

SB0043S01 compared with SB0043

~~{deleted text}~~ shows text that was in SB0043 but was deleted in SB0043S01.

Inserted text shows text that was not in SB0043 but was inserted into SB0043S01.

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Senator Karen Mayne proposes the following substitute bill:

CRIMINAL PROVISIONS MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

~~{Committee Note:~~

~~— The Criminal Code Evaluation Task Force recommended this bill.~~

~~— Membership: — 7 legislators — 9 non-legislators~~

~~— Legislative Vote: 4 voting for — 0 voting against — 2 absent~~

~~{General Description:~~

~~This bill modifies provisions relating to criminal offenses and penalties in the Utah Code.~~

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the definition of "continuing criminal enterprise" used in the Utah Controlled Substances Act;

SB0043S01 compared with SB0043

- ▶ modifies criminal offenses and penalties relating to:
 - clandestine drug labs;
 - drug distribution resulting in death;
 - electronic communications harassment; and
 - return of a marriage license to a county clerk;
- ▶ repeals the offense of fornication;{

→ ~~repeals provisions allowing the Department of Public Safety to enforce the Clandestine Drug Lab Act;}~~ and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-1-11, as last amended by Laws of Utah 2018, Chapter 148

58-37-2, as last amended by Laws of Utah 2015, Chapter 258

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

58-37d-2, as last amended by Laws of Utah 2013, Chapter 278

58-37d-3, as last amended by Laws of Utah 2013, Chapters 262 and 413

58-37d-4, as last amended by Laws of Utah 2008, Chapter 305

58-37d-5, as last amended by Laws of Utah 2003, Chapter 115

58-37d-6, as enacted by Laws of Utah 1992, Chapter 156

76-9-201, as last amended by Laws of Utah 2018, Chapter 444

77-22-2, as last amended by Laws of Utah 2009, Chapter 6

77-22-2.5, as last amended by Laws of Utah 2017, Chapter 447

REPEALS:

~~{ **58-37d-9**, as last amended by Laws of Utah 1999, Chapter 21~~

~~‡ **76-7-104**, as enacted by Laws of Utah 1973, Chapter 196~~

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

SB0043S01 compared with SB0043

Section 1. Section 30-1-11 is amended to read:

30-1-11. Return of license after ceremony -- Failure -- Penalty.

(1) The individual solemnizing the marriage shall within 30 days [~~thereafter~~] after solemnizing the marriage return the license to the clerk of the county [~~whence it issued~~] that issues the license, with a certificate of the marriage over the individual's signature, giving the date and place of celebration and the names of two or more witnesses present at the marriage.

(2) An individual described in Subsection (1) who fails to [~~make the return~~] return the license is guilty of [~~a class B misdemeanor~~] an infraction.

Section 2. Section 58-37-2 is amended to read:

58-37-2. Definitions.

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, [~~Chapter 37a, Utah Drug Paraphernalia Act,~~] Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter

SB0043S01 compared with SB0043

37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f) (i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513;

(C) that is a controlled substance analog; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g) (i) "Controlled substance analog" means:

(A) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513;

(B) a substance which has a stimulant, depressant, or hallucinogenic effect on the

SB0043S01 compared with SB0043

central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

(C) A substance which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513.

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h) (i) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by:

(A) Chapter 37, Utah Controlled Substances Act;

(B) Chapter 37a, Utah Drug Paraphernalia Act;

SB0043S01 compared with SB0043

(C) Chapter 37b, Imitation Controlled Substances Act;

(D) Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Chapter 37d, Clandestine Drug Lab Act; or

(ii) for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under:

(A) Chapter 37, Utah Controlled Substances Act;

(B) Chapter 37a, Utah Drug Paraphernalia Act;

(C) Chapter 37b, Imitation Controlled Substances Act;

(D) Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Chapter 37d, Clandestine Drug Lab Act.

(i) "Counterfeit substance" means:

(i) any controlled substance or container or labeling of any controlled substance that:

(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or

(ii) any substance other than under Subsection (1)(i)(i) that:

(A) is falsely represented to be any legally or illegally manufactured controlled substance; and

(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:

(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;

SB0043S01 compared with SB0043

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system;

(iii) lysergic acid diethylamide; or

(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(r) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in

SB0043S01 compared with SB0043

Subsections (1)(r)(i)(A), (B), and (C).

