



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3161

by Rep. Kelly Burke

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-10
750 ILCS 60/210

from Ch. 38, par. 112A-10
from Ch. 40, par. 2312-10

Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that in counties with a population over 3,000,000, a special process server may not be appointed if the order of protection grants the surrender of a child, the surrender of a firearm or firearm owners identification card, or the exclusive possession of a shared residence.

LRB099 07348 HEP 31580 b

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-10 as follows:

6 (725 ILCS 5/112A-10) (from Ch. 38, par. 112A-10)
7 Sec. 112A-10. Process.

8 (a) Summons. Any action for an order of protection, whether
9 commenced alone or in conjunction with another proceeding, is a
10 distinct cause of action and requires that a separate summons
11 be issued and served, except that in pending criminal cases,
12 the summons may be delivered to respondent in open court. The
13 summons shall be in the form prescribed by Supreme Court Rule
14 101(d), except that it shall require respondent to answer or
15 appear within 7 days, and shall be accompanied by the petition
16 for the order of protection, any supporting affidavits, if any,
17 and any emergency order of protection that has been issued. The
18 enforcement of an order of protection under Section 112A-23
19 shall not be affected by the lack of service or delivery,
20 provided the requirements of subsection (a) of that Section are
21 otherwise met.

22 (b) Fees. No fee shall be charged for service of summons.

23 (c) Expedited service. The summons shall be served by the

1 sheriff or other law enforcement officer at the earliest time
2 and shall take precedence over other summonses except those of
3 a similar emergency nature. Special process servers may be
4 appointed at any time, and their designation shall not affect
5 the responsibilities and authority of the sheriff or other
6 official process servers. Process shall not be served in court.
7 In counties with a population over 3,000,000, a special process
8 server may not be appointed if the order of protection grants
9 the surrender of a child, the surrender of a firearm or firearm
10 owners identification card, or the exclusive possession of a
11 shared residence.

12 (d) Remedies requiring actual notice. The counseling,
13 payment of support, payment of shelter services, and payment of
14 losses remedies provided by paragraphs 4, 12, 13, and 16 of
15 subsection (b) of Section 112A-14 may be granted only if
16 respondent has been personally served with process, has
17 answered or has made a general appearance.

18 (e) Remedies upon constructive notice. Service of process
19 on a member of respondent's household or by publication, in
20 accordance with Sections 2-203, 2-206 and 2-207 of the Code of
21 Civil Procedure, as now or hereafter amended, shall be adequate
22 for the remedies provided by paragraphs 1, 2, 3, 5, 6, 7, 8, 9,
23 10, 11, 14, 15, and 17 of subsection (b) of Section 112A-14,
24 but only if: (i) petitioner has made all reasonable efforts to
25 accomplish actual service of process personally upon
26 respondent, but respondent cannot be found to effect such

1 service; and (ii) petitioner files an affidavit or presents
2 sworn testimony as to those efforts.

3 (f) Default. A plenary order of protection may be entered
4 by default (1) for any of the remedies sought in the petition,
5 if respondent has been served with documents in accordance with
6 subsection (a) and if respondent then fails to appear on the
7 specified return date or on any subsequent hearing date agreed
8 to by the parties or set by the court; or (2) for any of the
9 remedies provided under subsection (e), if the defendant fails
10 to answer or appear in accordance with the date set in the
11 publication notice or the return date indicated on the service
12 of a household member.

13 (Source: P.A. 87-1186.)

14 Section 10. The Illinois Domestic Violence Act of 1986 is
15 amended by changing Section 210 as follows:

16 (750 ILCS 60/210) (from Ch. 40, par. 2312-10)

17 Sec. 210. Process.

18 (a) Summons. Any action for an order of protection, whether
19 commenced alone or in conjunction with another proceeding, is a
20 distinct cause of action and requires that a separate summons
21 be issued and served, except that in pending cases the
22 following methods may be used:

23 (1) By delivery of the summons to respondent personally
24 in open court in pending civil or criminal cases.

1 (2) By notice in accordance with Section 210.1 in civil
2 cases in which the defendant has filed a general
3 appearance.

4 The summons shall be in the form prescribed by Supreme
5 Court Rule 101(d), except that it shall require respondent to
6 answer or appear within 7 days. Attachments to the summons or
7 notice shall include the petition for order of protection and
8 supporting affidavits, if any, and any emergency order of
9 protection that has been issued. The enforcement of an order of
10 protection under Section 223 shall not be affected by the lack
11 of service, delivery, or notice, provided the requirements of
12 subsection (d) of that Section are otherwise met.

13 (b) Blank.

14 (c) Expedited service. The summons shall be served by the
15 sheriff or other law enforcement officer at the earliest time
16 and shall take precedence over other summonses except those of
17 a similar emergency nature. Special process servers may be
18 appointed at any time, and their designation shall not affect
19 the responsibilities and authority of the sheriff or other
20 official process servers. In counties with a population over
21 3,000,000, a special process server may not be appointed if the
22 order of protection grants the surrender of a child, the
23 surrender of a firearm or firearm owners identification card,
24 or the exclusive possession of a shared residence.

25 (d) Remedies requiring actual notice. The counseling,
26 payment of support, payment of shelter services, and payment of

1 losses remedies provided by paragraphs 4, 12, 13, and 16 of
2 subsection (b) of Section 214 may be granted only if respondent
3 has been personally served with process, has answered or has
4 made a general appearance.

5 (e) Remedies upon constructive notice. Service of process
6 on a member of respondent's household or by publication shall
7 be adequate for the remedies provided by paragraphs 1, 2, 3, 5,
8 6, 7, 8, 9, 10, 11, 14, 15, and 17 of subsection (b) of Section
9 214, but only if: (i) petitioner has made all reasonable
10 efforts to accomplish actual service of process personally upon
11 respondent, but respondent cannot be found to effect such
12 service and (ii) petitioner files an affidavit or presents
13 sworn testimony as to those efforts.

14 (f) Default. A plenary order of protection may be entered
15 by default as follows:

16 (1) For any of the remedies sought in the petition, if
17 respondent has been served or given notice in accordance
18 with subsection (a) and if respondent then fails to appear
19 as directed or fails to appear on any subsequent appearance
20 or hearing date agreed to by the parties or set by the
21 court; or

22 (2) For any of the remedies provided in accordance with
23 subsection (e), if respondent fails to answer or appear in
24 accordance with the date set in the publication notice or
25 the return date indicated on the service of a household
26 member.

1 (Source: P.A. 87-1186; 88-306.)