

Effective 5/3/2023

76-5-113 Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

- (1)
 - (a) As used in this section:
 - (i) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.
 - (ii) "Alcoholic beverage" means the same as that term is defined in Section 32B-1-102.
 - (iii) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (iv) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.
 - (v) "Health care provider" means the same as that term is defined in Section 78B-3-403.
 - (vi) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.
 - (vii) "Prescription drug" means the same as that term is defined in Section 58-17b-102.
 - (viii) "Serious bodily injury" means the same as that term is defined in Section 19-2-115.
 - (ix) "Substance" means a controlled substance, poisonous substance, or deleterious substance.
 - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits surreptitious administration of a certain substance if the actor, surreptitiously or by means of fraud, deception, or misrepresentation, causes an individual to unknowingly consume or receive the administration of:
 - (a) any poisonous, deleterious, or controlled substance; or
 - (b) any alcoholic beverage.
- (3) A violation of Subsection (2) is:
 - (a) a second degree felony if the substance is a poisonous substance, regardless of whether the substance is a controlled substance or a prescription drug;
 - (b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; or
 - (c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.
- (4)
 - (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:
 - (i) provided the appropriate administration of a prescription drug; and
 - (ii) acted on the reasonable belief that the actor's conduct was in the best interest of the well-being of the individual to whom the prescription drug was administered.
 - (b)
 - (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.
 - (ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.
 - (c)
 - (i) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a).
 - (ii) This notice shall be filed or served not more than 10 days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.
 - (d)

- (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.
 - (ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.
- (5)
- (a) This section does not diminish the scope of authorized health care by a health care provider.
 - (b) Conduct in violation of Subsection (2) may also constitute a separate offense.

Amended by Chapter 330, 2023 General Session