

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 966

H.P. 726

House of Representatives, March 2, 2007

An Act To Make Part 1 of the Maine Criminal Code Gender-neutral

Reported by Representative GERZOFKY of Brunswick for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 17-A MRSA §2, sub-§8**, as enacted by PL 1975, c. 499, §1, is amended to
3 read:

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

8 **Sec. 2. 17-A MRSA §2, sub-§21**, as enacted by PL 1975, c. 499, §1, is amended
9 to read:

10 21. "Public servant" means any official officer or employee of any branch of
11 government and any person participating as juror, advisor, consultant or otherwise, in
12 performing a governmental function. A person is considered a public servant upon ~~his~~ the
13 person's election, appointment or other designation as such, although ~~he~~ the person may
14 not yet officially occupy that position.

15 **Sec. 3. 17-A MRSA §4-B, sub-§1**, as enacted by PL 1985, c. 282, §3, is amended
16 to read:

17 1. All civil violations are expressly declared not to be criminal offenses. They are
18 enforceable by the Attorney General, ~~his~~ the Attorney General's representative or any
19 other appropriate public official in a civil action to recover what may be designated a
20 fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the law.

21 **Sec. 4. 17-A MRSA §7, sub-§1**, as amended by PL 1979, c. 512, §§15, 16 and
22 17, is further amended to read:

23 1. Except as otherwise provided in this section, a person may be convicted under
24 the laws of this State for any crime committed by ~~his~~ the person's own conduct or by the
25 conduct of another for which ~~he~~ the person is legally accountable only if:

26 A. Either the conduct ~~which~~ that is an element of the crime or the result ~~which~~ that is
27 such an element occurs within this State or has a territorial relationship to this State;
28 ~~or~~

29 B. Conduct occurring outside this State constitutes an attempt to commit a crime
30 under the laws of this State and the intent is that the crime take place within this
31 State;

32 C. Conduct occurring outside this State would constitute a criminal conspiracy under
33 the laws of this State, an overt act in furtherance of the conspiracy occurs within this
34 State or has a territorial relationship to this State, and the object of the conspiracy is
35 that a crime take place within this State;

36 D. Conduct occurring within this State or having a territorial relationship to this State
37 would constitute complicity in the commission of, or an attempt, solicitation or

1 conspiracy to commit an offense in another jurisdiction ~~which~~ that is also a crime
2 under the law of this State;

3 E. The crime consists of the omission to perform a duty imposed on a person by the
4 law of this State, regardless of where that person is when the omission occurs; ~~or~~

5 F. The crime is based on a statute of this State ~~which~~ that expressly prohibits conduct
6 outside the State, when the ~~actor~~ person knows or should know that ~~his~~ the person's
7 conduct affects an interest of the State protected by that statute; or

8 G. Jurisdiction is otherwise provided by law.

9 **Sec. 5. 17-A MRSA §8, sub-§5, ¶A**, as enacted by PL 1975, c. 499, §1, is
10 amended to read:

11 A. Any crime based upon breach of fiduciary obligation, within one year after
12 discovery of the crime by an aggrieved party or by a person who has a legal duty to
13 represent an aggrieved party, and who is ~~himself~~ not a party to the crime, whichever
14 occurs first; ~~or~~

15 **Sec. 6. 17-A MRSA §10-A, sub-§1**, as enacted by PL 1981, c. 324, §12, is
16 amended to read:

17 1. ~~No~~ A criminal proceeding may not be commenced against any person who had
18 not attained ~~his 18th birthday~~ 18 years of age at the time of the alleged crime, except as
19 the result of a finding of probable cause authorized by Title 15, section 3101, subsection
20 4, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided
21 in Title 15, section 3101, subsection 2.

22 **Sec. 7. 17-A MRSA §16**, as amended by PL 1979, c. 127, §125, is further
23 amended to read:

24 **§16. Warrantless arrests by a private person**

25 Except as otherwise specifically provided, a private person ~~shall have~~ has the
26 authority to arrest without a warrant:

27 1. Any person who ~~he~~ the private person has probable cause to believe has
28 committed or is committing:

29 A. Murder; or

30 B. Any Class A, Class B or Class C crime.

31 2. Any person who, in fact, is committing in ~~his~~ the private person's presence and in
32 a public place: any of the Class D or Class E crimes described in section 207; 209; 211;
33 254; 255; 501, subsection 2; 503; 751; 806 or 1002.

