

MAINE STATE LEGISLATURE

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SAC
ROS

L.D. 967

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Date: 6-17-21

(Filing No. H-728)

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MINORITY

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE

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HOUSE OF REPRESENTATIVES

7

130TH LEGISLATURE

8

FIRST SPECIAL SESSION

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

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

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'An Act Decriminalizing First and 2nd Offenses of Possession of Scheduled Drugs'

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

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Sec. 1. 17-A MRSA §1106-A, sub-§2, as amended by PL 2001, c. 383, §125 and affected by §156, is repealed.

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

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1. Except as provided in subsection 2, a person is guilty of unlawful possession of a scheduled drug if the person intentionally or knowingly possesses what that person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the drug is:

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A. A schedule W drug and at the time of the offense the person had one or more convictions for violating this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction and the drug is:

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(1) Cocaine and the quantity possessed is more than 14 grams;

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(2) Cocaine in the form of cocaine base and the quantity possessed is more than 4 grams; or

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(3) Methamphetamine and the quantity possessed is more than 14 grams.

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

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~~Violation of this paragraph is a Class B crime;~~

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B. Except as provided in paragraph B-1, a schedule W drug and the drug contains:

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- (1) Heroin (diacetylmorphine) and the amount possessed is more than 200 milligrams;
- (2) Cocaine and the amount possessed is more than 2 grams;
- (3) Cocaine in the form of cocaine base and the amount possessed is more than 2 grams;
- (4) Oxycodone and the amount possessed is more than 200 milligrams;
- (5) Hydrocodone and the amount possessed is more than 200 milligrams;
- (6) Hydromorphone and the amount possessed is more than 200 milligrams;
- (7) Methamphetamine and the amount possessed is more than 200 milligrams; or
- (8) Fentanyl powder and the amount possessed is more than 200 milligrams;

~~Violation of this paragraph is a Class C crime;~~

B-1. A schedule W drug and that drug contains any of the following and at the time of the offense the person had one or more convictions for violating section 1103, 1105-A, 1105-C, 1105-E, 1106 or section 1124 or for engaging in substantially similar conduct in another jurisdiction:

- (1) Heroin (diacetylmorphine);
- (2) Cocaine;
- (3) Cocaine in the form of cocaine base;
- (4) Oxycodone;
- (5) Hydrocodone;
- (6) Hydromorphone;
- (7) Methamphetamine; or
- (8) Fentanyl powder;

~~Violation of this paragraph is a Class C crime;~~

~~C. A schedule W drug, except as provided in paragraphs A, B and B-1. Violation of this paragraph is a Class D crime;~~

~~D. A schedule X drug. Violation of this paragraph is a Class D crime;~~

~~E. A schedule Y drug. Violation of this paragraph is a Class E crime; or~~

~~F. A schedule Z drug. Violation of this paragraph is a Class E crime unless the drug is marijuana, in which case a violation of this paragraph is:~~

- ~~(1) For possession of over 2 1/2 ounces to 8 ounces of marijuana, a Class E crime;~~
- ~~(2) For possession of over 8 ounces to 16 ounces of marijuana, a Class D crime;~~
- ~~(3) For possession of over one pound to 20 pounds of marijuana, a Class C crime; and~~
- ~~(4) For possession of over 20 pounds of marijuana, a Class B crime.~~

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

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1 1-A. A first violation of subsection 1 is a civil violation for which the court may impose
2 a sentence of:

3 A. A fine of up to \$100; or

4 B. Referral as an alternative in place of the fine to assessment and treatment by a
5 credentialed treatment professional for behavioral health and substance use disorder.

6 **Sec. 4. 17-A MRSA §1107-A, sub-§1-B** is enacted to read:

7 1-B. A 2nd violation of subsection 1 is a civil violation for which the court may not
8 impose a fine but must refer the defendant to assessment and treatment by a credentialed
9 treatment professional for behavioral health and substance use disorder.

10 **Sec. 5. 17-A MRSA §1107-A, sub-§1-C** is enacted to read:

11 1-C. A 3rd or subsequent violation of subsection 1 is a Class E crime for which the
12 court may impose a sentence of:

13 A. A fine of up to \$300; or

14 B. As an alternative sentence in place of the fine, referral to assessment and treatment
15 by a credentialed treatment professional for behavioral health and substance use
16 disorder.

17 **Sec. 6. 17-A MRSA §1126, sub-§1**, as enacted by PL 2019, c. 113, Pt. B, §17, is
18 amended to read:

19 **1. Fine based on value of scheduled drugs at time of offense.** As authorized by
20 section 1706, subsection 3, if the State pleads and proves the value at the time of the
21 commission of a crime of a scheduled drug that is the basis for a conviction under section
22 1103, 1105-A, 1105-B, 1105-C, 1105-D; or 1106 or 1107-A, the convicted person may be
23 sentenced to pay a fine in an amount up to the value, as pleaded and proved by the State,
24 of that scheduled drug.

25 **Sec. 7. 17-A MRSA §1126, sub-§2**, as enacted by PL 2019, c. 113, Pt. B, §17, is
26 amended to read:

27 **2. Mandatory minimum fine barring court finding exceptional circumstances.** In
28 addition to any other authorized sentencing alternative specified in section 1502, subsection
29 2 for individuals or section 1502, subsection 7 for organizations, the court shall impose a
30 minimum fine of \$400, none of which may be suspended, except as provided in subsection
31 3, for an individual convicted of a crime under section 1103; 1104; 1105-A; 1105-B;
32 1105-C; 1105-D; 1106; ~~1107-A~~; 1108; 1109; 1110; 1111; 1111-A, subsection 4-A; 1116;
33 1117; or 1118.

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

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Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

CORRECTIONS, DEPARTMENT OF

Corrections - Departmentwide Savings N402

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

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

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

SUMMARY

This amendment is the minority report of the committee. This amendment provides a new title. The amendment changes first and 2nd offenses of possession of scheduled drugs from crimes to civil violations and 3rd and subsequent offenses to Class E crimes. The amendment provides sentences as follows: for a first violation, a sentence of a fine of up to \$100 or referral for behavioral health and substance use disorder assessment and treatment; for a 2nd violation, referral for assessment and treatment; and for a 3rd or subsequent violation, either a fine of up to \$300 or referral for assessment and treatment. The amendment removes from the bill the provisions related to reporting a drug-related medical emergency or administering naloxone and related to deferred disposition for possession of a schedule W drug. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 967

LR 933(03)

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

Fiscal Note for Bill as Amended by Committee Amendment *B(H-728)*
 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
Net Cost (Savings)				
General Fund	(\$368,877)	(\$471,417)	(\$471,417)	(\$471,417)
Appropriations/Allocations				
General Fund	(\$1,046,425)	(\$1,148,965)	(\$1,148,965)	(\$1,148,965)
Revenue				
General Fund	(\$677,548)	(\$677,548)	(\$677,548)	(\$677,548)

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 first and second offenses of possession of scheduled drugs from crimes to civil violations and third offenses to Class E crimes. The bill also imposes a fine of \$100 for a first violation or referral to treatment, a fine or a referral for a second violation and a Class E crime and a fine of up to \$300 or referral for assessment and treatment for a third violation. 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 averaged \$677,549 per year. Using certain assumptions related to the number of offenders and the frequency of violations likely to occur, it is estimated that revenues credited to the General Fund will decrease by \$553,022 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. In 2019 a total of 16 individuals were admitted to 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 for a Class C crime is 364 days at an average cost of \$151.24 per day.