



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4395

Introduced 02/03/04, by John A. Fritchey

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-3	from Ch. 38, par. 112A-3
750 ILCS 60/103	from Ch. 40, par. 2311-3

Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Defines "stay away".

LRB093 18410 LCB 44118 b

1 AN ACT concerning protective orders.

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-3 as follows:

6 (725 ILCS 5/112A-3) (from Ch. 38, par. 112A-3)

7 Sec. 112A-3. Definitions. For the purposes of this Article,
8 the following terms shall have the following meanings:

9 (1) "Abuse" means physical abuse, harassment, intimidation
10 of a dependent, interference with personal liberty or willful
11 deprivation but does not include reasonable direction of a
12 minor child by a parent or person in loco parentis.

13 (2) "Domestic violence" means abuse as described in
14 paragraph (1).

15 (3) "Family or household members" include spouses, former
16 spouses, parents, children, stepchildren and other persons
17 related by blood or by present or prior marriage, persons who
18 share or formerly shared a common dwelling, persons who have or
19 allegedly have a child in common, persons who share or
20 allegedly share a blood relationship through a child, persons
21 who have or have had a dating or engagement relationship,
22 persons with disabilities and their personal assistants, and
23 caregivers as defined in paragraph (3) of subsection (b) of
24 Section 12-21 of the Criminal Code of 1961. For purposes of
25 this paragraph, neither a casual acquaintanceship nor ordinary
26 fraternization between 2 individuals in business or social
27 contexts shall be deemed to constitute a dating relationship.

28 (4) "Harassment" means knowing conduct which is not
29 necessary to accomplish a purpose which is reasonable under the
30 circumstances; would cause a reasonable person emotional
31 distress; and does cause emotional distress to the petitioner.
32 Unless the presumption is rebutted by a preponderance of the

1 evidence, the following types of conduct shall be presumed to
2 cause emotional distress:

3 (i) creating a disturbance at petitioner's place of
4 employment or school;

5 (ii) repeatedly telephoning petitioner's place of
6 employment, home or residence;

7 (iii) repeatedly following petitioner about in a
8 public place or places;

9 (iv) repeatedly keeping petitioner under surveillance
10 by remaining present outside his or her home, school, place
11 of employment, vehicle or other place occupied by
12 petitioner or by peering in petitioner's windows;

13 (v) improperly concealing a minor child from
14 petitioner, repeatedly threatening to improperly remove a
15 minor child of petitioner's from the jurisdiction or from
16 the physical care of petitioner, repeatedly threatening to
17 conceal a minor child from petitioner, or making a single
18 such threat following an actual or attempted improper
19 removal or concealment, unless respondent was fleeing from
20 an incident or pattern of domestic violence; or

21 (vi) threatening physical force, confinement or
22 restraint on one or more occasions.

23 (5) "Interference with personal liberty" means committing
24 or threatening physical abuse, harassment, intimidation or
25 willful deprivation so as to compel another to engage in
26 conduct from which she or he has a right to abstain or to
27 refrain from conduct in which she or he has a right to engage.

28 (6) "Intimidation of a dependent" means subjecting a person
29 who is dependent because of age, health or disability to
30 participation in or the witnessing of: physical force against
31 another or physical confinement or restraint of another which
32 constitutes physical abuse as defined in this Article,
33 regardless of whether the abused person is a family or
34 household member.

35 (7) "Order of protection" means an emergency order, interim
36 order or plenary order, granted pursuant to this Article, which

1 includes any or all of the remedies authorized by Section
2 112A-14 of this Code.

3 (8) "Petitioner" may mean not only any named petitioner for
4 the order of protection and any named victim of abuse on whose
5 behalf the petition is brought, but also any other person
6 protected by this Article.

7 (9) "Physical abuse" includes sexual abuse and means any of
8 the following:

9 (i) knowing or reckless use of physical force,
10 confinement or restraint;

11 (ii) knowing, repeated and unnecessary sleep
12 deprivation; or

13 (iii) knowing or reckless conduct which creates an
14 immediate risk of physical harm.

