

HB0474S01 compared with HB0474

~~{deleted text}~~ shows text that was in HB0474 but was deleted in HB0474S01.

inserted text shows text that was not in HB0474 but was inserted into HB0474S01.

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Representative Colin W. Jack proposes the following substitute bill:

CRIMINAL JUSTICE CHANGES

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the criminal justice system.

Highlighted Provisions:

This bill:

- ~~{~~ → clarifies the roles of county sheriffs and the Department of Corrections regarding the detention of probationers and parolees who have allegedly violated a condition of probation or parole;
- { →
 - ▶ modifies the penalties for drug offenses to address possession and distribution of fentanyl, methamphetamine, heroin, and cocaine in certain amounts;
 - ▶ removes an unsecured bond as a method of payment for a financial condition of pretrial release;
 - ▶ clarifies requirements for a magistrate or judge ordering a condition of release;

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- ▶ allows a magistrate or judge to consider the seriousness or type of offense in making a decision about pretrial release if the offense for which the individual is arrested for, or charged with, is a violent felony;
- ▶ creates a crime for a violation of a pretrial release agreement;
- ▶ allows a county sheriff to hold an individual for up to 24 hours for a violation of a pretrial release agreement; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

~~{ 17-22-5.5, as last amended by Laws of Utah 2022, Chapter 115~~

‡ 58-37-8 (Superseded 07/01/24), as last amended by Laws of Utah 2023, Chapters 312, 329

58-37-8 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 310, 312 and 329

58-37f-201, as last amended by Laws of Utah 2023, Chapters 329, 415

58-37f-704, as last amended by Laws of Utah 2022, Chapter 116

~~{ 64-13-29, as last amended by Laws of Utah 2022, Chapter 115~~

‡ 77-11b-102, as last amended by Laws of Utah 2023, Chapters 415, 422 and renumbered and amended by Laws of Utah 2023, Chapter 448

77-20-102, as last amended by Laws of Utah 2023, Chapter 408

~~{ 77-20-203, as last amended by Laws of Utah 2023, Chapter 408~~

‡ 77-20-204, as last amended by Laws of Utah 2023, Chapters 34, 408

77-20-205, as last amended by Laws of Utah 2023, Chapters 408, 447

77-20-402, as renumbered and amended by Laws of Utah 2021, Second Special Session, Chapter 4

77-40a-101, as last amended by Laws of Utah 2023, Chapter 265

ENACTS:

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~~{ 17-22-5.6, Utah Code Annotated 1953~~

~~} 77-20-210, Utah Code Annotated 1953~~

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

Section 1. Section ~~{17-22-5.5}~~ **58-37-8 (Superseded 07/01/24)** is amended to read:

~~{ 17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity of jail facilities -- Transfer or release of prisoners -- Limitation -- Records regarding release:~~

~~———— (1) (a) Except as provided in Subsection (4), a county sheriff shall determine:~~

~~———— (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail facility under the sheriff's control;~~

~~———— (ii) the nature of each program conducted at a jail facility under the sheriff's control;~~
~~and~~

~~———— (iii) the internal operation of a jail facility under the sheriff's control.~~

~~———— (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any applicable zoning ordinance or conditional use permit of the county or municipality.~~

~~———— (2) Except as provided in Subsection (4), each county sheriff shall:~~

~~———— (a) with the approval of the county legislative body, establish a maximum operating capacity for each jail facility under the sheriff's control, based on facility design and staffing;~~
~~and~~

~~———— (b) upon a jail facility reaching the jail facility's maximum operating capacity:~~

~~———— (i) transfer prisoners to another appropriate facility:~~

~~———— (A) under the sheriff's control; or~~

~~———— (B) available to the sheriff by contract;~~

~~———— (ii) release prisoners:~~

~~———— (A) to a supervised release program, according to release criteria established by the sheriff; or~~

~~———— (B) to another alternative incarceration program developed by the sheriff; or~~

~~———— (iii) admit prisoners in accordance with law and a uniform admissions policy imposed equally upon all entities using the county jail.~~

~~———— (3) (a) The sheriff shall keep records of the release status and the type of release~~

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~~program or alternative incarceration program for any prisoner released under Subsection (2)(b)(ii).~~

~~—— (b) The sheriff shall make these records available upon request to the Department of Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.~~

~~—— (4) This section may not be construed to authorize a sheriff to modify provisions of a contract with the Department of Corrections to house in a county jail an individual sentenced to the Department of Corrections.~~

~~—— (5) Regardless of whether a jail facility has reached the jail facility's maximum operating capacity under Subsection (2), a sheriff may release an individual from a jail facility in accordance with Section 77-20-203 or 77-20-204.~~

~~—— [(6) (a) Subject to Subsection (6)(c), a jail facility shall detain an individual for up to 24 hours from booking if:]~~

~~—— [(i) the individual is on supervised probation or parole and that information is reasonably available; and]~~

~~—— [(ii) the individual was arrested for:]~~

~~—— [(A) a violent felony as defined in Section 76-3-203.5; or]~~

~~—— [(B) a qualifying domestic violence offense as defined in Subsection 77-36-1.1(4) that is not a criminal mischief offense.]~~

~~—— [(b) The jail facility shall notify the entity supervising the individual's probation or parole that the individual is being detained.]~~

~~—— [(c) (i) The jail facility shall release the individual:]~~

~~—— [(A) to the Department of Corrections if the Department of Corrections supervises the individual and requests the individual's release; or]~~

~~—— [(B) if a court or magistrate orders release.]~~

~~—— [(ii) Nothing in this Subsection (6) prohibits a jail facility from holding the individual in accordance with Title 77, Chapter 20, Bail, for new criminal conduct.]~~

~~—— Section 2. Section 17-22-5.6 is enacted to read:~~

~~—— **17-22-5.6. Probation supervision -- Violation of probation -- Detention -- Hearing.**~~

~~—— (1) As used in this section:~~

~~—— (a) "Probationer" means an individual on probation under the supervision of the county sheriff.~~

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~~———— (b) (i) "Qualifying domestic violence offense" means the same as that term is defined in Subsection 77-36-1.1(4).~~

~~———— (ii) "Qualifying domestic violence offense" does not include criminal mischief as described in Section 76-6-106.~~

~~———— (c) "Violent felony" means the same as that term is defined in Section 76-3-203.5.~~

~~}{ ——— (2) A county sheriff shall ensure that the court is notified of violations of the terms and conditions of a probationer's probation when the county sheriff determines that:~~

