

MAINE STATE LEGISLATURE

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(New Draft of H.P. 1051, L.D. 1414)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1882

H.P. 1380 House of Representatives, June 30, 1987
Reported by Representative PARADIS from the Committee on
Judiciary and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored by Representative TAYLOR of
Camden. Cosponsored by Representative HIGGINS of Scarborough,
Senators TWITCHELL of Oxford and WEBSTER of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Relating to Aggravated Trafficking or
2 Furnishing Scheduled Drugs under the
3 Maine Criminal Code.
4

5 Be it enacted by the People of the State of Maine as
6 follows:

7 Sec. 1. 17-A MRSA §1103, sub-§3, as amended by
8 PL 1987, c. 164, §1, is further amended to read:

9 3. A person shall be presumed to be unlawfully
10 trafficking in scheduled drugs if he intentionally or
11 knowingly possesses more than 2 pounds of marijuana
12 ~~or one ounce~~, 28 grams or more of cocaine or 28 grams
13 or more of heroin.

14 Sec. 2. 17-A MRSA §1103, sub-§4, as enacted by
15 PL 1987, c. 164, §2, is amended to read:

1 4. As used in this section, "cocaine" means co-
2 caine--or any salt, compound, isomer,--derivative
3 mixture or preparation which is chemically equivalent
4 or identical--to any of these substances and any ac-
5 tive or inactive ingredient used as a diluent con-
6 taining cocaine or any salt, isomer or derivative
7 thereof. As used in this section, "heroin" means any
8 compound, mixture or preparation containing heroin,
9 diacetylmorphine.

10 Sec. 3. 17-A MRSA §1105, sub-§1, as amended by
11 PL 1975, c. 740, §102, is repealed and the following
12 enacted in its place:

13 1. A person is guilty of aggravated trafficking
14 or furnishing scheduled drugs if:

15 A. In violation of section 1103, 1104 or 1106,
16 he trafficks with or furnishes to a child, in
17 fact, under 18 years of age a scheduled drug; or

18 B. He violates section 1103, 1104 or 1106, and,
19 at the time of the offense, he has been convicted
20 of any offense under this chapter punishable by a
21 term of imprisonment of more than one year, or
22 under any law of the United States or of another
23 state relating to scheduled drugs, as defined in
24 this chapter, and punishable by a term of impris-
25 onment of more than one year. For purposes of
26 this paragraph, a person shall have been convict-
27 ed of an offense on the date the judgment of con-
28 viction was entered by the trial court.

29 Sec. 4. 17-A MRSA §1106, sub-§3, as amended by
30 PL 1987, c. 164, §3, is amended to read:

31 3. A person shall be presumed to be unlawfully
32 furnishing a scheduled drug if he intentionally or
33 knowingly possesses more than 1 1/2 ounces of mari-
34 juana or 1/2 ounce, 14 grams or more of cocaine or 14
35 grams or more of heroin.

36 Sec. 5. 17-A MRSA §1106, sub-§4, as enacted by
37 PL 1987, c. 164, §4, is amended to read:

38 4. As used in this section, "cocaine" shall and
39 "heroin" have the same meaning as defined meanings as
40 in section 1103, subsection 4.

1 Sec. 6. 17-A MRSA §1110, as enacted by PL 1975,
2 c. 499, §1, is repealed and the following enacted in
3 its place:

4 §1110. Trafficking in or furnishing hypodermic appa-
5 ratUSES

6 1. A person is guilty of trafficking in or fur-
7 nishing hypodermic apparatuses if he intentionally or
8 knowingly trafficks in or furnishes a hypodermic ap-
9 paratus, unless the conduct which constitutes such
10 trafficking or furnishing is either:

11 A. Expressly authorized by Title 22; or

12 B. Expressly made a civil violation by Title 22.

13 2. Trafficking in hypodermic apparatuses is a
14 Class C crime. Furnishing hypodermic apparatuses is a
15 Class D crime.

