

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

H.P. 1125 - L.D. 1521

An Act To Strengthen Protections against Civil Asset Forfeiture

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

Sec. 1. 15 MRSA §5821, first ¶, as amended by PL 2017, c. 409, Pt. B, §1, is further amended to read:

Except as provided in section 5821-A or 5821-B, the following are subject to forfeiture to the State and no property right may exist in them if the owner of the following is convicted of a crime in which the following was involved:

Sec. 2. 15 MRSA §5821, sub-§3-A, as repealed and replaced by PL 2013, c. 588, Pt. A, §19, is amended to read:

3-A. Firearms and other weapons. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs in which scheduled drugs are found. ~~Except for those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822, all weapons seized~~ weapons declared by a court to be forfeited in accordance with section 5826, subsection 9, if the owner of a seized firearm or dangerous weapon is convicted of a crime in which the firearm or dangerous weapon was involved, after notice and opportunity for hearing, the firearm or dangerous weapon must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon need may not be forfeited if the owner appears prior to the declaration of forfeiture and unless the State satisfies the court, by a preponderance of evidence, of all of the following: that the owner of the firearm or dangerous weapon was convicted of a crime in which the firearm or dangerous weapon was involved.

~~A. That the owner had a possessory interest in the weapon at the time of the seizure sufficient to exclude every person involved with the seized drugs or every person at the site of the seizure;~~

~~B. That the owner had no knowledge of or involvement with the drugs and was not at the site of the seizure; and~~

~~C. That the owner had not given any involved person permission to possess or use the weapon.~~

Post-hearing procedures are as provided in section 5822.

A confiscated or forfeited firearm that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the firearm was stolen and the rightful owner was not the person who committed the homicide, in which case the firearm must be returned to the owner if ascertainable;

Sec. 3. 15 MRSA §5821, sub-§3-B, as amended by PL 2019, c. 113, Pt. C, §52, is further amended to read:

3-B. Forfeiture of firearms used in the commission of certain acts. In addition to the provisions of subsection 3-A and Title 17-A, section 1504, this subsection controls the forfeiture of firearms used in the commission of certain acts.

A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if the firearm is used by a person who is the owner of the firearm to commit a criminal act that in fact causes serious bodily injury or death to another human being and, following that act, the person either commits suicide or attempts to commit suicide and the attempt results in the person's becoming incompetent to stand trial or the person is killed or rendered incompetent to stand trial as the result of a justifiable use of deadly force by a law enforcement officer. Except as provided in paragraph B, a property right does not exist in the firearm subject to forfeiture.

B. A firearm that is used in the commission of a criminal act described in paragraph A is exempt from forfeiture under this subsection if the firearm belongs to another person who is the rightful owner from whom the firearm has been stolen and the other person is not a principal or accomplice in the criminal act. In that case, the firearm must be transferred to the other person unless that person is otherwise prohibited from possessing a firearm under applicable law.

A firearm subject to forfeiture pursuant to this subsection that is declared by a court to be forfeited pursuant to section ~~5822~~ 5826, subsection 9 must be promptly destroyed, or caused to be promptly destroyed, by the law enforcement agency that has custody of the firearm;

Sec. 4. 15 MRSA §5821, sub-§7-A, as amended by PL 2019, c. 97, §1, is further amended to read:

7-A. Computers. ~~Except as provided in paragraph A, all computers~~ Computers, as defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but not limited to, printers and scanners, that are used or are attempted to be used in violation of Title 17-A, section 259-A;

~~A. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner;~~

Sec. 5. 15 MRSA §5821, as amended by PL 2019, c. 97, §§1 to 3 and c. 113, Pt. C, §52, is further amended by adding at the end a new paragraph to read:

Unless seized property under this section includes United States currency in excess of \$100,000, a law enforcement agency, prosecuting authority, state agency, county or municipality may not enter into an agreement to transfer or refer property seized under this section to a federal agency directly, indirectly, through adoption, through an

intergovernmental joint task force or by other means that circumvent the provisions of this section.

Sec. 6. 15 MRSA §5822, sub-§1, as amended by PL 1987, c. 648, is repealed.

Sec. 7. 15 MRSA §5822, sub-§2, as enacted by PL 1987, c. 420, §2, is repealed.

Sec. 8. 15 MRSA §5822, sub-§3, as amended by PL 1991, c. 461, §1, is repealed.

Sec. 9. 15 MRSA §5822, sub-§4, as amended by PL 1999, c. 408, §1, is repealed.

Sec. 10. 15 MRSA §5822, sub-§5, as enacted by PL 1987, c. 420, §2, is repealed.

Sec. 11. 15 MRSA §5823, sub-§2, as amended by PL 1991, c. 461, §3, is repealed.

Sec. 12. 15 MRSA §5825, as amended by PL 2019, c. 651, §1, is further amended to read:

§5825. Records; reports

1. Records of forfeited property. Any officer to whom or department or agency to which property subject to forfeiture under section 5821 has been ordered forfeited shall maintain records showing:

A. The name of the court that ordered each item of property to be forfeited to the officer, department or agency;

D. The date on which each item of property was ordered forfeited to the officer, department or agency; and

E. A description of each item of property forfeited to the officer, department or agency.

The records must be open to inspection. A copy of each record must be filed with the Department of Public Safety.

2. Department of Public Safety. A report of the transfer of property previously held by the Department of Public Safety and then ordered by a court to be forfeited to another governmental entity must be provided upon request to the Commissioner of Administrative and Financial Services and the Office of Fiscal and Program Review. The report must account for any such transfer that occurred during the 12 months preceding such a request. The Department of Public Safety shall maintain all records filed with the department pursuant to subsection 1. The Department of Public Safety shall make all records under this subsection available on a publicly accessible website.

Sec. 13. 15 MRSA §5826, sub-§9 is enacted to read:

9. Exceptions to requirement for conviction. A conviction is not required for seizure only as provided in this subsection.

A. Nothing in this chapter prevents property from being forfeited as part of:

(1) A plea agreement; or

(2) A grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

B. The court may waive the conviction requirement in this section and grant title to the property to the State if the State files a motion no fewer than 90 days after seizure and shows by a preponderance of the evidence that, before conviction, the defendant:

- (1) Died;
- (2) Was deported by the United States Government;
- (3) Abandoned the property; or
- (4) Fled the jurisdiction.

Sec. 14. 15 MRSA §5828 is enacted to read:

§5828. Post-seizure proceedings

1. Prompt post-seizure hearing. This subsection governs post-seizure proceedings for assets seized pursuant to this chapter.

A. Following the seizure of property, a defendant or any person with an interest in the property has a right to a prompt post-seizure hearing.

B. A person with an interest in the property may petition the court for a hearing.

C. At the court's discretion, the court may hold a prompt post-seizure hearing:

- (1) As a separate hearing; or
- (2) At the same time as a probable-cause determination, a post-arraignment hearing or other pretrial hearing.

D. A party, by agreement of all parties or for good cause, may move for one extension of the hearing date of no more than 10 days. Any motion may be supported by affidavits or other submissions.

E. The court shall order the return of seized property if it finds:

- (1) The seizure was invalid;
- (2) A criminal charge has not been filed and no extension of the filing period established under this section is available;
- (3) The property is not reasonably required to be held as evidence; or
- (4) The final judgment likely will be in favor of the claimant.