

STATE OF MAINE

—

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

—

H.P. 497 - L.D. 724

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

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

Sec. 1. 15 MRSA §5821, sub-§3-A, as amended by PL 2011, c. 465, §2, is further 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 or synthetic hallucinogenic drugs, as defined in Title 17-A, section 1101, subsection 16-A, in which scheduled drugs or synthetic hallucinogenic drugs are found. Except for those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822, all weapons seized, after notice and opportunity for hearing, 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 not be forfeited if the owner appears prior to the declaration of forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

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

ascertainable. For purposes of this subsection, "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of a single hand.

Sec. 2. 15 MRSA §5821, sub-§3-B is enacted 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 1158-A, 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 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 must be promptly destroyed, or caused to be promptly destroyed, by the law enforcement agency that has custody of the firearm.

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

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

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

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

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

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