



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4460

Introduced 1/30/2012, by Rep. Anthony DeLuca

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-17
750 ILCS 60/217

from Ch. 38, par. 112A-17
from Ch. 40, par. 2312-17

Amends the Code of Criminal Procedure of 1963 and 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 Department of the 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, 2012.

LRB097 16790 AJO 64376 b

FISCAL NOTE ACT
MAY APPLY

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 Code of Criminal Procedure of 1963 is
5 amended by changing Section 112A-17 as follows:

6 (725 ILCS 5/112A-17) (from Ch. 38, par. 112A-17)

7 Sec. 112A-17. 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, petitioner shall establish that:

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

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

14 and

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

18 (i) For the remedies of "prohibition of abuse"
19 described in Section 112A-14(b)(1), "stay away order
20 and additional prohibitions" described in Section
21 112A-14(b)(3), "removal or concealment of minor child"
22 described in Section 112A-14(b)(8), "order to appear"
23 described in Section 112A-14(b)(9), "physical care and

1 possession of the minor child" described in Section
2 112A-14(b)(5), "protection of property" described in
3 Section 112A-14(b)(11), "prohibition of entry"
4 described in Section 112A-14(b)(14), "prohibition of
5 firearm possession" described in Section
6 112A-14(b)(14.5), "prohibition of access to records"
7 described in Section 112A-14(b)(15), and "injunctive
8 relief" described in Section 112A-14(b)(16), the harm
9 which that remedy is intended to prevent would be
10 likely to occur if the respondent were given any prior
11 notice, or greater notice than was actually given, of
12 the petitioner's efforts to obtain judicial relief;

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

1 substantially outweigh those to petitioner.

2 (iii) For the remedy of "possession of personal
3 property" described in Section 112A-14(b)(10),
4 improper disposition of the personal property would be
5 likely to occur if respondent were given any prior
6 notice, or greater notice than was actually given, of
7 petitioner's efforts to obtain judicial relief, or
8 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 remedies.

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

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

20 (1) Prerequisites. When the court is unavailable at the
21 close of business, the petitioner may file a petition for a
22 21-day emergency order before any available circuit judge
23 or associate judge who may grant relief under this Article.
24 If the judge finds that there is an immediate and present
25 danger of abuse to petitioner and that petitioner has
26 satisfied the prerequisites set forth in subsection (a) of

1 Section 112A-17, that judge may issue an emergency order of
2 protection.

3 (1.5) Issuance of order. The chief judge of the circuit
4 court may designate for each county in the circuit at least
5 one judge to be reasonably available to issue orally, by
6 telephone, by facsimile, or otherwise, an emergency order
7 of protection at all times, whether or not the court is in
8 session.

9 (2) Certification and transfer. The judge who issued
10 the order under this Section shall promptly communicate or
11 convey the order to the sheriff to facilitate the entry of
12 the order into the Law Enforcement Agencies Data System by
13 the Department of State Police pursuant to Section 112A-28.
14 Any order issued under this Section and any documentation
15 in support thereof shall be certified on the next court day
16 to the appropriate court. The clerk of that court shall
17 immediately assign a case number, file the petition, order
18 and other documents with the court and enter the order of
19 record and file it with the sheriff for service, in
20 accordance with Section 112A-22. Filing the petition shall
21 commence proceedings for further relief, under Section
22 112A-2. Failure to comply with the requirements of this
23 subsection shall not affect the validity of the order.

24 (d) Expungement

25 (1) Upon the petition of a respondent subject to an
26 emergency order issued under this Section, the court shall

1 order that all records related to the emergency order be
2 expunged from the court's records and from the Law
3 Enforcement Agencies Data System maintained by the
4 Department of the State Police if the petitioner who sought
5 the emergency order failed to seek a plenary order of
6 protection under this Code prior to the expiration of the
7 emergency order.

8 (2) Following issuance of an emergency order of
9 protection under this Section, upon the subsequent denial
10 of a plenary order of protection, an agreed dismissal of an
11 action for a plenary order of protection, or the dismissal
12 of an action for a plenary order of protection due to the
13 petitioner's or the petitioner's legal counsel's failure
14 to appear, the court shall order all records related to the
15 emergency order be expunged from the court's records and
16 from the Law Enforcement Agencies Data System maintained by
17 the Department of the State Police.

18 (3) The clerk of the court shall immediately file a
19 certified copy of the expungement order with the Department
20 of the State Police.

21 (4) All records related to the emergency order required
22 to be expunged under this subsection shall be expunged no
23 later than 3 business days after the court issues the
24 expungement order.

25 (5) Records related to an emergency order of protection
26 shall not be expunged under this subsection if the

1 respondent against whom the emergency order was issued
2 violated the order.

