

MAINE STATE LEGISLATURE

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Date: 6/8/11

L.D. 1562
(Filing No. H-586)

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT "A" to H.P. 1147, L.D. 1562, Bill, "An Act To Prohibit the Sale or Possession of So-called Bath Salts Containing Dangerous Synthetic Drugs"

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Amend the bill by striking out everything after the title and before the summary and inserting the following:

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Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

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Whereas, certain synthetic hallucinogenic drugs marketed as bath salts are powerful stimulant drugs that are suspected to have been designed to avoid prosecution and are commonly available on the Internet; and

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Whereas, there exists a perception that these so-called bath salts pose a safer alternative to other drugs that are illegal but use of these bath salts is known to produce a number of severe side effects, including organ failure, and death; and

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Whereas, prohibiting the use and possession of these so-called bath salts is an urgent public safety matter; and

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Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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Sec. 1. 17-A MRSA §§1119 to 1123 are enacted to read:

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§1119. Unlawful possession of certain synthetic hallucinogenic drugs

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1. A person is guilty of unlawful possession of certain synthetic hallucinogenic drugs if the person intentionally or knowingly possesses what that person knows or believes to

COMMITTEE AMENDMENT

1 be a certain synthetic hallucinogenic drug, which is in fact a certain synthetic
2 hallucinogenic drug, and the drug is:

3 A. 3, 4 - methylenedioxymethcathinone, MDMC;

4 B. 3, 4 - methylenedioxypropylvalerone, MDPV;

5 C. 4 - methylmethcathinone, 4-MMC;

6 D. 4 - methoxymethcathinone, bk-PMMA, PMMC;

7 E. 3 - fluoromethcathinone, FMC;

8 F. 4 - fluoromethcathinone, FMC;

9 G. Naphthylpropylvalerone, NRG-1; and

10 H. Beta-keto-N-methylbenzodioxolylpropylamine.

11 2. Violation of this section is a Class C crime.

12 3. This section is repealed June 15, 2013.

13 **§1120. Unlawful trafficking in certain synthetic hallucinogenic drugs**

14 1. A person is guilty of unlawful trafficking in certain synthetic hallucinogenic drugs
15 if the person intentionally or knowingly trafficks in what the person knows or believes to
16 be a certain synthetic hallucinogenic drug, which is in fact a certain synthetic
17 hallucinogenic drug listed in section 1119.

18 2. If a person uses a motor vehicle to facilitate the trafficking in a certain synthetic
19 hallucinogenic drug listed in section 1119, the court may, in addition to other authorized
20 penalties, suspend the person's driver's license or permit or privilege to operate a motor
21 vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A
22 suspension may not begin until after any period of incarceration is served. If the court
23 suspends a person's driver's license or permit, privilege to operate a motor vehicle or right
24 to apply for or obtain a license, the court shall notify the Secretary of State of the
25 suspension and the court shall take physical custody of the person's license or permit.
26 The Secretary of State may not reinstate the person's driver's license or permit or
27 privilege to operate a motor vehicle or right to apply for or obtain a license unless the
28 person demonstrates that, after having been released and discharged from any period of
29 incarceration that may have been ordered, the person has served the period of suspension
30 ordered by the court.

31 3. Violation of this section is a Class B crime.

32 4. This section is repealed June 15, 2013.

33 **§1121. Aggravated trafficking in certain synthetic hallucinogenic drugs**

34 1. A person is guilty of aggravated trafficking in certain synthetic hallucinogenic
35 drugs if the person violates section 1120 and:

36 A. The person trafficks in a certain synthetic hallucinogenic drug with a child who is
37 in fact less than 18 years of age. Violation of this paragraph is a Class A crime;

1 B. At the time of the offense, the person has one or more prior convictions for any
2 Class A, B or C offense under this chapter or for engaging in substantially similar
3 conduct to that of the Class A, B or C offenses under this chapter in another
4 jurisdiction. Section 9-A governs the use of prior convictions when determining a
5 sentence, except that, for the purposes of this paragraph, the date of each prior
6 conviction may precede the commission of the offense being enhanced by more than
7 10 years. Violation of this paragraph is a Class A crime;

8 C. At the time of the offense, the person possesses a firearm in the furtherance of the
9 offense, uses a firearm, carries a firearm or is armed with a firearm. Violation of this
10 paragraph is a Class A crime;

