

## 1 SENATE BILL NO. 95

2 INTRODUCED BY S. MALEK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DOMESTIC VIOLENCE AND  
5 FIREARMS; PROVIDING THAT WHEN ISSUING A TEMPORARY RESTRAINING ORDER A JUDGE MAY  
6 PROHIBIT THE RESPONDENT FROM POSSESSING OR USING A FIREARM; PROHIBITING OFFENDERS  
7 CONVICTED OF DOMESTIC VIOLENCE FROM POSSESSING FIREARMS; AMENDING SECTIONS 40-15-201  
8 AND 45-8-313, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 40-15-201, MCA, is amended to read:

13 **"40-15-201. Temporary order of protection.** (1) A petitioner may seek a temporary order of protection  
14 from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in  
15 reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a  
16 relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a  
17 temporary order of protection immediately.

18 (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does  
19 not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate  
20 relief. The temporary order of protection may include any or all of the following orders:

21 (a) prohibiting the respondent from threatening to commit or committing acts of violence against the  
22 petitioner and any designated family member;

23 (b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting,  
24 or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim  
25 of this offense, or a witness to the offense;

26 (c) prohibiting the respondent from removing a child from the jurisdiction of the court;

27 (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner,  
28 the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented  
29 by the petitioner and by any other designated family or household member;

30 (e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership

1 of the residence;

2 (f) prohibiting the respondent from possessing or using ~~the firearm used in the assault~~ firearms;

3 (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any  
4 property except in the usual course of business or for the necessities of life and, if so restrained, requiring the  
5 respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the  
6 order is issued;

7 (h) directing the transfer of possession and use of the residence, an automobile, and other essential  
8 personal property, regardless of ownership of the residence, automobile, or essential personal property, and  
9 directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the  
10 petitioner safely obtains possession of the residence, automobile, or other essential personal property or to  
11 supervise the petitioner's or respondent's removal of essential personal property;

12 (i) directing the respondent to complete violence counseling, which may include alcohol or chemical  
13 dependency counseling or treatment, if appropriate;

14 (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or  
15 other designated family member.

16 (3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be  
17 withheld, except by order of the court for good cause shown.

18 (4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order  
19 of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence,  
20 that harm may result to the petitioner if an order is not issued before the 20-day period for responding has  
21 elapsed.

22 (5) A temporary order of protection issued pursuant to this section must conspicuously bear the following:

23 "Violation of this order is a criminal offense under 45-5-626 and may also be a criminal offense under 45-5-220."  
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25 **Section 2.** Section 45-8-313, MCA, is amended to read:

26 **"45-8-313. Unlawful possession of firearm by convicted person.** (1) A person commits the offense  
27 of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or  
28 possesses a firearm after the person has been convicted of:

29 (a) a felony for which the person received an additional sentence under 46-18-221; or

30 (b) an offense under the law of another state or of the United States that is equivalent to an offense that

1 when committed in Montana is subject to an additional sentence under 46-18-221-; or

2 (c) a violation of:

3 (i) 45-5-206 or a similar statute in another state;

4 (ii) 45-5-209;

5 (iii) 45-5-215 or a similar statute in another state;

6 (iv) 45-5-220; or

7 (v) 45-5-626.

8 (2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned  
9 in a state prison for not less than 2 years or more than 10 years.

10 (3) A person who has been issued a permit under 45-8-314 may not be convicted of a violation of this  
11 section."

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13 NEW SECTION. Section 3. Applicability. [This act] applies to temporary orders of protection and  
14 convictions that occur on or after [the effective date of this act].

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