

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1020

H.P. 741

House of Representatives, February 25, 2003

**An Act To Amend the Maine Criminal Code as Recommended by
the Criminal Law Advisory Commission**

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

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

4 **Sec. 1. 17-A MRSA §106, sub-§1-A** is enacted to read:

6 1-A. For purposes of subsection 1, "reasonable degree of
8 force" is an objective standard. To constitute a reasonable
10 degree of force, the physical force applied to the person may
12 result in no more than transient discomfort or minor temporary
14 marks on that person.

16 **Sec. 2. 17-A MRSA §106, sub-§4**, as enacted by PL 1975, c. 499,
18 §1, is amended to read:

20 **4.** The justification extended in subsections 1, 2 and 3
22 does not apply to the purposeful intentional or reckless use of
24 force that creates a substantial risk of death, serious bodily
26 injury, or extraordinary pain.

28 **Sec. 3. 17-A MRSA §107**, as amended by PL 1995, c. 215, §§2
30 and 3, is further amended to read:

32 **§107. Physical force in law enforcement**

34 **1.** A law enforcement officer is justified in using a
36 reasonable degree of nondeadly force upon another person:

38 **A.** When and to the extent that he the officer reasonably
40 believes it necessary to effect an arrest or to prevent the
42 escape from custody of an arrested person, unless he the
44 officer knows that the arrest or detention is illegal; or

46 **B.** To defend himself or herself or a 3rd person from what
48 he the officer reasonably believes to be the imminent use of
50 unlawful nondeadly force encountered while attempting to
effect such an arrest or while seeking to prevent such an
escape.

2. A law enforcement officer is justified in using deadly
force only when he the officer reasonably believes such force is
necessary:

A. To defend himself or herself or a 3rd person from what
he the officer reasonably believes is the imminent use of
unlawful deadly force; or

B. To effect an arrest or prevent the escape from arrest of
a person when the law enforcement officer reasonably
believes that the person has committed a crime involving the
use or threatened use of deadly force, is using a dangerous
weapon in attempting to escape or otherwise indicates that

2 the person is likely to endanger seriously human life or to
3 inflict serious bodily injury unless apprehended without
4 delay; and

6 (1) The law enforcement officer has made reasonable
7 efforts to advise the person that the officer is a law
8 enforcement officer attempting to effect an arrest or
9 prevent the escape from arrest and the officer has
10 reasonable grounds to believe that the person is aware
11 of this advice; or

12 (2) The law enforcement officer reasonably believes
13 that the person to be arrested otherwise knows that the
14 officer is a law enforcement officer attempting to
15 effect an arrest or prevent the escape from arrest.

16 For purposes of this paragraph, "a reasonable belief that
17 another has committed a crime involving use or threatened
18 use of deadly force" means such reasonable belief in facts,
19 circumstances and the law which, if true, would constitute
20 such an offense by that person. If the facts and
21 circumstances reasonably believed would not constitute such
22 an offense, an erroneous but reasonable belief that the law
23 is otherwise justifies the use of deadly force to make an
24 arrest or prevent an escape.

26
27 3. A private person who has been directed by a law
28 enforcement officer to assist ~~him~~ the officer in effecting an
29 arrest or preventing an escape from custody is justified in
30 using:

32 A. A reasonable degree of nondeadly force when and to the
33 extent that he the private person reasonably believes such
34 to be necessary to carry out the officer's direction, unless
35 he the private person believes the arrest is illegal; or

36
37 B. Deadly force only when he the private person reasonably
38 believes such to be necessary to defend himself or herself
39 or a 3rd person from what he the private person reasonably
40 believes to be the imminent use of unlawful deadly force, or
41 when the law enforcement officer directs ~~him~~ the private
42 person to use deadly force and he the private person
43 believes ~~such~~ the officer ~~himself~~ is authorized to use
44 deadly force under the circumstances.

46 4. A private person acting on his or her own is justified
47 in using:

48
49 A. A reasonable degree of nondeadly force upon another when
50 and to the extent that he the private person reasonably

believes it necessary to effect an arrest or detention which
2 that is lawful for ~~him~~ the private person to make or prevent
4 the escape from such an arrest or detention; or

B. Deadly force only when the private person reasonably
6 believes such force is necessary:

8 (1) To defend ~~he~~ the person or a 3rd person from what
10 the private citizen reasonably believes to be the
imminent use of unlawful deadly force; or

12 (2) To effect a lawful arrest or prevent the escape
14 from such arrest of a person who in fact:

16 (a) Has committed a crime involving the use or
18 threatened use of deadly force, or is using a
dangerous weapon in attempting to escape; and

20 (b) The private citizen has made reasonable
22 efforts to advise the person that the citizen is a
24 private citizen attempting to effect an arrest or
prevent the escape from arrest and has reasonable
26 grounds to believe the person is aware of this
advice or the citizen reasonably believes that the
28 person to be arrested otherwise knows that the
citizen is a private citizen attempting to effect
an arrest or prevent the escape from arrest.

30 5. Except where otherwise expressly provided, a corrections
32 officer, corrections supervisor or law enforcement officer in a
34 facility where persons are confined, pursuant to an order of a
36 court or as a result of an arrest, is justified in using deadly
38 force against such persons under the circumstances described in
40 subsection 2. The officer or another individual responsible for
the custody, care or treatment of those persons is justified in
using a reasonable degree of nondeadly force when and to the
extent the officer or the individual reasonably believes it
necessary to prevent any escape from custody or to enforce the
rules of the facility.

42 5-A. A corrections officer, corrections supervisor or law
44 enforcement officer is justified in using deadly force against a
46 person confined in the Maine State Prison ~~or--the--Maine~~
48 ~~Correctional-Institution--Warren~~ when the officer or supervisor
reasonably believes that deadly force is necessary to prevent an
escape from custody. The officer or supervisor shall make
reasonable efforts to advise the person that if the attempt to
escape does not stop immediately, deadly force will be used.
This subsection does not authorize any corrections officer,

2 corrections supervisor or law enforcement officer who is not
employed by a state agency to use deadly force.

4 7. Use of force that is not justifiable under this section
in effecting an arrest does not render illegal an arrest that is
6 otherwise legal and the use of such unjustifiable force does not
render inadmissible anything seized incident to a legal arrest.

8
10 8. Nothing in this section constitutes justification for
conduct by a law enforcement officer or a private person
amounting to an offense against innocent persons whom he the
12 officer or private person is not seeking to arrest or retain in
custody.

14 **Sec. 4. 17-A MRSA §210, sub-§1**, as amended by PL 2001, c. 383,
16 §11 and affected by §156, is further amended to read:

18 1. A person is guilty of terrorizing if that person in fact
communicates to any person a threat to commit or to cause to be
20 committed a crime of violence dangerous to human life, against
the person to whom the communication is made or another, and the
22 natural and probable consequence of such a threat, whether or not
such consequence in fact occurs, is:

24 A. To place the person to whom the threat is communicated
26 or the person threatened in reasonable fear that the crime
will be committed. Violation of this paragraph is a Class D
28 crime; or

30 B. To cause evacuation of a building, place of assembly or
facility of public transport or to cause the occupants of a
32 building to be moved to or required to remain in a
designated secured area. Violation of this paragraph is a
34 Class C crime.

36 **Sec. 5. 17-A MRSA §451, sub-§3-A**, as enacted by PL 1981, c.
38 317, §13, is repealed.

40 **Sec. 6. 17-A MRSA §452, sub-§2-A**, as amended by PL 1983, c.
42 450, §3, is repealed.

44 **Sec. 7. 17-A MRSA §454, sub-§1, ¶A**, as amended by PL 2001, c.
46 383, §63 and affected by §156, is further amended to read:

48 A. Induces or otherwise causes, or attempts to induce or
cause, a witness or informant:

50 (1) To testify or inform ~~falsely~~ in a manner the actor
knows to be false; or

(2) To withhold testimony, information or evidence.

Violation of this paragraph is a Class C crime;

Sec. 8. 17-A MRSA §1108, sub-§5, as enacted by PL 2001, c. 419, §20, is amended to read:

5. For purposes of the causation required by subsection 1, engaging in an act of deception described in subsection 2, paragraph A or B ~~is deemed to have~~ gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303, that the act of deception in fact resulted in the acquisition of any drugs prescribed to that person by that prescribing health care provider or person acting under the direction or supervision of that prescribing health care provider.

Sec. 9. 17-A MRSA §1158, first ¶, as repealed and replaced by PL 2001, c. 667, Pt. A, §37 and affected by §38, is amended to read:

As part of every judgment ~~of conviction~~ and sentence imposed, a firearm must be forfeited to the State if that firearm:

Sec. 10. 17-A MRSA §1159 is enacted to read:

§1159. Recalcitrant witness in execution of sentence involving imprisonment

In the event a witness in a grand jury or criminal proceeding has been ordered confined by a court of record in the State as a remedial sanction for refusing to comply with an order of the court to testify or provide evidence, and that witness is already in execution of an undischarged term of imprisonment on a sentence in the State, that court may order that the undischarged term of imprisonment be tolled for the duration of the coercive imprisonment.

Sec. 11. 17-A MRSA §1252, sub-§2, ¶A, as amended by PL 1995, c. 473, §1, is repealed and the following enacted in its place:

A. In the case of a Class A crime, the court shall set a definite period not to exceed 40 years. The Supreme Judicial Court may establish sentencing factors within the sentencing range;

Sec. 12. 17-A MRSA §1252, sub-§4-A, as repealed and replaced by PL 2001, c. 667, Pt. A, §39 and affected by §40, is amended to read:

2 4-A. If the State pleads and proves that, at the time any
4 crime, excluding murder, under chapter 9, 11, 13 or 27 was
6 committed, the defendant had been convicted of 2 or more crimes
8 violating chapter 9, 11, 13 or 27 or essentially similar crimes
10 in other jurisdictions, the sentencing class for the crime is one
12 class higher than it would otherwise be. In the case of a Class
14 A crime, the sentencing class is not increased, but the prior
16 record must be given serious consideration by the court when
imposing a sentence. Section 9-A governs the use of prior
convictions when determining a sentence, except that, for the
purposes of this subsection, the dates of prior convictions may
have occurred at any time. This subsection does not apply to
section 210-A if the prior convictions have already served to
enhance the sentencing class under section 210-A, subsection 1,
paragraph C.

18 **Sec. 13. 17-A MRSA §1252-B**, as repealed and replaced by PL
1995, c. 433, §1, is repealed.

20 **Sec. 14. 17-A MRSA §1302, sub-§1**, as enacted by PL 1999, c.
22 367, §3, is amended to read:

24 1. In determining the amount of a fine, unless the fine
26 amount is mandatory, and in determining the method of payment of
28 a fine, the court shall take into account the present and future
financial capacity of the offender to pay the fine and the nature
of the financial burden that payment of the fine will impose on
the offender or a dependent of the offender, if any.

30 **Sec. 15. 17-A MRSA §1352, sub-§3**, as enacted by PL 1975, c.
32 740, §124, is amended to read:

34 3. In the event of the death or resignation of any a
36 member, the vacancy for his the member's unexpired term shall
must be filled by the Attorney General.

38 **Sec. 16. 17-A MRSA §1355, sub-§1**, as enacted by PL 1975, c.
740, §124, is amended to read:

40 1. The Attorney General shall notify all members of the
42 time and place of the first meeting. At that time the commission
44 shall organize, elect a ~~chairman~~ chair, ~~vice-chairman~~ vice-chair
and secretary-treasurer and adopt rules as to the administration
of the commission and its affairs. The commission shall maintain
such financial records as may be required by the State Auditor.

46 **Sec. 17. Effective date.** That section of this Act that repeals
48 the Maine Revised Statutes, Title 17-A, section 1252-B takes
50 effect January 1, 2004.

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SUMMARY

Section 1 defines "reasonable degree of force" in the context of the use of physical force by a parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of a person, as limited to applying physical force to a person that at most results in transient pain or minor temporary marks on that person. As enacted, the Maine Revised Statutes, Title 17-A, section 106, subsection 1-A reflects current Maine case law respecting use of physical force by a parent to prevent or punish a child's misconduct. See State v. York, 2001 ME 30, 766 A.2d 570. In section 2, in light of this new Title 17-A, section 106, subsection 1-A definition, the reference to subsection 1 is removed from Title 17-A, section 106, subsection 4. The word "purposeful" is replaced with the equivalent word "intentional" in Title 17-A, section 106, subsection 4 to reflect Maine Criminal Code language usage. See Title 17-A, section 2, subsection 15.

Section 3 amends the law regarding the use of physical force in law enforcement in 3 ways. First, it adds the word "unlawful" to the law to specify that a law enforcement officer or private person may use force upon another when the law enforcement officer or private person reasonably believes that there exists an imminent use of "unlawful" force by another. The addition of "unlawful" makes this law consistent with other use of force provisions in Chapter 5 of the Maine Criminal Code. Second, this section strikes an outdated reference to the Maine Correctional Institution - Warren. Third, the section makes the Maine Revised Statutes, Title 17-A, section 107 gender neutral in conformance with drafting standards.

Section 4 adds the phrase "in fact" before the word "communicates" in the Maine Revised Statutes, Title 17-A, section 210, subsection 1 to clarify that no culpable mental state need be proved. The addition mirrors Maine case law. See State v. Porter, 384 A.2d 429, 433-434 (Me. 1978).

Sections 5 and 6 repeal the Maine Revised Statutes, Title 17-A, section 451, subsection 3-A and section 452, subsection 2-A. Each subsection was intended to continue in effect the traditional "2 witness" rule as set forth in State v. Farrington, 411 A.2d 396, 401 (Me. 1980). See State v. Anthoine, 2002 ME 22, ¶8, 789 A.2d 1277, 1279, n.2. However, neither section of law accurately expresses the rule or any exception to the rule. Both provisions are deleted in favor of allowing State v. Farrington and subsequent cases to speak to the rule and any exception to it.

2 Section 7 clarifies the Maine Revised Statutes, Title 17-A,
3 section 454, subsection 1, paragraph A, which concerns tampering
4 with a witness, informant, juror or victim, by specifying that
5 the actor must be aware at the time the actor induces or
6 otherwise causes, or attempts to cause, a witness or informant to
7 testify or inform falsely that such testimony or information is
8 false.

9 Section 8 amends the Maine Revised Statutes, Title 17-A,
10 section 1108, subsection 5, which concerns acquiring drugs by
11 deception, to clarify that the trier of fact is permitted, as
12 authorized by the Maine Rules of Evidence, Rule 303(b), to infer
13 the causation element of "acquiring" from the act of deception
14 described in Title 17-A, section 1108, subsection 2, paragraph A
15 or B. The section is not intended to create a conclusive
16 presumption.

17 Section 9 strikes from the Maine Revised Statutes, Title
18 17-A, section 1158, which concerns the forfeiture of firearms,
19 the reference to the "judgment of conviction" to eliminate
20 confusion. The forfeiture of a firearm is part of the sentence
21 while the sentence is part of the judgment. See the Maine Rules
22 of Criminal Procedure, Rule 32(b).

23 Section 10 provides for the tolling of a Maine sentence
24 involving imprisonment in the event the person in execution of
25 that sentence is a recalcitrant witness in a grand jury or
26 criminal proceeding in a Maine court of record and has been
27 ordered into coercive imprisonment as a remedial sanction for
28 refusing to comply with an order of the court to testify or to
29 provide evidence.

30 In 1988 the Legislature doubled the maximum sentence of
31 imprisonment for Class A crimes from 20 years to 40 years. See
32 Public Law 1987, chapter 808, codified as the Maine Revised
33 Statutes, Title 17-A, section 1252, subsection 2, paragraph A.
34 In 1991 the Law Court examined the legislative history of that
35 Act and determined that the legislative intent was to "make
36 available two discrete ranges of sentences for Class A crimes."
37 See State v. Lewis, 590 A.2d 149, 151 (Me. 1991). Most Class A
38 crime sentences were intended to remain in the original 0 to 20
39 year range, while the "expanded range" of 20-40 year sentences
40 was reserved "only for the most heinous and violent crimes
41 committed against a person" (590 A.2d at 151). The sentencing
42 court was to apply this "heinousness" standard "in its
43 discretion" as a sentencing factor, subject to appellate review
44 (590 A.2d at 151).

45 This two-tier system has been placed under a constitutional
46 cloud by the decision of the United States Supreme Court in
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2 Apprendi v. New Jersey, 530 U.S. 466 (2000), which held that
4 sentencing factors increasing punishment beyond the maximum
6 authorized must be treated as elements of crimes to be pleaded
8 and proved beyond a reasonable doubt rather than as sentencing
factors. Since the "heinousness" standard can be interpreted as
increasing the maximum punishment of up to 20 years to the
"expanded range" of 20 to 40 years, it is potentially
unconstitutional absent legislative correction.

10 The new Title 17-A, section 1252, subsection 2, paragraph A
12 eliminates the constitutional doubts by replacing the 2-tier
14 system with a single sentencing range, while preserving the
16 Supreme Judicial Court's discretion to establish and enforce,
through appellate review, sentencing factors that avoid
excessively harsh sentences. It is not intended that this change
modify current sentencing practices.

