

**OFFICE OF POLICY AND LEGAL ANALYSIS  
BILL ANALYSIS**

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**TO: Members, Joint Standing Committee on Criminal Justice and Public Safety**

**FROM: Jane Orbeton, Legislative Analyst**

**DATE: April 7, 2021**

**LD: 477 An Act To Allow for Fair Restitution by Providing That Restitution Does Not Include the Cost of Analysis of Suspected Illegal Drugs**

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**Summary**

Current law on restitution, 17-A MRSA chapter 69 (Ferdico pages 228 to 237), allows critical investigation expenses to be recovered by a victim as restitution in criminal cases. “Victim” is defined in section 2002, sub-§7 as a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime. “Economic loss” is defined in section 2002, sub-§3, paragraph B, to include critical investigation expense to include the cost of analysis of suspected illegal drugs. It is this definition that the bill proposes to amend, repealing from “critical investigation expense” the cost of analysis of suspected illegal drugs.

**Testimony**

**Proponents:**

1. Representative Warren testified in support of the bill and provided written testimony that included the legislative history of the drug analysis provision from 2005.
2. Michael Kebede, representing the ACLU, testified in support and provide written testimony. Mr. Kebede stated that restitution to the government for the cost of analysis of suspected illegal drugs is inconsistent with the basic structure of a just legal system, is unjust and unfair, adds to the stigma of substance use disorder and contradicts the state’s goal to encourage treatment and rehabilitation.
3. Walter McKee, representing the Maine Association of Criminal Defense Lawyers (MACDL), testified and provided written testimony in support of the bill, citing the inability of some defendants to pay drug analysis costs and the trend toward having defendants pay for governmental services connected to their cases.

**Opponents:**

None

**Neither for nor against:**

1. John Pelletier, representing the Criminal Law Advisory Commission, provided written testimony outlining the division among CLAC members regarding the bill. CLAC members supporting the bill cited the unlikely collection of restitution from indigent defendants serving prison sentences, the existence of other costs of investigation that do not qualify for restitution and that the costs of prosecution should not be borne by defendants. CLAC members not supporting the bill suggested

an amendment to allow a court to order restitution for drug analysis costs with regard to a defendant who profits from the drug trade in trafficking cases in which the court in sentencing a defendant makes a finding that the conduct underlying the conviction was motivated by profit as opposed to an attempt to pay for a drug habit.

**INFORMATION REQUESTED:**

1. Information was requested with regard to the frequency and amounts of restitution for the costs of drug analysis.

Anna Black, from the DOC, provided the following information:

We can only provide figures for which we collect for restitution, not for what prosecutors collect. Please see the chart below that identifies amounts, by year, distributed to MEDEA as reimbursement for the costs of analysis of suspected illegal drugs. The sums include lab testing fees and potentially may also include fees related to methamphetamine lab clean-up. (The MDOC is not provided the specific reason the restitution was ordered).

<b>Year</b>	<b>Total Restitution to MDEA</b>
2016	\$46,163.36
2017	\$59,590.94
2018	\$69,592.09
2019	\$41,321.52
2020	\$36,798.62

Maeghan Maloney, for the Maine Prosecutors Association, provided information from District Attorney Todd Collins that in District 8 restitution for the cost of drug analysis is requested in almost every case.