

EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION

725 ILCS 5/112A-17.5

By Judge Miller

EXPEDITED HEARING

The court shall consider the request for an ex parte protective order on an expedited basis without requiring the respondent's presence or requiring notice to the respondent.

THE PETITION

The petition 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.

(725 Ill. Comp. Stat. Ann. 5/112A-5)

PETITION TIME LIMIT

A petition for a protective order may be filed at any time, in-person or online, after a criminal charge or delinquency petition is filed and before the charge or delinquency petition is dismissed, the defendant or juvenile is acquitted, or the defendant or juvenile completes service of his or her sentence.

(725 Ill. Comp. Stat. Ann. 5/112A-5.5)

WHO MAY FILE THE PETITION?

A petition for a domestic violence order of protection may be filed:

(1) by a named victim who has been abused by a family or household member;

(2) by any person or by the State's Attorney on behalf of a named victim who is 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.

WHAT IS DOMESTIC VIOLENCE?

“Domestic violence” 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.

FAMILY OR HOUSEHOLD MEMBER

“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.

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.

IF THE RESPONDENT IS PRESENT

If the respondent is present at the hearing, the respondent may rebut prima facie evidence of the crime by presenting evidence of a meritorious defense. The respondent shall file a written notice alleging a meritorious defense which shall be verified and supported by affidavit. The verified notice and affidavit shall set forth the evidence that will be presented at a hearing. If the court finds that the evidence presented at the hearing establishes a meritorious defense by a preponderance of the evidence, the court may decide not to issue a protective order.

{725 Ill. Comp. Stat. Ann. 5/112A-11.5(a-5)}

IF THE RESPONDENT IS NOT PRESENT

If the respondent is NOT present at the hearing, then, upon 7 days' notice to the petitioner, or a shorter notice period as the court may prescribe, a respondent subject to an ex parte protective order may appear and petition the court to re-hear the 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 ex parte protective order was entered under Section 112A-17.5 of this Code; 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.

THE RESPONDENT'S PETITION

The verified petition and affidavit shall set forth the evidence of the meritorious defense that will be presented at a hearing. If the court finds that the evidence presented at the hearing on the petition establishes a meritorious defense by a preponderance of the evidence, the court may decide to vacate the protective order or modify the remedies.

(725 Ill. Comp. Stat. Ann. 5/112A-17.5)

BURDEN OF PROOF

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.

(750 Ill. Comp. Stat. Ann. 60/205)

THREE FINDINGS

In order to grant the Domestic Violence Order of Protection, the Court needs to find 3 things:

1. _____ Jurisdiction

2. _____ Prima Facie Evidence

3. _____ Good Cause for Ex Parte hearing.

JURISDICTION

REQUIREMENT NUMBER 1

An ex parte domestic violence order of protection shall be issued if petitioner shall establishes that the court has jurisdiction under 725 ILCS 5/112A-9.

(725 ILCS 5/112A-17.5a)

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,² as now or hereafter amended.

725 ILCS 112A-9

PRIMA FACIE EVIDENCE REQUIREMENT NUMBER 2

An ex parte domestic violence order of protection shall be issued if petitioner shall establishes that the requirements of 725 ILCS 5/112A-11.5 are satisfied.

(725 ILCS 5/112A-17.5a)

- an information, complaint, indictment, or delinquency petition, charging a crime of domestic violence, a sexual offense, or stalking or charging an attempt to commit a crime of domestic violence, a sexual offense, or stalking;
- the entry of a protective order in a separate civil case brought by the petitioner against the respondent.

725 ILCS 5/112A-11.5

GOOD CAUSE FOR AN EX PARTE HEARING REQUIREMENT NUMBER 3

No notice is required if 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.

(725 ILCS 5/112A-17.5(b)(3))

INJURY TO PETITIONER NOT REQUIRED

The court, when determining whether or not to issue a protective order, may not require physical injury on the person of the victim.

EXCLUSIVE POSSESSION OF RESIDENCE

- **For the remedy of Exclusive Possession of the Residence, the immediate danger of further abuse of the petitioner by the respondent, if the petitioner chooses or had chosen to remain in the residence or household while the respondent was given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief outweighs the hardships to the respondent of an emergency order granting the petitioner exclusive possession of the residence or household; and the remedy shall not be denied because the petitioner has or could obtain temporary shelter elsewhere while prior notice is given to the respondent, unless the hardship to the respondent from exclusion from the home substantially outweigh the hardship to the petitioner.**

EXCLUDED REMEDIES

An ex parte domestic violence order of protection may not include the counseling, custody, or payment of support or monetary compensation remedies.

725 Ill. Comp. Stat. Ann. 5/112A-17.5

CHILD CUSTODY ISSUES

A criminal court may decline to decide contested issues of physical care and possession of a minor child, temporary allocation of parental responsibilities or significant decision-making responsibility, parenting time, 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.

EXCLUSIVE POSSESSION OF THE RESIDENCE

If the ex parte protective 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 petitioner and the respondent. Other issues raised by the pleadings may be consolidated for the hearing if the petitioner, the respondent, and the court do not object.

(725 Ill. Comp. Stat. Ann. 5/112A-17.5)

RESPONDENT'S CHALLENGE TO THE EX PARTE ORDER-- PART 1

Upon 7 days' notice to the petitioner, or a shorter notice period as the court may prescribe, a respondent subject to an ex parte protective order may appear and petition the court to re-hear the 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 ex parte protective order was entered under Section 112A-17.5 of this Code; 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.**

RESPONDENT'S CHALLENGE TO THE EX PARTE ORDER-- PART 2

The verified petition and affidavit shall set forth the evidence of the meritorious defense that will be presented at a hearing. If the court finds that the evidence presented at the hearing on the petition establishes a meritorious defense by a preponderance of the evidence, the court may decide to vacate the protective order or modify the remedies.

DURATION OF EX PARTE ORDER

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.**

(750 ILCS 60/220)

LENGTH OF PROTECTIVE ORDER

A final protective order shall remain in effect until 2 years after the expiration of any supervision, conditional discharge, probation, periodic imprisonment, parole, aftercare release, or mandatory supervised release for domestic violence orders of protection and civil no contact orders.