

**HOMELESS RESOURCE CENTER DRUG FREE ZONE**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

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

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**LONG TITLE**

**General Description:**

This bill modifies the penalty for certain crimes committed at a homeless resource center.

**Highlighted Provisions:**

This bill:

- ▶ modifies the penalty for certain controlled substance offenses when the offense is committed in or on the grounds of a homeless resource center that meets certain qualifications; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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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 is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

165 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

180 (vii) in or on the grounds of a homeless shelter that has the capacity to provide  
181 temporary shelter to at least:

182 (A) 200 individuals per night and is located in a county of the first or second class; or

183 (B) 20 individuals per night and is located in a county of the third, fourth, fifth, or sixth  
184 class;

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

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

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

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

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

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

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

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

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

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

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

213 (i) the actor mistakenly believed the individual to be 18 years of age or older at the

214 time of the offense or was unaware of the individual's true age; or

215 (ii) the actor mistakenly believed that the location where the act occurred was not as  
216 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
217 described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

270 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307 marijuana; and

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

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

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

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

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

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

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

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