~~———— (a) incarceration is recommended as a sanction;~~

~~———— (b) a graduated and evidence-based response is not an appropriate response to the offender's violation and recommends revocation of probation; or~~

~~———— (c) there is probable cause that the conduct that led to a violation of probation is:~~

~~———— (i) a violent felony; or~~

~~———— (ii) a qualifying domestic violence offense.~~

~~———— (3) A county sheriff may take custody of, and detain, a probationer for a maximum of 72 hours, excluding weekends and holidays, if there is probable cause to believe that the probationer has committed a violation of probation.~~

~~———— (4) A county sheriff may not detain a probationer or parolee for longer than 72 hours without obtaining a warrant issued by the court.~~

~~———— (5) If the county sheriff detains a probationer under Subsection (3), the county sheriff shall ensure the proper court is notified.~~

~~———— (6) A written order from the county sheriff is sufficient authorization for a peace officer to incarcerate a probationer if the county sheriff has determined that there is probable cause to believe that the probationer has violated the conditions of probation.~~

~~———— (7) If a probationer commits a violation outside of the jurisdiction of the county sheriff supervising the probationer, the arresting law enforcement agency is not required to hold or transport the probationer to the county sheriff.~~

~~———— (8) This section does not require a county sheriff to release a probationer who is being held for something other than a probation violation, including a warrant issued for new criminal conduct or a new conviction where the individual is sentenced to incarceration.~~

~~———— Section 3. Section 58-37-8 (Superseded 07/01/24) is amended to read:~~

~~}{ **58-37-8 (Superseded 07/01/24). Prohibited acts -- Penalties.**~~

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

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

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

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

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

(iv) engage in a continuing criminal enterprise where:

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

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

(b) ~~[A person convicted of violating Subsection (1)(a) with respect to]~~ Except as provided in Subsection (1)(c), (d), (e), or (f), a violation of Subsection (1)(a) is:

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

(A) a second degree felony and punishable by imprisonment for not more than 15 years upon a first conviction; or

(B) a first degree felony upon a second or subsequent conviction;

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

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(A) a third degree felony upon a first conviction; or

(B) a second degree felony upon a second or subsequent conviction; or

(iii) for a substance or a counterfeit of a substance classified in Schedule V [is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of]:

(A) a class A misdemeanor upon a first conviction; or

(B) a third degree felony upon a second or subsequent conviction.

(c) A violation of Subsection (1)(a)(ii) is a first degree felony if the controlled or counterfeit substance is:

(i) fentanyl, methamphetamine, heroin, or cocaine in any amount; and

(ii) the distribution resulted in a serious injury or death of an individual.

(d) A violation of Subsection (1)(a)(iii) is:

(i) a first degree felony if the controlled or counterfeit substance is:

(A) fentanyl in an amount of 500 or more pills or 10 grams or more;

(B) methamphetamine in an amount of 453 grams or more;

(C) heroin in an amount of 112 grams or more; or

(D) cocaine in an amount of 453 grams or more; or

(ii) except as provided in Subsection (1)(d)(i), a second degree felony if the controlled or counterfeit substance is fentanyl, methamphetamine, heroin, or cocaine in any amount.

~~[(c)]~~ (e) (i) [A] The court may sentence a person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) [may be sentenced] to imprisonment for an indeterminate term [as provided by law, but if] as described in Title 76, Chapter 3, Punishments.

(ii) If the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense[;]:

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

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

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

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

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

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

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

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

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

(a) It is unlawful:

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

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

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

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

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

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

(b) A violation of Subsection (2)(a)(i) is:

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(i) for all other controlled substances not included in Subsection (2)(b)(ii), (iii), or (iv), including a substance listed in Section 58-37-4.2 or marijuana:

(A) a class B misdemeanor upon a first or second conviction;

(B) a class A misdemeanor upon a third conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based; or

(C) a third degree felony upon a fourth or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based;

(ii) except as provided in Subsection (2)(b)(iii) and (iv), for a substance classified in Schedule I or II or a controlled substance analog:

(A) a class A misdemeanor on a first or second conviction; or

(B) a third degree felony on a third or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based;

(iii) a third degree felony if the substance is:

(A) fentanyl in an amount of 19 pills or fewer or in an amount less than one gram;

(B) methamphetamine in an amount of 28 grams or more but less than 56 grams;

(C) heroin in an amount less than 112 grams; or

(D) cocaine in an amount of 28 grams or more but less than 56 grams; or

(iv) a second degree felony if the substance is:

(A) fentanyl in an amount of 20 to 499 pills or an amount of less than 10 grams but more than one gram;

(B) methamphetamine in an amount of 56 grams or more but less than 453 grams;

(C) heroin in an amount of 14 grams or more but less than 112 grams;

(D) cocaine in an amount of 56 grams or more but less than 453 grams; or

(E) marijuana in an amount of 100 pounds or more.

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

~~[(d) A person who violates Subsection (2)(a)(i) with respect to all other controlled~~

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~~substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.]~~

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

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

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

~~[(f) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:]~~

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

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

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

~~[(f)] (c) A [person convicted of violating] violation of Subsection (2)(a)(ii) or (iii) is:~~

~~(i) [on a first conviction, guilty of] a class B misdemeanor upon a first conviction;~~

~~(ii) [on a second conviction, guilty of] a class A misdemeanor upon a second conviction; and~~

~~(iii) [on a third or subsequent conviction, guilty of] a third degree felony upon a third or subsequent conviction.~~

~~(d) If a person is convicted of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), a court shall sentence the person to a penalty one degree greater than provided in this Subsection (2).~~

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(e) If a person is convicted of a violation described in Subsection (2)(b)(ii), (iii) or (iv) and the violation occurred while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement:

(i) the court shall sentence the person to a penalty one degree greater than provided in Subsection (2)(b);

(ii) the court may sentence the individual to imprisonment for an indeterminate term as described in Title 76, Chapter 3, Punishments, except that the court shall additionally sentence the person to a term of one year to run consecutively and not concurrently; and

(iii) the court may additionally sentence the person to an indeterminate term not to exceed five years to run consecutively and not concurrently.

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

(3) Prohibited acts C -- Penalties:

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

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

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

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

(iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or

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device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.

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

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

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

(4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

(vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);

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

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

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

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otherwise have been established but for this Subsection (4) would have been a first degree felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or

(c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian,

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as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.

