

SB0087



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0087

Introduced 2/3/2021, by Sen. Win Stoller

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.

LRB102 04162 RLC 14179 b

A BILL FOR

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
5 by 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
17 respondent.

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

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

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

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

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

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

1 associate judge shall issue an emergency order.

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

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

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

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

1 order is terminated , ~~or~~ expired, or not granted within 7
2 days.

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

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

1 (h-6) If a person other than the respondent claims title
2 to 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
10 agrees to store the firearm in a manner such that the
11 respondent does not have access to or control of the
12 firearm; and

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

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

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

1 service of the order or if necessary to continue protection.
2 The court may extend the order for a greater length of time by
3 mutual agreement of the parties.

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

5 (430 ILCS 67/40)

6 Sec. 40. Six-month orders.

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

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

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

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

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

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

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

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

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

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

26 (5) A recent threat of violence or act of violence by

1 the respondent directed toward himself, herself, or
2 another.

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

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

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

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

24 (g-5) If the court issues a 6-month firearms restraining
25 order, it shall, upon a finding of probable cause that the
26 respondent possesses firearms, issue a search warrant

1 directing a law enforcement agency to seize the respondent's
2 firearms. The court may, as part of that warrant, direct the
3 law enforcement agency to search the respondent's residence
4 and other places where the court finds there is probable cause
5 to believe he or she is likely to possess the firearms.

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

7 (1) the respondent to refrain from having in his or
8 her custody or control, purchasing, possessing, or
9 receiving additional firearms for the duration of the
10 order; and

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

22 (i) Except as otherwise provided in subsection (i-5) of
23 this Section, upon expiration of the period of safekeeping, if
24 the firearms or Firearm Owner's Identification Card cannot be
25 returned to the respondent because the respondent cannot be
26 located, fails to respond to requests to retrieve the

1 firearms, or is not lawfully eligible to possess a firearm,
2 upon petition from the local law enforcement agency, the court
3 may order the local law enforcement agency to destroy the
4 firearms, use the firearms for training purposes, or use the
5 firearms for any other application as deemed appropriate by
6 the local law enforcement agency.

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

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

26 (1) the firearm is removed from the respondent's

1 custody, control, or possession and the lawful owner
2 agrees to store the firearm in a manner such that the
3 respondent does not have access to or control of the
4 firearm; and

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

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

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

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

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.