

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

---

Legislative Document

No. 2474

H.P. 1803

House of Representatives, April 5, 1990

Reported by Representative PARADIS from the Committee on Judiciary pursuant to H.P. 1769 and printed under Joint Rule 2.

A handwritten signature in black ink that reads "Ed Pert".

EDWIN H. PERT, Clerk

---

STATE OF MAINE

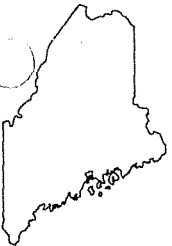
---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

An Act to Amend the Maine Criminal Code with Regard to Drugs.

---



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

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

Sec. 1. 17-A MRSA §1102, sub-§1, ¶I, as amended by PL 1989, c. 334, §2, is further amended to read:

I. Unless listed or described in another schedule, all narcotic drugs, including, but not limited to, heroin (diacetylmorphine), methadone, pethidine, morphine and opium. As used in this chapter, "heroin" means any compound, mixture or preparation containing heroin;

Sec. 2. 17-A MRSA §1102, sub-§1, ¶J, as enacted by PL 1977, c. 649, §1, is amended to read:

J. Phencyclidine;

Sec. 3. 17-A MRSA §1102, sub-§1, ¶¶K to M are enacted to read:

K. Lysergic acid diethylamide, and its salts, isomers and salts of isomers;

L. Lysergic acid; and

M. Lysergic acid amide.

Sec. 4. 17-A MRSA §1102, sub-§2, ¶H, as enacted by PL 1975, c. 740, §100, is amended to read:

H. Unless listed or described in another schedule, any of the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3, 4 -- methylenedioxy amphetamine;
- (2) 5 -- methoxy -- 3, 4 -- methylenedioxy amphetamine;
- (3) 3, 4, 5 -- trimethoxy amphetamine;
- (4) 4 -- methyl -- 2, 5 -- dimethoxyamphetamine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) Dipropyltryptamine;
- ~~(8) -- Lysergic acid diethylamide --~~
- (9) (8) 2, -- 3 methylenedioxy amphetamine;

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

~~(10)~~ (9) 2, 5 -- dimethoxyamphetamine;

~~(11)~~ (10) 4 -- bromo -- 2, 5 -- dimethoxyamphetamine;  
and

~~(12)~~ (11) 4 -- methoxyamphetamine; and

Sec. 5. 17-A MRSA §1102, sub-§2, ¶I, as enacted by PL 1975, c. 740, §100, is repealed.

Sec. 6. 17-A MRSA §1102, sub-§2, ¶J, as amended by PL 1977, c. 649, §3, is repealed.

Sec. 7. 17-A MRSA §1102, sub-§4, ¶C, as amended by PL 1987, c. 747, §1, is further amended to read:

C. All nonprescription drugs other than those included in schedules W, X or Y as the Board of Commissioners of the Profession of Pharmacy shall duly designate;

Sec. 8. 17-A MRSA §1103, sub-§3, as amended by PL 1989, c. 336, is repealed and the following enacted in its place:

3. A person is presumed to be unlawfully trafficking in scheduled drugs if the person intentionally or knowingly possesses any scheduled drug that is, in fact:

A. More than 2 pounds of marijuana;

B. Fourteen grams or more of cocaine;

C. Four grams or more of heroin; or

D. Lysergic acid diethylamide in any of the following quantities, states or concentrations:

(1) Any compound, mixture, substance or solution in a liquid state that contains a detectable quantity of lysergic acid diethylamide;

(2) Fifty or more squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

(3) Any quantity of any compound mixture or substance that, in the aggregate, contains 2,500 micrograms or more of lysergic acid diethylamide.

