

HB0253S01 compared with HB0253

~~{Omitted text}~~ shows text that was in HB0253 but was omitted in HB0253S01

inserted text shows text that was not in HB0253 but was inserted into HB0253S01

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Marijuana Use or Possession {Penalty} Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Grant Amjad Miller

Senate Sponsor:

LONG TITLE

General Description:

This bill ~~{changes}~~ amends criminal ~~{penalties for}~~ procedures concerning the use or possession of 14 grams or less of marijuana.

Highlighted Provisions:

This bill:

- requires a prosecuting attorney to offer a plea in abeyance for a first offense for use or possession of 14 grams or less of marijuana;
- provides ~~{lower criminal penalties for the}~~ requirements for a plea in abeyance agreement for a first offense for use or possession of 14 grams or less of marijuana; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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AMENDS:

~~{58-37-8, as last amended by Laws of Utah 2025, Chapters 141, 173, 198, 208, and 305}~~

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

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

77-2a-2, as last amended by Laws of Utah 2025, Chapters 214, 431

~~{77-40a-101, as last amended by Laws of Utah 2025, Chapters 173, 239}~~

~~{77-40a-205, as last amended by Laws of Utah 2025, Chapters 173, 208, 214, and 239}~~

ENACTS:

77-2a-1.5, Utah Code Annotated 1953

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

~~{Section 1. Section 58-37-8 is amended to read: }~~

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

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

(a) Except as authorized by this chapter, and under circumstances not amounting to an offense described in Section 58-37-8.1, trafficking of fentanyl or a fentanyl-related substance, it is unlawful for a person to knowingly and intentionally:

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

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

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

(iv) engage in a continuing criminal enterprise where:

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

(B) the violation is a part of a continuing series of two or more violations of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate

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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.

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

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

55 (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

59 (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.

62 (c)

(i) Except as provided in Subsection (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)(c)(ii) and Title 76, Chapter 3, Punishments.

66 (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:

71 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in Section 76-11-101, that is not a firearm, in an angry, threatening, intimidating, or coercive manner;

74 (B) used a firearm, as that term is defined in Section 76-11-101, or had a firearm readily accessible for immediate use, as that term is defined in Section 76-11-201; or

77 (C) distributed a firearm, as that term is defined in Section 76-11-101, or possessed a firearm with intent to distribute the firearm.

79 (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:

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

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

85 (C) orders the person to complete the terms and conditions of supervised probation provided by the
Department of Corrections.

87 (d)

(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:

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

90 (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.

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

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

97 (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).

100 (f)

(i) A court shall impose the mandatory jail sentence described in Subsection (1)(f)(ii), and may not
suspend any portion of the jail sentence or grant early release, if:

103 (A) the court suspends the imposition of a prison sentence for a felony conviction under Subsection
(1)(a) or sentences a person for a misdemeanor violation of an offense under Subsection (1)(a);

106 (B)

(I) the violation is the person's second or subsequent conviction for any level of offense under
Subsection (1)(a); or

108 (II) the person previously has been convicted of a criminal violation in another jurisdiction, including a
state or federal court, that is substantially equivalent to the violation of an offense under Subsection
(1)(a); and

111 (C) the person previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec.
1326.

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(ii) The mandatory jail sentences referred to in Subsection (1)(f)(i) are:

(A) for a felony or a class A misdemeanor, 360 days in jail;

(B) for a class B misdemeanor, 180 days in jail; and

(C) for a class C misdemeanor, 90 days in jail.

(iii)

(A) Except as provided in Subsection (1)(f)(iii)(B), a person who is subject to a mandatory jail sentence under Subsection (1)(f)(i) may not be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation until the person has served the entire jail sentence described in Subsection (1)(f)(ii).

(B) A person may be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation at any time during the 14-day period before the final day of the person's jail sentence described in Subsection (1)(f)(ii).

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

(a) It is unlawful:

(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;

(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 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

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

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

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

(ii) a substance classified in Schedule I or II, or a controlled substance analog, not including marijuana, is guilty of a class A misdemeanor on a first or second conviction, and on a third 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 is guilty of a third degree felony.

