

# MAINE STATE LEGISLATURE

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L.D. 1457

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MAJORITY  
CRIMINAL JUSTICE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1038, L.D. 1457, Bill, "An Act to Discourage the Spread of "Crack" Cocaine"

Amend the bill by striking out all of sections 2 and 3 (page 1, lines 26 to 43 in L.D.) and inserting in their place the following:

Sec. 2. 17-A MRSA §1103, sub-§3, ¶B, as enacted by PL 1989, c. 924, §8, is amended to read:

B. Fourteen grams or more of cocaine or 4 grams or more of cocaine in the form of cocaine base;

Sec. 3. 17-A MRSA §1105, sub-§1, ¶B, as repealed and replaced by PL 1989, c. 600, Pt. A, §§2 and 3, is amended to read:

B. The person violates section 1103, 1104 or 1106, and, at the time of the offense, the person has been convicted of any offense under this chapter punishable by a term of imprisonment of more than one year, or under any law of the United States, of another state or of a foreign country relating to scheduled drugs, as defined in this chapter, and punishable by a term of imprisonment of more than one year. For purposes of this paragraph, a person ~~shall have~~ has been convicted of an offense on the date the judgment of conviction was entered by the ~~trial~~ court;

**COMMITTEE AMENDMENT**

2           **Sec. 4. 17-A MRSA §1105, sub-§1, ¶D**, as amended by PL 1989, c.  
3 924, §10, is further amended to read:

4  
5           D. A person violates section 1103 or 1106, and, at the time  
6 of the offense, the person trafficks in or furnishes cocaine  
7 in a quantity of 112 grams or more or cocaine in the form of  
8 cocaine base in a quantity of 32 grams or more;

10           **Sec. 5. 17-A MRSA §1106, sub-§3, ¶B**, as enacted by PL 1989, c.  
11 924, §12, is amended to read:

12  
13           B. Seven grams or more of cocaine or 2 grams or more of  
14 cocaine in the form of cocaine base;

16           **Sec. 6. 17-A MRSA §1107, sub-§2**, as amended by PL 1989, c.  
17 384, §4 and c. 538, §§3 and 4, is repealed and the following  
18 enacted in its place:

20           2. Violation of this section is:

22           A. A Class C crime if the drug is:

24                   (1) Heroin (diacetylmorphine); or

26                   (2) Cocaine in the form of cocaine base and at the  
27 time of the offense the person has been convicted of  
28 any offense under this chapter or under any law of the  
29 United States, another state or a foreign country  
30 relating to scheduled drugs, as defined in this  
31 chapter. For the purposes of this paragraph, a person  
32 has been convicted of an offense on the date the  
33 judgment of conviction was entered by the court;

34           B. A Class D crime if the drug is:

36                   (1) A schedule W drug other than:

38                           (a) Heroin (diacetylmorphine); or

40                           (b) Cocaine in the form of cocaine base and the  
41 person has a prior scheduled drug conviction  
42 within the meaning of paragraph A, subparagraph  
43 (2) of this section; or

44                   (2) A schedule X drug;

46           C. A Class E crime if the drug is a schedule Y or Z drug; or  
48

D. A Class B crime if the drug is cocaine and the quantity possessed is more than 14 grams or cocaine in the form of cocaine base and the quantity possessed is more than 4 grams.'

Further amend the bill by inserting at the end before the statement of fact the following:

**FISCAL NOTE**

This bill increases the penalties for certain Class B, C and D crimes by one class.

When the class of crime is increased from B to A, sentences of more than 9 months for both Class B crimes and Class A crimes must be served in a state correctional institution. Since the average length of stay for a Class A crime is 1,130 days greater than a Class B crime, the incremental increase in the average cost to the State's correctional facilities is \$93,960. Sentences of 9 months or less for both Class A crimes and Class B crimes must be served in a county jail. The State provides reimbursement to the counties for housing these offenders.

When the class of crime is increased from C to B, sentences of more than 9 months for both Class C crimes and Class B crimes must be served in a state correctional institution. Since the average length of stay for a Class B crime is one year and one month greater than a Class C crime, the incremental increase in the average cost to the State's correctional facilities is \$32,433. Sentences of 9 months or less for both Class C crimes and Class B crimes must be served in a county jail. The State provides reimbursement to the counties for housing these offenders.

When the class of crime is increased from a Class D to a Class C, costs are shifted from the counties to the State. Sentences of more than 9 months for Class C crimes must be served in a state correctional institution at the cost of \$55,711 per sentence based on an average length of stay of one year and 10 months. Sentences of 9 months or less for a Class C crime and all sentences for a Class D crime must be served in a county jail. The State must reimburse counties for housing Class C crime offenders but does not provide reimbursement for Class D offenders.

The Judicial Department may require additional General Fund appropriations to cover indigent defense costs related to these new cases. The amounts can not be estimated at this time. The

additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.

