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*Attorneys for Defendants*

**MONTANA FIFTH JUDICIAL DISTRICT COURT,  
MADISON COUNTY**

STATE OF MONTANA,	)	Cause Nos. DC-29-2022-022
	)	DC-29-2022-023
Plaintiff,	)	DC-29-2022-024
vs.	)	DC-29-2022-026
JESSE MICHAEL BOYD, BETHANY	)	
GRACE BOYD, CARTER NORMAN	)	<b>DEFENDANTS' SUPPLEMENTAL</b>
PHILLIPS, and ERIC ANTOHONY	)	<b>MEMORANDUM, MOTION, AND</b>
TRENT,	)	<b>PROFFER REGARDING</b>
Defendants.	)	<b>JUSTIFIED USE OF FORCE</b>

**REQUEST FOR EVIDENTIARY HEARING**

Defendants Jesse M. Boyd (“Boyd”), Carter N. Phillips (“Phillips”),  
Bethany Boyd (“Bethany”), and Eric Trent (“Trent”), by and through their counsel  
of record, hereby provide this Supplemental Memorandum and Proffer regarding  
Justified use of Force.

The Defense believes it would benefit the Court to have an evidentiary hearing regarding all issues in this case related to justified use of force.

The government is making a number of arguments which deserve judicial analysis and scrutiny. Specifically, the State is arguing that:

- (1) No one can argue justified use of force unless they take the witness stand;
- (2) No one can argue justified use of force unless he “admits to the crime”;
- (3) No one can argue justified use of force in any unconscious, momentary, or instinctive manner;
- (4) No one can argue justified use of force in circumstances where he is accused of pointing a firearm at an advancing unarmed man;
- (5) No one can argue justified use of force while also arguing they were attempting to perform a citizens arrest; and
- (6) The burden of proof in a case where a defendant asserts justifiable use of force is on the defendant to show his actions were justified—and the State can curtail the defendant’s right even to assert such a defense where the State concludes that the justifiable-use-of-force defense is inapplicable.

Defendants believe it would assist the Court, and all parties, to hold a hearing in which each of these concepts are carefully analyzed. The defense would like to present expert witness Gary Marbut, who authored House Bill 228 in 2009 (which later became parts of several current Montana statutes in today’s MCA, including 46-16-131, 45-3-111(2), and 45-3-112—all of which are directly on-point and applicable to this case. Marbut can review and recount the long history of issues leading up to HB 228, both in Montana culture, case law, and legislation.

Marbut can testify regarding the thinking and legislative intent behind each of the concepts in HB 228.

Marbut, the author *Gun Laws of Montana*, is also a renowned firearm safety instructor and security guard license reviewer who can testify about self-defense issues that occur on the ground in real life.

Among other things, Marbut will describe and recount the need for Montanans to restore the burden-shifting requirement of HB 228 (now codified at 46-16-131) (“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.”) after the Supreme Court’s ruling in *State v. Longstreth*, 295 Mont. 457 984 P.2d 157 (1999).

The Defense may also call Attorney General Austin Knudsen as a witness. As Speaker of the Montana House of Representatives, Knudsen shepherded numerous pieces of legislation on self-defense issues through that house of the Legislature. Knudsen consulted with numerous interest groups, including law enforcement, shooting sports advocates, and victim advocates. Knudsen, like Marbut, is very knowledgeable of statewide debates and conflicts among policymakers, constituents and stakeholders regarding the topics of self defense and the right to bear arms.

The Defense attaches as an exhibit to this proffer and motion, the original text of House Bill 228.

Respectfully submitted this 13<sup>th</sup> day of March, 2023.

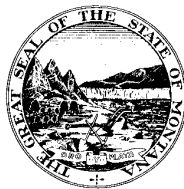
/s/ John M. Pierce

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# EXHIBIT 1



AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, 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, are 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 section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

(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 10];

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

(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves.

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

**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 using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104.

**Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

(3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses.

**Section 3. Investigation of alleged offense involving claim of justifiable use of force.** When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

**Section 4.** Section 45-3-103, MCA, is amended to read:

**"45-3-103. Use of force in defense of occupied structure.** (1) A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such~~ the other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)(a)~~ (a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)(b)~~ (b) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure."

**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.

**Section 6. Landlords and tenants -- no firearm prohibition allowed.** 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.

**Section 7.** Section 45-8-321, MCA, is amended to read:

**"45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

- (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;
- (b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;
- (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:
  - (i) a crime punishable by more than 1 year of incarceration ~~or~~, or
  - (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;
- (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;
- (e) has a warrant of any state or the federal government out for the applicant's arrest;
- (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,



suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

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

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in

subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), 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."

**Section 8.** 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.

(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."

**Section 9. 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.

**Section 10. Codification instruction.** (1) [Sections 1 through 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 3].

(2) [Section 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 5].

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

(4) [Section 9] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the

provisions of Title 46, chapter 16, part 1, apply to [section 9].

**Section 11. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0228, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALLYEAT, 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

AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE  
RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, MCA; AND PROVIDING  
AN IMMEDIATE EFFECTIVE DATE.

## **CERTIFICATE OF SERVICE**

I, John M. Pierce, hereby certify that I have served true and accurate copies of the foregoing Motion - Request for Hearing to the following on 03-13-2023:

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Representing: State of Montana  
Service Method: eService

Electronically Signed By: John M. Pierce  
Dated: 03-13-2023