Sec. 9. 17-A MRSA §1103, sub-§5 is enacted to read:

2           5. Quantities of scheduled drugs involved in violations of  
3 this section or sections 1105 to 1107, committed pursuant to one  
4 scheme or course of conduct and confiscated within a 48-hour  
5 period, may be aggregated to charge a single violation of this  
6 section of appropriate class. Subject to the requirement that  
7 the conduct of the defense may not be prejudiced by lack of fair  
8 notice or by surprise, the court may at any time order that a  
9 single aggregate count be considered as separate violations. An  
10 aggregate count of violations may not be deemed duplicitous  
11 because of such an order and no election may be required.  
12 Prosecution may be brought in any venue in which one of the  
13 violations aggregated was committed.

14           **Sec. 10. 17-A MRSA §1105, sub-§1, ¶¶D and E,** as enacted by PL  
15 1989, c. 600, Pt. A, §§5 and 6, are amended to read:

16           D. A person violates section 1103 or 1106, and, at the time  
17 of the offense, the person trafficks in or furnishes cocaine  
18 in a quantity of 112 grams or more; ~~ex~~

19           E. A person violates section 1103, and, at the time of the  
20 offense, the person is on a school bus or on or within 1,000  
21 feet of the real property comprising a private or public  
22 elementary or secondary school. For purposes of this  
23 paragraph, "school bus" has the same meaning as set forth in  
24 Title 29, section 2011, subsection 2, ~~or~~

25           **Sec. 11. 17-A MRSA §1105, sub-§1, ¶F** is enacted to read:

26           F. A person violates section 1103, and, at the time of the  
27 offense, the person enlists or solicits the aid of or  
28 conspires with a child who is, in fact, under 18 years of  
29 age, to traffick in or furnish any scheduled drug.

30           **Sec. 12. 17-A MRSA §1106, sub-§3,** as amended by PL 1989, c.  
31 253 and c. 344, §2 and as repealed and replaced by PL 1989, c.  
32 600, Pt. A, §§7 and 8, is repealed and the following enacted in  
33 its place:

34           3. A person is presumed to be unlawfully furnishing  
35 scheduled drugs if the person intentionally or knowingly  
36 possesses a scheduled drug that is, in fact:

37           A. More than 1 1/4 ounces of marijuana;

38           B. Seven grams or more of cocaine;

39           C. Two grams or more of heroin; or

40           D. Lysergic acid diethylamide in any of the following  
41 quantities or concentrations:

42

2                   (1) Not less than 25 squares, stamps, tablets or units  
3                   of any compound mixture or substance containing a  
4                   detectable quantity of lysergic acid diethylamide; or

5                   (2) Any quantity of any compound mixture or substance  
6                   that, in the aggregate, contains not less than 1,250  
7                   micrograms of lysergic acid diethylamide.

8  
9                   **Sec. 13. 17-A MRSA §1322, sub-§3, as amended by PL 1989, c.**  
10                   **188, is further amended to read:**

11                   **3. Economic loss.** "Economic loss" includes economic  
12                   detriment consisting of environmental clean-up expense, property  
13                   loss, allowable expense, work loss, replacement services loss  
14                   and, if injury causes death, dependent's economic loss and  
15                   dependent's replacement services loss. Noneconomic detriment is  
16                   not loss. Economic detriment is loss although caused by pain and  
17                   suffering or physical impairment.

18  
19                   A. ~~Allowable-expense.~~ "Allowable expense" means reasonable  
20                   charges incurred for reasonably needed products, services  
21                   and accommodations, including those for medical care,  
22                   rehabilitation, rehabilitative occupational training and  
23                   other remedial treatment and care, and nonmedical remedial  
24                   care and treatment rendered in accordance with a recognized  
25                   religious method of healing. The term includes reasonable  
26                   and customary charges incurred for expenses in any way  
27                   related to funeral, cremation and burial. It does not  
28                   include that portion of a charge for a room in a hospital,  
29                   clinic, convalescent or nursing home, or any other  
30                   institution engaged in providing nursing care and related  
31                   services, in excess of a reasonable and customary charge for  
32                   semiprivate accommodations, unless other accommodations are  
33                   medically required.

34  
35                   B. ~~Dependent's-economic-loss.~~ "Dependent's economic loss"  
36                   means loss after decedent's death of contributions of things  
37                   of economic value to his the decedent's dependents, not  
38                   including services they would have received from the  
39                   decedent if he the decedent had not suffered the fatal  
40                   injury, less expenses of the dependents avoided by reason of  
41                   decedent's death.