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

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

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

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

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

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

(i) engaged in medical research; and

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

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

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

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

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

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

(16) (a) It is an affirmative defense to an allegation of the commission of an offense

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listed in Subsection (16)(b) that the person or bystander:

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

(ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26B-4-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

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

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

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

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

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

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

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

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

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

(17) If any provision of this chapter, or the application of any provision to any person

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or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

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

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

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

Section ~~44~~2. Section **58-37-8 (Effective 07/01/24)** is amended to read:

58-37-8 (Effective 07/01/24). Prohibited acts -- Penalties.

- (1) Prohibited acts A -- Penalties and reporting:
 - (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:
 - (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
 - (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;
 - (iii) possess a controlled or counterfeit substance with intent to distribute; or
 - (iv) engage in a continuing criminal enterprise where:
 - (A) the person participates, directs, or engages in conduct that results in a violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and
 - (B) the violation is a part of a continuing series of two or more violations of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or

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more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) ~~[A person convicted of violating Subsection (1)(a) with respect to:]~~ Except as provided in Subsection (1)(c), (d), (e), or (f), a violation of Subsection (1)(a) is:

(i) for a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III ~~[is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of]:~~

(A) a first degree felony upon a second or subsequent conviction; or

(B) a second degree felony and punishable by imprisonment for not more than 15 years upon a first conviction;

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

(A) a third degree felony upon a first conviction; or

(B) a second degree felony upon a second or subsequent conviction; or

(iii) for a substance or a counterfeit of a substance classified in Schedule V ~~[is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of]:~~

(A) a class A misdemeanor upon a first conviction; or

(B) a third degree felony upon a second or subsequent conviction.

(c) A violation of Subsection (1)(a)(ii) is a first degree felony if the controlled or counterfeit substance is:

(i) fentanyl, methamphetamine, heroin, or cocaine in any amount; and

(ii) the distribution resulted in a serious injury or death of an individual.

(d) A violation of Subsection (1)(a)(iii) is:

(i) a first degree felony if the controlled or counterfeit substance is:

(A) fentanyl in an amount of 500 or more pills or 10 grams or more;

(B) methamphetamine in an amount of 453 grams or more;

(C) heroin in an amount of 112 grams or more; or

(D) cocaine in an amount of 453 grams or more; or

(ii) except as provided in Subsection (1)(d)(i), a second degree felony if the controlled

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or counterfeit substance is fentanyl, methamphetamine, heroin, or cocaine in any amount.

~~[(c)] (e) (i) [A]~~ The court may sentence a person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) ~~[may be sentenced]~~ to imprisonment for an indeterminate term ~~[as provided by law, but if]~~ as described in Title 76, Chapter 3, Punishments.

(ii) If the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense~~;~~:

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

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

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

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

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

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

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

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

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

(a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

~~[(i) Subsection (2)(b), the person may be sentenced to imprisonment for an~~

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~~indeterminate term as provided by law, and:]~~

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

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

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

(b) A violation of Subsection (2)(a)(i) is:

(i) for all other controlled substances not included in Subsection (2)(b)(ii), (iii), or (iv), including a substance listed in Section 58-37-4.2 or marijuana:

(A) a class B misdemeanor upon a first or second conviction;

(B) a class A misdemeanor upon a third conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based; or

(C) a third degree felony upon a fourth or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based;

(ii) except as provided in Subsection (2)(b)(iii) and (iv), for a substance classified in Schedule I or II or a controlled substance analog:

(A) a class A misdemeanor on a first or second conviction; or

(B) a third degree felony on a third or subsequent conviction if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based; or

(iii) a third degree felony if the substance is:

(A) fentanyl in an amount of 19 pills or fewer or in an amount less than one gram;

(B) methamphetamine in an amount of 28 grams or more but less than 56 grams;

(C) heroin in an amount less than 112 grams; or

(D) cocaine in an amount of 28 grams or more but less than 56 grams; or

(iv) a second degree felony if the substance is:

(A) fentanyl in an amount of 20 to 499 pills or an amount that is less than 10 grams but

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more than one gram;

(B) methamphetamine in an amount of 56 grams or more but less than 453 grams;

(C) heroin in an amount of 14 grams or more but less than 112 grams;

(D) cocaine in an amount of 56 grams or more but less than 453 grams; or

(E) marijuana in an amount of 100 pounds or more.

~~[(f)]~~ (c) A [person convicted of violating] a violation of Subsection (2)(a)(ii) or (iii) is:

(i) [on a first conviction, guilty of] a class B misdemeanor upon a first conviction;

(ii) [on a second conviction, guilty of] a class A misdemeanor upon a second

conviction; and

(iii) [on a third or subsequent conviction, guilty of] a third degree felony upon a third or subsequent conviction.

(d) If a person is convicted of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), a court shall sentence the person to a penalty one degree greater than provided in this Subsection (2).

(e) If a person is convicted of a violation described in Subsection (2)(b)(ii), (iii), or (iv) and the violation occurred while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement:

(i) the court shall sentence the person to a penalty one degree greater than provided in Subsection (2)(b);

(ii) the court may sentence the individual to imprisonment for an indeterminate term as described in Title 76, Chapter 3, Punishments, except that the court shall additionally sentence the person to a term of one year to run consecutively and not concurrently; and

(iii) the court may additionally sentence the person to an indeterminate term not to exceed five years to run consecutively and not concurrently.

~~[(g)]~~ (f) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

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

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the

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purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

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

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

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

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

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

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

(4) Prohibited acts D -- Penalties:

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

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

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

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or

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facility's hours of operation;

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

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

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

(vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);

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

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

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

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

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

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

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

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

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

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violation of Subsection (4)(a)(ix).

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

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

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

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

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

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

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

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

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

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

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

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

(10) This section does not prohibit a veterinarian, in good faith and in the course of the

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veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

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

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

(b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or

(c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.

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

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

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

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

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

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

(13) (a) It is an affirmative defense that the person produced, possessed, or

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administered a controlled substance listed in Section 58-37-4.2 if the person was:

- (i) engaged in medical research; and
 - (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed

a controlled substance listed in Section 58-37-4.2.

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

- (a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
- (b) the substance was administered to the person by the medical researcher.

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

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

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

(ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 53-2d-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

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

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

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person

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experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~53~~3. Section **58-37f-201** is amended to read:

58-37f-201. Controlled substance database -- Creation -- Purpose.

(1) There is created within the division a controlled substance database.

