

HB1106



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1106

by Rep. Careen M Gordon

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-14

from Ch. 38, par. 112A-14

Amends the Code of Criminal Procedure of 1963. Makes a technical change in the Section concerning the issuance of orders of protection.

LRB095 09700 RLC 29902 b

A BILL FOR

1 AN ACT concerning criminal law.

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

1 Section 112A-17 on emergency orders, Section 112A-18 on interim
2 orders, and Section 112A-19 on plenary orders. The remedies
3 listed in this subsection shall be in addition to other civil
4 or criminal remedies available to petitioner.

5 (1) Prohibition of abuse. Prohibit respondent's
6 harassment, interference with personal liberty,
7 intimidation of a dependent, physical abuse or willful
8 deprivation, as defined in this Article, if such abuse has
9 occurred or otherwise appears likely to occur if not
10 prohibited.

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

20 (A) Right to occupancy. A party has a right to
21 occupancy of a residence or household if it is solely
22 or jointly owned or leased by that party, that party's
23 spouse, a person with a legal duty to support that
24 party or a minor child in that party's care, or by any
25 person or entity other than the opposing party that
26 authorizes that party's occupancy (e.g., a domestic

1 violence shelter). Standards set forth in subparagraph
2 (B) shall not preclude equitable relief.

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

1 accessible, alternate housing for petitioner instead
2 of excluding respondent from a mutual residence or
3 household.

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

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

24 (4) Counseling. Require or recommend the respondent to
25 undergo counseling for a specified duration with a social
26 worker, psychologist, clinical psychologist, psychiatrist,

1 family service agency, alcohol or substance abuse program,
2 mental health center guidance counselor, agency providing
3 services to elders, program designed for domestic violence
4 abusers or any other guidance service the court deems
5 appropriate.

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

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

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

26 If a court finds, after a hearing, that respondent has

1 committed abuse (as defined in Section 112A-3) of a minor
2 child, there shall be a rebuttable presumption that
3 awarding temporary legal custody to respondent would not be
4 in the child's best interest.

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

24 Petitioner may deny respondent access to the minor
25 child if, when respondent arrives for visitation,
26 respondent is under the influence of drugs or alcohol and

1 constitutes a threat to the safety and well-being of
2 petitioner or petitioner's minor children or is behaving in
3 a violent or abusive manner.

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

13 (8) Removal or concealment of minor child. Prohibit
14 respondent from removing a minor child from the State or
15 concealing the child within the State.

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

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

26 (i) petitioner, but not respondent, owns the

1 property; or

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

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

13 No order under this provision shall affect title to
14 property.

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

19 (i) petitioner, but not respondent, owns the
20 property; or

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

23 If petitioner's sole claim to ownership of the property
24 is that it is marital property, the court may grant
25 petitioner relief under subparagraph (ii) of this
26 paragraph only if a proper proceeding has been filed under

1 the Illinois Marriage and Dissolution of Marriage Act, as
2 now or hereafter amended.

3 The court may further prohibit respondent from
4 improperly using the financial or other resources of an
5 aged member of the family or household for the profit or
6 advantage of respondent or of any other person.

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

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

1 travel expenses, including additional reasonable expenses
2 for temporary shelter and restaurant meals.

3 (i) Losses affecting family needs. If a party is
4 entitled to seek maintenance, child support or
5 property distribution from the other party under the
6 Illinois Marriage and Dissolution of Marriage Act, as
7 now or hereafter amended, the court may order
8 respondent to reimburse petitioner's actual losses, to
9 the extent that such reimbursement would be
10 "appropriate temporary relief", as authorized by
11 subsection (a) (3) of Section 501 of that Act.

12 (ii) Recovery of expenses. In the case of an
13 improper concealment or removal of a minor child, the
14 court may order respondent to pay the reasonable
15 expenses incurred or to be incurred in the search for
16 and recovery of the minor child, including but not
17 limited to legal fees, court costs, private
18 investigator fees, and travel costs.

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

24 (14.5) Prohibition of firearm possession. (a) When a
25 complaint is made under a request for an order of
26 protection, that the respondent has threatened or is likely

1 to use firearms illegally against the petitioner, and the
2 respondent is present in court, or has failed to appear
3 after receiving actual notice, the court shall examine on
4 oath the petitioner, and any witnesses who may be produced.
5 If the court is satisfied that there is any danger of the
6 illegal use of firearms, it shall include in the order of
7 protection the requirement that any firearms in the
8 possession of the respondent, except as provided in
9 subsection (b), be turned over to the local law enforcement
10 agency for safekeeping. If the respondent fails to appear,
11 or refuses or fails to surrender his or her firearms, the
12 court shall issue a warrant for seizure of any firearm in
13 the possession of the respondent. The period of safekeeping
14 shall be for a stated period of time not to exceed 2 years.
15 The firearm or firearms shall be returned to the respondent
16 at the end of the stated period or at expiration of the
17 order of protection, whichever is sooner. (b) If the
18 respondent is a peace officer as defined in Section 2-13 of
19 the Criminal Code of 1961, the court shall order that any
20 firearms used by the respondent in the performance of his
21 or her duties as a peace officer be surrendered to the
22 chief law enforcement executive of the agency in which the
23 respondent is employed, who shall retain the firearms for
24 safekeeping for the stated period not to exceed 2 years as
25 set forth in the court order.

26 (15) Prohibition of access to records. If an order of

1 protection prohibits respondent from having contact with
2 the minor child, or if petitioner's address is omitted
3 under subsection (b) of Section 112A-5, or if necessary to
4 prevent abuse or wrongful removal or concealment of a minor
5 child, the order shall deny respondent access to, and
6 prohibit respondent from inspecting, obtaining, or
7 attempting to inspect or obtain, school or any other
8 records of the minor child who is in the care of
9 petitioner.

10 (16) Order for payment of shelter services. Order
11 respondent to reimburse a shelter providing temporary
12 housing and counseling services to the petitioner for the
13 cost of the services, as certified by the shelter and
14 deemed reasonable by the court.

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

24 (c) Relevant factors; findings.

25 (1) In determining whether to grant a specific remedy,
26 other than payment of support, the court shall consider

1 relevant factors, including but not limited to the
2 following:

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

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

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

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

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

25 (iii) the effect on the relationship of the party,
26 and any minor child or dependent adult in the party's

1 care, to family, school, church and community.

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

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

9 (ii) Whether the conduct or actions of respondent,
10 unless prohibited, will likely cause irreparable harm
11 or continued abuse.

12 (iii) Whether it is necessary to grant the
13 requested relief in order to protect petitioner or
14 other alleged abused persons.

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

20 When a verified petition for an emergency order of
21 protection in accordance with the requirements of Sections
22 112A-5 and 112A-17 is presented to the court, the court
23 shall examine petitioner on oath or affirmation. An
24 emergency order of protection shall be issued by the court
25 if it appears from the contents of the petition and the
26 examination of petitioner that the averments are

1 sufficient to indicate abuse by respondent and to support
2 the granting of relief under the issuance of the emergency
3 order of protection.

4 (5) Never married parties. No rights or
5 responsibilities for a minor child born outside of marriage
6 attach to a putative father until a father and child
7 relationship has been established under the Illinois
8 Parentage Act of 1984. Absent such an adjudication, no
9 putative father shall be granted temporary custody of the
10 minor child, visitation with the minor child, or physical
11 care and possession of the minor child, nor shall an order
12 of payment for support of the minor child be entered.

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

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

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

1 (2) Respondent was voluntarily intoxicated;

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

6 (4) Petitioner did not act in self-defense or defense
7 of another;

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

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

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

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