

ILLINOIS DOMESTIC VIOLENCE ACT¹

WHAT SPECIAL PROTECTIONS DOES THE LAW PROVIDE TO VICTIMS OF DOMESTIC VIOLENCE?

In *Calloway v. Kinkelaar*, the Illinois Supreme Court found that the IDVA created a “specially protected class of individuals to whom statutorily mandated duties are owed.”² Law enforcement officers are not subject to civil liability for any act of omission or commission when they are acting in good faith in rendering emergency assistance or otherwise enforcing the IDVA, unless the act is a result of willful or wanton misconduct. Therefore, a domestic violence victim has a right of action against a police department if the victim can show that:

- “he or she is a person in need of protection under the Act,
- the statutory law enforcement duties owed to him or her were breached by the willful and wanton acts or omissions of law enforcement officers, and
- such conduct proximately caused plaintiff’s injuries.”

Willful or wanton conduct is defined as action, which if not intentional, shows an utter indifference to or conscious disregard for the safety of another person.

WHO IS COVERED BY THE IDVA?

The IDVA protects victims of domestic violence who are related to the abuser in one of the following ways:

- related by blood or by present or prior marriage;
- share or formerly shared a common dwelling (apartment or home);
- have or allegedly have a child in common;
- share or allegedly share a blood relationship through a child; or
- have or have had a dating or engagement relationship.

In addition, an adult with disabilities can obtain an order of protection against his/her personal assistant or caregiver. The IDVA incorporates the definition of caregiver from the Criminal Abuse or Neglect of an Elderly Person or Person with a Disability statute (720 ILCS 5/12-21 (b)). In addition to persons who would already come under the IDVA, this definition adds caregivers who are employed by the person with disabilities to

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²*Calloway v. Kinkelaar*, 659 N.E.2d 1322, 1327 (IL 1995).

provide for the victim's health and personal care and persons who have been appointed by a private or public agency or by a court of competent jurisdiction to provide for the victim's health and personal care.

Any person who lives in the petitioner's household can be listed as a protected person on the petitioner's Order of Protection, whether or not such persons have a family or household relationship with the respondent. A protected person can sign a criminal complaint as a victim of the criminal offense of violation of order of protection.

Anyone can file for an order of protection on behalf of a person who is prevented by age, disability, health or inaccessibility from filing on their own behalf, but such an order cannot be extended over the objections of the victim.

WHAT IS AN ORDER OF PROTECTION (OP)?

An Order of Protection (OP) is a court order that prohibits the abuser from committing certain behaviors or orders him to perform certain acts. Violation of an Order of Protection can result in the abuser being found in contempt of court, resulting in fine or incarceration, or criminal charges, carrying penalties up to three years under certain circumstances.

HOW CAN AN ORDER OF PROTECTION BE OBTAINED?

CIVIL COURT: An Order of Protection can be obtained in civil court in an independent proceeding, meaning that it is not connected to any other case, or in conjunction with any civil case in which the parties are the same, such as a divorce, custody, paternity, or probate case. Petitioners seeking an Order of Protection in civil court are advised to seek legal assistance.

By local court rule, when the parties to an Order of Protection have or have had a divorce or paternity case, the Order of Protection must be obtained in the court where that case is or was heard. In Chicago, these cases are heard at the Daley Center.

CRIMINAL COURT: An Order of Protection can be obtained in criminal court only as part of a criminal case in which the petitioner for the OP is the victim and the respondent to the OP is the defendant. The State's Attorney's Office represents the victim/petitioner for the OP.

JUVENILE COURT: An Order of Protection can be obtained in Juvenile Court in abuse and neglect or delinquency proceedings.

WHERE CAN ORDERS OF PROTECTION ARE OBTAINED IN CHICAGO?

In Chicago, the new centralized Domestic Violence Court at 555 West Harrison Street has several types of courtrooms:

- civil courtrooms, where independent Orders of Protection can be obtained.
- misdemeanor courtrooms, where all misdemeanor cases from Chicago involving family or household members are heard; and
- a felony preliminary hearing courtroom, where felony cases (other than murder) involving family or household members who are intimate partners are heard.

Officers should refer victims to 555 West Harrison Street under the following circumstances:

- to file misdemeanor criminal charges and obtain an Order of Protection;
- to obtain an Order of Protection following an arrest for a misdemeanor;
- to obtain an independent Order of Protection when the victim does not wish to pursue criminal charges and the parties have not had a divorce or paternity case filed.

