

Simple Possession

35 P.A. 780-113(a)(16)

Ungraded Misdemeanor

1st Offense- Max 1yr/\$5k Fine

2nd Offense- Max 3yrs/\$25k Fine*

License Suspension

No Mandatory Sentencing

OGS 3

Offense Defined:

Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

35 Pa. Stat. Ann. § 780-113(a)(16)

Penalties:

Any person who violates any of the provisions of clauses **...(15) through (20)... of subsection (a)** shall be guilty of a misdemeanor, [and] on conviction thereof, be sentenced to **imprisonment not exceeding one year or to pay a fine not exceeding five thousand dollars (\$5,000)**, or both...; but, if the violation is committed *after a prior conviction of such person for a violation of this act under this section has become final*, such person shall be sentenced to **imprisonment not exceeding three years or to pay a fine not exceeding twenty-five thousand dollars (\$25,000)**, or both.

35 Pa. Stat. Ann. § 780-113(b)

Issue: Subsequent Convictions

The above statute, *35 Pa. Stat. Ann. § 780-113(b)*, states:

*“if the violation is committed after a prior conviction of such person for a violation of this act **under this section** has become final...”*

According to the plain reading of the statute, for a defendant to be subjected to enhanced sentencing for a subsequent offense, the first offense must be “under this section” meaning, in most cases, a previous conviction for simple possession under *35 Pa. Stat. Ann. § 780-113(a)(16)*

Convictions for PWID, *35 Pa. Stat. Ann. § 780-113(a)(30)*, Possession of a Small Amount of Marijuana, *35 Pa. Stat. Ann. § 780-113(a)(31)*, and for Possession of Drug Paraphernalia, *35 Pa. Stat. Ann. § 780-113(a)(32)* **DO NOT COUNT AS PREVIOUS CONVICTIONS UNDER THIS SUBSECTION.**

License Suspension

Suspension.--**The department shall suspend the operating privilege of any person upon receiving a certified record of the person's conviction of any offense involving the possession, sale, delivery, offering for sale, holding for sale or giving away of any controlled substance** under the laws of the United States, this Commonwealth or any other state, or any person 21 years of age or younger upon receiving a certified record of the person's conviction or adjudication of delinquency under 18 Pa.C.S. § 2706 (relating to terroristic threats) committed on any school property, including any public school grounds, during any school-sponsored activity or on any conveyance providing transportation to a school entity or school-sponsored activity.

(1) The period of suspension shall be as follows:

(i) For a **first offense**, a period of **six months** from the date of the suspension

(ii) For a **second offense**, a period of **one year** from the date of the suspension

(iii) For a **third and any subsequent offense** thereafter, a period of **two years from the date of the suspension**.

(2) For the purposes of this subsection, the term "conviction" shall include any conviction or adjudication of delinquency for any of the offenses listed in paragraph (1), whether in this Commonwealth or any other Federal or state court.

75 Pa. Cons. Stat. Ann. § 1532 (c)