

**Representative Jefferson S. Burton** proposes the following substitute bill:

**PROHIBITED CORRECTIONAL FACILITY ITEMS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jefferson S. Burton**

Senate Sponsor: Derrin R. Owens

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**LONG TITLE**

**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 or secure area of a mental health facility in violation of facility policy; and
- ▶ makes technical 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 2020, Chapters 302, 347

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



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

27 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

28 **Penalties.**

29 (1) As used in this section:

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

33 (b) "Contraband" means any item not specifically prohibited for possession by  
34 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

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

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

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

40 (ii) ~~[any]~~ a facility operated by a municipality or a county to house or detain criminal  
41 offenders;

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

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

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

47 ~~[(e)]~~ (f) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter  
48 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled substances as defined in  
49 Title 58, Chapter 37, Utah Controlled Substances Act.

50 ~~[(f)]~~ (g) "Mental health facility" means the same as that term is defined in Section  
51 62A-15-602.

52 ~~[(g)]~~ (h) "Nicotine product" means the same as that term is defined in Section  
53 76-10-101.

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

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

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

57 76-10-101.

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

- 62 (a) transported to or upon a correctional or mental health facility;  
63 (b) sold or given away at [~~any~~] a correctional or mental health facility;  
64 (c) given to or used by [~~any~~] an offender at a correctional or mental health facility; or  
65 (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

- 68 (a) a correctional facility operated by the Department of Corrections, acted in  
69 conformity with departmental rule or policy;  
70 (b) a correctional facility operated by a municipality, acted in conformity with the  
71 policy of the municipality;  
72 (c) a correctional facility operated by a county, acted in conformity with the policy of  
73 the county; or  
74 (d) a mental health facility, acted in conformity with the policy of the mental health  
75 facility.

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

80 (b) An individual who, without the permission of the authority operating the facility,  
81 provides or sells to [~~any~~] an offender at a correctional facility, or [~~any~~] a detainee at a secure  
82 area of a mental health facility, [~~any~~] a communication device, a firearm, ammunition, a  
83 dangerous weapon, or an implement of escape is guilty of a second degree felony.

84 (c) An offender [~~who possesses~~] at a correctional facility, or a detainee [~~who possesses~~]  
85 at a secure area of a mental health facility, [~~any~~] who, without the permission of the authority  
86 operating the facility, possesses a communication device, a firearm, ammunition, a dangerous  
87 weapon, or an implement of escape is guilty of a second degree felony.

88 (d) An individual, other than an offender, who, without the permission of the authority  
89 operating the correctional facility or the secure area of a mental health facility, knowingly  
90 possesses at a correctional facility or a secure area of a mental health facility:

91 (i) [~~any~~] a firearm, ammunition, a dangerous weapon, or an implement of escape is  
92 guilty of a third degree felony; or

93 (ii) a communication device is guilty of a class A misdemeanor.

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

97 (5) (a) An individual is guilty of a third degree felony who, without the permission of  
98 the authority operating the correctional facility or secure area of a mental health facility,  
99 knowingly transports to or upon a correctional facility or into a secure area of a mental health  
100 facility any:

101 (i) spirituous or fermented liquor;

102 (ii) medicine, whether or not lawfully prescribed for the offender; or

103 (iii) poison [~~in any quantity~~].

104 (b) An individual is guilty of a third degree felony who knowingly violates correctional  
105 or mental health facility policy or rule by providing or selling to any offender at a correctional  
106 facility or detainee within a secure area of a mental health facility any:

107 (i) spirituous or fermented liquor;

108 (ii) medicine, whether or not lawfully prescribed for the offender; or

109 (iii) poison [~~in any quantity~~].

110 (c) An inmate is guilty of a third degree felony who, in violation of correctional or  
111 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a  
112 mental health facility any:

113 (i) spirituous or fermented liquor;

114 (ii) medicine, other than medicine provided by the facility's health care providers in  
115 compliance with facility policy; or

116 (iii) poison [~~in any quantity~~].

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

119 product to an offender, directly or indirectly:

120 (i) transports, delivers, or distributes [~~any~~] a tobacco product, electronic cigarette  
121 product, or nicotine product to an offender or on the grounds of [~~any~~] a correctional facility;

122 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another  
123 person to transport [~~any~~] a tobacco product, electronic cigarette product, or nicotine product to  
124 an offender or on [~~any~~] a correctional facility, if the person is acting with the mental state  
125 required for the commission of an offense; or

126 (iii) facilitates, arranges, or causes the transport of [~~any~~] a tobacco product, electronic  
127 cigarette product, or nicotine product in violation of this section to an offender or on the  
128 grounds of [~~any~~] a correctional facility.

129 (e) An individual is guilty of a class A misdemeanor who, without the permission of  
130 the authority operating the correctional or mental health facility, fails to declare or knowingly  
131 possesses at a correctional facility or in a secure area of a mental health facility any:

132 (i) spirituous or fermented liquor;

133 (ii) medicine; or

134 (iii) poison [~~in any quantity~~].

135 (f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B  
136 misdemeanor who, without the permission of the authority operating the correctional facility,  
137 knowingly engages in [~~any~~] an activity that would facilitate the possession of [~~any~~] contraband  
138 by an offender in a correctional facility.

139 (ii) The provisions of Subsection (5)(d) regarding [~~any~~] a tobacco product, electronic  
140 cigarette product, or nicotine product take precedence over this Subsection (5)(f).

141 (g) Exemptions may be granted for worship for Native American inmates pursuant to  
142 Section [64-13-40](#).

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

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