

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 292

H.P. 228

House of Representatives, January 21, 1997

An Act to Modify Waiver of a Defense in the Criminal Law.

Reported by Representative THOMPSON for the Criminal Law Advisory Commission under the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

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

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Sec. 1. 17-A MRSA §101, sub-§1, as repealed and replaced by PL 1981, c. 324, §24, is amended to read:

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

SUMMARY

This change to section 101, subsection 1 of the Maine Criminal Code is intended to expressly overrule State v. Berube, 669 A.2d 170 (Me. 1995) and predecessor cases interpreting section 101, subsection 1 (formerly §5(2)) as requiring that a jury instruction be given as to any generated statutory defense, absent an express waiver by a defendant. This change also seeks to make clear that subsection 1 is not properly a source of law respecting waiver decisions, the proper source being instead the Supreme Judicial Court exercising its rule-making authority.