

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1728

H.P. 1270

House of Representatives, March 21, 2001

**An Act to Control the Illegal Diversion and Abuse of Prescription
Narcotic Drugs.**

(AFTER DEADLINE)

Submitted by the Department of the Attorney General and approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative POVICH of Ellsworth.
Cosponsored by Senator McALEVEY of York and
Representatives: QUINT of Portland, SCHNEIDER of Durham, SIMPSON of Auburn,
SNOWE-MELLO of Poland.

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

2
4 **Sec. 1. 17-A MRSA §701, sub-§4**, as amended by PL 1981, c. 436, §1, is further amended to read:

6 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;

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

16 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;

24 **Sec. 3. 17-A MRSA §1102, sub-§2, ¶D**, as enacted by PL 1975, c. 499, §1, is repealed.

28 **Sec. 4. 17-A MRSA §1103, sub-§3, ¶D**, as amended by PL 1999, c. 422, §2, is further amended to read:

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

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

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

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

46 **Sec. 5. 17-A MRSA §1103, sub-§3, ¶E**, as enacted by PL 1999, c. 422, §3, is amended to read:

48 E. Fourteen grams or more of methamphetamine;

2 **Sec. 6. 17-A MRSA §1103, sub-§3, ¶¶F and G** are enacted to read:

4 F. Ninety or more pills, capsules, tablets, vials, ampules,
6 syringes or units containing any narcotic drug other than
8 heroin; or

10 G. Any quantity of pills, capsules, tablets, units,
12 compounds, mixtures or substances that, in the aggregate,
14 contains 800 milligrams or more of oxycodone or 100
16 milligrams or more of hydromorphone.

18 **Sec. 7. 17-A MRSA §1105, sub-§1, ¶¶H and I,** as enacted by PL
20 1999, c. 531, Pt. I, §5, are amended to read:

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

28 I. A person violates section 1103 or 1106 and, at the time
30 of the offense, the person trafficks in or furnishes heroin
32 in a quantity of 6 grams or more or 270 or more individual
34 bags, folds, packages, envelopes or containers of any kind
36 containing heroin; or

38 **Sec. 8. 17-A MRSA §1105, sub-§1, ¶J** is enacted to read:

40 J. A person violates section 1103 or 1106 and, at the time
42 of the offense, the person trafficks in or furnishes 300 or
44 more pills, capsules, tablets, vials, ampules, syringes or
46 units containing any narcotic drug other than heroin, or any
48 quantity of pills, capsules, tablets, units, compounds,
 mixtures or substances that, in the aggregate, contains
 8,000 milligrams or more of oxycodone or 1,000 milligrams or
 more of hydromorphone.

Sec. 9. 17-A MRSA §1106, sub-§3, ¶D, as amended by PL 1999, c.
 422, §8, is further amended to read:

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

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

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

2 **Sec. 10. 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. 11. 17-A MRSA §1106, sub-§3, ¶¶F and G** 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; or

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.

18 **Sec. 12. 17-A MRSA §1108, sub-§§1 and 2**, as repealed and
replaced by PL 1979, c. 512, §33, are amended to read:

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

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

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

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

42 **Sec. 13. 17-A MRSA §1108, sub-§5** is enacted to read:

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

50

2 **Sec. 14. 17-A MRSA §1109, sub-§2,** as enacted by PL 1975, c.
499, §1, is amended to read:

4 2. Stealing drugs is a ~~Class D crime~~:

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

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

10 **Sec. 15. 17-A MRSA §1112, sub-§1,** as amended by PL 1979, c.
12 512, §34, is further amended to read:

14 1. A laboratory ~~which~~ that receives a drug or substance
16 from a law enforcement officer or agency for analysis as a
scheduled drug shall, if it is capable of so doing, analyze the
18 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
20 stating the results of ~~such~~ the analysis. ~~Such~~ The certificate,
22 when duly signed and sworn to by a person certified as qualified
for this purpose by the Department of Human Services under
24 certification standards set by that department, ~~shall--be~~ is
admissible in evidence in ~~any a~~ court of the State ~~of~~ Maine, and
26 ~~shall--be~~ 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
28 prosecution, the defendant requests that a qualified witness
testify as to ~~such~~ the composition, quality and quantity.

