



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3918

Introduced 2/26/2009, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

740 ILCS 22/101.1 new
740 ILCS 22/103
740 ILCS 22/201
740 ILCS 22/204.2 new
740 ILCS 22/212
740 ILCS 22/213
740 ILCS 22/213.7 new
740 ILCS 22/215.5 new
740 ILCS 22/216
740 ILCS 22/217
740 ILCS 22/220 new

Amends the Civil No Contact Order Act. Provides definitions of "family or household members", "petitioner", and "respondent". Provides that persons protected by the Act include a victim of non-consensual sexual conduct or penetration, family or household member of the victim, and an employee or volunteer at a rape crisis center providing service to the victim. Provides that an order under the Act does not waive any privilege concerning the victim's records as protected by federal and State laws including the federal Health Insurance Portability and Accountability Act, Illinois Medical Patient Rights Act, Mental Health and Developmental Disabilities Confidentiality Act, and the Code of Civil Procedure. Provides the elements of relief that an order under the Act may include. Provides that aiding and abetting non-consensual sexual contact or penetration is prohibited. Provides that a petitioner in a civil proceeding under the Act may testify in chambers. Provides that an extension of a plenary civil no contact order may be entered to continue until it is vacated or modified. Provides for enforcement of an order outside the State and an out-of-state order. Makes other changes.

LRB096 08531 AJO 22454 b

1 AN ACT concerning civil law.

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

4 Section 5. The Civil No Contact Order Act is amended by
5 changing Sections 103, 201, 204.2, 212, 213, 216, 217, 218,
6 218.5, and 219 and the heading of Article III and Sections 301
7 and 302 and by adding Sections 101.1, 204.2, 213.7, 215.5, and
8 Section 220 as follows:

9 (740 ILCS 22/101.1 new)

10 Sec. 101.1. Designation of parties. Subsection (e) of
11 Section 2-401 of the Code of Civil Procedure regarding
12 designation of parties applies to petitions under this Act.

13 (740 ILCS 22/103)

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

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

18 "Family or household members" include spouses, parents,
19 children, stepchildren, and persons who share a common
20 dwelling.

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

22 "Petitioner" may mean not only any named petitioner for the

1 civil no contact order and any named victim of non-consensual
2 sexual conduct or non-consensual sexual penetration on whose
3 behalf the petition is brought, but also any other person
4 sought to be protected by this Act.

5 "Respondent" in a petition for a civil no contact order may
6 mean not only the person alleged to have committed an act of
7 non-consensual sexual conduct or non-consensual sexual
8 penetration against the petitioner, but also any other named
9 person alleged to have aided and abetted such an act of
10 non-consensual sexual conduct or non-consensual sexual
11 penetration.

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

16 "Sexual conduct" means any intentional or knowing touching
17 or fondling by the petitioner or the respondent, either
18 directly or through clothing, of the sex organs, anus, or
19 breast of the petitioner or the respondent, or any part of the
20 body of a child under 13 years of age, or any transfer or
21 transmission of semen by the respondent upon any part of the
22 clothed or unclothed body of the petitioner, for the purpose of
23 sexual gratification or arousal of the petitioner or the
24 respondent.

25 "Sexual penetration" means any contact, however slight,
26 between the sex organ or anus of one person by an object, the

1 sex organ, mouth or anus of another person, or any intrusion,
2 however slight, of any part of the body of one person or of any
3 animal or object into the sex organ or anus of another person,
4 including but not limited to cunnilingus, fellatio or anal
5 penetration. Evidence of emission of semen is not required to
6 prove sexual penetration.

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

12 (Source: P.A. 93-236, eff. 1-1-04; 93-811, eff. 1-1-05.)

13 (740 ILCS 22/201)

14 Sec. 201. Persons protected by this Act.

15 (a) The following persons are protected by this Act:

16 (1) any victim of non-consensual sexual conduct or
17 non-consensual sexual penetration on whose behalf the
18 petition is brought;

19 (2) any family or household member of the named victim;

20 and

21 (3) any employee of or volunteer at a rape crisis
22 center that is providing services to the petitioner or the
23 petitioner's family or household member.

