

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1487

H.P. 1058

House of Representatives, May 3, 1995

An Act Relating to Criminal Forfeitures.

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BUNKER of Kossuth Township.
Cosponsored by Representative: WHEELER of Bridgewater, Senator: BENOIT of Franklin.

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

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

6 §5826. Criminal forfeiture

8 1. Forfeiture upon indictment by the grand jury. Property
10 subject to forfeiture pursuant to section 5821 that is not yet
12 the subject of a final judgment resulting from a petition for
14 civil forfeiture filed pursuant to section 5822, subsection 3 may
be proceeded against by indictment of the grand jury upon a
finding of probable cause in any related criminal proceeding in
which one or more persons of interest in the property have been
simultaneously indicted for one or more violations of Title 17-A,
chapter 45.

16 2. Seizure upon indictment. Property subject to forfeiture
18 that has been indicted by the grand jury pursuant to this
20 section, if not already seized pursuant to section 5822,
22 subsection 6, may be seized upon the issuance of a warrant upon
24 the indictment, except that real property subject to forfeiture
26 pursuant to section 5821, subsection 7 may not be seized without
prior notice to and opportunity to be heard by all owners of
record or upon a finding by probable cause that prior notice to
one or more of the owners is likely to result in the destruction,
diminution of value or alienation of interest of the property.

28 3. Bifurcated trial proceedings. At trial, the court may,
30 upon motion of a defendant or the State, separate the trial of
32 the matter against the defendant from the trial of the matter
34 against the property subject to criminal forfeiture. If the
36 court bifurcates the trial, the court shall first submit to the
trier of fact the issue of the defendant's guilt or innocence to
be determined by proof beyond a reasonable doubt. The court
shall then submit to the trier of fact the issue of the
forfeiture of the property to be determined by proof by a
preponderance of the evidence.

38 4. Disposition of property. In any proceeding when the
40 court finds by plea or trial that property subject to forfeiture
42 pursuant to section 5821 has in fact been used or intended to be
44 used to violate or facilitate the violation of Title 17-A,
46 chapter 45, or a proceed is traceable to such a violation, the
court may order all or a portion of the property forfeited to the
State and disposed of pursuant to section 5822, subsection 4 and
section 5824.

STATEMENT OF FACT

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This bill authorizes prosecutors in the State to seek forfeiture of property in the same criminal proceeding that is commenced against the criminal defendant for the underlying crime that gave right to the forfeiture. Under present law, 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 fruits of their crimes or the assets used by them to commit 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, a citizen body of 23 persons, acts a check against unreasonable forfeitures.