

## CHAPTER 5

### DEFENSES AND AFFIRMATIVE DEFENSES; JUSTIFICATION

#### §101. General rules for defenses and affirmative defenses; justification

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 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.

[PL 2015, c. 431, §35 (AMD).]

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

[PL 1981, c. 324, §24 (RPR).]

3. Conduct that is justifiable under this chapter constitutes a defense to any crime; except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the person's belief be reasonable has not been met, the person may be convicted only of a crime for which recklessness or criminal negligence suffices.

[PL 2007, c. 475, §10 (AMD).]

4. The fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

[PL 1981, c. 324, §24 (NEW).]

5. For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:

A. Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings; or [PL 2009, c. 336, §5 (NEW).]

B. A less-than-lethal munition that has or is designed to have a disabling effect upon human beings. For purposes of this paragraph, "less-than-lethal munition" means a low-kinetic energy projectile designed to be discharged from a firearm that is approved by the Board of Trustees of the Maine Criminal Justice Academy. [PL 2009, c. 336, §5 (NEW).]

[PL 2009, c. 336, §5 (RPR).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1981, c. 324, §24 (RPR). PL 1997, c. 185, §1 (AMD). PL 1999, c. 358, §1 (AMD). PL 2001, c. 386, §1 (AMD). PL 2007, c. 475, §10 (AMD). PL 2009, c. 336, §5 (AMD). PL 2015, c. 431, §35 (AMD).

#### §102. Public duty

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and the judgments or orders of courts or other public tribunals.

[PL 1975, c. 499, §1 (NEW).]

2. The justification afforded by this section to public servants is not precluded:

A. By the fact that the law, order or process was defective provided it appeared valid on its face and the defect was not knowingly caused or procured by such public servant; or, [PL 1975, c. 499, §1 (NEW).]

B. As to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded 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 person believed the public servant to be engaged in the performance of the public servant's duties or that the legal process or court decree was competent. [PL 2007, c. 173, §16 (AMD).]

[PL 2007, c. 173, §16 (AMD).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 2007, c. 173, §16 (AMD).

#### §102-A. Military orders

1. It is a defense if the person engaged in the conduct charged to constitute a crime in obedience to an order of the person's superior in the armed services that the person did not know to be unlawful. [PL 2007, c. 173, §17 (AMD).]

2. If the 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. [PL 2007, c. 173, §17 (AMD).]

#### SECTION HISTORY

PL 1981, c. 324, §25 (NEW). PL 2007, c. 173, §17 (AMD).

#### §103. Competing harms

1. Conduct that the person believes to be necessary to avoid imminent physical harm to 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. [PL 2007, c. 173, §18 (AMD).]

2. When the person was reckless or criminally negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of 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. [PL 2007, c. 173, §18 (AMD).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 2007, c. 173, §18 (AMD).

#### §103-A. Duress

1. It is a defense that, when a person engages in conduct that would otherwise constitute a crime, the person is compelled to do so by threat of imminent death or serious bodily injury to that person or another person or because that person was compelled to do so by force. [PL 2007, c. 173, §19 (AMD).]

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.

[PL 1981, c. 324, §26 (NEW).]

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

A. To a person who intentionally or knowingly committed the homicide for which the person is being tried; [PL 2007, c. 173, §19 (AMD).]

B. To a person who recklessly placed that person in a situation in which it was reasonably probable that the person would be subjected to duress; or [PL 2007, c. 173, §19 (AMD).]

C. To a person who with criminal negligence placed that person in a situation in which it was reasonably probable that the person would be subjected to duress, whenever criminal negligence suffices to establish culpability for the offense charged. [PL 2007, c. 173, §19 (AMD).]

[PL 2007, c. 173, §19 (AMD).]

#### SECTION HISTORY

PL 1981, c. 324, §26 (NEW). PL 2007, c. 173, §19 (AMD).

#### **§103-B. Involuntary conduct**

1. It is a defense that, when a person causes a result or engages in forbidden conduct, the person's act or omission to act is involuntary.

[PL 1999, c. 195, §2 (NEW).]

2. An omission to act is involuntary if the person fails to perform an act and:

A. The person is not capable of performing the act; [PL 1999, c. 195, §2 (NEW).]

B. The person has no legal duty to perform the act; or [PL 1999, c. 195, §2 (NEW).]

C. The person has no opportunity to perform the act. [PL 1999, c. 195, §2 (NEW).]

[PL 1999, c. 195, §2 (NEW).]

3. Possession of something is involuntary if the person:

A. Did not knowingly procure or receive the thing possessed; or [PL 1999, c. 195, §2 (NEW).]

B. Was not aware of the person's control of the possession for a sufficient period to have been able to terminate the person's possession of the thing. [PL 1999, c. 195, §2 (NEW).]

[PL 1999, c. 195, §2 (NEW).]

#### SECTION HISTORY

PL 1999, c. 195, §2 (NEW).

#### **§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 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.

[PL 2007, c. 173, §20 (AMD).]

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 the person reasonably believes it necessary to prevent an attempt by the other person to commit arson.

[PL 2007, c. 173, §20 (AMD).]

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 [PL 1975, c. 740, §26 (NEW).]

B. When the person reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal trespass by such other person, who 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. [PL 2007, c. 173, §20 (AMD).]

[PL 2007, c. 173, §20 (AMD).]

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

[PL 2007, c. 173, §20 (AMD).]

5. As used in this section:

A. Dwelling place has the same meaning provided in section 2, subsection 10; and [PL 1975, c. 740, §26 (NEW).]

B. Premises includes, but is not limited to, lands, private ways and any buildings or structures thereon. [PL 1975, c. 740, §26 (NEW).]

[PL 1975, c. 740, §26 (NEW).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §26 (RPR). PL 2007, c. 173, §20 (AMD).

#### **§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 the person reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of the person's property, or criminal mischief, or to retake the person's property immediately following its taking; but the person may use deadly force only under such circumstances as are prescribed in sections 104, 107 and 108. [PL 2007, c. 173, §21 (AMD).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §27 (AMD). PL 2007, c. 173, §21 (AMD).

#### **§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 child is justified in using a reasonable degree of force against that child when and to the extent that the person reasonably believes it necessary to prevent or punish the child'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. For purposes of this subsection, "child" means a person who has not attained 18 years of age and has not been ordered emancipated by a court pursuant to Title 15, section 3506-A.

[PL 2009, c. 336, §6 (AMD).]

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 child may result in no more than transient discomfort or minor temporary marks on that child.

[PL 2009, c. 336, §7 (AMD).]

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 nondeadly force against any such person who creates a disturbance when and to the extent that 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.

[PL 2009, c. 336, §8 (AMD).]

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

[PL 2009, c. 336, §9 (AMD).]

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

[PL 2009, c. 336, §10 (AMD).]

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 the person reasonably believes it necessary for such purposes.

[PL 2007, c. 173, §22 (AMD).]

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

[PL 2007, c. 173, §22 (AMD).]

7. A licensed physician, or a person acting under a licensed physician's direction, may use force for the purpose of administering a recognized form of treatment 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 the patient's care and supervision; or [PL 2007, c. 173, §22 (AMD).]

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. [PL 1975, c. 499, §1 (NEW).]

[PL 2007, c. 173, §22 (AMD).]

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.

[PL 2007, c. 173, §22 (AMD).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1979, c. 127, §127 (AMD). PL 1979, c. 512, §22 (AMD). PL 1979, c. 663, §121 (AMD). PL 2003, c. 143, §§1,2 (AMD). PL 2007, c. 173, §22 (AMD). PL 2009, c. 336, §§6-10 (AMD).

#### §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 [PL 2003, c. 143, §3 (AMD).]

B. 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. [PL 2007, c. 173, §23 (AMD).]  
[PL 2007, c. 173, §23 (AMD).]

2. A law enforcement officer is justified in using deadly force only when the officer reasonably believes such force is necessary:

A. For self-defense or to defend a 3rd person from what the officer reasonably believes is the imminent use of unlawful deadly force; or [PL 2007, c. 173, §23 (AMD).]

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 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. [PL 2007, c. 173, §23 (AMD).]  
[PL 2007, c. 173, §23 (AMD).]

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 [PL 2003, c. 143, §3 (AMD).]

B. Deadly force only when the private person reasonably believes such to be necessary 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. [PL 2007, c. 173, §23 (AMD).]  
[PL 2007, c. 173, §23 (AMD).]

4. A private person acting on 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 [PL 2007, c. 173, §23 (AMD).]

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. [PL 2003, c. 143, §3 (AMD).]

[PL 2007, c. 173, §23 (AMD).]

**5.**

[PL 2025, c. 429, §3 (RP).]

**5-A.**

[PL 2025, c. 429, §4 (RP).]

**6.**

[PL 1975, c. 740, §32 (RP).]

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.

[PL 1975, c. 499, §1 (NEW).]

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.

[PL 2003, c. 143, §3 (AMD).]

**SECTION HISTORY**

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §§28-33 (AMD). PL 1979, c. 512, §23 (AMD). PL 1989, c. 18, §§2,3 (AMD). PL 1989, c. 502, §§C5,C6 (AMD). PL 1995, c. 215, §§2,3 (AMD). PL 2003, c. 143, §3 (AMD). PL 2007, c. 173, §23 (AMD). PL 2025, c. 429, §§3, 4 (AMD).

**§107-A. Physical force in corrections**

1. A corrections officer, corrections supervisor, transport officer, law enforcement officer or another individual responsible for the custody, care, treatment or transport of persons in custody pursuant to an order of a court or as a result of arrest is justified in using a reasonable degree of nondeadly force:

A. When and to the extent the individual reasonably believes it necessary to prevent an escape from custody or to enforce a rule of the Department of Corrections or a jail; or [PL 2025, c. 429, §5 (NEW).]

B. In self-defense or to defend a 3rd person from what the individual reasonably believes to be the imminent use of unlawful nondeadly force encountered while seeking to prevent an escape or enforce a rule as described in paragraph A. [PL 2025, c. 429, §5 (NEW).]

[PL 2025, c. 429, §5 (NEW).]

2. A corrections officer, corrections supervisor, transport officer or law enforcement officer responsible for the custody, care, treatment or transport of persons in custody pursuant to an order of a court or as a result of arrest is justified in using deadly force when the officer or supervisor reasonably believes such force is necessary:

A. For self-defense or to defend a 3rd person from what the officer or supervisor reasonably believes is the imminent use of unlawful deadly force; or [PL 2025, c. 429, §5 (NEW).]

B. To prevent an escape from custody when the officer or supervisor reasonably believes 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 seriously endanger human life or to inflict serious bodily injury unless apprehended without delay and:

(1) The officer or supervisor has made reasonable efforts to advise the person that the officer or supervisor is attempting to prevent the escape from custody and the officer or supervisor reasonably believes that the person is aware of this advice; or

(2) The officer or supervisor reasonably believes that the person in custody otherwise knows the officer or supervisor is attempting to prevent the escape from custody. [PL 2025, c. 429, §5 (NEW).]

For the purposes of this subsection, "a reasonable belief that another person has committed a crime involving use or threatened use of deadly force" is a reasonable belief in facts, circumstances and the law that, if true, would constitute such an offense by the 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 prevent an escape.

[PL 2025, c. 429, §5 (NEW).]

3. A corrections officer, corrections supervisor, transport officer or law enforcement officer is justified in using deadly force against a person in the custody of the Maine State Prison or in the custody of an officer or supervisor of the Maine State Prison when the officer or supervisor reasonably believes that deadly force is necessary to prevent an escape from custody by that person. 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, transport officer or law enforcement officer who is not employed by a state agency to use deadly force.

[PL 2025, c. 429, §5 (NEW).]

4. A private person who has been directed by a corrections officer, corrections supervisor, transport officer or law enforcement officer who is responsible for the custody, care, treatment or transport of persons in custody pursuant to an order of a court or as a result of arrest to assist the officer or supervisor in 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 force to be necessary to carry out the officer's or supervisor's direction, unless the private person reasonably believes the order is illegal; or [PL 2025, c. 429, §5 (NEW).]

B. Deadly force only when the private person reasonably believes such force to be necessary 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 officer or supervisor directs the private person to use deadly force and the private person reasonably believes the officer or supervisor is authorized to use deadly force under the circumstances. [PL 2025, c. 429, §5 (NEW).]

[PL 2025, c. 429, §5 (NEW).]

