

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

**'An Act To Increase Sentences Imposed for the
Illegal Importation of Certain Scheduled Drugs'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 15 MRSA §3314, sub-§6, as amended by PL 2003, c. 657, §1, is further amended to read:

6. Forfeiture of firearms. As part of every disposition in every proceeding under this code, every firearm that constitutes the basis for an adjudication for a juvenile crime that, if committed by an adult, would constitute a violation of section 393; Title 17-A, section 1105-A, subsection 1, paragraph C-1; Title 17-A, section 1105-B, subsection 1, paragraph C; Title 17-A, section 1105-C, subsection 1, paragraph C-1; ~~or~~ Title 17-A, section 1105-D, subsection 1, paragraph B-1; or Title 17-A, section 1118-A, subsection 1, paragraph B and every firearm used by the juvenile or any accomplice during the course of conduct for which the juvenile has been adjudicated to have committed a juvenile crime that would have been forfeited pursuant to Title 17-A, section 1158-A if the criminal conduct had been committed by an adult must be forfeited to the State and the juvenile court shall so order unless another person satisfies the court prior to the dispositional hearing and by a preponderance of the evidence that the other person had a right to possess the firearm, to the exclusion of the juvenile, at the time of the conduct that constitutes the juvenile crime. Rules adopted by the Attorney General that govern the disposition of firearms forfeited pursuant to Title 17-A, section 1158-A govern forfeitures under this subsection.

Sec. 2. 17-A MRSA §1118, sub-§2, ¶A, as enacted by PL 2001, c. 428, §1, is amended to read:

A. A Class C crime if the drug is a schedule W drug, except that the violation is a Class B crime if the drug is fentanyl powder or if the drug is heroin and at the time of the offense the person illegally imports 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; and

Sec. 3. 17-A MRSA §1118-A is enacted to read:

§ 1118-A. Aggravated illegal importation of scheduled drugs

1. A person is guilty of aggravated illegal importation of a scheduled drug if the person violates section 1118; the drug is fentanyl powder or the drug is heroin and at the time of the offense the person illegally imports 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; and:

A. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction.

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;

B. 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;

C. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to illegally import the scheduled drug; or

D. Death is in fact caused by the use of the scheduled drug.

A violation of this subsection is a Class A crime.

2. If a person uses a motor vehicle to facilitate the aggravated illegal importation of a scheduled drug, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit or privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit or privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court.

Sec. 4. 17-A MRSA §1158-A, sub-§1, ¶A, as amended by PL 2009, c. 336, §13, is further amended to read:

A. That firearm constitutes the basis for conviction under:

(1) Title 15, section 393;

(2) Section 1105-A, subsection 1, paragraph C-1;

(3) Section 1105-B, subsection 1, paragraph C;

(4) Section 1105-C, subsection 1, paragraph C-1; or

(5) Section 1105-D, subsection 1, paragraph B-1; or

(6) Section 1118-A, subsection 1, paragraph B;

Sec. 5. 17-A MRSA §1252, sub-§5-A, as amended by PL 2013, c. 133, §15, is further amended to read:

5-A. Notwithstanding any other provision of this Code, for a person convicted of violating section 1105-A, 1105-B, 1105-C ~~or~~, 1105-D or 1118-A:

A. Except as otherwise provided in paragraphs B and C, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 4 years; when the sentencing class is Class B, the minimum term of imprisonment is 2 years; and, with the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year;

B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:

(1) The court finds by substantial evidence that:

(a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;

(b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and

(c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section 1105-A, 1105-B, 1105-C ~~or~~, 1105-D or 1118-A; and

(2) The court finds that:

(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 9 months; when the sentencing is Class B, the minimum term of imprisonment is 6 months; and, with the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months.'

SUMMARY

This amendment is the minority report of the committee. The amendment raises the class of crime for the illegal importation of scheduled drugs for a schedule W drug from a Class C crime to a Class B crime if the drug is fentanyl powder or the drug is heroin and at the time of the offense the person illegally imports 6 grams or more of heroin or 270 or more individual bags, folds, packages, envelopes or containers of any kind containing heroin.

Like the bill, this amendment creates the crime of aggravated illegal importation of a scheduled drug; however, the amendment limits the scheduled drugs that may give rise to the crime to fentanyl powder and certain amounts of heroin. The aggravating factors include a prior drug conviction, using a firearm while committing the offense, having a child under 18 years of age assist with the illegal importation and when death is in fact caused by the use of the scheduled drug.

The amendment adds aggravated illegal importation of a scheduled drug to the crimes that may result, under certain circumstances, in the forfeiture of firearms.

The amendment specifies that the minimum sentence of imprisonment is 4 years for a violation of the law prohibiting aggravated illegal importation of a scheduled drug.