(2) The division shall administer and direct the functioning of the database in accordance with this chapter.

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(3) The division may, under state procurement laws, contract with another state agency or a private entity to establish, operate, or maintain the database.

(4) The division shall, in collaboration with the board, determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.

(5) The purpose of the database is to contain:

(a) the data described in Section 58-37f-203 regarding prescriptions for dispensed controlled substances;

(b) data reported to the division under Section 26B-2-225 regarding poisoning or overdose;

(c) data reported to the division under Subsection 41-6a-502(5) or 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed controlled substance or impaired driving; and

(d) data reported to the division under Subsection [~~58-37-8(1)(e) or 58-37-8(2)(g)~~] 58-37-8(1)(g) or 58-37-8(2)(f) regarding certain violations of Chapter 37, Utah Controlled Substances Act.

(6) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance;

(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy;

(e) individuals admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance; and

(f) individuals convicted for:

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- (i) driving under the influence of a prescribed controlled substance that renders the individual incapable of safely operating a vehicle;
- (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
- (iii) certain violations of Chapter 37, Utah Controlled Substances Act.

Section ~~{6}~~4. Section **58-37f-704** is amended to read:

58-37f-704. Entering certain convictions into the database.

Beginning October 1, 2016, if the division receives a report from a court under Subsection [~~58-37-8(1)(e) or 58-37-8(2)(g);~~] 58-37-8(1)(g) or 58-37-8(2)(f), the division shall daily enter into the database the information supplied in the report.

Section ~~{7}~~5. Section ~~{64-13-29}~~77-11b-102 is amended to read:

~~{~~ **64-13-29. Violation of parole or probation -- Detention -- Hearing.**

~~———— (1) As used in this section:~~

~~———— (a) "72-hour hold" means a directive from the department:~~

~~———— (i) prohibiting the release of a parolee or probationer from correctional custody who has entered correctional custody due to a violation of a condition of parole or probation; and~~
~~———— (ii) lasting for a maximum of 72 hours, excluding weekends or holidays, from the time the parolee or probationer entered correctional custody.~~

~~———— (b) "Correctional custody" means when a parolee or probationer is physically detained in a county jail or a correctional facility operated by the department.~~

~~———— (c) "Parolee" means an individual on parole under the supervision of the department.~~

~~———— (d) "Probationer" means an individual on probation under the supervision of the department.~~

~~———— (e) (i) "Qualifying domestic violence offense" means the same as that term is defined in Subsection 77-36-1.1(4).~~

~~———— (ii) "Qualifying domestic violence offense" does not include criminal mischief as described in Section 76-6-106.~~

~~———— (f) "Violent felony" means the same as that term is defined in Section 76-3-203.5.~~

~~———— [(a)] (2) The department [or local law enforcement agency] shall ensure that the court is notified of violations of the terms and conditions of probation in the case of probationers under the supervision of the department[, the local law enforcement agency,] or the Board of Pardons and Parole in the case of parolees under the department's supervision when:~~

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~~—— [(i)] (a) [a sanction of] incarceration is recommended as a sanction;~~

~~—— [(ii)] (b) the department [or local law enforcement agency] determines that a graduated and evidence-based response is not an appropriate response to the [offender's] violation and recommends revocation of probation or parole; or~~

~~—— [(iii)] (c) there is probable cause that the conduct that led to a violation of parole or probation is:~~

~~—— [(A)] (i) a violent felony [as defined in Section 76-3-203.5]; or~~

~~—— [(B)] (ii) a qualifying domestic violence offense [as defined in Subsection 77-36-1.1(4) that is not a criminal mischief offense];~~

~~—— [(b) In cases where the department desires to detain an offender alleged to have violated his parole or probation and where it is unlikely that the Board of Pardons and Parole or court will conduct a hearing within a reasonable time to determine if the offender has violated his conditions of parole or probation, the department shall hold an administrative hearing within a reasonable time, unless the hearing is waived by the parolee or probationer, to determine if there is probable cause to believe that a violation has occurred.]~~

~~—— [(c) If there is a conviction for a crime based on the same charges as the probation or parole violation, or a finding by a federal or state court that there is probable cause to believe that an offender has committed a crime based on the same charges as the probation or parole violation, the department need not hold an administrative hearing.]~~

~~—— [(2) The appropriate officer or officers of the department shall, as soon as practical following the department's administrative hearing, report to the court or the Board of Pardons and Parole, furnishing a summary of the hearing, and may make recommendations regarding the disposition to be made of the parolee or probationer.]~~

~~—— [(3) (a) Pending any proceeding under this section for a violation of probation or parole, the department:]~~

~~—— [(i) except as provided in Subsection (3)(b), may take custody of and detain the parolee or probationer who committed the violation for a period not to exceed 72 hours excluding weekends and holidays; and]~~

~~—— [(ii) if the department or the department's agent has probable cause that the conduct that led to the violation is an offense described in Subsection (1)(a)(iii), shall take custody of and detain the parolee or probationer who committed the violation for a period not to exceed 72~~

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~~hours excluding weekends and holidays.]~~

~~}{ — [(b) The 72-hour period described in this Subsection (3) is reduced by the amount of time a probationer or parolee is detained under Subsection 17-22-5.5(6).]~~

~~— [(4) In cases where probationers are supervised by a local law enforcement agency, the agency may take custody of and detain the probationer involved for a period not to exceed 72 hours excluding weekends and holidays if:]~~

~~— [(a) the probationer commits a major violation or repeated violations of probation;]~~

~~— [(b) it is unlikely that the court will conduct a hearing within a reasonable time to determine if the offender has violated the conditions of probation; and]~~

~~— [(c) the law enforcement agency conducts an administrative hearing within a reasonable time to determine if there is probable cause to believe the offender has violated the conditions of probation, unless the hearing is waived by the probationer.]~~

~~— [(5) If the requirements for Subsection (4) are met, the local law enforcement agency shall ensure the proper court is notified.]~~

~~— [(6) If the hearing officer determines that there is probable cause to believe that the offender has violated the conditions of the offender's parole or probation, the department may detain the offender for a reasonable period of time after the hearing or waiver, as necessary to arrange for the incarceration of the offender. A written order of the department is sufficient authorization for any peace officer to incarcerate the offender. The department may promulgate rules for the implementation of this section.]~~

~~— [(7) A written order from the local law enforcement agency is sufficient authorization for any peace officer to incarcerate the offender if:]~~

