

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2001

B. A facility is not in violation of the ambient criteria for mercury if:

(1) The facility is in compliance with an interim discharge limit established by the department pursuant to section 413, subsection 11; or

(2) The facility is in compliance with a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department.

C. The department may establish a site-specific bioaccumulation factor for mercury when there is sufficient information to indicate that a site-specific bioaccumulation factor will be protective of human health and wildlife. A site-specific bioaccumulation factor may only be established:

(1) As part of a licensing proceeding pursuant to section 413 by the board; or

(2) As part of a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department.

D. The department shall establish by rule a statewide bioaccumulation factor protective of 95% of the waters of the State based upon data of acceptable quality and representing the species consumed by the public following guidelines published by the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

E. The department shall establish by rule statewide ambient water quality criteria for mercury concerning wildlife based upon data of acceptable quality from the State or the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2005 and by January 15th every 5th year thereafter on the status of mercury discharges, progress in implementing pollution prevention plans and progress toward attainment of ambient water quality criteria for

mercury under this subsection. The report may include proposed statutory amendments. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out any necessary implementing legislation related to these mercury issues in each session in which a report is required under this subsection.

Sec. 4. Legislative intent regarding mercury discharge. The State is required pursuant to the federal Clean Water Act to adopt ambient water quality criteria for toxic pollutants the discharge or presence of which in waters could reasonably be expected to interfere with designated uses of the waters adopted by the State. The Legislature finds that the State has a significant, ongoing contamination problem in regard to mercury and compounds containing mercury, both organic or inorganic, as demonstrated by widespread fish advisories. It also finds that this situation is due to a combination of factors, primarily including air deposition, historic industrial practices, current wastewater discharges and consumer products. Efforts are required to address each of these factors, including the support of national strategies to address interstate issues. This Act establishes ambient water quality criteria for mercury that identify that level of mercury considered safe for human health and the environment. Many of the State's waters do not meet these criteria. The Legislature recognizes that technology is not always adequate to allow facilities to reduce their discharges to an extent necessary to avoid violation of these criteria and that background levels in some water bodies may violate these criteria even without the presence of wastewater discharges. In order to best address the portion of mercury entering the environment through wastewater discharges, the Legislature establishes a process in the Maine Revised Statutes, Title 38, section 413, subsection 11 to require significant and reasonable progress in the reduction of wastewater discharges containing mercury in the State.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 15, 2001.

CHAPTER 419

H.P. 1270 - L.D. 1728

An Act to Control the Illegal Diversion and Abuse of Prescription Narcotic Drugs and Abuse of Designer Club Drugs

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

Sec. 1. 17-A MRSA §701, sub-§4, as amended by PL 1981, c. 436, §1, is further amended to read:

4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, absentee ballot application, absentee ballot envelope, medical drug prescription form, other evidence or symbol of value, right, privilege or identification, and any paper, document or other written instrument containing written or printed matter or its equivalent;

Sec. 2. 17-A MRSA §1102, first ¶, as enacted by PL 1975, c. 499, §1, is amended to read:

For the purposes of defining crimes under this chapter and of determining the penalties therefor, there are hereby ~~established~~ established the following schedules, designated W, X, Y and Z.

Sec. 3. 17-A MRSA §1102, sub-§1, ¶I, as amended by PL 1995, c. 499, §2 and affected by §5, is further amended to read:

I. Unless listed or described in another schedule, all narcotic drugs, including, but not limited to, the following narcotic drugs or their salts, isomers or salts of isomers: heroin (diacetylmorphine), methadone, methadone hydrochloride, levo-alpha-acetyl-methadol, or LAAM, pethidine, morphine, oxycodone, hydrocodone, hydromorphone, fentanyl and opium. As used in this chapter, "heroin" means any compound, mixture or preparation containing heroin;

Sec. 4. 17-A MRSA §1102, sub-§1, ¶M, as amended by PL 1997, c. 487, §1, is further amended to read:

M. Lysergic acid amide; ~~and~~

Sec. 5. 17-A MRSA §1102, sub-§1, ¶N, as enacted by PL 1997, c. 487, §2, is amended to read:

N. Flunitrazepam or its chemical equivalent; ~~and~~

Sec. 6. 17-A MRSA §1102, sub-§1, ¶O is enacted to read:

O. Unless listed or described in another schedule, the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of the salts, isomers and salts of isomers is possible within the chemical designation:

(1) 3, 4 - methylenedioxy amphetamine, MDA;

(2) 5 methoxy - 3, 4 methylenedioxy amphetamine, MMDA;

(3) 3, 4, 5 - trimethoxy amphetamine, TMA;

(4) 4 - methyl - 2, 5 - dimethoxyamphetamine, DOM;

(5) 2, - 3 methylenedioxyamphetamine;

(6) 2, 5 - dimethoxyamphetamine, DMA;

(7) 4 - bromo - 2, 5 - dimethoxyamphetamine, DOB;

(8) 4 methoxyamphetamine;

(9) 3, 4 - methylenedioxymethamphetamine, MDMA;

(10) 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS;

(11) 3, 4 - methylenedioxy-N-ethylamphetamine, MDE;

(12) Paramethoxymethamphetamine, PMMA;

(13) Paramethoxyamphetamine, PMA; and

(14) Paramethoxyethylamphetamine, PME.

Sec. 7. 17-A MRSA §1102, sub-§2, ¶D, as enacted by PL 1975, c. 499, §1, is repealed.

Sec. 8. 17-A MRSA §1102, sub-§2, ¶H, as amended by PL 1989, c. 924, §4, is further amended to read:

H. Unless listed or described in another schedule, ~~any of~~ the following hallucinogenic drugs or their salts, isomers and salts of isomers whenever the existence of ~~such the~~ salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) ~~3, 4~~ methylenedioxy amphetamine;

(2) ~~5 methoxy~~ 3, 4 methylenedioxy amphetamine;

(3) ~~3, 4, 5~~ trimethoxy amphetamine;

(4) ~~4 methyl~~ 2, 5 dimethoxyamphetamine;

(5) Diethyltryptamine, DET;

(6) Dimethyltryptamine, DMT;

(7) Dipropyltryptamine, DPT; and

(8) ~~2, 3~~ methylenedioxy amphetamine;

(9) ~~2, 5—dimethoxyamphetamine;~~

(10) ~~4—bromo—2, 5—dimethoxyamphetamine; and~~

(11) ~~4—methoxyamphetamine.; and~~

(12) Alpha-ethyltryptamine, AET.

Sec. 9. 17-A MRSA §1102, sub-§2, ¶K, as enacted by PL 1977, c. 649, §4, is amended to read:

K. Diethylpropion or its salts;

Sec. 10. 17-A MRSA §1102, sub-§2, ¶¶L, M and N are enacted to read:

L. Gamma hydroxybutyrate, GHB, and its salts, isomers and salts of isomers;

M. Ketamine and its salts, isomers and salts of isomers; and

N. The following substances, if intended for human ingestion:

(1) Gamma butyrolactone, GBL, and its salts, isomers and salts of isomers; or

(2) One, 4-butanediol, BD, and its salts, isomers and salts of isomers.

Sec. 11. 17-A MRSA §1103, sub-§3, ¶D, as amended by PL 1999, c. 422, §2, is further amended to read:

D. Lysergic acid diethylamide in any of the following quantities, states or concentrations:

(1) Any compound, mixture, substance or solution in a liquid state that contains a detectable quantity of lysergic acid diethylamide;

(2) Fifty or more squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

(3) Any quantity of any compound, mixture or substance that, in the aggregate, contains 2,500 micrograms or more of lysergic acid diethylamide; ~~or~~

Sec. 12. 17-A MRSA §1103, sub-§3, ¶E, as enacted by PL 1999, c. 422, §3, is amended to read:

E. Fourteen grams or more of methamphetamine;

Sec. 13. 17-A MRSA §1103, sub-§3, ¶¶F to H are enacted to read:

F. Ninety or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin;

G. Any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains 800 milligrams or more of oxycodone or 100 milligrams or more of hydromorphone; or

H. Thirty or more pills, capsules, tablets or units containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O.

Sec. 14. 17-A MRSA §1105, sub-§1, ¶¶H and I, as enacted by PL 1999, c. 531, Pt. I, §5, are amended to read:

H. A person violates section 1103 or 1106 and, at the time of the offense, the person trafficks in or furnishes methamphetamine in a quantity of 100 grams or more; ~~or~~

I. A person violates section 1103 or 1106 and, at the time of the offense, the person trafficks in or furnishes heroin in a quantity of 6 grams or more or 270 or more individual bags, folds, packages, envelopes or containers of any kind containing heroin;

Sec. 15. 17-A MRSA §1105, sub-§1, ¶J and ¶K are enacted to read:

J. A person violates section 1103 or 1106 and, at the time of the offense, the person trafficks in or furnishes 300 or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin, or any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains 8,000 milligrams or more of oxycodone or 1,000 milligrams or more of hydromorphone; or

K. A person violates section 1103 or 1106 and, at the time of the offense, the person trafficks in or furnishes a quantity of 300 or more pills, capsules, tablets or units containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O.

Sec. 16. 17-A MRSA §1106, sub-§3, ¶D, as amended by PL 1999, c. 422, §8, is further amended to read:

D. Lysergic acid diethylamide in any of the following quantities or concentrations:

(1) Not less than 25 squares, stamps, tablets or units of any compound, mixture or substance containing a detectable quantity of lysergic acid diethylamide; or

(2) Any quantity of any compound, mixture or substance that, in the aggregate, contains not less than 1,250 micrograms of lysergic acid diethylamide; or

Sec. 17. 17-A MRSA §1106, sub-§3, ¶E, as enacted by PL 1999, c. 422, §9, is amended to read:

E. Seven grams or more of methamphetamine;

Sec. 18. 17-A MRSA §1106, sub-§3, ¶¶F to H are enacted to read:

F. Forty-five or more pills, capsules, tablets, vials, ampules, syringes or units containing any narcotic drug other than heroin;

G. Any quantity of pills, capsules, tablets, units, compounds, mixtures or substances that, in the aggregate, contains not less than 400 milligrams of oxycodone or not less than 50 milligrams of hydromorphone; or

H. Fifteen or more pills, capsules, tablets or units containing 3, 4 - methylenedioxymethamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O.

Sec. 19. 17-A MRSA §1108, sub-§§1 and 2, as repealed and replaced by PL 1979, c. 512, §33, are amended to read:

1. A person is guilty of acquiring drugs by deception if, as a result of deception, ~~he~~ the person obtains or exercises control over a prescription for a scheduled drug, or what he that person knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug.

2. As used in this section, "deception" has the same meaning as in section 354, subsection 2, and includes:

A. Failure by a person, after having been asked by a prescribing health care provider or a person acting under the direction or supervision of a prescribing health care provider, to disclose the particulars of every narcotic drug or prescription for a narcotic drug issued to that person by a different health care provider within the preceding 30 days; or

B. Furnishing a false name or address to a prescribing health care provider or a person acting under the direction or supervision of a prescribing health care provider.

Sec. 20. 17-A MRSA §1108, sub-§5 is enacted to read:

5. For purposes of the causation required by subsection 1, engaging in an act of deception described in subsection 2, paragraph A or B is deemed to have resulted in the acquisition of any drugs prescribed to that person by that prescribing health care provider or person acting under the direction or supervision of that prescribing health care provider.

