



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB3044

Introduced 5/31/2008, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-22
750 ILCS 5/602.1

from Ch. 38, par. 112A-22
from Ch. 40, par. 602.1

Amends the Code of Criminal Procedure of 1963, if and only if the provisions of House Bill 5121 of the 95th General Assembly become law in the form it passed the House of Representatives. Provides that in a domestic violence case upon the request of the petitioner, the clerk shall send a certified copy of the order to each specified health care facility or health care provider requested by the petitioner. Provides that the health care provider may place the order in the child's records or use another method to identify these records. Provides that no health care provider who receives an order prohibiting a respondent's access to the records of any child who is protected by the order shall allow a respondent access to the records unless the order has expired or the respondent shows a certified copy of an order vacating the other order. Provides that nothing shall be construed to require altered billing procedures. Provides that any person or facility that is licensed to administer health care shall not be civilly liable for any act or omission for complying with these provisions. Amends the Illinois Marriage and Dissolution of Marriage Act, if and only if the provisions of House Bill 5121 of the 95th General Assembly become law in the form it passed the House of Representatives, by making a conforming change.

LRB095 21428 RLC 50830 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, if and only if the provisions of House Bill 5121 of
6 the 95th General Assembly become law in the form it passed the
7 House of Representatives, by changing Section 112A-22 as
8 follows:

9 (725 ILCS 5/112A-22) (from Ch. 38, par. 112A-22)

10 Sec. 112A-22. Notice of orders.

11 (a) Entry and issuance. Upon issuance of any order of
12 protection, the clerk shall immediately, or on the next court
13 day if an emergency order is issued in accordance with
14 subsection (c) of Section 112A-17, (i) enter the order on the
15 record and file it in accordance with the circuit court
16 procedures and (ii) provide a file stamped copy of the order to
17 respondent, if present, and to petitioner.

18 (b) Filing with sheriff. The clerk of the issuing judge
19 shall, or the petitioner may, on the same day that an order of
20 protection is issued, file a copy of that order with the
21 sheriff or other law enforcement officials charged with
22 maintaining Department of State Police records or charged with
23 serving the order upon respondent. If the order was issued in

1 accordance with subsection (c) of Section 112A-17, the clerk
2 shall on the next court day, file a certified copy of the order
3 with the Sheriff or other law enforcement officials charged
4 with maintaining Department of State Police records.

5 (c) Service by sheriff. Unless respondent was present in
6 court when the order was issued, the sheriff, other law
7 enforcement official or special process server shall promptly
8 serve that order upon respondent and file proof of such
9 service, in the manner provided for service of process in civil
10 proceedings. Instead of serving the order upon the respondent,
11 however, the sheriff, other law enforcement official, or
12 special process server may serve the respondent with a short
13 form notification as provided in Section 112A-22.10. If process
14 has not yet been served upon the respondent, it shall be served
15 with the order or short form notification.

16 (c-5) If the person against whom the order of protection is
17 issued is arrested and the written order is issued in
18 accordance with subsection (c) of Section 112A-17 and received
19 by the custodial law enforcement agency before the respondent
20 or arrestee is released from custody, the custodial law
21 enforcement agent shall promptly serve the order upon the
22 respondent or arrestee before the respondent or arrestee is
23 released from custody. In no event shall detention of the
24 respondent or arrestee be extended for hearing on the petition
25 for order of protection or receipt of the order issued under
26 Section 112A-17 of this Code.

1 (d) Extensions, modifications and revocations. Any order
2 extending, modifying or revoking any order of protection shall
3 be promptly recorded, issued and served as provided in this
4 Section.

5 (e) Notice to health care facilities and health care
6 practitioners. Upon the request of the petitioner, the clerk of
7 the circuit court shall send a certified copy of the order of
8 protection to any specified health care facility or health care
9 practitioner requested by the petitioner at the mailing address
10 provided by the petitioner.

