section 41-6a-502 or 41-6a-517, conduct the following as defined in Section 41-6a-501:
- 232 (i) a screening;
- 233 (ii) an assessment;
- 234 (iii) an educational series; and
- 235 (iv) substance [~~use~~] abuse treatment; and
- 236 (n) utilize proceeds of the accounts described in Subsection 26B-5-209(1) to supplement the cost of providing the services described in Subsection (5)(m).
- 238 (6) Before disbursing any public funds, each local substance abuse authority shall require that each entity that receives any public funds from the local substance abuse authority agrees in writing that:
- 241 (a) the entity's financial records and other records relevant to the entity's performance of the services provided to the local substance abuse authority shall be subject to examination by:

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- 244 (i) the division;
- 245 (ii) the local substance abuse authority director;
- 246 (iii)
- . (A) the county treasurer and county or district attorney; or
- 247 (B) if two or more counties jointly provide substance use services under an agreement under Subsection
(2), the designated treasurer and the designated legal officer;
- 250 (iv) the county legislative body; and
- 251 (v) in a county with a county executive that is separate from the county legislative body, the county
executive;
- 253 (b) the county auditor may examine and audit the entity's financial and other records relevant to the
entity's performance of the services provided to the local substance abuse authority; and
- 256 (c) the entity will comply with the provisions of Subsection (4)(b).
- 257 (7) A local substance abuse authority may receive property, grants, gifts, supplies, materials,
contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are
conditioned upon their use for a specified service or program, they shall be so used.
- 261 (8)
- . (a) As used in this section, "public funds" means the same as that term is defined in Section 17-43-203.
- 263 (b) Public funds received for the provision of services pursuant to the local substance abuse plan
may not be used for any other purpose except those authorized in the contract between the local
substance abuse authority and the provider for the provision of plan services.
- 267 (9) Subject to the requirements of the federal Substance Abuse Prevention and Treatment Block Grant,
Pub. L. No. 102-321, a local substance abuse authority shall ensure that all substance use treatment
programs that receive public funds:
- 270 (a) accept and provide priority for admission to a pregnant woman or a pregnant minor; and
- 272 (b) if admission of a pregnant woman or a pregnant minor is not possible within 24 hours of the time
that a request for admission is made, provide a comprehensive referral for interim services that:
- 275 (i) are accessible to the pregnant woman or pregnant minor;
- 276 (ii) are best suited to provide services to the pregnant woman or pregnant minor;
- 277 (iii) may include:
- 278 (A) counseling;
- 279 (B) case management; or

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- 280 (C) a support group; and
281 (iv) shall include a referral for:
282 (A) prenatal care; and
283 (B) counseling on the effects of alcohol and drug use during pregnancy.
284 (10) If a substance use treatment program described in Subsection (9) is not able to accept and admit
a pregnant woman or pregnant minor under Subsection (9) within 48 hours of the time that request
for admission is made, the local substance abuse authority shall contact the Division of Integrated
Healthcare for assistance in providing services to the pregnant woman or pregnant minor.

292 Section 4. Section **17-43-301** is amended to read:

293 **17-43-301. Local mental health authorities -- Responsibilities.**

291 (1) As used in this section:

- 292 (a) "Assisted outpatient treatment" means the same as that term is defined in Section 26B-5-301.
294 (b) "Crisis worker" means the same as that term is defined in Section 26B-5-610.
295 (c) "Local mental health crisis line" means the same as that term is defined in Section 26B-5-610.
297 (d) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
298 (e) "Public funds" means the same as that term is defined in Section 17-43-303.
299 (f) "Statewide mental health crisis line" means the same as that term is defined in Section 26B-5-610.

301 (2)

. (a)

. (i) In each county operating under a county executive-council form of government under Section
17-52a-203, the county legislative body is the local mental health authority, provided however
that any contract for plan services shall be administered by the county executive.

305 (ii) In each county operating under a council-manager form of government under Section
17-52a-204, the county manager is the local mental health authority.

307 (iii) In each county other than a county described in Subsection (2)(a)(i) or (ii), the county
legislative body is the local mental health authority.

309 (b) Within legislative appropriations and county matching funds required by this section, under the
direction of the division, each local mental health authority shall:

311 (i) provide mental health services to individuals within the county; and

312 (ii) cooperate with efforts of the division to promote integrated programs that address an individual's
substance use, mental health, and physical healthcare needs, as described in Section 26B-5-102.

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- 315 (c) Within legislative appropriations and county matching funds required by this section, each local
mental health authority shall cooperate with the efforts of the department to promote a system
of care, as defined in Section 26B-5-101, for minors with or at risk for complex emotional and
behavioral needs, as described in Section [~~26B-1-202~~] 26B-5-101.
- 320 (3)
- . (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or
more counties may join to:
- 322 (i) provide mental health prevention and treatment services; or
- 323 (ii) create a united local health department that combines substance use treatment services, mental
health services, and local health department services in accordance with Subsection (4).
- 326 (b) The legislative bodies of counties joining to provide services may establish acceptable ways of
apportioning the cost of mental health services.
- 328 (c) Each agreement for joint mental health services shall:
- 329 (i)
- . (A) designate the treasurer of one of the participating counties or another person as the treasurer for the
combined mental health authorities and as the custodian of money available for the joint services;
and
- 332 (B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may
make payments from the money available for the joint services upon audit of the appropriate
auditing officer or officers representing the participating counties;
- 336 (ii) provide for the appointment of an independent auditor or a county auditor of one of the participating
counties as the designated auditing officer for the combined mental health authorities;
- 339 (iii)
- . (A) provide for the appointment of the county or district attorney of one of the participating counties as
the designated legal officer for the combined mental health authorities; and
- 342 (B) authorize the designated legal officer to request and receive the assistance of the county or district
attorneys of the other participating counties in defending or prosecuting actions within their counties
relating to the combined mental health authorities; and
- 346 (iv) provide for the adoption of management, clinical, financial, procurement, personnel, and
administrative policies as already established by one of the participating counties or as approved by
the legislative body of each participating county or interlocal board.

