

CORRECTIONAL FACILITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Derrin R. Owens

LONG TITLE

Committee Note:

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

Legislative Vote: 10 voting for 0 voting against 8 absent

General Description:

This bill enacts provisions related to communication devices in correctional facilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a crime to transport, provide, sell, or possess a communication device at a correctional facility in violation of facility policy; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-8-311.3, as last amended by Laws of Utah 2023, Chapter 330

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



28 Section 1. Section 76-8-311.3 is amended to read:

29 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

30 **Penalties.**

31 (1) As used in this section:

32 (a) "Communication device" means a device designed to receive or transmit an image,
33 text message, email, video, location information, or voice communication or another device
34 that can be used to communicate electronically.

35 (b) "Contraband" means ~~[any]~~ an item not specifically prohibited for possession by
36 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

37 ~~[(b)]~~ (c) "Controlled substance" means any substance defined as a controlled substance
38 under Title 58, Chapter 37, Utah Controlled Substances Act.

39 ~~[(c)]~~ (d) "Correctional facility" means:

40 (i) ~~[any]~~ a facility operated by or contracting with the Department of Corrections to
41 house ~~[offenders]~~ an offender in either a secure or nonsecure setting;

42 (ii) ~~[any]~~ a facility operated by a municipality or a county to house or detain ~~[criminal~~
43 ~~offenders]~~ an offender;

44 (iii) ~~[any]~~ a juvenile detention facility; ~~[and]~~ or

45 (iv) ~~[any]~~ a building or grounds appurtenant to ~~[the]~~ a facility or ~~[lands]~~ land granted to
46 the state, municipality, or county for use as a correctional facility.

47 ~~[(d)]~~ (e) "Electronic cigarette product" means the same as that term is defined in
48 Section 76-10-101.

49 ~~[(e)]~~ (f) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter
50 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled ~~[substances]~~ substance as
51 defined in Title 58, Chapter 37, Utah Controlled Substances Act.

52 ~~[(f)]~~ (g) "Mental health facility" means the same as that term is defined in Section
53 26B-5-301.

54 ~~[(g)]~~ (h) "Nicotine product" means the same as that term is defined in Section
55 76-10-101.

56 ~~[(h)]~~ (i) "Offender" means ~~[a person]~~ an individual in custody at a correctional facility.

57 ~~[(i)]~~ (j) "Secure area" means the same as that term is defined in Section 76-8-311.1.

58 ~~[(j)]~~ (k) "Tobacco product" means the same as that term is defined in Section

59 76-10-101.

60 (2) (a) Notwithstanding Section 76-10-500, a correctional facility or mental health
61 facility may ~~[provide by rule that no]~~ prohibit a firearm, ammunition, a dangerous weapon, an
62 implement of escape, an explosive, a controlled substance, spirituous or fermented liquor,
63 medicine, or poison ~~[in any quantity may be]~~ from being:

64 ~~[(a)]~~ (i) transported to or ~~[upon]~~ within a correctional facility or mental health facility;

65 ~~[(b)]~~ (ii) sold or ~~[given away at any]~~ provided to an offender at a correctional facility or
66 mental health facility; or

67 ~~[(c)]~~ (iii) ~~[given to or used by any offender]~~ possessed by an offender or another
68 individual at a correctional facility or mental health facility~~[-or].~~

69 ~~[(d)] knowingly or intentionally possessed at a correctional or mental health facility.]~~

70 (b) A correctional facility may prohibit a communication device from being:

71 (i) transported to or within the correctional facility for the purpose of being sold or
72 provided to an offender in the correctional facility;

73 (ii) sold or provided to an offender in the correctional facility; or

74 (iii) possessed by an offender or another individual at the correctional facility.

75 (3) It is a defense to ~~[any]~~ a prosecution under this section if the accused in committing
76 the act made criminal by this section with respect to:

77 (a) a correctional facility operated by the Department of Corrections, acted in
78 conformity with departmental rule or policy;

79 (b) a correctional facility operated by a municipality, acted in conformity with the
80 policy of the municipality;

81 (c) a correctional facility operated by a county, acted in conformity with the policy of
82 the county; or

83 (d) a mental health facility, acted in conformity with the policy of the mental health
84 facility.

85 (4) (a) An individual who transports to or upon a correctional facility, or into a secure
86 area of a mental health facility, ~~[any]~~ a firearm, ammunition, a dangerous weapon, or an
87 implement of escape with intent to provide or sell it to ~~[any]~~ an offender, is guilty of a second
88 degree felony.

89 (b) An individual who provides or sells to ~~[any]~~ an offender at a correctional facility, or

90 ~~[any]~~ a detainee at a secure area of a mental health facility, ~~[any]~~ a firearm, ammunition, a
91 dangerous weapon, or an implement of escape is guilty of a second degree felony.

92 (c) An offender who possesses at a correctional facility, or a detainee who possesses at
93 a secure area of a mental health facility, ~~[any]~~ a firearm, ammunition, a dangerous weapon, or
94 an implement of escape is guilty of a second degree felony.

95 (d) An individual who, without the permission of the authority operating the
96 correctional facility or the secure area of a mental health facility, knowingly possesses at a
97 correctional facility or a secure area of a mental health facility ~~[any]~~ a firearm, ammunition, a
98 dangerous weapon, or an implement of escape is guilty of a third degree felony.

