

**Representative Paul Ray** proposes the following substitute bill:

**CRIMINAL PROVISIONS MODIFICATIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: Paul Ray

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ 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; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

- 27 **30-1-11**, as last amended by Laws of Utah 2018, Chapter 148
- 28 **58-37-2**, as last amended by Laws of Utah 2015, Chapter 258
- 29 **58-37-8**, as last amended by Laws of Utah 2017, Chapter 330
- 30 **58-37d-2**, as last amended by Laws of Utah 2013, Chapter 278
- 31 **58-37d-3**, as last amended by Laws of Utah 2013, Chapters 262 and 413
- 32 **58-37d-4**, as last amended by Laws of Utah 2008, Chapter 305
- 33 **58-37d-5**, as last amended by Laws of Utah 2003, Chapter 115
- 34 **58-37d-6**, as enacted by Laws of Utah 1992, Chapter 156
- 35 **76-9-201**, as last amended by Laws of Utah 2018, Chapter 444
- 36 **77-22-2**, as last amended by Laws of Utah 2009, Chapter 6
- 37 **77-22-2.5**, as last amended by Laws of Utah 2017, Chapter 447

38 REPEALS:

- 39 **76-7-104**, as enacted by Laws of Utah 1973, Chapter 196



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

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

43 **30-1-11. Return of license after ceremony -- Failure -- Penalty.**

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

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

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

51 **58-37-2. Definitions.**

52 (1) As used in this chapter:

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

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

57 or

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

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

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

66 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,  
67 partnership, corporation, business trust, association, or other legal entity, and any union or  
68 groups of individuals associated in fact although not a legal entity, and includes illicit as well  
69 as licit entities created or maintained for the purpose of engaging in conduct which constitutes  
70 the commission of two or more episodes of activity made unlawful by Title 58, Chapter 37,  
71 Utah Controlled Substances Act, [~~Chapter 37a, Utah Drug Paraphernalia Act,~~] Chapter 37b,  
72 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,  
73 or Chapter 37d, Clandestine Drug Lab Act, [~~which episodes~~] that are not isolated, but have the  
74 same or similar purposes, results, participants, victims, methods of commission, or otherwise  
75 are interrelated by distinguishing characteristics[ ~~Taken~~] and taken together, [~~the episodes~~  
76 ~~shall~~] demonstrate continuing unlawful conduct and [~~be~~] are related either to each other or to  
77 the enterprise.

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

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

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

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

84 (C) that is a controlled substance analog; or

85 (D) listed in Section [58-37-4.2](#).

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

87 (A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B,

88 Alcoholic Beverage Control Act;

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

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

95 (I) are not otherwise regulated by law; and

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

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

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

104 (B) a substance which has a stimulant, depressant, or hallucinogenic effect on the  
105 central nervous system substantially similar to the stimulant, depressant, or hallucinogenic  
106 effect on the central nervous system of controlled substances listed in Schedules I and II of  
107 Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and  
108 II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

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

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

116 (A) a controlled substance currently scheduled in Schedules I through V of Section  
117 58-37-4;

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

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

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

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

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

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

134 (A) Chapter 37, Utah Controlled Substances Act;

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

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

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

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

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

141 (A) Chapter 37, Utah Controlled Substances Act;

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

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

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

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

146 (i) "Counterfeit substance" means:

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

148 (A) without authorization bears the trademark, trade name, or other identifying mark,  
149 imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser

150 other than the person or persons who in fact manufactured, distributed, or dispensed the  
151 substance which falsely purports to be a controlled substance distributed by any other  
152 manufacturer, distributor, or dispenser; and

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

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

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

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

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

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

164 (l) "Depressant or stimulant substance" means:

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

167 (ii) a drug which contains any quantity of:

168 (A) amphetamine or any of its optical isomers;

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

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

173 (iii) lysergic acid diethylamide; or

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

178 (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an  
179 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes  
180 distributing to, leaving with, giving away, or disposing of that substance as well as the

181 packaging, labeling, or compounding necessary to prepare the substance for delivery.

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

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

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

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

188 (r) (i) "Drug" means:

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

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

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

197 (D) substances intended for use as a component of any substance specified in  
198 Subsections (1)(r)(i)(A), (B), and (C).

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

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

204 (t) "Food" means:

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

207 (ii) foods for special dietary uses as exist by reason of a physical, physiological,  
208 pathological, or other condition including but not limited to the conditions of disease,  
209 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and  
210 overweight; uses for supplying a particular dietary need which exist by reason of age including  
211 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for

212 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for  
213 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional  
214 purposes.

