

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

- (1) As used in this section:
  - (a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.
  - (b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.
  - (c) "Correctional facility" means:
    - (i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;
    - (ii) any facility operated by a municipality or a county to house or detain criminal offenders;
    - (iii) any juvenile detention facility; and
    - (iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.
  - (d) "Electronic cigarette" is as defined in Section 76-10-101.
  - (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.
  - (f) "Mental health facility" is as defined in Section 62A-15-602.
  - (g) "Offender" means a person in custody at a correctional facility.
  - (h) "Secure area" is as defined in Section 76-8-311.1.
- (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:
  - (a) transported to or upon a correctional or mental health facility;
  - (b) sold or given away at any correctional or mental health facility;
  - (c) given to or used by any offender at a correctional or mental health facility; or
  - (d) knowingly or intentionally possessed at a correctional or mental health facility.
- (3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section with respect to:
  - (a) a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;
  - (b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;
  - (c) a correctional facility operated by a county, acted in conformity with the policy of the county; or
  - (d) a mental health facility, acted in conformity with the policy of the mental health facility.
- (4)
  - (a) Any person who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.
  - (b) Any person who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.
  - (c) Any offender who possesses at a correctional facility, or any detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.
  - (d) Any person who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility

or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5)

(a) A person is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

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

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

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

- (i) spirituous or fermented liquor;
- (ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or
- (iii) poison in any quantity.

(d) A person is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product or electronic cigarette to an offender, directly or indirectly:

- (i) transports, delivers, or distributes any tobacco product or electronic cigarette to an offender or on the grounds of any correctional facility;
- (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product or electronic cigarette to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or
- (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic cigarette in violation of this section to an offender or on the grounds of any correctional facility.

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

- (i) spirituous or fermented liquor;
- (ii) medicine; or
- (iii) poison in any quantity.

(f) A person is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility. The provisions of Subsection (5)(d) regarding any tobacco product or electronic cigarette take precedence over this Subsection (5)(f).

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

- (6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.
- (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing any tobacco product or electronic cigarette to offenders is a class A misdemeanor.

Amended by Chapter 114, 2010 General Session