

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1934

H.P. 1420

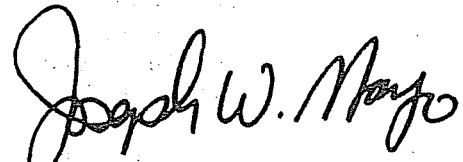
House of Representatives, February 24, 1994

**An Act to Limit the Use of Force against Law Enforcement Officers
Engaged in Searches or Seizures.**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden.
Cosponsored by Representatives: AULT of Wayne, BAILEY of Township 27, BENNETT of
Norway, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DONNELLY of Presque Isle,
GREENLAW of Standish, LIBBY of Kennebunk, LINDAHL of Northport, MARSH of West
Gardiner, PENDEXTER of Scarborough, TUFTS of Stockton Springs.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

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6 Whereas, it is vitally important that the law be clarified
concerning the use of force against law enforcement officers who
are conducting searches and seizures in good faith without using
8 unlawful force; and

10 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
12 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
14 safety; now, therefore,

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

18 **Sec. 1. 17-A MRSA §104, sub-§§1 and 3,** as enacted by PL 1975,
c. 740, §26, are amended to read:

20 1. A Except as provided in section 104-A, a person in
22 possession or control of premises or a person who is licensed or
privileged to be thereon is justified in using nondeadly force
24 upon another when and to the extent that he reasonably believes
it necessary to prevent or terminate the commission of a criminal
26 trespass by such other in or upon such premises.

28 3. A Except as provided in section 104-A, a person in
possession or control of a dwelling place or a person who is
30 licensed or privileged to be therein is justified in using deadly
force upon another:

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

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

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

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

48 **Sec. 2. 17-A MRSA §104-A** is enacted to read:

2 §104-A. Limitation on the use of force against a law enforcement
3 officer engaged in a search or a seizure

4 1. A person is not justified in using force against a law
5 enforcement officer engaged in a search or a seizure if:

6 A. The officer has made reasonable efforts to advise the
7 person that the officer is a law enforcement officer acting
8 in accordance with that officer's duty;

9 B. The person knows or has reason to know that the officer
10 is a law enforcement officer acting in accordance with that
11 officer's duty;

12 C. The officer acts in good faith; and

13 D. The officer does not use unlawful force in carrying out
14 the search or seizure.

15 **COMMENT**

16 This section is designed to limit the use of permissible
17 force against a law enforcement officer when that officer is
18 engaged in the performance of his or her official duties in
19 conducting a search or a seizure. More specifically, it is
20 intended to overrule the result in State v. Clisham, 614 A.2d
21 1297 (Me. 1992), and a reading of section 104 that allows for a
22 violent response by a private citizen to a nonconsensual search
23 by a police officer.

24 Subsection (1)(A) of this section, like subsection
25 107(2)(b)(1), contains a requirement that the officer make
26 reasonable efforts to advise the person that he or she is a law
27 enforcement officer acting in accordance with his or her official
28 duties. If the person subject to the officer's authority knows
29 or has reason to know that this is in fact the case, that person
30 would be denied a defense under section 104 or 105 if he or she
31 threatened to use, or actually used, force against the officer.
32 Under subsection (1)(C) the officer must have acted in good faith
33 in initiating the search or seizure.

34 The statute leaves intact, in subsection (1)(D), the right
35 of self-defense allowed a citizen under section 108 against
36 unlawful or excessive force used by the officer. The person
37 takes his or her chances, however, on later being able to show
38 that the officer was not justified under section 107. State v.
39 Austin, 381 A.2d 652 (Me. 1978).

40 **Emergency clause.** In view of the emergency cited in the
41 preamble, this Act takes effect when approved.

STATEMENT OF FACT

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This bill enacts a new provision in the Maine Criminal Code that provides that a person is not justified in using force against a law enforcement officer engaged in a search or a seizure if certain circumstances are met.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.