11 (f) Disclosure by health care facilities and health care
12 practitioners. After receiving a certified copy of an order of
13 protection that prohibits a respondent's access to records, no
14 health care facility or health care practitioner shall allow a
15 respondent access to the records of any child who is a
16 protected person under the order of protection, or release
17 information in those records to the respondent, unless the
18 order has expired or the respondent shows a certified copy of
19 the court order vacating the corresponding order of protection
20 that was sent to the health care facility or practitioner.
21 Nothing in this Section shall be construed to require health
22 care facilities or health care practitioners to alter
23 procedures related to billing and payment. The health care
24 facility or health care practitioner may file the copy of the
25 order of protection in the records of a child who is a
26 protected person under the order of protection, or may employ

1 any other method to identify the records to which a respondent
2 is prohibited access. No health care facility or health care
3 practitioner shall be civilly or professionally liable for
4 reliance on a copy of an order of protection, except for
5 willful and wanton misconduct.

6 (Source: P.A. 92-162, eff. 1-1-02.)

7 Section 10. The Illinois Marriage and Dissolution of
8 Marriage Act is amended, if and only if the provisions of House
9 Bill 5121 of the 95th General Assembly become law in the form
10 it passed the House of Representatives, by changing Section
11 602.1 as follows:

12 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

13 Sec. 602.1. (a) The dissolution of marriage, the
14 declaration of invalidity of marriage, the legal separation of
15 the parents, or the parents living separate and apart shall not
16 diminish parental powers, rights, and responsibilities except
17 as the court for good reason may determine under the standards
18 of Section 602.

19 (b) Upon the application of either or both parents, or upon
20 its own motion, the court shall consider an award of joint
21 custody. Joint custody means custody determined pursuant to a
22 Joint Parenting Agreement or a Joint Parenting Order. In such
23 cases, the court shall initially request the parents to produce
24 a Joint Parenting Agreement. Such Agreement shall specify each

1 parent's powers, rights and responsibilities for the personal
2 care of the child and for major decisions such as education,
3 health care, and religious training. The Agreement shall
4 further specify a procedure by which proposed changes, disputes
5 and alleged breaches may be mediated or otherwise resolved and
6 shall provide for a periodic review of its terms by the
7 parents. In producing a Joint Parenting Agreement, the parents
8 shall be flexible in arriving at resolutions which further the
9 policy of this State as expressed in Sections 102 and 602. For
10 the purpose of assisting the court in making a determination
11 whether an award of joint custody is appropriate, the court may
12 order mediation and may direct that an investigation be
13 conducted pursuant to the provisions of Section 605. If there
14 is a danger to the health or safety of a partner, joint
15 mediation shall not be required by the court. In the event the
16 parents fail to produce a Joint Parenting Agreement, the court
17 may enter an appropriate Joint Parenting Order under the
18 standards of Section 602 which shall specify and contain the
19 same elements as a Joint Parenting Agreement, or it may award
20 sole custody under the standards of Sections 602, 607, and 608.

21 (c) The court may enter an order of joint custody if it
22 determines that joint custody would be in the best interests of
23 the child, taking into account the following:

24 (1) the ability of the parents to cooperate effectively
25 and consistently in matters that directly affect the joint
26 parenting of the child. "Ability of the parents to

1 cooperate" means the parents' capacity to substantially
2 comply with a Joint Parenting Order. The court shall not
3 consider the inability of the parents to cooperate
4 effectively and consistently in matters that do not
5 directly affect the joint parenting of the child;

6 (2) The residential circumstances of each parent; and

7 (3) all other factors which may be relevant to the best
8 interest of the child.

9 (d) Nothing within this section shall imply or presume that
10 joint custody shall necessarily mean equal parenting time. The
11 physical residence of the child in joint custodial situations
12 shall be determined by:

13 (1) express agreement of the parties; or

14 (2) order of the court under the standards of this
15 Section.

16 (e) Notwithstanding any other provision of law, access to
17 records and information pertaining to a child, including but
18 not limited to medical, dental, child care and school records,
19 shall not be denied to a parent for the reason that such parent
20 is not the child's custodial parent; however, no parent shall
21 have access to the school records of a child if the parent is
22 prohibited by an order of protection from inspecting or
23 obtaining such records pursuant to the Illinois Domestic
24 Violence Act of 1986, as now or hereafter amended. No parent
25 who is a named respondent in an order of protection issued
26 pursuant to the Domestic Violence Act of 1986 or the Code of

1 Criminal Procedure of 1963 shall have access to the health care
2 records of a child who is a protected person under that order
3 of protection.

4 (Source: P.A. 94-377, eff. 7-29-05; 09500HB5121eng.)