



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB4636**

Introduced 2/1/2012, by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-3.4

was 720 ILCS 5/12-30

Amends the Criminal Code of 1961 relating to violation of an order of protection. Provides that the Class 4 felony violation of an order of protection if the defendant had prior convictions for specified offenses applies to a prior conviction under the law of another jurisdiction for an offense which is substantially similar to specified Illinois offenses. Effective immediately.

LRB097 16551 RLC 61723 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 12-3.4 as follows:

6 (720 ILCS 5/12-3.4) (was 720 ILCS 5/12-30)

7 Sec. 12-3.4. Violation of an order of protection.

8 (a) A person commits violation of an order of protection  
9 if:

10 (1) He or she knowingly commits an act which was  
11 prohibited by a court or fails to commit an act which was  
12 ordered by a court in violation of:

13 (i) a remedy in a valid order of protection  
14 authorized under paragraphs (1), (2), (3), (14), or  
15 (14.5) of subsection (b) of Section 214 of the Illinois  
16 Domestic Violence Act of 1986,

17 (ii) a remedy, which is substantially similar to  
18 the remedies authorized under paragraphs (1), (2),  
19 (3), (14) or (14.5) of subsection (b) of Section 214 of  
20 the Illinois Domestic Violence Act of 1986, in a valid  
21 order of protection, which is authorized under the laws  
22 of another state, tribe or United States territory,

23 (iii) any other remedy when the act constitutes a

1 crime against the protected parties as the term  
2 protected parties is defined in Section 112A-4 of the  
3 Code of Criminal Procedure of 1963; and

4 (2) Such violation occurs after the offender has been  
5 served notice of the contents of the order, pursuant to the  
6 Illinois Domestic Violence Act of 1986 or any substantially  
7 similar statute of another state, tribe or United States  
8 territory, or otherwise has acquired actual knowledge of  
9 the contents of the order.

10 An order of protection issued by a state, tribal or  
11 territorial court related to domestic or family violence shall  
12 be deemed valid if the issuing court had jurisdiction over the  
13 parties and matter under the law of the state, tribe or  
14 territory. There shall be a presumption of validity where an  
15 order is certified and appears authentic on its face. For  
16 purposes of this Section, an "order of protection" may have  
17 been issued in a criminal or civil proceeding.

18 (a-5) Failure to provide reasonable notice and opportunity  
19 to be heard shall be an affirmative defense to any charge or  
20 process filed seeking enforcement of a foreign order of  
21 protection.

22 (b) Nothing in this Section shall be construed to diminish  
23 the inherent authority of the courts to enforce their lawful  
24 orders through civil or criminal contempt proceedings.

25 (c) The limitations placed on law enforcement liability by  
26 Section 305 of the Illinois Domestic Violence Act of 1986 apply

1 to actions taken under this Section.

2 (d) Violation of an order of protection is a Class A  
3 misdemeanor. Violation of an order of protection is a Class 4  
4 felony if the defendant has any prior conviction under this  
5 Code for domestic battery (Section 12-3.2) or violation of an  
6 order of protection (Section 12-3.4 or 12-30), or any prior  
7 conviction under the law of another jurisdiction for an offense  
8 which is substantially similar. Violation of an order of  
9 protection is a Class 4 felony if the defendant has any prior  
10 conviction under this Code for first degree murder (Section  
11 9-1), attempt to commit first degree murder (Section 8-4),  
12 aggravated domestic battery (Section 12-3.3), aggravated  
13 battery (Section 12-3.05 or 12-4), heinous battery (Section  
14 12-4.1), aggravated battery with a firearm (Section 12-4.2),  
15 aggravated battery with a machine gun or a firearm equipped  
16 with a silencer (Section 12-4.2-5), aggravated battery of a  
17 child (Section 12-4.3), aggravated battery of an unborn child  
18 (subsection (a-5) of Section 12-3.1, or Section 12-4.4),  
19 aggravated battery of a senior citizen (Section 12-4.6),  
20 stalking (Section 12-7.3), aggravated stalking (Section  
21 12-7.4), criminal sexual assault (Section 11-1.20 or 12-13),  
22 aggravated criminal sexual assault (Section 11-1.30 or 12-14),  
23 kidnapping (Section 10-1), aggravated kidnapping (Section  
24 10-2), predatory criminal sexual assault of a child (Section  
25 11-1.40 or 12-14.1), aggravated criminal sexual abuse (Section  
26 11-1.60 or 12-16), unlawful restraint (Section 10-3),

1 aggravated unlawful restraint (Section 10-3.1), aggravated  
2 arson (Section 20-1.1), aggravated discharge of a firearm  
3 (Section 24-1.2), or a violation of any former law of this  
4 State that is substantially similar to any listed offense, or  
5 any prior conviction under the law of another jurisdiction for  
6 an offense which is substantially similar to the offenses  
7 listed in this Section, when any of these offenses have been  
8 committed against a family or household member as defined in  
9 Section 112A-3 of the Code of Criminal Procedure of 1963. The  
10 court shall impose a minimum penalty of 24 hours imprisonment  
11 for defendant's second or subsequent violation of any order of  
12 protection; unless the court explicitly finds that an increased  
13 penalty or such period of imprisonment would be manifestly  
14 unjust. In addition to any other penalties, the court may order  
15 the defendant to pay a fine as authorized under Section 5-9-1  
16 of the Unified Code of Corrections or to make restitution to  
17 the victim under Section 5-5-6 of the Unified Code of  
18 Corrections. In addition to any other penalties, including  
19 those imposed by Section 5-9-1.5 of the Unified Code of  
20 Corrections, the court shall impose an additional fine of \$20  
21 as authorized by Section 5-9-1.11 of the Unified Code of  
22 Corrections upon any person convicted of or placed on  
23 supervision for a violation of this Section. The additional  
24 fine shall be imposed for each violation of this Section.

25 (e) (Blank).

26 (f) A defendant who directed the actions of a third party

1 to violate this Section, under the principles of accountability  
2 set forth in Article 5 of this Code, is guilty of violating  
3 this Section as if the same had been personally done by the  
4 defendant, without regard to the mental state of the third  
5 party acting at the direction of the defendant.

6 (Source: P.A. 96-1551, Article 1, Section 5, eff. 7-1-11;  
7 96-1551, Article 2, Section 1035, eff. 7-1-11; incorporates  
8 97-311, eff. 8-11-11; revised 9-11-11.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.