

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1745

H.P. 1124

House of Representatives, April 20, 2023

**An Act to Support Public Health by Protecting Certain Activities  
Conducted Under Comprehensive Community Drug Checking  
Initiatives**

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative LaROCHELLE of Augusta.  
Cosponsored by Representatives: CRAFTS of Newcastle, MILLIKEN of Blue Hill.

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

2 **Sec. 1. 17-A MRSA §1103, sub-§1-A**, as enacted by PL 2001, c. 383, §115 and  
3 affected by §156, is amended to read:

4 **1-A.** Except as provided in ~~subsection~~ subsections 1-B and 8, a person is guilty of  
5 unlawful trafficking in a scheduled drug if the person intentionally or knowingly trafficks  
6 in what the person knows or believes to be a scheduled drug, which is in fact a scheduled  
7 drug, and the drug is:

8 A. A schedule W drug. Violation of this paragraph is a Class B crime;

9 B. A schedule X drug. Violation of this paragraph is a Class C crime;

10 C. Marijuana in a quantity of 20 pounds or more. Violation of this paragraph is a Class  
11 B crime;

12 D. Marijuana and the person grows or cultivates 500 or more plants. Violation of this  
13 paragraph is a Class B crime;

14 E. Marijuana in a quantity of more than one pound. Violation of this paragraph is a  
15 Class C crime;

16 F. Marijuana and the person grows or cultivates 100 or more plants. Violation of this  
17 paragraph is a Class C crime;

18 G. A schedule Y drug. Violation of this paragraph is a Class D crime; or

19 H. A schedule Z drug. Violation of this paragraph is a Class D crime.

20 **Sec. 2. 17-A MRSA §1103, sub-§8** is enacted to read:

21 **8.** Unlawful trafficking in a scheduled drug does not include the trafficking in a  
22 residual amount of any scheduled drug that is contained in one or more sample collection  
23 instruments or drug paraphernalia, as defined in section 1111-A, subsection 1, for the  
24 purpose of delivering the sample collection instruments or drug paraphernalia to a drug  
25 checking and analysis program authorized by the Department of Health and Human  
26 Services.

27 **Sec. 3. 17-A MRSA §1104, sub-§4** is enacted to read:

28 **4.** Unlawful trafficking in or furnishing counterfeit drugs does not include the  
29 trafficking or furnishing of a residual amount of a substance that is not a scheduled drug  
30 but is capable of causing death or serious bodily injury when taken or administered in the  
31 customary or intended manner if the purpose is to deliver the drug to a drug checking and  
32 analysis program authorized by the Department of Health and Human Services.

33 **Sec. 4. 17-A MRSA §1106, sub-§1-A**, as enacted by PL 2001, c. 383, §121 and  
34 affected by §156, is amended to read:

35 **1-A.** Except as provided in ~~subsection~~ subsections 1-B and 7, a person is guilty of  
36 unlawful furnishing of a scheduled drug if the person intentionally or knowingly furnishes  
37 what the person knows or believes to be a scheduled drug, which is in fact a scheduled  
38 drug, and the drug is:

39 A. A schedule W drug. Violation of this paragraph is a Class C crime;

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

- 1 C. A schedule Y drug. Violation of this paragraph is a Class D crime; or
- 2 D. A schedule Z drug. Violation of this paragraph is a Class D crime.

3 **Sec. 5. 17-A MRSA §1106, sub-§7** is enacted to read:

4 7. Unlawful furnishing of a scheduled drug does not include the furnishing of a  
5 residual amount of any scheduled drug that is contained in one or more sample collection  
6 instruments or drug paraphernalia, as defined in section 1111-A, subsection 1, for the  
7 purpose of delivering the sample collection instruments or drug paraphernalia to a drug  
8 checking and analysis program authorized by the Department of Health and Human  
9 Services.

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

12 **1.** Except as provided in ~~subsection~~ subsections 2 and 6, a person is guilty of unlawful  
13 possession of a scheduled drug if the person intentionally or knowingly possesses what that  
14 person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and the  
15 drug is:

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

- 19 (1) Cocaine and the quantity possessed is more than 14 grams;
- 20 (2) Cocaine in the form of cocaine base and the quantity possessed is more than 4  
21 grams; or
- 22 (3) Methamphetamine and the quantity possessed is more than 14 grams.

