



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5788

Introduced 05/02/06, by Rep. John A. Fritchey - David E. Miller

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-14
750 ILCS 60/214

from Ch. 38, par. 112A-14
from Ch. 40, par. 2312-14

Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that the court may include in the order of protection granting the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and ordering the respondent to stay away from the animal and forbidding the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

LRB094 20343 RLC 58497 b

1 AN ACT concerning orders of protection.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 112A-14 as follows:

6 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

7 Sec. 112A-14. Order of protection; remedies.

8 (a) Issuance of order. If the court finds that petitioner
9 has been abused by a family or household member, as defined in
10 this Article, an order of protection prohibiting such abuse
11 shall issue; provided that petitioner must also satisfy the
12 requirements of one of the following Sections, as appropriate:
13 Section 112A-17 on emergency orders, Section 112A-18 on interim
14 orders, or Section 112A-19 on plenary orders. Petitioner shall
15 not be denied an order of protection because petitioner or
16 respondent is a minor. The court, when determining whether or
17 not to issue an order of protection, shall not require physical
18 manifestations of abuse on the person of the victim.
19 Modification and extension of prior orders of protection shall
20 be in accordance with this Article.

21 (b) Remedies and standards. The remedies to be included in
22 an order of protection shall be determined in accordance with
23 this Section and one of the following Sections, as appropriate:
24 Section 112A-17 on emergency orders, Section 112A-18 on interim
25 orders, and Section 112A-19 on plenary orders. The remedies
26 listed in this subsection shall be in addition to other civil
27 or criminal remedies available to petitioner.

28 (1) Prohibition of abuse. Prohibit respondent's
29 harassment, interference with personal liberty,
30 intimidation of a dependent, physical abuse or willful
31 deprivation, as defined in this Article, if such abuse has
32 occurred or otherwise appears likely to occur if not

1 prohibited.

2 (2) Grant of exclusive possession of residence.
3 Prohibit respondent from entering or remaining in any
4 residence or household of the petitioner, including one
5 owned or leased by respondent, if petitioner has a right to
6 occupancy thereof. The grant of exclusive possession of the
7 residence shall not affect title to real property, nor
8 shall the court be limited by the standard set forth in
9 Section 701 of the Illinois Marriage and Dissolution of
10 Marriage Act.

11 (A) Right to occupancy. A party has a right to
12 occupancy of a residence or household if it is solely
13 or jointly owned or leased by that party, that party's
14 spouse, a person with a legal duty to support that
15 party or a minor child in that party's care, or by any
16 person or entity other than the opposing party that
17 authorizes that party's occupancy (e.g., a domestic
18 violence shelter). Standards set forth in subparagraph
19 (B) shall not preclude equitable relief.

20 (B) Presumption of hardships. If petitioner and
21 respondent each has the right to occupancy of a
22 residence or household, the court shall balance (i) the
23 hardships to respondent and any minor child or
24 dependent adult in respondent's care resulting from
25 entry of this remedy with (ii) the hardships to
26 petitioner and any minor child or dependent adult in
27 petitioner's care resulting from continued exposure to
28 the risk of abuse (should petitioner remain at the
29 residence or household) or from loss of possession of
30 the residence or household (should petitioner leave to
31 avoid the risk of abuse). When determining the balance
32 of hardships, the court shall also take into account
33 the accessibility of the residence or household.
34 Hardships need not be balanced if respondent does not
35 have a right to occupancy.

36 The balance of hardships is presumed to favor

1 possession by petitioner unless the presumption is
2 rebutted by a preponderance of the evidence, showing
3 that the hardships to respondent substantially
4 outweigh the hardships to petitioner and any minor
5 child or dependent adult in petitioner's care. The
6 court, on the request of petitioner or on its own
7 motion, may order respondent to provide suitable,
8 accessible, alternate housing for petitioner instead
9 of excluding respondent from a mutual residence or
10 household.

11 (3) Stay away order and additional prohibitions. Order
12 respondent to stay away from petitioner or any other person
13 protected by the order of protection, or prohibit
14 respondent from entering or remaining present at
15 petitioner's school, place of employment, or other
16 specified places at times when petitioner is present, or
17 both, if reasonable, given the balance of hardships.
18 Hardships need not be balanced for the court to enter a
19 stay away order or prohibit entry if respondent has no
20 right to enter the premises.