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by

SB0043S01 compared with SB0043

the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (i) opium, coca leaves, and opiates;
- (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
- (iii) opium poppy and poppy straw; or
- (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

SB0043S01 compared with SB0043

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

SB0043S01 compared with SB0043

(ll) "Prescription" means an order issued:

(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and

(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.

(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

(oo) "State" means the state of Utah.

(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Section ~~2~~3. 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 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 that results in any violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, ~~[37a, Utah Drug Paraphernalia Act,]~~ 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony~~[-and]~~, if the violation:

~~[(B)]~~ (A) ~~[the violation]~~ is a part of a continuing series of two or more violations of

SB0043S01 compared with SB0043

Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, 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~~] another position of management[-]; or

(B) results in the death of an individual.

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

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

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 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 or a counterfeit of 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 the person or in the person's 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.

(e) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if

SB0043S01 compared with SB0043

known, the date of birth of each person convicted of violating Subsection (2)(a).

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

(a) It is unlawful:

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

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

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

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

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

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

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

(d) (i) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

(ii) Upon a third conviction under Subsection (2)(d)(i), the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater

SB0043S01 compared with SB0043

than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A person is guilty of a separate offense for each victim suffering serious bodily

SB0043S01 compared with SB0043

injury or death as a result of the person's negligent driving in violation of Subsection(2)(g) whether or not the injuries arise from the same episode of driving.

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

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

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

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

(4) Prohibited acts D -- Penalties:

SB0043S01 compared with SB0043

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) 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 during the hours of 6 a.m. through 10 p.m.;

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

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

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

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

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

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

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

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

(b) (i) 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 (4) would have been a first degree felony.

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

(c) [Hf] Except for a violation of Subsection (2)(g), 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. [~~This Subsection (4)(c) does not apply to a~~

SB0043S01 compared with SB0043

~~violation of Subsection (2)(g):]~~

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

(A) 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

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

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

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

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

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

(ii) from a conviction that is separate from [~~any other~~] another conviction used to enhance the current charge.

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

SB0043S01 compared with SB0043

(8) (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.

(9) In any prosecution for a violation of this chapter, evidence or proof that 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.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's 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 the veterinarian's direction and supervision.

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

(a) any person registered under this chapter 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 the officer's employment.

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

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

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

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

SB0043S01 compared with SB0043

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

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence~~[.H]~~ and, if the defense is established, [it] the defense is a complete defense to the charges.

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

(i) was engaged in medical research; and

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

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

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

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

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

(15) (a) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

(b) This Subsection (15) takes precedence over any conflicting provision of this section.

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

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

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

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the

SB0043S01 compared with SB0043

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

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

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

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

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

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

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

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

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

(17) 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.

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

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

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

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

SB0043S01 compared with SB0043

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

Section ~~3~~4. Section **58-37d-2** is amended to read:

58-37d-2. Purpose.

The clandestine production of methamphetamine, other amphetamines, phencyclidine, narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack" cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the western states and Utah. These highly technical illegal operations create substantial dangers to the general public and environment from fire, explosions, and the release of toxic chemicals. By their very nature these activities often involve a number of persons in a conspiratorial enterprise to bring together all necessary components for clandestine production, to thwart regulation and detection, and to distribute the final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory operations. With regard to the controlled substances specified herein, this act shall control, notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

Section ~~4~~5. Section **58-37d-3** is amended to read:

58-37d-3. Definitions.

(1) As used in this chapter:

(a) (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily injury when triggered by the action of a person making contact with the device.

(ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.

(b) "Clandestine laboratory operation" means the:

(i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;

(ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of specified controlled substances;

(iii) setting up of equipment or supplies in preparation for the illegal manufacture of

SB0043S01 compared with SB0043

specified controlled substances;

(iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;

(v) illegal manufacture of specified controlled substances; or

(vi) distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

(c) "Controlled substance precursor" means those chemicals designated in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in Subsections 58-37c-3(1)(kk) and (ll).

(d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:

(i) (A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be an opioid distributed by another manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be an opioid distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or

(ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and

(B) a reasonable person would believe to be a legal or illegal opioid.

