

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2011

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Legislative Document

No. 1589

H.P. 1192

House of Representatives, September 23, 2011

**An Act To Criminalize Possession, Trafficking and Furnishing of  
So-called Bath Salts Containing Synthetic Hallucinogenic Drugs**

(EMERGENCY)

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Received by the Clerk of the House on September 21, 2011. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative DAMON of Bangor. (GOVERNOR'S BILL)  
Cosponsored by Senator FARNHAM of Penobscot and  
Representatives: BERRY of Bowdoinham, CUSHING of Hampden, HASKELL of Portland,  
PLUMMER of Windham, Senators: GERZOFKY of Cumberland, MASON of Androscoggin,  
President RAYE of Washington.

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

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

6           **Whereas,** a perception exists that these so-called bath salts are a safer alternative to  
7 other illegal drugs, but, in fact, the use of bath salts is known to produce a number of  
8 severe side effects, including psychosis, organ failure and death; and

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

11           **Whereas,** the passage of Public Law 2011, chapter 447 earlier this year has not had  
12 the intended effect of reducing the possession and use of these so-called bath salts; and

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

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

18           **Sec. 1. 15 MRSA §5821, sub-§§1 and 2,** as enacted by PL 1987, c. 420, §2, are  
19 amended to read:

20           **1. Scheduled drugs and synthetic hallucinogenic drugs.** All scheduled drugs  
21 ~~which~~ and all synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101,  
22 subsection 16-A, that have been manufactured, made, created, grown, cultivated, sold,  
23 bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed  
24 or otherwise acquired in violation of any law of this State, any other state or of the United  
25 States;

26           **2. Materials related to scheduled drugs and synthetic hallucinogenic drugs.** All  
27 raw materials, products and equipment of any kind ~~which~~ that are used or intended for  
28 use in manufacturing, compounding, processing, delivering, cultivating, growing or  
29 otherwise creating any scheduled drug or any synthetic hallucinogenic drug, as defined in  
30 Title 17-A, section 1101, subsection 16-A, in violation of any law of this State, any other  
31 state or the United States;

32           **Sec. 2. 15 MRSA §5821, sub-§3-A,** as amended by PL 2001, c. 348, §2, is  
33 further amended to read:

34           **3-A. Firearms and other weapons.** Law enforcement officers may seize all  
35 firearms and dangerous weapons that they may find in any lawful search for scheduled  
36 drugs or synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101,  
37 subsection 16-A, in which scheduled drugs or synthetic hallucinogenic drugs are found.  
38 Except for those seized weapons listed in a petition filed in the Superior Court pursuant to

1 section 5822, all weapons seized, after notice and opportunity for hearing, must be  
2 forfeited to the State by the District Court 90 days after a list of the weapons and drugs  
3 seized is filed in the District Court in the district in which the weapons and drugs were  
4 seized. A weapon need not be forfeited if the owner appears prior to the declaration of  
5 forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

6 A. That the owner had a possessory interest in the weapon at the time of the seizure  
7 sufficient to exclude every person involved with the seized drugs or every person at  
8 the site of the seizure;

9 B. That the owner had no knowledge of or involvement with the drugs and was not  
10 at the site of the seizure; and

11 C. That the owner had not given any involved person permission to possess or use  
12 the weapon.

13 Post-hearing procedures are as provided in section 5822.

14 A confiscated or forfeited handgun that was confiscated or forfeited because it was used  
15 to commit a homicide must be destroyed by the State unless the handgun was stolen and  
16 the rightful owner was not the person who committed the homicide, in which case the  
17 handgun must be returned to the owner if ascertainable. For purposes of this subsection,  
18 "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of  
19 a single hand.

20 **Sec. 3. 15 MRSA §5821, sub-§6**, as amended by PL 1989, c. 302, §1, is further  
21 amended to read:

22 **6. Money instruments.** Except as provided in paragraph A, all money, negotiable  
23 instruments, securities or other things of value furnished or intended to be furnished by  
24 any person in exchange for a scheduled drug or synthetic hallucinogenic drug, as defined  
25 in Title 17-A, section 1101, subsection 16-A, in violation of Title 17-A, chapter 45; all  
26 proceeds traceable to such an exchange; and all money, negotiable instruments and  
27 securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45;

28 A. No property may be forfeited under this subsection, to the extent of the interest of  
29 an owner, by reason of any act or omission established by that owner to have been  
30 committed or omitted without the knowledge or consent of that owner;

31 **Sec. 4. 15 MRSA §5821, sub-§7**, as amended by PL 2003, c. 688, Pt. B, §2, is  
32 further amended to read:

33 **7. Real property.** Except as provided in paragraph A, all real property, including  
34 any right, title or interest in the whole of any lot or tract of land and any appurtenances or  
35 improvements, that is used or intended for use, in any manner or part, to commit or to  
36 facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B ~~or~~,  
37 1105-C, ~~which~~ 1120, 1121 or 1123 that is a Class A, Class B or Class C crime, with the  
38 exception of offenses involving marijuana.

