



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1940

Introduced 2/26/2021, by Sen. Craig Wilcox

SYNOPSIS AS INTRODUCED:

750 ILCS 60/217

from Ch. 40, par. 2312-17

Amends the Illinois Domestic Violence Act of 1986. Provides that upon petition, the court shall order that a person against whom an emergency order of protection was issued shall have all records related to the emergency order expunged (unless the person violated the order) from the court's records and from the Department of State Police's Law Enforcement Agencies Data System if: (1) the person who sought the emergency order fails to seek a plenary order of protection before the emergency order expires; (2) there is an agreed dismissal; or (3) the court denies the issuance of a plenary order of protection following the emergency order. Provides that the clerk shall immediately file the expungement order and all records to be expunged shall be expunged no later than 3 business days after the order. Effective June 1, 2021.

LRB102 11364 LNS 16697 b

1 AN ACT concerning domestic violence.

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

4 Section 5. The Illinois Domestic Violence Act of 1986 is
5 amended by changing Section 217 as follows:

6 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

7 Sec. 217. Emergency order of protection.

8 (a) Prerequisites. An emergency order of protection shall
9 issue if petitioner satisfies the requirements of this
10 subsection for one or more of the requested remedies. For each
11 remedy requested, petitioner shall establish that:

12 (1) The court has jurisdiction under Section 208;

13 (2) The requirements of Section 214 are satisfied; and

14 (3) There is good cause to grant the remedy,
15 regardless of prior service of process or of notice upon
16 the respondent, because:

17 (i) For the remedies of "prohibition of abuse"
18 described in Section 214(b)(1), "stay away order and
19 additional prohibitions" described in Section
20 214(b)(3), "removal or concealment of minor child"
21 described in Section 214(b)(8), "order to appear"
22 described in Section 214(b)(9), "physical care and
23 possession of the minor child" described in Section

1 214(b)(5), "protection of property" described in
2 Section 214(b)(11), "prohibition of entry" described
3 in Section 214(b)(14), "prohibition of firearm
4 possession" described in Section 214(b)(14.5),
5 "prohibition of access to records" described in
6 Section 214(b)(15), and "injunctive relief" described
7 in Section 214(b)(16), the harm which that remedy is
8 intended to prevent would be likely to occur if the
9 respondent were given any prior notice, or greater
10 notice than was actually given, of the petitioner's
11 efforts to obtain judicial relief;

12 (ii) For the remedy of "grant of exclusive
13 possession of residence" described in Section
14 214(b)(2), the immediate danger of further abuse of
15 petitioner by respondent, if petitioner chooses or had
16 chosen to remain in the residence or household while
17 respondent was given any prior notice or greater
18 notice than was actually given of petitioner's efforts
19 to obtain judicial relief, outweighs the hardships to
20 respondent of an emergency order granting petitioner
21 exclusive possession of the residence or household.
22 This remedy shall not be denied because petitioner has
23 or could obtain temporary shelter elsewhere while
24 prior notice is given to respondent, unless the
25 hardships to respondent from exclusion from the home
26 substantially outweigh those to petitioner;

1 (iii) For the remedy of "possession of personal
2 property" described in Section 214(b)(10), improper
3 disposition of the personal property would be likely
4 to occur if respondent were given any prior notice, or
5 greater notice than was actually given, of
6 petitioner's efforts to obtain judicial relief, or
7 petitioner has an immediate and pressing need for
8 possession of that property.

9 An emergency order may not include the counseling, legal
10 custody, payment of support or monetary compensation remedies.

11 (a-5) When a petition for an emergency order of protection
12 is granted, the order shall not be publicly available until
13 the order is served on the respondent.

14 (b) Appearance by respondent. If respondent appears in
15 court for this hearing for an emergency order, he or she may
16 elect to file a general appearance and testify. Any resulting
17 order may be an emergency order, governed by this Section.
18 Notwithstanding the requirements of this Section, if all
19 requirements of Section 218 have been met, the court may issue
20 a 30-day interim order.

21 (c) Emergency orders: court holidays and evenings.

22 (1) Prerequisites. When the court is unavailable at
23 the close of business, the petitioner may file a petition
24 for a 21-day emergency order before any available circuit
25 judge or associate judge who may grant relief under this
26 Act. If the judge finds that there is an immediate and

1 present danger of abuse to petitioner and that petitioner
2 has satisfied the prerequisites set forth in subsection
3 (a) of Section 217, that judge may issue an emergency
4 order of protection.

5 (1.5) Issuance of order. The chief judge of the
6 circuit court may designate for each county in the circuit
7 at least one judge to be reasonably available to issue
8 orally, by telephone, by facsimile, or otherwise, an
9 emergency order of protection at all times, whether or not
10 the court is in session.

11 (2) Certification and transfer. The judge who issued
12 the order under this Section shall promptly communicate or
13 convey the order to the sheriff to facilitate the entry of
14 the order into the Law Enforcement Agencies Data System by
15 the Department of State Police pursuant to Section 302.
16 Any order issued under this Section and any documentation
17 in support thereof shall be certified on the next court
18 day to the appropriate court. The clerk of that court
19 shall immediately assign a case number, file the petition,
20 order and other documents with the court, and enter the
21 order of record and file it with the sheriff for service,
22 in accordance with Section 222. Filing the petition shall
23 commence proceedings for further relief under Section 202.
24 Failure to comply with the requirements of this subsection
25 shall not affect the validity of the order.

26 (d) Expungement.

1 (1) Upon the petition of a respondent subject to an
2 emergency order issued under this Section, the court shall
3 order that all records related to the emergency order be
4 expunged from the court's records and from the Law
5 Enforcement Agencies Data System maintained by the
6 Department of State Police if the petitioner who sought
7 the emergency order failed to seek a plenary order of
8 protection under this Act prior to the expiration of the
9 emergency order.

10 (2) Following issuance of an emergency order of
11 protection under this Section, upon the subsequent denial
12 of a plenary order of protection, an agreed dismissal of
13 an action for a plenary order of protection, or the
14 dismissal of an action for a plenary order of protection
15 due to the petitioner's or the petitioner's legal
16 counsel's failure to appear, the court shall order all
17 records related to the emergency order be expunged from
18 the court's records and from the Law Enforcement Agencies
19 Data System maintained by the Department of State Police.

20 (3) The clerk of the court shall immediately file a
21 certified copy of the expungement order with the
22 Department of State Police.

23 (4) All records related to an emergency order required
24 to be expunged under this subsection shall be expunged no
25 later than 3 business days after the court issues the
26 expungement order.

1 (5) Records related to an emergency order of
2 protection shall not be expunged under this subsection if
3 the respondent against whom the emergency order was issued
4 violated the order.

5 (Source: P.A. 101-255, eff. 1-1-20.)

6 Section 99. Effective date. This Act takes effect June 1,
7 2021.