

1 **CRIMINAL PROVISIONS MODIFICATIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Paul Ray

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Criminal Code Evaluation Task Force recommended this bill.

10 Membership: 7 legislators 9 non-legislators

11 Legislative Vote: 4 voting for 0 voting against 2 absent

12 **General Description:**

13 This bill modifies provisions relating to criminal offenses and penalties in the Utah
14 Code.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ modifies criminal offenses and penalties relating to:
 - 19 • clandestine drug labs;
 - 20 • drug distribution resulting in death;
 - 21 • electronic communications harassment; and
 - 22 • return of a marriage license to a county clerk;
- 23 ▶ repeals the offense of fornication;
- 24 ▶ repeals provisions allowing the Department of Public Safety to enforce the
25 Clandestine Drug Lab Act; and
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 **AMENDS:**

- 33 [30-1-11](#), as last amended by Laws of Utah 2018, Chapter 148
- 34 [58-37-8](#), as last amended by Laws of Utah 2017, Chapter 330
- 35 [58-37d-2](#), as last amended by Laws of Utah 2013, Chapter 278
- 36 [58-37d-3](#), as last amended by Laws of Utah 2013, Chapters 262 and 413
- 37 [58-37d-4](#), as last amended by Laws of Utah 2008, Chapter 305
- 38 [58-37d-5](#), as last amended by Laws of Utah 2003, Chapter 115
- 39 [58-37d-6](#), as enacted by Laws of Utah 1992, Chapter 156
- 40 [76-9-201](#), as last amended by Laws of Utah 2018, Chapter 444
- 41 [77-22-2](#), as last amended by Laws of Utah 2009, Chapter 6
- 42 [77-22-2.5](#), as last amended by Laws of Utah 2017, Chapter 447

43 **REPEALS:**

- 44 [58-37d-9](#), as last amended by Laws of Utah 1999, Chapter 21
- 45 [76-7-104](#), as enacted by Laws of Utah 1973, Chapter 196

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

48 Section 1. Section **30-1-11** is amended to read:

49 **30-1-11. Return of license after ceremony -- Failure -- Penalty.**

50 (1) The individual solemnizing the marriage shall within 30 days ~~[hereafter]~~ after
51 solemnizing the marriage return the license to the clerk of the county ~~[whence it issued]~~ that
52 issues the license, with a certificate of the marriage over the individual's signature, giving the
53 date and place of celebration and the names of two or more witnesses present at the marriage.

54 (2) An individual described in Subsection (1) who fails to ~~[make the return]~~ return the
55 license is guilty of ~~[a class B misdemeanor]~~ an infraction.

56 Section 2. Section **58-37-8** is amended to read:

57 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

66 (iv) engage in a continuing criminal enterprise where~~[-(A)]~~ the person participates,
67 directs, or engages in conduct that results in any violation of any provision of Title 58,
68 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
69 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
70 Clandestine Drug Lab Act, that is a felony~~[-and]~~, if the violation:

71 ~~[(B)]~~ (A) ~~[the violation]~~ is a part of a continuing series of two or more violations of
72 Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
73 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
74 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
75 more persons with respect to whom the person occupies a position of organizer, supervisor, or
76 ~~[any other]~~ another position of management~~[-];~~ or

77 (B) results in the death of an individual.

78 (b) Any person convicted of violating Subsection (1)(a) with respect to:

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

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

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

89 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)

90 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
91 of fact finds a firearm as defined in Section [76-10-501](#) was used, carried, or possessed on the
92 person or in the person's immediate possession during the commission or in furtherance of the
93 offense, the court shall additionally sentence the person convicted for a term of one year to run
94 consecutively and not concurrently; and the court may additionally sentence the person
95 convicted for an indeterminate term not to exceed five years to run consecutively and not
96 concurrently.

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

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

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

(a) It is unlawful:

(i) for any 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 any owner, tenant, licensee, or person in control of any 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 any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any 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 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) (i) Any 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.

(ii) Upon a third conviction under Subsection (2)(d)(i), the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section [64-13-1](#) or any 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 indeterminate term as provided by law, and the court:

(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) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

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

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

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

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

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's

body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section [76-5-207](#) in a negligent manner, causing serious bodily injury as defined in Section [76-1-601](#) or the death of another.

