



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Harry Osterman

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 Domestic Violence Article of the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Requires a person against whom an order of protection is issued to surrender all firearms in the person's possession during the period in which the order is in effect. Requires, upon the motion of the court or a party, the translation of an order of protection into the language of a non-English speaking party if he or she is not fluent enough in English to understand the order. Provides for the payment of the translation out of the funds of the county or out of funds assessed as court costs.

LRB093 18560 RLC 44281 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT in relation to domestic violence.

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. Whenever a court upon its
21 own motion or upon the motion of any party determines that a
22 petitioner, respondent, or other necessary party is not fluent
23 in English to the extent he or she will sufficiently understand
24 an order of protection, the court shall order that the order of
25 protection be translated into the language of that party. The
26 court may determine a reasonable fee for the translation
27 services that shall be paid out of the funds of the county or
28 assessed as court costs.

29 (b) Remedies and standards. The remedies to be included in
30 an order of protection shall be determined in accordance with
31 this Section and one of the following Sections, as appropriate:
32 Section 112A-17 on emergency orders, Section 112A-18 on interim

1 orders, and Section 112A-19 on plenary orders. The remedies
2 listed in this subsection shall be in addition to other civil
3 or criminal remedies available to petitioner.

4 (1) Prohibition of abuse. Prohibit respondent's
5 harassment, interference with personal liberty,
6 intimidation of a dependent, physical abuse or willful
7 deprivation, as defined in this Article, if such abuse has
8 occurred or otherwise appears likely to occur if not
9 prohibited.

10 (2) Grant of exclusive possession of residence.
11 Prohibit respondent from entering or remaining in any
12 residence or household of the petitioner, including one
13 owned or leased by respondent, if petitioner has a right to
14 occupancy thereof. The grant of exclusive possession of the
15 residence shall not affect title to real property, nor
16 shall the court be limited by the standard set forth in
17 Section 701 of the Illinois Marriage and Dissolution of
18 Marriage Act.

19 (A) Right to occupancy. A party has a right to
20 occupancy of a residence or household if it is solely
21 or jointly owned or leased by that party, that party's
22 spouse, a person with a legal duty to support that
23 party or a minor child in that party's care, or by any
24 person or entity other than the opposing party that
25 authorizes that party's occupancy (e.g., a domestic
26 violence shelter). Standards set forth in subparagraph
27 (B) shall not preclude equitable relief.

28 (B) Presumption of hardships. If petitioner and
29 respondent each has the right to occupancy of a
30 residence or household, the court shall balance (i) the
31 hardships to respondent and any minor child or
32 dependent adult in respondent's care resulting from
33 entry of this remedy with (ii) the hardships to
34 petitioner and any minor child or dependent adult in
35 petitioner's care resulting from continued exposure to
36 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
27 stay away order or prohibit entry if respondent has no
28 right to enter the premises.

29 If an order of protection grants petitioner exclusive
30 possession of the residence, or prohibits respondent from
31 entering the residence, or orders respondent to stay away
32 from petitioner or other protected persons, then the court
33 may allow respondent access to the residence to remove
34 items of clothing and personal adornment used exclusively
35 by respondent, medications, and other items as the court
36 directs. The right to access shall be exercised on only one

1 occasion as the court directs and in the presence of an
2 agreed-upon adult third party or law enforcement officer.

3 (4) Counseling. Require or recommend the respondent to
4 undergo counseling for a specified duration with a social
5 worker, psychologist, clinical psychologist, psychiatrist,
6 family service agency, alcohol or substance abuse program,
7 mental health center guidance counselor, agency providing
8 services to elders, program designed for domestic violence
9 abusers or any other guidance service the court deems
10 appropriate.

11 (5) Physical care and possession of the minor child. In
12 order to protect the minor child from abuse, neglect, or
13 unwarranted separation from the person who has been the
14 minor child's primary caretaker, or to otherwise protect
15 the well-being of the minor child, the court may do either
16 or both of the following: (i) grant petitioner physical
17 care or possession of the minor child, or both, or (ii)
18 order respondent to return a minor child to, or not remove
19 a minor child from, the physical care of a parent or person
20 in loco parentis.

