

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2069

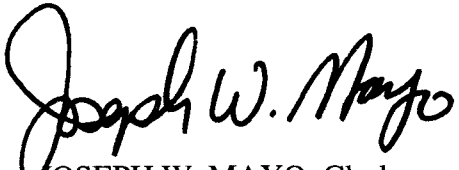
H.P. 1448

House of Representatives, March 30, 1999

**An Act to Establish a Critical Incident Review Panel Regarding Physical Force Used by Officers Causing Serious Bodily Injury or Death to Another Person.**

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

  
JOSEPH W. MAYO, Clerk

Presented by Representative LaVERDIERE of Wilton.  
Cosponsored by Representatives: GREEN of Monmouth, JABAR of Waterville, McALEVEY of Waterboro, Senator: TREAT of Kennebec.

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

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4       **Sec. 1. 5 MRSA §200-A, last ¶**, as enacted by PL 1995, c. 200, §1, is amended to read:

6       The Attorney General has exclusive responsibility for the  
8       direction and control of any criminal investigation of a law  
10       enforcement officer who, while acting in the performance of that  
12       law enforcement officer's duties, uses deadly force, as defined  
14       in Title 17-A, section 2, subsection 8. Any law enforcement  
16       agency whose officer uses deadly force shall notify, as soon as  
18       practicable, the Attorney General of the event. Any investigation conducted by the Attorney General of any incident in which a law enforcement officer used physical force in performing that officer's duties that resulted in serious bodily injury or death of another person must be completed within 30 days. The Attorney General may obtain for good cause shown an extension to complete the investigation.

20       **Sec. 2. 25 MRSA §2803-B, sub-§6** is enacted to read:

22       **6. Investigation; deadly force by law enforcement officer.**  
24       Notwithstanding any policy adopted pursuant to this section, any investigation conducted by a law enforcement agency of any incident in which a law enforcement officer used physical force in performing that officer's duties that resulted in serious bodily injury or death to another person must be completed within 30 days. The law enforcement agency may obtain for good cause shown an extension to complete the investigation.

30       **Sec. 3. 25 MRSA §2810** is enacted to read:

32       **§2810. Critical incident review panel**

34       The board shall establish a critical incident review panel, referred to in this section as the "panel," to review the use of physical force by a law enforcement officer or a corrections officer. The panel must be established within 30 days of the dissemination to the public of the findings of an investigation by the Attorney General of any incident in which a law enforcement officer or a corrections officer used physical force in performing that officer's duties that resulted in serious bodily injury or death to another person. A law enforcement officer or a corrections officer may not be placed on administrative leave during the critical incident review conducted by the panel.

48       **1. Members.** The chair of the board shall appoint 5 members to serve on the panel. One member must be a member of the Attorney General's staff. Depending on who is involved in the

2 incident being reviewed, 2 of the members must be either law  
4 enforcement officers holding academy certification under section  
6 2804-C and working as full-time law enforcement officers or  
8 corrections officers holding academy certification under section  
10 2804-D and working as full-time corrections officers. Two of the  
12 members must be citizens who have never been sworn members of a  
14 law enforcement agency or employed as corrections officers. The  
16 chair of the board shall designate one of the persons appointed  
18 to the panel to serve as the chair of the panel.

20 2. Review. The panel shall conduct a review of the  
22 incident involving the use of physical force by a law enforcement  
24 or corrections officer for the purpose of determining:

26 A. The facts of the incident;

28 B. Whether relevant policy was clearly understandable and  
30 effective for the particular circumstances;

32 C. Whether compliance with relevant policy occurred;

34 D. Whether relevant current training curriculum was  
36 sufficient and effective for the particular circumstances;

38 E. Whether changes in relevant current policy, practice,  
40 procedures or training are recommended;

42 F. Whether any remedial action should be recommended;

44 G. Whether a recommendation should be made to the board  
46 respecting certification or discipline; and

48 H. Whether any other recommendation should be made.

50 3. Access to records; deliberations not public  
52 proceedings. The panel is granted access to the records and  
54 findings of the Attorney General, the records and findings of any  
56 internal or administrative investigation undertaken by the  
58 department employing the law enforcement or corrections officer  
60 who used physical force, the records and findings of the board if  
62 action was contemplated or taken pursuant to section 2806 and  
64 personnel records maintained by the department employing or any  
66 department that previously employed the law enforcement or  
68 corrections officer who used physical force. To the extent the  
70 panel determines it relevant, the panel must also be granted  
72 access to similar records relating to prior incidents of the use  
74 of force that have been investigated by the Attorney General.  
76 The grant of access to the records or findings described in this  
78 subsection do not constitute a public right to access that does  
80 not otherwise exist. The review and deliberations of the panel

do not constitute public proceedings as defined in Title 1,  
section 402, subsection 2.

**4. Public report.** The panel, at the conclusion of its review and deliberations, shall issue a public report stating its determinations with respect to each of the factors identified in subsection 2. Prior to the panel releasing its public report, the panel or a representative of the panel shall meet with the chief of the law enforcement agency or the Commissioner of Corrections to discuss the panel's findings.

**5. Admissibility of public report in subsequent proceedings.** The public report issued pursuant to subsection 4 is not admissible in any litigation arising out of the incident. The testimony of panel members on the subjects covered by this report are not discoverable or admissible in any subsequent proceeding, nor may the members of the panel be subject to subpoena for trial or deposition with respect to the subjects covered by their report, except to the extent that a party seeking such testimony can show that a member of the panel possesses firsthand knowledge with respect to factual issues that is not available from any other source. The opinions and conclusions of the panel or of individual panel members are not discoverable or admissible under any circumstances.

**6. Unlawful dissemination.** A person is guilty of unlawful dissemination of information relating to the panel if that person knowingly disseminates confidential information in violation of this section. Unlawful dissemination of information relating to the panel is a Class E crime.

## SUMMARY

This bill requires that any investigation conducted by the Attorney General or a law enforcement agency of any incident in which a law enforcement officer used physical force in performing that officer's duties that resulted in serious bodily injury or death to another person be completed within 30 days.

The bill also establishes a critical incident review panel to review the use of physical force by law enforcement or corrections officers that results in serious bodily injury or death to another person.