



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3714

Introduced 2/25/2009, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

725 ILCS 5/112A-22
750 ILCS 5/602.1

from Ch. 38, par. 112A-22
from Ch. 40, par. 602.1

Amends the Code of Criminal Procedure of 1963 and the Illinois Marriage and Dissolution of Marriage Act. Provides that upon the request of the petitioner, within 24 hours of the issuance of an order of protection, the clerk of the issuing judge shall send written notice of the order of protection along with a certified copy of the order of protection to the day-care facility, pre-school or pre-kindergarten, or private school or the principal office of the public school district or any college or university in which any child who is a protected person under the order of protection or any child of the petitioner is enrolled. Provides that upon the request of the petitioner, the clerk of the circuit court shall send a certified copy of the order of protection to any specified health care facility or health care practitioner requested by the petitioner at the mailing address provided by the petitioner. Provides that if the order of protection prohibits a respondent's access to such records, the respondent shall not be allowed access to the records unless the order has expired or has been vacated.

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FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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-22 as follows:

6 (725 ILCS 5/112A-22) (from Ch. 38, par. 112A-22)

7 Sec. 112A-22. Notice of orders.

8 (a) Entry and issuance. Upon issuance of any order of
9 protection, the clerk shall immediately, or on the next court
10 day if an emergency order is issued in accordance with
11 subsection (c) of Section 112A-17, (i) enter the order on the
12 record and file it in accordance with the circuit court
13 procedures and (ii) provide a file stamped copy of the order to
14 respondent, if present, and to petitioner.

15 (b) Filing with sheriff. The clerk of the issuing judge
16 shall, or the petitioner may, on the same day that an order of
17 protection is issued, file a copy of that order with the
18 sheriff or other law enforcement officials charged with
19 maintaining Department of State Police records or charged with
20 serving the order upon respondent. If the order was issued in
21 accordance with subsection (c) of Section 112A-17, the clerk
22 shall on the next court day, file a certified copy of the order
23 with the Sheriff or other law enforcement officials charged

1 with maintaining Department of State Police records.

2 (c) Service by sheriff. Unless respondent was present in
3 court when the order was issued, the sheriff, other law
4 enforcement official or special process server shall promptly
5 serve that order upon respondent and file proof of such
6 service, in the manner provided for service of process in civil
7 proceedings. Instead of serving the order upon the respondent,
8 however, the sheriff, other law enforcement official, or
9 special process server may serve the respondent with a short
10 form notification as provided in Section 112A-22.10. If process
11 has not yet been served upon the respondent, it shall be served
12 with the order or short form notification.

13 (c-5) If the person against whom the order of protection is
14 issued is arrested and the written order is issued in
15 accordance with subsection (c) of Section 112A-17 and received
16 by the custodial law enforcement agency before the respondent
17 or arrestee is released from custody, the custodial law
18 enforcement agent shall promptly serve the order upon the
19 respondent or arrestee before the respondent or arrestee is
20 released from custody. In no event shall detention of the
21 respondent or arrestee be extended for hearing on the petition
22 for order of protection or receipt of the order issued under
23 Section 112A-17 of this Code.

24 (d) Extensions, modifications and revocations. Any order
25 extending, modifying or revoking any order of protection shall
26 be promptly recorded, issued and served as provided in this

1 Section.

2 (e) Notice to schools. Upon the request of the petitioner,
3 within 24 hours of the issuance of an order of protection, the
4 clerk of the issuing judge shall send written notice of the
5 order of protection along with a certified copy of the order of
6 protection to the day-care facility, pre-school or
7 pre-kindergarten, or private school or the principal office of
8 the public school district or any college or university in
9 which any child who is a protected person under the order of
10 protection or any child of the petitioner is enrolled. If the
11 child transfers enrollment to another day-care facility,
12 pre-school, pre-kindergarten, private school, public school,
13 college, or university, the petitioner may, within 24 hours of
14 the transfer, send to the clerk written notice of the transfer,
15 including the name and address of the institution to which the
16 child is transferring. Within 24 hours of receipt of notice
17 from the petitioner that a child is transferring to another
18 day-care facility, pre-school, pre-kindergarten, private
19 school, public school, college, or university, the clerk shall
20 send written notice of the order of protection, along with a
21 certified copy of the order, to the institution to which the
22 child is transferring.

23 (f) Disclosure by schools. After receiving a certified copy
24 of an order of protection that prohibits a respondent's access
25 to records, neither a day-care facility, pre-school,
26 pre-kindergarten, public or private school, college, or

1 university nor its employees shall allow a respondent access to
2 a protected child's records or release information in those
3 records to the respondent. The school shall file the copy of
4 the order of protection in the records of a child who is a
5 protected person under the order of protection. When a child
6 who is a protected person under the order of protection
7 transfers to another day-care facility, pre-school,
8 pre-kindergarten, public or private school, college, or
9 university, the institution from which the child is
10 transferring may, at the request of the petitioner, provide,
11 within 24 hours of the transfer, written notice of the order of
12 protection, along with a certified copy of the order, to the
13 institution to which the child is transferring.

