

Matthew H. Gwynn proposes the following substitute bill:

Drug Trafficking Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

LONG TITLE

General Description:

This bill addresses the trafficking of certain controlled substances.

Highlighted Provisions:

This bill:

- creates a criminal offense of trafficking of fentanyl or a fentanyl-related substance; and
- makes conforming and technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-8, as last amended by Laws of Utah 2024, Chapter 105

ENACTS:

58-37-8.1, Utah Code Annotated 1953

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

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

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

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

(a) Except as authorized by this chapter, and under circumstances not amounting to an offense described in Section 58-37-8.1, trafficking of fentanyl or a fentanyl-related substance, 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;

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

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

33 (A) the person participates, directs, or engages in conduct that results in a
34 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter
35 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled
36 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a
37 felony; and

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

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

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

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

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

58 (c)(i) Except as provided in Subsection (1)(c)(ii), a person who has been convicted
59 of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment
60 for an indeterminate term as described in Subsection (1)(b) and Title 76, Chapter
61 3, Punishments.

62 (ii) The court shall impose an indeterminate prison term for a person who has been
63 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony
64 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,

- 65 during the commission or furtherance of the violation, the person intentionally or
66 knowingly:
- 67 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in
68 Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,
69 or coercive manner;
- 70 (B) used a firearm or had a firearm readily accessible for immediate use, as those
71 terms are defined in Section 76-10-501; or
- 72 (C) distributed a firearm, as that term is defined in Section 76-10-501, or
73 possessed a firearm with intent to distribute the firearm.
- 74 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate
75 prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 76 (A) details on the record the reasons why it is in the interests of justice not to
77 impose the indeterminate prison term;
- 78 (B) makes a finding on the record that the person does not pose a significant
79 safety risk to the public; and
- 80 (C) orders the person to complete the terms and conditions of supervised
81 probation provided by the Department of Corrections.
- 82 (d)(i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
83 felony punishable by imprisonment for an indeterminate term of not less than:
- 84 (A) seven years and which may be for life; or
- 85 (B) 15 years and which may be for life if the trier of fact determined that the
86 defendant knew or reasonably should have known that any subordinate under
87 Subsection (1)(a)(iv)(B) was under 18 years old.
- 88 (ii) Imposition or execution of the sentence may not be suspended, and the person is
89 not eligible for probation.
- 90 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
91 offense, was under 18 years old.
- 92 (e) The Administrative Office of the Courts shall report to the Division of Professional
93 Licensing the name, case number, date of conviction, and if known, the date of birth
94 of each person convicted of violating Subsection (1)(a).
- 95 (2) Prohibited acts B -- Penalties and reporting:
- 96 (a) It is unlawful:
- 97 (i) for a person knowingly and intentionally to possess or use a controlled substance
98 analog or a controlled substance, unless it was obtained under a valid prescription

- 99 or order, directly from a practitioner while acting in the course of the person's
100 professional practice, or as otherwise authorized by this chapter;
- 101 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
102 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them
103 to be occupied by persons unlawfully possessing, using, or distributing controlled
104 substances in any of those locations; or
- 105 (iii) for a person knowingly and intentionally to possess an altered or forged
106 prescription or written order for a controlled substance.
- 107 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 108 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree
109 felony; or
- 110 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is
111 guilty of a class A misdemeanor on a first or second conviction, and on a third or
112 subsequent conviction if each prior offense was committed within seven years
113 before the date of the offense upon which the current conviction is based is guilty
114 of a third degree felony.
- 115 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
116 conviction under Subsection (1)(a), that person shall be sentenced to a one degree
117 greater penalty than provided in this Subsection (2).
- 118 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
119 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in
120 Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 121 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each
122 prior offense was committed within seven years before the date of the offense
123 upon which the current conviction is based.
- 124 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree
125 felony if each prior offense was committed within seven years before the date of
126 the offense upon which the current conviction is based.
- 127 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
128 boundaries of property occupied by a correctional facility as defined in Section
129 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty
130 one degree greater than provided in Subsection (2)(b), and if the conviction is with
131 respect to controlled substances as listed in:
- 132 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an