21 If an order of protection grants petitioner exclusive
22 possession of the residence, or prohibits respondent from
23 entering the residence, or orders respondent to stay away
24 from petitioner or other protected persons, then the court
25 may allow respondent access to the residence to remove
26 items of clothing and personal adornment used exclusively
27 by respondent, medications, and other items as the court
28 directs. The right to access shall be exercised on only one
29 occasion as the court directs and in the presence of an
30 agreed-upon adult third party or law enforcement officer.

31 (4) Counseling. Require or recommend the respondent to
32 undergo counseling for a specified duration with a social
33 worker, psychologist, clinical psychologist, psychiatrist,
34 family service agency, alcohol or substance abuse program,
35 mental health center guidance counselor, agency providing
36 services to elders, program designed for domestic violence

1 abusers or any other guidance service the court deems
2 appropriate.

3 (5) Physical care and possession of the minor child. In
4 order to protect the minor child from abuse, neglect, or
5 unwarranted separation from the person who has been the
6 minor child's primary caretaker, or to otherwise protect
7 the well-being of the minor child, the court may do either
8 or both of the following: (i) grant petitioner physical
9 care or possession of the minor child, or both, or (ii)
10 order respondent to return a minor child to, or not remove
11 a minor child from, the physical care of a parent or person
12 in loco parentis.

13 If a court finds, after a hearing, that respondent has
14 committed abuse (as defined in Section 112A-3) of a minor
15 child, there shall be a rebuttable presumption that
16 awarding physical care to respondent would not be in the
17 minor child's best interest.

18 (6) Temporary legal custody. Award temporary legal
19 custody to petitioner in accordance with this Section, the
20 Illinois Marriage and Dissolution of Marriage Act, the
21 Illinois Parentage Act of 1984, and this State's Uniform
22 Child-Custody Jurisdiction and Enforcement Act.

23 If a court finds, after a hearing, that respondent has
24 committed abuse (as defined in Section 112A-3) of a minor
25 child, there shall be a rebuttable presumption that
26 awarding temporary legal custody to respondent would not be
27 in the child's best interest.

28 (7) Visitation. Determine the visitation rights, if
29 any, of respondent in any case in which the court awards
30 physical care or temporary legal custody of a minor child
31 to petitioner. The court shall restrict or deny
32 respondent's visitation with a minor child if the court
33 finds that respondent has done or is likely to do any of
34 the following: (i) abuse or endanger the minor child during
35 visitation; (ii) use the visitation as an opportunity to
36 abuse or harass petitioner or petitioner's family or

1 household members; (iii) improperly conceal or detain the
2 minor child; or (iv) otherwise act in a manner that is not
3 in the best interests of the minor child. The court shall
4 not be limited by the standards set forth in Section 607.1
5 of the Illinois Marriage and Dissolution of Marriage Act.
6 If the court grants visitation, the order shall specify
7 dates and times for the visitation to take place or other
8 specific parameters or conditions that are appropriate. No
9 order for visitation shall refer merely to the term
10 "reasonable visitation".

11 Petitioner may deny respondent access to the minor
12 child if, when respondent arrives for visitation,
13 respondent is under the influence of drugs or alcohol and
14 constitutes a threat to the safety and well-being of
15 petitioner or petitioner's minor children or is behaving in
16 a violent or abusive manner.

17 If necessary to protect any member of petitioner's
18 family or household from future abuse, respondent shall be
19 prohibited from coming to petitioner's residence to meet
20 the minor child for visitation, and the parties shall
21 submit to the court their recommendations for reasonable
22 alternative arrangements for visitation. A person may be
23 approved to supervise visitation only after filing an
24 affidavit accepting that responsibility and acknowledging
25 accountability to the court.

26 (8) Removal or concealment of minor child. Prohibit
27 respondent from removing a minor child from the State or
28 concealing the child within the State.

29 (9) Order to appear. Order the respondent to appear in
30 court, alone or with a minor child, to prevent abuse,
31 neglect, removal or concealment of the child, to return the
32 child to the custody or care of the petitioner or to permit
33 any court-ordered interview or examination of the child or
34 the respondent.

