SB3157 Engrossed

1 AN ACT concerning civil law.

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

4 Section 5. The Stalking No Contact Order Act is amended by 5 changing Sections 20 and 95 as follows:

6 (740 ILCS 21/20)

Sec. 20. Commencement of action; filing fees.

8 (a) An action for a stalking no contact order is9 commenced:

(1) independently, by filing a petition for a stalking
 no contact order in any civil court, unless specific
 courts are designated by local rule or order; or

(2) in conjunction with a delinquency petition or a
criminal prosecution as provided in Article 112A of the
Code of Criminal Procedure of 1963.

16 (a-5) When a petition for an emergency stalking no contact 17 order is filed, the petition <u>and file shall not be public and</u> 18 <u>shall only be accessible to the court, law enforcement,</u> 19 <u>petitioner, victim advocate, counsel of record for either</u> 20 <u>party, and the State's Attorney for the county shall not be</u> 21 <u>publicly available</u> until the petition is served on the 22 respondent.

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(b) Withdrawal or dismissal of any petition for a stalking

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no contact order prior to adjudication where the petitioner is 1 represented by the State shall operate as a dismissal without 2 3 prejudice. No action for a stalking no contact order shall be dismissed because the respondent is being prosecuted for a 4 5 crime against the petitioner. For any action commenced under item (2) of subsection (a) of this Section, dismissal of the 6 7 conjoined case (or a finding of not guilty) shall not require 8 dismissal of the action for a stalking no contact order; 9 instead, it may be treated as an independent action and, if 10 necessary and appropriate, transferred to a different court or 11 division.

(c) No fee shall be charged by the clerk of the court for filing petitions or modifying or certifying orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this Section.

(d) The court shall provide, through the office of the
clerk of the court, simplified forms for filing of a petition
under this Section by any person not represented by counsel.
(Source: P.A. 100-199, eff. 1-1-18; 101-255, eff. 1-1-20.)

21 (740 ILCS 21/95)

22 Sec. 95. Emergency stalking no contact order.

(a) An emergency stalking no contact order shall issue if
the petitioner satisfies the requirements of this subsection
(a). The petitioner shall establish that:

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(1) the court has jurisdiction under Section 50;

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(2) the requirements of Section 80 are satisfied; and

3 is good cause to grant the remedy, (3) there regardless of prior service of process or of notice upon 4 the respondent, because the harm which that remedy is 5 intended to prevent would be likely to occur if the 6 7 respondent were given any prior notice, or greater notice 8 than was actually given, of the petitioner's efforts to 9 obtain judicial relief.

An emergency stalking no contact order shall be issued by the court if it appears from the contents of the petition and the examination of the petitioner that the averments are sufficient to indicate stalking by the respondent and to support the granting of relief under the issuance of the stalking no contact order.

An emergency stalking no contact order shall be issued if the court finds that items (1), (2), and (3) of this subsection (a) are met.

19 (a-5) When a petition for an emergency stalking no contact 20 order is granted, the <u>petition</u>, order, and file shall not be 21 <u>public and shall only be accessible to the court</u>, law 22 <u>enforcement</u>, <u>petitioner</u>, <u>victim advocate</u>, <u>counsel of record</u> 23 <u>for either party</u>, and the State's Attorney for the county 24 shall not be publicly available until the order is served on 25 the respondent.

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(b) If the respondent appears in court for this hearing

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for an emergency order, he or she may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this Section. Notwithstanding the requirements of this Section, if all requirements of Section 100 have been met, the court may issue a plenary order.

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(c) Emergency orders; court holidays and evenings.

7 (1) When the court is unavailable at the close of 8 business, the petitioner may file a petition for a 21-day 9 emergency order before any available circuit judge or associate judge who may grant relief under this Act. If 10 11 the judge finds that there is an immediate and present 12 danger of abuse against the petitioner and that the 13 petitioner has satisfied the prerequisites set forth in 14 subsection (a), that judge may issue an emergency stalking 15 no contact order.