5. Notwithstanding any provision of this section to the contrary, a corrections officer or corrections supervisor is not justified in using nondeadly or deadly force, or in directing a private person in the use of such force, in accordance with this section unless the corrections officer or corrections supervisor has received in-service training pursuant to Title 25, section 2804-F, subsection 5 in the use of such force, or in directing a private person to use such force, in the setting in which the force is to be used.

[PL 2025, c. 429, §5 (NEW).]

## SECTION HISTORY

PL 2025, c. 429, §5 (NEW).

**§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 the person or a 3rd person from what the person reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and the person may use a degree of such force 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, the person provoked the use of unlawful, nondeadly force by such other person; or [PL 2007, c. 173, §24 (AMD).]

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 [PL 2007, c. 173, §24 (AMD).]

C. The force involved was the product of a combat by agreement not authorized by law. [PL 1975, c. 499, §1 (NEW).]

[PL 2007, c. 173, §24 (AMD).]

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.

[PL 1997, c. 351, §1 (NEW).]

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 [PL 1989, c. 878, Pt. B, §15 (AMD).]

B. When 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 the person or a 3rd person present in the dwelling place; [PL 2007, c. 173, §24 (AMD).]

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, the person provokes such other person to use unlawful deadly force against anyone;

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

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

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

(c) Comply with a demand that the person abstain from performing an act that the person is not obliged to perform. [PL 2007, c. 173, §24 (AMD).]

[PL 2007, c. 173, §24 (AMD).]

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

[PL 2019, c. 462, §2 (NEW).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §34 (AMD). PL 1979, c. 701, §19 (AMD). PL 1989, c. 878, §B15 (AMD). PL 1997, c. 351, §1 (AMD). PL 2007, c. 173, §24 (AMD). PL 2019, c. 462, §2 (AMD).

#### §109. Consent

1. It is a defense that, when a defendant engages in conduct which would otherwise constitute a crime against the person or property of another, such other consented to the conduct and an element of the crime is negated as a result of such consent.

[PL 1981, c. 324, §27 (NEW).]

2. When conduct is a crime because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense only if:

A. Neither the injury inflicted nor the injury threatened was such as to endanger life or to cause serious bodily injury; [PL 1981, c. 324, §27 (NEW).]

B. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or [PL 1981, c. 324, §27 (NEW).]

C. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent. [PL 1981, c. 324, §27 (NEW).]

[PL 1981, c. 324, Pt. 27 (NEW).]

3. Consent is not a defense within the meaning of this section if:

A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is manifest or known to the actor; [PL 1981, c. 324, §27 (NEW).]

B. It is given by a person who, by reason of intoxication, physical illness, mental illness or mental defect, including, but not limited to, dementia and other cognitive impairments, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or [PL 2013, c. 414, §1 (AMD).]

C. It is induced by force, duress or deception or undue influence. [PL 2013, c. 414, §2 (AMD).]  
[PL 2013, c. 414, §§1, 2 (AMD).]

4. As used in this section, "undue influence" means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is an incapacitated adult as defined in Title 22, section 3472, subsection 10 or is a dependent adult as

defined in Title 22, section 3472, subsection 6 and who is wholly or partially dependent upon that person or others for care or support, either emotional or physical.

[PL 2013, c. 414, §3 (NEW).]

#### SECTION HISTORY

PL 1981, c. 324, §27 (NEW). PL 2013, c. 414, §§1-3 (AMD).

#### **§110. Threat to use deadly force against a law enforcement officer, transport officer, corrections officer or corrections supervisor**

A person otherwise justified in threatening to use deadly force against another is not justified in doing so with the use of a firearm or other dangerous weapon if the person knows or should know that the other person is a law enforcement officer, transport officer, corrections officer or corrections supervisor, unless the person knows that the officer or supervisor is not in fact engaged in the performance of the officer's or supervisor's public duty, or unless the person is justified under this chapter in using deadly force against the officer or supervisor. A law enforcement officer, transport officer, corrections officer or corrections supervisor may not make a nonconsensual warrantless entry into a dwelling place solely in response to a threat not justified under this section. [PL 2025, c. 429, §6 (AMD).]

#### SECTION HISTORY

PL 1997, c. 289, §1 (NEW). PL 2025, c. 429, §6 (AMD).

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