

October 1, 1973

October 4, 1973 meeting

TITLE D1 GENERAL PRINCIPLES

Chapter 13 Justification

Section 1. General Rules

1. Conduct which is justifiable under this Chapter constitutes a defense to any crime; provided, however, that if a person is justified in using force against another, but he recklessly injures or creates a risk of injury to third persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness.

2. The fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

Comment

Source: This section combines provisions of the New Hampshire Criminal Code, section 627:1 and the Proposed Massachusetts Criminal Code, chapter 263, section 32 (b).

Current Maine Law: There are no statutes on this subject, and the rule concerning burden of proof on justification has only recently been settled in regard to self-defense. In State v. Millett, 273 A.2d 504, 507-08 (Me. 1971) the Supreme Judicial Court noted:

The majority rule, embraced by many courts, declines to shift the burden of proof to defendant, but requires only that he assume the burden of going forward with evidence (court's emphasis) of such nature and quality as to raise the issue of self-defense and justify a reasonable doubt

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of guilt if upon the whole evidence the factfinder entertains such a doubt. The rule has been variously stated by those courts which have adopted it, and in some instances they have been aided by the wording or their judicial construction of applicable statutes . . .

We are satisfied that we should now adopt the majority rule. It has the virtue of relative simplicity and should eliminate that apparent confusion which has arisen when trial courts have attempted to harmonize a burden of proof imposed upon the defendant with the continuing obligation of the State to prove guilt beyond a reasonable doubt. Since the claim of justification by self-defense is not raised by plea, it need not be anticipated by the State but will enter the case as an issue only if and when substantial evidence bearing on the issue is introduced, from whatever source that evidence may come. In that sense only can it be said that the defendant has a burden, the burden of coming forward with evidence of justification which will generate the issue and justify a finding by the factfinder, if indeed one is made, that by reason of the claimed justification a reasonable doubt exists as to defendant's guilt. As has frequently been stated, the defendant's burden under these circumstances is purely procedural and there is no occasion for instructions to the jury with respect to it.

The Draft: This section generalizes the rule of Millett to all cases where there is a claim of justification for the criminal conduct. The rule of the majority of the courts, accepted by Millett, has also become the rule of the recodifications, so that the burden of going forward with the evidence of justification is usually placed on the defendant by the new codes.

The proviso in subsection one is designed to make sure that where a person is justified, for example, in firing a weapon at another, he does not consciously disregard an undue risk that bystanders might get hurt.

The purpose of subsection two is to have the rules of civil liability free from unintended amendment by the provisions of this chapter. It may be, of course, that the rules of justification in this chapter turn out to be similar or identical with the rules that civilly exculpate. But it is not the function of the criminal code to determine whether that is a useful result.

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Section 2. Public Duty

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and judgments or orders of courts or other tribunals.

2. The justification afforded by this section to public servants is not precluded by the fact that the law, order or process was defective provided it appeared valid on its face or, as to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

Comment

Source: This section is taken from the New Hampshire Criminal Code, §627:2.

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Current Maine Law: There is no general rule making explicit the assumption that when a public servant acts within the scope of his duty, he incurs no criminal liability for so doing. There are indications in the cases, however, that this is the assumption. See e.g., State v. Phinney, 42 Me. 284 (1856), noting "the protection which the law throws around its ministers when on the rightful discharge of their official duty;" cf. State v. Robinson, 145 Me. 77 (1950), declaring an illegal arrest to be an assault and battery.

It does not appear to be settled in Maine whether a defect in the authority under which a public servant acts will affect the justification of his conduct, when he is unaware of the defect.

The Draft: A primary purpose of the first subsection is to insure that a distinction is made between acts of public servants which involve the use of physical force, and those which do not. The former are the subject of detailed rules in other sections of this chapter, while the latter are governed by the general rule of this section.

Subsection 2 is designed to permit public servants to act upon authority which appears to them to be bona fide. It is written to as to make irrelevant any personal knowledge of a defect which a public servant may have in any particular instance, in order to permit the public's business to be carried on on the basis of documents on their face official and lawful. To permit litigation of the officer's state of mind under such circumstances would inject an undesirable degree of uncertainty.

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Section 3. Competing Harms

1. Conduct which the actor believes to be necessary to avoid harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute, either in its general or particular application.

2. When the actor was reckless or negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in subsection 1 does not apply in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish criminal liability.

Comment

Source: This section is taken from the New Hampshire Criminal Code, §627:3.

Current Maine Law: The problems covered by this section do not seem to be the subject of statutory or case law.

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The Draft: The purpose of this section is to provide a general guidance for the resolution of infrequently occurring, but troublesome circumstances, such as where a truck driver who discovers a defect in his brakes on a downhill road, decides to bring his vehicle to a stop near a crowd of people at the foot of the road, rather than turn off the road and risk some personal injury to himself.

The second sentence of the first subsection is designed to prevent this section from being a basis for justifying acts of civil disobedience.

Subsection 2 is designed to preserve the possibility of criminal liability based on recklessness or negligence when intentional conduct might be justified.

Section 4. Use of Force in Defense of Premises

A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in section 7 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.

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Comment

Source: This section is taken from the New Hampshire Criminal Code, §627:7.

Current Maine Law: State v. Benson, 155 Me. 115, 119 (1959) states "When one goes upon the land of another without invitation or license he is there unlawfully as a trespasser and the owner may take reasonable measures to remove him. This follows the view of 4 AmJur §38, p. 147. Trespassers, however, do have the right of self-defense when there is no request by the land owner to leave. However, if the trespasser uses actual force in gaining entrance, a request to leave is not necessary, neither is a request necessary when it would be useless, it would be dangerous, or substantial harm could be done before the request was made". The case cites, on these points, 4 AmJur. §74, p. 166. It does not distinguish or explain "substantial harm" in terms of individuals, property, or premises. See also Stearns v. Sampson, 59 Me. 566 (1871), permitting a landlord to use force to eject a tenant upon termination of the tenancy; State v. Brown, 302 A.2d 322 (Me. 1973), reiterating the right to use force against a trespasser.

The Draft: The rule of this section follows generally the statements made in the Benson and Stearns cases. It is specifically provided, however, that the use of deadly force is governed by the section in this chapter on that subject. Additionally, the owner is justified in using deadly force to prevent his premises from being burned or blown up.

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Section 5. Use of Force in Property Offenses

A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in section 7.

Comment

Source: This section is taken from the New Hampshire Criminal Code, §627:8.

Current Maine Law: There is no settled law on this subject. The only case mentioning the subject matter of this section appears to be State v. Gilman, 69 Me. 163 (1879) which states: "The law is well settled that an assault with intent to kill cannot be justified for the defense of property".

The Draft: This section permits property owners to use reasonable and non-deadly force to prevent theft or destruction of their property. The use of deadly force, however, is to be governed by the section on that subject.

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Section 6. Physical Force by Persons with Special Responsibilities

1. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.

2. A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified in using force against any such minor who creates a disturbance when and to the extent that he reasonably believes it necessary to expel such minor from the scene of such disturbance.

3. A person responsible for the general care and supervision of an incompetent person is justified in using force for the purpose of safeguarding his welfare, or, when such incompetent person is in an institution for his care and custody, for the maintenance of reasonable discipline in such institution.

4. The justification extended in subsections 1, 2 and 3 does not apply to the purposeful or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain, mental distress or humiliation.

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5. A person authorized by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, may use non-deadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury.

6. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

7. A licensed physician, or a person acting under his direction, may use force for the purpose of administering a recognized form of treatment which he reasonably believes will tend to promote the physical or mental health of the patient, provided such treatment is administered.

A. with consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

B. in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

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Comment

Source: This section is patterned on the New Hampshire Criminal Code, §627:6.

Current Maine Law: Several statutes deal with the subject matter of this section.

Title 19 §218: Any parent, guardian or other person having the care and custody of any child, who cruelly treats such child by abuse, neglect, overwork or extreme punishment, shall be punished by imprisonment for not more than 11 months.

Title 15 §2716: The Superintendent [of a state school] shall have all the power which a guardian has to his ward, and all powers which parents have over their children, as to the person, property, earnings and the rehabilitation of every child committed to the center.

It appears that teachers may inflict corporal punishment and incur liability only for the use of excessive force. See Patterson v. Nutter, 78 Me. 509 (1886).

In regard to public conveyances, Title 35 §1171 gives to the conductor a power to eject "in a reasonable manner and at a reasonable place anyone acting in a drunk or disorderly manner". This authority may be exercised against a person who refuses to pay his fare. State v. Gould, 53 Me. 279 (1865).

Physicians have an immunity from civil liability when they administer, with dire care, emergency medical treatment. Title 32 §3291.

The Draft: This section deals with several different roles under circumstances where the use of force is not uncommon.

Subsection 1 permits parents to use force against their children which they reasonably believe is necessary for punishment or to prevent misbehavior. This would appear to be the same rule as is implied in the statutory prohibition against extreme punishment.

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Teachers, however, are not granted authority to use force in order to punish by subsection 2 which thereby changes present law. It is necessary for a teacher to have order so that he may teach, and subsection 2 gives him authority to maintain order when a child is creating a disturbance or when he refuses to leave the classroom or other school area.

Persons in charge of institutions, such as mental hospitals, are given a broader scope of authority by virtue of their 24 hour responsibility for their patients.

Subsection 4 serves to place a legislative limit on what may be deemed reasonable under the first three subsections. That is, the purpose of the subsection is to prohibit death, serious bodily injury, or substantial amounts of either pain, mental suffering or humiliation.

Subsection 5 seeks to give authority that is commensurate with responsibility.

Subsections 6 and 7 articulate rules which conform with general expectations of what the law permits under the named circumstances.

TITLE D1 GENERAL PRINCIPLES

Chapter 13 Justification

Section 1. General Rules (ORIGINAL PAGE 13-1)

Approved 10-4-73.

Section 2. Public Duty (Approved as revised 10-4-73.
Original page 13-3)

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and judgments or orders of courts or other tribunals.

2. The justification afforded by this section to public servants is not precluded:

A. by the fact that the law, order or process was defective provided it appeared valid on its face and the defect was not knowingly caused or procured by such public servant; or,

B. as to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

Section 3. Competing Harms (Approved as revised 10-4-73.
Original page 13-5)

1. Conduct which the actor believes to be necessary to avoid imminent physical harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute.

2. When the actor was reckless or negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in subsection 1 does not apply in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish criminal liability.

Section 4. Use of Force in Defense of Premises

Approved 10-4-73. Original page 13-6

TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 9. Multiple Convictions (Original page 11-12)

Deleted 8-2-73

Section 10. Definitions of Culpable States of Mind

(Approved 8-2-73, subject to review by entire Commission membership
(Approved as revised 10-4-73. Original page 11-14)

1. "Intentionally."

A. A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.

B. A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

2. "Knowingly."

A. A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

B. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

3. "Recklessly."

A. A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

B. A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

C. A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

4. "Criminal Negligence."

A. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a substantial and unjustifiable risk that such circumstances exist.

B. A person acts with criminal negligence with respect to result of his conduct when he fails to be aware of a substantial and unjustifiable risk that his conduct will cause such a result.

C. A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law-abiding person would observe in the same situation.

Section 11. Requirement of Culpable Mental States

(Approved 8-2-73. Approved as revised 10-4-73. Original page 11-1)

1. Unless otherwise expressly provided, a person is not guilty of a crime unless he acted intentionally, knowingly, recklessly, or negligently, as the law defining the crime specifies, with respect to each element of the offense. When the state of mind required to establish an element of a crime is either not specified by such law, or is specified as "willfully", "corruptly", or in some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

3. When the law provides that negligence is sufficient to establish an element of a crime, that element also is established if, with respect thereto, a person acted intentionally, knowingly, or recklessly. When the law provides that recklessness is sufficient to establish an element of a crime, that element also is established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acted intentionally.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 1. Perjury (Approved as revised 10-4-73. Original page 27.

1. A person is guilty of perjury, a class B crime, if he makes:

A. in any official proceeding, a false statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true; or

B. inconsistent material statements, in the same official proceeding, under oath or affirmation, both within the period of limitations, one of which statements is false and not believed by him to be true.

2. Whether a statement is material is a question of law to be determined by the court. In a prosecution under subsection 1B, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

3. No person shall be convicted under this section (1) if he retracts the falsification in the course of the official proceeding in which it was made, and before it became manifest that the falsification was or would have been exposed; or (2) where proof of falsity rests solely upon contradiction by testimony of a single witness. Whether a conviction is prohibited under this subsection is a question for the trier of fact.

4. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not mentally competent to make the statement or was disqualified from doing so. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

5. As used in this section:

A. "official proceeding" means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding;

B. "material" means capable of affecting the course or outcome of the proceeding.

Section 2. False Swearing (Approved as revised 10-4-73.
Original page 27-5)

1. A person is guilty of false swearing, a class C crime, if:
A. he makes a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and he does not believe the statement to be true, provided

(1) the falsification occurs in an official proceeding as defined in section 1, subsection 5A, or is made with the intention to mislead a public servant performing his official duties; or

(2) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or

B. he makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this subsection, it need not be alleged or proved which of the statements is false, but only that one or the other was false and not believed by the defendant to be true.

2. No person shall be convicted under this section (1) if, when made in an official proceeding, he retracts the falsification in the course of such proceeding before it becomes manifest that the falsification was or would have been exposed, or (2) where proof of falsity rests solely upon contradiction by testimony of a single witness. Whether a conviction is prohibited under this subsection is a question for the trier of fact, unless the evidence relating to such prohibition is insufficient as a matter of law.

3. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not mentally competent to make the statement or was disqualified from doing so. A document purporting to be made upon oaths or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

Section 3. Unsworn Falsification

1. A person is guilty of unsworn falsification, a class D crime, if:

A. he makes a written false statement which he does not believe to be true, on or pursuant to, a form conspicuously bearing notification authorized by statute or regulation to the effect that false statements made therein are punishable; or

B. with the intent to deceive a public servant in the performance of his official duties, he

(1) makes any written false statement which he does not believe to be true; or

(2) knowingly creates, or attempts to create, a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(3) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false.

TITLE D1 GENERAL PRINCIPLES

Chapter 13 Justification

Section 7. Physical Force in Law Enforcement

1. A law enforcement officer is justified in using non-deadly force upon another person:

reasonable degree of

A. when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless he knows that the arrest or detention is illegal; or,

B. to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.

2. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary

A. to defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or

B. to effect an arrest or prevent the escape from custody of a person whom he reasonably believes

(1) has committed a crime involving the use or threatened use of deadly force, or is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely seriously to endanger human life or to inflict serious bodily injury unless apprehended without delay; and

(2) he had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

3. A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using

A. non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or

B. deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

4. A private person acting on his own is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from custody of such other whom he reasonably believes to have committed a crime; but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force.

5. A guard or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2 of this section. He is justified in using non-deadly force when and to the extent they[?] reasonably believe it necessary to prevent any other escape from such a facility.

6. A reasonable belief that another has committed a crime means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

7. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

8. Nothing in this section constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

Section 8. Physical Force in Defense of a Person

1. A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

A. With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or

B. He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or

C. The force involved was the product of a combat by agreement not authorized by law.

2. A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a third person, or is likely to use any unlawful force against the occupant of a dwelling while committing or attempting to commit a burglary of such dwelling, or is committing or about to commit kidnapping or a forcible sex offense. However, a person is not justified in

using deadly force on another to defend himself or a third person from deadly force by the other:

A. if, with a purpose to cause physical harm to another, he provoked the use of unlawful deadly force by such other; or

B. if he knows that he can, with complete safety

1. retreat from the encounter, except that he is not required to retreat if he is in his dwelling and was not the initial aggressor, provided that ^{if} he is a law enforcement officer or a private person assisting him at his direction and was acting pursuant to section 7, he need not retreat; or

2. surrender property to a person asserting a claim of right thereto; or

3. comply with a demand that he abstain from performing an act which he is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the actor has provoked the use of force against himself in the same encounter.

Temporary Section XXX. Definitions for Chapter 13.

(to be included among General Provisions)

1. "Deadly force" means physical force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

2. "Non-deadly force" means any physical force which is not deadly force.

3. "Dwelling" means any building ^{vehicle} or structure, though movable or temporary, which is for the time being any person's home or place of lodging.

4. "Law Enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to maintain public order, to prosecute offenders, or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

5. "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or extended impairment of the function of any bodily member or organ.

6. "Bodily injury" means physical pain, physical illness or any impairment of physical condition.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 1. Disorderly Conduct

A person is guilty of disorderly conduct if:

1. in a public place he in fact:

A. creates a condition which serves no useful purpose and is hazardous or physically offensive to one or more ordinary persons therein; or

B. engages in a course of gestures or physical conduct which is obscene;

2. in a public or private place, he accosts, insults, taunts or challenges any person with ^{words or gestures which would in fact} offensive, derisive or annoying words which would in fact have a direct tendency to provoke a disorderly response, or to cause an act of violence, by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged;

3. in a private place, he makes unreasonable noise which can be heard as such in a public place or in another private place;

4. A person violating this section in the presence of a law enforcement officer may be arrested without a warrant.

5. As used in this section:

A. "public place" means a place to which the public at large or a substantial group has access, including

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public ways as defined in section 5, schools, government-owned custodial facilities, and the lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals;

B. "private place" means any place that is not a public place.

6. Disorderly conduct is a class D crime.

Chapter 28 Offenses Against Public Order

Section 2. Failure to Disperse

1. When six or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.

2. A person is guilty of failure to disperse if he knowingly fails to comply with an order made pursuant to subsection 1.

3. Failure to disperse is a class ^{typo error} ~~D~~ C crime.

Chapter 28 Offenses Against Public Order

Section 3. Riot

1. A person is guilty of riot if he participates with five or more other persons in a course of disorderly conduct:

A. With intent imminently to commit or facilitate the commission of a crime involving physical injury or property damage against persons who are not participants; or

B. When he or any other participant to his knowledge uses or intends to use a firearm or other dangerous weapon in the course of the disorderly conduct.

2. Riot is a class ~~C~~^{misprint} crime.
B

Chapter 28 Offenses Against Public Order

Section 4. Unlawful Assembly

1. A person is guilty of unlawful assembly if:

A. He assembles with five or more other persons with intent to engage in conduct constituting a riot; or

B. Being present at an assembly that either has or develops a purpose to engage in conduct constituting a riot, he remains there with intent to advance that purpose.

2. Unlawful assembly is a class D crime.

Chapter 28 Offenses Against Public Order

Section 5. Obstructing Public Ways

1. A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

2. As used in this section, "public way" means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, way upon which the public has a right of access or has access as invitees or licensees, or way under the control of park commissioners or a body having like powers.

3. Obstructing Public Ways is a class D crime.

Chapter 13 Justification

Section 7. Physical Force in Law Enforcement

Comment

Source: This section is a modified version of section 572 of the New Hampshire Report of the Commission to Recommend Codification of the Criminal Laws.

Current Maine Law: There is relatively little Maine law on this subject. Title 15, section 704 provides that in making an arrest, if the law enforcement officer "acts wantonly or oppressively, or detains a person without warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby." This creates a civil liability to the person detained. State v. Boynton, 143 Me. 313 (1948); Bale v. Ryder, 290 A.2d 359 (Me. 1972), and does not constitute any defense for the person arrested.

Section 558 of Title 34 provides a justification for "suppressing an insurrection among the convicts of the State Prison, and . . . preventing their escape or rescue therefrom, or from any other legal custody or confinement" even if the convict is wounded or killed. Section 595 of the same title is to the same effect in providing a justification for wounding or killing any convict who refuses and resists obedience to a lawful command.

Some insight into current practice, however, may be gained from review of portions of General Order 72-1 of the Portland Police Department. This was made available to the Commission by Chief McClaran who noted: "We are quite comfortable with our present Firearms Regulation." The relevant parts of the General Order are appended as pages 13-12c and 13-12d.

The Draft: This section deals first with the justification provided to law enforcement officers. It is divided into justification for non-deadly force and for the use of deadly force. In regard to the former, subsection 1 provides a rule that the officer may use the force necessary to carry out his duty to arrest and prevent escapes, and may similarly use the non-deadly force that is required to prevent persons from interfering with the performance of these duties.

In regard to the use of deadly force, the officer is justified in using it to defend himself or another from a third person's use of such force. In addition, he is granted the right to use deadly force in making arrests under circumstances where the person to be arrested poses a threat to human life. Subsection 2B also includes provisions designed to insure that, even under these circumstances, deadly force is a last resort.

Subsection 3 is concerned with the force a private person may use when he is assisting a law enforcement officer. It does not purport to define the citizen's duty to respond to a request for such assistance, nor does it define when an officer is authorized to request the assistance. Subsection 4 is similarly limited in that it does not set out the circumstances which might give rise to a citizen's arrest; it merely says that when he does arrest, he may use reasonable force. Use of deadly force for these purposes, however, is limited to self-defense circumstances.

Justification for use of force in a correctional facility is the same as applies when a law enforcement officer seeks to prevent the escape of an arrested person, and subsection 5 makes an explicit incorporation of those rules.

Subsection 6 serves to restate, in the law enforcement context, the generally applicable rule that mistakes about law do not change one's legal rights. It is to be expected, in any event, that law enforcement officers will have more than a passing knowledge of the law defining offenses.

Subsection 7 provides assurance that there is no windfall to an arrested or searched person merely by virtue of his otherwise legal arrest being accomplished by excessive force.

The final subsection states that if a law enforcement officer recklessly shoots a bystander when he is, with justification, shooting at an escaping criminal, he may be guilty of recklessly wounding or killing the bystander.