



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3991

Introduced 2/26/2009, by Rep. Elizabeth Coulson

#### SYNOPSIS AS INTRODUCED:

430 ILCS 65/8	from Ch. 38, par. 83-8
430 ILCS 65/8.2 new	
725 ILCS 5/112A-14	from Ch. 38, par. 112A-14
750 ILCS 60/214	from Ch. 40, par. 2312-14

Amends the Firearm Owner Identification Card Act. Requires (instead of permits) the Department of State Police to deny an application or to revoke and seize a Firearm Owner's Identification Card previously issued under the Act if the Department finds that the applicant or person to whom such card was issued is or was at the time of issuance the subject to an existing order of protection. Amends the Domestic Violence Article of the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that if the court is satisfied that there is any danger of the illegal use of firearms, it shall include in the order of protection the requirement that any Firearm Owner's Identification Card of the respondent be turned over to the local law enforcement agency for safekeeping.

LRB096 08419 RLC 18532 b

1 AN ACT concerning firearms.

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

4 Section 5. The Firearm Owners Identification Card Act is  
5 amended by changing Section 8 and by adding Section 8.2 as  
6 follows:

7 (430 ILCS 65/8) (from Ch. 38, par. 83-8)

8 Sec. 8. The Department of State Police has authority to  
9 deny an application for or to revoke and seize a Firearm  
10 Owner's Identification Card previously issued under this Act  
11 only if the Department finds that the applicant or the person  
12 to whom such card was issued is or was at the time of issuance:

13 (a) A person under 21 years of age who has been convicted  
14 of a misdemeanor other than a traffic offense or adjudged  
15 delinquent;

16 (b) A person under 21 years of age who does not have the  
17 written consent of his parent or guardian to acquire and  
18 possess firearms and firearm ammunition, or whose parent or  
19 guardian has revoked such written consent, or where such parent  
20 or guardian does not qualify to have a Firearm Owner's  
21 Identification Card;

22 (c) A person convicted of a felony under the laws of this  
23 or any other jurisdiction;

1 (d) A person addicted to narcotics;

2 (e) A person who has been a patient of a mental institution  
3 within the past 5 years or has been adjudicated as a mental  
4 defective;

5 (f) A person whose mental condition is of such a nature  
6 that it poses a clear and present danger to the applicant, any  
7 other person or persons or the community;

8 For the purposes of this Section, "mental condition" means  
9 a state of mind manifested by violent, suicidal, threatening or  
10 assaultive behavior.

11 (g) A person who is mentally retarded;

12 (h) A person who intentionally makes a false statement in  
13 the Firearm Owner's Identification Card application;

14 (i) An alien who is unlawfully present in the United States  
15 under the laws of the United States;

16 (i-5) An alien who has been admitted to the United States  
17 under a non-immigrant visa (as that term is defined in Section  
18 101(a)(26) of the Immigration and Nationality Act (8 U.S.C.  
19 1101(a)(26))), except that this subsection (i-5) does not apply  
20 to any alien who has been lawfully admitted to the United  
21 States under a non-immigrant visa if that alien is:

22 (1) admitted to the United States for lawful hunting or  
23 sporting purposes;

24 (2) an official representative of a foreign government  
25 who is:

26 (A) accredited to the United States Government or

1 the Government's mission to an international  
2 organization having its headquarters in the United  
3 States; or

4 (B) en route to or from another country to which  
5 that alien is accredited;

6 (3) an official of a foreign government or  
7 distinguished foreign visitor who has been so designated by  
8 the Department of State;

9 (4) a foreign law enforcement officer of a friendly  
10 foreign government entering the United States on official  
11 business; or

12 (5) one who has received a waiver from the Attorney  
13 General of the United States pursuant to 18 U.S.C.  
14 922 (y) (3);

15 (j) (Blank) ~~A person who is subject to an existing order of~~  
16 ~~protection prohibiting him or her from possessing a firearm;~~

17 (k) A person who has been convicted within the past 5 years  
18 of battery, assault, aggravated assault, violation of an order  
19 of protection, or a substantially similar offense in another  
20 jurisdiction, in which a firearm was used or possessed;

21 (l) A person who has been convicted of domestic battery or  
22 a substantially similar offense in another jurisdiction  
23 committed on or after January 1, 1998;

24 (m) A person who has been convicted within the past 5 years  
25 of domestic battery or a substantially similar offense in  
26 another jurisdiction committed before January 1, 1998;

1 (n) A person who is prohibited from acquiring or possessing  
2 firearms or firearm ammunition by any Illinois State statute or  
3 by federal law;

4 (o) A minor subject to a petition filed under Section 5-520  
5 of the Juvenile Court Act of 1987 alleging that the minor is a  
6 delinquent minor for the commission of an offense that if  
7 committed by an adult would be a felony; or

8 (p) An adult who had been adjudicated a delinquent minor  
9 under the Juvenile Court Act of 1987 for the commission of an  
10 offense that if committed by an adult would be a felony.

