

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1541

S.P. 602

In Senate, January 7, 2016

An Act To Increase Sentences Imposed for the Illegal Importation of Scheduled Drugs

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 CYRWAY of Kennebec.
Cosponsored by Representative NADEAU of Winslow and
Senators: CUSHING of Penobscot, DIAMOND of Cumberland, KATZ of Kennebec,
LANGLEY of Hancock, McCORMICK of Kennebec, President THIBODEAU of Waldo,
Representatives: LUCHINI of Ellsworth, MALABY of Hancock, McCABE of Skowhegan.

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

2 **Sec. 1. 17-A MRSA §1118, sub-§2**, as enacted by PL 2001, c. 428, §1, is
3 amended to read:

4 2. A violation of this section is:

5 A. A Class E B crime if the drug is a schedule W drug; and

6 B. A Class D C crime if the drug is a schedule X, Y or Z drug.

7 **Sec. 2. 17-A MRSA §1118-A** is enacted to read:

8 **§1118-A. Aggravated illegal importation of scheduled drugs**

9 **1. A person is guilty of aggravated illegal importation of a scheduled drug if the**
10 **person violates section 1118 and:**

11 **A. At the time of the offense, the person has one or more prior convictions for any**
12 **Class A, B or C offense under this chapter or for engaging in substantially similar**
13 **conduct to that of the Class A, B or C offenses under this chapter in another**
14 **jurisdiction and the drug is:**

15 **(1) A schedule W drug. Violation of this subparagraph is a Class A crime; or**

16 **(2) A schedule X, Y or Z drug. Violation of this subparagraph is a Class B**
17 **crime;**

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

21 **B. At the time of the offense, the person possesses a firearm in the furtherance of the**
22 **offense, uses a firearm, carries a firearm or is armed with a firearm, and the drug is:**

23 **(1) A schedule W drug. Violation of this subparagraph is a Class A crime; or**

24 **(2) A schedule X, Y or Z drug. Violation of this subparagraph is a Class B**
25 **crime;**

26 **C. At the time of the offense, the person illegally imports cocaine in a quantity of**
27 **112 grams or more or cocaine in the form of cocaine base in a quantity of 32 grams**
28 **or more. Violation of this paragraph is a Class A crime;**

29 **D. At the time of the offense, the person enlists or solicits the aid of or conspires**
30 **with a child who is in fact less than 18 years of age to illegally import a scheduled**
31 **drug and the drug is:**

32 **(1) A schedule W drug. Violation of this subparagraph is a Class A crime; or**

33 **(2) A schedule X, Y or Z drug. Violation of this subparagraph is a Class B**
34 **crime;**

1 E. At the time of the offense, the person illegally imports methamphetamine or
2 amphetamine in a quantity of 300 or more pills, capsules, tablets or units or 100
3 grams or more. Violation of this paragraph is a Class A crime;

4 F. At the time of the offense, the person illegally imports heroin in a quantity of 6
5 grams or more or 270 or more individual bags, folds, packages, envelopes or
6 containers of any kind containing heroin. Violation of this paragraph is a Class A
7 crime;

8 G. At the time of the offense, the person illegally imports 300 or more pills,
9 capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other
10 than heroin, or any quantity of pills, capsules, tablets, units, compounds, mixtures or
11 substances that, in the aggregate, contains 8,000 milligrams or more of oxycodone or
12 1,000 milligrams or more of hydromorphone. Violation of this paragraph is a Class
13 A crime;

14 H. At the time of the offense, the person illegally imports a quantity of 300 or more
15 pills, capsules, tablets or units containing 3, 4-methylenedioxymethamphetamine,
16 MDMA, or any other drug listed in section 1102, subsection 1, paragraph O.
17 Violation of this paragraph is a Class A crime; or

18 I. Death is in fact caused by the use of that scheduled drug and the drug is a schedule
19 W drug. A violation of this paragraph is a Class A crime.

