



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1492

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H.P. 1094

House of Representatives, April 4, 2019

### An Act To Reform Drug Sentencing Laws

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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 "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative BEEBE-CENTER of Rockland.  
Cosponsored by Senator SANBORN, L. of Cumberland and  
Representatives: BROOKS of Lewiston, GATTINE of Westbrook, MADIGAN of Waterville,  
MELARAGNO of Auburn, PERRY of Calais, RECKITT of South Portland, Senators:  
CLAXTON of Androscoggin, WOODSOME of York.

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

2 **Sec. 1. 17-A MRSA §1101, sub-§17**, as amended by PL 2015, c. 346, §1, is  
3 further amended to read:

4 **17. "Traffick":**

5 A. To make, create, manufacture;

6 B. To grow or cultivate, except for marijuana;

7 C. To sell, barter, trade, exchange or otherwise furnish for consideration; or

8 D. To possess with the intent to do any act mentioned in paragraph C~~;~~

9 ~~E. To possess 2 grams or more of heroin or 90 or more individual bags, folds,~~  
10 ~~packages, envelopes or containers of any kind containing heroin; or~~

11 ~~F. To possess 2 grams or more of fentanyl powder or 90 or more individual bags,~~  
12 ~~folds, packages, envelopes or containers of any kind containing fentanyl powder.~~

13 **Sec. 2. 17-A MRSA §1101, sub-§18**, as amended by PL 2015, c. 496, §§1 and 2,  
14 is further amended to read:

15 **18. "Furnish":**

16 A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to  
17 another; or

18 B. To possess with the intent to do any act mentioned in paragraph A~~;~~

19 ~~C. To possess more than 200 milligrams but less than 2 grams of heroin or at least 45~~  
20 ~~but fewer than 90 individual bags, folds, packages, envelopes or containers of any~~  
21 ~~kind containing heroin; or~~

22 ~~D. To possess more than 200 milligrams but less than 2 grams of fentanyl powder or~~  
23 ~~at least 45 but fewer than 90 individual bags, folds, packages, envelopes or containers~~  
24 ~~of any kind containing fentanyl powder.~~

25 **Sec. 3. 17-A MRSA §1101, sub-§24**, as amended by PL 2017, c. 274, §1, is  
26 further amended to read:

27 **24. "Fentanyl powder"** means any compound, mixture or preparation, in granular or  
28 powder form, containing fentanyl or any derivative of fentanyl listed in section 1102,  
29 subsection 1, paragraph I ~~in any quantity.~~

30 **Sec. 4. 17-A MRSA §1101, sub-§25, ¶B**, as enacted by PL 2017, c. 432, Pt. E,  
31 §1, is amended to read:

32 B. A mixture or preparation that contains ~~any quantity~~ of any of the following  
33 substances:

34 (1) Cocaine, its salts, optical and geometric isomers and salts of isomers;

35 (2) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or

1 (3) Cocaine base, which is the alkaloid form of cocaine.

2 **Sec. 5. 17-A MRSA §1101, sub-§26**, as enacted by PL 2017, c. 432, Pt. E, §1, is  
3 amended to read:

4 **26. Heroin.** "Heroin" means any compound, mixture or preparation containing  
5 heroin (diacetylmorphine) ~~in any quantity.~~

6 **Sec. 6. 17-A MRSA §1103, sub-§3**, as amended by PL 2015, c. 346, §4, is  
7 repealed.

8 **Sec. 7. 17-A MRSA §1105-A, sub-§1, ¶B**, as amended by PL 2007, c. 476, §39,  
9 is further amended to read:

10 B. At the time of the offense, the person has one or more prior convictions for any  
11 Class A, or B ~~or~~ C offense under this chapter or for engaging in substantially similar  
12 conduct to that of the Class A, or B ~~or~~ C offenses under this chapter in another  
13 jurisdiction and the drug is:

- 14 (1) A schedule W drug. Violation of this subparagraph is a Class A crime;
- 15 (2) Marijuana in a quantity of 20 pounds or more. Violation of this  
16 subparagraph is a Class A crime;
- 17 (3) A schedule X drug. Violation of this subparagraph is a Class B crime;
- 18 (4) Marijuana in a quantity of more than one pound. Violation of this  
19 subparagraph is a Class B crime;
- 20 (5) A schedule Y drug. Violation of this subparagraph is a Class C crime; or
- 21 (6) A schedule Z drug. Violation of this subparagraph is a Class C crime.

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

25 **Sec. 8. 17-A MRSA §1106, sub-§3**, as amended by PL 2015, c. 496, §§3-5, is  
26 repealed.

27 **Sec. 9. 17-A MRSA §1106-A, sub-§2**, as amended by PL 2001, c. 383, §125 and  
28 affected by §156, is repealed.

29 **Sec. 10. 17-A MRSA §1107-A, sub-§1, ¶A**, as amended by PL 2015, c. 308, §1,  
30 is repealed.

