

**CORRECTIONAL FACILITY AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

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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 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

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

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

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

**Penalties.**

(1) As used in this section:

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

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

~~(b)~~ (c) "Controlled substance" means any substance defined as a controlled substance

33 under Title 58, Chapter 37, Utah Controlled Substances Act.

34 ~~(c)~~ (d) "Correctional facility" means:

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

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

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

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

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

44 ~~(e)~~ (f) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter  
45 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled substances as defined in  
46 Title 58, Chapter 37, Utah Controlled Substances Act.

47 ~~(f)~~ (g) "Mental health facility" means the same as that term is defined in Section  
48 26B-5-301.

49 ~~(g)~~ (h) "Nicotine product" means the same as that term is defined in Section  
50 76-10-101.

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

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

53 ~~(j)~~ (k) "Tobacco product" means the same as that term is defined in Section  
54 76-10-101.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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) a communication device to or within a correctional facility with the intent to  
102 provide or sell the communication device to an offender in the correctional facility;

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

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

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

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

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

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

115 ~~[(ii)]~~ (iii) medicine[;] to an offender at a correctional facility or detainee within a  
116 secure area of a mental facility whether or not the medicine is lawfully prescribed for the  
117 offender; or

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

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

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

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

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

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

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

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

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

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

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

147           (i) subject to Subsection (7), a communication device at a correctional facility;

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

150           ~~[(ii)]~~ (iii) medicine at a correctional facility or in a secure area of a mental health  
151 facility; or

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

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

157 offender in a correctional facility.

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

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

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

165 (7) (a) A correctional facility that prohibits an individual other than an offender from  
166 possessing a communications device in the correctional facility under Subsection (5)(e)(i) shall  
167 post a sign visible to an individual entering the correctional facility that provides the individual  
168 with notice that possessing a communications device in the correctional facility is prohibited  
169 and the individual may be prosecuted for possessing a communications device.

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

172 ~~(7)~~ (8) The department shall make rules under Title 63G, Chapter 3, Utah  
173 Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors  
174 that providing any tobacco product, electronic cigarette product, or nicotine product to  
175 offenders is a class A misdemeanor.

176 Section 2. **Effective date.**

177 This bill takes effect on May 1, 2024.