

(1) THAT THE PERSON REPRESENTS AS A CONTROLLED DANGEROUS SUBSTANCE;

(2) THAT THE PERSON INTENDS FOR USE OR DISTRIBUTION AS A CONTROLLED DANGEROUS SUBSTANCE; OR

(3) UNDER CIRCUMSTANCES WHERE ONE REASONABLY SHOULD KNOW THAT THE NONCONTROLLED SUBSTANCE WILL BE USED OR DISTRIBUTED FOR USE AS A CONTROLLED DANGEROUS SUBSTANCE.

(B) CONSIDERATIONS.

TO DETERMINE IF A PERSON HAS VIOLATED THIS SECTION, THE COURT OR OTHER AUTHORITY SHALL INCLUDE IN ITS CONSIDERATION:

(1) WHETHER THE NONCONTROLLED SUBSTANCE WAS PACKAGED IN A MANNER NORMALLY USED TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE ILLEGALLY;

(2) WHETHER THE DISTRIBUTION OR ATTEMPTED DISTRIBUTION INCLUDED AN EXCHANGE OF OR DEMAND FOR MONEY OR OTHER PROPERTY AS CONSIDERATION, AND WHETHER THE AMOUNT OF CONSIDERATION WAS SUBSTANTIALLY GREATER THAN THE REASONABLE VALUE OF THE NONCONTROLLED SUBSTANCE; AND

(3) WHETHER THE PHYSICAL APPEARANCE OF THE NONCONTROLLED SUBSTANCE IS SUBSTANTIALLY IDENTICAL TO THAT OF A CONTROLLED DANGEROUS SUBSTANCE.

(C) PENALTY.

A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$15,000 OR BOTH.

(D) BELIEF NOT A DEFENSE.

IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE DEFENDANT BELIEVED THAT THE NONCONTROLLED SUBSTANCE WAS A CONTROLLED DANGEROUS SUBSTANCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 286B(b) through (f).

In subsection (b)(1) of this section, the reference to a controlled "dangerous" substance is added for consistency within this title.

In subsection (c) of this section, the former phrase "with respect to the distribution, attempt to distribute, or possession with intent to distribute a noncontrolled substance as a controlled dangerous substance" is deleted as redundant.

Former Art. 27, § 286B(a)(2) and its introductory language, which defined