

PROTECTION FOR CHILDREN AND ELDERLY

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

AN ACT RELATING TO THE CRIMINAL CODE AND CLANDESTINE DRUG LABORATORIES; CHANGING THE PENALTIES RELATED TO OPERATION OF A CLANDESTINE DRUG LABORATORY THAT MAY PRESENT RISK OF BODILY INJURY TO CHILDREN OR ELDER ADULTS; AND CREATING THE CRIME OF ENDANGERING A CHILD OR ELDER ADULT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-37d-5, as last amended by Chapter 65, Laws of Utah 1998

ENACTS:

76-5-112.5, Utah Code Annotated 1953

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

Section 1. Section **58-37d-5** is amended to read:

58-37d-5. Prohibited acts -- First degree felony.

(1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), or (f) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:

(a) possession of a firearm;

(b) use of a booby trap;

(c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

(d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;

~~[(e) any phase of the clandestine laboratory operation or production or manufacture of a~~

~~controlled or counterfeit substance involved or was conducted in the presence of a person less than 18 years of age;~~

~~[(f)] (e)~~ clandestine laboratory operation actually produced any amount of a specified controlled substance; or

~~[(g)] (f)~~ intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.

(2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through ~~[(g)] (f)~~ of this section occurred in conjunction with the violation, at sentencing for the first degree felony:

- (a) probation shall not be granted;
- (b) the execution or imposition of sentence shall not be suspended; and
- (c) the court shall not enter a judgment for a lower category of offense.

Section 2. Section **76-5-112.5** is enacted to read:

76-5-112.5. Endangerment of child or elder adult.

(1) For purposes of this section:

(a) "chemical substance" means a substance used as a precursor in the manufacture of a controlled substance, or any other chemical, as demonstrated by its use, quantity, manner of storage, or proximity to other precursors, or to manufacturing equipment which was intended to be used in the manufacture of controlled substances;

(b) "child" means the same as that term is defined in Subsection 76-5-109(1)(a);

(c) "controlled substance" means the same as that term is defined in Section 58-37-2;

(d) "drug paraphernalia" means the same as that term is defined in Section 58-37a-3; and

(e) "elder adult" means the same as that term is defined in Section 76-5-111.

(2) Unless a greater penalty is otherwise provided by law, any person who knowingly or intentionally causes or permits a child or elder adult to be at risk of suffering bodily injury, substantial bodily injury, or serious bodily injury from exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia as defined in Subsection (1), is guilty of a felony of the third degree.

(3) Unless a greater penalty is otherwise provided by law, any person who violates Subsection (2), and a child or elder adult actually suffers bodily injury, substantial bodily injury, or serious bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a felony of the second degree unless the exposure, ingestion, inhalation, or contact results in the death of the child or elder adult, in which case the person is guilty of a felony of the first degree.