

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 171

H.P. 126

House of Representatives, January 28, 1991

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 PARADIS of Augusta.

Cosponsored by Senator GAUVREAU of Androscoggin and Representative RICHARDS of Hampden.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Strengthen the State's Role in Drug-related Prosecution.**

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

25 MRSA §2958 is enacted to read:

§2958. Guidelines for selection of prosecution forum

The prosecution of violations of Title 17-A, chapter 45 and federal drug laws must be initiated and pursued according to the following requirements.

1. Prosecution in state court. Except as provided in subsection 2, cases in which the primary investigative agency is a state, county or local agency, or cases that are initiated by a state, county or local agency must be prosecuted in state court.

The appropriate state district attorney, assistant attorney general assigned to the bureau and the United States Attorney may agree to prosecute a case that meets the requirements of subsection 2, paragraph B, in state court if:

A. The accused has agreed in writing to cooperate with law enforcement agencies in a meaningful fashion; or

B. Prosecuting the case in federal court would violate the accused's right to a speedy trial.

2. Prosecution in federal court. Cases that meet the following requirements may be prosecuted in federal court.

A. Cases in which the primary investigative agency is a federal agency or cases that are initiated by a federal agency may be prosecuted in federal court.

B. If the appropriate state district attorney, assistant attorney general assigned to the bureau and the United States Attorney unanimously agree that a case should be prosecuted in federal court, the case may be prosecuted in federal court. The decision that a case should be prosecuted in federal court must be based on objective and consistent grounds, including at least one of the following factors.

(1) The case is likely to result in interstate or international drug charges because drugs were delivered or were to be delivered from another state or country.

(2) Objective differences in federal and state laws allow an appropriate greater charge or greater sentence to be sought in the federal system.

(3) Higher bail is available under the federal system and the accused poses a substantial risk of flight and

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is known to have organized crime connections with financial resources.

3. Value of forfeiture. The decision to prosecute in state court or federal court may not be based on the amount or value of money or property seized which may be forfeited to an agency.

STATEMENT OF FACT

This bill establishes clear guidelines for the prosecution in federal and state court of drug offenses. Lack of objective standards for intergovernmental drug enforcement agencies can cause due process violations, resulting in reduced sentences for convicted drug criminals. United States v. Williams, 746 F.Supp. 1076 (D.Utah 1990).