SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3/21/07
BILL NO. HB0228.03 HB228



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HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALYEAT, BENNETT, BLACK, BLASDEL, BONIEK, R. BROWN, T. BROWN, CAMPBELL, CURTISS, GALLUS, HAMLETT, HENDRICK, HINKLE, HOVEN, INGRAHAM, JACKSON, JONES, KOTTEL, MCGEE, MEHLHOFF, MILLER, MORE, RANDALL, ROUNDSTONE, SMITH, SONJU, VANCE, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS ~~45-8-315,~~ 45-3-103, 45-8-316, 45-8-317, 45-8-321, AND 46-6-502, MCA; ~~AND REPEALING SECTION 45-8-317, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana constitution, is fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana constitution;

(3) self-defense is a natural right under 1-2-104 and is included in 49-1-101 and 49-1-103;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) In a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 1];

(6) In self-defense, the use of justifiable force discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 4] is to clarify and secure the ability of the people to protect themselves.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. No duty to summon help or flee.** Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to ~~acting in self-defense~~ USING FORCE.

1 THE PROVISIONS OF THIS SECTION APPLY TO A PERSON OFFERING EVIDENCE OF JUSTIFIABLE USE
2 OF FORCE UNDER 45-3-102, 45-3-103, OR 45-3-104.
3
4 ~~NEW SECTION. **Section 2. Defensive display of firearm not offense.** (1) A person who displays or~~
5 ~~shows a firearm TO A PERSON OTHER THAN AN IDENTIFIED PEACE OFFICER for a harmless defensive purpose needs~~
6 ~~no justification for the display and may not be charged with or convicted of an offense for that display.~~
7 ~~(2) Displaying or showing a firearm includes but is not limited to:~~
8 ~~(a) openly wearing, carrying, or possessing a firearm;~~
9 ~~(b) verbally informing another that one possesses a firearm; and~~
10 ~~(c) holding a firearm in a position so that the firearm does not point directly at another person.~~
11 ~~(3) The right to show or display a firearm does not include the following situations, and justification is~~
12 ~~required for the display:~~
13 ~~(a) intentionally or recklessly pointing a firearm directly at another person or sweeping another person~~
14 ~~with the muzzle of a firearm;~~
15 ~~(b) intentionally discharging a firearm in the direction of another person; or~~
16 ~~(c) deliberately provoking another person into threatening words or actions when possessing a firearm;~~
17 ~~(D) NEGLIGENTLY OR PURPOSEFULLY THREATENING A PEACE OFFICER WITH A FIREARM;~~
18 ~~(E) DISPLAYING A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY; OR~~
19 ~~(F) DISPLAYING A FIREARM AS PART OF A PATTERN OF CRIMINAL STREET GANG ACTIVITY AS DEFINED IN 45-8-405~~.
20
21 NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who
22 is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may
23 communicate to another person the fact that the person has a weapon. ~~It is not necessary that the person~~
24 ~~believes that the person is threatened for the communication to be lawful~~.
25 (2) If a person reasonably believes that the person or another person is threatened with bodily harm,
26 the person may WARN OR threaten the use of ~~deadly~~ force, INCLUDING DEADLY FORCE, against the
27 aggressor, including DRAWING OR presenting a weapon in an appropriate circumstance
28 (3) This section does not limit the authority of the board of regents to regulate the carrying of weapons,
29 as defined in 45-8-361 (5)(b) on campuses of the Montana university system.
30

1 NEW SECTION. **Section 3. Investigation of alleged offense involving self-defense claim.** When
2 an investigation is conducted by a peace officer of an incident that appears to have been or is alleged to have
3 been in self-defense, the investigation must be conducted so as to disclose all evidence, including testimony,
4 that might support the alleged offense and the apparent or alleged self-defense.
5
6 **SECTION 4.** SECTION 45-3-103, MCA, IS AMENDED TO READ:
7 **"45-3-103. Use of force in defense of occupied structure.** (1) A person is justified in the use of force
8 or threat to use force against another when and to the extent that ~~he~~ THE PERSON reasonably believes that ~~such~~
9 ~~conduct~~ THE USE OF FORCE is necessary to prevent or terminate ~~such~~ THE other's unlawful entry into or attack
10 upon an occupied structure. ~~However, he~~
11 (2) A PERSON JUSTIFIED IN THE USE OF FORCE PURSUANT TO SUBSECTION (1) is justified in the use of force
12 likely to cause death or serious bodily harm only if:
13 ~~(1)~~(A) the entry is made or attempted ~~in violent, tiotous, or tumultuous manner~~ and ~~he~~ THE PERSON
14 reasonably believes that ~~such~~ THE force is necessary to prevent an assault upon ~~or offer of personal violence~~
15 ~~to~~ ~~him~~ THE PERSON or another then in the occupied structure; or
16 ~~(2)~~(B) ~~he~~ THE PERSON reasonably believes that ~~such~~ THE force is necessary to prevent the commission
17 of a forcible felony in the occupied structure."
18 {*Internal References to 45-3-103:*
19 *ok 45-3-105** }
20
21 ~~NEW SECTION. **Section 5. Award of attorney fees and costs -- charge dismissed -- person found**~~
22 ~~**not guilty.** In a criminal prosecution of a person who is accused of an offense and who asserts the right of~~
23 ~~self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is~~
24 ~~found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of~~
25 ~~the charge.~~
26
27 ~~NEW SECTION. **Section 6. Conditions for seizure of firearm -- return of seized firearm.** (1) Unless~~
28 ~~a firearm is seized pursuant to 46-5-401, a peace officer may seize a legally possessed firearm only:~~
29 ~~(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause~~
30 ~~to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm~~

~~and no other into temporary custody, for up to 2 hours, to secure the safety of persons at the scene. If an arrest is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be another person no later than the end of the 2-hour custody period, unless a court order is obtained to retain the firearm.~~

~~(b) if a person is arrested because of probable cause to believe that the person has committed a crime and it is alleged with probable cause that the firearm has been used to further that crime. The firearm must be returned to the person from whom it was seized or to the rightful owner, if that is determined to be a different person, unless a court order is obtained to retain the firearm, within 2 weeks of the seizure if a criminal charge has not been filed against the person from whom the firearm was seized.~~

~~(2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined to be a different person within 48 hours of the dismissal or of a verdict of not guilty if no other charges directly relating to the firearm are pending.~~

~~(3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing, delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of the peace to compel the return. The person may also seek judicial sanctions and reasonable attorney fees if the person prevails against a law enforcement agency that has failed to comply with the initial demand for return. A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the return of a firearm under this subsection.~~

~~(4) A peace officer or law enforcement agency in possession of a firearm under this section shall exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.~~

~~(5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from whom the firearm was seized must be given a receipt for the firearm by the officer who seized the firearm or by another officer from the seizing officer's agency. The receipt must contain enough specificity to identify the firearm and must be given by either of those officers before the seizing officer leaves the scene of the seizure.~~

NEW SECTION. **Section 5. Firearm not to be destroyed.** If a firearm possessed by a law

enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

NEW SECTION. **Section 6. Landlords and tenants -- no firearm prohibition allowed.** (1) A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

(2) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO HOUSING PROVIDED BY THE MONTANA UNIVERSITY SYSTEM AND OTHER POSTSECONDARY INSTITUTIONS.

~~NEW SECTION. **Section 9. Employer prohibition of means of self-defense.** (1) An employer who as a condition of employment prohibits an employee from possessing the means of defending the employee in the workplace, including the possession of firearms, shall provide a level of security and safety for the employee equal to that which the employee could have provided without the prohibition. An employer who violates this requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an employee of the government of the United States or of a school district of this state.~~

~~(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the employee and parked at the workplace.~~

~~**Section 7.** Section 45-8-315, MCA, is amended to read:~~

~~**"45-8-315. Definition.** "Concealed weapon" means any weapon mentioned in 45-8-316, through 45-8-318, and 45-8-321 through 45-8-328, and that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."~~

**Section 7.** Section 45-8-316, MCA, is amended to read:

1 **"45-8-316. Carrying concealed weapons.** (1) ~~Every A~~ EXCEPT AS PROVIDED IN SUBSECTION
2 (3), A person who carries or bears concealed upon ~~his~~ the person~~, if using it to commit a criminal offense,~~ a dirk,
3 dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having
4 a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished
5 by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.
6 (2) A person who has previously been convicted of an offense, committed on a different occasion than
7 the offense under this section, in this state or any other jurisdiction for which a sentence to a term of
8 imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ the
9 person~~, if using it to commit a criminal offense,~~ any of the weapons described in subsection (1) shall be punished
10 by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.
11 (3) A PERSON MAY CARRY A CONCEALED WEAPON UPON THE PERSON UNLESS THE PERSON
12 IS PROHIBITED BY 45-8-321(1)(A) THROUGH (1)(H) FROM OBTAINING A CONCEALED WEAPON PERMIT.
13 ~~(4) This section does not limit the authority of the board of regents to regulate the carrying of weapons~~
14 ~~as defined in 45-8-361 (5)(b) on campuses of the Montana university system~~"
15
16 **SECTION 8.** SECTION 45-8-317, MCA, IS AMENDED TO READ:
17 **"45-8-317. Exceptions.** (1) Section 45-8-316 does not apply to:
18 (a) any peace officer of the state of Montana or of another state who has the power to make arrests;
19 (b) any officer of the United States government authorized to carry a concealed weapon;
20 (c) a person in actual service as a member of the national guard;
21 (d) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);
22 (e) a civil officer or the officer's deputy engaged in the discharge of official business;
23 (f) a probation and parole officer authorized to carry a firearm under 46-23-1002;
24 (g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;
25 (h) an agent of the department of justice or a criminal investigator in a county attorney's office;
26 (i) a person who is outside the official boundaries of a city or town or the confines of a logging,
27 lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking,
28 backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or
29 protection; ~~or~~
30 (j) the carrying of arms on one's own premises or at one's home or place of business; or

1 (k) the carrying of a concealed weapon pursuant to 45-8-316(3).

