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1 AMENDMENT TO HOUSE BILL 4395

2 AMENDMENT NO. _____. Amend House Bill 4395 on page 3,
3 after line 31, by inserting the following:

4 "Section 8. The Civil No Contact Order Act is amended by
5 changing Sections 103, 202, 213, 214, 217, and 218 and by
6 adding Sections 204.3 and 218.5 as follows:

7 (740 ILCS 22/103)

8 Sec. 103. Definitions. As used in this Act:

9 ~~"Abuse" means physical abuse, harassment, intimidation of
10 a dependent, or interference with personal liberty.~~

11 "Civil no contact order" means an emergency order or
12 plenary order granted under this Act, which includes a remedy
13 authorized by Section 213 of this Act.

14 "Non-consensual" means a lack of freely given agreement.

15 "Petitioner" means any named petitioner for the no contact
16 order or any named victim of non-consensual sexual conduct or
17 non-consensual sexual penetration on whose behalf the petition
18 is brought.

19 "Sexual conduct" means any intentional or knowing touching
20 or fondling by the petitioner or the respondent, either
21 directly or through clothing, of the sex organs, anus, or
22 breast of the petitioner or the respondent, or any part of the
23 body of a child under 13 years of age, or any transfer or
24 transmission of semen by the respondent upon any part of the

1 clothed or unclothed body of the petitioner, for the purpose of
2 sexual gratification or arousal of the petitioner or the
3 respondent.

4 "Sexual penetration" means any contact, however slight,
5 between the sex organ or anus of one person by an object, the
6 sex organ, mouth or anus of another person, or any intrusion,
7 however slight, of any part of the body of one person or of any
8 animal or object into the sex organ or anus of another person,
9 including but not limited to cunnilingus, fellatio or anal
10 penetration. Evidence of emission of semen is not required to
11 prove sexual penetration.

12 "Stay away" means to refrain from both physical presence
13 and nonphysical contact with the petitioner directly,
14 indirectly, or through third parties who may or may not know of
15 the order. "Nonphysical contact" includes, but is not limited
16 to, telephone calls, mail, e-mail, fax, and written notes.

17 (Source: P.A. 93-236, eff. 1-1-04.)

18 (740 ILCS 22/202)

19 Sec. 202. Commencement of action; filing fees.

20 (a) An action for a civil no contact order is commenced:

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

24 (2) in conjunction with a delinquency petition or a
25 criminal prosecution, by filing a petition for a civil no
26 contact order under the same case number as the delinquency
27 petition or criminal prosecution, to be granted during
28 pre-trial release of a defendant, with any dispositional
29 order issued under Section 5-710 of the Juvenile Court Act
30 of 1987 or as a condition of release, supervision,
31 conditional discharge, probation, periodic imprisonment,
32 parole, or mandatory supervised release, or in conjunction
33 with imprisonment or a bond forfeiture warrant, provided

1 that (i) the violation is alleged in an information,
2 complaint, indictment, or delinquency petition on file and
3 the alleged victim is a person protected by this Act, and
4 (ii) the petition, which is filed by the State's Attorney,
5 names a victim of the alleged crime as a petitioner.

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

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

22 (d) The court shall provide, through the office of the
23 clerk of the court, simplified forms for ~~and clerical~~
24 ~~assistance to help with the writing and~~ filing of a petition
25 under this Section by any person not represented by counsel.

26 (Source: P.A. 93-236, eff. 1-1-04.)

27 (740 ILCS 22/204.3 new)

28 Sec. 204.3. Appointment of counsel. The court may appoint
29 counsel to represent the petitioner if the respondent is
30 represented by counsel.

31 (740 ILCS 22/213)

32 Sec. 213. Civil no contact order; remedy.

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

12 (b) A civil no contact order shall order one or more of the
13 following:

14 (1) order the respondent to stay away from the
15 petitioner; or

16 (2) other injunctive relief necessary or appropriate.
17 ~~Order the respondent to stay away from any other person~~
18 ~~protected by the civil no contact order;~~

19 ~~(3) prohibit the respondent from abuse, as defined in~~
20 ~~this Act, or stalking of the petitioner, as defined in~~
21 ~~Section 12-7.3 of the Criminal Code of 1961, if the abuse~~
22 ~~or stalking has occurred or otherwise appears likely to~~
23 ~~occur if not prohibited; or~~

24 ~~(4) prohibit the respondent from entering or remaining~~
25 ~~present at the petitioner's school or place of employment,~~
26 ~~or both, or other specified places at times when the~~
27 ~~petitioner is present, if reasonable, given the balance of~~
28 ~~hardships. Hardships need not be balanced for the court to~~
29 ~~enter a stay away order or prohibit entry if the respondent~~
30 ~~has no right to enter the premises.~~

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

33 (1) the respondent has cause for any use of force,
34 unless that cause satisfies the standards for justifiable

1 use of force provided by Article VII of the Criminal Code
2 of 1961;

3 (2) the respondent was voluntarily intoxicated;

4 (3) the petitioner acted in self-defense or defense of
5 another, provided that, if the petitioner utilized force,
6 such force was justifiable under Article VII of the
7 Criminal Code of 1961;

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

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

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

16 (d) Monetary damages are not recoverable as a remedy.

17 (Source: P.A. 93-236, eff. 1-1-04.)

18 (740 ILCS 22/214)

19 Sec. 214. Emergency civil no contact order.

20 (a) An emergency civil no contact order shall issue if the
21 petitioner satisfies the requirements of this subsection (a).

22 The petitioner shall establish that:

23 (1) the court has jurisdiction under Section 206 ~~208~~;

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

25 (3) there is good cause to grant the remedy, regardless
26 of prior service of process or of notice upon the
27 respondent, because the harm which that remedy is intended
28 to prevent would be likely to occur if the respondent were
29 given any prior notice, or greater notice than was actually
30 given, of the petitioner's efforts to obtain judicial
31 relief.

32 An emergency civil no contact order shall be issued by the
33 court if it appears from the contents of the petition and the

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

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

7 (b) If the respondent appears in court for this hearing for
8 an emergency order, he or she may elect to file a general
9 appearance and testify. Any resulting order may be an emergency
10 order, governed by this Section. Notwithstanding the
11 requirements of this Section, if all requirements of Section
12 215 have been met, the court may issue a plenary order.

13 (c) Emergency orders; court holidays and evenings.

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

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

27 (3) Any order issued under this Section and any
28 documentation in support of the order shall be certified on
29 the next court day to the appropriate court. The clerk of
30 that court shall immediately assign a case number, file the
31 petition, order, and other documents with the court, and
32 enter the order of record and file it with the sheriff for
33 service, in accordance with Section 222. Filing the
34 petition shall commence proceedings for further relief

1 under Section 202. Failure to comply with the requirements
2 of this paragraph (3) does not affect the validity of the
3 order.

4 (Source: P.A. 93-236, eff. 1-1-04.)

5 (740 ILCS 22/217)

6 Sec. 217. Contents of orders.

7 (a) Any civil no contact order shall describe each remedy
8 granted by the court, in reasonable detail and not by reference
9 to any other document, so that the respondent may clearly
10 understand what he or she must do or refrain from doing.

11 (b) A civil no contact order shall further state the
12 following:

13 (1) The name of each petitioner that the court finds
14 was the victim of non-consensual sexual conduct or
15 non-consensual sexual penetration by the respondent ~~and~~
16 ~~the name of each other person protected by the order and~~
17 ~~that the person is protected by this Act.~~

18 (2) The date and time the civil no contact order was
19 issued, whether it is an emergency or plenary order, and
20 the duration of the order.

21 (3) The date, time, and place for any scheduled hearing
22 for extension of that civil no contact order or for another
23 order of greater duration or scope.

24 (4) For each remedy in an emergency civil no contact
25 order, the reason for entering that remedy without prior
26 notice to the respondent or greater notice than was
27 actually given.

