

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1424

H.P. 1023

House of Representatives, May 2, 1989

Approved for introduction by a majority of the Legislature Council pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads 'Ed Pert'.

EDWIN H. PERT, Clerk

Presented by Representative ROLDE of York.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

---

An Act to Provide Compensation to Victims of Illegal Acts.

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(AFTER DEADLINE)



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

3 Sec. 1. 15 MRSA c. 517, as enacted by PL 1987, c. 420, §2, is  
5 repealed.

7 Sec. 2. 15 MRSA c. 519 is enacted to read:

9 CHAPTER 519

11 AID TO VICTIMS OF CRIME

13 §7001. Statement of purpose and legislative intent

15 1. Findings. The Legislature finds that it is necessary to  
17 create a fund to support victim assistance programs and that the  
fund should be, to the extent possible, comprised of the proceeds  
of criminal enterprise.

19 2. Intent. It is intended that the primary use of the  
21 Victim Assistance Fund be to provide for at least one  
23 state-funded victim assistant in each of the 8 prosecutorial  
districts, thus alleviating the substantial property tax burden  
on the counties that currently fund those positions.

25 §7002. Victim Assistance Fund created

27 1. Creation of fund. There is created the Victim  
29 Assistance Fund, in this chapter called the fund.

31 2. Administration. The fund shall be administered by the  
Attorney General on behalf of the victims of crime.

33 3. Acceptance of revenues and assets. The fund shall  
35 accept revenues and assets from:

37 A. The proceeds of criminal enterprise; and

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

41 4. Expending of assets. The funds may expend assets for  
43 the purpose of assisting the victims of crime by disbursing those  
assets to victim assistance programs.

45 §7003. Procedures

47 The Attorney General shall promulgate rules setting forth  
49 the manner in which the proceeds of criminal enterprise shall be  
handled, how the fund shall be administered and the assets of the  
51 fund expended. These rules, prior to promulgation, shall be  
approved by a majority of a committee composed of the President  
of the Maine Prosecutor's Association, the Commissioner

1 of Public Safety and a member of the public appointed by the  
2 Governor. These rules shall make provisions for:

3  
4 1. Agencies and entities which may apply for grants. Which  
5 agencies and entities may apply for grants under this chapter;

6  
7 2. Manner of application. The manner in which the  
8 applications shall be made;

9  
10 3. Procedures to ensure services. The procedures these  
11 agencies and entities shall use to ensure that services are in  
12 fact provided to victims of crime;

13  
14 4. Procedures; law enforcement agencies. The procedures  
15 law enforcement agencies shall use to demonstrate substantial  
16 contributions to the resolution of criminal cases which underlie  
17 forfeiture actions; and

18  
19 5. Limitations. Which limitations may be imposed on use  
20 and disposition of property forfeited to law enforcement agencies.

21 §7004. Proceeds of criminal enterprise defined

22  
23 For the purposes of this chapter, "proceeds of criminal  
24 enterprise" means:

25  
26 1. Property used to further crimes. All property of any  
27 kind and in whatever form held used or intended for use to effect  
28 or further any conduct which constitutes murder, a Class A, Class  
29 B or Class C crime;

30  
31 2. Conveyances. All conveyances, including aircraft,  
32 watercraft, vehicles and vessels used or intended for use to  
33 transport, conceal, effect, further or otherwise facilitate any  
34 conduct which constitutes murder, a Class A, Class B or Class C  
35 crime;

36  
37 3. Property furnished to procure other property. All  
38 property of any kind and in whatever form held furnished or  
39 intended to be furnished by any person or entity to procure the  
40 use or ownership of any property which that person or entity  
41 knows or reasonably should have known to have been procured as  
42 the result, in whole or in part, of conduct which constitutes  
43 murder, a Class A, Class B or Class C crime;

44  
45 4. Property procured through crime. All property of any  
46 kind and in whatever form held procured in any part through  
47 conduct which constitutes murder, a Class A, Class B or Class C  
48 crime; and  
49

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

5           §7005. Forfeiture of all property which constitutes proceeds of  
6           criminal enterprise

7  
8           1. Proceeds subject to forfeiture. The proceeds of  
9           criminal enterprise shall be subject to forfeiture.

11           2. Property declared forfeited by court. Property subject  
12           to forfeiture under subsection 1 shall be declared forfeited by  
13           any court having jurisdiction over the property or having final  
14           jurisdiction over any related criminal proceeding.

15  
16           3. Exceptions. The court shall order forfeiture of all  
17           proceeds of criminal enterprise except as follows.

19           A. No conveyance used as a common carrier in the  
20           transaction of business as a common carrier may be forfeited  
21           unless it appears that the owner or person in charge of the  
22           conveyance is a consenting party to or has knowledge of the  
23           commission of murder, a Class A, Class B or Class C crime.

