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OVERDOSE REPORTING AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill modifies Title 58, Chapter 37, Utah Controlled Substances Act, and Title 76, Utah Criminal Code, regarding penalties for controlled substance violations related to the reporting of an overdose incident.

Highlighted Provisions:

This bill:

▶ provides that a person who reports a person's overdose from a controlled substance or other substance may claim an affirmative defense to specified charges of violating the Utah Controlled Substances Act if the person remains with the person who is subject to the overdose and cooperates with responding medical providers and law enforcement officers; and

▶ provides that remaining with a person subject to an overdose and cooperating with medical providers and law enforcement is a mitigating factor when determining the penalty for a related violation of the Utah Controlled Substances Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-37-8**, as last amended by Laws of Utah 2011, Chapter 12

31 ENACTS:

32 **76-3-203.11**, Utah Code Annotated 1953



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

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

36 **58-37-8. Prohibited acts -- Penalties.**

37 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

46 (A) the person participates, directs, or engages in conduct which results in any
47 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

48 (B) the violation is a part of a continuing series of two or more violations of Title 58,
49 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
50 five or more persons with respect to whom the person occupies a position of organizer,
51 supervisor, or any other position of management.

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

53 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
54 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
55 degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

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

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

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

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

74 (2) Prohibited acts B -- Penalties:

75 (a) It is unlawful:

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

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

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

86 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

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

88 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
89 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree

90 felony; or

91 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of
92 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
93 misdemeanor.

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

97 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
98 substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in
99 Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor.
100 Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or
101 subsequent conviction the person is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

120 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not

121 amounting to a violation of Section 76-5-207:

122 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
123 body any measurable amount of a controlled substance; and

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

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

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

130 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
131 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
132 degree felony; or

133 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
134 A misdemeanor.

135 (i) A person is guilty of a separate offense for each victim suffering serious bodily
136 injury or death as a result of the person's negligent driving in violation of Subsection
137 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

138 (3) Prohibited acts C -- Penalties:

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

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

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

151 (iii) to make any false or forged prescription or written order for a controlled substance,

152 or to utter the same, or to alter any prescription or written order issued or written under the
153 terms of this chapter; or

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

158 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree
159 felony.

160 (4) Prohibited acts D -- Penalties:

161 (a) Notwithstanding other provisions of this section, a person not authorized under this
162 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
163 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances
164 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if
165 the trier of fact finds the act is committed:

166 (i) in a public or private elementary or secondary school or on the grounds of any of
167 those schools;

168 (ii) in a public or private vocational school or postsecondary institution or on the
169 grounds of any of those schools or institutions;

170 (iii) in those portions of any building, park, stadium, or other structure or grounds
171 which are, at the time of the act, being used for an activity sponsored by or through a school or
172 institution under Subsections (4)(a)(i) and (ii);

173 (iv) in or on the grounds of a preschool or child-care facility;

174 (v) in a public park, amusement park, arcade, or recreation center;

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

176 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
177 playhouse, or parking lot or structure adjacent thereto;

178 (viii) in or on the grounds of a library;

179 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds
180 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

181 (x) in the presence of a person younger than 18 years of age, regardless of where the act
182 occurs; or

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

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

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

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

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

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

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

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

206 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
207 mistakenly believed the individual to be 18 years of age or older at the time of the offense or
208 was unaware of the individual's true age; nor that the actor mistakenly believed that the
209 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
210 the location where the act occurred was as described in Subsection (4)(a).

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

213 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of

214 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
215 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
216 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

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

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

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

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

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

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

238 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
239 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide
240 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
241 as defined in Subsection 58-37-2(1)(w).

242 (b) In a prosecution alleging violation of this section regarding peyote as defined in
243 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,
244 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in

245 connection with the practice of a traditional Indian religion.

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

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

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

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

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

257 (i) was engaged in medical research; and

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

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

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

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

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

267 (15) (a) It is an affirmative defense to an allegation of the commission of an offense
268 listed in Subsection (15)(b) that the person:

269 (i) reasonably believes that the person or another person is experiencing an overdose
270 event due to the ingestion of a controlled substance or other substance;

271 (ii) reports in good faith the overdose event to a medical provider, an emergency
272 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911
273 emergency call system, or an emergency dispatch system, or the person is the subject of a
274 report made under this Subsection (15);

275 (iii) provides in the report under Subsection (15)(a)(ii) a functional description of the

276 actual location of the overdose event that facilitates responding to the person experiencing the
277 overdose event;

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

282 (v) provides personal identification to and cooperates with the responding medical
283 provider, emergency medical service provider, and law enforcement officer, including
284 providing information regarding the person experiencing the overdose event and any
285 substances the person may have ingested; and

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

288 (b) The offenses referred to in Subsection (15)(a) are:

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

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

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

294 (c) As used in this Subsection (15) and in Section [76-3-203.11](#), "good faith" does not
295 include seeking medical assistance under this section during the course of a law enforcement
296 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

297 ~~[(15)]~~ (16) If any provision of this chapter, or the application of any provision to any
298 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
299 without the invalid provision or application.

300 ~~[(16)]~~ (17) A legislative body of a political subdivision may not enact an ordinance that
301 is less restrictive than any provision of this chapter.

302 Section 2. Section **76-3-203.11** is enacted to read:

303 **76-3-203.11. Reporting an overdose -- Mitigating factor.**

304 It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah
305 Controlled Substances Act, that the person:

306 (1) reasonably believes that the person or another person is experiencing an overdose

307 event due to the ingestion of a controlled substance or other substance;

308 (2) reports in good faith the overdose event to a medical provider, an emergency
309 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911
310 emergency call system, or an emergency dispatch system, or the person is the subject of a
311 report made under this section;

312 (3) provides in the report under Subsection (2) a functional description of the location
313 of the actual overdose event that facilitates responding to the person experiencing the overdose
314 event;

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

319 (5) provides personal identification to and cooperates with the responding medical
320 provider, emergency medical service provider, and law enforcement officer, including
321 providing information regarding the person experiencing the overdose event and any
322 substances the person may have ingested; and

323 (6) committed the offense in the same course of events from which the reported
324 overdose arose.

325 **Section 3. Effective date.**

326 If approved by two-thirds of all the members elected to each house, this bill takes effect
327 upon approval by the governor, or the day following the constitutional time limit of Utah
328 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
329 the date of veto override.

Legislative Review Note
as of 11-21-13 6:42 AM

Office of Legislative Research and General Counsel