16 (2) The chief judge of the circuit court may designate 17 for each county in the circuit at least one judge to be 18 reasonably available to issue orally, by telephone, by 19 facsimile, or otherwise, an emergency stalking no contact 20 order at all times, whether or not the court is in session.

(3) Any order issued under this Section and any documentation in support of the order shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case number, file the petition, order, and other documents with the court, and enter the order of record and file it with the sheriff SB3157 Engrossed - 5 - LRB102 20296 LNS 29148 b

for service, in accordance with Section 60. Filing the 1 2 petition shall commence proceedings for further relief under Section 20. Failure to comply with the requirements 3 of this paragraph (3) does not affect the validity of the 4 5 order. (Source: P.A. 101-255, eff. 1-1-20.) 6 7 Section 10. The Civil No Contact Order Act is amended by 8 changing Sections 202, 213, and 214 as follows: 9 (740 ILCS 22/202) 10 Sec. 202. Commencement of action; filing fees. 11 (a) An action for a civil no contact order is commenced: 12 (1) independently, by filing a petition for a civil no 13 contact order in any civil court, unless specific courts 14 are designated by local rule or order; or 15 (2) in conjunction with a delinquency petition or a criminal prosecution as provided in Article 112A of the 16 Code of Criminal Procedure of 1963. 17 18 (a-5) When a petition for an emergency a civil no contact 19 order is filed, the petition and file shall not be public and 20 shall only be accessible to the court, law enforcement, petitioner, rape crisis advocate, counsel of record for either 21 22 party, and the State's Attorney for the county shall not be 23 publicly available until the petition is served on the 24 respondent.

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(b) Withdrawal or dismissal of any petition for a civil no 1 2 contact order prior to adjudication where the petitioner is represented by the State shall operate as a dismissal without 3 prejudice. No action for a civil no contact order shall be 4 5 dismissed because the respondent is being prosecuted for a crime against the petitioner. For any action commenced under 6 7 item (2) of subsection (a) of this Section, dismissal of the conjoined case (or a finding of not guilty) shall not require 8 9 dismissal of the action for a civil no contact order; instead, 10 it may be treated as an independent action and, if necessary 11 and appropriate, transferred to a different court or division.

(c) No fee shall be charged by the clerk of the court for filing petitions or modifying or certifying orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this Section.

(d) The court shall provide, through the office of the
clerk of the court, simplified forms for filing of a petition
under this Section by any person not represented by counsel.
(Source: P.A. 100-199, eff. 1-1-18; 101-255, eff. 1-1-20.)

21 (740 ILCS 22/213)

22 (Text of Section before amendment by P.A. 102-220)

23 Sec. 213. Civil no contact order; remedies.

(a) If the court finds that the petitioner has been avictim of non-consensual sexual conduct or non-consensual

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sexual penetration, a civil no contact order shall issue; 1 2 provided that the petitioner must also satisfy the 3 requirements of Section 214 on emergency orders or Section 215 on plenary orders. The petitioner shall not be denied a civil 4 5 no contact order because the petitioner or the respondent is a minor. The court, when determining whether or not to issue a 6 civil no contact order, may not require physical injury on the 7 person of the victim. Modification and extension of prior 8 9 civil no contact orders shall be in accordance with this Act.

10 (a-5) <u>(Blank)</u>. When a petition for a civil no contact 11 order is granted, the order shall not be publicly available 12 until the order is served on the respondent.

13 (b) (Blank).

14 (b-5) The court may provide relief as follows:

(1) prohibit the respondent from knowingly coming
within, or knowingly remaining within, a specified
distance from the petitioner;

(2) restrain the respondent from having any contact,
including nonphysical contact, with the petitioner
directly, indirectly, or through third parties, regardless
of whether those third parties know of the order;

(3) prohibit the respondent from knowingly coming
within, or knowingly remaining within, a specified
distance from the petitioner's residence, school, day care
or other specified location;

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(4) order the respondent to stay away from any

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property or animal owned, possessed, leased, kept, or held by the petitioner and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the property or animal; and

5 (5) order any other injunctive relief as necessary or 6 appropriate for the protection of the petitioner.

