

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2284

H.P. 1651

House of Representatives, February 6, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative RICHARDS of Hampden.

Cosponsored by Senator HOLLOWAY of Lincoln, Representative LEBOWITZ of Bangor and Representative FARNSWORTH of Hallowell.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act to Provide for Forfeiture of Weapons Used in Crimes Against Persons.**

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

Sec. 1. 15 MRSA c. 519 is enacted to read:

**CHAPTER 519**

**FORFEITURE OF FIREARMS  
USED AGAINST PERSONS**

**§5851. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Armed with a firearm.** "Armed with a firearm" means in actual possession, regardless of whether the possession is visible or concealed, of a firearm.

**2. Bodily injury.** "Bodily injury" has the same meaning as set forth in Title 17-A, section 2, subsection 5.

**3. Burglary.** "Burglary" means the offense described in Title 17-A, section 401.

**4. Dwelling place.** "Dwelling place" has the same meaning as set forth in Title 17-A, section 2, subsection 10.

**5. Firearm.** "Firearm" has the same meaning as set forth in Title 17-A, section 2, subsection 12-A.

**6. Serious bodily injury.** "Serious bodily injury" has the same meaning as set forth in Title 17-A, section 2, subsection 23.

**§5852. Forfeiture**

**1. Application.** Under subsection 2, the court shall order the forfeiture of a firearm seized by law enforcement officials from a person charged with the commission of:

**A. A crime in which the person used or threatened to use the firearm in a manner producing or capable of producing death, serious bodily injury or bodily injury; or**

**B. A burglary in a dwelling place during which the person was armed with the firearm.**

**2. Forfeiture.** At the arraignment of a defendant described in subsection 1, the prosecutor may petition the court for the forfeiture of a firearm described in subsection 1. Upon proof by the prosecutor of all material facts by a preponderance of the evidence, the court shall order the forfeiture of the firearm to

2 the State, unless a person who is not the defendant or an  
4 accomplice proves by a preponderance of the evidence that the  
person had a right to possess the firearm, to the exclusion of  
the defendant, at the time of the crime.

6 3. Procedures. The Attorney General shall adopt rules  
8 under Title 5, chapter 375, governing procedures for notice and  
10 hearing of a petition under subsection 2, and for disposition to  
state, county and municipal agencies of firearms forfeited under  
this chapter.

12 **Sec. 2. 17-A MRS §1158**, as enacted by PL 1989, c. 382, is  
14 amended to read:

16 **§1158. Forfeiture of firearms**

18 As Except when a firearm has been forfeited under Title 15,  
20 chapter 517 or 519, as part of every judgment of conviction and  
22 sentence imposed, every firearm used by the defendant or any  
24 accomplice during the commission of any murder or Class A, Class  
B or Class C crime shall must be forfeited to the State and the  
26 court shall so order, unless another person can satisfy the court  
prior to the judgment and by a preponderance of the evidence that  
28 such other person had a right to possess the firearm, to the  
exclusion of the defendant, at the time of the offense. The  
Attorney General shall adopt rules in accordance with Title 5,  
chapter 375, governing the disposition to state, county and  
municipal agencies of firearms forfeited under this section.

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**STATEMENT OF FACT**

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34 This bill permits a prosecutor to seek the forfeiture, at  
36 the time of arraignment, of any firearm used against a person in  
38 the commission of a crime and of any firearm that was in the  
40 possession of a person committing a burglary of a dwelling  
42 place. The bill requires the State to prove all facts material  
44 to the forfeiture by a preponderance of the evidence, and  
46 requires the court, upon such proof, to order forfeiture. The  
bill provides, however, an opportunity for a person who is not  
the defendant to prove, also by a preponderance of the evidence,  
that the person is entitled to possession of the firearm. The  
forfeiture procedures for firearms applicable at the time of  
sentencing of criminal defendants that currently exist in the  
Maine Revised Statutes, Title 17-A, section 1158, remain  
available for firearms not forfeited under a prior procedure.