

# ILLINOIS DOMESTIC VIOLENCE ACT



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Disclaimer: This booklet is intended to be an accurate rendition of the compiled statutes through its revision date. The reader is responsible for checking the official statutes.

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# Illinois Domestic Violence Act Order Of Protection In Civil Court

## Article I—General Provisions

### **Purposes**

(750 ILCS 60/102)

This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) Recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development;

(2) Recognize domestic violence against high risk adults with disabilities, who are particularly vulnerable due to impairments in ability to seek or obtain protection, as a serious problem which takes on many forms, including physical abuse, sexual abuse, neglect, and exploitation, and facilitate accessibility of remedies under the Act in order to provide immediate and effective assistance and protection.

(3) Recognize that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence; that, although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims;

(4) Support the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse and, when necessary, reduce the abuser's access to the victim and address any related issues of child custody and economic support, so that victims are not trapped in abusive situations by fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services;

(5) Clarify the responsibilities and support the efforts of law enforcement officers to provide immediate, effective assistance and protection for victims of domestic violence, recognizing that law enforcement officers often become the secondary victims of domestic violence, as evidenced by the high rates of police injuries and deaths that occur in response to domestic violence calls; and

(6) Expand the civil and criminal remedies for victims of domestic violence; including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse.

## **Definitions**

(750 ILCS 60/103)

For the purposes of this Act, the following terms shall have the following meanings:

(1) "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.

(2) "Adult with disabilities" means an elder adult with disabilities or a high-risk adult with disabilities. A person may be an adult with disabilities for purposes of this Act even though he or she has never been adjudicated an incompetent adult. However, no court proceeding may be initiated or continued on behalf of an adult with disabilities over that adult's objection, unless such proceeding is approved by his or her legal guardian, if any.

(3) "Domestic violence" means abuse as defined in paragraph (1).

(4) "Elder adult with disabilities" means an adult prevented by advanced age from taking appropriate action to protect himself or herself from abuse by a family or household member.

(5) "Exploitation" means the illegal, including tortious, use of a high-risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resources of a high-risk adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law.

(6) "Family or household members" include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in paragraph (3) of subsection (b) of Section 12-21 of the Criminal Code of 1961. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high-risk adult with disabilities, "family or household members" includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.

(7) "Harassment" means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

- (i) creating a disturbance at petitioner's place of employment or school;

- (ii) repeatedly telephoning petitioner's place of employment, home or residence;
- (iii) repeatedly following petitioner about in a public place or places;
- (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;
- (v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence; or
- (vi) threatening physical force, confinement or restraint on one or more occasions.

(8) "High-risk adult with disabilities" means a person aged 18 or over whose physical or mental disability impairs his or her ability to seek or obtain protection from abuse, neglect, or exploitation.

(9) "Interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage.

(10) "Intimidation of a dependent" means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Act, regardless of whether the abused person is a family or household member.

(11) (A) "Neglect" means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes but is not limited to:

- (i) the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse;
- (ii) the repeated, careless imposition of unreasonable confinement;
- (iii) the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance;
- (iv) the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities; or
- (v) the failure to protect a high-risk adult with disabilities from health and safety hazards.

(B) Nothing in this subsection (10) shall be construed to impose a requirement that assistance be provided to a high-risk adult with disabilities over his or her objection in the absence of a court order, nor to create any new affirmative duty to provide support to a high-risk adult with disabilities.

(12) "Order of protection" means an emergency order, interim order or plenary order, granted pursuant to this Act, which includes any or all of the remedies authorized by Section 214 of this Act.

(13) "Petitioner" may mean not only any named petitioner for the order of protection and any named victim of abuse on whose behalf the petition is brought, but also any other person protected by this Act.

(14) "Physical abuse" includes sexual abuse and means any of the following:

(i) knowing or reckless use of physical force, confinement or restraint;

(ii) knowing, repeated and unnecessary sleep deprivation; or

(iii) knowing or reckless conduct which creates an immediate risk of physical harm.

(14.5) "Stay away" means for the respondent to refrain from both physical presence and nonphysical contact with the petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, email, faxes, and written notes), or through third parties who may or may not know about the order of protection.

(15) "Willful deprivation" means willfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forgo such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.

## Article II—Orders of Protection

### **Persons protected by this Act**

(750 ILCS 60/201)

(a) The following persons are protected by this Act:

(i) any person abused by a family or household member;

(ii) any high-risk adult with disabilities who is abused, neglected, or exploited by a family or household member;

(iii) any minor child or dependent adult in the care of such person; and

(iv) any person residing or employed at a private home or public shelter which is housing an abused family or household member.

(b) A petition for an order of protection may be filed only: (i) by a person who has been abused by a family or household member or by any person on behalf of a minor child or an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition, or (ii) by any person on behalf of a high-risk adult with disabilities who has been abused, neglected, or exploited by a family or household member. However, any petition properly filed under this Act may seek protection for any additional persons protected by this Act.

### **Access of high-risk adults**

(750 ILCS 60/201.1)

No person shall obstruct or impede the access of a high-risk adult with disabilities to any agency or organization authorized to file a petition for an order of protection under Section 201 of this Act for the purpose of a private visit relating to legal rights, entitlements, claims and services under this Act and Section 1 of "An Act in relation to domestic relations and domestic violence shelters and service programs", approved September 24, 1981, as now or hereafter amended. If a person does so obstruct or impede such access of a high-risk adult with disabilities, local law enforcement agencies shall take all appropriate action to assist the party seeking access in petitioning for a search warrant or an ex parte injunctive order. Such warrant or order may issue upon a showing of probable cause to believe that the high-risk adult with disabilities is the subject of abuse, neglect, or exploitation which constitutes a criminal offense or that any other criminal offense is occurring which affects the interests or welfare of the high-risk adult with disabilities. When, from the personal observations of a law enforcement officer, it appears probable that delay of entry in order to obtain a warrant or order would cause the high-risk adult with disabilities to be in imminent danger of death or great bodily harm, entry may be made by the law enforcement officer after an announcement of the officer's authority and purpose.

### **Commencement of action; filing fees; dismissal**

(750 ILCS 60/202)

(a) How to commence action. Actions for orders of protection are commenced:

(1) Independently: By filing a petition for an order of protection in any civil court, unless specific courts are designated by local rule or order.

(2) In conjunction with another civil proceeding: By filing a petition for an order of protection under the same case number as another civil proceeding involving the parties, including but not limited to: (i) any proceeding under the Illinois Marriage and Dissolution of Marriage Act, Illinois Parentage Act of 1984, Nonsupport of Spouse and Children Act, Revised Uniform Reciprocal Enforcement of Support Act or an action for nonsupport brought under Article 10 of the Illinois Public Aid Code, provided that a petitioner and the respondent are a party to or the subject of that proceeding or (ii) a guardianship proceeding under the Probate Act of 1975, or a proceeding for involuntary commitment under the Mental Health and Developmental Disabilities Code, or any proceeding, other than a delinquency petition, under the Juvenile Court Act of 1987, provided that a petitioner or the respondent is a party to or the subject of such proceeding.

(3) In conjunction with a delinquency petition or a criminal prosecution: By filing a petition for an order of protection, under the same case number as the delinquency petition or criminal prosecution, to be granted during pre-trial release of a defendant, with any dispositional order issued under Section 5-710 of the Juvenile Court Act of 1987 or as a condition of release, supervision, conditional discharge, probation, periodic imprisonment, parole or mandatory supervised release, or in conjunction with imprisonment or a bond forfeiture warrant; provided that:

(i) the violation is alleged in an information, complaint, indictment or delinquency petition on file, and the alleged offender and victim are family or household members or persons protected by this Act; and

(ii) the petition, which is filed by the State's Attorney, names a victim of the alleged crime as a petitioner.

(b) Filing, certification, and service fees. No fee shall be charged by the clerk for filing, amending, vacating, certifying, or photocopying petitions or orders; or for issuing alias summons; or for any related filing service. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this Section.

(c) Dismissal and consolidation. Withdrawal or dismissal of any petition for an order of protection prior to adjudication where the petitioner is represented by the State shall operate as a dismissal without prejudice. No action for an order of protection shall be dismissed because the respondent is being prosecuted for a crime against the petitioner. An independent action may be consolidated with another civil proceeding, as provided by paragraph (2) of subsection (a) of this Section. For any action commenced under paragraph (2) or (3) of subsection (a) of this Section, dismissal of the conjoined case (or a finding of not guilty) shall not require dismissal of the action for the order of protection; instead, it may be treated as an independent action and, if necessary and appropriate, transferred to a different court or division. Dismissal of any conjoined case shall not affect the validity of any previously issued order of protection, and thereafter subsections (b)(1) and (b)(2) of Section 220 shall be inapplicable to such order.

(d) Pro se petitions. The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to help with the writing and filing of a petition under this Section by any person not represented by counsel. In addition, that assistance may be provided by the state's attorney.

### **Pleading; non-disclosure of address; non-disclosure of schools**

(750 ILCS 60/203)

(a) A petition for an order of protection shall be in writing and verified or accompanied by affidavit and shall allege that petitioner has been abused by respondent, who is a family or household member. The petition shall further set forth whether there is any other pending action between the parties. During the pendency of this proceeding, each party has a continuing duty to inform the court of any subsequent proceeding for an order of protection in this or any other state.

(b) If the petition states that disclosure of petitioner's address would risk abuse of petitioner or any member of petitioner's family or household or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from all documents filed with the court. If disclosure is necessary to determine jurisdiction or consider any venue issue, it shall be made orally and in camera. If petitioner has not disclosed an address under this subsection, petitioner shall designate an alternative address at which respondent may serve notice of any motions.

(c) If the petitioner is seeking to have a child protected by the order of protection, and if that child is enrolled in any day-care facility, pre-school, pre-kindergarten, private school, public school district, college, or university, the petitioner may provide the name and address of the day-care facility, pre-school, pre-kindergarten, private school, public school district, college, or university to the court. However, if the petition states that disclosure of this information would risk abuse to petitioner or to the child protected under the order, this information may be omitted from all documents filed with the court.

### **Application of rules of civil procedure; Domestic abuse advocates**

(750 ILCS 60/205)

(a) Any proceeding to obtain, modify, reopen or appeal an order of protection, whether commenced alone or in conjunction with a civil or criminal proceeding, shall be governed by the rules of civil procedure of this State. The standard of proof in such a proceeding is proof by a preponderance of the evidence, whether the proceeding is heard in criminal or civil court. The Code of Civil Procedure and Supreme Court and local court rules applicable to civil proceedings, as now or hereafter amended, shall apply, except as otherwise provided by this law.

(b) (1) In all circuit court proceedings under this Act, domestic abuse advocates shall be allowed to attend and sit at counsel table and confer with the victim, unless otherwise directed by the court.

(2) In criminal proceedings in circuit courts, domestic abuse advocates shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court.

(3) Court administrators shall allow domestic abuse advocates to assist victims of domestic violence in the preparation of petitions for orders of protection.

(4) Domestic abuse advocates are not engaged in the unauthorized practice of law when providing assistance of the types specified in this subsection (b).

### **Trial by jury**

(750 ILCS 60/206)

There shall be no right to trial by jury in any proceeding to obtain, modify, vacate or extend any order of protection under this Act. However, nothing in this Section shall deny any existing right to trial by jury in a criminal proceeding.

### **Subject matter jurisdiction**

(750 ILCS 60/207)

Each of the circuit courts shall have the power to issue orders of protection.

### **Jurisdiction over persons**

(750 ILCS 60/208)

In child custody proceedings, the court's personal jurisdiction is determined by this State's Uniform Child-Custody Jurisdiction and Enforcement Act. Otherwise,

the courts of this State have jurisdiction to bind (i) State residents and (ii) non-residents having minimum contacts with this State, to the extent permitted by the long-arm statute, Section 2-209 of the Code of Civil Procedure, as now or hereafter amended.

## **Venue**

(750 ILCS 60/209)

(a) Filing. A petition for an order of protection may be filed in any county where (i) petitioner resides, (ii) respondent resides, (iii) the alleged abuse occurred or (iv) the petitioner is temporarily located if petitioner left petitioner's residence to avoid further abuse and could not obtain safe, accessible, and adequate temporary housing in the county of that residence.

(b) Exclusive Possession. With respect to requests for exclusive possession of the residence under this Act, venue is proper only in the county where the residence is located, except in the following circumstances:

(1) If a request for exclusive possession of the residence is made under this Act in conjunction with a proceeding under the Illinois Marriage and Dissolution of Marriage Act, venue is proper in the county or judicial circuit where the residence is located or in a contiguous county or judicial circuit.

(2) If a request for exclusive possession of the residence is made under this Act in any other proceeding, provided the petitioner meets the requirements of item (iv) of subsection (a), venue is proper in the county or judicial circuit where the residence is located or in a contiguous county or judicial circuit. In such case, however, if the court is not located in the county where the residence is located, it may grant exclusive possession of the residence under subdivision (b)(2) of Section 214 only in an emergency order under Section 217, and such grant may be extended thereafter beyond the maximum initial period only by a court located in the county where the residence is located.

