

1 SENATE BILL NO. 86

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING TEMPORARY ORDERS OF
5 PROTECTION; REQUIRING THAT A COURT NOTIFY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
6 SERVICES WHEN THE PETITIONER FOR A TEMPORARY ORDER OF PROTECTION IS A MINOR AND THE
7 RESPONDENT IS A PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL OR LEGAL CUSTODY
8 OF THE MINOR; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO
9 PROVIDE VOLUNTARY OR EMERGENCY PROTECTIVE SERVICES TO THE MINOR FOR A LIMITED
10 DURATION IF A TEMPORARY ORDER OF PROTECTION IS ISSUED; AND AMENDING SECTION 40-15-201,
11 MCA."
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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15 **Section 1.** Section 40-15-201, MCA, is amended to read:

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

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

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

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

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

30 (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner,

1 the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented
2 by the petitioner and by any other designated family or household member;

3 (e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership
4 of the residence;

5 (f) prohibiting the respondent from possessing or using the firearm used in the assault;

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

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

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

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

19 (3) If the petitioner is a minor and the respondent is a parent, guardian, or other person having physical
20 or legal custody of the minor, the court shall report the matter promptly to the department of public health and
21 human services. If the court issues the temporary order of protection, the department shall provide to the minor
22 emergency protective services, pursuant to 41-3-301, or voluntary protective services, pursuant to 41-3-302, until
23 the court conducts a hearing and makes a determination regarding whether the temporary order of protection
24 should be continued, amended, or made permanent.

25 ~~(3)~~(4) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be
26 withheld, except by order of the court for good cause shown.

27 ~~(4)~~(5) The court may, without requiring prior notice to the respondent, issue an immediate temporary
28 order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other
29 evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding
30 has elapsed.