21 If a court finds, after a hearing, that respondent has
22 committed abuse (as defined in Section 112A-3) of a minor
23 child, there shall be a rebuttable presumption that
24 awarding physical care to respondent would not be in the
25 minor child's best interest.

26 (6) Temporary legal custody. Award temporary legal
27 custody to petitioner in accordance with this Section, the
28 Illinois Marriage and Dissolution of Marriage Act, the
29 Illinois Parentage Act of 1984, and this State's Uniform
30 Child-Custody Jurisdiction and Enforcement Act.

31 If a court finds, after a hearing, that respondent has
32 committed abuse (as defined in Section 112A-3) of a minor
33 child, there shall be a rebuttable presumption that
34 awarding temporary legal custody to respondent would not be
35 in the child's best interest.

36 (7) Visitation. Determine the visitation rights, if

1 any, of respondent in any case in which the court awards
2 physical care or temporary legal custody of a minor child
3 to petitioner. The court shall restrict or deny
4 respondent's visitation with a minor child if the court
5 finds that respondent has done or is likely to do any of
6 the following: (i) abuse or endanger the minor child during
7 visitation; (ii) use the visitation as an opportunity to
8 abuse or harass petitioner or petitioner's family or
9 household members; (iii) improperly conceal or detain the
10 minor child; or (iv) otherwise act in a manner that is not
11 in the best interests of the minor child. The court shall
12 not be limited by the standards set forth in Section 607.1
13 of the Illinois Marriage and Dissolution of Marriage Act.
14 If the court grants visitation, the order shall specify
15 dates and times for the visitation to take place or other
16 specific parameters or conditions that are appropriate. No
17 order for visitation shall refer merely to the term
18 "reasonable visitation".

19 Petitioner may deny respondent access to the minor
20 child if, when respondent arrives for visitation,
21 respondent is under the influence of drugs or alcohol and
22 constitutes a threat to the safety and well-being of
23 petitioner or petitioner's minor children or is behaving in
24 a violent or abusive manner.

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

34 (8) Removal or concealment of minor child. Prohibit
35 respondent from removing a minor child from the State or
36 concealing the child within the State.

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

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

11 (i) petitioner, but not respondent, owns the
12 property; or

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

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

24 No order under this provision shall affect title to
25 property.

26 (11) Protection of property. Forbid the respondent
27 from taking, transferring, encumbering, concealing,
28 damaging or otherwise disposing of any real or personal
29 property, except as explicitly authorized by the court, if:

30 (i) petitioner, but not respondent, owns the
31 property; or

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

34 If petitioner's sole claim to ownership of the property
35 is that it is marital property, the court may grant
36 petitioner relief under subparagraph (ii) of this

1 paragraph only if a proper proceeding has been filed under
2 the Illinois Marriage and Dissolution of Marriage Act, as
3 now or hereafter amended.

4 The court may further prohibit respondent from
5 improperly using the financial or other resources of an
6 aged member of the family or household for the profit or
7 advantage of respondent or of any other person.

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

22 (13) Order for payment of losses. Order respondent to
23 pay petitioner for losses suffered as a direct result of
24 the abuse. Such losses shall include, but not be limited
25 to, medical expenses, lost earnings or other support,
26 repair or replacement of property damaged or taken,
27 reasonable attorney's fees, court costs and moving or other
28 travel expenses, including additional reasonable expenses
29 for temporary shelter and restaurant meals.

30 (i) Losses affecting family needs. If a party is
31 entitled to seek maintenance, child support or
32 property distribution from the other party under the
33 Illinois Marriage and Dissolution of Marriage Act, as
34 now or hereafter amended, the court may order
35 respondent to reimburse petitioner's actual losses, to
36 the extent that such reimbursement would be

1 "appropriate temporary relief", as authorized by
2 subsection (a) (3) of Section 501 of that Act.

