

SB3123



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3123

Introduced 2/2/2024, by Sen. Craig Wilcox

SYNOPSIS AS INTRODUCED:

750 ILCS 60/217

from Ch. 40, par. 2312-17

Amends the Illinois Domestic Violence Act of 1986. Provides that upon petition, the court shall order that a person against whom an emergency order of protection was issued shall have all records related to the emergency order expunged (unless the person violated the order) from the court's records and from the Illinois State Police's Law Enforcement Agencies Data System if: (1) the person who sought the emergency order fails to seek a plenary order of protection before the emergency order expires; (2) there is an agreed dismissal; or (3) the court denies the issuance of a plenary order of protection following the emergency order. Provides that the clerk shall immediately file the expungement order and all records to be expunged shall be expunged no later than 3 business days after the order. Effective June 1, 2024.

LRB103 38016 RLC 68148 b

A BILL FOR

1 AN ACT concerning domestic violence.

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

4 Section 5. The Illinois Domestic Violence Act of 1986 is
5 amended by changing Section 217 as follows:

6 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

7 Sec. 217. Emergency order of protection.

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

12 (1) The court has jurisdiction under Section 208;

13 (2) The requirements of Section 214 are satisfied; and

14 (3) There is good cause to grant the remedy,
15 regardless of prior service of process or of notice upon
16 the respondent, because:

17 (i) For the remedies of "prohibition of abuse"
18 described in Section 214(b)(1), "stay away order and
19 additional prohibitions" described in Section
20 214(b)(3), "removal or concealment of minor child"
21 described in Section 214(b)(8), "order to appear"
22 described in Section 214(b)(9), "physical care and
23 possession of the minor child" described in Section

1 214(b)(5), "protection of property" described in
2 Section 214(b)(11), "prohibition of entry" described
3 in Section 214(b)(14), "prohibition of firearm
4 possession" described in Section 214(b)(14.5),
5 "prohibition of access to records" described in
6 Section 214(b)(15), and "injunctive relief" described
7 in Section 214(b)(16), the harm which that remedy is
8 intended to prevent would be likely to occur if the
9 respondent were given any prior notice, or greater
10 notice than was actually given, of the petitioner's
11 efforts to obtain judicial relief;

12 (ii) For the remedy of "grant of exclusive
13 possession of residence" described in Section
14 214(b)(2), the immediate danger of further abuse of
15 the petitioner by the respondent, if the petitioner
16 chooses or had chosen to remain in the residence or
17 household while the respondent was given any prior
18 notice or greater notice than was actually given of
19 the petitioner's efforts to obtain judicial relief,
20 outweighs the hardships to the respondent of an
21 emergency order granting the petitioner exclusive
22 possession of the residence or household. This remedy
23 shall not be denied because the petitioner has or
24 could obtain temporary shelter elsewhere while prior
25 notice is given to the respondent, unless the
26 hardships to respondent from exclusion from the home

1 substantially outweigh those to the petitioner;

2 (iii) For the remedy of "possession of personal
3 property" described in Section 214(b)(10), improper
4 disposition of the personal property would be likely
5 to occur if the respondent were given any prior
6 notice, or greater notice than was actually given, of
7 the petitioner's efforts to obtain judicial relief, or
8 the petitioner has an immediate and pressing need for
9 possession of that property.

10 An emergency order may not include the counseling, legal
11 custody, payment of support, or monetary compensation
12 remedies.

13 (a-5) When a petition for an emergency order of protection
14 is granted, the order and file shall not be public and shall
15 only be accessible to the court, the petitioner, law
16 enforcement, a domestic violence advocate or counselor, the
17 counsel of record for either party, and the State's Attorney
18 for the county until the order is served on the respondent.

19 Accessibility to the order and file under this subsection
20 prior to the order being served on the respondent shall be in
21 accordance with Section 5 of the Court Record and Document
22 Accessibility Act.

23 (b) Appearance by respondent. If the respondent appears in
24 court for this hearing for an emergency order, he or she may
25 elect to file a general appearance and testify. Any resulting
26 order may be an emergency order, governed by this Section.

1 Notwithstanding the requirements of this Section, if all
2 requirements of Section 218 have been met, the court may issue
3 a 30-day interim order.

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

5 (1) Prerequisites. When the court is unavailable at
6 the close of business, the petitioner may file a petition
7 for a 21-day emergency order before any available circuit
8 judge or associate judge who may grant relief under this
9 Act. If the judge finds that there is an immediate and
10 present danger of abuse to the petitioner and that the
11 petitioner has satisfied the prerequisites set forth in
12 subsection (a) of Section 217, that judge may issue an
13 emergency order of protection.

14 (1.5) Issuance of order. The chief judge of the
15 circuit court may designate for each county in the circuit
16 at least one judge to be reasonably available to issue
17 orally, by telephone, by facsimile, or otherwise, an
18 emergency order of protection at all times, whether or not
19 the court is in session.

20 (2) Certification and transfer. The judge who issued
21 the order under this Section shall promptly communicate or
22 convey the order to the sheriff to facilitate the entry of
23 the order into the Law Enforcement Agencies Data System by
24 the Illinois State Police pursuant to Section 302. Any
25 order issued under this Section and any documentation in
26 support thereof shall be certified on the next court day

1 to the appropriate court. The clerk of that court shall
2 immediately assign a case number, file the petition, order
3 and other documents with the court, and enter the order of
4 record and file it with the sheriff for service, in
5 accordance with Section 222. Filing the petition shall
6 commence proceedings for further relief under Section 202.
7 Failure to comply with the requirements of this subsection
8 shall not affect the validity of the order.

9 (d) Expungement.

10 (1) Upon the petition of a respondent subject to an
11 emergency order issued under this Section, the court shall
12 order that all records related to the emergency order be
13 expunged from the court's records and from the Law
14 Enforcement Agencies Data System maintained by the
15 Illinois State Police if the petitioner who sought the
16 emergency order failed to seek a plenary order of
17 protection under this Act prior to the expiration of the
18 emergency order.

19 (2) Following issuance of an emergency order of
20 protection under this Section, upon the subsequent denial
21 of a plenary order of protection, an agreed dismissal of
22 an action for a plenary order of protection, or the
23 dismissal of an action for a plenary order of protection
24 due to the petitioner's or the petitioner's legal
25 counsel's failure to appear, the court shall order all
26 records related to the emergency order be expunged from

1 the court's records and from the Law Enforcement Agencies
2 Data System maintained by the Illinois State Police.

3 (3) The clerk of the court shall immediately file a
4 certified copy of the expungement order with the Illinois
5 State Police.

6 (4) All records related to an emergency order required
7 to be expunged under this subsection shall be expunged no
8 later than 3 business days after the court issues the
9 expungement order.

10 (5) Records related to an emergency order of
11 protection shall not be expunged under this subsection if
12 the respondent against whom the emergency order was issued
13 violated the order.

14 (Source: P.A. 102-538, eff. 8-20-21; 102-831, eff. 5-13-22;
15 103-154, eff. 6-30-23; 103-166, eff. 1-1-24.)

16 Section 99. Effective date. This Act takes effect June 1,
17 2024.