



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3248

by Rep. Reginald Phillips

SYNOPSIS AS INTRODUCED:

720 ILCS 5/24-6	from Ch. 38, par. 24-6
725 ILCS 5/112A-14	from Ch. 38, par. 112A-14
750 ILCS 60/214	from Ch. 40, par. 2312-14
765 ILCS 1030/2	from Ch. 141, par. 142

Amends the Criminal Code of 2012. Provides that after the disposition of a criminal case or in any criminal case where a final judgment in the case was not entered due to the death of the defendant, and when a confiscated weapon is no longer needed for evidentiary purposes, and when in due course no legitimate claim has been made for the weapon, a weapon transferred to a law enforcement agency may be sold by the law enforcement agency at public auction under the Law Enforcement Disposition of Property Act. Amends the Domestic Violence: Order of Protection Article of the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that upon expiration of the period of safekeeping of a firearm of a respondent against whom an order of protection was issued, if the firearms or Firearm Owner's Identification Card cannot be returned to respondent because the respondent cannot be located, fails to respond to requests to retrieve the firearms, or is not lawfully eligible to possess a firearm, upon petition from the local law enforcement agency, the court may order the local law enforcement agency to sell the firearm at public auction under the provisions of the Law Enforcement Disposition of Property Act. Amends the Law Enforcement Disposition of Property Act. Provides that weapons that have been confiscated as a result of having been abandoned or illegally possessed may be sold at public auction under the Act.

LRB099 08760 RLC 28928 b

FISCAL 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 2012 is amended by changing
5 Section 24-6 as follows:

6 (720 ILCS 5/24-6) (from Ch. 38, par. 24-6)

7 Sec. 24-6. Confiscation and disposition of weapons.

8 (a) Upon conviction of an offense in which a weapon was
9 used or possessed by the offender, any weapon seized shall be
10 confiscated by the trial court.

11 (b) Any stolen weapon so confiscated, when no longer needed
12 for evidentiary purposes, shall be returned to the person
13 entitled to possession, if known. After the disposition of a
14 criminal case or in any criminal case where a final judgment in
15 the case was not entered due to the death of the defendant, and
16 when a confiscated weapon is no longer needed for evidentiary
17 purposes, and when in due course no legitimate claim has been
18 made for the weapon, the court may transfer the weapon to the
19 sheriff of the county who may proceed to destroy it, or may in
20 its discretion order the weapon preserved as property of the
21 governmental body whose police agency seized the weapon, or may
22 in its discretion order the weapon to be transferred to the
23 Department of State Police for use by the crime laboratory

1 system, for training purposes, or for any other application as
2 deemed appropriate by the Department. A weapon transferred to a
3 law enforcement agency under this Section may be sold by the
4 law enforcement agency at public auction under Section 3 of the
5 Law Enforcement Disposition of Property Act. If, after the
6 disposition of a criminal case, a need still exists for the use
7 of the confiscated weapon for evidentiary purposes, the court
8 may transfer the weapon to the custody of the State Department
9 of Corrections for preservation. The court may not order the
10 transfer of the weapon to any private individual or private
11 organization other than to return a stolen weapon to its
12 rightful owner.

13 The provisions of this Section shall not apply to
14 violations of the Fish and Aquatic Life Code or the Wildlife
15 Code. Confiscation of weapons for Fish and Aquatic Life Code
16 and Wildlife Code violations shall be only as provided in those
17 Codes.

18 (c) Any mental hospital that admits a person as an
19 inpatient pursuant to any of the provisions of the Mental
20 Health and Developmental Disabilities Code shall confiscate
21 any firearms in the possession of that person at the time of
22 admission, or at any time the firearms are discovered in the
23 person's possession during the course of hospitalization. The
24 hospital shall, as soon as possible following confiscation,
25 transfer custody of the firearms to the appropriate law
26 enforcement agency. The hospital shall give written notice to

1 the person from whom the firearm was confiscated of the
2 identity and address of the law enforcement agency to which it
3 has given the firearm.

4 The law enforcement agency shall maintain possession of any
5 firearm it obtains pursuant to this subsection for a minimum of
6 90 days. Thereafter, the firearm may be disposed of pursuant to
7 the provisions of subsection (b) of this Section.

8 (Source: P.A. 91-696, eff. 4-13-00.)

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

11 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

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

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

1 be in accordance with this Article.

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

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

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

24 (A) Right to occupancy. A party has a right to
25 occupancy of a residence or household if it is solely
26 or jointly owned or leased by that party, that party's

1 spouse, a person with a legal duty to support that
2 party or a minor child in that party's care, or by any
3 person or entity other than the opposing party that
4 authorizes that party's occupancy (e.g., a domestic
5 violence shelter). Standards set forth in subparagraph
6 (B) shall not preclude equitable relief.

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

23 The balance of hardships is presumed to favor
24 possession by petitioner unless the presumption is
25 rebutted by a preponderance of the evidence, showing
26 that the hardships to respondent substantially

1 outweigh the hardships to petitioner and any minor
2 child or dependent adult in petitioner's care. The
3 court, on the request of petitioner or on its own
4 motion, may order respondent to provide suitable,
5 accessible, alternate housing for petitioner instead
6 of excluding respondent from a mutual residence or
7 household.

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

18 If an order of protection grants petitioner exclusive
19 possession of the residence, or prohibits respondent from
20 entering the residence, or orders respondent to stay away
21 from petitioner or other protected persons, then the court
22 may allow respondent access to the residence to remove
23 items of clothing and personal adornment used exclusively
24 by respondent, medications, and other items as the court
25 directs. The right to access shall be exercised on only one
26 occasion as the court directs and in the presence of an

1 agreed-upon adult third party or law enforcement officer.

2 (4) Counseling. Require or recommend the respondent to
3 undergo counseling for a specified duration with a social
4 worker, psychologist, clinical psychologist, psychiatrist,
5 family service agency, alcohol or substance abuse program,
6 mental health center guidance counselor, agency providing
7 services to elders, program designed for domestic violence
8 abusers or any other guidance service the court deems
9 appropriate. The court may order the respondent in any
10 intimate partner relationship to report to an Illinois
11 Department of Human Services protocol approved partner
12 abuse intervention program for an assessment and to follow
13 all recommended treatment.

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

24 If a court finds, after a hearing, that respondent has
25 committed abuse (as defined in Section 112A-3) of a minor
26 child, there shall be a rebuttable presumption that

1 awarding physical care to respondent would not be in the
2 minor child's best interest.

3 (6) Temporary legal custody. Award temporary legal
4 custody to petitioner in accordance with this Section, the
5 Illinois Marriage and Dissolution of Marriage Act, the
6 Illinois Parentage Act of 1984, and this State's Uniform
7 Child-Custody Jurisdiction and Enforcement Act.

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

13 (7) Visitation. Determine the visitation rights, if
14 any, of respondent in any case in which the court awards
15 physical care or temporary legal custody of a minor child
16 to petitioner. The court shall restrict or deny
17 respondent's visitation with a minor child if the court
18 finds that respondent has done or is likely to do any of
19 the following: (i) abuse or endanger the minor child during
20 visitation; (ii) use the visitation as an opportunity to
21 abuse or harass petitioner or petitioner's family or
22 household members; (iii) improperly conceal or detain the
23 minor child; or (iv) otherwise act in a manner that is not
24 in the best interests of the minor child. The court shall
25 not be limited by the standards set forth in Section 607.1
26 of the Illinois Marriage and Dissolution of Marriage Act.

1 If the court grants visitation, the order shall specify
2 dates and times for the visitation to take place or other
3 specific parameters or conditions that are appropriate. No
4 order for visitation shall refer merely to the term
5 "reasonable visitation".

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

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

21 (8) Removal or concealment of minor child. Prohibit
22 respondent from removing a minor child from the State or
23 concealing the child within the State.

24 (9) Order to appear. Order the respondent to appear in
25 court, alone or with a minor child, to prevent abuse,
26 neglect, removal or concealment of the child, to return the

1 child to the custody or care of the petitioner or to permit
2 any court-ordered interview or examination of the child or
3 the respondent.

4 (10) Possession of personal property. Grant petitioner
5 exclusive possession of personal property and, if
6 respondent has possession or control, direct respondent to
7 promptly make it available to petitioner, if:

8 (i) petitioner, but not respondent, owns the
9 property; or

10 (ii) the parties own the property jointly; sharing
11 it would risk abuse of petitioner by respondent or is
12 impracticable; and the balance of hardships favors
13 temporary possession by petitioner.