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

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

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection [58-37-4\(2\)\(a\)\(iii\)\(S\)](#) or (AA), or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class

163 A misdemeanor.

164 (i) A person is guilty of a separate offense for each victim suffering serious bodily
165 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
166 whether or not the injuries arise from the same episode of driving.

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

170 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

195 (4) Prohibited acts D -- Penalties:

196 (a) Notwithstanding other provisions of this section, a person not authorized under this
197 chapter who commits any act that is unlawful under Subsection (1)(a), Section [58-37a-5](#), or
198 Section [58-37b-4](#) is upon conviction subject to the penalties and classifications under this
199 Subsection (4) if the trier of fact finds the act is committed:

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

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

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

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

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

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

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

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

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

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

221 (ii) Imposition or execution of the sentence may not be suspended, and the person is

not eligible for probation

(c) ~~[If] Except for a violation of Subsection (2)(g), 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. [This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).]~~

(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 any 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 the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that 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) Any 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]~~ another 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]~~ another section of this chapter.

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

(b) Where 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) any 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; or

(b) any law enforcement officer acting in the course and legitimate scope of the

officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection [58-37-2\(1\)\(v\)](#), 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 Subsection [58-37-2\(1\)\(w\)](#).

281 (b) In a prosecution alleging violation of this section regarding peyote as defined in
282 Subsection [58-37-4\(2\)\(a\)\(iii\)\(V\)](#), it is an affirmative defense that the peyote was used,
283 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in
284 connection with the practice of a traditional Indian religion.

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

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

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

291 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
292 a preponderance of the evidence~~[-#]~~ and, if the defense is established, ~~the~~ the defense is a
293 complete defense to the charges.

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

296 (i) was engaged in medical research; and

297 (ii) was a holder of a valid license to possess controlled substances under Section
298 [58-37-6](#).

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

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

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

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

306 (15) (a) The application of any increase in penalty under this section to a violation of

307 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.

308 (b) This Subsection (15) takes precedence over any conflicting provision of this
309 section.

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

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

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

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

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

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

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

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

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

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

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

338 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not
339 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 of age is found by a court to have violated this section, the court may order:

(a) the minor to complete a screening as defined in Section [41-6a-501](#);

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

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

Section 3. Section **58-37d-2** is amended to read:

58-37d-2. Purpose.

The clandestine production of methamphetamine, other amphetamines, phencyclidine, narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack" cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the western states and Utah. These highly technical illegal operations create substantial dangers to the general public and environment from fire, explosions, and the release of toxic chemicals. By their very nature these activities often involve a number of persons in a conspiratorial enterprise to bring together all necessary components for clandestine production, to thwart regulation and detection, and to distribute the final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory operations. With regard to the controlled substances specified herein, this act shall control, notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

Section 4. Section **58-37d-3** is amended to read:

58-37d-3. Definitions.

(1) As used in this chapter:

(a) (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily injury when triggered by the action of a person making contact with the device.

(ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.

(b) "Clandestine laboratory operation" means the:

(i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;

(ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of specified controlled substances;

(iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;

(iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;

(v) illegal manufacture of specified controlled substances; or

(vi) distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

(c) "Controlled substance precursor" means those chemicals designated in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in Subsections [58-37c-3\(1\)\(kk\)](#) and (ll).

(d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:

(i) (A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be an opioid distributed by another manufacturer, distributor, or dispenser; and

400 (B) a reasonable person would believe to be an opioid distributed by an authorized
401 manufacturer, distributor, or dispenser based on the appearance of the substance as described
402 under Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or
403 (ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and
404 (B) a reasonable person would believe to be a legal or illegal opioid.

405 ~~[(e)]~~ (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping,
406 spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or
407 water so that the material may enter the environment, be emitted into the air, or discharged into
408 any waters, including groundwater.

409 ~~[(e)]~~ (f) "Hazardous or dangerous material" means a substance that because of its
410 quantity, concentration, physical characteristics, or chemical characteristics may cause or
411 significantly contribute to an increase in mortality, an increase in serious illness, or may pose a
412 substantial present or potential future hazard to human health or the environment when
413 improperly treated, stored, transported, disposed of, or otherwise improperly managed.