28 (5) For emergency civil no contact orders, that the
29 respondent may petition the court, in accordance with
30 Section 218.5, to reopen the order if he or she did not
31 receive actual prior notice of the hearing as required
32 under Section 209 of this Act and if the respondent alleges
33 that he or she had a meritorious defense to the order or

1 that the order or its remedy is not authorized by this Act.

2 (c) A civil no contact order shall include the following
3 notice, printed in conspicuous type: "Any knowing violation of
4 a civil no contact order is a Class A misdemeanor. Any second
5 or subsequent violation is a Class 4 felony."

6 (Source: P.A. 93-236, eff. 1-1-04.)

7 (740 ILCS 22/218)

8 Sec. 218. Notice of orders.

9 (a) Upon issuance of any civil no contact order, the clerk
10 shall immediately, or on the next court day if an emergency
11 order is issued in accordance with subsection (c) of Section
12 214:

13 (1) enter the order on the record and file it in
14 accordance with the circuit court procedures; and

15 (2) provide a file stamped copy of the order to the
16 respondent, if present, and to the petitioner.

17 (b) The clerk of the issuing judge shall, or the petitioner
18 may, on the same day that a civil no contact order is issued,
19 file a certified copy of that order with the sheriff or other
20 law enforcement officials charged with maintaining Department
21 of State Police records or charged with serving the order upon
22 the respondent. If the order was issued in accordance with
23 subsection (c) of Section 214, the clerk shall, on the next
24 court day, file a certified copy of the order with the Sheriff
25 or other law enforcement officials charged with maintaining
26 Department of State Police records.

27 (c) Unless the respondent was present in court when the
28 order was issued, the sheriff, other law enforcement official,
29 or special process server shall promptly serve that order upon
30 the respondent and file proof of such service in the manner
31 provided for service of process in civil proceedings. If
32 process has not yet been served upon the respondent, it shall
33 be served with the order or short form notification. ~~A single~~

1 ~~fee may be charged for service of an order obtained in civil~~
2 ~~court, or for service of such an order together with process,~~
3 ~~unless waived or deferred under Section 208.~~

4 (d) If the person against whom the civil no contact order
5 is issued is arrested and the written order is issued in
6 accordance with subsection (c) of Section 214 and received by
7 the custodial law enforcement agency before the respondent or
8 arrestee is released from custody, the custodial law
9 enforcement agent shall promptly serve the order upon the
10 respondent or arrestee before the respondent or arrestee is
11 released from custody. In no event shall detention of the
12 respondent or arrestee be extended for hearing on the petition
13 for civil no contact order or receipt of the order issued under
14 Section 214 of this Act.

15 (e) Any order extending, modifying, or revoking any civil
16 no contact order shall be promptly recorded, issued, and served
17 as provided in this Section.

18 (f) Upon the request of the petitioner, within 24 hours of
19 the issuance of a civil no contact order, the clerk of the
20 issuing judge shall send written notice of the order along with
21 a certified copy of the order to any school, college, or
22 university at which the petitioner is enrolled.

23 (Source: P.A. 93-236, eff. 1-1-04.)

24 (740 ILCS 22/218.5 new)

25 Sec. 218.5. Modification; reopening of orders.

26 (a) Except as otherwise provided in this Section, upon
27 motion by the petitioner, the court may modify an emergency or
28 plenary civil no contact order by altering the remedy, subject
29 to Section 213.

30 (b) After 30 days following entry of a plenary civil no
31 contact order, a court may modify that order only when a change
32 in the applicable law or facts since that plenary order was
33 entered warrants a modification of its terms.

1 (c) Upon 2 days' notice to the petitioner, or such shorter
2 notice as the court may prescribe, a respondent subject to an
3 emergency civil no contact order issued under this Act may
4 appear and petition the court to rehear the original or amended
5 petition. Any petition to rehear shall be verified and shall
6 allege the following:

7 (1) that the respondent did not receive prior notice of
8 the initial hearing in which the emergency order was
9 entered under Sections 209 and 214; and

10 (2) that the respondent had a meritorious defense to
11 the order or any of its remedies or that the order or any
12 of its remedies was not authorized by this Act."