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- 350 (d) An agreement for joint mental health services may provide for:
- 351 (i) joint operation of services and facilities or for operation of services and facilities under contract by
one participating local mental health authority for other participating local mental health authorities;
and
- 354 (ii) allocation of appointments of members of the mental health advisory council between or among
participating counties.
- 356 (4) A county governing body may elect to combine the local mental health authority with the local
substance abuse authority created in Part 2, Local Substance Abuse Authorities, and the local health
department created in Title 26A, Chapter 1, Part 1, Local Health Department Act, to create a united
local health department under Section 26A-1-105.5. A local mental health authority that joins with a
united local health department shall comply with this part.
- 362 (5)
- . (a) Each local mental health authority is accountable to the department and the state with regard to the
use of state and federal funds received from those departments for mental health services, regardless
of whether the services are provided by a private contract provider.
- 366 (b) Each local mental health authority shall comply, and require compliance by its contract provider,
with all directives issued by the department regarding the use and expenditure of state and federal
funds received from those departments for the purpose of providing mental health programs and
services. The department shall ensure that those directives are not duplicative or conflicting, and
shall consult and coordinate with local mental health authorities with regard to programs and
services.
- 372 (6)
- . (a) Each local mental health authority shall:
- 373 (i) review and evaluate mental health needs and services, including mental health needs and
services for:
- 375 (A) an individual incarcerated in a county jail or other county correctional facility; and
- 377 (B) an individual who is a resident of the county and who is court ordered to receive assisted outpatient
treatment under Section 26B-5-351;
- 379 (ii) in accordance with [~~Subsection (6)(b)~~] Subsections (6)(b) and (c), annually prepare and submit
to the division a plan approved by the county legislative body for mental health funding and
service delivery, either directly by the local mental health authority or by contract;

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- 383 (iii) establish and maintain, either directly or by contract, programs licensed under Title 26B,
Chapter 2, Part 1, Human Services Programs and Facilities;
- 385 (iv) appoint, directly or by contract, a full-time or part-time director for mental health programs and
prescribe the director's duties;
- 387 (v) provide input and comment on new and revised rules established by the division;
- 388 (vi) establish and require contract providers to establish administrative, clinical, personnel,
financial, procurement, and management policies regarding mental health services and facilities,
in accordance with the rules of the division, and state and federal law;
- 392 (vii) establish mechanisms allowing for direct citizen input;
- 393 (viii) annually contract with the division to provide mental health programs and services in
accordance with the provisions of Title 26B, Chapter 5, Health Care - Substance Use and
Mental Health;
- 396 (ix) comply with all applicable state and federal statutes, policies, audit requirements, contract
requirements, and any directives resulting from those audits and contract requirements;
- 399 (x) provide funding equal to at least 20% of the state funds that it receives to fund services
described in the plan;
- 401 (xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation
Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Special Districts, and Title 51, Chapter
2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
Entities Act; and
- 405 (xii) take and retain physical custody of minors committed to the physical custody of local mental
health authorities by a judicial proceeding under Title 26B, Chapter 5, Part 4, Commitment of
Persons Under Age 18.
- 408 (b) Each plan under Subsection (6)(a)(ii) shall include services for adults, youth, and children, which
shall include:
- 410 (i) inpatient care and services;
- 411 (ii) residential care and services;
- 412 (iii) outpatient care and services;
- 413 (iv) 24-hour crisis care and services;
- 414 (v) psychotropic medication management;
- 415 (vi) psychosocial rehabilitation, including vocational training and skills development;

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- 416 (vii) case management;
- 417 (viii) community supports, including in-home services, housing, family support services, and respite services;
- 419 (ix) consultation and education services, including case consultation, collaboration with other county service agencies, public education, and public information; and
- 421 (x) services to persons incarcerated in a county jail or other county correctional facility.
- 423 (c) Each plan under Subsection (6)(a)(ii) shall include, in a form and format usable by a first responder, { a comprehensive } an inclusive list of providers of mental health services { available } for individuals within the local mental health authority's jurisdiction.
- 426 (7)
- . (a) If a local mental health authority provides for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall:
- 429 (i) collaborate with the statewide mental health crisis line described in Section 26B-5-610;
- 431 (ii) ensure that each individual who answers calls to the local mental health crisis line:
- 432 (A) is a mental health therapist or a crisis worker; and
- 433 (B) meets the standards of care and practice established by the Division of Integrated Healthcare, in accordance with Section 26B-5-610; and
- 435 (iii) ensure that when necessary, based on the local mental health crisis line's capacity, calls are immediately routed to the statewide mental health crisis line to ensure that when an individual calls the local mental health crisis line, regardless of the time, date, or number of individuals trying to simultaneously access the local mental health crisis line, a mental health therapist or a crisis worker answers the call without the caller first:
- 441 (A) waiting on hold; or
- 442 (B) being screened by an individual other than a mental health therapist or crisis worker.
- 444 (b) If a local mental health authority does not provide for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall use the statewide mental health crisis line as a local crisis line resource.
- 448 (8) Before disbursing any public funds, each local mental health authority shall require that each entity that receives any public funds from a local mental health authority agrees in writing that:
- 451

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(a) the entity's financial records and other records relevant to the entity's performance of the services provided to the mental health authority shall be subject to examination by:

454 (i) the division;

455 (ii) the local mental health authority director;

456 (iii)

. (A) the county treasurer and county or district attorney; or

457 (B) if two or more counties jointly provide mental health services under an agreement under Subsection (3), the designated treasurer and the designated legal officer;

460 (iv) the county legislative body; and

461 (v) in a county with a county executive that is separate from the county legislative body, the county executive;

463 (b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local mental health authority; and

466 (c) the entity will comply with the provisions of Subsection (5)(b).

467 (9) A local mental health authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

471 (10) Public funds received for the provision of services pursuant to the local mental health plan may not be used for any other purpose except those authorized in the contract between the local mental health authority and the provider for the provision of plan services.

475 (11) A local mental health authority shall provide assisted outpatient treatment services to a resident of the county who has been ordered under Section 26B-5-351 to receive assisted outpatient treatment.

481 Section 5. Section **17-53-223** is amended to read:

482 **17-53-223. Ordinances -- Power to enact -- Penalty for violation.**

480 (1) A county legislative body may:

481 (a) pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by this title, and as are necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace, and good order, comfort, and convenience of the county and its inhabitants, and for the protection of property in the county;