~~(d)~~ (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or water so that the material may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.

~~(e)~~ (f) "Hazardous or dangerous material" means a substance that because of its quantity, concentration, physical characteristics, or chemical characteristics may cause or significantly contribute to an increase in mortality, an increase in serious illness, or may pose a substantial present or potential future hazard to human health or the environment when

SB0043S01 compared with SB0043

improperly treated, stored, transported, disposed of, or otherwise improperly managed.

~~[(f)]~~ (g) "Illegal manufacture of specified controlled substances" means in violation of Title 58, Chapter 37, Utah Controlled Substances Act, the:

(i) compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing for the purpose of producing methamphetamine, other amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act, phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled Substances Act, lysergic acid diethylamide, ~~[or]~~ mescaline, tetrahydrocannabinol, or counterfeit opioid;

(ii) conversion of cocaine or methamphetamine to their base forms; or

(iii) extraction, concentration, or synthesis of ~~[marijuana as that drug is defined in Section 58-37-2]~~ tetrahydrocannabinol.

(h) "Opioid" means the same as that term is defined in Section 58-37f-303.

(i) "Tetrahydrocannabinol" means the same as that term is defined in Section 58-37-3.6.

(2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this chapter.

Section ~~57~~6. Section **58-37d-4** is amended to read:

58-37d-4. Prohibited acts -- Second degree felony.

(1) It is unlawful for any person to knowingly or intentionally:

(a) possess a controlled substance or a controlled substance precursor with the intent to engage in a clandestine laboratory operation;

(b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;

(c) sell, distribute, or otherwise supply a controlled substance, controlled substance precursor ~~[chemical]~~, laboratory equipment, or laboratory supplies, knowing or having reasonable cause to believe any of these items will be used for a clandestine laboratory operation;

(d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;

SB0043S01 compared with SB0043

(e) conspire with or aid another to engage in a clandestine laboratory operation;

(f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act;

(g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by [~~any other~~] another person regardless of whether the final destination for the distribution is within this state or [~~any other~~] another location; or

(h) engage in compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of any substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, knowing or having reasonable cause to believe that the substance is a product of any of these activities and will be used in the illegal manufacture of specified controlled substances.

(2) A person who violates [~~any provision of~~] Subsection (1) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than [~~3~~] three years nor more than 15 years.

Section ~~67~~7. Section **58-37d-5** is amended to read:

58-37d-5. Prohibited acts -- First degree felony.

(1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), (f), or (h) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:

(a) possession of a firearm;

(b) use of a booby trap;

(c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

(d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;

(e) clandestine laboratory operation actually produced any amount of a specified

SB0043S01 compared with SB0043

controlled substance or a counterfeit opioid; or

(f) intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.

(2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for the first degree felony:

- (a) probation shall not be granted;
- (b) the execution or imposition of sentence shall not be suspended; and
- (c) the court shall not enter a judgment for a lower category of offense.

Section ~~77~~8. Section **58-37d-6** is amended to read:

58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance precursor or clandestine laboratory equipment.

The trier of fact may infer that ~~the~~ a defendant intended to engage in a clandestine laboratory operation if the defendant:

(1) is in illegal possession of a controlled substance precursor; or
(2) illegally possesses or attempts to illegally possess a controlled substance or controlled substance precursor and is in possession of any one of the following pieces of equipment:

- (a) glass reaction vessel;
- (b) separatory funnel;
- (c) glass condenser;
- (d) analytical balance; ~~or~~
- (e) heating mantle~~[-];~~~~for~~
- (f) pill press machine or similar device;
- (g) closed loop extraction system;
- (h) extraction tube; or
- (i) rotary evaporator.

Section ~~78~~9. Section **76-9-201** is amended to read:

76-9-201. Electronic communication harassment -- Definitions -- Penalties.

(1) As used in this section:

- (a) "Adult" means ~~a person~~ an individual 18 years of age or older.

SB0043S01 compared with SB0043

(b) "Electronic communication" means [~~any~~] a communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at [~~any~~] a specific individual.

(c) "Electronic communication device" includes a telephone, a facsimile machine, electronic mail, a pager, a computer, or [~~any other~~] another device or medium that can be used to communicate electronically.

(d) "Minor" means [~~a person~~] an individual who is younger than 18 years of age.