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

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

222 (w) "Indian religion" means any religion:

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

225 (ii) which is practiced by Indians.

226 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or  
227 community of Indians, including any Alaska Native village, which is legally recognized as  
228 eligible for and is consistent with the special programs, services, and entitlements provided by  
229 the United States to Indians because of their status as Indians.

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

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

237 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
238 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
239 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or  
240 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,  
241 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
242 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,



243 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
244 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
245 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
246 active are also included.

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

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

252 (i) opium, coca leaves, and opiates;

253 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or  
254 opiates;

255 (iii) opium poppy and poppy straw; or

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

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

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

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

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

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

272 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,  
273 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,

274 or consumption, as distinguished from distribution, of controlled substances and includes  
275 individual, joint, or group possession or use of controlled substances. For a person to be a  
276 possessor or user of a controlled substance, it is not required that the person be shown to have  
277 individually possessed, used, or controlled the substance, but it is sufficient if it is shown that  
278 the person jointly participated with one or more persons in the use, possession, or control of  
279 any substances with knowledge that the activity was occurring, or the controlled substance is  
280 found in a place or under circumstances indicating that the person had the ability and the intent  
281 to exercise dominion and control over it.

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

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

288 (i) orally or in writing; or

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

291 (ll) "Prescription" means an order issued:

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

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

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

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

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

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

304 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,

305 Utah Criminal Code, shall apply.

306 Section 3. Section **58-37-8** is amended to read:

307 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

316 (iv) engage in a continuing criminal enterprise where~~[-(A)]~~ the person participates,  
317 directs, or engages in conduct that results in ~~[any]~~ a felony violation of any provision of Title  
318 58, Chapters 37, Utah Controlled Substances Act, ~~[37a, Utah Drug Paraphernalia Act,]~~ 37b,  
319 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,  
320 Clandestine Drug Lab Act, that ~~[is a felony; and]~~:

321 ~~[(B) the violation is a]~~

322 (A) is part of a continuing series of two or more violations of [Title 58, Chapters 37,  
323 Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled  
324 Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab  
325 Act,] the respective act that occur on separate occasions ~~[that]~~ and are undertaken in concert  
326 with five or more persons with respect to whom the person occupies a position of organizer,  
327 supervisor, or ~~[any other]~~ another position of management~~[-]; or~~

328 (B) results in the death of an individual.

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

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

334 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
335 marijuana, or a substance listed in Section **58-37-4.2** is guilty of a third degree felony, and

336 upon a second or subsequent conviction is guilty of a second degree felony; or

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

340 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
341 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
342 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the  
343 person or in the person's immediate possession during the commission or in furtherance of the  
344 offense, the court shall additionally sentence the person convicted for a term of one year to run  
345 consecutively and not concurrently; and the court may additionally sentence the person  
346 convicted for an indeterminate term not to exceed five years to run consecutively and not  
347 concurrently.

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

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

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

356 (a) It is unlawful:

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

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

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

367 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:  
368 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;  
369 or

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

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

376 (d) (i) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
377 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
378 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

- 398 (ii) on a second conviction, guilty of a class A misdemeanor; and  
399 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 400 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
401 amounting to a violation of Section 76-5-207:
- 402 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
403 body any measurable amount of a controlled substance; and
- 404 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
405 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 406 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 407 (i) a controlled substance classified under Schedule I, other than those described in  
408 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
409 degree felony;
- 410 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
411 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
412 degree felony; or
- 413 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
414 A misdemeanor.
- 415 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
416 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)  
417 whether or not the injuries arise from the same episode of driving.
- 418 (j) The Administrative Office of the Courts shall report to the Division of Occupational  
419 and Professional Licensing the name, case number, date of conviction, and if known, the date  
420 of birth of each person convicted of violating Subsection (2)(a).
- 421 (3) Prohibited acts C -- Penalties:
- 422 (a) It is unlawful for any person knowingly and intentionally:
- 423 (i) to use in the course of the manufacture or distribution of a controlled substance a  
424 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
425 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
426 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
427 person;
- 428 (ii) to acquire or obtain possession of, to procure or attempt to procure the

429 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
430 be attempting to acquire or obtain possession of, or to procure the administration of any  
431 controlled substance by misrepresentation or failure by the person to disclose receiving any  
432 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
433 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

446 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

460 (vi) in or on the grounds of a library when the library is open to the public;  
461 (vii) within any area that is within 100 feet of any structure, facility, or grounds  
462 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);  
463 (viii) in the presence of a person younger than 18 years of age, regardless of where the  
464 act occurs; or  
465 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
466 distribution of a substance in violation of this section to an inmate or on the grounds of any  
467 correctional facility as defined in Section 76-8-311.3.

