

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 everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 17-A MRSA §1107-A, sub-§1, ¶B, as amended by PL 2015, c. 308, §2 and c. 346, §6, is repealed and the following enacted in its place:

B. A schedule W drug that contains:

(1) Heroin (diacetylmorphine);

(2) Cocaine in the form of cocaine base and:

(a) The quantity possessed is 4 grams or more; or

(b) At the time of the offense the person had one or more convictions for violating this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction;

(3) Methamphetamine;

(4) Oxycodone and at the time of the offense the person had one or more convictions for violating this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction;

(5) Hydrocodone and at the time of the offense the person had one or more convictions for violating this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction;

(6) Hydromorphone and at the time of the offense the person had one or more convictions for violating this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction;

(7) Fentanyl powder; or

(8) Cocaine and the quantity possessed is 14 grams or more.

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

Violation of this paragraph is a Class C crime;

Sec. 2. 17-A MRSA §1107-A, sub-§4, as amended by PL 2011, c. 464, §19, is further amended to read:

4. It is an affirmative defense to prosecution under subsection 1, paragraph B, subparagraphs (3)(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.

Sec. 3. 17-A MRSA §1348-A, sub-§5 is enacted to read:

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

SUMMARY

This amendment is the majority report of the committee. This amendment repeals 2 conflicting versions of the Maine Revised Statutes, Title 17-A, section 1107-A, subsection 1, paragraph B, which was amended by Public Law 2015, chapter 308, section 2 and chapter 346, section 6. The amendment resolves the conflicts and enacts a new version of Title 17-A, section 1107-A, subsection 1, paragraph B. Under this amendment, and subject to other provisions of law that address the quantities of drugs possessed:

1. The first offense of possession of oxycodone, hydrocodone or hydromorphone is a Class D crime, and a 2nd or subsequent offense is a Class C crime;

2. Possession of heroin, methamphetamine and fentanyl powder is a Class C crime;

3. Possession of cocaine in a quantity of 14 grams or more is a Class C crime and possession of less than 14 grams is a Class D crime; and

4. Possession of cocaine in the form of cocaine base if the quantity is 4 grams or more or if the offense is a 2nd or subsequent offense is a Class C crime.

This amendment also amends the law on affirmative defenses to charges of possession of schedule W prescription drugs to take into account reordering in Title 17-A, section 1107-A, subsection 1, paragraph B the list of prescription drugs as a result of resolving the conflict and amends the law on deferred disposition under Title 17-A, section 1348-A to affirmatively state that deferred disposition is a preferred disposition in a prosecution for possession of schedule W drugs under Title 17-A, section 1107-A, subsection 1, paragraph B.

FISCAL NOTE REQUIRED

(See attached)