

MAINE STATE LEGISLATURE

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*State Of Maine
120th Legislature*

First Regular Session

Bill Summaries

*Joint Standing Committee
on
Criminal Justice*

August 2001

Members:

*Sen. Michael J. McAlevey, Chair
Sen. William B. O'Gara
Sen. Paul T. Davis*

*Rep. Edward J. Povich, Chair
Rep. Michael W. Quint
Rep. Charles E. Mitchell
Rep. Lillian LaFontaine O'Brien
Rep. Patricia A. Blanchette
Rep. Stanley J. Gerzofsky
Rep. Judith B. Peavey
Rep. Edgar Wheeler
Rep. James H. Tobin, Jr.
Rep. Lois A. Snowe-Mello*

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Maine State Legislature
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120th Legislature
First Regular Session

Summary Of Legislation Before The Joint Standing Committees
August 2001

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills considered by the committees. It is organized by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CARRIED OVER.....	Bill Carried Over to Second Regular Session
CON RES XXX.....	Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE.....	Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES.....	House & Senate disagree; bill died
DIED IN CONCURRENCE.....	One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT.....	Action incomplete when session ended; bill died
EMERGENCY.....	Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE.....	Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE.....	Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....	Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY.....	Ruled out of order by the presiding officers; bill died
INDEF PP.....	Bill Indefinitely Postponed
ONTP.....	Ought Not To Pass report accepted
OTP ND.....	Committee report Ought To Pass In New Draft
OTP ND/NT.....	Committee report Ought To Pass In New Draft/New Title
P&S XXX.....	Chapter # of enacted Private & Special Law
PUBLIC XXX.....	Chapter # of enacted Public Law
RESOLVE XXX.....	Chapter # of finally passed Resolve
UNSIGNED.....	Bill held by Governor
VETO SUSTAINED.....	Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is **September 21, 2001**.

David E. Boulter, Director
Offices Located in the State House, Rooms 101/107/135

Joint Standing Committee on Criminal Justice

LD 1727

An Act to Control the Abuse of Designer Club Drugs by Adding Certain Drugs to the List of Schedule W and Schedule X Drugs

ONTP

Sponsor(s)
SCHNEIDER
MCALEVEY

Committee Report
ONTP

Amendments Adopted

LD 1727 proposed to:

1. Add the newly popular hallucinogenic "club" or "rave" drug ecstasy, 3, 4 - methylenedioxymethamphetamine, MDMA, and its close chemical relatives for the purposes of criminal enforcement: 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS; 3, 4 - methylenedioxy-N-ethylamphetamine, MDE; paramethoxymethamphetamine, PMMA; paramethoxyamphetamine, PMA; and paramethoxyethylamphetamine, PMEAs to the list of schedule W drugs. None of these drugs have been previously scheduled in the State, but all are schedule I drugs under the federal Controlled Substances Act;
2. Move other close chemical relatives of MDMA, which have been listed as schedule X drugs under state law since 1989, to schedule W, whereby increasing potential penalties for trafficking or furnishing the drugs;
3. Add 3 other newly popular drugs to the list of schedule X drugs: gamma hydroxybutyrate, GHB; Ketamine; and alpha-ethyltryptamine, AET;
4. Set the number of pills containing MDMA and related drugs that results in a permissible inference at trial of intent to furnish and traffic;
5. Create a charge of aggravated trafficking and furnishing MDMA and similar drugs based on trafficking or furnishing 300 or more pills;
6. Result in possession of MDMA, GHB or Ketamine is a Class D crime; trafficking in MDMA being a Class B crime; trafficking in GHB or Ketamine being a Class C crime; aggravated furnishing MDMA being a Class B felony crime with a mandatory minimum 2-year sentence; and aggravated trafficking in MDMA being a Class A felony with a mandatory minimum 4-year sentence.

LD 1727 was not passed but was incorporated into LD 1728, An Act to Control the Illegal Diversion and Abuse of Prescription Narcotic Drugs.

LD 1728

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

PUBLIC 419

Sponsor(s)
POVICH
MCALEVEY

Committee Report
OTP-AM

Amendments Adopted
H-353

Joint Standing Committee on Criminal Justice

LD 1728 proposed to:

1. Clarify the definition of "narcotic drugs" under the Maine Revised Statutes, Title 17-A, chapter 45 by specifically listing the most commonly encountered prescription narcotic drugs by chemical name;
2. Remove archaic references to drug preparations that are inaccurately described or no longer commonly encountered in modern medical treatment;
3. Set the number of illicit prescription pills or other units that would result in a presumption of trafficking or furnishing at trial: 90 pills or units for trafficking, and 45 for furnishing. Oxycodone, Oxycontin, and hydromorphone, Dilaudid, were singled out for separate treatment based on the aggregate amount of the drug in milligrams due to their availability in very powerful single pill dosage formulations;
4. Create a charge of aggravated trafficking and furnishing based on trafficking and furnishing 300 or more pills or other units of narcotic drugs other than heroin. Again, the compounds contained in Oxycontin and Dilaudid were singled out for special treatment based on aggregate amounts of the drugs in milligrams. A charge of aggravated trafficking or furnishing would be a Class A felony, with a mandatory minimum sentence of 4 years in prison;
5. Prevent the use of altered, forged or counterfeit prescriptions by having the Department of Public Safety, after consultation with the Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy, adopt rules establishing security requirements for written prescriptions for schedule II drugs, primarily through requiring the use of tamper-proof prescription forms;
6. Amend the crime of acquiring drugs by deception to clarify that failure to disclose recent narcotic prescriptions from other doctors, or use of a false name or address, is within the definition of "deception." It also proposed to address the issue of having to prove causation between obtaining drugs and the deceptive act if the patient deceived the physician in these ways;
7. Increase the penalties for stealing schedule W, X or Y drugs by making it a Class C felony offense. Stealing schedule Z drugs would remain a Class D crime. This would equalize the penalties for the crimes of acquiring drugs by deception and stealing drugs;
8. Clarify that a medical drug prescription form is a "written instrument" for purposes of the forgery law; and
9. Clarify that the analysis of a scheduled drug could be by a method designed to accurately determine the composition of the drug, and could include a visual examination. This was intended to approve the already common practice of proving the composition of a commercially manufactured pharmaceutical drug by visual observation of the unique markings on the pill by a chemist or pharmacist.

Committee Amendment "A" (H-353) proposed to incorporate the text of LD 1727, "An Act to Control the Abuse of Designer Club Drugs by Adding Certain Drugs to the List of Schedule W and Schedule X Drugs," which proposed to do the following:

1. Add the newly popular hallucinogenic "club" or "rave" drug ecstasy, 3, 4 - methylenedioxymethamphetamine, MDMA, and its close chemical relatives for the purposes of criminal enforcement: 4 - bromo - 2, 5 - dimethoxyphenethylamine, NEXUS; 3, 4 - methylenedioxy-N-ethylamphetamine, MDE;

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paramethoxymethamphetamine, PMMA; paramethoxyamphetamine, PMA; and paramethoxythylamphetamine, PMEA to the list of schedule W drugs. None of these drugs have been previously scheduled in the State, but all are schedule I drugs under the federal Controlled Substances Act;

2. Move other close chemical relatives of MDMA that have been listed as schedule X drugs under the state law since 1989, to schedule W, increasing potential penalties for trafficking or furnishing the drugs;
3. Add 3 other newly popular drugs to the list of schedule X drugs: gamma hydroxybutyrate, GHB; Ketamine; and alpha-ethyltryptamine, AET;
4. Set the number of pills containing MDMA and related drugs that results in a permissible inference at trial of intent to furnish and traffick;
5. Create a charge of aggravated trafficking and furnishing MDMA and similar drugs based on trafficking or furnishing 300 or more pills;
6. Result in possession of MDMA, GHB or Ketamine being a Class D crime; trafficking in MDMA would be a Class B crime; trafficking in GHB or Ketamine would be a Class C crime; aggravated furnishing MDMA would be a Class B crime with a mandatory minimum 2-year sentence; and aggravated trafficking in MDMA would be a Class A crime with a mandatory minimum 4-year sentence.

The amendment also proposed to change the rule-making provisions to require major substantive rules, instead of routine technical rules, for establishing security requirements for written prescriptions for narcotics. This change was made to ensure that the rulemaking results from the cooperation of the Department of Public Safety and the medical profession. The amendment proposed to require the Department of Public Safety to bring its proposed rules before the Joint Standing Committee on Criminal Justice in the Second Regular Session of the 120th Legislature.

The amendment also proposed to add a fiscal note to the bill.

Enacted law summary

Public Law 2001, chapter 419 does the following.

1. It clarifies the definition of "narcotic drugs" under the Maine Revised Statutes, Title 17-A, chapter 45 by specifically listing the most commonly encountered prescription narcotic drugs by chemical name.
2. It removes archaic references to drug preparations that are inaccurately described or no longer commonly encountered in modern medical treatment.
3. It sets the number of illicit prescription pills or other units that would result in a presumption of trafficking or furnishing at trial: 90 pills or units for trafficking, and 45 for furnishing. Oxycodone, Oxycontin, and hydromorphone, Dilaudid, are singled out for separate treatment based on the aggregate amount of the drug in milligram due to the availability in very powerful single pill dosage formulations.

