

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

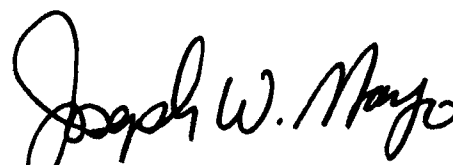
No. 1362

H.P. 964

House of Representatives, February 18, 1999

An Act to Allow the State to Initiate Default Proceedings in Order to Obtain Forfeited Assets When the Defendant Fails to Appear in a Court Proceeding.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SCHNEIDER of Durham.

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

4 **Sec. 1. 15 MRSA §5826, sub-§7 is enacted to read:**

6 7. Default proceedings. Upon motion of the State, the
8 court having jurisdiction over a criminal forfeiture matter may
10 declare a default judgment of forfeiture if the court finds as
12 follows:

14 A. By clear and convincing evidence that:

16 (1) There was probable cause to support the seizure of
18 the property at the time of its seizure;

20 (2) The interested party has knowledge of the seizure
22 of the property or the property was seized under
24 circumstances in which a reasonable person would have
26 knowledge of the seizure of that person's property; and

28 (3) The interested party has failed to appear for any
30 court appearance in accordance with Title 17-A, chapter
32 45 for a violation that forms the basis of the
34 forfeiture, and that a warrant of arrest for the
36 interested party for such failure to appear has been
38 outstanding for 6 months or more; and

40 B. By a preponderance of the evidence that the State is
42 entitled to a judgment of forfeiture pursuant to chapter 517.

44 The State may meet its burden under paragraphs A and B by
46 presentation of testimony or affidavit.

48 The interested party has 30 days from the date of the declaration
of default judgment of forfeiture to appear before the court in
person, submit to its jurisdiction on the companion criminal
charge and to petition the court to remove the default judgment.

Post-default proceedings are governed by section 5825.

SUMMARY

This bill allows the State to initiate default proceedings in order to obtain forfeited assets when the defendant fails to appear in a court proceeding.

This bill is the recommendation of the Attorney General.