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

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

15 (14.5) Prohibition of firearm possession. (a) Prohibit
16 the respondent from possessing any firearms during the
17 period of the order of protection. The court ~~When a~~
18 ~~complaint is made under a request for an order of~~
19 ~~protection, that the respondent has threatened or is likely~~
20 ~~to use firearms illegally against the petitioner, and the~~
21 ~~respondent is present in court, or has failed to appear~~
22 ~~after receiving actual notice, the court shall examine on~~
23 ~~oath the petitioner, and any witnesses who may be produced.~~
24 ~~If the court is satisfied that there is any danger of the~~
25 ~~illegal use of firearms, it shall include in the order of~~
26 protection the requirement that any firearms in the
27 possession of the respondent, except as provided in
28 subsection (b), be turned over to the local law enforcement
29 agency for safekeeping during the period of the order of
30 protection. If the respondent fails to appear, or refuses
31 or fails to surrender his or her firearms, the court shall
32 issue a warrant for seizure of any firearm in the
33 possession of the respondent. The period of safekeeping
34 shall be for the duration of the order of protection ~~a~~
35 ~~stated period of time not to exceed 2 years~~. The firearm or
36 firearms 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~~. (b) If the respondent is a
3 peace officer as defined in Section 2-13 of the Criminal
4 Code of 1961, the court shall order that any firearms used
5 by the respondent in the performance of his or her duties
6 as a peace officer be surrendered to the chief law
7 enforcement executive of the agency in which the respondent
8 is employed, who shall retain the firearms for safekeeping
9 for the duration of the order of protection ~~stated period~~
10 ~~not to exceed 2 years as set forth in the court order~~.

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

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

26 (17) Order for injunctive relief. Enter injunctive
27 relief necessary or appropriate to prevent further abuse of
28 a family or household member or to effectuate one of the
29 granted remedies, if supported by the balance of hardships.
30 If the harm to be prevented by the injunction is abuse or
31 any other harm that one of the remedies listed in
32 paragraphs (1) through (16) of this subsection is designed
33 to prevent, no further evidence is necessary to establish
34 that the harm is an irreparable injury.

35 (c) Relevant factors; findings.

36 (1) In determining whether to grant a specific remedy,

1 other than payment of support, the court shall consider
2 relevant factors, including but not limited to the
3 following:

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

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

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

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

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

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

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

33 (i) That the court has considered the applicable
34 relevant factors described in paragraphs (1) and (2) of
35 this subsection.

36 (ii) Whether the conduct or actions of respondent,

1 unless prohibited, will likely cause irreparable harm
2 or continued abuse.

3 (iii) Whether it is necessary to grant the
4 requested relief in order to protect petitioner or
5 other alleged abused persons.

6 (4) For purposes of issuing an ex parte emergency order
7 of protection, the court, as an alternative to or as a
8 supplement to making the findings described in paragraphs
9 (c)(3)(i) through (c)(3)(iii) of this subsection, may use
10 the following procedure:

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

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

30 (d) Balance of hardships; findings. If the court finds that
31 the balance of hardships does not support the granting of a
32 remedy governed by paragraph (2), (3), (10), (11), or (16) of
33 subsection (b) of this Section, which may require such
34 balancing, the court's findings shall so indicate and shall
35 include a finding as to whether granting the remedy will result
36 in hardship to respondent that would substantially outweigh the

1 hardship to petitioner from denial of the remedy. The findings
2 shall be an official record or in writing.

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

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

8 (2) Respondent was voluntarily intoxicated;

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

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

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

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

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

23 (Source: P.A. 93-108, eff. 1-1-04.)

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

26 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

27 Sec. 214. Order of protection; remedies.

28 (a) Issuance of order. If the court finds that petitioner
29 has been abused by a family or household member or that
30 petitioner is a high-risk adult who has been abused, neglected,
31 or exploited, as defined in this Act, an order of protection
32 prohibiting the abuse, neglect, or exploitation shall issue;
33 provided that petitioner must also satisfy the requirements of
34 one of the following Sections, as appropriate: Section 217 on

1 emergency orders, Section 218 on interim orders, or Section 219
2 on plenary orders. Petitioner shall not be denied an order of
3 protection because petitioner or respondent is a minor. The
4 court, when determining whether or not to issue an order of
5 protection, shall not require physical manifestations of abuse
6 on the person of the victim. Modification and extension of
7 prior orders of protection shall be in accordance with this
8 Act. Whenever a court upon its own motion or upon the motion of
9 any party determines that a petitioner, respondent, or other
10 necessary party is not fluent in English to the extent he or
11 she will sufficiently understand an order of protection, the
12 court shall order that the order of protection be translated
13 into the language of that party. The court may determine a
14 reasonable fee for the translation services that shall be paid
15 out of the funds of the county or assessed as court costs.

