

Annotated with Testimony, Side-by-side LD 1492, An Act to Reform Drug Sentencing Laws

LD 1492	Notes	Information requested May 22 regarding testimony
<p>Be it enacted by the People of the State of Maine as follows:</p> <p>Sec. 1. 17-A MRSA §1101, sub-§17, as amended by PL 2015, c. 346, §1, is further amended to read:</p> <p>17. "Traffick":</p> <p>A. To make, create, manufacture;</p> <p>B. To grow or cultivate, except for marijuana;</p> <p>C. To sell, barter, trade, exchange or otherwise furnish for consideration; <u>or</u></p> <p>D. To possess with the intent to do any act mentioned in paragraph C ;</p> <p>E. To possess 2 grams or more of heroin or 90 or more individual bags, folds, packages, envelopes or containers of any kind containing heroin; or</p> <p>F. To possess 2 grams or more of fentanyl powder or 90 or more individual bags, folds, packages, envelopes or containers of any kind containing fentanyl powder.</p>	<p>Repeals from the definition of "trafficking" possession of heroin and fentanyl powder weighing 2 grams or more or consisting of 90 or more packages of any kind.</p>	<p>MDEA Opposes proposal.</p> <p>AG Suggests discussing definition of trafficking.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 2. 17-A MRSA §1101, sub-§18, as amended by PL 2015, c. 496, §§1 and 2, is further amended to read:</p> <p>18. "Furnish":</p> <p>A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to another; <u>or</u></p> <p>B. To possess with the intent to do any act mentioned in paragraph A ;</p> <p>C. To possess more than 200 milligrams but less than 2 grams of heroin or at least 45 but fewer than 90 individual bags, folds, packages, envelopes or containers of any kind containing heroin; or</p> <p>D. To possess more than 200 milligrams but less than 2 grams of fentanyl powder or at least 45 but fewer than 90 individual bags, folds, packages, envelopes or containers of any kind containing fentanyl powder.</p>	<p>Repeals from the definition of "furnishing" possession of heroin and fentanyl powder weighing more than 200 mg but less than 2 grams or more or consisting of 45 or more but fewer than 90 packages of any kind.</p>	<p>MDEA Opposes proposal.</p> <p>AG Suggests discussing definition of furnishing.</p> <p>DA Supports raising to 500 mg heroin in ¶C.</p>
<p>Sec. 3. 17-A MRSA §1101, sub-§24, as amended by PL 2017, c. 274, §1, is further amended to read:</p> <p>24. "Fentanyl powder" means any compound, mixture or preparation, in granular or powder form, containing fentanyl or any derivative of fentanyl listed in section 1102, subsection 1, paragraph I in any quantity.</p>	<p>Repeals from definition of fentanyl powder that the presence of fentanyl can be in "in any quantity." Tina Nadeau, MACDL, notes this will require the State in a prosecution to establish the purity of the fentanyl.</p>	<p>MDEA Opposes proposal.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>

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<p>Sec. 4. 17-A MRSA §1101, sub-§25, ¶B, as enacted by PL 2017, c. 432, Pt. E, §1, is amended to read:</p> <p>B. A mixture or preparation that contains any quantity of any of the following substances:</p> <p>(1) Cocaine, its salts, optical and geometric isomers and salts of isomers;</p> <p>(2) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or</p> <p>(3) Cocaine base, which is the alkaloid form of cocaine.</p>	<p>Repeals from the definition of “cocaine” reference to “in any quantity” of cocaine, ecgonine (a precursor and metabolite of cocaine) and cocaine base.</p>	<p>MDEA Opposes proposal.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 5. 17-A MRSA §1101, sub-§26, as enacted by PL 2017, c. 432, Pt. E, §1, is amended to read:</p> <p>26. Heroin. "Heroin" means any compound, mixture or preparation containing heroin (diacetylmorphine) in any quantity.</p>	<p>Repeals from the definition of “heroin” reference to “in any quantity.”</p>	<p>MDEA Opposes proposal.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 6. 17-A MRSA §1103, sub-§3, as amended by PL 2015, c. 346, §4, is repealed</p>	<p>Repeals in the unlawful trafficking law the permissible inference that arises from possession of certain drugs and certain drugs in certain quantities – for example: more than a pound of marijuana, 90 units of heroin, 14g or 30 units of MDMA (Ecstasy), LSD, 14g or more of methamphetamine, 800mg or more of Oxycodone, 14g or more of cocaine or 4g or more of cocaine base.</p>	<p>MDEA Opposes proposal. Suggests in ¶B that amounts for cocaine and cocaine base be equal.</p> <p>AG Suggests in ¶B that amounts for cocaine and cocaine base be equal at 14g or more.</p> <p>DA Suggests in ¶B that amounts for cocaine and cocaine base be equal at 14g or more.</p>

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<p>Sec. 7. 17-A MRSA §1105-A, sub-§1, ¶B, as amended by PL 2007, c. 476, §39, is further amended to read:</p> <p>B. At the time of the offense, the person has one or more prior convictions for any Class A, or B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, or B or C offenses under this chapter in another jurisdiction and the drug is:</p> <p>(1) A schedule W drug. Violation of this subparagraph is a Class A crime;</p> <p>(2) Marijuana in a quantity of 20 pounds or more. Violation of this subparagraph is a Class A crime;</p> <p>(3) A schedule X drug. Violation of this subparagraph is a Class B crime;</p> <p>(4) Marijuana in a quantity of more than one pound. Violation of this subparagraph is a Class B crime;</p> <p>(5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or</p> <p>(6) A schedule Z drug. Violation of this subparagraph is a Class C crime.</p> <p>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;</p>	<p>Repeals from the crime of aggravated trafficking of scheduled drugs the variant based on one or more prior convictions for Class C drug crimes.</p>	<p>MDEA Opposes proposal.</p> <p>AG Suggests discussing prior convictions used to elevate a possession charge.</p> <p>DA Suggests amending ¶B to read: "At the time of the offense the person had one or more convictions for violating any Class A, B or C offense in section 1103 (trafficking), 1105-A (aggravated trafficking), 1105-C (aggravated furnishing), 1105-E aggravated operation of a meth lab), 1106 (furnishing) or 1124 (operation of a meth lab) or for engaging in substantially similar conduct in another jurisdiction." Suggests similar changes to 1105-C(1)(B), 1105-D(1)(A) and 1107-A(1)(B-1). This limits elevation of crime to Class A, B and C convictions.</p>
<p>Sec. 8. 17-A MRSA §1106, sub-§3, as amended by PL 2015, c. 496, §§3-5, is repealed.</p>	<p>Repeals from the crime of unlawfully furnishing scheduled drugs the permissible inference that the person is furnishing that arises from possession of certain drugs in certain quantities – for example: more than 1 ½ ounces of marijuana, more than 200 milligrams of methamphetamine, 15 or more units of MDMA, or more than 200 milligrams of oxycodone.</p>	<p>MDEA Opposes proposal.</p> <p>DA Supports raising to 500mg the amounts for meth, Oxycodone and narcotic drugs.</p>
<p>Sec. 9. 17-A MRSA §1106-A, sub-§2, as amended by PL 2001, c. 383, §125 and affected by §156, is repealed.</p>	<p>Repeals the provision of law that allows aggregation of quantities of scheduled drugs confiscated in a scheme or course of conduct within a 48-hour period for the purposes of charging unlawful possession of scheduled drugs under section 1107-A.</p>	<p>AG Suggests discussing time period used in aggregation of quantities.</p>

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<p>Sec. 10. 17-A MRSA §1107-A, sub-§1, ¶A, as amended by PL 2015, c. 308, §1, is repealed.</p>	<p>Repeals the Class B crime of unlawful possession of schedule W drug based on prior conviction when drug is cocaine and the quantity is more than 14 grams, or the drug is cocaine base and the quantity is more than 4 grams or the drug is meth and the quantity is more than 14 grams.</p>	<p>MDEA Opposes proposal.</p> <p>AG Supports proposal.</p> <p>DA Supports repeal of 1107-A, sub-§1, ¶A, sub-¶1 and 2. Did not mention sub-¶3.</p>
<p>Sec. 11. 17-A MRSA §1107-A, sub-§1, ¶B, as repealed and replaced by PL 2015, c. 496, §6, is amended to read:</p> <p>B. Except as provided in paragraph B-1, a <u>A</u> schedule W drug and the drug contains:</p> <p>(1) Heroin (diacetylmorphine) and the amount possessed is more than 200 milligrams <u>3.5 grams</u>;</p> <p>(2) Cocaine and the amount possessed is more than 2 <u>3.5</u> grams;</p> <p>(3) Cocaine in the form of cocaine base and the amount possessed is more than 2 <u>3.5</u> grams;</p> <p>(4) Oxycodone and the amount possessed is more than 200 milligrams <u>3.5 grams</u>;</p> <p>(5) Hydrocodone and the amount possessed is more than 200 milligrams <u>3.5 grams</u>;</p> <p>(6) Hydromorphone and the amount possessed is more than 200 milligrams <u>3.5 grams</u>;</p> <p>(7) Methamphetamine and the amount possessed is more than 200 milligrams <u>3.5 grams</u>; or</p> <p>(8) Fentanyl powder and the amount possessed is more than 200 milligrams <u>3.5 grams</u>.</p> <p>Violation of this paragraph is a Class <u>D</u> crime ;.</p>	<p>Amends the Class C crime of unlawful possession of <u>schedule W</u> drug for certain listed drugs, lowering the class to <u>Class D</u> and raising the amount that is unlawful from more than 200 milligrams to more than 3.5 grams. 200 milligrams = .2 grams 3.5 grams = 3500 milligrams</p>	<p>MDEA Opposes proposed increased amounts.</p> <p>AG Suggests amounts tailored to the specific drugs and appropriate for personal use. Suggests discussing amounts between 500mg and 3.5g.</p> <p>DA Supports raising to 500mg the amounts for heroin, Oxycodone, Hydrocodone and meth.</p> <p>MACDL Suggests that personal use of heroin does not mean only .1g and that possession of 3.5g should not trigger additional penalties or an inference of furnishing.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 12. 17-A MRSA §1107-A, sub-§1, ¶B-1, as enacted by PL 2015, c. 496, §7, is repealed.</p>	<p>Repeals the Class C crime of unlawful possession of schedule W drug based on prior convictions for trafficking, aggravated trafficking, furnishing, aggravated furnishing, operation of a meth lab and aggravated operation of a meth lab.</p>	<p>MDEA Opposes proposal.</p>

