



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3411

by Rep. Natalie A. Manley

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-14  
750 ILCS 60/214

from Ch. 38, par. 112A-14  
from Ch. 40, par. 2312-14

Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that a person who is subject to an existing order of protection, interim order of protection, emergency order of protection, or plenary order of protection issued by this State or any other state, possession, or territory of the United States, or the District of Columbia, which is substantially similar to an order of protection issued in this State, may not lawfully possess a firearm, firearm ammunition, stun gun, or taser.

LRB099 09141 RLC 29338 b

1 AN ACT concerning orders of protection.

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

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 112A-14 as follows:

6 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

7 Sec. 112A-14. 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, as defined in  
10 this Article, an order of protection prohibiting such abuse  
11 shall issue; provided that petitioner must also satisfy the  
12 requirements of one of the following Sections, as appropriate:  
13 Section 112A-17 on emergency orders, Section 112A-18 on interim  
14 orders, or Section 112A-19 on plenary orders. Petitioner shall  
15 not be denied an order of protection because petitioner or  
16 respondent is a minor. The court, when determining whether or  
17 not to issue an order of protection, shall not require physical  
18 manifestations of abuse on the person of the victim.  
19 Modification and extension of prior orders of protection shall  
20 be in accordance with this Article.

21 (b) Remedies and standards. The remedies to be included in  
22 an order of protection shall be determined in accordance with  
23 this Section and one of the following Sections, as appropriate:

1 Section 112A-17 on emergency orders, Section 112A-18 on interim  
2 orders, and Section 112A-19 on plenary orders. The remedies  
3 listed in this subsection shall be in addition to other civil  
4 or criminal remedies available to petitioner.

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

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

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

1 violence shelter). Standards set forth in subparagraph  
2 (B) shall not preclude equitable relief.

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

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

1           accessible, alternate housing for petitioner instead  
2           of excluding respondent from a mutual residence or  
3           household.

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

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

24          (4) Counseling. Require or recommend the respondent to  
25          undergo counseling for a specified duration with a social  
26          worker, psychologist, clinical psychologist, psychiatrist,

1 family service agency, alcohol or substance abuse program,  
2 mental health center guidance counselor, agency providing  
3 services to elders, program designed for domestic violence  
4 abusers or any other guidance service the court deems  
5 appropriate. The court may order the respondent in any  
6 intimate partner relationship to report to an Illinois  
7 Department of Human Services protocol approved partner  
8 abuse intervention program for an assessment and to follow  
9 all recommended treatment.

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

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

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

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

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

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

1 "reasonable visitation".

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

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

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

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

26 (10) Possession of personal property. Grant petitioner



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) Recovery of expenses. In the case of an  
26 improper concealment or removal of a minor child, the

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

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

11 (14.5) Prohibition of firearm possession.

12 (A) A person who is subject to an existing order of  
13 protection, interim order of protection, emergency  
14 order of protection, or plenary order of protection,  
15 issued under this Code or a substantially similar order  
16 of protection issued by any other state, possession, or  
17 territory of the United States, or the District of  
18 Columbia may not lawfully possess a firearm, firearm  
19 ammunition, stun gun, or taser ~~may not lawfully possess~~  
20 ~~weapons~~ under Section 8.2 of the Firearm Owners  
21 Identification Card Act.

22 (B) Any firearms, firearm ammunition, stun guns,  
23 or tasers in the possession of the respondent, except  
24 as provided in subparagraph (C) of this paragraph  
25 (14.5), shall be ordered by the court to be turned over  
26 to a person with a valid Firearm Owner's Identification

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

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

26 (D) Upon expiration of the period of safekeeping,

1 if the firearms or Firearm Owner's Identification Card  
2 cannot be returned to respondent because respondent  
3 cannot be located, fails to respond to requests to  
4 retrieve the firearms, or is not lawfully eligible to  
5 possess a firearm, upon petition from the local law  
6 enforcement agency, the court may order the local law  
7 enforcement agency to destroy the firearms, use the  
8 firearms for training purposes, or for any other  
9 application as deemed appropriate by the local law  
10 enforcement agency; or that the firearms be turned over  
11 to a third party who is lawfully eligible to possess  
12 firearms, and who does not reside with respondent.

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

23 (16) Order for payment of shelter services. Order  
24 respondent to reimburse a shelter providing temporary  
25 housing and counseling services to the petitioner for the  
26 cost of the services, as certified by the shelter and

1 deemed reasonable by the court.

2 (17) Order for injunctive relief. Enter injunctive  
3 relief necessary or appropriate to prevent further abuse of  
4 a family or household member or to effectuate one of the  
5 granted remedies, if supported by the balance of hardships.  
6 If the harm to be prevented by the injunction is abuse or  
7 any other harm that one of the remedies listed in  
8 paragraphs (1) through (16) of this subsection is designed  
9 to prevent, no further evidence is necessary to establish  
10 that the harm is an irreparable injury.

11 (c) Relevant factors; findings.

12 (1) In determining whether to grant a specific remedy,  
13 other than payment of support, the court shall consider  
14 relevant factors, including but not limited to the  
15 following:

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

24 (ii) the danger that any minor child will be abused  
25 or neglected or improperly removed from the  
26 jurisdiction, improperly concealed within the State or

1           improperly separated from the child's primary  
2           caretaker.

3           (2) In comparing relative hardships resulting to the  
4           parties from loss of possession of the family home, the  
5           court shall consider relevant factors, including but not  
6           limited to the following:

7                   (i) availability, accessibility, cost, safety,  
8                   adequacy, location and other characteristics of  
9                   alternate housing for each party and any minor child or  
10                  dependent adult in the party's care;

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

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

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

19                   (i) That the court has considered the applicable  
20                   relevant factors described in paragraphs (1) and (2) of  
21                   this subsection.

22                   (ii) Whether the conduct or actions of respondent,  
23                   unless prohibited, will likely cause irreparable harm  
24                   or continued abuse.

25                   (iii) Whether it is necessary to grant the  
26                   requested relief in order to protect petitioner or



1 other alleged abused persons.

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

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

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

26 (d) Balance of hardships; findings. If the court finds that

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

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

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

14 (2) Respondent was voluntarily intoxicated;

15 (3) Petitioner acted in self-defense or defense of  
16 another, provided that, if petitioner utilized force, such  
17 force was justifiable under Article 7 of the Criminal Code  
18 of 2012;

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

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

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

25 (7) Conduct by any family or household member excused  
26 the abuse by respondent, unless that same conduct would

1           have excused such abuse if the parties had not been family  
2           or household members.

3           (Source: P.A. 97-158, eff. 1-1-12; 97-1131, eff. 1-1-13;  
4           97-1150, eff. 1-25-13; 98-63, eff. 7-9-13.)

5           Section 10. The Illinois Domestic Violence Act of 1986 is  
6           amended by changing Section 214 as follows:

7           (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

8           Sec. 214. Order of protection; remedies.

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

24          (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 2012, if  
13 such abuse, neglect, exploitation, or stalking has  
14 occurred or otherwise appears likely to occur if not  
15 prohibited.

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

25 (A) Right to occupancy. A party has a right to  
26 occupancy of a residence or household if it is solely

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

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

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

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

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

19                (A) If an order of protection grants petitioner  
20                exclusive possession of the residence, or prohibits  
21                respondent from entering the residence, or orders  
22                respondent to stay away from petitioner or other  
23                protected persons, then the court may allow respondent  
24                access to the residence to remove items of clothing and  
25                personal adornment used exclusively by respondent,  
26                medications, and other items as the court directs. The

1 right to access shall be exercised on only one occasion  
2 as the court directs and in the presence of an  
3 agreed-upon adult third party or law enforcement  
4 officer.

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

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



1           legal custodian of the respondent is responsible for  
2           transportation and other costs associated with the  
3           transfer or change.