~~— [(a) the probationers are supervised by a local law enforcement agency; and]~~

~~— [(b) the appropriate officer or officers determine that there is probable cause to believe that the offender has violated the conditions of probation.]~~

~~— [(8) If a probationer supervised by a local law enforcement agency commits a violation outside of the jurisdiction of the supervising agency, the arresting agency is not required to hold or transport the probationer for the supervising agency.]~~

~~— (3) The department:~~

~~— (a) may place a 72-hour hold on a parolee or probationer if there is probable cause to believe that the parolee or probationer has committed a violation other than a violent felony or~~

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~~qualifying domestic violence offense; and~~

~~—— (b) shall place a 72-hour hold on a parolee or probationer if there is probable cause to believe that the parolee or probationer has committed a violent felony or qualifying domestic violence offense.~~

~~—— (4) (a) The department may not detain, or have a county jail detain, a probationer or parolee for longer than 72 hours without a warrant or order issued by the court or Board of Pardons and Parole.~~

~~—— (b) To obtain a warrant or order to detain a probationer or parolee for longer than 72 hours, the department shall seek the warrant or order from the court for a probationer or the Board of Pardons and Parole for a parolee.~~

~~—— (c) The department may decline to seek a warrant or order under Subsection (4)(b) for a probationer or parolee subject to a 72-hour hold and remove the 72-hour hold.~~

~~—— (5) This section does not require the department to release a probationer or parolee who is being held for something other than a probation or parole violation, including a warrant issued for new criminal conduct or a new conviction where the individual is sentenced to incarceration.~~

~~—— (6) The department may make rules as necessary to implement this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— Section 8. Section ~~77-11b-102~~ is amended to read:~~

‡ **77-11b-102. Property subject to forfeiture.**

(1) (a) Except as provided in Subsection (2), (3), (4), or (5), an agency may seek to forfeit:

(i) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; or

(ii) seized proceeds.

(b) An agency, or the prosecuting attorney, may not forfeit the seized property of an innocent owner or an interest holder.

(2) If seized property is used to facilitate an offense that is a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, an agency may not forfeit the property if the forfeiture would constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution,

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Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.

(3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the motor vehicle, unless:

(a) the operator of the vehicle has previously been convicted of an offense committed after May 12, 2009, that is:

(i) a felony driving under the influence violation under Section 41-6a-502 or Subsection 76-5-102.1(2)(a);

(ii) a felony violation under Subsection 76-5-102.1(2)(b);

(iii) a violation under Section 76-5-207; or

(iv) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g); or

(b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license and:

(i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii) was imposed because of a violation under:

(A) Section 41-6a-502;

(B) Section 41-6a-517;

(C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

(D) Section 41-6a-520.1;

(E) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

(F) Section 76-5-102.1;

(G) Section 76-5-207; or

(H) a criminal prohibition as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections

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(3)(b)(i)(A) through (G); or

(ii) the denial, suspension, revocation, or disqualification described in Subsection

(3)(b)(i):

(A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and

(B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsection (3)(b)(i).

(4) If a peace officer seizes property incident to an arrest solely for possession of a controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection ~~[58-37-8(2)(b)(i)]~~ 58-37-8(2)(b)(iv)(E), an agency may not seek to forfeit the property that was seized in accordance with the arrest.

(5) If a peace officer seizes an individual's firearm as the result of an offense under Section 76-10-529, an agency may not seek to forfeit the individual's firearm if the individual may lawfully possess the firearm.

Section ~~79~~6. Section **77-20-102** is amended to read:

77-20-102. Definitions.

As used in this chapter:

(1) "Bail" means pretrial release.

(2) "Bail bond" means the same as that term is defined in Section 31A-35-102.

(3) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(4) "Bail bond producer" means the same as that term is defined in Section 31A-35-102.

(5) "County jail official" means a county sheriff or the county sheriff's designee.

(6) "Exonerate" means to release and discharge a surety, or a surety's bail bond producer, from liability for a bail bond.

(7) "Financial condition" means any monetary condition that is imposed to secure an individual's pretrial release.

(8) "Forfeiture" means:

(a) to divest an individual or surety from a right to the repayment of monetary bail; or

(b) to enforce a pledge of assets or real or personal property from an individual or surety used to secure an individual's pretrial release.

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(9) "Magistrate" means the same as that term is defined in Section 77-1-3.

(10) (a) "Material change in circumstances" includes:

(i) an unreasonable delay in prosecution that is not attributable to the defendant;

(ii) a material change in the risk that an individual poses to a victim, a witness, or the public if released due to the passage of time or any other relevant factor;

(iii) a material change in the conditions of release or the services that are reasonably available to the defendant if released;

(iv) a willful or repeated failure by the defendant to appear at required court appearances; or

(v) any other material change related to the defendant's risk of flight or danger to any other individual or to the community if released.

(b) "Material change in circumstances" does not include any fact or consideration that is known at the time that the pretrial status order is issued.

(11) "Monetary bail" means a financial condition.

(12) "Own recognizance" means the release of an individual without any condition of release other than the individual's promise to:

(a) appear for all required court proceedings; and

(b) not commit any criminal offense.

(13) "Pretrial detention hearing" means a hearing described in Section 77-20-206.

(14) "Pretrial release" means the release of an individual from law enforcement custody during the time the individual awaits trial or other resolution of criminal charges.

(15) "Pretrial risk assessment" means an objective, research-based, validated assessment tool that measures an individual's risk of flight and risk of anticipated criminal conduct while on pretrial release.

(16) "Pretrial services program" means a program that is established to:

(a) gather information on individuals booked into a jail facility;

(b) conduct pretrial risk assessments; and

(c) supervise individuals granted pretrial release.

(17) "Pretrial status order" means an order issued by a magistrate or judge that:

(a) releases the individual on the individual's own recognizance while the individual awaits trial or other resolution of criminal charges;

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(b) sets the terms and conditions of the individual's pretrial release while the individual awaits trial or other resolution of criminal charges; or

(c) denies pretrial release and orders that the individual be detained while the individual awaits trial or other resolution of criminal charges.

(18) "Principal" means the same as that term is defined in Section 31A-35-102.

(19) "Surety" means a surety insurer or a bail bond agency.

(20) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(21) "Temporary pretrial status order" means an order issued by a magistrate that:

(a) releases the individual on the individual's own recognizance until a pretrial status order is issued;

(b) sets the terms and conditions of the individual's pretrial release until a pretrial status order is issued; or

(c) denies pretrial release and orders that the individual be detained until a pretrial status order is issued.

