

# 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 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 2074

7 H.P. 1471

House of Representatives, February 26, 1986

8 Approved for introduction by a majority of the Legislative Council  
9 pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Paradis of Augusta.

Cosponsored by Representative Jacques of Waterville, Senator Carpenter  
of Aroostook and Representative Drinkwater of Belfast.

11  
12 STATE OF MAINE  
13

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

17 AN ACT to Reform High-speed Pursuit Policies  
18 for Law Enforcement Personnel.  
19

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

22 Sec. 1. 17-A MRSA §34, sub-§6 is enacted to  
23 read:

24 6. In any prosecution of a police officer for  
25 any offense under this Title or Title 29, in deter-  
26 mining whether such a police officer acted recklessly  
27 or with criminal negligence during a high-speed auto-  
28 mobile pursuit involving a violation of Title 29,  
29 section 2501-A, subsection 3, the finder of fact  
30 shall consider the officer's degree of compliance  
31 with any high-speed pursuit policy adopted by his de-  
32 partment or enacted by law.

33 Sec. 2. 17-A MRSA §63 is enacted to read:

34 §63. Criminal liability of police officers engaged in  
35 high-speed pursuit

1       1. No police officer may be held criminally lia-  
2 ble under this Title, Title 29 or any other criminal  
3 law for any action taken by him in the performance of  
4 his official duties while engaged in a high-speed  
5 pursuit of a motor vehicle that is in violation of  
6 Title 29, section 2501-A, subsection 3, if that po-  
7 lice officer has acted in full compliance with the  
8 high-speed pursuit policy adopted by his department  
9 or enacted by law.

10       Sec. 3. 17-A MRSA §203, sub-§3, as amended by PL  
11 1983, c. 217, is further amended to read:

12       3. Manslaughter is a Class B crime if it occurs  
13 as the result of the reckless or criminally negligent  
14 operation of a motor vehicle and if the defendant was  
15 not eluding or attempting to elude a police officer  
16 at the time the manslaughter occurred; otherwise,  
17 manslaughter is a Class A crime. If manslaughter oc-  
18 curs as the result of reckless or criminally negli-  
19 gent operation of a motor vehicle and the defendant  
20 was eluding or attempting to elude a police officer  
21 as defined by Title 29, section 2501-A, subsection 3,  
22 at the time the manslaughter occurred, the manslaugh-  
23 ter is a Class A crime.

24       Sec. 4. 29 MRSA §2462 is enacted to read:

25       §2462. Forfeiture of motor vehicles used to elude or  
26 attempting to elude police officers

27       1. Motor vehicles forfeited. Any motor vehicle  
28 subject to forfeiture to the State and all property  
29 rights in the vehicle shall be in the State when the  
30 vehicle is used by any operator to elude or attempt  
31 to elude any police officer as defined by section  
32 2501-A, subsection 3.

33       2. Exceptions. Exceptions to forfeiture are ac-  
34 cording to this subsection.

35       A. No motor vehicle may be forfeited under sub-  
36 section 1 when the operator is someone other than  
37 the registered owner, unless the owner has previ-  
38 ously received written notice by certified mail  
39 from any law enforcement agency that the motor  
40 vehicle or any other motor vehicle owned by the

1 registered owner has been involved in an incident  
2 of eluding or attempting to elude a police officer  
3 within a period of the previous 3 years.

4 B. No motor vehicle may be forfeited by reason  
5 of any act or omission established by the owner  
6 of the motor vehicle to have been committed or  
7 omitted by any person other than the owner while  
8 the motor vehicle was unlawfully in the possession  
9 of a person other than the owner in violation  
10 of the criminal laws of the United States,  
11 this State or of any state.

