

**CRIME ENHANCEMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Pitcher**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the enhancements for possession of a controlled substance and property crimes.

**Highlighted Provisions:**

This bill:

- ▶ limits the enhancement for multiple possessions of a controlled substance to within seven years of the previous conviction or commission of the offense; and
- ▶ reduces the enhancement time period for property crimes from ten years to seven.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37-8**, as last amended by Laws of Utah 2019, Chapter 58

**76-6-412**, as last amended by Laws of Utah 2019, Chapters 136, 189, and 309

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

58 (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may

59 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of  
60 fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the  
61 person or in the person's immediate possession during the commission or in furtherance of the  
62 offense, the court shall additionally sentence the person convicted for a term of one year to run  
63 consecutively and not concurrently; and the court may additionally sentence the person  
64 convicted for an indeterminate term not to exceed five years to run consecutively and not  
65 concurrently.

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

70 (e) The Administrative Office of the Courts shall report to the Division of  
71 Occupational and Professional Licensing the name, case number, date of conviction, and if  
72 known, the date of birth of each person convicted of violating Subsection (1)(a).

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

74 (a) It is unlawful:

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

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

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

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

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

87 or

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

90 conviction if each prior offense was committed within seven years before the date of the  
91 current conviction or the date of the offense upon which the current conviction is based is  
92 guilty of a third degree felony.

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

96 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
97 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
98 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the  
99 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction within  
100 seven years of the date of the previous conviction or the date of the offense upon which the  
101 current conviction is based the person is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

120 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not

121 amounting to a violation of Section 76-5-207:

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

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

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

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

130 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
131 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
132 degree felony; or

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

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

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

141 (3) Prohibited acts C -- Penalties:

142 (a) It is unlawful for a person knowingly and intentionally:

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

148 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
149 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be  
150 attempting to acquire or obtain possession of, or to procure the administration of a controlled  
151 substance by misrepresentation or failure by the person to disclose receiving a controlled

152 substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
153 prescription or written order for a controlled substance, or the use of a false name or address;

154 (iii) to make a false or forged prescription or written order for a controlled substance,  
155 or to utter the same, or to alter a prescription or written order issued or written under the terms  
156 of this chapter; or

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

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

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

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

166 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (i) the actor mistakenly believed the individual to be 18 years of age or older at the  
210 time of the offense or was unaware of the individual's true age; or

211 (ii) the actor mistakenly believed that the location where the act occurred was not as  
212 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
213 described in Subsection (4)(a).

214 (5) A violation of this chapter for which no penalty is specified is a class B  
215 misdemeanor.

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

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

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

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

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

228 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu  
229 of, a civil or administrative penalty or sanction authorized by law.

230 (b) When a violation of this chapter violates a federal law or the law of another state,  
231 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
232 prosecution in this state.

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

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

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

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

245 (b) a law enforcement officer acting in the course and legitimate scope of the officer's  
246 employment.

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

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

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

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

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

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

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

266 (i) engaged in medical research; and

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

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

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

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

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

275 (15) The application of any increase in penalty under this section to a violation of

276 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
277 Subsection (15) takes precedence over any conflicting provision of this section.

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

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

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

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

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

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

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

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

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

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

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

306 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not

307 include seeking medical assistance under this section during the course of a law enforcement  
308 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

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

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

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

316 (a) a screening as defined in Section 41-6a-501;

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

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

321 Section 2. Section 76-6-412 is amended to read:

322 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

323 (1) Theft of property and services as provided in this chapter is punishable:

324 (a) as a second degree felony if the:

325 (i) value of the property or services is or exceeds \$5,000;

326 (ii) property stolen is a firearm or an operable motor vehicle; or

327 (iii) property is stolen from the person of another;

328 (b) as a third degree felony if:

329 (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

330 (ii) the value of the property or services is or exceeds \$500 and the actor has been twice

331 before convicted of any of the following offenses, if each prior offense was committed within

332 [~~10~~] seven years before the date of the current conviction or the date of the offense upon which

333 the current conviction is based and at least one of those convictions is for a class A

334 misdemeanor:

335 (A) any theft, any robbery, or any burglary with intent to commit theft;

336 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

337 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

338 (iii) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;  
339 (B) the theft occurs on a property where the offender has committed any theft within  
340 the past five years; and  
341 (C) the offender has received written notice from the merchant prohibiting the offender  
342 from entering the property pursuant to Subsection 78B-3-108(4); or  
343 (iv) the actor has been previously convicted of a felony violation of any of the offenses  
344 listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was committed  
345 within ~~[10]~~ seven years before the date of the current conviction or the date of the offense upon  
346 which the current conviction is based;  
347 (c) as a class A misdemeanor if:  
348 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;  
349 (ii) (A) the value of property or services is less than \$500;  
350 (B) the theft occurs on a property where the offender has committed any theft within  
351 the past five years; and  
352 (C) the offender has received written notice from the merchant prohibiting the offender  
353 from entering the property pursuant to Subsection 78B-3-108(4); or  
354 (iii) the actor has been twice before convicted of any of the offenses listed in  
355 Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10  
356 years before the date of the current conviction or the date of the offense upon which the current  
357 conviction is based; or  
358 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and  
359 the theft is not an offense under Subsection (1)(c).  
360 (2) Any individual who violates Subsection 76-6-408(2) or 76-6-413(1), or commits  
361 theft of a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack,  
362 jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes, is civilly liable  
363 for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of  
364 suit and reasonable attorney fees.