

Effective 5/6/2026

76-18-208 Unlawfully producing, manufacturing, or dispensing a controlled substance or counterfeit substance.

- (1) Terms defined in Sections 58-37-101, 76-1-101.5, 76-18-101, and 76-18-201 apply to this section.
- (2) Except as authorized by this part or Title 58, Chapter 37, Controlled Substances, and under circumstances not amounting to an offense described in Section 76-18-220, trafficking of fentanyl or a fentanyl-related substance, an actor commits unlawfully producing, manufacturing, or dispensing a controlled substance or counterfeit substance if the actor knowingly and intentionally:
 - (a) produces, manufactures, or dispenses a controlled substance or a counterfeit substance; or
 - (b) possesses, with the intent to produce, manufacture, or dispense, a controlled substance or a counterfeit substance.
- (3)
 - (a) Except as provided in Subsection (3)(b) and subject to Subsections (4) and (5), a violation of Subsection (2) is:
 - (i) a second degree felony if the controlled substance or counterfeit substance is:
 - (A) a substance or a counterfeit of a substance classified in Schedule I or II, not including marijuana;
 - (B) a controlled substance analog; or
 - (C) gammahydroxybutyric acid as listed in Schedule III;
 - (ii) a third degree felony if the controlled substance or counterfeit substance is:
 - (A) a substance or a counterfeit of a substance classified in Schedule III or IV;
 - (B) marijuana; or
 - (C) a substance listed in Section 58-37-109; or
 - (iii) a class A misdemeanor if the controlled substance or counterfeit substance is a substance or counterfeit substance of a substance classified in Schedule V.
 - (b) Subject to Subsections (4) and (5), a second or subsequent conviction under:
 - (i) Subsection (3)(a)(i) is a first degree felony;
 - (ii) Subsection (3)(a)(ii) is a second degree felony; or
 - (iii) Subsection (3)(a)(iii) is a third degree felony.
- (4)
 - (a) A court shall impose a mandatory jail sentence of 360 days in jail, and may not suspend any portion of the jail sentence or grant early release, if:
 - (i) the court suspends the imposition of a prison sentence for a felony conviction under this section or sentences an actor for a misdemeanor violation of an offense under this section;
 - (ii)
 - (A) the violation is the actor's second or subsequent conviction for any level of offense under this section, Section 76-18-209, 76-18-210, or 76-18-211; or
 - (B) the actor 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 this section, Section 76-18-209, 76-18-210, or 76-18-211; and
 - (iii) the actor previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec. 1326.
 - (b)
 - (i) Except as provided in Subsection (4)(b)(ii), an actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not be released to the federal Immigration and

- Customs Enforcement Agency of the United States Department of Homeland Security for deportation until the actor has served the entire jail sentence described in Subsection (4)(a).
- (ii) An actor 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 actor's jail sentence described in Subsection (4)(a).
- (5) Notwithstanding any other provision of this section, a violation of this section is subject to the penalties and classifications under Section 76-18-204, Enhanced penalties and sentencing for certain drug offenses, if the trier of fact finds the elements described under Section 76-18-204.
- (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 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).

Enacted by Chapter 362, 2026 General Session