

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Make Part 1 of the Maine Criminal Code Gender-neutral**

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

**Sec. 1. 17-A MRSA §2, sub-§8,** as enacted by PL 1975, c. 499, §1, is amended to read:

8. "Deadly force" means physical force ~~which~~that a person uses with the intent of causing, or ~~which~~that a person knows to create a substantial risk of causing, death or serious bodily injury. Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

**Sec. 2. 17-A MRSA §2, sub-§21,** as enacted by PL 1975, c. 499, §1, is amended to read:

21. "Public servant" means any official officer or employee of any branch of government and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function. A person is considered a public servant upon ~~his~~the person's election, appointment or other designation as such, although ~~he~~the person may not yet officially occupy that position.

**Sec. 3. 17-A MRSA §4-B, sub-§1,** as enacted by PL 1985, c. 282, §3, is amended to read:

1. All civil violations are expressly declared not to be criminal offenses. They are enforceable by the Attorney General, ~~his~~the Attorney General's representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the law.

**Sec. 4. 17-A MRSA §7, sub-§1,** as amended by PL 1979, c. 512, §§15, 16 and 17, is further amended to read:

1. Except as otherwise provided in this section, a person may be convicted under the laws of this State for any crime committed by ~~his~~the person's own conduct or by the conduct of another for which ~~he~~the person is legally accountable only if:

A. Either the conduct ~~which~~that is an element of the crime or the result ~~which~~that is such an element occurs within this State or has a territorial relationship to this State; ~~or~~

B. Conduct occurring outside this State constitutes an attempt to commit a crime under the laws of this State and the intent is that the crime take place within this State;

C. Conduct occurring outside this State would constitute a criminal conspiracy under the laws of this State, an overt act in furtherance of the conspiracy occurs within this State or has a territorial relationship to this State, and the object of the conspiracy is that a crime take place within this State;

D. Conduct occurring within this State or having a territorial relationship to this State would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction ~~which~~that is also a crime under the law of this State;

E. The crime consists of the omission to perform a duty imposed on a person by the law of this State, regardless of where that person is when the omission occurs; or

F. The crime is based on a statute of this State ~~which~~that expressly prohibits conduct outside the State, when the ~~aet~~person knows or should know that ~~his~~the person's conduct affects an interest of the State protected by that statute; or

G. Jurisdiction is otherwise provided by law.

**Sec. 5. 17-A MRSA §8, sub-§5, ¶A**, as enacted by PL 1975, c. 499, §1, is amended to read:

A. Any crime based upon breach of fiduciary obligation, within one year after discovery of the crime by an aggrieved party or by a person who has a legal duty to represent an aggrieved party, and who is himself not a party to the crime, whichever occurs first; or

**Sec. 6. 17-A MRSA §10-A, sub-§1**, as enacted by PL 1981, c. 324, §12, is amended to read:

1. ~~No~~A criminal proceeding may not be commenced against any person who had not attained ~~his 18th birthday~~18 years of age at the time of the alleged crime, except as the result of a finding of probable cause authorized by Title 15, section 3101, subsection 4, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 3101, subsection 2.

**Sec. 7. 17-A MRSA §16**, as amended by PL 1979, c. 127, §125, is further amended to read:

## **§ 16. Warrantless arrests by a private person**

Except as otherwise specifically provided, a private person ~~shall have~~has the authority to arrest without a warrant:

1. Any person who ~~he~~the private person has probable cause to believe has committed or is committing:

A. Murder; or

B. Any Class A, Class B or Class C crime.

2. Any person who, in fact, is committing in ~~his~~the private person's presence and in a public place:any of the Class D or Class E crimes described in section 207; 209; 211; 254; 255; 501, subsection 2; 503; 751; 806 or 1002.

A. ~~Any of the Class D or Class E crimes described in sections 207; 209; 211; 254; 255; 501, subsection 2; 503; 751; 806 or 1002.~~

3. For the purposes of subsection 2, in the presence has the same meaning given in section 15, subsection 2.

**Sec. 8. 17-A MRSA §35**, as enacted by PL 1981, c. 324, §14, is amended to read:

## **§ 35. Definitions of culpable states of mind**

**1. "Intentionally."**

A. A person acts intentionally with respect to a result of ~~his~~the person's conduct when it is ~~his~~the person's conscious object to cause such a result.

B. A person acts intentionally with respect to attendant circumstances when ~~he~~the person is aware of the existence of such circumstances or believes that they exist.

**2. "Knowingly."**

A. A person acts knowingly with respect to a result of ~~his~~the person's conduct when ~~he~~the person is aware that it is practically certain that ~~his~~the person's conduct will cause such a result.

B. A person acts knowingly with respect to attendant circumstances when ~~he~~the person is aware that such circumstances exist.

**3. "Recklessly."**

A. A person acts recklessly with respect to a result of ~~his~~the person's conduct when ~~he~~the person consciously disregards a risk that ~~his~~the person's conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when ~~he~~the person consciously disregards a risk that such circumstances exist.

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to ~~him~~the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

**4. "Criminal negligence."**

A. A person acts with criminal negligence with respect to a result of ~~his~~the person's conduct when ~~he~~the person fails to be aware of a risk that ~~his~~the person's conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when ~~he~~the person fails to be aware of a risk that such circumstances exist.

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to ~~him~~the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

**5. "Culpable."** A person acts culpably when ~~he~~the person acts with the intention, knowledge, recklessness or criminal negligence as is required.

**Sec. 9. 17-A MRSA §36, sub-§3,** as enacted by PL 1981, c. 324, §14, is amended to read:

3. Although ignorance or mistake would otherwise afford a defense to the crime charged, the defense is not available if the defendant would be guilty of another crime had the situation been as ~~hethe~~ defendant supposed.

**Sec. 10. 17-A MRSA §36, sub-§4**, as enacted by PL 1981, c. 324, §14, is amended to read:

4. It is an affirmative defense if the defendant engages in conduct ~~which hethat the defendant~~ believes does not legally constitute a crime if:

A. The statute violated is not known to the defendant and has not been published or otherwise reasonably made available prior to the conduct alleged; or

B. The defendant acts in reasonable reliance upon an official statement, afterward determined to be invalid or erroneous, contained in:

(1) A statute, ordinance or other enactment;

(2) A final judicial decision, opinion or judgment;

(3) An administrative order or grant of permission; or

(4) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the statute defining the crime. This subsection does not impose any duty to make any such official interpretation.

**Sec. 11. 17-A MRSA §37, sub-§2**, as enacted by PL 1981, c. 324, §14, is amended to read:

2. When recklessness establishes an element of the offense, if ~~the actor a~~ person, due to self-induced intoxication, is unaware of a risk of which ~~hethe~~ person would have been aware had ~~hethe~~ person not been intoxicated, such unawareness is immaterial.

**Sec. 12. 17-A MRSA §37, sub-§3**, as enacted by PL 1981, c. 324, §14, is amended to read:

3. As used in this section:

A. "Intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs or similar substances into the body; and

B. "Self-induced intoxication" means intoxication caused when ~~the actor a~~ person intentionally or knowingly introduces into ~~histhe~~ person's body substances ~~whichthat~~ the actor person knows or ought to know tend to cause intoxication, unless ~~hethe~~ person introduces them pursuant to medical advice or under such duress as would afford a defense to a charge of crime.

**Sec. 13. 17-A MRSA §57**, as amended by PL 1977, c. 510, §25-A, is further amended to read:

## **§ 57. Criminal liability for conduct of another; accomplices**

1. A person may be guilty of a crime if it is committed by the conduct of another person for which he ~~he~~ the person is legally accountable as provided in this section.

2. A person is legally accountable for the conduct of another person when:

A. Acting with the intention, knowledge, recklessness or criminal negligence that is sufficient for the commission of the crime, ~~he~~ the person causes an innocent person, or a person not criminally responsible, to engage in such conduct; or

B. ~~He~~ The person is made accountable for the conduct of such other person by the law defining the crime; or

C. ~~He~~ The person is an accomplice of such other person in the commission of the crime, as provided in subsection 3.

3. A person is an accomplice of another person in the commission of a crime if:

A. With the intent of promoting or facilitating the commission of the crime, ~~he~~ the person solicits such other person to commit the crime, or aids or agrees to aid or attempts to aid such other person in planning or committing the crime. A person is an accomplice under this subsection to any crime the commission of which was a reasonably foreseeable consequence of ~~his~~ the person's conduct; or

B. ~~His~~ The person's conduct is expressly declared by law to establish ~~his~~ the person's complicity.

4. A person who is legally incapable of committing a particular crime ~~himself~~ may be guilty thereof if it is committed by the conduct of another person for which ~~he~~ the person is legally accountable.

5. Unless otherwise expressly provided, a person is not an accomplice in a crime committed by another person if:

A. ~~He~~ The person is the victim of that crime; or

B. The crime is so defined that it cannot be committed without ~~his~~ the person's cooperation; or

C. ~~He~~ The person terminates ~~his~~ complicity prior to the commission of the crime by:

(1) ~~informing his~~ Informing the person's accomplice that ~~he~~ the person has abandoned the criminal activity; and

(2) ~~leaving~~ Leaving the scene of the prospective crime, if ~~he~~ the person is present thereat.

6. An accomplice may be convicted on proof of the commission of the crime and of ~~his~~ the accomplice's complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or is not subject to criminal prosecution as a result of immaturity pursuant to section 10-A, subsection 1, or has an immunity to prosecution or conviction, or has been acquitted.

**Sec. 14. 17-A MRSA §60, sub-§1, ¶B,** as enacted by PL 1975, c. 499, §1, is amended to read:

B. The conduct or result specified in the definition of the crime is engaged in or caused by an agent of the organization while acting within the scope of ~~his~~the agent's office or employment.

**Sec. 15. 17-A MRSA §61,** as enacted by PL 1975, c. 499, §1, is amended to read:

### **§ 61. Individual liability for conduct on behalf of organization**

1. An individual is criminally liable for any conduct ~~he~~the individual performs in the name of an organization or in its behalf to the same extent as if it were performed in ~~his~~the individual's own name or behalf. Such an individual ~~shall~~must be sentenced as if the conduct had been performed in ~~his~~the individual's own name or behalf.

2. If a criminal statute imposes a duty to act on an organization, any agent of the organization having primary responsibility for the discharge of the duty is criminally liable if ~~he~~the agent recklessly omits to perform the required act, and ~~he shall~~the agent must be sentenced as if the duty were imposed by law directly upon ~~him~~the agent.

**Sec. 16. 17-A MRSA §101, sub-§1,** as amended by PL 1997, c. 185, §1, is further amended to read:

1. The State is not required to negate any facts expressly designated as a "defense," or any exception, exclusion or authorization 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 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 waived by ~~the defendant~~a person. The subject of waiver is addressed by the Maine Rules of Criminal Procedure.

**Sec. 17. 17-A MRSA §101, sub-§2,** as repealed and replaced by PL 1981, c. 324, §24, is amended to read:

2. Where the statute explicitly designates a matter as an "affirmative defense," the matter so designated must be proved by the ~~defendant~~person by a preponderance of the evidence.

**Sec. 18. 17-A MRSA §102, sub-§2, ¶B,** as enacted by PL 1975, c. 499, §1, is amended to read:

B. As to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded ~~his~~the public servant's legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the ~~actor~~person believed the public servant to be engaged in the performance of ~~his~~the public servant's duties or that the legal process or court decree was competent.

**Sec. 19. 17-A MRSA §102-A,** as enacted by PL 1981, c. 324, §25, is amended to read:

### **§ 102-A. Military orders**

1. It is a defense if the ~~defendant~~person engaged in the conduct charged to constitute a crime in obedience to an order of ~~his~~the person's superior in the armed services ~~which he~~that the person did not know to be unlawful.

2. If the ~~defendant~~person was reckless in failing to know the unlawful nature of such an order, the defense is unavailable in a prosecution for a crime for which recklessness suffices to establish liability.

**Sec. 20. 17-A MRSA §103**, as enacted by PL 1975, c. 499, §1, is amended to read:

### **§ 103. Competing harms**

1. Conduct ~~which~~that the ~~actor~~person believes to be necessary to avoid imminent physical harm to ~~himself~~that person or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the crime charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute.

2. When the ~~actor~~person was reckless or criminally negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of ~~his~~the person's conduct, the justification provided in subsection 1 does not apply in a prosecution for any crime for which recklessness or criminal negligence, as the case may be, suffices to establish criminal liability.

**Sec. 21. 17-A MRSA §103-A**, as enacted by PL 1981, c. 324, §26, is amended to read:

### **§ 103-A. Duress**

1. It is a defense that, when a ~~defendant~~person engages in conduct ~~which~~that would otherwise constitute a crime, ~~he~~the person is compelled to do so by threat of imminent death or serious bodily injury to ~~himself~~that person or another person or because ~~he~~that person was compelled to do so by force.

2. For purposes of this section, compulsion exists only if the force, threat or circumstances are such as would have prevented a reasonable person in the defendant's situation from resisting the pressure.

3. The defense set forth in this section is not available:

A. To a person who intentionally or knowingly committed the homicide for which ~~he~~the person is being tried;

B. To a person who recklessly placed ~~himself~~that person in a situation in which it was reasonably probable that ~~he~~the person would be subjected to duress; or

C. To a person who with criminal negligence placed ~~himself~~that person in a situation in which it was reasonably probable that ~~he~~the person would be subjected to duress, whenever criminal negligence suffices to establish culpability for the offense charged.

**Sec. 22. 17-A MRSA §104**, as repealed and replaced by PL 1975, c. 740, §26, is amended to read:

## § 104. Use of force in defense of premises

1. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using nondeadly force upon another person when and to the extent that ~~he~~the person reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other person in or upon such premises.

2. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using deadly force upon another person when and to the extent that ~~he~~the person reasonably believes it necessary to prevent an attempt by the other person to commit arson.

3. A person in possession or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another person:

A. Under the circumstances enumerated in section 108; or

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

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

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

4. A person may use deadly force under subsection 3, paragraph B; only if ~~he~~the person first demands the person against whom such deadly force is to be used to terminate the criminal trespass and the other ~~person~~trespasser fails to immediately comply with the demand, unless ~~he~~the person reasonably believes that it would be dangerous to ~~himself~~the person or ~~another~~a 3rd person to make the demand.

5. As used in this section:

A. Dwelling place has the same meaning provided in section 2, subsection 10; and

B. Premises includes, but is not limited to, lands, private ways and any buildings or structures thereon.

**Sec. 23. 17-A MRSA §105,** as amended by PL 1975, c. 740, §27, is further amended to read:

## § 105. Use of force in property offenses

A person is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that ~~he~~the person reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of ~~his~~the person's property, or criminal mischief, or to retake ~~his~~the person's property immediately following its taking; but ~~he~~the person may use deadly force only under such circumstances as are prescribed in sections 104, 107; and 108.



**Sec. 24. 17-A MRSA §106**, as amended by PL 2003, c. 143, §§1 and 2, is further amended to read:

**§ 106. Physical force by persons with special responsibilities**

1. A parent, foster parent, guardian or other similar person responsible for the long term general care and welfare of ~~a~~another person is justified in using a reasonable degree of force against such other person when and to the extent that ~~he~~the person reasonably believes it necessary to prevent or punish such other person's misconduct. A person to whom such parent, foster parent, guardian or other responsible person has expressly delegated permission to so prevent or punish misconduct is similarly justified in using a reasonable degree of force.

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

2. A teacher or other person entrusted with the care or supervision of a person for special and limited purposes is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that ~~he~~the teacher or other entrusted person reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance.

3. A person responsible for the general care and supervision of a mentally incompetent person is justified in using a reasonable degree of force against such person who creates a disturbance when and to the extent that ~~he~~the responsible person reasonably believes it necessary to control the disturbing behavior or to remove such person from the scene of such disturbance.

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

5. A person required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, may use nondeadly force when and to the extent that ~~he~~the person reasonably believes it necessary for such purposes.

6. A person acting under a reasonable belief that another person is about to commit suicide or to ~~infiict~~self-inflict serious bodily injury ~~upon himself~~ may use a degree of force on such other person as ~~he~~the person reasonably believes to be necessary to thwart such a result.

7. A licensed physician, or a person acting under ~~his~~a licensed physician's direction, may use force for the purpose of administering a recognized form of treatment ~~which he~~that the physician reasonably believes will tend to safeguard the physical or mental health of the patient, provided such treatment is administered:

A. With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with ~~his~~the patient's care and supervision; or

B. In an emergency relating to health when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

8. A person identified in this section for purposes of specifying the rule of justification herein provided; is not precluded from using force declared to be justifiable by another section of this chapter.

