

MAINE STATE LEGISLATURE

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M
R. of S.

L.D. 1487

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DATE: 6/21/95

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CRIMINAL JUSTICE

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10 Reproduced and distributed under the direction of the Clerk of
12 the House.

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

16

18

20 COMMITTEE AMENDMENT "A" to H.P. 1058, L.D. 1487, Bill, "An
Act Relating to Criminal Forfeitures"

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Amend the bill by striking out everything after the title
and before the statement of fact and inserting in its place the
following:

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Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

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Whereas, the constitutional legitimacy of civil asset
forfeitures has been challenged and the absence of an alternative
criminal forfeiture procedure would significantly undermine the
drug enforcement effort in the State; and

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Whereas, the existing practice in many cases of instituting
2 actions, one criminal against individuals who violate the Maine
Revised Statutes, Title 17-A, chapter 45 and one civil against
property as a consequence of such violations or intended
violations, often results in an unnecessary duplication of effort
and a drain on scarce judicial, prosecutorial and law enforcement
resources when both actions are actually part of a single,
coordinated law enforcement effort; and

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Whereas, this bill authorizes prosecutors to institute both
the criminal action against the individual and the forfeiture
action against the subject property in one proceeding, minimizing
both duplication and the impact upon judicial, prosecutorial and
law enforcement resources; and

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Whereas, this bill does not expand the kind or nature of
property that is subject to forfeiture either civilly or
criminally; and

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2 Whereas, in the judgment of the Legislature, these facts
3 create an emergency within the meaning of the Constitution of
4 Maine and require the following legislation as immediately
5 necessary for the preservation of the public peace, health and
6 safety; now, therefore,

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

10 **Sec. 1. 15 MRSA §5826 is enacted to read:**

12 **§5826. Criminal forfeiture**

14 **1. Property subject to criminal forfeiture.**
15 Notwithstanding any other provision of law, a person convicted of
16 a violation of Title 17-A, chapter 45 forfeits to the State all
17 rights, privileges, interests and claims to property that is
18 subject to forfeiture pursuant to section 5821. All rights,
19 privileges, interest and title in property subject to forfeiture
20 under this section vests in the State upon the commission of the
21 act giving rise to forfeiture pursuant to section 5821.

22 **2. Commencement of criminal forfeiture action.** Property
23 subject to forfeiture that is not yet the subject of a final
24 order pursuant to section 5822, subsection 4 may be proceeded
25 against by indictment or superseding indictment of the grand jury
26 in any related criminal proceeding in which one or more persons
27 with an interest in the property have been simultaneously
28 indicted for one or more violations of Title 17-A, chapter 45.
29 At any time prior to trial, the State, with the consent of the
30 court and any defendant with an interest in the property, may
31 file an ancillary charging instrument or information alleging
32 that property is subject to criminal forfeiture. Upon
33 commencement of a criminal forfeiture by indictment or
34 information of any property that may be the subject of any
35 pending civil action commenced pursuant to section 5822, the
36 civil action must be immediately stayed and subrogated to the
37 criminal forfeiture action. Discovery in the criminal action
38 must be as provided for by the Maine Rules of Criminal Procedure.

39 **3. Seizure upon indictment.** Property subject to forfeiture
40 that has been indicted by the grand jury pursuant to this section
41 may be seized pursuant to section 5822, subsection 6, except that
42 real property subject to forfeiture pursuant to section 5821,
43 subsection 7 may, not be seized without prior notice to and
44 opportunity to be heard by all owners of record or upon a finding
45 by probable cause that prior notice to one or more of the owners
46 is likely to result in the destruction, diminution of value or
47 alienation of interest of the property.

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2 4. Bifurcated trial proceedings. Trial against property
3 charged by indictment or information may be by jury and must be
4 held in a single proceeding together with the trial of the
5 related criminal violation. Forfeiture of the property must be
6 proved by the State by a preponderance of the evidence. The
7 court, in its discretion, may allow any defendant with an
8 interest in property indicted pursuant to this section to waive
9 the right to trial by jury as against the property while
10 preserving the right to trial by jury of any crime alleged. At
11 trial by jury, the court, upon motion of a defendant or the
12 State, may separate the trial of the matter against the defendant
13 from the trial of the matter against the property subject to
14 criminal forfeiture. If the court bifurcates the jury trial, the
15 court shall first instruct and submit to the jury the issue of
16 the guilt or innocence of defendants to be determined by proof
17 beyond a reasonable doubt and shall restrict argument of counsel
18 to those issues. After a verdict upon the guilt or innocence of
19 all defendants, the court shall instruct and submit to the jury
20 the issue of the forfeiture of the property to be determined by
21 proof by a preponderance of the evidence and the court shall
22 restrict argument to those issues. A special verdict must be
23 returned as to the extent of the interest or property subject to
24 forfeiture, if any.

25 5. Ancillary hearing of 3rd-party interests. A person not
26 charged in the indictment may not intervene in the criminal
27 action. Following the entry of a verdict of forfeiture of
28 property pursuant to this section or the entry of a guilty plea
29 in open court on the record, the State shall provide written
30 notice of its intent to dispose of the property to any person
31 known to have alleged an interest in the property. The notice
32 may be by certified, return receipt mail or as otherwise ordered
33 by the court. Receipt by a person then licensed to operate a
34 motor vehicle in the State is presumed when notice is mailed to
35 the last known address of that person on file with the Secretary
36 of State, Bureau of Motor Vehicles. A person other than the
37 defendant asserting a legal interest in the property, within 30
38 days of the date of receipt of the notice, may petition the court
39 for a hearing to adjudicate the validity of any alleged interest
40 in the property. The hearing must be held before the court
41 without jury. The request for the hearing must be signed by the
42 petitioner under penalty of perjury and must state the nature and
43 extent of the petitioner's right, title or interest in the
44 property, the time and circumstances of the petitioner's
45 acquisition of the right, title or interest in the property, any
46 additional facts supporting the petitioner's claim and the relief
47 sought. Upon the filing of any petition for hearing, the court
48 shall schedule the hearing as soon as practicable but in no event
49 later than 6 months or after the sentencing of any defendant
50 convicted upon the same indictment. The court shall issue or

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2 amend a final order of forfeiture in accordance with its
3 determination if, after the hearing, the court determines that
4 the petitioner has established by a preponderance of the evidence
5 that:

6 A. The petitioner has a legal right, title or interest in
7 the property the right, title or interest renders the order
8 of forfeiture invalid in whole or in part because the right,
9 title or interest was vested in the petitioner rather than
10 in any defendant or was superior to any right, title or
11 interest to the exclusion of any defendant at the time of
12 the commission of the acts that gave rise to the forfeiture
13 of the property under this section; or

14 B. The petitioner is a bona fide purchaser for value of the
15 right, title or interest in the property and was at the time
16 of purchase reasonably without cause to believe that the
17 property was subject to forfeiture under this section.

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19 6. Final order of disposition of property. Following the
20 entry of a verdict of forfeiture of property pursuant to this
21 section or the entry of a guilty plea in open court on the record
22 and following the court's disposition of all petitions for
23 hearing timely filed by 3rd parties, the State has clear title to
24 property that is the subject of the indictment or information and
25 order of forfeiture and may order all or a portion of the
26 property forfeited to the State to be disposed of pursuant to
27 section 5822, subsection 4 and section 5824.

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29 **§5827. Construction**

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31 The provisions of this chapter must be liberally construed
32 to effectuate its remedial purposes.

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34 **Emergency clause.** In view of the emergency cited in the
35 preamble, this Act takes effect when approved.'

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37 Further amend the bill by inserting at the end before the
38 statement of fact the following:

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41 **FISCAL NOTE**

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43 The Department of the Attorney General and the Judicial
44 Department may realize some minor net savings from a reduction in
45 the number of civil cases to seek forfeiture of property.'

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STATEMENT OF FACT

This amendment replaces the bill. The amendment authorizes state prosecutors to seek forfeiture of property in the same criminal proceeding that is commenced against the criminal defendant for the underlying crime that gave rise to or is related to the property subject to forfeiture. Currently, prosecutors charging individuals with violations of the Maine Revised Statutes, Title 17-A, chapter 45 must charge the individuals in one criminal action, then commence a separate civil asset forfeiture proceeding in order to remove from defendants the proceeds of their crimes or the assets used by or intended to be used by them to commit or facilitate their criminal acts. By placing both matters before the grand jury in a single proceeding, prosecutorial, judicial and law enforcement resources are preserved and the grand jury acts as a check against unreasonable forfeitures.

The amendment is modeled after the federal law in 21 United States Code, Section 853 authorizing criminal forfeitures and is intended to authorize a similar procedure in state criminal actions. Forfeiture of property in a criminal case by a preponderance of the evidence is consistent with the standard of evidence utilized by courts in imposing sentences and assessing fines. As with the civil asset forfeiture provisions contained in Title 15, sections 5821 to 5825, title acquired by criminal forfeiture relates back in time to the date of the commission of the act that gave rise to the criminal forfeiture.

The amendment requires that, if property that is the subject of a pending civil action is indicted criminally, the civil action must be stayed and will be subject to the outcome of the criminal proceeding. Because the civil action is not dismissed, the court continues to have jurisdictional authority over any parties to the civil action against whom civil process has been perfected and may utilize that jurisdiction in determining the interests of 3rd parties in the ancillary hearing. Discovery in the criminal forfeiture hearing is intended to be no broader or narrower than in any criminal action and is governed exclusively by the Maine Rules of Criminal Procedure.

The amendment authorizes the seizure of subject property pursuant to Title 15, section 5822, subsection 6.

The amendment confirms the right to trial by jury on the issue of forfeiture of any interest in property alleged by indictment to be subject to forfeiture and authorizes the bifurcation of the forfeiture from the criminal violations issues during the trial. This is not intended to create a right to

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2 bifurcation. See United States v. Sandini, 816 F.2d 869 (3d Cir.
3 1987). It also designates the standard of proof against property
4 criminally indicted as being the civil standard of proof by a
5 preponderance, authorizes the use of a special verdict form by
6 the jury in determining whether property indicted is subject to
7 forfeiture and is modeled after Federal Rules of Criminal
8 Procedure 31(e).

9
10 The amendment creates a post-criminal trial or plea
11 procedure for the litigation of 3rd-party interests in property
12 that may not be owned entirely by a criminal defendant. This is
13 modeled after 21 United States Code, Section 853(n). The
14 amendment provides that, because persons licensed to operate
15 motor vehicles in the State are required to notify the Secretary
16 of State of their current address and any change of address, a
17 presumption that notice sent to that address was actually
18 received is justifiable. The amendment provides a procedure for
19 3rd parties to demonstrate their ownership or legal interest in
20 property found to be otherwise forfeited.

21
22 The amendment clarifies that property criminally forfeited,
23 like civilly forfeited property, may be equitably transferred to
24 any municipal, county or state agency that has made a substantial
25 contribution to the investigation or prosecution of the related
26 criminal case pursuant to Title 15, sections 5822 and 5824.

27
28 The amendment clarifies that the Legislature intends the
29 criminal forfeiture action, like the civil forfeiture action, to
30 be liberally construed to effect its remedial purposes. See
31 United States v. One Assortment of 89 Firearms, 465 U.S., 354,
32 362-66 (1984); United States v. Tilley, 18 F.3d 295 (5th Cir.
1994).

33
34 The amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT