

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 443, L.D. 593, Bill, "An Act to Strengthen the Laws Concerning Resisting Arrest"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 17-A MRSA §108, sub-§1-A is enacted to read:

1-A. A person is not justified in using nondeadly force against another person who that person knows or reasonably should know is a law enforcement officer attempting to effect an arrest or detention, regardless of whether the arrest or detention is legal. A person is justified in using the degree of nondeadly force the person reasonably believes is necessary to defend the person or a 3rd person against a law enforcement officer who, in effecting an arrest or detention, uses nondeadly force not justified under section 107, subsection 1.

Sec. 2. 17-A MRSA §751, as enacted by PL 1975, c. 499, §1, is amended to read:

§751. Obstructing government administration

1. A person is guilty of obstructing government administration if he the person uses force, violence, or intimidation or engages in any criminal act with the intent to interfere with a public servant performing or purporting to perform an official function.

COMMITTEE AMENDMENT

2. This section shall does not apply to:

A. Refusal by a person to submit to an arrest or detention; or

B. Escape by a person from official custody, as defined in section 755.

3. Obstructing government administration is a Class D crime.

Sec. 3. 17-A MRSA §751-A is enacted to read:

§751-A. Refusing to submit to arrest or detention

1. A person is guilty of refusing to submit to an arrest or a detention if, with the intent to hinder, delay or prevent a law enforcement officer from effecting the arrest or detention, that person:

A. Uses physical force against the law enforcement officer; or

B. Creates a substantial risk of bodily injury to the law enforcement officer.

2. It is a defense to prosecution under this section that:

A. The person knew that the law enforcement officer knew that the arrest or detention was illegal; or

B. The person reasonably believed that the person attempting to effect the arrest or detention was not a law enforcement officer.

3. Refusing to submit to an arrest or a detention is a Class D crime.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.78 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

R. S.

2 The additional workload, administrative costs and indigent
3 defense costs associated with the minimal number of new cases
4 filed in the court system can be absorbed within the budgeted
5 resources of the Judicial Department. The collection of
6 additional fines may also increase General Fund revenue by minor
7 amounts.'

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SUMMARY

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11 This amendment codifies the holding in State v. Austin, 381
12 A.2d 652 (Me. 1978), by stating that a person is not justified in
13 using physical force to resist an arrest or detention, regardless
14 of whether the arrest or detention is legal, as long as the law
15 enforcement officer uses reasonable nondeadly force to effect the
16 arrest or detention. A person is justified in using reasonable
17 nondeadly force against an officer who unlawfully uses nondeadly
18 force.

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21 The amendment states that a person is guilty of the Class D
22 crime of resisting an arrest or detention if the person intends
23 to hinder, delay or prevent the arrest and either uses physical
24 force against the officer or creates a substantial risk of bodily
25 injury to the officer. The amendment does not address the
26 situation in which a person at least recklessly causes an
27 offensive physical contact or bodily injury to an officer,
28 because that is adequately addressed in the Maine Revised
29 Statutes, Title 17-A, sections 207, 208 and 752-A. Similarly,
30 the amendment does not address the situation in which a person
31 threatens to use physical force against an officer, because that
32 is already addressed in Title 17-A, sections 209 and 210.

32

33 The amendment provides a defense for a person who reasonably
34 believed that the person making the arrest was not an officer or
35 who was aware that the officer knew the arrest was illegal.
36 Finally, the amendment adds a fiscal note to the bill.

COMMITTEE AMENDMENT