FELONY CASES:

Orders of Protection can be obtained as part of a felony case, in bond court, at the preliminary hearing or at any time during the trial process. An OP will not be available at 555 W. Harrison Street in the criminal courtrooms unless the felony charge is already in the system and the case is up for the preliminary hearing. Victims may also get an Order of Protection in civil court.

WHAT ARE THE TYPES AND DURATION OF ORDER OF PROTECTION?

There are three types of orders:

Emergency Order: The emergency order is valid for a period of time between 14 days and 21 days. It can be entered without notice to the respondent if the petitioner alleges that the abuse she or he is trying to prevent would be likely to occur if the respondent were given notice or any more notice than was actually given. An emergency order may not grant counseling, temporary custody, payment of support, monetary compensation, or reimbursement of shelter costs, nor can the order prohibit possession of weapons.

Interim Order: An interim order is valid for up to 30 days. It is issued after the respondent has been served or the petitioner has served notice on the respondent and has satisfied the court that she or he is diligently attempting to complete the required service of process. An interim order may not include the counseling, payment of support or monetary compensation, shelter reimbursement or weapons remedies unless the respondent has filed a general appearance or has been personally served.

Plenary Order: Plenary orders of protection can be valid for varying lengths of time. If entered in conjunction with a divorce, it can run for the life of the final decree; if in conjunction with a criminal offense, for the length of the defendant's sentence plus two years; and in conjunction with any proceeding, until the conclusion of the case. An independent order is valid for a fixed period of time not to exceed two years.

WHAT IS THE "BURDEN OF PROOF" FOR AN ORDER OF PROTECTION?

The Order of Protection proceeding is always civil in nature regardless of the courtroom in which it is heard. The civil burden of proof is preponderance of the evidence, that is, the evidence shows that the allegations of the case are more likely true than not true.

FEES

There are no fees for filing or serving orders of protection. A respondent will have to pay an appearance fee, which can be waived if the respondent is indigent.

WHAT REMEDIES ARE AVAILABLE ON THE ORDER OF PROTECTION?

There are 17 specific remedies available on an order of protection. A petitioner can pick and choose among the remedies

BOX 1: PROHIBITION AGAINST FURTHER ABUSE (VOOP)

This remedy orders the respondent not to further abuse the petitioner. "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. This remedy is granted whenever there is a finding of abuse.

DEFINITIONS OF ABUSE:

Physical abuse includes sexual abuse and means: 1) knowing or reckless use of physical force, confinement or restraint; 2) knowing, repeated and unnecessary sleep

deprivation; or 3) knowing or reckless conduct which creates an immediate risk of physical harm.

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 are presumed to cause emotional distress:

- 1) creating a disturbance at the petitioner's place of employment or school;
- 2) repeatedly telephoning petitioner's place of employment, home or residence;
- 3) repeatedly following petitioner about in a public place or places;
- 4) repeatedly keeping the 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;
- 5) improperly concealing a child from the petitioner, repeatedly threatening to improperly remove a child of the petitioner's from the jurisdiction or the physical care of the petitioner, repeatedly threatening to conceal a minor child from the petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless the respondent was fleeing from an incident or pattern of domestic violence; or
- 6) threatening physical force, confinement or restraint on one or more occasions.

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.

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 a new affirmative duty to provide support to dependent persons.

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.

BOX 2: EXCLUSIVE POSSESSION OF RESIDENCE (VOOP)

This remedy grants the petitioner exclusive possession of a residence and prohibits the respondent from entering or remaining at the residence. To be granted this remedy, the petitioner must have a right to occupy the residence. The petitioner has the right to occupy if one or more of the following conditions apply:

- the petitioner's name is on the lease or title to the property;
- the petitioner's spouse's name is on the lease or title;
- the petitioner is caring for a minor child of the person whose name is on the lease or title; or
- the petitioner but not the respondent has permission to occupy from the person(s) whose name is on the title or lease (example: relative's home or domestic violence shelter).

If both parties have a right to occupy, the judge must balance the hardships of each party. The Act includes a presumption in favor of the petitioner.

