

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 677

H.P. 498

House of Representatives, February 7, 2019

An Act Regarding the Use of Seizure and Forfeitures by Law Enforcement

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FAULKINGHAM of Winter Harbor.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: ANDREWS of Paris, BABINE of Scarborough, COLLINGS of Portland,
FECTEAU of Augusta, HICKMAN of Winthrop, McCREIGHT of Harpswell, MOONEN of
Portland, STROM of Pittsfield.

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

2 **Sec. 1. 15 MRSA §5825**, as corrected by RR 2017, c. 1, §9, is amended to read:

3 **§5825. Records**

4 **1. Records of forfeited property.** Any officer, department or agency having
5 custody of property subject to forfeiture under section 5821 or having disposed of the
6 property shall maintain complete records showing:

- 7 A. From whom it received the property;
- 8 B. Under what authority it held, received or disposed of the property;
- 9 C. To whom it delivered the property;
- 10 D. The date and manner of destruction or disposition of the property; and
- 11 E. The exact kinds, quantities and forms of the property.

12 The records must be open to inspection by all federal and state officers responsible for
13 enforcing federal and state drug control laws and to the Commissioner of Public Safety.
14 Persons making final disposition or destruction of the property under court order shall
15 report, under oath, to the court the exact circumstances of the disposition or destruction.

16 **1-A. Report regarding disposition of property subject to forfeiture.** Any officer,
17 department or agency having custody of property subject to forfeiture under section 5821
18 or having disposed of the property shall report on a monthly basis and in a manner and
19 format as required by the Department of Public Safety information regarding that
20 property.

21 **2. Department of Public Safety; centralized record.** The Department of Public
22 Safety shall maintain a centralized record and case tracking system of property seized,
23 held by and ordered to the department and all property seized, held by or ordered to a law
24 enforcement agency or the lead agency of a multijurisdictional task force and reported
25 pursuant to subsection 1-A to the department. All records maintained by the Department
26 of Public Safety pursuant to this subsection are public records as defined in Title 1,
27 section 402, subsection 3 and must be made available for inspection by members of the
28 public through a searchable, publicly accessible website. A report of the disposition of
29 property previously held by the department and ordered by the court to any governmental
30 entity and all property seized, held by or ordered to a law enforcement agency and
31 reported pursuant to subsection 1-A to the department must be provided at least monthly
32 to the Department of Public Safety and by the Department of Public Safety at least
33 quarterly to the Commissioner of Administrative and Financial Services and the Office of
34 Fiscal and Program Review for review. A law enforcement agency that made no seizures
35 during the reporting period shall file a report stating that the agency made no seizures.
36 These records must include an estimate as to the fair market value of items seized.

37 **3. Contents of centralized record; seized and forfeited property.** The case
38 tracking system and searchable, publicly accessible website maintained by the
39 Department of Public Safety pursuant to subsection 2 must include the following

1 information about property seized, held by and ordered to the department and all property
2 seized, held by or ordered to a law enforcement agency and reported pursuant to
3 subsections 1 and 2 to the department:

4 A. All information required by subsection 1 and 1-A;

5 B. The name of the law enforcement agency or lead agency of the multijurisdictional
6 task force that seized the property;

7 C. The date of the seizure, acquisition and transfer or disposal of the property;

8 D. If the property is a motor vehicle, the make, model, year and serial number;

9 E. The place of seizure or acquisition of the property, including, if the property was
10 seized during a traffic stop on an interstate highway or state highway, the direction of
11 the traffic flow;

12 F. The value of the property;

13 G. The criminal offense alleged that led to the seizure or forfeiture and any crime
14 prosecuted, including the criminal case number, the crime charged and the court, and
15 whether the case concluded with a conviction or, if no conviction occurred, a
16 statement of the disposition of the charge or whether charges were dropped or no
17 charges were brought;

18 H. If seizure or forfeiture was contested, the case number, type of proceeding,
19 description of disposition, including disposition by agreement of the parties, date of
20 final order and court;

21 I. The total costs or an estimate of total costs to the law enforcement agency or lead
22 agency of a multijurisdictional task force to seize, store, sell or dispose of the
23 property, including:

24 (1) Personnel costs for law enforcement and prosecutors and any attorney's fees
25 awarded to any party;

26 (2) Costs related to substance use, crime and gang prevention programs;

27 (3) Victim reparations;

28 (4) Investigation costs, including witness protection, informant fees and
29 controlled buys;

30 (5) Salaries, overtime and benefits of agency personnel and office costs for
31 supplies, postage and printing;

32 (6) Professional services, including auditing, court reporting, expert witness fees
33 and membership fees paid to trade associations; and

34 (7) Capital expenditures for vehicles, firearms, equipment, computers and
35 furniture;

36 J. If the property was retained by a law enforcement agency or the lead agency of a
37 multijurisdictional task force, the purpose for which the property was used by that
38 agency; and

1 K. The total value of property held by the law enforcement agency or the lead
2 agency of a multijurisdictional task force at the end of the reporting period.