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

21 No order under this provision shall affect title to
22 property.

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

1 (i) petitioner, but not respondent, owns the
2 property; or

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

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

11 The court may further prohibit respondent from
12 improperly using the financial or other resources of an
13 aged member of the family or household for the profit or
14 advantage of respondent or of any other person.

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

24 (12) Order for payment of support. Order respondent to
25 pay temporary support for the petitioner or any child in
26 the petitioner's care or custody, when the respondent has a

1 legal obligation to support that person, in accordance with
2 the Illinois Marriage and Dissolution of Marriage Act,
3 which shall govern, among other matters, the amount of
4 support, payment through the clerk and withholding of
5 income to secure payment. An order for child support may be
6 granted to a petitioner with lawful physical care or
7 custody of a child, or an order or agreement for physical
8 care or custody, prior to entry of an order for legal
9 custody. Such a support order shall expire upon entry of a
10 valid order granting legal custody to another, unless
11 otherwise provided in the custody order.

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

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

1 "appropriate temporary relief", as authorized by
2 subsection (a) (3) of Section 501 of that Act.

3 (ii) Recovery of expenses. In the case of an
4 improper concealment or removal of a minor child, the
5 court may order respondent to pay the reasonable
6 expenses incurred or to be incurred in the search for
7 and recovery of the minor child, including but not
8 limited to legal fees, court costs, private
9 investigator fees, and travel costs.

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

15 (14.5) Prohibition of firearm possession.

16 (A) A person who is subject to an existing order of
17 protection, interim order of protection, emergency
18 order of protection, or plenary order of protection,
19 issued under this Code may not lawfully possess weapons
20 under Section 8.2 of the Firearm Owners Identification
21 Card Act.

22 (B) Any firearms in the possession of the
23 respondent, except as provided in subparagraph (C) of
24 this paragraph (14.5), shall be ordered by the court to
25 be turned over to a person with a valid Firearm Owner's
26 Identification Card for safekeeping. The court shall

1 issue an order that the respondent's Firearm Owner's
2 Identification Card be turned over to the local law
3 enforcement agency, which in turn shall immediately
4 mail the card to the Department of State Police Firearm
5 Owner's Identification Card Office for safekeeping.
6 The period of safekeeping shall be for the duration of
7 the order of protection. The firearm or firearms and
8 Firearm Owner's Identification Card, if unexpired,
9 shall at the respondent's request be returned to the
10 respondent at expiration of the order of protection.

11 (C) If the respondent is a peace officer as defined
12 in Section 2-13 of the Criminal Code of 2012, the court
13 shall order that any firearms used by the respondent in
14 the performance of his or her duties as a peace officer
15 be surrendered to the chief law enforcement executive
16 of the agency in which the respondent is employed, who
17 shall retain the firearms for safekeeping for the
18 duration of the order of protection.

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

1 firearms for training purposes, or for any other
2 application as deemed appropriate by the local law
3 enforcement agency, including a sale at public auction
4 under the provisions of the Law Enforcement
5 Disposition of Property Act; or that the firearms be
6 turned over to a third party who is lawfully eligible
7 to possess firearms, and who does not reside with
8 respondent.

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 7 of the Criminal Code of 2012;

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 7 of the Criminal Code
14 of 2012;

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. 97-158, eff. 1-1-12; 97-1131, eff. 1-1-13;
26 97-1150, eff. 1-25-13; 98-63, eff. 7-9-13.)

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

1 subsection shall be in addition to other civil or criminal
2 remedies available to petitioner.

3 (1) Prohibition of abuse, neglect, or exploitation.
4 Prohibit respondent's harassment, interference with
5 personal liberty, intimidation of a dependent, physical
6 abuse, or willful deprivation, neglect or exploitation, as
7 defined in this Act, or stalking of the petitioner, as
8 defined in Section 12-7.3 of the Criminal Code of 2012, if
9 such abuse, neglect, exploitation, or stalking has
10 occurred or otherwise appears likely to occur if not
11 prohibited.

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

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

1 authorizes that party's occupancy (e.g., a domestic
2 violence shelter). Standards set forth in subparagraph
3 (B) shall not preclude equitable relief.

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

20 The balance of hardships is presumed to favor
21 possession by petitioner unless the presumption is
22 rebutted by a preponderance of the evidence, showing
23 that the hardships to respondent substantially
24 outweigh the hardships to petitioner and any minor
25 child or dependent adult in petitioner's care. The
26 court, on the request of petitioner or on its own

1 motion, may order respondent to provide suitable,
2 accessible, alternate housing for petitioner instead
3 of excluding respondent from a mutual residence or
4 household.