31 **Sec. 11. 17-A MRSA §1107-A, sub-§1, ¶B**, as repealed and replaced by PL  
32 2015, c. 496, §6, is amended to read:

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

- 34 (1) Heroin (diacetylmorphine) and the amount possessed is more than 200  
35 milligrams 3.5 grams;

- 1 (2) Cocaine and the amount possessed is more than ~~2~~ 3.5 grams;
- 2 (3) Cocaine in the form of cocaine base and the amount possessed is more than ~~2~~  
3 3.5 grams;
- 4 (4) Oxycodone and the amount possessed is more than ~~200 milligrams~~ 3.5  
5 grams;
- 6 (5) Hydrocodone and the amount possessed is more than ~~200 milligrams~~ 3.5  
7 grams;
- 8 (6) Hydromorphone and the amount possessed is more than ~~200 milligrams~~ 3.5  
9 grams;
- 10 (7) Methamphetamine and the amount possessed is more than ~~200 milligrams~~  
11 3.5 grams; or
- 12 (8) Fentanyl powder and the amount possessed is more than ~~200 milligrams~~ 3.5  
13 grams.

14 Violation of this paragraph is a Class E D crime;.

15 **Sec. 12. 17-A MRSA §1107-A, sub-§1, ¶B-1**, as enacted by PL 2015, c. 496,  
16 §7, is repealed.

17 **Sec. 13. 17-A MRSA §1107-A, sub-§1, ¶C**, as amended by PL 2015, c. 496, §8,  
18 is repealed.

19 **Sec. 14. 17-A MRSA §1107-A, sub-§1, ¶¶D and E**, as enacted by PL 2001, c.  
20 383, §127 and affected by §156, are repealed.

21 **Sec. 15. 17-A MRSA §1107-A, sub-§1, ¶F**, as amended by PL 2009, c. 67, §2,  
22 is repealed.

23 **Sec. 16. 17-A MRSA §1107-A, sub-§4**, as amended by PL 2015, c. 496, §9, is  
24 further amended to read:

25 **4.** It is an affirmative defense to prosecution under subsection 1, paragraph B,  
26 subparagraphs (4) to (6); ~~subsection 1, paragraph B-1, subparagraphs (4) to (6); and~~  
27 ~~paragraphs C to F~~ that the person possessed a valid prescription for the scheduled drug or  
28 controlled substance that is the basis for the charge and that, at all times, the person  
29 intended the drug to be used only for legitimate medical use in conformity with the  
30 instructions provided by the prescriber and dispenser.

31 **Sec. 17. 17-A MRSA §1110**, as amended by PL 2007, c. 695, Pt. A, §20, is  
32 repealed.

33 **Sec. 18. 17-A MRSA §1111**, as amended by PL 2007, c. 346, Pt. B, §4, is  
34 repealed.

35 **Sec. 19. 17-A MRSA §1111-A, sub-§1, ¶¶D and E**, as amended by PL 1981,  
36 c. 531, §2, are repealed.

1           **Sec. 20. 17-A MRSA §1111-A, sub-§1, ¶¶I and J**, as amended by PL 1981, c.  
2 531, §2, are further amended to read:

3           I. Capsules, balloons, envelopes and other containers used or intended for use in  
4 packaging small quantities of scheduled drugs; and

5           J. Containers and other objects used or intended for use in storing or concealing  
6 scheduled drugs; ~~and~~.

7           **Sec. 21. 17-A MRSA §1111-A, sub-§1, ¶K**, as amended by PL 1981, c. 531, §3,  
8 is repealed.

9           **Sec. 22. 17-A MRSA §1111-A, sub-§2**, as enacted by PL 1981, c. 266, is  
10 amended to read:

11           2. For purposes of this section, drug paraphernalia does not include hypodermic  
12 apparatus. ~~Possession of, furnishing or trafficking in hypodermic apparatus constitute~~  
13 ~~separate offenses under sections 1110 and 1111.~~

14           **Sec. 23. 17-A MRSA §1111-A, sub-§3, ¶B**, as amended by PL 2007, c. 476,  
15 §44, is repealed.

16           **Sec. 24. 17-A MRSA §1111-A, sub-§3, ¶E**, as enacted by PL 1981, c. 266, is  
17 repealed.

18           **Sec. 25. 17-A MRSA §1116, sub-§1, ¶A**, as enacted by PL 2001, c. 383, §143  
19 and affected by §156, is repealed.

20           **Sec. 26. 17-A MRSA §1116, sub-§2**, as amended by PL 2001, c. 383, §145 and  
21 affected by §156, is repealed.

22           **Sec. 27. 17-A MRSA §1301, sub-§6**, as amended by PL 2011, c. 464, §22, is  
23 further amended to read:

24           6. In addition to any other authorized sentencing alternative, the court shall impose a  
25 minimum fine of \$400, none of which may be suspended, for a person convicted of a  
26 crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106; 1107-A; 1108;  
27 1109; ~~1110; 1111~~; 1111-A, subsection 4-A; 1116; 1117; or 1118.

28           **Sec. 28. 17-A MRSA §1348-A, sub-§5**, as enacted by PL 2015, c. 496, §10, is  
29 amended to read:

30           5. A deferred disposition is a preferred disposition in a prosecution for possession of  
31 schedule W drugs under section 1107-A, subsection 1, ~~paragraphs paragraph B and B-1~~.

32           **Sec. 29. 22 MRSA §2383-B, sub-§6**, as amended by PL 2015, c. 27, §1, is  
33 repealed.

34           **Sec. 30. 32 MRSA §13787-A, sub-§3**, as amended by PL 2003, c. 688, Pt. A,  
35 §39, is repealed.

