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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3238

03/20/2014 Authored by Schoen, Simonson, Holberg and Slocum
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; prohibiting persons subject to domestic violence
1.3 restraining orders from possessing weapons; requiring persons convicted of
1.4 domestic violence offenses to surrender their firearms while they are prohibited
1.5 from possessing firearms; amending Minnesota Statutes 2012, sections
1.6 260C.201, subdivision 3; 518B.01, subdivision 6; 609.2242, subdivision 3;
1.7 609.749, subdivision 8; 624.713, subdivision 1.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2012, section 260C.201, subdivision 3, is amended to
1.10 read:

1.11 Subd. 3. **Domestic child abuse.** (a) If the court finds that the child is a victim of
1.12 domestic child abuse, as defined in section 260C.007, subdivision 13, it may order any of
1.13 the following dispositions of the case in addition to or as alternatives to the dispositions
1.14 authorized under subdivision 1:

1.15 (1) restrain any party from committing acts of domestic child abuse;

1.16 (2) exclude the abusing party from the dwelling which the family or household
1.17 members share or from the residence of the child;

1.18 (3) on the same basis as is provided in chapter 518, establish temporary visitation
1.19 with regard to minor children of the adult family or household members;

1.20 (4) on the same basis as is provided in chapter 518 or 518A, establish temporary
1.21 support or maintenance for a period of 30 days for minor children or a spouse;

1.22 (5) provide counseling or other social services for the family or household members;

1.23 or

1.24 (6) order the abusing party to participate in treatment or counseling services.

2.1 Any relief granted by the order for protection shall be for a fixed period not to
2.2 exceed one year.

2.3 (b) No order excluding the abusing party from the dwelling may be issued unless
2.4 the court finds that:

2.5 (1) the order is in the best interests of the child or children remaining in the dwelling;

2.6 (2) a remaining adult family or household member is able to care adequately for the
2.7 child or children in the absence of the excluded party; and

2.8 (3) the local welfare agency has developed a plan to provide appropriate social
2.9 services to the remaining family or household members.

2.10 (c) Upon a finding that the remaining parent is able to care adequately for the child
2.11 and enforce an order excluding the abusing party from the home and that the provision of
2.12 supportive services by the responsible social services agency is no longer necessary, the
2.13 responsible social services agency may be dismissed as a party to the proceedings. Orders
2.14 entered regarding the abusing party remain in full force and effect and may be renewed by
2.15 the remaining parent as necessary for the continued protection of the child for specified
2.16 periods of time, not to exceed one year.

2.17 (d) An order granting relief shall prohibit the abusing party from possessing firearms
2.18 for the length the order is in effect if the order (1) restrains the abusing party from
2.19 harassing, stalking, or threatening the abused party or restrains the abusing party from
2.20 engaging in other conduct that would place the abused party in reasonable fear of bodily
2.21 injury, and (2) includes a finding that the abusing party represents a credible threat to the
2.22 physical safety of the abused party or prohibits the abusing party from using, attempting to
2.23 use, or threatening to use physical force against the abused party. The order shall inform
2.24 the abusing party of that party's prohibited status and shall require that the abusing party
2.25 surrender to the sheriff any permits to carry or purchase firearms. The court shall order the
2.26 person to surrender any firearms that the abusing party controls, owns, or possesses to
2.27 a federally licensed firearms dealer or a law enforcement agency. A federally licensed
2.28 firearms dealer or law enforcement agency may charge the person a reasonable fee to store
2.29 the person's firearms. Federally licensed firearms dealers and law enforcement agencies
2.30 may establish policies for disposal of abandoned firearms.

2.31 Sec. 2. Minnesota Statutes 2012, section 518B.01, subdivision 6, is amended to read:

2.32 Subd. 6. **Relief by court.** (a) Upon notice and hearing, the court may provide
2.33 relief as follows:

2.34 (1) restrain the abusing party from committing acts of domestic abuse;

3.1 (2) exclude the abusing party from the dwelling which the parties share or from the
3.2 residence of the petitioner;

3.3 (3) exclude the abusing party from a reasonable area surrounding the dwelling or
3.4 residence, which area shall be described specifically in the order;

