

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1162

6  
7 H.P. 821

House of Representatives, March 28, 1985

8 On motion of Representative Kane of S. Portland, referred to the  
9 Committee on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Bell of Paris.

11 Cosponsored by Representative Smith of Island Falls, Senator Chalmers  
of Knox and Representative Drinkwater of Belfast.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Enhance Enforcement of Drug Laws at  
18 the Local Level.  
19

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

22 Sec. 1. 15 MRSA §2063 is enacted to read:

23 §2063. Drug offense fines paid out to county or mu-  
24 nicipality

25 The district attorney for the prosecutorial dis-  
26 trict in which the county or municipality is located  
27 shall apply to the Treasurer of State for payment to  
28 the district attorney of any fine paid by a person,  
29 as defined in Title 17-A, section 2, convicted of an  
30 offense under Title 17-A, chapter 45, where officers  
31 or employees of the county or municipality conducted  
32 the investigation and caused the arrest of the per-  
33 son. The Treasurer of State shall transfer these  
34 fines to the district attorney, who shall maintain  
35 them in an account, administered by the district at-

1 torney, on behalf of the county or municipality enti-  
2 tled to the fines. The money in the account shall be  
3 used solely for the purposes of investigation under  
4 and the enforcement of Title 17-A, chapter 45, by the  
5 county or municipality.

6 Sec. 2. 17-A MRSA §1301, sub-§1, as amended by  
7 PL 1977, c. 510, §§83 to 85, is further amended to  
8 read:

9 1. A natural person who has been convicted of a  
10 Class B, Class C, Class D or Class E crime may be  
11 sentenced to pay a fine, unless the statute which the  
12 person is convicted of violating expressly provides  
13 that the fine and imprisonment penalties it autho-  
14 rizes may not be suspended, in which case the con-  
15 victed person shall be sentenced to the imprisonment  
16 and required to pay the fine authorized therein. Sub-  
17 ject to such sentences and to section 1302, the fine  
18 which shall not exceed:

19 A. \$10,000 for a Class B crime;

20 A-1. \$2,500 for a Class C crime;

21 B. \$1,000 for a Class D crime;

22 C. \$500 for a Class E crime; and

23 D. Regardless of the classification of the  
24 crime, any higher amount which does not exceed  
25 twice the pecuniary gain derived from the crime  
26 by the defendant; and

27 E. Regardless of the classification of the crime  
28 when the crime is a violation of chapter 45, any  
29 higher amount which does not exceed the amount of  
30 money derived by the defendant from the commis-  
31 sion of the crime or the value, as determined an-  
32 nually, by rule, by the Chief of the State Po-  
33 lice, of the drugs, counterfeit drugs or imita-  
34 tion scheduled drugs in the possession of the de-  
35 fendant at the time of the commission of the  
36 crime.

37 Sec. 3. 17-A MRSA §1301, §3, as repealed and re-  
38 placed by PL 1981, c. 317, §27, is amended to read:

1           3. If the defendant convicted of a crime is an  
2 organization and the statute which it is convicted of  
3 violating expressly provides that the fine it autho-  
4 rizes may not be suspended, the organization shall be  
5 sentenced to pay the fine authorized therein. Other-  
6 wise, the maximum allowable fine which such a defend-  
7 ant may be sentenced to pay shall be:

8           A. Any amount for murder;

9           B. \$50,000 for a Class A crime;

10          C. \$20,000 for a Class B crime;

11          D. \$10,000 for a Class C crime;

12          E. \$5,000 for a Class D crime or a Class E  
13 crime; ~~and~~

14          F. Any higher amount which does not exceed twice  
15 the pecuniary gain derived from the crime by the  
16 convicted organization; and

17          G. Regardless of the classification of the crime  
18 when the crime is a violation of chapter 45, any  
19 higher amount which does not exceed the amount of  
20 money derived by the convicted organization from  
21 the commission of the crime or the value of  
22 drugs, counterfeit drugs or imitation scheduled  
23 drugs in the possession of the convicted organi-  
24 zation at the time of the commission of the  
25 crime.

