



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/05/04, by John A. Fritchey

SYNOPSIS AS INTRODUCED:

740 ILCS 22/103
740 ILCS 22/202
740 ILCS 22/204.3 new
740 ILCS 22/213
740 ILCS 22/214
740 ILCS 22/217
740 ILCS 22/218
740 ILCS 22/218.5 new

Amends the Civil No Contact Order Act. Removes the definition of "abuse". Defines "stay away". Provides that the court shall provide, through the office of the clerk of the court, simplified forms for filing a petition (instead of simplified forms and clerical assistance to help with the writing and filing of a petition). Provides that the court may appoint counsel to represent the petitioner if the respondent is represented by counsel. Changes what a civil no contact order may contain. Provides that an emergency civil no contact order shall be issued by the court if it appears from the contents of the petition and the examination of the petitioner that the averments are sufficient to indicate nonconsensual sexual penetration by the respondent and to support the granting of relief under the issuance of the civil no contact order. Removes from the requirements that must be stated in the civil no contact order the name of each person (other than the victim) protected by the order and that the person is protected by the Act. Provides that, for emergency civil no contact orders, the order must state that the respondent may petition the court to reopen the order if he or she did not receive actual prior notice of the hearing and if the respondent alleges that he or she had a meritorious defense to the order or that the order or its remedy is not authorized by the Act. Makes other changes. Effective September 1, 2004.

LRB093 19071 LCB 46845 b

1 AN ACT concerning civil no contact orders.

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

4 Section 5. The Civil No Contact Order Act is amended by
5 changing Sections 103, 202, 213, 214, 217, and 218 and by
6 adding Sections 204.3 and 218.5 as follows:

7 (740 ILCS 22/103)

8 Sec. 103. Definitions. As used in this Act:

9 ~~"Abuse" means physical abuse, harassment, intimidation of~~
10 ~~a dependent, or interference with personal liberty.~~

11 "Civil no contact order" means an emergency order or
12 plenary order granted under this Act, which includes a remedy
13 authorized by Section 213 of this Act.

14 "Non-consensual" means a lack of freely given agreement.

15 "Petitioner" means any named petitioner for the no contact
16 order or any named victim of non-consensual sexual conduct or
17 non-consensual sexual penetration on whose behalf the petition
18 is brought.

19 "Sexual conduct" means any intentional or knowing touching
20 or fondling by the petitioner or the respondent, either
21 directly or through clothing, of the sex organs, anus, or
22 breast of the petitioner or the respondent, or any part of the
23 body of a child under 13 years of age, or any transfer or
24 transmission of semen by the respondent upon any part of the
25 clothed or unclothed body of the petitioner, for the purpose of
26 sexual gratification or arousal of the petitioner or the
27 respondent.

28 "Sexual penetration" means any contact, however slight,
29 between the sex organ or anus of one person by an object, the
30 sex organ, mouth or anus of another person, or any intrusion,
31 however slight, of any part of the body of one person or of any
32 animal or object into the sex organ or anus of another person,

1 including but not limited to cunnilingus, fellatio or anal
2 penetration. Evidence of emission of semen is not required to
3 prove sexual penetration.

4 "Stay away" means to refrain from both physical presence
5 and nonphysical contact with the petitioner directly,
6 indirectly, or through third parties who may or may not know of
7 the order. "Nonphysical contact" includes, but is not limited
8 to, telephone calls, mail, e-mail, fax, and written notes.

9 (Source: P.A. 93-236, eff. 1-1-04.)

10 (740 ILCS 22/202)

11 Sec. 202. Commencement of action; filing fees.

12 (a) An action for a civil no contact order is commenced:

13 (1) independently, by filing a petition for a civil no
14 contact order in any civil court, unless specific courts
15 are designated by local rule or order; or

16 (2) in conjunction with a delinquency petition or a
17 criminal prosecution, by filing a petition for a civil no
18 contact order under the same case number as the delinquency
19 petition or criminal prosecution, to be granted during
20 pre-trial release of a defendant, with any dispositional
21 order issued under Section 5-710 of the Juvenile Court Act
22 of 1987 or as a condition of release, supervision,
23 conditional discharge, probation, periodic imprisonment,
24 parole, or mandatory supervised release, or in conjunction
25 with imprisonment or a bond forfeiture warrant, provided
26 that (i) the violation is alleged in an information,
27 complaint, indictment, or delinquency petition on file and
28 the alleged victim is a person protected by this Act, and
29 (ii) the petition, which is filed by the State's Attorney,
30 names a victim of the alleged crime as a petitioner.