35 (10) Possession of personal property. Grant petitioner
36 exclusive possession of personal property and, if

1 respondent has possession or control, direct respondent to
2 promptly make it available to petitioner, if:

3 (i) petitioner, but not respondent, owns the
4 property; or

5 (ii) the parties own the property jointly; sharing
6 it would risk abuse of petitioner by respondent or is
7 impracticable; and the balance of hardships favors
8 temporary possession by petitioner.

9 If petitioner's sole claim to ownership of the property
10 is that it is marital property, the court may award
11 petitioner temporary possession thereof under the
12 standards of subparagraph (ii) of this paragraph only if a
13 proper proceeding has been filed under the Illinois
14 Marriage and Dissolution of Marriage Act, as now or
15 hereafter amended.

16 No order under this provision shall affect title to
17 property.

18 (11) Protection of property. Forbid the respondent
19 from taking, transferring, encumbering, concealing,
20 damaging or otherwise disposing of any real or personal
21 property, except as explicitly authorized by the court, if:

22 (i) petitioner, but not respondent, owns the
23 property; or

24 (ii) the parties own the property jointly, and the
25 balance of hardships favors granting this remedy.

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

32 The court may further prohibit respondent from
33 improperly using the financial or other resources of an
34 aged member of the family or household for the profit or
35 advantage of respondent or of any other person.

36 (11.5) Protection of animals. Grant the petitioner the

1 exclusive care, custody, or control of any animal owned,
2 possessed, leased, kept, or held by either the petitioner
3 or the respondent or a minor child residing in the
4 residence or household of either the petitioner or the
5 respondent and order the respondent to stay away from the
6 animal and forbid the respondent from taking,
7 transferring, encumbering, concealing, harming, or
8 otherwise disposing of the animal.

9 (12) Order for payment of support. Order respondent to
10 pay temporary support for the petitioner or any child in
11 the petitioner's care or custody, when the respondent has a
12 legal obligation to support that person, in accordance with
13 the Illinois Marriage and Dissolution of Marriage Act,
14 which shall govern, among other matters, the amount of
15 support, payment through the clerk and withholding of
16 income to secure payment. An order for child support may be
17 granted to a petitioner with lawful physical care or
18 custody of a child, or an order or agreement for physical
19 care or custody, prior to entry of an order for legal
20 custody. Such a support order shall expire upon entry of a
21 valid order granting legal custody to another, unless
22 otherwise provided in the custody order.

23 (13) Order for payment of losses. Order respondent to
24 pay petitioner for losses suffered as a direct result of
25 the abuse. Such losses shall include, but not be limited
26 to, medical expenses, lost earnings or other support,
27 repair or replacement of property damaged or taken,
28 reasonable attorney's fees, court costs and moving or other
29 travel expenses, including additional reasonable expenses
30 for temporary shelter and restaurant meals.

31 (i) Losses affecting family needs. If a party is
32 entitled to seek maintenance, child support or
33 property distribution from the other party under the
34 Illinois Marriage and Dissolution of Marriage Act, as
35 now or hereafter amended, the court may order
36 respondent to reimburse petitioner's actual losses, to

1 the extent that such reimbursement would be
2 "appropriate temporary relief", as authorized by
3 subsection (a) (3) of Section 501 of that Act.

4 (ii) Recovery of expenses. In the case of an
5 improper concealment or removal of a minor child, the
6 court may order respondent to pay the reasonable
7 expenses incurred or to be incurred in the search for
8 and recovery of the minor child, including but not
9 limited to legal fees, court costs, private
10 investigator fees, and travel costs.

11 (14) Prohibition of entry. Prohibit the respondent
12 from entering or remaining in the residence or household
13 while the respondent is under the influence of alcohol or
14 drugs and constitutes a threat to the safety and well-being
15 of the petitioner or the petitioner's children.