42  
43                   C. ~~Dependent's--replacement--services--loss.~~ "Dependent's  
44                   replacement loss" means loss reasonably incurred by  
45                   dependents after decedent's death in obtaining ordinary and  
46                   necessary services in lieu of those the decedent would have  
47                   performed for their benefit if he the decedent had not  
48                   suffered the fatal injury, less expenses of the dependents  
49                   avoided by reason of decedent's death and not subtracted in  
50                   calculating dependent's economic loss.

2 C-1. "Environmental clean-up expense" means any reasonable  
3 expense incurred for products and services needed to clean  
4 up any harm or damage caused to the environment, including  
5 any harm or damage caused by chemicals, to restore the  
6 environment to its previous condition prior to any harm or  
7 damage and for the proper disposal of chemicals and other  
8 materials, including those used in the manufacture of  
9 scheduled drugs in violation of chapter 45.

10 D. ~~Property--loss.~~ "Property loss" means the value of  
11 property taken from the victim, or of property destroyed or  
12 otherwise broken or harmed. A property loss ~~shall include~~  
13 includes the value of taxes or other obligations due to the  
14 government that have not been paid.

15 E. ~~Replacement--services--loss.~~ "Replacement services loss"  
16 means expenses reasonably incurred in obtaining ordinary and  
17 necessary services in lieu of those the injured person would  
18 have performed, not for income but for the benefit of  
19 himself the injured person or his the injured person's  
20 family, if he the injured person had not been injured.

21 F. ~~Work--loss.~~ "Work loss" means loss of income from work  
22 the injured person would have performed if he the injured  
23 person had not been injured and expenses reasonably incurred  
24 by him the injured person in obtaining services in lieu of  
25 those he the injured person would have performed for income,  
26 reduced by any income for substitute work actually performed  
27 by him the injured person or by income he the injured person  
28 would have earned in available appropriate substitute work  
29 he the injured person was capable of performing but  
30 unreasonably failed to undertake.

31  
32  
33  
34 **Sec. 14. 25 MRSA §2003, sub-§4, ¶¶B and C, as enacted by PL**  
35 **1985, c. 478, §2, are amended to read:**

36 B. Information of record relative to 3 or more convictions  
37 of the applicant for crimes punishable by less than one year  
38 imprisonment or one or more adjudications of the applicant  
39 for juvenile offenses involving conduct which that, if  
40 committed by an adult, is punishable by less than one year  
41 imprisonment; ~~or~~

42  
43 C. Information of record indicating that the applicant has  
44 engaged in reckless or negligent conduct; ~~or~~

45  
46 **Sec. 15. 25 MRSA §2003, sub-§4, ¶D is enacted to read:**

47 D. Information of record indicating that the applicant has  
48 been convicted of or adjudicated as having committed a  
49 violation of Title 17-A, chapter 45 or Title 22, section  
50 2383, or adjudicated as having committed a juvenile crime  
51

2 that is a violation of Title 22, section 2383 or a juvenile  
3 crime that would be defined as a criminal violation under  
4 Title 17-A, chapter 45 if committed by an adult.

6 **FISCAL NOTE**

8 If this legislation is enacted, the average sentence length  
9 would increase as a result of changing the classification for  
10 trafficking in or furnishing LSD from a Class C crime to a Class  
11 B crime. The increased annual operational costs to the  
12 Department of Corrections, beginning in 1993, are estimated to be  
13 approximately \$136,000 for which a General Fund appropriation  
14 will be required. This amount does not include inflation or  
15 possible capital costs.

16 If enacted, the Judicial Department will absorb, within its  
17 budgeted resources, the additional costs associated with an  
18 anticipated increase in the number of cases filed as a result of  
19 this legislation.

