

SURREPTITIOUS ADMINISTRATION OF A SUBSTANCE

2001 GENERAL SESSION

STATE OF UTAH

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This act modifies the Criminal Code to create the specific criminal offense of surreptitiously administering deleterious or alcoholic substances or drugs to another person. The act provides definitions, and also graduated penalties based on the risks posed by the substance administered. The act includes a defense for administering medical treatment.

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

ENACTS:

76-5-113, Utah Code Annotated 1953

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

Section 1. Section **76-5-113** is enacted to read:

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

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverages" in Section 32A-1-105.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

(d) "Controlled substance" has the same definition as in Section 58-37-2.

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(g) "Prescription drug" has the same definition as in Section 58-17a-102.

(h) "Serious bodily injury" has the same definition as in Section 19-2-115.

(i) "Substance" means a controlled substance, poisonous substance, or deleterious substance as defined in this Subsection (1).

(2) In addition to any other offense the actor's conduct may constitute, it is a criminal offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause another person 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; and

(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 his conduct was in the best interest of the well-being of the person to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of his 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) 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). This notice shall be filed or served not more than ten 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) This section does not diminish the scope of authorized health care by a health care provider as defined in Section 26-23a-1.