30 **Sec. 16. 32 MRSA §13786-A** is enacted to read:

32 §13786-A. Security requirements; rules

34 1. Rules. The Department of Public Safety, after
36 consultation with the Board of Osteopathic Licensure, the Board
of Licensure in Medicine and the Board of Pharmacy, shall adopt
38 rules that establish security requirements for all written
prescriptions for schedule II drugs issued by health care
40 providers. For purposes of this section, "schedule II drug" has
the same meaning as in the federal Controlled Substances Act of
42 1970, 21 United States Code, Section 812. Rules adopted pursuant
to this subsection are routine technical rules as defined in
44 Title 5, chapter 375, subchapter II-A. The rules must include a
46 procedure to obtain a waiver for prescription blanks that provide
substantially equivalent protection against forgery. The rules
must deal with the following subjects:

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

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

6 C. Measures to prevent the use of counterfeit prescription
8 forms.

10 **SUMMARY**

12 This bill clarifies the definition of "narcotic drugs" under
14 the Maine Revised Statutes, Title 17-A, chapter 45 by
specifically listing the most commonly encountered prescription
narcotic drugs by chemical name.

16 This bill removes archaic references to drug preparations
18 that are inaccurately described or no longer commonly encountered
in modern medical treatment.

20 This bill sets the number of illicit prescription pills or
22 other units that would result in a presumption of trafficking or
furnishing at trial: 90 pills or units for trafficking, and 45
24 for furnishing. Oxycodone, Oxycontin, and hydromorphone,
Dilaudid, are singled out for separate treatment based on the
26 aggregate amount of the drug in milligrams due to their
availability in very powerful single pill dosage formulations.

28 The bill creates a charge of aggravated trafficking and
30 furnishing based on trafficking and furnishing 300 or more pills
or other units of narcotic drugs other than heroin. Again, the
32 compounds contained in Oxycontin and Dilaudid are singled out for
special treatment based on aggregate amounts of the drugs in
34 milligrams. A charge of aggravated trafficking or furnishing
would be a Class A felony, with a mandatory minimum sentence of 4
36 years in prison.

38 The bill prevents the use of altered, forged or counterfeit
prescriptions by having the Department of Public Safety, after
40 consultation with the Board of Osteopathic Licensure, the Board
of Licensure in Medicine and the Board of Pharmacy, adopt rules
42 establishing security requirements for written prescriptions for
schedule II drugs, primarily through requiring the use of
44 tamper-proof prescription forms.

46 The bill prevents "doctor shopping" by amending the crime of
acquiring drugs by deception to clarify that failure to disclose
48 recent narcotic prescriptions from other doctors, or use of a
false name or address, is within the definition of "deception."
50 It also addresses the issue of having to prove causation between

2 obtaining drugs and the deceptive act if the patient deceives the
physician in these ways. This provision is based in part on
4 current law in the Province of Saskatchewan, Canada.

6 The bill increases the penalties for stealing schedule W, X
or Y drugs by making it a Class C felony offense. Stealing
8 schedule Z drugs would remain a Class D crime. This equalizes
the penalties for the crimes of acquiring drugs by deception and
stealing drugs.

10 The bill clarifies that a medical drug prescription form is
12 a "written instrument" for purposes of the forgery law.

14 The bill clarifies that the analysis of a scheduled drug may
be by a method designed to accurately determine the composition
16 of the drug, and may include a visual examination. This is
intended to approve the already common practice of proving the
18 composition of a commercially manufactured pharmaceutical drug by
visual observation of the unique markings on the pill by a
20 chemist or pharmacist.