31 (b) Withdrawal or dismissal of any petition for a civil no
32 contact order prior to adjudication where the petitioner is
33 represented by the State shall operate as a dismissal without
34 prejudice. No action for a civil no contact order shall be
35 dismissed because the respondent is being prosecuted for a

1 crime against the petitioner. For any action commenced under
2 item (2) of subsection (a) of this Section, dismissal of the
3 conjoined case (or a finding of not guilty) shall not require
4 dismissal of the action for a civil no contact order; instead,
5 it may be treated as an independent action and, if necessary
6 and appropriate, transferred to a different court or division.

7 (c) No fee shall be charged by the clerk of the court for
8 filing petitions or modifying or certifying orders. No fee
9 shall be charged by the sheriff for service by the sheriff of a
10 petition, rule, motion, or order in an action commenced under
11 this Section.

12 (d) The court shall provide, through the office of the
13 clerk of the court, simplified forms for ~~and clerical~~
14 ~~assistance to help with the writing and~~ filing of a petition
15 under this Section by any person not represented by counsel.

16 (Source: P.A. 93-236, eff. 1-1-04.)

17 (740 ILCS 22/204.3 new)

18 Sec. 204.3. Appointment of counsel. The court may appoint
19 counsel to represent the petitioner if the respondent is
20 represented by counsel.

21 (740 ILCS 22/213)

22 Sec. 213. Civil no contact order; remedy.

23 (a) If the court finds that the petitioner has been a
24 victim of non-consensual sexual conduct or non-consensual
25 sexual penetration, a civil no contact order shall issue;
26 provided that the petitioner must also satisfy the requirements
27 of Section 214 on emergency orders or Section 215 on plenary
28 orders. The petitioner shall not be denied a civil no contact
29 order because the petitioner or the respondent is a minor. The
30 court, when determining whether or not to issue a civil no
31 contact order, may not require physical injury on the person of
32 the victim. Modification and extension of prior civil no
33 contact orders shall be in accordance with this Act.

34 (b) A civil no contact order shall order one or more of the

1 following:

2 (1) order the respondent to stay away from the
3 petitioner; or

4 (2) other injunctive relief necessary or appropriate.
5 ~~Order the respondent to stay away from any other person~~
6 ~~protected by the civil no contact order;~~

7 ~~(3) prohibit the respondent from abuse, as defined in~~
8 ~~this Act, or stalking of the petitioner, as defined in~~
9 ~~Section 12-7.3 of the Criminal Code of 1961, if the abuse~~
10 ~~or stalking has occurred or otherwise appears likely to~~
11 ~~occur if not prohibited; or~~

12 ~~(4) prohibit the respondent from entering or remaining~~
13 ~~present at the petitioner's school or place of employment,~~
14 ~~or both, or other specified places at times when the~~
15 ~~petitioner is present, if reasonable, given the balance of~~
16 ~~hardships. Hardships need not be balanced for the court to~~
17 ~~enter a stay away order or prohibit entry if the respondent~~
18 ~~has no right to enter the premises.~~

19 (c) Denial of a remedy may not be based, in whole or in
20 part, on evidence that:

21 (1) the respondent has cause for any use of force,
22 unless that cause satisfies the standards for justifiable
23 use of force provided by Article VII of the Criminal Code
24 of 1961;

25 (2) the respondent was voluntarily intoxicated;

26 (3) the petitioner acted in self-defense or defense of
27 another, provided that, if the petitioner utilized force,
28 such force was justifiable under Article VII of the
29 Criminal Code of 1961;

30 (4) the petitioner did not act in self-defense or
31 defense of another;

32 (5) the petitioner left the residence or household to
33 avoid further non-consensual sexual conduct or
34 non-consensual sexual penetration by the respondent; or

35 (6) the petitioner did not leave the residence or
36 household to avoid further non-consensual sexual conduct

1 or non-consensual sexual penetration by the respondent.

2 (d) Monetary damages are not recoverable as a remedy.

3 (Source: P.A. 93-236, eff. 1-1-04.)

4 (740 ILCS 22/214)

5 Sec. 214. Emergency civil no contact order.

6 (a) An emergency civil no contact order shall issue if the
7 petitioner satisfies the requirements of this subsection (a).

8 The petitioner shall establish that:

9 (1) the court has jurisdiction under Section 206 ~~208~~;

10 (2) the requirements of Section 213 are satisfied; and

11 (3) there is good cause to grant the remedy, regardless
12 of prior service of process or of notice upon the
13 respondent, because the harm which that remedy is intended
14 to prevent would be likely to occur if the respondent were
15 given any prior notice, or greater notice than was actually
16 given, of the petitioner's efforts to obtain judicial
17 relief.

18 An emergency civil no contact order shall be issued by the
19 court if it appears from the contents of the petition and the
20 examination of the petitioner that the averments are sufficient
21 to indicate nonconsensual sexual penetration by the respondent
22 and to support the granting of relief under the issuance of the
23 civil no contact order.

24 An emergency civil no contact order shall be issued if the
25 court finds that subsections (1), (2), and (3) above are met.

26 (b) If the respondent appears in court for this hearing for
27 an emergency order, he or she may elect to file a general
28 appearance and testify. Any resulting order may be an emergency
29 order, governed by this Section. Notwithstanding the
30 requirements of this Section, if all requirements of Section
31 215 have been met, the court may issue a plenary order.

32 (c) Emergency orders; court holidays and evenings.

33 (1) When the court is unavailable at the close of
34 business, the petitioner may file a petition for a 21-day
35 emergency order before any available circuit judge or

1 associate judge who may grant relief under this Act. If the
2 judge finds that there is an immediate and present danger
3 of abuse against the petitioner and that the petitioner has
4 satisfied the prerequisites set forth in subsection (a),
5 that judge may issue an emergency civil no contact order.

6 (2) The chief judge of the circuit court may designate
7 for each county in the circuit at least one judge to be
8 reasonably available to issue orally, by telephone, by
9 facsimile, or otherwise, an emergency civil no contact
10 order at all times, whether or not the court is in session.

11 (3) Any order issued under this Section and any
12 documentation in support of the order shall be certified on
13 the next court day to the appropriate court. The clerk of
14 that court shall immediately assign a case number, file the
15 petition, order, and other documents with the court, and
16 enter the order of record and file it with the sheriff for
17 service, in accordance with Section 222. Filing the
18 petition shall commence proceedings for further relief
19 under Section 202. Failure to comply with the requirements
20 of this paragraph (3) does not affect the validity of the
21 order.

22 (Source: P.A. 93-236, eff. 1-1-04.)

23 (740 ILCS 22/217)

24 Sec. 217. Contents of orders.

25 (a) Any civil no contact order shall describe each remedy
26 granted by the court, in reasonable detail and not by reference
27 to any other document, so that the respondent may clearly
28 understand what he or she must do or refrain from doing.

29 (b) A civil no contact order shall further state the
30 following:

31 (1) The name of each petitioner that the court finds
32 was the victim of non-consensual sexual conduct or
33 non-consensual sexual penetration by the respondent ~~and~~
34 ~~the name of each other person protected by the order and~~
35 ~~that the person is protected by this Act.~~

1 (2) The date and time the civil no contact order was
2 issued, whether it is an emergency or plenary order, and
3 the duration of the order.

4 (3) The date, time, and place for any scheduled hearing
5 for extension of that civil no contact order or for another
6 order of greater duration or scope.

7 (4) For each remedy in an emergency civil no contact
8 order, the reason for entering that remedy without prior
9 notice to the respondent or greater notice than was
10 actually given.

