

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1596

S. P. 507

In Senate, March 26, 1973

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Brennan of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Possession of Firearms by Persons Convicted of
Criminal Offenses.

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

Sec. 1. R. S., T. 15, § 391, repealed and replaced. Section 391 of Title 15 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 391. Definition

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

“Firearm” means any pistol, revolver, rifle, shotgun, machinegun, automatic or semi-automatic rifle or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or projected any solid projectile or slug, pellet, missile or bullet or any gas, vapor or other noxious thing by means of a cartridge or shell or by action of an explosive or igniting or flammable or explosive substances or by manual or mechanical action.

Sec. 2. R. S., T. 15, § 392, amended. The first paragraph of section 392 of Title 15 of the Revised Statutes, as amended by section 1 of chapter 327 of the public laws of 1965, is further amended to read as follows:

The penal provisions of section 393 shall not apply to any person commissioned as a law enforcement officer or employed as a guard or watchman so long as such person has received a pardon from the Governor, with the advice and consent of the Executive Council, prior to obtaining and possessing a firearm.

Sec. 3. R. S., T. 15, § 393, amended. Section 393 of Title 15 of the Revised Statutes, as amended by section 2 of chapter 327 of the public laws of 1965, is further amended to read as follows:

§ 393. Possession forbidden

It shall be unlawful for any person who has been convicted of a felony, **except those felonies enumerated in the next paragraph**, under the laws of the United States or of the State of Maine, or of any other state, to have in his possession any ~~pistol, revolver or any other firearm capable of being concealed upon the person~~ until the expiration of 5 years from the date of his discharge or release from prison or termination of probation. Such a person convicted of any offense, except misdemeanors, the maximum punishment for which is a fine of \$100 or less, or imprisonment for 90 days or less, during the 5-year period, shall be forever barred from having in his actual or constructive possession any ~~of the weapons described herein~~ **firearm**.

It shall be unlawful for any person knowingly to have in his actual or constructive possession any firearm at any time after the conviction of such person of any of the following crimes: Arson; aggravated assault; armed assault; aggravated assault and battery; possession of a bomb; burglary; assault with intent to commit burglary; breaking and entering; selling firearms to children; escape or aiding in escape; indecent liberties; kidnapping; larceny from the person; breaking, entering and larceny; manslaughter; murder; attempt to murder; rape; carnal knowledge; robbery; assault with intent to commit robbery; threatening communications; intent to extort; treason; possession of a machinegun; attempt to commit any of the offenses above, when such attempt is a felony; conspiracy to commit any of the above; or the equivalent offenses under the laws of any other state or the United States. Anyone violating any of the provisions of this chapter shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 5 years.

Sec. 4. R. S., T. 15, §§ 394, 395 and 396, additional. Title 15 of the Revised Statutes is amended by adding 3 new sections 394 to 396, to read as follows:

§ 394. Confiscation and seizure

Any firearm, possessed in violation of this chapter, is declared to be contraband and is subject to forfeiture to the State. Any law enforcement officer shall have the power to seize the same with due process.

When a firearm is seized as provided, the officer seizing the same shall immediately file with the judge before whom such warrant is returnable a libel against the firearm, setting forth the seizure and describing the firearm and the place of seizure in a sufficient manner to reasonably identify it, that it was possessed in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of same to all persons interested, citing them to appear at the time and place appointed to show cause why such firearm should not be declared forfeited, by causing true and attested copies of said libel and

monition to be posted in 2 public and conspicuous places in the town and place where such firearm was seized, 10 days at least before said libel is returnable. In addition, a true and attested copy of the libel and monition shall be served upon the person from whom said firearm was seized and upon the owner thereof, if their whereabouts can be readily ascertained, 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized firearm may be transferred to the State of Maine by the owner thereof. If title to and ownership in the firearm is transferred to the State, a receipt for the firearm shall be given to the former owner by the law enforcement officer who seized the firearm.

§ 395. Forfeiture proceedings

If no claimant appears, such judge shall, on proof of notice, declare the same to be forfeited to the State. If any person appears, and claims such firearm, as having a right to the possession thereof at the time when the same was seized, he shall file with the judge a claim in writing stating specifically the right so claimed, the foundation thereof, the item so claimed, any exemption claimed, the time and place of the seizure and the name of the law enforcement officer who seized the firearm, and in it declare that it was not possessed in violation of this chapter, and state his business and place of residence and sign and make oath to the same before such judge. If any person so makes claim, he shall be admitted as a party to the process, and the judge shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said firearm was not possessed in violation of this chapter and that the claimant is entitled to the custody thereof, he shall give an order in writing, directed to the law enforcement officer having seized the same, commanding him to deliver to the claimant the firearm to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant not entitled to possess the firearm, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge and issue execution thereof, and shall declare such firearm forfeited to the State. The claimants may appeal and shall recognize with sureties as an appeal in civil actions from a judge. The judge may order that the firearm remain in the custody of the seizing law enforcement officer, pending the disposition of the appeal. All firearms declared forfeited to the State, or title to which has been transferred to the State in lieu of forfeiture proceedings, shall be turned over to the Chief of the Maine State Police. If said firearm is found to be of a historic, artistic, scientific or educational value, the State Police may retain the firearm for an indefinite period of time. Any other firearm declared forfeited and in possession of the State Police shall be destroyed by a means most convenient to the Chief of the State Police.

§ 396. Probation and parole

Nothing contained in this chapter shall be construed as prohibiting a judge or the State Parole Board from setting as a condition of probation or parole the prohibition of possession of a firearm by the person to be paroled or placed on probation.

STATEMENT OF FACT

The purpose of this bill is to strengthen existing prohibitions on convicted criminals in order to preclude them from having or using firearms. Now only felons are prohibited from carrying arms, and then only for 5 years from the date of their discharge from prison or the correctional center, and only small arms. This bill would prohibit anyone convicted of a felony, which involves violence or the threat of violence, from ever possessing a firearm. Anyone who has demonstrated a capacity for defying the law and using violence should be denied access to the instrumentalities of violence.