

Effective 5/6/2026

76-18-207 Unlawfully possessing or using a controlled substance or controlled substance analog.

- (1)
 - (a) As used in this section:
 - (i) "Correctional facility" means the same as that term is defined in Section 64-13-1.
 - (ii) "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.
 - (b) Terms defined in Sections 58-37-101, 76-1-101.5, 76-18-101, and 76-18-201 apply to this section.
- (2) An actor commits unlawfully possessing or using a controlled substance or a controlled substance analog if the actor knowingly and intentionally possesses or uses a controlled substance or a controlled substance analog, unless the controlled substance or controlled substance analog was obtained:
 - (a) under a valid prescription or order;
 - (b) directly from a practitioner while acting in the course of the practitioner's professional practice; or
 - (c) as otherwise authorized by this part or Title 58, Chapter 37, Controlled Substances.
- (3) Subject to Subsection (4), a violation of Subsection (2) is:
 - (a) a second degree felony if the substance is marijuana and the amount is 100 pounds or more;
 - (b) a third degree felony if:
 - (i)
 - (A) the substance is a substance classified in Schedule I or II or a controlled substance analog, not including marijuana; and
 - (B) the actor's current violation results in the actor receiving at least a third conviction under this section and each of the actor's previous convictions were based on a violation committed within seven years before the date of the violation upon which the current conviction is based; or
 - (ii) the violation would otherwise qualify under Subsection (3)(d), but the actor's current violation results in the actor receiving at least a fourth conviction under this section and each of the actor's previous convictions were based on a violation committed within seven years before the date of the violation upon which the current conviction is based;
 - (c) a class A misdemeanor if:
 - (i)
 - (A) the substance is a substance classified in Schedule I or II or a controlled substance analog, not including marijuana; and
 - (B) the current violation is the actor's first or second conviction under this section or does not qualify as a third degree felony under Subsection (3)(b); or
 - (ii) the violation would otherwise qualify under Subsection (3)(d), but the actor's current violation results in the actor receiving at least a third conviction under this section and each of the actor's previous convictions were based on a violation committed within seven years before the date of the violation upon which the current conviction is based; or
 - (d) if Subsection (3)(a), (b), or (c) does not apply, a class B misdemeanor, including a substance listed in Section 58-37-109 or marijuana.
- (4)
 - (a) Except as provided in Subsection (4)(c) and subject to Subsection (5), upon an actor's conviction of a violation of this section, if the actor has previously been convicted of a violation

of Section 76-18-208, 76-18-209, 76-18-210, or 76-18-211, the court shall sentence the actor to a penalty that is one degree higher than the applicable penalty provided in Subsection (3).

(b)

(i) Except as provided in Subsection (4)(c) and subject to Subsection (5), the court shall sentence an actor convicted of violating this section to a penalty that is one degree higher than the applicable penalty provided in Subsection (3)(a), (3)(b)(i), or (3)(c)(i), if the violation of this section occurs while the actor is inside the exterior boundaries of property occupied by:

(A) a correctional facility;

(B) a public jail; or

(C) another place of confinement.

(ii) Except as provided in Subsection (4)(c) and subject to Subsection (5), if an actor is subject to an enhanced penalty under Subsection (4)(b)(i) and the violation of this section is based on a controlled substance listed in Subsection (3)(a) or (3)(b)(i), the actor may be sentenced to imprisonment for an indeterminate term as provided by law, and:

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

(B) the court may additionally sentence the actor for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(iii) Except as provided in Subsection (4)(c) and subject to Subsection (5), if an actor is subject to an enhanced penalty under Subsection (4)(b)(i) and the violation of this section is based on a controlled substance that would qualify for punishment under Subsection (3)(d), the actor may be sentenced to imprisonment for an indeterminate term as provided by law and the court shall additionally sentence the actor to a term of six months to run consecutively and not concurrently.

(5) The application of any increase in penalty under this section may not result in any greater penalty than a second degree felony.

(6)

(a) For purposes of a penalty enhancement, a plea of guilty or no contest to a violation or attempted violation of this section or a plea that 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.

(b) A previous conviction used for a penalty enhancement under this section may only be a conviction that:

(i) is from a separate criminal episode than the current conviction under this section; and

(ii) has not already been used under a separate penalty enhancement provision to enhance the conviction under this section.

(c) A previous conviction used for a penalty enhancement under this section includes a conviction for an offense described in a statute previously in effect in this state that is the same or substantially similar to a violation of this section.

(7)

(a) An actor 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 part or Title 58, Chapter 37, Controlled Substances.

(b) A penalty imposed for a violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.

(c) Defenses and exemptions in Section 76-18-203 apply to this section.

- (8) 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 actor convicted of violating this section.
- (9) If a minor who is under 18 years old is found by a court to have violated this section, the court may order the minor to complete:
 - (a) a screening as defined in Section 41-6a-501;
 - (b) an assessment as defined in Section 41-6a-501 if the screening described in Subsection (9)(a) indicates that an assessment is appropriate; and
 - (c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment described in Subsection (9)(b).
- (10)
 - (a) It is an affirmative defense to a violation of Subsection (2) if the circumstances listed in Subsection (10)(b) apply and the actor or bystander:
 - (i) reasonably believes that the actor or another individual 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 an individual 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 actor is the subject of a report made under this section;
 - (iii) provides, in the report described in Subsection (10)(a)(ii), a functional description of the actual location of the overdose event that facilitates responding to the individual experiencing the overdose event;
 - (iv) remains at the location of the individual 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 individual 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 individual experiencing the overdose event and any substances the individual may have injected, inhaled, or otherwise introduced into the individual'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 circumstances referred to in Subsection (10)(a) are:
 - (i) the possession or use of less than 16 ounces of marijuana; or
 - (ii) the possession or use of a scheduled or listed controlled substance other than marijuana.

Enacted by Chapter 362, 2026 General Session