



Sen. Cheryl Axley

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LRB094 18261 RLC 57387 a

1 AMENDMENT TO HOUSE BILL 5216

2 AMENDMENT NO. _____. Amend House Bill 5216 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Firearm Owners Identification Card Act is
5 amended by changing Section 8 and by adding Section 8.2 as
6 follows:

7 (430 ILCS 65/8) (from Ch. 38, par. 83-8)

8 Sec. 8. The Department of State Police has authority to
9 deny an application for or to revoke and seize a Firearm
10 Owner's Identification Card previously issued under this Act
11 only if the Department finds that the applicant or the person
12 to whom such card was issued is or was at the time of issuance:

13 (a) A person under 21 years of age who has been convicted
14 of a misdemeanor other than a traffic offense or adjudged
15 delinquent;

16 (b) A person under 21 years of age who does not have the
17 written consent of his parent or guardian to acquire and
18 possess firearms and firearm ammunition, or whose parent or
19 guardian has revoked such written consent, or where such parent
20 or guardian does not qualify to have a Firearm Owner's
21 Identification Card;

22 (c) A person convicted of a felony under the laws of this
23 or any other jurisdiction;

24 (d) A person addicted to narcotics;

1 (e) A person who has been a patient of a mental institution
2 within the past 5 years;

3 (f) A person whose mental condition is of such a nature
4 that it poses a clear and present danger to the applicant, any
5 other person or persons or the community;

6 For the purposes of this Section, "mental condition" means
7 a state of mind manifested by violent, suicidal, threatening or
8 assaultive behavior.

9 (g) A person who is mentally retarded;

10 (h) A person who intentionally makes a false statement in
11 the Firearm Owner's Identification Card application;

12 (i) An alien who is unlawfully present in the United States
13 under the laws of the United States;

14 (i-5) An alien who has been admitted to the United States
15 under a non-immigrant visa (as that term is defined in Section
16 101(a)(26) of the Immigration and Nationality Act (8 U.S.C.
17 1101(a)(26))), except that this subsection (i-5) does not apply
18 to any alien who has been lawfully admitted to the United
19 States under a non-immigrant visa if that alien is:

20 (1) admitted to the United States for lawful hunting or
21 sporting purposes;

22 (2) an official representative of a foreign government
23 who is:

24 (A) accredited to the United States Government or
25 the Government's mission to an international
26 organization having its headquarters in the United
27 States; or

28 (B) en route to or from another country to which
29 that alien is accredited;

30 (3) an official of a foreign government or
31 distinguished foreign visitor who has been so designated by
32 the Department of State;

33 (4) a foreign law enforcement officer of a friendly
34 foreign government entering the United States on official

1 business; or

2 (5) one who has received a waiver from the Attorney
3 General of the United States pursuant to 18 U.S.C.
4 922 (y) (3);

5 (j) (Blank) ~~A person who is subject to an existing order of~~
6 ~~protection prohibiting him or her from possessing a firearm;~~

7 (k) A person who has been convicted within the past 5 years
8 of battery, assault, aggravated assault, violation of an order
9 of protection, or a substantially similar offense in another
10 jurisdiction, in which a firearm was used or possessed;

11 (l) A person who has been convicted of domestic battery or
12 a substantially similar offense in another jurisdiction
13 committed on or after January 1, 1998;

14 (m) A person who has been convicted within the past 5 years
15 of domestic battery or a substantially similar offense in
16 another jurisdiction committed before January 1, 1998;

17 (n) A person who is prohibited from acquiring or possessing
18 firearms or firearm ammunition by any Illinois State statute or
19 by federal law;

20 (o) A minor subject to a petition filed under Section 5-520
21 of the Juvenile Court Act of 1987 alleging that the minor is a
22 delinquent minor for the commission of an offense that if
23 committed by an adult would be a felony; or

24 (p) An adult who had been adjudicated a delinquent minor
25 under the Juvenile Court Act of 1987 for the commission of an
26 offense that if committed by an adult would be a felony.

27 (Source: P.A. 92-854, eff. 12-5-02; 93-367, eff. 1-1-04.)

28 (430 ILCS 65/8.2 new)

29 Sec. 8.2. Firearm Owner's Identification Card denial or
30 revocation. The Department of State Police shall deny an
31 application or shall revoke and seize a Firearm Owner's
32 Identification Card previously issued under this Act if the
33 Department finds that the applicant or person to whom such card

1 was issued is or was at the time of issuance subject to an
2 existing order of protection.

