

**AMENDMENTS REGARDING ILLEGAL DRUGS
IN CORRECTIONAL FACILITIES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

This act modifies the Criminal Code and the Utah Controlled Substances Act by providing that if the Department of Corrections determines that a visitor to a correctional facility has violated laws regarding controlled substances while at the facility, the department shall revoke the person's visitation privileges. This act also allows the department in its discretion to reinstate visitation privileges. This act also amends provisions regarding controlled substances to provide incarceration for violations of drug laws while at a correctional facility.

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

AMENDS:

58-37-8, as last amended by Chapters 12 and 303, Laws of Utah 1999

64-13-17, as last amended by Chapters 198 and 237, Laws of Utah 1996

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

Section 1. Section **58-37-8** is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or



(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct which results in any violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance classified in Schedule I or II or a controlled substance analog is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(2) Prohibited acts B -- Penalties:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while

59 acting in the course of his professional practice, or as otherwise authorized by this chapter;

60 (ii) for any owner, tenant, licensee, or person in control of any building, room,
61 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
62 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
63 any of those locations; or

64 (iii) for any person knowingly and intentionally to possess an altered or forged
65 prescription or written order for a controlled substance.

66 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

67 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

68 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
69 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
70 felony; or

71 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of
72 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
73 misdemeanor.

74 ~~[(c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior~~
75 ~~boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or~~
76 ~~any public jail or other place of confinement shall be sentenced to a penalty one degree greater~~
77 ~~than provided in Subsection (2)(b):]~~

78 ~~[(d)]~~ (c) Upon a second or subsequent conviction of possession of any controlled
79 substance by a person, that person shall be sentenced to a one degree greater penalty than
80 provided in this Subsection (2).

81 ~~[(e)]~~ (d) Any person who violates Subsection (2)(a)(i) with respect to all other
82 controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one
83 ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person
84 is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is
85 guilty of a third degree felony.

86 ~~[(f)]~~ (e) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

87 (i) on a first conviction, guilty of a class B misdemeanor;

88 (ii) on a second conviction, guilty of a class A misdemeanor; and

89 (iii) on a third or subsequent conviction, guilty of a third degree felony.

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for any person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose his receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding any other provisions of this section, a person not authorized under this chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act, is upon conviction subject to the penalties and classifications as specified under Subsection (4)(b), (c), or (d) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools;

(ii) in a public or private vocational school or postsecondary institution or on the

grounds of any of those schools or institutions;

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (4)(a)(i) and (ii);

(iv) in or on the grounds of a preschool or child-care facility;

(v) in a public park, amusement park, arcade, or recreation center;

(vi) in a church or synagogue;

(vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto;

(viii) in a public parking lot or structure;

(ix) within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (viii); ~~or~~

(x) in the immediate presence of a person younger than 18 years of age, regardless of where the act occurs~~[-]; or~~

(xi) in or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this subsection would have been a first degree felony. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense, except as provided in Subsection (4)(d).

(d) If the violation is of Subsection (4)(a)(xi) and the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently. The penalties under this Subsection (4)(d) apply to any person who, acting with the mental state required for the commission of an offense, solicits, requests, commands,

encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(xi).

~~[(d)]~~ (e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

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

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(7) In any prosecution for a violation of this chapter, evidence or proof which shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(8) This section does not prohibit a veterinarian, in good faith and in the course of his professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under his direction and supervision.

(9) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under the Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of his employment.

(10) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

Section 2. Section **64-13-17** is amended to read:

64-13-17. Visitors to correctional facilities -- Violation of drug laws --

Correspondence.

(1) (a) The following persons may visit correctional facilities without the consent of the department:

(i) the governor;

(ii) the attorney general;

(iii) a justice or judge of the courts of record;

(iv) members of the Corrections Advisory Council;

(v) members of the Board of Pardons and Parole;

(vi) members of the Legislature;

(vii) the sheriff, district attorney, and county attorney for the county in which the correctional facility is located; and

(viii) any other persons authorized under rules prescribed by the department or court order.

(b) Any person acting under a court order may visit or correspond with any inmate without the consent of the department provided the department has received notice of, and is permitted to respond to, the court order. The court shall consider department policy when making its order.

(c) The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.

(2) (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.

(b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

(c) (i) If the department determines by clear and convincing evidence that a visitor at a correctional facility has violated or attempted to violate any provision of Subsection 58-37-8(1)(a) while at a correctional facility or on the grounds of a correctional facility, the department shall revoke the visitor's privilege to visit any state correctional facility at any time unless or until the executive director or a designee reinstates the person's visitation privileges.

(ii) A person's visitation privileges may be reinstated under limited and specified

214 conditions regarding location and inmates.

215 (iii) If a final determination of not guilty is made in a criminal proceeding regarding
216 charges based on allegations substantially similar to the department's findings under Subsection
217 (2)(c)(i), and related to the same situation as addressed by the department, the department shall
218 reinstate the person's visitation privileges.

219 (3) Offenders housed at any correctional facility may send and receive correspondence,
220 subject to the rules of the department. All correspondence is subject to search, consistent with
221 department rules.

Legislative Review Note
as of 2-12-03 3:40 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0343****Amendments Regarding Illegal Drugs In Correctional
Facilities***21-Feb-03**10:58 AM*

State Impact

This bill requires an ongoing appropriation of \$86,100 General Fund beginning FY 2005 to the Department of Corrections.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$0	\$86,100	\$0	\$0
TOTAL	\$0	\$86,100	\$0	\$0

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst