

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1192 - L.D. 1589

**An Act To Criminalize Possession, Trafficking and Furnishing of So-called
Bath Salts Containing Synthetic Hallucinogenic Drugs**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, certain synthetic hallucinogenic drugs marketed as bath salts are powerful stimulant drugs that are suspected to have been designed to avoid prosecution and are commonly available on the Internet; and

Whereas, a perception exists that these so-called bath salts are a safer alternative to other illegal drugs, but, in fact, the use of bath salts is known to produce a number of severe side effects, including psychosis, organ failure and death; and

Whereas, prohibiting the use and possession of these so-called bath salts is an urgent public safety matter; and

Whereas, the passage of Public Law 2011, chapter 447 earlier this year has not had the intended effect of reducing the possession and use of these so-called bath salts; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §5821, sub-§§1 and 2, as enacted by PL 1987, c. 420, §2, are amended to read:

1. Scheduled drugs and synthetic hallucinogenic drugs. All scheduled drugs ~~which~~ and all synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101, subsection 16-A, that have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;

2. Materials related to scheduled drugs and synthetic hallucinogenic drugs. All raw materials, products and equipment of any kind ~~which~~ that are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug or any synthetic hallucinogenic drug, as defined in Title 17-A, section 1101, subsection 16-A, in violation of any law of this State, any other state or the United States;

Sec. 2. 15 MRSA §5821, sub-§3-A, as amended by PL 2001, c. 348, §2, is further amended to read:

3-A. Firearms and other weapons. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs or synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101, subsection 16-A, in which scheduled drugs or synthetic hallucinogenic drugs are found. Except for those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822, all weapons seized, after notice and opportunity for hearing, must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon need not be forfeited if the owner appears prior to the declaration of forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

- A. That the owner had a possessory interest in the weapon at the time of the seizure sufficient to exclude every person involved with the seized drugs or every person at the site of the seizure;
- B. That the owner had no knowledge of or involvement with the drugs and was not at the site of the seizure; and
- C. That the owner had not given any involved person permission to possess or use the weapon.

Post-hearing procedures are as provided in section 5822.

A confiscated or forfeited handgun that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the handgun was stolen and the rightful owner was not the person who committed the homicide, in which case the handgun must be returned to the owner if ascertainable. For purposes of this subsection, "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of a single hand.

Sec. 3. 15 MRSA §5821, sub-§6, as amended by PL 1989, c. 302, §1, is further amended to read:

6. Money instruments. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug or synthetic hallucinogenic drug, as defined in Title 17-A, section 1101, subsection 16-A, in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange; and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45;

A. No property may be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner;

Sec. 4. 15 MRSA §5821, sub-§7, as amended by PL 2003, c. 688, Pt. B, §2, is further amended to read:

7. Real property. Except as provided in paragraph A, all real property, including any right, title or interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended for use, in any manner or part, to commit or to facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B ~~or~~, 1105-C, ~~which~~ 1120, 1121 or 1123 that is a Class A, Class B or Class C crime, with the exception of offenses involving marijuana.

A. Property may not be forfeited under this subsection, to the extent of an interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. When an owner of property that is that person's primary residence proves by a preponderance of the evidence that the owner is the spouse or minor child of the coowner of the primary residence who has used or intended to use the residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B ~~or~~, 1105-C, 1120, 1121 or 1123, the State shall bear the burden of proving knowledge or consent of the spouse or minor child by a preponderance of the evidence;

Sec. 5. 17-A MRSA §1101, sub-§16-A is enacted to read:

16-A. "Synthetic hallucinogenic drug" means:

A. 3, 4 - methylenedioxymethcathinone, MDMC;

B. 3, 4 - methylenedioxypropylvalerone, MDPV;

C. 4 - methylmethcathinone, 4-MMC;

D. 4 - methoxymethcathinone, bk-PMMA, PMMC;

E. 3 - fluoromethcathinone, FMC;

F. 4 - fluoromethcathinone, FMC;

G. Napthylpyrovalerone, NRG-1; or

H. Beta-keto-N-methylbenzodioxolylpropylamine.

Sec. 6. 17-A MRSA §§1119 to 1123 are enacted to read:

§1119. Unlawful possession of synthetic hallucinogenic drugs

1. A person is guilty of unlawful possession of a synthetic hallucinogenic drug if the person intentionally or knowingly possesses what that person knows or believes to be a synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug.