20 2. If a person uses a motor vehicle to facilitate the aggravated illegal importation of
21 a scheduled drug, the court may, in addition to other authorized penalties, suspend the
22 person's driver's license or permit or privilege to operate a motor vehicle or right to apply
23 for or obtain a license for a period not to exceed 5 years. A suspension may not begin
24 until after any period of incarceration is served. If the court suspends a person's driver's
25 license or permit, privilege to operate a motor vehicle or right to apply for or obtain a
26 license, the court shall notify the Secretary of State of the suspension and the court shall
27 take physical custody of the person's license or permit. The Secretary of State may not
28 reinstate the person's driver's license or permit or privilege to operate a motor vehicle or
29 right to apply for or obtain a license unless the person demonstrates that, after having
30 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 **Sec. 3. 17-A MRSA §1252, sub-§5-A,** as amended by PL 2013, c. 133, §15, is
33 further amended to read:

34 **5-A.** Notwithstanding any other provision of this Code, for a person convicted of
35 violating section 1105-A, 1105-B, 1105-C, ~~or~~ 1105-D, 1118 or 1118-A:

36 A. Except as otherwise provided in paragraphs B and C, the minimum sentence of
37 imprisonment, which may not be suspended, is as follows: When the sentencing class
38 is Class A, the minimum term of imprisonment is 4 years; when the sentencing class
39 is Class B, the minimum term of imprisonment is 2 years; and, with the exception of
40 a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is
41 the basis for the charge is marijuana, when the sentencing class is Class C, the
42 minimum term of imprisonment is one year;

1 B. The court may impose a sentence other than a minimum unsuspended term of
2 imprisonment set forth in paragraph A, if:

3 (1) The court finds by substantial evidence that:

4 (a) Imposition of a minimum unsuspended term of imprisonment under
5 paragraph A will result in substantial injustice to the defendant. In making
6 this determination, the court shall consider, among other considerations,
7 whether the defendant did not know and reasonably should not have known
8 that the victim was less than 18 years of age;

9 (b) Failure to impose a minimum unsuspended term of imprisonment under
10 paragraph A will not have an adverse effect on public safety; and

11 (c) Failure to impose a minimum unsuspended term of imprisonment under
12 paragraph A will not appreciably impair the effect of paragraph A in
13 deterring others from violating section 1105-A, 1105-B, 1105-C or 1105-D;
14 and

15 (2) The court finds that:

16 (c) The defendant's background, attitude and prospects for rehabilitation and
17 the nature of the victim and the offense indicate that imposition of a sentence
18 under paragraph A would frustrate the general purposes of sentencing set
19 forth in section 1151.

20 If the court imposes a sentence under this paragraph, the court shall state in writing
21 its reasons for its findings and for imposing a sentence under this paragraph rather
22 than under paragraph A; and

23 C. If the court imposes a sentence under paragraph B, the minimum sentence of
24 imprisonment, which may not be suspended, is as follows: When the sentencing class
25 is Class A, the minimum term of imprisonment is 9 months; when the sentencing is
26 Class B, the minimum term of imprisonment is 6 months; and, with the exception of
27 trafficking or furnishing marijuana under section 1105-A or 1105-C, when the
28 sentencing class is Class C, the minimum term of imprisonment is 3 months.

29 SUMMARY

30 This bill raises the class of crime for the illegal importation of scheduled drugs from a
31 Class C crime to a Class B crime if the drug is a schedule W drug and from a Class D
32 crime to a Class C crime if the drug is a schedule X, Y or Z drug.

33 The bill also creates the crime of aggravated illegal importation of scheduled drugs.
34 Under the new crime, which is based on the crime of aggravated trafficking of scheduled
35 drugs, certain aggravating factors, such as a prior conviction, using a child under 18 years
36 of age to assist with the illegal importation or the quantity of drugs being imported, raise
37 the class of crime by one class.

38 This bill specifies that the minimum sentence of imprisonment is 4 years for a Class
39 A violation of illegal importation of drugs or aggravated illegal importation of drugs and
40 2 years for a Class B violation of those crimes.