2 (2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply

3 to this section."

4 {*Internal References to 45-8-317:*
5 *OK 45-8-315**}

6

7 **SECTION 9.** SECTION 45-8-321, MCA, IS AMENDED TO READ:

8 **"45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing

9 of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years

10 from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who

11 holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the

12 person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided

13 in subsection (2), this privilege may not be denied an applicant unless the applicant:

14 (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

15 (b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable

16 by incarceration for 1 year or more;

17 (c) has been convicted in any state or federal court of a crime punishable by more than 1 year of

18 incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the

19 crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful

20 restraint, sexual abuse, or sexual intercourse or contact without consent;

21 (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years

22 have elapsed since the date of the conviction;

23 (e) has a warrant of any state or the federal government out for the applicant's arrest;

24 (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful

25 user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,

26 suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is

27 otherwise under state supervision;

28 (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill,

29 mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

30 (h) was dishonorably discharged from the United States armed forces.

1 (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable
2 cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be
3 a threat to the peace and good order of the community to the extent that the applicant should not be allowed to
4 carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the
5 subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon
6 which the denial is based.
7 (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be
8 required by the sheriff to demonstrate familiarity with a firearm by:
9 (a) completion of a hunter education or safety course approved or conducted by the department of fish,
10 wildlife, and parks or a similar agency of another state;
11 (b) completion of a firearms safety or training course approved or conducted by the department of fish,
12 wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency,
13 an institution of higher education, or an organization that uses instructors certified by a national firearms
14 association;
15 (c) completion of a law enforcement firearms safety or training course offered to or required of public
16 or private law enforcement personnel and conducted or approved by a law enforcement agency;
17 (d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted
18 by that state upon completion of a course described in subsections (3)(a) through (3)(c); or
19 (e) evidence that the applicant, during military service, was found to be qualified to operate firearms,
20 including handguns.
21 (4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from
22 the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other
23 document that attests to completion of the course and can be verified through contact with the entity or instructor
24 that conducted the course creates a presumption that the applicant has completed a course described in
25 subsection (3).
26 (5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with
27 a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity
28 to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the
29 applicant's familiarity with a firearm.
30 (6) A PERSON WHO HAS BEEN CONVICTED OF A FELONY AND WHOSE RIGHTS HAVE BEEN RESTORED PURSUANT

TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION IS ENTITLED TO ISSUANCE OF A CONCEALED WEAPONS PERMIT IF OTHERWISE ELIGIBLE."

{*Internal References to 45-8-321:*
*OK 45-8-315* OK 45-8-315* OK 45-8-317 OK 45-8-317*
*OK 45-8-322* OK 45-8-322* }

**Section 10.** Section 46-6-502, MCA, is amended to read:

**"46-6-502. Arrest by private person.** (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. ~~Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.~~

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. **SECTION E 11. JUSTIFIABLE USE OF FORCE -- BURDEN OF PROOF.** IN A CRIMINAL TRIAL, WHEN THE DEFENDANT HAS OFFERED EVIDENCE OF JUSTIFIABLE USE OF FORCE, THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S ACTIONS WERE NOT JUSTIFIED.

~~NEW SECTION. **Section 12. Repealer.** Section 45-8-317, MCA, is repealed.~~

NEW SECTION. **Section 12. Codification instruction.** (1) [Sections 1 through ~~5~~ 4 ~~3~~] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through ~~5~~ 4 ~~3~~].

~~(2) [Section 6] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [section 6].~~

~~(3)~~(2) [Section ~~7~~ 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section ~~7~~ 5].

~~(4)~~(3) [Section ~~8~~ 6] is intended to be codified as an integral part of Title 70, chapter ~~1~~ 24, part ~~1~~ 1, and the provisions of Title 70, chapter ~~1~~ 24, part ~~1~~ 1, apply to [section ~~8~~ 6].

1 ~~(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of~~
2 ~~Title 39, chapter 2, apply to [section 9].~~
3 (4) [Section 11] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the
4 provisions of Title 46, chapter 16, part 1, apply to [section 11].
5
6 NEW SECTION. **SECTION 13. {STANDARD} EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND
7 APPROVAL.
8 - END -