

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1270, L.D. 1728, Bill, "An Act to Control the Illegal Diversion and Abuse of Prescription Narcotic Drugs"

Amend the bill by striking out the title and substituting the following:

'An Act to Control the Illegal Diversion and Abuse of Prescription Narcotic Drugs and Abuse of Designer Club Drugs'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 17-A MRSA §701, sub-§4, as amended by PL 1981, c. 436, §1, is further amended to read:

4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, absentee ballot application, absentee ballot envelope, medical drug prescription form, other evidence or symbol of value, right, privilege or identification, and any paper, document or other written instrument containing written or printed matter or its equivalent;

Sec. 2. 17-A MRSA §1102, first ¶, as enacted by PL 1975, c. 499, §1, is amended to read:

For the purposes of defining crimes under this chapter and of determining the penalties therefor, there are hereby established established the following schedules, designated W, X, Y and Z.

Sec. 3. 17-A MRSA §1102, sub-§1, ¶I, as amended by PL 1995, c. 499, §2 and affected by §5, is further amended to read:

COMMITTEE AMENDMENT

I. Unless listed or described in another schedule, all narcotic drugs, including, but not limited to, the following narcotic drugs or their salts, isomers or salts of isomers: heroin (diacetylmorphine), methadone, methadone hydrochloride, levo-alpha-acetyl-methadol, or LAAM, pethidine, morphine, oxycodone, hydrocodone, hydromorphone, fentanyl and opium. As used in this chapter, "heroin" means any compound, mixture or preparation containing heroin;

Sec. 4. 17-A MRSA §1102, sub-§1, ¶M, as amended by PL 1997, c. 487, §1, is further amended to read:

M. Lysergic acid amide; and

Sec. 5. 17-A MRSA §1102, sub-§1, ¶N, as enacted by PL 1997, c. 487, §2, is amended to read:

N. Flunitrazepam or its chemical equivalent; and

Sec. 6. 17-A MRSA §1102, sub-§1, ¶O is enacted to read:

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

- (1) 3, 4 - methylenedioxy amphetamine, MDA;
- (2) 5 methoxy - 3, 4 methylenedioxy amphetamine, MMDA;
- (3) 3, 4, 5 - trimethoxy amphetamine, TMA;
- (4) 4 - methyl - 2, 5 - dimethoxyamphetamine, DOM;
- (5) 2, - 3 methylenedioxyamphetamine;
- (6) 2, 5 - dimethoxyamphetamine, DMA;
- (7) 4 - bromo - 2, 5 - dimethoxyamphetamine, DOB;
- (8) 4 methoxyamphetamine;
- (9) 3, 4 - methylenedioxymethamphetamine, MDMA;
- (10) 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS;
- (11) 3, 4 - methylenedioxy-N-ethylamphetamine, MDE;
- (12) Paramethoxymethamphetamine, PMMA;

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(13) Paramethoxyamphetamine, PMA; and

(14) Paramethoxyethylamphetamine, PME.A.

Sec. 7. 17-A MRSA §1102, sub-§2, ¶D, as enacted by PL 1975, c. 499, §1, is repealed.

Sec. 8. 17-A MRSA §1102, sub-§2, ¶H, as amended by PL 1989, c. 924, §4, is further 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 the 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, DET;

(6) Dimethyltryptamine, DMT;

(7) Dipropyltryptamine, DPT; and

(8) ~~2,3~~---methylenedioxy-amphetamine;

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

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

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

(12) Alpha-ethyltryptamine, AET.

Sec. 9. 17-A MRSA §1102, sub-§2, ¶K, as enacted by PL 1977, c. 649, §4, is amended to read:

K. Diethylpropion or its salts;

Sec. 10. 17-A MRSA §1102, sub-§2, ¶¶L, M and N are enacted to read:

2 L. Gamma hydroxybutyrate, GHB, and its salts, isomers and
3 salts of isomers;

4 M. Ketamine and its salts, isomers and salts of isomers; and

6 N. The following substances, if intended for human
7 ingestion:

8 (1) Gamma butyrolactone, GBL, and its salts, isomers
9 and salts of isomers; or

12 (2) One, 4-butanediol, BD, and its salts, isomers and
13 salts of isomers.

14 **Sec. 11. 17-A MRSA §1103, sub-§3, ¶D,** as amended by PL 1999,
16 c. 422, §2, is further amended to read:

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

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

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

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

32 **Sec. 12. 17-A MRSA §1103, sub-§3, ¶E,** as enacted by PL 1999,
34 c. 422, §3, is amended to read:

36 E. Fourteen grams or more of methamphetamine;

38 **Sec. 13. 17-A MRSA §1103, sub-§3, ¶¶F to H** are enacted to read:

40 F. Ninety or more pills, capsules, tablets, vials, ampules,
41 syringes or units containing any narcotic drug other than
42 heroin;

44 G. Any quantity of pills, capsules, tablets, units,
45 compounds, mixtures or substances that, in the aggregate,
46 contains 800 milligrams or more of oxycodone or 100
47 milligrams or more of hydromorphone; or

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2 H. Thirty or more pills, capsules, tablets or units
3 containing 3, 4 - methylenedioxymethamphetamine, MDMA, or
4 any other drug listed in section 1102, subsection 1,
5 paragraph O.

6 **Sec. 14. 17-A MRSA §1105, sub-§1, ¶¶H and I**, as enacted by PL
7 1999, c. 531, Pt. I, §5, are amended to read:

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9 H. A person violates section 1103 or 1106 and, at the time
10 of the offense, the person trafficks in or furnishes
11 methamphetamine in a quantity of 100 grams or more; ~~or~~

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13 I. A person violates section 1103 or 1106 and, at the time
14 of the offense, the person trafficks in or furnishes heroin
15 in a quantity of 6 grams or more or 270 or more individual
16 bags, folds, packages, envelopes or containers of any kind
17 containing heroin;

18 **Sec. 15. 17-A MRSA §1105, sub-§1, ¶J and ¶K** are enacted to
19 read:

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21 J. A person violates section 1103 or 1106 and, at the time
22 of the offense, the person trafficks in or furnishes 300 or
23 more pills, capsules, tablets, vials, ampules, syringes or
24 units containing any narcotic drug other than heroin, or any
25 quantity of pills, capsules, tablets, units, compounds,
26 mixtures or substances that, in the aggregate, contains
27 8,000 milligrams or more of oxycodone or 1,000 milligrams or
28 more of hydromorphone; or

29
30 K. A person violates section 1103 or 1106 and, at the time
31 of the offense, the person trafficks in or furnishes a
32 quantity of 300 or more pills, capsules, tablets or units
33 containing 3, 4 - methylenedioxymethamphetamine, MDMA, or
34 any other drug listed in section 1102, subsection 1,
35 paragraph O.

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37 **Sec. 16. 17-A MRSA §1106, sub-§3, ¶D**, as amended by PL 1999,
38 c. 422, §8, is further amended to read:

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

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

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47 (2) Any quantity of any compound, mixture or substance
48 that, in the aggregate, contains not less than 1,250
49 micrograms of lysergic acid diethylamide; ~~or~~
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2 **Sec. 17. 17-A MRSA §1106, sub-§3, ¶E**, as enacted by PL 1999,
c. 422, §9, is amended to read:

4 E. Seven grams or more of methamphetamine;

6 **Sec. 18. 17-A MRSA §1106, sub-§3, ¶¶F to H** are enacted to read:

8 F. Forty-five or more pills, capsules, tablets, vials,
10 ampules, syringes or units containing any narcotic drug
12 other than heroin;

14 G. Any quantity of pills, capsules, tablets, units,
compounds, mixtures or substances that, in the aggregate,
16 contains not less than 400 milligrams of oxycodone or not
less than 50 milligrams of hydromorphone; or

18 H. Fifteen or more pills, capsules, tablets or units
containing 3, 4 - methylenedioxymethamphetamine, MDMA, or
20 any other drug listed in section 1102, subsection 1,
22 paragraph O.

24 **Sec. 19. 17-A MRSA §1108, sub-§§1 and 2**, as repealed and
replaced by PL 1979, c. 512, §33, are amended to read:

26 1. A person is guilty of acquiring drugs by deception if,
as a result of deception, he the person obtains or exercises
28 control over a prescription for a scheduled drug, or what he that
person knows or believes to be a scheduled drug, and which is, in
30 fact, a scheduled drug.

32 2. As used in this section, "deception" has the same
meaning as in section 354, subsection 2, and includes:

34 A. Failure by a person, after having been asked by a
36 prescribing health care provider or a person acting under
the direction or supervision of a prescribing health care
38 provider, to disclose the particulars of every narcotic drug
or prescription for a narcotic drug issued to that person by
40 a different health care provider within the preceding 30
days; or

42 B. Furnishing a false name or address to a prescribing
44 health care provider or a person acting under the direction
or supervision of a prescribing health care provider.

46 **Sec. 20. 17-A MRSA §1108, sub-§5** is enacted to read:

5. For purposes of the causation required by subsection 1, engaging in an act of deception described in subsection 2, paragraph A or B is deemed to have resulted in the acquisition of any drugs prescribed to that person by that prescribing health care provider or person acting under the direction or supervision of that prescribing health care provider.

Sec. 21. 17-A MRSA §1109, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. ~~Stealing drugs is a Class D crime;~~

A. A Class C crime if the drug is a schedule W, X or Y drug; or

B. A Class D crime if the drug is a schedule Z drug.

Sec. 22. 17-A MRSA §1112, sub-§1, as amended by PL 1979, c. 512, §34, is further amended to read:

1. A laboratory which that receives a drug or substance from a law enforcement officer or agency for analysis as a scheduled drug shall, if it is capable of so doing, analyze the same as requested by a method designed to accurately determine the composition of the substance, including by chemical means, visual examination, or both, and shall issue a certificate stating the results of ~~such~~ the analysis. ~~Such~~ The certificate, when duly signed and sworn to by a person certified as qualified for this purpose by the Department of Human Services under certification standards set by that department, ~~shall--be is~~ is admissible in evidence in any a court of the State ~~of~~-Maine, and ~~shall--be is~~ is prima facie evidence that the composition, quality and quantity of the drug or substance are as stated ~~therein~~ in the certificate, unless with 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to ~~such~~ the composition, quality and quantity.

Sec. 23. 32 MRSA §13786-A is enacted to read:

§13786-A. Security requirements; rules

1. **Rules.** The Department of Public Safety, after consultation with the Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy, shall adopt rules that establish security requirements for all written prescriptions for schedule II drugs issued by health care providers. For purposes of this section, "schedule II drug" has the same meaning as in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812. Rules adopted pursuant to this subsection are major substantive rules as defined in

Title 5, chapter 375, subchapter II-A and must be brought back for review by the joint standing committee of the Legislature having jurisdiction over criminal justice matters during the 2nd Regular Session of the 120th Legislature. The rules must include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery. The rules must deal with the following subjects:

A. Measures designed to prevent unauthorized copying of a completed or blank prescription form;

B. Measures designed to prevent the erasure or modification of information written on the prescription by the prescribing health care provider; and

C. Measures to prevent the use of counterfeit prescription forms.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

This bill may increase prosecutions for Class A crimes. Sentences of more than 9 months imposed for Class A crimes must be served in state correctional institutions. The cost to the State per sentence is \$211,893 based upon an average length of stay of 7 years and 2 months.

This bill may increase prosecutions for Class B crimes. Sentences of more than 9 months imposed for Class B crimes must be served in state correctional institutions. The cost to the State per sentence is \$115,468 based upon an average length of stay of 3 years and 11 months.

This bill may increase prosecutions for Class C crimes. Sentences of more than 9 months imposed for Class C crimes must be served in state correctional institutions. The cost to the State per sentence is \$71,306 based upon an average length of stay of 2 years and 5 months.

This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.36 per day per prisoner. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

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 Public Safety will incur some minor additional costs to adopt certain rules pertaining to security requirements for written prescriptions for schedule II drugs. These costs can be absorbed within the department's existing budgeted resources.

The Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy within the Department of Professional and Financial Regulation will incur some minor additional costs to consult with the Department of Public Safety regarding security requirements for written prescriptions for schedule II drugs. These costs can be absorbed within each board's existing budgeted resources.'

SUMMARY

This amendment incorporates the text of L.D. 1727, "An Act to Control the Abuse of Designer Club Drugs by Adding Certain Drugs to the List of Schedule W and Schedule X Drugs," which does the following.

1. It adds the newly popular hallucinogenic "club" or "rave" drug ecstasy, 3, 4 - methylenedioxyamphetamine, MDMA, and its close chemical relatives for the purposes of criminal enforcement: 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS; 3, 4 - methylenedioxy-N-ethylamphetamine, MDE; paramethoxymethamphetamine, PMMA; paramethoxyamphetamine, PMA; and paramethoxythylamphetamine, PMEA to the list of schedule W drugs. None of these drugs have been previously scheduled in the State, but all are schedule I drugs under the federal Controlled Substances Act.

2. It moves other close chemical relatives of MDMA that have been listed as schedule X drugs under the state law since 1989, to schedule W, increasing potential penalties for trafficking or furnishing the drugs.

3. It adds 3 other newly popular drugs to the list of schedule X drugs: gamma hydroxybutyrate, GHB; Ketamine; and alpha-ethyltryptamine, AET.

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2 4. It sets the number of pills containing MDMA and related
drugs that results in a permissible inference at trial of intent
to furnish and traffick.

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6 5. It creates a charge of aggravated trafficking and
furnishing MDMA and similar drugs based on trafficking or
furnishing 300 or more pills.

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10 6. It results in possession of MDMA, GHB or Ketamine being
a Class D crime; trafficking in MDMA is a Class B crime;
trafficking in GHB or Ketamine is a Class C crime; aggravated
12 furnishing MDMA is a Class B crime with a mandatory minimum
2-year sentence; and aggravated trafficking in MDMA is a Class A
14 crime with a mandatory minimum 4-year sentence.

16 The amendment also changes the rule-making provisions to
require major substantive rules, instead of routine technical
18 rules, for establishing security requirements for written
prescriptions for narcotics. This change is made to ensure that
20 the rulemaking results from the cooperation of the Department of
Public Safety and the medical profession. The Department of
22 Public Safety shall bring its proposed rules before the Joint
Standing Committee on Criminal Justice in the Second Regular
24 Session of the 120th Legislature.

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