11 (Source: P.A. 95-581, eff. 6-1-08.)

12 (430 ILCS 65/8.2 new)

13 Sec. 8.2. Firearm Owner's Identification Card denial or  
14 revocation. The Department of State Police shall deny an  
15 application or shall revoke and seize a Firearm Owner's  
16 Identification Card previously issued under this Act if the  
17 Department finds that the applicant or person to whom such card  
18 was issued is or was at the time of issuance subject to an  
19 existing order of protection.

20 Section 10. The Code of Criminal Procedure of 1963 is  
21 amended by changing Section 112A-14 as follows:

22 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

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

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

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

21           (1) Prohibition of abuse. Prohibit respondent's  
22 harassment, interference with personal liberty,  
23 intimidation of a dependent, physical abuse or willful  
24 deprivation, as defined in this Article, if such abuse has  
25 occurred or otherwise appears likely to occur if not  
26 prohibited.

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

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

19           (B) Presumption of hardships. If petitioner and  
20 respondent each has the right to occupancy of a  
21 residence or household, the court shall balance (i) the  
22 hardships to respondent and any minor child or  
23 dependent adult in respondent's care resulting from  
24 entry of this remedy with (ii) the hardships to  
25 petitioner and any minor child or dependent adult in  
26 petitioner's care resulting from continued exposure to

1 the risk of abuse (should petitioner remain at the  
2 residence or household) or from loss of possession of  
3 the residence or household (should petitioner leave to  
4 avoid the risk of abuse). When determining the balance  
5 of hardships, the court shall also take into account  
6 the accessibility of the residence or household.  
7 Hardships need not be balanced if respondent does not  
8 have a right to occupancy.

9 The balance of hardships is presumed to favor  
10 possession by petitioner unless the presumption is  
11 rebutted by a preponderance of the evidence, showing  
12 that the hardships to respondent substantially  
13 outweigh the hardships to petitioner and any minor  
14 child or dependent adult in petitioner's care. The  
15 court, on the request of petitioner or on its own  
16 motion, may order respondent to provide suitable,  
17 accessible, alternate housing for petitioner instead  
18 of excluding respondent from a mutual residence or  
19 household.

20 (3) Stay away order and additional prohibitions. Order  
21 respondent to stay away from petitioner or any other person  
22 protected by the order of protection, or prohibit  
23 respondent from entering or remaining present at  
24 petitioner's school, place of employment, or other  
25 specified places at times when petitioner is present, or  
26 both, if reasonable, given the balance of hardships.



1 Hardships need not be balanced for the court to enter a  
2 stay away order or prohibit entry if respondent has no  
3 right to enter the premises.

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

14 (4) Counseling. Require or recommend the respondent to  
15 undergo counseling for a specified duration with a social  
16 worker, psychologist, clinical psychologist, psychiatrist,  
17 family service agency, alcohol or substance abuse program,  
18 mental health center guidance counselor, agency providing  
19 services to elders, program designed for domestic violence  
20 abusers or any other guidance service the court deems  
21 appropriate. The court may order the respondent in any  
22 intimate partner relationship to report to an Illinois  
23 Department of Human Services protocol approved partner  
24 abuse intervention program for an assessment and to follow  
25 all recommended treatment.

26 (5) Physical care and possession of the minor child. In

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

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

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

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

25 (7) Visitation. Determine the visitation rights, if  
26 any, of respondent in any case in which the court awards

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

18 Petitioner may deny respondent access to the minor  
19 child if, when respondent arrives for visitation,  
20 respondent is under the influence of drugs or alcohol and  
21 constitutes a threat to the safety and well-being of  
22 petitioner or petitioner's minor children or is behaving in  
23 a violent or abusive manner.

24 If necessary to protect any member of petitioner's  
25 family or household from future abuse, respondent shall be  
26 prohibited from coming to petitioner's residence to meet

1 the minor child for visitation, and the parties shall  
2 submit to the court their recommendations for reasonable  
3 alternative arrangements for visitation. A person may be  
4 approved to supervise visitation only after filing an  
5 affidavit accepting that responsibility and acknowledging  
6 accountability to the court.

