

1 **OVERDOSE REPORTING AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Carol Spackman Moss**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 58, Chapter 37, Utah Controlled Substances Act, and Title 76,
10 Utah Criminal Code, regarding penalties for controlled substance violations related to
11 the reporting of an overdose incident.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that a person who reports a person's overdose from a controlled substance
15 or other substance may claim an affirmative defense to specified charges of
16 violating the Utah Controlled Substances Act if the person remains with the person
17 who is subject to the overdose and cooperates with responding medical providers
18 and law enforcement officers; and

19 ▶ provides that remaining with a person subject to an overdose and cooperating with
20 medical providers and law enforcement is a mitigating factor when determining the
21 penalty for a related violation of the Utah Controlled Substances Act.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides an immediate effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **58-37-8**, as last amended by Laws of Utah 2011, Chapter 12

29 ENACTS:

30 [76-3-203.11](#), Utah Code Annotated 1953



31
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **58-37-8. Prohibited acts -- Penalties.**

35 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

54 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
55 marijuana, or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony, and
56 upon a second or subsequent conviction is guilty of a second degree felony; or

57 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a

58 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
59 felony.

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

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

72 (2) Prohibited acts B -- Penalties:

73 (a) It is unlawful:

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

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

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

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

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

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

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

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

95 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
96 substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in
97 Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor.
98 Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or
99 subsequent conviction the person is guilty of a third degree felony.

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

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

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

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

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

- 114 (f) Any person convicted of violating Subsection (2)(a)(ii) or(iii) is:
- 115 (i) on a first conviction, guilty of a class B misdemeanor;
- 116 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 117 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 118 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 119 amounting to a violation of Section [76-5-207](#):
- 120 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 121 body any measurable amount of a controlled substance; and
- 122 (ii) operates a motor vehicle as defined in Section [76-5-207](#) in a negligent manner,
- 123 causing serious bodily injury as defined in Section [76-1-601](#) or the death of another.
- 124 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 125 (i) a controlled substance classified under Schedule I, other than those described in
- 126 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 127 degree felony;
- 128 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 129 [58-37-4\(2\)\(a\)\(iii\)\(S\)](#) or (AA), or a substance listed in Section [58-37-4.2](#) is guilty of a third
- 130 degree felony; or
- 131 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
- 132 A misdemeanor.
- 133 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 134 injury or death as a result of the person's negligent driving in violation of Subsection
- 135 [58-37-8\(2\)\(g\)](#) whether or not the injuries arise from the same episode of driving.
- 136 (3) Prohibited acts C -- Penalties:
- 137 (a) It is unlawful for any person knowingly and intentionally:
- 138 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 139 license number which is fictitious, revoked, suspended, or issued to another person or, for the
- 140 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
- 141 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized

142 person;

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

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

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

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

158 (4) Prohibited acts D -- Penalties:

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

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

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

168 (iii) in those portions of any building, park, stadium, or other structure or grounds
169 which are, at the time of the act, being used for an activity sponsored by or through a school or

170 institution under Subsections (4)(a)(i) and (ii);
171 (iv) in or on the grounds of a preschool or child-care facility;
172 (v) in a public park, amusement park, arcade, or recreation center;
173 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;
174 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
175 playhouse, or parking lot or structure adjacent thereto;
176 (viii) in or on the grounds of a library;
177 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds
178 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);
179 (x) in the presence of a person younger than 18 years of age, regardless of where the act
180 occurs; or
181 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
182 distribution of a substance in violation of this section to an inmate or on the grounds of any
183 correctional facility as defined in Section 76-8-311.3.
184 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
185 and shall be imprisoned for a term of not less than five years if the penalty that would
186 otherwise have been established but for this Subsection (4) would have been a first degree
187 felony.
188 (ii) Imposition or execution of the sentence may not be suspended, and the person is
189 not eligible for probation.
190 (c) If the classification that would otherwise have been established would have been
191 less than a first degree felony but for this Subsection (4), a person convicted under this
192 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
193 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).
194 (d) (i) If the violation is of Subsection (4)(a)(xi):
195 (A) the person may be sentenced to imprisonment for an indeterminate term as
196 provided by law, and the court shall additionally sentence the person convicted for a term of
197 one year to run consecutively and not concurrently; and

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

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

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

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

211 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of
212 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
213 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
214 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

215 (7) A person may be charged and sentenced for a violation of this section,
216 notwithstanding a charge and sentence for a violation of any other section of this chapter.