11 D. At the time of the offense, the person is on a school bus or within 1,000 feet of the
12 real property comprising a private or public elementary or secondary school or a safe
13 zone as defined in section 1101, subsection 23. For purposes of this paragraph,
14 "school bus" has the same meaning as defined in Title 29-A, section 2301, subsection
15 5. Violation of this paragraph is a Class A crime;

16 E. At the time of the offense, the person enlists or solicits the aid of or conspires with
17 a child who is in fact less than 18 years of age to traffick in a certain synthetic
18 hallucinogenic drug. Violation of this paragraph is a Class A crime;

19 F. Death is in fact caused by the use of that certain synthetic hallucinogenic drug. A
20 violation of this paragraph is a Class A crime; or

21 G. Serious bodily injury is in fact caused by the use of that certain synthetic
22 hallucinogenic drug. A violation of this paragraph is a Class B crime.

23 2. If a person uses a motor vehicle to facilitate the aggravated trafficking in a certain
24 synthetic hallucinogenic drug, the court may, in addition to other authorized penalties,
25 suspend the person's driver's license or permit or privilege to operate a motor vehicle or
26 right to apply for or obtain a license for a period not to exceed 5 years. A suspension may
27 not begin until after any period of incarceration is served. If the court suspends a person's
28 driver's license or permit, privilege to operate a motor vehicle or right to apply for or
29 obtain a license, the court shall notify the Secretary of State of the suspension and the
30 court shall take physical custody of the person's license or permit. The Secretary of State
31 may not reinstate the person's driver's license or permit or privilege to operate a motor
32 vehicle or right to apply for or obtain a license unless the person demonstrates that, after
33 having been released and discharged from any period of incarceration that may have been
34 ordered, the person has served the period of suspension ordered by the court.

35 3. This section is repealed June 15, 2013.

36 **§1122. Unlawfully furnishing certain synthetic hallucinogenic drugs**

37 1. A person is guilty of unlawful furnishing of a certain synthetic hallucinogenic
38 drug if the person intentionally or knowingly furnishes what the person knows or believes
39 to be a certain synthetic hallucinogenic drug, which is in fact a certain synthetic
40 hallucinogenic drug listed in section 1119. Violation of this subsection is a Class C
41 crime.

42 2. If a person uses a motor vehicle to facilitate the unlawful furnishing of a certain
43 synthetic hallucinogenic drug, the court may, in addition to other authorized penalties,

1 suspend the person's driver's license, permit, privilege to operate a motor vehicle or right
2 to apply for or obtain a license for a period not to exceed 5 years. A suspension may not
3 begin until after any period of incarceration is served. If the court suspends a person's
4 driver's license, permit, privilege to operate a motor vehicle or right to apply for or obtain
5 a license, the court shall notify the Secretary of State of the suspension and the court shall
6 take physical custody of the person's license. The Secretary of State may not reinstate the
7 person's driver's license, permit, privilege to operate a motor vehicle or right to apply for
8 or obtain a license unless the person demonstrates that, after having been released and
9 discharged from any period of incarceration that may have been ordered, the person has
10 served the period of suspension ordered by the court.

11 3. This section is repealed June 15, 2013.

12 **§1123. Aggravated furnishing of certain synthetic hallucinogenic drugs**

13 1. A person is guilty of aggravated furnishing of certain synthetic hallucinogenic
14 drugs if the person violates section 1122 and:

15 A. The person furnishes a certain synthetic hallucinogenic drug to a child who is in
16 fact less than 18 years of age. Violation of this paragraph is a Class B crime;

17 B. At the time of the offense, the person has one or more prior convictions for any
18 Class A, B or C offense under this chapter or for engaging in substantially similar
19 conduct to that of the Class A, B or C offenses under this chapter in another
20 jurisdiction. Section 9-A governs the use of prior convictions when determining a
21 sentence, except that, for the purposes of this paragraph, the date of each prior
22 conviction may precede the commission of the offense being enhanced by more than
23 10 years. Violation of this paragraph is a Class B crime;

24 C. At the time of the offense, the person possesses a firearm in the furtherance of the
25 offense, uses a firearm, carries a firearm or is armed with a firearm. Violation of this
26 paragraph is a Class B crime;

