

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1368

6  
7 S.P. 447

In Senate, March 29, 1983

8 Referred to the Committee on Judiciary. Sent down for concurrence and  
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Pearson of Penobscot.

Cosponsors: Senator Diamond of Cumberland, Representative Cashman  
of Old Town and Representaive Cooper of Windham.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Make Extreme Anger or Extreme  
18 Fear Brought About by Adequate Provocation  
19 an Affirmative Defense which Reduces Murder  
20 to Manslaughter, and to Create the Crime of  
21 Intentional or Knowing Manslaughter.  
22

23 Be it enacted by the People of the State of Maine as  
24 follows:

25 Sec. 1. 17-A MRSa §201, sub-§§3, 4 and 5 are  
26 enacted to read:

27 3. It is an affirmative defense to a prosecution  
28 under subsection 1, paragraph A, that the actor  
29 causes the death while under the influence of extreme  
30 anger or extreme fear brought about by adequate  
31 provocation.

32 4. For purposes of subsection 3, provocation is  
33 adequate if:

1           A. It is not induced by the actor; and

2           B. It is reasonable for the actor to react to  
3 the provocation with extreme anger or extreme  
4 fear, provided that evidence demonstrating only  
5 that the actor has a tendency towards extreme  
6 anger or extreme fear shall not be sufficient, in  
7 and of itself, to establish the reasonableness of  
8 his reaction.

9           5. Nothing contained in subsection 3 may consti-  
10 tute a defense to a prosecution for, or preclude con-  
11 viction of, manslaughter or any other crime.

12           Sec. 2. 17-A MRSA §203, sub-§1, ¶B, as repealed  
13 and replaced by PL 1977, c. 510, §40, is repealed and  
14 the following enacted in its place:

15           B. Intentionally or knowingly causes the death  
16 of another human being under circumstances which  
17 do not constitute murder because he causes the  
18 death while under the influence of extreme anger  
19 or extreme fear brought about by adequate provo-  
20 cation. Adequate provocation has the same mean-  
21 ing as in section 201, subsection 4. The fact  
22 that he causes the death while under the influ-  
23 ence of extreme anger or extreme fear brought  
24 about by adequate provocation constitutes a miti-  
25 gating circumstance reducing murder to manslaugh-  
26 ter and need not be proved in any prosecution  
27 initiated under this subsection.

28           Sec. 3. 17-A MRSA §203, sub-§3, as enacted by PL  
29 1977, c. 510, §40, is repealed.

#### 30   STATEMENT OF FACT

31           The purpose of this bill is to correct the  
32 unfairness inherent in Maine homicide law.

33           Section 1 amends Title 17-A, section 201, the  
34 murder statute, by making evidence of a defendant's  
35 extreme anger or extreme fear brought about by ade-  
36 quate provocation an affirmative defense to murder  
37 which, if proved by a preponderance of the evidence  
38 by the defendant, reduces murder to manslaughter.  
39 The section changes current law in 2 ways.

1 First, it changes the mitigating circumstance of  
2 extreme anger or extreme fear brought about by ade-  
3 quate provocation which reduces murder to manslaugh-  
4 ter from a punishment category, currently Title 17-A,  
5 section 203, subsection 1, paragraph B, to a defense.

6 Second, it makes that defense an affirmative one,  
7 meaning that instead of requiring the State to dis-  
8 prove beyond a reasonable doubt the largely subjec-  
9 tive state of mind of the defendant, the law would  
10 require the defendant to prove it by preponderance of  
11 the evidence, much like the insanity defense. A  
12 somewhat similar statutory scheme was in effect in  
13 Maine before the United States Supreme Court decided  
14 Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44  
15 L.Ed.2d 508 (1975). The court found Maine's scheme  
16 unconstitutional because the defendant bore the risk  
17 of nonpersuasion on the issue of malice, an element  
18 of the crime of murder which could be presumed unless  
19 the defendant proved sudden provocation. This shift-  
20 ing of the burden of proof violated due process under  
21 In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25  
22 L.Ed.2d 368 (1970). The United States Supreme Court  
23 upheld soon thereafter the New York statutory scheme  
24 on which this bill is modeled. In Patterson v. New  
25 York, 432 U.S. 197, 97 S.Ct. 2379, 53 L.Ed.2d 281  
26 (1977), the court held that due process was satisfied  
27 as long as the state was required to prove each ele-  
28 ment of the crime of murder - intentionally causing  
29 the death of another person - beyond a reasonable  
30 doubt. Requiring a defendant to prove the mitigating  
31 circumstance of emotional disturbance - in Maine,  
32 extreme anger or extreme fear brought about by ade-  
33 quate provocation - to reduce the crime from murder  
34 to manslaughter was found to be perfectly consistent  
35 with due process; no element of murder was being pre-  
36 sumed unless the defendant could disprove it, as in  
37 Wilbur.

38 Sections 2 and 3 correct another problem affect-  
39 ing both the State and defendant. Currently, the  
40 State cannot charge the crime of manslaughter when a  
41 person kills intentionally or knowingly but where  
42 the mitigating circumstance of extreme anger or  
43 extreme fear brought about by adequate provocation is  
44 clearly present. The only crime chargeable for an  
45 intentional or knowing killing is murder. The

1 unfairness lies in the state's legal inability to  
2 charge manslaughter even when it is willing to con-  
3 cede the mitigating circumstance at the outset. The  
4 defendant thus charged stands in jeopardy of being  
5 convicted of murder for what is really not murder at  
6 all, but voluntary manslaughter. This legally re-  
7 quired overcharging brings discredit to the judicial  
8 system and serves no public policy.

9 In cases where the State believes a murder charge  
10 is appropriate and does not concede the mitigating  
11 circumstance, it would still, pursuant to section 1  
12 of this bill, be able to charge murder and put the  
13 defendant to the task of proving his extreme anger or  
14 fear.

15

1911031583