

1 AMENDMENT TO HOUSE BILL 2524

2 AMENDMENT NO. _____. Amend House Bill 2524 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Domestic Violence Act of 1986
5 is amended by changing Section 214 as follows:

6 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

7 Sec. 214. Order of protection; remedies.

8 (a) Issuance of order. If the court finds that
9 petitioner has been abused by a family or household member or
10 that petitioner is a high-risk adult who has been abused,
11 neglected, or exploited, as defined in this Act, an order of
12 protection prohibiting the abuse, neglect, or exploitation
13 shall issue; provided that petitioner must also satisfy the
14 requirements of one of the following Sections, as
15 appropriate: Section 217 on emergency orders, Section 218 on
16 interim orders, or Section 219 on plenary orders. Petitioner
17 shall not be denied an order of protection because petitioner
18 or respondent is a minor. The court, when determining whether
19 or not to issue an order of protection, shall not require
20 physical manifestations of abuse on the person of the victim.
21 Modification and extension of prior orders of protection
22 shall be in accordance with this Act.

1 (b) Remedies and standards. The remedies to be included
2 in an order of protection shall be determined in accordance
3 with this Section and one of the following Sections, as
4 appropriate: Section 217 on emergency orders, Section 218 on
5 interim orders, and Section 219 on plenary orders. The
6 remedies listed in this subsection shall be in addition to
7 other civil or criminal remedies available to petitioner.

8 (1) Prohibition of abuse, neglect, or exploitation.
9 Prohibit respondent's harassment, interference with
10 personal liberty, intimidation of a dependent, physical
11 abuse, or willful deprivation, neglect or exploitation,
12 as defined in this Act, ~~or stalking of the petitioner, as~~
13 ~~defined in Section 12-7.3 of the Criminal Code of 1961,~~
14 if such abuse, neglect, exploitation, or stalking has
15 occurred or otherwise appears likely to occur if not
16 prohibited.

17 (2) Grant of exclusive possession of residence.
18 Prohibit respondent from entering or remaining in any
19 residence or household of the petitioner, including one
20 owned or leased by respondent, if petitioner has a right
21 to occupancy thereof. The grant of exclusive possession
22 of the residence shall not affect title to real property,
23 nor shall the court be limited by the standard set forth
24 in Section 701 of the Illinois Marriage and Dissolution
25 of Marriage Act.

26 (A) Right to occupancy. A party has a right
27 to occupancy of a residence or household if it is
28 solely or jointly owned or leased by that party,
29 that party's spouse, a person with a legal duty to
30 support that party or a minor child in that party's
31 care, or by any person or entity other than the
32 opposing party that authorizes that party's
33 occupancy (e.g., a domestic violence shelter).
34 Standards set forth in subparagraph (B) shall not

1 preclude equitable relief.

2 (B) Presumption of hardships. If petitioner
3 and respondent each has the right to occupancy of a
4 residence or household, the court shall balance (i)
5 the hardships to respondent and any minor child or
6 dependent adult in respondent's care resulting from
7 entry of this remedy with (ii) the hardships to
8 petitioner and any minor child or dependent adult in
9 petitioner's care resulting from continued exposure
10 to the risk of abuse (should petitioner remain at
11 the residence or household) or from loss of
12 possession of the residence or household (should
13 petitioner leave to avoid the risk of abuse). When
14 determining the balance of hardships, the court
15 shall also take into account the accessibility of
16 the residence or household. Hardships need not be
17 balanced if respondent does not have a right to
18 occupancy.

19 The balance of hardships is presumed to favor
20 possession by petitioner unless the presumption is
21 rebutted by a preponderance of the evidence, showing
22 that the hardships to respondent substantially
23 outweigh the hardships to petitioner and any minor
24 child or dependent adult in petitioner's care. The
25 court, on the request of petitioner or on its own
26 motion, may order respondent to provide suitable,
27 accessible, alternate housing for petitioner instead
28 of excluding respondent from a mutual residence or
29 household.

30 (3) Stay away order and additional prohibitions.
31 Order respondent to stay away from petitioner or any
32 other person protected by the order of protection, or
33 prohibit respondent from entering or remaining present at
34 petitioner's school, place of employment, or other

1 specified places at times when petitioner is present, or
2 both, if reasonable, given the balance of hardships.
3 Hardships need not be balanced for the court to enter a
4 stay away order or prohibit entry if respondent has no
5 right to enter the premises.

6 If an order of protection grants petitioner
7 exclusive possession of the residence, or prohibits
8 respondent from entering the residence, or orders
9 respondent to stay away from petitioner or other
10 protected persons, then the court may allow respondent
11 access to the residence to remove items of clothing and
12 personal adornment used exclusively by respondent,
13 medications, and other items as the court directs. The
14 right to access shall be exercised on only one occasion
15 as the court directs and in the presence of an
16 agreed-upon adult third party or law enforcement officer.

17 (4) Counseling. Require or recommend the
18 respondent to undergo counseling for a specified duration
19 with a social worker, psychologist, clinical
20 psychologist, psychiatrist, family service agency,
21 alcohol or substance abuse program, mental health center
22 guidance counselor, agency providing services to elders,
23 program designed for domestic violence abusers or any
24 other guidance service the court deems appropriate.

25 (5) Physical care and possession of the minor
26 child. In order to protect the minor child from abuse,
27 neglect, or unwarranted separation from the person who
28 has been the minor child's primary caretaker, or to
29 otherwise protect the well-being of the minor child, the
30 court may do either or both of the following: (i) grant
31 petitioner physical care or possession of the minor
32 child, or both, or (ii) order respondent to return a
33 minor child to, or not remove a minor child from, the
34 physical care of a parent or person in loco parentis.

1 If a court finds, after a hearing, that respondent
2 has committed abuse (as defined in Section 103) of a
3 minor child, there shall be a rebuttable presumption that
4 awarding physical care to respondent would not be in the
5 minor child's best interest.

6 (6) Temporary legal custody. Award temporary legal
7 custody to petitioner in accordance with this Section,
8 the Illinois Marriage and Dissolution of Marriage Act,
9 the Illinois Parentage Act of 1984, and this State's
10 Uniform Child Custody Jurisdiction Act.

11 If a court finds, after a hearing, that respondent
12 has committed abuse (as defined in Section 103) of a
13 minor child, there shall be a rebuttable presumption that
14 awarding temporary legal custody to respondent would not
15 be in the child's best interest.

16 (7) Visitation. Determine the visitation rights,
17 if any, of respondent in any case in which the court
18 awards physical care or temporary legal custody of a
19 minor child to petitioner. The court shall restrict or
20 deny respondent's visitation with a minor child if the
21 court finds that respondent has done or is likely to do
22 any of the following: (i) abuse or endanger the minor
23 child during visitation; (ii) use the visitation as an
24 opportunity to abuse or harass petitioner or petitioner's
25 family or household members; (iii) improperly conceal or
26 detain the minor child; or (iv) otherwise act in a manner
27 that is not in the best interests of the minor child.
28 The court shall not be limited by the standards set forth
29 in Section 607.1 of the Illinois Marriage and Dissolution
30 of Marriage Act. If the court grants visitation, the
31 order shall specify dates and times for the visitation to
32 take place or other specific parameters or conditions
33 that are appropriate. No order for visitation shall
34 refer merely to the term "reasonable visitation".

1 Petitioner may deny respondent access to the minor
2 child if, when respondent arrives for visitation,
3 respondent is under the influence of drugs or alcohol and
4 constitutes a threat to the safety and well-being of
5 petitioner or petitioner's minor children or is behaving
6 in a violent or abusive manner.

7 If necessary to protect any member of petitioner's
8 family or household from future abuse, respondent shall
9 be prohibited from coming to petitioner's residence to
10 meet the minor child for visitation, and the parties
11 shall submit to the court their recommendations for
12 reasonable alternative arrangements for visitation. A
13 person may be approved to supervise visitation only after
14 filing an affidavit accepting that responsibility and
15 acknowledging accountability to the court.

16 (8) Removal or concealment of minor child. Prohibit
17 respondent from removing a minor child from the State or
18 concealing the child within the State.

19 (9) Order to appear. Order the respondent to
20 appear in court, alone or with a minor child, to prevent
21 abuse, neglect, removal or concealment of the child, to
22 return the child to the custody or care of the petitioner
23 or to permit any court-ordered interview or examination
24 of the child or the respondent.

25 (10) Possession of personal property. Grant
26 petitioner exclusive possession of personal property and,
27 if respondent has possession or control, direct
28 respondent to promptly make it available to petitioner,
29 if:

30 (i) petitioner, but not respondent, owns the
31 property; or

32 (ii) the parties own the property jointly;
33 sharing it would risk abuse of petitioner by
34 respondent or is impracticable; and the balance of

1 hardships favors temporary possession by petitioner.

2 If petitioner's sole claim to ownership of the
3 property is that it is marital property, the court may
4 award petitioner temporary possession thereof under the
5 standards of subparagraph (ii) of this paragraph only if
6 a proper proceeding has been filed under the Illinois
7 Marriage and Dissolution of Marriage Act, as now or
8 hereafter amended.

9 No order under this provision shall affect title to
10 property.

11 (11) Protection of property. Forbid the respondent
12 from taking, transferring, encumbering, concealing,
13 damaging or otherwise disposing of any real or personal
14 property, except as explicitly authorized by the court,
15 if:

16 (i) petitioner, but not respondent, owns the
17 property; or

18 (ii) the parties own the property jointly, and
19 the balance of hardships favors granting this
20 remedy.

21 If petitioner's sole claim to ownership of the
22 property is that it is marital property, the court may
23 grant petitioner relief under subparagraph (ii) of this
24 paragraph only if a proper proceeding has been filed
25 under the Illinois Marriage and Dissolution of Marriage
26 Act, as now or hereafter amended.

27 The court may further prohibit respondent from
28 improperly using the financial or other resources of an
29 aged member of the family or household for the profit or
30 advantage of respondent or of any other person.

31 (12) Order for payment of support. Order
32 respondent to pay temporary support for the petitioner or
33 any child in the petitioner's care or custody, when the
34 respondent has a legal obligation to support that person,

1 in accordance with the Illinois Marriage and Dissolution
2 of Marriage Act, which shall govern, among other matters,
3 the amount of support, payment through the clerk and
4 withholding of income to secure payment. An order for
5 child support may be granted to a petitioner with lawful
6 physical care or custody of a child, or an order or
7 agreement for physical care or custody, prior to entry of
8 an order for legal custody. Such a support order shall
9 expire upon entry of a valid order granting legal custody
10 to another, unless otherwise provided in the custody
11 order.

12 (13) Order for payment of losses. Order respondent
13 to pay petitioner for losses suffered as a direct result
14 of the abuse, neglect, or exploitation. Such losses
15 shall include, but not be limited to, medical expenses,
16 lost earnings or other support, repair or replacement of
17 property damaged or taken, reasonable attorney's fees,
18 court costs and moving or other travel expenses,
19 including additional reasonable expenses for temporary
20 shelter and restaurant meals.

21 (i) Losses affecting family needs. If a party
22 is entitled to seek maintenance, child support or
23 property distribution from the other party under the
24 Illinois Marriage and Dissolution of Marriage Act,
25 as now or hereafter amended, the court may order
26 respondent to reimburse petitioner's actual losses,
27 to the extent that such reimbursement would be
28 "appropriate temporary relief", as authorized by
29 subsection (a)(3) of Section 501 of that Act.

30 (ii) Recovery of expenses. In the case of an
31 improper concealment or removal of a minor child,
32 the court may order respondent to pay the reasonable
33 expenses incurred or to be incurred in the search
34 for and recovery of the minor child, including but

1 not limited to legal fees, court costs, private
2 investigator fees, and travel costs.

3 (14) Prohibition of entry. Prohibit the respondent
4 from entering or remaining in the residence or household
5 while the respondent is under the influence of alcohol or
6 drugs and constitutes a threat to the safety and
7 well-being of the petitioner or the petitioner's
8 children.

9 (14.5) Prohibition of firearm possession.

10 (a) When a complaint is made under a request
11 for an order of protection, that the respondent has
12 threatened or is likely to use firearms illegally
13 against the petitioner, and the respondent is
14 present in court, or has failed to appear after
15 receiving actual notice, the court shall examine on
16 oath the petitioner, and any witnesses who may be
17 produced. If the court is satisfied that there is
18 any danger of the illegal use of firearms, it shall
19 issue an order that any firearms in the possession
20 of the respondent, except as provided in subsection
21 (b), be turned over to the local law enforcement
22 agency for safekeeping. If the respondent has
23 failed to appear, the court shall issue a warrant
24 for seizure of any firearm in the possession of the
25 respondent. The period of safekeeping shall be for a
26 stated period of time not to exceed 2 years. The
27 firearm or firearms shall be returned to the
28 respondent at the end of the stated period or at
29 expiration of the order of protection, whichever is
30 sooner.

31 (b) If the respondent is a peace officer as
32 defined in Section 2-13 of the Criminal Code of
33 1961, the court shall order that any firearms used
34 by the respondent in the performance of his or her

1 duties as a peace officer be surrendered to the
2 chief law enforcement executive of the agency in
3 which the respondent is employed, who shall retain
4 the firearms for safekeeping for the stated period
5 not to exceed 2 years as set forth in the court
6 order.

7 (15) Prohibition of access to records. If an order
8 of protection prohibits respondent from having contact
9 with the minor child, or if petitioner's address is
10 omitted under subsection (b) of Section 203, or if
11 necessary to prevent abuse or wrongful removal or
12 concealment of a minor child, the order shall deny
13 respondent access to, and prohibit respondent from
14 inspecting, obtaining, or attempting to inspect or
15 obtain, school or any other records of the minor child
16 who is in the care of petitioner.

17 (16) Order for payment of shelter services. Order
18 respondent to reimburse a shelter providing temporary
19 housing and counseling services to the petitioner for the
20 cost of the services, as certified by the shelter and
21 deemed reasonable by the court.

22 (17) Order for injunctive relief. Enter injunctive
23 relief necessary or appropriate to prevent further abuse
24 of a family or household member or further abuse,
25 neglect, or exploitation of a high-risk adult with
26 disabilities or to effectuate one of the granted
27 remedies, if supported by the balance of hardships. If
28 the harm to be prevented by the injunction is abuse or
29 any other harm that one of the remedies listed in
30 paragraphs (1) through (16) of this subsection is
31 designed to prevent, no further evidence is necessary
32 that the harm is an irreparable injury.

33 (c) Relevant factors; findings.

34 (1) In determining whether to grant a specific

1 remedy, other than payment of support, the court shall
2 consider relevant factors, including but not limited to
3 the following:

4 (i) the nature, frequency, severity, pattern
5 and consequences of the respondent's past abuse,
6 neglect or exploitation of the petitioner or any
7 family or household member, including the
8 concealment of his or her location in order to evade
9 service of process or notice, and the likelihood of
10 danger of future abuse, neglect, or exploitation to
11 petitioner or any member of petitioner's or
12 respondent's family or household; and

13 (ii) the danger that any minor child will be
14 abused or neglected or improperly removed from the
15 jurisdiction, improperly concealed within the State
16 or improperly separated from the child's primary
17 caretaker.

18 (2) In comparing relative hardships resulting to
19 the parties from loss of possession of the family home,
20 the court shall consider relevant factors, including but
21 not limited to the following:

22 (i) availability, accessibility, cost, safety,
23 adequacy, location and other characteristics of
24 alternate housing for each party and any minor child
25 or dependent adult in the party's care;

26 (ii) the effect on the party's employment; and

27 (iii) the effect on the relationship of the
28 party, and any minor child or dependent adult in the
29 party's care, to family, school, church and
30 community.

31 (3) Subject to the exceptions set forth in
32 paragraph (4) of this subsection, the court shall make
33 its findings in an official record or in writing, and
34 shall at a minimum set forth the following:

1 (i) That the court has considered the
2 applicable relevant factors described in paragraphs
3 (1) and (2) of this subsection.

4 (ii) Whether the conduct or actions of
5 respondent, unless prohibited, will likely cause
6 irreparable harm or continued abuse.

7 (iii) Whether it is necessary to grant the
8 requested relief in order to protect petitioner or
9 other alleged abused persons.

10 (4) For purposes of issuing an ex parte emergency
11 order of protection, the court, as an alternative to or
12 as a supplement to making the findings described in
13 paragraphs (c)(3)(i) through (c)(3)(iii) of this
14 subsection, may use the following procedure:

15 When a verified petition for an emergency order of
16 protection in accordance with the requirements of
17 Sections 203 and 217 is presented to the court, the court
18 shall examine petitioner on oath or affirmation. An
19 emergency order of protection shall be issued by the
20 court if it appears from the contents of the petition and
21 the examination of petitioner that the averments are
22 sufficient to indicate abuse by respondent and to support
23 the granting of relief under the issuance of the
24 emergency order of protection.

25 (5) Never married parties. No rights or
26 responsibilities for a minor child born outside of
27 marriage attach to a putative father until a father and
28 child relationship has been established under the
29 Illinois Parentage Act of 1984, the Illinois Public Aid
30 Code, Section 12 of the Vital Records Act, the Juvenile
31 Court Act of 1987, the Probate Act of 1985, the Revised
32 Uniform Reciprocal Enforcement of Support Act, the
33 Uniform Interstate Family Support Act, the Expedited
34 Child Support Act of 1990, any judicial, administrative,

1 or other act of another state or territory, any other
2 Illinois statute, or by any foreign nation establishing
3 the father and child relationship, any other proceeding
4 substantially in conformity with the Personal
5 Responsibility and Work Opportunity Reconciliation Act of
6 1996 (Pub. L. 104-193), or where both parties appeared in
7 open court or at an administrative hearing acknowledging
8 under oath or admitting by affirmation the existence of
9 a father and child relationship. Absent such an
10 adjudication, finding, or acknowledgement, no putative
11 father shall be granted temporary custody of the minor
12 child, visitation with the minor child, or physical care
13 and possession of the minor child, nor shall an order of
14 payment for support of the minor child be entered.

15 (d) Balance of hardships; findings. If the court finds
16 that the balance of hardships does not support the granting
17 of a remedy governed by paragraph (2), (3), (10), (11), or
18 (16) of subsection (b) of this Section, which may require
19 such balancing, the court's findings shall so indicate and
20 shall include a finding as to whether granting the remedy
21 will result in hardship to respondent that would
22 substantially outweigh the hardship to petitioner from denial
23 of the remedy. The findings shall be an official record or in
24 writing.

25 (e) Denial of remedies. Denial of any remedy shall not
26 be based, in whole or in part, on evidence that:

27 (1) Respondent has cause for any use of force,
28 unless that cause satisfies the standards for justifiable
29 use of force provided by Article VII of the Criminal Code
30 of 1961;

31 (2) Respondent was voluntarily intoxicated;

32 (3) Petitioner acted in self-defense or defense of
33 another, provided that, if petitioner utilized force,
34 such force was justifiable under Article VII of the

1 Criminal Code of 1961;

2 (4) Petitioner did not act in self-defense or
3 defense of another;

4 (5) Petitioner left the residence or household to
5 avoid further abuse, neglect, or exploitation by
6 respondent;

7 (6) Petitioner did not leave the residence or
8 household to avoid further abuse, neglect, or
9 exploitation by respondent;

10 (7) Conduct by any family or household member
11 excused the abuse, neglect, or exploitation by
12 respondent, unless that same conduct would have excused
13 such abuse, neglect, or exploitation if the parties had
14 not been family or household members.

15 (Source: P.A. 89-367, eff. 1-1-96; 90-118, eff. 1-1-98.)".