

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

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

Sec. 1. 17-A MRSA §1252, sub-§4-A, as amended by PL 2003, c. 1, §10, is further amended to read:

4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27 or section 402-A, subsection 1, paragraph A was committed, the defendant had been convicted of 2 or more crimes violating chapter 9, 11, 13 or 27 or section 402-A, subsection 1, paragraph A or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time.

See title page for effective date.

CHAPTER 476

H.P. 701 - L.D. 944

**An Act To Increase Penalties for
Furnishing or Trafficking Scheduled
Drugs That Cause Death or Serious
Bodily Injury**

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

Sec. 1. 17-A MRSA §1105-A, sub-§1, ¶¶I and J, as enacted by PL 2001, c. 667, Pt. D, §25 and affected by §36, are amended to read:

I. At the time of the offense, the person trafficks in 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 con-~~ tain 8,000 milligrams or more of oxycodone or 1,000 milligrams or more of hydromorphone; ~~or~~

J. At the time of the offense, the person trafficks in 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. 2. 17-A MRSA §1105-A, sub-§1, ¶¶K and L are enacted to read:

K. Death is in fact caused by the use of that scheduled drug and the drug is a schedule W drug. A violation of this paragraph is a Class A crime; or

L. Serious bodily injury is in fact caused by the use of that scheduled drug and the drug is a schedule W drug. A violation of this paragraph is a Class B crime.

Sec. 3. 17-A MRSA §1105-B, sub-§1, ¶B, as enacted by PL 2001, c. 383, §119 and affected by §156, is amended to read:

B. At the time of the offense, the person has been convicted of any offense under this chapter punishable by a term of imprisonment of more than one year or under any law of the United States, of another state or of a foreign country relating to scheduled drugs or counterfeit drugs, as defined in this chapter, and punishable by a term of imprisonment of more than one year. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years; ~~or~~

Sec. 4. 17-A MRSA §1105-B, sub-§1, ¶C, as repealed and replaced by PL 2001, c. 667, Pt. D, §26 and affected by §36, is amended to read:

C. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm-; or

Sec. 5. 17-A MRSA §1105-B, sub-§1, ¶D is enacted to read:

D. Death or serious bodily injury is in fact caused by the use of that counterfeit drug.

Sec. 6. 17-A MRSA §1105-C, sub-§1, ¶¶I and J, as amended by PL 2003, c. 1, §8, are further amended to read:

I. At the time of the offense, the person 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. Violation of this paragraph is a Class B crime; ~~or~~

J. At the time of the offense, the person furnishes a quantity of 300 or more pills, capsules, tablets or units containing 3,

4-methylenedioxyamphetamine, MDMA, or any other drug listed in section 1102, subsection 1, paragraph O. Violation of this paragraph is a Class B crime.;

Sec. 7. 17-A MRSA §1105-C, sub-§1, ¶¶K and L are enacted to read:

K. Death is in fact caused by the use of that scheduled drug and the drug is a schedule W drug. A violation of this paragraph is a Class B crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the death was not a reasonably foreseeable consequence of the use of that scheduled drug. In determining whether the death was reasonably foreseeable, the jury shall consider:

- (1) The factual circumstances surrounding the furnishing of the drug;
- (2) The total quantity of the drug furnished;
- (3) The dosage of the units furnished;
- (4) The nature of the drug;
- (5) The overdose risk presented by use of the drug; and
- (6) Any safety warnings provided to the defendant at the time of dispensing the drug; or

L. Serious bodily injury is in fact caused by the use of that scheduled drug and the drug is a schedule W drug. A violation of this paragraph is a Class C crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the serious bodily injury was not a reasonably foreseeable consequence of the use of that scheduled drug. In determining whether the serious bodily injury was reasonably foreseeable, the jury shall consider:

- (1) The factual circumstances surrounding the furnishing of the drug;
- (2) The total quantity of the drug furnished;
- (3) The dosage of the units furnished;
- (4) The nature of the drug;
- (5) The overdose risk presented by use of the drug; and

(6) Any safety warnings provided to the defendant at the time of dispensing the drug.

See title page for effective date.

CHAPTER 477

S.P. 538 - L.D. 1577

An Act To Amend and Improve the Education Laws

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

Sec. 1. 20-A MRSA §1, sub-§13-A, ¶B, as enacted by PL 1991, c. 608, §1, is repealed.

Sec. 2. 20-A MRSA §1, sub-§13-A, ¶B-1 is enacted to read:

B-1. Is a child or a youth:

(1) Who is sharing the housing of other persons due to loss of housing or economic hardship or a similar reason; is living in a motel, hotel, trailer park or camping ground due to the lack of alternative adequate accommodation; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;

(2) Who is living in a car, park or public space or in an abandoned building, substandard housing, bus or train station or similar setting;

(3) Who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; and

(4) Who is a migratory child, as defined in Section 1309 of the federal Elementary and Secondary Education Act of 1965, who qualifies as homeless for the purpose of this chapter because the child is living in circumstances described in this section.

Sec. 3. 20-A MRSA §1, sub-§13-A, ¶C, as enacted by PL 1991, c. 608, §1, is repealed.

Sec. 4. 20-A MRSA §5205, sub-§7, as enacted by PL 1991, c. 608, §3, is amended to read:

7. Homeless students. Pursuant to section 261, the commissioner may adopt rules to ensure that each homeless student has unrestricted access to the free public education afforded by section 2, subsection 1. The rules must implement the requirements and