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

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

32 (2) Grant of exclusive possession of residence.
33 Prohibit respondent from entering or remaining in any
34 residence or household of the petitioner, including one
35 owned or leased by respondent, if petitioner has a right to
36 occupancy thereof. The grant of exclusive possession of the

1 residence shall not affect title to real property, nor
2 shall the court be limited by the standard set forth in
3 Section 701 of the Illinois Marriage and Dissolution of
4 Marriage Act.

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

14 (B) Presumption of hardships. If petitioner and
15 respondent each has the right to occupancy of a
16 residence or household, the court shall balance (i) the
17 hardships to respondent and any minor child or
18 dependent adult in respondent's care resulting from
19 entry of this remedy with (ii) the hardships to
20 petitioner and any minor child or dependent adult in
21 petitioner's care resulting from continued exposure to
22 the risk of abuse (should petitioner remain at the
23 residence or household) or from loss of possession of
24 the residence or household (should petitioner leave to
25 avoid the risk of abuse). When determining the balance
26 of hardships, the court shall also take into account
27 the accessibility of the residence or household.
28 Hardships need not be balanced if respondent does not
29 have a right to occupancy.

30 The balance of hardships is presumed to favor
31 possession by petitioner unless the presumption is
32 rebutted by a preponderance of the evidence, showing
33 that the hardships to respondent substantially
34 outweigh the hardships to petitioner and any minor
35 child or dependent adult in petitioner's care. The
36 court, on the request of petitioner or on its own

1 motion, may order respondent to provide suitable,
2 accessible, alternate housing for petitioner instead
3 of excluding respondent from a mutual residence or
4 household.

5 (3) Stay away order and additional prohibitions. Order
6 respondent to stay away from petitioner or any other person
7 protected by the order of protection, or prohibit
8 respondent from entering or remaining present at
9 petitioner's school, place of employment, or other
10 specified places at times when petitioner is present, or
11 both, if reasonable, given the balance of hardships.
12 Hardships need not be balanced for the court to enter a
13 stay away order or prohibit entry if respondent has no
14 right to enter the premises.

15 If an order of protection grants petitioner exclusive
16 possession of the residence, or prohibits respondent from
17 entering the residence, or orders respondent to stay away
18 from petitioner or other protected persons, then the court
19 may allow respondent access to the residence to remove
20 items of clothing and personal adornment used exclusively
21 by respondent, medications, and other items as the court
22 directs. The right to access shall be exercised on only one
23 occasion as the court directs and in the presence of an
24 agreed-upon adult third party or law enforcement officer.

25 (4) Counseling. Require or recommend the respondent to
26 undergo counseling for a specified duration with a social
27 worker, psychologist, clinical psychologist, psychiatrist,
28 family service agency, alcohol or substance abuse program,
29 mental health center guidance counselor, agency providing
30 services to elders, program designed for domestic violence
31 abusers or any other guidance service the court deems
32 appropriate.

33 (5) Physical care and possession of the minor child. In
34 order to protect the minor child from abuse, neglect, or
35 unwarranted separation from the person who has been the
36 minor child's primary caretaker, or to otherwise protect

1 the well-being of the minor child, the court may do either
2 or both of the following: (i) grant petitioner physical
3 care or possession of the minor child, or both, or (ii)
4 order respondent to return a minor child to, or not remove
5 a minor child from, the physical care of a parent or person
6 in loco parentis.

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

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

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

22 (7) Visitation. Determine the visitation rights, if
23 any, of respondent in any case in which the court awards
24 physical care or temporary legal custody of a minor child
25 to petitioner. The court shall restrict or deny
26 respondent's visitation with a minor child if the court
27 finds that respondent has done or is likely to do any of
28 the following: (i) abuse or endanger the minor child during
29 visitation; (ii) use the visitation as an opportunity to
30 abuse or harass petitioner or petitioner's family or
31 household members; (iii) improperly conceal or detain the
32 minor child; or (iv) otherwise act in a manner that is not
33 in the best interests of the minor child. The court shall
34 not be limited by the standards set forth in Section 607.1
35 of the Illinois Marriage and Dissolution of Marriage Act.
36 If the court grants visitation, the order shall specify

1 dates and times for the visitation to take place or other
2 specific parameters or conditions that are appropriate. No
3 order for visitation shall refer merely to the term
4 "reasonable visitation".