Violation of this subsection is a Class D crime.

2. A person who violates subsection 1 commits a Class C crime if the person has one or more prior convictions for any offense under this chapter or for engaging in substantially similar conduct to that of an offense 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 subsection, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years.

§1120. Unlawful trafficking in synthetic hallucinogenic drugs

1. A person is guilty of unlawful trafficking in a synthetic hallucinogenic drug if the person intentionally or knowingly trafficks in what the person knows or believes to be a synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug. Violation of this subsection is a Class B crime.

2. If a person uses a motor vehicle to facilitate the trafficking in a synthetic hallucinogenic 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 or 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.

§1121. Aggravated trafficking in synthetic hallucinogenic drugs

1. A person is guilty of aggravated trafficking in a synthetic hallucinogenic drug if the person violates section 1120 and:

A. The person trafficks in a synthetic hallucinogenic drug with a child who is in fact less than 18 years of age. Violation of this paragraph is a Class A crime;

B. 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. Violation of this paragraph is a Class A crime;

C. 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. Violation of this paragraph is a Class A crime;

D. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23. Violation of this paragraph is a Class A crime.

For purposes of this paragraph, "school bus" has the same meaning as in Title 29-A, section 2301, subsection 5;

E. 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 traffick in a synthetic hallucinogenic drug. Violation of this paragraph is a Class A crime;

F. Death is in fact caused by the use of that synthetic hallucinogenic drug. Violation of this paragraph is a Class A crime; or

G. Serious bodily injury is in fact caused by the use of that synthetic hallucinogenic drug. Violation of this paragraph is a Class B crime.

2. If a person uses a motor vehicle to facilitate the aggravated trafficking in a synthetic hallucinogenic 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 or 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.

§1122. Unlawfully furnishing synthetic hallucinogenic drugs

1. A person is guilty of unlawful furnishing of a synthetic hallucinogenic drug if the person intentionally or knowingly furnishes what the person knows or believes to be a synthetic hallucinogenic drug, which is in fact a synthetic hallucinogenic drug.

Violation of this subsection is a Class C crime.

2. If a person uses a motor vehicle to facilitate the unlawful furnishing of a synthetic hallucinogenic 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 or 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.

§1123. Aggravated furnishing of synthetic hallucinogenic drugs

1. A person is guilty of aggravated furnishing of a synthetic hallucinogenic drug if the person violates section 1122 and:

A. The person furnishes a synthetic hallucinogenic drug to a child who is in fact less than 18 years of age. Violation of this paragraph is a Class B crime;

B. 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. Violation of this paragraph is a Class B crime;

C. 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. Violation of this paragraph is a Class B crime;

D. At the time of the offense, the person is on a school bus or within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23. Violation of this paragraph is a Class B crime.

For purposes of this paragraph, "school bus" has the same meaning as in Title 29-A, section 2301, subsection 5;

E. 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 furnish a synthetic hallucinogenic drug. Violation of this paragraph is a Class B crime;

F. Death is in fact caused by the use of that synthetic hallucinogenic drug. Violation of this paragraph is a Class B crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the death was not a reasonably foreseeable consequence of the use of that synthetic hallucinogenic drug. In determining whether the death was reasonably foreseeable, the fact finder shall consider:

(1) The factual circumstances surrounding the furnishing of the drug;

(2) The total quantity of the drug furnished;

(3) The dosage of the units furnished;

(4) The nature of the drug;

(5) The overdose risk presented by use of the drug; and

(6) Any safety warnings provided to the defendant at the time of dispensing the drug; or

G. Serious bodily injury is in fact caused by the use of that synthetic hallucinogenic drug. Violation of this paragraph is a Class C crime. It is an affirmative defense to prosecution under this paragraph that the drug furnished was lawfully possessed by the defendant prior to furnishing and that the serious bodily injury was not a reasonably foreseeable consequence of the use of that synthetic hallucinogenic drug. In determining whether the serious bodily injury was reasonably foreseeable, the fact finder shall consider:

- (1) The factual circumstances surrounding the furnishing of the drug;
- (2) The total quantity of the drug furnished;
- (3) The dosage of the units furnished;
- (4) The nature of the drug;
- (5) The overdose risk presented by use of the drug; and
- (6) Any safety warnings provided to the defendant at the time of dispensing the drug.