414 ~~[(f)]~~ (g) "Illegal manufacture of specified controlled substances" means in violation of
415 Title 58, Chapter 37, Utah Controlled Substances Act, the:

416 (i) compounding, synthesis, concentration, purification, separation, extraction, or other
417 physical or chemical processing for the purpose of producing methamphetamine, other
418 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,
419 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled
420 Substances Act, lysergic acid diethylamide, ~~[(e)]~~ mescaline, tetrahydrocannabinol, or counterfeit
421 opioid;

422 (ii) conversion of cocaine or methamphetamine to their base forms; or

423 (iii) extraction, concentration, or synthesis of ~~[marijuana as that drug is defined in~~
424 ~~Section [58-37-2](#)] tetrahydrocannabinol.~~

425 (h) "Opioid" means the same as that term is defined in Section [58-37f-303](#).

426 (i) "Tetrahydrocannabinol" means the same as that term is defined in Section
427 [58-37-3.6](#).

428 (2) Unless otherwise specified, the definitions in Section [58-37-2](#) also apply to this
429 chapter.

430 Section 5. Section **58-37d-4** is amended to read:

431 **58-37d-4. Prohibited acts -- Second degree felony.**

432 (1) It is unlawful for any person to knowingly or intentionally:

433 (a) possess a controlled substance or a controlled substance precursor with the intent to
434 engage in a clandestine laboratory operation;

435 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine
436 laboratory operation;

437 (c) sell, distribute, or otherwise supply a controlled substance, controlled substance
438 precursor ~~[chemical]~~, laboratory equipment, or laboratory supplies, knowing or having
439 reasonable cause to believe any of these items will be used for a clandestine laboratory
440 operation;

441 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled
442 Substance Precursor Act, knowing or having reasonable cause to believe that the material
443 distributed or received will be used for a clandestine laboratory operation;

444 (e) conspire with or aid another to engage in a clandestine laboratory operation;

445 (f) produce or manufacture, or possess with intent to produce or manufacture a
446 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah
447 Controlled Substances Act;

448 (g) transport or convey a controlled or counterfeit substance with the intent to
449 distribute or to be distributed by the person transporting or conveying the controlled or
450 counterfeit substance or by ~~[any other]~~ another person regardless of whether the final
451 destination for the distribution is within this state or ~~[any other]~~ another location; or

452 (h) engage in compounding, synthesis, concentration, purification, separation,
453 extraction, or other physical or chemical processing of any substance, including a controlled
454 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
455 holding a substance that is a product of any of these activities, knowing or having reasonable
456 cause to believe that the substance is a product of any of these activities and will be used in the
457 illegal manufacture of specified controlled substances.

458 (2) A person who violates ~~[any provision of]~~ Subsection (1) is guilty of a second

degree felony punishable by imprisonment for an indeterminate term of not less than [3] three
years nor more than 15 years.

Section 6. Section **58-37d-5** is amended to read:

58-37d-5. Prohibited acts -- First degree felony.

(1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), (f), or (h) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:

(a) possession of a firearm;

(b) use of a booby trap;

(c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;

(d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;

(e) clandestine laboratory operation actually produced any amount of a specified controlled substance or a counterfeit opioid; or

(f) intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.

(2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for the first degree felony:

(a) probation shall not be granted;

(b) the execution or imposition of sentence shall not be suspended; and

(c) the court shall not enter a judgment for a lower category of offense.

Section 7. Section **58-37d-6** is amended to read:

58-37d-6. Legal inference of intent -- Illegal possession of a controlled substance precursor or clandestine laboratory equipment.

The trier of fact may infer that ~~the~~ a defendant intended to engage in a clandestine laboratory operation if the defendant:

(1) is in illegal possession of a controlled substance precursor; or

(2) illegally possesses or attempts to illegally possess a controlled substance or controlled substance precursor and is in possession of any one of the following pieces of equipment:

(a) glass reaction vessel;

(b) separatory funnel;

(c) glass condenser;

(d) analytical balance; ~~or~~

(e) heating mantle~~[-]~~; or

(f) pill press machine or similar device.

Section 8. Section **76-9-201** is amended to read:

76-9-201. Electronic communication harassment -- Definitions -- Penalties.

(1) As used in this section:

(a) "Adult" means ~~a person~~ an individual 18 years of age or older.

