



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1632

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H.P. 1175

House of Representatives, April 25, 2019

### **An Act Regarding Criminal Procedure with Respect to Allowable Defenses**

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative WARREN of Hallowell.  
Cosponsored by Senator CHENETTE of York and  
Representatives: FECTION of Biddeford, HICKMAN of Winthrop, HOBBS of Wells,  
McLEAN of Gorham, MOONEN of Portland, PEBWORTH of Blue Hill, RECKITT of South  
Portland.

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

2 **Sec. 1. 17-A MRSA §38**, as enacted by PL 1981, c. 324, §14, is amended by  
3 adding at the end a new paragraph to read:

4 An actor does not suffer from an abnormal condition of the mind based solely on the  
5 discovery of, knowledge about or potential disclosure of the victim's actual or perceived  
6 gender, gender identity, gender expression or sexual orientation, including under  
7 circumstances in which the victim made an unwanted nonforcible romantic or sexual  
8 advance toward the actor or in which the actor and victim dated or had a romantic or  
9 sexual relationship.

10 **Sec. 2. 17-A MRSA §108, sub-§3** is enacted to read:

11 **3.** A person is not justified in using force against another based solely on the  
12 discovery of, knowledge about or potential disclosure of the victim's actual or perceived  
13 gender, gender identity, gender expression or sexual orientation, including under  
14 circumstances in which the victim made an unwanted nonforcible romantic or sexual  
15 advance toward the person or in which the person and victim dated or had a romantic or  
16 sexual relationship.

17 **Sec. 3. 17-A MRSA §201, sub-§4**, as amended by PL 2001, c. 383, §8 and  
18 affected by §156, is further amended to read:

19 **4.** For purposes of subsection 3, provocation is adequate if:

20 A. It is not induced by the person; and

21 B. It is reasonable for the person to react to the provocation with extreme anger or  
22 extreme fear, provided that evidence demonstrating only that the person has a  
23 tendency towards extreme anger or extreme fear is not sufficient, in and of itself, to  
24 establish the reasonableness of the person's reaction.

25 For purposes of determining whether extreme anger or extreme fear was brought about by  
26 adequate provocation, the provocation was not adequate if it resulted solely from the  
27 discovery of, knowledge about or potential disclosure of the victim's actual or perceived  
28 gender, gender identity, gender expression or sexual orientation, including under  
29 circumstances in which the victim made an unwanted nonforcible romantic or sexual  
30 advance toward the person or in which the person and victim dated or had a romantic or  
31 sexual relationship.

32 **SUMMARY**

33 This bill prohibits the use of what is referred to as the "gay and trans panic defense."

34 The bill provides that when considering whether a defendant has an abnormal  
35 condition of the mind in determining whether a requisite culpable mental state exists in  
36 the defendant, a determination of abnormal condition of the mind may not be based on  
37 the defendant's discovery of, knowledge about or potential disclosure of the victim's  
38 actual or perceived gender, gender identity, gender expression or sexual orientation,

1 including under circumstances in which the victim made an unwanted nonforcible  
2 romantic or sexual advance toward the defendant or under circumstances in which the  
3 defendant and victim dated or had a romantic or sexual relationship.

4 The bill excludes from the affirmative defense for murder that the defendant acted on  
5 the basis of extreme anger or extreme fear based on provocation by prohibiting the  
6 alleged cause of provocation from being solely from the discovery of, knowledge about  
7 or potential disclosure of the victim's actual or perceived gender, gender identity, gender  
8 expression or sexual orientation, including under circumstances in which the victim made  
9 an unwanted nonforcible romantic or sexual advance toward the defendant or under  
10 circumstances in which the defendant and victim dated or had a romantic or sexual  
11 relationship.

12 The bill provides that a person's discovery of, knowledge about or potential  
13 disclosure of the victim's actual or perceived gender, gender identity, gender expression  
14 or sexual orientation, including under circumstances in which the victim made an  
15 unwanted nonforcible romantic or sexual advance toward the defendant or under  
16 circumstances in which the defendant and victim dated or had a romantic or sexual  
17 relationship, may not be used as the sole justification for the use of force against the  
18 victim.