

2026 South Dakota Legislature

Senate Bill 42**AMENDMENT 42B
FOR THE INTRODUCED BILL**

1 **An Act to enhance the penalties for ingestion, possession, possession with intent to**
2 **deliver, and delivery of a controlled substance in a state correctional facility.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 24-2-14 be AMENDED:**

5 **24-2-14.** Possession of the following articles by an inmate of a state correctional
6 facility, unless directly issued by the Department of Corrections and used in accordance
7 with the department's policies and procedures, is a felony pursuant to the following
8 schedule:

- 9 (1) Possession of any alcoholic beverage or marijuana is a Class 6 felony;
10 (2) Possession of a cell phone or any other electronic communication device prohibited
11 by Department of Corrections policy is a Class 4 felony;
12 (3) Possession of any prescription or nonprescription drug or controlled substance, as
13 defined by chapter 34-20B, except by written order for a definite period from a
14 physician, physician assistant, or certified nurse practitioner, as defined in chapters
15 36-4, 36-4A, and 36-9A, is a ~~Class 4~~ Class 3 felony;
16 (4) Possession of a dangerous weapon as defined by § 22-1-2 is a Class 2 felony; and
17 (5) Possession of any article, not proscribed by this section, that is not provided by or
18 authorized by the facility in any form, is a Class 6 felony.

19 **Section 2. That § 24-2-22 be AMENDED:**

20 **24-2-22.** Any employee or other person who delivers or procures to be delivered,
21 or possesses with the intent to deliver, to any inmate in a state correctional facility, or
22 who deposits or conceals in or around any facility or place used to house inmates, or in
23 any mode of transport entering the grounds of any facility or place and its ancillary
24 facilities used to house inmates, any of the following articles, with the intent that any
25 inmate obtain or receive the article, is guilty of a felony pursuant to the following schedule:

- 1 (1) Any alcoholic beverage or marijuana is a Class 6 felony;
- 2 (2) A cell phone or any other electronic communication device prohibited by
- 3 Department of Corrections policy is a Class 4 felony;
- 4 (3) Any prescription or nonprescription drug or controlled substance, as defined by
- 5 chapter 34-20B, except as authorized by the Department of Corrections, is a ~~Class~~
- 6 Class 3 felony;
- 7 (4) A dangerous weapon, as defined by § 22-1-2, is a Class 2 felony; and
- 8 (5) Any article, not proscribed by this section, that is not provided by or authorized by
- 9 the facility in any form, is a Class 6 felony.

10 **Section 3. That § 22-42-5.1 be AMENDED:**

11 **22-42-5.1.** No person may knowingly ingest a controlled drug or substance or
12 have a controlled drug or substance in an altered state in the body unless the substance
13 was obtained directly or pursuant to a valid prescription or order from a practitioner, acting
14 in the course of the practitioner's professional practice, or except as otherwise authorized
15 by chapter 34-20B. The following penalties apply to a violation of this section:

- 16 (1) A first violation is a Class 1 misdemeanor, and the court, in addition to any other
17 sentence, shall order that the person complete a drug and alcohol evaluation and
18 complete supervised probation using evidence-based sentencing practices, which
19 may include the HOPE probation program and other programs as established in
20 chapter 16-22;
- 21 (2) A second violation is a Class 1 misdemeanor, and the court, in addition to any other
22 sentence, may sentence the person to a period of up to one year in jail, and shall
23 sentence the person to a period of supervised probation using evidence-based
24 practices, which may include the HOPE probation program and other programs as
25 established in chapter 16-22, and order that the person complete a drug and
26 alcohol evaluation and complete any other recommended course of treatment; ~~and~~
- 27 (3) A third or subsequent violation, occurring within ten years of the person's first
28 conviction, is a Class 6 felony;
- 29 (4) A violation by an inmate under confinement in a state correctional facility is a ~~Class~~
30 5 Class 6 felony; and
- 31 (5) A violation by a person while under parole supervision is a ~~Class 5~~ Class 6 felony.