



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5489

Introduced 2/5/2010, by Rep. Randy Ramey, Jr.

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-14	from Ch. 38, par. 112A-14
725 ILCS 5/112A-17	from Ch. 38, par. 112A-17
750 ILCS 60/214	from Ch. 40, par. 2312-14

Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Makes changes so that the civil and criminal statutes relating to remedies when the court issues an order of protection are consistent.

LRB096 17403 RLC 32756 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 Sections 112A-14 and 112A-17 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, ~~or~~ 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) When a complaint is made under a request for an
13 order of protection, that the respondent has
14 threatened or is likely to use firearms illegally
15 against the petitioner, the court shall examine on oath
16 the petitioner, and any witnesses who may be produced.
17 If the court is satisfied that there is any danger of
18 the illegal use of firearms, and the respondent is
19 present in court, it shall issue an order that any
20 firearms in the possession of the respondent, except as
21 provided in subsection (b), be turned over to the local
22 law enforcement agency for safekeeping. If the court is
23 satisfied that there is any danger of the illegal use
24 of firearms, and the respondent is present in court, it
25 shall issue an order that the respondent's Firearm
26 Owner's Identification Card be turned over to the local

1 law enforcement agency for safekeeping. If the court is
2 satisfied that there is any danger of the illegal use
3 of firearms, and if the respondent is not present in
4 court, the court shall issue a warrant for seizure of
5 the respondent's Firearm Owner's Identification Card
6 and any firearm in the possession of the respondent,
7 except as provided in subsection (b), be turned over to
8 the local law enforcement agency for safekeeping. The
9 period of safekeeping shall be for a stated period of
10 time not to exceed 2 years. The firearm or firearms
11 shall be returned to the respondent at the end of the
12 stated period or at expiration of the order of
13 protection, whichever is sooner.

14 (b) If the respondent is a peace officer as defined
15 in Section 2-13 of the Criminal Code of 1961, the court
16 shall order that any firearms used by the respondent in
17 the performance of his or her duties as a peace officer
18 be surrendered to the chief law enforcement executive
19 of the agency in which the respondent is employed, who
20 shall retain the firearms for safekeeping for the
21 stated period not to exceed 2 years as set forth in the
22 court order.

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

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

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

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

25 (17) Order for injunctive relief. Enter injunctive
26 relief necessary or appropriate to prevent further abuse of

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

8 (c) Relevant factors; findings.

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

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

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

26 (2) In comparing relative hardships resulting to the

1 parties from loss of possession of the family home, the
2 court shall consider relevant factors, including but not
3 limited to the following:

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

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

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

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

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

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

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

25 (4) For purposes of issuing an ex parte emergency order
26 of protection, the court, as an alternative to or as a

1 supplement to making the findings described in paragraphs
2 (c) (3) (i) through (c) (3) (iii) of this subsection, may use
3 the following procedure:

4 When a verified petition for an emergency order of
5 protection in accordance with the requirements of Sections
6 112A-5 and 112A-17 is presented to the court, the court
7 shall examine petitioner on oath or affirmation. An
8 emergency order of protection shall be issued by the court
9 if it appears from the contents of the petition and the
10 examination of petitioner that the averments are
11 sufficient to indicate abuse by respondent and to support
12 the granting of relief under the issuance of the emergency
13 order of protection.

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

23 (d) Balance of hardships; findings. If the court finds that
24 the balance of hardships does not support the granting of a
25 remedy governed by paragraph (2), (3), (10), (11), or (16) of
26 subsection (b) of this Section, which may require such

1 balancing, the court's findings shall so indicate and shall
2 include a finding as to whether granting the remedy will result
3 in hardship to respondent that would substantially outweigh the
4 hardship to petitioner from denial of the remedy. The findings
5 shall be an official record or in writing.

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

8 (1) Respondent has cause for any use of force, unless
9 that cause satisfies the standards for justifiable use of
10 force provided by Article VII of the Criminal Code of 1961;

11 (2) Respondent was voluntarily intoxicated;

12 (3) Petitioner acted in self-defense or defense of
13 another, provided that, if petitioner utilized force, such
14 force was justifiable under Article VII of the Criminal
15 Code of 1961;

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

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

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

22 (7) Conduct by any family or household member excused
23 the abuse by respondent, unless that same conduct would
24 have excused such abuse if the parties had not been family
25 or household members.

