

# HB5770



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB5770

by Rep. David Harris

#### 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 in issuing an order of protection, the court may restrain a party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage held for the benefit of the parties or a child or children of the parties for whom support may be ordered, or both.

LRB098 14162 HEP 48752 b

A BILL FOR

1 AN ACT concerning civil law.

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 restrain a party from cashing, borrowing  
8           against, canceling, transferring, disposing of, or  
9           changing the beneficiaries of any insurance or other  
10           coverage held for the benefit of the parties or a child or  
11           children of the parties for whom support may be ordered, or  
12           both.

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

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

26           (12) Order for payment of support. Order respondent to

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

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

22 (i) Losses affecting family needs. If a party is  
23 entitled to seek maintenance, child support or  
24 property distribution from the other party under the  
25 Illinois Marriage and Dissolution of Marriage Act, as  
26 now or hereafter amended, the court may order

1           respondent to reimburse petitioner's actual losses, to  
2           the extent that such reimbursement would be  
3           "appropriate temporary relief", as authorized by  
4           subsection (a) (3) of Section 501 of that Act.

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

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

17          (14.5) Prohibition of firearm possession.

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

24           (B) Any firearms in the possession of the  
25           respondent, except as provided in subparagraph (C) of  
26           this paragraph (14.5), shall be ordered by the court to

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

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

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

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

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

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

23 (17) Order for injunctive relief. Enter injunctive  
24 relief necessary or appropriate to prevent further abuse of  
25 a family or household member or to effectuate one of the  
26 granted remedies, if supported by the balance of hardships.

1           If the harm to be prevented by the injunction is abuse or  
2           any other harm that one of the remedies listed in  
3           paragraphs (1) through (16) of this subsection is designed  
4           to prevent, no further evidence is necessary to establish  
5           that the harm is an irreparable injury.

6           (c) Relevant factors; findings.

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

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

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

24          (2) In comparing relative hardships resulting to the  
25          parties from loss of possession of the family home, the  
26          court shall consider relevant factors, including but not

1 limited to the following:

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

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

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

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

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

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

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

23 (4) For purposes of issuing an ex parte emergency order  
24 of protection, the court, as an alternative to or as a  
25 supplement to making the findings described in paragraphs  
26 (c)(3)(i) through (c)(3)(iii) of this subsection, may use



1 the following procedure:

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

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

21 (d) Balance of hardships; findings. If the court finds that  
22 the balance of hardships does not support the granting of a  
23 remedy governed by paragraph (2), (3), (10), (11), or (16) of  
24 subsection (b) of this Section, which may require such  
25 balancing, the court's findings shall so indicate and shall  
26 include a finding as to whether granting the remedy will result

1 in hardship to respondent that would substantially outweigh the  
2 hardship to petitioner from denial of the remedy. The findings  
3 shall be an official record or in writing.

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

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

9 (2) Respondent was voluntarily intoxicated;

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

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

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

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

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

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

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

3           (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

4           Sec. 214. Order of protection; remedies.

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

20           (b) Remedies and standards. The remedies to be included in  
21 an order of protection shall be determined in accordance with  
22 this Section and one of the following Sections, as appropriate:  
23 Section 217 on emergency orders, Section 218 on interim orders,  
24 and Section 219 on plenary orders. The remedies listed in this  
25 subsection shall be in addition to other civil or criminal

1 remedies available to petitioner.

2 (1) Prohibition of abuse, neglect, or exploitation.  
3 Prohibit respondent's harassment, interference with  
4 personal liberty, intimidation of a dependent, physical  
5 abuse, or willful deprivation, neglect or exploitation, as  
6 defined in this Act, or stalking of the petitioner, as  
7 defined in Section 12-7.3 of the Criminal Code of 2012, if  
8 such abuse, neglect, exploitation, or stalking 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 (A) If an order of protection grants petitioner  
15 exclusive possession of the residence, or prohibits  
16 respondent from entering the residence, or orders  
17 respondent to stay away from petitioner or other  
18 protected persons, then the court may allow respondent  
19 access to the residence to remove items of clothing and  
20 personal adornment used exclusively by respondent,  
21 medications, and other items as the court directs. The  
22 right to access shall be exercised on only one occasion  
23 as the court directs and in the presence of an  
24 agreed-upon adult third party or law enforcement  
25 officer.

26 (B) When the petitioner and the respondent attend

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

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

25                   (C) The court may order the parents, guardian, or  
26          legal custodian of a minor respondent to take certain



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           The court may restrain a party from cashing, borrowing  
18 against, canceling, transferring, disposing of, or  
19 changing the beneficiaries of any insurance or other  
20 coverage held for the benefit of the parties or a child or  
21 children of the parties for whom support may be ordered, or  
22 both.

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

1           (11.5) Protection of animals. Grant the petitioner the  
2 exclusive care, custody, or control of any animal owned,  
3 possessed, leased, kept, or held by either the petitioner  
4 or the respondent or a minor child residing in the  
5 residence or household of either the petitioner or the  
6 respondent and order the respondent to stay away from the  
7 animal and forbid the respondent from taking,  
8 transferring, encumbering, concealing, harming, or  
9 otherwise disposing of the animal.

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

24           (13) Order for payment of losses. Order respondent to  
25 pay petitioner for losses suffered as a direct result of  
26 the abuse, neglect, or exploitation. Such losses shall

1 include, but not be limited to, medical expenses, lost  
2 earnings or other support, repair or replacement of  
3 property damaged or taken, reasonable attorney's fees,  
4 court costs and moving or other travel expenses, including  
5 additional reasonable expenses for temporary shelter and  
6 restaurant meals.

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

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

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

1 of the petitioner or the petitioner's children.

2 (14.5) Prohibition of firearm possession.

3 (a) Prohibit a respondent against whom an order of  
4 protection was issued from possessing any firearms  
5 during the duration of the order if the order:

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

9 (2) restrains such person from harassing,  
10 stalking, or threatening an intimate partner of  
11 such person or child of such intimate partner or  
12 person, or engaging in other conduct that would  
13 place an intimate partner in reasonable fear of  
14 bodily injury to the partner or child; and

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

22 Any Firearm Owner's Identification Card in the  
23 possession of the respondent, except as provided in  
24 subsection (b), shall be ordered by the court to be  
25 turned over to the local law enforcement agency. The  
26 local law enforcement agency shall immediately mail



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

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

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

9 (c) Relevant factors; findings.

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

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

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

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

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

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

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

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

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

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

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

26           (4) For purposes of issuing an ex parte emergency order

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

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

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

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

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

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

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

1 (2) Respondent was voluntarily intoxicated;

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

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

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

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

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

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