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<p>Sec. 13. 17-A MRSA §1107-A, sub-§1, ¶C, as amended by PL 2015, c. 496, §8, is repealed.</p>	<p>Repeals the Class D crime of unlawful possession of Schedule W drugs.</p>	<p>MDEA Opposes proposal. Suggests discussing decreasing 1st offense possession to Class D or E.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 14. 17-A MRSA §1107-A, sub-§1, ¶¶D and E, as enacted by PL 2001, c. 383, §127 and affected by §156, are repealed.</p>	<p>Repeals the Class D crime of unlawful possession of schedule X drug and Class E crime of unlawful possession of schedule Y drug.</p>	<p>MDEA Opposes proposal.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 15. 17-A MRSA §1107-A, sub-§1, ¶F, as amended by PL 2009, c. 67, §2, is repealed.</p>	<p>Repeals the Class E crime of unlawful possession of schedule Z drug, and Class B, C, D and E crimes of unlawful possession of marijuana.</p>	<p>MDEA Opposes proposal.</p> <p>AG Opposes proposal.</p> <p>CLAC Opposes proposal.</p>
<p>Sec. 16. 17-A MRSA §1107-A, sub-§4, as amended by PL 2015, c. 496, §9, is further amended to read:</p> <p>4. It is an affirmative defense to prosecution under subsection 1, paragraph B, subparagraphs (4) to (6); subsection 1, paragraph B-1, subparagraphs (4) to (6); and paragraphs C to F that the person possessed a valid prescription for the scheduled drug or controlled substance that is the basis for the charge and that, at all times, the person intended the drug to be used only for legitimate medical use in conformity with the instructions provided by the prescriber and dispenser.</p>	<p>Repeals the affirmative defense of a valid prescription as to the repealed paragraphs B-1, C, D, E and F.</p>	<p>MDEA Opposes proposal. Connected to sec. 13, 14 and 15.</p> <p>AG Opposes proposal.</p>

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<p>Sec. 17. 17-A MRSA §1110, as amended by PL 2007, c. 695, Pt. A, §20, is repealed.</p>	<p>Repeals the Class C and Class D crimes of trafficking or furnishing hypodermic apparatuses and affirmative defense applicable to those crimes.</p>	<p>AG Supports amendment to reduce the significance of the charge.</p> <p>DA Supports decreasing violation of 1110(1) trafficking in 1 or more hypodermic apparatuses from Class C to Class D. Supports increasing number of hypodermic apparatuses in 1110(1-A) furnishing from 11 to 25 and decreasing from Class D to Class E.</p>
<p>Sec. 18. 17-A MRSA §1111, as amended by PL 2007, c. 346, Pt. B, §4, is repealed.</p>	<p>Repeals the Class D crime of illegal possession of hypodermic apparatuses and affirmative defense applicable to that crime.</p>	<p>DA Supports increasing number of hypodermic apparatuses from 11 to 25.</p>
<p>Sec. 19. 17-A MRSA §1111-A, sub-§1, ¶¶D and E, as amended by PL 1981, c. 531, §2, are repealed.</p>	<p>Repeals in the Class D and Class E crimes of use of drug paraphernalia certain testing equipment, scales and balances from the definition of drug paraphernalia.</p>	
<p>Sec. 20. 17-A MRSA §1111-A, sub-§1, ¶¶I and J, as amended by PL 1981, c. 531, §2, are further amended to read: I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs; <u>and</u> J. Containers and other objects used or intended for use in storing or concealing scheduled drugs and.</p>	<p>Technical editing needed for repeal of paragraph K.</p>	
<p>Sec. 21. 17-A MRSA §1111-A, sub-§1, ¶K, as amended by PL 1981, c. 531, §3, is repealed.</p>	<p>Repeals in the Class D and Class E crimes of use of drug paraphernalia certain objects used or intended for use in ingesting, inhaling, or introducing into the body marijuana, cocaine, hashish or hash oil.</p>	