22 **STATEMENT OF FACT**

24 This bill consolidates the provisions of several bills into  
25 one bill.

28 This bill moves lysergic acid diethylamide, or LSD, from the  
29 less significant Schedule X to the more significant Schedule W.  
30 In so doing, the penalties for furnishing and trafficking in LSD  
31 are increased by one class.

32 This bill corrects the language of the law to conform with  
33 the name of the Board of Commissioners of the Profession of  
34 Pharmacy, as established under the Maine Revised Statutes, Title  
35 32, chapter 117.

38 The bill allows for the aggregation of the weights of drugs  
39 confiscated over a 48-hour period arising out of a single course  
40 of conduct for the purpose of determining the proper charge.  
41 This change has an effect on both the violation charged and the  
42 penalty.

44 This bill establishes rebuttable presumptions of trafficking  
45 in LSD and furnishing LSD based on the possession of certain  
46 quantities of LSD, while at the same time incorporating the  
47 presumptive quantities previously existing for marijuana, cocaine  
48 and heroin. The new presumptive quantities of LSD are largely  
49 based on the experiences of the Federal Drug Enforcement  
50 Administration and the state Bureau of Intergovernmental Drug  
51 Enforcement through undercover purchases, laboratory analysis and  
52 the debriefing of cooperating defendants, although the quantities



2 are set at a somewhat higher level, allowing for a margin of  
error.

4 In establishing these rebuttable presumptions for furnishing  
and trafficking in LSD, this bill uses the term "units" and  
6 purposefully does not use the term "dosage units" as defined in  
Title 17-A, section 1101, subsection 2. It is intended that the  
8 common meaning of "units" apply.

10 The bill adds a new course of conduct for which a person may  
be charged with an aggravated drug offense. This affects persons  
12 charged with trafficking. If a person enlists or solicits the  
aid of a juvenile to traffick in or furnish the drug, it is an  
14 aggravated offense.

16 This bill broadens possible restitution to include  
environmental clean-up expenses. Although the initial concern  
18 was the harmful effects of illicit drug laboratories on the  
environment, the possible restitution has been expanded to cover  
20 all types of harm or damage to the environment for which the  
victim, including the government, currently ends up paying.

22 The bill amends the definition of good moral character under  
the concealed firearms permit laws to deny persons who have been  
24 convicted or adjudicated of having violated the drug laws within  
the last 5 years the privilege of obtaining a permit. Such a  
26 conviction would also result in the revocation of an existing  
28 permit.

30 To estimate the projected impact of this bill, the  
Department of Corrections reviewed all cases of offenders serving  
32 time in the correctional system for possession of, furnishing of,  
and trafficking in Schedule X and Schedule W drugs. The results  
34 of this review showed that:

36 1. The average length of actual time served in prison for  
trafficking in or furnishing of a Schedule X drug is 2 years  
38 and 6 months;

40 2. The average length of actual time served in prison for  
trafficking in or furnishing a Schedule W drug is 4 years  
42 and 3 months; and

44 3. The average length of actual time served in prison for  
possession of a Schedule X or Schedule W drug is one year  
46 and one month.

48 Based on these data and present sentencing practices, the  
department projects that reclassifying LSD to a Schedule W drug,  
50 which increases the crime class from Class C to Class B, and the  
penalty from up to 5 years to up to 10 years, would result in a  
52 net gain of one year and 7 months in the length of stay of an  
offender in prison for trafficking or furnishing LSD.

54

2 If these changes were to become effective this calendar  
year, impact on the correctional system would begin in early 1993  
4 with those prisoners who in the past were released after 2 years  
and 6 months, and who now have another one year and 7 months to  
6 serve before being released. In short, a bed that was occupied  
for an average of 2 years and 6 months would now be occupied 4  
8 years and 3 months, resulting in an increase in the average daily  
population from 6 to 9 inmates in late 1994.

10 At the present time there is an average of 6 prisoners  
serving sentences for trafficking or furnishing LSD. Based on  
12 the impact described above, the fiscal impact, beginning in 1993,  
would be increased annual operational costs of about \$136,000.  
14 These costs are based on today's cost per day per inmate, \$62,  
and do not include inflation and possible capital cost.  
16