26 (Source: P.A. 95-234, eff. 1-1-08; 95-773, eff. 1-1-09; 96-701,

1 eff. 1-1-10.)

2 (725 ILCS 5/112A-17) (from Ch. 38, par. 112A-17)

3 Sec. 112A-17. Emergency order of protection.

4 (a) Prerequisites. An emergency order of protection shall
5 issue if petitioner satisfies the requirements of this
6 subsection for one or more of the requested remedies. For each
7 remedy requested, petitioner shall establish that:

8 (1) The court has jurisdiction under Section 112A-9;

9 (2) The requirements of Section 112A-14 are satisfied;

10 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:

14 (i) For the remedies of "prohibition of abuse"
15 described in Section 112A-14(b)(1), "stay away order
16 and additional prohibitions" described in Section
17 112A-14(b)(3), "removal or concealment of minor child"
18 described in Section 112A-14(b)(8), "order to appear"
19 described in Section 112A-14(b)(9), "physical care and
20 possession of the minor child" described in Section
21 112A-14(b)(5), "protection of property" described in
22 Section 112A-14(b)(11), "prohibition of entry"
23 described in Section 112A-14(b)(14), "prohibition of
24 firearm possession" described in Section
25 112A-14(b)(14.5), "prohibition of access to records"

1 described in Section 112A-14(b)(15), and "injunctive
2 relief" described in Section 112A-14(b)(16), the harm
3 which that remedy is intended to prevent would be
4 likely to occur if the respondent were given any prior
5 notice, or greater notice than was actually given, of
6 the petitioner's efforts to obtain judicial relief;

7 (ii) For the remedy of "grant of exclusive
8 possession of residence" described in Section
9 112A-14(b)(2), the immediate danger of further abuse
10 of petitioner by respondent, if petitioner chooses or
11 had chosen to remain in the residence or household
12 while respondent was given any prior notice or greater
13 notice than was actually given of petitioner's efforts
14 to obtain judicial relief, outweighs the hardships to
15 respondent of an emergency order granting petitioner
16 exclusive possession of the residence or household.
17 This remedy shall not be denied because petitioner has
18 or could obtain temporary shelter elsewhere while
19 prior notice is given to respondent, unless the
20 hardships to respondent from exclusion from the home
21 substantially outweigh those to petitioner.

22 (iii) For the remedy of "possession of personal
23 property" described in Section 112A-14(b)(10),
24 improper disposition of the personal property would be
25 likely to occur if respondent were given any prior
26 notice, or greater notice than was actually given, of

1 petitioner's efforts to obtain judicial relief, or
2 petitioner has an immediate and pressing need for
3 possession of that property.

4 An emergency order may not include the counseling, legal
5 custody, payment of support or monetary compensation remedies.

6 (b) Appearance by respondent. If respondent appears in
7 court for this hearing for an emergency order, he or she may
8 elect to file a general appearance and testify. Any resulting
9 order may be an emergency order, governed by this Section.
10 Notwithstanding the requirements of this Section, if all
11 requirements of Section 112A-18 have been met, the Court may
12 issue a 30-day interim order.

13 (c) Emergency orders: court holidays and evenings.

14 (1) Prerequisites. When the court is unavailable at the
15 close of business, the petitioner may file a petition for a
16 21-day emergency order before any available circuit judge
17 or associate judge who may grant relief under this Article.
18 If the judge finds that there is an immediate and present
19 danger of abuse to petitioner and that petitioner has
20 satisfied the prerequisites set forth in subsection (a) of
21 Section 112A-17, that judge may issue an emergency order of
22 protection.

23 (1.5) Issuance of order. The chief judge of the circuit
24 court may designate for each county in the circuit at least
25 one judge to be reasonably available to issue orally, by
26 telephone, by facsimile, or otherwise, an emergency order

1 of protection at all times, whether or not the court is in
2 session.