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- (b) enforce obedience to ordinances with fines or penalties as the county legislative body considers proper; and
- 489 (c) pass ordinances to control air pollution.
- 490 (2)
- . (a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or both fine and imprisonment.
- 493 (b) Notwithstanding Subsection (2)(a), a county may not impose a criminal penalty greater than an infraction for a violation pertaining to an individual's pet, as defined in Section 4-12-102, or an individual's use of the individual's residence unless:
- 496 (i) the violation:
- 497 (A) is a nuisance as that term is defined in [~~Subsection 78B-6-1101(1)~~] Section 78B-6-1101; and
- 499 (B) threatens the health, safety, or welfare of the individual or an identifiable third party; or
- 501 (ii) the county has imposed a fine on the individual for a violation that involves the same residence or pet on three previous occasions within the past 12 months.
- 503 (c) Subsection (2)(b) does not apply to county enforcement of a building code or fire code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.
- 505 (d) When a penalty for a violation of an ordinance includes any possibility of imprisonment, the county legislative body shall include in the ordinance a statement that the county is required, under Section 78B-22-301, to provide for indigent defense services, as that term is defined in Section 78B-22-102.
- 509 (e) Notwithstanding any other provision of law, the following may issue a criminal citation for a violation that is punished as a misdemeanor if the violation threatens the health and safety of an animal or the public:
- 512 (i) a fire officer described in Section 53-7-102;
- 513 (ii) a law enforcement officer described in Section 53-13-103; or
- 514 (iii) an animal control officer described in Section 11-46-102.
- 515 (3)
- . (a) Except as specifically authorized by statute, the county legislative body may not impose a civil penalty for the violation of a county traffic ordinance.
- 517 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles on a highway.
- 519 (4) A county may not issue more than one infraction within a 14-day period for a violation described in Subsection (2)(b) that is ongoing.

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524 Section 6. Section 6 is enacted to read:

525 **26B-5-121. Voluntary referrals to substance use and mental health services by first**
526 **responders -- Immunity from liability -- Reporting -- Rulemaking.**

524 (1) As used in this section:

525 (a) "First responder" means:

526 (i) a law enforcement officer, as that term is defined in Section 53-13-103;

527 (ii) emergency medical service personnel, as that term is defined in Section 53-2d-101;

528 (iii) an emergency medical technician, as that term is defined in Section 53-2e-101;

529 (iv) an advanced emergency medical technician, as that term is defined in Section 53-2e-101;

531 (v) a firefighter, as that term is defined in Section 53B-8c-102; or

532 (vi) a dispatcher, as that term is defined in Section 53-6-102.

533 (b) "Local services list" means a comprehensive list of local substance use or mental health services, as
described in Subsections 17-43-201(5)(b)(iii) and 17-43-301(6)(c).

535 (2) As and when appropriate, a first responder is encouraged to offer a referral to substance use or
mental health services to an individual who experiences an intentional or accidental overdose.

538 (3) If an individual expresses interest in substance use or mental health services, a first responder may,
as appropriate:

540 (a) facilitate a real-time connection with an appropriate local service provider;

541 (b) contact the statewide 988 crisis line for assistance; or

542 (c) if the individual does not wish to speak with a service provider at that time, provide the individual
with a physical copy of a local services list.

544 (4)

. (a) This section does not create a duty for a first responder to offer or provide a referral to substance use
or mental health services.

546 (b) A first responder and an employer of a first responder are not liable under this section for a first
responder's action or failure to act in regards to offering or providing a referral to substance use or
mental health services as described in this section.

550 (c) This section does not affect any privilege or immunity from liability, exemption from law,
ordinance, or rule, or any other benefit that applies to a first responder or an employer of a first
responder.

553 (5)

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- . (a) If a first responder offers a referral to substance use or mental health services as described in this section, the first responder's employer shall report annually to the division the total number of individuals who accepted a referral from all first responders employed by the employer.
- 557 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying how the reports required by Subsection (5)(a) shall be submitted.
- 563 Section 7. Section **26B-7-117** is amended to read:
- 564 **26B-7-117. Syringe exchange and education.**
- 562 (1) The following may operate a syringe exchange program in the state to prevent the transmission of disease~~[and]~~, reduce morbidity and mortality, and facilitate access to treatment and recovery services among individuals who inject drugs, and those individuals' contacts:
- 565 (a) a government entity, including:
- 566 (i) the department;
- 567 (ii) a local health department; or
- 568 (iii) a local substance abuse authority, as defined in Section 26B-5-101;
- 569 (b) a nongovernment entity, including:
- 570 (i) a nonprofit organization; or
- 571 (ii) a for-profit organization; or
- 572 (c) any other entity that complies with Subsections (2) and ~~[(3)]~~ (4).
- 573 (2) An entity operating a syringe exchange program in the state shall:
- 574 (a) facilitate the exchange of an individual's used syringe for one or more new syringes in sealed sterile packages;
- 576 (b) ensure that a recipient of a new syringe is given verbal and written instruction on:
- 577 (i) methods for preventing the transmission of blood-borne diseases, including hepatitis C and human immunodeficiency virus; and
- 579 (ii) options for obtaining:
- 580 (A) services for the treatment of a substance use disorder;
- 581 (B) testing for a blood-borne disease; and
- 582 (C) an opiate antagonist, as that term is defined in Section 26B-4-501; and
- 583 (c) report annually to the department the following information about the program's activities:
- 585 (i) the number of individuals who have exchanged syringes;
- 586 (ii) the number of used syringes exchanged for new syringes;~~[and]~~

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- 587 (iii) the number of new syringes provided in exchange for used syringes[-] ; {and}
592 (iv) information the program provided to individuals about recovery and treatment resources; and
588 {(iv)} (v) of the individuals who have exchanged syringes, the number of individuals who received
services for the treatment of a substance use disorder within 12 months of exchanging syringes.
- 591 (3) A person that ~~{contracts with-}~~ is licensed by the department to provide residential treatment
for a substance use disorder shall include as part of the person's admissions materials a question
asking whether the individual seeking treatment has ever received services from a syringe exchange
program.
- 595 [(3)] (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, as necessary or advisable to implement the provisions of this
section, including rules:
- 604 (a) specifying requirements for:
- 605 (i) syringe distribution;
- 606 (ii) data collection; and
- 607 (iii) the evaluation of an entity operating a syringe exchange program to ensure compliance with
applicable statutes and rules; and
- 609 (b) specifying how and when an entity operating a syringe exchange program shall make the report
required by Subsection (2)(c).
- 598 (5) An entity operating a syringe exchange program {in the state-} may not facilitate the exchange
of syringes at a ~~{location described in Subsection 58-37-8(4)(a)}~~ homeless shelter, as that term is
defined in Section 35A-16-501, or permanent supportive housing.
- 614 Section 8. Section 58-17b-309.7 is amended to read:
- 615 **58-17b-309.7. Opioid treatment program -- Mobile medication assisted treatment units.**
- 617 (1) As used in this section:
- 618 (a) "Covered provider" means an individual who is licensed to engage in:
- 619 (i) the practice of advanced practice registered nursing as defined in Section 58-31b-102;
- 621 (ii) the practice of registered nursing as defined in Section 58-31b-102; or
- 622 (iii) practice as a physician assistant as defined in Section 58-70a-102.
- 623 (b) "Mobile unit" means a mobile unit that provides medication, such as buprenorphine, methadone, or
naltrexone, to treat substance use withdrawal symptoms or a substance use disorder.
- 626 [(b)] (c) "Opioid treatment program" means a program or practitioner that is:

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- 627 (i) engaged in dispensing an opiate medication assisted treatment for opioid use disorder;
- 629 (ii) registered under 21 U.S.C. Sec. 823(g)(1);
- 630 (iii) licensed by the Division of Licensing and Background Checks within the Department of Health and
Human Services created in Section 26B-2-103; and
- 632 (iv) certified by the federal Substance Abuse and Mental Health Services Administration in accordance
with 42 C.F.R. 8.11.
- 634 (2) A covered provider may dispense opiate medication assisted treatment at an opioid treatment
program if the covered provider:
- 636 (a) is operating under the direction of a pharmacist;
- 637 (b) dispenses the opiate medication assisted treatment under the direction of a pharmacist; and
- 639 (c) acts in accordance with division ~~[rule]~~ rules made under Subsection ~~[(3)]~~ (4).
- 640 (3)
- . (a) An opioid treatment program may operate one or more mobile units to serve individuals without a
fixed address and other individuals as appropriate.
- 642 (b) A mobile unit shall operate as an extension of, and under the registration, license, and certification
held by, the opioid treatment program.
- 644 (c) The pharmacist-in-charge who is responsible for directing the operation of the opioid treatment
program shall determine the number of mobile units that may be operated as an extension of the
opioid treatment program.
- 647 (d) A covered provider may dispense prescription medication assisted treatment only:
- 648 (i) pursuant to a valid prescription; and
- 649 (ii) in compliance with the requirements described in Subsection (2).
- 650 (e) Medication may not be left in a mobile unit during the hours that the mobile unit is not in operation.
- 652 (f) An opioid treatment program that intends to operate a mobile unit shall notify the division and board
of that intention as soon as possible, but not later than one business day before the mobile unit
begins operating.
- 655 (g) An opioid treatment program that intends to discontinue operation of a mobile unit shall notify the
division and board of that intention as soon as possible, but not later than one business day before
the mobile unit discontinues operating.
- 658

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(h) The Department of Health and Human Services may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, to establish requirements for the operation of a mobile unit.

661 [(3)] (4) The division shall, in consultation with practitioners who work in an opioid treatment program, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines under which a covered provider may dispense opiate medication assisted treatment to a patient in an opioid treatment program under this section.

600 Section 8. Section 8 is enacted to read:

601 **58-17b-309.8. Mobile medication assisted treatment units.**

602 (1) As used in this section, "mobile unit" means a mobile unit that provides medication, such as buprenorphine, methadone, or naltrexone, to treat substance use withdrawal symptoms or an opioid use disorder.

605 (2) A substance use disorder treatment provider may operate one or more mobile units to serve individuals without a fixed address and other individuals as appropriate.

607 (3)

(a) A mobile unit shall be operated as an extension of a pharmacy license held by the substance use disorder treatment provider.

609 (b) The pharmacist-in-charge who is responsible for the operation of a substance use disorder treatment provider's pharmacy license shall determine the number of mobile units that may be operated as an extension of the pharmacy license.

612 (4) A mobile unit may dispense prescription medication pursuant to a valid prescription, including a prescription of a physician who practices in the mobile unit, only if the mobile unit meets all of the following requirements:

615 (a) while prescription medications are being dispensed, a licensed pharmacist shall be present in person at the mobile unit and the mobile unit shall be under the control and management of the licensed pharmacist;

618 (b) all activities of a pharmacist working with the mobile unit, including the dispensing of medication from the mobile unit, shall be undertaken in compliance with the provisions of this chapter and division rules; and

621 (c) medication may not be left in the mobile unit during the hours that the mobile unit is not in operation.

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623 (5) A substance use disorder treatment provider that intends to operate a mobile unit shall notify the
division and board of that intention as soon as possible, but not later than five business days after the
mobile unit begins operating.

626 (6) A substance use disorder treatment provider that intends to discontinue operation of a mobile
unit shall notify the division and board of that intention as soon as possible, but not later than one
business day before the mobile unit discontinues operating.

629 (7) The Department of Health and Human Services may make rules, in accordance with Title 63G,
Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, to establish
requirements for the operation of a mobile unit.

666 Section 9. Section **58-37-8** is amended to read:

667 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

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

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

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

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

656 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance
analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree

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felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

- 661 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a
substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or
subsequent conviction is guilty of a second degree felony; or
- 665 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A
misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.
- 668 (c)
- . (i) Except as provided in Subsection ~~[(1)(e)(ii)]~~ (1)(c)(iii), a person who has been convicted of a
violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate
term as described in Subsection ~~[(1)(b)]~~ (1)(c)(ii) and Title 76, Chapter 3, Punishments.
- 672 (ii) The court shall impose an indeterminate prison term for a person who has been convicted of a
violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony or a second degree felony if
the trier of fact finds beyond a reasonable doubt that, during the commission or furtherance of the
violation, the person intentionally or knowingly:
- 677 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in Section 76-10-501, that is
not a firearm, in an angry, threatening, intimidating, or coercive manner;
- 680 (B) used a firearm or had a firearm readily accessible for immediate use, as those terms are defined in
Section 76-10-501; or
- 682 (C) distributed a firearm, as that term is defined in Section 76-10-501, or possessed a firearm with intent
to distribute the firearm.
- 684 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate prison term for a
person convicted under Subsection (1)(c)(ii) if the court:
- 686 (A) details on the record the reasons why it is in the interests of justice not to impose the indeterminate
prison term;
- 688 (B) makes a finding on the record that the person does not pose a significant safety risk to the public;
and
- 690 (C) orders the person to complete the terms and conditions of supervised probation provided by the
Department of Corrections.
- 692 (d)
- .