14 (g) Notice to health care facilities and health care
15 practitioners. Upon the request of the petitioner, the clerk of
16 the circuit court shall send a certified copy of the order of
17 protection to any specified health care facility or health care
18 practitioner requested by the petitioner at the mailing address
19 provided by the petitioner.

20 (h) Disclosure by health care facilities and health care
21 practitioners. After receiving a certified copy of an order of
22 protection that prohibits a respondent's access to records, no
23 health care facility or health care practitioner shall allow a
24 respondent access to the records of any child who is a
25 protected person under the order of protection, or release
26 information in those records to the respondent, unless the

1 order has expired or the respondent shows a certified copy of
2 the court order vacating the corresponding order of protection
3 that was sent to the health care facility or practitioner.
4 Nothing in this Section shall be construed to require health
5 care facilities or health care practitioners to alter
6 procedures related to billing and payment. The health care
7 facility or health care practitioner may file the copy of the
8 order of protection in the records of a child who is a
9 protected person under the order of protection, or may employ
10 any other method to identify the records to which a respondent
11 is prohibited access. No health care facility or health care
12 practitioner shall be civilly or professionally liable for
13 reliance on a copy of an order of protection, except for
14 willful and wanton misconduct.

15 (Source: P.A. 92-162, eff. 1-1-02.)

16 Section 10. The Illinois Marriage and Dissolution of
17 Marriage Act is amended by changing Section 602.1 as follows:

18 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

19 Sec. 602.1. (a) The dissolution of marriage, the
20 declaration of invalidity of marriage, the legal separation of
21 the parents, or the parents living separate and apart shall not
22 diminish parental powers, rights, and responsibilities except
23 as the court for good reason may determine under the standards
24 of Section 602.

1 (b) Upon the application of either or both parents, or upon
2 its own motion, the court shall consider an award of joint
3 custody. Joint custody means custody determined pursuant to a
4 Joint Parenting Agreement or a Joint Parenting Order. In such
5 cases, the court shall initially request the parents to produce
6 a Joint Parenting Agreement. Such Agreement shall specify each
7 parent's powers, rights and responsibilities for the personal
8 care of the child and for major decisions such as education,
9 health care, and religious training. The Agreement shall
10 further specify a procedure by which proposed changes, disputes
11 and alleged breaches may be mediated or otherwise resolved and
12 shall provide for a periodic review of its terms by the
13 parents. In producing a Joint Parenting Agreement, the parents
14 shall be flexible in arriving at resolutions which further the
15 policy of this State as expressed in Sections 102 and 602. For
16 the purpose of assisting the court in making a determination
17 whether an award of joint custody is appropriate, the court may
18 order mediation and may direct that an investigation be
19 conducted pursuant to the provisions of Section 605. If there
20 is a danger to the health or safety of a partner, joint
21 mediation shall not be required by the court. In the event the
22 parents fail to produce a Joint Parenting Agreement, the court
23 may enter an appropriate Joint Parenting Order under the
24 standards of Section 602 which shall specify and contain the
25 same elements as a Joint Parenting Agreement, or it may award
26 sole custody under the standards of Sections 602, 607, and 608.

1 (c) The court may enter an order of joint custody if it
2 determines that joint custody would be in the best interests of
3 the child, taking into account the following:

4 (1) the ability of the parents to cooperate effectively
5 and consistently in matters that directly affect the joint
6 parenting of the child. "Ability of the parents to
7 cooperate" means the parents' capacity to substantially
8 comply with a Joint Parenting Order. The court shall not
9 consider the inability of the parents to cooperate
10 effectively and consistently in matters that do not
11 directly affect the joint parenting of the child;

12 (2) The residential circumstances of each parent; and

13 (3) all other factors which may be relevant to the best
14 interest of the child.

15 (d) Nothing within this section shall imply or presume that
16 joint custody shall necessarily mean equal parenting time. The
17 physical residence of the child in joint custodial situations
18 shall be determined by:

19 (1) express agreement of the parties; or

20 (2) order of the court under the standards of this
21 Section.

22 (e) Notwithstanding any other provision of law, access to
23 records and information pertaining to a child, including but
24 not limited to medical, dental, child care and school records,
25 shall not be denied to a parent for the reason that such parent
26 is not the child's custodial parent; however, no parent shall

1 have access to the school records of a child if the parent is
2 prohibited by an order of protection from inspecting or
3 obtaining such records pursuant to the Illinois Domestic
4 Violence Act of 1986, as now or hereafter amended or pursuant
5 to the Code of Criminal Procedure of 1963. No parent who is a
6 named respondent in an order of protection issued pursuant to
7 the Domestic Violence Act of 1986 or the Code of Criminal
8 Procedure of 1963 shall have access to the health care records
9 of a child who is a protected person under that order of
10 protection.

11 (Source: P.A. 94-377, eff. 7-29-05; 95-912, eff. 1-1-09.)