3 (2) Certification and transfer. Any order issued under
4 this Section and any documentation in support thereof shall
5 be certified on the next court day to the appropriate
6 court. The clerk of that court shall immediately assign a
7 case number, file the petition, order and other documents
8 with the court and enter the order of record and file it
9 with the sheriff for service, in accordance with Section
10 112A-22. Filing the petition shall commence proceedings
11 for further relief, under Section 112A-2. Failure to comply
12 with the requirements of this subsection shall not affect
13 the validity of the order.

14 (Source: P.A. 90-392, eff. 1-1-98.)

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

17 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

18 Sec. 214. Order of protection; remedies.

19 (a) Issuance of order. If the court finds that petitioner
20 has been abused by a family or household member or that
21 petitioner is a high-risk adult who has been abused, neglected,
22 or exploited, as defined in this Act, an order of protection
23 prohibiting the abuse, neglect, or exploitation shall issue;
24 provided that petitioner must also satisfy the requirements of

1 one of the following Sections, as appropriate: Section 217 on
2 emergency orders, Section 218 on interim orders, or Section 219
3 on plenary orders. Petitioner shall not be denied an order of
4 protection because petitioner or respondent is a minor. The
5 court, when determining whether or not to issue an order of
6 protection, shall not require physical manifestations of abuse
7 on the person of the victim. Modification and extension of
8 prior orders of protection shall be in accordance with this
9 Act.

10 (b) Remedies and standards. The remedies to be included in
11 an order of protection shall be determined in accordance with
12 this Section and one of the following Sections, as appropriate:
13 Section 217 on emergency orders, Section 218 on interim orders,
14 and Section 219 on plenary orders. The remedies listed in this
15 subsection shall be in addition to other civil or criminal
16 remedies available to petitioner.

17 (1) Prohibition of abuse, neglect, or exploitation.
18 Prohibit respondent's harassment, interference with
19 personal liberty, intimidation of a dependent, physical
20 abuse, or willful deprivation, neglect or exploitation, as
21 defined in this Act, or stalking of the petitioner, as
22 defined in Section 12-7.3 of the Criminal Code of 1961, if
23 such abuse, neglect, exploitation, or stalking has
24 occurred or otherwise appears likely to occur if not
25 prohibited.

26 (2) Grant of exclusive possession of residence.

1 Prohibit respondent from entering or remaining in any
2 residence, household, or premises of the petitioner,
3 including one owned or leased by respondent, if petitioner
4 has a right to occupancy thereof. The grant of exclusive
5 possession of the residence, household, or premises shall
6 not affect title to real property, nor shall the court be
7 limited by the standard set forth in Section 701 of the
8 Illinois Marriage and Dissolution of Marriage Act.

9 (A) Right to occupancy. A party has a right to
10 occupancy of a residence or household if it is solely
11 or jointly owned or leased by that party, that party's
12 spouse, a person with a legal duty to support that
13 party or a minor child in that party's care, or by any
14 person or entity other than the opposing party that
15 authorizes that party's occupancy (e.g., a domestic
16 violence shelter). Standards set forth in subparagraph
17 (B) shall not preclude equitable relief.

18 (B) Presumption of hardships. If petitioner and
19 respondent each has the right to occupancy of a
20 residence or household, the court shall balance (i) the
21 hardships to respondent and any minor child or
22 dependent adult in respondent's care resulting from
23 entry of this remedy with (ii) the hardships to
24 petitioner and any minor child or dependent adult in
25 petitioner's care resulting from continued exposure to
26 the risk of abuse (should petitioner remain at the

1 residence or household) or from loss of possession of
2 the residence or household (should petitioner leave to
3 avoid the risk of abuse). When determining the balance
4 of hardships, the court shall also take into account
5 the accessibility of the residence or household.
6 Hardships need not be balanced if respondent does not
7 have a right to occupancy.

8 The balance of hardships is presumed to favor
9 possession by petitioner unless the presumption is
10 rebutted by a preponderance of the evidence, showing
11 that the hardships to respondent substantially
12 outweigh the hardships to petitioner and any minor
13 child or dependent adult in petitioner's care. The
14 court, on the request of petitioner or on its own
15 motion, may order respondent to provide suitable,
16 accessible, alternate housing for petitioner instead
17 of excluding respondent from a mutual residence or
18 household.

19 (3) Stay away order and additional prohibitions. Order
20 respondent to stay away from petitioner or any other person
21 protected by the order of protection, or prohibit
22 respondent from entering or remaining present at
23 petitioner's school, place of employment, or other
24 specified places at times when petitioner is present, or
25 both, if reasonable, given the balance of hardships.
26 Hardships need not be balanced for the court to enter a

1 stay away order or prohibit entry if respondent has no
2 right to enter the premises.

3 If an order of protection grants petitioner exclusive
4 possession of the residence, or prohibits respondent from
5 entering the residence, or orders respondent to stay away
6 from petitioner or other protected persons, then the court
7 may allow respondent access to the residence to remove
8 items of clothing and personal adornment used exclusively
9 by respondent, medications, and other items as the court
10 directs. The right to access shall be exercised on only one
11 occasion as the court directs and in the presence of an
12 agreed-upon adult third party or law enforcement officer.

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) When a complaint is made under a request for an
3 order of protection, that the respondent has
4 threatened or is likely to use firearms illegally
5 against the petitioner, ~~and the respondent is present~~
6 ~~in court, or has failed to appear after receiving~~
7 ~~actual notice,~~ the court shall examine on oath the
8 petitioner, and any witnesses who may be produced. If
9 the court is satisfied that there is any danger of the
10 illegal use of firearms, and the respondent is present
11 in court, it shall issue an order that any firearms and
12 any Firearm Owner's Identification Card in the
13 possession of the respondent, except as provided in
14 subsection (b), be turned over to the local law
15 enforcement agency for safekeeping. If the court is
16 satisfied that there is any danger of the illegal use
17 of firearms, and if ~~if~~ the respondent is not present in
18 court has failed to appear, the court shall issue a
19 warrant for seizure of any firearm and Firearm Owner's
20 Identification Card in the possession of the
21 respondent, to be kept by the local law enforcement
22 agency for safekeeping, except as provided in
23 subsection (b). The period of safekeeping shall be for
24 a stated period of time not to exceed 2 years. The
25 firearm or firearms and Firearm Owner's Identification
26 Card shall be returned to the respondent at the end of

1 the stated period or at expiration of the order of
2 protection, whichever is sooner.

3 (b) If the respondent is a peace officer as defined
4 in Section 2-13 of the Criminal Code of 1961, the court
5 shall order that any firearms used by the respondent in
6 the performance of his or her duties as a peace officer
7 be surrendered to the chief law enforcement executive
8 of the agency in which the respondent is employed, who
9 shall retain the firearms for safekeeping for the
10 stated period not to exceed 2 years as set forth in the
11 court order.

12 (c) Upon expiration of the period of safekeeping,
13 if the firearms or Firearm Owner's Identification Card
14 cannot be returned to respondent because respondent
15 cannot be located, fails to respond to requests to
16 retrieve the firearms, or is not lawfully eligible to
17 possess a firearm, upon petition from the local law
18 enforcement agency, the court may order the local law
19 enforcement agency to destroy the firearms, use the
20 firearms for training purposes, or for any other
21 application as deemed appropriate by the local law
22 enforcement agency; or that the firearms be turned over
23 to a third party who is lawfully eligible to possess
24 firearms, and who does not reside with respondent.

25 (15) Prohibition of access to records. If an order of
26 protection prohibits respondent from having contact with

1 the minor child, or if petitioner's address is omitted
2 under subsection (b) of Section 203, or if necessary to
3 prevent abuse or wrongful removal or concealment of a minor
4 child, the order shall deny respondent access to, and
5 prohibit respondent from inspecting, obtaining, or
6 attempting to inspect or obtain, school or any other
7 records of the minor child who is in the care of
8 petitioner.

9 (16) Order for payment of shelter services. Order
10 respondent to reimburse a shelter providing temporary
11 housing and counseling services to the petitioner for the
12 cost of the services, as certified by the shelter and
13 deemed reasonable by the court.

14 (17) Order for injunctive relief. Enter injunctive
15 relief necessary or appropriate to prevent further abuse of
16 a family or household member or further abuse, neglect, or
17 exploitation of a high-risk adult with disabilities or to
18 effectuate one of the granted remedies, if supported by the
19 balance of hardships. If the harm to be prevented by the
20 injunction is abuse or any other harm that one of the
21 remedies listed in paragraphs (1) through (16) of this
22 subsection is designed to prevent, no further evidence is
23 necessary that the harm is an irreparable injury.