Sec. 21. 17-A MRSA §1109, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. Stealing drugs is ~~a Class D crime;~~

A. A Class C crime if the drug is a schedule W, X or Y drug; or

B. A Class D crime if the drug is a schedule Z drug.

Sec. 22. 17-A MRSA §1112, sub-§1, as amended by PL 1979, c. 512, §34, is further amended to read:

1. A laboratory ~~which~~ that receives a drug or substance from a law enforcement officer or agency for analysis as a scheduled drug shall, if it is capable of so doing, analyze the same as requested by a method designed to accurately determine the composition of the substance, including by chemical means, visual examination, or both, and shall issue a certificate stating the results of ~~such~~ the analysis. ~~Such~~ The certificate, when duly signed and sworn to by a person certified as qualified for this purpose by the Department of Human Services under certification standards set by that department, ~~shall be~~ is admissible in evidence in ~~any~~ a court of the State of ~~Maine~~, and ~~shall be~~ is prima facie evidence that the composition, quality and quantity of the drug or substance are as stated ~~therein in the certificate,~~ unless with 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to ~~such~~ the composition, quality and quantity.

Sec. 23. 32 MRSA §13786-A is enacted to read:

§13786-A. Security requirements; rules

1. Rules. The Department of Public Safety, after consultation with the Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy, shall adopt rules that establish security requirements for all written prescriptions for schedule II drugs issued by health care providers. For purposes of this section, "schedule II drug" has the same meaning as in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812. Rules adopted pursuant to this subsection are major

substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be brought back for review by the joint standing committee of the Legislature having jurisdiction over criminal justice matters during the 2nd Regular Session of the 120th Legislature. The rules must include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery. The rules must deal with the following subjects:

A. Measures designed to prevent unauthorized copying of a completed or blank prescription form;

B. Measures designed to prevent the erasure or modification of information written on the prescription by the prescribing health care provider; and

C. Measures to prevent the use of counterfeit prescription forms.

See title page for effective date.

CHAPTER 420

S.P. 232 - L.D. 797

**An Act to Amend the Laws
Pertaining to Domestic Violence**

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

Sec. 1. 19-A MRSA §4011, sub-§1, as amended by PL 1997, c. 683, Pt. C, §7 and affected by §8, is further amended to read:

1. Crime committed. Except as provided in ~~subsection~~ subsections 2 and 4, violation of the following is a Class D crime; when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement:

A. A temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a similar order issued by a court of the United States or of another state, territory, commonwealth or tribe; or

B. A court-approved consent agreement.

Sec. 2. 19-A MRSA §4011, sub-§4 is enacted to read:

4. Reckless conduct; assault. A defendant who violates a protective order issued pursuant to section 4007 through conduct that is reckless and that creates a substantial risk of death or serious bodily injury to the plaintiff named in the protective order or who

assaults the plaintiff named in the protective order commits a Class C crime.

See title page for effective date.

CHAPTER 421

H.P. 1086 - L.D. 1455

**An Act to Implement the
Recommendations of the Committee
to Study Further Decriminalization
of the Criminal Laws of Maine**

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

PART A

Sec. A-1. 14 MRSA Pt. 6-A is enacted to read:

PART 6-A

**CIVIL VIOLATION PROCEEDINGS CHAPTER
621 GENERAL PROVISIONS**

§5601. Statute of limitations

1. Three-year period of limitation. A proceeding against a person for a Title 29-A traffic infraction or a Title 12 civil violation related to marine resources laws and inland fisheries and wildlife laws must be commenced within 3 years after the traffic infraction or civil violation is committed. The burden is on the defendant to prove by a preponderance of the evidence that a proceeding against a person for the traffic infraction or civil violation was commenced after the expiration of the 3-year period of limitation.

2. Limitations on period of limitation. The period of limitation may not run:

A. During any time when the defendant is absent from the State, but in no event may this paragraph extend the period of limitation by more than 5 years; or

B. During any time when a traffic infraction or civil violation proceeding against the defendant for the same traffic infraction or civil violation based on the same conduct is pending in this State.

3. Definitions. For purposes of this section:

A. A civil violation is committed when every definitional component of the civil violation has occurred or, if the civil violation consists of a continuing course of conduct, at the time when