24 (b) A petition for a civil no contact order may be filed:

25 (1) by any person who is a victim of non-consensual

1 sexual conduct or non-consensual sexual penetration,
2 including a single incident of non-consensual sexual
3 conduct or non-consensual sexual penetration; or

4 (2) by a person on behalf of a minor child or an adult
5 who is a victim of non-consensual sexual conduct or
6 non-consensual sexual penetration but, because of age,
7 disability, health, or inaccessibility, cannot file the
8 petition.

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

10 (740 ILCS 22/204.2 new)

11 Sec. 204.2. Application of privileges. The filing of a
12 petition for a civil no contact order does not in any way
13 constitute a waiver of any privilege that otherwise protects
14 any medical, mental health, or other records of the petitioner,
15 absent a release by the petitioner, pursuant to federal or
16 State Acts including but not limited to: the federal Health
17 Insurance Portability and Accountability Act (HIPAA); Illinois
18 Medical Patient Rights Act; Mental Health and Developmental
19 Disabilities Confidentiality Act; and Sections 8-802 and
20 8-802.1 of the Code of Civil Procedure.

21 (740 ILCS 22/212)

22 Sec. 212. Prior sexual activity or reputation as evidence.
23 ~~Hearsay exception.~~

24 (a) In proceedings for a civil no contact order and

1 prosecutions for violating a civil no-contact order, the prior
2 sexual activity or the reputation of the petitioner is
3 inadmissible except:

4 (1) as evidence concerning the past sexual conduct of
5 the petitioner with the respondent when this evidence is
6 offered by the respondent upon the issue of whether the
7 petitioner consented to the sexual conduct with respect to
8 which the offense is alleged; or

9 (2) when constitutionally required to be admitted.

10 (b) No evidence admissible under this Section may be
11 introduced unless ruled admissible by the trial judge after an
12 offer of proof has been made at a hearing held in camera to
13 determine whether the respondent has evidence to impeach the
14 witness in the event that prior sexual activity with the
15 respondent is denied. The offer of proof shall include
16 reasonably specific information as to the date, time, and place
17 of the past sexual conduct between the petitioner and the
18 respondent. Unless the court finds that reasonably specific
19 information as to date, time, or place, or some combination
20 thereof, has been offered as to prior sexual activity with the
21 respondent, counsel for the respondent shall be ordered to
22 refrain from inquiring into prior sexual activity between the
23 petitioner and the respondent. The court may not admit evidence
24 under this Section unless it determines at the hearing that the
25 evidence is relevant and the probative value of the evidence
26 outweighs the danger of unfair prejudice or embarrassment to

1 the petitioner. The evidence shall be admissible at trial to
2 the extent an order made by the court specifies the evidence
3 that may be admitted and areas with respect to which the
4 petitioner may be examined or cross examined.

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

6 (740 ILCS 22/213)

7 Sec. 213. Civil no contact order; remedies.

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

19 (b) (Blank). ~~A civil no contact order shall order one or~~
20 ~~more of the following:~~

21 ~~(1) order the respondent to stay away from the~~
22 ~~petitioner; or~~

23 ~~(2) other injunctive relief necessary or appropriate.~~

24 (b-5) The court may provide relief as follows:

25 (1) prohibit the respondent from knowingly coming

1 within, or knowingly remaining within, a specified
2 distance from the petitioner;

3 (2) restrain the respondent from having any contact,
4 including nonphysical contact, with the petitioner
5 directly, indirectly, or through third parties, regardless
6 of whether those third parties know of the order;

7 (3) prohibit the respondent from knowingly coming
8 within, or knowingly remaining within, a specified
9 distance from the petitioner's residence, school, day care
10 or other specified location;

11 (4) order the respondent to stay away from any property
12 or animal owned, possessed, leased, kept, or held by the
13 petitioner and forbid the respondent from taking,
14 transferring, encumbering, concealing, harming, or
15 otherwise disposing of the property or animal; and

16 (5) order any other injunctive relief as necessary or
17 appropriate for the protection of the petitioner.