12 3. Prima facie evidence of operation. For the  
13 purposes of any forfeiture proceeding under this section,  
14 it is considered prima facie evidence that the  
15 registered owner was in fact the operator of the motor  
16 vehicle at the time any violation of Title 29,  
17 section 2501-A, subsection 3, occurred, when the  
18 State proves the identity of the motor vehicle and  
19 its registered owner by means of the motor vehicle  
20 registration records of the Secretary of State.

21 4. Petition order. A district attorney or the  
22 Attorney General may petition the Superior Court in  
23 the name of the State in the nature of a proceeding  
24 in rem to order forfeiture under subsection 1. The  
25 petition shall be filed in the court having jurisdiction  
26 over the property. The proceeding shall be  
27 deemed a civil suit in which the State shall have the  
28 burden of proving all material facts by a preponderance  
29 of the evidence and the owner of the property or  
30 other person having a claim to the property shall  
31 have such burden as to all exceptions set forth in  
32 subsection 2. The court shall order the State to  
33 give notice by certified or registered mail or hand  
34 delivered by a deputy sheriff to the owner of the  
35 property and to such other person as appears to have  
36 an interest in the property and shall promptly, but  
37 not less than 2 weeks after notice, hold a hearing on  
38 the petition. At the hearing, the court shall hear  
39 evidence and make findings of fact and enter conclusions  
40 of law and shall, thereupon, issue a final order  
41 from which the parties have the right of appeal.  
42 The final order provides for disposition of the property  
43 by the State or any subdivision of the State in  
44 any manner not prohibited by law, including official

1 use by an authorized law enforcement or other public  
2 agency, or sale at public auction or by competitive  
3 bidding. The proceeds of any such sale shall be used  
4 to pay the reasonable expenses of the forfeiture pro-  
5 ceedings, seizure, storage, maintenance of custody,  
6 advertising and notice and to pay a bonafide mortgage  
7 on the property and the balance, if any, shall be de-  
8 posited in the State Treasury, county or municipality  
9 making the seizure.

10 5. Records. Any officer, department or agency  
11 having custody of a motor vehicle subject to forfei-  
12 ture under subsection 1 or having disposed of the mo-  
13 tor vehicle shall keep and maintain full and complete  
14 records showing from whom it received the motor vehi-  
15 cle, to whom it delivered the motor vehicle and the  
16 date and manner of destruction or disposition of the  
17 motor vehicle. Persons making final disposition or  
18 destruction of the motor vehicles under court order  
19 shall report under oath to the court the exact cir-  
20 cumstances of the disposition or destruction.

21 The Department of Public Safety shall be responsible  
22 for maintaining a centralized record of motor vehi-  
23 cles seized, held by and ordered to the department. A  
24 report of the disposition of motor vehicles previous-  
25 ly held by the department and ordered by the court to  
26 any governmental agency shall be provided at least  
27 quarterly to the Commissioner of Finance and Adminis-  
28 tration and the Office of Fiscal and Program Review,  
29 for review. These records shall include an estimate  
30 as to the fair market value of the motor vehicle  
31 seized.

32 6. Preliminary order. The court may issue, at  
33 the request of the state ex parte, any preliminary  
34 order or process as is necessary to seize or secure  
35 the motor vehicle for which forfeiture is sought and  
36 to provide for its custody. Process for seizure of a  
37 motor vehicle shall issue only upon a showing of  
38 probable cause and the application for process and  
39 the issuance, execution and return of process shall  
40 be subject to the provisions of applicable state law.  
41 Any property subject to forfeiture under this section  
42 may be seized upon process, except that seizure with-  
43 out process may be made when:

- 1           A. The seizure is incident to an arrest with  
2           probable cause or a search under a valid search  
3           warrant or an inspection under a valid adminis-  
4           trator's inspection warrant;
- 5           B. The property subject to seizure has been the  
6           subject of a prior judgment in favor of the State  
7           in a forfeiture proceeding under this section; or
- 8           C. There is a probable cause to believe that the  
9           property is directly or indirectly dangerous to  
10           health or safety.

