



2026 South Dakota Legislature

Senate Bill 42

SENATE ENGROSSED

Introduced by: The Chair of the Committee on Judiciary at the request of the Attorney General

1 **An Act to enhance the penalties for ingestion, possession with intent to deliver, and**
 2 **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 § 24-2-22 be AMENDED:**

5 **24-2-22.** Any employee or other person who delivers or procures to be delivered,
 6 or possesses with the intent to deliver, to any inmate in a state correctional facility, or
 7 who deposits or conceals in or around any facility or place used to house inmates, or in
 8 any mode of transport entering the grounds of any facility or place and its ancillary
 9 facilities used to house inmates, any of the following articles, with the intent that any
 10 inmate obtain or receive the article, is guilty of a felony pursuant to the following schedule:

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

20 **Section 2. That § 22-42-5.1 be AMENDED:**

21 **22-42-5.1.** No person may knowingly ingest a controlled drug or substance or
 22 have a controlled drug or substance in an altered state in the body unless the substance
 23 was obtained directly or pursuant to a valid prescription or order from a practitioner, acting
 24 in the course of the practitioner's professional practice, or except as otherwise authorized
 25 by chapter 34-20B. The following penalties apply to a violation of this section:

- 1 (1) A first violation is a Class 1 misdemeanor, and the court, in addition to any other
2 sentence, shall order that the person complete a drug and alcohol evaluation and
3 complete supervised probation using evidence-based sentencing practices, which
4 may include the HOPE probation program and other programs as established in
5 chapter 16-22;
- 6 (2) A second violation is a Class 1 misdemeanor, and the court, in addition to any other
7 sentence, may sentence the person to a period of up to one year in jail, and shall
8 sentence the person to a period of supervised probation using evidence-based
9 practices, which may include the HOPE probation program and other programs as
10 established in chapter 16-22, and order that the person complete a drug and
11 alcohol evaluation and complete any other recommended course of treatment; ~~and~~
- 12 (3) A third or subsequent violation, occurring within ten years of the person's first
13 conviction, is a Class 6 felony;
- 14 (4) A violation by an inmate under confinement in a state correctional facility is a Class
15 5 felony; and
- 16 (5) A violation by a person while under parole supervision is a Class 5 felony.