

MAINE STATE LEGISLATURE

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STATE OF MAINE
117TH LEGISLATURE

FIRST REGULAR SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
CRIMINAL JUSTICE

AUGUST 1995

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**ONE HUNDRED AND SEVENTEENTH LEGISLATURE
FIRST REGULAR SESSION**

**SUMMARY OF LEGISLATION BEFORE
THE JOINT STANDING COMMITTEES**

AUGUST 1995

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees of the Maine Legislature. The volume is organized alphabetically by committee; within each committee, the summaries are arranged by LD number. A subject index is provided at the beginning of each committee's summaries. The publication, History and Final Disposition of Legislative Documents, is helpful in determining to which committee any particular bill was referred.

In this document, the committee report or reports, the prime sponsor for each bill and the lead co-sponsor in each house if one has been designated are listed below each bill title. All adopted amendments are listed, by paper number, together with the sponsor for floor amendments. Final action on each bill is listed to the right of the title. Various categories of final action are abbreviated as follows:

CARRIED OVER	<i>Bill carried over to Second Session</i>
CON RES XXX	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
CONF CMTE UNABLE TO AGREE	<i>Committee of Conference unable to agree; bill died</i>
DIED BETWEEN BODIES	<i>House & Senate disagree; bill died</i>
DIED ON ADJOURNMENT	<i>Action incomplete when session ended; bill died</i>
EMERGENCY	<i>Enacted law takes effect sooner than 90 days</i>
FAILED EMERGENCY ENACTMENT	<i>Emergency bill failed to get 2/3 vote</i>
FAILED ENACTMENT	<i>Bill failed to get majority vote</i>
FAILED MANDATE ENACTMENT	<i>Bill imposing local mandate failed to get 2/3 vote</i>
INDEF PP	<i>Bill Indefinitely Postponed</i>
ONTP	<i>Ought Not to Pass report accepted</i>
P&S XXX	<i>Chapter # of enacted Private & Special Law</i>
PUBLIC XXX	<i>Chapter # of enacted Public Law</i>
RESOLVE XXX	<i>Chapter # of enacted Resolve</i>
UNSIGNED	<i>Not signed by Governor within 10 days</i>
VETO SUSTAINED	<i>Legislature failed to override Governor's Veto</i>

These summaries were prepared by the analyst or analysts assigned to the committee. If more detailed information is needed on a bill, contact the committee analyst.

5581LHS

The bill also directs the Department of Human Services and the Department of the Attorney General to convene a work group to examine the legal rights of children who are alleged victims of sexual abuse and to review current investigative and courtroom procedures for child sexual abuse cases.

COMMITTEE AMENDMENT "A" (S-208) is the majority report of the Joint Standing Committee on Criminal Justice. This amendment replaces the bill and requires that, if requested to do so, a prosecutor who decides not to pursue a case involving alleged child sexual abuse provide written notification to the parent, surrogate parent or guardian of the alleged victim of the reasons why the case is not being pursued. The amendment also adds a mandate preamble and a fiscal note.

LD 1486 An Act to Add Types of Pharmacies That Are Subject to Record Seizure

PUBLIC 251

SPONSOR(S)
BUNKER

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
H-296

SUMMARY

This bill amends the existing law which, by use of the limited definitions of "drug outlet" and "drug wholesaler," excludes nonrural health care centers, including hospital pharmacies, from authorized inspections of the Board of Commissioners of the Profession of Pharmacy in terms of seizure of records as part of a criminal investigation. The Maine Revised Statutes, Title 32, section 13721, subsection 1, paragraph D authorizes inspections of the Board of Commissioners of the Profession of Pharmacy and certain other criminal law enforcement investigators to inspect all pharmacies, dispensaries, stores, hospital pharmacies, extended care facilities, boarding homes, nursing homes, drug abuse treatment centers, penal institutions, family planning centers or other drug outlets in which drugs or medicines are manufactured, stored, distributed, compounded, dispensed or retailed in this State.

COMMITTEE AMENDMENT "A" (H-296) adds a fiscal note to the bill.

LD 1487 An Act Relating to Criminal Forfeitures

PUBLIC 421
EMERGENCY

SPONSOR(S)
BUNKER

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
H-568

SUMMARY

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 as a check against unreasonable forfeitures.

COMMITTEE AMENDMENT "A" (H-568) 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.

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

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

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

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

The amendment also adds a fiscal note.

**LD 1506 An Act Regarding the Registration and Publication of
Residences of Released Persons Convicted of Sexual
Abuse of a Minor**

ONTP

SPONSOR(S)
RICHARDSON

COMMITTEE REPORT
ONTP

AMENDMENTS ADOPTED

SUMMARY

This bill would have amended current sex offender registration law by adding to the definition of "sex offender" a person convicted of sexual abuse of a minor. Offenders on probation would have been required to report their addresses and any changes to the Department of Corrections, Division of Probation and Parole, instead of to the Department of Public Safety, State Bureau of Identification, as is currently required.