3 Section 10. The Code of Criminal Procedure of 1963 is
4 amended by changing Section 112A-14 as follows:

5 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

6 Sec. 112A-14. Order of protection; remedies.

7 (a) Issuance of order. If the court finds that petitioner
8 has been abused by a family or household member, as defined in
9 this Article, an order of protection prohibiting such abuse
10 shall issue; provided that petitioner must also satisfy the
11 requirements of one of the following Sections, as appropriate:
12 Section 112A-17 on emergency orders, Section 112A-18 on interim
13 orders, or Section 112A-19 on plenary orders. Petitioner shall
14 not be denied an order of protection because petitioner or
15 respondent is a minor. The court, when determining whether or
16 not to issue an order of protection, shall not require physical
17 manifestations of abuse on the person of the victim.
18 Modification and extension of prior orders of protection shall
19 be in accordance with this Article.

20 (b) Remedies and standards. The remedies to be included in
21 an order of protection shall be determined in accordance with
22 this Section and one of the following Sections, as appropriate:
23 Section 112A-17 on emergency orders, Section 112A-18 on interim
24 orders, and Section 112A-19 on plenary orders. The remedies
25 listed in this subsection shall be in addition to other civil
26 or criminal remedies available to petitioner.

27 (1) Prohibition of abuse. Prohibit respondent's
28 harassment, interference with personal liberty,
29 intimidation of a dependent, physical abuse or willful
30 deprivation, as defined in this Article, if such abuse has
31 occurred or otherwise appears likely to occur if not
32 prohibited.

1 (2) Grant of exclusive possession of residence.
2 Prohibit respondent from entering or remaining in any
3 residence or household of the petitioner, including one
4 owned or leased by respondent, if petitioner has a right to
5 occupancy thereof. The grant of exclusive possession of the
6 residence shall not affect title to real property, nor
7 shall the court be limited by the standard set forth in
8 Section 701 of the Illinois Marriage and Dissolution of
9 Marriage Act.

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

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

1 The balance of hardships is presumed to favor
2 possession by petitioner unless the presumption is
3 rebutted by a preponderance of the evidence, showing
4 that the hardships to respondent substantially
5 outweigh the hardships to petitioner and any minor
6 child or dependent adult in petitioner's care. The
7 court, on the request of petitioner or on its own
8 motion, may order respondent to provide suitable,
9 accessible, alternate housing for petitioner instead
10 of excluding respondent from a mutual residence or
11 household.

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

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

32 (4) Counseling. Require or recommend the respondent to
33 undergo counseling for a specified duration with a social
34 worker, psychologist, clinical psychologist, psychiatrist,

1 family service agency, alcohol or substance abuse program,
2 mental health center guidance counselor, agency providing
3 services to elders, program designed for domestic violence
4 abusers or any other guidance service the court deems
5 appropriate.

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

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

21 (6) Temporary legal custody. Award temporary legal
22 custody to petitioner in accordance with this Section, the
23 Illinois Marriage and Dissolution of Marriage Act, the
24 Illinois Parentage Act of 1984, and this State's Uniform
25 Child-Custody Jurisdiction and Enforcement Act.

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

31 (7) Visitation. Determine the visitation rights, if
32 any, of respondent in any case in which the court awards
33 physical care or temporary legal custody of a minor child
34 to petitioner. The court shall restrict or deny

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

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

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

31 (8) Removal or concealment of minor child. Prohibit
32 respondent from removing a minor child from the State or
33 concealing the child within the State.

34 (9) Order to appear. Order the respondent to appear in

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

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

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

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

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

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

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

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

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

33 If petitioner's sole claim to ownership of the property
34 is that it is marital property, the court may grant

1 petitioner relief under subparagraph (ii) of this
2 paragraph only if a proper proceeding has been filed under
3 the Illinois Marriage and Dissolution of Marriage Act, as
4 now or hereafter amended.

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

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

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

31 (i) Losses affecting family needs. If a party is
32 entitled to seek maintenance, child support or
33 property distribution from the other party under the
34 Illinois Marriage and Dissolution of Marriage Act, as

1 now or hereafter amended, the court may order
2 respondent to reimburse petitioner's actual losses, to
3 the extent that such reimbursement would be
4 "appropriate temporary relief", as authorized by
5 subsection (a) (3) of Section 501 of that Act.

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

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

18 (14.5) Prohibition of firearm possession. (a) When a
19 complaint is made under a request for an order of
20 protection, that the respondent has threatened or is likely
21 to use firearms illegally against the petitioner, and the
22 respondent is present in court, or has failed to appear
23 after receiving actual notice, the court shall examine on
24 oath the petitioner, and any witnesses who may be produced.
25 If the court is satisfied that there is any danger of the
26 illegal use of firearms, it shall include in the order of
27 protection the requirement that any firearms and any
28 Firearm Owner's Identification Card in the possession of
29 the respondent, except as provided in subsection (b), be
30 turned over to the local law enforcement agency for
31 safekeeping. If the respondent fails to appear, or refuses
32 or fails to surrender his or her firearms or Firearm
33 Owner's Identification Card, the court shall issue a
34 warrant for seizure of any firearm and any Firearm Owner's

1 Identification Card in the possession of the respondent.
2 The period of safekeeping shall be for a stated period of
3 time not to exceed 2 years. The firearm or firearms and any
4 Firearm Owner's Identification Card shall be returned to
5 the respondent at the end of the stated period or at
6 expiration of the order of protection, whichever is sooner.

7 (b) If the respondent is a peace officer as defined in
8 Section 2-13 of the Criminal Code of 1961, the court shall
9 order that any firearms used by the respondent in the
10 performance of his or her duties as a peace officer be
11 surrendered to the chief law enforcement executive of the
12 agency in which the respondent is employed, who shall
13 retain the firearms for safekeeping for the stated period
14 not to exceed 2 years as set forth in the court order.

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

25 (16) Order for payment of shelter services. Order
26 respondent to reimburse a shelter providing temporary
27 housing and counseling services to the petitioner for the
28 cost of the services, as certified by the shelter and
29 deemed reasonable by the court.

30 (17) Order for injunctive relief. Enter injunctive
31 relief necessary or appropriate to prevent further abuse of
32 a family or household member or to effectuate one of the
33 granted remedies, if supported by the balance of hardships.
34 If the harm to be prevented by the injunction is abuse or

1 any other harm that one of the remedies listed in
2 paragraphs (1) through (16) of this subsection is designed
3 to prevent, no further evidence is necessary to establish
4 that the harm is an irreparable injury.

5 (c) Relevant factors; findings.

6 (1) In determining whether to grant a specific remedy,
7 other than payment of support, the court shall consider
8 relevant factors, including but not limited to the
9 following:

10 (i) the nature, frequency, severity, pattern and
11 consequences of the respondent's past abuse of the
12 petitioner or any family or household member,
13 including the concealment of his or her location in
14 order to evade service of process or notice, and the
15 likelihood of danger of future abuse to petitioner or
16 any member of petitioner's or respondent's family or
17 household; and

18 (ii) the danger that any minor child will be abused
19 or neglected or improperly removed from the
20 jurisdiction, improperly concealed within the State or
21 improperly separated from the child's primary
22 caretaker.

23 (2) In comparing relative hardships resulting to the
24 parties from loss of possession of the family home, the
25 court shall consider relevant factors, including but not
26 limited to the following:

27 (i) availability, accessibility, cost, safety,
28 adequacy, location and other characteristics of
29 alternate housing for each party and any minor child or
30 dependent adult in the party's care;

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

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

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

5 (i) That the court has considered the applicable
6 relevant factors described in paragraphs (1) and (2) of
7 this subsection.

8 (ii) Whether the conduct or actions of respondent,
9 unless prohibited, will likely cause irreparable harm
10 or continued abuse.

11 (iii) Whether it is necessary to grant the
12 requested relief in order to protect petitioner or
13 other alleged abused persons.

14 (4) For purposes of issuing an ex parte emergency order
15 of protection, the court, as an alternative to or as a
16 supplement to making the findings described in paragraphs
17 (c)(3)(i) through (c)(3)(iii) of this subsection, may use
18 the following procedure:

19 When a verified petition for an emergency order of
20 protection in accordance with the requirements of Sections
21 112A-5 and 112A-17 is presented to the court, the court
22 shall examine petitioner on oath or affirmation. An
23 emergency order of protection shall be issued by the court
24 if it appears from the contents of the petition and the
25 examination of petitioner that the averments are
26 sufficient to indicate abuse by respondent and to support
27 the granting of relief under the issuance of the emergency
28 order of protection.

