

Representative Stephanie Pitcher proposes the following substitute bill:

CRIME ENHANCEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

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

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.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

55 (c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may
56 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of

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

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

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

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

71 (a) It is unlawful:

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

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

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

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

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

85 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
86 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
87 conviction if each prior offense was committed within seven years before the date of the

88 current conviction or the date of the offense upon which the current conviction is based is
89 guilty of a third degree felony.

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

93 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
94 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
95 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

96 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
97 offense was committed within seven years before the date of the current conviction or the date
98 of the offense upon which the current conviction is based. [~~and upon~~]

99 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
100 if each prior offense was committed within seven years of the date of the current conviction or
101 the date of the offense upon which the current conviction is based [~~the person is guilty of a~~
102 ~~third degree felony~~].

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

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

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

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

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

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

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

- 119 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 120 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 121 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 122 amounting to a violation of Section 76-5-207:
- 123 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 124 body any measurable amount of a controlled substance; and
- 125 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
- 126 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 127 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 128 (i) a controlled substance classified under Schedule I, other than those described in
- 129 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 130 degree felony;
- 131 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 132 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
- 133 degree felony; or
- 134 (iii) a controlled substance classified under Schedules III, IV, or V is guilty of a class A
- 135 misdemeanor.
- 136 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 137 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
- 138 whether or not the injuries arise from the same episode of driving.
- 139 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 140 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 141 of birth of each person convicted of violating Subsection (2)(a).
- 142 (3) Prohibited acts C -- Penalties:
- 143 (a) It is unlawful for a person knowingly and intentionally:
- 144 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 145 license number which is fictitious, revoked, suspended, or issued to another person or, for the
- 146 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
- 147 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
- 148 person;
- 149 (ii) to acquire or obtain possession of, to procure or attempt to procure the

150 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
151 attempting to acquire or obtain possession of, or to procure the administration of a controlled
152 substance by misrepresentation or failure by the person to disclose receiving a controlled
153 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
154 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

167 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

199 (d) (i) If the violation is of Subsection (4)(a)(ix):
200 (A) the person may be sentenced to imprisonment for an indeterminate term as
201 provided by law, and the court shall additionally sentence the person convicted for a term of
202 one year to run consecutively and not concurrently; and
203 (B) the court may additionally sentence the person convicted for an indeterminate term
204 not to exceed five years to run consecutively and not concurrently; and

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

209 (e) It is not a defense to a prosecution under this Subsection (4) that:
210 (i) the actor mistakenly believed the individual to be 18 years of age or older at the
211 time of the offense or was unaware of the individual's true age; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

267 (i) engaged in medical research; and

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

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

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

273 (a) the person was the subject of medical research conducted by a holder of a valid

274 license to possess controlled substances under Section 58-37-6; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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