16 (14.5) Prohibition of firearm possession. (a) When a
17 complaint is made under a request for an order of
18 protection, that the respondent has threatened or is likely
19 to use firearms illegally against the petitioner, and the
20 respondent is present in court, or has failed to appear
21 after receiving actual notice, the court shall examine on
22 oath the petitioner, and any witnesses who may be produced.
23 If the court is satisfied that there is any danger of the
24 illegal use of firearms, it shall include in the order of
25 protection the requirement that any firearms in the
26 possession of the respondent, except as provided in
27 subsection (b), be turned over to the local law enforcement
28 agency for safekeeping. If the respondent fails to appear,
29 or refuses or fails to surrender his or her firearms, the
30 court shall issue a warrant for seizure of any firearm in
31 the possession of the respondent. The period of safekeeping
32 shall be for a stated period of time not to exceed 2 years.
33 The firearm or firearms shall be returned to the respondent
34 at the end of the stated period or at expiration of the
35 order of protection, whichever is sooner. (b) If the
36 respondent is a peace officer as defined in Section 2-13 of

1 the Criminal Code of 1961, the court shall order that any
2 firearms used by the respondent in the performance of his
3 or her duties as a peace officer be surrendered to the
4 chief law enforcement executive of the agency in which the
5 respondent is employed, who shall retain the firearms for
6 safekeeping for the stated period not to exceed 2 years as
7 set forth in the court order.

8 (15) Prohibition of access to records. If an order of
9 protection prohibits respondent from having contact with
10 the minor child, or if petitioner's address is omitted
11 under subsection (b) of Section 112A-5, or if necessary to
12 prevent abuse or wrongful removal or concealment of a minor
13 child, the order shall deny respondent access to, and
14 prohibit respondent from inspecting, obtaining, or
15 attempting to inspect or obtain, school or any other
16 records of the minor child who is in the care of
17 petitioner.

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

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

32 (c) Relevant factors; findings.

33 (1) In determining whether to grant a specific remedy,
34 other than payment of support, the court shall consider
35 relevant factors, including but not limited to the
36 following:

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

9 (ii) the danger that any minor child will be abused
10 or neglected or improperly removed from the
11 jurisdiction, improperly concealed within the State or
12 improperly separated from the child's primary
13 caretaker.

14 (2) In comparing relative hardships resulting to the
15 parties from loss of possession of the family home, the
16 court shall consider relevant factors, including but not
17 limited to the following:

18 (i) availability, accessibility, cost, safety,
19 adequacy, location and other characteristics of
20 alternate housing for each party and any minor child or
21 dependent adult in the party's care;

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

23 (iii) the effect on the relationship of the party,
24 and any minor child or dependent adult in the party's
25 care, to family, school, church and community.

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

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

33 (ii) Whether the conduct or actions of respondent,
34 unless prohibited, will likely cause irreparable harm
35 or continued abuse.

36 (iii) Whether it is necessary to grant the

1 requested relief in order to protect petitioner or
2 other alleged abused persons.

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

8 When a verified petition for an emergency order of
9 protection in accordance with the requirements of Sections
10 112A-5 and 112A-17 is presented to the court, the court
11 shall examine petitioner on oath or affirmation. An
12 emergency order of protection shall be issued by the court
13 if it appears from the contents of the petition and the
14 examination of petitioner that the averments are
15 sufficient to indicate abuse by respondent and to support
16 the granting of relief under the issuance of the emergency
17 order of protection.

18 (5) Never married parties. No rights or
19 responsibilities for a minor child born outside of marriage
20 attach to a putative father until a father and child
21 relationship has been established under the Illinois
22 Parentage Act of 1984. Absent such an adjudication, no
23 putative father shall be granted temporary custody of the
24 minor child, visitation with the minor child, or physical
25 care and possession of the minor child, nor shall an order
26 of payment for support of the minor child be entered.

27 (d) Balance of hardships; findings. If the court finds that
28 the balance of hardships does not support the granting of a
29 remedy governed by paragraph (2), (3), (10), (11), or (16) of
30 subsection (b) of this Section, which may require such
31 balancing, the court's findings shall so indicate and shall
32 include a finding as to whether granting the remedy will result
33 in hardship to respondent that would substantially outweigh the
34 hardship to petitioner from denial of the remedy. The findings
35 shall be an official record or in writing.