29 (5) Never married parties. No rights or
30 responsibilities for a minor child born outside of marriage
31 attach to a putative father until a father and child
32 relationship has been established under the Illinois
33 Parentage Act of 1984. Absent such an adjudication, no
34 putative father shall be granted temporary custody of the

1 minor child, visitation with the minor child, or physical
2 care and possession of the minor child, nor shall an order
3 of payment for support of the minor child be entered.

4 (d) Balance of hardships; findings. If the court finds that
5 the balance of hardships does not support the granting of a
6 remedy governed by paragraph (2), (3), (10), (11), or (16) of
7 subsection (b) of this Section, which may require such
8 balancing, the court's findings shall so indicate and shall
9 include a finding as to whether granting the remedy will result
10 in hardship to respondent that would substantially outweigh the
11 hardship to petitioner from denial of the remedy. The findings
12 shall be an official record or in writing.

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

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

18 (2) Respondent was voluntarily intoxicated;

19 (3) Petitioner acted in self-defense or defense of
20 another, provided that, if petitioner utilized force, such
21 force was justifiable under Article VII of the Criminal
22 Code of 1961;

23 (4) Petitioner did not act in self-defense or defense
24 of another;

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

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

29 (7) Conduct by any family or household member excused
30 the abuse by respondent, unless that same conduct would
31 have excused such abuse if the parties had not been family
32 or household members.

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

1 Section 15. The Illinois Domestic Violence Act of 1986 is
2 amended by changing Section 214 as follows:

3 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

4 Sec. 214. Order of protection; remedies.

5 (a) Issuance of order. If the court finds that petitioner
6 has been abused by a family or household member or that
7 petitioner is a high-risk adult who has been abused, neglected,
8 or exploited, as defined in this Act, an order of protection
9 prohibiting the abuse, neglect, or exploitation shall issue;
10 provided that petitioner must also satisfy the requirements of
11 one of the following Sections, as appropriate: Section 217 on
12 emergency orders, Section 218 on interim orders, or Section 219
13 on plenary orders. Petitioner shall not be denied an order of
14 protection because petitioner or respondent is a minor. The
15 court, when determining whether or not to issue an order of
16 protection, shall not require physical manifestations of abuse
17 on the person of the victim. Modification and extension of
18 prior orders of protection shall be in accordance with this
19 Act.

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

27 (1) Prohibition of abuse, neglect, or exploitation.
28 Prohibit respondent's harassment, interference with
29 personal liberty, intimidation of a dependent, physical
30 abuse, or willful deprivation, neglect or exploitation, as
31 defined in this Act, or stalking of the petitioner, as
32 defined in Section 12-7.3 of the Criminal Code of 1961, if
33 such abuse, neglect, exploitation, or stalking has

1 occurred or otherwise appears likely to occur if not
2 prohibited.

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

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

21 (B) Presumption of hardships. If petitioner and
22 respondent each has the right to occupancy of a
23 residence or household, the court shall balance (i) the
24 hardships to respondent and any minor child or
25 dependent adult in respondent's care resulting from
26 entry of this remedy with (ii) the hardships to
27 petitioner and any minor child or dependent adult in
28 petitioner's care resulting from continued exposure to
29 the risk of abuse (should petitioner remain at the
30 residence or household) or from loss of possession of
31 the residence or household (should petitioner leave to
32 avoid the risk of abuse). When determining the balance
33 of hardships, the court shall also take into account
34 the accessibility of the residence or household.

1 Hardships need not be balanced if respondent does not
2 have a right to occupancy.

3 The balance of hardships is presumed to favor
4 possession by petitioner unless the presumption is
5 rebutted by a preponderance of the evidence, showing
6 that the hardships to respondent substantially
7 outweigh the hardships to petitioner and any minor
8 child or dependent adult in petitioner's care. The
9 court, on the request of petitioner or on its own
10 motion, may order respondent to provide suitable,
11 accessible, alternate housing for petitioner instead
12 of excluding respondent from a mutual residence or
13 household.