18 (b-6) When the petitioner and the respondent attend the
19 same public or private elementary, middle, or high school, the
20 court when issuing a civil no contact order and providing
21 relief shall consider, among the other facts of the case, the
22 severity of the act, any continuing physical danger or
23 emotional distress to the petitioner, and the expense,
24 difficulty, and educational disruption that would be caused by
25 a transfer of the respondent to another school. The court may
26 order that the respondent not attend the public or private

1 elementary, middle, or high school attended by the petitioner.
2 In the event the court orders a transfer of the respondent to
3 another school, the parents or legal guardians of the
4 respondent are responsible for transportation and other costs
5 associated with the change of school by the respondent.

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

8 (1) the respondent has cause for any use of force,
9 unless that cause satisfies the standards for justifiable
10 use of force provided by Article VII of the Criminal Code
11 of 1961;

12 (2) the respondent was voluntarily intoxicated;

13 (3) the petitioner acted in self-defense or defense of
14 another, provided that, if the petitioner utilized force,
15 such force was justifiable under Article VII of the
16 Criminal Code of 1961;

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

19 (5) the petitioner left the residence or household to
20 avoid further non-consensual sexual conduct or
21 non-consensual sexual penetration by the respondent; or

22 (6) the petitioner did not leave the residence or
23 household to avoid further non-consensual sexual conduct
24 or non-consensual sexual penetration by the respondent.

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

26 (Source: P.A. 93-236, eff. 1-1-04; 93-811, eff. 1-1-05; 94-360,

1 eff. 1-1-06.)

2 (740 ILCS 22/213.7 new)

3 Sec. 213.7. Aiding and abetting non-consensual sexual
4 conduct or non-consensual sexual penetration. A person aids and
5 abets an act of non-consensual sexual conduct or non-consensual
6 sexual penetration when, before or during the commission of an
7 act of non-consensual sexual conduct or non-consensual sexual
8 penetration as defined in Section 103 and with the intent to
9 promote or facilitate such conduct, he or she intentionally
10 aids or abets another in the planning or commission of
11 non-consensual sexual conduct or non-consensual sexual
12 penetration, unless before the commission of the offense he or
13 she makes proper effort to prevent the commission of the
14 offense.

15 (740 ILCS 22/215.5 new)

16 Sec. 215.5. Petitioner testimony at plenary civil no
17 contact order hearing. In a plenary civil no contact order
18 hearing, if a court finds that testimony by the petitioner in
19 the courtroom may result in serious emotional distress to the
20 petitioner, the court may order that the examination of the
21 petitioner be conducted in chambers. Counsel shall be present
22 at the examination unless otherwise agreed upon by the parties.
23 The court shall cause a court reporter to be present who shall
24 make a complete record of the examination instantaneously to be

1 part of the record in the case.

2 (740 ILCS 22/216)

3 Sec. 216. Duration and extension of orders.

4 (a) Unless re-opened or extended or voided by entry of an
5 order of greater duration, an emergency order shall be
6 effective for not less than 14 nor more than 21 days.

7 (b) Except as otherwise provided in this Section, a plenary
8 civil no contact order shall be effective for a fixed period of
9 time, not to exceed 2 years. A plenary civil no contact order
10 entered in conjunction with a criminal prosecution shall remain
11 in effect as follows:

12 (1) if entered during pre-trial release, until
13 disposition, withdrawal, or dismissal of the underlying
14 charge; if however, the case is continued as an independent
15 cause of action, the order's duration may be for a fixed
16 period of time not to exceed 2 years;

17 (2) if in effect in conjunction with a bond forfeiture
18 warrant, until final disposition or an additional period of
19 time not exceeding 2 years; no civil no contact order,
20 however, shall be terminated by a dismissal that is
21 accompanied by the issuance of a bond forfeiture warrant;

22 (3) until expiration of any supervision, conditional
23 discharge, probation, periodic imprisonment, parole, or
24 mandatory supervised release and for an additional period
25 of time thereafter not exceeding 2 years; or

1 (4) until the date set by the court for expiration of
2 any sentence of imprisonment and subsequent parole or
3 mandatory supervised release and for an additional period
4 of time thereafter not exceeding 2 years.

