

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY GENERAL**

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
TTY (605) 773-6585  
<http://atg.sd.gov/>

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**RECEIVED**

**MAY 17 2017**

**S.D. SEC. OF STATE**

*Bray*  
**CHARLES D. McGUIGAN**  
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

May 17, 2017

Hon. Shantel Krebs  
Secretary of State  
500 E. Capitol  
Pierre, SD 57501

**RE: Attorney General's Statement for initiated measure (legalizing all quantities of marijuana)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marty Jackley".

Marty J. Jackley  
ATTORNEY GENERAL

MJJ/PA/lde  
Enc.

cc/enc.: John Dale  
Jason Hancock, Director of LRC

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MAY 17 2017  
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize all quantities of marijuana and to make other changes to State law involving marijuana.

Explanation:

This measure legalizes all quantities of marijuana possession and distribution under State law, as well as marijuana paraphernalia. People under 21 who possess or use marijuana are subject to restrictions. The measure removes certain references to marijuana from the statutes prohibiting driving and boating while intoxicated.

A parent's marijuana possession or use cannot be considered in child custody cases. With certain exceptions, marijuana possession, use, or distribution no longer disqualifies students from participating in extracurricular school activities. Nor does it prevent students from receiving State-funded college scholarships.

The measure prohibits law enforcement and State agencies from keeping certain records involving a person's marijuana use or possession, and from enforcing federal marijuana laws. It significantly limits State asset forfeitures involving marijuana. It also limits the ability of a "locality" to regulate marijuana-related activity.

The measure establishes April 20 as "Cannabis Day" and allows residents free admission to State parks on that day.

This 41-section measure makes several other changes and additions to State law. Because it contains internal inconsistencies and may conflict with existing laws, judicial or legislative clarification may be necessary. A court may find provisions of the measure unconstitutional. Marijuana remains illegal under federal law.

Be it enacted by the people of South Dakota:

An Act to provide certain provisions regarding the legalization of cannabis, to take effect immediately upon passage, the content of which was finalized on 4/5/2017.

**RECEIVED**

**MAY 17 2017**

Section 1. That the code be amended by adding a NEW SECTION to read:

**S.D. SEC. OF STATE**

As used in this Act, cannabis means all parts of the plant genus *Cannabis* spp containing one or more of the cannabinoids tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG), whether growing or not, whether living or not, whether in vegetative or flowering stages, cannabis accessories, cannabis growing implements, means of processing cannabis, means of transporting cannabis, means of reselling cannabis, and cannabis seeds.

Section 2. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state or any agent of the state may enforce any federal cannabis law.

Section 3. That the code be amended by adding a NEW SECTION to read:

A person's right to keep and bear arms may not be infringed for possessing cannabis in accordance with the provisions of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

No charge may be brought under chapter 32-23 for consumed Cannabis metabolites. No law enforcement agency in the state or agent of the state may keep any record, whether written, electronic, digital, or otherwise based on a finding that cannabis plant matter or its metabolites are found on a person's body or breath or in the person's possession.

Section 5. That the code be amended by adding a NEW SECTION to read:

Any person under twenty-one years of age who is working in the agriculture industry with a letter from the person's employer describing the legal duties performed by the underage person may handle cannabis products having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one who possesses a doctor's recommendation describing the person's medical condition that requires cannabis as medication may possess and ingest cannabis having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one in possession of cannabis plant material containing greater than three percent tetrahydrocannabinol without an employer letter and without a doctor's recommendation pursuant to this section is subject to a penalty of ten hours of community service for each offense, not to exceed one hundred hours in any calendar year and shall surrender the plant material to law enforcement agents of the state. The cannabis plant material shall be tested by agents of the state in accordance with ISO/IEC 17025:2005 standards deemed applicable by the South Dakota Department of Agriculture, and catalogued without retaining or associating any personally identifying information about the person. Any cannabis plant material that is confiscated under this section shall be destroyed after testing. At least once per year the state shall issue a report disclosing test results and overall weight of confiscated cannabis.

Any person who sells or distributes Cannabis to any other person under age twenty-one who does not have a doctor's recommendation shall be subject to 100 hours of community service for each offense, not to exceed 200 hours in any calendar year, after which the offender shall pay a one thousand dollar fine per offense.

Any person under age twenty-one who is found to be in possession of cannabis containing more than three percent tetrahydrocannabinol shall display a doctor's recommendation or an employee permission letter that verifies the person's cannabis possession privileges. If a person cannot display the documentation required under this section to an official at the time of cannabis possession, the person may display the documentation to a court of competent jurisdiction within thirty days of the offense to avoid prosecution in accordance with the provisions of this Act.

Section 6. That the code be amended by adding a NEW SECTION to read:

The South Dakota Department of Agriculture shall promulgate rules pursuant to chapter 1-26 regarding the manufacture, sale, and transport of cannabis in the state in accordance with the provisions of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any revenue generated from licensure fees under this Act that is in excess of the amount required to implement any provision of this Act shall be granted to South Dakota small farmers. The grants shall be used to support early-stage, high-risk local agriculture new venture, research and development. The grants shall only be awarded to proof of concept projects that are already completed, taking into account the ratio of investment-level-to-value of the expressed entrepreneurial idea as a key criterion for the award.

