

13.1020 Prohibited actions.

(a) Except as authorized by the Director, it is unlawful for any person to deliver, dispense, distribute, possess with intent to deliver, dispense, or distribute, produce, or manufacture a controlled substance. In determining whether a controlled substance is possessed with intent to deliver, dispense, or distribute, a court should consider, in addition to all other logically relevant factors, the following:

- (1) statements by the owner or by anyone in control of the controlled substance;
- (2) the amount possessed and its consistency or inconsistency with personal use;
- (3) the presence of paraphernalia commonly used in preparing, packaging, or subdividing controlled substances for distribution, dispensing, or delivering; and or
- (4) the presence of apparent proceeds or records of distribution, dispensing, or delivering of controlled substances.

~~(b) Any person who violates this section is guilty of a crime, and upon conviction may be imprisoned for not more than 20 years, or fined not more than \$20,000, or both.~~

As to violation of this section with regard to marijuana as defined in A.S.C.A. § 13.1001(h), any person who violates this section is guilty of a felony and shall be punished, for a first offense, by a fine of not less than \$2,500 but not more than \$10,000 and/or imprisonment of up to five years imprisonment including not less than three months without parole, and, for the second and subsequent offenses, shall be guilty of a felony and shall be punished by a fine of not less than \$5,000, but not more than \$50,000 and/or imprisonment of up to seven years with not less than one year without parole. Any sentence in excess of the mandatory minimum may be suspended and that person placed on probation for the maximum term of imprisonment.

(1) It is a defense to a charge of production of marijuana, under this section, that the contraband was for personal use and not for sale or distribution; the burden of proving such a defense is on the defendant.

~~(c) Any person who violates this section by delivering, dispensing, distributing, producing, manufacturing or who attempts to deliver dispense, distribute, produce, or manufacture a controlled substance in any school or on any school campus in the Territory is guilty of a crime and upon conviction shall be imprisoned for a mandatory term of 10 years without the possibility of parole, and fined \$10,000.00.~~

*As to violation of this section with regard to any other controlled substance as defined by this chapter other than marijuana, any person who violates this section is guilty of a felony and shall be punished, for a first offense, by a fine of not less than \$5,000 but not more than \$25,000 and/or imprisonment of up to five years imprisonment including not less than one year without parole, and, for the second offense, shall be guilty of a felony and shall be punished by a fine of not less than \$5,000, but not more than \$100,000 **and** imprisonment of up to ten years with not less than two years without parole, and for a third and subsequent offenses, shall be guilty of a felony and shall be punished by a fine of not less than \$5,000, but not more than \$250,000 **and** imprisonment of up to fifteen years with not less than five years without parole.*

. Any sentence in excess of the mandatory minimums may be suspended and that person placed on probation for the maximum term of imprisonment.

(d) Any person who violates this section by delivering, dispensing, distributing, producing, manufacturing or who attempts to deliver dispense, distribute, produce, or manufacture marijuana in any school or on any school campus in the Territory is guilty of a felony and upon conviction shall be imprisoned for up to seven years with not less

than six months without parole and/or a fine of at least \$5,000 but not more than \$50,000.

(e) Any person who violates this section by delivering, dispensing, distributing, producing, manufacturing or who attempts to deliver dispense, distribute, produce, or manufacture a controlled substance other than marijuana in any school or on any school campus in the Territory is guilty of a crime and upon conviction shall be imprisoned for up to ten years with a mandatory term of 18 months without the possibility of parole, and/or fined not less than \$10,000 but not more than \$250,000.

History:1974, PL 13-56 § 3; amd 1996, PL 24-20, 1999, PL 26-11.

13.1021 Counterfeiting controlled substance unlawful.

(a) Except as authorized by the Director, it is unlawful for any person to deliver, dispense, distribute, produce, manufacture, or possess with intent to deliver, dispense, distribute, produce, or manufacture a counterfeit of a controlled substance.

(b) Any person who violates this section is guilty of a crime, and upon conviction may be imprisoned for not more than 10 years, or fined not more than \$10,000, or both.

History:1974, PL 13-56 § 3.

13.1022 Possession of controlled substance unlawful.

(a) Except as authorized by the director, it is unlawful for a person to possess a controlled substance.

~~(b) A person who violates this section is guilty of a felony and shall be punished as follows:~~

~~(1) for a first offense, a fine not less than \$5,000 and not more than \$20,000 or not less than 5 years and not more than 10 years in prison, or both;~~

~~(2) for a second offense, a fine not less than \$20,000 and not more than \$30,000 or not less than 10 years and not more than 20 years in prison, or both; and~~

~~(3) for a third offense, a fine not less than \$30,000 and not more than \$40,000 or not less than 15 years and not more than 30 years in prison, or both;~~

~~There shall be no parole for a conviction under this section.~~

Any person who violates this section with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of an infraction and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100), and, for the second offense, violators shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) but not more than one thousand dollars (\$1,000) and/or by imprisonment for up to three months, or both, and for third and subsequent offenses, violators shall be guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) but not more than one thousand dollars (\$1,000) and/or by imprisonment for up to six months.

(2) more than one ounce and less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) and/or by imprisonment for up to one year.

(3) eight ounces or more of marijuana is guilty of a class D felony and shall be sentenced accordingly.

(4) possession of a controlled substance other than marijuana in an amount consistent with personal use is, for the first offense, guilty of a felony punishable by imprisonment without parole of at least 30 days and up to one year and/or a fine of not less than \$1,000 nor more than \$10,000, and for a second offense shall be punishable by imprisonment without parole of at least one year and up to three years and/or a fine of not less than \$5,000 and not less than \$50,000.

(5) bringing one ounce or less of marijuana into the Territory shall be guilty of a felony punishable by imprisonment of up to one year and a fine of not less than \$1000 and up to \$5000.

(6) bringing more than one ounce of marijuana into the Territory shall be guilty of a felony punishable by imprisonment of up to five years and/or a fine of not less than \$5000 and up to \$25,000.

(7) bringing more than eight ounces of marijuana or more than an ounce of another controlled substance shall be guilty of a felony punishable by imprisonment of not less than one year without parole and up to ten years imprisonment and a fine of not less than \$25,000 and up to \$250,000.

~~(c) The above penalties are mandatory.~~

History: 1974, PL 13-56 § 3, amd 1984, PL 18-40 § 1; amd 1998, PL 25-34.

Amendments: 1984 Subsection (a): substituted the word “a” for “any”. Subsection (b): upgraded violation from misdemeanor to felony.

13.1023 Subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) An offense is considered a second or subsequent offense if, prior to his conviction of the offense, the offender has at any time been convicted under this subchapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant or hallucinogenic drugs.

History: 1974, PL 13-56 § 3.

13.1024 Deferred proceedings.

History:

Reviser’s Comment: Repealed by PL 25-19.

13.1030 Powers of authorities.

Any employee of the Government of American Samoa who is commissioned or duly authorized to make arrests within the jurisdictional boundaries of his agency, which includes but is not limited to, territorial police, customs inspectors, immigration officers, agriculture inspectors and airport police may:

- (1) make arrests without warrant for any offenses under this chapter committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony;
- (2) make seizures of property pursuant to this chapter.

History:1974, PL 13-56 § 3.

13.1031 Restraint or injunction of violations.

The High Court may exercise jurisdiction to restrain or enjoin violations of this chapter.

History:1974, PL 13-56 § 3.

13.1032 Forfeiture—Substances subject to.

The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

(2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) all property which is used, or intended for use, as a container for property described in paragraph (1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, of property described in paragraph (1) or (2); but:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without this knowledge or consent;

(c) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

History:1974, PL 13-56 § 3.

13.1033 Forfeiture--Seizure without process.

- (a) Property subject to forfeiture under this chapter may be seized by the Territorial

police upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

- (1) the seizure is incident to an arrest or a search under a search warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the territory in a criminal injunction or forfeiture proceeding based upon this chapter;
- (3) any employee authorized under 13.1030 has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) any employee authorized under 13.1030 has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(b) In the event of seizure pursuant to this section, ~~proceedings under subsection (c) shall be instituted promptly~~ anyone with an interest in the seized property may request a formal hearing as to the propriety of the seizure.

(1) Any such request shall be:

- (A) Filed with the Administrative Law Court of American Samoa;
- (B) In writing;
- (C) Within ninety (90) days of the date of seizure;
- (D) With a copy of the request served upon the Attorney General.

(2) If a request for hearing is made, a hearing must be held by the Administrative Law Court of American Samoa within forty-five (45) days of the request. In no case shall the date of the hearing be delayed further than 45 days except with the agreement of the party requesting the hearing.

(A) The specific procedures, requirements, and burden of proof shall be set out by Administrative rules by the Director; until such rules are properly promulgated, no seizure of property with a value over \$1,000 shall be valid (excluding contraband).

(c) Property taken or detained under this section or 13.1032, 13.1034 and 13.1035 after a seizure hearing has been conducted and the property deemed properly seized, or the time for a person with an alleged property interest to request a hearing has passed, said property is ~~not subject to replevin,~~ but is deemed to be in the custody of the Territorial police subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the Territorial police may:

- (1) place the property under seal; or
 - (2) remove the property to a place designated by it.
- (d) When property is forfeited under this chapter, the territorial police may:
- (1) retain it for official use;
 - (2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs.

History:1974, PL 13-56 § 3.

13.1034 Forfeiture--Contraband.

Controlled substances that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the territory. Controlled substances which are seized or come into the possession of the

territory, the owners of which are unknown, are contraband and shall be summarily forfeited to the territory. Controlled substances which are unknown are contraband and shall be summarily forfeited to the Territory.

History: 1974, PL 13-56 § 3.

13.1035 Forfeiture--Seizure of plants providing derivatives.

Species of plants from which controlled substances may be derived, which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growth, may be seized and summarily forfeited to the territory.

History: 1974, PL 13-56 § 3.

13.1036 Burden of proof.

(a) It is not necessary for the territory to negate any exemption or exception in this chapter in any complaint, information, or other pleading, or in any trial, hearing, or other proceeding under this chapter. The burden of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is duly authorized to deliver, dispense, produce, manufacture or possess a controlled substance under this chapter, he is presumed not to be authorized. The burden of proof is upon him to rebut the presumption.

History:1974, PL 13-56 § 3.

13.1037 Liability of officials.

No liability is imposed by this chapter upon any authorized Territorial officer engaged in the lawful performance of his duties.

History:1974, PL 13-56 § 3.

13.1040 Import and sale of drugs and medicines--Permission required.

No person may import or sell in American Samoa any medicines or drugs, including patent medicines, unless permission to do so has been granted under regulations approved by the Governor.

History: 1962, PL 7-12.

13.1041 Export of drugs, medicine and medical supplies—Permission required.

No person may export any medicines, drugs or other supplies originally obtained from the Department of Medical Services without the written permission of the Director.

History:1962, PL 7-12.

13.1042 Violation—Penalty.

~~Any person who violates any provision of this chapter, or who aids or abets any other person to violate it, shall be guilty of a class D felony and upon conviction, sentenced accordingly.~~

Any person who aids or abets any other person to violate this chapter as it relates to controlled substances shall be guilty of a class D felony and upon conviction, sentenced accordingly. This section shall not be available in order to increase the severity of a penalty for a offense otherwise described within this chapter and in no case shall a penalty or level of crime exceed that of the most severe crime or punishment available had the aider or abettor been charged with the substantive crime.