



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1215

S.P. 377

In Senate, March 12, 2019

### **An Act Relating to Defenses and Self-defense in the Maine Criminal Code**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.

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

2 **Sec. 1. 17-A MRSA §101, sub-§1**, as amended by PL 2015, c. 431, §35, is  
3 further amended to read:

4 **1.** The State is not required to negate any facts expressly designated as a "defense,"  
5 or any exception, exclusion or authorization that is set out in the statute defining the  
6 crime by proof at trial, unless the existence of the defense, exception, exclusion or  
7 authorization is in issue as a result of evidence admitted at the trial that is sufficient to  
8 raise a reasonable doubt on the issue, in which case the State must disprove its existence  
9 beyond a reasonable doubt. The determination of the applicability of a defense,  
10 exception, exclusion or authorization is a preliminary question of fact under the Maine  
11 Rules of Evidence, Rule 104 that must be proved by the totality of the circumstances and  
12 not by viewing the evidence in a light most favorable to the defendant. This subsection  
13 does not require a trial court to instruct on an issue that has been waived by the defendant.  
14 The subject of waiver is addressed by the Maine Rules of Unified Criminal Procedure.

15 **Sec. 2. 17-A MRSA §108, sub-§1, ¶B**, as amended by PL 2007, c. 173, §24, is  
16 further amended to read:

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

21 **Sec. 3. 17-A MRSA §108, sub-§1, ¶C**, as enacted by PL 1975, c. 499, §1, is  
22 amended to read:

23 **C.** The force involved was the product of a combat by agreement not authorized by  
24 law; ~~or~~

25 **Sec. 4. 17-A MRSA §108, sub-§1, ¶D** is enacted to read:

26 **D.** The person was engaged in criminal conduct against the other person or the other  
27 person's property concurrently with the use of the nondeadly force.

28 **SUMMARY**

29 This bill amends the Maine Criminal Code by clarifying that determination of the  
30 applicability of a defense is a preliminary question of fact under the Maine Rules of  
31 Evidence that must be proved by the totality of the circumstances and not by viewing the  
32 evidence in a light most favorable to the defendant and by providing that the use of  
33 nondeadly force in defense of a person is not justified when the person is engaged in  
34 criminal conduct against the other person or the other person's property concurrently with  
35 the use of the nondeadly force.