3 **4. Commissioner report.** By October 1st of each year, the Commissioner of Public
4 Safety shall submit to the President of the Senate, the Speaker of the House of
5 Representatives, the Attorney General and the Governor a written report and shall post on
6 the commissioner's publicly accessible website maintained pursuant to subsection 2
7 information summarizing seizure and forfeiture activity in the State during the prior year,
8 including the type, value and disposition of property seized or forfeited, the amount of the
9 proceeds of any sales of property and the costs to any law enforcement agencies and state,
10 county and regional government of seizures and forfeitures from the prior year. The
11 report must separate seizure and forfeiture information by law enforcement agency. The
12 report may include recommendations for changes in rule and law to improve the seizure
13 and forfeiture process and ensure that it is fair to crime victims, property owners, citizens
14 and taxpayers, persons holding secured interests in property seized and forfeited and law
15 enforcement agencies. The report is a public record as defined in Title 1, section 402,
16 subsection 3.

17 **5. Rules.** The Commissioner of Public Safety shall adopt rules to implement this
18 section including, but not limited to, rules to ensure the timely filing of required reports
19 and civil penalties payable to the General Fund for failure to file on a timely basis of up
20 to \$500 or 1/4 of the value of forfeiture proceeds received by the law enforcement
21 agency, whichever is greater. The rules may allow the imposition of fees on a law
22 enforcement agency reporting to the commissioner under subsections 1-A and 2 to pay
23 costs of the commissioner associated with this section. Rules adopted pursuant to this
24 subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

25 **6. Audit.** The State Auditor shall perform an audit of seized and forfeited property
26 annually using generally accepted government auditing standards and shall submit a copy
27 to the Commissioner of Public Safety and make a copy available to the public no later
28 than January 1st of each year.

29 **7. Definition.** As used in this section, unless the context otherwise indicates, "law
30 enforcement agency" means any state, county, municipality or other political unit in the
31 State or any department, agency or subdivision of any of the foregoing, or any
32 corporation or other association carrying out the functions of government that employs
33 law enforcement officers, including any fire department.

34 **8. Application.** The provisions of this section apply to a law enforcement agency
35 that seizes, holds or disposes of property as a result of an investigation and arrest carried
36 out in cooperation with a federal law enforcement agency.

37 **Sec. 2. 15 MRSA §5826, sub-§9** is enacted to read:

38 **9. Records; reporting.** The following provisions apply to criminal forfeiture of
39 property under this section.

1 A. Any officer, department or agency having custody of property subject to
2 forfeiture under this section or having disposed of the property shall maintain
3 complete records showing:

4 (1) From whom it received the property;

5 (2) Under what authority it held, received or disposed of the property;

6 (3) To whom it delivered the property;

7 (4) The date and manner of destruction or disposition of the property; and

8 (5) The exact kinds, quantities and forms of the property.

9 The records must be open to inspection by all federal and state officers responsible
10 for enforcing federal and state drug control laws and to the Commissioner of Public
11 Safety. Persons making final disposition or destruction of the property under court
12 order shall report, under oath, to the court the exact circumstances of the disposition
13 or destruction.

14 B. Any officer, department or agency having custody of property subject to forfeiture
15 under this section or having disposed of the property shall report on a monthly basis
16 and in a manner and format as required by the Department of Public Safety
17 information regarding that property.

18 C. The Department of Public Safety shall maintain a centralized record and case
19 tracking system of property seized, held by and ordered to the department and all
20 property seized, held by or ordered to a law enforcement agency or the lead agency of
21 a multijurisdictional task force and shall report pursuant to paragraph B to the
22 department. All records maintained by the Department of Public Safety pursuant to
23 this paragraph are public records as defined in Title 1, section 402, subsection 3 and
24 must be made available for inspection by members of the public through a
25 searchable, publicly accessible website. A report of the disposition of property
26 previously held by the department and ordered by the court to any governmental
27 entity and all property seized, held by or ordered to a law enforcement agency and
28 reported pursuant to paragraph B must be provided at least monthly to the
29 Department of Public Safety and by the Department of Public Safety quarterly to the
30 Commissioner of Administrative and Financial Services and the Office of Fiscal and
31 Program Review for review. A law enforcement agency that made no seizures during
32 the reporting period shall file a report stating that the agency made no seizures.
33 These records must include an estimate as to the fair market value of items seized.