7 (b-6) When the petitioner and the respondent attend the same public or private elementary, middle, or high school, the 8 9 court when issuing a civil no contact order and providing 10 relief shall consider the severity of the act, any continuing 11 physical danger or emotional distress to the petitioner, the 12 educational rights guaranteed to the petitioner and respondent under federal and State law, the availability of a transfer of 13 14 the respondent to another school, a change of placement or a 15 change of program of the respondent, the expense, difficulty, 16 and educational disruption that would be caused by a transfer 17 of the respondent to another school, and any other relevant facts of the case. The court may order that the respondent not 18 attend the public, private, or non-public elementary, middle, 19 20 or high school attended by the petitioner, order that the respondent accept a change of placement or program, 21 as 22 determined by the school district or private or non-public 23 school, or place restrictions on the respondent's movements within the school attended by the petitioner. The respondent 24 25 bears the burden of proving by a preponderance of the evidence 26 that a transfer, change of placement, or change of program of

the respondent is not available. The respondent also bears the 1 2 burden of production with respect to the expense, difficulty, and educational disruption that would be caused by a transfer 3 of the respondent to another school. A transfer, change of 4 5 placement, or change of program is not unavailable to the respondent solely on the ground that the respondent does not 6 7 agree with the school district's or private or non-public 8 school's transfer, change of placement, or change of program 9 or solely on the ground that the respondent fails or refuses to 10 consent to or otherwise does not take an action required to 11 effectuate a transfer, change of placement, or change of 12 program. When a court orders a respondent to stay away from the 13 public, private, or non-public school attended by the 14 petitioner and the respondent requests a transfer to another 15 attendance center within the respondent's school district or private or non-public school, the school district or private 16 17 or non-public school shall have sole discretion to determine the attendance center to which the respondent is transferred. 18 In the event the court order results in a transfer of the minor 19 respondent to another attendance center, a change in the 20 respondent's placement, or a change of the respondent's 21 22 program, the parents, guardian, or legal custodian of the 23 respondent is responsible for transportation and other costs 24 associated with the transfer or change.

(b-7) The court may order the parents, guardian, or legal
 custodian of a minor respondent to take certain actions or to

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1 refrain from taking certain actions to ensure that the 2 respondent complies with the order. In the event the court 3 orders a transfer of the respondent to another school, the 4 parents or legal guardians of the respondent are responsible 5 for transportation and other costs associated with the change 6 of school by the respondent.

7 (c) Denial of a remedy may not be based, in whole or in 8 part, on evidence that:

9 (1) the respondent has cause for any use of force, 10 unless that cause satisfies the standards for justifiable 11 use of force provided by Article 7 of the Criminal Code of 12 2012;

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(2) the respondent was voluntarily intoxicated;

14 (3) the petitioner acted in self-defense or defense of 15 another, provided that, if the petitioner utilized force, 16 such force was justifiable under Article 7 of the Criminal 17 Code of 2012;

18 (4) the petitioner did not act in self-defense or 19 defense of another;

(5) the petitioner left the residence or household to
 avoid further non-consensual sexual conduct or
 non-consensual sexual penetration by the respondent; or

(6) the petitioner did not leave the residence or
household to avoid further non-consensual sexual conduct
or non-consensual sexual penetration by the respondent.
(d) Monetary damages are not recoverable as a remedy.

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

Sec. 213. Civil no contact order; remedies. 3 4 (a) If the court finds that the petitioner has been a 5 victim of non-consensual sexual conduct or non-consensual 6 sexual penetration, a civil no contact order shall issue; 7 provided that the petitioner must also satisfy the requirements of Section 214 on emergency orders or Section 215 8 9 on plenary orders. The petitioner shall not be denied a civil 10 no contact order because the petitioner or the respondent is a 11 minor. The court, when determining whether or not to issue a 12 civil no contact order, may not require physical injury on the person of the victim. Modification and extension of prior 13 14 civil no contact orders shall be in accordance with this Act.

