

1                                   **UNLAWFUL CONTROLLED SUBSTANCES IN**  
2                                   **CORRECTIONAL FACILITIES**

3                                   2004 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: LaVar Christensen**

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7   **LONG TITLE**

8   **General Description:**

9           This bill amends a Department of Corrections provision, the Utah Controlled  
10 Substances Act, and the Criminal Code regarding bringing illegal items into  
11 correctional facilities. This bill also provides a penalty for bringing contraband tobacco  
12 products into a correctional facility for distribution.

13 **Highlighted Provisions:**

14           This bill:

- 15           ▶ requires the Department of Corrections to advise persons visiting inmates at  
16 correctional facilities: of prohibited items; that distribution of controlled substances  
17 to inmates is subject to criminal penalties, including incarceration; and that all  
18 visitors may be required to submit to a search as a condition of the visit, as required  
19 by current law;
- 20           ▶ provides for an additional year or more of incarceration for person violating  
21 controlled substances laws at a correctional facility; and
- 22           ▶ increases the penalty from a class B misdemeanor to a third degree felony for  
23 persons bringing contraband tobacco products to a correctional facility in violation  
24 of state law.

25 **Monies Appropriated in this Bill:**

26           None

27 **Other Special Clauses:**



28 This bill provides an immediate effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **58-37-8**, as last amended by Chapters 10 and 33, Laws of Utah 2003

32 **64-13-17**, as last amended by Chapter 36, Laws of Utah 2003

33 **76-8-311.3**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session



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

36 Section 1. Section **58-37-8** is amended to read:

37 **58-37-8. Prohibited acts -- Penalties.**

38 (1) Prohibited acts A -- Penalties:

39 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
40 intentionally:

41 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
42 manufacture, or dispense, a controlled or counterfeit substance;

43 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
44 arrange to distribute a controlled or counterfeit substance;

45 (iii) possess a controlled or counterfeit substance with intent to distribute; or

46 (iv) engage in a continuing criminal enterprise where:

47 (A) the person participates, directs, or engages in conduct which results in any  
48 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

49 (B) the violation is a part of a continuing series of two or more violations of Title 58,  
50 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with  
51 five or more persons with respect to whom the person occupies a position of organizer,  
52 supervisor, or any other position of management.

53 (b) Any person convicted of violating Subsection (1)(a) with respect to:

54 (i) a substance classified in Schedule I or II, a controlled substance analog, or  
55 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and  
56 upon a second or subsequent conviction is guilty of a first degree felony;

57 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree  
58 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

59 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a  
60 second or subsequent conviction is guilty of a third degree felony.

61 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
62 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
63 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his  
64 person or in his immediate possession during the commission or in furtherance of the offense,  
65 the court shall additionally sentence the person convicted for a term of one year to run  
66 consecutively and not concurrently; and the court may additionally sentence the person  
67 convicted for an indeterminate term not to exceed five years to run consecutively and not  
68 concurrently.

69 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
70 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
71 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
72 person is not eligible for probation.

73 (2) Prohibited acts B -- Penalties:

74 (a) It is unlawful:

75 (i) for any person knowingly and intentionally to possess or use a controlled substance  
76 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
77 directly from a practitioner while acting in the course of his professional practice, or as  
78 otherwise authorized by this chapter;

79 (ii) for any owner, tenant, licensee, or person in control of any building, room,  
80 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to  
81 be occupied by persons unlawfully possessing, using, or distributing controlled substances in  
82 any of those locations; or

83 (iii) for any person knowingly and intentionally to possess an altered or forged  
84 prescription or written order for a controlled substance.

85 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

86 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

87 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16  
88 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree  
89 felony; or

90 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of  
91 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A  
92 misdemeanor.

93 ~~[(c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior~~  
94 ~~boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or~~  
95 ~~any public jail or other place of confinement shall be sentenced to a penalty one degree greater~~  
96 ~~than provided in Subsection (2)(b)].~~

97 ~~[(d)]~~ (c) Upon a second or subsequent conviction of possession of any controlled  
98 substance by a person, that person shall be sentenced to a one degree greater penalty than  
99 provided in this Subsection (2).

100 ~~[(e)]~~ (d) Any person who violates Subsection (2)(a)(i) with respect to all other  
101 controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one  
102 ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person  
103 is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is  
104 guilty of a third degree felony.

105 ~~[(f)]~~ (e) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

106 (i) on a first conviction, guilty of a class B misdemeanor;

107 (ii) on a second conviction, guilty of a class A misdemeanor; and

108 (iii) on a third or subsequent conviction, guilty of a third degree felony.

109 ~~[(g)]~~ (f) A person is subject to the penalties under Subsection (4)(c) who, in an offense  
110 not amounting to a violation of Section 76-5-207:

111 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any  
112 measurable amount of a controlled substance; and

113 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
114 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

115 (3) Prohibited acts C -- Penalties:

116 (a) It is unlawful for any person knowingly and intentionally:

117 (i) to use in the course of the manufacture or distribution of a controlled substance a  
118 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
119 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a  
120 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized

121 person;

122 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
123 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
124 be attempting to acquire or obtain possession of, or to procure the administration of any  
125 controlled substance by misrepresentation or failure by the person to disclose his receiving any  
126 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
127 prescription or written order for a controlled substance, or the use of a false name or address;

128 (iii) to make any false or forged prescription or written order for a controlled substance,  
129 or to utter the same, or to alter any prescription or written order issued or written under the  
130 terms of this chapter; or

131 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed  
132 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
133 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
134 so as to render any drug a counterfeit controlled substance.

135 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree  
136 felony.

137 (4) Prohibited acts D -- Penalties:

138 (a) Notwithstanding other provisions of this section, a person not authorized under this  
139 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,  
140 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances  
141 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
142 the trier of fact finds the act is committed:

143 (i) in a public or private elementary or secondary school or on the grounds of any of  
144 those schools;

145 (ii) in a public or private vocational school or postsecondary institution or on the  
146 grounds of any of those schools or institutions;

147 (iii) in those portions of any building, park, stadium, or other structure or grounds  
148 which are, at the time of the act, being used for an activity sponsored by or through a school or  
149 institution under Subsections (4)(a)(i) and (ii);

150 (iv) in or on the grounds of a preschool or child-care facility;

151 (v) in a public park, amusement park, arcade, or recreation center;

152 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

153 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,

154 playhouse, or parking lot or structure adjacent thereto;

155 (viii) in a public parking lot or structure;

156 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections

157 (4)(a)(i) through (viii); ~~or~~

158 (x) in the immediate presence of a person younger than 18 years of age, regardless of  
159 where the act occurs[-];

160 (xi) in or on the grounds of any correctional facility as defined in Section 76-8-311.3;

161 or

162 (xii) directly or indirectly facilitates, arranges, or causes the transport, delivery, or  
163 distribution of a substance in violation of this section to an inmate or on the grounds of any  
164 correctional facility as defined in Section 76-8-311.3.

165 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and  
166 shall be imprisoned for a term of not less than five years if the penalty that would otherwise  
167 have been established but for this subsection would have been a first degree felony. Imposition  
168 or execution of the sentence may not be suspended, and the person is not eligible for probation.

169 (c) If the classification that would otherwise have been established would have been  
170 less than a first degree felony but for this Subsection (4), a person convicted under Subsection  
171 (2)~~(g)~~(f) or this Subsection (4) is guilty of one degree more than the maximum penalty  
172 prescribed for that offense[-], except as provided in Subsection (4)(d).

173 (d) (i) If the violation is of Subsection (4)(a)(xi) or Subsection (4)(a)(xii) and the  
174 classification that would otherwise have been established would have been less than a first  
175 degree felony but for this Subsection (4):

176 (A) the person may be sentenced to imprisonment for an indeterminate term as  
177 provided by law, and the court shall additionally sentence the person convicted for a term of  
178 one year to run consecutively and not concurrently; and

179 (B) the court may additionally sentence the person convicted for an indeterminate term  
180 not to exceed five years to run consecutively and not concurrently; and

181 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
182 the mental state required for the commission of an offense, directly or indirectly solicits,

183 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
184 violation of Subsection (4)(a)(xi).

185 ~~[(d)]~~ (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
186 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
187 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
188 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
189 the location where the act occurred was as described in Subsection (4)(a).

190 (5) Any violation of this chapter for which no penalty is specified is a class B  
191 misdemeanor.

192 (6) (a) Any penalty imposed for violation of this section is in addition to, and not in  
193 lieu of, any civil or administrative penalty or sanction authorized by law.

194 (b) Where violation of this chapter violates a federal law or the law of another state,  
195 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
196 prosecution in this state.

197 (7) In any prosecution for a violation of this chapter, evidence or proof which shows a  
198 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
199 substance or substances, is prima facie evidence that the person or persons did so with  
200 knowledge of the character of the substance or substances.

201 (8) This section does not prohibit a veterinarian, in good faith and in the course of his  
202 professional practice only and not for humans, from prescribing, dispensing, or administering  
203 controlled substances or from causing the substances to be administered by an assistant or  
204 orderly under his direction and supervision.

205 (9) Civil or criminal liability may not be imposed under this section on:

206 (a) any person registered under the Controlled Substances Act who manufactures,  
207 distributes, or possesses an imitation controlled substance for use as a placebo or  
208 investigational new drug by a registered practitioner in the ordinary course of professional  
209 practice or research; or

210 (b) any law enforcement officer acting in the course and legitimate scope of his  
211 employment.

212 (10) If any provision of this chapter, or the application of any provision to any person  
213 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the

214 invalid provision or application.

215 Section 2. Section ~~64-13-17~~ is amended to read:

216 **64-13-17. Visitors to correctional facilities -- Correspondence.**

217 (1) (a) The following persons may visit correctional facilities without the consent of  
218 the department:

219 (i) the governor;

220 (ii) the attorney general;

221 (iii) a justice or judge of the courts of record;

222 (iv) members of the Board of Pardons and Parole;

223 (v) members of the Legislature;

224 (vi) the sheriff, district attorney, and county attorney for the county in which the  
225 correctional facility is located; and

226 (vii) any other persons authorized under rules prescribed by the department or court  
227 order.

228 (b) Any person acting under a court order may visit or correspond with any inmate  
229 without the consent of the department provided the department has received notice of, and is  
230 permitted to respond to, the court order. The court shall consider department policy when  
231 making its order.

232 (c) The department may limit access to correctional facilities when the department or  
233 governor declares an emergency or when there is a riot or other disturbance.

234 (2) (a) A person may not visit with any offender at any correctional facility, other than  
235 under Subsection (1), without the consent of the department.

236 (b) Offenders and all visitors, including those listed in Subsection (1), may be required  
237 to submit to a search or inspection of their persons and properties as a condition of visitation.

238 (c) All visitors, including those listed in Subsection (1), shall be provided written  
239 notice:

240 (i) of items prohibited on the grounds of correctional facilities;

241 (ii) that distributing any controlled substance to an inmate in violation of state law is  
242 subject to criminal penalties, including incarceration; and

243 (iii) that under this section all visitors may be required to submit to a search of their  
244 persons and properties as a condition of visitation.

245 (3) Offenders housed at any correctional facility may send and receive correspondence,  
246 subject to the rules of the department. All correspondence is subject to search, consistent with  
247 department rules.

248 Section 3. Section **76-8-311.3** is amended to read:

249 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

250 **Penalties.**

251 (1) As used in this section:

252 (a) "Contraband" means any item;

253 (i) prohibited by a correctional facility for possession by offenders; and

254 (ii) any other item not specifically prohibited for possession by offenders under this  
255 section or Title 58, Chapter 37, Utah Controlled Substances Act.

256 (b) "Controlled substance" means any substance defined as a controlled substance  
257 under Title 58, Chapter 37, Utah Controlled Substances Act.

258 (c) "Correctional facility" means:

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

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

263 (iii) any juvenile detention facility; and

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

266 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a,  
267 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,  
268 Chapter 37, Utah Controlled Substances Act.

269 (e) "Mental health facility" has the same meaning as defined in Section 62A-15-602.

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

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

272 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may  
273 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,  
274 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any  
275 quantity may be:

- 276 (a) transported to or upon a correctional or mental health facility;
- 277 (b) sold or given away at any correctional or mental health facility;
- 278 (c) given to or used by any offender at a correctional or mental health facility; or
- 279 (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

- 282 (a) with respect to a correctional facility operated by the Department of Corrections,  
283 acted in conformity with departmental rule or policy;
- 284 (b) with respect to a correctional facility operated by a municipality, acted in  
285 conformity with the policy of the municipality;
- 286 (c) with respect to a correctional facility operated by a county, acted in conformity with  
287 the policy of the county; or
- 288 (d) with respect to a mental health facility, acted in conformity with the policy of the  
289 mental health facility.

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

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

296 (c) Any offender who possesses at a correctional facility, or any detainee who  
297 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous  
298 weapon, or implement of escape is guilty of a second degree felony.

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

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

305 (5) (a) A person is guilty of a third degree felony who, without the permission of the  
306 authority operating the correctional facility or secure area of a mental health facility, knowingly

307 transports to or upon a correctional facility or into a secure area of a mental health facility any:

308 (i) spirituous or fermented liquor;

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

310 (iii) poison in any quantity.

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

314 (i) spirituous or fermented liquor;

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

316 (iii) poison in any quantity.

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

320 (i) spirituous or fermented liquor;

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

323 (iii) poison in any quantity.

324 (d) (i) As used in this Subsection (5)(d), "contraband tobacco" means any cigarette,  
325 tobacco, or tobacco product regarding which a correctional facility prohibits possession by  
326 offenders.

327 (ii) A person is guilty of a third degree felony who, with the intent to directly or  
328 indirectly provide or sell any contraband tobacco to an offender, directly or indirectly:

329 (A) transports, delivers, or distributes contraband tobacco to an offender or on the  
330 grounds of any correctional facility;

331 (B) solicits, requests, commands, coerces, encourages, or intentionally aids another  
332 person to transport contraband tobacco to an offender or on any correctional facility, if the  
333 person is acting with the mental state required for the commission of an offense; or

334 (C) facilitates, arranges, or causes the transport of any contraband tobacco in violation  
335 of this section to an offender or on the grounds of any correctional facility.

336 [~~(d)~~] (e) A person is guilty of a class A misdemeanor who, without the permission of  
337 the authority operating the correctional or mental health facility, fails to declare or knowingly

338 possesses at a correctional facility or in a secure area of a mental health facility any:

339 (i) spirituous or fermented liquor;

340 (ii) medicine; or

341 (iii) poison in any quantity.

342 [~~(e)~~] (f) A person is guilty of a class B misdemeanor who, without the permission of  
343 the authority operating the correctional facility, knowingly engages in any activity that would  
344 facilitate the possession of any contraband by an offender in a correctional facility. The  
345 provisions of Subsection (5)(d) regarding contraband tobacco take precedence over this  
346 Subsection (5)(f).

347 [~~(f)~~] (g) Exemptions may be granted for worship for Native American inmates pursuant  
348 to Section 64-13-40.

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

352 (7) A correctional facility shall provide specific notification to persons visiting  
353 offenders that providing contraband tobacco to offenders is a third degree felony.

354 **Section 4. Effective date.**

355 If approved by two-thirds of all the members elected to each house, this bill takes effect  
356 upon approval by the governor, or the day following the constitutional time limit of Utah  
357 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
358 the date of veto override.

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**Legislative Review Note**  
**as of 11-19-03 1:17 PM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-10-03 12:09 PM**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.