

HB5728



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5728

by Rep. Kelly Burke

SYNOPSIS AS INTRODUCED:

750 ILCS 60/217

from Ch. 40, par. 2312-17

Amends the Illinois Domestic Violence Act of 1986. Provides that the court shall not issue a warrant for the seizure of any firearm in the possession of a respondent upon an emergency order of protection unless specified procedural requirements are met.

LRB099 20151 HEP 44592 b

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

6 (750 ILCS 60/217) (from Ch. 40, par. 2312-17)

7 Sec. 217. 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 208;

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

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

17 (i) For the remedies of "prohibition of abuse"
18 described in Section 214(b)(1), "stay away order and
19 additional prohibitions" described in Section
20 214(b)(3), "removal or concealment of minor child"
21 described in Section 214(b)(8), "order to appear"
22 described in Section 214(b)(9), "physical care and
23 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 The court shall not issue a warrant for the seizure of any
12 firearm in the possession of a respondent upon an emergency
13 order of protection unless the requirements of subdivision
14 (b) (14.5) (a) (1) of Section 214 of this Act are met.

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

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

23 (1) Prerequisites. When the court is unavailable at the
24 close of business, the petitioner may file a petition for a
25 21-day emergency order before any available circuit judge
26 or associate judge who may grant relief under this Act. If

1 the judge finds that there is an immediate and present
2 danger of abuse to petitioner and that petitioner has
3 satisfied the prerequisites set forth in subsection (a) of
4 Section 217, that judge may issue an emergency order of
5 protection.

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

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

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