

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 944

H.P. 701

House of Representatives, February 25, 2003

An Act To Increase Penalties for Furnishing or Trafficking Scheduled Drugs That Cause Death or Serious Bodily Injury

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered
printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BUNKER of Kossuth Township.
Cosponsored by Senator HATCH of Somerset and
Representatives: CARR of Lincoln, CHURCHILL of Washburn, FAIRCLOTH of Bangor,
GREELEY of Levant, GROSE of Woolwich, LESSARD of Topsham.

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

2
4 **Sec. 1. 17-A MRSA §1105-A, sub-§1, ¶¶I and J**, as enacted by PL 2001, c. 667, Pt. D, §25 and affected by §36, are amended to read:

6 I. At the time of the offense, the person trafficks in 300
8 or more pills, capsules, tablets, vials, ampules, syringes
10 or units containing any narcotic drug other than heroin, or
12 any quantity of pills, capsules, tablets, units, compounds,
mixtures or substances that, in the aggregate, ~~contains~~
contain 8,000 milligrams or more of oxycodone or 1,000
milligrams or more of hydromorphone; ~~or~~

14 J. At the time of the offense, the person trafficks in a
16 quantity of 300 or more pills, capsules, tablets or units
18 containing 3, 4-methylenedioxymethamphetamine, MDMA, or any
other drug listed in section 1102, subsection 1, paragraph
O-;

20 **Sec. 2. 17-A MRSA §1105-A, sub-§1, ¶¶K and L** are enacted to
22 read:

24 K. Death is in fact caused by the use of that scheduled
26 drug and the drug is a schedule W drug. A violation of this
paragraph is a Class A crime; or

28 L. Serious bodily injury is in fact caused by the use of
30 that scheduled drug and the drug is a schedule W drug. A
violation of this paragraph is a Class B crime.

32 **Sec. 3. 17-A MRSA §1105-B, sub-§1, ¶B**, as enacted by PL 2001,
c. 383, §119 and affected by §156, is amended to read:

34 B. At the time of the offense, the person has been
36 convicted of any offense under this chapter punishable by a
38 term of imprisonment of more than one year or under any law
40 of the United States, of another state or of a foreign
42 country relating to scheduled drugs or counterfeit drugs, as
44 defined in this chapter, and punishable by a term of
imprisonment of more than one year. Section 9-A governs the
use of prior convictions when determining a sentence, except
that, for the purposes of this paragraph, the date of each
prior conviction may precede the commission of the offense
being enhanced by more than 10 years; ~~or~~

46 **Sec. 4. 17-A MRSA §1105-B, sub-§1, ¶C**, as repealed and replaced
48 by PL 2001, c. 667, Pt. D, §26 and affected by §36, is amended to
read:

2 C. At the time of the offense, the person possesses a
firearm in the furtherance of the offense, uses a firearm,
4 carries a firearm or is armed with a firearm; or

6 **Sec. 5. 17-A MRSA §1105-B, sub-§1, ¶D** is enacted to read:

8 D. Death or serious bodily injury is in fact caused by the
use of that counterfeit drug.

10 **Sec. 6. 17-A MRSA §1105-C, sub-§1, ¶I**, as enacted by PL 2001,
c. 667, Pt. D, §32 and affected by §36, is amended to read:

12 I. At the time of the offense, the person furnishes 300 or
14 more pills, capsules, tablets, vials, ampules, syringes or
units containing any narcotic drug other than heroin, or any
16 quantity of pills, capsules, tablets, units, compounds,
mixtures or substances that, in the aggregate, ~~eentains~~
18 contain 8,000 milligrams or more of oxycodone or 1,000
milligrams or more of hydromorphone; ~~ex~~

20 **Sec. 7. 17-A MRSA §1105-C, sub-§1, ¶J**, as enacted by PL 2001,
22 c. 667, Pt. D, §32 and affected by §36, is amended to read:

24 J. At the time of the offense, the person furnishes a
quantity of 300 or more pills, capsules, tablets or units
26 containing 3, 4-methylenedioxymethamphetamine, MDMA, or any
other drug listed in section 1102, subsection 1, paragraph
28 O; or

30 **Sec. 8. 17-A MRSA §1105-C, sub-§1, ¶¶K and L** are enacted to
read:

32 K. Death is in fact caused by the use of that scheduled
34 drug and the drug is a schedule W drug. A violation of this
paragraph is a Class B crime; or

36 L. Serious bodily injury is in fact caused by the use of
38 that scheduled drug and the drug is a schedule W drug. A
violation of this paragraph is a Class C crime.

42 SUMMARY

44 This bill increases the penalties for trafficking or
furnishing schedule W drugs or a counterfeit scheduled drug when
46 death or serious bodily injury results from the use of the drug,
such as in cases of accidental overdoses. Schedule W drugs
48 include those whose use is most likely to result in a fatal
overdose, such as heroin, cocaine and prescription narcotic
50 pills. Counterfeit drugs are those substances, sometimes sold as

2 illegal drugs, that are capable of causing death or serious
3 bodily injury, such as poisons or chemical agents. The changes
4 add such situations to the existing list of aggravating
5 circumstances that already provide for increased penalties, such
6 as furnishing or trafficking within 1,000 feet of a school or to
7 a child under 18 years of age. The death or serious bodily
8 injury need not be reasonably foreseeable by the defendant; it is
9 sufficient if the death would not have happened but for the use
10 of the drug, either alone or concurrently with another cause,
11 unless the concurrent cause was clearly sufficient to produce the
12 result, and the conduct of the defendant was clearly insufficient.

13
14 This bill makes it a Class A crime with the possibility of a
15 4-year mandatory minimum sentence when death occurs from the
16 trafficking of a schedule W drug. The bill also makes it a Class
17 B crime with the possibility of a 2-year mandatory minimum
18 sentence when death occurs from the furnishing of a schedule W
19 drug, when serious bodily injury occurs from trafficking a
20 schedule W drug or when death or serious bodily injury occurs
21 from the trafficking or furnishing of a counterfeit scheduled
22 drug. A Class C crime results from furnishing a schedule W drug
when serious bodily injury occurs. Lower mandatory minimum
sentences apply to certain first-time offenders.