14 (3) Stay away order and additional prohibitions. Order
15 respondent to stay away from petitioner or any other person
16 protected by the order of protection, or prohibit
17 respondent from entering or remaining present at
18 petitioner's school, place of employment, or other
19 specified places at times when petitioner is present, or
20 both, if reasonable, given the balance of hardships.
21 Hardships need not be balanced for the court to enter a
22 stay away order or prohibit entry if respondent has no
23 right to enter the premises.

24 If an order of protection grants petitioner exclusive
25 possession of the residence, or prohibits respondent from
26 entering the residence, or orders respondent to stay away
27 from petitioner or other protected persons, then the court
28 may allow respondent access to the residence to remove
29 items of clothing and personal adornment used exclusively
30 by respondent, medications, and other items as the court
31 directs. The right to access shall be exercised on only one
32 occasion as the court directs and in the presence of an
33 agreed-upon adult third party or law enforcement officer.

34 (4) Counseling. Require or recommend the respondent to

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

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

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

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

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

33 (7) Visitation. Determine the visitation rights, if
34 any, of respondent in any case in which the court awards

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

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

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

33 (8) Removal or concealment of minor child. Prohibit
34 respondent from removing a minor child from the State or

1 concealing the child within the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) Losses affecting family needs. If a party is

1 entitled to seek maintenance, child support or
2 property distribution from the other party under the
3 Illinois Marriage and Dissolution of Marriage Act, as
4 now or hereafter amended, the court may order
5 respondent to reimburse petitioner's actual losses, to
6 the extent that such reimbursement would be
7 "appropriate temporary relief", as authorized by
8 subsection (a) (3) of Section 501 of that Act.

9 (ii) Recovery of expenses. In the case of an
10 improper concealment or removal of a minor child, the
11 court may order respondent to pay the reasonable
12 expenses incurred or to be incurred in the search for
13 and recovery of the minor child, including but not
14 limited to legal fees, court costs, private
15 investigator fees, and travel costs.

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

21 (14.5) Prohibition of firearm possession.

22 (a) When a complaint is made under a request for an
23 order of protection, that the respondent has
24 threatened or is likely to use firearms illegally
25 against the petitioner, and the respondent is present
26 in court, or has failed to appear after receiving
27 actual notice, the court shall examine on oath the
28 petitioner, and any witnesses who may be produced. If
29 the court is satisfied that there is any danger of the
30 illegal use of firearms, it shall issue an order that
31 any firearms and any Firearm Owner's Identification
32 Card in the possession of the respondent, except as
33 provided in subsection (b), be turned over to the local
34 law enforcement agency for safekeeping. If the

1 respondent has failed to appear, the court shall issue
2 a warrant for seizure of any firearm and Firearm
3 Owner's Identification Card in the possession of the
4 respondent. The period of safekeeping shall be for a
5 stated period of time not to exceed 2 years. The
6 firearm or firearms and Firearm Owner's Identification
7 Card shall be returned to the respondent at the end of
8 the stated period or at expiration of the order of
9 protection, whichever is sooner.

10 (b) If the respondent is a peace officer as defined
11 in Section 2-13 of the Criminal Code of 1961, the court
12 shall order that any firearms used by the respondent in
13 the performance of his or her duties as a peace officer
14 be surrendered to the chief law enforcement executive
15 of the agency in which the respondent is employed, who
16 shall retain the firearms for safekeeping for the
17 stated period not to exceed 2 years as set forth in the
18 court order.

19 (15) Prohibition of access to records. If an order of
20 protection prohibits respondent from having contact with
21 the minor child, or if petitioner's address is omitted
22 under subsection (b) of Section 203, or if necessary to
23 prevent abuse or wrongful removal or concealment of a minor
24 child, the order shall deny respondent access to, and
25 prohibit respondent from inspecting, obtaining, or
26 attempting to inspect or obtain, school or any other
27 records of the minor child who is in the care of
28 petitioner.

29 (16) Order for payment of shelter services. Order
30 respondent to reimburse a shelter providing temporary
31 housing and counseling services to the petitioner for the
32 cost of the services, as certified by the shelter and
33 deemed reasonable by the court.

34 (17) Order for injunctive relief. Enter injunctive

1 relief necessary or appropriate to prevent further abuse of
2 a family or household member or further abuse, neglect, or
3 exploitation of a high-risk adult with disabilities or to
4 effectuate one of the granted remedies, if supported by the
5 balance of hardships. If the harm to be prevented by the
6 injunction is abuse or any other harm that one of the
7 remedies listed in paragraphs (1) through (16) of this
8 subsection is designed to prevent, no further evidence is
9 necessary that the harm is an irreparable injury.