(e) "Personal identifying information" means the same as that term is defined in Section 76-6-1102.

(2) A person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a) (i) makes repeated contact by means of electronic communications, regardless of whether a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device[~~; or~~].

~~[(e) electronically publishes, posts, or otherwise discloses personal identifying information of another person, in a public online site or forum, without that person's~~

SB0043S01 compared with SB0043

permission.]

(3) A person who electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to abuse, threaten, or disrupt the other individual's electronic communication and without the other individual's permission is guilty of electronic communication harassment.

~~(3)~~ (4) (a) (i) Electronic communication harassment committed against an adult is a class B misdemeanor, except under Subsection ~~(3)~~ (4)(a)(ii).

(ii) A second or subsequent offense under Subsection ~~(3)~~ (4)(a)(i) is [a]:

(A) a class A misdemeanor if all prior violations of this section were committed against adults; and

(B) a third degree felony if [any] a prior violation of this section was committed against a minor.

(b) (i) Electronic communication harassment committed against a minor is a class A misdemeanor, except as provided under Subsection ~~(3)~~ (4)(b)(ii).

(ii) A second or subsequent offense under Subsection ~~(3)~~ (4)(b)(i) is a third degree felony, regardless of whether [any] a prior violation of this section was committed against a minor or an adult.

~~(4)~~ (5) (a) Except as provided under Subsection ~~(4)~~ (5)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of [~~any of the offenses~~] an offense under this section.

(b) This section does not create [any] a civil cause of action based on electronic communications made for legitimate business purposes.

Section ~~9~~10. Section 77-22-2 is amended to read:

77-22-2. Investigations -- Right to subpoena witnesses and require production of evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed court -- Disclosure of information.

(1) As used in this section, "prosecutor" means the [~~attorney general, county attorney, district attorney, or municipal attorney~~] the same as that term is defined in Section 77-22-4.5.

(2) (a) In any matter involving the investigation of a crime or malfeasance in office, or any criminal conspiracy or activity, the prosecutor may, upon application and approval of the district court and for good cause shown, conduct a criminal investigation.

SB0043S01 compared with SB0043

(b) The application and statement of good cause shall state whether or not [~~any other~~ another] investigative order related to the investigation at issue has been filed in another court.

(3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

(i) subpoena witnesses;

(ii) compel their attendance and testimony under oath to be recorded by a suitable electronic recording device or to be given before any certified court reporter; and

(iii) require the production of books, papers, documents, recordings, and any other items that [~~constitute~~ are] evidence or may be relevant to the investigation.

(b) The prosecutor shall:

(i) apply to the district court for each subpoena; and

(ii) show that the requested information is reasonably related to the criminal investigation authorized by the court.

(4) (a) The prosecutor shall state in each subpoena:

(i) the time and place of the examination;

(ii) that the subpoena is issued in aid of a criminal investigation; and

(iii) the right of the person subpoenaed to have counsel present.

(b) The examination may be conducted anywhere within the jurisdiction of the prosecutor issuing the subpoena.

(c) The subpoena need not disclose the names of possible defendants.

(d) Witness fees and expenses shall be paid as in a civil action.

(5) (a) At the beginning of each compelled interrogation, the prosecutor shall personally inform each witness:

(i) of the general subject matter of the investigation;

(ii) of the privilege to, at any time during the proceeding, refuse to answer any question or produce any evidence of a communicative nature that may result in self-incrimination;

(iii) that any information provided may be used against the witness in a subsequent criminal proceeding; and

(iv) of the right to have counsel present.

(b) If the prosecutor has substantial evidence that the subpoenaed witness has committed a crime that is under investigation, the prosecutor shall:

(i) inform the witness in person before interrogation of that witness's target status; and

SB0043S01 compared with SB0043

(ii) inform the witness of the nature of the charges under consideration against the witness.

(6) (a) (i) The prosecutor may make written application to any district court showing a reasonable likelihood that publicly releasing information about the identity of a witness or the substance of the evidence resulting from a subpoena or interrogation would pose a threat of harm to a person or otherwise impede the investigation.