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

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

1 (B) When the petitioner and the respondent attend
2 the same public, private, or non-public elementary,
3 middle, or high school, the court when issuing an order
4 of protection and providing relief shall consider the
5 severity of the act, any continuing physical danger or
6 emotional distress to the petitioner, the educational
7 rights guaranteed to the petitioner and respondent
8 under federal and State law, the availability of a
9 transfer of the respondent to another school, a change
10 of placement or a change of program of the respondent,
11 the expense, difficulty, and educational disruption
12 that would be caused by a transfer of the respondent to
13 another school, and any other relevant facts of the
14 case. The court may order that the respondent not
15 attend the public, private, or non-public elementary,
16 middle, or high school attended by the petitioner,
17 order that the respondent accept a change of placement
18 or change of program, as determined by the school
19 district or private or non-public school, or place
20 restrictions on the respondent's movements within the
21 school attended by the petitioner. The respondent
22 bears the burden of proving by a preponderance of the
23 evidence that a transfer, change of placement, or
24 change of program of the respondent is not available.
25 The respondent also bears the burden of production with
26 respect to the expense, difficulty, and educational

1 disruption that would be caused by a transfer of the
2 respondent to another school. A transfer, change of
3 placement, or change of program is not unavailable to
4 the respondent solely on the ground that the respondent
5 does not agree with the school district's or private or
6 non-public school's transfer, change of placement, or
7 change of program or solely on the ground that the
8 respondent fails or refuses to consent or otherwise
9 does not take an action required to effectuate a
10 transfer, change of placement, or change of program.
11 When a court orders a respondent to stay away from the
12 public, private, or non-public school attended by the
13 petitioner and the respondent requests a transfer to
14 another attendance center within the respondent's
15 school district or private or non-public school, the
16 school district or private or non-public school shall
17 have sole discretion to determine the attendance
18 center to which the respondent is transferred. In the
19 event the court order results in a transfer of the
20 minor respondent to another attendance center, a
21 change in the respondent's placement, or a change of
22 the respondent's program, the parents, guardian, or
23 legal custodian of the respondent is responsible for
24 transportation and other costs associated with the
25 transfer or change.

26 (C) The court may order the parents, guardian, or

1 legal custodian of a minor respondent to take certain
2 actions or to refrain from taking certain actions to
3 ensure that the respondent complies with the order. In
4 the event the court orders a transfer of the respondent
5 to another school, the parents, guardian, or legal
6 custodian of the respondent is responsible for
7 transportation and other costs associated with the
8 change of school by the respondent.

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

21 (5) Physical care and possession of the minor child. In
22 order to protect the minor child from abuse, neglect, or
23 unwarranted separation from the person who has been the
24 minor child's primary caretaker, or to otherwise protect
25 the well-being of the minor child, the court may do either
26 or both of the following: (i) grant petitioner physical

1 care or possession of the minor child, or both, or (ii)
2 order respondent to return a minor child to, or not remove
3 a minor child from, the physical care of a parent or person
4 in loco parentis.

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

10 (6) Temporary legal custody. Award temporary legal
11 custody to petitioner in accordance with this Section, the
12 Illinois Marriage and Dissolution of Marriage Act, the
13 Illinois Parentage Act of 1984, and this State's Uniform
14 Child-Custody Jurisdiction and Enforcement Act.

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

20 (7) Visitation. Determine the visitation rights, if
21 any, of respondent in any case in which the court awards
22 physical care or temporary legal custody of a minor child
23 to petitioner. The court shall restrict or deny
24 respondent's visitation with a minor child if the court
25 finds that respondent has done or is likely to do any of
26 the following: (i) abuse or endanger the minor child during

1 visitation; (ii) use the visitation as an opportunity to
2 abuse or harass petitioner or petitioner's family or
3 household members; (iii) improperly conceal or detain the
4 minor child; or (iv) otherwise act in a manner that is not
5 in the best interests of the minor child. The court shall
6 not be limited by the standards set forth in Section 607.1
7 of the Illinois Marriage and Dissolution of Marriage Act.
8 If the court grants visitation, the order shall specify
9 dates and times for the visitation to take place or other
10 specific parameters or conditions that are appropriate. No
11 order for visitation shall refer merely to the term
12 "reasonable visitation".

