

2026 South Dakota Legislature

Senate Bill 42**AMENDMENT 42E
FOR THE SENATE ENGROSSED BILL**

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, and revise**
3 **the penalties for ingestion of a controlled substance.**

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

5 **Section 1. That § 24-2-22 be AMENDED:**

6 **24-2-22.** Any employee or other person who delivers or procures to be delivered,
7 or possesses with the intent to deliver, to any inmate in a state correctional facility, or
8 who deposits or conceals in or around any facility or place used to house inmates, or in
9 any mode of transport entering the grounds of any facility or place and its ancillary
10 facilities used to house inmates, any of the following articles, with the intent that any
11 inmate obtain or receive the article, is guilty of a felony pursuant to the following schedule:
12 (1) Any alcoholic beverage or marijuana is a Class 6 felony;
13 (2) A cell phone or any other electronic communication device prohibited by
14 Department of Corrections policy is a Class 4 felony;
15 (3) Any prescription or nonprescription drug or controlled substance, as defined by
16 chapter 34-20B, except as authorized by the Department of Corrections, is a ~~Class~~
17 4 Class 3 felony;
18 (4) A dangerous weapon, as defined by § 22-1-2, is a Class 2 felony; and
19 (5) Any article, not proscribed by this section, that is not provided by or authorized by
20 the facility in any form, is a Class 6 felony.

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

22 **22-42-5.1.** No person may knowingly ingest a controlled drug or substance or
23 have a controlled drug or substance in an altered state in the body unless the substance
24 was obtained directly or pursuant to a valid prescription or order from a practitioner, acting

1 in the course of the practitioner's professional practice, or except as otherwise authorized
2 by chapter 34-20B. The following penalties apply to a violation of this section:

3 (1) A first violation is a Class 1 misdemeanor, and the court, in addition to any other
4 sentence, shall order that the person complete a drug and alcohol evaluation and,
5 unless the person is in the custody or under the supervision of the Department of
6 Corrections, order that the person complete supervised probation using evidence-
7 based sentencing practices, which may include the HOPE probation program and
8 other programs as established in chapter 16-22;

9 (2) A second violation is a Class 1 misdemeanor, and the court, in addition to any other
10 sentence, ~~may:~~

11 (a) May sentence the person to a period of up to one year in jail, ~~and shall;~~

12 (b) Shall sentence the person to a period of supervised probation using
13 evidence-based practices, which may include the HOPE probation program
14 and other programs as established in chapter 16-22, ~~and order, unless the~~
15 person is in the custody or under the supervision of the Department of
16 Corrections; and

17 (c) Shall order that the person complete a drug and alcohol evaluation and
18 complete any other recommended course of treatment; ~~and~~

19 (3) A third or subsequent violation, occurring within ten years of the person's first
20 conviction, is a Class 6 felony ~~;~~

21 ~~(4) A violation by an inmate under confinement in a state correctional facility is a Class~~
22 ~~5 felony; and~~

23 ~~(5) A violation by a person while under parole supervision is a Class 5 felony.~~