

MAINE STATE LEGISLATURE

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R. O. S.

L.D. 1740

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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. 1280, L.D. 1740, Bill, "An Act to Implement Recommendations of the MCJUSTIS Board Pursuant to the Study Required by Resolve 1997, Chapter 105"

Amend the bill in section 58 in subsection 4 in the 4th line (page 37, line 9 in L.D.) by inserting after the following: "rise to" the following" 'a'

Further amend the bill by inserting after section 124 the following:

'Sec. 125. 17-A MRSA §1106-A, sub-§2, as enacted by PL 1999, c. 442, §2, is amended to read:

2. Quantities of scheduled drugs involved in violation of section ~~1107~~ 1107-A committed pursuant to one scheme or course of conduct and confiscated within a 48-hour period may be aggregated to charge a single violation of appropriate class. Subject to the requirement that the conduct of the defense may not be prejudiced by lack of fair notice or by surprise, the court may at any time order that a single aggregate count be considered as separate violations. An aggregate count of violations may not be deemed duplicative because of such an order and no election may be required. Prosecution may be brought in any venue in which one of the violations aggregated was committed.'

Further amend the bill by striking out all of section 126 and inserting in its place the following:

'Sec. 126. 17-A MRSA §1107-A is enacted to read:

§1107-A. Unlawful possession of scheduled drugs

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1. Except as provided in subsection 2, a person is guilty of unlawful possession of a scheduled drug if the person intentionally or knowingly possesses what that person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:

A. A schedule W drug that is:

(1) Cocaine and the quantity possessed is more than 14 grams;

(2) Cocaine in the form of cocaine base and the quantity possessed is more than 4 grams; or

(3) Methamphetamine and the quantity possessed is more than 14 grams.

Violation of this paragraph is a Class B crime;

B. A schedule W drug that is:

(1) Heroin (diacetylmorphine);

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

(3) Methamphetamine.

Violation of this paragraph is a Class C crime;

C. A schedule W drug, except as provided in paragraphs A and B. Violation of this paragraph is a Class D crime;

D. A schedule X drug. Violation of this paragraph is a Class D crime;

E. A schedule Y drug. Violation of this paragraph is a Class E crime; or

F. A schedule Z drug. Violation of this paragraph is a Class E crime.

2 2. A person is not guilty of unlawful possession of a
3 scheduled drug if the conduct that constitutes the possession is
4 expressly:

6 A. Authorized by Title 22 or Title 32; or

8 B. Made a civil violation by Title 22.'

10 Further amend the bill by inserting after section 132 the
11 following:

12 '**Sec. 133. 17-A MRSA §1110, sub-§2**, as repealed and replaced
13 by PL 1987, c. 535, §6, is repealed.'

14 Further amend the bill by striking out all of section 145.

16 Further amend the bill in section 147 in that part
17 designated "~~§1117.~~" in subsection 1 in paragraph B in
18 subparagraph (2) in the last line (page 77, line 37 in L.D.) by
19 striking out the following: "or"

22 Further amend the bill in section 147 in that part
23 designated "~~§1117.~~" in subsection 1 in paragraph B in
24 subparagraph (3) in the last line (page 77, line 40 in L.D.) by
25 striking out the following: "E" and inserting in its place the
26 following: 'D'

28 Further amend the bill in section 147 in that part
29 designated "~~§1117.~~" in subsection 1 in paragraph B in
30 subparagraph (3) in the last line (page 77, line 40 in L.D.) by
31 striking out the following: "." and inserting in its place the
32 following: '; or'

34 Further amend the bill in section 147 in that part
35 designated "~~§1117.~~" in subsection 1 in paragraph B by inserting
36 after subparagraph (3) the following:

38 '(4) Five or fewer. Violation of this subparagraph is
39 a Class E crime.'

40 Further amend the bill by striking out all of section 148
41 and inserting in its place the following:

44 '**Sec. 148. 17-A MRSA §1158**, as amended by PL 1995, c. 252,
45 §1, is repealed and the following enacted in its place:

46 **§1158. Forfeiture of firearms**

48 As part of every judgment of conviction and sentence
49 imposed, a firearm must be forfeited to the State if that firearm:
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2 1. Constitutes the basis for conviction under:

4 A. Title 15, section 393;

6 B. Section 1105-A, subsection 1, paragraph C;

8 C. Section 1105-B, subsection 1, paragraph C;

10 D. Section 1105-C, subsection 1, paragraph C; or

12 E. Section 1105-D, subsection 1, paragraph B; or

14 2. Is used by the defendant or an accomplice during the
16 commission of any murder or Class A, Class B or Class C crime or
any Class D crime defined in chapter 9, 11 or 13.

18 The court shall order the forfeiture of the firearm unless
20 another person can satisfy the court prior to the judgment and by
22 a preponderance of the evidence that another person had a right
24 to possess the firearm, to the exclusion of the defendant, at the
time of the offense. The Attorney General shall adopt rules in
accordance with Title 5, chapter 375 governing the disposition to
state, county and municipal agencies of firearms forfeited under
this section.'

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28 Further amend the bill by striking out all of section 154
and inserting in its place the following:

30 '**Sec. 154. Corrective legislation.** The Joint Standing Committee
32 on Judiciary shall review statutory changes enacted by the 120th
Legislature that may conflict with this Act and shall prepare
34 corrective legislation before December 1, 2002 for introduction
in the 121st Legislature. This section takes effect January 1,
2002.

36 '**Sec. 155. Effective date.** Except as otherwise provided, this
38 Act takes effect January 31, 2003.'

40 Further amend the bill by relettering or renumbering any
42 nonconsecutive Part letter or section number to read
consecutively.

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

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FISCAL NOTE

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The Judicial Department will incur some minor additional costs to update the offense file to incorporate the numerous statutory changes contained in this bill. These costs can be absorbed within the department's existing budgeted resources.'

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SUMMARY

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The amendment makes the following changes to the bill.

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1. It makes a technical change to the criminal trespass provisions.

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2. It corrects an additional cross-reference in the drug statutes required by the bill.

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3. It reorders the crime of unlawful possession of scheduled drugs to provide for the highest class being listed first.

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4. It repeals a subsection in the drug statutes that the bill makes unnecessary.

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5. It deletes a duplicative section of the bill.

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6. It reorganizes the firearm forfeiture provisions to clarify that section of law.

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7. It corrects the crime of aggravated cultivating of marijuana to correctly list the Class D and Class E crimes.

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The bill as amended makes changes to the Maine Criminal Code with regard to sentence enhancers. To clarify what was stated in the bill, the category of substantive changes that are necessary relates to how to handle facts about a crime that are not technically elements but are currently used for determining the class of crime for sentencing purposes. Facts that function to give the underlying crime a higher class than it would otherwise carry are termed "sentence enhancers" and are the functional equivalent of elements of the resulting higher class crimes. Legally indistinguishable from an element, a sentence enhancer, in order to meet state and federal constitutional requirements, other than the fact of convictions, must be alleged in the charging instrument, submitted to the jury and proved by the prosecution beyond a reasonable doubt. Although in many instances these specific procedural safeguards currently expressly accompany the sentence enhancer, such is not always the

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2 case. This bill as amended incorporates each sentence enhancer
into the elements of the crime that it enhances. This results in
4 the statutory requirement that the enhancers be pleaded and
proved beyond a reasonable doubt in order for the prosecution to
6 secure a conviction for that crime at that class. The amendment
adds a fiscal note to the bill.

COMMITTEE AMENDMENT