26          Sec. 4. 17-A MRSA §1301, sub-§5 is enacted to  
27 read:

28          5. When the court imposes a fine under subsec-  
29 tion 1, paragraph E, or subsection 3, paragraph G,  
30 the court shall make a finding as to the amount of  
31 money derived by the defendant or the value of the  
32 drugs, counterfeit drugs or imitation scheduled drugs  
33 in the defendant's possession. If the record, does  
34 not contain sufficient evidence to support a finding,  
35 the court may conduct, in connection with its imposi-  
36 tion of a sentence, a hearing on this issue.

1           Sec. 5. 22 MRSA 2387, sub-§1, as amended by PL  
2 1981, c. 470, Pt. A, §94, is further amended to read:

3           1. Property forfeited. The following property  
4 shall be subject to forfeiture to the State and all  
5 property rights therein shall be in the State:

6           A. All materials, products and equipment of any  
7 kind which are used, or intended for use, in man-  
8 ufacturing, trafficking or furnishing any sub-  
9 stance in violation of Title 17-A, chapter 45;  
10 and

11           B. All conveyances, including aircraft, water-  
12 craft, vehicles or vessels, which are used, or  
13 are intended for use, to transport, conceal or  
14 otherwise to facilitate the manufacture, traf-  
15 ficking or furnishing of a substance in violation  
16 of Title 17-A, chapter 45; and

17           C. All moneys, negotiable instruments, securi-  
18 ties or other things of value furnished or in-  
19 tended to be furnished by any person in exchange  
20 for a scheduled drug in violation of Title 17-A,  
21 chapter 45, all proceeds traceable to such an ex-  
22 change, and all moneys, negotiable instruments  
23 and securities used or intended to be used to fa-  
24 cilitate any violation of Title 17-A, chapter  
25 45; and

26           D. All real property, including any right, title  
27 and interest in the whole of any lot or tract of  
28 land and any appurtenances or improvements, which  
29 is used, or intended to be used, in any manner or  
30 part to commit, or to facilitate the commission  
31 of, a violation of Title 17-A, chapter 45.

32           Sec. 6. 22 MRSA §2387, sub-§4, as amended by PL  
33 1981, c. 529, §3, is further amended to read:

34           4. Petition; order. A district attorney or the  
35 Attorney General may petition the Superior Court in  
36 the name of the State in the nature of a proceeding  
37 in rem to order forfeiture of property subject to  
38 forfeiture under subsection 1, paragraphs B and C  
39 and D. Such petition shall be filed in the court hav-  
40 ing jurisdiction over the property. Such proceeding

1 shall be deemed a civil suit, in which the State  
2 shall have the burden of proving all material facts  
3 by a preponderance of the evidence and the owner of  
4 the property or other person claiming thereunder  
5 shall have such burden as to all exceptions set forth  
6 in subsection 3. The court shall order the State to  
7 give notice by certified or registered mail or hand  
8 delivered by a deputy sheriff to the owner of the  
9 property and to such other person as appears to have  
10 an interest therein and shall promptly, but not less  
11 than 2 weeks after notice, hold a hearing on the pe-  
12 tition. At such hearing, the court shall hear evi-  
13 dence and make findings of fact and enter conclusions  
14 of law, and shall thereupon issue a final order, from  
15 which the parties shall have such right of appeal.  
16 Such final order shall provide for disposition of the  
17 property by the State or any subdivision thereof in  
18 any manner not prohibited by law, including official  
19 use by an authorized law enforcement or other public  
20 agency, or sale at public auction or by competitive  
21 bidding. The proceeds of any such sale shall be used  
22 to pay the reasonable expenses of the forfeiture pro-  
23 ceedings, seizure, storage, maintenance of custody,  
24 advertising and notice, and to pay any bonafide mort-  
25 gage thereon, and the balance, if any, shall be de-  
26 posited in the treasury of the State, county or mu-  
27 nicipality making such seizure. All moneys, negotia-  
28 ble instruments, securities, proceeds and other  
29 things of value forfeited pursuant to subsection 1,  
30 paragraph C shall be used to pay the reasonable ex-  
31 penses of the forfeiture proceedings, seizure, stor-  
32 age, maintenance of custody, advertising and notice  
33 and the balance, if any, shall be deposited in the  
34 General Fund of the State Treasury or treasury of the  
35 county or municipality making the seizure.

36 Sec. 7. 22 MRSA §2387, sub-§5, as amended by PL  
37 1981, c. 529, §4, is further amended to read:

38 5. Records. Any officer, department or agency  
39 having custody ~~of~~ of property subject to forfeiture  
40 under subsection 1, paragraph A, B ~~or~~, C or D, or  
41 having disposed of the property shall keep and main-  
42 tain full and complete records showing from whom it  
43 received the property, under what authority it held  
44 or received or disposed of the property, to whom it  
45 delivered the property, the date and manner of de-

1 construction or disposition of the property and the exact  
2 kinds, quantities and forms of the property.  
3 Said records shall be open to inspection by all federal  
4 and state officers charged with enforcement of  
5 federal and state drug control laws. Persons making  
6 final disposition or destruction of said property under  
7 court order shall report, under oath, to the  
8 court the exact circumstances of said disposition or  
9 destruction.

10 STATEMENT OF FACT

11 The purpose of this bill is to include real prop-  
12 erty in the property subject to forfeiture to the  
13 State because of its connection to a violation of  
14 criminal drug laws. The bill also provides for money  
15 and proceeds for forfeitures to be set aside for the  
16 use of the State, county or municipality, depending  
17 upon which entity made the seizure. The bill also  
18 permits fines in cases of drug offenses to be related  
19 to the amount of money derived by the defendant from  
20 the criminal activity or to the value of the drugs  
21 involved. Finally, the bill sets aside fines paid as  
22 the result of a conviction under Maine's drug laws to  
23 any county or municipality which did the investiga-  
24 tion and made the arrest.

25 Section 1 of the bill provides that the district  
26 attorney must apply to the Treasurer of State on be-  
27 half of the county or municipality which conducted  
28 the investigation and arrest for any fines resulting  
29 from conviction under the drug laws. The Treasurer  
30 of State must pay these fines to the district attor-  
31 ney, who shall maintain them for use by the county or  
32 municipality in drug investigation and enforcement.

33 Sections 2, 3 and 4 permit the judge, in sentenc-  
34 ing a person convicted of a drug offense, to set a  
35 fine equal to the amount of money derived by the de-  
36 fendant from the commission of the crime or to the  
37 value of the drugs in the defendant's possession at  
38 the time of the crime.

39 Section 5 amends the current law on forfeiture of  
40 property connected to drug offenses. This section

1 adds real property, including appurtenances and im-  
2 provements, as property that may be forfeited if in-  
3 volved in the commission of a violation of criminal  
4 drug laws.

5 Section 6 amends the current provisions for dis-  
6 position of proceeds from the sale of forfeited prop-  
7 erty and of money, negotiable instruments and the  
8 like connected with drug offenses. Current law per-  
9 mits proceeds from the sale of forfeited property to  
10 be placed in the State Treasury or county or munici-  
11 pality treasury which made the seizure. This section  
12 includes proceeds from sales of real property in  
13 these provisions. This section also extends that  
14 procedure to forfeited money, negotiable instruments,  
15 and the like, so that these items are turned over to  
16 the State, county or municipality which made the sei-  
17 zure, rather than to the General Fund of the State as  
18 under current law.

19 Section 7 makes a technical change necessitated  
20 by the addition of the Maine Revised Statutes, Title  
21 22, section 2387, subsection 1, paragraph D, in sec-  
22 tion 5 of this bill.

23

1988030485