11           Sec. 5. 29 MRSA §2501-A, sub-§3, as amended by  
12           PL 1983, c. 181, §1, is further amended to read:

13           3. Eluding an officer. Whoever, after being re-  
14           requested or signaled to stop, attempts to elude a law  
15           enforcement officer by driving a vehicle at a reck-  
16           less rate of speed which results in a high-speed  
17           chase between the operator's vehicle and any law en-  
18           forcement vehicle using a blue light or siren is  
19           guilty of a Class B C crime. If any person suffers  
20           any serious bodily injury, as defined in Title 17-A,  
21           section 2, subsection 23, as a result of the  
22           operator's attempt to elude a law enforcement officer  
23           as described in this section, that operator commits a  
24           Class E B crime.

25           Sec. 6. Establishment of statewide high-speed  
26           pursuit policy. The Legislature specifically finds  
27           that, while the public needs protection from the dan-  
28           gers of high-speed motor vehicle chases by law en-  
29           forcement officials, the public interest also dic-  
30           tates the need for suspects fleeing by motor vehicle  
31           to be apprehended. Therefore, the Commissioner of  
32           Public Safety in consultation with the Maine Chiefs  
33           of Police Association, the Maine Sheriff's Associa-  
34           tion and the Chief of Wardens of the Bureau of Warden  
35           Service and the Department of Marine Resources shall  
36           develop a uniform written high-speed pursuit policy  
37           for use by all law enforcement agencies in the State.

38           The commissioner shall submit a written report  
39           containing his recommendations, including any neces-  
40           sary implementing legislation for such a policy, to  
41           the 113th Legislature, within 9 months after the ef-  
42           fective date of this Act.

1 STATEMENT OF FACT

2 This bill proposes to deal with the dual problems  
3 of the dangers of high-speed motor vehicle chases by  
4 police officers and the need to ensure that motor ven-  
5 icle operators obey the law and stop promptly when  
6 signaled to do so by police officers investigating  
7 suspected traffic violations or criminal offenses.

8 The bill seeks to deter would-be violators from  
9 trying to elude the police by stiffening the penal-  
10 ties for eluding or attempting to elude police offi-  
11 cers and by providing for the possible forfeiture to  
12 the State of motor vehicles.

13 The bill also seeks to establish a statewide,  
14 uniform high-speed pursuit policy that all police of-  
15 ficers would be required to follow or run the risk of  
16 potential criminal liability for injuries or damages  
17 caused by their actions that did not conform to the  
18 uniform policy.

19 Sections 1 and 2 of the bill are designed to en-  
20 sure that once a uniform high-speed pursuit policy is  
21 adopted by a department by statutory enactment of the  
22 Legislature, police officers will follow it. If a  
23 police officer followed such a policy to the letter,  
24 he could not be held criminally liable for any of his  
25 official acts that resulted in damage, injury or  
26 death. Also, if the police officer were charged with  
27 a criminal offense arising out of a high-speed chase  
28 where it was alleged that the officer acted  
29 recklessly or with criminal negligence, a fact finder  
30 would have to consider whether the police officer had  
31 followed the uniform high-speed pursuit policy in its  
32 consideration of whether the officer was reckless or  
33 criminally negligent. Officers would thus be encour-  
34 aged to strictly adhere to the uniform high-speed  
35 pursuit policy since adherence would protect them  
36 from criminal liability.

37 Specifically in section 3, the bill amends the  
38 manslaughter law, the Maine Revised Statutes, Title  
39 17-A, section 203, subsection 3, to make vehicular  
40 manslaughter that occurred as the result of a defend-  
41 ant attempting to elude police officers a Class A

1 crime rather than a Class B crime as it currently is.  
2 The purpose of this section is to protect the public  
3 by deterring those who might run from the police by  
4 providing that any homicide resulting from reckless  
5 or criminally negligent acts during such a chase be  
6 punished by the highest class of crime punishable by  
7 up to 20 years in prison.

