

DOMESTIC BATTERY ORDER OF PROTECTION

by Judge Bob Miller

Per 725 ILCS 5/112A-17.5a, in order to grant the Domestic Violence Order of Protection, the Court needs to find 3 things:

1. __ JURISDICTION
(725 ILCS 112A-9)

Are the parties either residents, or nonresidents with minimum contacts?

2. __ PRIMA FACIE EVIDENCE
(725 ILCS 5/112A-11.5)

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, shall be considered prima facie evidence of the crime.

3. __ GOOD CAUSE FOR EX PARTE
{725 ILCS 5/112A-17.5(b)(3)}

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.

- 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)
- 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 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 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)

- 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)

- If the Court does **NOT find that good cause exists** to issue the Order of Protection, and believes Respondent should receive Notice, then see 725 ILCS 5/112A-5.5:

(c) A summons shall be issued and served for a protective order. The summons may be served by delivery to the respondent personally in open court in the criminal or juvenile delinquency proceeding, in the form prescribed by subsection (d) of Supreme Court Rule 101, except that it shall require the respondent to answer or appear within 7 days. Attachments to the summons shall include the petition for protective order, supporting affidavits, if any, and any ex parte protective order that has been issued. 725 Ill. Comp. Stat. Ann. 5/112A-5.5(c)

- 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)
- 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. (725 Ill. Comp. Stat. Ann. 5/112A-4.5)
- “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 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 subsection (e) of Section 12-4.4a of the Criminal Code of 2012.1 For purposes of this paragraph (3), neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship. (725 Ill. Comp. Stat. Ann. 5/112A-3)
- 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)

- 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. {725 Ill. Comp. Stat. Ann. 5/112A-12(b)}
- The 14-21 day maximum duration that applies to civil emergency protective orders does NOT apply to ex parte criminal protective orders. Rather, ex parte orders remain in effect until the court considers the request for a final protective order after notice to defendant or until a default final protective order is entered, whichever occurs first. 725 ILCS 5/11A-17.5(i) (750 ILCS 60/220)
- 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; (725 Ill. Comp. Stat. Ann. 5/112A-20)
- Withdrawal or dismissal of the criminal charges or delinquency petition shall not require a dismissal or vacating of the protective order. Instead, at the request of the petitioner or their attorney or State's Attorney, it may be treated as an independent action. Dismissal of the criminal action or delinquency petition shall not affect the validity of any previously issued protective order. 725 ILCS 5/112A-22.3(a).
- Computation of time. The duration of a domestic violence order of protection shall not be reduced by the duration of any prior domestic violence order of protection. 725 ILCS 5/112A-20(c)