

HOUSE BILL NO. 388

INTRODUCED BY R. PINOCCI, C. FISCUS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SELF-DEFENSE LAWS; REQUIRING PEACE OFFICERS CONDUCTING AN INVESTIGATION INTO A CLAIM OF JUSTIFIABLE USE OF FORCE TO CONDUCT A THOROUGH INVESTIGATION AND DISCLOSE ALL INFORMATION GATHERED DURING THE INVESTIGATION; PROVIDING A RELIEF PROVISION; AMENDING SECTION 45-3-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Legislative findings. (1) In section 3, Chapter 332, Laws of 2009, codified in 45-3-112, the legislature intended to make a substantive change in Montana law and in the duties and practices of peace officers in the state.

(2) The legislature reaffirms that pursuant to 1-3-223, the law neither does nor requires idle acts.

(3) In State v. Cooksey, 2012 MT 226, 366 Mont. 346, 286 P.3d 1174, the Montana supreme court held that 45-3-112 did not impose an independent duty to conduct a separate investigation into the claim of self-defense.

(4) As a result, the revisions of 45-3-112 as of [the effective date of this act] are intended to clarify that a thorough investigation into a claim of self-defense is required by 45-3-112 and includes a duty to seek, locate, collect, preserve, and disclose all evidence concerning the alleged offense.

Section 2. Section 45-3-112, MCA, is amended to read:

"45-3-112. Investigation of alleged offense involving claim of justifiable use of force. (1) 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 seek, locate, collect, preserve, and disclose all evidence, including witness testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

(2) If the investigation fails to meet the standard required by subsection (1), the court upon motion shall order dismissal of all charges with prejudice and award reasonable attorney fees and costs and any other relief



1 the court considers just."

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3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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5 NEW SECTION. **Section 4. Applicability.** [This act] applies to all incidents for which a claim of
6 justifiable use of force is raised that take place on or after [the effective date of this act].

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