



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3379

Introduced 2/14/2020, by Sen. Julie A. Morrison - Ann Gillespie

SYNOPSIS AS INTRODUCED:

430 ILCS 67/5
430 ILCS 67/10
430 ILCS 67/35
430 ILCS 67/40
430 ILCS 67/45

Amends the Firearms Restraining Order Act. Includes a former spouse or person with a child in common in the definition of "family member of the respondent". Provides that a firearms restraining order includes the seizure of ammunition. Provides that no fee shall be charged by the clerk of the court for printing petitions or orders. Provides that the petitioner shall make a good faith effort to notify recent intimate partners (rather than intimate partners) of the respondent. Provides that a return of the search warrant for searching for the respondent's firearms and ammunition shall be filed by the law enforcement agency with the court within 7 days thereafter, setting forth the time, date, and location that the search warrant was executed and what items were seized. Effective immediately.

LRB101 19561 RLC 69035 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 5, 10, 35, 40, and 45 as follows:

6 (430 ILCS 67/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Family member of the respondent" means a spouse, former
9 spouse, parent, child, or step-child of the respondent, person
10 with a child in common and any other person related by blood or
11 present marriage to the respondent, or a person who shares a
12 common dwelling with the respondent.

13 "Firearms restraining order" means an order issued by the
14 court, prohibiting and enjoining a named person from having in
15 his or her custody or control, purchasing, possessing, or
16 receiving any firearms and ammunition.

17 "Intimate partner" means a spouse, former spouse, a person
18 with whom the respondent has or allegedly has a child in
19 common, or a person with whom the respondent has or has had a
20 dating or engagement relationship.

21 "Petitioner" means:

22 (1) a family member of the respondent as defined in
23 this Act; or

1 (2) a law enforcement officer who files a petition
2 alleging that the respondent poses a danger of causing
3 personal injury to himself, herself, or another by having
4 in his or her custody or control, purchasing, possessing,
5 or receiving a firearm and ammunition.

6 "Respondent" means the person alleged in the petition to
7 pose a danger of causing personal injury to himself, herself,
8 or another by having in his or her custody or control,
9 purchasing, possessing, or receiving a firearm and ammunition.
10 (Source: P.A. 100-607, eff. 1-1-19; 101-81, eff. 7-12-19.)

11 (430 ILCS 67/10)

12 Sec. 10. Commencement of action; procedure.

13 (a) An action for a firearms restraining order is commenced
14 by filing a verified petition for a firearms restraining order
15 in any circuit court.

16 (b) A petition for a firearms restraining order may be
17 filed in any county where the respondent resides.

18 (c) No fee shall be charged by the clerk for filing,
19 amending, vacating, certifying, printing, or photocopying
20 petitions or orders; or for issuing alias summons; or for any
21 related filing service. No fee shall be charged by the sheriff
22 or other law enforcement for service by the sheriff or other
23 law enforcement of a petition, rule, motion, or order in an
24 action commenced under this Section.

25 (d) The court shall provide, through the office of the

1 clerk of the court, simplified forms and clerical assistance to
2 help with the writing and filing of a petition under this
3 Section by any person not represented by counsel. In addition,
4 that assistance may be provided by the State's Attorney.

5 (Source: P.A. 100-607, eff. 1-1-19; 101-81, eff. 7-12-19.)

6 (430 ILCS 67/35)

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

8 (a) A petitioner may request an emergency firearms
9 restraining order by filing an affidavit or verified pleading
10 alleging that the respondent poses an immediate and present
11 danger of causing personal injury to himself, herself, or
12 another by having in his or her custody or control, purchasing,
13 possessing, or receiving a firearm and ammunition. The petition
14 shall also describe the type and location of any firearm or
15 firearms and ammunition presently believed by the petitioner to
16 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 recent intimate partners of the respondent. The
23 notice must include that the petitioner intends to petition the
24 court for an emergency firearms restraining order, and, if the
25 petitioner is a law enforcement officer, referral to relevant

1 domestic violence or stalking advocacy or counseling
2 resources, if appropriate. The petitioner shall attest to
3 having provided the notice in the filed affidavit or verified
4 pleading. If, after making a good faith effort, the petitioner
5 is unable to provide notice to any or all recent intimate
6 partners, the affidavit or verified pleading should describe
7 what efforts were made.

