

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1632

H.P. 1175

House of Representatives, April 25, 2019

An Act Regarding Criminal Procedure with Respect to Allowable Defenses

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator CHENETTE of York and
Representatives: FECTION of Biddeford, HICKMAN of Winthrop, HOBBS of Wells,
McLEAN of Gorham, MOONEN of Portland, PEBWORTH of Blue Hill, RECKITT of South
Portland.

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

2 **Sec. 1. 17-A MRSA §38**, as enacted by PL 1981, c. 324, §14, is amended by
3 adding at the end a new paragraph to read:

4 An actor does not suffer from an abnormal condition of the mind based solely on the
5 discovery of, knowledge about or potential disclosure of the victim's actual or perceived
6 gender, gender identity, gender expression or sexual orientation, including under
7 circumstances in which the victim made an unwanted nonforcible romantic or sexual
8 advance toward the actor or in which the actor and victim dated or had a romantic or
9 sexual relationship.

10 **Sec. 2. 17-A MRSA §108, sub-§3** is enacted to read:

11 **3.** A person is not justified in using force against another based solely on the
12 discovery of, knowledge about or potential disclosure of the victim's actual or perceived
13 gender, gender identity, gender expression or sexual orientation, including under
14 circumstances in which the victim made an unwanted nonforcible romantic or sexual
15 advance toward the person or in which the person and victim dated or had a romantic or
16 sexual relationship.

17 **Sec. 3. 17-A MRSA §201, sub-§4**, as amended by PL 2001, c. 383, §8 and
18 affected by §156, is further amended to read:

19 **4.** For purposes of subsection 3, provocation is adequate if:

20 A. It is not induced by the person; and

21 B. It is reasonable for the person to react to the provocation with extreme anger or
22 extreme fear, provided that evidence demonstrating only that the person has a
23 tendency towards extreme anger or extreme fear is not sufficient, in and of itself, to
24 establish the reasonableness of the person's reaction.

25 For purposes of determining whether extreme anger or extreme fear was brought about by
26 adequate provocation, the provocation was not adequate if it resulted solely from the
27 discovery of, knowledge about or potential disclosure of the victim's actual or perceived
28 gender, gender identity, gender expression or sexual orientation, including under
29 circumstances in which the victim made an unwanted nonforcible romantic or sexual
30 advance toward the person or in which the person and victim dated or had a romantic or
31 sexual relationship.

32 **SUMMARY**

33 This bill prohibits the use of what is referred to as the "gay and trans panic defense."

34 The bill provides that when considering whether a defendant has an abnormal
35 condition of the mind in determining whether a requisite culpable mental state exists in
36 the defendant, a determination of abnormal condition of the mind may not be based on
37 the defendant's discovery of, knowledge about or potential disclosure of the victim's
38 actual or perceived gender, gender identity, gender expression or sexual orientation,

1 including under circumstances in which the victim made an unwanted nonforcible
2 romantic or sexual advance toward the defendant or under circumstances in which the
3 defendant and victim dated or had a romantic or sexual relationship.

4 The bill excludes from the affirmative defense for murder that the defendant acted on
5 the basis of extreme anger or extreme fear based on provocation by prohibiting the
6 alleged cause of provocation from being solely from the discovery of, knowledge about
7 or potential disclosure of the victim's actual or perceived gender, gender identity, gender
8 expression or sexual orientation, including under circumstances in which the victim made
9 an unwanted nonforcible romantic or sexual advance toward the defendant or under
10 circumstances in which the defendant and victim dated or had a romantic or sexual
11 relationship.

12 The bill provides that a person's discovery of, knowledge about or potential
13 disclosure of the victim's actual or perceived gender, gender identity, gender expression
14 or sexual orientation, including under circumstances in which the victim made an
15 unwanted nonforcible romantic or sexual advance toward the defendant or under
16 circumstances in which the defendant and victim dated or had a romantic or sexual
17 relationship, may not be used as the sole justification for the use of force against the
18 victim.