34 ~~A. Any of the Class D or Class E crimes described in sections 207; 209; 211; 254;~~
35 ~~255; 501, subsection 2; 503; 751; 806 or 1002.~~

36 3. For the purposes of subsection 2, in the presence has the same meaning given in
37 section 15, subsection 2.

1 **Sec. 8. 17-A MRSA §35**, as enacted by PL 1981, c. 324, §14, is amended to read:

2 **§35. Definitions of culpable states of mind**

3 **1. "Intentionally."**

4 A. A person acts intentionally with respect to a result of ~~his~~ the person's conduct
5 when it is ~~his~~ the person's conscious object to cause such a result.

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

8 **2. "Knowingly."**

9 A. A person acts knowingly with respect to a result of ~~his~~ the person's conduct
10 when ~~he~~ the person is aware that it is practically certain that ~~his~~ the person's conduct
11 will cause such a result.

12 B. A person acts knowingly with respect to attendant circumstances when ~~he~~ the
13 person is aware that such circumstances exist.

14 **3. "Recklessly."**

15 A. A person acts recklessly with respect to a result of ~~his~~ the person's conduct when
16 ~~he~~ the person consciously disregards a risk that ~~his~~ the person's conduct will cause
17 such a result.

18 B. A person acts recklessly with respect to attendant circumstances when ~~he~~ the
19 person consciously disregards a risk that such circumstances exist.

20 C. For purposes of this subsection, the disregard of the risk, when viewed in light of
21 the nature and purpose of the person's conduct and the circumstances known to ~~him~~
22 the person, must involve a gross deviation from the standard of conduct that a
23 reasonable and prudent person would observe in the same situation.

24 **4. "Criminal negligence."**

25 A. A person acts with criminal negligence with respect to a result of ~~his~~ the person's
26 conduct when ~~he~~ the person fails to be aware of a risk that ~~his~~ the person's conduct
27 will cause such a result.

28 B. A person acts with criminal negligence with respect to attendant circumstances
29 when ~~he~~ the person fails to be aware of a risk that such circumstances exist.

30 C. For purposes of this subsection, the failure to be aware of the risk, when viewed
31 in light of the nature and purpose of the person's conduct and the circumstances
32 known to ~~him~~ the person, must involve a gross deviation from the standard of
33 conduct that a reasonable and prudent person would observe in the same situation.

34 **5. "Culpable."**A person acts culpably when ~~he~~ the person acts with the intention,
35 knowledge, recklessness or criminal negligence as is required.

36 **Sec. 9. 17-A MRSA §36, sub-§3**, as enacted by PL 1981, c. 324, §14, is amended
37 to read:

1 3. Although ignorance or mistake would otherwise afford a defense to the crime
2 charged, the defense is not available if the defendant would be guilty of another crime
3 had the situation been as ~~he~~ the defendant supposed.

4 **Sec. 10. 17-A MRSA §36, sub-§4**, as enacted by PL 1981, c. 324, §14, is
5 amended to read:

6 4. It is an affirmative defense if the defendant engages in conduct ~~which he~~ that the
7 defendant believes does not legally constitute a crime if:

8 A. The statute violated is not known to the defendant and has not been published or
9 otherwise reasonably made available prior to the conduct alleged; or

10 B. The defendant acts in reasonable reliance upon an official statement, afterward
11 determined to be invalid or erroneous, contained in:

12 (1) A statute, ordinance or other enactment;

13 (2) A final judicial decision, opinion or judgment;

14 (3) An administrative order or grant of permission; or

15 (4) An official interpretation of the public officer or body charged by law with
16 responsibility for the interpretation, administration or enforcement of the statute
17 defining the crime. This subsection does not impose any duty to make any such
18 official interpretation.

19 **Sec. 11. 17-A MRSA §37, sub-§2**, as enacted by PL 1981, c. 324, §14, is
20 amended to read:

21 2. When recklessness establishes an element of the offense, if ~~the actor~~ a person, due
22 to self-induced intoxication, is unaware of a risk of which ~~he~~ the person would have been
23 aware had ~~he~~ the person not been intoxicated, such unawareness is immaterial.