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

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

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

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

25 (f-5) If the court issues an emergency firearms restraining
26 order, it shall, upon a finding of probable cause that the

1 respondent possesses firearms and ammunition, issue a search
2 warrant directing a law enforcement agency to seize the
3 respondent's firearms and ammunition. The court may, as part of
4 that warrant, direct the law enforcement agency to search the
5 respondent's residence and other places where the court finds
6 there is probable cause to believe he or she is likely to
7 possess the firearms and ammunition. A return of the search
8 warrant shall be filed by the law enforcement agency with the
9 court within 7 days thereafter, setting forth the time, date,
10 and location that the search warrant was executed and what
11 items were seized.

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 and ammunition for the duration of the
16 order; and

17 (2) the respondent to turn over to the local law
18 enforcement agency any Firearm Owner's Identification Card
19 and concealed carry license in his or her possession. The
20 local law enforcement agency shall immediately mail the
21 card and concealed carry license to the Department of State
22 Police Firearm Services Bureau for safekeeping. The
23 firearm or firearms, ammunition, and Firearm Owner's
24 Identification Card and concealed carry license, if
25 unexpired, shall be returned to the respondent after the
26 firearms restraining order is terminated or expired.

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,
4 ammunition, and concealed carry license cannot be returned to
5 the respondent because the respondent cannot be located, fails
6 to respond to requests to retrieve the firearms and ammunition,
7 or is not lawfully eligible to possess a firearm and
8 ammunition, upon petition from the local law enforcement
9 agency, the court may order the local law enforcement agency to
10 destroy the firearms and ammunition, use the firearms and
11 ammunition for training purposes, or use the firearms and
12 ammunition for any other application as deemed appropriate by
13 the local law enforcement agency.

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

1 (h-6) If a person other than the respondent claims title to
2 any firearms surrendered under this Section, he or she may
3 petition the court, if the petitioner is present in court or
4 has notice of the petition, to have the firearm returned to him
5 or her. If the court determines that person to be the lawful
6 owner of the firearm, the firearm shall be returned to him or
7 her, provided that:

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

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

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

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

1 The court may extend the order for a greater length of time by
2 mutual agreement of the parties.

3 (Source: P.A. 100-607, eff. 1-1-19; 101-81, eff. 7-12-19.)

4 (430 ILCS 67/40)

5 Sec. 40. Six-month orders.

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

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

1 filed affidavit or verified pleading. If, after making a good
2 faith effort, the petitioner is unable to provide notice to any
3 or all recent intimate partners, the affidavit or verified
4 pleading should describe what efforts were made.

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

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

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

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

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

21 (3) Any prior arrest of the respondent for a felony
22 offense.

23 (4) Evidence of the abuse of controlled substances or
24 alcohol by the respondent.

25 (5) A recent threat of violence or act of violence by
26 the respondent directed toward himself, herself, or

1 another.

2 (6) A violation of an emergency order of protection
3 issued under Section 217 of the Illinois Domestic Violence
4 Act of 1986 or Section 112A-17 of the Code of Criminal
5 Procedure of 1963 or of an order of protection issued under
6 Section 214 of the Illinois Domestic Violence Act of 1986
7 or Section 112A-14 of the Code of Criminal Procedure of
8 1963.

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

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

18 (g) If the court finds that there is clear and convincing
19 evidence to issue a firearms restraining order, the court shall
20 issue a firearms restraining order that shall be in effect for
21 6 months subject to renewal under Section 45 of this Act or
22 termination under that Section.

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

1 firearms and ammunition. The court may, as part of that
2 warrant, direct the law enforcement agency to search the
3 respondent's residence and other places where the court finds
4 there is probable cause to believe he or she is likely to
5 possess the firearms and ammunition. A return of the search
6 warrant shall be filed by the law enforcement agency with the
7 court within 7 days thereafter, setting forth the time, date,
8 and location that the search warrant was executed and what
9 items were seized.