(ii) Upon a finding of reasonable likelihood, the court may order the:

(A) interrogation of a witness be held in secret;

(B) occurrence of the interrogation and other subpoenaing of evidence, the identity of the person subpoenaed, and the substance of the evidence obtained be kept secret; and

(C) record of testimony and other subpoenaed evidence be kept secret unless the court for good cause otherwise orders.

(b) After application, the court may by order exclude from any investigative hearing or proceeding any persons except:

(i) the attorneys representing the state and members of their staffs;

(ii) persons who, in the judgment of the attorneys representing the state, are reasonably necessary to assist in the investigative process;

(iii) the court reporter or operator of the electronic recording device; and

(iv) the attorney for the witness.

(c) This chapter does not prevent attorneys representing the state or members of their staff from disclosing information obtained pursuant to this chapter for the purpose of furthering any official governmental investigation.

(d) (i) If a secrecy order has been granted by the court regarding the interrogation or disclosure of evidence by a witness under this subsection, and if the court finds a further restriction on the witness is appropriate, the court may order the witness not to disclose the substance of the witness's testimony or evidence given by the witness to others.

(ii) Any order to not disclose made under this subsection shall be served with the subpoena.

(iii) In an appropriate circumstance the court may order that the witness not disclose the existence of the investigation to others.

(iv) Any order under this Subsection (6)(d) must be based upon a finding by the court

SB0043S01 compared with SB0043

that one or more of the following risks exist:

- (A) disclosure by the witness would cause destruction of evidence;
- (B) disclosure by the witness would taint the evidence provided by other witnesses;
- (C) disclosure by the witness to a target of the investigation would result in flight or other conduct to avoid prosecution;
- (D) disclosure by the witness would damage a person's reputation; or
- (E) disclosure by the witness would cause a threat of harm to any person.

(e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction to a witness not to disclose the substance of testimony or evidence provided and the prosecuting agency proves by a preponderance of the evidence that a witness has violated that order, the court may hold the witness in contempt.

(ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not infringe on the attorney-client relationship between the witness and the witness's attorney or on [~~any other~~] another legally recognized privileged relationship.

(7) (a) (i) The prosecutor may submit to any district court a separate written request that the application, statement of good cause, and the court's order authorizing the investigation be kept secret.

(ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government Records Access and Management Act, but need not contain any information that would compromise any of the interest listed in Subsection (7)(c).

(b) With the court's permission, the prosecutor may submit to the court, in camera, any additional information to support the request for secrecy if necessary to avoid compromising the interests listed in Subsection (7)(c).

(c) The court shall consider all information in the application and order authorizing the investigation and any information received in camera and shall order that all information be placed in the public file except information that, if disclosed, would pose:

- (i) a substantial risk of harm to a person's safety;
- (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or
- (iii) a serious impediment to the investigation.

(d) Before granting an order keeping secret documents and other information received under this section, the court shall narrow the secrecy order as much as reasonably possible in

SB0043S01 compared with SB0043

order to preserve the openness of court records while protecting the interests listed in Subsection (7)(c).

Section ~~{10}~~11. Section **77-22-2.5** is amended to read:

77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" has the same definition as in Section 76-10-1230.

(e) "Prosecutor" has the same definition as in Section ~~[77-22-2]~~ 77-22-4.5.

(f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(g) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor ~~[as defined in Section 76-5b-201]~~ or attempted sexual exploitation of a minor in violation of Section 76-5b-201;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

SB0043S01 compared with SB0043

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206;

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401; or

(v) human trafficking of a child in violation of Section 76-5-308.5.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier ~~was~~ is suspected of being used in the commission of the offense:

(i) names of subscribers, service customers, and users;

(ii) addresses of subscribers, service customers, and users;

(iii) records of session times and durations;

(iv) length of service, including the start date and types of service utilized; and

(v) telephone or other instrument subscriber numbers or other subscriber identifiers, including any temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce any records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

SB0043S01 compared with SB0043

(4) (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that [it] the provider does not have the information.

(7) There is no cause of action against any provider or wire or electronic communication service, or [its] the provider or service's officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8) (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) [Every] A prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Section ~~{11}~~ 12. **Repealer.**

This bill repeals:

~~{~~ ~~Section 58-37d-9, Department of Public Safety enforcement authority.~~

SB0043S01 compared with SB0043

† Section **76-7-104, Fornication.**