39 A. Property may not be forfeited under this subsection, to the extent of an interest of  
40 an owner, by reason of an act or omission established by that owner to have been  
41 committed or omitted without the knowledge or consent of that owner. When an

1 owner of property that is that person's primary residence proves by a preponderance  
2 of the evidence that the owner is the spouse or minor child of the coowner of the  
3 primary residence who has used or intended to use the residence, in any manner or  
4 part, to commit or facilitate the commission of a violation of Title 17-A, section  
5 1103, 1105-A, 1105-B ~~or~~, 1105-C, 1120, 1121 or 1123, the State shall bear the  
6 burden of proving knowledge or consent of the spouse or minor child by a  
7 preponderance of the evidence;

8 **Sec. 5. 17-A MRSA §1101, sub-§16-A** is enacted to read:

9 **16-A.** "Synthetic hallucinogenic drug" means:

10 A. 3, 4 - methylenedioxy methcathinone, MDMC;

11 B. 3, 4 - methylenedioxy pyrovalerone, MDPV;

12 C. 4 - methylmethcathinone, 4-MMC;

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

14 E. 3 - fluoromethcathinone, FMC;

15 F. 4 - fluoromethcathinone, FMC;

16 G. Napthylpyrovalerone, NRG-1; or

17 H. Beta-keto-N-methylbenzodioxolypropylamine.

18 **Sec. 6. 17-A MRSA §§1119 to 1123** are enacted to read:

19 **§1119. Unlawful possession of synthetic hallucinogenic drugs**

20 1. A person is guilty of unlawful possession of a synthetic hallucinogenic drug if the  
21 person intentionally or knowingly possesses what that person knows or believes to be a  
22 synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug.

23 Violation of this subsection is a Class D crime.

24 2. A person who violates subsection 1 commits a Class C crime if:

25 A. The person has one or more prior convictions for any offense under this chapter;  
26 or

27 B. The person has one or more prior convictions for any Class A, B or C offense  
28 under this Title or for engaging in substantially similar conduct to that of a Class A, B  
29 or C offense under this Title in another jurisdiction.

30 **§1120. Unlawful trafficking in synthetic hallucinogenic drugs**

31 1. A person is guilty of unlawful trafficking in a synthetic hallucinogenic drug if the  
32 person intentionally or knowingly trafficks in what the person knows or believes to be a  
33 synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug. Violation  
34 of this subsection is a Class B crime.

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

13           **§1121. Aggravated trafficking in synthetic hallucinogenic drugs**

14           1. A person is guilty of aggravated trafficking in a synthetic hallucinogenic drug if  
15 the person violates section 1120 and:

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

18           B. At the time of the offense, the person has one or more prior convictions for any  
19 Class A, B or C offense under this chapter or for engaging in substantially similar  
20 conduct to that of the Class A, B or C offenses under this chapter in another  
21 jurisdiction. Section 9-A governs the use of prior convictions when determining a  
22 sentence, except that, for the purposes of this paragraph, the date of each prior  
23 conviction may precede the commission of the offense being enhanced by more than  
24 10 years. Violation of this paragraph is a Class A crime;

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

28           D. At the time of the offense, the person is on a school bus or within 1,000 feet of the  
29 real property comprising a private or public elementary or secondary school or a safe  
30 zone as defined in section 1101, subsection 23. Violation of this paragraph is a Class  
31 A crime.

32           For purposes of this paragraph, "school bus" has the same meaning as in Title 29-A,  
33 section 2301, subsection 5;

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

37           F. Death is in fact caused by the use of that synthetic hallucinogenic drug. Violation  
38 of this paragraph is a Class A crime; or

39           G. Serious bodily injury is in fact caused by the use of that synthetic hallucinogenic  
40 drug. Violation of this paragraph is a Class B crime.

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

13           **§1122. Unlawfully furnishing synthetic hallucinogenic drugs**

14           1. A person is guilty of unlawful furnishing of a synthetic hallucinogenic drug if the  
15 person intentionally or knowingly furnishes what the person knows or believes to be a  
16 synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug.