2. If a person uses a motor vehicle to facilitate the aggravated furnishing of a synthetic hallucinogenic 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 or 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. 7. 17-A MRSA §1201, sub-§1, ¶A-1, as amended by PL 2009, c. 573, §3, is further amended to read:

A-1. The conviction is for a Class D or Class E crime other than:

- (1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;
- (2) A Class D crime that the State pleads and proves was committed against a family or household member or a dating partner under chapter 9 or 13 or section 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; "dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;
- (2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15, section 321, subsection 6 or Title 19-A, section 4011, subsection 1;
- (3) A Class D or Class E crime in chapter 11 or 12;
- (4) A Class D crime under section 210-A;
- (4-A) A Class E crime under section 552;

- (5) A Class D or Class E crime under section 556, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;
- (6) A Class D crime in chapter 45 relating to a schedule W drug;
- (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B; ~~or~~
- (8) A Class D crime under Title 17, section 1031; or
- (9) A Class D crime under Title 17-A, section 1119, subsection 1.

Sec. 8. 22 MRSA §2383-B, sub-§2-A is enacted to read:

2-A. Others so authorized. Except as otherwise provided by law, the following persons are authorized to possess, furnish and have control of synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101, subsection 16-A:

- A. Employees or agents of persons lawfully entitled to possession who have temporary, incidental possession while acting within the scope of their employment or agency;
- B. Persons whose possession is for the purpose of aiding public officers in performing their official duties while acting within the scope of their employment or duties;
- C. Law enforcement officers while acting within the scope of their employment and official duties; and
- D. Persons conducting research at a school of pharmacology that is accredited or a candidate for accreditation in good standing.

Sec. 9. 22 MRSA §2383-B, sub-§3, ¶D-1 is enacted to read:

D-1. "Synthetic hallucinogenic drug" has the same meaning as in Title 17-A, section 1101, subsection 16-A.

Sec. 10. 22 MRSA §§2390 to 2394, as enacted by PL 2011, c. 447, §1, are repealed.

Sec. 11. Appropriations and allocations. The following appropriations and allocations are made.

**CORRECTIONS, DEPARTMENT OF
Correctional Impact Reserve N033**

Initiative: Provides funds for the Correctional Impact Reserve program for an anticipated increase in correctional costs as a result of increasing the penalties for synthetic hallucinogenics.

GENERAL FUND	2011-12	2012-13
All Other	\$21,848	\$153,725
GENERAL FUND TOTAL	<u>\$21,848</u>	<u>\$153,725</u>

CORRECTIONS, DEPARTMENT OF	2011-12	2012-13
DEPARTMENT TOTALS		
GENERAL FUND	\$21,848	\$153,725
DEPARTMENT TOTAL - ALL FUNDS	<u>\$21,848</u>	<u>\$153,725</u>

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON
Maine Commission on Indigent Legal Services Z112

Initiative: Provides funds for the anticipated increase in indigent legal service costs as a result of increasing the penalties related to synthetic hallucinogenics.

GENERAL FUND	2011-12	2012-13
All Other	\$9,167	\$22,000
GENERAL FUND TOTAL	<u>\$9,167</u>	<u>\$22,000</u>

INDIGENT LEGAL SERVICES, MAINE	2011-12	2012-13
COMMISSION ON		
DEPARTMENT TOTALS		
GENERAL FUND	\$9,167	\$22,000
DEPARTMENT TOTAL - ALL FUNDS	<u>\$9,167</u>	<u>\$22,000</u>

SECTION TOTALS	2011-12	2012-13
GENERAL FUND	\$31,015	\$175,725
SECTION TOTAL - ALL FUNDS	<u>\$31,015</u>	<u>\$175,725</u>

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor