

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1246

S.P. 451

In Senate, April 7, 2015

An Act To Strengthen Laws Regarding the Manufacture and Sale of Methamphetamine and Other Drugs

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.

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

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator ROSEN of Hancock.
Cosponsored by Representative DAVITT of Hampden and
Senators: BURNS of Washington, GERZOFSKY of Cumberland, Representatives: BECK of
Waterville, GOLDEN of Lewiston, HOBBS of Saco, LONG of Sherman, SAUCIER of
Presque Isle, THERIAULT of China.

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

2 **Sec. 1. 17-A MRSA §1101, sub-§17**, as amended by PL 1999, c. 374, §1 and c.
3 453, §§1 to 3, is further amended to read:

4 **17. "Traffick":**

5 A. To make, create, manufacture;

6 B. To grow or cultivate, except for marijuana;

7 C. To sell, barter, trade, exchange or otherwise furnish for consideration;

8 D. To possess with the intent to do any act mentioned in paragraph C; ~~or~~

9 E. To possess 2 grams or more of heroin or 90 or more individual bags, folds,
10 packages, envelopes or containers of any kind containing heroin; or

11 F. To possess 2 grams or more of fentanyl or 90 or more individual bags, folds,
12 packages, envelopes or containers of any kind containing fentanyl.

13 **Sec. 2. 17-A MRSA §1101, sub-§18**, as amended by PL 1999, c. 453, §§4 and 5,
14 is further amended to read:

15 **18. "Furnish":**

16 A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to
17 another;

18 B. To possess with the intent to do any act mentioned in paragraph A; ~~or~~

19 C. To possess at least one gram but less than 2 grams of heroin or at least 45 but
20 fewer than 90 individual bags, folds, packages, envelopes or containers of any kind
21 containing heroin; or

22 D. To possess at least one gram but less than 2 grams of fentanyl or at least 45 but
23 fewer than 90 individual bags, folds, packages, envelopes or containers of any kind
24 containing fentanyl.

25 **Sec. 3. 17-A MRSA §1103, sub-§3, ¶H**, as enacted by PL 2001, c. 419, §13, is
26 amended to read:

27 H. ~~Thirty~~ Fourteen grams or more of or 30 or more pills, capsules, tablets or units
28 containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed
29 in section 1102, subsection 1, paragraph O or P.

30 **Sec. 4. 17-A MRSA §1105-E** is enacted to read:

31 **§1105-E. Aggravated unlawful operation of a clandestine methamphetamine**
32 **laboratory**

33 **1. A person is guilty of aggravated unlawful operation of a clandestine**
34 **methamphetamine laboratory if the person violates section 1124 and:**

1 A. 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. Violation of this paragraph is a Class A crime.

5 Section 9-A governs the use of prior convictions when determining a sentence under
6 this paragraph, except that, for the purposes of this paragraph, the date of each prior
7 conviction may precede the commission of the offense being enhanced by more than
8 10 years;

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

12 C. At the time of the offense, the person is within 1,000 feet of the real property
13 comprising a private or public elementary or secondary school or a safe zone as
14 defined in section 1101, subsection 23. Violation of this paragraph is a Class A
15 crime;

16 D. At the time of the offense, the person enlists or solicits the aid of or conspires
17 with a child who is in fact less than 18 years of age to operate a clandestine
18 methamphetamine laboratory. Violation of this paragraph is a Class A crime;

19 E. Death or serious bodily injury is in fact caused by the clandestine
20 methamphetamine laboratory. Violation of this paragraph is a Class A crime; or

21 F. At the time of the offense, the premises is the residence of a child who is in fact
22 less than 18 years of age, the premises is a multi-unit residential building or the
23 premises is a room offered to the public for overnight accommodations. Violation of
24 this paragraph is a Class A crime.

25 **Sec. 5. 17-A MRSA §1107-A, sub-§1, ¶B**, as amended by PL 2007, c. 476, §43,
26 is further amended to read:

27 B. A schedule W drug that contains:

28 (1) Heroin (diacetylmorphine);

29 (2) Cocaine in the form of cocaine base and at the time of the offense the person
30 has one or more prior convictions for any offense under this chapter or for
31 engaging in substantially similar conduct to that of the Maine offenses under this
32 chapter in another jurisdiction. For the purposes of this paragraph, a person has
33 been convicted of an offense on the date the judgment of conviction was entered
34 by the court;

35 (3) Methamphetamine;

36 (4) Oxycodone;

37 (5) Hydrocodone; ~~or~~

38 (6) Hydromorphone-;

39 (7) Fentanyl;

40 (8) Cocaine and the quantity possessed is 7 grams or more; or

1 (9) Cocaine in the form of cocaine base and the quantity possessed is 2 grams or
2 more.

3 Violation of this paragraph is a Class C crime;

4 **Sec. 6. 17-A MRSA §1124** is enacted to read:

5 **§1124. Unlawful operation of a clandestine methamphetamine laboratory**

6 1. For purposes of this section, unless the context otherwise indicates, the following
7 terms have the following meanings:

8 A. "Methamphetamine catalyst" means any substance that has been used, is being
9 used or is intended to be used to activate, accelerate, extend or improve a chemical
10 reaction involved in the manufacture of methamphetamine.

11 B. "Methamphetamine precursor" means any substance that can be directly or
12 indirectly transformed into methamphetamine by means of chemical synthesis,
13 including, but not limited to, ephedrine, pseudoephedrine, benzyl methyl ketone,
14 phenylacetone, phenylacetic acid, phenyl-2-propanone (P2P) or any salt, isomer or
15 salt of isomers of these chemicals.

16 C. "Methamphetamine reagent" means any substance other than a methamphetamine
17 catalyst that has been used, is being used or is intended to be used to react with and
18 chemically alter any methamphetamine precursor.

19 D. "Methamphetamine solvent" means any substance that has been used, is being
20 used or is intended to be used as a medium in which any methamphetamine
21 precursor, methamphetamine catalyst, methamphetamine reagent or any substance
22 containing any of the foregoing is dissolved, diluted or washed during any part of the
23 methamphetamine manufacturing process.

24 2. A person is guilty of unlawful operation of a clandestine methamphetamine
25 laboratory if that person intentionally or knowingly produces, prepares, compounds,
26 converts or processes any methamphetamine precursor, methamphetamine catalyst,
27 methamphetamine reagent or methamphetamine solvent with the intent that
28 methamphetamine be produced.

29 It is not a defense that the chemical reaction is not complete or that no scheduled drug
30 was in fact created.

31 Violation of this subsection is a Class B crime.

32 3. If a person uses a motor vehicle to facilitate the unlawful operation of a
33 clandestine methamphetamine laboratory, the court may, in addition to other authorized
34 penalties, suspend the person's driver's license or permit or privilege to operate a motor
35 vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A
36 suspension may not begin until after any period of incarceration is served. If the court
37 suspends a person's driver's license or permit, privilege to operate a motor vehicle or right
38 to apply for or obtain a license, the court shall notify the Secretary of State of the
39 suspension and the court shall take physical custody of the person's license or permit.
40 The Secretary of State may not reinstate the person's driver's license or permit or

1 privilege to operate a motor vehicle or right to apply for or obtain a license unless the
2 person demonstrates that, after having been released and discharged from any period of
3 incarceration that may have been ordered, the person has served the period of suspension
4 ordered by the court.

5 **Sec. 7. 17-A MRSA §1322, sub-§3, ¶C-2**, as enacted by PL 1993, c. 305, §1, is
6 amended to read:

7 C-2. "Expense of an emergency response" means reasonable costs incurred by a
8 public agency in reasonably making an appropriate emergency response to the
9 incident, including a response to a suspected unlawful clandestine methamphetamine
10 laboratory under section 1124, but only includes those costs directly arising because
11 of the response to the particular incident. Reasonable costs include the costs of
12 providing police, firefighting, rescue and emergency medical services at the scene of
13 the incident, as well as the compensation for the personnel, including trained
14 laboratory personnel, responding to the incident. "Public agency" means the State or
15 any county, municipality, district or public authority located, in whole or in part,
16 within this State that provides or may provide laboratory services or police,
17 firefighting, ambulance or other emergency services.

18 SUMMARY

19 This bill strengthens laws regarding the manufacture and sale of methamphetamine
20 and other drugs. It:

21 1. Provides that possession of 2 grams or more of fentanyl or 90 or more individual
22 containers containing fentanyl constitutes "trafficking";

23 2. Provides that possession of at least one gram but less than 2 grams of fentanyl or
24 at least 45 but fewer than 90 individual containers of fentanyl constitutes "furnishing";

25 3. Establishes the crime of aggravated unlawful operation of a clandestine
26 methamphetamine laboratory; and

27 4. Prohibits the unlawful possession of a scheduled drug containing fentanyl, 7
28 grams or more of cocaine or 2 grams or more of cocaine in the form of cocaine base.