3.5 (4) award temporary custody or establish temporary parenting time with regard to
3.6 minor children of the parties on a basis which gives primary consideration to the safety of
3.7 the victim and the children. In addition to the primary safety considerations, the court
3.8 may consider particular best interest factors that are found to be relevant to the temporary
3.9 custody and parenting time award. Findings under section 257.025, 518.17, or 518.175
3.10 are not required with respect to the particular best interest factors not considered by the
3.11 court. If the court finds that the safety of the victim or the children will be jeopardized by
3.12 unsupervised or unrestricted parenting time, the court shall condition or restrict parenting
3.13 time as to time, place, duration, or supervision, or deny parenting time entirely, as needed
3.14 to guard the safety of the victim and the children. The court's decision on custody and
3.15 parenting time shall in no way delay the issuance of an order for protection granting other
3.16 relief provided for in this section. The court must not enter a parenting plan under section
3.17 518.1705 as part of an action for an order for protection;

3.18 (5) on the same basis as is provided in chapter 518 or 518A, establish temporary
3.19 support for minor children or a spouse, and order the withholding of support from the
3.20 income of the person obligated to pay the support according to chapter 518A;

3.21 (6) provide upon request of the petitioner counseling or other social services for the
3.22 parties, if married, or if there are minor children;

3.23 (7) order the abusing party to participate in treatment or counseling services,
3.24 including requiring the abusing party to successfully complete a domestic abuse
3.25 counseling program or educational program under section 518B.02;

3.26 (8) award temporary use and possession of property and restrain one or both parties
3.27 from transferring, encumbering, concealing, or disposing of property except in the usual
3.28 course of business or for the necessities of life, and to account to the court for all such
3.29 transfers, encumbrances, dispositions, and expenditures made after the order is served or
3.30 communicated to the party restrained in open court;

3.31 (9) exclude the abusing party from the place of employment of the petitioner, or
3.32 otherwise limit access to the petitioner by the abusing party at the petitioner's place of
3.33 employment;

3.34 (10) order the abusing party to have no contact with the petitioner whether in
3.35 person, by telephone, mail, or electronic mail or messaging, through a third party, or
3.36 by any other means;

4.1 (11) order the abusing party to pay restitution to the petitioner;

4.2 (12) order the continuance of all currently available insurance coverage without
4.3 change in coverage or beneficiary designation;

4.4 (13) order, in its discretion, other relief as it deems necessary for the protection of
4.5 a family or household member, including orders or directives to the sheriff or other law
4.6 enforcement or corrections officer as provided by this section;

4.7 (14) direct the care, possession, or control of a pet or companion animal owned,
4.8 possessed, or kept by the petitioner or respondent or a child of the petitioner or respondent;
4.9 and

4.10 (15) direct the respondent to refrain from physically abusing or injuring any pet or
4.11 companion animal, without legal justification, known to be owned, possessed, kept, or
4.12 held by either party or a minor child residing in the residence or household of either party
4.13 as an indirect means of intentionally threatening the safety of such person.

4.14 (b) Any relief granted by the order for protection shall be for a period not to exceed
4.15 two years, except when the court determines a longer period is appropriate. When a
4.16 referee presides at the hearing on the petition, the order granting relief becomes effective
4.17 upon the referee's signature.

4.18 (c) An order granting the relief authorized in paragraph (a), clause (1), may not be
4.19 vacated or modified in a proceeding for dissolution of marriage or legal separation, except
4.20 that the court may hear a motion for modification of an order for protection concurrently
4.21 with a proceeding for dissolution of marriage upon notice of motion and motion. The
4.22 notice required by court rule shall not be waived. If the proceedings are consolidated
4.23 and the motion to modify is granted, a separate order for modification of an order for
4.24 protection shall be issued.

4.25 (d) An order granting the relief authorized in paragraph (a), clause (2) or (3), is not
4.26 voided by the admittance of the abusing party into the dwelling from which the abusing
4.27 party is excluded.

4.28 (e) If a proceeding for dissolution of marriage or legal separation is pending between
4.29 the parties, the court shall provide a copy of the order for protection to the court with
4.30 jurisdiction over the dissolution or separation proceeding for inclusion in its file.

4.31 (f) An order for restitution issued under this subdivision is enforceable as civil
4.32 judgment.

