CRIMINAL PROVISIONS MODIFICATIONS

2019 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

General Description:
This bill modifies provisions relating to criminal offenses and penalties in the Utah Code.

Highlighted Provisions:
This bill:
- defines terms;
- modifies criminal offenses and penalties relating to:
  - clandestine drug labs;
  - electronic communications harassment; and
  - return of a marriage license to a county clerk;
- repeals the offense of fornication; and
- makes technical changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
30-1-11, as last amended by Laws of Utah 2018, Chapter 148
58-37d-2, as last amended by Laws of Utah 2013, Chapter 278
58-37d-3, as last amended by Laws of Utah 2013, Chapters 262 and 413
58-37d-4, as last amended by Laws of Utah 2008, Chapter 305
Be it enacted by the Legislature of the state of Utah:

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

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

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

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

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


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


(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

(B) a reasonable person would believe to be an opioid distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under this Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or

(ii) (A) is falsely represented to be any legally or illegally manufactured opioid; and

(B) a reasonable person would believe to be a legal or illegal opioid.

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

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

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

(i) compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing for the purpose of producing methamphetamine, other amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act, phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled...
Substances Act, lysergic acid diethylamide, [or] mescaline, tetrahydrocannabinol, or counterfeit opioid;
(ii) conversion of cocaine or methamphetamine to their base forms; or
(iii) extraction, concentration, or synthesis of [marijuana as that drug is defined in Section 58-37-2] tetrahydrocannabinol.

(h) "Opioid" means the same as that term is defined in Section 58-37f-303.
(i) "Tetrahydrocannabinol" means the same as that term is defined in Section 58-37-3.6.

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

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

(1) It is unlawful for any person to knowingly or intentionally:
(a) possess a controlled substance or a controlled substance precursor with the intent to engage in a clandestine laboratory operation;
(b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;
(c) sell, distribute, or otherwise supply a controlled substance, controlled substance precursor [chemical], laboratory equipment, or laboratory supplies, knowing or having reasonable cause to believe any of these items will be used for a clandestine laboratory operation;
(d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;
(e) conspire with or aid another to engage in a clandestine laboratory operation;
(f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act;
(g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by another person regardless of whether the final destination for the distribution is within this state or another location; or

(h) engage in compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of any 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, knowing or having reasonable cause to believe that the substance is a product of any of these activities and will be used in the illegal manufacture of specified controlled substances.

(2) A person who violates Subsection (1) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years nor more than 15 years.

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


(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 6. 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 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[.];

(f) pill press machine or similar device;

(g) closed loop extraction system;

(h) extraction tube; or

(i) rotary evaporator.

Section 7. Section 76-9-201 is amended to read:

76-9-201. Electronic communication harassment -- Definitions -- Penalties.
198 (1) As used in this section:
199     (a) "Adult" means an individual 18 years of age or older.
200     (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.
204     (c) "Electronic communication device" includes a telephone, a facsimile machine,
electronic mail, a pager, a computer, or another device or medium that can be used
to communicate electronically.
207     (d) "Minor" means an individual who is younger than 18 years of age.
208     (e) "Personal identifying information" means the same as that term is defined in
Section 76-6-1102.
210 (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:
214     (a) (i) makes repeated contact by means of electronic communications, regardless of
whether a conversation ensues; or
216     (ii) after the recipient has requested or informed the person not to contact the recipient,
and the person repeatedly or continuously:
218     (A) contacts the electronic communication device of the recipient; or
219     (B) causes an electronic communication device of the recipient to ring or to receive
other notification of attempted contact by means of electronic communication;
221     (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;
224     (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;

(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.

(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.

(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 under this section.

(b) This section does not create a civil cause of action based on electronic communications made for legitimate business purposes.

Section 8. Section 77-22-2 is amended to read:
(1) As used in this section, "prosecutor" means the attorney general, county attorney, district attorney, or municipal attorney] 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.

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

(i) the time and place of the examination;

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

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

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

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

(d) Witness fees and expenses shall be paid as in a civil action.
(5) (a) At the beginning of each compelled interrogation, the prosecutor shall personally inform each witness:

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

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

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

(iv) of the right to have counsel present.

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

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

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

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

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

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

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

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

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

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

(ii) persons who, in the judgment of the attorneys representing the state, are reasonably necessary to assist in the investigative process;
(iii) the court reporter or operator of the electronic recording device; and
(iv) the attorney for the witness.

(c) This chapter does not prevent attorneys representing the state or members of their
staff from disclosing information obtained pursuant to this chapter for the purpose of furthering
any official governmental investigation.

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

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

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

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

(A) disclosure by the witness would cause destruction of evidence;
(B) disclosure by the witness would taint the evidence provided by other witnesses;
(C) disclosure by the witness to a target of the investigation would result in flight or
other conduct to avoid prosecution;
(D) disclosure by the witness would damage a person's reputation; or
(E) disclosure by the witness would cause a threat of harm to any person.

(e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction
to a witness not to disclose the substance of testimony or evidence provided and the
prosecuting agency proves by a preponderance of the evidence that a witness has violated that
order, the court may hold the witness in contempt.

(ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not
infringe on the attorney-client relationship between the witness and the witness's attorney or on
[any other] another legally recognized privileged relationship.
(7) (a) (i) The prosecutor may submit to any district court a separate written request that the application, statement of good cause, and the court's order authorizing the investigation be kept secret.

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

(b) With the court's permission, the prosecutor may submit to the court, in camera, any additional information to support the request for secrecy if necessary to avoid compromising the interests listed in Subsection (7)(c).

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

(i) a substantial risk of harm to a person's safety;

(ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

(iii) a serious impediment to the investigation.

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

Section 9. Section 77-22-2.5 is amended to read:

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

(1) As used in this section:

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

(ii) "Electronic communication" does not include:
(A) any wire or oral communication;
(B) any communication made through a tone-only paging device;
(C) any communication from a tracking device; or
(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

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

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

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

(e) "Prosecutor" has the same definition as in Section 77-22-2.

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

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

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

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

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

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401; or

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

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
service or remote computing service has been used in the commission of a criminal offense, a
law enforcement agent shall:

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

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

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

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

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

   (iii) records of session times and durations;

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Repealer.

This bill repeals:

Section 76-7-104, Fornication.