18 Section 12 clarifies that if the State pleads and proves
20 that an actor has 2 or more prior convictions for stalking under
22 the Maine Revised Statutes, Title 17-A, section 210-A, the State
may not plead and prove further sentencing class enhancement
under Title 17-A, section 1252.

24 Effective January 1, 2004, section 13 eliminates the current
26 requirement under the Maine Revised Statutes, Title 17-A, section
28 1252-B that deductions for good time and meritorious good time be
taken into consideration when a sentencing alternative involving
imprisonment is requested or recommended by a party or imposed by
a court.

30 In 1988 the 113th Legislature enacted the Maine Revised
32 Statutes, Title 17-A, section 1252-B, which for the first time
34 expressly precluded a sentencing court from ignoring
36 administrative awards for good time and meritorious good time in
the sentencing decision and instead required that such awards be
considered. See Public Law 1987, chapter 808, section 2.

38 Seven years later, in 1995, the 117th Legislature enacted
40 the Maine Revised Statutes, Title 17-A, section 1253, subsection
42 8, which on or after October 1, 1995 markedly reduced the
44 statutory deductions for good time and meritorious good time
46 authorized under that same section. See Public Law 1995, chapter
48 433, section 4. The resulting disparity in an administrative
award of good time and meritorious good time for persons
committing crimes prior to October 1, 1995 and for persons
committing crimes on and after that date is illustrated by the
following: A person who committed a crime before October 1,
1995, and subsequently was sentenced to a term of imprisonment of
more than 6 months, and receives maximum deductions under section
1253, subsections 3, 4 and 5, or about 180 days a year, will
serve about 57% of the term of imprisonment. A person who

2 commits a crime on or after October 1, 1995, and subsequently is
3 sentenced to a term of imprisonment of more than 6 months,
4 receiving maximum deductions under section 1253, subsection 8, or
5 about 60 days a year, will serve about 85% of the term of
6 imprisonment. At the same time that the Legislature
7 prospectively sharply reduced good time and meritorious good time
8 awards, because sentencing courts since 1988 had been required to
9 take good time and meritorious good time deductions into
10 consideration in their sentencing decisions, the Legislature
11 repealed and replaced Maine Revised Statutes, Title 17-A, section
12 1252-B to address the disparity. As replaced, Title 17-A,
13 section 1252-B designated the existing provisions as subsection 1
14 with added specific reference to the deductions applicable to
15 crimes committed prior to October 1, 1995, namely section 1253,
16 subsections 3, 3-B, 4 and 5, and added a subsection 2 that
17 addressed the disparity in deductions created by section 1253,
18 subsection 8. See Public Law 1995, chapter 433, section 1. The
19 Legislature directed in subsection 2 that to the extent that
20 longer terms of imprisonment have previously been imposed in an
21 effort to compensate for the impact of substantial good time and
22 meritorious good time deductions, an adjustment must be made in
23 the sentencing process for crimes committed on or after October
24 1, 1995 in view of the substantially reduced deduction under
25 subsection 8.

26 By January 1, 2004, the Maine Revised Statutes, Title 17-A,
27 section 1252-B, subsection 2 will have been law for over 8
28 years. During this transitional period, a large number of
29 sentences subject to adjustment for the substantially reduced
30 deductions have been imposed. That body of sentences serves to
31 inform a court's sentencing decision rather than the pre-1995
32 sentences. With its intended legislative purpose accomplished,
33 this directive is no longer necessary. Repealing Title 17-A,
34 section 1252-B is necessary to accomplish the intended
35 fundamental policy change of allowing both the parties and the
36 sentencing court to ignore administrative awards for good time
37 and meritorious good time when a sentencing alternative involving
38 imprisonment is requested or recommended by a party or imposed by
39 a court.

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41 Section 15 amends the criteria for imposing fines to
42 expressly recognize the existing limitation upon the court's
43 discretion in the event the fine amount is mandatory and thus the
44 convicted offender must be sentenced to pay the fine amounts
45 required under the Maine Revised Statutes, Title 17-A, sections
46 1201 and 1301.

47 Section 16 amends the Maine Revised Statutes, Title 17-A,
48 chapter 55, which concerns the Criminal Law Advisory Commission,
49 to make section 1352, subsection 3 gender neutral.
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2 Section 17 amends the Maine Revised Statutes, Title 17-A,
chapter 55, which concerns the Criminal Law Advisory Commission,
to make section 1355, subsection 1 gender neutral.