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- (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).
- 150 (d)
- (i) [A] Except as provided in Subsection (2)(e), 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.
- 154 (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.
- 157 (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.
- 160 (e) A violation of Subsection (2)(a)(i) with respect to 14 grams or less of marijuana is:
- 161 (i) an infraction on a first conviction;
- 162 (ii) a class C misdemeanor on a second conviction or on a subsequent conviction not described in Subsection (2)(e)(iii) or (iv);
- 164 (iii) a class B misdemeanor if the conviction is the person's third conviction and each prior offense was committed within seven years before the date of the offense upon which the current conviction is based; or
- 167 (iv) a class A misdemeanor if the conviction is the person's fourth conviction and each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.
- 170 ~~[(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) or (2)(e), as applicable, and if the conviction is with respect to controlled substances as listed in:
- 175 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:
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(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(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

(ii) Subsection (2)(d), 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.

~~[(f)]~~ (g) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

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

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

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

~~[(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).

(3) Prohibited acts C -- Penalties:

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

(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;

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

(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

(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

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

(b)

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

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

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

(4) Prohibited acts D -- Penalties:

(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:

(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.;

(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.;

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

(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;

(v) in or on the grounds of a house of worship as defined in Section 76-11-201;

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

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

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

(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.

(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.

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- 246 (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for
probation.
- 248 (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.
- 252 (d)
- (i) If the violation is of Subsection (4)(a)(ix):
- 253 (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
- 256 (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
- 258 (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).
- 262 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 263 (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
- 265 (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).
- 268 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 269 (6)
- (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.
- 274 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:
- 276 (i) from a separate criminal episode than the current charge; and
- 277 (ii) from a conviction that is separate from any other conviction used to enhance the current charge.

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- 279 (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.
- 281 (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.
- 283 (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.
- 286 (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.
- 290 (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.
- 294 (11) Civil or criminal liability may not be imposed under this section on:
- 295 (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;
- 298 (b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or
- 300 (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
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.
- 305 (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.
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- (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.
- (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.
- (ii) The notice shall include the specific claims of the affirmative defense.
- (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.
- (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.
- (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:
- (i) engaged in medical research; and
- (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- (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.
- (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:
- (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
- (b) the substance was administered to the person by the medical researcher.
- (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.
- (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:

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

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

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

(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.

(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.

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- 373 (18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than
any provision of this chapter.
- 375 (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:
- 378 (a) a screening as defined in Section 41-6a-501;
- 379 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be
appropriate; and
- 381 (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as
indicated by an assessment.
- 383 ~~{Section 2. Section 58-37f-201 is amended to read: }~~
- 384 **58-37f-201. Controlled substance database -- Creation -- Purpose.**
- 385 (1) There is created within the division a controlled substance database.
- 386 (2) The division shall administer and direct the functioning of the database in accordance with this
chapter.
- 388 (3) The division may, under state procurement laws, contract with another state agency or a private
entity to establish, operate, or maintain the database.
- 390 (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.
- 393 (5) The purpose of the database is to contain:
- 394 (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed controlled
substances;
- 396 (b) data reported to the division under Section 26B-2-225 regarding poisoning or overdose;
- 398 (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
- 401 (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.
- 404 (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:
- 406 (a) prescribing practices and patterns of prescribing and dispensing controlled substances;

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- (b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;
- (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;
- (d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy;
- (e) individuals admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance; and
- (f) individuals convicted for:
 - (i) driving under the influence of a prescribed controlled substance that renders the individual incapable of safely operating a vehicle;
 - (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
 - (iii) certain violations of Chapter 37, Utah Controlled Substances Act.

~~{Section 3. Section 58-37f-704 is amended to read: }~~

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.

Section 1. Section 1 is enacted to read:

77-2a-1.5. Offer of a plea in abeyance for certain marijuana offenses.

(1) As used in this section:

(a)

(i) "Convicted" means:

(A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a mental condition;

or

(B) having received a judgment of guilty or a judgment of guilty with a mental condition.

(ii) "Convicted" does not include:

(A) an adjudication of an offense under Section 80-6-701; or

(B) a traffic offense.

(b) "Traffic offense" means the same as that term is defined in Section 77-40a-1.

