

1                   **DRUG PARAPHERNALIA PENALTY AMENDMENTS**

2                                   2019 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Stephanie Pitcher**

5                                   Senate Sponsor: Todd Weiler

---

---

7 **LONG TITLE**

8 **General Description:**

9           This bill addresses drug paraphernalia.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ removes certain enhancements for offenses related to drug paraphernalia; and
- 13           ▶ makes technical changes.

14 **Money Appropriated in this Bill:**

15           None

16 **Other Special Clauses:**

17           None

18 **Utah Code Sections Affected:**

19 AMENDS:

20           **58-37-8**, as last amended by Laws of Utah 2017, Chapter 330

---

---

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

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

24           **58-37-8. Prohibited acts -- Penalties.**

25           (1) Prohibited acts A -- Penalties and reporting:

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

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

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

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

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

34 (A) the person participates, directs, or engages in conduct that results in ~~[any]~~ a  
35 violation of ~~[any provision of Title 58,]~~ Chapters 37, Utah Controlled Substances Act, 37a,  
36 Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled  
37 Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

38 (B) the violation is a part of a continuing series of two or more violations of ~~[Title 58,]~~  
39 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,  
40 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,  
41 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or  
42 more persons with respect to whom the person occupies a position of organizer, supervisor, or  
43 any other position of management.

44 (b) ~~[Any]~~ A person convicted of violating Subsection (1)(a) with respect to:

45 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
46 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
47 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or  
48 subsequent conviction is guilty of a first degree felony;

49 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
50 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and  
51 upon a second or subsequent conviction is guilty of a second degree felony; or

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

55 (c) ~~[Any]~~ A person who has been convicted of a violation of Subsection (1)(a)(ii) or

56 (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the  
57 trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on

58 the person or in the person's immediate possession during the commission or in furtherance of  
59 the offense, the court shall additionally sentence the person convicted for a term of one year to  
60 run 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~~] A person convicted of violating Subsection (1)(a)(iv) is guilty of a first  
64 degree felony punishable by imprisonment for an indeterminate term of not less than seven  
65 years and which may be for life. Imposition or execution of the sentence may not be  
66 suspended, and the person is not eligible for probation.

67 (e) The Administrative Office of the Courts shall report to the Division of  
68 Occupational and Professional Licensing the name, case number, date of conviction, and if  
69 known, the date of birth of each person convicted of violating Subsection [~~(2)~~] (1)(a).

70 (2) Prohibited acts B -- Penalties and reporting:

71 (a) It is unlawful:

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

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

80 (iii) for [~~any~~] a person knowingly and intentionally to possess an altered or forged  
81 prescription or written order for a controlled substance.

82 (b) [~~Any~~] A person convicted of violating Subsection (2)(a)(i) with respect to:

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

84 or

85 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty

86 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
87 conviction is guilty of a third degree felony.

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

91 (d) [~~Any~~] A person who violates Subsection (2)(a)(i) with respect to all other  
92 controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in  
93 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction  
94 the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the  
95 person is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

114 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
115 amounting to a violation of Section 76-5-207:

116 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
117 body any measurable amount of a controlled substance; and

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

120 (h) A person who violates Subsection (2)(g) by having in the person's body:

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

124 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
125 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
126 degree felony; or

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

129 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
130 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)  
131 whether or not the injuries arise from the same episode of driving.

132 (j) The Administrative Office of the Courts shall report to the Division of Occupational  
133 and Professional Licensing the name, case number, date of conviction, and if known, the date  
134 of birth of each person convicted of violating Subsection (2)(a).

135 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

155 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
156 misdemeanor.

157 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
158 degree felony.

159 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

160 (4) Prohibited acts D -- Penalties:

161 (a) Notwithstanding other provisions of this section, a person not authorized under this  
162 chapter who commits any act that is unlawful under Subsection (1)(a)[, Section 58-37a-5,] or  
163 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this  
164 Subsection (4) if the trier of fact finds the act is committed:

165 (i) in a public or private elementary or secondary school or on the grounds of any of  
166 those schools during the hours of 6 a.m. through 10 p.m.;

167 (ii) in a public or private vocational school or postsecondary institution or on the  
168 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

169 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or

170 facility's hours of operation;

171 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
172 amusement park, arcade, or recreation center is open to the public;