11 (5) For emergency civil no contact orders, that the
12 respondent may petition the court, in accordance with
13 Section 218.5, to reopen the order if he or she did not
14 receive actual prior notice of the hearing as required
15 under Section 209 of this Act and if the respondent alleges
16 that he or she had a meritorious defense to the order or
17 that the order or its remedy is not authorized by this Act.

18 (c) A civil no contact order shall include the following
19 notice, printed in conspicuous type: "Any knowing violation of
20 a civil no contact order is a Class A misdemeanor. Any second
21 or subsequent violation is a Class 4 felony."

22 (Source: P.A. 93-236, eff. 1-1-04.)

23 (740 ILCS 22/218)

24 Sec. 218. Notice of orders.

25 (a) Upon issuance of any civil no contact order, the clerk
26 shall immediately, or on the next court day if an emergency
27 order is issued in accordance with subsection (c) of Section
28 214:

29 (1) enter the order on the record and file it in
30 accordance with the circuit court procedures; and

31 (2) provide a file stamped copy of the order to the
32 respondent, if present, and to the petitioner.

33 (b) The clerk of the issuing judge shall, or the petitioner
34 may, on the same day that a civil no contact order is issued,
35 file a certified copy of that order with the sheriff or other

1 law enforcement officials charged with maintaining Department
2 of State Police records or charged with serving the order upon
3 the respondent. If the order was issued in accordance with
4 subsection (c) of Section 214, the clerk shall, on the next
5 court day, file a certified copy of the order with the Sheriff
6 or other law enforcement officials charged with maintaining
7 Department of State Police records.

8 (c) Unless the respondent was present in court when the
9 order was issued, the sheriff, other law enforcement official,
10 or special process server shall promptly serve that order upon
11 the respondent and file proof of such service in the manner
12 provided for service of process in civil proceedings. If
13 process has not yet been served upon the respondent, it shall
14 be served with the order or short form notification. ~~A single
15 fee may be charged for service of an order obtained in civil
16 court, or for service of such an order together with process,
17 unless waived or deferred under Section 208.~~

18 (d) If the person against whom the civil no contact order
19 is issued is arrested and the written order is issued in
20 accordance with subsection (c) of Section 214 and received by
21 the custodial law enforcement agency before the respondent or
22 arrestee is released from custody, the custodial law
23 enforcement agent shall promptly serve the order upon the
24 respondent or arrestee before the respondent or arrestee is
25 released from custody. In no event shall detention of the
26 respondent or arrestee be extended for hearing on the petition
27 for civil no contact order or receipt of the order issued under
28 Section 214 of this Act.

29 (e) Any order extending, modifying, or revoking any civil
30 no contact order shall be promptly recorded, issued, and served
31 as provided in this Section.

32 (f) Upon the request of the petitioner, within 24 hours of
33 the issuance of a civil no contact order, the clerk of the
34 issuing judge shall send written notice of the order along with
35 a certified copy of the order to any school, college, or
36 university at which the petitioner is enrolled.

1 (Source: P.A. 93-236, eff. 1-1-04.)

2 (740 ILCS 22/218.5 new)

3 Sec. 218.5. Modification; reopening of orders.

4 (a) Except as otherwise provided in this Section, upon
5 motion by the petitioner, the court may modify an emergency or
6 plenary civil no contact order by altering the remedy, subject
7 to Section 213.

8 (b) After 30 days following entry of a plenary civil no
9 contact order, a court may modify that order only when a change
10 in the applicable law or facts since that plenary order was
11 entered warrants a modification of its terms.

12 (c) Upon 2 days' notice to the petitioner, or such shorter
13 notice as the court may prescribe, a respondent subject to an
14 emergency civil no contact order issued under this Act may
15 appear and petition the court to rehear the original or amended
16 petition. Any petition to rehear shall be verified and shall
17 allege the following:

18 (1) that the respondent did not receive prior notice of
19 the initial hearing in which the emergency order was
20 entered under Sections 209 and 214; and

21 (2) that the respondent had a meritorious defense to
22 the order or any of its remedies or that the order or any
23 of its remedies was not authorized by this Act.

24 Section 99. Effective date. This Act takes effect September
25 1, 2004.