16 Sec. 7. 17-A MRSA §1252, sub-§5-A is enacted to
17 read:

18 5-A. Notwithstanding any other provision of this
19 Code, for a person convicted of violating section
20 1105:

21 A. Except as otherwise provided in paragraphs B
22 and C, the minimum sentence of imprisonment,
23 which shall not be suspended, shall be as fol-
24 lows: When the sentencing class is Class A, the
25 minimum term of imprisonment shall be 4 years;
26 when the sentencing class is Class B, the minimum
27 term of imprisonment shall be 2 years; and, with
28 the exception of trafficking or furnishing mari-
29 juana under section 1105, when the sentencing
30 class is Class C, the minimum term of imprison-
31 ment shall be one year;

32 B. The court may impose a sentence other than a
33 minimum unsuspended term of imprisonment set
34 forth in paragraph A, if:

35 (1) The court finds by substantial evidence
36 that:

1 (a) Imposition of a minimum
2 unsuspended term of imprisonment under
3 paragraph A will result in substantial
4 injustice to the defendant. In making
5 this determination, the court shall
6 consider, among other considerations,
7 whether the defendant did not know and
8 reasonably should not have known that
9 the victim was under 18 years of age;

10 (b) Failure to impose a minimum
11 unsuspended term of imprisonment under
12 paragraph A will not have an adverse
13 effect on public safety; and

14 (c) Failure to impose a minimum
15 unsuspended term of imprisonment under
16 paragraph A will not appreciably impair
17 the effect of paragraph A in deterring
18 others from violating section 1105; and

19 (2) The court finds that:

20 (a) The defendant has no prior crimi-
21 nal history; and

22 (b) The defendant is an appropriate
23 candidate for an intensive supervision
24 program, but would be ineligible to
25 participate under a sentence imposed
26 under paragraph A; or

27 (c) The defendant's background, atti-
28 tude and prospects for rehabilitation
29 and the nature of the victim and the
30 offense indicate that imposition of a
31 sentence under paragraph A would frus-
32 trate the general purposes of sentenc-
33 ing set forth in section 1151.

34 If the court imposes a sentence under this para-
35 graph, the court shall state in writing its rea-
36 sons for its findings and for imposing a sentence
37 under this paragraph rather than under paragraph
38 A; and

1 C. If the court imposes a sentence under para-
2 graph B, the minimum sentence of imprisonment,
3 which shall not be suspended, shall be as fol-
4 lows: When the sentencing class is Class A, the
5 minimum term of imprisonment shall be 9 months;
6 when the sentencing is Class B, the minimum term
7 of imprisonment shall be 6 months; and with the
8 exception of trafficking or furnishing marijuana
9 under section 1105, when the sentencing class is
10 Class C, the minimum term of imprisonment shall
11 be 3 months.

12 FISCAL NOTE

13 This new draft will have a significant impact on
14 the General Fund beginning in fiscal year 1990. This
15 will occur due to the mandatory sentencing imposed,
16 resulting in a larger number of prisoners serving a
17 longer period of time.

18 STATEMENT OF FACT

19 This new draft:

20 1. Creates a presumption of trafficking for a
21 person intentionally or knowingly possessing 28 grams
22 or more of heroin;

23 2. Creates a presumption of furnishing for a
24 person intentionally or knowingly possessing 14 grams
25 or more of heroin;

26 3. Defines the crime of aggravated trafficking
27 or furnishing scheduled drugs as:

28 A. Trafficking with or furnishing to a child un-
29 der 18 years of age; or

30 B. Trafficking or furnishing after having been
31 previously convicted of a drug felony;

32 4. Creates a Class D crime for furnishing a hy-
33 podermic apparatus; and

1 5. Provides mandatory sentences for persons con-
2 victed of aggravated trafficking or furnishing sched-
3 uled drugs. The new draft:

4 A. Deletes aggravated trafficking or furnishing
5 of 2 pounds or less of marijuana from any manda-
6 tory minimum term of imprisonment; and

7 B. Under certain circumstances, permits a court
8 to sentence any other offender of the aggravated
9 trafficking or furnishing law to a sentence other
10 than the mandatory minimum term of imprisonment
11 set by the new draft. The new draft requires the
12 court to consider certain factors and make writ-
13 ten findings before setting an alternate sen-
14 tence. In no event may the court sentence such
15 an offender to less than mandatory imprisonment
16 for 9 months for a Class A crime; 6 months for a
17 Class B crime; or 3 months for a Class C crime,
18 other than one involving aggravated trafficking
19 or furnishing of 2 pounds or less of marijuana.

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