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

174 (vi) in or on the grounds of a library when the library is open to the public;

175 (vii) within ~~any~~ an area that is within 100 feet of any structure, facility, or grounds  
176 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

177 (viii) in the presence of a person younger than 18 years of age, regardless of where the  
178 act occurs; or

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

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

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

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

192 (d) (i) If the violation is of Subsection (4)(a)(ix):

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

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

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

202 (e) It is not a defense to a prosecution under this Subsection (4) that:

203 (i) the actor mistakenly believed the individual to be 18 years of age or older at the  
204 time of the offense or was unaware of the individual's true age; ~~[not that]~~ or

205 (ii) the actor mistakenly believed that the location where the act occurred was not as  
206 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
207 described in Subsection (4)(a).

208 (5) ~~[Any]~~ A violation of this chapter for which no penalty is specified is a class B  
209 misdemeanor.

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

215 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
216 conviction that is:

217 (i) from a separate criminal episode than the current charge; and

218 (ii) from a conviction that is separate from any other conviction used to enhance the  
219 current charge.

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

222 (8) (a) ~~[Any]~~ A penalty imposed for violation of this section is in addition to, and not  
223 in lieu of, ~~[any]~~ a civil or administrative penalty or sanction authorized by law.

224 (b) ~~[Where]~~ When a violation of this chapter violates a federal law or the law of  
225 another state, conviction or acquittal under federal law or the law of another state for the same



226 act is a bar to prosecution in this state.

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

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

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

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

239 (b) ~~[any]~~ a law enforcement officer acting in the course and legitimate scope of the  
240 officer's employment.

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

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

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

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

253 (iii) The court may waive the notice requirement in the interest of justice for good

254 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

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

258 (13) (a) It is an affirmative defense that the person produced, possessed, or  
259 administered a controlled substance listed in Section 58-37-4.2 if the person was:

260 (i) [~~was~~] engaged in medical research; and

261 (ii) [~~was~~] a holder of a valid license to possess controlled substances under Section  
262 58-37-6.

263 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed  
264 a controlled substance listed in Section 58-37-4.2.

265 (14) It is an affirmative defense that the person possessed, in the person's body, a  
266 controlled substance listed in Section 58-37-4.2 if:

267 (a) the person was the subject of medical research conducted by a holder of a valid  
268 license to possess controlled substances under Section 58-37-6; and

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

270 (15) The application of any increase in penalty under this section to a violation of  
271 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
272 Subsection (15) takes precedence over any conflicting provision of this section.

273 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
274 listed in Subsection (16)(b) that the person:

275 (i) reasonably believes that the person or another person is experiencing an overdose  
276 event due to the ingestion, injection, inhalation, or other introduction into the human body of a  
277 controlled substance or other substance;

278 (ii) reports in good faith the overdose event to a medical provider, an emergency  
279 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911  
280 emergency call system, or an emergency dispatch system, or the person is the subject of a  
281 report made under this Subsection (16);

282 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
283 actual location of the overdose event that facilitates responding to the person experiencing the  
284 overdose event;

285 (iv) remains at the location of the person experiencing the overdose event until a  
286 responding law enforcement officer or emergency medical service provider arrives, or remains  
287 at the medical care facility where the person experiencing an overdose event is located until a  
288 responding law enforcement officer arrives;

289 (v) cooperates with the responding medical provider, emergency medical service  
290 provider, and law enforcement officer, including providing information regarding the person  
291 experiencing the overdose event and any substances the person may have injected, inhaled, or  
292 otherwise introduced into the person's body; and

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

295 (b) The offenses referred to in Subsection (16)(a) are:

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

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

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

301 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not  
302 include seeking medical assistance under this section during the course of a law enforcement  
303 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

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

307 (18) A legislative body of a political subdivision may not enact an ordinance that is  
308 less restrictive than any provision of this chapter.

309 (19) If a minor who is under 18 years of age is found by a court to have violated this

310 section, the court may order the minor to complete:

311 (a) [~~the minor to complete~~] a screening as defined in Section 41-6a-501;

312 (b) [~~the minor to complete~~] an assessment as defined in Section 41-6a-501 if the  
313 screening indicates an assessment to be appropriate; and

314 (c) [~~the minor to complete~~] an educational series as defined in Section 41-6a-501 or  
315 substance use disorder treatment as indicated by an assessment.