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

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

15 (2) the respondent to turn over to the local law
16 enforcement agency any firearm, ammunition, ~~or~~ Firearm
17 Owner's Identification Card, and concealed carry license
18 in his or her possession. The local law enforcement agency
19 shall immediately mail the card and concealed carry license
20 to the Department of State Police Firearm Services Bureau
21 for safekeeping. The firearm or firearms, ammunition, and
22 Firearm Owner's Identification Card and concealed carry
23 license, if unexpired, shall be returned to the respondent
24 after the firearms restraining order is terminated or
25 expired.

26 (i) Except as otherwise provided in subsection (i-5) of

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

13 (i-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
17 and ammunition to a person who is lawfully able to possess the
18 firearm and ammunition if the person does not reside at the
19 same address as the respondent. Notice of the petition shall be
20 served upon the person protected by the emergency firearms
21 restraining order. While the order is in effect, the transferee
22 who receives the respondent's firearms and ammunition must
23 swear or affirm by affidavit that he or she shall not transfer
24 the firearm and ammunition to the respondent or to anyone
25 residing in the same residence as the respondent.

26 (i-6) If a person other than the respondent claims title to

1 any firearms surrendered under this Section, he or she may
2 petition the court, if the petitioner is present in court or
3 has notice of the petition, to have the firearm returned to him
4 or her. If the court determines that person to be the lawful
5 owner of the firearm, the firearm shall be returned to him or
6 her, provided that:

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

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

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

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

22 (k) When the court issues a firearms restraining order
23 under this Section, the court shall inform the respondent that
24 he or she is entitled to one hearing during the period of the
25 order to request a termination of the order, under Section 45
26 of this Act, and shall provide the respondent with a form to

1 request a hearing.

2 (Source: P.A. 100-607, eff. 1-1-19; 101-81, eff. 7-12-19.)

3 (430 ILCS 67/45)

4 Sec. 45. Termination and renewal.

5 (a) A person subject to a firearms restraining order issued
6 under this Act may submit one written request at any time
7 during the effective period of the order for a hearing to
8 terminate the order.

9 (1) The respondent shall have the burden of proving by
10 a preponderance of the evidence that the respondent does
11 not pose a danger of causing personal injury to himself,
12 herself, or another in the near future by having in his or
13 her custody or control, purchasing, possessing, or
14 receiving a firearm and ammunition.

15 (2) If the court finds after the hearing that the
16 respondent has met his or her burden, the court shall
17 terminate the order.

18 (b) A petitioner may request a renewal of a firearms
19 restraining order at any time within the 3 months before the
20 expiration of a firearms restraining order.

21 (1) A court shall, after notice and a hearing, renew a
22 firearms restraining order issued under this part if the
23 petitioner proves, by clear and convincing evidence, that
24 the respondent continues to pose a danger of causing
25 personal injury to himself, herself, or another in the near

1 future by having in his or her custody or control,
2 purchasing, possessing, or receiving a firearm and
3 ammunition.

4 (2) In determining whether to renew a firearms
5 restraining order issued under this Act, the court shall
6 consider evidence of the facts identified in subsection (e)
7 of Section 40 of this Act and any other evidence of an
8 increased risk for violence.

9 (3) At the hearing, the petitioner shall have the
10 burden of proving by clear and convincing evidence that the
11 respondent continues to pose a danger of causing personal
12 injury to himself, herself, or another in the near future
13 by having in his or her custody or control, purchasing,
14 possessing, or receiving a firearm and ammunition.

15 (4) The renewal of a firearms restraining order issued
16 under this Section shall be in effect for 6 months, subject
17 to termination by further order of the court at a hearing
18 held under this Section and further renewal by further
19 order of the court under this Section.

20 (Source: P.A. 100-607, eff. 1-1-19; 101-81, eff. 7-12-19.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.