(b) "Electronic communication" means ~~any~~ a communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at ~~any~~ a specific individual.

(c) "Electronic communication device" includes a telephone, a facsimile machine, electronic mail, a pager, a computer, or ~~any other~~ another device or medium that can be used to communicate electronically.

(d) "Minor" means ~~a person~~ an individual who is younger than 18 years of age.

(e) "Personal identifying information" means the same as that term is defined in Section 76-6-1102.

(2) A person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a) (i) makes repeated contact by means of electronic communications, regardless of

whether a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device~~[-or]~~.

~~[(e) electronically publishes, posts, or otherwise discloses personal identifying information of another person, in a public online site or forum, without that person's permission.]~~

(3) A person who electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to abuse, threaten, or disrupt the other individual's electronic communication and without the other individual's permission is guilty of electronic communication harassment.

~~[(3)] (4) (a) (i) Electronic communication harassment committed against an adult is a class B misdemeanor, except under Subsection ~~[(3)] (4)~~(a)(ii).~~

(ii) A second or subsequent offense under Subsection ~~[(3)] (4)~~(a)(i) is [a]:

(A) a class A misdemeanor if all prior violations of this section were committed against adults; and

(B) a third degree felony if ~~[any]~~ a prior violation of this section was committed against a minor.

(b) (i) Electronic communication harassment committed against a minor is a class A misdemeanor, except as provided under Subsection ~~[(3)] (4)~~(b)(ii).

(ii) A second or subsequent offense under Subsection ~~[(3)] (4)~~(b)(i) is a third degree felony, regardless of whether ~~[any]~~ a prior violation of this section was committed against a minor or an adult.

~~[(4)] (5) (a) Except as provided under Subsection ~~[(4)] (5)~~(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of ~~[any of the offenses]~~ an offense under this section.~~

(b) This section does not create ~~[any]~~ a civil cause of action based on electronic

communications made for legitimate business purposes.

Section 9. Section **77-22-2** is amended to read:

77-22-2. Investigations -- Right to subpoena witnesses and require production of evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed court -- Disclosure of information.

(1) As used in this section, "prosecutor" means the ~~[attorney general, county attorney, district attorney, or municipal attorney]~~ the same as that term is defined in Section [77-22-4.5](#).

(2) (a) In any matter involving the investigation of a crime or malfeasance in office, or any criminal conspiracy or activity, the prosecutor may, upon application and approval of the district court and for good cause shown, conduct a criminal investigation.

(b) The application and statement of good cause shall state whether or not ~~[any other]~~ another investigative order related to the investigation at issue has been filed in another court.

(3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

(i) subpoena witnesses;

(ii) compel their attendance and testimony under oath to be recorded by a suitable electronic recording device or to be given before any certified court reporter; and

(iii) require the production of books, papers, documents, recordings, and any other items that ~~[constitute]~~ are evidence or may be relevant to the investigation.

(b) The prosecutor shall:

(i) apply to the district court for each subpoena; and

(ii) show that the requested information is reasonably related to the criminal investigation authorized by the court.

577 (4) (a) The prosecutor shall state in each subpoena:

578 (i) the time and place of the examination;

579 (ii) that the subpoena is issued in aid of a criminal investigation; and

580 (iii) the right of the person subpoenaed to have counsel present.

581 (b) The examination may be conducted anywhere within the jurisdiction of the
582 prosecutor issuing the subpoena.

583 (c) The subpoena need not disclose the names of possible defendants.

584 (d) Witness fees and expenses shall be paid as in a civil action.

585 (5) (a) At the beginning of each compelled interrogation, the prosecutor shall

586 personally inform each witness:

587 (i) of the general subject matter of the investigation;

588 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question
589 or produce any evidence of a communicative nature that may result in self-incrimination;

590 (iii) that any information provided may be used against the witness in a subsequent
591 criminal proceeding; and

592 (iv) of the right to have counsel present.

593 (b) If the prosecutor has substantial evidence that the subpoenaed witness has
594 committed a crime that is under investigation, the prosecutor shall:

595 (i) inform the witness in person before interrogation of that witness's target status; and

596 (ii) inform the witness of the nature of the charges under consideration against the
597 witness.

