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April 26, 2021

Hon. Susan Deschambault
Hon. Charlotte Warren
Joint Standing Committee on Criminal Justice and Public Safety
State House, Room 436
Augusta, Maine 04332

Re: LD 1138, *An Act to Ensure the Right to Self-defense Exists Outside the Home by Removing the Requirement to Retreat*

Senate Chair Deschambault, House Chair Warren, and members of the committee:

I am writing in opposition to LD 1138, *An Act To Ensure the Right to Self-defense Exists Outside the Home by Removing the Requirement To Retreat*.

Under 17-A MRS § 108(2)(A), a person is entitled to use deadly force against another if:

- A. the person reasonably believes it necessary and reasonably believes that another person is
 1. about to use unlawful, deadly force against him/herself or a 3rd person; or
 2. the person is committing or about to commit kidnapping, robbery or gross sexual assault against him/herself or a 3rd person.

Under current Maine law, a person cannot use deadly force as outlined in paragraph A above if that person can, with complete safety, retreat from the encounter. LD 1138 eliminates the requirement that a person must retreat if it is safe to do so.

Under the current statute, if someone can, with complete safety, comply with a demand that he/she abstain from performing an act that the person is not obliged to perform, they should do so rather than use deadly force. See 17-A MRS § 108(2)(C)(3)(c). LD 1138 would also repeal this provision—in other words, a person could use deadly force instead of refraining from doing something that they are not legally obligated to do.

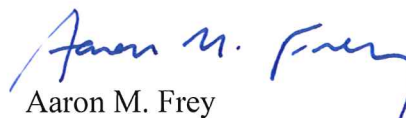
LD 1138 authorizes the use of deadly force even where it is safe to retreat. This is poor public policy. We anticipate that such a defense would be raised in many homicide cases. Once the defendant introduces sufficient evidence of the defense, the State bears the burden to disprove beyond a reasonable doubt that the defendant acted in self-defense. Under the current statute, the State can meet this burden by proving that the defendant could safely retreat. With the elimination of a duty to retreat, the means of disproving the defense would frequently turn on the State's ability to disprove the reasonableness of defendant's beliefs. The result is likely to be that individuals who should be held accountable for homicide will in fact be found not guilty.

Research published in 2017 in the Journal of the American Medical Association found that the implementation of Florida's "stand your ground" law was associated with a 24.4% increase in homicides and a 31.6% increase in firearm-related homicides over a nine-year period following the law's enactment.

Such laws essentially confer police powers on private citizens absent the requirements of intensive training in handling weapons and dealing with threats that are subject to policies, rules, procedures, and legal restraints. Even police officers with no legal obligation to do so retreat to certain degrees in favor of engaging methods short of deadly force.

The choice between killing another human being or retreating if safe should be self-evident. But "Stand your ground" laws are essentially "Shoot First" laws. I cannot support such a law in Maine, and as such I urge the members of the committee to vote Ought Not To Pass.

Sincerely,

A handwritten signature in blue ink that reads "Aaron M. Frey". The signature is fluid and cursive, with the first name "Aaron" being the most prominent.

Aaron M. Frey
Attorney General