

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

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

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

Sec. 1. 17-A MRSA §101, sub-§1, as amended by PL 2015, c. 431, §35, 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. The determination of the applicability of a defense, exception, exclusion or authorization is a preliminary question of fact under the Maine Rules of Evidence, Rule 104 that must be proved by the totality of the circumstances and not by viewing the evidence in a light most favorable to the defendant. This subsection does not require a trial court to instruct on an issue that has been waived by the defendant. The subject of waiver is addressed by the Maine Rules of Unified Criminal Procedure.

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

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

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

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

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

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

SUMMARY

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