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

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

474 (c) ~~[H] Except for a violation of Subsection (2)(g), if the classification that would~~  
475 otherwise have been established would have been less than a first degree felony but for this  
476 Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than  
477 the maximum penalty prescribed for that offense. ~~[This Subsection (4)(c) does not apply to a~~  
478 ~~violation of Subsection (2)(g).]~~

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

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

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

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

489 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
490 mistakenly believed the individual to be 18 years of age or older at the time of the offense or



491 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
492 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
493 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

546 (i) was engaged in medical research; and

547 (ii) was a holder of a valid license to possess controlled substances under Section  
548 58-37-6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

583 (ii) the possession or use of a scheduled or listed controlled substance other than

584 marijuana; and

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

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

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

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

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

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

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

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

602 Section 4. Section 58-37d-2 is amended to read:

603 **58-37d-2. Purpose.**

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

615 notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled  
616 Substances Act.

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

618 **58-37d-3. Definitions.**

619 (1) As used in this chapter:

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

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

625 (b) "Clandestine laboratory operation" means the:

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

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

630 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of  
631 specified controlled substances;

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

637 (v) illegal manufacture of specified controlled substances; or

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

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

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

644 (i) (A) without authorization bears the trademark, trade name, or other identifying  
645 mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or

646 dispenser other than the person or persons who in fact manufactured, distributed, or dispensed  
647 the substance which falsely purports to be an opioid distributed by another manufacturer,  
648 distributor, or dispenser; and

649 (B) a reasonable person would believe to be an opioid distributed by an authorized  
650 manufacturer, distributor, or dispenser based on the appearance of the substance as described  
651 under this Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or  
652 (ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and  
653 (B) a reasonable person would believe to be a legal or illegal opioid.

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

658 ~~[(e)]~~ (f) "Hazardous or dangerous material" means a substance that because of its  
659 quantity, concentration, physical characteristics, or chemical characteristics may cause or  
660 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a  
661 substantial present or potential future hazard to human health or the environment when  
662 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

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

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

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

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

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

675 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section  
676 58-37-3.6.

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

679 Section 6. Section 58-37d-4 is amended to read:

680 **58-37d-4. Prohibited acts -- Second degree felony.**

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

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

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

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

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

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

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

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

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

707 (2) A person who violates [~~any provision of~~] Subsection (1) is guilty of a second

708 degree felony punishable by imprisonment for an indeterminate term of not less than [3] three  
709 years nor more than 15 years.

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

711 **58-37d-5. Prohibited acts -- First degree felony.**

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

715 (a) possession of a firearm;

716 (b) use of a booby trap;

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

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

723 (e) clandestine laboratory operation actually produced any amount of a specified  
724 controlled substance or a counterfeit opioid; or

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

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

730 (a) probation shall not be granted;

731 (b) the execution or imposition of sentence shall not be suspended; and

732 (c) the court shall not enter a judgment for a lower category of offense.

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

734 **58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance**  
735 **precursor or clandestine laboratory equipment.**

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

738 (1) is in illegal possession of a controlled substance precursor; or



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

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

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

752 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

753 (1) As used in this section:

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

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

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

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

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

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

769 (a) (i) makes repeated contact by means of electronic communications, regardless of

770 whether a conversation ensues; or

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

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

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

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

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

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

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

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

791 ~~[(3)]~~ (4) (a) (i) Electronic communication harassment committed against an adult is a  
792 class B misdemeanor, except under Subsection ~~[(3)]~~ (4)(a)(ii).

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

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

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

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

800 (ii) A second or subsequent offense under Subsection ~~[(3)]~~ (4)(b)(i) is a third degree

801 felony, regardless of whether ~~[any]~~ a prior violation of this section was committed against a  
802 minor or an adult.

803 ~~[(4)]~~ (5) (a) Except as provided under Subsection ~~[(4)]~~ (5)(b), criminal prosecution  
804 under this section does not affect an individual's right to bring a civil action for damages  
805 suffered as a result of the commission of ~~[any of the offenses]~~ an offense under this section.