15 (9.5) "Stay away" means for the respondent to refrain from
16 both physical presence and nonphysical contact with the
17 petitioner whether direct, indirect (including, but not
18 limited to, telephone calls, mail, email, faxes, and written
19 notes), or through third parties who may or may not know about
20 the order of protection.

21 (10) "Willful deprivation" means wilfully denying a person
22 who because of age, health or disability requires medication,
23 medical care, shelter, accessible shelter or services, food,
24 therapeutic device, or other physical assistance, and thereby
25 exposing that person to the risk of physical, mental or
26 emotional harm, except with regard to medical care and
27 treatment when such dependent person has expressed the intent
28 to forgo such medical care or treatment. This paragraph does
29 not create any new affirmative duty to provide support to
30 dependent persons.

31 (Source: P.A. 92-253, eff. 1-1-02.)

32 Section 10. The Illinois Domestic Violence Act of 1986 is
33 amended by changing Section 103 as follows:

34 (750 ILCS 60/103) (from Ch. 40, par. 2311-3)

1 Sec. 103. Definitions. For the purposes of this Act, the
2 following terms shall have the following meanings:

3 (1) "Abuse" means physical abuse, harassment, intimidation
4 of a dependent, interference with personal liberty or willful
5 deprivation but does not include reasonable direction of a
6 minor child by a parent or person in loco parentis.

7 (2) "Adult with disabilities" means an elder adult with
8 disabilities or a high-risk adult with disabilities. A person
9 may be an adult with disabilities for purposes of this Act even
10 though he or she has never been adjudicated an incompetent
11 adult. However, no court proceeding may be initiated or
12 continued on behalf of an adult with disabilities over that
13 adult's objection, unless such proceeding is approved by his or
14 her legal guardian, if any.

15 (3) "Domestic violence" means abuse as defined in paragraph
16 (1).

17 (4) "Elder adult with disabilities" means an adult
18 prevented by advanced age from taking appropriate action to
19 protect himself or herself from abuse by a family or household
20 member.

21 (5) "Exploitation" means the illegal, including tortious,
22 use of a high-risk adult with disabilities or of the assets or
23 resources of a high-risk adult with disabilities. Exploitation
24 includes, but is not limited to, the misappropriation of assets
25 or resources of a high-risk adult with disabilities by undue
26 influence, by breach of a fiduciary relationship, by fraud,
27 deception, or extortion, or the use of such assets or resources
28 in a manner contrary to law.

29 (6) "Family or household members" include spouses, former
30 spouses, parents, children, stepchildren and other persons
31 related by blood or by present or prior marriage, persons who
32 share or formerly shared a common dwelling, persons who have or
33 allegedly have a child in common, persons who share or
34 allegedly share a blood relationship through a child, persons
35 who have or have had a dating or engagement relationship,
36 persons with disabilities and their personal assistants, and

1 caregivers as defined in paragraph (3) of subsection (b) of
2 Section 12-21 of the Criminal Code of 1961. For purposes of
3 this paragraph, neither a casual acquaintanceship nor ordinary
4 fraternization between 2 individuals in business or social
5 contexts shall be deemed to constitute a dating relationship.
6 In the case of a high-risk adult with disabilities, "family or
7 household members" includes any person who has the
8 responsibility for a high-risk adult as a result of a family
9 relationship or who has assumed responsibility for all or a
10 portion of the care of a high-risk adult with disabilities
11 voluntarily, or by express or implied contract, or by court
12 order.

13 (7) "Harassment" means knowing conduct which is not
14 necessary to accomplish a purpose that is reasonable under the
15 circumstances; would cause a reasonable person emotional
16 distress; and does cause emotional distress to the petitioner.
17 Unless the presumption is rebutted by a preponderance of the
18 evidence, the following types of conduct shall be presumed to
19 cause emotional distress:

20 (i) creating a disturbance at petitioner's place of
21 employment or school;

22 (ii) repeatedly telephoning petitioner's place of
23 employment, home or residence;

24 (iii) repeatedly following petitioner about in a
25 public place or places;

26 (iv) repeatedly keeping petitioner under surveillance
27 by remaining present outside his or her home, school, place
28 of employment, vehicle or other place occupied by
29 petitioner or by peering in petitioner's windows;

30 (v) improperly concealing a minor child from
31 petitioner, repeatedly threatening to improperly remove a
32 minor child of petitioner's from the jurisdiction or from
33 the physical care of petitioner, repeatedly threatening to
34 conceal a minor child from petitioner, or making a single
35 such threat following an actual or attempted improper
36 removal or concealment, unless respondent was fleeing an

1 incident or pattern of domestic violence; or

2 (vi) threatening physical force, confinement or
3 restraint on one or more occasions.

4 (8) "High-risk adult with disabilities" means a person aged
5 18 or over whose physical or mental disability impairs his or
6 her ability to seek or obtain protection from abuse, neglect,
7 or exploitation.

8 (9) "Interference with personal liberty" means committing
9 or threatening physical abuse, harassment, intimidation or
10 willful deprivation so as to compel another to engage in
11 conduct from which she or he has a right to abstain or to
12 refrain from conduct in which she or he has a right to engage.

13 (10) "Intimidation of a dependent" means subjecting a
14 person who is dependent because of age, health or disability to
15 participation in or the witnessing of: physical force against
16 another or physical confinement or restraint of another which
17 constitutes physical abuse as defined in this Act, regardless
18 of whether the abused person is a family or household member.

19 (11) (A) "Neglect" means the failure to exercise that
20 degree of care toward a high-risk adult with disabilities which
21 a reasonable person would exercise under the circumstances and
22 includes but is not limited to:

23 (i) the failure to take reasonable steps to protect a
24 high-risk adult with disabilities from acts of abuse;

25 (ii) the repeated, careless imposition of unreasonable
26 confinement;

27 (iii) the failure to provide food, shelter, clothing,
28 and personal hygiene to a high-risk adult with disabilities
29 who requires such assistance;

30 (iv) the failure to provide medical and rehabilitative
31 care for the physical and mental health needs of a
32 high-risk adult with disabilities; or

33 (v) the failure to protect a high-risk adult with
34 disabilities from health and safety hazards.

35 (B) Nothing in this subsection (10) shall be construed to
36 impose a requirement that assistance be provided to a high-risk

1 adult with disabilities over his or her objection in the
2 absence of a court order, nor to create any new affirmative
3 duty to provide support to a high-risk adult with disabilities.

4 (12) "Order of protection" means an emergency order,
5 interim order or plenary order, granted pursuant to this Act,
6 which includes any or all of the remedies authorized by Section
7 214 of this Act.

8 (13) "Petitioner" may mean not only any named petitioner
9 for the order of protection and any named victim of abuse on
10 whose behalf the petition is brought, but also any other person
11 protected by this Act.

12 (14) "Physical abuse" includes sexual abuse and means any
13 of the following:

14 (i) knowing or reckless use of physical force,
15 confinement or restraint;

16 (ii) knowing, repeated and unnecessary sleep
17 deprivation; or

18 (iii) knowing or reckless conduct which creates an
19 immediate risk of physical harm.

20 (14.5) "Stay away" means for the respondent to refrain from
21 both physical presence and nonphysical contact with the
22 petitioner whether direct, indirect (including, but not
23 limited to, telephone calls, mail, email, faxes, and written
24 notes), or through third parties who may or may not know about
25 the order of protection.

26 (15) "Willful deprivation" means wilfully denying a person
27 who because of age, health or disability requires medication,
28 medical care, shelter, accessible shelter or services, food,
29 therapeutic device, or other physical assistance, and thereby
30 exposing that person to the risk of physical, mental or
31 emotional harm, except with regard to medical care or treatment
32 when the dependent person has expressed an intent to forgo such
33 medical care or treatment. This paragraph does not create any
34 new affirmative duty to provide support to dependent persons.

35 (Source: P.A. 92-253, eff. 1-1-02.)