



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1554

S.P. 609

In Senate, January 12, 2016

An Act To Resolve Inconsistencies in the Drug Laws

Submitted by the Department of the Attorney General pursuant to Joint Rule 203.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator ROSEN of Hancock.
Cosponsored by Representative DAVITT of Hampden and
Senators: DIAMOND of Cumberland, SAVIELLO of Franklin, Representatives: BECK of
Waterville, SHORT of Pittsfield.

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

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3 and c. 346, §6, is repealed and the following enacted in its place:

4 B. A schedule W drug that contains:

5 (1) Heroin (diacetylmorphine):

6 (2) Cocaine in the form of cocaine base and at the time of the offense the person
7 had one or more convictions for violating this chapter or for engaging in
8 substantially similar conduct to that of the Maine offenses under this chapter in
9 another jurisdiction;

10 (3) Methamphetamine;

11 (4) Oxycodone and the aggregate quantity of pills, capsules, tablets, mixtures or
12 substances is equal to or more than 30 milligrams;

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

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

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

22 (8) Fentanyl powder;

23 (9) Cocaine and the quantity possessed is 7 grams or more; or

24 (10) Cocaine in the form of cocaine base and the quantity possessed is 2 grams
25 or more.

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

29 Violation of this paragraph is a Class C crime;

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

32 **4.** It is an affirmative defense to prosecution under subsection 1, paragraph B,
33 subparagraphs (3) to ~~(6)~~ (7) and paragraphs C to F that the person possessed a valid
34 prescription for the scheduled drug or controlled substance that is the basis for the charge
35 and that, at all times, the person intended the drug to be used only for legitimate medical
36 use in conformity with the instructions provided by the prescriber and dispenser.

1 **SUMMARY**

2 This bill corrects a conflict created by Public Law 2015, chapters 308 and 346, which
3 affected the same provision of law. It repeals the provision and replaces it with a version
4 that provides that a person is guilty of unlawful possession of a scheduled drug and
5 commits a Class C crime if the person intentionally or knowingly possesses what that
6 person knows or believes to be a scheduled drug, which is in fact a scheduled drug, and
7 the drug is a schedule W drug that contains:

8 1. Heroin;

9 2. Cocaine in the form of cocaine base, oxycodone, hydrocodone or hydromorphone
10 and at the time of the offense the person had one or more convictions for violating the
11 State's drug laws or for engaging in substantially similar conduct to that of offenses under
12 the State's drug laws in another jurisdiction;

13 3. Methamphetamine;

14 4. Oxycodone and the aggregate quantity of pills, capsules, tablets, mixtures or
15 substances is equal to or more than 30 milligrams;

16 5. Fentanyl powder;

17 6. Cocaine and the quantity possessed is 7 grams or more; or

18 7. Cocaine in the form of cocaine base and the quantity possessed is 2 grams or
19 more.