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

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

809 **77-22-2. Investigations -- Right to subpoena witnesses and require production of**  
810 **evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed**  
811 **court -- Disclosure of information.**

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

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

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

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

820 (i) subpoena witnesses;

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

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

825 (b) The prosecutor shall:

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

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

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

830 (i) the time and place of the examination;

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

- 832 (iii) the right of the person subpoenaed to have counsel present.
- 833 (b) The examination may be conducted anywhere within the jurisdiction of the  
834 prosecutor issuing the subpoena.
- 835 (c) The subpoena need not disclose the names of possible defendants.
- 836 (d) Witness fees and expenses shall be paid as in a civil action.
- 837 (5) (a) At the beginning of each compelled interrogation, the prosecutor shall  
838 personally inform each witness:
- 839 (i) of the general subject matter of the investigation;
- 840 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question  
841 or produce any evidence of a communicative nature that may result in self-incrimination;
- 842 (iii) that any information provided may be used against the witness in a subsequent  
843 criminal proceeding; and
- 844 (iv) of the right to have counsel present.
- 845 (b) If the prosecutor has substantial evidence that the subpoenaed witness has  
846 committed a crime that is under investigation, the prosecutor shall:
- 847 (i) inform the witness in person before interrogation of that witness's target status; and  
848 (ii) inform the witness of the nature of the charges under consideration against the  
849 witness.
- 850 (6) (a) (i) The prosecutor may make written application to any district court showing a  
851 reasonable likelihood that publicly releasing information about the identity of a witness or the  
852 substance of the evidence resulting from a subpoena or interrogation would pose a threat of  
853 harm to a person or otherwise impede the investigation.
- 854 (ii) Upon a finding of reasonable likelihood, the court may order the:
- 855 (A) interrogation of a witness be held in secret;
- 856 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of  
857 the person subpoenaed, and the substance of the evidence obtained be kept secret; and
- 858 (C) record of testimony and other subpoenaed evidence be kept secret unless the court  
859 for good cause otherwise orders.
- 860 (b) After application, the court may by order exclude from any investigative hearing or  
861 proceeding any persons except:
- 862 (i) the attorneys representing the state and members of their staffs;

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

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

866 (iv) the attorney for the witness.

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

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

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

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

878 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court  
879 that one or more of the following risks exist:

880 (A) disclosure by the witness would cause destruction of evidence;

881 (B) disclosure by the witness would taint the evidence provided by other witnesses;

882 (C) disclosure by the witness to a target of the investigation would result in flight or  
883 other conduct to avoid prosecution;

884 (D) disclosure by the witness would damage a person's reputation; or

885 (E) disclosure by the witness would cause a threat of harm to any person.

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

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

893 (7) (a) (i) The prosecutor may submit to any district court a separate written request

894 that the application, statement of good cause, and the court's order authorizing the investigation  
895 be kept secret.

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

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

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

905 (i) a substantial risk of harm to a person's safety;

906 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

907 (iii) a serious impediment to the investigation.

908 (d) Before granting an order keeping secret documents and other information received  
909 under this section, the court shall narrow the secrecy order as much as reasonably possible in  
910 order to preserve the openness of court records while protecting the interests listed in  
911 Subsection (7)(c).

912 Section 11. Section **77-22-2.5** is amended to read:

913 **77-22-2.5. Court orders for criminal investigations for records concerning an**  
914 **electronic communications system or service or remote computing service -- Content --**  
915 **Fee for providing information.**

916 (1) As used in this section:

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

920 (ii) "Electronic communication" does not include:

921 (A) any wire or oral communication;

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

923 (C) any communication from a tracking device; or

924 (D) electronic funds transfer information stored by a financial institution in a

925 communications system used for the electronic storage and transfer of funds.

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

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

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

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

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

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

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

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

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

943 (iv) enticement of a minor or attempted enticement of a minor in violation of Section  
944 [76-4-401](#); or

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

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

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

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

955 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.

956 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote  
957 computing service provider that owns or controls the Internet protocol address, websites, email  
958 address, or service to a specific telephone number, requiring the production of the following  
959 information, if available, upon providing in the court order the Internet protocol address, email  
960 address, telephone number, or other identifier, and the dates and times the address, telephone  
961 number, or other identifier [~~was~~] is suspected of being used in the commission of the offense:

962 (i) names of subscribers, service customers, and users;  
963 (ii) addresses of subscribers, service customers, and users;  
964 (iii) records of session times and durations;  
965 (iv) length of service, including the start date and types of service utilized; and  
966 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,  
967 including any temporarily assigned network address.

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

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

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

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

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

984 (7) There is no cause of action against any provider or wire or electronic  
985 communication service, or [~~its~~] the provider or service's officers, employees, agents, or other  
986 specified persons, for providing information, facilities, or assistance in accordance with the



987 terms of the court order issued under this section or statutory authorization.

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

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

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

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

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

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

1000 Section 12. **Repealer.**

1001 This bill repeals:

1002 Section ~~76-7-104~~, **Fornication.**