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

19 If necessary to protect any member of petitioner's
20 family or household from future abuse, respondent shall be
21 prohibited from coming to petitioner's residence to meet
22 the minor child for visitation, and the parties shall
23 submit to the court their recommendations for reasonable
24 alternative arrangements for visitation. A person may be
25 approved to supervise visitation only after filing an
26 affidavit accepting that responsibility and acknowledging

1 accountability to the court.

2 (8) Removal or concealment of minor child. Prohibit
3 respondent from removing a minor child from the State or
4 concealing the child within the State.

5 (9) Order to appear. Order the respondent to appear in
6 court, alone or with a minor child, to prevent abuse,
7 neglect, removal or concealment of the child, to return the
8 child to the custody or care of the petitioner or to permit
9 any court-ordered interview or examination of the child or
10 the respondent.

11 (10) Possession of personal property. Grant petitioner
12 exclusive possession of personal property and, if
13 respondent has possession or control, direct respondent to
14 promptly make it available to petitioner, if:

15 (i) petitioner, but not respondent, owns the
16 property; or

17 (ii) the parties own the property jointly; sharing
18 it would risk abuse of petitioner by respondent or is
19 impracticable; and the balance of hardships favors
20 temporary possession by petitioner.

21 If petitioner's sole claim to ownership of the property
22 is that it is marital property, the court may award
23 petitioner temporary possession thereof under the
24 standards of subparagraph (ii) of this paragraph only if a
25 proper proceeding has been filed under the Illinois
26 Marriage and Dissolution of Marriage Act, as now or

1 hereafter amended.

2 No order under this provision shall affect title to
3 property.

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

8 (i) petitioner, but not respondent, owns the
9 property; or

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

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

18 The court may further prohibit respondent from
19 improperly using the financial or other resources of an
20 aged member of the family or household for the profit or
21 advantage of respondent or of any other person.

22 (11.5) Protection of animals. Grant the petitioner the
23 exclusive care, custody, or control of any animal owned,
24 possessed, leased, kept, or held by either the petitioner
25 or the respondent or a minor child residing in the
26 residence or household of either the petitioner or the

1 respondent and order the respondent to stay away from the
2 animal and forbid the respondent from taking,
3 transferring, encumbering, concealing, harming, or
4 otherwise disposing of the animal.

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

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

1 restaurant meals.

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

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

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

23 (14.5) Prohibition of firearm possession.

24 (a) Prohibit a respondent against whom an order of
25 protection was issued from possessing any firearms
26 during the duration of the order if the order:

1 (1) was issued after a hearing of which such
2 person received actual notice, and at which such
3 person had an opportunity to participate;

4 (2) restrains such person from harassing,
5 stalking, or threatening an intimate partner of
6 such person or child of such intimate partner or
7 person, or engaging in other conduct that would
8 place an intimate partner in reasonable fear of
9 bodily injury to the partner or child; and

10 (3)(i) includes a finding that such person
11 represents a credible threat to the physical
12 safety of such intimate partner or child; or (ii)
13 by its terms explicitly prohibits the use,
14 attempted use, or threatened use of physical force
15 against such intimate partner or child that would
16 reasonably be expected to cause bodily injury.

17 Any Firearm Owner's Identification Card in the
18 possession of the respondent, except as provided in
19 subsection (b), shall be ordered by the court to be
20 turned over to the local law enforcement agency. The
21 local law enforcement agency shall immediately mail
22 the card to the Department of State Police Firearm
23 Owner's Identification Card Office for safekeeping.
24 The court shall issue a warrant for seizure of any
25 firearm in the possession of the respondent, to be kept
26 by the local law enforcement agency for safekeeping,

1 except as provided in subsection (b). The period of
2 safekeeping shall be for the duration of the order of
3 protection. The firearm or firearms and Firearm
4 Owner's Identification Card, if unexpired, shall at
5 the respondent's request, be returned to the
6 respondent at the end of the order of protection. It is
7 the respondent's responsibility to notify the
8 Department of State Police Firearm Owner's
9 Identification Card Office.