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

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

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

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

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

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

234 (b) any law enforcement officer acting in the course and legitimate scope of the
235 officer's employment.

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

240 (b) In a prosecution alleging violation of this section regarding peyote as defined in
241 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,
242 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in
243 connection with the practice of a traditional Indian religion.

244 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
245 defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to
246 trial.

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

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

250 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
251 a preponderance of the evidence. If the defense is established, it is a complete defense to the
252 charges.

253 (13) (a) It is an affirmative defense that the person produced, possessed, or

254 administered a controlled substance listed in Section 58-37-4.2 if the person:

255 (i) was engaged in medical research; and

256 (ii) was a holder of a valid license to possess controlled substances under Section

257 58-37-6.

258 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed

259 a controlled substance listed in Section 58-37-4.2.

260 (14) It is an affirmative defense that the person possessed, in the person's body, a

261 controlled substance listed in Section 58-37-4.2 if:

262 (a) the person was the subject of medical research conducted by a holder of a valid

263 license to possess controlled substances under Section 58-37-6; and

264 (b) the substance was administered to the person by the medical researcher.

265 (15) (a) It is an affirmative defense to an allegation of the commission of an offense

266 listed in Subsection (15)(b) that the person:

267 (i) reasonably believes that the person or another person is experiencing an overdose

268 event due to the ingestion, injection, inhalation, or other introduction into the human body of a

269 controlled substance or other substance;

270 (ii) reports in good faith the overdose event to a medical provider, an emergency

271 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911

272 emergency call system, or an emergency dispatch system, or the person is the subject of a

273 report made under this Subsection (15);

274 (iii) provides in the report under Subsection (15)(a)(ii) a functional description of the

275 actual location of the overdose event that facilitates responding to the person experiencing the

276 overdose event;

277 (iv) remains at the location of the person experiencing the overdose event until a

278 responding law enforcement officer or emergency medical service provider arrives, or remains

279 at the medical care facility where the person experiencing an overdose event is located until a

280 responding law enforcement officer arrives;

281 (v) cooperates with the responding medical provider, emergency medical service

282 provider, and law enforcement officer, including providing information regarding the person
283 experiencing the overdose event and any substances the person may have injected, inhaled, or
284 otherwise introduced into the person's body; and

285 (vi) is alleged to have committed the offense in the same course of events from which
286 the reported overdose arose.

287 (b) The offenses referred to in Subsection (15)(a) are:

288 (i) the possession or use of less than 16 ounces of marijuana;

289 (ii) the possession or use of a scheduled or listed controlled substance other than
290 marijuana; and

291 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
292 Imitation Controlled Substances Act.

293 (c) As used in this Subsection (15) and in Section 76-3-203.11, "good faith" does not
294 include seeking medical assistance under this section during the course of a law enforcement
295 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

296 ~~[(15)]~~ (16) If any provision of this chapter, or the application of any provision to any
297 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
298 without the invalid provision or application.

299 ~~[(16)]~~ (17) A legislative body of a political subdivision may not enact an ordinance that
300 is less restrictive than any provision of this chapter.

301 Section 2. Section **76-3-203.11** is enacted to read:

302 **76-3-203.11. Reporting an overdose -- Mitigating factor.**

303 It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah
304 Controlled Substances Act, that the person:

305 (1) reasonably believes that the person or another person is experiencing an overdose
306 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
307 controlled substance or other substance;

308 (2) reports in good faith the overdose event to a medical provider, an emergency
309 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911

310 emergency call system, or an emergency dispatch system, or the person is the subject of a
311 report made under this section;

312 (3) provides in the report under Subsection (2) a functional description of the location
313 of the actual overdose event that facilitates responding to the person experiencing the overdose
314 event;

315 (4) remains at the location of the person experiencing the overdose event until a
316 responding law enforcement officer or emergency medical service provider arrives, or remains
317 at the medical care facility where the person experiencing an overdose event is located until a
318 responding law enforcement officer arrives;

319 (5) cooperates with the responding medical provider, emergency medical service
320 provider, and law enforcement officer, including providing information regarding the person
321 experiencing the overdose event and any substances the person may have injected, inhaled, or
322 otherwise introduced into the person's body; and

323 (6) committed the offense in the same course of events from which the reported
324 overdose arose.

325 **Section 3. Effective date.**

326 If approved by two-thirds of all the members elected to each house, this bill takes effect
327 upon approval by the governor, or the day following the constitutional time limit of Utah
328 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
329 the date of veto override.