

**SENTENCING AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Cheryl K. Acton**

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

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**LONG TITLE**

**General Description:**

This bill modifies the penalties for operating a motor vehicle in a negligent manner with any measurable amount of a controlled substance in the operator's body and causing the serious bodily injury or death of another.

**Highlighted Provisions:**

This bill:

- ▶ modifies the penalties for the offense of operating a motor vehicle in a negligent or criminally negligent manner with any measurable amount of a controlled substance in the operator's body and causing the serious bodily injury or death of another; 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 2020, Chapters 12, 117, 131, 191, and 354

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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:



28 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

67 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
68 felony punishable by imprisonment for an indeterminate term of not less than:

69 (A) seven years and which may be for life; or

70 (B) 15 years and which may be for life if the trier of fact determined that the defendant  
71 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)  
72 was under 18 years of age.

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

75 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
76 offense, was under 18 years of age.

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

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

81 (a) It is unlawful:

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

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

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

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

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

95 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty  
96 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
97 conviction if each prior offense was committed within seven years before the date of the  
98 current conviction or the date of the offense upon which the current conviction is based is  
99 guilty of a third degree felony.

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

103 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
104 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
105 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

106 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior  
107 offense was committed within seven years before the date of the current conviction or the date  
108 of the offense upon which the current conviction is based.

109 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony  
110 if each prior offense was committed within seven years of the date of the current conviction or  
111 the date of the offense upon which the current conviction is based.

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

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

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

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

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

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

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

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

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

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

132 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
133 body any measurable amount of a controlled substance, except for  
134 11-nor-9-carboxy-tetrahydrocannabinol; and

135 (ii) (A) if the controlled substance is not marijuana, operates a motor vehicle as defined  
136 in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section  
137 76-1-601 or the death of another; or

138 (B) if the controlled substance is marijuana, operates a motor vehicle as defined in  
139 Section 76-5-207 in a criminally negligent manner, causing serious bodily injury as defined in  
140 Section 76-1-601 or the death of another.

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

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

145 (ii) except as provided in Subsection (2)(g)(ii)(B), marijuana, tetrahydrocannabinols, or  
146 equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in  
147 Section 58-37-4.2 is guilty of a ~~third degree felony~~ class A misdemeanor; or

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

150 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
151 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)

152 whether or not the injuries arise from the same episode of driving.

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

156 (3) Prohibited acts C -- Penalties:

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

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

163 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
164 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be  
165 attempting to acquire or obtain possession of, or to procure the administration of a controlled  
166 substance by misrepresentation or failure by the person to disclose receiving a controlled  
167 substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
168 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

181 (4) Prohibited acts D -- Penalties:

182 (a) Notwithstanding other provisions of this section, a person not authorized under this

183 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is  
184 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier  
185 of fact finds the act is committed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 (ii) the actor mistakenly believed that the location where the act occurred was not as  
227 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
228 described in Subsection (4)(a).

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

281 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

305 (iv) remains at the location of the person experiencing the overdose event until a  
306 responding law enforcement officer or emergency medical service provider arrives, or remains

307 at the medical care facility where the person experiencing an overdose event is located until a  
308 responding law enforcement officer arrives;

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

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

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

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

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

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

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

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

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

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

331 (a) a screening as defined in Section [41-6a-501](#);

332 (b) an assessment as defined in Section [41-6a-501](#) if the screening indicates an  
333 assessment to be appropriate; and

334 (c) an educational series as defined in Section [41-6a-501](#) or substance use disorder  
335 treatment as indicated by an assessment.