5 (c) Any emergency or plenary order may be extended one or
6 more times, as required, provided that the requirements of
7 Section 214 or 215, as appropriate, are satisfied. If the
8 motion for extension is uncontested and the petitioner seeks no
9 modification of the order, the order may be extended on the
10 basis of the petitioner's motion or affidavit stating that
11 there has been no material change in relevant circumstances
12 since entry of the order and stating the reason for the
13 requested extension. Extensions may be granted only in open
14 court and not under the provisions of subsection (c) of Section
15 214, which applies only when the court is unavailable at the
16 close of business or on a court holiday.

17 (d) Any civil no contact order which would expire on a
18 court holiday shall instead expire at the close of the next
19 court business day.

20 (d-5) An extension of a plenary civil no contact order may
21 be granted, upon good cause shown, to remain in effect until
22 the civil no contact order is vacated or modified.

23 (e) The practice of dismissing or suspending a criminal
24 prosecution in exchange for the issuance of a civil no contact
25 order undermines the purposes of this Act. This Section shall
26 not be construed as encouraging that practice.

1 (Source: P.A. 93-236, eff. 1-1-04; 94-360, eff. 1-1-06.)

2 (740 ILCS 22/217)

3 Sec. 217. Contents of orders.

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

8 (b) A civil no contact order shall further state the
9 following:

10 (1) The name of each petitioner that the court finds
11 was the victim of non-consensual sexual conduct or
12 non-consensual sexual penetration by the respondent and
13 the name of each other person protected by the civil no
14 contact order.

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

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

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

25 (5) For emergency civil no contact orders, that the

1 respondent may petition the court, in accordance with
2 Section 218.5, to reopen the order if he or she did not
3 receive actual prior notice of the hearing as required
4 under Section 209 of this Act and if the respondent alleges
5 that he or she had a meritorious defense to the order or
6 that the order or its remedy is not authorized by this Act.

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

11 (d) A civil no contact order shall state, "This Civil No
12 Contact Order is enforceable, even without registration, in all
13 50 states, the District of Columbia, tribal lands, and the U.S.
14 territories pursuant to the Violence Against Women Act (18
15 U.S.C. 2265)."

16 (Source: P.A. 93-236, eff. 1-1-04; 93-811, eff. 1-1-05.)

17 (740 ILCS 22/220 new)

18 Sec. 220. Enforcement of a civil no contact order.

19 (a) Nothing in this Act shall preclude any Illinois court
20 from enforcing a valid protective order issued in another
21 state.

22 (b) Illinois courts may enforce civil no contact orders
23 through both criminal proceedings and civil contempt
24 proceedings, unless the action which is second in time is
25 barred by collateral estoppel or the constitutional

1 prohibition against double jeopardy.

2 (c) Criminal prosecution. A violation of any civil no
3 contact order, whether issued in a civil or criminal
4 proceeding, shall be enforced by a criminal court when the
5 respondent commits the crime of violation of a civil no contact
6 order pursuant to Section 219 by having knowingly violated:

7 (1) remedies described in Section 213 and included in a
8 civil no contact order; or

9 (2) a provision of an order, which is substantially
10 similar to provisions of Section 213, in a valid civil no
11 contact order which is authorized under the laws of another
12 state, tribe, or United States territory.

13 Prosecution for a violation of a civil no contact order
14 shall not bar a concurrent prosecution for any other crime,
15 including any crime that may have been committed at the time of
16 the violation of the civil no contact order.