~~[(22) "Unsecured bond" means an individual's promise to pay a financial condition if the individual fails to appear for any required court appearance.]~~

Section ~~{10. Section 77-20-203 is amended to read:~~

~~———— 77-20-203. County sheriff authority to release an individual from jail on own recognizance.~~

~~———— (1) As used in this section:~~

~~———— (a) (i) "Qualifying domestic violence offense" means the same as that term is defined in Subsection 77-36-1.1(4):~~

~~———— (ii) "Qualifying domestic violence offense" does not include criminal mischief as described in Section 76-6-106.~~

~~———— [(a)] (b) "Qualifying offense" means the same as that term is defined in Section 78B-7-801.~~

~~———— [(b)] (c) "Violent felony" means the same as that term is defined in [Subsection 76-3-203.5(1)(c)(i)] Section 76-3-203.5.~~

~~———— (2) [A] Except as provided in Subsection (3), a county jail official may release an individual from a jail facility on the individual's own recognizance if:~~

~~———— (a) the individual was arrested without a warrant;~~

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- ~~_____ (b) the individual was not arrested for:~~
- ~~_____ (i) a violent felony;~~
- ~~_____ (ii) a qualifying offense;~~
- ~~_____ (iii) the offense of driving under the influence or driving with a measurable controlled substance in the body if the offense results in death or serious bodily injury to an individual; or~~
- ~~_____ (iv) an offense described in Subsection 76-9-101(4);~~
- ~~_____ (c) law enforcement has not submitted a probable cause statement to a court or magistrate;~~
- ~~_____ (d) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and~~
- ~~_____ (e) the individual qualifies for release under the written policy described in Subsection [(3)] (4) for the county.~~
- ~~_____ (3) A county jail official may not release an individual from a jail facility if the individual is subject to a 72-hour hold placed on the individual by the Department of Corrections as described in Section 64-13-29.~~
- ~~_____ [(3)] (4) (a) A county sheriff shall create and approve a written policy for the county that governs the release of an individual on the individual's own recognizance.~~
- ~~_____ (b) The written policy shall describe the criteria an individual shall meet to be released on the individual's own recognizance:~~
- ~~_____ (c) A county sheriff may include in the written policy the criteria for release relating to:~~
- ~~_____ (i) criminal history;~~
- ~~_____ (ii) prior instances of failing to appear for a mandatory court appearance;~~
- ~~_____ (iii) current employment;~~
- ~~_____ (iv) residency;~~
- ~~_____ (v) ties to the community;~~
- ~~_____ (vi) an offense for which the individual was arrested;~~
- ~~_____ (vii) any potential criminal charges that have not yet been filed;~~
- ~~_____ (viii) the individual's health condition;~~
- ~~_____ (ix) any potential risks to a victim, a witness, or the public; and~~
- ~~_____ (x) any other similar factor a sheriff determines is relevant.~~
- ~~_____ (5) (a) Except as provided in Subsection (5)(b)(ii), a jail facility shall detain an~~

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~~individual for up to 24 hours from booking if:~~

~~—— (i) the individual is on supervised probation or parole and that information is reasonably available; and~~

~~—— (ii) the individual was arrested for:~~

~~—— (A) a violent felony; or~~

~~—— (B) a qualifying domestic violence offense.~~

~~—— (b) The jail facility shall:~~

~~—— (i) notify the entity supervising the individual's probation or parole that the individual is being detained; and~~

~~—— (ii) release the individual:~~

~~—— (A) to the Department of Corrections if the Department of Corrections supervises the individual and requests the individual's release; or~~

~~—— (B) if a court or magistrate orders release.~~

~~—— (c) This Subsection (5) does not prohibit a jail facility from holding the individual in accordance with this chapter for a new criminal offense.~~

~~—— [(4)] (6) [Nothing in this section prohibits] This section does not prohibit a court and a county from entering into an agreement regarding release.~~

~~—— Section 11}7. Section 77-20-204 is amended to read:~~

77-20-204. County sheriff authority to release an individual from jail on monetary bail.

(1) As used in this section, "eligible felony offense" means a third degree felony violation under:

- (a) Section 23A-4-501 or 23A-4-502;
- (b) Section 23A-5-311;
- (c) Section 23A-5-313;
- (d) Title 76, Chapter 6, Part 4, Theft;
- (e) Title 76, Chapter 6, Part 5, Fraud;
- (f) Title 76, Chapter 6, Part 6, Retail Theft;
- (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
- (h) Title 76, Chapter 6, Part 8, Library Theft;
- (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;

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- (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
- (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
- (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
- (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
- (o) Title 76, Chapter 6a, Pyramid Scheme Act;
- (p) Title 76, Chapter 7, Offenses Against the Family;
- (q) Title 76, Chapter 7a, Abortion Prohibition;
- (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
- (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
- (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- (u) Title 76, Chapter 9, Part 5, Libel; or
- (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.

(2) Except as provided in Subsection (7)(a), a county jail official may fix a financial condition for an individual if:

(a) (i) the individual is ineligible to be released on the individual's own recognizance under Section 77-20-203;

(ii) the individual is arrested for, or charged with:

(A) a misdemeanor offense under state law; or

(B) a violation of a city or county ordinance that is classified as a class B or C misdemeanor offense;

(iii) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and

(iv) law enforcement has not submitted a probable cause statement to a magistrate; or

(b) (i) the individual is arrested for, or charged with, an eligible felony offense;

(ii) the individual is not on pretrial release for a separate criminal offense;

(iii) the individual is not on probation or parole;

(iv) the primary risk posed by the individual is the risk of failure to appear;

(v) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and

(vi) law enforcement has not submitted a probable cause statement to a magistrate.

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(3) A county jail official may not fix a financial condition at a monetary amount that exceeds:

- (a) \$5,000 for an eligible felony offense;
- (b) \$1,950 for a class A misdemeanor offense;
- (c) \$680 for a class B misdemeanor offense;
- (d) \$340 for a class C misdemeanor offense;
- (e) \$150 for a violation of a city or county ordinance that is classified as a class B

misdemeanor; or

(f) \$80 for a violation of a city or county ordinance that is classified as a class C misdemeanor.

(4) If an individual is arrested for more than one offense, and the county jail official fixes a financial condition for release:

(a) the county jail official shall fix the financial condition at a single monetary amount; and

(b) the single monetary amount may not exceed the monetary amount under Subsection (3) for the highest level of offense for which the individual is arrested.