- 133 indeterminate term as provided by law, and:
- 134 (A) the court shall additionally sentence the person convicted to a term of one year
- 135 to run consecutively and not concurrently; and
- 136 (B) the court may additionally sentence the person convicted for an indeterminate
- 137 term not to exceed five years to run consecutively and not concurrently; and
- 138 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
- 139 indeterminate term as provided by law, and the court shall additionally sentence
- 140 the person convicted to a term of six months to run consecutively and not
- 141 concurrently.
- 142 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 143 (i) on a first conviction, guilty of a class B misdemeanor;
- 144 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 145 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 146 (g) The Administrative Office of the Courts shall report to the Division of Professional
- 147 Licensing the name, case number, date of conviction, and if known, the date of birth
- 148 of each person convicted of violating Subsection (2)(a).
- 149 (3) Prohibited acts C -- Penalties:
- 150 (a) It is unlawful for a person knowingly and intentionally:
- 151 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 152 license number which is fictitious, revoked, suspended, or issued to another
- 153 person or, for the purpose of obtaining a controlled substance, to assume the title
- 154 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,
- 155 dentist, veterinarian, or other authorized person;
- 156 (ii) to acquire or obtain possession of, to procure or attempt to procure the
- 157 administration of, to obtain a prescription for, to prescribe or dispense to a person
- 158 known to be attempting to acquire or obtain possession of, or to procure the
- 159 administration of a controlled substance by misrepresentation or failure by the
- 160 person to disclose receiving a controlled substance from another source, fraud,
- 161 forgery, deception, subterfuge, alteration of a prescription or written order for a
- 162 controlled substance, or the use of a false name or address;
- 163 (iii) to make a false or forged prescription or written order for a controlled substance,
- 164 or to utter the same, or to alter a prescription or written order issued or written
- 165 under the terms of this chapter; or
- 166 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed

- 167 to print, imprint, or reproduce the trademark, trade name, or other identifying
168 mark, imprint, or device of another or any likeness of any of the foregoing upon
169 any drug or container or labeling so as to render a drug a counterfeit controlled
170 substance.
- 171 (b)(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
172 misdemeanor.
- 173 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
174 degree felony.
- 175 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 176 (4) Prohibited acts D -- Penalties:
- 177 (a) Notwithstanding other provisions of this section, a person not authorized under this
178 chapter who commits any act that is unlawful under Subsection (1)(a) or Section
179 58-37b-4 is upon conviction subject to the penalties and classifications under this
180 Subsection (4) if the trier of fact finds the act is committed:
- 181 (i) in a public or private elementary or secondary school or on the grounds of any of
182 those schools during the hours of 6 a.m. through 10 p.m.;
- 183 (ii) in a public or private vocational school or postsecondary institution or on the
184 grounds of any of those schools or institutions during the hours of 6 a.m. through
185 10 p.m.;
- 186 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
187 facility's hours of operation;
- 188 (iv) in a public park, amusement park, arcade, or recreation center when the public or
189 amusement park, arcade, or recreation center is open to the public;
- 190 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 191 (vi) in or on the grounds of a library when the library is open to the public;
- 192 (vii) within an area that is within 100 feet of any structure, facility, or grounds
193 included in Subsections (4)(a)(i) through (vi);
- 194 (viii) in the presence of a person younger than 18 years old, regardless of where the
195 act occurs; or
- 196 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
197 distribution of a substance in violation of this section to an inmate or on the
198 grounds of a correctional facility as defined in Section 76-8-311.3.
- 199 (b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony
200 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 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

235 current charge.

