



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3045

Introduced 2/23/2011, by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

750 ILCS 60/214

from Ch. 40, par. 2312-14

Amends the Illinois Domestic Violence Act of 1986. Provides that, as part of a stay away order, the court, on the request of respondent or on its own motion and for good cause shown, may order petitioner to stay away from respondent, or prohibit petitioner from entering or remaining present at respondent's school, place of employment, or other specified places at times when respondent is legitimately present, or both, if reasonable. Provides that, as part of an order prohibiting abuse, neglect, or exploitation, the court, on the request of respondent or on its own motion and for good cause shown, may prohibit petitioner from harassing the respondent; for purposes of this provision "harassment" means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the respondent. Provides that a court order that prohibits a petitioner from harassing the respondent shall not be construed as a mutual order of protection.

LRB097 08028 AJO 51227 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 Illinois Domestic Violence Act of 1986 is
5 amended by changing Section 214 as follows:

6 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

7 Sec. 214. Order of protection; remedies.

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

23 (b) Remedies and standards. The remedies to be included in

1 an order of protection shall be determined in accordance with
2 this Section and one of the following Sections, as appropriate:
3 Section 217 on emergency orders, Section 218 on interim orders,
4 and Section 219 on plenary orders. The remedies listed in this
5 subsection shall be in addition to other civil or criminal
6 remedies available to petitioner.

7 (1) Prohibition of abuse, neglect, or exploitation.
8 Prohibit respondent's harassment, interference with
9 personal liberty, intimidation of a dependent, physical
10 abuse, or willful deprivation, neglect or exploitation, as
11 defined in this Act, or stalking of the petitioner, as
12 defined in Section 12-7.3 of the Criminal Code of 1961, if
13 such abuse, neglect, exploitation, or stalking has
14 occurred or otherwise appears likely to occur if not
15 prohibited. Additionally, the court, on the request of
16 respondent or on its own motion, may prohibit petitioner
17 from harassing the respondent; for purposes of this
18 sentence, "harassment" means knowing conduct which is not
19 necessary to accomplish a purpose that is reasonable under
20 the circumstances; would cause a reasonable person
21 emotional distress; and does cause emotional distress to
22 the respondent. A court order that prohibits a petitioner
23 from harassing the respondent shall not be construed as a
24 mutual order of protection.

25 (2) Grant of exclusive possession of residence.
26 Prohibit respondent from entering or remaining in any

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

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

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

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

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

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

1 right to enter the premises. Additionally, the court, on
2 the request of respondent or on its own motion, may order
3 petitioner to stay away from respondent, or prohibit
4 petitioner from entering or remaining present at
5 respondent's school, place of employment, or other
6 specified places at times when respondent is legitimately
7 present, or both, if reasonable. A court order that
8 prohibits a petitioner from harassing the respondent shall
9 not be construed as a mutual order of protection.

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

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

1 appropriate. The Court may order the respondent in any
2 intimate partner relationship to report to an Illinois
3 Department of Human Services protocol approved partner
4 abuse intervention program for an assessment and to follow
5 all recommended treatment.

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 103) 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 103) 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 (11.5) Protection of animals. Grant the petitioner the
8 exclusive care, custody, or control of any animal owned,
9 possessed, leased, kept, or held by either the petitioner
10 or the respondent or a minor child residing in the
11 residence or household of either the petitioner or the
12 respondent and order the respondent to stay away from the
13 animal and forbid the respondent from taking,
14 transferring, encumbering, concealing, harming, or
15 otherwise disposing of the animal.

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

1 custody. Such a support order shall expire upon entry of a
2 valid order granting legal custody to another, unless
3 otherwise provided in the custody order.

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

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

22 (ii) Recovery of expenses. In the case of an
23 improper concealment or removal of a minor child, the
24 court may order respondent to pay the reasonable
25 expenses incurred or to be incurred in the search for
26 and recovery of the minor child, including but not

1 limited to legal fees, court costs, private
2 investigator fees, and travel costs.

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

8 (14.5) Prohibition of firearm possession.

9 (a) When a complaint is made under a request for an
10 order of protection, that the respondent has
11 threatened or is likely to use firearms illegally
12 against the petitioner, the court shall examine on oath
13 the petitioner, and any witnesses who may be produced.
14 If the court is satisfied that there is any danger of
15 the illegal use of firearms, and the respondent is
16 present in court, it shall issue an order that any
17 firearms and any Firearm Owner's Identification Card
18 in the possession of the respondent, except as provided
19 in subsection (b), be turned over to the local law
20 enforcement agency for safekeeping. If the court is
21 satisfied that there is any danger of the illegal use
22 of firearms, and if the respondent is not present in
23 court, the court shall issue a warrant for seizure of
24 any firearm and Firearm Owner's Identification Card in
25 the possession of the respondent, to be kept by the
26 local law enforcement agency for safekeeping, except

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

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

17 (c) Upon expiration of the period of safekeeping,
18 if the firearms or Firearm Owner's Identification Card
19 cannot be returned to respondent because respondent
20 cannot be located, fails to respond to requests to
21 retrieve the firearms, or is not lawfully eligible to
22 possess a firearm, upon petition from the local law
23 enforcement agency, the court may order the local law
24 enforcement agency to destroy the firearms, use the
25 firearms for training purposes, or for any other
26 application as deemed appropriate by the local law

1 enforcement agency; or that the firearms be turned over
2 to a third party who is lawfully eligible to possess
3 firearms, and who does not reside with respondent.