36 (e) Denial of remedies. Denial of any remedy shall not be

1 based, in whole or in part, on evidence that:

2 (1) Respondent has cause for any use of force, unless
3 that cause satisfies the standards for justifiable use of
4 force provided by Article VII of the Criminal Code of 1961;

5 (2) Respondent was voluntarily intoxicated;

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

10 (4) Petitioner did not act in self-defense or defense
11 of another;

12 (5) Petitioner left the residence or household to avoid
13 further abuse by respondent;

14 (6) Petitioner did not leave the residence or household
15 to avoid further abuse by respondent;

16 (7) Conduct by any family or household member excused
17 the abuse by respondent, unless that same conduct would
18 have excused such abuse if the parties had not been family
19 or household members.

20 (Source: P.A. 93-108, eff. 1-1-04.)

21 Section 10. The Illinois Domestic Violence Act of 1986 is
22 amended by changing Section 214 as follows:

23 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

24 Sec. 214. Order of protection; remedies.

25 (a) Issuance of order. If the court finds that petitioner
26 has been abused by a family or household member or that
27 petitioner is a high-risk adult who has been abused, neglected,
28 or exploited, as defined in this Act, an order of protection
29 prohibiting the abuse, neglect, or exploitation shall issue;
30 provided that petitioner must also satisfy the requirements of
31 one of the following Sections, as appropriate: Section 217 on
32 emergency orders, Section 218 on interim orders, or Section 219
33 on plenary orders. Petitioner shall not be denied an order of
34 protection because petitioner or respondent is a minor. The

1 court, when determining whether or not to issue an order of
2 protection, shall not require physical manifestations of abuse
3 on the person of the victim. Modification and extension of
4 prior orders of protection shall be in accordance with this
5 Act.

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

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

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

31 (A) Right to occupancy. A party has a right to
32 occupancy of a residence or household if it is solely
33 or jointly owned or leased by that party, that party's
34 spouse, a person with a legal duty to support that
35 party or a minor child in that party's care, or by any
36 person or entity other than the opposing party that

1 authorizes that party's occupancy (e.g., a domestic
2 violence shelter). Standards set forth in subparagraph
3 (B) shall not preclude equitable relief.

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

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

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

1 both, if reasonable, given the balance of hardships.
2 Hardships need not be balanced for the court to enter a
3 stay away order or prohibit entry if respondent has no
4 right to enter the premises.

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

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

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

33 If a court finds, after a hearing, that respondent has
34 committed abuse (as defined in Section 103) of a minor
35 child, there shall be a rebuttable presumption that
36 awarding physical care to respondent would not be in the

1 minor child's best interest.

2 (6) Temporary legal custody. Award temporary legal
3 custody to petitioner in accordance with this Section, the
4 Illinois Marriage and Dissolution of Marriage Act, the
5 Illinois Parentage Act of 1984, and this State's Uniform
6 Child-Custody Jurisdiction and Enforcement Act.

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

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

31 Petitioner may deny respondent access to the minor
32 child if, when respondent arrives for visitation,
33 respondent is under the influence of drugs or alcohol and
34 constitutes a threat to the safety and well-being of
35 petitioner or petitioner's minor children or is behaving in
36 a violent or abusive manner.

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

10 (8) Removal or concealment of minor child. Prohibit
11 respondent from removing a minor child from the State or
12 concealing the child within the State.

13 (9) Order to appear. Order the respondent to appear in
14 court, alone or with a minor child, to prevent abuse,
15 neglect, removal or concealment of the child, to return the
16 child to the custody or care of the petitioner or to permit
17 any court-ordered interview or examination of the child or
18 the respondent.

19 (10) Possession of personal property. Grant petitioner
20 exclusive possession of personal property and, if
21 respondent has possession or control, direct respondent to
22 promptly make it available to petitioner, if:

23 (i) petitioner, but not respondent, owns the
24 property; or

25 (ii) the parties own the property jointly; sharing
26 it would risk abuse of petitioner by respondent or is
27 impracticable; and the balance of hardships favors
28 temporary possession by petitioner.

29 If petitioner's sole claim to ownership of the property
30 is that it is marital property, the court may award
31 petitioner temporary possession thereof under the
32 standards of subparagraph (ii) of this paragraph only if a
33 proper proceeding has been filed under the Illinois
34 Marriage and Dissolution of Marriage Act, as now or
35 hereafter amended.

36 No order under this provision shall affect title to

1 property.