(Text of Section after amendment by P.A. 102-220)

15 (a-5) <u>(Blank).</u> When a petition for a civil no contact 16 order is granted, the order shall not be publicly available 17 until the order is served on the respondent.

18 (b) (Blank).

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(b-5) The court may provide relief as follows:

(1) prohibit the respondent from knowingly coming
within, or knowingly remaining within, a specified
distance from the petitioner;

(2) restrain the respondent from having any contact,
 including nonphysical contact and electronic communication
 as defined in Section 26.5-0.1 of the Criminal Code of

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2012, with the petitioner directly, indirectly, or through
 third parties, regardless of whether those third parties
 know of the order;

4 (3) prohibit the respondent from knowingly coming
5 within, or knowingly remaining within, a specified
6 distance from the petitioner's residence, school, day care
7 or other specified location;

8 (4) order the respondent to stay away from any 9 property or animal owned, possessed, leased, kept, or held 10 by the petitioner and forbid the respondent from taking, 11 transferring, encumbering, concealing, harming, or 12 otherwise disposing of the property or animal; and

13 (5) order any other injunctive relief as necessary or14 appropriate for the protection of the petitioner.

15 (b-6) When the petitioner and the respondent attend the 16 same public or private elementary, middle, or high school, the 17 court when issuing a civil no contact order and providing relief shall consider the severity of the act, any continuing 18 19 physical danger or emotional distress to the petitioner, the 20 educational rights guaranteed to the petitioner and respondent 21 under federal and State law, the availability of a transfer of 22 the respondent to another school, a change of placement or a 23 change of program of the respondent, the expense, difficulty, and educational disruption that would be caused by a transfer 24 25 of the respondent to another school, and any other relevant 26 facts of the case. The court may order that the respondent not

attend the public, private, or non-public elementary, middle, 1 2 or high school attended by the petitioner, order that the 3 respondent accept a change of placement or program, as determined by the school district or private or non-public 4 5 school, or place restrictions on the respondent's movements within the school attended by the petitioner. The respondent 6 7 bears the burden of proving by a preponderance of the evidence 8 that a transfer, change of placement, or change of program of 9 the respondent is not available. The respondent also bears the 10 burden of production with respect to the expense, difficulty, 11 and educational disruption that would be caused by a transfer 12 of the respondent to another school. A transfer, change of placement, or change of program is not unavailable to the 13 14 respondent solely on the ground that the respondent does not 15 agree with the school district's or private or non-public 16 school's transfer, change of placement, or change of program 17 or solely on the ground that the respondent fails or refuses to consent to or otherwise does not take an action required to 18 19 effectuate a transfer, change of placement, or change of 20 program. When a court orders a respondent to stay away from the 21 public, private, or non-public school attended by the 22 petitioner and the respondent requests a transfer to another 23 attendance center within the respondent's school district or 24 private or non-public school, the school district or private 25 or non-public school shall have sole discretion to determine 26 the attendance center to which the respondent is transferred.

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In the event the court order results in a transfer of the minor respondent to another attendance center, a change in the respondent's placement, or a change of the respondent's program, the parents, guardian, or legal custodian of the respondent is responsible for transportation and other costs associated with the transfer or change.

(b-7) The court may order the parents, guardian, or legal 7 8 custodian of a minor respondent to take certain actions or to 9 refrain from taking certain actions to ensure that the 10 respondent complies with the order. In the event the court 11 orders a transfer of the respondent to another school, the 12 parents or legal guardians of the respondent are responsible 13 for transportation and other costs associated with the change 14 of school by the respondent.

15 (c) Denial of a remedy may not be based, in whole or in 16 part, on evidence that:

(1) the respondent has cause for any use of force, unless that cause satisfies the standards for justifiable use of force provided by Article 7 of the Criminal Code of 20 2012;

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(2) the respondent was voluntarily intoxicated;

(3) the petitioner acted in self-defense or defense of
another, provided that, if the petitioner utilized force,
such force was justifiable under Article 7 of the Criminal
Code of 2012;

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(4) the petitioner did not act in self-defense or

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1 defense of another;

2 (5) the petitioner left the residence or household to 3 avoid further non-consensual sexual conduct or 4 non-consensual sexual penetration by the respondent; or

5 (6) the petitioner did not leave the residence or 6 household to avoid further non-consensual sexual conduct 7 or non-consensual sexual penetration by the respondent.

8 (d) Monetary damages are not recoverable as a remedy.
9 (Source: P.A. 101-255, eff. 1-1-20; 102-220, eff. 1-1-22.)

10 (740 ILCS 22/214)

11 Sec. 214. Emergency civil no contact order.

(a) An emergency civil no contact order shall issue if the
petitioner satisfies the requirements of this subsection (a).
The petitioner shall establish that:

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(1) the court has jurisdiction under Section 206;

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(i) the could has julibalecton ander beecton 200,

(2) the requirements of Section 213 are satisfied; and

17 (3) there is good cause to grant the remedy, 18 regardless of prior service of process or of notice upon the respondent, because the harm which that remedy is 19 20 intended to prevent would be likely to occur if the 21 respondent were given any prior notice, or greater notice 22 than was actually given, of the petitioner's efforts to 23 obtain judicial relief.

An emergency civil no contact order shall be issued by the court if it appears from the contents of the petition and the SB3157 Engrossed - 16 - LRB102 20296 LNS 29148 b

1 examination of the petitioner that the averments are 2 sufficient to indicate nonconsensual sexual conduct or 3 nonconsensual sexual penetration by the respondent and to support the granting of relief under the issuance of the civil 4 5 no contact order.

6 An emergency civil no contact order shall be issued if the 7 court finds that subsections (1), (2), and (3) above are met.

8 <u>(a-5) When a petition for a civil no contact order is</u> 9 granted, the petition, order, and file shall not be public and 10 shall only be accessible to the court, law enforcement, 11 petitioner, rape crisis advocate, counsel of record for either 12 party, and the State's Attorney for the county until the 13 petition is served on the respondent.

(b) If the respondent appears in court for this hearing for an emergency order, he or she may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this Section. Notwithstanding the requirements of this Section, if all requirements of Section 215 have been met, the court may issue a plenary order.

(c) Emergency orders; court holidays and evenings.

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(1) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available circuit judge or associate judge who may grant relief under this Act. If the judge finds that there is an immediate and present danger of abuse against the petitioner and that the SB3157 Engrossed

petitioner has satisfied the prerequisites set forth in subsection (a), that judge may issue an emergency civil no contact order.

4 (2) The chief judge of the circuit court may designate 5 for each county in the circuit at least one judge to be 6 reasonably available to issue orally, by telephone, by 7 facsimile, or otherwise, an emergency civil no contact 8 order at all times, whether or not the court is in session.

9 (3) Any order issued under this Section and any 10 documentation in support of the order shall be certified 11 on the next court day to the appropriate court. The clerk 12 of that court shall immediately assign a case number, file the petition, order, and other documents with the court, 13 and enter the order of record and file it with the sheriff 14 15 for service, in accordance with Section 222. Filing the 16 petition shall commence proceedings for further relief 17 under Section 202. Failure to comply with the requirements of this paragraph (3) does not affect the validity of the 18 19 order.

20 (Source: P.A. 93-236, eff. 1-1-04; 93-811, eff. 1-1-05; 21 94-360, eff. 1-1-06.)

22 Section 15. The Illinois Domestic Violence Act of 1986 is 23 amended by changing Section 217 as follows:

24 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

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Sec. 217. Emergency order of protection.

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

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(1) The court has jurisdiction under Section 208;

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

8 (3) There is good cause to grant the remedy, 9 regardless of prior service of process or of notice upon 10 the respondent, because:

11 (i) For the remedies of "prohibition of abuse" 12 described in Section 214(b)(1), "stay away order and 13 additional prohibitions" described in Section 14 214(b)(3), "removal or concealment of minor child" 15 described in Section 214(b)(8), "order to appear" 16 described in Section 214(b)(9), "physical care and 17 possession of the minor child" described in Section 214(b)(5), "protection of property" described in 18 Section 214(b)(11), "prohibition of entry" described 19 20 Section 214(b)(14), "prohibition of in firearm 21 possession" described in Section 214(b)(14.5), 22 "prohibition of access to records" described in 23 Section 214(b)(15), and "injunctive relief" described in Section 214(b)(16), the harm which that remedy is 24 25 intended to prevent would be likely to occur if the 26 respondent were given any prior notice, or greater

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notice than was actually given, of the petitioner's efforts to obtain judicial relief;

(ii) For the remedy of "grant of exclusive 3 of residence" described in Section 4 possession 5 214 (b) (2), the immediate danger of further abuse of petitioner by respondent, if petitioner chooses or had 6 7 chosen to remain in the residence or household while respondent was given any prior notice or greater 8 9 notice than was actually given of petitioner's efforts 10 to obtain judicial relief, outweighs the hardships to 11 respondent of an emergency order granting petitioner 12 exclusive possession of the residence or household. 13 This remedy shall not be denied because petitioner has 14 or could obtain temporary shelter elsewhere while 15 prior notice is given to respondent, unless the 16 hardships to respondent from exclusion from the home 17 substantially outweigh those to petitioner;

(iii) For the remedy of "possession of personal 18 19 property" described in Section 214(b)(10), improper 20 disposition of the personal property would be likely 21 to occur if respondent were given any prior notice, or 22 greater notice than actually given, was of 23 petitioner's efforts to obtain judicial relief, or 24 petitioner has an immediate and pressing need for 25 possession of that property.

26 An emergency order may not include the counseling, legal

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custody, payment of support or monetary compensation remedies. 1 2 (a-5) When a petition for an emergency order of protection 3 is granted, the order and file shall not be public and shall only be accessible to the court, petitioner, law enforcement, 4 5 domestic violence advocate or counselor, counsel of record for either party, and the State's Attorney for the county shall 6 7 not be publicly available until the order is served on the 8 respondent.

9 (b) Appearance by respondent. If respondent appears in 10 court for this hearing for an emergency order, he or she may 11 elect to file a general appearance and testify. Any resulting 12 order may be an emergency order, governed by this Section. 13 Notwithstanding the requirements of this Section, if all 14 requirements of Section 218 have been met, the court may issue 15 a 30-day interim order.

16

(c) Emergency orders: court holidays and evenings.

17 (1) Prerequisites. When the court is unavailable at the close of business, the petitioner may file a petition 18 19 for a 21-day emergency order before any available circuit 20 judge or associate judge who may grant relief under this Act. If the judge finds that there is an immediate and 21 22 present danger of abuse to petitioner and that petitioner 23 has satisfied the prerequisites set forth in subsection (a) of Section 217, that judge may issue an emergency 24 25 order of protection.

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(1.5) Issuance of order. The chief judge of the

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circuit court may designate for each county in the circuit at least one judge to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency order of protection at all times, whether or not the court is in session.

(2) Certification and transfer. The judge who issued 6 7 the order under this Section shall promptly communicate or convey the order to the sheriff to facilitate the entry of 8 9 the order into the Law Enforcement Agencies Data System by 10 the Department of State Police pursuant to Section 302. 11 Any order issued under this Section and any documentation 12 in support thereof shall be certified on the next court day to the appropriate court. The clerk of that court 13 14 shall immediately assign a case number, file the petition, 15 order and other documents with the court, and enter the 16 order of record and file it with the sheriff for service, 17 in accordance with Section 222. Filing the petition shall commence proceedings for further relief under Section 202. 18 19 Failure to comply with the requirements of this subsection 20 shall not affect the validity of the order.

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

22 Section 95. No acceleration or delay. Where this Act makes 23 changes in a statute that is represented in this Act by text 24 that is not yet or no longer in effect (for example, a Section 25 represented by multiple versions), the use of that text does SB3157 Engrossed - 22 - LRB102 20296 LNS 29148 b not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

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