(c) Inconvenient forum. If an order of protection is issued by a court in a county in which neither of the parties resides, the court may balance hardships to the parties and accordingly transfer any proceeding to extend, modify, re-open, vacate or enforce any such order to a county wherein a party resides.

(d) Objection. Objection to venue is waived if not made within such time as respondent's response is due, except as otherwise provided in subsection (b). In no event shall venue be deemed jurisdictional.

## **Process**

(750 ILCS 60/210)

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

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

(2) By notice in accordance with Section 210.1 in civil cases in which the defendant has filed a general appearance. The summons shall be in the form prescribed by Supreme Court Rule 101(d), except that it shall require respondent to answer or appear within 7 days. Attachments to the summons or notice shall include the petition for order of protection and supporting affidavits, if any, and any emergency order of protection that has been issued. The enforcement of an order of protection under Section 223 shall not be affected by the lack of service, delivery, or notice, provided the requirements of subsection (d) of that Section are otherwise met.

(b) Blank.

(c) Expedited service. The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(d) Remedies requiring actual notice. The counseling, payment of support, payment of shelter services, and payment of losses remedies provided by paragraphs 4, 12, 13, and 16 of subsection (b) of Section 214 may be granted only if respondent has been personally served with process, has answered or has made a general appearance.

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

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

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

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

### **Service of notice in conjunction with a pending civil case**

(750 ILCS 60/210.1)

(a) Notice. When an action for an order of protection is sought in conjunction with a pending civil case in which the court has obtained jurisdiction over respondent, and respondent has filed a general appearance, then a separate summons need not issue. Original notice of a hearing on a petition for an order of protection may be given, and the documents served, in accordance with Illinois Supreme Court Rules 11 and 12. When, however, an emergency order of

protection is sought in such a case on an ex parte application, then the procedure set forth in subsection (a) of Section 210 (other than in subsection (a)(2)) shall be followed. If an order of protection is issued using the notice provisions of this Section, then the order of protection or extensions of that order may survive the disposition of the main civil case. The enforcement of any order of protection under Section 223 shall not be affected by the lack of notice under this Section, provided the requirements of subsection (d) of that Section are otherwise met.

(b) Default. The form of notice described in subsection (a) shall include the following language directed to the respondent:

A 2-year plenary order of protection may be entered by default for any of the remedies sought in the petition if you fail to appear on the specified hearing date or on any subsequent hearing date agreed to by the parties or set by the court.

(c) Party to give notice. Notice in the pending civil case shall be given (i) by either party under this Section, with respect to extensions, modifications, hearings, or other relief pertinent to an order of protection, in accordance with Illinois Supreme Court Rules 11 and 12 or (ii) by the respondent as provided in subsection (c) of Section 224.

## **Service of notice of hearings**

Service of notice of hearings

Except as provided in Sections 210 and 210.1, notice of hearings on petitions or motions shall be served in accordance with Supreme Court Rules 11 and 12, unless notice is excused by Section 217 of this Act, or by the Code of Civil Procedure, Supreme Court Rules, or local rules, as now or hereafter amended.

## **Hearings**

(750 ILCS 60/212)

(a) A petition for an order of protection shall be treated as an expedited proceeding, and no court shall transfer or otherwise decline to decide all or part of such petition except as otherwise provided herein. Nothing in this Section shall prevent the court from reserving issues when jurisdiction or notice requirements are not met.

(b) Any court or a division thereof which ordinarily does not decide matters of child custody and family support may decline to decide contested issues of physical care, custody, visitation, or family support unless a decision on one or more of those contested issues is necessary to avoid the risk of abuse, neglect, removal from the state or concealment within the state of the child or of separation of the child from the primary caretaker. If the court or division thereof has declined to decide any or all of these issues, then it shall transfer all undecided issues to the appropriate court or division. In the event of such a transfer, a government attorney involved in the criminal prosecution may, but need not, continue to offer counsel to petitioner on transferred matters.

(c) If the court transfers or otherwise declines to decide any issue, judgment on that issue shall be expressly reserved and ruling on other issues shall not be

delayed or declined.

## **Continuances**

(750 ILCS 60/213)

(a) Petitions for emergency orders. Petitions for emergency remedies shall be granted or denied in accordance with the standards of Section 217, regardless of respondent's appearance or presence in court.

(b) Petitions for interim and plenary orders. Any action for an order of protection is an expedited proceeding. Continuances should be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance. If the continuance is necessary for some, but not all, of the remedies requested, hearing on those other remedies shall not be delayed.

## **Hearsay exception**

(750 ILCS 60/213.1)

In an action for an order of protection on behalf of a high-risk adult with disabilities, a finding of lack of capacity to testify shall not render inadmissible any statement as long as the reliability of the statement is ensured by circumstances bringing it within the scope of a hearsay exception. The following evidence shall be admitted as an exception to the hearsay rule whether or not the declarant is available as a witness:

(1) A statement relating to a startling event or condition made spontaneously while the declarant was under the contemporaneous or continuing stress of excitement caused by the event or condition.

(2) A statement made for the purpose of obtaining, receiving, or promoting medical diagnosis or treatment, including psychotherapy, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment. For purposes of obtaining a protective order, the identity of any person inflicting abuse or neglect as defined in this Act shall be deemed reasonably pertinent to diagnosis or treatment.

(3) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, and (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts.

Circumstantial guarantees of trustworthiness include:

- (1) the credibility of the witness who testifies the statement was made;
- (2) assurance of the declarant's personal knowledge of the event;
- (3) the declarant's interest or bias and the presence or absence of capacity or motive to fabricate;
- (4) the presence or absence of suggestiveness or prompting at the time the statement was made;
- (5) whether the declarant has ever reaffirmed or recanted the statement; and

(6) corroboration by physical evidence or behavioral changes in the declarant. The record shall reflect the court's findings of fact and conclusions of law as to the trustworthiness requirement.

A statement shall not be admitted under the exception set forth in this Section unless its proponent gives written notice stating his or her intention to offer the statement and the particulars of it to the adverse party sufficiently in advance of offering the statement to provide the adverse party with a fair opportunity to prepare to meet the statement.

### **Waiver of privilege**

(750 ILCS 60/213.2)

When the subject of any proceeding under this Act is a high-risk adult with disabilities for whom no guardian has been appointed, no party other than the high-risk adult or the attorney for the high-risk adult shall be entitled to invoke or waive a common law or statutory privilege on behalf of the high-risk adult which results in the exclusion of evidence.

### **Independent counsel; temporary substitute guardian**

(750 ILCS 60/213.3)

If the petitioner is a high-risk adult with disabilities for whom a guardian has been appointed, the court shall appoint independent counsel other than a guardian ad litem and, may appoint a temporary substitute guardian under the provisions of Article XIa of the Probate Act of 1975. The court shall appoint a temporary substitute guardian if the guardian is named as a respondent in a petition under this Act.

### **Order of protection; remedies**

(750 ILCS 60/214)

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

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

(1) Prohibition of abuse, neglect, or exploitation. Prohibit respondent's harassment, interference with personal liberty, intimidation of a dependent, physical abuse, or willful deprivation, neglect or exploitation, as defined in this Act, or stalking of the petitioner, as defined in Section 12-7.3 of the Criminal Code of 1961, if such abuse, neglect, exploitation, or stalking has occurred or otherwise appears likely to occur if not prohibited.

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

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

(B) Presumption of hardships. If petitioner and respondent each has the right to occupancy of a residence or household, the court shall balance (i) the hardships to respondent and any minor child or dependent adult in respondent's care resulting from entry of this remedy with (ii) the hardships to petitioner and any minor child or dependent adult in petitioner's care resulting from continued exposure to the risk of abuse (should petitioner remain at the residence or household) or from loss of possession of the residence or household (should petitioner leave to avoid the risk of abuse). When determining the balance of hardships, the court shall also take into account the accessibility of the residence or household. Hardships need not be balanced if respondent does not have a right to occupancy. The balance of hardships is presumed to favor possession by petitioner unless the presumption is rebutted by a preponderance of the evidence, showing that the hardships to respondent substantially outweigh the hardships to petitioner and any minor child or dependent adult in petitioner's care. The court, on the request of petitioner or on its own motion, may order respondent to provide suitable, accessible, alternate housing for petitioner instead of excluding respondent from a mutual residence or household.

(3) Stay away order and additional prohibitions. Order respondent to stay away from petitioner or any other person protected by the order of protection, or prohibit respondent from entering or remaining present at petitioner's school, place of employment, or other specified places at times when petitioner is present, or both, if reasonable, given the balance of hardships. Hardships need not be balanced for the court to enter a stay away order or prohibit entry if respondent has no right to enter the premises. If an order of protection grants petitioner exclusive possession of the residence, or prohibits respondent from entering the residence, or orders respondent to stay away from petitioner or other protected persons, then the court may allow respondent access to the residence

to remove items of clothing and personal adornment used exclusively by respondent, medications, and other items as the court directs. The right to access shall be exercised on only one occasion as the court directs and in the presence of an agreed-upon adult third party or law enforcement officer.

(4) Counseling. Require or recommend the respondent to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, alcohol or substance abuse program, mental health center guidance counselor, agency providing services to elders, program designed for domestic violence abusers or any other guidance service the court deems appropriate. The Court may order the respondent in any intimate partner relationship to report to an Illinois Department of Human Services protocol approved partner abuse intervention program for an assessment and to follow all recommended treatment.

(5) Physical care and possession of the minor child. In order to protect the minor child from abuse, neglect, or unwarranted separation from the person who has been the minor child's primary caretaker, or to otherwise protect the well-being of the minor child, the court may do either or both of the following: (i) grant petitioner physical care or possession of the minor child, or both, or (ii) order respondent to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis. If a court finds, after a hearing, that respondent has committed abuse (as defined in Section 103) of a minor child, there shall be a rebuttable presumption that awarding physical care to respondent would not be in the minor child's best interest.

(6) Temporary legal custody. Award temporary legal custody to petitioner in accordance with this Section, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, and this State's Uniform Child-Custody Jurisdiction and Enforcement Act. If a court finds, after a hearing, that respondent has committed abuse (as defined in Section 103) of a minor child, there shall be a rebuttable presumption that awarding temporary legal custody to respondent would not be in the child's best interest.

(7) Visitation. Determine the visitation rights, if any, of respondent in any case in which the court awards physical care or temporary legal custody of a minor child to petitioner. The court shall restrict or deny respondent's visitation with a minor child if the court finds that respondent has done or is likely to do any of the following: (i) abuse or endanger the minor child during visitation; (ii) use the visitation as an opportunity to abuse or harass petitioner or petitioner's family or household members; (iii) improperly conceal or detain the minor child; or (iv) otherwise act in a manner that is not in the best interests of the minor child. The court shall not be limited by the standards set forth in Section 607.1 of the Illinois Marriage and Dissolution of Marriage Act. If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. No order for visitation shall refer merely to the term "reasonable visitation". Petitioner may deny respondent access to the minor child if, when respondent arrives for visitation, respondent is under the influence of drugs or alcohol and constitutes a threat to the safety and

well-being of petitioner or petitioner's minor children or is behaving in a violent or abusive manner. If necessary to protect any member of petitioner's family or household from future abuse, respondent shall be prohibited from coming to petitioner's residence to meet the minor child for visitation, and the parties shall submit to the court their recommendations for reasonable alternative arrangements for visitation. A person may be approved to supervise visitation only after filing an affidavit accepting that responsibility and acknowledging accountability to the court.

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

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

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

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

(ii) the parties own the property jointly; sharing it would risk abuse of petitioner by respondent or is impracticable; and the balance of hardships favors temporary possession by petitioner. If petitioner's sole claim to ownership of the property is that it is marital property, the court may award petitioner temporary possession thereof under the standards of subparagraph (ii) of this paragraph only if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended. No order under this provision shall affect title to property.

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

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

(ii) the parties own the property jointly, and the balance of hardships favors granting this remedy. If petitioner's sole claim to ownership of the property is that it is marital property, the court may grant petitioner relief under subparagraph (ii) of this paragraph only if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended. The court may further prohibit respondent from improperly using the financial or other resources of an aged member of the family or household for the profit or advantage of respondent or of any other person.

(11.5) Protection of animals. Grant the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

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

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

(i) Losses affecting family needs. If a party is entitled to seek maintenance, child support or property distribution from the other party under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended, the court may order respondent to reimburse petitioner's actual losses, to the extent that such reimbursement would be "appropriate temporary relief", as authorized by subsection (a)(3) of Section 501 of that Act.

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

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

(14.5) Prohibition of firearm possession.

(a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall issue an order that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent has failed to appear, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.

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

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

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

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

(c) Relevant factors; findings.

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

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

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

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

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

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

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

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

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

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

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

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

(5) Never married parties. No rights or responsibilities for a minor child born outside of marriage attach to a putative father until a father and child relationship has been established under the Illinois Parentage Act of 1984, the Illinois Public Aid Code, Section 12 of the Vital Records Act, the Juvenile Court Act of 1987, the Probate Act of 1985, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, the Expedited Child Support Act of 1990, any judicial, administrative, or other act of another state or territory, any other Illinois statute, or by any foreign nation establishing the father and child relationship, any other proceeding substantially in conformity with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193), or where both parties appeared in open court or at an administrative hearing acknowledging under oath or admitting by affirmation the existence of a father and child relationship. Absent such an adjudication, finding, or acknowledgement, no putative father shall be granted temporary custody of the minor child, visitation with the minor child, or physical care and possession of the minor child, nor shall an order of payment for support of the minor child be entered.

(d) Balance of hardships; findings. If the court finds that the balance of hardships does not support the granting of a remedy governed by paragraph (2), (3), (10), (11), or (16) of subsection (b) of this Section, which may require such balancing, the court's findings shall so indicate and shall include a finding as to whether granting the remedy will result in hardship to respondent that would

substantially outweigh the hardship to petitioner from denial of the remedy. The findings shall be an official record or in writing.

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

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

(2) Respondent was voluntarily intoxicated;

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

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

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

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

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

### **Mutual orders of protection; correlative separate orders**

(750 ILCS 60/215)

Mutual orders of protection are prohibited. Correlative separate orders of protection undermine the purposes of this Act and are prohibited unless both parties have properly filed written pleadings, proved past abuse by the other party, given prior written notice to the other party unless excused under Section 217, satisfied all prerequisites for the type of order and each remedy granted, and otherwise complied with this Act. In these cases, the court shall hear relevant evidence, make findings, and issue separate orders in accordance with Sections 214 and 221. The fact that correlative separate orders are issued shall not be a sufficient basis to deny any remedy to petitioner or to prove that the parties are equally at fault or equally endangered.

### **Accountability for Actions of Others**

(750 ILCS 60/216)

For the purposes of issuing an order of protection, deciding what remedies should be included and enforcing the order, Article 5 of the Criminal Code of 1961 shall govern whether respondent is legally accountable for the conduct of another person.

### **Emergency order of protection**

(750 ILCS 60/217)

(a) Prerequisites. An emergency order of protection shall issue if petitioner satisfies the requirements of this subsection for one or more of the requested

remedies. For each remedy requested, petitioner shall establish that:

- (1) The court has jurisdiction under Section 208;
- (2) The requirements of Section 214 are satisfied; and
- (3) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because:

(i) For the remedies of "prohibition of abuse" described in Section 214(b)(1), "stay away order and additional prohibitions" described in Section 214(b)(3), "removal or concealment of minor child" described in Section 214(b)(8), "order to appear" described in Section 214(b)(9), "physical care and possession of the minor child" described in Section 214(b)(5), "protection of property" described in Section 214(b)(11), "prohibition of entry" described in Section 214(b)(14), "prohibition of access to records" described in Section 214(b)(15), and "injunctive relief" described in Section 214(b)(16), the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief;

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

(iii) For the remedy of "possession of personal property" described in Section 214(b)(10), improper disposition of the personal property would be likely to occur if respondent were given any prior notice, or greater notice than was actually given, of petitioner's efforts to obtain judicial relief, or petitioner has an immediate and pressing need for possession of that property. An emergency order may not include the counseling, legal custody, payment of support or monetary compensation remedies.

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

(c) Emergency orders: court holidays and evenings.

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

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

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

### **30-Day interim order of protection**

(750 ILCS 60/218)

(a) Prerequisites. An interim order of protection shall issue if petitioner has served notice of the hearing for that order on respondent, in accordance with Section 211, and satisfies the requirements of this subsection for one or more of the requested remedies. For each remedy requested, petitioner shall establish that:

- (1) The court has jurisdiction under Section 208;
- (2) The requirements of Section 214 are satisfied; and
- (3) A general appearance was made or filed by or for respondent; or

process was served on respondent in the manner required by Section 210; or the petitioner is diligently attempting to complete the required service of process. An interim order may not include the counseling, payment of support or monetary compensation remedies, unless the respondent has filed a general appearance or has been personally served.

(b) Appearance by respondent. If respondent appears in court for this hearing for an interim order, he or she may elect to file a general appearance and testify. Any resulting order may be an interim order, governed by this Section. Notwithstanding the requirements of this Section, if all requirements of Section 219 have been met, the Court may issue a plenary order of protection.

### **Plenary Order of Protection**

(750 ILCS 60/219)

A plenary order of protection shall issue if petitioner has served notice of the hearing for that order on respondent, in accordance with Section 211, and satisfies the requirements of this Section for one or more of the requested remedies. For each remedy requested, petitioner must establish that:

- (1) The court has jurisdiction under Section 208;
- (2) The requirements of Section 214 are satisfied; and
- (3) A general appearance was made or filed by or for respondent or process was served on respondent in the manner required by Section 210; and

(4) Respondent has answered or is in default.

### **Duration and extension of orders**

(750 ILCS 60/220)

(a) Duration of emergency and interim orders. Unless re-opened or extended or voided by entry of an order of greater duration:

(1) Emergency orders issued under Section 217 shall be effective for not less than 14 nor more than 21 days;

(2) Interim orders shall be effective for up to 30 days.

(b) Duration of plenary orders. Except as otherwise provided in this Section, a plenary order of protection shall be valid for a fixed period of time, not to exceed two years.

(1) A plenary order of protection entered in conjunction with another civil proceeding shall remain in effect as follows:

(i) if entered as preliminary relief in that other proceeding, until entry of final judgment in that other proceeding;

(ii) if incorporated into the final judgment in that other proceeding, until the order of protection is vacated or modified; or

(iii) if incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding 2 years.

(2) A plenary order of protection entered in conjunction with a criminal prosecution shall remain in effect as follows:

(i) if entered during pre-trial release, until disposition, withdrawal, or dismissal of the underlying charge; if, however, the case is continued as an independent cause of action, the order's duration may be for a fixed period of time not to exceed 2 years;

(ii) if in effect in conjunction with a bond forfeiture warrant, until final disposition or an additional period of time not exceeding 2 years; no order of protection, however, shall be terminated by a dismissal that is accompanied by the issuance of a bond forfeiture warrant;

(iii) until expiration of any supervision, conditional discharge, probation, periodic imprisonment, parole or mandatory supervised release and for an additional period of time thereafter not exceeding 2 years; or

(iv) until the date set by the court for expiration of any sentence of imprisonment and subsequent parole or mandatory supervised release and for an additional period of time thereafter not exceeding 2 years.

(c) Computation of time. The duration of an order of protection shall not be reduced by the duration of any prior order of protection.

(d) Law enforcement records. When a plenary order of protection expires upon the occurrence of a specified event, rather than upon a specified date as provided in subsection (b), no expiration date shall be entered in Department of State Police records. To remove the plenary order from those records, either party shall request the clerk of the court to file a certified copy of an order stating that the specified event has occurred or that the plenary order has been vacated

or modified with the Sheriff, and the Sheriff shall direct that law enforcement records shall be promptly corrected in accordance with the filed order.

(e) Extension of orders. Any emergency, interim or plenary order may be extended one or more times, as required, provided that the requirements of Section 217, 218 or 219, as appropriate, are satisfied. If the motion for extension is uncontested and petitioner seeks no modification of the order, the order may be extended on the basis of petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension. An extension of a plenary order of protection may be granted, upon good cause shown, to remain in effect until the order of protection is vacated or modified. Extensions may be granted only in open court and not under the provisions of subsection (c) of Section 217, which applies only when the court is unavailable at the close of business or on a court holiday.

(f) Termination date. Any order of protection which would expire on a court holiday shall instead expire at the close of the next court business day.

(g) Statement of purpose. The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of an order of protection undermines the purposes of this Act. This Section shall not be construed as encouraging that practice.

## **Contents of orders**

(750 ILCS 60/221)

(a) Any order of protection shall describe the following:

(1) Each remedy granted by the court, in reasonable detail and not by reference to any other document, so that respondent may clearly understand what he or she must do or refrain from doing. Pre-printed form orders of protection shall include the definitions of the types of abuse, neglect, and exploitation, as provided in Section 103. Remedies set forth in pre-printed form orders shall be numbered consistently with and corresponding to the numerical sequence of remedies listed in Section 214 (at least as of the date the form orders are printed).

(2) The reason for denial of petitioner's request for any remedy listed in Section 214.

(b) An order of protection shall further state the following:

(1) The name of each petitioner that the court finds was abused, neglected, or exploited by respondent, and that respondent is a member of the family or household of each such petitioner, and the name of each other person protected by the order and that such person is protected by this Act.

(2) For any remedy requested by petitioner on which the court has declined to rule, that that remedy is reserved.

(3) The date and time the order of protection was issued, whether it is an emergency, interim or plenary order and the duration of the order.

(4) The date, time and place for any scheduled hearing for extension of that order of protection or for another order of greater duration or scope.

(5) For each remedy in an emergency order of protection, the reason for entering that remedy without prior notice to respondent or greater notice than was actually given.

(6) For emergency and interim orders of protection, that respondent may petition the court, in accordance with Section 224, to re-open that order if he or she did not receive actual prior notice of the hearing, in accordance with Section 211, and alleges that he or she had a meritorious defense to the order or that the order or any of its remedies was not authorized by this Act.

(c) Any order of protection shall include the following notice, printed in conspicuous type: "Any knowing violation of an order of protection forbidding physical abuse, neglect, exploitation, harassment, intimidation, interference with personal liberty, willful deprivation, or entering or remaining present at specified places when the protected person is present, or granting exclusive possession of the residence or household, or granting a stay away order is a Class A misdemeanor. Grant of exclusive possession of the residence or household shall constitute notice forbidding trespass to land. Any knowing violation of an order awarding legal custody or physical care of a child or prohibiting removal or concealment of a child may be a Class 4 felony. Any willful violation of any order is contempt of court. Any violation may result in fine or imprisonment."

(d) An emergency order of protection shall state, "This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262)."

(e) An interim or plenary order of protection shall state, "This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262). The respondent may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition under the Gun Control Act (18 U.S.C. 922(g)(8) and (9))."

## **Notice of orders**

(750 ILCS 60/222)

(a) Entry and issuance. Upon issuance of any order of protection, the clerk shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of Section 217, (i) enter the order on the record and file it in accordance with the circuit court procedures and (ii) provide a file stamped copy of the order to respondent, if present, and to petitioner.

(b) Filing with sheriff. The clerk of the issuing judge shall, or the petitioner may, on the same day that an order of protection is issued, file a certified copy of that order with the sheriff or other law enforcement officials charged with maintaining Department of State Police records or charged with serving the order upon respondent. If the order was issued in accordance with subsection (c) of Section

217, the clerk shall on the next court day, file a certified copy of the order with the Sheriff or other law enforcement officials charged with maintaining Department of State Police records.

(c) Service by sheriff. Unless respondent was present in court when the order was issued, the sheriff, other law enforcement official or special process server shall promptly serve that order upon respondent and file proof of such service, in the manner provided for service of process in civil proceedings. Instead of serving the order upon the respondent, however, the sheriff, other law enforcement official, or special process server may serve the respondent with a short form notification as provided in Section 222.10. If process has not yet been served upon the respondent, it shall be served with the order or short form notification. A single fee may be charged for service of an order obtained in civil court, or for service of such an order together with process, unless waived or deferred under Section 210.

(c-5) If the person against whom the order of protection is issued is arrested and the written order is issued in accordance with subsection (c) of Section 217 and received by the custodial law enforcement agency before the respondent or arrestee is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or arrestee before the respondent or arrestee is released from custody. In no event shall detention of the respondent or arrestee be extended for hearing on the petition for order of protection or receipt of the order issued under Section 217 of this Act.

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

(e) Notice to schools. 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. If the child transfers enrollment to another day-care facility, pre-school, pre-kindergarten, private school, public school, college, or university, the petitioner may, within 24 hours of the transfer, send to the clerk written notice of the transfer, including the name and address of the institution to which the child is transferring. Within 24 hours of receipt of notice from the petitioner that a child is transferring to another day-care facility, pre-school, pre-kindergarten, private school, public school, college, or university, the clerk shall send written notice of the order of protection, along with a certified copy of the order, to the institution to which the child is transferring.

(f) Disclosure by schools. After receiving a certified copy of an order of protection that prohibits a respondent's access to records, neither a day-care facility, pre-school, pre-kindergarten, public or private school, college, or university nor its employees shall allow a respondent access to a protected child's records or release information in those records to the respondent. The

school shall file the copy of the order of protection in the records of a child who is a protected person under the order of protection. When a child who is a protected person under the order of protection transfers to another day-care facility, pre-school, pre-kindergarten, public or private school, college, or university, the institution from which the child is transferring may, at the request of the petitioner, provide, within 24 hours of the transfer, written notice of the order of protection, along with a certified copy of the order, to the institution to which the child is transferring.

(g) Notice to health care facilities and health care practitioners. 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.

(h) Disclosure by health care facilities and health care practitioners. After receiving a certified copy of an order of protection that prohibits a respondent's access to records, no health care facility or health care practitioner shall allow a respondent access to the records of any child who is a protected person under the order of protection, or release information in those records to the respondent, unless the order has expired or the respondent shows a certified copy of the court order vacating the corresponding order of protection that was sent to the health care facility or practitioner. Nothing in this Section shall be construed to require health care facilities or health care practitioners to alter procedures related to billing and payment. The health care facility or health care practitioner may file the copy of the order of protection in the records of a child who is a protected person under the order of protection, or may employ any other method to identify the records to which a respondent is prohibited access. No health care facility or health care practitioner shall be civilly or professionally liable for reliance on a copy of an order of protection, except for willful and wanton misconduct.

### **Filing of an order of protection issued in another state** (750 ILCS 60/222.5)

(a) A person entitled to protection under an order of protection issued by the court of another state, tribe, or United States territory may file a certified copy of the order of protection with the clerk of the court in a judicial circuit in which the person believes that enforcement may be necessary.

(b) The clerk shall:

(1) treat the foreign order of protection in the same manner as a judgment of the circuit court for any county of this State in accordance with the provisions of the Uniform Enforcement of Foreign Judgments Act, except that the clerk shall not mail notice of the filing of the foreign order to the respondent named in the order; and

(2) on the same day that a foreign order of protection is filed, file a certified copy of that order with the sheriff or other law enforcement officials charged with

maintaining Department of State Police records as set forth in Section 222 of this Act.

(c) Neither residence in this State nor filing of a foreign order of protection shall be required for enforcement of the order by this State. Failure to file the foreign order shall not be an impediment to its treatment in all respects as an Illinois order of protection.

(d) The clerk shall not charge a fee to file a foreign order of protection under this Section.

(e) The sheriff shall inform the Department of State Police as set forth in Section 302 of this Act.

### **Short form notification**

(750 ILCS 60/222.10)

(a) Instead of personal service of an order of protection under Section 222, a sheriff, other law enforcement official, or special process server may serve a respondent with a short form notification. The short form notification must include the following items:

- (1) The respondent's name.
- (2) The respondent's date of birth, if known.
- (3) The petitioner's name.
- (4) The names of other protected parties.
- (5) The date and county in which the order of protection was filed.
- (6) The court file number.
- (7) The hearing date and time, if known.
- (8) The conditions that apply to the respondent, either in checklist form or handwritten.

(9) The name of the judge who signed the order.

(b) The short form notification must contain the following notice in bold print:  
"The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in (name of county) County to obtain a copy of the order of protection. You are subject to arrest and may be charged with a misdemeanor or felony if you violate any of the terms of the order of protection."

(c) Upon verification of the identity of the respondent and the existence of an unserved order of protection against the respondent, a sheriff or other law enforcement official may detain the respondent for a reasonable time necessary to complete and serve the short form notification.

(d) When service is made by short form notification under this Section, it may be proved by the affidavit of the sheriff, other law enforcement official, or special process server making the service.

(e) The Attorney General shall provide adequate copies of the short form notification form to law enforcement agencies in this State.

### **Enforcement of orders of protection**

(750 ILCS 60/223)

(a) When violation is crime. A violation of any order of protection, whether issued in a civil or criminal proceeding, shall be enforced by a criminal court when:

(1) The respondent commits the crime of violation of an order of protection pursuant to Section 12-30 of the Criminal Code of 1961, by having knowingly violated:

(i) remedies described in paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 214 of this Act; or

(ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (2), (3), (14), and (14.5) of subsection (b) of Section 214 of this Act, in a valid order of protection which is authorized under the laws of another state, tribe, or United States territory; or

(iii) any other remedy when the act constitutes a crime against the protected parties as defined by the Criminal Code of 1961. Prosecution for a violation of an order of protection shall not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order of protection; or

(2) The respondent commits the crime of child abduction pursuant to Section 10-5 of the Criminal Code of 1961, by having knowingly violated:

(i) remedies described in paragraphs (5), (6) or (8) of subsection (b) of Section 214 of this Act; or

(ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (5), (6), or (8) of subsection (b) of Section 214 of this Act, in a valid order of protection which is authorized under the laws of another state, tribe, or United States territory.

(b) When violation is contempt of court. A violation of any valid Illinois order of protection, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the order of protection were committed, to the extent consistent with the venue provisions of this Act. Nothing in this Act shall preclude any Illinois court from enforcing any valid order of protection issued in another state. Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy.

(1) In a contempt proceeding where the petition for a rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children or on dependent adults in petitioner's care, the court may order the attachment of the respondent without prior service of the rule to show cause or the petition for a rule to show cause. Bond shall be set unless specifically denied in writing.

(2) A petition for a rule to show cause for violation of an order of protection shall be treated as an expedited proceeding.

(c) Violation of custody or support orders. A violation of remedies described in paragraphs (5), (6), (8), or (9) of subsection (b) of Section 214 of this Act may be enforced by any remedy provided by Section 611 of the Illinois Marriage and Dissolution of Marriage Act. The court may enforce any order for support issued under paragraph (12) of subsection (b) of Section 214 in the manner provided for under Parts V and VII of the Illinois Marriage and Dissolution of Marriage Act.

(d) Actual knowledge. An order of protection may be enforced pursuant to this Section if the respondent violates the order after the respondent has actual knowledge of its contents as shown through one of the following means:

- (1) By service, delivery, or notice under Section 210.
- (2) By notice under Section 210.1 or 211.
- (3) By service of an order of protection under Section 222.
- (4) By other means demonstrating actual knowledge of the contents of the order.

(e) The enforcement of an order of protection in civil or criminal court shall not be affected by either of the following:

- (1) The existence of a separate, correlative order, entered under Section 215.
- (2) Any finding or order entered in a conjoined criminal proceeding.

(f) Circumstances. The court, when determining whether or not a violation of an order of protection has occurred, shall not require physical manifestations of abuse on the person of the victim.

(g) Penalties.

(1) Except as provided in paragraph (3) of this subsection, where the court finds the commission of a crime or contempt of court under subsections (a) or (b) of this Section, the penalty shall be the penalty that generally applies in such criminal or contempt proceedings, and may include one or more of the following: incarceration, payment of restitution, a fine, payment of attorneys' fees and costs, or community service.

(2) The court shall hear and take into account evidence of any factors in aggravation or mitigation before deciding an appropriate penalty under paragraph (1) of this subsection.

(3) To the extent permitted by law, the court is encouraged to:

(i) increase the penalty for the knowing violation of any order of protection over any penalty previously imposed by any court for respondent's violation of any order of protection or penal statute involving petitioner as victim and respondent as defendant;

(ii) impose a minimum penalty of 24 hours imprisonment for respondent's first violation of any order of protection; and

(iii) impose a minimum penalty of 48 hours imprisonment for respondent's second or subsequent violation of an order of protection unless the court explicitly finds that an increased penalty or that period of imprisonment would be manifestly unjust.

(4) In addition to any other penalties imposed for a violation of an order of protection, a criminal court may consider evidence of any violations of an order of protection:

- (i) to increase, revoke or modify the bail bond on an underlying criminal charge pursuant to Section 110-6 of the Code of Criminal Procedure of 1963;
- (ii) to revoke or modify an order of probation, conditional discharge or supervision, pursuant to Section 5-6-4 of the Unified Code of Corrections;
- (iii) to revoke or modify a sentence of periodic imprisonment, pursuant to Section 5-7-2 of the Unified Code of Corrections.

(5) In addition to any other penalties, the court shall impose an additional fine of \$20 as authorized by Section 5-9-1.11 of the Unified Code of Corrections upon any person convicted of or placed on supervision for a violation of an order of protection. The additional fine shall be imposed for each violation of this Section.

### **Order of protection; status**

(750 ILCS 60/223.1)

Whenever relief is sought under this Act, the court, before granting relief, shall determine whether any order of protection has previously been entered in the instant proceeding or any other proceeding in which any party, or a child of any party, or both, if relevant, has been designated as either a respondent or a protected person.

### **Modification and re-opening of orders**

(750 ILCS 60/224)

(a) Except as otherwise provided in this Section, upon motion by petitioner, the court may modify an emergency, interim, or plenary order of protection:

- (1) If respondent has abused petitioner since the hearing for that order, by adding or altering one or more remedies, as authorized by Section 214; and
- (2) Otherwise, by adding any remedy authorized by Section 214 which was:
  - (i) reserved in that order of protection;
  - (ii) not requested for inclusion in that order of protection; or
  - (iii) denied on procedural grounds, but not on the merits.

(b) Upon motion by petitioner or respondent, the court may modify any prior order of protection's remedy for custody, visitation or payment of support in accordance with the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act. Each order of protection shall be entered in the Law Enforcement Agencies Data System on the same day it is issued by the court.

(c) After 30 days following entry of a plenary order of protection, a court may modify that order only when changes in the applicable law or facts since that plenary order was entered warrant a modification of its terms.

(d) Upon 2 days' notice to petitioner, in accordance with Section 211 of this Act, or such shorter notice as the court may prescribe, a respondent subject to an emergency or interim order of protection issued under this Act may appear and petition the court to re-hear the original or amended petition. Any petition to

re-hear shall be verified and shall allege the following:

(1) that respondent did not receive prior notice of the initial hearing in which the emergency, interim, or plenary order was entered under Sections 211 and 217; and

(2) that respondent had a meritorious defense to the order or any of its remedies or that the order or any of its remedies was not authorized by this Act.

(e) In the event that the emergency or interim order granted petitioner exclusive possession and the petition of respondent seeks to re-open or vacate that grant, the court shall set a date for hearing within 14 days on all issues relating to exclusive possession. Under no circumstances shall a court continue a hearing concerning exclusive possession beyond the 14th day, except by agreement of the parties. Other issues raised by the pleadings may be consolidated for the hearing if neither party nor the court objects.

(f) This Section does not limit the means, otherwise available by law, for vacating or modifying orders of protection.

### **Immunity from prosecution**

(750 ILCS 60/225)

Any individual or organization acting in good faith to report the abuse of any person 60 years of age or older or to do any of the following in complying with the provisions of this Act shall not be subject to criminal prosecution or civil liability as a result of such action: providing any information to the appropriate law enforcement agency, providing that the giving of any information does not violate any privilege of confidentiality under law; assisting in any investigation; assisting in the preparation of any materials for distribution under this Act; or by providing services ordered under an order of protection.

Any individual, agency, or organization acting in good faith to report or investigate alleged abuse, neglect, or exploitation of a high-risk adult with disabilities, to testify in any proceeding on behalf of a high-risk adult with disabilities, to take photographs or perform an examination, or to perform any other act in compliance with the provisions of this Act shall not be the subject of criminal prosecution, civil liability, or other penalty, sanction, restriction, or retaliation as a result of such action.

### **Untrue statements**

(750 ILCS 60/226)

Allegations and denials, made without reasonable cause and found to be untrue, shall subject the party pleading them to the payment of reasonable expenses actually incurred by the other party by reason of the untrue pleading, together with a reasonable attorney's fee, to be summarily taxed by the court upon motion made within 30 days of the judgment or dismissal, as provided in Supreme Court Rule 137. The court may direct that a copy of an order entered under this Section be provided to the State's Attorney so that he or she may determine whether to prosecute for perjury. This Section shall not apply to

proceedings heard in Criminal Court or to criminal contempt of court proceedings, whether heard in Civil or Criminal Court.

## **Privileged communications between domestic violence counselors and victims**

(750 ILCS 60/227)

(a) As used in this Section:

(1) "Domestic violence program" means any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.

(2) "Domestic violence advocate or counselor" means any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.

(3) "Confidential communication" means any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. The confidential nature of the communication is not waived by the presence at the time of the communication of any additional persons, including but not limited to an interpreter, to further express the interests of the domestic violence victim or by the advocate's or counselor's disclosure to such an additional person with the consent of the victim when reasonably necessary to accomplish the purpose for which the advocate or counselor is consulted.

(4) "Domestic violence victim" means any person who consults a domestic violence counselor for the purpose of securing advice, counseling or assistance related to one or more alleged incidents of domestic violence.

(5) "Domestic violence" means abuse as defined in the Illinois Domestic Violence Act.

(b) No domestic violence advocate or counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal case or proceeding or in any legislative or administrative proceeding without the written consent of the domestic violence victim except (1) in accordance with the provisions of the Abused and Neglected Child Reporting Act or (2) in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.

(c) A domestic violence advocate or counselor who knowingly discloses any confidential communication in violation of this Act commits a Class A misdemeanor.

(d) When a domestic violence victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the domestic

violence victim or the executor or administrator of the estate of the domestic violence victim may waive the privilege established by this Section, except where the guardian, executor or administrator of the estate has been charged with a violent crime against the domestic violence victim or has had an Order of Protection entered against him or her at the request of or on behalf of the domestic violence victim or otherwise has an interest adverse to that of the domestic violence victim with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the estate of the domestic violence victim.

(e) A minor may knowingly waive the privilege established by this Section. Where a minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, except where such parent or guardian has been charged with a violent crime against the minor or has had an Order of Protection entered against him or her on request of or on behalf of the minor or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the minor child who shall be compensated in accordance with Section 506 of the Illinois Marriage and Dissolution of Marriage Act.

(f) Nothing in this Section shall be construed to limit in any way any privilege that might otherwise exist under statute or common law.

(g) The assertion of any privilege under this Section shall not result in an inference unfavorable to the State's cause or to the cause of the domestic violence victim.

### **Other privileged information**

(750 ILCS 60/227.1)

Except as otherwise provided in this Section, no court or administrative or legislative body shall compel any person or domestic violence program to disclose the location of any domestic violence program or the identity of any domestic violence advocate or counselor in any civil or criminal case or proceeding or in any administrative or legislative proceeding. A court may compel disclosure of the location of a domestic violence program or the identity of a domestic violence advocate or counselor if the court finds, following a hearing, that there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. If the court makes such a finding, then disclosure shall take place in camera, under a restrictive protective order that does not frustrate the purposes of compelling the disclosure, and the information disclosed shall not be made a part of the written record of the case.

## Article III—Law Enforcement Responsibilities

### **Arrest without warrant**

(750 ILCS 60/301)

(a) Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing any crime, including but not limited to violation of an order of protection, under Section 12-30 of the Criminal Code of 1961, even if the crime was not committed in the presence of the officer.

(b) The law enforcement officer may verify the existence of an order of protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or respondent.

(c) Any law enforcement officer may make an arrest without warrant if the officer has reasonable grounds to believe a defendant at liberty under the provisions of subdivision (d)(1) or (d)(2) of Section 110-10 of the Code of Criminal Procedure of 1963 has violated a condition of his or her bail bond or recognizance.

### **Law enforcement policies**

(750 ILCS 60/301.1)

Every law enforcement agency shall develop, adopt, and implement written policies regarding arrest procedures for domestic violence incidents consistent with the provisions of this Act. In developing these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents.

### **Data maintenance by law enforcement agencies**

(750 ILCS 60/302)

(a) All sheriffs shall furnish to the Department of State Police, on the same day as received, in the form and detail the Department requires, copies of any recorded emergency, interim, or plenary orders of protection issued by the court, and any foreign orders of protection filed by the clerk of the court, and transmitted to the sheriff by the clerk of the court pursuant to subsection (b) of Section 222 of this Act. Each order of protection shall be entered in the Law Enforcement Agencies Data System on the same day it is issued by the court. If an emergency order of protection was issued in accordance with subsection (c) of Section 217, the order shall be entered in the Law Enforcement Agencies Data System as soon as possible after receipt from the clerk.

(b) The Department of State Police shall maintain a complete and systematic record and index of all valid and recorded orders of protection issued pursuant to this Act. The data shall be used to inform all dispatchers and law enforcement

officers at the scene of an alleged incident of abuse, neglect, or exploitation or violation of an order of protection of any recorded prior incident of abuse, neglect, or exploitation involving the abused, neglected, or exploited party and the effective dates and terms of any recorded order of protection.

(c) The data, records and transmittals required under this Section shall pertain to any valid emergency, interim or plenary order of protection, whether issued in a civil or criminal proceeding or authorized under the laws of another state, tribe, or United States territory.

### **Reports by law enforcement officers**

(750 ILCS 60/303)

(a) Every law enforcement officer investigating an alleged incident of abuse, neglect, or exploitation between family or household members shall make a written police report of any bona fide allegation and the disposition of such investigation. The police report shall include the victim's statements as to the frequency and severity of prior incidents of abuse, neglect, or exploitation by the same family or household member and the number of prior calls for police assistance to prevent such further abuse, neglect, or exploitation.

(b) Every police report completed pursuant to this Section shall be recorded and compiled as a domestic crime within the meaning of Section 5.1 of the Criminal Identification Act.

### **Assistance by law enforcement officers**

(750 ILCS 60/304)

(a) Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including:

(1) Arresting the abusing, neglecting and exploiting party, where appropriate;

(2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons;

(3) Accompanying the victim of abuse, neglect, or exploitation to his or her place of residence for a reasonable period of time to remove necessary personal belongings and possessions;

(4) Offering the victim of abuse, neglect, or exploitation immediate and adequate information (written in a language appropriate for the victim or in Braille or communicated in appropriate sign language), which shall include a summary of the procedures and relief available to victims of abuse under subsection (c) of Section 217 and the officer's name and badge number;

(5) Providing the victim with one referral to an accessible service agency;

(6) Advising the victim of abuse about seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property); and

(7) Providing or arranging accessible transportation for the victim of abuse (and, at the victim's request, any minors or dependents in the victim's care) to a medical facility for treatment of injuries or to a nearby place of shelter or safety; or, after the close of court business hours, providing or arranging for transportation for the victim (and, at the victim's request, any minors or dependents in the victim's care) to the nearest available circuit judge or associate judge so the victim may file a petition for an emergency order of protection under subsection (c) of Section 217. When a victim of abuse chooses to leave the scene of the offense, it shall be presumed that it is in the best interests of any minors or dependents in the victim's care to remain with the victim or a person designated by the victim, rather than to remain with the abusing party.

(b) Whenever a law enforcement officer does not exercise arrest powers or otherwise initiate criminal proceedings, the officer shall:

(1) Make a police report of the investigation of any bona fide allegation of an incident of abuse, neglect, or exploitation and the disposition of the investigation, in accordance with subsection (a) of Section 303;

(2) Inform the victim of abuse neglect, or exploitation of the victim's right to request that a criminal proceeding be initiated where appropriate, including specific times and places for meeting with the State's Attorney's office, a warrant officer, or other official in accordance with local procedure; and

(3) Advise the victim of the importance of seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property).

(c) Except as provided by Section 24-6 of the Criminal Code of 1961 or under a court order, any weapon seized under subsection (a)(2) shall be returned forthwith to the person from whom it was seized when it is no longer needed for evidentiary purposes.

### **Limited law enforcement liability**

(750 ILCS 60/305)

Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.

## Article IV—Health Care Providers

### **Providing information on services; liability**

(750 ILCS 60/401)

Any person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession shall offer to a person suspected to be a victim of abuse immediate and adequate information regarding services available to victims of abuse.

Any person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business, or practice of a profession and who in good faith offers to a person suspected to be a victim of abuse information regarding services available to victims of abuse shall not be civilly liable for any act or omission of the agency providing those services to the victims of abuse or for the inadequacy of those services provided by the agency.

## **Illinois Domestic Violence Act**

### **Order of Protection in Criminal Court**

#### **Orders of Protection to Prohibit Domestic Violence (725 ILCS 5/111-8)**

(a) Whenever a violation of Section 9-1, 9-2, 9-3, 10-3, 10-3.1, 10-4, 10-5, 11-15, 11-15.1, 11-20.1, 11-20a, 12-1, 12-2, 12-3, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.3, 12-4.6, 12-5, 12-6, 12-6.3, 12-7.3, 12-7.4, 12-7.5, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 19-4, 21-1, 21-2, or 21-3 of the Criminal Code of 1961 or Section 1-1 of the Harassing and Obscene Communications Act is alleged in an information, complaint or indictment on file, and the alleged offender and victim are family or household members, as defined in the Illinois Domestic Violence Act, the People through the respective State's Attorneys may by separate petition and upon notice to the defendant, except as provided in subsection (c) herein, request the court to issue an order of protection.

(b) In addition to any other remedies specified in Section 208 of the Illinois Domestic Violence Act, as now or hereafter amended, the order may direct the defendant to initiate no contact with the alleged victim or victims who are family or household members and to refrain from entering the residence, school or place of business of the alleged victim or victims.

(c) The court may grant emergency relief without notice upon a showing of immediate and present danger of abuse to the victim or minor children of the victim and may enter a temporary order pending notice and full hearing on the matter.

#### **Domestic Violence: Order of Protection**

##### **Construction**

(725 ILCS 5/112A-1)

This Article shall be interpreted in accordance with the purposes and rules of construction set forth in Section 102 of the Illinois Domestic Violence Act of 1986. Each of the provisions of the Illinois Domestic Violence Act of 1986 which are

included in this Article shall govern the issuance, recording and enforcement of orders of protection in criminal proceedings.

## **Commencement of Actions**

(725 ILCS 5/112A-2)

(a) Actions for orders of protection are commenced in conjunction with a delinquency petition or a criminal prosecution by filing a petition for an order of protection, under the same case number as the delinquency petition or the criminal prosecution, to be granted during pre-trial release of a defendant, with any dispositional order issued under Section 5-710 of the Juvenile Court Act of 1987, or as a condition of release, supervision, conditional discharge, probation, periodic imprisonment, parole or mandatory supervised release, or in conjunction with imprisonment or a bond forfeiture warrant, provided that:

(i) the violation is alleged in an information, complaint, indictment or delinquency petition on file, and the alleged offender and victim are family or household members; and

(ii) the petition, which is filed by the State's Attorney, names a victim of the alleged crime as a petitioner.

(b) Withdrawal or dismissal of any petition for an order of protection prior to adjudication where the petitioner is represented by the state shall operate as a dismissal without prejudice.

(c) Voluntary dismissal or withdrawal of any delinquency petition or criminal prosecution or a finding of not guilty shall not require dismissal of the action for the order of protection; instead, in the discretion of the State's Attorney, it may be treated as an independent action and, if necessary and appropriate, transferred to a different court or division. Dismissal of any delinquency petition or criminal prosecution shall not affect the validity of any previously issued order of protection, and thereafter subsection (b) of Section 112A-20 shall be inapplicable to that order.

## **Definitions**

(725 ILCS 5/112A-3)

For the purposes of this Article, the following terms shall have the following meanings:

(1) "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.

(2) "Domestic violence" means abuse as described in paragraph (1).

(3) "Family or household members" include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in paragraph (3) of subsection (b) of

Section 12-21 of the Criminal Code of 1961. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

(4) "Harassment" means knowing conduct which is not necessary to accomplish a purpose which is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

- (i) creating a disturbance at petitioner's place of employment or school;
- (ii) repeatedly telephoning petitioner's place of employment, home or residence;
- (iii) repeatedly following petitioner about in a public place or places;
- (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;
- (v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing from an incident or pattern of domestic violence; or
- (vi) threatening physical force, confinement or restraint on one or more occasions.

(5) "Interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage.

(6) "Intimidation of a dependent" means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Article, regardless of whether the abused person is a family or household member.

(7) "Order of protection" means an emergency order, interim order or plenary order, granted pursuant to this Article, which includes any or all of the remedies authorized by Section 112A-14 of this Code.

(8) "Petitioner" may mean not only any named petitioner for the order of protection and any named victim of abuse on whose behalf the petition is brought, but also any other person protected by this Article.

(9) "Physical abuse" includes sexual abuse and means any of the following:

- (i) knowing or reckless use of physical force, confinement or restraint;
- (ii) knowing, repeated and unnecessary sleep deprivation; or
- (iii) knowing or reckless conduct which creates an immediate risk of physical harm.

(9.5) "Stay away" means for the respondent to refrain from both physical presence and nonphysical contact with the petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, email, faxes, and written notes), or through third parties who may or may not know about the order of protection.

(10) "Willful deprivation" means willfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care and treatment when such dependent person has expressed the intent to forgo such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.

### **Persons protected by this article**

(725 ILCS 5/112A-4)

(a) The following persons are protected by this Article:

- (i) any person abused by a family or household member;
- (ii) any minor child or dependent adult in the care of such person; and
- (iii) any person residing or employed at a private home or public shelter

which is housing an abused family or household member.

(b) A petition for an order of protection may be filed only by a person who has been abused by a family or household member or by any person on behalf of a minor child or an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition. However, any petition properly filed under this Article may seek protection for any additional persons protected by this Article.

### **Pleading; non-disclosure of address**

(725 ILCS 5/112A-5)

(a) A petition for an order of protection shall be in writing and verified or accompanied by affidavit and shall allege that petitioner has been abused by respondent, who is a family or household member. The petition shall further set forth whether there is any other pending action between the parties. During the pendency of this proceeding, each party has a continuing duty to inform the court of any subsequent proceeding for an order of protection in this or any other state.

(b) If the petition states that disclosure of petitioner's address would risk abuse of petitioner or any member of petitioner's family or household or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from all documents filed with the court. If disclosure is necessary to determine jurisdiction or consider any venue issue, it shall be made orally and in camera. If petitioner has not disclosed an address under this subsection, petitioner shall designate an alternative address at which respondent may serve notice of any motions.

## **Application of rules of civil procedure; criminal law**

(725 ILCS 5/112A-6)

(a) Any proceeding to obtain, modify, reopen or appeal an order of protection, whether commenced alone or in conjunction with a civil or criminal proceeding, shall be governed by the rules of civil procedure of this State. The standard of proof in such a proceeding is proof by a preponderance of the evidence, whether the proceeding is heard in criminal or civil court. The Code of Civil Procedure and Supreme Court and local court rules applicable to civil proceedings, as now or hereafter amended, shall apply, except as otherwise provided by law. Civil law on venue, discovery, and on penalties for untrue statements shall not apply to order of protection proceedings heard under this Article 112A.

(b) Criminal law on discovery, venue, and on penalties for untrue statements apply to orders of protection proceedings heard under this Article 112A.

## **Trial by jury**

(725 ILCS 5/112A-7)

There shall be no right to trial by jury in any proceeding to obtain, modify, vacate or extend any order of protection under this Article. However, nothing in this Section shall deny any existing right to trial by jury in a criminal proceeding.

## **Subject matter jurisdiction**

(725 ILCS 5/112A-8)

Each of the circuit courts shall have the power to issue orders of protection.

## **Jurisdiction over persons**

(725 ILCS 5/112A-9)

In child custody proceedings, the court's personal jurisdiction is determined by this State's Uniform Child-Custody Jurisdiction and Enforcement Act. Otherwise, the courts of this State have jurisdiction to bind (i) State residents, and (ii) non-residents having minimum contacts with this State, to the extent permitted by the long-arm statute, Section 2-209 of the Code of Civil Procedure, as now or hereafter amended.

## **Process**

(725 ILCS 5/112A-10)

(a) Summons. Any action for an order of protection, whether commenced alone or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served, except that in pending criminal cases, the summons may be delivered to respondent in open court. The summons shall be in the form prescribed by Supreme Court Rule 101(d), except that it shall require respondent to answer or appear within 7 days, and shall be accompanied by the petition for the order of protection, any supporting affidavits, if any, and any emergency order of protection that has been issued. The enforcement of an order of protection under Section 112A-23 shall not be

affected by the lack of service or delivery, provided the requirements of subsection (a) of that Section are otherwise met.

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

(c) Expedited service. The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers. Process shall not be served in court.

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

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

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

## **Service of Notice of Hearings**

(725 ILCS 5/112A-11)

A party presenting a petition or motion to the court shall provide the other parties with written notice of the date, time and place of the hearing thereon, together with a copy of any petition, motion or accompanying affidavit not yet served upon that party, and shall file proof of that service, in accordance with Supreme Court Rules 11 and 12, unless notice is excused by Section 112A-17 of this Article, or by the Code of Civil Procedure, Supreme Court Rules or local rules.

## **Hearings**

(725 ILCS 5/112A-12)

(a) A petition for an order of protection shall be treated as an expedited proceeding, and no court shall transfer or otherwise decline to decide all or part of such petition, except as otherwise provided herein. Nothing in this Section shall prevent the court from reserving issues when jurisdiction or notice requirements are not met.

(b) A criminal court may decline to decide contested issues of physical care, custody, visitation, or family support, unless a decision on one or more of those contested issues is necessary to avoid the risk of abuse, neglect, removal from the state or concealment within the state of the child or of separation of the child from the primary caretaker.

(c) The court shall transfer to the appropriate court or division any issue it has declined to decide. Any court may transfer any matter which must be tried by jury to a more appropriate calendar or division.

(d) If the court transfers or otherwise declines to decide any issue, judgment on that issue shall be expressly reserved and ruling on other issues shall not be delayed or declined.

## **Continuances**

(725 ILCS 5/112A-13)

(a) Petitions for Emergency Orders. Petitions for emergency remedies shall be granted or denied in accordance with the standards of Section 217 of the Illinois Domestic Violence Act of 1986, regardless of respondent's presence in court or appearance.

(b) Petitions for Interim and Plenary Orders. Any action for an order of protection is an expedited proceeding. Continuances should be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance. If the continuance is necessary for some, but not all, of the remedies requested, hearing on those other remedies shall not be delayed.

## **Order of protection; remedies**

(725 ILCS 5/112A-14)

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

(b) Remedies and standards. The remedies to be included in an order of protection shall be determined in accordance with this Section and one of the following Sections, as appropriate: Section 112A-17 on emergency orders,

Section 112A-18 on interim orders, and Section 112A-19 on plenary orders. The remedies listed in this subsection shall be in addition to other civil or criminal remedies available to petitioner.

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

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

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

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

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

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

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

(4) Counseling. Require or recommend the respondent to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, alcohol or substance abuse program, mental health center guidance counselor, agency providing services to elders, program designed for domestic violence abusers or any other guidance service the court deems appropriate. The court may order the respondent in any intimate partner relationship to report to an Illinois Department of Human Services protocol approved partner abuse intervention program for an assessment and to follow all recommended treatment.

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

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

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

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

(7) Visitation. Determine the visitation rights, if any, of respondent in any case in which the court awards physical care or temporary legal custody of a minor child to petitioner. The court shall restrict or deny respondent's visitation with a minor child if the court finds that respondent has done or is likely to do any of the following: (i) abuse or endanger the minor child during visitation; (ii) use the visitation as an opportunity to abuse or harass petitioner or petitioner's family or household members; (iii) improperly conceal or detain the minor child; or (iv) otherwise act in a manner that is not in the best interests of the minor child. The court shall not be limited by the standards set forth in Section 607.1 of the Illinois

Marriage and Dissolution of Marriage Act. If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. No order for visitation shall refer merely to the term "reasonable visitation".

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

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

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

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

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

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

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

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

No order under this provision shall affect title to property.

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

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

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

If petitioner's sole claim to ownership of the property is that it is marital property, the court may grant petitioner relief under subparagraph (ii) of this paragraph only if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended. The court may further prohibit respondent from improperly using the financial or other resources

of an aged member of the family or household for the profit or advantage of respondent or of any other person.

(11.5) Protection of animals. Grant the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.

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

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

(i) Losses affecting family needs. If a party is entitled to seek maintenance, child support or property distribution from the other party under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended, the court may order respondent to reimburse petitioner's actual losses, to the extent that such reimbursement would be "appropriate temporary relief", as authorized by subsection (a)(3) of Section 501 of that Act.

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

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

(14.5) Prohibition of firearm possession. (a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall

include in the order of protection the requirement that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent fails to appear, or refuses or fails to surrender his or her firearms, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner. (b) If the respondent is a peace officer as defined in Section 2-13 of the Criminal Code of 1961, the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed 2 years as set forth in the court order.

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

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

(17) Order for injunctive relief. Enter injunctive relief necessary or appropriate to prevent further abuse of a family or household member or to effectuate one of the granted remedies, if supported by the balance of hardships. If the harm to be prevented by the injunction is abuse or any other harm that one of the remedies listed in paragraphs (1) through (16) of this subsection is designed to prevent, no further evidence is necessary to establish that the harm is an irreparable injury.

(c) Relevant factors; findings.

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

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

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

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

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

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

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

(3) Subject to the exceptions set forth in paragraph

(4) of this subsection, the court shall make its findings in an official record or in writing, and shall at a minimum set forth the following:

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

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

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

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

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

(5) Never married parties. No rights or responsibilities for a minor child born outside of marriage attach to a putative father until a father and child relationship has been established under the Illinois Parentage Act of 1984. Absent such an adjudication, no putative father shall be granted temporary custody of the minor child, visitation with the minor child, or physical care and possession of the minor child, nor shall an order of payment for support of the minor child be entered.

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

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

(1) Respondent has cause for any use of force, unless that cause satisfies

the standards for justifiable use of force provided by Article VII of the Criminal Code of 1961;

(2) Respondent was voluntarily intoxicated;

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

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

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

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

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

### **Mutual orders of protection; correlative separate orders**

(725 ILCS 5/112A-15)

Mutual orders of protection are prohibited. Correlative separate orders of protection undermine the purposes of this Article. If separate orders of protection in a criminal or delinquency case are sought, there must be compliance with Section 112A-2. Nothing in this Section prohibits a party from seeking a civil order of protection.

If correlative separate orders of protection result after being sought in separate criminal or delinquency actions in accordance with Section 112A-2, that fact shall not be a sufficient basis to deny any remedy to either petitioner or to prove that the parties are equally at fault or equally endangered.

### **Accountability for Actions of Others**

(725 ILCS 5/112A-16)

For the purposes of issuing an order of protection, deciding what remedies should be included and enforcing the order, Article 5 of the Criminal Code of 1961 shall govern whether respondent is legally accountable for the conduct of another person.

### **Emergency order of protection**

(725 ILCS 5/112A-17)

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

(1) The court has jurisdiction under Section 112A-9;

(2) The requirements of Section 112A-14 are satisfied; and

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

(i) For the remedies of "prohibition of abuse" described in Section 112A-14(b)(1), "stay away order and additional prohibitions" described in Section

112A-14(b)(3), "removal or concealment of minor child" described in Section 112A-14(b)(8), "order to appear" described in Section 112A-14(b)(9), "physical care and possession of the minor child" described in Section 112A-14(b)(5), "protection of property" described in Section 112A-14(b)(11), "prohibition of entry" described in Section 112A-14(b)(14), "prohibition of access to records" described in Section 112A-14(b)(15), and "injunctive relief" described in Section 112A-14(b)(16), the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief;

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

(iii) For the remedy of "possession of personal property" described in Section 112A-14(b)(10), improper disposition of the personal property would be likely to occur if respondent were given any prior notice, or greater notice than was actually given, of petitioner's efforts to obtain judicial relief, or petitioner has an immediate and pressing need for possession of that property. An emergency order may not include the counseling, legal custody, payment of support or monetary compensation remedies.

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

(c) Emergency orders: court holidays and evenings.

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

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

(2) Certification and transfer. Any order issued under this Section and any documentation in support thereof shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case

number, file the petition, order and other documents with the court and enter the order of record and file it with the sheriff for service, in accordance with Section 112A-22. Filing the petition shall commence proceedings for further relief, under Section 112A-2. Failure to comply with the requirements of this subsection shall not affect the validity of the order.

### **30-Day interim order of protection**

(725 ILCS 5/112A-18)

(a) Prerequisites. An interim order of protection shall issue if petitioner has served notice of the hearing for that order on respondent, in accordance with Section 112A-11, and satisfies the requirements of this subsection for one or more of the requested remedies. For each remedy requested, petitioner shall establish that:

(1) The court has jurisdiction under Section 112A-9;

(2) The requirements of Section 112A-14 are satisfied; and

(3) A general appearance was made or filed by or for respondent; or process was served on respondent in the manner required by Section 112A-10; or the petitioner is diligently attempting to complete the required service of process.

An interim order may not include the counseling, payment of support or monetary compensation remedies, unless the respondent has filed a general appearance or has been personally served.

(b) Appearance by respondent. If respondent appears in court for this hearing for an interim order, he or she may elect to file a general appearance and testify. Any resulting order may be an interim order, governed by this Section. Notwithstanding the requirements of this Section, if all requirements of Section 112A-19 have been met, the Court may issue a plenary order of protection.

### **Plenary Order of Protection**

(725 ILCS 5/112A-19)

A plenary order of protection shall issue if petitioner has served notice of the hearing for that order on respondent, in accordance with Section 112A-11, and satisfies the requirements of this Section for one or more of the requested remedies. For each remedy requested, petitioner must establish that:

(1) The court has jurisdiction under Section 112A-9;

(2) The requirements of Section 112A-14 are satisfied; and

(3) A general appearance was made or filed by or for respondent or process was served on respondent in the manner required by Section 112A-10; and

(4) Respondent has answered or is in default.

### **Duration and extension of orders**

(725 ILCS 5/112A-20)

(a) Duration of emergency and interim orders. Unless re-opened or extended or voided by entry of an order of greater duration:

(1) Emergency orders issued under Section 112A-17 shall be effective for not less than 14 nor more than 21 days;

(2) Interim orders shall be effective for up to 30 days.

(b) Duration of plenary orders. Except as otherwise provided in this Section, a plenary order of protection shall be valid for a fixed period of time not to exceed 2 years. A plenary order of protection entered in conjunction with a criminal prosecution shall remain in effect as follows:

(1) if entered during pre-trial release, until disposition, withdrawal, or dismissal of the underlying charge; if, however, the case is continued as an independent cause of action, the order's duration may be for a fixed period of time not to exceed 2 years;

(2) if in effect in conjunction with a bond forfeiture warrant, until final disposition or an additional period of time not exceeding 2 years; no order of protection, however, shall be terminated by a dismissal that is accompanied by the issuance of a bond forfeiture warrant;

(3) until expiration of any supervision, conditional discharge, probation, periodic imprisonment, parole or mandatory supervised release and for an additional period of time thereafter not exceeding 2 years; or

(4) until the date set by the court for expiration of any sentence of imprisonment and subsequent parole or mandatory supervised release and for an additional period of time thereafter not exceeding 2 years.

(c) Computation of time. The duration of an order of protection shall not be reduced by the duration of any prior order of protection.

(d) Law enforcement records. When a plenary order of protection expires upon the occurrence of a specified event, rather than upon a specified date as provided in subsection (b), no expiration date shall be entered in Department of State Police records. To remove the plenary order from those records, either party shall request the clerk of the court to file a certified copy of an order stating that the specified event has occurred or that the plenary order has been vacated or modified with the sheriff, and the sheriff shall direct that law enforcement records shall be promptly corrected in accordance with the filed order.

(e) Extension of Orders. Any emergency, interim or plenary order of protection may be extended one or more times, as required, provided that the requirements of Section 112A-17, 112A-18 or 112A-19, as appropriate, are satisfied. If the motion for extension is uncontested and petitioner seeks no modification of the order, the order may be extended on the basis of petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension. An extension of a plenary order of protection may be granted, upon good cause shown, to remain in effect until the order of protection is vacated or modified. Extensions may be granted only in open court and not under the provisions of Section 112A-17(c), which applies only when the court is unavailable at the close of business or on a court holiday.

(f) Termination date. Any order of protection which would expire on a court holiday shall instead expire at the close of the next court business day.

(g) Statement of purpose. The practice of dismissing or suspending a criminal prosecution in exchange for issuing an order of protection undermines the purposes of this Article. This Section shall not be construed as encouraging that practice.

## **Contents of orders**

(725 ILCS 5/112A-21)

(a) Any order of protection shall describe, in reasonable detail and not by reference to any other document, the following:

(1) Each remedy granted by the court, in reasonable detail and not by reference to any other document, so that respondent may clearly understand what he or she must do or refrain from doing. Pre-printed form orders of protection shall include the definitions of the types of abuse, as provided in Section 112A-3. Remedies set forth in pre-printed form orders shall be numbered consistently with and corresponding to the numerical sequence of remedies listed in Section 112A-14 (at least as of the date the form orders are printed).

(2) The reason for denial of petitioner's request for any remedy listed in Section 112A-14.

(b) An order of protection shall further state the following:

(1) The name of each petitioner that the court finds was abused by respondent, and that respondent is a member of the family or household of each such petitioner, and the name of each other person protected by the order and that such person is protected by this Act.

(2) For any remedy requested by petitioner on which the court has declined to rule, that that remedy is reserved.

(3) The date and time the order of protection was issued, whether it is an emergency, interim or plenary order and the duration of the order.

(4) The date, time and place for any scheduled hearing for extension of that order of protection or for another order of greater duration or scope.

(5) For each remedy in an emergency order of protection, the reason for entering that remedy without prior notice to respondent or greater notice than was actually given.

(6) For emergency and interim orders of protection, that respondent may petition the court, in accordance with Section 112A-24, to re-open that order if he or she did not receive actual prior notice of the hearing, in accordance with Section 112A-11, and alleges that he or she had a meritorious defense to the order or that the order or any of its remedies was not authorized by this Article.

(c) Any order of protection shall include the following notice, printed in conspicuous type: "Any knowing violation of an order of protection forbidding physical abuse, harassment, intimidation, interference with personal liberty, willful deprivation, or entering or remaining present at specified places when the protected person is present, or granting exclusive possession of the residence or household, or granting a stay away order is a Class A misdemeanor. Grant of exclusive possession of the residence or household shall constitute notice forbidding trespass to land. Any knowing violation of an order awarding legal

custody or physical care of a child or prohibiting removal or concealment of a child may be a Class 4 felony. Any willful violation of any order is contempt of court. Any violation may result in fine or imprisonment."

(d) An emergency order of protection shall state, "This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262)."

(e) An interim or plenary order of protection shall state, "This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262). The respondent may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition under the Gun Control Act (18 U.S.C. 922(g)(8) and (9))."

### **Notice of orders**

(725 ILCS 5/112A-22)

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

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

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

(c-5) If the person against whom the order of protection is issued is arrested and the written order is issued in accordance with subsection (c) of Section 112A-17 and received by the custodial law enforcement agency before the respondent or arrestee is released from custody, the custodial law enforcement

agent shall promptly serve the order upon the respondent or arrestee before the respondent or arrestee is released from custody. In no event shall detention of the respondent or arrestee be extended for hearing on the petition for order of protection or receipt of the order issued under Section 112A-17 of this Code.

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

### **Filing of an order of protection issued in another state**

(725 ILCS 5/112A-22.5)

(a) A person entitled to protection under an order of protection issued by the court of another state, tribe, or United States territory may file a certified copy of the order of protection with the clerk of the court in a judicial circuit in which the person believes that enforcement may be necessary.

(b) The clerk shall:

(1) treat the foreign order of protection in the same manner as a judgment of the circuit court for any county of this State in accordance with the provisions of the Uniform Enforcement of Foreign Judgments Act, except that the clerk shall not mail notice of the filing of the foreign order to the respondent named in the order; and

(2) on the same day that a foreign order of protection is filed, file a certified copy of that order with the sheriff or other law enforcement officials charged with maintaining Department of State Police records as set forth in Section 112A-22 of this Act.

(c) Neither residence in this State nor filing of a foreign order of protection shall be required for enforcement of the order by this State. Failure to file the foreign order shall not be an impediment to its treatment in all respects as an Illinois order of protection.

(d) The clerk shall not charge a fee to file a foreign order of protection under this Section.

(e) The sheriff shall inform the Department of State Police as set forth in Section 112A-28 of this Act.

### **Short form notification**

(725 ILCS 5/112A-22.10)

(a) Instead of personal service of an order of protection under Section 112A-22, a sheriff, other law enforcement official, or special process server may serve a respondent with a short form notification. The short form notification must include the following items:

- (1) The respondent's name.
- (2) The respondent's date of birth, if known.
- (3) The petitioner's name.
- (4) The names of other protected parties.
- (5) The date and county in which the order of protection was filed.

- (6) The court file number.
- (7) The hearing date and time, if known.
- (8) The conditions that apply to the respondent, either in checklist form or handwritten.
- (9) The name of the judge who signed the order.
- (b) The short form notification must contain the following notice in bold print:  
"The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in (name of county) County to obtain a copy of the order of protection. You are subject to arrest and may be charged with a misdemeanor or felony if you violate any of the terms of the order of protection."
- (c) Upon verification of the identity of the respondent and the existence of an unserved order of protection against the respondent, a sheriff or other law enforcement official may detain the respondent for a reasonable time necessary to complete and serve the short form notification.
- (d) When service is made by short form notification under this Section, it may be proved by the affidavit of the sheriff, other law enforcement official, or special process server making the service.
- (e) The Attorney General shall provide adequate copies of the short form notification form to law enforcement agencies in this State.

### **Enforcement of orders of protection**

(725 ILCS 5/112A-23)

(a) When violation is crime. A violation of any order of protection, whether issued in a civil, quasi-criminal proceeding, shall be enforced by a criminal court when:

(1) The respondent commits the crime of violation of an order of protection pursuant to Section 12-30 of the Criminal Code of 1961, by having knowingly violated:

(i) remedies described in paragraphs (1), (2), (3), (14), or (14.5) of subsection (b) of Section 112A-14,

(ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (2), (3), (14) or (14.5) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, in a valid order of protection, which is authorized under the laws of another state, tribe or United States territory,

(iii) or any other remedy when the act constitutes a crime against the protected parties as defined by the Criminal Code of 1961.

Prosecution for a violation of an order of protection shall not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order of protection; or

(2) The respondent commits the crime of child abduction pursuant to Section 10-5 of the Criminal Code of 1961, by having knowingly violated:

(i) remedies described in paragraphs (5), (6) or (8) of subsection (b) of Section 112A-14, or

(ii) a remedy, which is substantially similar to the remedies authorized under paragraphs (1), (5), (6), or (8) of subsection (b) of Section 214 of the Illinois Domestic Violence Act of 1986, in a valid order of protection, which is authorized under the laws of another state, tribe or United States territory.

(b) When violation is contempt of court. A violation of any valid order of protection, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the order of protection were committed, to the extent consistent with the venue provisions of this Article. Nothing in this Article shall preclude any Illinois court from enforcing any valid order of protection issued in another state. Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy.

(1) In a contempt proceeding where the petition for a rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children or on dependent adults in petitioner's care, the court may order the attachment of the respondent without prior service of the rule to show cause or the petition for a rule to show cause. Bond shall be set unless specifically denied in writing.

(2) A petition for a rule to show cause for violation of an order of protection shall be treated as an expedited proceeding.

(c) Violation of custody or support orders. A violation of remedies described in paragraphs (5), (6), (8), or (9) of subsection (b) of Section 112A-14 may be enforced by any remedy provided by Section 611 of the Illinois Marriage and Dissolution of Marriage Act. The court may enforce any order for support issued under paragraph (12) of subsection (b) of Section 112A-14 in the manner provided for under Parts V and VII of the Illinois Marriage and Dissolution of Marriage Act.

(d) Actual knowledge. An order of protection may be enforced pursuant to this Section if the respondent violates the order after respondent has actual knowledge of its contents as shown through one of the following means:

(1) By service, delivery, or notice under Section 112A-10.

(2) By notice under Section 112A-11.

(3) By service of an order of protection under Section 112A-22.

(4) By other means demonstrating actual knowledge of the contents of the order.

(e) The enforcement of an order of protection in civil or criminal court shall not be affected by either of the following:

(1) The existence of a separate, correlative order entered under Section 112A-15.

(2) Any finding or order entered in a conjoined criminal proceeding.

(f) Circumstances. The court, when determining whether or not a violation of an order of protection has occurred, shall not require physical manifestations of

abuse on the person of the victim.

(g) Penalties.

(1) Except as provided in paragraph (3) of this subsection, where the court finds the commission of a crime or contempt of court under subsections (a) or (b) of this Section, the penalty shall be the penalty that generally applies in such criminal or contempt proceedings, and may include one or more of the following: incarceration, payment of restitution, a fine, payment of attorneys' fees and costs, or community service.

(2) The court shall hear and take into account evidence of any factors in aggravation or mitigation before deciding an appropriate penalty under paragraph (1) of this subsection.

(3) To the extent permitted by law, the court is encouraged to:

(i) increase the penalty for the knowing violation of any order of protection over any penalty previously imposed by any court for respondent's violation of any order of protection or penal statute involving petitioner as victim and respondent as defendant;

(ii) impose a minimum penalty of 24 hours imprisonment for respondent's first violation of any order of protection; and

(iii) impose a minimum penalty of 48 hours imprisonment for respondent's second or subsequent violation of an order of protection unless the court explicitly finds that an increased penalty or that period of imprisonment would be manifestly unjust.

(4) In addition to any other penalties imposed for a violation of an order of protection, a criminal court may consider evidence of any violations of an order of protection:

(i) to increase, revoke or modify the bail bond on an underlying criminal charge pursuant to Section 110-6;

(ii) to revoke or modify an order of probation, conditional discharge or supervision, pursuant to Section 5-6-4 of the Unified Code of Corrections;

(iii) to revoke or modify a sentence of periodic imprisonment, pursuant to Section 5-7-2 of the Unified Code of Corrections.

### **Modification and re-opening of orders**

(725 ILCS 5/112A-24)

(a) Except as otherwise provided in this Section, upon motion by petitioner, the court may modify an emergency, interim, or plenary order of protection:

(1) If respondent has abused petitioner since the hearing for that order, by adding or altering one or more remedies, as authorized by Section 112A-14; and

(2) Otherwise, by adding any remedy authorized by Section 112A-14 which was:

(i) reserved in that order of protection;

(ii) not requested for inclusion in that order of protection; or

(iii) denied on procedural grounds, but not on the merits.

(b) Upon motion by petitioner or respondent, the court may modify any prior order of protection's remedy for custody, visitation or payment of support in

accordance with the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act.

(c) After 30 days following the entry of a plenary order of protection, a court may modify that order only when changes in the applicable law or facts since that plenary order was entered warrant a modification of its terms.

(d) Upon 2 days notice to petitioner, in accordance with Section 112A-11, or such shorter notice as the court may prescribe, a respondent subject to an emergency or interim order of protection issued under this Article may appear and petition the court to re-hear the original or amended petition. Any petition to re-hear shall be verified and shall allege the following:

(1) that respondent did not receive prior notice of the initial hearing in which the emergency or interim order was entered, in accordance with Sections 112A-11 and 112A-17; and

(2) that respondent had a meritorious defense to the order or any of its remedies or that the order or any of its remedies was not authorized under this Article.

(e) If the emergency or interim order granted petitioner exclusive possession of the residence and the petition of respondent seeks to re-open or vacate that grant, the court shall set a date for hearing within 14 days on all issues relating to exclusive possession. Under no circumstances shall a court continue a hearing concerning exclusive possession beyond the 14th day except by agreement of the parties. Other issues raised by the pleadings may be consolidated for the hearing if neither party nor the court objects.

(f) This Section does not limit the means, otherwise available by law, for vacating or modifying orders of protection.

### **Immunity from Prosecution**

(725 ILCS 5/112A-25)

Any individual or organization acting in good faith to report the abuse of any person 60 years of age or older or to do any of the following in complying with the provisions of this Article shall not be subject to criminal prosecution or civil liability as a result of such action: providing any information to the appropriate law enforcement agency, providing that the giving of any information does not violate any privilege of confidentiality under law; assisting in any investigation; assisting in the preparation of any materials for distribution under this Article; or by providing services ordered under an order of protection.

### **Arrest without warrant**

(725 ILCS 5/112A-26)

(a) Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing any crime, including but not limited to violation of an order of protection, under Section 12-30 of the Criminal Code of 1961, even if the crime was not committed in the presence of the officer.

(b) The law enforcement officer may verify the existence of an order of

protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by petitioner or respondent.

### **Law enforcement policies**

(725 ILCS 5/112A-27)

Every law enforcement agency shall develop, adopt, and implement written policies regarding arrest procedures for domestic violence incidents consistent with the provisions of this Article. In developing these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents.

### **Data maintenance by law enforcement agencies**

(725 ILCS 5/112A-28)

(a) All sheriffs shall furnish to the Department of State Police, daily, in the form and detail the Department requires, copies of any recorded orders of protection issued by the court, and any foreign orders of protection filed by the clerk of the court, and transmitted to the sheriff by the clerk of the court pursuant to subsection (b) of Section 112A-22 of this Act. Each order of protection shall be entered in the Law Enforcement Agencies Data System on the same day it is issued by the court. If an emergency order of protection was issued in accordance with subsection (c) of Section 112A-17, the order shall be entered in the Law Enforcement Agencies Data System as soon as possible after receipt from the clerk.

(b) The Department of State Police shall maintain a complete and systematic record and index of all valid and recorded orders of protection issued or filed pursuant to this Act. The data shall be used to inform all dispatchers and law enforcement officers at the scene of an alleged incident of abuse or violation of an order of protection of any recorded prior incident of abuse involving the abused party and the effective dates and terms of any recorded order of protection.

(c) The data, records and transmittals required under this Section shall pertain to any valid emergency, interim or plenary order of protection, whether issued in a civil or criminal proceeding or authorized under the laws of another state, tribe, or United States territory.

### **Reports by law enforcement officers**

(725 ILCS 5/112A-29)

(a) Every law enforcement officer investigating an alleged incident of abuse between family or household members shall make a written police report of any bona fide allegation and the disposition of such investigation. The police report shall include the victim's statements as to the frequency and severity of prior incidents of abuse by the same family or household member and the number of prior calls for police assistance to prevent such further abuse.

(b) Every police report completed pursuant to this Section shall be recorded and compiled as a domestic crime within the meaning of Section 5.1 of the Criminal Identification Act.

### **Assistance by law enforcement officers**

(725 ILCS 5/112A-30)

(a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including:

(1) Arresting the abusing party, where appropriate;

(2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons;

(3) Accompanying the victim of abuse to his or her place of residence for a reasonable period of time to remove necessary personal belongings and possessions;

(4) Offering the victim of abuse immediate and adequate information (written in a language appropriate for the victim or in Braille or communicated in appropriate sign language), which shall include a summary of the procedures and relief available to victims of abuse under subsection (c) of Section 112A-17 and the officer's name and badge number;

(5) Providing the victim with one referral to an accessible service agency;

(6) Advising the victim of abuse about seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property); and

(7) Providing or arranging accessible transportation for the victim of abuse (and, at the victim's request, any minors or dependents in the victim's care) to a medical facility for treatment of injuries or to a nearby place of shelter or safety; or, after the close of court business hours, providing or arranging for transportation for the victim (and, at the victim's request, any minors or dependents in the victim's care) to the nearest available circuit judge or associate judge so the victim may file a petition for an emergency order of protection under subsection (c) of Section 112A-17. When a victim of abuse chooses to leave the scene of the offense, it shall be presumed that it is in the best interests of any minors or dependents in the victim's care to remain with the victim or a person designated by the victim, rather than to remain with the abusing party.

(b) Whenever a law enforcement officer does not exercise arrest powers or otherwise initiate criminal proceedings, the officer shall:

(1) Make a police report of the investigation of any bona fide allegation of an incident of abuse and the disposition of the investigation, in accordance with subsection (a) of Section 112A-29;

(2) Inform the victim of abuse of the victim's right to request that a criminal proceeding be initiated where appropriate, including specific times and places for meeting with the State's Attorney's office, a warrant officer, or other official in accordance with local procedure; and

(3) Advise the victim of the importance of seeking medical attention and preserving evidence (specifically including photographs of injury or damage and damaged clothing or other property).

(c) Except as provided by Section 24-6 of the Criminal Code of 1961 or under a court order, any weapon seized under subsection (a)(2) shall be returned forthwith to the person from whom it was seized when it is no longer needed for evidentiary purposes.

**Limited law enforcement liability**

(725 ILCS 5/112A-31)

Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Article shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.

## **GLOSSARY**

### **Affidavit**

A written statement of facts made by a person under oath. Lying in an affidavit can result in a charge of perjury which could result in a fine and/or jail.

### **Affirmative Defense**

A defendant's claim to dissolve himself or herself of liability even if the plaintiff's claim is true.

### **Alimony (Maintenance)**

The money paid by one ex-spouse to the other for support under the terms of a court order or settlement agreement following a divorce. Except in marriages of long duration (ten years or more) or in the case of an ailing spouse, alimony usually lasts for a set period, with the expectation that the recipient spouse will become self-supporting. Alimony is called "maintenance" under Illinois laws.

### **Appeal**

A request by either the prosecution or the defense that a higher (appellate) court review the decision of a lower (trial) court.

### **Appearance**

Coming into court as a party to a suit, either as plaintiff or defendant. A formal proceeding by which one submits himself to the jurisdiction of the court.

### **Assault**

A crime that occurs when one person tries to physically harm another in a way that makes the person under attack feel immediately threatened. Actual physical contact is not necessary; threatening gestures that would alarm any reasonable person can constitute an assault. Compare battery.

### **Assets**

Property of any kind, real or personal, tangible or intangible, legal or equitable.

### **Bail**

The money paid to the court, usually at arraignment, to ensure that an arrested person who is released from jail will show up at all required court appearances. The amount of bail is determined by the local bail schedule, which is based on the seriousness of the offense. The judge can increase the bail if the prosecutor convinces him that the defendant is likely to flee (for example, if he has failed to show up in court in the past), or he can decrease it if the defense attorney shows that the defendant is unlikely to run (for example, he has strong ties to the community by way of a steady job and a family). In Illinois, the amount of cash bail required is usually 10 percent of the bail amount set by the court.

### **Battery**

The willful and unlawful use of force on the person of another. Every battery includes an "assault" which is merely an unlawful attempt or offer to use force to the injury of another. "Assault" does not include "battery." When the "assault" culminates in a "battery", the offense is "assault and battery".

### **Bench Trial**

In criminal proceedings, a trial in which there is no jury and in which a judge decides all issues of fact and law in the case.

### **Bond**

A document that guarantees the defendant will appear for future court dates as required and that records the pledge of money or property to be paid to the court if the defendant does not appear.

### **Burden of proof**

A party's job of convincing the decision maker in a trial that the party's version of the facts is true. In a civil trial, it means that the plaintiff must convince the judge or jury "by a preponderance of the

evidence" that the plaintiff's version is true--that is, over 50% of the believable evidence is in the plaintiff's favor. In a criminal case, because a person's liberty is at stake, the government has a harder job, and must convince the judge or jury beyond a reasonable doubt that the defendant is guilty.

**Charge**

An allegation that a specific person has committed a specific offense. Charges are recorded in various charging documents such as a complaint, information, or indictment.

**Circuit Court**

A court that hears and resolves felony, misdemeanor, and juvenile cases as well as some noncriminal cases. In Illinois, these trial courts are organized into 22 judicial circuits.

**Circumstantial evidence**

Evidence that proves a fact by means of an inference. For example, from the evidence that a person was seen running away from the scene of a crime, a judge or jury may infer that the person committed the crime.

**Compensatory Damages**

Awarded for purpose of making injured party whole.

**Conditional Discharge**

A court-imposed sentence similar to probation, except that the level of supervision of the offender is limited.

**Contempt of court**

Behavior in or out of court that violates a court order, or otherwise disrupts or shows disregard for the court. Refusing to answer a proper question, to file court papers on time or to follow local court rules can expose witnesses, lawyers and litigants to contempt findings. Contempt of court is punishable by fine or imprisonment.

**Continuance**

The adjournment or delay of a scheduled session of the court.

**Conviction**

A finding by a judge or jury that the defendant is guilty of a crime.

**Docket**

A list of the cases and hearings that will be held by a court on a particular day, week or month.

**Domestic Violence Advocate**

Any person (a) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (b) who provides services to victims through a domestic violence program either on an employed or volunteer basis. Also called domestic abuse advocate.

**Domestic Violence Program**

Any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.

**Domestic Violence Victim**

Any person who consults a domestic violence counselor for the purpose of securing advice, counseling, or assistance related to one or more alleged incidents of domestic violence.

**Ex parte**

A judicial proceeding granted for the benefit of one party only. The other party has not received notice of the proceeding so, therefore, is not present.

**Felony**

Crime or a graver or more atrocious nature than those designated as misdemeanors.

**Full Faith and Credit**

Constitutional requirement that a state accord the judgment of a court of another state, tribe or territory the same credit that it is entitled to in the courts of that state.

**Hearing/Trial**

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

**Hearsay**

Any evidence that is offered by a witness of which they do not have direct knowledge but, rather, their testimony is based on what others have said to them. The basic rule, when testifying in court, is that you can only provide information of which you have direct knowledge. In other words, hearsay evidence is not generally allowed.

**Illinois Attorney General**

Illinois' top legal officer, who is elected to a four-year term by the voters statewide. Although primarily involved in civil matters, the Attorney General's Office initiates some criminal proceedings and represents the state in criminal appeals before the Illinois Supreme Court and the U.S. Supreme Court.

**Jurisdiction**

The authority of a court to hear and decide a case. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

**Law Enforcement Agency Data System (LEADS)**

A statewide, computerized telecommunications system, maintained by the Illinois State Police, designed to provide services, information, and capabilities to law enforcement and other criminal justice agencies in Illinois.

**May**

Not necessarily. The word "may" as appearing in a statute is to be construed as a possibility, not as a word of command. Compare to "shall."

**Misdemeanor**

A crime of lesser seriousness than a felony where the punishment might be a fine or prison for less than one year.

**Motion**

A written or oral request to the judge after a lawsuit has been started.

**Order**

A decision issued by a court.

**Order to Show Cause**

An order by a judge for a person to show up to a hearing to explain why he/she has not complied with a court order.

**Paternity**

Being a father. "Paternity suits" are filed when a man denies paternity of a child to an unmarried woman. New technology of DNA testing can establish paternity thus obligating the father to provide child support and addressing the issue of visitation.

**Petition**

A formal written document submitted to a court, asking for an order or ruling on a particular matter. Petitions set out the facts, identify the law, and suggest a course of action for the court to order.

**Petitioner/Plaintiff**

The person who brings a case to court; who sues.

**Plea**

A defendant's formal answer in court that he or she is guilty or not guilty to the criminal offense charged or does not contest the charge.

**Plea bargaining**

A negotiation between the defense and prosecution (and sometimes the judge) that settles a criminal case. The defendant typically pleads guilty to a lesser crime (or fewer charges) than originally charged, in exchange for a guaranteed sentence that is shorter than what the defendant could face if convicted at trial. The prosecution gets the certainty of a conviction and a known sentence; the defendant avoids the risk of a higher sentence; and the judge gets to move on to other cases.

**Preponderance**

Used in civil cases and means the weight of the evidence that is needed on either side to win a case.

**Preponderance of the Evidence**

The degree or weight of evidence sufficient in the eyes of the court to render a proper verdict.

**Primary Caretaker**

The person whom a child resides with most of the time. It is not who has custody of a child.

**Probable Cause**

A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a crime had occurred and that a particular person had committed it.

**Pro bono**

Provided for free.

**Proof Beyond a Reasonable Doubt**

Such proof as precludes every reasonable hypothesis except that which it intends to support and is inconsistent with any other rational conclusion.

**Pro se**

A person who represents herself in court, instead of hiring an attorney.

**Public Defender**

An attorney employed by the county for the purpose of providing free defense services to persons who cannot afford an attorney and are charged with a crime.

**Reconsider**

To look at again or to consider again.

**Restricted (Supervised) Visitation**

If a parent without custody poses a serious physical or emotional threat to his/her child(ren), he/she may receive what is called restricted or supervised visitation. Most of the time, the restriction or supervision will only last for a certain period of time.

**Sentence**

The punishment given to a person who has been convicted (i.e. found to be guilty) of a crime. It may be time in jail, a period of probation, and/or fines.

**Serve or Service**

The process where a person is officially notified of a pending lawsuit.

**Shall**

Must. Obligated. Ordinarily where a statute uses the word "shall," its provision is absolute. Compare to "may."

**State's Attorney/Prosecutor**

The highest-ranking law enforcement officer in each county in Illinois. The State's Attorney, who is elected to a four-year term by the voters in the county, commences and carries out all criminal and juvenile proceedings in the county. Most counties have Assistant State's Attorneys to help prosecute persons charged with violating criminal laws.

**Subpoena**

A court order issued at the request of a party commanding a witness to appear in court at a certain time and place to give testimony.

**Summons**

A paper prepared by the petitioner and issued by a court that informs the respondent that he has been sued.

**Vacate**

To make useless or without force or significance.

**Venue**

The decision of which county in the State of Illinois is proper for a court case to be filed in and for the case to be ruled upon. Venue for a criminal case is normally the county where the crime was committed.

**Verdict**

The decision of a jury. In criminal cases, this is usually expressed as "guilty" or "not guilty". In a civil case, the verdict would be a finding for the petitioner or for the respondent.

**Visitation**

The period of time when the non-custodial parent gets to visit with her or his child.