3 (Source: P.A. 96-1239, eff. 1-1-11; 96-1241, eff. 1-1-11;
4 97-333, eff. 8-12-11.)

5 Section 10. The Illinois Domestic Violence Act of 1986 is
6 amended by changing Section 217 as follows:

7 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

8 Sec. 217. Emergency order of protection.

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

- 13 (1) The court has jurisdiction under Section 208;
14 (2) The requirements of Section 214 are satisfied; and
15 (3) There is good cause to grant the remedy, regardless
16 of prior service of process or of notice upon the
17 respondent, because:

18 (i) For the remedies of "prohibition of abuse"
19 described in Section 214(b)(1), "stay away order and
20 additional prohibitions" described in Section
21 214(b)(3), "removal or concealment of minor child"
22 described in Section 214(b)(8), "order to appear"
23 described in Section 214(b)(9), "physical care and
24 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 petitioner by respondent, if petitioner chooses or had
16 chosen to remain in the residence or household while
17 respondent was given any prior notice or greater notice
18 than was actually given of petitioner's efforts to
19 obtain judicial relief, outweighs the hardships to
20 respondent of an emergency order granting petitioner
21 exclusive possession of the residence or household.
22 This remedy shall not be denied because petitioner has
23 or could obtain temporary shelter elsewhere while
24 prior notice is given to respondent, unless the
25 hardships to respondent from exclusion from the home
26 substantially outweigh those to petitioner;

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

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

11 (b) Appearance by respondent. If respondent appears in
12 court for this hearing for an emergency order, he or she may
13 elect to file a general appearance and testify. Any resulting
14 order may be an emergency order, governed by this Section.
15 Notwithstanding the requirements of this Section, if all
16 requirements of Section 218 have been met, the court may issue
17 a 30-day interim order.

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

19 (1) Prerequisites. When the court is unavailable at the
20 close of business, the petitioner may file a petition for a
21 21-day emergency order before any available circuit judge
22 or associate judge who may grant relief under this Act. If
23 the judge finds that there is an immediate and present
24 danger of abuse to petitioner and that petitioner has
25 satisfied the prerequisites set forth in subsection (a) of
26 Section 217, that judge may issue an emergency order of

1 protection.

2 (1.5) Issuance of order. The chief judge of the circuit
3 court may designate for each county in the circuit at least
4 one judge to be reasonably available to issue orally, by
5 telephone, by facsimile, or otherwise, an emergency order
6 of protection at all times, whether or not the court is in
7 session.

8 (2) Certification and transfer. The judge who issued
9 the order under this Section shall promptly communicate or
10 convey the order to the sheriff to facilitate the entry of
11 the order into the Law Enforcement Agencies Data System by
12 the Department of State Police pursuant to Section 302. Any
13 order issued under this Section and any documentation in
14 support thereof shall be certified on the next court day to
15 the appropriate court. The clerk of that court shall
16 immediately assign a case number, file the petition, order
17 and other documents with the court, and enter the order of
18 record and file it with the sheriff for service, in
19 accordance with Section 222. Filing the petition shall
20 commence proceedings for further relief under Section 202.
21 Failure to comply with the requirements of this subsection
22 shall not affect the validity of the order.

23 (d) Expungement.

24 (1) Upon the petition of a respondent subject to an
25 emergency order issued under this Section, the court shall
26 order that all records related to the emergency order be

1 expunged from the court's records and from the Law
2 Enforcement Agencies Data System maintained by the
3 Department of the State Police if the petitioner who sought
4 the emergency order failed to seek a plenary order of
5 protection under this Act prior to the expiration of the
6 emergency order.

7 (2) Following issuance of an emergency order of
8 protection under this Section, upon the subsequent denial
9 of a plenary order of protection, an agreed dismissal of an
10 action for a plenary order of protection, or the dismissal
11 of an action for a plenary order of protection due to the
12 petitioner's or the petitioner's legal counsel's failure
13 to appear, the court shall order all records related to the
14 emergency order be expunged from the court's records and
15 from the Law Enforcement Agencies Data System maintained by
16 the Department of the State Police.

17 (3) The clerk of the court shall immediately file a
18 certified copy of the expungement order with the Department
19 of the State Police.

20 (4) All records related to an emergency order required
21 to be expunged under this subsection shall be expunged no
22 later than 3 business days after the court issues the
23 expungement order.

24 (5) Records related to an emergency order of protection
25 shall not be expunged under this subsection if the
26 respondent against whom the emergency order was issued

1 violated the order.

2 (Source: P.A. 96-701, eff. 1-1-10; 96-1241, eff. 1-1-11.)

3 Section 99. Effective date. This Act takes effect June 1,
4 2012.