(5) Except as provided in Subsection (7)(b), an individual shall be released if the individual posts a financial condition fixed by a county jail official in accordance with this section.

(6) If a county jail official fixes a financial condition for an individual, law enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah Rules of Criminal Procedure after the county jail official fixes the financial condition.

(7) Once a magistrate begins a review of an individual's case under Rule 9 of the Utah Rules of Criminal Procedure:

(a) a county jail official may not fix or modify a financial condition for an individual; and

(b) if a county jail official fixed a financial condition for the individual before the magistrate's review, the individual may no longer be released on the financial condition.

(8) A jail facility may not release an individual subject to a 72-hour hold placed on the individual by the Department of Corrections as described in Section 64-13-29.

~~[(8)]~~ (9) ~~[Nothing in this section prohibits]~~ This section does not prohibit a court and a

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county from entering into an agreement regarding release.

Section ~~{12}8~~. Section 77-20-205 is amended to read:

77-20-205. Pretrial release by a magistrate or judge.

(1) (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure, the magistrate shall issue a temporary pretrial status order that:

(i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges;

(ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or

(iii) orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges.

(b) At the time that a magistrate issues a summons, the magistrate may issue a temporary pretrial status order that:

(i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges; or

(ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges.

(2) (a) Except as provided in Subsection (2)(b), the magistrate or judge shall issue a pretrial status order at an individual's first appearance before the court.

(b) The magistrate or judge may delay the issuance of a pretrial status order at an individual's first appearance before the court:

(i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for pretrial detention as described in Section 77-20-206;

(ii) if a party requests a delay; or

(iii) if there is good cause to delay the issuance.

(c) If a magistrate or judge delays the issuance of a pretrial status order under Subsection (2)(b), the magistrate or judge shall extend the temporary pretrial status order until the issuance of a pretrial status order.

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(3) (a) When a magistrate or judge issues a pretrial status order, the pretrial status order shall:

(i) release the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges;

(ii) designate a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or

(iii) order the individual to be detained during the time that individual awaits trial or other resolution of criminal charges.

(b) In making a determination about pretrial release in a pretrial status order, the magistrate or judge may not give any deference to a magistrate's decision in a temporary pretrial status order.

(4) In making a determination about pretrial release, a magistrate or judge shall impose:

(a) only conditions of release that are reasonably available [~~and necessary to reasonably ensure~~]; and

(b) conditions of release that ensure:

~~(a)~~ (i) the individual's appearance in court when required;

~~(b)~~ (ii) the safety of any witnesses or victims of the offense allegedly committed by the individual;

~~(c)~~ (iii) the safety and welfare of the public; and

~~(d)~~ (iv) that the individual will not obstruct, or attempt to obstruct, the criminal justice process.

(5) Except as provided in Subsection (6), a magistrate or judge may impose a condition, or combination of conditions, for pretrial release that requires an individual to:

(a) not commit a federal, state, or local offense during the period of pretrial release;

(b) avoid contact with a victim of the alleged offense;

(c) avoid contact with a witness who:

(i) may testify concerning the alleged offense; and

(ii) is named in the pretrial status order;

(d) not consume alcohol or any narcotic drug or other controlled substance unless

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prescribed by a licensed medical practitioner;

(e) submit to drug or alcohol testing;

(f) complete a substance abuse evaluation and comply with any recommended treatment or release program;

(g) submit to electronic monitoring or location device tracking;

(h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;

(i) maintain employment or actively seek employment if unemployed;

(j) maintain or commence an education program;

(k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;

(l) comply with specified restrictions on personal associations, place of residence, or travel;

(m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;

(n) comply with a specified curfew;

(o) forfeit or refrain from possession of a firearm or other dangerous weapon;

(p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;

(q) comply with requirements for house arrest;

(r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;

(s) remain in custody of one or more designated individuals who agree to:

(i) supervise and report on the behavior and activities of the individual; and

(ii) encourage compliance with all court orders and attendance at all required court proceedings;

(t) comply with a financial condition; or

(u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection (4).

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(6) (a) If a county or municipality has established a pretrial services program, the magistrate or judge shall consider the services that the county or municipality has identified as available in determining what conditions of release to impose.

(b) The magistrate or judge may not order conditions of release that would require the county or municipality to provide services that are not currently available from the county or municipality.

(c) Notwithstanding Subsection (6)(a), the magistrate or judge may impose conditions of release not identified by the county or municipality so long as the condition does not require assistance or resources from the county or municipality.

(7) (a) If the magistrate or judge determines that a financial condition~~[, other than an unsecured bond,]~~ is necessary to impose as a condition of release, the magistrate or judge shall consider the individual's ability to pay when determining the amount of the financial condition.

(b) If the magistrate or judge determines that a financial condition is necessary to impose as a condition of release, and a county jail official fixed a financial condition for the individual under Section 77-20-204, the magistrate or judge may not give any deference to:

(i) the county jail official's action to fix a financial condition; or

(ii) the amount of the financial condition that the individual was required to pay for pretrial release.

(c) If a magistrate or judge orders a financial condition as a condition of release, the judge or magistrate shall set the financial condition at a single amount per case.

(8) In making a determination about pretrial release, the magistrate or judge may:

(a) rely upon information contained in:

(i) the indictment or information;

(ii) any sworn or probable cause statement or other information provided by law enforcement;

(iii) a pretrial risk assessment;

(iv) an affidavit of indigency described in Section 78B-22-201.5;

(v) witness statements or testimony;

(vi) the results of a lethality assessment completed in accordance with Section 77-36-2.1; or

(vii) any other reliable record or source, including proffered evidence; and

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(b) consider:

(i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:

(A) whether the offense is a violent offense; and

(B) the vulnerability of a witness or alleged victim;

(ii) the nature and circumstances of the individual, including the individual's:

(A) character;

(B) physical and mental health;

(C) family and community ties;

(D) employment status or history;

(E) financial resources;

(F) past criminal conduct;

(G) history of drug or alcohol abuse; and

(H) history of timely appearances at required court proceedings;

(iii) the potential danger to another individual, or individuals, posed by the release of the individual;

(iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;

(v) the availability of:

(A) other individuals who agree to assist the individual in attending court when required; or

(B) supervision of the individual in the individual's community;

(vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or

(vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.

