

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:

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

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.

This bill also would have required the Division of Probation and Parole and the Department of Public Safety, State Bureau of Identification to report all registration information to the law enforcement agency for the locality in which the sex offender resided or planned to reside.

By January 1, 1996, the Commissioner of Public Safety would have had to develop regulations for the dissemination of information regarding sex offenders by local law enforcement agencies.

The issue of public notification of sex offenders released from jail has been carried over into the 2nd Regular Session. LD 1510, "An Act to Make Comprehensive Changes to Sex Offender Laws," will be used to incorporate all potential changes.

**LD 1509 An Act to Prohibit the Sale of Firearms to Minors without
Parental Approval**

PUBLIC 263

SPONSOR(S)
CLEVELAND

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
S-199

SUMMARY

This bill creates the Class C crime of transferring a firearm to a minor.

COMMITTEE AMENDMENT "A" (S-199) replaces section 3 of the bill. The amendment creates a new Class D crime of unlawful transfer of a firearm to a minor. A person who is not the parent, foster parent or guardian of the transferee is guilty of transferring a firearm to a minor if the person to whom the firearm is transferred is in fact a minor.

The amendment creates 2 affirmative defenses to the crime of unlawful transfer of a firearm to a minor. If the transferor reasonably believed the other person was 16 years of age or older, and that belief is not based only on the appearance or word of the other person but on a picture identification, driver's license or similar method for determining the transferee's identity, it is an affirmative defense. If the parent or guardian of the minor approves the transfer of a firearm to a minor, it is also an affirmative defense.

The amendment also adds a fiscal note to the bill.

**LD 1510 An Act to Make Comprehensive Changes to the Sex Offender
Laws**

CARRIED OVER

SPONSOR(S)
PINGREE

COMMITTEE REPORT

AMENDMENTS ADOPTED

SUMMARY

This bill would make comprehensive changes to the laws involving sex offenders, including the following.

1. All judges and justices would be required to attend a conference on sexual abuse.
2. The statute of limitations for civil actions involving sexual acts toward minors would be changed to allow actions to be brought up to 5 years after the victim reaches the age of majority.
3. All trials in which the defendant is accused of a sex offense against a minor would have to be conducted in a speedy fashion.