Section 8. That the code be amended by adding a NEW SECTION to read:

No court may determine parental suitability based on the parent's use or possession of cannabis when deciding a child custody case.

Section 9. That the code be amended by adding a NEW SECTION to read:

No locality may pass any law, ordinance, or regulation that restricts or controls the location of operation of a cannabis-related business. No locality may tax, regulate, control, or pass any law or regulation governing the use or consumption of cannabis. No locality may enact any zoning requirement that is discriminatory to a cannabis-related business. A locality may require a standard business license to conduct cannabis sales within the locality's jurisdiction. No locality may ban home cultivation or any other cultivation of cannabis.

Section 10. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act may be interpreted to grant the right of an employee to use cannabis while at a workplace, nor to remove the right of employers to enact workplace policies that restrict or prohibit the use of cannabis in the workplace. Nothing in this Act may be interpreted to prohibit a landowner from restricting or prohibiting the use of cannabis on the landowner's private property.

Section 11. That the code be amended by adding a NEW SECTION to read:

The state shall recognize April 20 of each year as "Cannabis Day." State parks shall allow any resident of the state admission free of charge on April 20 of each year.

Section 12. That §13-32-9 be amended to read:

Any person adjudicated, convicted, the subject of an informal adjustment or court-approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one-year suspension may be reduced to thirty calendar days if the person participates in an assessment with a certified or licensed addiction counselor. If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a second adjudication, conviction, diversion, or suspended imposition of a sentence for possession, use, or distribution of controlled ~~drugs,~~ drugs or substances, ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one year suspension may be reduced to sixty calendar days if the person completes an accredited intensive prevention or treatment program. Upon a third or subsequent adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education. Upon such a determination in any juvenile court proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is participating in any extracurricular activity. The Unified Judicial System shall give notice to the chief administrators of secondary schools accredited by the Department of Education for any such determination in a court proceeding for any person eighteen to twenty-one years of age without regard to current status in school or involvement in extracurricular activities. The notice shall include name, date of birth, city of residence, and offense. The chief administrator shall give notice to the South Dakota High School Activities Association if any such person is participating in extracurricular activities.

Upon placement of the person in an informal adjustment or court-approved diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is participating in any extracurricular activity.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association. Students are ineligible to participate in activity events, competitions, and performances, but a local school district may allow a student to participate in practices.

Section 13. That §13-32-9.2 be amended to read:

If a suspension is reduced pursuant to § 13-32-9, a suspension for a first offense shall make the student ineligible for a minimum of two South Dakota High School Activities Association sanctioned events. If two sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until two sanctioned events for which the student is ineligible have taken place. If a suspension is reduced pursuant to § 13-32-9, a suspension for a second offense shall make

the student ineligible for a minimum of six South Dakota High School Activities Association sanctioned events. If six sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until six sanctioned events for which the student is ineligible have taken place. To count toward the minimum number of events, the student must participate in the entire activity season and may not drop out or quit the activity to avoid suspension and the failure of a student to complete the entire activity season shall result in the student being ineligible for one year from the date of adjudication, conviction, the subject of an internal adjustment or court approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency. A suspension that is not completed by the student during one activity season shall carry over to the next activity season in which the student participates. In addition, a suspension that is reduced pursuant to § 13-32-9 is only in effect during the South Dakota High School Activities Association's activity year, which begins on the first day of its first sanctioned event and concludes on the last day of its last sanctioned event. A reduced suspension that is not completed by the end of one activity year shall carry over to the next activity year.

A suspension begins on:

(1) The day following the notification to a school administrator by the Unified Judicial System that a student has been adjudicated, convicted, the subject of an informal adjustment or court approved diversion program, or the subject of a suspended imposition of a sentence or a suspended adjudication of delinquency for possession, use, or distribution of controlled ~~drugs, drugs or substances, or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance prohibited by § 22-42-15 and the school administrator gives notice to the South Dakota High School Activities Association and the students; or

(2) The day following the student's admission to a school administrator that the student committed an offense enumerated in subdivision (1), which shall be made with the student's parent or guardian present if the student is an unemancipated minor, and the school administrator gives notice to the South Dakota High School Activities Association.