**Sec. 25. 17-A MRSA §107**, as amended by PL 2003, c. 143, §3, is further amended to read:

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

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

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

B. ~~To defend himself or herself~~In self-defense or to defend a 3rd person from what the officer reasonably believes to be the imminent use of 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 the officer reasonably believes such force is necessary:

A. ~~To defend himself or herself~~For self-defense or to defend a 3rd person from what 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 the person is likely to endanger seriously human life or to inflict serious bodily injury unless apprehended without delay; and

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

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

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

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

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

B. Deadly force only when the private person reasonably believes such to be necessary ~~to defend himself or herself~~for self-defense or to defend a 3rd person from what the private person reasonably believes to be the imminent use of unlawful deadly force, or when the law enforcement officer directs the private person to use deadly force and the private person believes the officer is authorized to use deadly force under the circumstances.

4. A private person acting on ~~his or her~~that private person's own is justified in using:

A. A reasonable degree of nondeadly force upon another person when and to the extent that the private person reasonably believes it necessary to effect an arrest or detention that is lawful for the private person to make or prevent the escape from such an arrest or detention; or

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

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

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

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

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

5. Except where otherwise expressly provided, a corrections officer, corrections supervisor or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in 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.

5-A. A corrections officer, corrections supervisor or law enforcement officer is justified in using deadly force against a person confined in the Maine State Prison 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, corrections supervisor or law enforcement officer who is not employed by a state agency to use deadly force.

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

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 the officer or private person is not seeking to arrest or retain in custody.

**Sec. 26. 17-A MRSA §108,** as amended by PL 1997, c. 351, §1, is further amended to read:

### **§ 108. Physical force in defense of a person**

1. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend ~~himself~~the person or a 3rd person from what ~~he~~the person reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and ~~he~~the person may use a degree of such force ~~which he~~that the person reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

A. With a purpose to cause physical harm to another person, ~~he~~the person provoked the use of unlawful, nondeadly force by such other person; or

B. ~~He~~The person was the initial aggressor, unless after such aggression ~~he~~the person withdraws from the encounter and effectively communicates to such other person ~~his~~the intent to do so, but the ~~latter~~other person notwithstanding continues the use or threat of unlawful, nondeadly force; or

C. The force involved was the product of a combat by agreement not authorized by law.

1-A. A person is not justified in using nondeadly force against another person who that person knows or reasonably should know is a law enforcement officer attempting to effect an arrest or detention, regardless of whether the arrest or detention is legal. A person is justified in using the degree of nondeadly

force the person reasonably believes is necessary to defend the person or a 3rd person against a law enforcement officer who, in effecting an arrest or detention, uses nondeadly force not justified under section 107, subsection 1.

2. A person is justified in using deadly force upon another person:

A. When the person reasonably believes it necessary and reasonably believes such other person is:

(1) About to use unlawful, deadly force against the person or a 3rd person; or

(2) Committing or about to commit a kidnapping, robbery or a violation of section 253, subsection 1, paragraph A, against the person or a 3rd person; or

B. When ~~hethe~~ the person reasonably believes:

(1) That such other person has entered or is attempting to enter a dwelling place or has surreptitiously remained within a dwelling place without a license or privilege to do so; and

(2) That deadly force is necessary to prevent the infliction of bodily injury by such other person upon ~~himself~~ the person or a 3rd person present in the dwelling place;

C. However, a person is not justified in using deadly force as provided in paragraph A, if:

(1) With the intent to cause physical harm to another, ~~hethe~~ the person provokes such other person to use unlawful deadly force against anyone; or

(2) ~~He~~ The person knows that the person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force; or

(3) ~~He~~ The person knows that ~~hethe~~ the person or a 3rd person can, with complete safety:

(a) ~~retreat~~ Retreat from the encounter, except that ~~hethe~~ the person or the 3rd person is not required to retreat if ~~hethe~~ the person or the 3rd person is in ~~his~~ the person's dwelling place and was not the initial aggressor; or

(b) ~~surrender~~ Surrender property to a person asserting a colorable claim of right thereto; or

(c) ~~comply~~ Comply with a demand that ~~hethe~~ the person abstain from performing an act ~~which~~ hethat the person is not obliged to perform.

## **SUMMARY**

This bill is submitted by the Criminal Law Advisory Committee.

The bill amends Part 1 of the Maine Criminal Code to make it gender-neutral.