24 **Sec. 12. 17-A MRSA §37, sub-§3**, as enacted by PL 1981, c. 324, §14, is
25 amended to read:

26 3. As used in this section:

27 A. "Intoxication" means a disturbance of mental capacities resulting from the
28 introduction of alcohol, drugs or similar substances into the body; and

29 B. "Self-induced intoxication" means intoxication caused when ~~the actor~~ a person
30 intentionally or knowingly introduces into ~~his~~ the person's body substances ~~which~~
31 that the actor person knows or ought to know tend to cause intoxication, unless ~~he~~ the
32 person introduces them pursuant to medical advice or under such duress as would
33 afford a defense to a charge of crime.

34 **Sec. 13. 17-A MRSA §57**, as amended by PL 1977, c. 510, §25-A, is further
35 amended to read:

1 **§57. Criminal liability for conduct of another; accomplices**

2 1. A person may be guilty of a crime if it is committed by the conduct of another
3 person for which ~~he~~ the person is legally accountable as provided in this section.

4 2. A person is legally accountable for the conduct of another person when:

5 A. Acting with the intention, knowledge, recklessness or criminal negligence that is
6 sufficient for the commission of the crime, ~~he~~ the person causes an innocent person,
7 or a person not criminally responsible, to engage in such conduct; or

8 B. ~~He~~ The person is made accountable for the conduct of such other person by the
9 law defining the crime; or

10 C. ~~He~~ The person is an accomplice of such other person in the commission of the
11 crime, as provided in subsection 3.

12 3. A person is an accomplice of another person in the commission of a crime if:

13 A. With the intent of promoting or facilitating the commission of the crime, ~~he~~ the
14 person solicits such other person to commit the crime, or aids or agrees to aid or
15 attempts to aid such other person in planning or committing the crime. A person is an
16 accomplice under this subsection to any crime the commission of which was a
17 reasonably foreseeable consequence of ~~his~~ the person's conduct; or

18 B. ~~His~~ The person's conduct is expressly declared by law to establish ~~his~~ the person's
19 complicity.

20 4. A person who is legally incapable of committing a particular crime ~~himself~~ may
21 be guilty thereof if it is committed by the conduct of another person for which ~~he~~ the
22 person is legally accountable.

23 5. Unless otherwise expressly provided, a person is not an accomplice in a crime
24 committed by another person if:

25 A. ~~He~~ The person is the victim of that crime; ~~or~~

26 B. The crime is so defined that it cannot be committed without ~~his~~ the person's
27 cooperation; or

28 C. ~~He~~ The person terminates ~~his~~ complicity prior to the commission of the crime by:

29 (1) ~~informing his~~ Informing the person's accomplice that ~~he~~ the person has
30 abandoned the criminal activity; and

31 (2) ~~leaving~~ Leaving the scene of the prospective crime, if ~~he~~ the person is present
32 thereat.

33 6. An accomplice may be convicted on proof of the commission of the crime and of
34 ~~his~~ the accomplice's complicity therein, though the person claimed to have committed the
35 crime has not been prosecuted or convicted, or has been convicted of a different crime or
36 degree of crime, or is not subject to criminal prosecution ~~as a result of immaturity~~
37 pursuant to section 10-A, subsection 1, or has an immunity to prosecution or conviction,
38 or has been acquitted.

1 **Sec. 14. 17-A MRSA §60, sub-§1, ¶B**, as enacted by PL 1975, c. 499, §1, is
2 amended to read:

3 B. The conduct or result specified in the definition of the crime is engaged in or
4 caused by an agent of the organization while acting within the scope of ~~his~~ the agent's
5 office or employment.

6 **Sec. 15. 17-A MRSA §61**, as enacted by PL 1975, c. 499, §1, is amended to read:

7 **§61. Individual liability for conduct on behalf of organization**

8 1. An individual is criminally liable for any conduct ~~he~~ the individual performs in
9 the name of an organization or in its behalf to the same extent as if it were performed in
10 ~~his~~ the individual's own name or behalf. Such an individual ~~shall~~ must be sentenced as if
11 the conduct had been performed in ~~his~~ the individual's own name or behalf.

12 2. If a criminal statute imposes a duty to act on an organization, any agent of the
13 organization having primary responsibility for the discharge of the duty is criminally
14 liable if ~~he~~ the agent recklessly omits to perform the required act, and ~~he shall~~ the agent
15 must be sentenced as if the duty were imposed by law directly upon ~~him~~ the agent.