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- (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:
- 694 (A) seven years and which may be for life; or
- 695 (B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.
- 698 (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.
- 700 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under 18 years old.
- 702 (e) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a).
- 705 (2) Prohibited acts B -- Penalties and reporting:
- 706 (a) It is unlawful:
- 707 (i) for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;
- 711 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement, vehicle, boat, aircraft, or other place to knowingly and intentionally [to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations] permit a person to occupy the building, room, tenement, vehicle, boat, aircraft, or other place while the person is unlawfully manufacturing, possessing, using, or distributing a controlled substance at that location; or
- 718 (iii) for a person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.
- 720 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 721 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or
- 723 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of ~~{:}~~
- 725 ~~{(A)}~~ a class A misdemeanor on a first ~~{for second }~~ conviction~~{E,{} :}~~ and

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- 726 ~~{(B)}~~ ~~a third degree felony~~ on a ~~{third}{}~~ ~~second~~ or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based ~~{f is guilty of a third degree felony}~~ .
- 729 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).
- 732 ~~{(d)}~~
- . ~~{(i) Upon a person's second conviction of a violation of this Subsection (2), the court may:}~~
- 734 ~~{(A) suspend the imposition or execution of the sentence contingent upon the person's completion of a drug court program as described in Section 78A-5-201;}~~
- 736 ~~{(B) suspend the imposition or execution of the sentence contingent upon the person's completion of a treatment plan recommended by an addiction specialist and approved by the court; or}~~
- 739 ~~{(C) require the person to undergo an examination concerning the criteria for essential treatment described in Section 26B-5-504 and, if the court determines based on the results of the examination that the person meets the criteria for essential treatment, the court may suspend the imposition or execution of the sentence contingent upon the person's completion of essential treatment ordered by the court.}~~
- 745 ~~{(ii) The court shall impose or execute a sentence suspended under Subsection (2)(d)(i) for a person who fails to comply with the requirements of the drug court program, court-approved treatment plan, or court-ordered essential treatment.}~~
- 748 ~~{(d){} {(e)}{}}~~
- . (i) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 752 ~~{(i)}~~ (ii) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.
- 755 ~~{(i)}~~ (iii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.

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- ~~{(e)}~~ ~~{(f)}~~ A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:
- 763 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:
- 765 (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and
- 767 (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and
- 769 (ii) Subsection ~~{(2)(d)}~~ ~~{(e)}~~, the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.
- 773 ~~{(f)}~~ ~~{(g)}~~ A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 774 (i) on a first conviction, guilty of a class B misdemeanor;
- 775 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 776 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 777 ~~{(g)}~~ ~~{(h)}~~ The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).
- 780 (3) Prohibited acts C -- Penalties:
- 781 (a) It is unlawful for a person knowingly and intentionally:
- 782 (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;
- 787 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud,

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forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

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

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

802 (b)

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

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

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

807 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

822 (vi) in or on the grounds of a library when the library is open to the public;

823 (vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);

825 (viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or

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- (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.
- 830 (b)
- . (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.
- 834 (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.
- 836 (c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.
- 840 (d)
- . (i) If the violation is of Subsection (4)(a)(ix):
- 841 (A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and
- 844 (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and
- 846 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).
- 850 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 851 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or
- 853 (ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).
- 856 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 857 (6)

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- . (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
- 862 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:
864 (i) from a separate criminal episode than the current charge; and
865 (ii) from a conviction that is separate from any other conviction used to enhance the current charge.
- 867 (7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.
- 869 (8)
- . (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.
- 871 (b) When a violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.
- 874 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.
- 878 (10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.
- 882 (11) Civil or criminal liability may not be imposed under this section on:
883 (a) a person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research;
886 (b) a law enforcement officer acting in the course and legitimate scope of the officer's employment;_or
888 (c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis

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on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.

893 (12)

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

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

901 (c)

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

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

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

908 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

911 (13)

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

913 (i) engaged in medical research; and

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

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

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

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

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

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- (15) The application of any increase in penalty under this section to a violation of Subsection (2)(a) (i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.
- 925 (16)
- . (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)
- (b) that the person or bystander:
- 927 (i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;
- 930 (ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 53-2d-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);
- 935 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;
- 938 (iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;
- 942 (v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and
- 946 (vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.
- 948 (b) The offenses referred to in Subsection (16)(a) are:
- 949 (i) the possession or use of less than 16 ounces of marijuana;
- 950 (ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and
- 952 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

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- 954 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking
medical assistance under this section during the course of a law enforcement agency's execution of a
search warrant, execution of an arrest warrant, or other lawful search.
- 958 (17) If any provision of this chapter, or the application of any provision to any person or circumstances,
is held invalid, the remainder of this chapter shall be given effect without the invalid provision or
application.
- 961 (18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than
any provision of this chapter.
- 963 (19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection
76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to complete:
- 966 (a) a screening as defined in Section 41-6a-501;
- 967 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be
appropriate; and
- 969 (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as
indicated by an assessment.

971 ~~{Section 10. Section 58-37f-201 is amended to read: }~~

972 **58-37f-201. Controlled substance database -- Creation -- Purpose.**

- 973 (1) There is created within the division a controlled substance database.
- 974 (2) The division shall administer and direct the functioning of the database in accordance with this
chapter.
- 976 (3) The division may, under state procurement laws, contract with another state agency or a private
entity to establish, operate, or maintain the database.
- 978 (4) The division shall, in collaboration with the board, determine whether to operate the database within
the division or contract with another entity to operate the database, based on an analysis of costs and
benefits.
- 981 (5) The purpose of the database is to contain:
- 982 (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed controlled
substances;
- 984 (b) data reported to the division under Section 26B-2-225 regarding poisoning or overdose;
- 986

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- (c) data reported to the division under Subsection 41-6a-502(5) or 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed controlled substance or impaired driving; and
- 989 (d) data reported to the division under Subsection 58-37-8(1)(e) or ~~[58-37-8(2)(g)]~~ 58-37-8(2)(h) regarding certain violations of Chapter 37, Utah Controlled Substances Act.
- 992 (6) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:
- 994 (a) prescribing practices and patterns of prescribing and dispensing controlled substances;
- 996 (b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;
- 998 (c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance;
- 1002 (d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy;
- 1004 (e) individuals admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance; and
- 1006 (f) individuals convicted for:
- 1007 (i) driving under the influence of a prescribed controlled substance that renders the individual incapable of safely operating a vehicle;
- 1009 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
- 1011 (iii) certain violations of Chapter 37, Utah Controlled Substances Act.

1012 ~~{Section 11. Section 58-37f-704 is amended to read: }~~

1013 **58-37f-704. Entering certain convictions into the database.**

Beginning October 1, 2016, if the division receives a report from a court under Subsection 58-37-8(1)(e) or ~~[58-37-8(2)(g)]~~ 58-37-8(2)(h), the division shall daily enter into the database the information supplied in the report.

987 Section 10. Section **76-10-801** is amended to read:

988 **76-10-801. Definitions.**

1019 ~~[(1) A nuisance is any item, thing, manner, condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.]~~ As used in this part:

1022 (1) "Controlled substance" means the same as that term is defined in Section 58-37-2.