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

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

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

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

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

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

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

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

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

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

266 (b) In a prosecution alleging violation of this section regarding peyote as defined in
267 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or
268 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 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

- 303 this Subsection (16);
- 304 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
- 305 actual location of the overdose event that facilitates responding to the person
- 306 experiencing the overdose event;
- 307 (iv) remains at the location of the person experiencing the overdose event until a
- 308 responding law enforcement officer or emergency medical service provider
- 309 arrives, or remains at the medical care facility where the person experiencing an
- 310 overdose event is located until a responding law enforcement officer arrives;
- 311 (v) cooperates with the responding medical provider, emergency medical service
- 312 provider, and law enforcement officer, including providing information regarding
- 313 the person experiencing the overdose event and any substances the person may
- 314 have injected, inhaled, or otherwise introduced into the person's body; and
- 315 (vi) is alleged to have committed the offense in the same course of events from which
- 316 the reported overdose arose.
- 317 (b) The offenses referred to in Subsection (16)(a) are:
- 318 (i) the possession or use of less than 16 ounces of marijuana;
- 319 (ii) the possession or use of a scheduled or listed controlled substance other than
- 320 marijuana; and
- 321 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
- 322 Imitation Controlled Substances Act.
- 323 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
- 324 include seeking medical assistance under this section during the course of a law
- 325 enforcement agency's execution of a search warrant, execution of an arrest warrant,
- 326 or other lawful search.
- 327 (17) If any provision of this chapter, or the application of any provision to any person or
- 328 circumstances, is held invalid, the remainder of this chapter shall be given effect without
- 329 the invalid provision or application.
- 330 (18) A legislative body of a political subdivision may not enact an ordinance that is less
- 331 restrictive than any provision of this chapter.
- 332 (19) If a minor who is under 18 years old is found by a court to have violated this section or
- 333 Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to
- 334 complete:
- 335 (a) a screening as defined in Section 41-6a-501;
- 336 (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 2. Section **58-37-8.1** is enacted to read:

58-37-8.1 . Trafficking of fentanyl or a fentanyl-related substance.

(1) As used in this section:

- (a) "Fentanyl-related substance" means a derivative or analog of fentanyl including:
- (i) carfentanil;
 - (ii) sufentanil;
 - (iii) alfentanil; or
 - (iv) a fentanyl-related substance that is a controlled substance as described in Section 58-37-3.
- (b) "Trafficking amount of fentanyl or a fentanyl-related substance" means 100 grams or more of any composition or mixture, including pills, that contains any quantity of fentanyl or a fentanyl-related substance.

(2) A person commits trafficking of fentanyl or a fentanyl-related substance if the person intentionally:

- (a) produces, manufactures, or dispenses a trafficking amount of fentanyl or a fentanyl-related substance;
- (b) distributes a trafficking amount of fentanyl or a fentanyl-related substance;
- (c) agrees, consents, offers, or arranges to distribute a trafficking amount of fentanyl or a fentanyl-related substance; or
- (d) possesses a trafficking amount of fentanyl or a fentanyl-related substance with the intent to distribute the fentanyl or fentanyl-related substance.

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

(4) Except as provided in Subsection (5) or (6), a court may not grant probation, suspend the execution or imposition of the sentence, order hospitalization, or enter a judgment for a lower category of offense under Section 76-3-402, if the effect of which would in any way shorten the person's required indeterminate prison sentence, when:

- (a) sentencing a person for a violation described in Subsection (3);
- (b) sentencing a person for a conviction of an attempt to commit trafficking of fentanyl or a fentanyl-related substance in accordance with Section 76-4-102; or
- (c) sentencing a person who has had the first degree felony classified in Subsection (3) reduced one degree by a prosecuting attorney in accordance with Section 77-2-2.3.

- 371 (5) A court may suspend the execution or imposition of a prison sentence under Subsection
372 (4) if the court:
373 (a) makes a finding on the record that:
374 (i) details why it is in the interests of justice not to execute or impose the prison
375 sentence; and
376 (ii) the actor does not pose a significant safety risk to the general public; and
377 (b) orders:
378 (i) the actor to complete a minimum of at least 48 months of probation; and
379 (ii) the Division of Adult Probation and Parole to supervise the entire term of
380 probation described in Subsection (5)(b)(i).
381 (6) Subsection (4) does not apply if the sentencing court finds that the person:
382 (a) was under 18 years old at the time of the offense; and
383 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
384 delayed filing of the information.
385 **Section 3. Effective date.**
386 This bill takes effect on May 7, 2025.