16 **Sec. 16. 17-A MRSA §101, sub-§1**, as amended by PL 1997, c. 185, §1, is
17 further amended to read:

18 1. The State is not required to negate any facts expressly designated as a "defense,"
19 or any exception, exclusion or authorization that is set out in the statute defining the
20 crime by proof at trial, unless the existence of the defense, exception, exclusion or
21 authorization is in issue as a result of evidence admitted at the trial that is sufficient to
22 raise a reasonable doubt on the issue, in which case the State must disprove its existence
23 beyond a reasonable doubt. This subsection does not require a trial judge to instruct on
24 an issue that has been waived by ~~the defendant~~ a person. The subject of waiver is
25 addressed by the Maine Rules of Criminal Procedure.

26 **Sec. 17. 17-A MRSA §101, sub-§2**, as repealed and replaced by PL 1981, c. 324,
27 §24, is amended to read:

28 2. Where the statute explicitly designates a matter as an "affirmative defense," the
29 matter so designated must be proved by the ~~defendant~~ person by a preponderance of the
30 evidence.

31 **Sec. 18. 17-A MRSA §102, sub-§2, ¶B**, as enacted by PL 1975, c. 499, §1, is
32 amended to read:

33 B. As to persons assisting public servants, by the fact that the public servant to
34 whom assistance was rendered exceeded ~~his~~ the public servant's legal authority or
35 that there was a defect of jurisdiction in the legal process or decree of the court or
36 tribunal, provided the ~~actor~~ person believed the public servant to be engaged in the
37 performance of ~~his~~ the public servant's duties or that the legal process or court decree
38 was competent.

1 **Sec. 19. 17-A MRSA §102-A**, as enacted by PL 1981, c. 324, §25, is amended to
2 read:

3 **§102-A. Military orders**

4 1. It is a defense if the ~~defendant~~ person engaged in the conduct charged to
5 constitute a crime in obedience to an order of ~~his~~ the person's superior in the armed
6 services ~~which he~~ that the person did not know to be unlawful.

7 2. If the ~~defendant~~ person was reckless in failing to know the unlawful nature of
8 such an order, the defense is unavailable in a prosecution for a crime for which
9 recklessness suffices to establish liability.

10 **Sec. 20. 17-A MRSA §103**, as enacted by PL 1975, c. 499, §1, is amended to
11 read:

12 **§103. Competing harms**

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

19 2. When the ~~actor~~ person was reckless or criminally negligent in bringing about the
20 circumstances requiring a choice of harms or in appraising the necessity of ~~his~~ the
21 person's conduct, the justification provided in subsection 1 does not apply in a
22 prosecution for any crime for which recklessness or criminal negligence, as the case may
23 be, suffices to establish criminal liability.

24 **Sec. 21. 17-A MRSA §103-A**, as enacted by PL 1981, c. 324, §26, is amended to
25 read:

26 **§103-A. Duress**

27 1. It is a defense that, when a ~~defendant~~ person engages in conduct ~~which that~~ would
28 otherwise constitute a crime, ~~he~~ the person is compelled to do so by threat of imminent
29 death or serious bodily injury to ~~himself that~~ person or another person or because ~~he~~ that
30 person was compelled to do so by force.

31 2. For purposes of this section, compulsion exists only if the force, threat or
32 circumstances are such as would have prevented a reasonable person in the defendant's
33 situation from resisting the pressure.

34 3. The defense set forth in this section is not available:

35 A. To a person who intentionally or knowingly committed the homicide for which
36 ~~he~~ the person is being tried;

1 B. To a person who recklessly placed ~~himself~~ that person in a situation in which it
2 was reasonably probable that ~~he~~ the person would be subjected to duress; or

3 C. To a person who with criminal negligence placed ~~himself~~ that person in a
4 situation in which it was reasonably probable that ~~he~~ the person would be subjected
5 to duress, whenever criminal negligence suffices to establish culpability for the
6 offense charged.

7 **Sec. 22. 17-A MRSA §104**, as repealed and replaced by PL 1975, c. 740, §26, is
8 amended to read:

9 **§104. Use of force in defense of premises**

10 1. A person in possession or control of premises or a person who is licensed or
11 privileged to be thereon is justified in using nondeadly force upon another person when
12 and to the extent that ~~he~~ the person reasonably believes it necessary to prevent or
13 terminate the commission of a criminal trespass by such other person in or upon such
14 premises.