10 (b) If the respondent is a peace officer as defined
11 in Section 2-13 of the Criminal Code of 2012, the court
12 shall order that any firearms used by the respondent in
13 the performance of his or her duties as a peace officer
14 be surrendered to the chief law enforcement executive
15 of the agency in which the respondent is employed, who
16 shall retain the firearms for safekeeping for the
17 duration of the order of protection.

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

1 application as deemed appropriate by the local law
2 enforcement agency, including a sale at public auction
3 under the provisions of the Law Enforcement
4 Disposition of Property Act; or that the firearms be
5 turned over to a third party who is lawfully eligible
6 to possess firearms, and who does not reside with
7 respondent.

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

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

23 (17) Order for injunctive relief. Enter injunctive
24 relief necessary or appropriate to prevent further abuse of
25 a family or household member or further abuse, neglect, or
26 exploitation of a high-risk adult with disabilities or to

1 effectuate one of the granted remedies, if supported by the
2 balance of hardships. If the harm to be prevented by the
3 injunction is abuse or any other harm that one of the
4 remedies listed in paragraphs (1) through (16) of this
5 subsection is designed to prevent, no further evidence is
6 necessary 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, neglect
14 or exploitation of the petitioner or any family or
15 household member, including the concealment of his or
16 her location in order to evade service of process or
17 notice, and the likelihood of danger of future abuse,
18 neglect, or exploitation to petitioner or any member of
19 petitioner's or respondent's family or 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
5 203 and 217 is presented to the court, the court shall
6 examine petitioner on oath or affirmation. An emergency
7 order of protection shall be issued by the court if it
8 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, the Illinois Public Aid Code,
18 Section 12 of the Vital Records Act, the Juvenile Court Act
19 of 1987, the Probate Act of 1985, the Revised Uniform
20 Reciprocal Enforcement of Support Act, the Uniform
21 Interstate Family Support Act, the Expedited Child Support
22 Act of 1990, any judicial, administrative, or other act of
23 another state or territory, any other Illinois statute, or
24 by any foreign nation establishing the father and child
25 relationship, any other proceeding substantially in
26 conformity with the Personal Responsibility and Work

1 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
2 or where both parties appeared in open court or at an
3 administrative hearing acknowledging under oath or
4 admitting by affirmation the existence of a father and
5 child relationship. Absent such an adjudication, finding,
6 or acknowledgement, no putative father shall be granted
7 temporary custody of the minor child, visitation with the
8 minor child, or physical care and possession of the minor
9 child, nor shall an order of payment for support of the
10 minor child be entered.

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

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

22 (1) Respondent has cause for any use of force, unless
23 that cause satisfies the standards for justifiable use of
24 force provided by Article 7 of the Criminal Code of 2012;

25 (2) Respondent was voluntarily intoxicated;

26 (3) Petitioner acted in self-defense or defense of

1 another, provided that, if petitioner utilized force, such
2 force was justifiable under Article 7 of the Criminal Code
3 of 2012;

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

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

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

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

16 (Source: P.A. 96-701, eff. 1-1-10; 96-1239, eff. 1-1-11;
17 97-158, eff. 1-1-12; 97-294, eff. 1-1-12; 97-813, eff. 7-13-12;
18 97-1131, eff. 1-1-13; 97-1150, eff. 1-25-13.)

19 Section 20. The Law Enforcement Disposition of Property Act
20 is amended by changing Section 2 as follows:

21 (765 ILCS 1030/2) (from Ch. 141, par. 142)

22 Sec. 2. (a) Such property believed to be abandoned, lost or
23 stolen or otherwise illegally possessed shall be retained in
24 custody by the sheriff, chief of police or other principal

1 official of the law enforcement agency, which shall make
2 reasonable inquiry and efforts to identify and notify the owner
3 or other person entitled to possession thereof, and shall
4 return the property after such person provides reasonable and
5 satisfactory proof of his ownership or right to possession and
6 reimburses the agency for all reasonable expenses of such
7 custody.

8 (b) Weapons that have been confiscated as a result of
9 having been abandoned or illegally possessed may be sold at
10 public auction under Section 3 of this Act; or transferred to
11 the Department of State Police for use by the crime laboratory
12 system, for training purposes, or for any other application as
13 deemed appropriate by the Department, if no legitimate claim is
14 made for the confiscated weapon within 6 months of the date of
15 confiscation, or within 6 months of final court disposition if
16 such confiscated weapon was used for evidentiary purposes.

17 (Source: P.A. 85-632.)