

§5826. Criminal forfeiture

1. Property subject to criminal forfeiture. Notwithstanding any other provision of law, a person convicted of a crime that subjects the person to forfeiture of property under section 5821 forfeits to the State all rights, privileges, interests and claims to that property. All rights, privileges, interest and title in property subject to forfeiture under this section vests in the State upon the commission of the act giving rise to forfeiture pursuant to section 5821.

[PL 2019, c. 97, §4 (AMD).]

2. Commencement of criminal forfeiture action. Property subject to forfeiture may be proceeded against by indictment of the grand jury or by complaint in the District Court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a crime that subjects the person to forfeiture of property under section 5821. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that property is subject to criminal forfeiture. Discovery in the criminal action must be as provided for by the Maine Rules of Unified Criminal Procedure.

[PL 2019, c. 97, §5 (AMD).]

3. Seizure upon indictment. Property subject to forfeiture that has been indicted by the grand jury pursuant to this section may be seized pursuant to section 5822, subsection 6, except that real property subject to forfeiture pursuant to section 5821, subsection 7 may not be seized without prior notice to and opportunity to be heard by all owners of record or upon a finding by probable cause that prior notice to one or more of the owners is likely to result in the destruction, diminution of value or alienation of interest of the property.

[PL 1995, c. 421, §1 (NEW).]

4. Trial proceedings. Trial against property charged by indictment, information or complaint may be by jury and must be held in a single proceeding together with the trial of the related criminal violation.

A. Forfeiture of the property must be proved by the State by a preponderance of the evidence. [PL 1999, c. 408, §3 (NEW).]

B. The court, in its discretion, may allow any defendant with an interest in property charged pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. [PL 1999, c. 408, §3 (NEW).]

C. At trial by jury, the court, upon motion of a defendant or the State, shall separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. If the jury finds a defendant guilty of the related criminal offense, the court shall instruct and submit to the jury the issue of the forfeiture of the property. [PL 1999, c. 408, §3 (NEW).]

[PL 1999, c. 408, §3 (AMD).]

5. Ancillary hearing of 3rd-party interests. A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property, within 30 days

of the date of receipt of the notice, may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. Upon the filing of any petition for hearing, the hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require but in no event may the hearing be scheduled later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than in any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; or [PL 1995, c. 421, §1 (NEW).]

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section. [PL 1995, c. 421, §1 (NEW).]

[PL 2011, c. 559, Pt. A, §14 (AMD).]

6. Final order of disposition of property; public education campaign. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record and following the court's disposition of all petitions for hearing timely filed by 3rd parties, the State has clear title to property that is the subject of the indictment, information or complaint. The final order must provide for the deposit of the property, the proceeds from the disposition of the property and any cash seized or forfeited, less any outstanding restitution, which must be sent to the office of the attorney for the State who prosecuted the case, then the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, in the General Fund, except that, to the extent that the court finds it reasonable, the court may order forfeiture of as much of the property as is appropriate, less the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, to a municipality, county or state agency that has made a substantial contribution to the investigation or prosecution of a related criminal case or, upon request of the investigating agency or the prosecuting agency, to a law enforcement agency in this State that provides case management and other social services to persons affected by crimes that are subject to forfeiture of property under this chapter.

[PL 2023, c. 196, §1 (AMD).]

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

A. By clear and convincing evidence that:

- (1) There was probable cause to support the seizure of the property at the time of its seizure;
- (2) The interested party has knowledge of the seizure of the property or the property was seized under circumstances in which a reasonable person would have knowledge of the seizure of that person's property; and
- (3) The interested party has failed to appear for any court appearance in accordance with Title 17-A, chapter 45 for a violation that forms the basis of the forfeiture, and that a warrant of arrest for the interested party for such failure to appear has been outstanding for 6 months or more; and [PL 1999, c. 395, §1 (NEW).]

B. By a preponderance of the evidence that the State is entitled to a judgment of forfeiture pursuant to chapter 517. [PL 1999, c. 395, §1 (NEW).]

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

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.
[PL 1999, c. 395, §1 (NEW).]

7. (REALLOCATED TO T. 15, §5826, sub-§8) Equitable transfer of forfeited assets.
[RR 1999, c. 1, §24 (RAL); PL 1999, c. 408, §4 (NEW).]

8. (REALLOCATED FROM T. 15, §5826, sub-§7) Equitable transfer of forfeited assets. In the case of any asset forfeited under this section to any entity other than the State, transfer of title to the asset may not occur until the transfer is approved by:

A. In the case of an agency or department of a county, a majority of the commissioners of the county; and [RR 1999, c. 1, §24 (RAL).]

B. In the case of an agency or department of a municipality, the municipal officers of the municipality. [RR 1999, c. 1, §24 (RAL).]

When property is forfeited and transferred to a municipality in accordance with this section, the municipal officers of the municipality shall determine the disposition of the property. When property is forfeited and transferred to a county in accordance with this section, the county commissioners shall determine the disposition of the property.

[RR 1999, c. 1, §24 (RAL).]

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. [PL 2021, c. 454, §13 (NEW).]

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. [PL 2021, c. 454, §13 (NEW).]

[PL 2021, c. 454, §13 (NEW).]

SECTION HISTORY

PL 1995, c. 421, §1 (NEW). RR 1999, c. 1, §24 (COR). PL 1999, c. 395, §1 (AMD). PL 1999, c. 408, §§3,4 (AMD). PL 2011, c. 559, Pt. A, §14 (AMD). PL 2015, c. 431, §33 (AMD). PL 2017, c. 460, Pt. F, §1 (AMD). PL 2019, c. 97, §§4-6 (AMD). PL 2021, c. 454, §13 (AMD). PL 2023, c. 196, §1 (AMD).

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