15 2. A person in possession or control of premises or a person who is licensed or
16 privileged to be thereon is justified in using deadly force upon another person when and
17 to the extent that ~~he~~ the person reasonably believes it necessary to prevent an attempt by
18 the other person to commit arson.

19 3. A person in possession or control of a dwelling place or a person who is licensed
20 or privileged to be therein is justified in using deadly force upon another person:

21 A. Under the circumstances enumerated in section 108; or

22 B. When ~~he~~ the person reasonably believes that deadly force is necessary to prevent
23 or terminate the commission of a criminal trespass by such other person, who ~~he~~ the
24 person reasonably believes:

25 (1) Has entered or is attempting to enter the dwelling place or has surreptitiously
26 remained within the dwelling place without a license or privilege to do so; and

27 (2) Is committing or is likely to commit some other crime within the dwelling
28 place.

29 4. A person may use deadly force under subsection 3, paragraph B; only if ~~he~~ the
30 person first demands the person against whom such deadly force is to be used to
31 terminate the criminal trespass and the ~~other person~~ trespasser fails to immediately
32 comply with the demand, unless ~~he~~ the person reasonably believes that it would be
33 dangerous to ~~himself~~ the person or ~~another~~ a 3rd person to make the demand.

34 5. As used in this section:

35 A. Dwelling place has the same meaning provided in section 2, subsection 10; and

36 B. Premises includes, but is not limited to, lands, private ways and any buildings or
37 structures thereon.

1 **Sec. 23. 17-A MRSA §105**, as amended by PL 1975, c. 740, §27, is further
2 amended to read:

3 **§105. Use of force in property offenses**

4 A person is justified in using a reasonable degree of nondeadly force upon another
5 person when and to the extent that ~~he~~ the person reasonably believes it necessary to
6 prevent what is or reasonably appears to be an unlawful taking of ~~his~~ the person's
7 property, or criminal mischief, or to retake ~~his~~ the person's property immediately
8 following its taking; but ~~he~~ the person may use deadly force only under such
9 circumstances as are prescribed in sections 104, 107, and 108.

10 **Sec. 24. 17-A MRSA §106**, as amended by PL 2003, c. 143, §§1 and 2, is further
11 amended to read:

12 **§106. Physical force by persons with special responsibilities**

13 **1.** A parent, foster parent, guardian or other similar person responsible for the long
14 term general care and welfare of ~~a~~ another person is justified in using a reasonable
15 degree of force against such other person when and to the extent that ~~he~~ the person
16 reasonably believes it necessary to prevent or punish such other person's misconduct. A
17 person to whom such parent, foster parent, guardian or other responsible person has
18 expressly delegated permission to so prevent or punish misconduct is similarly justified in
19 using a reasonable degree of force.

20 **1-A.** For purposes of subsection 1, "reasonable degree of force" is an objective
21 standard. To constitute a reasonable degree of force, the physical force applied to the
22 person may result in no more than transient discomfort or minor temporary marks on that
23 person.

24 **2.** A teacher or other person entrusted with the care or supervision of a person for
25 special and limited purposes is justified in using a reasonable degree of force against any
26 such person who creates a disturbance when and to the extent that ~~he~~ the teacher or other
27 entrusted person reasonably believes it necessary to control the disturbing behavior or to
28 remove a person from the scene of such disturbance.

29 **3.** A person responsible for the general care and supervision of a mentally
30 incompetent person is justified in using a reasonable degree of force against such person
31 who creates a disturbance when and to the extent that ~~he~~ the responsible person
32 reasonably believes it necessary to control the disturbing behavior or to remove such
33 person from the scene of such disturbance.

34 **4.** The justification extended in subsections 2 and 3 does not apply to the intentional
35 or reckless use of force that creates a substantial risk of death, serious bodily injury or
36 extraordinary pain.

37 **5.** A person required by law to enforce rules and regulations, or to maintain decorum
38 or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are

1 assembled, may use nondeadly force when and to the extent that ~~he~~ the person reasonably
2 believes it necessary for such purposes.

