



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB4681

Introduced 2/4/2004, by Marlow H. Colvin - Maria Antonia Berrios - Linda Chapa LaVia - Harry Osterman

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 Domestic Violence: Order of Protection Article of the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that a person who is in immediate danger of domestic abuse may apply for a temporary emergency order of protection issued by a municipal police department or by a county sheriff's office if the person resides in a municipality that does not have a police department or resides in an unincorporated area. Establishes requirements for the issuance of the order and the type of remedies that may be granted. Provides that the order is effective for 3 business days.

LRB093 18130 RLC 43822 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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
24 possession of the minor child" described in Section
25 112A-14(b)(5), "protection of property" described in
26 Section 112A-14(b)(11), "prohibition of entry"
27 described in Section 112A-14(b)(14), "prohibition of
28 access to records" described in Section
29 112A-14(b)(15), and "injunctive relief" described in
30 Section 112A-14(b)(16), the harm which that remedy is
31 intended to prevent would be likely to occur if the
32 respondent were given any prior notice, or greater

1 notice than was actually given, of the petitioner's
2 efforts to obtain judicial relief;

3 (ii) For the remedy of "grant of exclusive
4 possession of residence" described in Section
5 112A-14(b)(2), the immediate danger of further abuse
6 of petitioner by respondent, if petitioner chooses or
7 had chosen to remain in the residence or household
8 while respondent was given any prior notice or greater
9 notice than was actually given of petitioner's efforts
10 to obtain judicial relief, outweighs the hardships to
11 respondent of an emergency order granting petitioner
12 exclusive possession of the residence or household.
13 This remedy shall not be denied because petitioner has
14 or could obtain temporary shelter elsewhere while
15 prior notice is given to respondent, unless the
16 hardships to respondent from exclusion from the home
17 substantially outweigh those to petitioner.

18 (iii) For the remedy of "possession of personal
19 property" described in Section 112A-14(b)(10),
20 improper disposition of the personal property would be
21 likely to occur if respondent were given any prior
22 notice, or greater notice than was actually given, of
23 petitioner's efforts to obtain judicial relief, or
24 petitioner has an immediate and pressing need for
25 possession of that property.

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

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

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

36 (1) Prerequisites. When the court is unavailable at the

1 close of business, the petitioner may file a petition for a
2 21-day emergency order before any available circuit judge
3 or associate judge who may grant relief under this Article.
4 If the judge finds that there is an immediate and present
5 danger of abuse to petitioner and that petitioner has
6 satisfied the prerequisites set forth in subsection (a) of
7 Section 112A-17, that judge may issue an emergency order of
8 protection.

9 (1.5) Issuance of order. The chief judge of the circuit
10 court may designate for each county in the circuit at least
11 one judge to be reasonably available to issue orally, by
12 telephone, by facsimile, or otherwise, an emergency order
13 of protection at all times, whether or not the court is in
14 session.

15 (2) Certification and transfer. Any order issued under
16 this Section and any documentation in support thereof shall
17 be certified on the next court day to the appropriate
18 court. The clerk of that court shall immediately assign a
19 case number, file the petition, order and other documents
20 with the court and enter the order of record and file it
21 with the sheriff for service, in accordance with Section
22 112A-22. Filing the petition shall commence proceedings
23 for further relief, under Section 112A-2. Failure to comply
24 with the requirements of this subsection shall not affect
25 the validity of the order.

26 (d) Notwithstanding any other provision of this Article to
27 the contrary, a person residing within a municipality that has
28 a police department may make an application for a temporary
29 emergency order of protection from the municipal police
30 department for the granting of any of the remedies described in
31 clauses (a) (3) (i), (ii), and (iii) of this Section. The order
32 may be granted by the municipal police department if approved
33 by the ranking law enforcement officer on duty at the time of
34 the application; provided that the ranking law enforcement
35 officer on duty has probable cause to believe that the person is
36 in immediate danger of abuse and the harm to which the remedy

1 is intended to prevent would likely occur before the time an
2 emergency order of protection could be issued by the court. The
3 order shall be effective for a period of 3 business days after
4 its issuance by the municipal police department. If the person
5 making application resides in a municipality that does not have
6 a police department or resides in an unincorporated area, the
7 person may apply for the order from the office of the county
8 sheriff. That order must be approved by the ranking deputy
9 sheriff on duty at the time of the application and meet the
10 same requirements specified in this subsection (d) for the
11 issuance of an order by a municipal police department.

