

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES (Filing No. H-233)  
110th LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 67, L.D. 104, Bill, "AN ACT to Prohibit the Sale and Use of Drug Paraphernalia."

Amend the Bill in that part designated "§1111-A.", subsection 1, in the 9th line (7th line in L.D.) by inserting after the underlined word "chapter" the underlined words and figures 'or Title 22, section 2383'

Further amend the Bill in that part designated "§1111-A.", subsection 1, by striking out all of paragraphs J and K and inserting in their place the following:

'J. Containers and other objects used, intended for use or designed for use in storing or concealing scheduled drugs; and'

Further amend the Bill in that part designated "§1111-A.", subsection 1, paragraph L, at <sup>the beginning of</sup> the first line by striking out the underlined letter "L." and inserting in its place the underlined letter 'K.'

Further amend the Bill in that part designated "§1111-A.", by inserting after subsection 1 the following:

For purposes of this section,  
'2. /drug paraphernalia does not include hypodermic apparatus. < -> Possession of, furnishing or trafficking in hypodermic apparatus constitute separate offenses under sections 1110 and 1111.

Further amend the Bill in that part designated "§1111-A.",  
subsection 3

by inserting at the end before the period the following:

'or Title 22, section 2383 '

Further amend the Bill in that part designated "§1111-A.",  
by striking out all of subsection 4 and inserting in its place  
the following:

'4. It is unlawful for any person to traffick in or furnish 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 scheduled drug in violation of this chapter or Title 22, section 2383.'

Further amend the Bill in that part designated "§1111-A.",  
by renumbering subsections 2, 3 and 4 to read 3, 4 and 5.

Further amend the Bill in that part designated "§1111-A.",  
by striking out all of subsections 5, 6, 7 and 8 and inserting  
in their place the following:

'6. It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.'

7. Violation of subsection 4 is a civil violation for which a forfeiture of not more than \$200 may be adjudged.

8. Violation of subsection 5 or 6 is a Class E crime, except that if the actor trafficks or furnishes drug paraphernalia to <sup>a</sup> child under 16 years of age, it is a Class D crime.

9. Any drug paraphernalia possessed in violation of this section is declared to be contraband and may be seized and confiscated by the State.'

#### Statement of Fact

This amendment adds language to the model act to insure that marijuana paraphernalia is included in the definition of drug paraphernalia and in the substantive offenses involving drug paraphernalia. The original bill defined drug paraphernalia and provided drug paraphernalia offenses in terms of the possession or use of drug paraphernalia in violation of the drug laws of Maine "this chapter," the chapter in the/Criminal Code concerning drug-related offenses. This amendment adds violations of Title 22, section 2383, which relates to the civil violation of possession of marijuana.

The original bill also included hypodermic apparatus in the definition of drug paraphernalia. Since the current Maine Criminal Code has 2 sections devoted entirely to the possession of, furnishing and trafficking in hypodermic apparatus it was felt unnecessary

and redundant to include them in this bill. Current Maine law provides a much more severe penalty for hypodermic apparatus offenses in/sections 1110 and 1111. Accordingly, "hypodermic apparatus" has been removed from the definition of drug paraphernalia by this amendment. The current stricter offenses for possession of, furnishing or trafficking in hypodermic apparatus are retained.

The original bill provided offenses for "manufacturing" or "delivering" drug paraphernalia. Current drug offenses in Maine involve "trafficking in" or "furnishing" drugs. The Maine Criminal Code defines "trafficking" to include "manufacturing" and defines "furnishing" to include "delivery." This amendment replaces "manufacturing" and "delivering" with "trafficking" and "furnishing." The intent of this change is to include manufacturing and delivering drug paraphernalia in the substantive offenses, but not to limit it to those particular activities. Making this change will conform this bill to the other drug related offenses in the Maine Criminal Code. If this change is not made, the use of the more limiting words may appear to limit the scope of this bill.

Possession of drug paraphernalia is made a civil violation by this amendment. This change makes the bill more consistent with Maine law which treats possession of ~~—————~~ <sup>or less</sup> 1 1/2 ounces/of marijuana a civil violation.

This amendment also upgrades the crime one degree for trafficking

in or furnishing drug paraphernalia to a child under 16/ This change makes the bill consistent with other Maine drug laws. years of age.

The original bill was patterned after the model Act drafted by the Federal Drug Enforcement Administration. That Act has been found constitutional by several Federal District Courts largely because of the intent required as an element of the crime. These amendments do not alter that necessary language. The purpose of these amendments is to conform the model Act to current Maine law without altering the substantive parts of the bill which have withstood court challenges to date.

Reported by the Committee on Judiciary.  
Reproduced and distributed under the direction of the Clerk of the House.

4/23/81

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