5 Petitioner may deny respondent access to the minor
6 child if, when respondent arrives for visitation,
7 respondent is under the influence of drugs or alcohol and
8 constitutes a threat to the safety and well-being of
9 petitioner or petitioner's minor children or is behaving in
10 a violent or abusive manner.

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

20 (8) Removal or concealment of minor child. Prohibit
21 respondent from removing a minor child from the State or
22 concealing the child within the State.

23 (9) Order to appear. Order the respondent to appear in
24 court, alone or with a minor child, to prevent abuse,
25 neglect, removal or concealment of the child, to return the
26 child to the custody or care of the petitioner or to permit
27 any court-ordered interview or examination of the child or
28 the respondent.

29 (10) Possession of personal property. Grant petitioner
30 exclusive possession of personal property and, if
31 respondent has possession or control, direct respondent to
32 promptly make it available to petitioner, if:

33 (i) petitioner, but not respondent, owns the
34 property; or

35 (ii) the parties own the property jointly; sharing
36 it would risk abuse of petitioner by respondent or is

1 impracticable; and the balance of hardships favors
2 temporary possession by petitioner.

3 If petitioner's sole claim to ownership of the property
4 is that it is marital property, the court may award
5 petitioner temporary possession thereof under the
6 standards of subparagraph (ii) of this paragraph only if a
7 proper proceeding has been filed under the Illinois
8 Marriage and Dissolution of Marriage Act, as now or
9 hereafter amended.

10 No order under this provision shall affect title to
11 property.

12 (11) Protection of property. Forbid the respondent
13 from taking, transferring, encumbering, concealing,
14 damaging or otherwise disposing of any real or personal
15 property, except as explicitly authorized by the court, if:

16 (i) petitioner, but not respondent, owns the
17 property; or

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

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

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

30 (12) Order for payment of support. Order respondent to
31 pay temporary support for the petitioner or any child in
32 the petitioner's care or custody, when the respondent has a
33 legal obligation to support that person, in accordance with
34 the Illinois Marriage and Dissolution of Marriage Act,
35 which shall govern, among other matters, the amount of
36 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, neglect, or exploitation. Such losses shall
11 include, but not be limited to, medical expenses, lost
12 earnings or other support, repair or replacement of
13 property damaged or taken, reasonable attorney's fees,
14 court costs and moving or other travel expenses, including
15 additional reasonable expenses for temporary shelter and
16 restaurant meals.

17 (i) Losses affecting family needs. If a party is
18 entitled to seek maintenance, child support or
19 property distribution from the other party under the
20 Illinois Marriage and Dissolution of Marriage Act, as
21 now or hereafter amended, the court may order
22 respondent to reimburse petitioner's actual losses, to
23 the extent that such reimbursement would be
24 "appropriate temporary relief", as authorized by
25 subsection (a) (3) of Section 501 of that Act.

26 (ii) Recovery of expenses. In the case of an
27 improper concealment or removal of a minor child, the
28 court may order respondent to pay the reasonable
29 expenses incurred or to be incurred in the search for
30 and recovery of the minor child, including but not
31 limited to legal fees, court costs, private
32 investigator fees, and travel costs.

33 (14) Prohibition of entry. Prohibit the respondent
34 from entering or remaining in the residence or household
35 while the respondent is under the influence of alcohol or
36 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 the respondent from possessing any
4 firearms during the period of the order of protection.
5 The court ~~When a complaint is made under a request for~~
6 ~~an order of protection, that the respondent has~~
7 ~~threatened or is likely to use firearms illegally~~
8 ~~against the petitioner, and the respondent is present~~
9 ~~in court, or has failed to appear after receiving~~
10 ~~actual notice, the court shall examine on oath the~~
11 ~~petitioner, and any witnesses who may be produced. If~~
12 ~~the court is satisfied that there is any danger of the~~
13 ~~illegal use of firearms, it shall issue an order that~~
14 any firearms in the possession of the respondent,
15 except as provided in subsection (b), be turned over to
16 the local law enforcement agency for safekeeping. If
17 the respondent has failed to appear, the court shall
18 issue a warrant for seizure of any firearm in the
19 possession of the respondent. The period of
20 safekeeping shall be for the duration of the order of
21 protection ~~a stated period of time not to exceed 2~~
22 ~~years~~. The firearm or firearms shall be returned to the
23 respondent ~~at the end of the stated period or at~~
24 expiration of the order of protection, ~~whichever is~~
25 ~~sooner~~.