598 (6) (a) (i) The prosecutor may make written application to any district court showing a
599 reasonable likelihood that publicly releasing information about the identity of a witness or the
600 substance of the evidence resulting from a subpoena or interrogation would pose a threat of
601 harm to a person or otherwise impede the investigation.

602 (ii) Upon a finding of reasonable likelihood, the court may order the:

603 (A) interrogation of a witness be held in secret;

604 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of
605 the person subpoenaed, and the substance of the evidence obtained be kept secret; and

606 (C) record of testimony and other subpoenaed evidence be kept secret unless the court
607 for good cause otherwise orders.

608 (b) After application, the court may by order exclude from any investigative hearing or
609 proceeding any persons except:

610 (i) the attorneys representing the state and members of their staffs;

611 (ii) persons who, in the judgment of the attorneys representing the state, are reasonably
612 necessary to assist in the investigative process;

613 (iii) the court reporter or operator of the electronic recording device; and

614 (iv) the attorney for the witness.

615 (c) This chapter does not prevent attorneys representing the state or members of their
616 staff from disclosing information obtained pursuant to this chapter for the purpose of furthering

617 any official governmental investigation.

618 (d) (i) If a secrecy order has been granted by the court regarding the interrogation or
619 disclosure of evidence by a witness under this subsection, and if the court finds a further
620 restriction on the witness is appropriate, the court may order the witness not to disclose the
621 substance of the witness's testimony or evidence given by the witness to others.

622 (ii) Any order to not disclose made under this subsection shall be served with the
623 subpoena.

624 (iii) In an appropriate circumstance the court may order that the witness not disclose
625 the existence of the investigation to others.

626 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court
627 that one or more of the following risks exist:

628 (A) disclosure by the witness would cause destruction of evidence;

629 (B) disclosure by the witness would taint the evidence provided by other witnesses;

630 (C) disclosure by the witness to a target of the investigation would result in flight or
631 other conduct to avoid prosecution;

632 (D) disclosure by the witness would damage a person's reputation; or

633 (E) disclosure by the witness would cause a threat of harm to any person.

634 (e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction
635 to a witness not to disclose the substance of testimony or evidence provided and the

636 prosecuting agency proves by a preponderance of the evidence that a witness has violated that
637 order, the court may hold the witness in contempt.

638 (ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not
639 infringe on the attorney-client relationship between the witness and the witness's attorney or on
640 ~~[any other]~~ another legally recognized privileged relationship.

641 (7) (a) (i) The prosecutor may submit to any district court a separate written request
642 that the application, statement of good cause, and the court's order authorizing the investigation
643 be kept secret.

644 (ii) The request for secrecy is a public record under Title 63G, Chapter 2, Government
645 Records Access and Management Act, but need not contain any information that would
646 compromise any of the interest listed in Subsection (7)(c).

647 (b) With the court's permission, the prosecutor may submit to the court, in camera, any

648 additional information to support the request for secrecy if necessary to avoid compromising
649 the interests listed in Subsection (7)(c).

650 (c) The court shall consider all information in the application and order authorizing the
651 investigation and any information received in camera and shall order that all information be
652 placed in the public file except information that, if disclosed, would pose:

- 653 (i) a substantial risk of harm to a person's safety;
- 654 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or
- 655 (iii) a serious impediment to the investigation.

656 (d) Before granting an order keeping secret documents and other information received
657 under this section, the court shall narrow the secrecy order as much as reasonably possible in
658 order to preserve the openness of court records while protecting the interests listed in
659 Subsection (7)(c).

660 Section 10. Section **77-22-2.5** is amended to read:

661 **77-22-2.5. Court orders for criminal investigations for records concerning an**
662 **electronic communications system or service or remote computing service -- Content --**
663 **Fee for providing information.**

664 (1) As used in this section:

665 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
666 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
667 radio, electromagnetic, photoelectronic, or photooptical system.

668 (ii) "Electronic communication" does not include:

- 669 (A) any wire or oral communication;
- 670 (B) any communication made through a tone-only paging device;
- 671 (C) any communication from a tracking device; or
- 672 (D) electronic funds transfer information stored by a financial institution in a
673 communications system used for the electronic storage and transfer of funds.