2 (11) Protection of property. Forbid the respondent
3 from taking, transferring, encumbering, concealing,
4 damaging or otherwise disposing of any real or personal
5 property, except as explicitly authorized by the court, if:

6 (i) petitioner, but not respondent, owns the
7 property; or

8 (ii) the parties own the property jointly, and the
9 balance of hardships favors granting this remedy.

10 If petitioner's sole claim to ownership of the property
11 is that it is marital property, the court may grant
12 petitioner relief under subparagraph (ii) of this
13 paragraph only if a proper proceeding has been filed under
14 the Illinois Marriage and Dissolution of Marriage Act, as
15 now or hereafter amended.

16 The court may further prohibit respondent from
17 improperly using the financial or other resources of an
18 aged member of the family or household for the profit or
19 advantage of respondent or of any other person.

20 (11.5) Protection of animals. Grant the petitioner the
21 exclusive care, custody, or control of any animal owned,
22 possessed, leased, kept, or held by either the petitioner
23 or the respondent or a minor child residing in the
24 residence or household of either the petitioner or the
25 respondent and order the respondent to stay away from the
26 animal and forbid the respondent from taking,
27 transferring, encumbering, concealing, harming, or
28 otherwise disposing of the animal.

29 (12) Order for payment of support. Order respondent to
30 pay temporary support for the petitioner or any child in
31 the petitioner's care or custody, when the respondent has a
32 legal obligation to support that person, in accordance with
33 the Illinois Marriage and Dissolution of Marriage Act,
34 which shall govern, among other matters, the amount of
35 support, payment through the clerk and withholding of
36 income to secure payment. An order for child support may be

1 granted to a petitioner with lawful physical care or
2 custody of a child, or an order or agreement for physical
3 care or custody, prior to entry of an order for legal
4 custody. Such a support order shall expire upon entry of a
5 valid order granting legal custody to another, unless
6 otherwise provided in the custody order.

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

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

25 (ii) Recovery of expenses. In the case of an
26 improper concealment or removal of a minor child, the
27 court may order respondent to pay the reasonable
28 expenses incurred or to be incurred in the search for
29 and recovery of the minor child, including but not
30 limited to legal fees, court costs, private
31 investigator fees, and travel costs.

32 (14) Prohibition of entry. Prohibit the respondent
33 from entering or remaining in the residence or household
34 while the respondent is under the influence of alcohol or
35 drugs and constitutes a threat to the safety and well-being
36 of the petitioner or the petitioner's children.

1 (14.5) Prohibition of firearm possession.

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

22 (b) If the respondent is a peace officer as defined
23 in Section 2-13 of the Criminal Code of 1961, the court
24 shall order that any firearms used by the respondent in
25 the performance of his or her duties as a peace officer
26 be surrendered to the chief law enforcement executive
27 of the agency in which the respondent is employed, who
28 shall retain the firearms for safekeeping for the
29 stated period not to exceed 2 years as set forth in the
30 court order.

31 (15) Prohibition of access to records. If an order of
32 protection prohibits respondent from having contact with
33 the minor child, or if petitioner's address is omitted
34 under subsection (b) of Section 203, or if necessary to
35 prevent abuse or wrongful removal or concealment of a minor
36 child, the order shall deny respondent access to, and

1 prohibit respondent from inspecting, obtaining, or
2 attempting to inspect or obtain, school or any other
3 records of the minor child who is in the care of
4 petitioner.

5 (16) Order for payment of shelter services. Order
6 respondent to reimburse a shelter providing temporary
7 housing and counseling services to the petitioner for the
8 cost of the services, as certified by the shelter and
9 deemed reasonable by the court.

10 (17) Order for injunctive relief. Enter injunctive
11 relief necessary or appropriate to prevent further abuse of
12 a family or household member or further abuse, neglect, or
13 exploitation of a high-risk adult with disabilities or to
14 effectuate one of the granted remedies, if supported by the
15 balance of hardships. If the harm to be prevented by the
16 injunction is abuse or any other harm that one of the
17 remedies listed in paragraphs (1) through (16) of this
18 subsection is designed to prevent, no further evidence is
19 necessary that the harm is an irreparable injury.

20 (c) Relevant factors; findings.

