

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 29, 2021

LD: 1138 An Act To Ensure the Right to Self-defense Exists outside the Home by Removing the Requirement To Retreat

Summary

This bill amends the law in Title 17-A, section 108, on the use of physical force in defense of a person.

Title 17-A, section 108, subsection 2 lists justifications for the use of deadly force in paragraph A and exceptions to those justifications in paragraph C. This bill removes from the exceptions in paragraph C that the person can with complete safety (1) retreat or (2) comply with a demand to stop an action that the person is doing. The bill enacts a new subsection 4 stating that a person is justified in using deadly force under subsection 2 to prevent death or serious bodily injury or to prevent a kidnapping, robbery or forcible rape. Title 17-A, section 108 appears in Ferdico on pages 29 and 30. The text of section 108 is printed here.

Title 17-A §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.

Testimony

Proponents:

1. Representative Andrews presented the bill and spoke in favor, stressing that the bill aligns state law with the natural right to self-defense and Article 1 section 1 of the Maine Constitution.
2. Representative Faulkingham testified in favor of the bill and read testimony from his brother. Donna Stevens testified in support of the bill. Lauren LePage, representing the National Rifle Association of America testified in support and submitted written testimony.

Opponents:

1. Speaking against the bill were the following persons: Sandra Lovell, Michael Kebede from the ACLU, Mark Segar, Wanda Webber Snyder, Nacole Palmer, Dr. Edward Walworth, Hillary Shende, Sue Kistenmacher, Chris Campbell, Dr. David Fitz, Betsey Remage-Healey, Tracy Gregoire, Carol Selsberg, Lynn Ellis, Maura Pillsbury and Margaret Campbell. Attorney General Aaron Frey submitted written testimony against the bill.

Neither for nor against:

None