

DRUG-INDUCED HOMICIDE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns the offense of drug-induced homicide.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the offense of drug-induced homicide; 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 2022, Chapters 116, 415 and 430

76-5-201, as last amended by Laws of Utah 2022, Chapters 116, 181 and last amended by Coordination Clause, Laws of Utah 2022, Chapters 116, 181

ENACTS:

76-5-211, Utah Code Annotated 1953

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



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

29 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

59 felony.

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

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

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

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

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

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

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

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

82 (a) It is unlawful:

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

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

90 locations; or

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

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

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

96 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
97 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
98 conviction if each prior offense was committed within seven years before the date of the
99 offense upon which the current conviction is based is 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 offense upon which the
108 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 before the date of the offense upon
111 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) The Administrative Office of the Courts shall report to the Division of Professional
131 Licensing the name, case number, date of conviction, and if known, the date of birth of each
132 person convicted of violating Subsection (2)(a).

133 (3) Prohibited acts C -- Penalties:

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

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

140 (ii) to acquire or obtain possession of, to procure or attempt to procure the
141 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
142 attempting to acquire or obtain possession of, or to procure the administration of a controlled
143 substance by misrepresentation or failure by the person to disclose receiving a controlled
144 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
145 prescription or written order for a controlled substance, or the use of a false name or address;

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

149 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to
150 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
151 device of another or any likeness of any of the foregoing upon any drug or container or labeling

152 so as to render a drug a counterfeit controlled substance.

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

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

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

158 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

175 (viii) in the presence of a person younger than 18 years old, regardless of where the act
176 occurs; or

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

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

183 felony.

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

186 (c) If the classification that would otherwise have been established would have been
187 less than a first degree felony but for this Subsection (4), a person convicted under this
188 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
189 offense.

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

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

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

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

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

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

203 (ii) the actor mistakenly believed that the location where the act occurred was not as
204 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
205 described in Subsection (4)(a).

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

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

213 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a

214 conviction that is:

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

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

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

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

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

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

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

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

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

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

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

243 (b) In a prosecution alleging violation of this section regarding peyote as defined in
244 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported

245 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a
246 traditional Indian religion.

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

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

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

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

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

258 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

275 (ii) reports, or assists a person who reports, in good faith the overdose event to a

276 medical provider, an emergency medical service provider as defined in Section [26-8a-102](#), a
277 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
278 person is the subject of a report made under this Subsection (16);

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

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

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

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

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

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

294 (ii) the possession or use of a scheduled or listed controlled substance other than
295 marijuana; [~~and~~]

296 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
297 Imitation Controlled Substances Act; and

298 (iv) drug-induced homicide under Section [76-5-211](#).

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

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

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

307 (19) If a minor who is under 18 years old is found by a court to have violated this
308 section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to
309 complete:

- 310 (a) a screening as defined in Section 41-6a-501;
- 311 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
312 assessment to be appropriate; and
- 313 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
314 treatment as indicated by an assessment.

315 Section 2. Section 76-5-201 is amended to read:

316 **76-5-201. Criminal homicide -- Designations of offenses -- Exceptions --**
 317 **Application of consensual altercation defense.**

- 318 (1) (a) As used in this section:
- 319 (i) "Abortion" means the same as that term is defined in Section 76-7-301.
- 320 (ii) "Criminal homicide" means an act causing the death of another human being,
321 including an unborn child at any stage of the unborn child's development.
- 322 (b) The terms defined in Section 76-1-101.5 apply to this section.
- 323 (2) The following are criminal homicide:
- 324 (a) aggravated murder;
- 325 (b) murder;
- 326 (c) manslaughter;
- 327 (d) child abuse homicide;
- 328 (e) homicide by assault;
- 329 (f) negligent homicide; ~~and~~
- 330 (g) negligently operating a vehicle resulting in death[-]; and
- 331 (h) drug-induced homicide.
- 332 (3) Notwithstanding Subsection (2), an actor is not guilty of criminal homicide if:
- 333 (a) the death of an unborn child is caused by an abortion;
- 334 (b) the sole reason for the death of an unborn child is that the actor:
- 335 (i) refused to consent to:
- 336 (A) medical treatment; or
- 337 (B) a cesarean section; or

338 (ii) failed to follow medical advice; or
339 (c) a woman causes the death of her own unborn child, and the death:
340 (i) is caused by a criminally negligent act or reckless act of the woman; and
341 (ii) is not caused by an intentional or knowing act of the woman.
342 (4) The provisions governing a defense of a consensual altercation as described in
343 Section [76-5-104](#) apply to this part.

344 Section 3. Section **76-5-211** is enacted to read:

345 **76-5-211. Drug-induced homicide.**

346 (1) (a) As used in this section:

347 (i) "Controlled substance" means:

348 (A) a substance or a counterfeit of a substance included in Schedule I or II of Section
349 [58-37-4](#) or Schedule I or II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

350 (B) a controlled substance analog as that term is defined in Section [58-37-2](#).

351 (ii) "Sell" means to give or distribute, or offer or agree to give or distribute, to another
352 in exchange for money, services, or property.

353 (b) Terms defined in Section [76-1-101.5](#) apply to this section.

354 (2) An actor commits drug-induced homicide if, under circumstances not amounting to
355 aggravated murder as described in Section [76-5-202](#) or murder as described in Section
356 [76-5-203](#):

357 (a) the actor knowingly and unlawfully sells at least one controlled substance in
358 violation of Subsection [58-37-8\(1\)\(a\)](#); and

359 (b) the controlled substance described in Subsection (2)(a) causes or contributes to the
360 death of an individual who ingests, injects, inhales, or otherwise introduces the controlled
361 substance into the individual's body.

362 (3) A violation of Subsection (2) is a second degree felony.

363 (4) (a) It is not a defense to a prosecution under this section that the actor did not
364 directly distribute the controlled substance to the decedent.

365 (b) The affirmative defenses in Subsections [58-37-8\(13\)](#) and (16) are defenses to a
366 violation of this section.

367 (c) Civil or criminal liability may not be imposed under this section for conduct
368 described in Subsection [58-37-8\(11\)](#) or (12) or Section [78B-4-501](#).