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

7 7. A licensed physician, or a person acting under ~~his~~ a licensed physician's direction,
8 may use force for the purpose of administering a recognized form of treatment ~~which he~~
9 that the physician reasonably believes will tend to safeguard the physical or mental health
10 of the patient, provided such treatment is administered:

11 A. With consent of the patient or, if the patient is a minor or incompetent person,
12 with the consent of the person entrusted with ~~his~~ the patient's care and supervision; or

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

16 8. A person identified in this section for purposes of specifying the rule of
17 justification herein provided, is not precluded from using force declared to be justifiable
18 by another section of this chapter.

19 **Sec. 25. 17-A MRSA §107**, as amended by PL 2003, c. 143, §3, is further
20 amended to read:

21 **§107. Physical force in law enforcement**

22 1. A law enforcement officer is justified in using a reasonable degree of nondeadly
23 force upon another person:

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

27 B. ~~To defend himself or herself~~ In self-defense or to defend a 3rd person from what
28 the officer reasonably believes to be the imminent use of unlawful nondeadly force
29 encountered while attempting to effect such an arrest or while seeking to prevent such
30 an escape.

31 2. A law enforcement officer is justified in using deadly force only when the officer
32 reasonably believes such force is necessary:

33 A. ~~To defend himself or herself~~ For self-defense or to defend a 3rd person from what
34 the officer reasonably believes is the imminent use of unlawful deadly force; or

35 B. To effect an arrest or prevent the escape from arrest of a person when the law
36 enforcement officer reasonably believes that the person has committed a crime
37 involving the use or threatened use of deadly force, is using a dangerous weapon in
38 attempting to escape or otherwise indicates that the person is likely to endanger

1 seriously human life or to inflict serious bodily injury unless apprehended without
2 delay; and

3 (1) The law enforcement officer has made reasonable efforts to advise the person
4 that the officer is a law enforcement officer attempting to effect an arrest or
5 prevent the escape from arrest and the officer has reasonable grounds to believe
6 that the person is aware of this advice; or

7 (2) The law enforcement officer reasonably believes that the person to be
8 arrested otherwise knows that the officer is a law enforcement officer attempting
9 to effect an arrest or prevent the escape from arrest.

10 For purposes of this paragraph, "a reasonable belief that another has committed a
11 crime involving use or threatened use of deadly force" means such reasonable belief
12 in facts, circumstances and the law ~~which that~~, if true, would constitute such an
13 offense by that person. If the facts and circumstances reasonably believed would not
14 constitute such an offense, an erroneous but reasonable belief that the law is
15 otherwise justifies the use of deadly force to make an arrest or prevent an escape.

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

18 A. A reasonable degree of nondeadly force when and to the extent that the private
19 person reasonably believes such to be necessary to carry out the officer's direction,
20 unless the private person believes the arrest is illegal; or

21 B. Deadly force only when the private person reasonably believes such to be
22 necessary ~~to defend himself or herself for self-defense or to defend~~ a 3rd person from
23 what the private person reasonably believes to be the imminent use of unlawful
24 deadly force, or when the law enforcement officer directs the private person to use
25 deadly force and the private person believes the officer is authorized to use deadly
26 force under the circumstances.

27 4. A private person acting on ~~his or her~~ that private person's own is justified in
28 using:

29 A. A reasonable degree of nondeadly force upon another person when and to the
30 extent that the private person reasonably believes it necessary to effect an arrest or
31 detention that is lawful for the private person to make or prevent the escape from
32 such an arrest or detention; or

33 B. Deadly force only when the private person reasonably believes such force is
34 necessary:

35 (1) To defend the person or a 3rd person from what the private citizen
36 reasonably believes to be the imminent use of unlawful deadly force; or

37 (2) To effect a lawful arrest or prevent the escape from such arrest of a person
38 who in fact:

39 (a) Has committed a crime involving the use or threatened use of deadly
40 force, or is using a dangerous weapon in attempting to escape; and

1 (b) The private citizen has made reasonable efforts to advise the person that
2 the citizen is a private citizen attempting to effect an arrest or prevent the
3 escape from arrest and has reasonable grounds to believe the person is aware
4 of this advice or the citizen reasonably believes that the person to be arrested
5 otherwise knows that the citizen is a private citizen attempting to effect an
6 arrest or prevent the escape from arrest.