10 (c) Relevant factors; findings.

11 (1) In determining whether to grant a specific remedy,
12 other than payment of support, the court shall consider
13 relevant factors, including but not limited to the
14 following:

15 (i) the nature, frequency, severity, pattern and
16 consequences of the respondent's past abuse, neglect
17 or exploitation of the petitioner or any family or
18 household member, including the concealment of his or
19 her location in order to evade service of process or
20 notice, and the likelihood of danger of future abuse,
21 neglect, or exploitation to petitioner or any member of
22 petitioner's or respondent's family or household; and

23 (ii) the danger that any minor child will be abused
24 or neglected or improperly removed from the
25 jurisdiction, improperly concealed within the State or
26 improperly separated from the child's primary
27 caretaker.

28 (2) In comparing relative hardships resulting to the
29 parties from loss of possession of the family home, the
30 court shall consider relevant factors, including but not
31 limited to the following:

32 (i) availability, accessibility, cost, safety,
33 adequacy, location and other characteristics of
34 alternate housing for each party and any minor child or

1 dependent adult in the party's care;

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

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

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

10 (i) That the court has considered the applicable
11 relevant factors described in paragraphs (1) and (2) of
12 this subsection.

13 (ii) Whether the conduct or actions of respondent,
14 unless prohibited, will likely cause irreparable harm
15 or continued abuse.

16 (iii) Whether it is necessary to grant the
17 requested relief in order to protect petitioner or
18 other alleged abused persons.

19 (4) For purposes of issuing an ex parte emergency order
20 of protection, the court, as an alternative to or as a
21 supplement to making the findings described in paragraphs
22 (c) (3) (i) through (c) (3) (iii) of this subsection, may use
23 the following procedure:

24 When a verified petition for an emergency order of
25 protection in accordance with the requirements of Sections
26 203 and 217 is presented to the court, the court shall
27 examine petitioner on oath or affirmation. An emergency
28 order of protection shall be issued by the court if it
29 appears from the contents of the petition and the
30 examination of petitioner that the averments are
31 sufficient to indicate abuse by respondent and to support
32 the granting of relief under the issuance of the emergency
33 order of protection.

34 (5) Never married parties. No rights or

1 responsibilities for a minor child born outside of marriage
2 attach to a putative father until a father and child
3 relationship has been established under the Illinois
4 Parentage Act of 1984, the Illinois Public Aid Code,
5 Section 12 of the Vital Records Act, the Juvenile Court Act
6 of 1987, the Probate Act of 1985, the Revised Uniform
7 Reciprocal Enforcement of Support Act, the Uniform
8 Interstate Family Support Act, the Expedited Child Support
9 Act of 1990, any judicial, administrative, or other act of
10 another state or territory, any other Illinois statute, or
11 by any foreign nation establishing the father and child
12 relationship, any other proceeding substantially in
13 conformity with the Personal Responsibility and Work
14 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
15 or where both parties appeared in open court or at an
16 administrative hearing acknowledging under oath or
17 admitting by affirmation the existence of a father and
18 child relationship. Absent such an adjudication, finding,
19 or acknowledgement, no putative father shall be granted
20 temporary custody of the minor child, visitation with the
21 minor child, or physical care and possession of the minor
22 child, nor shall an order of payment for support of the
23 minor child be entered.

24 (d) Balance of hardships; findings. If the court finds that
25 the balance of hardships does not support the granting of a
26 remedy governed by paragraph (2), (3), (10), (11), or (16) of
27 subsection (b) of this Section, which may require such
28 balancing, the court's findings shall so indicate and shall
29 include a finding as to whether granting the remedy will result
30 in hardship to respondent that would substantially outweigh the
31 hardship to petitioner from denial of the remedy. The findings
32 shall be an official record or in writing.

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

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

4 (2) Respondent was voluntarily intoxicated;

5 (3) Petitioner acted in self-defense or defense of
6 another, provided that, if petitioner utilized force, such
7 force was justifiable under Article VII of the Criminal
8 Code of 1961;

9 (4) Petitioner did not act in self-defense or defense
10 of another;

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

13 (6) Petitioner did not leave the residence or household
14 to avoid further abuse, neglect, or exploitation by
15 respondent;

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

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