



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB1359

Introduced 2/6/2023, 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 Illinois 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, 2023.

LRB103 25276 LNS 51620 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, the 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 the petitioner by the respondent, if the petitioner  
16 chooses or had chosen to remain in the residence or  
17 household while the respondent was given any prior  
18 notice or greater notice than was actually given of  
19 the petitioner's efforts to obtain judicial relief,  
20 outweighs the hardships to the respondent of an  
21 emergency order granting the petitioner exclusive  
22 possession of the residence or household. This remedy  
23 shall not be denied because the petitioner has or  
24 could obtain temporary shelter elsewhere while prior  
25 notice is given to the respondent, unless the  
26 hardships to the respondent from exclusion from the

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

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

13 (a-5) When a petition for an emergency order of protection  
14 is granted, the order and file shall not be public and shall  
15 only be accessible to the court, the petitioner, law  
16 enforcement, a domestic violence advocate or counselor, the  
17 counsel of record for either party, and the State's Attorney  
18 for the county until the order is served on the respondent.

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

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

1           (1) Prerequisites. When the court is unavailable at  
2 the close of business, the petitioner may file a petition  
3 for a 21-day emergency order before any available circuit  
4 judge or associate judge who may grant relief under this  
5 Act. If the judge finds that there is an immediate and  
6 present danger of abuse to the petitioner and that the  
7 petitioner has satisfied the prerequisites set forth in  
8 subsection (a) of Section 217, that judge may issue an  
9 emergency order of protection.

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

16           (2) Certification and transfer. The judge who issued  
17 the order under this Section shall promptly communicate or  
18 convey the order to the sheriff to facilitate the entry of  
19 the order into the Law Enforcement Agencies Data System by  
20 the Illinois State Police pursuant to Section 302. Any  
21 order issued under this Section and any documentation in  
22 support thereof shall be certified on the next court day  
23 to the appropriate court. The clerk of that court shall  
24 immediately assign a case number, file the petition,  
25 order, and other documents with the court, and enter the  
26 order of record and file it with the sheriff for service,

1 in accordance with Section 222. Filing the petition shall  
2 commence proceedings for further relief under Section 202.  
3 Failure to comply with the requirements of this subsection  
4 shall not affect the validity of the order.

5 (d) Expungement.

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

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

25 (3) The clerk of the court shall immediately file a  
26 certified copy of the expungement order with the Illinois

1       State Police.

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

6           (5) Records related to an emergency order of  
7       protection shall not be expunged under this subsection if  
8       the respondent against whom the emergency order was issued  
9       violated the order.

10       (Source: P.A. 101-255, eff. 1-1-20; 102-538, eff. 8-20-21;  
11       102-831, eff. 5-13-22; revised 7-29-22.)

12           Section 99. Effective date. This Act takes effect June 1,  
13       2023.