99 (e) An individual violates Section 76-10-306 who knowingly or intentionally
100 transports, possesses, distributes, or sells ~~[any]~~ an explosive in a correctional facility or mental
101 health facility.

102 (5) (a) An individual is guilty of a third degree felony who, without the permission of
103 the authority operating the correctional facility or secure area of a mental health facility,
104 knowingly transports ~~[to or upon a correctional facility or into a secure area of a mental health~~
105 ~~facility any]~~:

106 (i) a communication device to or within a correctional facility with the intent to
107 provide or sell the communication device to an offender in the correctional facility;

108 (ii) spirituous or fermented liquor to or within a correctional facility or a secure area of
109 a mental health facility;

110 ~~[(ii)]~~ (iii) medicine to or within a correctional facility or a secure area of a mental
111 health facility[;] whether or not lawfully prescribed for ~~[the]~~ an offender or detainee; or

112 ~~[(iii)]~~ (iv) poison ~~[in any quantity]~~ to or within a correctional facility or a secure area of
113 a mental health facility.

114 (b) An individual is guilty of a third degree felony who knowingly violates correctional
115 or mental health facility policy or rule by providing or selling ~~[to any offender at a correctional~~
116 ~~facility or detainee within a secure area of a mental health facility any]~~:

117 (i) a communication device to an offender at a correctional facility;

118 (ii) spirituous or fermented liquor to an offender at a correctional facility or a detainee
119 within a secure area of a mental health facility;

120 ~~[(ii)]~~ (iii) medicine[;] to an offender at a correctional facility or detainee within a

121 secure area of a mental facility whether or not the medicine is lawfully prescribed for the
122 offender; or

123 ~~[(iii)]~~ (iv) poison [in any quantity] to an offender at a correctional facility or a detainee
124 within a secure area of a mental health facility.

125 (c) An ~~[inmate]~~ offender is guilty of a third degree felony who, in violation of
126 correctional or mental health facility policy or rule, possesses ~~[at a correctional facility or in a~~
127 ~~secure area of a mental health facility any]~~:

128 (i) a communication device at a correctional facility;

129 (ii) spirituous or fermented liquor at a correctional facility or in a secure area of a
130 mental health facility;

131 ~~[(ii)]~~ (iii) medicine at a correctional facility or in a secure area of a mental health
132 facility; other than medicine provided by the facility's health care providers in compliance
133 with facility policy; or

134 ~~[(iii)]~~ (iv) poison [in any quantity] at a correctional facility or in a secure area of a
135 mental health facility.

136 (d) An individual is guilty of a class A misdemeanor who, with the intent to directly or
137 indirectly provide or sell ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine
138 product to an offender, directly or indirectly:

139 (i) transports, delivers, or distributes any tobacco product, electronic cigarette product,
140 or nicotine product to an offender or on the grounds of any correctional facility;

141 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
142 person to transport any tobacco product, electronic cigarette product, or nicotine product to an
143 offender or on any correctional facility, if the person is acting with the mental state required for
144 the commission of an offense; or

145 (iii) facilitates, arranges, or causes the transport of any tobacco product, electronic
146 cigarette product, or nicotine product in violation of this section to an offender or on the
147 grounds of any correctional facility.

148 (e) An individual, other than an offender, is guilty of a class A misdemeanor who,
149 without the permission of the authority operating the correctional or mental health facility,
150 ~~[fails to declare or]~~ knowingly possesses ~~[at a correctional facility or in a secure area of a~~
151 ~~mental health facility any]~~:

152 (i) subject to Subsection (7), a communication device at a correctional facility;
153 (ii) spirituous or fermented liquor at a correctional facility or in a secure area of a
154 mental health facility;
155 ~~[(ii)]~~ (iii) medicine at a correctional facility or in a secure area of a mental health
156 facility; or
157 ~~[(iii)]~~ (iv) poison [~~in any quantity~~] at a correctional facility or in a secure area of a
158 mental health facility.

159 (f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B
160 misdemeanor who, without the permission of the authority operating the correctional facility,
161 knowingly engages in any activity that would facilitate the possession of any contraband by an
162 offender in a correctional facility.

163 (ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic
164 cigarette product, or nicotine product take precedence over this Subsection (5)(f).

165 (g) Exemptions may be granted for worship for Native American inmates pursuant to
166 Section 64-13-40.

167 (6) The possession, distribution, or use of a controlled substance at a correctional
168 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
169 Title 58, Chapter 37, Utah Controlled Substances Act.

170 (7) (a) A correctional facility that prohibits an individual other than an offender from
171 possessing a communication device in the correctional facility under Subsection (5)(e)(i) shall
172 post a sign visible to an individual entering the correctional facility that provides the individual
173 with notice that possessing a communication device in the correctional facility is prohibited
174 and the individual may be prosecuted for possessing a communication device.

175 (b) A prosecuting attorney may not prosecute an individual under Subsection (5)(e)(i)
176 if the correctional facility fails to comply with Subsection (7)(a).

177 ~~[(7)]~~ (8) The department shall make rules under Title 63G, Chapter 3, Utah
178 Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors
179 that providing any tobacco product, electronic cigarette product, or nicotine product to
180 offenders is a class A misdemeanor.

181 Section 2. **Effective date.**

182 This bill takes effect on May 1, 2024.