I

HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1440
TTY: (207) 287-4469

Chad R. Perkins
POB 251
Dover-Foxcroft, ME 04426
Residence: (207) 279-0927
Fax: (207) 305-4907
Chad.Perkins@legislature.maine.gov

12 Mar 25

MEMORANDUM FOR RECORD

SUBJECT: LD 486, An Act to Remove the Duty of an Individual Exercising Self-defense to Safely Retreat or Abstain from Performing Certain Acts upon Demand

Committee Chair Senator Beebe-Center, Committee Chair Representative Hasenfus and my fellow members of the Joint Standing Committee on Criminal Justice and Public Safety,

1. Thank you for allowing me to bring forth my bill, An Act to Remove the Duty of an Individual Exercising Self-defense to Safely Retreat or Abstain from Performing Certain Acts upon Demand.

2. Removal of the Duty to Retreat is not new, it is not radical and it is surely not without precedent. However, the theory and reasons behind it are not entirely simplistic either. While the Duty to Retreat was adopted with the adoption of the Model Penal Code (MPC), Maine stands in the minority of only 12 states that still retain such a duty today, as many states that had perviously adopted it have removed such a duty from their statutes.

3. The problems with the Duty to Retreat are two-fold, both in the liberty and dignitary interests of the individual citizen and in the pragmatic execution of self-defense, and I will address each of them.

4. While the Duty to Retreat requires that someone who is threatened with unlawful deadly force or serious bodily injury be compelled to *not* perform an action that the person is not obligated to do, it might be noticed at this point that there is no language regarding an obligation to perform a positive action other than surrender property. The supposed logic in this argument is that if a person can be compelled to retreat, then the person can be compelled to do other things as well.

5. To give examples, under the current law a person could lose their right to a self defense claim for failing to follow the following commands – "leave this park, or I will kill you", "stay in this park, or I will kill you", "don't date my ex-wife, or I will kill you", "don't go to that place, or I will kill you", "don't set up an abortion clinic, or I will kill you", "don't go to that protest, or I will kill you". All of these things a person can be legally compelled to do under Title 17-A §108-2-C-3-c and yet lose their claim to self defense if they do them.

6. Of course, detractors will claim that that the legal recourse is to contact law enforcement and seek protection. However, in some scenarios (such as the "stay here or I will kill you" scenario) that may not be feasible. In others, there will likely issues with prosecution arising from burdens of proof. While these theoretical examples sound far fetched and or highly unlikely (and while I hope no prosecutor in Maine would pursue such cases), it is consistent with the law.

7. Duty to Retreat laws subordinate the liberty interests of the law abiding person to the wishes of unlawful actors. Autonomy Interests are the rights of the individual to the integrity and autonomy of their self. Dignitary Interests extend beyond that to the right of the individual to move about freely and engage in fundamental rights, in a free society, so long as they do not violate the rights of others. Whenever the interests of unlawful aggressors willing to commit violence are put above individual Autonomy or Dignitary Interests of the lawful citizenry, especially those they consider too weak to defend themselves, the bad actors control society and the lawful person is denied any defense to their threats of injury.

8. The right to defend yourself from serious bodily injury or death is an *inherent* right. Currently, Maine is one of only 12 states that have a Duty to Retreat, however even in Maine there is no Duty to Retreat from your own home, a principle known as the "Castle Doctrine". The Supreme Court of the United States recently affirmed the *individual* right to self defense through the Second Amendment in both the *Bruen* and *Heller* cases.

9. However Title 17-A §108 does not distinguish the use of deadly force with a firearm versus other forms of the use of deadly force. The Court wrote in *Bruen,* "Although we remarked in Heller that the need for armed self-defense is perhaps 'most acute' in the home, id., at 628, we did not suggest that the need was insignificant elsewhere. Many Americans hazard greater danger outside the home than in it" and "confrontation can surely take place outside the home." Removing the Duty to Retreat would extend the same basic rights, in parity, to the person in or out of the home.

10. Removing the Duty to Retreat grants the same rights to self defense, as noted by the Supreme Court, both in and out of one's home. I would like to be very clear on one thing, removing the Duty to Retreat does not automatically grant a Stand Your Ground law, as we learned last session from extensive legal analysis, because there are no changes in any standards for reasonableness nor does it automatically grant any immunities from prosecution. Currently, while there are only 12 states left with a Duty to Retreat, only 18 states have adopted a Stand Your Ground Law and there are 20 states that have neither.

11. I would like to make note to the committee at this point that there is precedent for both having, and not having, a Duty to Retreat in American law. However for much of our history, the tendency was to not have a Duty to Retreat, with states and courts more heavily giving deference to individual rights. Some detractors opposed to removing Duty to Retreat will often claim that the Duty to Retreat has always been the Law of the Land and that removing it is "new and radical", implying that it is inherently "dangerous". One point that is made is that self defense laws in states without a Duty to Retreat are handled inconsistently. In reality, most self defense cases are handled differently regardless of the presence of a Duty to Retreat primarily based on how individual prosecutors and courts use the concept of *framing* (or how the circumstances before a self defense action are considered and how far back the timeline for framing is considered) to apply to the individual case. [Raymond, 2009].

12. While the Duty to Retreat was indeed inherited from English Common Law, it has not been universally used or applied in our country throughout our history. In a famous appellate case from Oklahoma in 1912, Judge Roy Hoffman wrote, "Under the old common law, no man could defend himself until he had retreated, and until his back was to the wall; but this is not the law in free America. Here the wall is to every man's back. It is the wall of his rights; and when he is at a place where he has a right to be, and he is unlawfully assailed, he may stand and defend himself; and cases sometimes arise in which he has the right, when unlawfully assailed, to advance and defend himself until he finds himself out of danger." [*Fowler v State*]

13. Judge Roy had probably kept up on his case law as contemporary cases of the time affirmed his statements. In *Runyan v State* (1877) the court wrote that the ability to stand and defend one's self was "founded on the law of nature; and is not, nor can it be, superseded by any law of society" and in *Beard v US* the Supreme Court wrote "A man may repel force by force in defense of his person, habitation, or property against anyone or many who manifestly intend and endeavor to commit a known felony by violence or surprise or either. In such case he is not compelled to retreat..."

14. At another time, the Supreme Court weighed in on the subject in *Brown v US* (1921) writing, "if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant, he may stand his ground, and that, if he kills him, he has not succeeded the bounds of lawful self-defense" and that the expansion of the right not to retreat was "consistent with human nature". Judge Oliver Wendell Holmes also famously wrote in this case that the previous rules that required even an innocent man to retreat, and which were cemented in English Common Law, were the result of requiring the pardon of grace and "had a tendency to ossify into specific rules without much regard for reason", further writing "Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety".

15. So while many states may have adopted the Duty to Retreat after the Model Penal Code was published in 1962, it certainly has not been the "law of the land" in the United States, and most of the states that have adopted it have since abandoned it.

16. The Duty to Retreat requirement has a more pragmatic affect, other than just restricting the individual liberties of our citizens.

17. In 1980, a police sergeant developed the "Tueller Drill", or as my fellow Law Enforcement Officers and I know it as the "21 foot rule". That is a phrase we hear multiple times over the course of our careers. It is the supposed "safe zone" comprised of a distance that an assailant with a knife would have to be that would give a trained law enforcement officer ample time to draw and fire their side arm in self defense before the attacker could reach and cause injury to the officer with the knife. While not part of any official policy, it has been used as a *standard* and even used in court trials. Dr. Hunter Martaindale, Director of Research at the Advanced Law Enforcement Rapid Response Training Center, conducted a scientific study in 2020. According to the research, while certain tactical movement techniques taught to trained officers can slightly decrease injury to officers at closer distances, the study shows that the average distance of twenty-one feet was inadequate and that a better distance was likely thirty-two feet, (though the study suggested more studies should be done to include scenarios with more stressors).

18. The study also showed that of the allowed reaction time to cover the twenty-one feet of 1.5 seconds, 75% of that time was used by the test subject to make a determination of either to shoot or not shoot during the tests. We know that reaction times for the average untrained 'civilian' is roughly twice that of a trained law enforcement officer. We also know from research that each additional stressor, each divided attention task and each additional level of complexity significantly adds to reaction time, both for trained and untrained people.

19. So imagine now that you are put in the horrible position where your life is now threatened. Imagine that fear. What is going to happen is that you are immediately going to go into a threat response mode. You will probably start experiencing tunnel vision as your field of view focuses narrowly on the threat. You may actually start to hear your own heart pound while all of the noises of the world around you seem to drown out and away as you experience auditory blunting. Time may actually seem to slow down, or it may even seem to speed up. These perceptual distortions are real, they are hardwired into us and are a normal physiological response to a threat. I was a CRASE instructor, which is Civilian Response to Active Shooter Events, trained by Baltimore PD. When I taught active shooter response training or defensive shooter classes, I told my students these phenomena are called 'lizard brain'.

20. At this point the assailant, who is intent on causing your death or inflicting serious bodily injury, already has the advantage. They have already made the decision to cause harm and are in the process of taking action to do so. You have split seconds to respond and much of that time is already consumed with the rightful decision making processes of "is the use of deadly force justified to defend myself" and "can I do so safely without causing injury to innocent people in the area". Each one of those decisions, while obviously needing to be made, significantly slows your reaction time. You probably do not have the benefit of the training afforded most law enforcement officers, so your reaction time will be slower. Every second counts.

21. It is because of these factors I believe we have a serious flaw in our current law. Under the law as it is written now, a person who would otherwise be justified in the use of deadly force to defend themselves is further delayed in taking action by being compelled to add another decision into the already complex and intense situation.

22. Each level of complexity removes life saving time from your reaction time and diminishes your ability to defend your own life. Each decision to 'retreat' is not a simple decision, but rather a complex situational awareness analysis that may consist of "do I have to retreat", "can I retreat safely", "if I try and retreat can I still be killed while retreating", "which is the safest/fastest route to retreat" or even "is that door locked". Someone forced to consider these decisions has to weigh in on a multitude of factors that include the relative speed and fitness between the aggressor and the victim, weather, visibility, obstructions and obstacles, etc. In short, removing the Duty to Retreat can save lives.

23. Finally, I would like to make a few statements about comments that I have heard from detractors of removing a Duty to Retreat. Removing the Duty to Retreat would not turn Maine into a "wild, wild west". While there were a few high profile cases surrounding cases in states where Stand Your Ground laws were enacted, it is important to remember that many states never enacted Duty to Retreat laws and many abandoned them years ago without adopting Stand Your ground and none of those states have turned into the "wild, wild west". Additionally, while the support of Duty to Retreat has varied over the years and by state by Domestic Violence Victims advocacy groups, there has not been universal for or against movement on Duty to Retreat and the fact is that victims of domestic violence are less likely to be charged in states without a Duty to Retreat when they are faced with a self defense situation.

24. In closing. removing the Duty to Retreat will still require that prosecutors and courts look at the issues of necessity, imminence, immediacy and reasonableness when it comes to using deadly force in a self defense situation. It will still require that someone who uses deadly force in a self defense situation do so lawfully and only when allowed by Title 17-A §108-2. It will not remove any criminal or civil liability for improperly using deadly force if the use of force fails to meet the already established standard of reasonableness. What it will do is give someone who is reasonably in fear for their life, or the life of another innocent person, adequate time to make the proper decisions to use, or not use, and then apply the proper application of appropriate force if necessary.

25. I hope you know by now the real world negative impact that the Duty to Retreat can have in a tense use of force situation and I hope you can see the benefit that removing the Duty to Retreat has when it comes to supporting victims threatened by violent crime and in upholding the individual rights of Maine citizens.

26. I encourage the committee to consider this legislation and support it with a vote of 'Ought To Pass'. I thank you for your time and will gladly answer any questions to my ability.

Respectfully,

Rep. Chad R. Perkins
District 31

CF:
Committee Chair Senator Beebe-Center
Committee Chair Representative Hasenfus
Senator Curry
Senator Cyrway
Representative Abdi
Representative Ardell
Representative Bunker
Representative Lajoie
Representative Lookner
Representative McIntyre
Representative Milliken
Representative Nutting
File