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- 1023 (2) "Nuisance" means an item, thing, manner, or condition that:
- 1024 (a) is dangerous to human life or health; or
- 1025 (b) renders soil, air, water, or food impure or unwholesome.
- 1026 [~~(2) Any person, whether as owner, agent, or occupant who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is guilty of a class B misdemeanor.~~]
- 1029 (3)
- . (a) "Supervised drug consumption site" means a facility or premises operated or intended to provide an environment for the unlawful use of a controlled substance.
- 1031 (b) "Supervised drug consumption site" does not include a facility or premises that provides or facilitates:
- 1033 (i) an opioid treatment program, as that term is defined in Section 58-17b-309.7; or
- 1034 (ii) the use of medication pursuant to a medication assisted treatment plan, as that term is defined in Section 64-13-25.1.
- 1006 Section 11. Section **76-10-803** is amended to read:
- 1007 **76-10-803. "Public nuisance" defined -- Agricultural operations -- Critical infrastructure materials operations.**
- 1039 (1) A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission:
- 1041 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;
- 1043 (b) offends public decency;
- 1044 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;
- 1047 (d) is a nuisance as described in Section 78B-6-1107; or
- 1048 (e) in any way renders three or more persons insecure in life or the use of property.
- 1049 (2) An act which affects three or more persons in any of the ways specified in this section is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.
- 1052 (3)
- . (a) Activities conducted in the normal and ordinary course of agricultural operations, as defined in Section 4-44-102, and conducted in accordance with sound agricultural practices are presumed to be reasonable and not constitute a public nuisance under Subsection (1).

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- 1056 (b) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations,
including zoning ordinances, are presumed to be operating within sound agricultural practices.
- 1059 (4)
- . (a) Activities conducted in the normal and ordinary course of critical infrastructure materials operations,
as that term is defined in [Subsection 78B-6-1101(8)] Section 78B-6-1101, and conducted in
accordance with sound critical infrastructure materials practices are presumed to be reasonable and
not constitute a public nuisance under Subsection (1).
- 1064 (b) Critical infrastructure materials operations undertaken in conformity with federal, state, and local
laws and regulations, including zoning ordinances, are presumed to be operating within sound
critical infrastructure materials operations.
- 1037 Section 12. Section **12** is enacted to read:
- 1038 **76-10-803.1. Maintenance of a drug-involved premises.**
- 1069 (1) Terms defined in Sections 76-1-101.5 and 76-10-801 apply to this section.
- 1070 (2) An actor commits maintenance of a drug-involved premises if the actor knowingly:
- 1071 (a) opens, leases, rents, uses, or maintains any facility or premises, whether permanently or temporarily,
for the purpose of the unlawful manufacturing, distributing, or using any controlled substance;
- 1074 (b)
- . (i) manages or controls any facility or premises, whether permanently or temporarily, as an owner,
tenant, lessee, agent, employee, occupant, or mortgagee; and
- 1077 (ii) intentionally rents, leases, profits from, or makes available for use, with or without compensation,
the facility or premises for the purpose of unlawfully manufacturing, storing, distributing, or using a
controlled substance;
- 1080 (c) operates a supervised drug consumption site; or
- 1081 (d) as an owner, tenant, lessee, agent, employee, occupant, or mortgagee, intentionally opens, rents,
leases profits from, maintains, or makes available for use, with or without compensation, any
premises for the purpose of operating a supervised drug consumption site.
- 1085 (3) A violation of Subsection (2) is a second degree felony.

1057 Section 13. Section **78B-6-1101** is amended to read:

1058 **78B-6-1101. Definitions -- Nuisance -- Agriculture operations.**

1088

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- (1) ~~[A nuisance is anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.]~~ As used in this part:
- 1091 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 1092 (b) "Critical infrastructure materials operations" means the same as that term is defined in Section 10-9a-901.
- 1094 (c) "Manufacturing facility" means a factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.
- 1099 (d) "Nuisance" means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- 1102 (e)
- . (i) "Possession or use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of a controlled substance, and includes individual, joint, or group possession or use of a controlled substance.
- 1107 (ii) For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of a controlled substance with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.
- 1114 (2) A nuisance may be the subject of an action.
- 1115 ~~[(2)]~~ (3) A nuisance may include the following:
- 1116 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 1117 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 1118 (c) criminal activity committed in concert with three or more persons as provided in Section 76-3-203.1;

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- 1120 (d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
- 1122 (e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
- 1124 (f) party houses that frequently create conditions defined in Subsection ~~[(4); and]~~ (1)(d); ~~{ or }~~
- 1126 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution~~[:];~~ or
- 1097 (h) the unlawful discharge of a firearm as provided in state or local law.
- 1127 ~~[(3)]~~ (4) A nuisance under this part includes:
- 1128 (a) tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
- 1130 ~~[(a)]~~ (i) drifts in more than once in each of two or more consecutive seven-day periods; and
- 1132 ~~[(b)]~~ (ii) creates any of the conditions ~~[under]~~ described in Subsection ~~[(4);]~~ (1)(d); or
- 1133 (b) fumes resulting from the unlawful manufacturing or the unlawful possession or use of a controlled substance that drift into a residential unit a person rents, leases, or owns, from another residential or commercial unit.
- 1136 ~~[(4)]~~ (5) Subsection ~~[(3)]~~ (4)(a) does not apply to:
- 1137 (a) a residential rental unit available for temporary rental, such as for a vacation, or available for only 30 or fewer days at a time; or
- 1139 (b) a hotel or motel room.
- 1140 ~~[(5)]~~ (6) Subsection ~~[(3)]~~ (4)(a) does not apply to a unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.
- 1143 ~~[(6) An action may be brought by a person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.]~~
- 1145 (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.
- 1147 ~~[(8) "Critical infrastructure materials operations" means the same as that term is defined in Section 10-9a-901.]~~
- 1149 ~~[(9) "Manufacturing facility" means a factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials,~~

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commodities, or physical objects are combined to form a new material, commodity, or physical object.]

