

HOMELESS RESOURCE CENTER DRUG-FREE ZONE

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions related to penalties for certain prohibited acts.

Highlighted Provisions:

This bill:

- ▶ modifies penalties for certain prohibited acts committed in or on the grounds of a permanent housing, permanent supportive, or transitional facility; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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 and reporting:

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



28 intentionally:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72 (a) It is unlawful:

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

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

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

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

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

85 or

86 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
87 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
88 conviction is guilty of a third degree felony.

89 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a

90 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
91 penalty than provided in this Subsection (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

- 121 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 122 (i) a controlled substance classified under Schedule I, other than those described in
- 123 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 124 degree felony;
- 125 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 126 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
- 127 degree felony; or
- 128 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
- 129 A misdemeanor.
- 130 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 131 injury or death as a result of the person's negligent driving in violation of Subsection (2)(g)
- 132 whether or not the injuries arise from the same episode of driving.
- 133 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 134 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 135 of birth of each person convicted of violating Subsection (2)(a).
- 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) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
157 misdemeanor.

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

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

161 (4) Prohibited acts D -- Penalties:

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

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

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

170 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
171 facility's hours of operation;

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

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

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

176 (vii) in or on the grounds of a permanent housing, permanent supportive, or transitional
177 facility, as defined in Section 35A-5-302;

178 [~~(vii)~~] (viii) within any area that is within 100 feet of any structure, facility, or grounds
179 included in [~~Subsections~~] Subsection (4)(a)(i), (ii), (iii), (iv), (v), [and] (vi), or (vii);

180 [~~(viii)~~] (ix) in the presence of a person younger than 18 years of age, regardless of
181 where the act occurs; or

182 [~~(ix)~~] (x) for the purpose of facilitating, arranging, or causing the transport, delivery, or

183 distribution of a substance in violation of this section to an inmate or on the grounds of any
184 correctional facility as defined in Section 76-8-311.3.

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

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

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

195 (d) (i) If the violation is of Subsection (4)(a)~~(ix)~~(x):

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

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

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

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

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

212 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
213 guilty or no contest to a violation or attempted violation of this section or a plea which is held

214 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
215 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
216 abeyance agreement.

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

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

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

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

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

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

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

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

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

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

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

243 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
244 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide

245 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
246 as defined in Subsection 58-37-2(1)(w).

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

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

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

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

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

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

262 (i) was engaged in medical research; and

263 (ii) was a holder of a valid license to possess controlled substances under Section
264 58-37-6.

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

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

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

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

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

275 (16) (a) It is an affirmative defense to an allegation of the commission of an offense

276 listed in Subsection (16)(b) that the person:

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

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

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

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

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

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

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

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

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

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

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

306 (17) If any provision of this chapter, or the application of any provision to any person

307 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
308 invalid provision or application.

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

311 (19) If a minor who is under 18 years of age is found by a court to have violated this
312 section, the court may order:

313 (a) the minor to complete a screening as defined in Section 41-6a-501;

314 (b) the minor to complete an assessment as defined in Section 41-6a-501 if the
315 screening indicates an assessment to be appropriate; and

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