8 Section 4 also outlines the procedures to be used  
9 in commencing and prosecuting such a forfeiture ac-  
10 tion. These provisions are virtually identical to  
11 those of the Maine Revised Statutes, Title 22, sec-  
12 tion 2387, which provides for the forfeiture of motor  
13 vehicles and other property that is used in connec-  
14 tion with illegal drug trafficking. This section en-  
15 sures procedural due process and also provides pro-  
16 tection to lienholders by providing that outstanding  
17 mortgage against the forfeited vehicle must be paid  
18 off from the proceeds of sales of the vehicles after  
19 forfeiture to the State.

20 Section 4 of the bill creates a new section of  
21 the Maine Revised Statutes, Title 29, and provides  
22 for the possible forfeiture to the State of any motor  
23 vehicle used in committing a violation of the Maine  
24 Revised Statutes, Title 29, section 2501-A, subsec-  
25 tion 3, eluding a police officer. The purpose of  
26 this section is to provide some recourse to the State  
27 to take action against those people who refuse to  
28 stop for the police and who in fact manage to elude  
29 the police by high speed or because the police in the  
30 interests of public safety decide to break off a pur-  
31 suit. If the police are to be required to break off  
32 pursuits in the interest of public safety, there must  
33 be some disincentive for people to try to escape.  
34 The forfeiture provision would provide a significant  
35 economic disincentive to those who would contemplate  
36 high-speed operation of their motor vehicle to escape  
37 the police.

38 Any motor vehicle used to elude a police officer  
39 would be subject to forfeiture with some significant  
40 exceptions. First, if the operator was someone other  
41 than the registered owner, the motor vehicle could  
42 not be forfeited unless the owner's car had previous-  
43 ly been involved in the same kind of activity and the  
44 owner had been given a written warning that his motor



1 vehicle had been used for eluding the police. The  
2 purpose of this provision would be to put parents of  
3 operators or friends of operators on notice not to  
4 allow the use of a motor vehicle owned by them by a  
5 person who would seek to elude the police.

6 The 2nd exception would be that no vehicle could  
7 be forfeited if the person in possession of the vehi-  
8 cle at the time the eluding occurred was illegally in  
9 possession of that vehicle, thus protecting any inno-  
10 cent owner whose car was taken without permission.

11 Section 4 also provides that if the State could  
12 prove the identity of the car and the owner by the  
13 registration records of the Secretary of State, the  
14 owner would be presumed to be the operator for the  
15 purpose of the forfeiture proceeding. Thus, the car  
16 could be forfeited upon evidence of who the regis-  
17 tered owner was, unless the owner was able to prove  
18 that someone else had in fact been operating the ve-  
19 hicle. The importance of this section is that it  
20 would eliminate one of the most important reasons the  
21 police officers are forced to chase and finally ap-  
22 prehend high-speed eluders. Currently, no action may  
23 be taken at all unless the police are able to  
24 positively identify the operator and as a practical  
25 matter identification of the operator is usually im-  
26 possible unless the vehicle is actually stopped and  
27 the operator apprehended. This presumption of opera-  
28 tion would be a means of taking action against those  
29 who elude the police without requiring the completion  
30 of a pursuit.

31 Section 5 increases the penalty for eluding or  
32 attempting to elude police officers. Any violation  
33 of the Maine Revised Statutes, Title 29, section  
34 2501-A, subsection 3, would become a Class C crime  
35 and if any serious bodily injury to any person re-  
36 sulted from such an offense the crime would be ele-  
37 vated to a Class B crime.

1           Finally, section 6 of the bill requires the Com-  
2           missioner of Public Safety, in consultation with all  
3           of the other law enforcement agencies in the State to  
4           study the issue of high-speed pursuits and to make a  
5           recommendation to the Legislature within a specific  
6           time period, of what the uniform statewide high-speed  
7           pursuit policy should be in the State.

8

4782020486