1125 Section 14. Section **78B-6-1102** is amended to read:

1126 **78B-6-1102. Right of action -- Remedies -- Jurisdiction for enforcement.**

1156 (1) An action for nuisance may be brought before a court with jurisdiction by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

1159 (2) Upon judgment, the [~~nuisance may be enjoined or abated, and damages may be recovered~~] court may:

1161 ~~{(a) award damages;}~~

1162 ~~{(b) order the nuisance to be enjoined or abated, which may include:}~~

1163 ~~{(i) requiring a defendant to make repairs to the nuisance property or property that is injuriously affected by the nuisance;}~~

1165 ~~{(ii) requiring a defendant to:}~~

1166 ~~{(A) install and maintain secure locks on the nuisance property's doors or windows;}~~

1167 ~~{(B) provide security personnel or video surveillance monitoring of the nuisance property; or}~~

1169 ~~{(C) install and maintain lighting in and around common areas; or}~~

1170 ~~{(iii) abatement by eviction as provided in this part;}~~

1171 ~~{(e) grant declaratory relief as described in Part 4, Declaratory Judgments;}~~

1172 ~~{(d) {award costs and reasonable attorney fees to the prevailing party as described in Section 76B-6-1114; or}~~

1174 ~~{(e) grant any other relief the court considers just and proper};~~ court may, in addition to any other relief the court considers just and proper:

1132 (a) award damages;

1133 (b) order the nuisance to be enjoined or abated, which may include:

1134 (i) requiring a defendant to make repairs to the nuisance property or property that is injuriously affected by the nuisance;

1136 (ii) requiring a defendant to:

1137 (A) install and maintain secure locks on the nuisance property's doors or windows;

1138 (B) provide security personnel or video surveillance monitoring of the nuisance property; or

1140 (C) install and maintain lighting in and around common areas; or

1141 (iii) abatement by eviction as provided in this part;

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- 1142 (c) grant declaratory relief as described in Part 4, Declaratory Judgments; or
1143 (d) award costs and reasonable attorney fees to the prevailing party as described in Section 76B-6-1114.
1175 (3) A court that issues a judgment or order under this part retains jurisdiction to enforce the judgment or order.

1147 Section 15. Section **78B-6-1102.5** is amended to read:

1148 **78B-6-1102.5. Violation of order enjoining a nuisance-- Civil penalty.**

A person who knowingly violates any judgment or order abating or [~~otherwise~~]
enjoining a nuisance, as that term is defined [~~under~~] in Section 78B-6-1101{~~;~~} :

1151 (1) is guilty of a class

B misdemeanor~~[;]~~ ; and

1152 (2) is subject to a civil penalty of \$50 per day for each day that the nuisance continues in violation of the order.

1154 Section 16. Section **78B-6-1103** is amended to read:

1155 **78B-6-1103. Manufacturing facility in operation over three years -- Limited application of restrictions.**

1185 (1)

. (a) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility~~[or operation]~~ may not be considered a nuisance~~[, private or public, by virtue]~~ because of any changed circumstance in land uses near the facility ~~[after it]~~ if:

1188 (i) the manufacturing facility has been in operation for more than three years~~[if]~~ ; and

1189 (ii) the manufacturing facility~~[or operation]~~ was not a nuisance at the time it began operation.

1191 (b) The manufacturing facility may not increase the condition asserted to be a nuisance.

1192 (c) The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.

1194 (2) ~~[The provisions of Subsection (1) may not affect or defeat]~~ Nothing in this section affects the right of [any] a person to recover damages for [any] injuries or damage sustained [because of any pollution of, or change in the condition of,] as a result of the pollution or change in the conditions of the waters of [any] a stream or [the] overflow of the lands of any person.

1199 (3)

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(a) Any and all ordinances now or in the future adopted by any county or municipal corporation in which a manufacturing facility is located and which makes its operation a nuisance or providing for an abatement as a nuisance in the circumstances set forth in this section are null and void.

1203 (b) The provisions of this Subsection (3) may not apply whenever a nuisance results from the negligent or improper operation of a manufacturing facility.

1177 Section 17. Section **78B-6-1106** is amended to read:

1178 **78B-6-1106. Rental units -- Tobacco smoke -- Drug fumes.**

1207 (1) There is no cause of action for a nuisance under Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4)(a) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:

1210 (a) tobacco smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and

1213 (b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4).

1217 (2) A cause of action for a nuisance under Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4)(a) may be brought against:

1219 (a) the individual generating the tobacco smoke;

1220 (b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises [~~he~~] the renter or lessee rents or leases; or

1223 (c) the landlord, but only if:

1224 (i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;

1226 (ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and

1229 (iii) the landlord knowingly allows the continuation of a nuisance under Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).

1233 (3) A cause of action for nuisance under Subsection 78B-6-1101(4)(b) may be brought against:

1235 (a) an individual who generates fumes by the unlawful manufacturing or the unlawful possession or use of a controlled substance;

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- (b) a renter or lessee who permits or fails to control the generation of fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance on the premises the renter or lessee rents or leases; or
- 1240 (c) a landlord, but only if:
- 1241 (i) the complaining renter or lessee has provided to the landlord a statement in writing indicating that fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance are creating a nuisance in the renter's or lessee's unit; and
- 1245 (ii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(4)(b) after receipt of written notice under Subsection (3)(c)(i).
- 1219 Section 18. Section **78B-6-1107** is amended to read:
- 1220 **78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Discharge of a firearm -- Defense.**
- 1250 (1) Every building or place is a nuisance where:
- 1251 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, [~~or~~]acquisition, or possession or use occurs of any controlled substance, precursor, or analog [~~specified~~] described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 1254 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as that term is defined in Subsection 78B-6-1101(1);
- 1257 (c) criminal activity is committed in concert with three or more persons as [~~provided~~] described in Section 76-3-203.1;
- 1259 (d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
- 1261 (e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
- 1263 (f) parties occur frequently which create the conditions of a nuisance as that term is defined in Subsection 78B-6-1101(1);
- 1265 (g) prostitution or promotion of prostitution is regularly carried on by one or more persons as [~~provided~~] described in Title 76, Chapter 10, Part 13, Prostitution; [~~and~~]
- 1267 (h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises [~~and~~]; and
- 1241 (i) the unlawful discharge of a firearm, as provided in state or local law, occurs on the premises.