7 5. Except where otherwise expressly provided, a corrections officer, corrections
8 supervisor or law enforcement officer in a facility where persons are confined, pursuant
9 to an order of a court or as a result of an arrest, is justified in using deadly force against
10 such persons under the circumstances described in subsection 2. The officer or another
11 individual responsible for the custody, care or treatment of those persons is justified in
12 using a reasonable degree of nondeadly force when and to the extent the officer or the
13 individual reasonably believes it necessary to prevent any escape from custody or to
14 enforce the rules of the facility.

15 5-A. A corrections officer, corrections supervisor or law enforcement officer is
16 justified in using deadly force against a person confined in the Maine State Prison when
17 the officer or supervisor reasonably believes that deadly force is necessary to prevent an
18 escape from custody. The officer or supervisor shall make reasonable efforts to advise
19 the person that if the attempt to escape does not stop immediately, deadly force will be
20 used. This subsection does not authorize any corrections officer, corrections supervisor
21 or law enforcement officer who is not employed by a state agency to use deadly force.

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

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

28 **Sec. 26. 17-A MRSA §108**, as amended PL 1997, c. 351, §1, is further amended
29 to read:

30 **§108. Physical force in defense of a person**

31 1. A person is justified in using a reasonable degree of nondeadly force upon
32 another person in order to defend ~~himself~~ the person or a 3rd person from what ~~he~~ the
33 person reasonably believes to be the imminent use of unlawful, nondeadly force by such
34 other person, and ~~he~~ the person may use a degree of such force ~~which he~~ that the person
35 reasonably believes to be necessary for such purpose. However, such force is not
36 justifiable if:

37 A. With a purpose to cause physical harm to another person, ~~he~~ the person provoked
38 the use of unlawful, nondeadly force by such other person; or

39 B. ~~He~~ The person was the initial aggressor, unless after such aggression ~~he~~ the
40 person withdraws from the encounter and effectively communicates to such other

1 person ~~his~~ the intent to do so, but the ~~latter~~ other person notwithstanding continues
2 the use or threat of unlawful, nondeadly force; or

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

5 1-A. A person is not justified in using nondeadly force against another person who
6 that person knows or reasonably should know is a law enforcement officer attempting to
7 effect an arrest or detention, regardless of whether the arrest or detention is legal. A
8 person is justified in using the degree of nondeadly force the person reasonably believes
9 is necessary to defend the person or a 3rd person against a law enforcement officer who,
10 in effecting an arrest or detention, uses nondeadly force not justified under section 107,
11 subsection 1.

12 2. A person is justified in using deadly force upon another person:

13 A. When the person reasonably believes it necessary and reasonably believes such
14 other person is:

15 (1) About to use unlawful, deadly force against the person or a 3rd person; or
16 (2) Committing or about to commit a kidnapping, robbery or a violation of
17 section 253, subsection 1, paragraph A, against the person or a 3rd person; or

18 B. When ~~he~~ the person reasonably believes:

19 (1) That such other person has entered or is attempting to enter a dwelling place
20 or has surreptitiously remained within a dwelling place without a license or
21 privilege to do so; and

22 (2) That deadly force is necessary to prevent the infliction of bodily injury by
23 such other person upon ~~himself~~ the person or a 3rd person present in the dwelling
24 place;

25 C. However, a person is not justified in using deadly force as provided in paragraph
26 A, if:

27 (1) With the intent to cause physical harm to another, ~~he~~ the person provokes
28 such other person to use unlawful deadly force against anyone; ~~or~~

29 (2) ~~He~~ The person knows that the person against whom the unlawful deadly
30 force is directed intentionally and unlawfully provoked the use of such force; or

31 (3) ~~He~~ The person knows that ~~he~~ the person or a 3rd person can, with complete
32 safety:

33 (a) ~~retreat~~ Retreat from the encounter, except that ~~he~~ the person or the 3rd
34 person is not required to retreat if ~~he~~ the person or the 3rd person is in ~~his~~ the
35 person's dwelling place and was not the initial aggressor; ~~or~~

36 (b) ~~surrender~~ Surrender property to a person asserting a colorable claim of
37 right thereto; or

38 (c) ~~comply~~ Comply with a demand that ~~he~~ the person abstain from
39 performing an act ~~which he~~ that the person is not obliged to perform.

SUMMARY

1

2 This bill is submitted by the Criminal Law Advisory Committee.

3 The bill amends Part 1 of the Maine Criminal Code to make it gender-neutral.