

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 724

H.P. 497

House of Representatives, February 28, 2013

**An Act To Require Firearms Used in the Commission of Certain
Acts To Be Civilly Forfeited to the State and Destroyed**

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered
printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DION of Portland.
Cosponsored by Senator: PLUMMER of Cumberland.

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

2 **Sec. 1. 15 MRSA §5821, sub-§3-A**, as amended by PL 2011, c. 465, §2, is
3 further amended to read:

4 **3-A. Firearms and other weapons.** Law enforcement officers may seize all
5 firearms and dangerous weapons that they may find in any lawful search for scheduled
6 drugs or synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101,
7 subsection 16-A, in which scheduled drugs or synthetic hallucinogenic drugs are found.
8 Except for those seized weapons listed in a petition filed in the Superior Court pursuant to
9 section 5822, all weapons seized, after notice and opportunity for hearing, must be
10 forfeited to the State by the District Court 90 days after a list of the weapons and drugs
11 seized is filed in the District Court in the district in which the weapons and drugs were
12 seized. A weapon need not be forfeited if the owner appears prior to the declaration of
13 forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

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

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

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

21 Post-hearing procedures are as provided in section 5822.

22 A confiscated or forfeited ~~handgun~~ firearm that was confiscated or forfeited because it
23 was used to commit a homicide must be destroyed by the State unless the ~~handgun~~
24 firearm was stolen and the rightful owner was not the person who committed the
25 homicide, in which case the ~~handgun~~ firearm must be returned to the owner if
26 ascertainable. ~~For purposes of this subsection, "handgun" means a firearm, including a~~
27 ~~pistol or revolver, designed to be fired by use of a single hand.~~

28 **Sec. 2. 15 MRSA §5821, sub-§3-B** is enacted to read:

29 **3-B. Forfeiture of firearms used in the commission of certain acts.** In addition to
30 the provisions of subsection 3-A and Title 17-A, section 1158-A, this subsection controls
31 the forfeiture of firearms used in the commission of certain acts.

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

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

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

10 **Sec. 3. 17-A MRSA §1158-A, sub-§2, ¶¶A and C**, as enacted by PL 2003, c.
11 657, §7, are amended to read:

12 A. Other than in the context of either subsection 1, paragraph A, subparagraph (1) or
13 subsection 1, paragraph B relative to murder or any other unlawful homicide crime ~~in~~
14 ~~which the firearm used is a handgun~~, the other person, at the time of the commission
15 of the crime, had a right to possess the firearm to the exclusion of the defendant;

16 C. In the context of subsection 1, paragraph B relating to murder or any other
17 unlawful homicide crime ~~in which the firearm used is a handgun~~, the other person, at
18 the time of the commission of the crime, was the rightful owner from whom the
19 ~~handgun firearm~~ had been stolen and the other person was not a principal or
20 accomplice in the commission of the crime.

21 **Sec. 4. 17-A MRSA §1158-A, sub-§4**, as enacted by PL 2003, c. 657, §7, is
22 amended to read:

23 **4.** The Attorney General shall adopt rules governing the disposition to state, county
24 and municipal agencies of firearms forfeited under this section. A ~~handgun~~ firearm not
25 excepted under subsection 2, paragraph C must be destroyed by the State.

26 **Sec. 5. 17-A MRSA §1158-A, sub-§5**, as enacted by PL 2003, c. 657, §7, is
27 repealed.

28 SUMMARY

29 This bill requires the forfeiture and destruction of a firearm used in the commission
30 of a crime that causes death or serious bodily injury by a person who then, either due to
31 suicide or attempted suicide or the justifiable actions of a law enforcement officer, dies or
32 becomes incompetent to stand trial.

33 Current law distinguishes between a firearm and a handgun for certain situations,
34 including allowing a handgun used in a murder to be returned to the rightful owner, as
35 long as the owner was not the person who committed the crime. This bill removes the
36 distinction, applying the forfeiture laws equally to all firearms.