17 (d) Contempt of court. A violation of any valid Illinois
18 civil no contact order, whether issued in a civil or criminal
19 proceeding, may be enforced through civil or criminal contempt
20 procedures, as appropriate, by any court with jurisdiction,
21 regardless of where the act or acts which violated the civil no
22 contact order were committed, to the extent consistent with the
23 venue provisions of this Act.

24 (1) In a contempt proceeding where the petition for a
25 rule to show cause or petition for adjudication of criminal
26 contempt sets forth facts evidencing an immediate danger

1 that the respondent will flee the jurisdiction or inflict
2 physical abuse on the petitioner or minor children or on
3 dependent adults in the petitioner's care, the court may
4 order the attachment of the respondent without prior
5 service of the petition for a rule to show cause, the rule
6 to show cause, the petition for adjudication of criminal
7 contempt or the adjudication of criminal contempt. Bond
8 shall be set unless specifically denied in writing.

9 (2) A petition for a rule to show cause or a petition
10 for adjudication of criminal contempt for violation of a
11 civil no contact order shall be treated as an expedited
12 proceeding.

13 (e) Actual knowledge. A civil no contact order may be
14 enforced pursuant to this Section if the respondent violates
15 the order after the respondent has actual knowledge of its
16 contents as shown through one of the following means:

17 (1) by service, delivery, or notice under Section 208;

18 (2) by notice under Section 218;

19 (3) by service of a civil no contact order under
20 Section 218; or

21 (4) by other means demonstrating actual knowledge of
22 the contents of the order.

23 (f) The enforcement of a civil no contact order in civil or
24 criminal court shall not be affected by either of the
25 following:

26 (1) the existence of a separate, correlative order,

1 entered under Section 202; or

2 (2) any finding or order entered in a conjoined
3 criminal proceeding.

4 (g) Circumstances. The court, when determining whether or
5 not a violation of a civil no contact order has occurred, shall
6 not require physical manifestations of abuse on the person of
7 the victim.

8 (h) Penalties.

9 (1) Except as provided in paragraph (3) of this
10 subsection, where the court finds the commission of a crime
11 or contempt of court under subsection (a) or (b) of this
12 Section, the penalty shall be the penalty that generally
13 applies in such criminal or contempt proceedings, and may
14 include one or more of the following: incarceration,
15 payment of restitution, a fine, payment of attorneys' fees
16 and costs, or community service.

17 (2) The court shall hear and take into account evidence
18 of any factors in aggravation or mitigation before deciding
19 an appropriate penalty under paragraph (1) of this
20 subsection.

21 (3) To the extent permitted by law, the court is
22 encouraged to:

23 (i) increase the penalty for the knowing violation
24 of any civil no contact order over any penalty
25 previously imposed by any court for respondent's
26 violation of any civil no contact order or penal

1 statute involving petitioner as victim and respondent
2 as defendant;

3 (ii) impose a minimum penalty of 24 hours
4 imprisonment for respondent's first violation of any
5 civil no contact order; and

6 (iii) impose a minimum penalty of 48 hours
7 imprisonment for respondent's second or subsequent
8 violation of a civil no contact order unless the court
9 explicitly finds that an increased penalty or that
10 period of imprisonment would be manifestly unjust.

11 (4) In addition to any other penalties imposed for a
12 violation of a civil no contact order, a criminal court may
13 consider evidence of any previous violations of a civil no
14 contact order:

15 (i) to increase, revoke or modify the bail bond on
16 an underlying criminal charge pursuant to Section
17 110-6 of the Code of Criminal Procedure of 1963;

18 (ii) to revoke or modify an order of probation,
19 conditional discharge or supervision, pursuant to
20 Section 5-6-4 of the Unified Code of Corrections; or

21 (iii) to revoke or modify a sentence of periodic
22 imprisonment, pursuant to Section 5-7-2 of the Unified
23 Code of Corrections.