4           (C) The court may order the parents, guardian, or  
5           legal custodian of a minor respondent to take certain  
6           actions or to refrain from taking certain actions to  
7           ensure that the respondent complies with the order. In  
8           the event the court orders a transfer of the respondent  
9           to another school, the parents, guardian, or legal  
10          custodian of the respondent is responsible for  
11          transportation and other costs associated with the  
12          change of school by the respondent.

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

25          (5) Physical care and possession of the minor child. In  
26          order to protect the minor child from abuse, neglect, or

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

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

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

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

24          (7) Visitation. Determine the visitation rights, if  
25          any, of respondent in any case in which the court awards  
26          physical care or temporary legal custody of a minor child

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

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

23 If necessary to protect any member of petitioner's  
24 family or household from future abuse, respondent shall be  
25 prohibited from coming to petitioner's residence to meet  
26 the minor child for visitation, and the parties shall

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

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

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

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

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

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

25 If petitioner's sole claim to ownership of the property  
26 is that it is marital property, the court may award

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

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

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

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

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

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

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

26 (11.5) Protection of animals. Grant the petitioner the

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

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

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

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

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

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

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

1 (14.5) Prohibition of firearm possession.

2 (a) A person who is subject to an existing order of  
3 protection, interim order of protection, emergency  
4 order of protection, or plenary order of protection,  
5 issued under this Act or a substantially similar order  
6 of protection issued by any other state, possession, or  
7 territory of the United States, or the District of  
8 Columbia may not lawfully possess firearms, firearm  
9 ammunition, stun guns, or tasers under Section 8.2 of  
10 the Firearm Owners Identification Card Act, ~~Prohibit a~~  
11 respondent against whom an order of protection was  
12 issued from possessing any firearms during the  
13 duration of the order if the order:

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

17 (2) restrains such person from harassing,  
18 stalking, or threatening an intimate partner of  
19 such person or child of such intimate partner or  
20 person, or engaging in other conduct that would  
21 place an intimate partner in reasonable fear of  
22 bodily injury to the partner or child; and

23 (3) (i) includes a finding that such person  
24 represents a credible threat to the physical  
25 safety of such intimate partner or child; or (ii)  
26 by its terms explicitly prohibits the use,



1            attempted use, or threatened use of physical force  
2            against such intimate partner or child that would  
3            reasonably be expected to cause bodily injury.

4            Any firearms, firearm ammunition, stun guns, or tasers  
5            in the possession of the respondent, except as provided  
6            in item (b) of this paragraph (14.5), shall be ordered  
7            by the court to be turned over to a person with a valid  
8            Firearm Owner's Identification Card for safekeeping.

9            The court shall order that the respondent's Firearm  
10           Owner's Identification Card be turned over to the local  
11           law enforcement agency, which shall immediately mail  
12           the card to the Department of State Police Firearm  
13           Owner's Identification Card Office for safekeeping.

14           The period of safekeeping shall be for the duration of  
15           the order of protection, interim order of protection,  
16           emergency order of protection, or plenary order of  
17           protection. The firearms, firearm ammunition, stun  
18           guns, or tasers and Firearm Owner's Identification

19           Card, if unexpired, shall at the respondent's request,  
20           be returned to the respondent at expiration of the  
21           order of protection, interim order of protection,  
22           emergency order of protection, or plenary order of  
23           protection. Any Firearm Owner's Identification Card in

24           the possession of the respondent, except as provided in  
25           subsection (b), shall be ordered by the court to be  
26           turned over to the local law enforcement agency. The

1 ~~local law enforcement agency shall immediately mail~~  
2 ~~the card to the Department of State Police Firearm~~  
3 ~~Owner's Identification Card Office for safekeeping.~~  
4 ~~The court shall issue a warrant for seizure of any~~  
5 ~~firearm in the possession of the respondent, to be kept~~  
6 ~~by the local law enforcement agency for safekeeping,~~  
7 ~~except as provided in subsection (b). The period of~~  
8 ~~safekeeping shall be for the duration of the order of~~  
9 ~~protection. The firearm or firearms and Firearm~~  
10 ~~Owner's Identification Card, if unexpired, shall at~~  
11 ~~the respondent's request, be returned to the~~  
12 ~~respondent at the end of the order of protection. It is~~  
13 the respondent's responsibility to notify the  
14 Department of State Police Firearm Owner's  
15 Identification Card Office.