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<p>Sec. 22. 17-A MRSA §1111-A, sub-§2, as enacted by PL 1981, c. 266, is amended to read:</p> <p>2. For purposes of this section, drug paraphernalia does not include hypodermic apparatus. Possession of, furnishing or trafficking in hypodermic apparatus constitute separate offenses under sections 1110 and 1111.</p>	<p>In the Class D and E crimes of use of drug paraphernalia repeals reference to possession of, furnishing or trafficking in hypodermic apparatuses being separate offenses.</p>	
<p>Sec. 23. 17-A MRSA §1111-A, sub-§3, ¶B, as amended by PL 2007, c. 476, §44, is repealed.</p>	<p>In the Class D and E crimes of use of drug paraphernalia repeals requirement that court consider prior drug convictions.</p>	
<p>Sec. 24. 17-A MRSA §1111-A, sub-§3, ¶E, as enacted by PL 1981, c. 266, is repealed.</p>	<p>In the Class D and E crimes of use of drug paraphernalia repeals requirement that court consider the existence of any drug residue on the object.</p>	
<p>Sec. 25. 17-A MRSA §1116, sub-§1, ¶A, as enacted by PL 2001, c. 383, §143 and affected by §156, is repealed.</p>	<p>Repeals the Class E crime of trafficking or furnishing imitation scheduled drugs to a person at least 18 years of age.</p>	
<p>Sec. 26. 17-A MRSA §1116, sub-§2, as amended by PL 2001, c. 383, §145 and affected by §156, is repealed.</p>	<p>Repeals from the Class D crime of trafficking or furnishing imitation scheduled drugs to a minor the permissible inference drawn from possession of 100 or more tablets, capsules or dosage units.</p>	
<p>Sec. 27. 17-A MRSA §1301, sub-§6, as amended by PL 2011, c. 464, §22, is further amended to read:</p> <p>6. In addition to any other authorized sentencing alternative, the court shall impose a minimum fine of \$400, none of which may be suspended, for a person convicted of a crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106; 1107-A; 1108; 1109; 1110; 1111; 1111-A, subsection 4-A; 1116; 1117; or 1118.</p>	<p>In the chapter on fines, repeals from mandatory minimum fine of \$400 for certain drug offenses the reference to illegal possession of hypodermic apparatuses and trafficking in or furnishing hypodermic apparatuses.</p>	
<p>Sec. 28. 17-A MRSA §1348-A, sub-§5, as enacted by PL 2015, c. 496, §10, is amended to read:</p> <p>5. A deferred disposition is a preferred disposition in a prosecution for possession of schedule W drugs under section 1107-A, subsection 1, paragraphs paragraph B and B-1.</p>	<p>Repeals deferred dispositions (for Class C, D and E crimes) for Class C unlawful possession of schedule W drug based on prior convictions for trafficking, aggravated trafficking, furnishing, aggravated furnishing, operation of a meth lab and aggravated operation of a meth lab.</p>	

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<p>Sec. 29. 22 MRSA §2383-B, sub-§6, as amended by PL 2015, c. 27, §1, is repealed.</p>	<p>Repeals in the law on authorized possession of marijuana, drugs and hypodermic apparatuses the provision that allows livestock owners to possess and control hypodermic apparatuses and agricultural supply stores to furnish and sell them.</p>	
<p>Sec. 30. 32 MRSA §13787-A, sub-§3, as amended by PL 2003, c. 688, Pt. A, §39, is repealed.</p>	<p>Repeals in the Maine Pharmacy Act, in the law restricting sale and purchase of hypodermic apparatuses, immunity for persons authorized to sell under 17-A, §110 and 111 as they are repealed in this bill.</p>	
<p>Sec. 31. 32 MRSA §13787-A, sub-§4, as enacted by PL 1993, c. 394, §2, is amended to read:</p> <p>4. Immunity limited. This section does not limit prosecution for violation of any law prohibiting or regulating the use, possession, dispensing, distribution or promotion of controlled substances, <u>or</u> scheduled drugs or drug paraphernalia.</p>	<p>Amends in Maine Pharmacy Act in law restricting sale and purchase of hypodermic apparatuses, repealing reference to use and possession and drug paraphernalia.</p>	