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- 1268 (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to the possession or use of a controlled substance.
- 1270 [~~(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).~~]
- 1272 (3) Evidence of a previous conviction for a crime described in Subsection (1) may not be used in an action for nuisance under this part.
- 1249 Section 19. Section **78B-6-1108** is amended to read:
- 1250 **78B-6-1108. Nuisance -- Abatement by eviction.**
- 1276 (1) {~~Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any } corporation, partnership } person { or business doing business in the county, in } his or } {their own name or { names, { } } A person whose property is injuriously affected or whose personal enjoyment is lessened by a nuisance described in Section 78B-6-1107 } may [maintain] bring an action for abatement by eviction in a court [of competent] with jurisdiction [~~to abate the nuisance and obtain an order for the automatic eviction of the tenant~~].~~
- 1285 (2)
- . {~~(a) A group of citizens may bring an action for abatement by eviction under this section if each citizen in the group would have the right to bring an action individually.~~}
- 1288 {~~(b) The court may designate a spokesperson [of any] from a group of citizens { who would otherwise have the right to maintain an action in their individual names against the defendant under this section { } described in Subsection (2)(a) to represent the group of citizens through the course of the action~~ }.
- 1261 Section 20. Section **78B-6-1109** is amended to read:
- 1262 **78B-6-1109. Abatement by eviction order -- Grounds.**
- [~~An order of abatement by eviction may issue only upon a showing by the applicant~~]A court shall issue an order of abatement by eviction if the applicant shows, by a preponderance of the evidence, that:
- 1297 (1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;
- 1299 (2) the threatened injury to the applicant outweighs [whatever] any damage the proposed order of abatement by eviction may cause the party [so ordered] to be evicted;

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- 1301 (3) the order of abatement by eviction[, if issued,] would not be adverse to the public interest; and
1303 (4) there is a substantial likelihood that:
1304 (a) the applicant will prevail on the merits of the underlying claim[;] ; or
1305 (b) the case presents serious issues on the merits which should be the subject of further litigation.

1276 Section 21. Section **78B-6-1110** is amended to read:

1277 **78B-6-1110. Prior acts or threats of violence -- Protection of applicant or witness.**

At the time of application for abatement of [the] a nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109[, if proof of the existence of the nuisance depends, in whole or in part, upon the affidavits of- {f} witnesses who are not peace officers { } a witness who is- } not a peace officer }, upon a showing of prior threats of violence or acts of violence by any defendant or other person], upon a showing of good cause the court may issue [orders to protect- {f} those witnesses { } the witness], including,] an order to protect the applicant or, if proof of the existence of the nuisance depends in whole or in part upon the affidavit of a witness who is not a peace officer, the witness, which order may include nondisclosure of the name, address, or any other information which may identify [those witnesses { } the witness]:-] the individual protected by the order.

1287 Section 22. Section **78B-6-1111** is amended to read:

1288 **78B-6-1111. Landlord, owner, or designated agent -- Necessary party -- Automatic eviction.**

- 1319 (1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the nuisance by eviction where the acts complained of are those of [~~third parties~~] a third party upon the premises of the landlord, owner, or designated agent.
- 1323 (2) [~~In the presence of the applicant, the tenant and the landlord, owner, or designated agent at-~~] At the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties [~~of its finding that~~] , including the applicant, the tenant, and the landlord, owner, or designated agent, if:
- 1327 (a) the court finds that a nuisance exists as [defined] described in Section 78B-6-1107; and
1329

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(b) as a result, the court is issuing an order to evict the tenant subject to compliance with the security requirement in Section 78B-6-1112.

1331 (3) In all cases, including default judgments, the order of abatement by eviction may be issued and enforced immediately.

1304 Section 23. Section **78B-6-1112** is amended to read:

1305 **78B-6-1112. Security requirement -- Amount not a limitation -- Jurisdiction over surety.**

1336 (1)

. (a) The court shall condition issuance of ~~[the]~~ an order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless:

1339 (i) ~~[it appears]~~ the court determines that none of the parties will incur or suffer costs, attorney fees, or damage as the result of any wrongful order of abatement by eviction~~[-or]~~ ;

1342 (ii) ~~[unless]~~ the court determines that there exists some ~~[other]~~ substantial reason for dispensing with the requirement of security~~[-]~~ ; or

1344 (iii) the applicant has proved, by a preponderance of the evidence, the existence of a nuisance described in Section 78B-6-1107.

1346 (b) ~~[No such security shall]~~ Security described in Subsection (1)(a) may not be required:

1347 (i) of the United States, the ~~[State of Utah]~~ state, or ~~[of]~~ an officer, agency, or subdivision of ~~[either; nor shall it be required]~~ the United States or the state; or

1349 (ii) when ~~[it is]~~ prohibited by law.

1350 (2) The amount of security ~~[shall not establish or]~~ may not limit the [amount of costs, including] award of:

1352 (a) reasonable attorney fees or costs incurred in connection with the order of abatement by eviction~~[-]~~ ;
or

1354 (b) damages that may be awarded to a party who is found to have been wrongfully evicted.

1356 (3)

. (a) A surety upon a bond or undertaking under this section submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served.

1359 (b) The surety's liability may be enforced on motion without the necessity of an independent action.

1361 (c) The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately ~~[mail copies to the persons giving the security if their addresses are~~

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known] provide a copy to the applicant or other person giving the security by the means established at the time of the application.

- 1365 (4) ~~[The plaintiff, upon demand,]~~ Upon request, the applicant shall be granted a hearing to be held
[prior to the expiration of] no later than three days from the date the defendant is served with
notice of the ~~[plaintiff's]~~ applicant's giving of security, as ~~[provided]~~ described in Subsection
~~[78B-6-1112(1)]~~ (1).

1340 Section 24. Section **78B-6-1113** is amended to read:

1341 **78B-6-1113. Evidence of nuisance.**

~~[In any action for abatement by eviction instituted pursuant to Sections 78B-6-1107 through 78B-6-1114]~~ In an action for nuisance or abatement by eviction, all evidence [otherwise] authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance or the elements required for an order of abatement by eviction by a preponderance of the evidence.

1347 Section 25. Section **78B-6-1114** is amended to read:

1348 **78B-6-1114. Award of costs and attorney fees.**

- 1378 (1) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which ~~[a governmental agency, private citizen or citizens, corporation, partnership, or business seeks to abate the nuisance by eviction in or upon any building or place where the nuisance occurs as provided in Section 78B-6-1107]~~ a party brings an action to abate a nuisance under this part.

- 1385 (2) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees against a defendant landlord, owner, or designated agent only when the court finds that the defendant landlord, owner, or designated agent had actual notice of the nuisance action and willfully failed to take reasonable action within a reasonable time to abate the nuisance.

1361 Section 26. **Repealer.**

This Bill Repeals:

1362 This bill repeals:

1363 Section **78B-6-1105, Tobacco smoke -- Legislative intent.**

1364 Section 27. **Effective date.**

This bill takes effect on May 7, 2025.

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Section 28. **Coordinating H.B. 199 with H.B. 355.**

If H.B. 199, Substance Use Treatment and Enforcement Amendments, and H.B. 355, Critical Infrastructure Materials Amendments, both pass and become law, the Legislature intends that, on May 7, 2025, the following language replace Subsection 78B-6-1101(1)(b) enacted in H.B. 199:

""Critical infrastructure materials operations" means the same as the term "critical infrastructure materials use" is defined in Section 10-9a-901.".

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