



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1713

Introduced 2/15/2019, by Sen. Chuck Weaver

SYNOPSIS AS INTRODUCED:

430 ILCS 67/35
430 ILCS 67/40

Amends the Firearms Restraining Order Act. Provides that a State's Attorney or assistant State's Attorney (rather than a petitioner) may request an emergency firearms restraining order by filing an affidavit or verified pleading alleging that the respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm. Provides that if the court issues an emergency firearms restraining order, it shall, based upon written application filed by the State's Attorney or assistant State's Attorney supported by evidence submitted under oath or affirmation, upon a finding of probable cause that the respondent possesses firearms, issue a search warrant directing a law enforcement agency to seize the respondent's firearms. Provides that an emergency firearms restraining order and a 6-month firearms restraining order shall require the firearm or firearms and Firearm Owner's Identification Card and concealed carry license, if unexpired, to be returned to the respondent if the firearms restraining order is not granted within 7 days. Effective immediately.

LRB101 06776 SLF 51803 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Firearms Restraining Order Act is amended by
5 changing Sections 35 and 40 as follows:

6 (430 ILCS 67/35)

7 Sec. 35. Ex parte orders and emergency hearings.

8 (a) A State's Attorney or assistant State's Attorney
9 ~~petitioner~~ may request an emergency firearms restraining order
10 by filing an affidavit or verified pleading alleging that the
11 respondent poses an immediate and present danger of causing
12 personal injury to himself, herself, or another by having in
13 his or her custody or control, purchasing, possessing, or
14 receiving a firearm. The petition shall also describe the type
15 and location of any firearm or firearms presently believed by
16 the petitioner to be possessed or controlled by the respondent.

17 (b) If the respondent is alleged to pose an immediate and
18 present danger of causing personal injury to an intimate
19 partner, or an intimate partner is alleged to have been the
20 target of a threat or act of violence by the respondent, the
21 petitioner shall make a good faith effort to provide notice to
22 any and all intimate partners of the respondent. The notice
23 must include that the petitioner intends to petition the court

1 for an emergency firearms restraining order, and, if the
2 petitioner is a law enforcement officer, referral to relevant
3 domestic violence or stalking advocacy or counseling
4 resources, if appropriate. The petitioner ~~Petitioner~~ shall
5 attest to having provided the notice in the filed affidavit or
6 verified pleading. If, after making a good faith effort, the
7 petitioner is unable to provide notice to any or all intimate
8 partners, the affidavit or verified pleading should describe
9 what efforts were made.

10 (c) Every person who files a petition for an emergency
11 firearms restraining order, knowing the information provided
12 to the court at any hearing or in the affidavit or verified
13 pleading to be false, is guilty of perjury under Section 32-2
14 of the Criminal Code of 2012.

15 (d) An emergency firearms restraining order shall be issued
16 on an ex parte basis, that is, without notice to the
17 respondent.

18 (e) An emergency hearing held on an ex parte basis shall be
19 held the same day that the petition is filed or the next day
20 that the court is in session.

21 (f) If a circuit or associate judge finds probable cause to
22 believe that the respondent poses an immediate and present
23 danger of causing personal injury to himself, herself, or
24 another by having in his or her custody or control, purchasing,
25 possessing, or receiving a firearm, the circuit or associate
26 judge shall issue an emergency order.

1 (f-5) If the court issues an emergency firearms restraining
2 order, it shall, based upon written application filed by the
3 State's Attorney or assistant State's Attorney supported by
4 evidence submitted under oath or affirmation, upon a finding of
5 probable cause that the respondent possesses firearms, issue a
6 search warrant directing a law enforcement agency to seize the
7 respondent's firearms. The court may, as part of that warrant,
8 direct the law enforcement agency to search the respondent's
9 residence and other places where the court finds there is
10 probable cause to believe he or she is likely to possess the
11 firearms.

12 (g) An emergency firearms restraining order shall require:

13 (1) the respondent to refrain from having in his or her
14 custody or control, purchasing, possessing, or receiving
15 additional firearms for the duration of the order; and

16 (2) the respondent to turn over to the local law
17 enforcement agency any Firearm Owner's Identification Card
18 and concealed carry license in his or her possession. The
19 local law enforcement agency shall immediately mail the
20 card and concealed carry license to the Department of State
21 Police Firearm Services Bureau for safekeeping. The
22 firearm or firearms and Firearm Owner's Identification
23 Card and concealed carry license, if unexpired, shall be
24 returned to the respondent after the firearms restraining
25 order is terminated, ~~or~~ expired, or not granted within 7
26 days.

1 (h) Except as otherwise provided in subsection (h-5) of
2 this Section, upon expiration of the period of safekeeping, if
3 the firearms or Firearm Owner's Identification Card and
4 concealed carry license cannot be returned to the respondent
5 because the respondent cannot be located, fails to respond to
6 requests to retrieve the firearms, or is not lawfully eligible
7 to possess a firearm, upon petition from the local law
8 enforcement agency, the court may order the local law
9 enforcement agency to destroy the firearms, use the firearms
10 for training purposes, or use the firearms for any other
11 application as deemed appropriate by the local law enforcement
12 agency.

13 (h-5) A respondent whose Firearm Owner's Identification
14 Card has been revoked or suspended may petition the court, if
15 the petitioner is present in court or has notice of the
16 respondent's petition, to transfer the respondent's firearm to
17 a person who is lawfully able to possess the firearm if the
18 person does not reside at the same address as the respondent.
19 Notice of the petition shall be served upon the person
20 protected by the emergency firearms restraining order. While
21 the order is in effect, the transferee who receives the
22 respondent's firearms must swear or affirm by affidavit that he
23 or she shall not transfer the firearm to the respondent or to
24 anyone residing in the same residence as the respondent.

25 (h-6) If a person other than the respondent claims title to
26 any firearms surrendered under this Section, he or she may

1 petition the court, if the petitioner is present in court or
2 has notice of the petition, to have the firearm returned to him
3 or her. If the court determines that person to be the lawful
4 owner of the firearm, the firearm shall be returned to him or
5 her, provided that:

6 (1) the firearm is removed from the respondent's
7 custody, control, or possession and the lawful owner agrees
8 to store the firearm in a manner such that the respondent
9 does not have access to or control of the firearm; and

10 (2) the firearm is not otherwise unlawfully possessed
11 by the owner.

12 The person petitioning for the return of his or her firearm
13 must swear or affirm by affidavit that he or she: (i) is the
14 lawful owner of the firearm; (ii) shall not transfer the
15 firearm to the respondent; and (iii) will store the firearm in
16 a manner that the respondent does not have access to or control
17 of the firearm.

18 (i) In accordance with subsection (e) of this Section, the
19 court shall schedule a full hearing as soon as possible, but no
20 longer than 14 days from the issuance of an ex parte firearms
21 restraining order, to determine if a 6-month firearms
22 restraining order shall be issued. The court may extend an ex
23 parte order as needed, but not to exceed 14 days, to effectuate
24 service of the order or if necessary to continue protection.
25 The court may extend the order for a greater length of time by
26 mutual agreement of the parties.

1 (Source: P.A. 100-607, eff. 1-1-19; revised 10-2-18.)

2 (430 ILCS 67/40)

3 Sec. 40. Six-month ~~Six-month~~ orders.

4 (a) A petitioner may request a 6-month firearms restraining
5 order by filing an affidavit or verified pleading alleging that
6 the respondent poses a significant danger of causing personal
7 injury to himself, herself, or another in the near future by
8 having in his or her custody or control, purchasing,
9 possessing, or receiving a firearm. The petition shall also
10 describe the number, types, and locations of any firearms
11 presently believed by the petitioner to be possessed or
12 controlled by the respondent.

13 (b) If the respondent is alleged to pose a significant
14 danger of causing personal injury to an intimate partner, or an
15 intimate partner is alleged to have been the target of a threat
16 or act of violence by the respondent, the petitioner shall make
17 a good faith effort to provide notice to any and all intimate
18 partners of the respondent. The notice must include that the
19 petitioner intends to petition the court for a 6-month firearms
20 restraining order, and, if the petitioner is a law enforcement
21 officer, referral to relevant domestic violence or stalking
22 advocacy or counseling resources, if appropriate. The
23 petitioner ~~Petitioner~~ shall attest to having provided the
24 notice in the filed affidavit or verified pleading. If, after
25 making a good faith effort, the petitioner is unable to provide

1 notice to any or all intimate partners, the affidavit or
2 verified pleading should describe what efforts were made.

3 (c) Every person who files a petition for a 6-month
4 firearms restraining order, knowing the information provided
5 to the court at any hearing or in the affidavit or verified
6 pleading to be false, is guilty of perjury under Section 32-2
7 of the Criminal Code of 2012.

8 (d) Upon receipt of a petition for a 6-month firearms
9 restraining order, the court shall order a hearing within 30
10 days.

11 (e) In determining whether to issue a firearms restraining
12 order under this Section, the court shall consider evidence
13 including, but not limited to, the following:

14 (1) The unlawful and reckless use, display, or
15 brandishing of a firearm by the respondent.

16 (2) The history of use, attempted use, or threatened
17 use of physical force by the respondent against another
18 person.

19 (3) Any prior arrest of the respondent for a felony
20 offense.

21 (4) Evidence of the abuse of controlled substances or
22 alcohol by the respondent.

23 (5) A recent threat of violence or act of violence by
24 the respondent directed toward himself, herself, or
25 another.

26 (6) A violation of an emergency order of protection

1 issued under Section 217 of the Illinois Domestic Violence
2 Act of 1986 or Section 112A-17 of the Code of Criminal
3 Procedure of 1963 or of an order of protection issued under
4 Section 214 of the Illinois Domestic Violence Act of 1986
5 or Section 112A-14 of the Code of Criminal Procedure of
6 1963.

7 (7) A pattern of violent acts or violent threats,
8 including, but not limited to, threats of violence or acts
9 of violence by the respondent directed toward himself,
10 herself, or another.

11 (f) At the hearing, the petitioner shall have the burden of
12 proving, by clear and convincing evidence, that the respondent
13 poses a significant danger of personal injury to himself,
14 herself, or another by having in his or her custody or control,
15 purchasing, possessing, or receiving a firearm.

16 (g) If the court finds that there is clear and convincing
17 evidence to issue a firearms restraining order, the court shall
18 issue a firearms restraining order that shall be in effect for
19 6 months subject to renewal under Section 45 of this Act or
20 termination under that Section.

21 (g-5) If the court issues a 6-month firearms restraining
22 order, it shall, upon a finding of probable cause that the
23 respondent possesses firearms, issue a search warrant
24 directing a law enforcement agency to seize the respondent's
25 firearms. The court may, as part of that warrant, direct the
26 law enforcement agency to search the respondent's residence and

1 other places where the court finds there is probable cause to
2 believe he or she is likely to possess the firearms.

3 (h) A 6-month firearms restraining order shall require:

4 (1) the respondent to refrain from having in his or her
5 custody or control, purchasing, possessing, or receiving
6 additional firearms for the duration of the order; and

7 (2) the respondent to turn over to the local law
8 enforcement agency any firearm or Firearm Owner's
9 Identification Card and concealed carry license in his or
10 her possession. The local law enforcement agency shall
11 immediately mail the card and concealed carry license to
12 the Department of State Police Firearm Services Bureau for
13 safekeeping. The firearm or firearms and Firearm Owner's
14 Identification Card and concealed carry license, if
15 unexpired, shall be returned to the respondent after the
16 firearms restraining order is terminated, ~~or~~ expired, or
17 not granted within 7 days.

18 (i) Except as otherwise provided in subsection (i-5) of
19 this Section, upon expiration of the period of safekeeping, if
20 the firearms or Firearm Owner's Identification Card cannot be
21 returned to the respondent because the respondent cannot be
22 located, fails to respond to requests to retrieve the firearms,
23 or is not lawfully eligible to possess a firearm, upon petition
24 from the local law enforcement agency, the court may order the
25 local law enforcement agency to destroy the firearms, use the
26 firearms for training purposes, or use the firearms for any

1 other application as deemed appropriate by the local law
2 enforcement agency.

3 (i-5) A respondent whose Firearm Owner's Identification
4 Card has been revoked or suspended may petition the court, if
5 the petitioner is present in court or has notice of the
6 respondent's petition, to transfer the respondent's firearm to
7 a person who is lawfully able to possess the firearm if the
8 person does not reside at the same address as the respondent.
9 Notice of the petition shall be served upon the person
10 protected by the emergency firearms restraining order. While
11 the order is in effect, the transferee who receives the
12 respondent's firearms must swear or affirm by affidavit that he
13 or she shall not transfer the firearm to the respondent or to
14 anyone ~~any one~~ residing in the same residence as the
15 respondent.

16 (i-6) If a person other than the respondent claims title to
17 any firearms surrendered under this Section, he or she may
18 petition the court, if the petitioner is present in court or
19 has notice of the petition, to have the firearm returned to him
20 or her. If the court determines that person to be the lawful
21 owner of the firearm, the firearm shall be returned to him or
22 her, provided that:

23 (1) the firearm is removed from the respondent's
24 custody, control, or possession and the lawful owner agrees
25 to store the firearm in a manner such that the respondent
26 does not have access to or control of the firearm; and

1 (2) the firearm is not otherwise unlawfully possessed
2 by the owner.

3 The person petitioning for the return of his or her firearm
4 must swear or affirm by affidavit that he or she: (i) is the
5 lawful owner of the firearm; (ii) shall not transfer the
6 firearm to the respondent; and (iii) will store the firearm in
7 a manner that the respondent does not have access to or control
8 of the firearm.

9 (j) If the court does not issue a firearms restraining
10 order at the hearing, the court shall dissolve any emergency
11 firearms restraining order then in effect.

12 (k) When the court issues a firearms restraining order
13 under this Section, the court shall inform the respondent that
14 he or she is entitled to one hearing during the period of the
15 order to request a termination of the order, under Section 45
16 of this Act, and shall provide the respondent with a form to
17 request a hearing.

18 (Source: P.A. 100-607, eff. 1-1-19; revised 10-2-18.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.