

1 **ITEMS PROHIBITED IN CORRECTIONAL**
2 **FACILITIES**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

6 AN ACT RELATING TO THE CRIMINAL CODE; AMENDING THE DEFINITION OF A
7 CORRECTIONAL FACILITY; AND MAKING TECHNICAL CORRECTION.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **76-8-311.3**, as last amended by Chapter 288, Laws of Utah 1997

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

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

13 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

14 (1) As used in this section:

15 (a) "Contraband" means any item not specifically prohibited for possession by offenders
16 under this section or Title 58, Chapter 37, [Utah] Controlled Substances [Act].

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

19 (c) "Correctional facility" means:

20 (i) any facility operated by or contracting with the Department of Corrections to house
21 offenders in either a secure or nonsecure setting;

22 (ii) any facility operated by a municipality or a county to house or detain criminal
23 offenders;

24 (iii) any juvenile detention facility; and

25 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
26 municipality, or county for use as a correctional facility.

27 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy

28 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
29 [Utah] Controlled Substances [Act].

30 (e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

31 (f) "Offender" means a person in custody at a correctional facility.

32 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

33 (2) Notwithstanding any other statute to the contrary, including Subsection
34 76-10-501(1)(b), a correctional or mental health facility may provide by rule that no firearm,
35 ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous
36 or fermented liquor, medicine, or poison in any quantity may be:

37 (a) transported to or upon a correctional or mental health facility;

38 (b) sold or given away at any correctional or mental health facility;

39 (c) given to or used by any offender at a correctional or mental health facility; or

40 (d) knowingly or intentionally possessed at a correctional or mental health facility.

41 (3) It is a defense to any prosecution under this section if the accused in committing the
42 act made criminal by this section:

43 (a) with respect to a correctional facility operated by the Department of Corrections, acted
44 in conformity with departmental rule or policy;

45 (b) with respect to a correctional facility operated by a municipality, acted in conformity
46 with the policy of the municipality;

47 (c) with respect to a correctional facility operated by a county, acted in conformity with
48 the policy of the county; or

49 (d) with respect to a mental health facility, acted in conformity with the policy of the
50 mental health facility.

51 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
52 of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement
53 of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

54 (b) Any person who provides or sells to any offender at a correctional facility, or any
55 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
56 explosive, or implement of escape is guilty of a second degree felony.

57 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
58 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive,

59 or implement of escape is guilty of a second degree felony.

60 (d) Any person who, without the permission of the authority operating the correctional
61 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
62 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, implement
63 of escape, or explosive is guilty of a third degree felony.

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

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

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

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

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

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

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

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

89 (e) A person is guilty of a class B misdemeanor who, without the permission of the

90 authority operating the facility, knowingly engages in any activity that would facilitate the
91 possession of any contraband by an offender in a correctional facility.

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

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

Legislative Review Note
as of 2-2-99 5:46 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel