

**Representative LaVar Christensen** proposes the following substitute bill:

**UNLAWFUL CONTROLLED SUBSTANCES IN  
CORRECTIONAL FACILITIES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: LaVar Christensen**

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**LONG TITLE**

**General Description:**

This bill amends a Department of Corrections provision, the Utah Controlled Substances Act, and the Criminal Code regarding bringing controlled substances into correctional facilities. This bill also provides a specific penalty for bringing tobacco products into a correctional facility for distribution.

**Highlighted Provisions:**

This bill:

- ▶ requires the Department of Corrections to establish rules for advising persons visiting inmates at correctional facilities of prohibited items and of searches;
- ▶ provides for additional incarceration for a person violating controlled substances laws at a correctional facility; and
- ▶ increases the penalty from a class B misdemeanor to a class A misdemeanor for persons bringing tobacco products to a correctional facility in violation of state law.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

**Utah Code Sections Affected:**



26 AMENDS:

27 **58-37-8**, as last amended by Chapters 10 and 33, Laws of Utah 2003

28 **64-13-17**, as last amended by Chapter 36, Laws of Utah 2003

29 **76-8-311.3**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

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

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

33 **58-37-8. Prohibited acts -- Penalties.**

34 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (2) Prohibited acts B -- Penalties:

70 (a) It is unlawful:

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

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

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

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

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

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

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

88 misdemeanor.

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

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

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

101 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
102 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
103 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
104 than provided in Subsection (2)(b) , and if the conviction is with respect to controlled  
105 substances as listed in:

106 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
107 indeterminate term as provided by law, and:

108 (A) the court shall additionally sentence the person convicted to a term of one year to  
109 run consecutively and not concurrently; and

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

112 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
113 indeterminate term as provided by law, and the court shall additionally sentence the person  
114 convicted to a term of six months to run consecutively and not concurrently.

115 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

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

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

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

119 (g) A person is subject to the penalties under Subsection (4)(c) who, in an offense not  
120 amounting to a violation of Section 76-5-207:

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

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

125 (3) Prohibited acts C -- Penalties:

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

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

132 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
133 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
134 be attempting to acquire or obtain possession of, or to procure the administration of any  
135 controlled substance by misrepresentation or failure by the person to disclose his receiving any  
136 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
137 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

147 (4) Prohibited acts D -- Penalties:

148 (a) Notwithstanding other provisions of this section, a person not authorized under this  
149 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,

150 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances  
151 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
152 the trier of fact finds the act is committed:

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

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

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

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

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

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

163 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,  
164 playhouse, or parking lot or structure adjacent thereto;

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

166 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections  
167 (4)(a)(i) through (viii); [~~or~~]

168 (x) in the immediate presence of a person younger than 18 years of age, regardless of  
169 where the act occurs[=];

170 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
171 distribution of a substance in violation of this section to an inmate or on the grounds of any  
172 correctional facility as defined in Section 76-8-311.3.

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

177 (c) If the classification that would otherwise have been established would have been  
178 less than a first degree felony but for this Subsection (4), a person convicted under Subsection  
179 (2)(g) or this Subsection (4) is guilty of one degree more than the maximum penalty prescribed  
180 for that offense.

181 (d) (i) If the violation is of Subsection (4)(a)(xi):

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

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

187 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
188 the mental state required for the commission of an offense, directly or indirectly solicits,  
189 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
190 violation of Subsection (4)(a)(xi).

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

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

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

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

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

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

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

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

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

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

221 Section 2. Section **64-13-17** is amended to read:

222 **64-13-17. Visitors to correctional facilities -- Correspondence.**

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

225 (i) the governor;

226 (ii) the attorney general;

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

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

229 (v) members of the Legislature;

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

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

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

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

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

242 (b) Offenders and all visitors, including those listed in Subsection (1), may be required

243 to submit to a search or inspection of their persons and properties as a condition of visitation.

244 (3) The department shall make rules under Title 63, Chapter 46a, Utah Administrative  
245 Rulemaking Act, establishing guidelines for providing written notice to visitors regarding  
246 prohibited items and regarding the fact that under state law all visitors may be required to  
247 submit to a search of their persons and properties as a condition of visitation.

248 [~~(3)~~] (4) Offenders housed at any correctional facility may send and receive  
249 correspondence, subject to the rules of the department. All correspondence is subject to search,  
250 consistent with department rules.

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

252 **76-8-311.3. Items prohibited in correctional and mental health facilities --**  
253 **Penalties.**

254 (1) As used in this section:

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

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

259 (c) "Correctional facility" means:

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

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

264 (iii) any juvenile detention facility; and

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

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

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

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

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

273 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may

274 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,  
275 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any  
276 quantity may be:

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

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

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

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

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

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

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

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

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

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

304 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,

305 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

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

309 (i) spirituous or fermented liquor;

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

311 (iii) poison in any quantity.

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

315 (i) spirituous or fermented liquor;

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

317 (iii) poison in any quantity.

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

321 (i) spirituous or fermented liquor;

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

324 (iii) poison in any quantity.

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

327 (i) transports, delivers, or distributes any tobacco product to an offender or on the  
328 grounds of any correctional facility;

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

332 (iii) facilitates, arranges, or causes the transport of any tobacco product in violation of  
333 this section to an offender or on the grounds of any correctional facility.

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

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

337 (i) spirituous or fermented liquor;

338 (ii) medicine; or

339 (iii) poison in any quantity.

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

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

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

350 (7) The department shall make rules under Title 63, Chapter 46a, Utah Administrative  
351 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing  
352 any tobacco product to offenders is a class A misdemeanor.

353 Section 4. **Effective date.**

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