674 (b) "Electronic communications service" means any service which provides for users
675 the ability to send or receive wire or electronic communications.

676 (c) "Electronic communications system" means any wire, radio, electromagnetic,
677 photooptical, or photoelectronic facilities for the transmission of wire or electronic
678 communications, and any computer facilities or related electronic equipment for the electronic

679 storage of the communication.

680 (d) "Internet service provider" has the same definition as in Section [76-10-1230](#).

681 (e) "Prosecutor" has the same definition as in Section ~~[77-22-2]~~ [77-22-4.5](#).

682 (f) "Remote computing service" means the provision to the public of computer storage
683 or processing services by means of an electronic communications system.

684 (g) "Sexual offense against a minor" means:

685 (i) sexual exploitation of a minor ~~[as defined in Section [76-5b-201](#)]~~ or attempted sexual
686 exploitation of a minor in violation of Section [76-5b-201](#);

687 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
688 of Title 76, Chapter 5, Part 4, Sexual Offenses;

689 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
690 Section [76-10-1206](#);

691 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
692 [76-4-401](#); or

693 (v) human trafficking of a child in violation of Section [76-5-308.5](#).

694 (2) When a law enforcement agency is investigating a sexual offense against a minor,

695 an offense of stalking under Section [76-5-106.5](#), or an offense of child kidnapping under
696 Section [76-5-301.1](#), and has reasonable suspicion that an electronic communications system or
697 service or remote computing service has been used in the commission of a criminal offense, a
698 law enforcement agent shall:

699 (a) articulate specific facts showing reasonable grounds to believe that the records or
700 other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and
701 material to an ongoing investigation;

702 (b) present the request to a prosecutor for review and authorization to proceed; and

703 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703
704 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing
705 service provider that owns or controls the Internet protocol address, websites, email address, or
706 service to a specific telephone number, requiring the production of the following information,
707 if available, upon providing in the court order the Internet protocol address, email address,
708 telephone number, or other identifier, and the dates and times the address, telephone number,
709 or other identifier ~~was~~ is suspected of being used in the commission of the offense:

710 (i) names of subscribers, service customers, and users;

711 (ii) addresses of subscribers, service customers, and users;

712 (iii) records of session times and durations;

713 (iv) length of service, including the start date and types of service utilized; and

714 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
715 including any temporarily assigned network address.

716 (3) A court order issued under this section shall state that the electronic
717 communications system or service or remote computing service provider shall produce any
718 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation
719 of the suspected criminal activity or offense as described in the court order.

720 (4) (a) An electronic communications system or service or remote computing service
721 provider that provides information in response to a court order issued under this section may
722 charge a fee, not to exceed the actual cost, for providing the information.

723 (b) The law enforcement agency conducting the investigation shall pay the fee.

724 (5) The electronic communications system or service or remote computing service
725 provider served with or responding to the court order may not disclose the court order to the
726 account holder identified pursuant to the court order for a period of 90 days.

727 (6) If the electronic communications system or service or remote computing service
728 provider served with the court order does not own or control the Internet protocol address,
729 websites, or email address, or provide service for the telephone number that is the subject of
730 the court order, the provider shall notify the investigating law enforcement agency that ~~it~~ the
731 provider does not have the information.

732 (7) There is no cause of action against any provider or wire or electronic
733 communication service, or ~~its~~ the provider or service's officers, employees, agents, or other
734 specified persons, for providing information, facilities, or assistance in accordance with the
735 terms of the court order issued under this section or statutory authorization.

736 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
737 Chapter 23b, Access to Electronic Communications.

738 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
739 Access to Electronic Communications, apply to providers and subscribers subject to a court
740 order issued under this section.

741 (9) ~~Every~~ A prosecutorial agency shall annually on or before February 15 report to
742 the Commission on Criminal and Juvenile Justice:

743 (a) the number of requests for court orders authorized by the prosecutorial agency;

744 (b) the number of orders issued by the court and the criminal offense, pursuant to
745 Subsection (2), each order was used to investigate; and

746 (c) if the court order led to criminal charges being filed, the type and number of
747 offenses charged.

748 Section 11. **Repealer.**

749 This bill repeals:

750 Section [58-37d-9](#), **Department of Public Safety enforcement authority.**

751 Section [76-7-104](#), **Fornication.**