26 (b) If the respondent is a peace officer as defined
27 in Section 2-13 of the Criminal Code of 1961, the court
28 shall order that any firearms used by the respondent in
29 the performance of his or her duties as a peace officer
30 be surrendered to the chief law enforcement executive
31 of the agency in which the respondent is employed, who
32 shall retain the firearms for safekeeping for the
33 duration of the order of protection ~~for the stated~~
34 ~~period not to exceed 2 years as set forth in the court~~
35 ~~order~~.

36 (15) Prohibition of access to records. If an order of

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

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

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

25 (c) Relevant factors; findings.

26 (1) In determining whether to grant a specific remedy,
27 other than payment of support, the court shall consider
28 relevant factors, including but not limited to the
29 following:

30 (i) the nature, frequency, severity, pattern and
31 consequences of the respondent's past abuse, neglect
32 or exploitation of the petitioner or any family or
33 household member, including the concealment of his or
34 her location in order to evade service of process or
35 notice, and the likelihood of danger of future abuse,
36 neglect, or exploitation to petitioner or any member of

1 petitioner's or respondent's family or household; and

2 (ii) the danger that any minor child will be abused
3 or neglected or improperly removed from the
4 jurisdiction, improperly concealed within the State or
5 improperly separated from the child's primary
6 caretaker.

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

11 (i) availability, accessibility, cost, safety,
12 adequacy, location and other characteristics of
13 alternate housing for each party and any minor child or
14 dependent adult in the party's care;

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

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

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

23 (i) That the court has considered the applicable
24 relevant factors described in paragraphs (1) and (2) of
25 this subsection.

26 (ii) Whether the conduct or actions of respondent,
27 unless prohibited, will likely cause irreparable harm
28 or continued abuse.

29 (iii) Whether it is necessary to grant the
30 requested relief in order to protect petitioner or
31 other alleged abused persons.

32 (4) For purposes of issuing an ex parte emergency order
33 of protection, the court, as an alternative to or as a
34 supplement to making the findings described in paragraphs
35 (c)(3)(i) through (c)(3)(iii) of this subsection, may use
36 the following procedure:

1 When a verified petition for an emergency order of
2 protection in accordance with the requirements of Sections
3 203 and 217 is presented to the court, the court shall
4 examine petitioner on oath or affirmation. An emergency
5 order of protection shall be issued by the court if it
6 appears from the contents of the petition and the
7 examination of petitioner that the averments are
8 sufficient to indicate abuse by respondent and to support
9 the granting of relief under the issuance of the emergency
10 order of protection.

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

35 (d) Balance of hardships; findings. If the court finds that
36 the balance of hardships does not support the granting of a

1 remedy governed by paragraph (2), (3), (10), (11), or (16) of
2 subsection (b) of this Section, which may require such
3 balancing, the court's findings shall so indicate and shall
4 include a finding as to whether granting the remedy will result
5 in hardship to respondent that would substantially outweigh the
6 hardship to petitioner from denial of the remedy. The findings
7 shall be an official record or in writing.

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

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

13 (2) Respondent was voluntarily intoxicated;

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

18 (4) Petitioner did not act in self-defense or defense
19 of another;

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

22 (6) Petitioner did not leave the residence or household
23 to avoid further abuse, neglect, or exploitation by
24 respondent;

25 (7) Conduct by any family or household member excused
26 the abuse, neglect, or exploitation by respondent, unless
27 that same conduct would have excused such abuse, neglect,
28 or exploitation if the parties had not been family or
29 household members.

30 (Source: P.A. 93-108, eff. 1-1-04.)