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

24 (c) Upon expiration of the period of safekeeping,  
25 if the firearms or Firearm Owner's Identification Card  
26 cannot be returned to respondent because respondent

1 cannot be located, fails to respond to requests to  
2 retrieve the firearms, or is not lawfully eligible to  
3 possess a firearm, upon petition from the local law  
4 enforcement agency, the court may order the local law  
5 enforcement agency to destroy the firearms, use the  
6 firearms for training purposes, or for any other  
7 application as deemed appropriate by the local law  
8 enforcement agency; or that the firearms be turned over  
9 to a third party who is lawfully eligible to possess  
10 firearms, and who does not reside with respondent.

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

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

26 (17) Order for injunctive relief. Enter injunctive

1 relief necessary or appropriate to prevent further abuse of  
2 a family or household member or further abuse, neglect, or  
3 exploitation of a high-risk adult with disabilities or to  
4 effectuate one of the granted remedies, if supported by the  
5 balance of hardships. If the harm to be prevented by the  
6 injunction is abuse or any other harm that one of the  
7 remedies listed in paragraphs (1) through (16) of this  
8 subsection is designed to prevent, no further evidence is  
9 necessary that the harm is an irreparable injury.

10 (c) Relevant factors; findings.

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

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

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

1 caretaker.

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

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

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

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

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

18 (i) That the court has considered the applicable  
19 relevant factors described in paragraphs (1) and (2) of  
20 this subsection.

21 (ii) Whether the conduct or actions of respondent,  
22 unless prohibited, will likely cause irreparable harm  
23 or continued abuse.

24 (iii) Whether it is necessary to grant the  
25 requested relief in order to protect petitioner or  
26 other alleged abused persons.

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

6           When a verified petition for an emergency order of  
7 protection in accordance with the requirements of Sections  
8 203 and 217 is presented to the court, the court shall  
9 examine petitioner on oath or affirmation. An emergency  
10 order of protection shall be issued by the court if it  
11 appears from the contents of the petition and the  
12 examination of petitioner that the averments are  
13 sufficient to indicate abuse by respondent and to support  
14 the granting of relief under the issuance of the emergency  
15 order of protection.

16           (5) Never married parties. No rights or  
17 responsibilities for a minor child born outside of marriage  
18 attach to a putative father until a father and child  
19 relationship has been established under the Illinois  
20 Parentage Act of 1984, the Illinois Public Aid Code,  
21 Section 12 of the Vital Records Act, the Juvenile Court Act  
22 of 1987, the Probate Act of 1985, the Revised Uniform  
23 Reciprocal Enforcement of Support Act, the Uniform  
24 Interstate Family Support Act, the Expedited Child Support  
25 Act of 1990, any judicial, administrative, or other act of  
26 another state or territory, any other Illinois statute, or

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

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

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

25 (1) Respondent has cause for any use of force, unless  
26 that cause satisfies the standards for justifiable use of

1 force provided by Article 7 of the Criminal Code of 2012;

2 (2) Respondent was voluntarily intoxicated;

3 (3) Petitioner acted in self-defense or defense of  
4 another, provided that, if petitioner utilized force, such  
5 force was justifiable under Article 7 of the Criminal Code  
6 of 2012;

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

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

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

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

19 (Source: P.A. 96-701, eff. 1-1-10; 96-1239, eff. 1-1-11;  
20 97-158, eff. 1-1-12; 97-294, eff. 1-1-12; 97-813, eff. 7-13-12;  
21 97-1131, eff. 1-1-13; 97-1150, eff. 1-25-13.)