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

26 Violation of this paragraph is a Class B crime;

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

- 28 (1) Heroin (diacetylmorphine) and the amount possessed is more than 200  
29 milligrams;
- 30 (2) Cocaine and the amount possessed is more than 2 grams;
- 31 (3) Cocaine in the form of cocaine base and the amount possessed is more than 2  
32 grams;
- 33 (4) Oxycodone and the amount possessed is more than 200 milligrams;
- 34 (5) Hydrocodone and the amount possessed is more than 200 milligrams;
- 35 (6) Hydromorphone and the amount possessed is more than 200 milligrams;
- 36 (7) Methamphetamine and the amount possessed is more than 200 milligrams; or
- 37 (8) Fentanyl powder and the amount possessed is more than 200 milligrams.

38 Violation of this paragraph is a Class C crime;

1 B-1. A schedule W drug and that drug contains any of the following and at the time of  
2 the offense the person had one or more convictions for violating section 1103, 1105-A,  
3 1105-C, 1105-E, 1106 or section 1124 or for engaging in substantially similar conduct  
4 in another jurisdiction:

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

13 Violation of this paragraph is a Class C crime;

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

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

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

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

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

25 **Sec. 7. 17-A MRSA §1107-A, sub-§6**, as enacted by PL 2021, c. 434, §3, is  
26 amended to read:

27 **6.** Unlawful possession of a scheduled drug does not include ~~possession of a residual~~  
28 ~~amount of any scheduled drug that is contained in one or more hypodermic apparatuses.;~~

29 A. Possession of a residual amount of any scheduled drug that is contained in one or  
30 more hypodermic apparatuses; or

31 B. Possession of a residual amount of any scheduled drug that is contained in one or  
32 more sample collection instruments or drug paraphernalia, as defined in section  
33 1111-A, subsection 1, for the purpose of delivering the sample collection instruments  
34 or drug paraphernalia to a drug checking and analysis program authorized by the  
35 Department of Health and Human Services.

36 **Sec. 8. 22 MRSA §2383-B, sub-§2, ¶E**, as amended by PL 2021, c. 434, §10, is  
37 further amended to read:

1 E. Physicians, dentists, podiatrists, pharmacists or other persons authorized by law or  
2 rule to administer, dispense, prescribe or sell scheduled or prescription drugs or  
3 controlled substances while acting within the course of their professional practice; ~~and~~

4 **Sec. 9. 22 MRSA §2383-B, sub-§2, ¶G**, as enacted by PL 2013, c. 266, §10, is  
5 amended to read:

6 G. Persons conducting research at a school of pharmacology that is accredited or is a  
7 candidate for accreditation in good standing; ~~and~~

8 **Sec. 10. 22 MRSA §2383-B, sub-§2, ¶H** is enacted to read:

9 H. Persons whose possession or transportation of a residual amount of a prescription  
10 drug, scheduled drug or imitation scheduled drug, as defined in Title 17-A, section  
11 1101, subsections 10, 11 and 19, respectively, that is contained in one or more sample  
12 collection instruments or drug paraphernalia, as defined in Title 17-A, section 1111-A,  
13 subsection 1, is for the purpose of delivering the sample collection instruments or drug  
14 paraphernalia to a drug checking and analysis program authorized by the department  
15 or, if possessed by such a drug checking and analysis program, is for the purpose of  
16 conducting the drug checking and analysis.

17 **SUMMARY**

18 This bill eliminates criminal liability for a person who trafficks, furnishes or possesses  
19 a residual amount of a prescription drug, scheduled drug or imitation scheduled drug in one  
20 or more sample collection instruments or drug paraphernalia when that trafficking,  
21 furnishing or possession is for the purpose of delivering the sample collection instruments  
22 or drug paraphernalia to a drug checking and analysis program authorized by the  
23 Department of Health and Human Services or for conducting the drug checking and  
24 analysis as part of such an authorized program.