(9) The magistrate or judge may not base a determination about pretrial release solely on the seriousness or type of offense that the individual is arrested for or charged with, unless the individual is arrested for or charged with a ~~[capital felony]~~ violent felony as defined in Section 76-3-203.5.

(10) An individual arrested for violation of a jail release agreement, or a jail release

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court order, issued in accordance with Section 78B-7-802:

(a) may not be released before the individual's first appearance before a magistrate or judge; and

(b) may be denied pretrial release by the magistrate or judge.

Section ~~{13}~~9. Section 77-20-210 is enacted to read:

77-20-210. Violation of pretrial release order -- 24-hour hold for violation.

(1) As used in this section, "pretrial release order" means a pretrial status order or a temporary pretrial status order.

(2) (a) An individual commits a violation of a pretrial release order if the individual:

(i) is released by a magistrate or judge upon the issuance of a pretrial release order that imposes a condition, or a combination of conditions, for the individual's pretrial release; and

(ii) the individual knowingly or intentionally violates a condition in the pretrial release order.

(b) A violation of Subsection (2)(a) is a class C misdemeanor.

(3) (a) If a county sheriff determines that there is probable cause to believe that an individual has committed a violation of a pretrial release order as described in Subsection (2), the county sheriff may take custody of, and detain, the individual for a maximum of 24 hours without obtaining a warrant issued by a court.

(b) If the county sheriff detains an individual under Subsection (3)(a), the county sheriff shall ensure that the court is notified.

(4) A written order from the county sheriff is sufficient authorization for a peace officer to detain an individual if the county sheriff has determined that there is probable cause to believe that the individual has committed a violation of a pretrial release order.

(5) If an individual commits a violation of a pretrial release order outside of the jurisdiction of the county sheriff supervising the individual on pretrial release, the arresting law enforcement agency is not required to hold or transport the individual to the county sheriff.

(6) This section does not prohibit a county sheriff or jail facility from holding an individual in accordance with this chapter for a new criminal offense.

Section ~~{14}~~10. Section 77-20-402 is amended to read:

77-20-402. Payment of monetary bail to court -- Specific payment methods -- Refund of monetary bail.

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(1) Subject to Subsection (2), a defendant may choose to post the amount of monetary bail imposed by a judge or magistrate by any of the following methods:

(a) in cash;

(b) by a bail bond with a surety; or

~~[(c) by an unsecured bond, at the discretion of the judge or magistrate; or]~~

~~[(d)]~~ (c) by credit or debit card, at the discretion of the judge or magistrate.

(2) A judge or magistrate may limit a defendant to a specific method of posting monetary bail described in Subsection (1):

(a) if, after charges are filed, the defendant fails to appear in the case on a bail bond and the case involves a violent offense;

(b) in order to allow the defendant to voluntarily remit the fine in accordance with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

(c) if the defendant has failed to respond to a citation or summons and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

(d) if a warrant is issued for the defendant solely for failure to pay a criminal accounts receivable, as defined in Section 77-32b-102, and the defendant's monetary bail is limited to the amount owed; or

(e) if a court has entered a judgment of bail bond forfeiture under Section 77-20-505 in any case involving the defendant.

(3) Monetary bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address, telephone number, and email address of the surety.

(4) Monetary bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

(5) (a) Monetary bail refunded by the court may be refunded by credit to the debit or credit card or in cash.

(b) The amount refunded shall be the full amount received by the court under Subsection (4), which may be less than the full amount of the monetary bail set by the judge or magistrate.

(c) Before refunding monetary bail that is posted by the defendant in cash, by credit

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card, or by debit card, the court may apply the amount posted toward a criminal accounts receivable, as defined in Section 77-32b-102, that is owed by the defendant in the priority set forth in Section 77-38b-304.

Section ~~{15}~~11. Section **77-40a-101** is amended to read:

77-40a-101. Definitions.

As used in this chapter:

(1) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(3) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(4) (a) "Clean slate eligible case" means, except as provided in Subsection (4)(c), a case:

(i) where each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor conviction; or

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40a-303(4) and (5) without taking into consideration the exception in Subsection 77-40a-303(7); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

(A) at least five years for a class C misdemeanor or an infraction;

(B) at least six years for a class B misdemeanor; and

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(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(b) "Clean slate eligible case" includes a case:

(i) that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(A) except as provided in Subsection (4)(c), each charge within the case is a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;

(B) the individual involved meets the requirements of Subsection (4)(a)(ii); and

(C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed; or

(ii) where charges are dismissed without prejudice if each conviction, or charge that was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or (b)(i).

(c) "Clean slate eligible case" does not include a case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes a criminal accounts receivable, as defined in Section 77-32b-102, that:

(A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or

(B) has not been satisfied according to court records; or

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40a-303(2)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Individual;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence

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and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

(H) a domestic violence offense as defined in Section 77-36-1; or

(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(6) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.

(7) "Criminal stalking injunction" means the same as that term is defined in Section 78B-7-102.

(8) "Department" means the Department of Public Safety established in Section 53-1-103.

(9) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except for:

(i) any offense under Subsection [~~58-37-8(2)(b)(i)~~] 58-37-8(2)(b)(iv)(E), possession of 100 pounds or more of marijuana;

(ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility; or

(iii) driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (9).

(10) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

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(11) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(12) (a) "Minor regulatory offense" means, except as provided in Subsection (12)(c), a class B or C misdemeanor offense or a local ordinance.

(b) "Minor regulatory offense" includes an offense under Section 76-9-701 or 76-10-105.

(c) "Minor regulatory offense" does not include:

(i) any drug possession offense;

(ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(iii) an offense under Sections 73-18-13 through 73-18-13.6;

(iv) except as provided in Subsection (12)(b), an offense under Title 76, Utah Criminal Code; or

(v) any local ordinance that is substantially similar to an offense listed in Subsections (12)(c)(i) through (iv).

(13) "Petitioner" means an individual applying for expungement under this chapter.

(14) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

(15) (a) "Traffic offense" means, except as provided in Subsection (15)(b):

(i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;

(ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to an offense listed in Subsections (15)(a)(i) through (iii).

(b) "Traffic offense" does not mean:

(i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) an offense under Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to an offense listed in Subsection

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(15)(b)(i) or (ii).

(16) "Traffic offense case" means that each offense in the case is a traffic offense.

Section ~~16~~12. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

(2) The actions affecting Section 58-37-8 (Effective 07/01/24) take effect on July 1, 2024.