

# MAINE STATE LEGISLATURE

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1703

L.D. 967

Date: 6-17-21

(Filing No. H-727)

MAJORITY  
CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 713, L.D. 967, "An Act To Make Possession of Scheduled Drugs for Personal Use a Civil Penalty"

Amend the bill by striking out the title and substituting the following:

'An Act To Make Possession of a Scheduled Drug a Civil Violation'

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 17-A MRSA §1106-A, sub-§2, as amended by PL 2001, c. 383, §125 and affected by §156, is repealed.

Sec. 2. 17-A MRSA §1107-A, sub-§1, as amended by PL 2015, c. 496, §§6 to 8, is repealed.

Sec. 3. 17-A MRSA §1107-A, sub-§1-A is enacted to read:

1-A. Unless otherwise specified, possession of a schedule W, X, Y or Z drug is a civil violation.

A. A person adjudicated of violating this subsection is subject to a civil penalty of up to \$100.

B. In lieu of payment of the fine specified in paragraph A, a person who violates this subsection may complete a health assessment administered by a credentialed treatment professional for behavioral health and substance use disorder treatment. The person must complete the health assessment within 45 days of being cited for violating this subsection. Upon verification that the person has complied with the requirements of this paragraph, the fine must be waived.

C. Failure to pay the fine for a violation of this subsection may not be the basis for the imposition of a term of imprisonment.

Sec. 4. 17-A MRSA §1107-A, sub-§4, as amended by PL 2015, c. 496, §9, is further amended to read:

COMMITTEE AMENDMENT

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1 4. It is an affirmative defense to prosecution under subsection 1, paragraph B,  
2 subparagraphs (4) to (6); subsection 1, paragraph B 1, subparagraphs (4) to (6); and  
3 paragraphs C to F 1-A that the person possessed a valid prescription for the scheduled drug  
4 or controlled substance that is the basis for the charge and that, at all times, the person  
5 intended the drug to be used only for legitimate medical use in conformity with the  
6 instructions provided by the prescriber and dispenser.

7 **Sec. 5. 17-A MRSA §1126, sub-§1**, as enacted by PL 2019, c. 113, Pt. B, §17, is  
8 amended to read:

9 **1. Fine based on value of scheduled drugs at time of offense.** As authorized by  
10 section 1706, subsection 3, if the State pleads and proves the value at the time of the  
11 commission of a crime of a scheduled drug that is the basis for a conviction under section  
12 1103, 1105-A, 1105-B, 1105-C, 1105-D; or 1106 or 1107-A, the convicted person may be  
13 sentenced to pay a fine in an amount up to the value, as pleaded and proved by the State,  
14 of that scheduled drug.

15 **Sec. 6. 17-A MRSA §1126, sub-§2**, as enacted by PL 2019, c. 113, Pt. B, §17, is  
16 amended to read:

17 **2. Mandatory minimum fine barring court finding exceptional circumstances.** In  
18 addition to any other authorized sentencing alternative specified in section 1502, subsection  
19 2 for individuals or section 1502, subsection 7 for organizations, the court shall impose a  
20 minimum fine of \$400, none of which may be suspended, except as provided in subsection  
21 3, for an individual convicted of a crime under section 1103; 1104; 1105-A; 1105-B;  
22 1105-C; 1105-D; 1106; 1107-A; 1108; 1109; 1110; 1111; 1111-A, subsection 4-A; 1116;  
23 1117; or 1118.

24 **Sec. 7. 17-A MRSA §1902, sub-§5**, as enacted by PL 2019, c. 113, Pt. A, §2, is  
25 repealed.

26 **Sec. 8. Transfer.** Notwithstanding any provision of law to the contrary, the  
27 Department of Administrative and Financial Services shall calculate the amount of savings  
28 identified that applies against each General Fund account within the Department of  
29 Corrections as a result of changing possession of scheduled drugs from being charged as a  
30 crime to a civil violation and shall transfer the amounts up to the amounts as specified by  
31 financial order upon the approval of the Governor. These transfers are considered  
32 adjustments to appropriations in fiscal year 2021-22 and fiscal year 2022-23.

33 **Sec. 9. Appropriations and allocations.** The following appropriations and  
34 allocations are made.

35 **CORRECTIONS, DEPARTMENT OF**  
36 **Corrections - Departmentwide Savings N402**

37 Initiative: Deappropriates funds on a departmentwide basis for savings resulting from  
38 changing possession of scheduled drugs from being charged as a crime to a civil violation.

39 <b>GENERAL FUND</b>		
40 All Other	2021-22	2022-23
41	(\$1,046,425)	(\$1,148,965)
42 <b>GENERAL FUND TOTAL</b>	<u>(\$1,046,425)</u>	<u>(\$1,148,965)</u>

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COMMITTEE AMENDMENT "A" to H.P. 713, L.D. 967

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Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment changes the unlawful possession of scheduled drugs from a crime to a civil violation for which a fine of not more than \$100 may be adjudged. In lieu of payment of the fine, a person may complete a health assessment administered by a credentialed treatment professional. Failure to pay the fine may not be used as the basis for the imposition of a term of imprisonment.

**FISCAL NOTE REQUIRED**

(See attached)



# 130th MAINE LEGISLATURE

LD 967

LR 933(02)

## An Act To Make Possession of Scheduled Drugs for Personal Use a Civil Penalty

Fiscal Note for Bill as Amended by Committee Amendment *A(H-727)*  
Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

### Fiscal Note

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
<b>Net Cost (Savings)</b>				
General Fund	(\$491,764)	(\$594,304)	(\$594,304)	(\$594,304)
<b>Appropriations/Allocations</b>				
General Fund	(\$1,046,425)	(\$1,148,965)	(\$1,148,965)	(\$1,148,965)
<b>Revenue</b>				
General Fund	(\$554,661)	(\$554,661)	(\$554,661)	(\$554,661)

### Correctional and Judicial Impact Statements

- Eliminates Class B crimes; decreases correctional and judicial costs
- Eliminates Class C crimes; decreases correctional and judicial costs
- Eliminates Class D crimes
- Eliminates Class E crimes
- Establishes new Class E crimes

### Fiscal Detail and Notes

This bill changes the unlawful possession of scheduled drugs from a crime to a civil violation. The bill also imposes either a fine of \$100 for violations or allows a person to complete a health assessment administered by a credentialed treatment professional. According to data provided by the judicial branch, there are currently an average of 1,658 violations per year for these offenses and fines assessed average \$677,549 per year. Using certain assumptions related to the number of offenders who will pay a fine or complete a health assessment, it is estimated that revenues credited to the General Fund will decrease by \$554,661 per year.

Additionally, changing possession of scheduled drugs from being charged as crimes to civil violations will reduce the number of individuals who serve sentences in state correctional facilities. According to the Maine Department of Corrections year end report for 2019, a total of 16 individuals were admitted to a prison for possession of a scheduled drug. Assuming that 3 of these admissions were for Class B crimes and 13 were for Class C crimes, the bill includes ongoing General Fund deappropriations to the Department of Corrections of \$1,046,425 in fiscal year 2021-22 and \$1,148,965 in fiscal year 2022-23. This estimate is based on the assumption that the average length of stay for a Class B crime is 591 days and 364 days for a Class C crime at an average cost of \$151.24 per day.