

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1505

6
7 S.P. 569

In Senate, May 9, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Clark of Cumberland.

Cosponsored by Representative McGowan of Canaan.

11
12 STATE OF MAINE
13

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

17 AN ACT to Aid the Victims of Crime.
18

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

21 15 MRSA c. 515 is enacted to read:

22 CHAPTER 515

23 AID TO VICTIMS OF CRIME

24 §5801. Statement of purpose and legislative intent

25 1. Findings. The Legislature finds that it is
26 necessary to create a fund to help victim assistance
27 programs and that the fund should be, to the extent
28 possible, comprised of the proceeds of criminal en-
29 terprise.

30 2. Intent. It is intended that the primary use
31 of the Victim Assistance Fund will be to provide for
32 at least one state-funded victim assistant in each of

1 the 8 prosecutorial districts, thus, alleviating a
2 substantial property tax burden because those posi-
3 tions are currently funded by the counties.

4 §5802. Victim Assistance Fund created

5 1. Creation of fund. There is created the Vic-
6 tim Assistance Fund, in this chapter called the fund.

7 2. Administration. The fund shall be adminis-
8 tered by the Attorney General on behalf of the vic-
9 tims of crime.

10 3. Acceptance of revenues and assets. The fund
11 shall accept revenues and assets from:

12 A. The proceeds of criminal enterprise; and

13 B. Legislative appropriations, grants from any
14 source and gifts or donations from any source.

15 4. Expending of assets. The fund may expend as-
16 sets for the purpose of assisting the victims of
17 crime by disbursing those assets to victim assistance
18 programs.

19 §5803. Procedures

20 The Attorney General shall promulgate rules set-
21 ting forth the manner in which the proceeds of crimi-
22 nal enterprise shall be handled, the manner in which
23 the fund shall be administered and the manner in
24 which the assets of the fund shall be expended. Pri-
25 or to the promulgation of these rules, they shall be
26 approved by a majority of a committee composed of the
27 President of the Maine Prosecutor's Association, the
28 Commissioner of Public Safety and a member of the
29 public appointed by the Governor. These rules shall
30 provide for:

31 1. Agencies and entities which may apply for
32 grants. The agencies and entities which may apply
33 for grants under this chapter;

34 2. Manner of application. The manner in which
35 the applications shall be made;

1 3. Procedures to assure that services are pro-
2 vided. The procedures which these agencies and enti-
3 ties shall use to assure that services are, in fact,
4 provided for and to victims of crime;

5 4. Procedures; law enforcement agencies. The
6 procedures which law enforcement agencies shall use
7 to demonstrate substantial contributions to criminal
8 cases which underlie forfeiture actions; and

9 5. Limitations. The limitations on use and dis-
10 position which may be made upon property forfeited to
11 law enforcement agencies.

12 §5804. Proceeds of criminal enterprise defined

13 The "proceeds of criminal enterprise" means any
14 one or more of the following:

15 1. Property used to further crimes. All proper-
16 ty, of any kind and in whatever form held, which is
17 used or intended for use to effect or further any
18 conduct which constitutes murder or a Class A, Class
19 B or Class C crime;

20 2. Conveyances. All conveyances, including air-
21 craft, watercraft, vehicles and vessels which are
22 used or are intended for use to transport, conceal,
23 effect, further or otherwise facilitate any conduct
24 which constitutes murder or a Class A, Class B or
25 Class C crime;

26 3. Property furnished to procure other proper-
27 ty. All property, of any kind and in whatever form
28 held, furnished or intended to be furnished by any
29 person or entity to procure the use or ownership of
30 any property which that person or entity knows or
31 reasonably should have known to have been procured as
32 the result, in whole or in part, of conduct which
33 constitutes murder or a Class A, Class B or Class C
34 crime;

35 4. Property procured through crime. All proper-
36 ty, of any kind and in whatever form held, which was
37 procured in any part through conduct which consti-
38 tutes murder or a Class A, Class B or Class C crime;
39 and

1 5. Other property. All property, of any kind
2 and in whatever form held, which was procured in any
3 part with property described by subsection 4.

4 §5805. Forfeiture of all property which constitutes
5 the proceeds of criminal enterprise

6 1. Proceeds subject to forfeiture. The proceeds
7 of criminal enterprise shall be subject to forfei-
8 ture.

9 2. Property declared forfeited by court. Prop-
10 erty subject to forfeiture under subsection 1 shall
11 be declared forfeited by any court having jurisdic-
12 tion over the property or having final jurisdiction
13 over any related criminal proceeding.

14 3. Exceptions. The court shall order forfeiture
15 of all proceeds of criminal enterprise except as fol-
16 lows:

17 A. No conveyance used by any person as a common
18 carrier in the transaction of business as a com-
19 mon carrier may be forfeited unless it appears
20 that the owner or other person in charge of the
21 conveyance was a consenting party or privy to the
22 commission of murder or a Class A, Class B or
23 Class C crime;

24 B. No conveyance may be forfeited by reason of
25 any act or omission established by the owner of
26 the conveyance to have been committed or omitted
27 by any person other than the owner while the con-
28 veyance was unlawfully in the possession of a
29 person other than the owner in violation of the
30 criminal laws of the United States, this State or
31 any state; and

32 C. Property, to the extent of the interest of an
33 owner, by reason of any act or omission estab-
34 lished by that owner to have been committed or
35 omitted without the knowledge or consent of that
36 owner.

37 4. Petition for proceeding to order forfei-
38 ture. A district attorney or the Attorney General
39 may petition the Superior Court in the name of the

1 State in the nature of a proceeding in rem to order
2 forfeiture of property subject to forfeiture under
3 subsection 1.

4 A. The petition shall be filed in the court hav-
5 ing jurisdiction over the property or in Kennebec
6 County.

7 B. The proceeding shall be deemed a civil action
8 in which the State shall have the burden of prov-
9 ing all material facts by a preponderance of the
10 evidence and the owner of the property or other
11 person claiming thereunder shall have such burden
12 as to all exception set forth in subsection 3,
13 except that it shall be presumed that all assets,
14 in any part acquired by a person convicted of a
15 violation of Title 17-A, chapter 15 or chapter 45
16 which is also a Class B or Class C crime, from
17 the date of the offense and for 2 years thereaf-
18 ter, is property described by section 5804, sub-
19 section 4. The owner of the assets or other per-
20 son claiming thereunder may rebut that presump-
21 tion by providing by a preponderance of the evi-
22 dence that the assets are not, in fact, property
23 described by section 5804, subsection 4.

24 C. The State shall give notice of the petition
25 to the owner of the property and to such other
26 persons as appear to have an interest in the
27 property by delivering to those persons a copy of
28 the summons and complaint by certified or regis-
29 tered mail or in hand or by any other means as is
30 approved by the court. Subsequent proceedings
31 shall be in conformity with the rules of civil
32 actions prescribed by the Superior Court, except
33 that no deposition may be had without the consent
34 of the parties or order of court.

35 D. At hearing, other than default proceedings,
36 the court shall hear evidence and make findings
37 of fact and enter conclusions of law, and shall
38 file a final order from which the parties shall
39 have the right of appeal. The final order shall
40 provide for the disposition of the property as
41 follows:

42 (1) In the case of money, negotiable in-
43 struments and securities, to the fund;

1 (2) In the case of other property, to the
2 State, with the requirement that the State
3 sell the property through public auction or
4 public bidding as it would surplus property
5 and that the proceeds of the sale, less the
6 costs of sale, seizure, storage, maintenance
7 of custody, advertising and notice, shall be
8 paid to the fund; and

9 (3) Notwithstanding paragraphs A and B, the
10 court may award forfeited property to a law
11 enforcement agency upon the written certifi-
12 cation of the Attorney General that the
13 agency has made a substantial contribution
14 to a criminal action which has resulted in
15 the forfeiture of that property.

16 Default proceedings shall be held in the same manner
17 as default proceedings in other civil actions, except
18 that service of motions and affidavits related to de-
19 fault proceedings need not be served upon any person
20 who has not answered or otherwise defended in the ac-
21 tion.

22 5. Preliminary order or process. The court may
23 issue, at the request of the State ex parte, any pre-
24 liminary order or process as is necessary to seize or
25 secure the property for which forfeiture is sought
26 and to provide for its custody. That order may in-
27 clude an order to a financial institution or to any
28 fiduciary to require the entity to impound any prop-
29 erty in its possession or control and not to release
30 it except upon further order of the court. Process
31 for seizure of the property shall issue only upon a
32 showing of probable cause; and the application for
33 process and the issuance, execution and return of
34 process shall be subject to the provisions of appli-
35 cable state law. Any property subject to forfeiture
36 under this section may be seized upon process, except
37 that seizure without process may be made when:

38 A. The seizure is incident to an arrest with
39 probable cause, a search under a valid search
40 warrant or an inspection under a valid adminis-
41 trative inspection warrant;