(2) A prosecuting attorney shall offer a plea in abeyance to a defendant if:

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- 38 (a) the individual has never been convicted of an offense;
39 (b) the individual is charged with a class B misdemeanor offense for the use or possession of marijuana
under Subsection 58-37-8(2)(d)(i);
41 (c) the amount of marijuana that forms the basis of the charge described in Subsection (2)(b) is 14
grams or less; and
43 (d) the individual was 18 years old or older at the time of the offense.
44 (3) A plea in abeyance under this section is subject to Subsection 77-2a-2(6)(b).

45 Section 2. Section 77-2a-2 is amended to read:

46 **77-2a-2. Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement --**
Waiver of time for sentencing.

- 48 (1) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of
conviction and imposition of sentence, ~~[the court may,]~~ and upon motion of both the prosecuting
attorney and the defendant, the court may hold the plea in abeyance and not enter judgment of
conviction against the defendant nor impose sentence upon the defendant within the time periods
contained in ~~[Rule 22(a),]~~ the Utah Rules of Criminal Procedure, Rule 22(a).
- 54 (2) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the
time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant
knowingly and intelligently waives the defendant's right to counsel.
- 57 (3) A defendant has the right to be represented by counsel at any court hearing relating to a plea in
abeyance agreement.
- 59 (4)
- (a) ~~[Any]~~ Subject to Subsection (6), a plea in abeyance agreement entered into between the prosecution
and the defendant and approved by the court shall~~[-subject to Subsection (7),]~~ include a full,
detailed recitation of the requirements and conditions agreed to by the defendant and the reason for
requesting the court to hold the plea in abeyance.
- 64 (b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be
in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the
defendant, and the defendant's counsel in the presence of the court.
- 68 (5)
- (a) Except as provided in ~~[Subsection (5)(b)]~~ Subsections (5)(b) and (5)(c), a plea may not be held in
abeyance for a period longer than 18 months if the plea is to any class of misdemeanor or longer

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than three years if the plea is to any degree of felony or to any combination of misdemeanors and felonies.

(b)

(i) For a plea in abeyance agreement that the Division of Adult Probation and Parole created in Section 64-14-202 supervises, the plea may not be held in abeyance for a period longer than the initial term of probation required under the adult sentencing and supervision length guidelines, as defined in Section 63M-7-401.1, if the initial term of probation is shorter than the period required under Subsection (5)(a).

(ii) Subsection (5)(b)(i) does not:

(A) apply to a plea that is held in abeyance in a drug court created under Title 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by the Judicial Council; or

(B) prohibit court supervision of a plea in abeyance agreement after the day on which the Division of Adult Probation and Parole supervision described in Subsection (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.

~~[(6)]~~ (c) ~~[Notwithstanding Subsection (5), a]~~ A plea may be held in abeyance for up to two years if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a condition that the defendant participate in a problem solving court approved by the Judicial Council.

~~[(7)]~~ (6)

(a) A plea in abeyance agreement may not:

~~[(a)]~~ (i) be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in ~~[Rule 22(a),]~~ the Utah Rules of Criminal Procedure, Rule 22(a); or

~~[(b)]~~ (ii) notwithstanding any other provision of law, include as part of the requirements and conditions agreed to by the defendant that the defendant will forfeit a firearm owned by the defendant if the offense the defendant will plea to is not an offense that would make the defendant a restricted person under Section 76-11-302 or 76-11-303 or federal law.

(b) For a plea in abeyance described in Section 77-2a-1.5, the plea in abeyance agreement:

(i) except as provided in Subsection (6)(b)(ii), may include any term as determined by the parties; and

(ii) if the plea in abeyance agreement includes a term of incarceration, shall require that the term of incarceration be suspended.

~~{Section 4. Section 77-40a-101 is amended to read: }~~

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77-40a-101. Definitions.

As used in this chapter:

- (1) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.
- (2) "Automatic expungement" means the expungement of records of an investigation, arrest, detention, or conviction of an offense without the filing of a petition.
- (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.
- (4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.
- (5) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
- (6) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
- (7) "Civil protective order" means the same as that term is defined in Section 78B-7-102.
- (8) "Clean slate eligible case" means a case that is eligible for automatic expungement under Section 77-40a-205.
- (9) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.
- (10) "Court" means a district court or a justice court.
- (11) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.
- (12) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.
- (13) "Criminal stalking injunction" means the same as that term is defined in Section 78B-7-102.
- (14) "Department" means the Department of Public Safety established in Section 53-1-103.
- (15) "Drug possession offense" means:
 - (a) an offense described in Subsection 58-37-8(2), except for:
 - (i) an offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana;
 - (ii) an offense enhanced under Subsection [58-37-8(2)(e)] 58-37-8(2)(f), violation in a correctional facility; or

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(iii) an offense for driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

(b) an offense described in Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) an offense described in Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (15).