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

31           C. No property, to the extent of the interest of an owner,  
32           may be forfeited by reason of any act or omission  
33           established by that owner to have been committed or omitted  
34           without the knowledge or consent of that owner.

37           4. Petition for proceeding to order forfeiture. A district  
38           attorney or the Attorney General may petition the Superior Court  
39           in the name of the State in the nature of a proceeding in rem to  
40           order forfeiture of property subject to forfeiture under  
41           subsection 1.

43           A. The petition shall be filed in the court having  
44           jurisdiction over the property or in Kennebec County.

45           B. The proceeding shall be deemed a civil action in which  
46           the State shall have the burden of proving all material  
47           facts by a preponderance of the evidence and the owner of  
48           the property or other person claiming under the proceeding  
49           shall have the burden of all exceptions set forth in  
50           subsection 3, except that it shall be presumed that all  
51           assets in any part acquired by a person convicted of a

1 violation of Title 17-A, chapter 15 or 45 are, from the date  
3 of the offense and for 2 years after, proceeds of criminal  
5 enterprise as defined by section 7004, subsection 4. The  
7 owner of the assets or other person claiming under the  
9 proceeding may rebut that presumption by providing by a  
11 preponderance of the evidence that the assets are not in  
13 fact property described by section 7004, subsection 4.

9 C. The State shall give notice of the petition to the owner  
11 of the property and to other persons who appear to have an  
13 interest in the property by delivering to those persons a  
15 copy of the summons and complaint by certified or registered  
17 mail, in hand or by any other means approved by the court.  
19 Subsequent proceedings shall conform with the rules of civil  
21 actions prescribed by the Superior Court, except that no  
23 deposition may be taken without the consent of the parties  
25 or order of court.

19 D. At a hearing, other than default proceedings, the court  
21 shall hear evidence, make findings of fact, enter  
23 conclusions of law and file a final order from which the  
25 parties shall have the right of appeal. The final order  
27 shall provide for the disposition of the property as follows.

25 (1) Money, negotiable instruments and securities shall  
27 be paid to the fund.

29 (2) Other property shall be awarded to the State with  
31 the requirement that the State sell the property  
33 through public auction or public bidding and the  
35 proceeds of the sale, less the costs of sale, seizure,  
37 storage, maintenance of custody, advertising and  
39 notice, shall be paid to the fund.

35 (3) Notwithstanding paragraphs A and B, the court may  
37 award forfeited property to a law enforcement agency  
39 upon the written certification of the Attorney General  
41 that the agency has made a substantial contribution to  
43 the resolution of a criminal action which has resulted  
45 in the forfeiture of that property.

41 Default proceedings shall be held in the same manner as default  
43 proceedings in other civil actions, except that service of  
45 motions and affidavits related to default proceedings need not be  
47 served upon any person who has not answered or otherwise defended  
49 in the action.

49 5. Preliminary order or process. The court may issue, at  
51 the request of the State, ex parte, any preliminary order or  
53 process necessary to seize or secure the property for which  
55 forfeiture is sought and provide for custody of that property.  
57 That order may include an order to a financial institution or to

1 any fiduciary requiring the entity to impound any property in its  
2 possession or control and not release the property except upon  
3 further order of the court. Process for seizure of the property  
4 shall issue only upon a showing of probable cause. The  
5 application for process and the issuance, execution and return of  
6 process shall be subject to the provisions of state law. Any  
7 property subject to forfeiture under this section may be seized  
8 upon process, except that seizure without process may be made  
9 when:

11 A. The seizure is incident to an arrest with probable  
12 cause, a search under a valid search warrant or an  
13 inspection under a valid administrative inspection warrant;

15 B. The property subject to seizure has been the subject of  
16 a prior judgment in favor of the State in a forfeiture  
17 proceeding under this section or any other provision of law;

19 C. There is probable cause to believe that the property is  
20 directly or indirectly dangerous to health or safety; or

21 D. There is probable cause to believe that the property has  
22 been used or was intended for use in violation of any  
23 criminal law of the State.

25 **§7006. Surplus**

27 When the balance of the fund exceeds \$500,000, the Attorney  
28 General shall transmit the excess to the General Fund.

31  
32  
33 **STATEMENT OF FACT**

35 This bill repeals the current law on compensating victims of  
36 illegal acts and creates the Victim Assistance Fund, funded to  
37 the extent possible by the proceeds of criminal enterprise.  
38 Under this bill, the proceeds of forfeiture shall be used to  
39 expand the fund, except when certain property is awarded to law  
40 enforcement agencies that have made substantial contributions to  
41 the resolution of criminal cases which underlie forfeiture  
42 proceedings.  
43