The Department of the Attorney General will incur some minor additional costs to prosecute a limited increase in the number of cocaine-related cases. These costs can be absorbed within the Department of the Attorney General's existing budgeted resources.'

### STATEMENT OF FACT

This amendment is the majority report of the Joint Standing Committee on Criminal Justice. The amendment strikes sections 2 and 3 of the original bill, but retains section 1, which defines and distinguishes cocaine in the form of cocaine base (crack cocaine) from cocaine hydrochloride (powder cocaine).

The amendment creates presumptive quantities for furnishing and trafficking cocaine base. These provisions are based upon a finding that the present single usage unit of cocaine base in Maine has an average weight of less than .10 grams and has an average street purchase price of \$40 to \$65 per usage unit. Possession of 4 grams or more of cocaine base raises a rebuttable, permissible inference, based upon quantity alone, that the person possessed the cocaine base with the intent to traffick in the cocaine base in violation of the Maine Revised Statutes, Title 17-A, section 1103. This rebuttable, permissible inference is based upon a finding that 4 grams of cocaine base is the equivalent of 40 consumption units with a street value of more than \$1,600.

The amendment provides that possession of 2 grams or more of cocaine base raises a rebuttable, permissible inference, based upon quantity alone, that the person possessed the cocaine base with the intent to furnish the cocaine base in violation of the Maine Revised Statutes, Title 17-A, section 1106. This rebuttable, permissible inference is based upon a finding that 2 grams of cocaine base is the equivalent of 20 usage units with a street value of more than \$800. As with all presumptive quantities contained in the Maine Criminal Code, Title 17-A, chapter 45, possession of less than the presumptive amount of scheduled drugs does not preclude a charge of possession with the intent to furnish or possession with the intent to traffick when there exists other indicia of furnishing or trafficking, including individualized packaging, scales, drug records, unusual sums of money or drug proceeds.

Under the Maine Revised Statutes, Title 17-A, section 1105, if the State pleads and proves an aggravating factor pursuant to section 1105, subsection 1, the class of crime is one class more serious than such trafficking or furnishing would otherwise be if the aggravating factor had not been pled and proven. The existing provisions of Title 17-A, section 1105, subsection 1, paragraph D provide that trafficking or furnishing 112 grams or more of cocaine enhances the sentencing category by one class of crime.

The amendment provides that a person is guilty of aggravated trafficking or furnishing scheduled drugs if the person trafficks in or furnishes cocaine in the form of cocaine base in a quantity of 32 grams or more. The 32-gram level is based upon: (1) evidence that individuals in possession of 32 grams or more of cocaine base have significant direct links to major sources of supply and present an extraordinary threat and risk to the health and safety of the citizens of the State of Maine; (2) evidence that 32 grams of cocaine base has a street value in excess of \$12,000; (3) the comparison with 21 United States Code, Section 841(b)(1)(B)(iii) that establishes a 5-year minimum mandatory sentence for the distribution or possession with intent to distribute 5 or more grams of cocaine base; and (4) the mathematical relationship between the 112-gram level for aggravated trafficking in cocaine and the 14-gram presumptive level for trafficking in cocaine, which is an 8 to 1 proportion. Therefore, the aggravated trafficking or furnishing level of 32 grams is consistent with the 4-gram cocaine base presumptive level for trafficking in cocaine base. Notwithstanding the holding of State v. Hawkins, 633 A.2d 78 (Me. 1993), as with all of the aggravated trafficking or furnishing provisions, offenders are exposed to the full potential sentence of up to 40 years for a Class A violation. Because the vast majority of these offenders are prosecuted by the Federal Government, this amendment will not have a significant impact upon the prosecutorial and correctional resources of the State.

Under existing law, possession of cocaine base is a Class D crime. The amendment provides that possession of cocaine in the form of cocaine base constitutes a Class C crime when the State proves that the offender has a prior scheduled drug conviction. Possession of cocaine in the form of cocaine base would continue to be a Class D crime when the State does not prove that the offender has a prior scheduled drug conviction. The rationale behind treating 2nd offenders more seriously is the need to provide increasing penalties for drug reoffenders who possess cocaine in the form of cocaine base.

The amendment also provides that possession of 4 grams or more of cocaine in the form of cocaine base is a Class B crime,

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2 which is consistent with the existing provisions of the Maine  
3 Revised Statutes, Title 17-A, section 1107 that provides that  
4 possession of 14 grams or more of cocaine is a Class B crime and  
5 is premised on the same factual bases articulated for setting the  
6 presumptive trafficking level at 4 grams or more of cocaine  
7 base. In addition, Title 17-A, section 1107, subsection 2 is  
8 based upon the rationale that a person possessing 4 grams or more  
9 of cocaine base has invested considerable financial resources in  
10 purchasing cocaine base and has generated a conspiratorial  
11 relationship with a significant source of cocaine base supply.  
12 Such an offender will be exposed to the same potential length of  
13 sentence as the person who sold the 4 grams of cocaine base in  
14 the first instance.

15 The amendment also adds a fiscal note to the bill.