4.33 (g) An order granting relief shall prohibit the abusing party from possessing firearms
4.34 for the length the order is in effect if the order (1) restrains the abusing party from
4.35 harassing, stalking, or threatening the abused party or restrains the abusing party from
4.36 engaging in other conduct that would place the abused party in reasonable fear of bodily

5.1 injury, and (2) includes a finding that the abusing party represents a credible threat to the
5.2 physical safety of the abused party or prohibits the abusing party from using, attempting to
5.3 use, or threatening to use physical force against the abused party. The order shall inform
5.4 the abusing party of that party's prohibited status and shall require that the abusing party
5.5 surrender to the sheriff any permits to carry or purchase firearms. The court shall order the
5.6 person to surrender any firearms that the abusing party controls, owns, or possesses to
5.7 a federally licensed firearms dealer or a law enforcement agency. A federally licensed
5.8 firearms dealer or law enforcement agency may charge the person a reasonable fee to store
5.9 the person's firearms. Federally licensed firearms dealers and law enforcement agencies
5.10 may establish policies for disposal of abandoned firearms.

5.11 Sec. 3. Minnesota Statutes 2012, section 609.2242, subdivision 3, is amended to read:

5.12 Subd. 3. **Domestic assaults; firearms.** (a) When a person is convicted of a violation
5.13 of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247, the court shall
5.14 determine and make written findings on the record as to whether:

5.15 (1) the assault was committed against a family or household member, as defined in
5.16 section 518B.01, subdivision 2;

5.17 (2) the defendant owns or possesses a firearm; and

5.18 (3) the firearm was used in any way during the commission of the assault.

5.19 (b) If the court determines that the assault was of a family or household member,
5.20 and that the offender owns or possesses a firearm and used it in any way during the
5.21 commission of the assault, it shall order that the firearm be summarily forfeited under
5.22 section 609.5316, subdivision 3.

5.23 (c) When a person is convicted of assaulting a family or household member and is
5.24 determined by the court to have used a firearm in any way during commission of the assault,
5.25 the court may order that the person is prohibited from possessing any type of firearm for
5.26 any period longer than three years or for the remainder of the person's life. A person who
5.27 violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the
5.28 court shall inform the defendant ~~whether~~ and for how long the defendant is prohibited from
5.29 possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure
5.30 of the court to provide this information to a defendant does not affect the applicability of
5.31 the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

5.32 (d) Except as otherwise provided in paragraph (c), when a person is convicted of a
5.33 violation of this section or section 609.224 and the court determines that the victim was a
5.34 family or household member, the court shall inform the defendant that the defendant is
5.35 prohibited from possessing a ~~pistol~~ firearm for three years from the date of conviction and

6.1 that it is a gross misdemeanor offense to violate this prohibition. The failure of the court
 6.2 to provide this information to a defendant does not affect the applicability of the ~~pistol~~
 6.3 firearm possession prohibition or the gross misdemeanor penalty to that defendant.

6.4 (e) Except as otherwise provided in paragraph (c), a person is not entitled to possess
 6.5 a pistol if the person has been convicted after August 1, 1992, or a firearm if a person has
 6.6 been convicted on or after the effective date of this act, of domestic assault under this
 6.7 section or assault in the fifth degree under section 609.224 and the assault victim was a
 6.8 family or household member as defined in section 518B.01, subdivision 2, unless three
 6.9 years have elapsed from the date of conviction and, during that time, the person has not
 6.10 been convicted of any other violation of this section or section 609.224. Property rights
 6.11 may not be abated but access may be restricted by the courts. A person who possesses a
 6.12 ~~pistol~~ firearm in violation of this paragraph is guilty of a gross misdemeanor.

6.13 (f) Except as otherwise provided in paragraph (b), when a person is convicted of
 6.14 a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247
 6.15 and the court determines that the assault was against a family or household member, the
 6.16 court shall order the person to surrender any firearms that the person controls, owns, or
 6.17 possesses to a federally licensed firearms dealer or a law enforcement agency. A federally
 6.18 licensed firearms dealer or law enforcement agency may charge the person a reasonable
 6.19 fee to store the person's firearms. The court shall order that the person surrender all
 6.20 permits to carry and purchase firearms to the sheriff. Federally licensed firearms dealers
 6.21 and law enforcement agencies may establish policies for disposal of abandoned firearms.

6.22 Sec. 4. Minnesota Statutes 2012, section 609.749, subdivision 8, is amended to read:

6.23 Subd. 8. **Stalking; firearms.** (a) When a person is convicted of a stalking crime
 6.24 under this section and the court determines that the person used a firearm in any way
 6.25 during commission of the crime, the court may order that the person is prohibited from
 6.26 possessing any type of firearm for any period longer than three years or for the remainder
 6.27 of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor.
 6.28 At the time of the conviction, the court shall inform the defendant ~~whether and~~ for
 6.29 how long the defendant is prohibited from possessing a firearm and that it is a gross
 6.30 misdemeanor to violate this paragraph. The failure of the court to provide this information
 6.31 to a defendant does not affect the applicability of the firearm possession prohibition or the
 6.32 gross misdemeanor penalty to that defendant.

6.33 (b) Except as otherwise provided in paragraph (a), when a person is convicted of a
 6.34 stalking crime under this section, the court shall inform the defendant that the defendant is
 6.35 prohibited from possessing a ~~pistol~~ firearm for three years from the date of conviction and

7.1 that it is a gross misdemeanor offense to violate this prohibition. The failure of the court
 7.2 to provide this information to a defendant does not affect the applicability of the ~~pistol~~
 7.3 firearm possession prohibition or the gross misdemeanor penalty to that defendant.

7.4 (c) Except as otherwise provided in paragraph (a), a person is not entitled to possess
 7.5 a pistol if the person has been convicted after August 1, 1996, of a stalking crime under
 7.6 this section, or to possess a firearm if the person has been convicted on or after the
 7.7 effective date of a stalking crime under this section, unless three years have elapsed from
 7.8 the date of conviction and, during that time, the person has not been convicted of any other
 7.9 violation of this section. Property rights may not be abated but access may be restricted
 7.10 by the courts. A person who possesses a ~~pistol~~ firearm in violation of this paragraph is
 7.11 guilty of a gross misdemeanor.

7.12 (d) If the court determines that a person convicted of a stalking crime under this
 7.13 section owns or possesses a firearm and used it in any way during the commission of
 7.14 the crime, it shall order that the firearm be summarily forfeited under section 609.5316,
 7.15 subdivision 3.

7.16 (e) Except as otherwise provided in paragraph (d), when a person is convicted of a
 7.17 stalking crime under this section, the court shall order the person to surrender any firearms
 7.18 that the person controls, owns, or possesses to a federally licensed firearms dealer or a
 7.19 law enforcement agency. A federally licensed firearms dealer or law enforcement agency
 7.20 may charge the person a reasonable fee to store the person's firearms. The court shall
 7.21 order that the person surrender all permits to carry and purchase firearms to the sheriff.
 7.22 Federally licensed firearms dealers and law enforcement agencies may establish policies
 7.23 for disposal of abandoned firearms.

7.24 Sec. 5. Minnesota Statutes 2012, section 624.713, subdivision 1, is amended to read:

7.25 Subdivision 1. **Ineligible persons.** The following persons shall not be entitled to
 7.26 possess a pistol or semiautomatic military-style assault weapon or, except for clause (1),
 7.27 any other firearm:

7.28 (1) a person under the age of 18 years except that a person under 18 may carry or
 7.29 possess a pistol or semiautomatic military-style assault weapon (i) in the actual presence
 7.30 or under the direct supervision of the person's parent or guardian, (ii) for the purpose
 7.31 of military drill under the auspices of a legally recognized military organization and
 7.32 under competent supervision, (iii) for the purpose of instruction, competition, or target
 7.33 practice on a firing range approved by the chief of police or county sheriff in whose
 7.34 jurisdiction the range is located and under direct supervision; or (iv) if the person has
 7.35 successfully completed a course designed to teach marksmanship and safety with a pistol

8.1 or semiautomatic military-style assault weapon and approved by the commissioner of
8.2 natural resources;

8.3 (2) except as otherwise provided in clause (9), a person who has been convicted of,
8.4 or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing,
8.5 in this state or elsewhere, a crime of violence. For purposes of this section, crime of
8.6 violence includes crimes in other states or jurisdictions which would have been crimes of
8.7 violence as herein defined if they had been committed in this state;

8.8 (3) a person who is or has ever been committed in Minnesota or elsewhere by a
8.9 judicial determination that the person is mentally ill, developmentally disabled, or mentally
8.10 ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, or who
8.11 has ever been found incompetent to stand trial or not guilty by reason of mental illness,
8.12 unless the person's ability to possess a firearm has been restored under subdivision 4;

8.13 (4) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or
8.14 gross misdemeanor violation of chapter 152, unless three years have elapsed since the
8.15 date of conviction and, during that time, the person has not been convicted of any other
8.16 such violation of chapter 152 or a similar law of another state; or a person who is or has
8.17 ever been committed by a judicial determination for treatment for the habitual use of a
8.18 controlled substance or marijuana, as defined in sections 152.01 and 152.02, unless the
8.19 person's ability to possess a firearm has been restored under subdivision 4;

8.20 (5) a person who has been committed to a treatment facility in Minnesota or
8.21 elsewhere by a judicial determination that the person is chemically dependent as defined
8.22 in section 253B.02, unless the person has completed treatment or the person's ability to
8.23 possess a firearm has been restored under subdivision 4. Property rights may not be abated
8.24 but access may be restricted by the courts;

8.25 (6) a peace officer who is informally admitted to a treatment facility pursuant to
8.26 section 253B.04 for chemical dependency, unless the officer possesses a certificate from
8.27 the head of the treatment facility discharging or provisionally discharging the officer from
8.28 the treatment facility. Property rights may not be abated but access may be restricted
8.29 by the courts;

8.30 (7) a person, including a person under the jurisdiction of the juvenile court, who
8.31 has been charged with committing a crime of violence and has been placed in a pretrial
8.32 diversion program by the court before disposition, until the person has completed the
8.33 diversion program and the charge of committing the crime of violence has been dismissed;

8.34 (8) except as otherwise provided in clause (9), a person who has been convicted in
8.35 another state of committing an offense similar to the offense described in section 609.224,
8.36 subdivision 3, against a family or household member or section 609.2242, subdivision

9.1 3, unless three years have elapsed since the date of conviction and, during that time, the
 9.2 person has not been convicted of any other violation of section 609.224, subdivision 3, or
 9.3 609.2242, subdivision 3, or a similar law of another state;

9.4 (9) a person who has been convicted in this state or elsewhere of assaulting a family
 9.5 or household member and who was found by the court to have used a firearm in any way
 9.6 during commission of the assault is prohibited from possessing any type of firearm for the
 9.7 period determined by the sentencing court;

9.8 (10) a person who:

9.9 (i) has been convicted in any court of a crime punishable by imprisonment for a
 9.10 term exceeding one year;

9.11 (ii) is a fugitive from justice as a result of having fled from any state to avoid
 9.12 prosecution for a crime or to avoid giving testimony in any criminal proceeding;

9.13 (iii) is an unlawful user of any controlled substance as defined in chapter 152;

9.14 (iv) has been judicially committed to a treatment facility in Minnesota or elsewhere
 9.15 as a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to
 9.16 the public, as defined in section 253B.02;

9.17 (v) is an alien who is illegally or unlawfully in the United States;

9.18 (vi) has been discharged from the armed forces of the United States under
 9.19 dishonorable conditions; or

9.20 (vii) has renounced the person's citizenship having been a citizen of the United States;

9.21 (viii) is subject to an order for protection as described in section 518B.01,
 9.22 subdivision 6, paragraph (g); or

9.23 (ix) is disqualified from possessing a firearm under United States Code, title 18,
 9.24 section 922(g)(8) or (9), as amended through March 1, 2014; or

9.25 (11) a person who has been convicted of the following offenses at the gross
 9.26 misdemeanor level, unless three years have elapsed since the date of conviction and, during
 9.27 that time, the person has not been convicted of any other violation of these sections: section
 9.28 609.229 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults
 9.29 motivated by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a
 9.30 child); 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring
 9.31 gun); 609.71 (riot); or 609.749 (stalking). For purposes of this paragraph, the specified
 9.32 gross misdemeanor convictions include crimes committed in other states or jurisdictions
 9.33 which would have been gross misdemeanors if conviction occurred in this state.

9.34 A person who issues a certificate pursuant to this section in good faith is not liable
 9.35 for damages resulting or arising from the actions or misconduct with a firearm committed
 9.36 by the individual who is the subject of the certificate.

10.1 The prohibition in this subdivision relating to the possession of firearms other than
10.2 pistols and semiautomatic military-style assault weapons does not apply retroactively
10.3 to persons who are prohibited from possessing a pistol or semiautomatic military-style
10.4 assault weapon under this subdivision before August 1, 1994.

10.5 The lifetime prohibition on possessing, receiving, shipping, or transporting firearms
10.6 for persons convicted or adjudicated delinquent of a crime of violence in clause (2),
10.7 applies only to offenders who are discharged from sentence or court supervision for a
10.8 crime of violence on or after August 1, 1993.

10.9 For purposes of this section, "judicial determination" means a court proceeding
10.10 pursuant to sections 253B.07 to 253B.09 or a comparable law from another state.