34 D. The case tracking system and searchable, publicly accessible website maintained
35 by the Department of Public Safety pursuant to paragraph C must include the
36 following information about property seized, held by and ordered to the department
37 and all property seized, held by or ordered to a law enforcement agency and reported
38 pursuant to paragraphs A and B to the department:

39 (1) All information required by paragraph A;

40 (2) The name of the law enforcement agency or lead agency of the
41 multijurisdictional task force that seized the property;

42 (3) The date of the seizure, acquisition and transfer or disposal of the property;

- 1 (4) If the property is a motor vehicle, the make, model, year and serial number;
- 2 (5) The place of seizure or acquisition of the property, including, if the property
- 3 was seized during a traffic stop on an interstate highway or state highway, the
- 4 direction of the traffic flow;
- 5 (6) The value of the property;
- 6 (7) The criminal offense alleged that led to the seizure and any crime prosecuted,
- 7 including the criminal case number, the crime charged and the court, and whether
- 8 the case concluded with a conviction or, if no conviction occurred, a statement of
- 9 the disposition of the charge or whether charges were dropped or no charges were
- 10 brought;
- 11 (8) If seizure or forfeiture was contested, the case number, type of proceeding,
- 12 description of disposition, including disposition by agreement of the parties, date
- 13 of final order and court;
- 14 (9) The total costs or an estimate of total costs to the law enforcement agency or
- 15 lead agency of a multijurisdictional task force to seize, store, sell or dispose of
- 16 the property, including:
 - 17 (a) Personnel costs for law enforcement and prosecutors and any attorney's
 - 18 fees awarded to any party;
 - 19 (b) Costs related to substance use, crime and gang prevention programs;
 - 20 (c) Victim reparations;
 - 21 (d) Investigation costs, including witness protection, informant fees and
 - 22 controlled buys;
 - 23 (e) Salaries, overtime and benefits of agency personnel and office costs for
 - 24 supplies, postage and printing;
 - 25 (f) Professional services, including auditing, court reporting, expert witness
 - 26 fees and membership fees paid to trade associations; and
 - 27 (g) Capital expenditures for vehicles, firearms, equipment, computers and
 - 28 furniture;
- 29 (10) If the property was retained by a law enforcement agency or the lead agency
- 30 of a multijurisdictional task force, the purpose for which the seized and forfeited
- 31 property was used by that agency; and
- 32 (11) The total value of seized and forfeited property held by the law enforcement
- 33 agency or the lead agency of a multijurisdictional task force at the end of the
- 34 reporting period.
- 35 E. By October 1st of each year, the Commissioner of Public Safety shall submit to
- 36 the President of the Senate, the Speaker of the House of Representatives, the Attorney
- 37 General and the Governor a written report and shall post on the commissioner's
- 38 publicly accessible website maintained pursuant to paragraph C information
- 39 summarizing seizure and forfeiture activity in the State during the prior year,
- 40 including the type, value and disposition of property seized or forfeited, the amount

1 of the proceeds of any sales of property and the costs to any law enforcement
2 agencies and state, county and regional government of seizures and forfeitures from
3 the prior year. The report must separate seizure and forfeiture information by law
4 enforcement agency. The report may include recommendations for changes in rule
5 and law to improve the seizure and forfeiture process and ensure that it is fair to
6 crime victims, property owners, citizens and taxpayers, persons holding secured
7 interests in property seized and forfeited and law enforcement agencies. The report is
8 a public record as defined in Title 1, section 402, subsection 3.

9 F. The Commissioner of Public Safety shall adopt rules to implement this section
10 including, but not limited to, rules to ensure the timely filing of required reports and
11 civil penalties payable to the General Fund for failure to file on a timely basis of up to
12 \$500 or 1/4 of the value of forfeiture proceeds received by the law enforcement
13 agency, whichever is greater. The rules may allow the imposition of fees on a law
14 enforcement agency reporting to the commissioner under paragraphs A and B to pay
15 costs of the commissioner associated with this subsection. Rules adopted pursuant to
16 this paragraph are routine technical rules as defined by Title 5, chapter 375,
17 subchapter 2-A.

18 G. The State Auditor shall perform an audit of seized and forfeited property annually
19 using generally accepted government auditing standards and shall submit a copy to
20 the Commissioner of Public Safety and make a copy available to the public no later
21 than January 1st of each year.

22 H. As used in this subsection, unless the context otherwise indicates, "law
23 enforcement agency" means any state, county, municipality or other political unit in
24 the State or any department, agency or subdivision of any of the foregoing, or any
25 corporation or other association carrying out the functions of government that
26 employs law enforcement officers, including any fire department.

27 I. The provisions of this subsection apply to a law enforcement agency that seizes,
28 holds or disposes of property as a result of an investigation and arrest carried out in
29 cooperation with a federal law enforcement agency.

30 **SUMMARY**

31 This bill requires the establishment of a record and case tracking system and detailed
32 reporting to the Commissioner of Public Safety when a law enforcement agency seizes,
33 holds or disposes of property as a result of civil forfeiture provisions of the Maine
34 Revised Statutes, Title 15, section 5821 and the criminal forfeiture provisions of Title 15,
35 section 5826. The bill provides that reported information is public information and for
36 public access to that information through a website and mandates reports to the
37 Legislature, Attorney General and Governor. The bill provides rulemaking for the
38 Commissioner of Public Safety and auditing by the State Auditor, with a report from the
39 State Auditor to the Commissioner of Public Safety. The provisions apply to law
40 enforcement agencies, which are defined to include fire departments, that seize, hold or
41 dispose of property as a result of an investigation and arrest carried out in cooperation
42 with a federal law enforcement agency.