

*Testimony of Senator Anne Carney introducing
LD 2086, An Act to Amend the Law Governing Disposition of Forfeited Firearms
Before the Joint Standing Committee on Judiciary
March 5, 2024*

Representative Moonen and esteemed colleagues on the Joint Standing Committee on Judiciary, as you know, I am Anne Carney, proudly representing Senate District 29, which includes South Portland, Cape Elizabeth, and part of Scarborough. Today I am pleased to introduce LD 2086, An Act to Amend the Law Governing the Disposition of Forfeited Firearms. The bill has two parts. First, the original bill amends Maine law to require destruction of firearms subject to an order of forfeiture. Second, a sponsor's amendment updates the definition of machine gun in Maine law to account for devices and alterations to semi-automatic firearms that have developed since our current law was enacted in 1975.

Disposition of Forfeited Firearms

As originally proposed, LD 2086 amends Maine law related to disposition of forfeited firearms. Current law requires destruction of forfeited firearms that were used in a murder or homicide. For other recovered or forfeited firearms, a law enforcement agency "may auction the firearms to federally licensed firearms dealers or the public, use the firearms and ammunition for training purposes or destroy the firearms and ammunition." 17-A MRS §1504. This bill would extend the requirement applicable to firearms used in murder or homicide to all forfeited firearms. If enacted, it would make our state law consistent with federal policy.

Federal law and regulations prevent forfeited firearms from being sold, out of concern that they will be resold and used in crime, according to the U.S. Department of Justice Asset Forfeiture Policy Manual 2023. Recent events related to the Oxford County Sheriff's Department have brought this issue to the forefront in Maine and raised a concern about lost, stolen and forfeited firearms being transferred without regard to legal requirements.

Federal policy and rationale are outlined by the Department of Justice Asset Forfeiture Manual:

The Department has concluded that the forfeiture of firearms and ammunition involved in crime constitutes a compelling law enforcement interest. Because cheap firearms used criminally cause harm the same as expensive ones, there is a strong law enforcement interest in removing both types from circulation.

...
The overriding policy concern weighing against the sale or sharing of forfeited or abandoned firearms is that they may subsequently be resold and used in crime.

The concern about forfeited or abandoned firearms being resold and used in crime is real. By making Maine law consistent with federal law we can reduce the likelihood that crime guns will be used to commit subsequent crimes.

Updating Maine's Definition of Machine Gun

Possession or transfer of a machine gun is already prohibited by state and federal law. The sponsor's amendment, distributed February 28, 2024, updates Maine's definition of "machine gun" to align state law with the federal definition of machine gun. Current Maine law, from 1975, defines a machine gun as "a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism." 17-A MRS §1051(2). Federal regulations state that "machine gun" as defined by federal law includes devices that allow a semiautomatic firearm to fire more than one shot with a single pull of the trigger such that it fires continuously. 18 U.S.C. §922; 27 C.F.R. 479.11.

The amendment would adopt a functional approach similar to Senator King's GOSAFE legislation, focusing on how the firearm and device or alteration together function to "materially increase the rate of fire of a semi-automatic firearm by eliminating the need for the operator of the semi-automatic firearm to make a separate movement for each individual operation of the trigger." Fifteen states have restricted the sale of bump stocks and other rapid-fire devices and alterations. Three states, Colorado, Illinois and Nevada, have adopted the functional approach that is proposed in the amendment.

Federal and state policy prohibiting machine guns is sound. Regulation of civilian possession and use of machine guns began in the 1930s in response to their use in crime and against law enforcement officers. The National Firearms Act of 1934 required registration of machine guns and imposed a tax on their transfer. §§ 3-6, 48 Stat. 1237-1238. Legislative history establishes that Congress adopted the act because the "gangster as a law violator must be deprived of his most dangerous weapon, the machine gun," and "there is no reason why anyone except a law officer should have a machine gun." S. Rep. No. 1444, 73d Cong., 2d Sess. 1-2 (1934) (Senate Report).

The federal law was amended in 1968 and 1986. The 1986 law made possessing or transferring machine guns a crime, but ‘grandfathered’ those lawfully possessed before the effective date of the 1986 law. 18 U.S.C. §922. In essence, the law limited the level of machine guns circulating in the civilian population to the number available in 1986. Congress took that step to provide “more effective protection of law enforcement officers from the proliferation of machine guns.” H.R. Rep. No. 495, 99th Cong., 2d Sess. 7 (1986). Prohibiting civilians from possessing and transferring machine guns makes sense. A machine gun fires 98 shots in 7 seconds.

The most recent change in regulation of machine guns came in response to the 2017 mass shooting in Las Vegas, Nevada. A gunman in a hotel room overlooking an outdoor concert used firearms equipped with ‘bump stocks’ to kill 60 people and injure 500 by shooting from his 32nd floor window. Based on audio from the October 1, 2017 mass shooting in Las Vegas, a semi-automatic firearm equipped with a bump stock fired 90 shots in 10 seconds. By way of comparison, audio from the June 12, 2016 mass shooting at an Orlando, FL nightclub indicates that a semi-automatic firearm without such a device fired 24 shots in 9 seconds. *See* <https://www.nytimes.com/interactive/2017/10/04/us/bump-stock-las-vegas-gun.html>.

In response to the Las Vegas mass shooting, then-President Trump issued a directive to the Department of Justice to adopt regulations “banning all devices that turn legal weapons into machineguns” by clarifying the definition of “machine gun” under Federal law. <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices/>.

A case challenging the validity of the Trump-era regulations is currently pending before the U.S. Supreme Court. *Garland v. Cargill*, No. 22-976, turns on a narrow issue of statutory construction of the word “automatically” that does not apply to current Maine law or to the proposed amendment.

LD 2086 as amended deserves this committee’s support regardless of the outcome in *Garland v. Cargill*. If the federal regulations are upheld, LD 2086 will ensure that Maine law aligns with the federal definition of machine gun and will give Maine law enforcement agencies jurisdiction to prevent harm from firearms that function like machine guns. Maine is one of 22 states and the District of Columbia that filed an *Amici Curiae* brief in the case, highlighting the benefit of complementary state and federal jurisdiction.

Amici States are jurisdictions across this Nation concerned about the severe public-safety threats posed by automatic weapons. Many *Amici* have already passed state level bans on bump stocks based on their authority to protect the well-being of their residents. But state-by-state enforcement is not always sufficient when firearms can travel so easily across state lines, evading local regulations.

ATF's Final Rule classifying bump stocks as machine guns is a critical federal supplement to state regulation—one that furthers a long tradition of regulating or barring automatic weapons and their equivalents.

The District of Columbia, et al. Amici Br. 1.

If the Supreme Court strikes down the federal regulations, passage is critically important to protecting the safety of Mainers. State-by-state enforcement will be the only means to uphold the long-standing public-safety policy of regulating or prohibiting automatic weapons and their equivalents that has been federal law for 90 years.

Legislative action in Vermont is a powerful example of the importance of state legislation to prevent legal firearms from being turned into illegal automatic weapons. In response to a narrowly-averted school shooting in 2018, Phil Scott, Vermont's Republican Governor, said "Only by the grace of God and the courage of a young woman who spoke up did we avert a horrific outcome." Within one week, Gov. Scott proposed a suite of measures to protect Vermonters from gun violence, including prohibiting rapid fire devices: "To be sure the positive step forward at the federal level is not reversed by a future federal administration, the legislature should pass H. 876 and ensure Vermont is not enabling the use of devices and accessories that convert legal firearms to illegal automatic weapons." https://governor.vermont.gov/sites/scott/files/documents/Gov.%20Scott%20Memo%20to%20General%20Assembly_02-22-18.pdf

Vermont and Maine have similar natural resource-based economies, a shared tradition of hunting and outdoorsmanship and many cultural commonalities. Our interest in preventing legal firearms from being converted into to illegal automatic weapons is an important public-safety policy we should also share.

I urge the committee to who ought to pass as amended on LD 2086. Thank you for your time and consideration today. I am happy to answer your questions.

Anne Carney

State Senator, District 29

South Portland, Cape Elizabeth, and part of Scarborough

SPONSOR AMENDMENT to LD 2086 An Act to Amend the Law Governing the Disposition of Forfeited Firearms

Sec. 1. 17-A MRSA §1051, sub-§2 is amended to read:

~~2. As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.~~

2. As used in this chapter, "machine gun" means:

A. A weapon of any description, by whatever name known, loaded or unloaded, that is capable of discharging a number of projectiles in rapid succession by one manual or mechanical operation on the trigger or firing mechanism;

B. A manual, power-driven or electronic device primarily designed or redesigned so that when the device is attached to a semi-automatic firearm, the device:

(1) Materially increases the rate of fire of the semi-automatic firearm; or

(2) Approximates the operation or rate of fire of a machine gun;

C. A device, part or combination of parts that is designed and functions to materially increase the rate of fire of a semi-automatic firearm by eliminating the need for the operator of the semi-automatic firearm to make a separate movement for each individual operation of the trigger; or

D. A semi-automatic firearm that has been modified in any way that:

(1) Materially increases the rate of fire of the semi-automatic firearm; or

(2) Approximates the action or rate of fire of a machine gun.

3. For purposes of this section, "semi-automatic firearm" means a firearm that:

A. Upon initiating the firing sequence, fires the first chambered cartridge and uses a portion of the energy of the firing cartridge to:

(1) Extract the expended cartridge case;

(2) Chamber the next round; and

(3) Prepare the firing mechanism to fire again;

B. Requires a separate operation of the trigger to fire each cartridge; and

C. Is not a machine gun.