7 (8) Removal or concealment of minor child. Prohibit  
8 respondent from removing a minor child from the State or  
9 concealing the child within the State.

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

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

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

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

26 If petitioner's sole claim to ownership of the property

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

7 No order under this provision shall affect title to  
8 property.

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

13 (i) petitioner, but not respondent, owns the  
14 property; or

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

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

23 The court may further prohibit respondent from  
24 improperly using the financial or other resources of an  
25 aged member of the family or household for the profit or  
26 advantage of respondent or of any other person.

1           (11.5) Protection of animals. Grant the petitioner the  
2 exclusive care, custody, or control of any animal owned,  
3 possessed, leased, kept, or held by either the petitioner  
4 or the respondent or a minor child residing in the  
5 residence or household of either the petitioner or the  
6 respondent and order the respondent to stay away from the  
7 animal and forbid the respondent from taking,  
8 transferring, encumbering, concealing, harming, or  
9 otherwise disposing of the animal.

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

24           (13) Order for payment of losses. Order respondent to  
25 pay petitioner for losses suffered as a direct result of  
26 the abuse. Such losses shall include, but not be limited

1 to, medical expenses, lost earnings or other support,  
2 repair or replacement of property damaged or taken,  
3 reasonable attorney's fees, court costs and moving or other  
4 travel expenses, including additional reasonable expenses  
5 for temporary shelter and restaurant meals.

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

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

22 (14) Prohibition of entry. Prohibit the respondent  
23 from entering or remaining in the residence or household  
24 while the respondent is under the influence of alcohol or  
25 drugs and constitutes a threat to the safety and well-being  
26 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 include in the order  
11 of protection the requirement that any firearms and any  
12 Firearm Owner's Identification Card in the possession  
13 of the respondent, except as provided in subsection  
14 (b), be turned over to the local law enforcement agency  
15 for safekeeping. If the respondent fails to appear, or  
16 refuses or fails to surrender his or her firearms or  
17 Firearm Owner's Identification Card, the court shall  
18 issue a warrant for seizure of any firearm and any  
19 Firearm Owner's Identification Card in the possession  
20 of the respondent. The period of safekeeping shall be  
21 for a stated period of time not to exceed 2 years. The  
22 firearm or firearms and Firearm Owner's Identification  
23 Card shall be returned to the respondent at the end of  
24 the stated period or at expiration of the order of  
25 protection, whichever is sooner.

26 (b) If the respondent is a peace officer as defined



1 in Section 2-13 of the Criminal Code of 1961, the court  
2 shall order that any firearms used by the respondent in  
3 the performance of his or her duties as a peace officer  
4 be surrendered to the chief law enforcement executive  
5 of the agency in which the respondent is employed, who  
6 shall retain the firearms for safekeeping for the  
7 stated period not to exceed 2 years as set forth in the  
8 court order.

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

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

24 (17) Order for injunctive relief. Enter injunctive  
25 relief necessary or appropriate to prevent further abuse of  
26 a family or household member or to effectuate one of the

1 granted remedies, if supported by the balance of hardships.  
2 If the harm to be prevented by the injunction is abuse or  
3 any other harm that one of the remedies listed in  
4 paragraphs (1) through (16) of this subsection is designed  
5 to prevent, no further evidence is necessary to establish  
6 that the harm is an irreparable injury.

7 (c) Relevant factors; findings.

8 (1) In determining whether to grant a specific remedy,  
9 other than payment of support, the court shall consider  
10 relevant factors, including but not limited to the  
11 following:

12 (i) the nature, frequency, severity, pattern and  
13 consequences of the respondent's past abuse of the  
14 petitioner or any family or household member,  
15 including the concealment of his or her location in  
16 order to evade service of process or notice, and the  
17 likelihood of danger of future abuse to petitioner or  
18 any member of petitioner's or respondent's family or  
19 household; and

20 (ii) the danger that any minor child will be abused  
21 or neglected or improperly removed from the  
22 jurisdiction, improperly concealed within the State or  
23 improperly separated from the child's primary  
24 caretaker.

25 (2) In comparing relative hardships resulting to the  
26 parties from loss of possession of the family home, the

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

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

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

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

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

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

18 (ii) Whether the conduct or actions of respondent,  
19 unless prohibited, will likely cause irreparable harm  
20 or continued abuse.

21 (iii) Whether it is necessary to grant the  
22 requested relief in order to protect petitioner or  
23 other alleged abused persons.