24 (c) Relevant factors; findings.

25 (1) In determining whether to grant a specific remedy,
26 other than payment of support, the court shall consider

1 relevant factors, including but not limited to the
2 following:

3 (i) the nature, frequency, severity, pattern and
4 consequences of the respondent's past abuse, neglect
5 or exploitation of the petitioner or any family or
6 household member, including the concealment of his or
7 her location in order to evade service of process or
8 notice, and the likelihood of danger of future abuse,
9 neglect, or exploitation to petitioner or any member of
10 petitioner's or respondent's family or household; and

11 (ii) the danger that any minor child will be abused
12 or neglected or improperly removed from the
13 jurisdiction, improperly concealed within the State or
14 improperly separated from the child's primary
15 caretaker.

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

20 (i) availability, accessibility, cost, safety,
21 adequacy, location and other characteristics of
22 alternate housing for each party and any minor child or
23 dependent adult in the party's care;

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

25 (iii) the effect on the relationship of the party,
26 and any minor child or dependent adult in the party's

1 care, to family, school, church and community.

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

6 (i) That the court has considered the applicable
7 relevant factors described in paragraphs (1) and (2) of
8 this subsection.

9 (ii) Whether the conduct or actions of respondent,
10 unless prohibited, will likely cause irreparable harm
11 or continued abuse.

12 (iii) Whether it is necessary to grant the
13 requested relief in order to protect petitioner or
14 other alleged abused persons.

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

20 When a verified petition for an emergency order of
21 protection in accordance with the requirements of Sections
22 203 and 217 is presented to the court, the court shall
23 examine petitioner on oath or affirmation. An emergency
24 order of protection shall be issued by the court if it
25 appears from the contents of the petition and the
26 examination of petitioner that the averments are

1 sufficient to indicate abuse by respondent and to support
2 the granting of relief under the issuance of the emergency
3 order of protection.

4 (5) Never married parties. No rights or
5 responsibilities for a minor child born outside of marriage
6 attach to a putative father until a father and child
7 relationship has been established under the Illinois
8 Parentage Act of 1984, the Illinois Public Aid Code,
9 Section 12 of the Vital Records Act, the Juvenile Court Act
10 of 1987, the Probate Act of 1985, the Revised Uniform
11 Reciprocal Enforcement of Support Act, the Uniform
12 Interstate Family Support Act, the Expedited Child Support
13 Act of 1990, any judicial, administrative, or other act of
14 another state or territory, any other Illinois statute, or
15 by any foreign nation establishing the father and child
16 relationship, any other proceeding substantially in
17 conformity with the Personal Responsibility and Work
18 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
19 or where both parties appeared in open court or at an
20 administrative hearing acknowledging under oath or
21 admitting by affirmation the existence of a father and
22 child relationship. Absent such an adjudication, finding,
23 or acknowledgement, no putative father shall be granted
24 temporary custody of the minor child, visitation with the
25 minor child, or physical care and possession of the minor
26 child, nor shall an order of payment for support of the

1 minor child be entered.

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

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

13 (1) Respondent has cause for any use of force, unless
14 that cause satisfies the standards for justifiable use of
15 force provided by Article VII of the Criminal Code of 1961;

16 (2) Respondent was voluntarily intoxicated;

17 (3) Petitioner acted in self-defense or defense of
18 another, provided that, if petitioner utilized force, such
19 force was justifiable under Article VII of the Criminal
20 Code of 1961;

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

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

25 (6) Petitioner did not leave the residence or household
26 to avoid further abuse, neglect, or exploitation by

1 respondent;

2 (7) Conduct by any family or household member excused
3 the abuse, neglect, or exploitation by respondent, unless
4 that same conduct would have excused such abuse, neglect,
5 or exploitation if the parties had not been family or
6 household members.

7 (Source: P.A. 95-234, eff. 1-1-08; 95-773, eff. 1-1-09; 96-701,
8 eff. 1-1-10.)