27 D. At the time of the offense, the person is on a school bus or within 1,000 feet of the
28 real property comprising a private or public elementary or secondary school or a safe
29 zone as defined in section 1101, subsection 23. For purposes of this paragraph,
30 "school bus" has the same meaning as defined in Title 29-A, section 2301, subsection
31 5. Violation of this paragraph is a Class B crime;

32 E. At the time of the offense, the person enlists or solicits the aid of or conspires with
33 a child who is in fact less than 18 years of age to furnish a certain synthetic
34 hallucinogenic drug. Violation of this paragraph is a Class B crime;

35 F. Death is in fact caused by the use of that certain synthetic hallucinogenic drug. A
36 violation of this paragraph is a Class B crime. It is an affirmative defense to
37 prosecution under this paragraph that the drug furnished was lawfully possessed by
38 the defendant prior to furnishing and that the death was not a reasonably foreseeable
39 consequence of the use of that certain synthetic hallucinogenic drug. In determining
40 whether the death was reasonably foreseeable, the jury shall consider:

41 (1) The factual circumstances surrounding the furnishing of the drug;

42 (2) The total quantity of the drug furnished;

- 1 (3) The dosage of the units furnished;
- 2 (4) The nature of the drug;
- 3 (5) The overdose risk presented by use of the drug; and
- 4 (6) Any safety warnings provided to the defendant at the time of dispensing the
- 5 drug; or

6 G. Serious bodily injury is in fact caused by the use of that certain synthetic
7 hallucinogenic drug. A violation of this paragraph is a Class C crime. It is an
8 affirmative defense to prosecution under this paragraph that the drug furnished was
9 lawfully possessed by the defendant prior to furnishing and that the serious bodily
10 injury was not a reasonably foreseeable consequence of the use of that drug. In
11 determining whether the serious bodily injury was reasonably foreseeable, the jury
12 shall consider:

- 13 (1) The factual circumstances surrounding the furnishing of the drug;
- 14 (2) The total quantity of the drug furnished;
- 15 (3) The dosage of the units furnished;
- 16 (4) The nature of the drug;
- 17 (5) The overdose risk presented by use of the drug; and
- 18 (6) Any safety warnings provided to the defendant at the time of dispensing the
- 19 drug.

20 2. If a person uses a motor vehicle to facilitate the aggravated furnishing of a certain
21 synthetic hallucinogenic drug, the court may, in addition to other authorized penalties,
22 suspend the person's driver's license or permit, privilege to operate a motor vehicle or
23 right to apply for or obtain a license for a period not to exceed 5 years. A suspension may
24 not begin until after any period of incarceration is served. If the court suspends a person's
25 driver's license or permit, privilege to operate a motor vehicle or right to apply for or
26 obtain a license, the court shall notify the Secretary of State of the suspension and the
27 court shall take physical custody of the person's license or permit. The Secretary of State
28 may not reinstate the person's driver's license or permit, privilege to operate a motor
29 vehicle or right to apply for or obtain a license unless the person demonstrates that, after
30 having been released and discharged from any period of incarceration that may have been
31 ordered, the person has served the period of suspension ordered by the court.

32 3. This section is repealed June 15, 2013.

33 **Emergency clause.** In view of the emergency cited in the preamble, this
34 legislation takes effect when approved.'

SUMMARY

35 This amendment replaces the bill. The amendment adds an emergency preamble and
36 clause and, instead of listing so-called bath salts as Schedule W drugs under the Maine
37 Criminal Code, chapter 45, prohibits the possession and use of the drugs using the same
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COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1147, L.D. 1562

1 penalties as those imposed for Schedule W drugs. The amendment also repeals the
2 changes effective June 15, 2013, at which time the Legislature may reevaluate the statute
3 and evaluate any action of the Federal Government regarding these drugs.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



125th MAINE LEGISLATURE

LD 1562

LR 2027(02)

An Act To Prohibit the Sale or Possession of So-called Bath Salts Containing Dangerous Synthetic Drugs

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Criminal Justice and Public Safety
Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class A, Class B and Class C crimes; increases correctional, indigent legal services and judicial costs.

Fiscal Detail and Notes

Prohibiting the sale or possession of so-called bath salts is expected to increase costs related to prosecuting and housing offenders. Estimates of the new number of individuals that may be convicted range from 10 to 24 per year. It is likely that a large number of offenders are juveniles. The exact amount of General Fund appropriations by fiscal year needed to support these costs cannot be estimated at this time.