4 (15) Prohibition of access to records. If an order of
5 protection prohibits respondent from having contact with
6 the minor child, or if petitioner's address is omitted
7 under subsection (b) of Section 203, or if necessary to
8 prevent abuse or wrongful removal or concealment of a minor
9 child, the order shall deny respondent access to, and
10 prohibit respondent from inspecting, obtaining, or
11 attempting to inspect or obtain, school or any other
12 records of the minor child who is in the care of
13 petitioner.

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

19 (17) Order for injunctive relief. Enter injunctive
20 relief necessary or appropriate to prevent further abuse of
21 a family or household member or further abuse, neglect, or
22 exploitation of a high-risk adult with disabilities or to
23 effectuate one of the granted remedies, if supported by the
24 balance of hardships. If the harm to be prevented by the
25 injunction is abuse or any other harm that one of the
26 remedies listed in paragraphs (1) through (16) of this

1 subsection is designed to prevent, no further evidence is
2 necessary that the harm is an irreparable injury.

3 (c) Relevant factors; findings.

4 (1) In determining whether to grant a specific remedy,
5 other than payment of support, the court shall consider
6 relevant factors, including but not limited to the
7 following:

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

16 (ii) the danger that any minor child will be abused
17 or neglected or improperly removed from the
18 jurisdiction, improperly concealed within the State or
19 improperly separated from the child's primary
20 caretaker.

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

25 (i) availability, accessibility, cost, safety,
26 adequacy, location and other characteristics of

1 alternate housing for each party and any minor child or
2 dependent adult in the party's care;

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

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

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

11 (i) That the court has considered the applicable
12 relevant factors described in paragraphs (1) and (2) of
13 this subsection.

14 (ii) Whether the conduct or actions of respondent,
15 unless prohibited, will likely cause irreparable harm
16 or continued abuse.

17 (iii) Whether it is necessary to grant the
18 requested relief in order to protect petitioner or
19 other alleged abused persons.

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

25 When a verified petition for an emergency order of
26 protection in accordance with the requirements of Sections

1 203 and 217 is presented to the court, the court shall
2 examine petitioner on oath or affirmation. An emergency
3 order of protection shall be issued by the court if it
4 appears from the contents of the petition and the
5 examination of petitioner that the averments are
6 sufficient to indicate abuse by respondent and to support
7 the granting of relief under the issuance of the emergency
8 order of protection.

9 (5) Never married parties. No rights or
10 responsibilities for a minor child born outside of marriage
11 attach to a putative father until a father and child
12 relationship has been established under the Illinois
13 Parentage Act of 1984, the Illinois Public Aid Code,
14 Section 12 of the Vital Records Act, the Juvenile Court Act
15 of 1987, the Probate Act of 1985, the Revised Uniform
16 Reciprocal Enforcement of Support Act, the Uniform
17 Interstate Family Support Act, the Expedited Child Support
18 Act of 1990, any judicial, administrative, or other act of
19 another state or territory, any other Illinois statute, or
20 by any foreign nation establishing the father and child
21 relationship, any other proceeding substantially in
22 conformity with the Personal Responsibility and Work
23 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
24 or where both parties appeared in open court or at an
25 administrative hearing acknowledging under oath or
26 admitting by affirmation the existence of a father and

1 child relationship. Absent such an adjudication, finding,
2 or acknowledgement, no putative father shall be granted
3 temporary custody of the minor child, visitation with the
4 minor child, or physical care and possession of the minor
5 child, nor shall an order of payment for support of the
6 minor child be entered.

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

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

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

21 (2) Respondent was voluntarily intoxicated;

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

26 (4) Petitioner did not act in self-defense or defense

1 of another;

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

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

7 (7) Conduct by any family or household member excused
8 the abuse, neglect, or exploitation by respondent, unless
9 that same conduct would have excused such abuse, neglect,
10 or exploitation if the parties had not been family or
11 household members.

12 (Source: P.A. 95-234, eff. 1-1-08; 95-773, eff. 1-1-09; 96-701,
13 eff. 1-1-10; 96-1239, eff. 1-1-11.)