

Senator Derrin R. Owens 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

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

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 firearm, ammunition, dangerous weapon, implement of escape,
60 explosive, controlled substance, communication device, spirituous or fermented liquor,
61 medicine, 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 firearm, ammunition, a dangerous weapon, or an
78 implement of escape with intent to provide or sell it to any offender, is guilty of a second
79 degree felony.

80 (b) An individual who provides or sells to [~~any~~] an offender at a correctional facility, or
81 [~~any~~] a detainee at a secure area of a mental health facility, [~~any~~] a firearm, ammunition, a
82 dangerous weapon, or an implement of escape is guilty of a second degree felony.

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

86 (d) An individual, other than an offender, who, without the permission of the authority
87 operating the correctional facility or the secure area of a mental health facility, knowingly

88 possesses at a correctional facility, or a secure area of a mental health facility, ~~[any]~~ a firearm,
89 ammunition, a dangerous weapon, or an implement of escape is guilty of a third degree felony.

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

93 (5) (a) An individual is guilty of a third degree felony who~~;~~ knowingly violates
94 correctional or mental health facility policy or rule and, without the permission of the authority
95 operating the correctional facility or secure area of ~~[a]~~ the mental health facility, knowingly
96 transports to or ~~[upon a]~~ into the secure area of the correctional facility or into a secure area of
97 ~~[a]~~ the mental health facility ~~[any]:~~

98 (i) a communication device;

99 (ii) spirituous or fermented liquor;

100 ~~[(ii)]~~ (iii) medicine, whether or not lawfully prescribed for the offender; or

101 ~~[(iii)]~~ (iv) poison ~~[in any quantity].~~

102 (b) An individual is guilty of a third degree felony who knowingly violates correctional
103 or mental health facility policy or rule ~~[by providing or selling to any]~~ and, without the
104 permission of the authority operating the correctional facility or the secure area of the mental
105 health facility, knowingly provides or sells to an offender ~~[at a]~~ in a secure area of the
106 correctional facility or detainee within a secure area of ~~[a]~~ the mental health facility ~~[any]:~~

107 (i) a communication device;

108 (ii) spirituous or fermented liquor;

109 ~~[(ii)]~~ (iii) medicine, whether or not lawfully prescribed for the offender; or

110 ~~[(iii)]~~ (iv) poison ~~[in any quantity].~~

111 (c) An ~~[inmate]~~ offender is guilty of a third degree felony who~~;~~ ~~[in violation of]~~
112 knowingly violates correctional or mental health facility policy or rule~~;~~ and, without the
113 permission of the authority operating the correctional facility or the secure area of the mental
114 health facility, knowingly possesses ~~[at a]~~ in a secure area of the correctional facility or in a
115 secure area of ~~[a]~~ the mental health facility ~~[any]:~~

116 (i) a communication device;

117 (ii) spirituous or fermented liquor;

118 ~~[(ii)]~~ (iii) medicine, other than medicine provided by the facility's health care providers

119 in compliance with facility policy; or

120 ~~[(iii)]~~ (iv) poison ~~[in any quantity]~~.

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

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

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

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

133 (e) An individual, other than an offender, is guilty of a class A misdemeanor who~~;~~
134 knowingly violates correctional or mental health facility policy or rule and, without the
135 permission of the authority operating the correctional or mental health facility, fails to declare
136 or knowingly possesses ~~[at a]~~ in a secure area of the correctional facility or in a secure area of
137 ~~[a]~~ the mental health facility ~~[any]~~:

138 (i) a communication device;

139 (ii) spirituous or fermented liquor;

140 ~~[(ii)]~~ (iii) medicine; or

141 ~~[(iii)]~~ (iv) poison ~~[in any quantity]~~.

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

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

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

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

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