21 (1) In determining whether to grant a specific remedy,
22 other than payment of support, the court shall consider
23 relevant factors, including but not limited to the
24 following:

25 (i) the nature, frequency, severity, pattern and
26 consequences of the respondent's past abuse, neglect
27 or exploitation of the petitioner or any family or
28 household member, including the concealment of his or
29 her location in order to evade service of process or
30 notice, and the likelihood of danger of future abuse,
31 neglect, or exploitation to petitioner or any member of
32 petitioner's or respondent's family or household; and

33 (ii) the danger that any minor child will be abused
34 or neglected or improperly removed from the
35 jurisdiction, improperly concealed within the State or
36 improperly separated from the child's primary

1 caretaker.

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

6 (i) availability, accessibility, cost, safety,
7 adequacy, location and other characteristics of
8 alternate housing for each party and any minor child or
9 dependent adult in the party's care;

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

11 (iii) the effect on the relationship of the party,
12 and any minor child or dependent adult in the party's
13 care, to family, school, church and community.

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

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

21 (ii) Whether the conduct or actions of respondent,
22 unless prohibited, will likely cause irreparable harm
23 or continued abuse.

24 (iii) Whether it is necessary to grant the
25 requested relief in order to protect petitioner or
26 other alleged abused persons.

27 (4) For purposes of issuing an ex parte emergency order
28 of protection, the court, as an alternative to or as a
29 supplement to making the findings described in paragraphs
30 (c) (3) (i) through (c) (3) (iii) of this subsection, may use
31 the following procedure:

32 When a verified petition for an emergency order of
33 protection in accordance with the requirements of Sections
34 203 and 217 is presented to the court, the court shall
35 examine petitioner on oath or affirmation. An emergency
36 order of protection shall be issued by the court if it

1 appears from the contents of the petition and the
2 examination of petitioner that the averments are
3 sufficient to indicate abuse by respondent and to support
4 the granting of relief under the issuance of the emergency
5 order of protection.

6 (5) Never married parties. No rights or
7 responsibilities for a minor child born outside of marriage
8 attach to a putative father until a father and child
9 relationship has been established under the Illinois
10 Parentage Act of 1984, the Illinois Public Aid Code,
11 Section 12 of the Vital Records Act, the Juvenile Court Act
12 of 1987, the Probate Act of 1985, the Revised Uniform
13 Reciprocal Enforcement of Support Act, the Uniform
14 Interstate Family Support Act, the Expedited Child Support
15 Act of 1990, any judicial, administrative, or other act of
16 another state or territory, any other Illinois statute, or
17 by any foreign nation establishing the father and child
18 relationship, any other proceeding substantially in
19 conformity with the Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
21 or where both parties appeared in open court or at an
22 administrative hearing acknowledging under oath or
23 admitting by affirmation the existence of a father and
24 child relationship. Absent such an adjudication, finding,
25 or acknowledgement, no putative father shall be granted
26 temporary custody of the minor child, visitation with the
27 minor child, or physical care and possession of the minor
28 child, nor shall an order of payment for support of the
29 minor child be entered.

30 (d) Balance of hardships; findings. If the court finds that
31 the balance of hardships does not support the granting of a
32 remedy governed by paragraph (2), (3), (10), (11), or (16) of
33 subsection (b) of this Section, which may require such
34 balancing, the court's findings shall so indicate and shall
35 include a finding as to whether granting the remedy will result
36 in hardship to respondent that would substantially outweigh the

1 hardship to petitioner from denial of the remedy. The findings
2 shall be an official record or in writing.

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

5 (1) Respondent has cause for any use of force, unless
6 that cause satisfies the standards for justifiable use of
7 force provided by Article VII of the Criminal Code of 1961;

8 (2) Respondent was voluntarily intoxicated;

9 (3) Petitioner acted in self-defense or defense of
10 another, provided that, if petitioner utilized force, such
11 force was justifiable under Article VII of the Criminal
12 Code of 1961;

13 (4) Petitioner did not act in self-defense or defense
14 of another;

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

17 (6) Petitioner did not leave the residence or household
18 to avoid further abuse, neglect, or exploitation by
19 respondent;

20 (7) Conduct by any family or household member excused
21 the abuse, neglect, or exploitation by respondent, unless
22 that same conduct would have excused such abuse, neglect,
23 or exploitation if the parties had not been family or
24 household members.

25 (Source: P.A. 93-108, eff. 1-1-04.)