

AN ACT

To amend 34 PNC Chapter 33 to increase penalties for offenses involving controlled substances; to allow the court to order restitution for the costs of investigation and prosecution of drug cases; to establish a Drug Fine Collection Fund; to amend 17 PNC 2301 to specifically include law enforcement officers within the scope of the law prohibiting official misconduct; to add a new section 3111 to Title 17 of the Palau National Code to allow a court to order a non-citizen convicted of a felony to be permanently deported after serving at least one-third of his sentence; to add a new section 3008 to Title 17 of the Palau National Code to prohibit falsely implicating another in a crime; and for other purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Amendments. 34 PNC Chapter 33 is amended as follows:

"§3301. Trafficking.

(a) . . .

(b) Any person who violates subsection (a) with respect to:

(1) a substance classified in Schedules I or II which is a narcotic, except those substances specified in subsection (5), shall be sentenced to a term of imprisonment for not more than 10 years, a fine of not more than \$10,000, or both;

(2) any other controlled substance classified in Schedules I, II or III, except those substances specified in subsection (5), shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than \$5,000, or both;

(3) . . .

(4) . . .

(5) methamphetamine, as defined in 34 PNC 3106(c)(2), heroin, cocaine, as defined in 34 PNC 3106 (a) (4), lysergic acid diethylamide ("LSD"), or morphine, shall be sentenced to a term of imprisonment of not less than 25 years but not more than 50 years, and a fine of not less than \$50,000 but not more than \$1,000,000. Notwithstanding any other provision of law, a person sentenced to imprisonment under this subsection shall not be eligible for any work-release program.

(c)

(d) Any person who attempts to import into the Republic or to manufacture methamphetamine, heroin, cocaine, LSD, or morphine, shall be sentenced to a term of imprisonment of not less than 25 years but not more than 50 years, and a fine of not less than \$50,000 but not more than \$1,000,000.

(e) The minimum and maximum term of imprisonment for any Bureau of Public Safety police officer, customs officer, immigration officer, airport or port security officer or quarantine officer who violates subsection (a) or (d) of this section shall be five years more than the penalty otherwise prescribed by subsection (b) or (d).

§3302. Possession.

(a)

(b)

(c) Any person who violates subsection (a) with respect to marihuana shall be penalized as follows:

(1) Any person who possesses two ounces or less shall be fined \$500 in the form of a citation which can be paid to the Court Clerk within 30 days after receipt. Any person who is cited for possession of two ounces or less of marihuana shall be fined \$1,000 in the form of a citation for each subsequent violation of this subsection.

(2) Any person possessing more than two ounces but not more than one pound shall be sentenced on first conviction to a term of imprisonment of one year and fined not more than \$3,000; provided, that eleven months of the sentence shall be suspended on the condition that the person enroll in a drug counseling program approved by the court and undergo regular drug testing at least four times per year for a period of three years as directed by the court, at his or her own expense or, if a minor, at the expense of his or her parents or legal guardian(s). If the mandatory drug testing reveals the illegal use of a controlled substance at any time during the three year testing period, or if the person does not complete the drug counseling program, the suspension shall be automatically revoked and the person shall be immediately imprisoned for the remainder of the sentence and shall not be eligible for parole. On subsequent conviction, the person shall be sentenced to a term of imprisonment of not more than two years, a fine of not more than \$5,000, or both.

(3) Any person possessing more than one pound of marihuana shall be sentenced to a term of not more than 10 years, a fine of no more than \$15,000, or both.

(d) Notwithstanding any other provision of law, any person who violates subsection (a) with respect to methamphetamine, as defined in 34 PNC 3106(c) (2), heroin, cocaine, as defined in 34 PNC 3106 (a) (4), lysergic acid diethylamide ("LSD"), or morphine shall be penalized as follows:

(1) Any person who possesses one gram or less shall be sentenced on first conviction to a term of imprisonment of one year and fined not more than \$3,000; provided, that nine months of the sentence shall be suspended on the condition that, immediately upon release from prison, the person enroll in a drug counseling program approved by the court and undergo regular drug testing at least four times per year for a period of three years as directed by the court, at his or her own expense or, if a minor, at the expense of his or her parents or legal guardian(s). If the mandatory drug testing reveals the illegal use of a controlled substance at any time during the three year testing period, or if the person does not complete the drug counseling program, the suspension shall be automatically revoked and the person shall be immediately imprisoned for the remainder of the sentence and shall not be eligible for parole. On subsequent conviction, the person shall be sentenced to a term of imprisonment of not more than two years, a fine of not more than \$5,000, or both.

(2) Any person who possesses more than one gram shall be sentenced on first conviction to a term of imprisonment of not less than 3 years nor more than 7 years and may be fined not less than \$2,500 nor more than \$10,000. On subsequent convictions, the person shall be sentenced to a term of imprisonment of not less than 7 years nor more than 14 years and may be fined not less than \$10,000 nor more than \$50,000.

(3) Any person imprisoned under this subsection shall receive drug counseling, the cost of which shall be borne by the national government. Such counseling shall begin immediately upon imprisonment and shall continue for a reasonable period of time as ordered by the court.

(e) The minimum and maximum term of imprisonment for any Bureau of Public Safety police officer, customs officer, immigration officer, airport or port security officer or quarantine officer who violates subsection (a) of this section shall be three years more than the penalty otherwise prescribed by subsection (b), (c) or (d).

....

§3306. Restitution; instrumentality of crime; proceeds of drug trafficking.

(a) Any penalty imposed for violation of this division shall be in addition to, and not in lieu of, any civil or administrative sanction authorized by law.

(b) The court may order any person convicted of a violation of this division to make restitution to the Republic for reasonable costs incurred in the investigation and prosecution of the criminal case against him. The court may order that such restitution be in the form of direct monetary payment, seizure of the convicted person's assets, garnishment of future wages or salary, seizure and sale of the convicted person's real or personal property, or any combination of the above methods.

(c) When the interests of justice so require, the court may order seized any real or personal property of the convicted where it is proven by clear and convincing evidence that such property was either used as an instrumentality in the violation of 34 PNC 3301, or that such property was purchased with the proceeds from drug trafficking.

§3307. Distribution to persons under eighteen.

(a) Any person who is at least 18 years of age who violates section 3301(a) (1) of this title by distributing a substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that authorized by section 3301 (a) (1), by the fine authorized by section 3301(a)(1), or both.

(b) Any person who is at least 18 years of age who violates section 3301 (a) (1) of this title by distributing any other controlled substance listed in Schedules I, II, III, or IV to a person under 18 years of age who is at least three years his junior is punishable by a term of imprisonment up to twice that authorized by section 3301 (b) (2), by the fine authorized by section 3301(b)(2), or both.

....

§3310. Cooperation with law enforcement officers.

The Court may impose a sentence or penalty less severe than the minimum punishment set out in this chapter upon any person who, after committing a violation of this chapter, willingly cooperates with law enforcement officers in their investigation of violations of this chapter.

§3311. Public notice at points of entry. The Bureau of Public Safety shall post public notices in English, Palauan, and other languages as it shall deem proper, in prominent locations throughout the Republic, including in areas entered by incoming passengers after they disembark from air and sea transports at Airai airport and Malakal harbor, respectively, warning of the penalties for persons found to be in violation of this chapter and warning that anyone who traffics in illegal drugs shall be prosecuted to the fullest extent of the law.

§3312. Drug Fine Collection Fund; establishment.

The Minister of Administration shall create within the National Treasury a special fund to be known as the "Drug Fine Collection Fund" which shall be maintained separate from other funds

of the Republic. The Minister of Administration shall maintain independent records and accounts in connection with the Drug Fine Collection Fund. All funds received from the payment of fines for violations of this chapter or restitution orders under 34 PNC 3306 shall be deposited into the Drug Fine Collection Fund and, subject to appropriation by law, shall be used to supplement rewards offered by the Crime Stoppers program for information regarding drug-related crimes, for the operations of the Bureau of Public Safety, and for operation of drug treatment and counseling programs."

Section 2. Amendment. 17 PNC 2301 is hereby amended as follows:

"§2301. Defined; punishment.

Every person who, being a public official or police officer, customs officer, immigration officer, airport or port security officer or quarantine officer, shall do any illegal acts under the color of office, or willfully neglect to perform the duties of his office as provided by law, shall be guilty of misconduct in public office, and upon conviction thereof, shall be imprisoned for a period of not more than one year, or fined \$1,000, or both."

Section 3. Amendment. Title 17 of the Palau National Code is hereby amended to add a new section 3111 to read as follows:

"§3111. Deportation of non-citizens.

If the interests of the people of the Republic will be served, the court, at the time of sentencing, may order any non citizen who is convicted of a felony, other than a crime punishable by life imprisonment, to be permanently deported after serving no less than one-third of the term of imprisonment that would otherwise be imposed and paying any fine imposed by the court. It shall be unlawful for any person who is deported pursuant to this section to subsequently re-enter the Republic, and any person who violates this provision shall be required to serve the maximum sentence that could have been imposed' on that person for the crime for which the person was deported."

Section 4. Amendment. Title 17 of the Palau National Code is hereby amended to add a new section 3008 to read as follows: "§3008. Falsely implicating another in a crime.

Any person who manufactures, or causes the manufacturing of, any evidence against another person, or places, or causes to be placed, incriminating evidence on the person, or on or within the property of the other person, with the intent of causing such other person to be charged with a crime, shall be guilty of violating this section and shall be imprisoned for not less than 5 years nor more than 25 years, and fined not less than \$5,000 nor more than \$25,000."

Section 5. Effective date. This Act shall take effect upon its approval by the President of the Republic of Palau, or upon its becoming law without such approval, except as otherwise provided by law.

PASSED: June 12, 1997

Approved this 13th day of June, 1997.

/s/

Kuniwo Nakamura, President
Republic of Palau