(16)

(a) "Expunge" means to remove a record from public inspection by:

(i) sealing the record; or

(ii) restricting or denying access to the record.

(b) "Expunge" does not include the destruction of a record.

(17) "Indigent" means a financial status that results from a court finding that a petitioner is financially unable to pay the fee to file a petition for expungement under Section 78A-2-302.

(18) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(19)

(a) "Minor regulatory offense" means a class B or C misdemeanor offense or a local ordinance.

(b) "Minor regulatory offense" includes an offense under Section 76-9-110 or 76-9-1106.

(c) "Minor regulatory offense" does not include:

(i) any drug possession offense;

(ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(iii) an offense under Sections 73-18-13 through 73-18-13.6;

(iv) except as provided in Subsection (19)(b), an offense under Title 76, Utah Criminal Code; or

(v) any local ordinance that is substantially similar to an offense listed in Subsections (19)(c)(i) through (iv).

(20) "Petitioner" means an individual applying for expungement under this chapter.

(21) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

(22) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material, regardless of physical form or characteristics, that:

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(a) is contained in the agency's file regarding the arrest, detention, investigation, conviction, sentence, incarceration, probation, or parole of an individual; and

(b) is prepared, owned, received, or retained by an agency, including a court.

(23) "Special certificate" means a document issued as described in Subsection 77-40a-304(1)(c) by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with the case do not clearly demonstrate whether the case is eligible for expungement.

(24)

(a) "Traffic offense" means:

(i) an infraction or a class C misdemeanor offense under Title 41, Chapter 1a, Motor Vehicle Act;

(ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;

(iii) an infraction or a class C misdemeanor offense under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(iv) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

(v) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 73, Chapter 18, State Boating Act; and

(vi) all local ordinances that are substantially similar to an offense listed in Subsections (24)(a)(i) through (iii).

(b) "Traffic offense" does not include:

(i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) an offense under Section 41-12a-302 for operating a motor vehicle without owner's or operator's security;

(iii) an offense under Section 41-12a-303.3 for providing false evidence of owner's or operator's security;

(iv) an offense under Sections 73-18-13 through 73-18-13.6; or

(v) any local ordinance that is substantially similar to an offense listed in Subsection (24)(b)(i) or (ii).

(25) "Traffic offense case" means that each offense in the case is a traffic offense.

~~{Section 5. Section 77-40a-205 is amended to read: }~~

77-40a-205. Automatic expungement of state records for a clean slate case.

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- (1) A court shall issue an order of expungement, without the filing of a petition, for all records of the case that are held by the court and the bureau if:
- 536 (a) on and after October 1, 2024, but before January 1, 2026, the individual submitted a form requesting
expungement of a case as described in Section 77-40a-204;
- 538 (b) the case is eligible for expungement under this section; and
- 539 (c) the prosecuting agency does not object to the expungement of the case as described in Subsection
(6).
- 541 (2) Except as otherwise provided in Subsection (3), a case is eligible for expungement under this section
if:
- 543 (a)
- (i) each conviction within the case is a conviction for:
- 544 (A) [a] an infraction or a misdemeanor offense for possession of a controlled substance in violation
of Subsection 58-37-8(2)(a)(i);
- 546 (B) a class B misdemeanor offense;
- 547 (C) a class C misdemeanor offense; or
- 548 (D) an infraction; and
- 549 (ii) the following time periods have passed after the day on which the individual is adjudicated:
- 551 (A) at least five years for the conviction of a class C misdemeanor offense or an infraction;
- 553 (B) at least six years for the conviction of a class B misdemeanor offense; or
- 554 (C) at least seven years for the conviction of a class A misdemeanor offense for possession of a
controlled substance in violation of Subsection 58-37-8(2)(a)(i); or
- 557 (b)
- (i) the case is dismissed as a result of a successful completion of a plea in abeyance agreement governed
by Subsection 77-2a-3(2)(b) or the case is dismissed without prejudice;
- 560 (ii) each charge within the case is:
- 561 (A) [a] an infraction or a misdemeanor offense for possession of a controlled substance in violation of
Subsection 58-37-8(2)(a)(i);
- 563 (B) a class B misdemeanor offense;
- 564 (C) a class C misdemeanor offense; or
- 565 (D) an infraction; and
- 566 (iii) the following time periods have passed after the day on which the case is dismissed:

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- 568 (A) at least five years for a charge in the case for a class C misdemeanor offense or an infraction;
570 (B) at least six years for a charge in the case for a class B misdemeanor offense; or
571 (C) at least seven years for a charge in the case for a class A misdemeanor offense for possession of a
controlled substance in violation of Subsection 58-37-8(2)(a)(i).
- 574 (3) A case is not eligible for expungement under this section if:
575 (a) the individual has a total number of convictions in courts of this state that exceed the limits under
Subsection 77-40a-303(4) or (5) without taking into consideration:
577 (i) the exception in Subsection 77-40a-303(7); or
578 (ii) any infraction, traffic offense, or minor regulatory offense;
579 (b) there is a criminal proceeding for a misdemeanor or felony offense pending in a court of this state
against the individual, unless the proceeding is for a traffic offense;
581 (c) for an individual seeking an automatic expungement on and after January 1, 2025, the individual is
incarcerated in the state prison or on probation or parole that is supervised by the Division of Adult
Probation and Parole created in Section 64-14-202;
585 (d) the case resulted in the individual being found not guilty by reason of insanity;
586 (e) the case establishes a criminal accounts receivable that:
587 (i) has been entered as a civil accounts receivable or a civil judgment of restitution and transferred to
the Office of State Debt Collection under Section 77-18-114; or
589 (ii) has not been satisfied according to court records; or
590 (f) the case resulted in a plea held in abeyance or a conviction for the following offenses:
591 (i) any of the offenses listed in Subsection 77-40a-303(2)(a);
592 (ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Individual;
594 (iii) a weapons offense in violation of Title 76, Chapter 11, Weapons;
595 (iv) sexual battery in violation of Section 76-5-418;
596 (v) an act of lewdness in violation of Section 76-5-419 or 76-5-420;
597 (vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless
Driving;
599 (vii) damage to or interruption of a communication device in violation of Section 76-6-108;
601 (viii) a domestic violence offense as defined in Section 77-36-1;
602 (ix) driving under the influence of alcohol, drugs, or a combination of both, or with specified or unsafe
blood alcohol concentration, as codified before February 2, 2005, Laws of Utah 2005, Chapter 2; or

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- 605 (x) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a
class A misdemeanor conviction for possession of a controlled substance in violation of Subsection
58-37-8(2)(a)(i).
- 608 (4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal Procedure shall
receive notice on a monthly basis for any case prosecuted by that agency that appears to be eligible
for automatic expungement under this section.
- 611 (5) Within 35 days after the day on which the notice described in Subsection (4) is sent, the prosecuting
agency shall provide written notice in accordance with Rule 42 of the Utah Rules of Criminal
Procedure if the prosecuting agency objects to an automatic expungement for any of the following
reasons:
- 615 (a) the prosecuting agency believes that the case is not eligible for expungement under this section after
reviewing the agency record;
- 617 (b) the individual has not paid restitution to the victim as ordered by the court; or
- 618 (c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual
involved in the case is continuing to engage in criminal activity within or outside of the state.
- 621 (6) If a prosecuting agency provides written notice of an objection for a reason described in Subsection
(5) within 35 days after the day on which the notice under Subsection (4) is sent, the court may not
proceed with automatic expungement of the case.
- 624 (7) If 35 days pass after the day on which the notice described in Subsection (4) is sent without the
prosecuting agency providing written notice of an objection under Subsection (5), the court shall
proceed with automatic expungement of the case.
- 627 (8) If a court issues an order of expungement under Subsection (1), the court shall:
- 628 (a) expunge all records of the case held by the court in accordance with Section 77-40a-401; and
- 630 (b) notify the bureau and the prosecuting agency identified in the case, based on information available
to the court, of the order of expungement.

105 Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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