17           Violation of this subsection is a Class C crime.

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

30           **§1123. Aggravated furnishing of synthetic hallucinogenic drugs**

31           1. A person is guilty of aggravated furnishing of a synthetic hallucinogenic drug if  
32 the person violates section 1122 and:

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

35           B. At the time of the offense, the person has one or more prior convictions for any  
36 Class A, B or C offense under this chapter or for engaging in substantially similar  
37 conduct to that of the Class A, B or C offenses under this chapter in another  
38 jurisdiction. Section 9-A governs the use of prior convictions when determining a  
39 sentence, except that, for the purposes of this paragraph, the date of each prior  
40 conviction may precede the commission of the offense being enhanced by more than  
41 10 years. Violation of this paragraph is a Class B crime;

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

4 D. At the time of the offense, the person is on a school bus or within 1,000 feet of the  
5 real property comprising a private or public elementary or secondary school or a safe  
6 zone as defined in section 1101, subsection 23. Violation of this paragraph is a Class  
7 B crime.

8 For purposes of this paragraph, "school bus" has the same meaning as in Title 29-A,  
9 section 2301, subsection 5;

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

13 F. Death is in fact caused by the use of that synthetic hallucinogenic drug. Violation  
14 of this paragraph is a Class B crime. It is an affirmative defense to prosecution under  
15 this paragraph that the drug furnished was lawfully possessed by the defendant prior  
16 to furnishing and that the death was not a reasonably foreseeable consequence of the  
17 use of that synthetic hallucinogenic drug. In determining whether the death was  
18 reasonably foreseeable, the fact finder shall consider:

- 19 (1) The factual circumstances surrounding the furnishing of the drug;
- 20 (2) The total quantity of the drug furnished;
- 21 (3) The dosage of the units furnished;
- 22 (4) The nature of the drug;
- 23 (5) The overdose risk presented by use of the drug; and
- 24 (6) Any safety warnings provided to the defendant at the time of dispensing the  
25 drug; or

26 G. Serious bodily injury is in fact caused by the use of that synthetic hallucinogenic  
27 drug. Violation of this paragraph is a Class C crime. It is an affirmative defense to  
28 prosecution under this paragraph that the drug furnished was lawfully possessed by  
29 the defendant prior to furnishing and that the serious bodily injury was not a  
30 reasonably foreseeable consequence of the use of that synthetic hallucinogenic drug.  
31 In determining whether the serious bodily injury was reasonably foreseeable, the fact  
32 finder shall consider:

- 33 (1) The factual circumstances surrounding the furnishing of the drug;
- 34 (2) The total quantity of the drug furnished;
- 35 (3) The dosage of the units furnished;
- 36 (4) The nature of the drug;
- 37 (5) The overdose risk presented by use of the drug; and
- 38 (6) Any safety warnings provided to the defendant at the time of dispensing the  
39 drug.



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

13           **Sec. 7. 17-A MRSA §1201, sub-§1, ¶A-1**, as amended by PL 2009, c. 573, §3,  
14 is further amended to read:

15           A-1. The conviction is for a Class D or Class E crime other than:

16           (1) A Class D or Class E crime relative to which, based upon both the written  
17 agreement of the parties and a court finding, the facts and circumstances of the  
18 underlying criminal episode giving rise to the conviction generated probable  
19 cause to believe the defendant had committed a Class A, Class B or Class C  
20 crime in the course of that criminal episode and, as agreed upon in writing by the  
21 parties and found by the court, the defendant has no prior conviction for murder  
22 or for a Class A, Class B or Class C crime and has not been placed on probation  
23 pursuant to this subparagraph on any prior occasion;

24           (2) A Class D crime that the State pleads and proves was committed against a  
25 family or household member or a dating partner under chapter 9 or 13 or section  
26 554, 555 or 758. As used in this subparagraph, "family or household member"  
27 has the same meaning as in Title 19-A, section 4002, subsection 4; "dating  
28 partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;

29           (2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15,  
30 section 321, subsection 6 or Title 19-A, section 4011, subsection 1;

31           (3) A Class D or Class E crime in chapter 11 or 12;

32           (4) A Class D crime under section 210-A;

33           (4-A) A Class E crime under section 552;

34           (5) A Class D or Class E crime under section 556, section 854, excluding  
35 subsection 1, paragraph A, subparagraph (1), or section 855;

36           (6) A Class D crime in chapter 45 relating to a schedule W drug;

37           (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A,  
38 paragraph B; ~~or~~

39           (8) A Class D crime under Title 17, section 1031; ~~or~~

40           (9) A Class D crime under Title 17-A, section 1119, subsection 1.



1 weapons, money and real property related to the crimes regarding synthetic  
2 hallucinogenic drugs.