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4. It creates a charge of aggravated trafficking and furnishing based on trafficking and furnishing 300 or more pills or other units of narcotic drugs other than heroin. The compounds contained in Oxycontin and Dilaudid are singled out for special treatment based on aggregate amounts of the drugs in milligrams. A charge of aggravated trafficking or furnishing is a Class A felony, with a mandatory minimum sentence of 4 years of prison.
5. It prevents the use of altered, forged or counterfeit prescriptions by having the Department of Public Safety, after consultation with the Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy, adopt major substantive rules establishing security requirements for written prescriptions for narcotics. The Department of Public Safety shall bring its proposed rules before the Criminal Justice Committee in the Second Regular Session of the 120th Legislature.
6. It amends the crime of acquiring drugs by deception to clarify that failure to disclose recent narcotic prescriptions from other doctors, or use of a false name or address, is within the definition of "deception." It also addresses the issue of having to prove causation between obtaining drugs and the deceptive act if the patient deceives the physician in these ways.
7. It increases the penalties for stealing schedule W, X or Y drugs by making these crimes Class C offenses. Stealing schedule Z drugs remains a Class D crime. This equalizes the penalties for the crimes of acquiring drugs by deception and stealing drugs.
8. It clarifies that a medical drug prescription form is a "written instrument" for purposes of the forgery law.
9. It clarifies that the analysis of a scheduled drug may be by a method designed to accurately determine the composition of the drug, and may include a visual examination. This is intended to approve the practice of proving the composition of a commercially manufactured pharmaceutical drug by visual observation of the unique markings on the pill by a chemist or pharmacist.
10. It adds the newly popular hallucinogenic "club" or "rave" drug ecstasy, 3, 4 -methylenedioxymethamphetamine, MDMA, and its close chemical relatives for the purposes of criminal enforcement: 4 – bromo – 2, 5 – dimethoxyphenethylamine, NEXUS; 3, 4 – methylenedioxy-N-ethylamphetamine, MDE; paramethoxymethamphetamine, PMMA; paramethoxyamphetamine, PMA; and paramethoxythylamphetamine, PMEAs to the list of schedule W drugs. None of these drugs have been previously scheduled in the State, but all are schedule I drugs under the federal Controlled Substances Act.
11. It moves other close chemical relatives of MDMA that have been listed as schedule X drugs under the state law since 1989, to schedule W, increasing potential penalties for trafficking or furnishing the drugs.
12. It adds 3 other newly popular drugs to the list of schedule X drugs: gamma hydroxybutyrate, GHB; Ketamine; and alpha-ethyltryptamine, AET.
13. It sets the number of pills containing MDMA and related drugs that results in a permissible inference at trial of intent to furnish and traffick.
14. It creates a charge of aggravated trafficking and furnishing MDMA and similar drugs based on trafficking or furnishing 300 or more pills.

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15. It results in possession of MDMA, GHB or Ketamine being a Class D crime; trafficking in MDMA being a Class B crime; trafficking in GHB or Ketamine being a Class C crime; aggravated furnishing MDMA being a Class B crime with a mandatory minimum 2-year sentence; and aggravated trafficking in MDMA being a Class A crime with a mandatory minimum 4-year sentence.

LD 1739

**Resolve, to Implement Additional Recommendations of the
MCJUSTIS Board**

RESOLVE 45

Sponsor(s)

Committee Report
OTP

Amendments Adopted

LD 1739

This resolve proposed to amend the reporting requirements for the MCJUSTIS Board to clarify that the board must submit its final report and proposed legislation amending the Maine Revised Statutes, Title 17-A by January 31, 2001. This resolve also proposed to amend the board's reporting requirements to specify that the board submit proposed legislation amending other civil and criminal violations to make them compatible with computerized databases by December 15, 2001 and December 15, 2002.

Enacted law summary

Resolve 2001, chapter 45 amends the reporting requirements for the MCJUSTIS Board to clarify that the board submits its final report and proposed legislation amending the Maine Revised Statutes, Title 17-A by January 31, 2001. Resolve 2001, chapter 45 also amends the board's reporting requirements to specify that the board submit proposed legislation amending other civil and criminal violations to make them compatible with computerized databases by December 15, 2001 and December 15, 2002. The retroactivity section makes these changes retroactive to January 31, 2001.

LD 1740

**An Act to Implement Recommendations of the MCJUSTIS Board
Pursuant to the Study Required by Resolve 1997, Chapter 105**

PUBLIC 383

Sponsor(s)

Committee Report
OTP-AM

Amendments Adopted
H-596

LD 1740 was the report of the Maine Criminal Justice Information System, MCJUSTIS, Policy Board pursuant to Resolve 1997, chapter 105, as amended by Public Law 1999, chapter 451, section 5 and Public Law 1999, chapter 790, Part D, section 12.

MCJUSTIS is an information clearinghouse, the purpose of which is to provide access to shared uniform information on criminal defendants and crime data. In order for the information to be uniform and accurate, it must be entered and accessed by all participants in the same way. To ensure that crimes are entered accurately, the statutes defining each crime must be precise and narrow enough to ensure that citing to the specific statutory unit