

1                                   **CONTROLLED SUBSTANCES PENALTY**

2   **AMENDMENTS**

3   2007 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Wayne A. Harper**

6   Senate Sponsor: Michael G. Waddoups

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8   **LONG TITLE**

9   **General Description:**

10                   This bill modifies the Utah Controlled Substances Act regarding violations of  
11 controlled substance laws in the presence of children, and regarding committing  
12 offenses in specified locations, including modifying the scope of the area surrounding  
13 the locations and modifying the list of locations.

14 **Highlighted Provisions:**

15                   This bill:

16                   ▶ amends the current crime of committing drug offenses in the "immediate presence"  
17 of persons younger than 18 to remove the word "immediate";

18                   ▶ amends the increased penalty for committing drug offenses in specified locations to  
19 address areas within 1,000 feet of the locations; and

20                   ▶ adds libraries to the list of areas.

21 **Monies Appropriated in this Bill:**

22                   None

23 **Other Special Clauses:**

24                   None

25 **Utah Code Sections Affected:**

26 AMENDS:

27                   **58-37-8**, as last amended by Chapters 8 and 30, Laws of Utah 2006

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

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

31 **58-37-8. Prohibited acts -- Penalties.**

32 (1) Prohibited acts A -- Penalties:

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

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

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

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

40 (iv) engage in a continuing criminal enterprise where:

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

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

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

48 (i) a substance classified in Schedule I or II, a controlled substance analog, or  
49 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and  
50 upon a second or subsequent conviction is guilty of a first degree felony;

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

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

55 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
56 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
57 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his

58 person or in his immediate possession during the commission or in furtherance of the offense,  
59 the court shall additionally sentence the person convicted for a term of one year to run  
60 consecutively and not concurrently; and the court may additionally sentence the person  
61 convicted for an indeterminate term not to exceed five years to run consecutively and not  
62 concurrently.

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

67 (2) Prohibited acts B -- Penalties:

68 (a) It is unlawful:

69 (i) for any person knowingly and intentionally to possess or use a controlled substance  
70 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
71 directly from a practitioner while acting in the course of his professional practice, or as  
72 otherwise authorized by this chapter;

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

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

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

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

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

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

86 misdemeanor.

87 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
88 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater  
89 penalty than provided in this Subsection (2).

90 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
91 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of  
92 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty  
93 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a  
94 third degree felony.

95 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
96 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
97 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
98 than provided in Subsection (2)(b), and if the conviction is with respect to controlled  
99 substances as listed in:

100 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
101 indeterminate term as provided by law, and:

102 (A) the court shall additionally sentence the person convicted to a term of one year to  
103 run consecutively and not concurrently; and

104 (B) the court may additionally sentence the person convicted for an indeterminate term  
105 not to exceed five years to run consecutively and not concurrently; and

106 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
107 indeterminate term as provided by law, and the court shall additionally sentence the person  
108 convicted to a term of six months to run consecutively and not concurrently.

109 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

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

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

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

113 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not

114 amounting to a violation of Section 76-5-207:

115 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any  
116 measurable amount of a controlled substance; and

117 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
118 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

119 (h) A person who violates Subsection (2)(g) by having in his body:

120 (i) a controlled substance classified under Schedule I, other than those described in  
121 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
122 degree felony;

123 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
124 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

125 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
126 A misdemeanor.

127 (3) Prohibited acts C -- Penalties:

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

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

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

140 (iii) to make any false or forged prescription or written order for a controlled substance,  
141 or to utter the same, or to alter any prescription or written order issued or written under the

142 terms of this chapter; or

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

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

149 (4) Prohibited acts D -- Penalties:

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

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

157 (ii) in a public or private vocational school or postsecondary institution or on the  
158 grounds of any of those schools or institutions;

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

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

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

164 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

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

167 [~~viii) in a public parking lot or structure;~~]

168 (viii) in or on the grounds of a library;

169 (ix) within [~~1,000~~] any area that is within 1,000 feet of any structure, facility, or

170 grounds included in Subsections (4)(a)(i) [~~through (viii)~~], (ii), (iv), (vi), and (vii);

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

173 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
174 distribution of a substance in violation of this section to an inmate or on the grounds of any  
175 correctional facility as defined in Section 76-8-311.3.

176 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
177 and shall be imprisoned for a term of not less than five years if the penalty that would  
178 otherwise have been established but for this subsection would have been a first degree felony.

179 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
180 not eligible for probation.

181 (c) If the classification that would otherwise have been established would have been  
182 less than a first degree felony but for this Subsection (4), a person convicted under this  
183 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
184 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

185 (d) (i) If the violation is of Subsection (4)(a)(xi):

186 (A) the person may be sentenced to imprisonment for an indeterminate term as  
187 provided by law, and the court shall additionally sentence the person convicted for a term of  
188 one year to run consecutively and not concurrently; and

189 (B) the court may additionally sentence the person convicted for an indeterminate term  
190 not to exceed five years to run consecutively and not concurrently; and

191 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
192 the mental state required for the commission of an offense, directly or indirectly solicits,  
193 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
194 violation of Subsection (4)(a)(xi).

195 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
196 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
197 was unaware of the individual's true age; nor that the actor mistakenly believed that the

198 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
199 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

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

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

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

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

221 (10) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
222 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide  
223 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
224 as defined in Subsection 58-37-2(1)(w).

225 (b) In a prosecution alleging violation of this section regarding peyote as defined in



226 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
227 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
228 connection with the practice of a traditional Indian religion.

229 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
230 defense under this Subsection (10) as soon as practicable, but not later than ten days prior to  
231 trial.

232 (ii) The notice shall include the specific claims of the affirmative defense.

233 (iii) The court may waive the notice requirement in the interest of justice for good  
234 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

235 (d) The defendant shall establish the affirmative defense under this Subsection (10) by  
236 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
237 charges.

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