## 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)



## 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

Legislative Document

No. 1821

H.P. 1267

House of Representatives, March 11, 1999

An Act to Expressly Treat Voluntary Conduct as a Defense in the Maine Criminal Code.

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

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

OSEPH W. MAYO, Clerk

	Be it enacted by the People of the State of Maine as follows:
4	Sec. 1. 17-A MRSA §31, as enacted by PL 1981, c. 324, §14, is repealed.
6	Sec. 2. 17-A MRSA §103-B is enacted to read:
8	§103-B. Involuntary conduct
10 12	1. It is a defense that, when a person causes a result or engages in forbidden conduct, the person's act or omission to act is involuntary.
14 16	2. An omission to act is involuntary if the person fails to perform an act and:
18	A. The person is not capable of performing the act;
20	B. The person has no legal duty to perform the act; or
22	C. The person has no opportunity to perform the act.
24	3. Possession of something is involuntary if the person:
26	A. Did not knowingly procure or receive the thing possessed; or
28	B. Was not aware of the person's control of the possession for a sufficient period to have been able to terminate the
30	person's possession of the thing.
32	SUMMARY
34	
36	This bill removes treatment of the issue of "voluntary conduct" from the Maine Revised Statutes, Title 17-A, section 31 in chapter 2 of the Maine Criminal Code to a new section 103-B in
38	chapter 5. New section 103-B expressly treats the issue as a "defense" under section 101, subsection 4 of the Maine Criminal
40	Code, renames the issue "involuntary conduct" and describes what constitutes involuntary rather than voluntary conduct. Although
42	in <u>State v. Case</u> , 672 A.2d 586 (Me. 1996) the Law Court treated section 31 as a "defense," in <u>State v. Therrien</u> , 695 A.2d 119
44	(Me. 1997), p. 123 n. 7 the Court stated that "Section 31 does
46	not fall within the purview of and must be distinguished from the general rules governing defenses; affirmative defenses and justification set forth in Chapter 5 of 17-A M.R.S.A (1983)."

Page 1-LR1581(1)

State v. Therrien leaves unclear how the issue of "voluntary conduct" is to be legally treated, in view of the court's

assertion that the general rules of chapter 5 are inapplicable.

The bill seeks to rectify this ambiguity.

48

50