

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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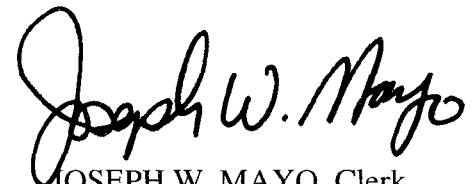
H.P. 1407

House of Representatives, March 23, 1999

**An Act to More Accurately Describe the Criminal Conduct Committed  
When a Person Grows or Cultivates Marijuana.**

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Reference to the Committee on Criminal Justice suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative SCHNEIDER of Durham.

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

2           **Sec. 1. 17-A MRSA §1101, sub-§17**, as amended by PL 1997, c.  
4 481, §1, is further amended to read:

6           17. "Traffick\*";

8           A. To make, create, manufacture;

10          ~~B. To grow or cultivate;~~

12          C. To sell, barter, trade, exchange or otherwise furnish  
14 for consideration; or

16          D. To possess with the intent to do any act mentioned in  
18 paragraph C.

18           **Sec. 2. 17-A MRSA §1103, sub-§2, ¶A**, as amended by PL 1989, c.  
20 850, §2, is further amended to read:

22           A. A Class B crime if the drug is a schedule W drug, or if  
24 it is marijuana in a quantity of 20 pounds or more ~~ex-if-it~~  
~~is-marijuana-and-the-person-grows-or-cultivates-500-or-more~~  
plants;

26           **Sec. 3. 17-A MRSA §1103, sub-§2, ¶B**, as amended by PL 1997, c.  
28 481, §2, is further amended to read:

30           B. A Class C crime if the drug is a schedule X drug, or if  
32 it is marijuana in a quantity of more than one pound ~~ex-if~~  
~~it-is-marijuana-and-the-person-grows-or-cultivates-100-or~~  
more-plants; or

34           **Sec. 4. 17-A MRSA §1105**, as amended by PL 1995, c. 635, §§3  
36 and 4, is further amended to read:

38           **§1105. Aggravated trafficking, furnishing or cultivation of**  
38           **scheduled drugs**

40           1. A person is guilty of aggravated trafficking ~~ex,~~  
42 furnishing or cultivating of scheduled drugs if:

44           A. In violation of section 1103, 1104 or 1106, the person  
46 trafficks with or furnishes to a child, in fact, under 18  
years of age a scheduled drug;

48           B. The person violates section 1103, 1104 ~~ex,~~ 1106 or 1117,  
50 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

2 of the United States, of another state or of a foreign  
country relating to scheduled drugs, as defined in this  
4 chapter, and punishable by a term of imprisonment of more  
than one year. For purposes of this paragraph, a person has  
6 been convicted of an offense on the date the judgment of  
conviction was entered by the court;

8 C. A person violates section 1103, 1104 ~~or~~, 1106 or 1117,  
and, at the time of the offense, the person uses, carries,  
10 possesses or is armed with a firearm;

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

16 E. A person violates section 1103, and, at the time of the  
offense, the person is on a school bus or on or within 1,000  
18 feet of the real property comprising a private or public  
elementary or secondary school. For purposes of this  
20 paragraph, "school bus" has the same meaning as set forth in  
22 Title 29-A, section 2301, subsection 5; ~~or~~

24 F. A person violates section 1103 or 1117, and, at the time  
of the offense, the person enlists or solicits the aid of or  
26 conspires with a child who is, in fact, under 18 years of  
age, to traffick in ~~or~~, furnish or cultivate any scheduled  
28 drug; or

30 G. A person violates section 1117 and, at the time of the  
offense, the person is within 1,000 feet of the real  
32 property comprising a private or public elementary or  
secondary school.

34 2. Aggravated trafficking ~~or~~, furnishing or cultivation of  
36 scheduled drugs is a crime one class more serious than such  
trafficking ~~or~~, furnishing or cultivation would otherwise be.

38 3. If a person uses a motor vehicle to facilitate the  
40 aggravated trafficking ~~or~~, furnishing or cultivation of a  
scheduled drug, the court may, in addition to other authorized  
42 penalties, suspend the person's driver's license, permit,  
privilege to operate a motor vehicle or right to apply for or  
44 obtain a license for a period not to exceed 5 years. A  
suspension may not begin until after any period of incarceration  
46 is served. If the court suspends a person's driver's license,  
permit, privilege to operate a motor vehicle or right to apply  
48 for or obtain a license, the court shall notify the Secretary of  
State of the suspension and the court shall take physical custody  
50 of the person's license. The Secretary of State may not

2 reinstate the person's driver's license, permit, privilege to  
3 operate a motor vehicle or right to apply for or obtain a license  
4 unless the person demonstrates that, after having been released  
5 and discharged from any period of incarceration that may have  
6 been ordered, the person has served the period of suspension  
7 ordered by the court.

8 **Sec. 5. 17-A MRSA §1117 is enacted to read:**

10 **§1117. Marijuana cultivation**

12 1. A person is guilty of marijuana cultivation if the  
13 person intentionally or knowingly grows or cultivates marijuana.

14 2. Violation of this section is:

16 A. A Class B crime if the person grows or cultivates 500 or  
17 more marijuana plants;

20 B. A Class C crime if the person grows or cultivates 100 or  
21 more but fewer than 500 marijuana plants; or

22 C. A Class D crime if the person grows or cultivates fewer  
23 than 100 marijuana plants.

26 **Sec. 6. 17-A MRSA §1252, sub-§5-A, ¶A, as enacted by PL 1987,**  
27 **c. 535, §7, is amended to read:**

28 A. Except as otherwise provided in paragraphs B and C, the  
29 minimum sentence of imprisonment, which ~~shall~~ may not be  
30 suspended, ~~shall-be~~ is as follows: When the sentencing class  
31 is Class A, the minimum term of imprisonment ~~shall-be~~ is 4  
32 years; when the sentencing class is Class B, the minimum  
33 term of imprisonment ~~shall-be~~ is 2 years; and, with the  
34 exception of trafficking ~~or~~, furnishing or cultivation of  
35 marijuana under section 1105, when the sentencing class is  
36 Class C, the minimum term of imprisonment ~~shall-be~~ is one  
37 year;

40

41 **SUMMARY**

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43 This bill creates the new crime of marijuana cultivation and  
44 eliminates the inclusion of growing or cultivating marijuana  
45 under the crime of trafficking. The penalties for the new crime  
46 of marijuana cultivation are the same as they had been when  
47 included under the offense of trafficking. Marijuana cultivation  
48 is treated the same as trafficking for purposes of aggravation of  
charges under the Maine Revised Statutes, Title 17-A, section

2 1105, except that marijuana plants that are cultivated in a locked or barred structure not located on school property is not included within the aggravating language of section 1105.