12 (Source: P.A. 90-392, eff. 1-1-98.)

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

15 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

16 Sec. 217. Emergency order of protection.

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

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

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

23 (3) There is good cause to grant the remedy, regardless
24 of prior service of process or of notice upon the
25 respondent, because:

26 (i) For the remedies of "prohibition of abuse"
27 described in Section 214(b)(1), "stay away order and
28 additional prohibitions" described in Section
29 214(b)(3), "removal or concealment of minor child"
30 described in Section 214(b)(8), "order to appear"
31 described in Section 214(b)(9), "physical care and
32 possession of the minor child" described in Section
33 214(b)(5), "protection of property" described in
34 Section 214(b)(11), "prohibition of entry" described

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

9 (ii) For the remedy of "grant of exclusive
10 possession of residence" described in Section
11 214(b)(2), the immediate danger of further abuse of
12 petitioner by respondent, if petitioner chooses or had
13 chosen to remain in the residence or household while
14 respondent was given any prior notice or greater notice
15 than was actually given of petitioner's efforts to
16 obtain judicial relief, outweighs the hardships to
17 respondent of an emergency order granting petitioner
18 exclusive possession of the residence or household.
19 This remedy shall not be denied because petitioner has
20 or could obtain temporary shelter elsewhere while
21 prior notice is given to respondent, unless the
22 hardships to respondent from exclusion from the home
23 substantially outweigh those to petitioner;

24 (iii) For the remedy of "possession of personal
25 property" described in Section 214(b)(10), improper
26 disposition of the personal property would be likely to
27 occur if respondent were given any prior notice, or
28 greater notice than was actually given, of
29 petitioner's efforts to obtain judicial relief, or
30 petitioner has an immediate and pressing need for
31 possession of that property.

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

34 (b) Appearance by respondent. If respondent appears in
35 court for this hearing for an emergency order, he or she may
36 elect to file a general appearance and testify. Any resulting

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

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

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

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

21 (2) Certification and transfer. Any order issued under
22 this Section and any documentation in support thereof shall
23 be certified on the next court day to the appropriate
24 court. The clerk of that court shall immediately assign a
25 case number, file the petition, order and other documents
26 with the court, and enter the order of record and file it
27 with the sheriff for service, in accordance with Section
28 222. Filing the petition shall commence proceedings for
29 further relief under Section 202. Failure to comply with
30 the requirements of this subsection shall not affect the
31 validity of the order.

32 (d) Notwithstanding any other provision of this Act to the
33 contrary, a person residing within a municipality that has a
34 police department may make an application for a temporary
35 emergency order of protection from the municipal police
36 department for the granting of any of the remedies described in

1 clauses (a)(3) (i), (ii), and (iii) of this Section. The order
2 may be granted by the municipal police department if approved
3 by the ranking law enforcement officer on duty at the time of
4 the application; provided that the ranking law enforcement
5 officer on duty has probable cause to believe that the person is
6 in immediate danger of abuse and the harm to which the remedy
7 is intended to prevent would likely occur before the time an
8 emergency order of protection could be issued by the court. The
9 order shall be effective for a period of 3 business days after
10 its issuance by the municipal police department. If the person
11 making application resides in a municipality that does not have
12 a police department or resides in an unincorporated area, the
13 person may apply for the order from the office of the county
14 sheriff. That order must be approved by the ranking deputy
15 sheriff on duty at the time of application and meet the same
16 requirements specified in this subsection (d) for the issuance
17 of an order by a municipal police department.

18 (Source: P.A. 90-392, eff. 1-1-98.)