

## 1 HOUSE BILL NO. 435

2 INTRODUCED BY D. SKEES

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CONDITIONS FOR THE SEIZURE OF A FIREARM  
5 AND THE RETURN OF A SEIZED FIREARM; AND AMENDING SECTIONS 46-5-301 AND 46-5-313, MCA."

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

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9 NEW SECTION. **Section 1. Conditions for seizure of firearm -- return of seized firearm.** (1) A peace  
10 officer may seize a legally possessed firearm only:11 (a) at an incident in which a firearm is present and a peace officer on the scene has reasonable cause  
12 to believe that the firearm may have been used to commit a crime. However, the peace officer may seize only  
13 that firearm and no others into temporary custody for up to 2 hours to secure an imminent threat of serious injury  
14 to the officer or others. If an arrest is not made, the firearm must be returned to the person from whom it was  
15 seized or to the rightful owner, if determined to be a different person, no later than the end of the 2-hour custody  
16 period unless:

17 (i) a court order is obtained to retain the firearm beyond the custody period;

18 (ii) the person from whom the firearm was seized or the rightful owner may not legally possess the  
19 firearm; or20 (iii) the person from whom the firearm was seized or the rightful owner is unavailable at the end of the  
21 custody period.22 (b) if a peace officer has reasonable cause to believe that a particular firearm was used to further a  
23 crime, in which case the firearm alleged to have been used may be seized as evidence of commission of the  
24 crime;

25 (c) if a person possessing a firearm is arrested;

26 (d) at a routine traffic stop only if a peace officer reasonably believes, for reasons other than that the  
27 person possesses a firearm, and can articulate that the stopped person is an imminent threat of serious injury  
28 to the officer or others. If an arrest is not made, any firearm seized must be returned pursuant to subsection  
29 (1)(a).

30 (e) at the scene of an ongoing conflict only if a peace officer reasonably believes, for reasons other than

1 that the person possesses a firearm, and can articulate that one or more conflict participants must be temporarily  
2 disarmed for the safety of others. If an arrest is not made, any firearm seized must be returned pursuant to  
3 subsection (1)(a).

4 (2) If no criminal charge has been filed against the person from whom the firearm was seized, any  
5 firearm taken into custody and not returned pursuant to subsection (1)(a) must be returned within 2 weeks to the  
6 person from whom it was seized or to the rightful owner, if determined to be a different person, no later than the  
7 end of the 2-week custody period unless the person from whom the firearm was seized or the rightful owner may  
8 not legally possess the firearm.

9 (3) If a criminal charge is dismissed against a person from whom a firearm has been seized or the  
10 person is found not guilty, the firearm must be returned to the person or to the rightful owner, if determined to be  
11 a different person, within 48 hours, excluding weekends or holidays, of the dismissal or of a verdict of not guilty  
12 if no other charges directly relating to the firearm are pending unless the person from whom the firearm was  
13 seized or the rightful owner may not legally possess the firearm.

14 (4) (a) A person from whom a firearm is seized or kept in a manner that is not consistent with this section  
15 may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing,  
16 delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must  
17 be honored within 24 hours, excluding weekends and holidays. This process does not require an order of any  
18 court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from a  
19 district court judge to compel the return. The person may also seek judicial sanctions and reasonable attorney  
20 fees if the person prevails against a law enforcement agency that has failed to comply with the initial demand for  
21 return.

22 (b) A person who may not legally possess any firearm or the type of firearm seized is not authorized to  
23 demand the return of a firearm under subsection (4)(a).

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

26 (6) If a peace officer or law enforcement agency seizes a firearm under this section, the person from  
27 whom the firearm was seized must be given a receipt for the firearm that contains enough information to identify  
28 the firearm by the peace officer who seized the firearm or by another peace officer from the seizing peace officer's  
29 agency before the seizing peace officer leaves the scene.

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1           **Section 2.** Section 46-5-301, MCA, is amended to read:

2           **"46-5-301. Return.** (1) A return must be made promptly and must be accompanied by a written inventory  
3 of any evidence or contraband taken, verified by the person serving the warrant. The return must be made before  
4 the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.

5           (2) The judge shall, upon request, deliver a copy of the inventory and the order of custody or disposition  
6 to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

7           (3) The judge shall enter an order providing for the custody or appropriate disposition of the evidence or  
8 contraband seized pending further proceedings.

9           (4) This section does not apply to the return of a seized firearm, which is governed by [section 1]."

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11           **Section 3.** Section 46-5-313, MCA, is amended to read:

12           **"46-5-313. Firearm not to be destroyed.** ¶ Except as otherwise provided in [section 1], if a firearm  
13 possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a  
14 private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the  
15 agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must  
16 be deposited in the general fund of the governmental entity of which the agency is a part."

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18           NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [section 1].

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