24 (4) For purposes of issuing an ex parte emergency order  
25 of protection, the court, as an alternative to or as a  
26 supplement to making the findings described in paragraphs

1 (c) (3) (i) through (c) (3) (iii) of this subsection, may use  
2 the following procedure:

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

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

22 (d) Balance of hardships; findings. If the court finds that  
23 the balance of hardships does not support the granting of a  
24 remedy governed by paragraph (2), (3), (10), (11), or (16) of  
25 subsection (b) of this Section, which may require such  
26 balancing, the court's findings shall so indicate and shall

1 include a finding as to whether granting the remedy will result  
2 in hardship to respondent that would substantially outweigh the  
3 hardship to petitioner from denial of the remedy. The findings  
4 shall be an official record or in writing.

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

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

10 (2) Respondent was voluntarily intoxicated;

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

15 (4) Petitioner did not act in self-defense or defense  
16 of another;

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

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

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

25 (Source: P.A. 95-234, eff. 1-1-08; 95-773, eff. 1-1-09.)

1           Section 15. The Illinois Domestic Violence Act of 1986 is  
2 amended by changing Section 214 as follows:

3           (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

4           Sec. 214. Order of protection; remedies.

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

20           (b) Remedies and standards. The remedies to be included in  
21 an order of protection shall be determined in accordance with  
22 this Section and one of the following Sections, as appropriate:  
23 Section 217 on emergency orders, Section 218 on interim orders,  
24 and Section 219 on plenary orders. The remedies listed in this  
25 subsection shall be in addition to other civil or criminal

1 remedies available to petitioner.

2 (1) Prohibition of abuse, neglect, or exploitation.  
3 Prohibit respondent's harassment, interference with  
4 personal liberty, intimidation of a dependent, physical  
5 abuse, or willful deprivation, neglect or exploitation, as  
6 defined in this Act, or stalking of the petitioner, as  
7 defined in Section 12-7.3 of the Criminal Code of 1961, if  
8 such abuse, neglect, exploitation, or stalking 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. The Court may order the respondent in any  
6 intimate partner relationship to report to an Illinois  
7 Department of Human Services protocol approved partner  
8 abuse intervention program for an assessment and to follow  
9 all recommended treatment.

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

20 If a court finds, after a hearing, that respondent has  
21 committed abuse (as defined in Section 103) of a minor  
22 child, there shall be a rebuttable presumption that  
23 awarding physical care to respondent would not be in the  
24 minor child's best interest.

25 (6) Temporary legal custody. Award temporary legal  
26 custody to petitioner in accordance with this Section, the

1 Illinois Marriage and Dissolution of Marriage Act, the  
2 Illinois Parentage Act of 1984, and this State's Uniform  
3 Child-Custody Jurisdiction and Enforcement Act.

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

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

1 "reasonable visitation".

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

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

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

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

26 (10) Possession of personal property. Grant petitioner

1 exclusive possession of personal property and, if  
2 respondent has possession or control, direct respondent to  
3 promptly make it available to petitioner, if:

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

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

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

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

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

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

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

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

7           The court may further prohibit respondent from  
8           improperly using the financial or other resources of an  
9           aged member of the family or household for the profit or  
10          advantage of respondent or of any other person.

11          (11.5) Protection of animals. Grant the petitioner the  
12          exclusive care, custody, or control of any animal owned,  
13          possessed, leased, kept, or held by either the petitioner  
14          or the respondent or a minor child residing in the  
15          residence or household of either the petitioner or the  
16          respondent and order the respondent to stay away from the  
17          animal and forbid the respondent from taking,  
18          transferring, encumbering, concealing, harming, or  
19          otherwise disposing of the animal.

20          (12) Order for payment of support. Order respondent to  
21          pay temporary support for the petitioner or any child in  
22          the petitioner's care or custody, when the respondent has a  
23          legal obligation to support that person, in accordance with  
24          the Illinois Marriage and Dissolution of Marriage Act,  
25          which shall govern, among other matters, the amount of  
26          support, payment through the clerk and withholding of

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

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

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

26 (ii) Recovery of expenses. In the case of an

1           improper concealment or removal of a minor child, the  
2           court may order respondent to pay the reasonable  
3           expenses incurred or to be incurred in the search for  
4           and recovery of the minor child, including but not  
5           limited to legal fees, court costs, private  
6           investigator fees, and travel costs.

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

12          (14.5) Prohibition of firearm possession.

13                 (a) When a complaint is made under a request for an  
14                 order of protection, that the respondent has  
15                 threatened or is likely to use firearms illegally  
16                 against the petitioner, and the respondent is present  
17                 in court, or has failed to appear after receiving  
18                 actual notice, the court shall examine on oath the  
19                 petitioner, and any witnesses who may be produced. If  
20                 the court is satisfied that there is any danger of the  
21                 illegal use of firearms, it shall issue an order that  
22                 any firearms and any Firearm Owner's Identification  
23                 Card in the possession of the respondent, except as  
24                 provided in subsection (b), be turned over to the local  
25                 law enforcement agency for safekeeping. If the  
26                 respondent has failed to appear, the court shall issue



1 a warrant for seizure of any firearm and Firearm  
2 Owner's Identification Card in the possession of the  
3 respondent. The period of safekeeping shall be for a  
4 stated period of time not to exceed 2 years. The  
5 firearm or firearms and Firearm Owner's Identification  
6 Card shall be returned to the respondent at the end of  
7 the stated period or at expiration of the order of  
8 protection, whichever is sooner.

9 (b) If the respondent is a peace officer as defined  
10 in Section 2-13 of the Criminal Code of 1961, the court  
11 shall order that any firearms used by the respondent in  
12 the performance of his or her duties as a peace officer  
13 be surrendered to the chief law enforcement executive  
14 of the agency in which the respondent is employed, who  
15 shall retain the firearms for safekeeping for the  
16 stated period not to exceed 2 years as set forth in the  
17 court order.

18 (15) Prohibition of access to records. If an order of  
19 protection prohibits respondent from having contact with  
20 the minor child, or if petitioner's address is omitted  
21 under subsection (b) of Section 203, or if necessary to  
22 prevent abuse or wrongful removal or concealment of a minor  
23 child, the order shall deny respondent access to, and  
24 prohibit respondent from inspecting, obtaining, or  
25 attempting to inspect or obtain, school or any other  
26 records of the minor child who is in the care of

1 petitioner.

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

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

17 (c) Relevant factors; findings.

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

22 (i) the nature, frequency, severity, pattern and  
23 consequences of the respondent's past abuse, neglect  
24 or exploitation of the petitioner or any family or  
25 household member, including the concealment of his or  
26 her location in order to evade service of process or

1 notice, and the likelihood of danger of future abuse,  
2 neglect, or exploitation to petitioner or any member of  
3 petitioner's or respondent's family or household; and

4 (ii) the danger that any minor child will be abused  
5 or neglected or improperly removed from the  
6 jurisdiction, improperly concealed within the State or  
7 improperly separated from the child's primary  
8 caretaker.

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

13 (i) availability, accessibility, cost, safety,  
14 adequacy, location and other characteristics of  
15 alternate housing for each party and any minor child or  
16 dependent adult in the party's care;

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

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

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

25 (i) That the court has considered the applicable  
26 relevant factors described in paragraphs (1) and (2) of

1           this subsection.

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

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

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

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

23          (5) Never married parties. No rights or  
24          responsibilities for a minor child born outside of marriage  
25          attach to a putative father until a father and child  
26          relationship has been established under the Illinois

1 Parentage Act of 1984, the Illinois Public Aid Code,  
2 Section 12 of the Vital Records Act, the Juvenile Court Act  
3 of 1987, the Probate Act of 1985, the Revised Uniform  
4 Reciprocal Enforcement of Support Act, the Uniform  
5 Interstate Family Support Act, the Expedited Child Support  
6 Act of 1990, any judicial, administrative, or other act of  
7 another state or territory, any other Illinois statute, or  
8 by any foreign nation establishing the father and child  
9 relationship, any other proceeding substantially in  
10 conformity with the Personal Responsibility and Work  
11 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),  
12 or where both parties appeared in open court or at an  
13 administrative hearing acknowledging under oath or  
14 admitting by affirmation the existence of a father and  
15 child relationship. Absent such an adjudication, finding,  
16 or acknowledgement, no putative father shall be granted  
17 temporary custody of the minor child, visitation with the  
18 minor child, or physical care and possession of the minor  
19 child, nor shall an order of payment for support of the  
20 minor child be entered.

21 (d) Balance of hardships; findings. If the court finds that  
22 the balance of hardships does not support the granting of a  
23 remedy governed by paragraph (2), (3), (10), (11), or (16) of  
24 subsection (b) of this Section, which may require such  
25 balancing, the court's findings shall so indicate and shall  
26 include a finding as to whether granting the remedy will result

1 in hardship to respondent that would substantially outweigh the  
2 hardship to petitioner from denial of the remedy. The findings  
3 shall be an official record or in writing.

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

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

9 (2) Respondent was voluntarily intoxicated;

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

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

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

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

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

26 (Source: P.A. 95-234, eff. 1-1-08; 95-773, eff. 1-1-09.)