Section 14. That §13-53-42 be amended to read:

Any person who has been determined by a court of competent jurisdiction to have possessed, used, or distributed controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law while enrolled at a South Dakota state supported institution of higher education is ineligible to participate in any form of intercollegiate extracurricular competition at any South Dakota state supported institution of higher education. Upon receiving a request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 15. That § 13-55-29 be amended to read:

Any person adjudicated, convicted, or the subject of a suspended imposition of sentence for possession, use, or distribution of controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law is ineligible for any scholarship for attendance at a postsecondary institution to the extent such scholarship is funded by the State of South Dakota. Upon receiving a

request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 16. That § 22-42-1 be amended to read:

(1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a drug or substance, listed in Schedules I through IV. The term includes an altered state of a drug or substance listed in Schedules I through IV absorbed into the human body;

(2) "Counterfeit substance," a controlled drug or substance which, or the container of labeling of which, without authorization, bears the trade-mark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(3) "Deliver" or "delivery," the actual or constructive transfer of a controlled ~~drug;~~ drug or substance, ~~or marijuana~~ whether or not there exists an agency relationship;

(4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

(5) "Distribute," to deliver a controlled ~~drug;~~ drug or substance, ~~or marijuana~~. Distribution means the delivery of a controlled ~~drug;~~ substance, ~~or marijuana~~;

(6) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate user;

(7) "~~Marijuana,~~" ~~all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant;~~

(8) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or veterinary medicine licensed to practice his or her profession, or pharmacists licensed to practice their profession; physician's assistants certified to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the Department of Health to distribute, dispense, conduct research with respect to, or administer a substance controlled by chapter 34-20B;

(9)(8) "Precursor" or "immediate precursor," a substance which the Department of Health has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled drug or substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(10)(9) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of drugs, substances, and immediate precursors listed in chapter 34-20B;

(11) (10) "Ultimate user," a person who lawfully possesses a controlled drug or substance for that person's own use or for the use of a member of that person's household or for administration to an animal owned by that person or by a member of that person's household.

Section 17. That § 22-42A-3 be amended to read:

No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 2 misdemeanor.

Section 18. That § 22-42A-4 be amended to read:

No person, knowing the drug related nature of the object, may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 6 felony.

Section 19. That § 22-42-6 be repealed:

~~No person may knowingly possess marijuana. It is a Class 1 misdemeanor to possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces of marijuana but less than one half pound of marijuana. It is a Class 5 felony to possess one half pound but less than one pound of marijuana. It is a Class 4 felony to possess one to ten pounds of marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars.~~

Section 20. That § 22-42-7 be repealed:

~~The distribution, or possession with intent to distribute, of less than one half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the~~



~~distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.~~

Section 21. That § 22-42A-1 be amended to read:

The term, drug paraphernalia, means any equipment, products, and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled substance ~~or marijuana~~ in violation of the provisions of this chapter. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or marijuana or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

~~(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;~~

~~(4)~~ Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

~~(5)~~(4) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

~~(6) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;~~

~~(7)~~ (5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or marijuana;

~~(8)~~(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or marijuana;

~~(9)~~(7) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human

body; and

~~(10) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:~~

~~(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~

~~(b) Water pipes;~~

~~(c) Carburetion tubes and devices;~~

~~(d) Smoking and carburetion masks;~~

~~(e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~

~~(f) Miniature cocaine spoons and cocaine vials;~~

~~(g) Chamber pipes;~~

~~(h) Carburetor pipes;~~

~~(i) Electric pipes;~~

~~(j) Air driven pipes;~~

~~(k) Chillums;~~

~~(l) Bongs; and~~

~~(m) Ice pipes or chillers.~~

Section 22. That § 22-42A-2 be amended to read:

In determining whether an object is drug paraphernalia as defined in Â§ 22-42A-1, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object, in time and space, to a direct violation of this article;

(3) The proximity of the object to controlled substances ~~or marijuana~~;

(4) The existence of any residue of controlled substances ~~or marijuana~~ on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom the person knows, or should reasonably know, intends to use the object to facilitate a violation of this article;

- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community;
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (12) The existence and scope of legitimate uses for the object in the community; and
- (13) Expert testimony concerning its use.

Section 23. That § 23A-35A-2 be amended to read:

Orders authorizing or approving the interception of wire or oral communications may be granted, subject to the provisions of this chapter when the interception may provide or has provided evidence of the commission of, or of any conspiracy to commit, the following offenses as otherwise defined by the laws of this state: murder; kidnapping; gambling; robbery; bribery; theft; unlawful use of a computer; unauthorized manufacturing, distribution or counterfeiting of controlled substances ~~or marijuana~~; and, rape.

Section 24. That § 24-2-14 be amended to read:

No alcoholic beverage, ~~marijuana~~, or weapon, as defined in subdivision 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or nonprescription drugs, controlled substance as defined by chapter 34-20B, or any article of indulgence may be possessed by any inmate of the state penitentiary except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively, which order shall be in writing and for a definite period. Any violation of this section constitutes a felony pursuant to the following schedule:

- (1) Possession of any alcoholic beverage ~~or marijuana~~ is a Class 6 felony;
- (2) Possession of any prescription or nonprescription drug or controlled substance is a Class 4 felony;
- (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 25. That § 24-11-47 be amended to read:

No alcoholic beverages, controlled substances as defined by chapter 34-20B, ~~marijuana~~, or weapons as defined in subdivision 22-1-2(10), may be possessed by any inmate of a jail. No prescription drugs may be possessed by any inmate of a jail except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively and such an order shall be in writing and for a definite period. For purposes of this section, prescription drugs include nonprescription medication items that have not been authorized by the sheriff and which are not available to inmates except