BOX 3: STAY AWAY AND ADDITIONAL PROHIBITIONS (VOOP)

This remedy allows the court to order the respondent to stay away from the petitioner and/or prohibit the respondent from entering or remaining present at the petitioner's school, place of employment or other specified places at times when the petitioner is present, if the prohibition is reasonable given the balance of hardships.

If the court grants the stay away remedy, the respondent must also refrain from 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.

BOX 4: COUNSELING

This remedy allows the judge to require or recommend the respondent to undergo counseling for a specified duration with a mental health professional, substance abuse counselor, a program designed for domestic violence abusers or any other guidance service the court deems appropriate.

BOX 5: PHYSICAL CARE AND POSSESSION OF THE MINOR CHILD (CA)

This remedy allows the court to grant physical care of the minor child to the petitioner. A violation of this remedy is a violation the child abduction statute. It can also order the respondent to return a minor child to the petitioner or prohibit the respondent from removing the child from the petitioner's care. A violation of this portion of the remedy can be enforced through contempt only.

BOX 6 TEMPORARY LEGAL CUSTODY (CA)

This remedy allows the judge to award temporary custody of the minor children upon the motion of petitioner.

BOX 7: VISITATION

This remedy requires the court to restrict or deny the respondent's visitation with a minor child if the court finds that the respondent has done or is likely to do any of the following:

- abuse or endanger the child during visitation;
- use the visitation as an opportunity to abuse or harass the petitioner or the petitioner's family or household members;
- improperly conceal or detain the minor child; or
- otherwise act in a manner that is not in the best interest of the child.

The court is not limited by the standards set forth in the Illinois Marriage and Dissolution of Marriage Act.

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

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

BOX 8: REMOVAL OR CONCEALMENT OF CHILD (CA)

This remedy prohibits the respondent from removing a minor child from the state or concealing the child within the state. Once the respondent has knowledge of this

remedy on the Order of Protection, violating it can result in felony child abduction charges.

BOX 9: ORDER TO APPEAR

This remedy orders 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 respondent.

BOX 10: POSSESSION OF PERSONAL PROPERTY

This remedy grants the petitioner exclusive possession of personal property and, if respondent has possession or control, directs the respondent to promptly make it available to the petitioner. To be granted this remedy, the petitioner must have a right to the property in question. If it is owned jointly with the respondent, the judge must balance the hardships to each party. If the petitioner's only claim to the property is that it is marital property, a petition for dissolution must be filed under the Marriage and Dissolution of Marriage Act. The Order of Protection does not affect ownership of the property.

BOX 11: PROTECTION OF PROPERTY (VOOP?)

This remedy forbids the respondent from taking, transferring, encumbering, concealing, damaging or otherwise disposing of any real or personal property. The conditions discussed above apply to this remedy as well. A respondent may be charged with violation of order of protection for taking or damaging protected property only if he or she can be charged with theft or criminal damage to property as well.

BOX 12: ORDER OF PAYMENT OF SUPPORT

The court can order the respondent to pay temporary support for the petitioner of any child in the petitioner's care or custody, when the respondent has a legal obligation to support that person.

BOX 13: ORDER FOR PAYMENT OF LOSSES

The court can order the respondent to pay petitioner's losses suffered as a direct result of the abuse, including medical expenses, lost earnings or other support, repair or replacement of property damaged or taken, reasonable attorneys' fees, court costs and moving or other travel expenses including reasonable expenses for temporary shelter and restaurant meals.

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

BOX 14: PROHIBITION OF ENTRY (VOOP)

This remedy prohibits 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.

BOX 14.5: PROHIBITION OF FIREARM POSSESSION (VOOP)

Upon a finding by the court that there is any danger of illegal use of firearms by the respondent against the petitioner, the court must order the respondent to surrender any firearms in his/her possession to the local enforcement for safekeeping for a fixed period of time not to exceed two years. The remedy cannot be granted on an emergency order. Respondent must first either receive actual notice or appear in court.

BOX 15: PROHIBITION OF ACCESS TO RECORDS

The order of protection shall deny respondent access to, and prohibit respondent from inspecting, obtaining, or attempting to inspect or obtain, school or any other records of a child in the care of the petitioner when:

- the OP prohibits the respondent from having contact with the child;
- the petitioner's address is omitted to protect the petitioner; or
- if necessary to prevent abuse or wrongful removal or concealment of the child.

BOX 16: ORDER FOR PAYMENT OF SHELTER SERVICES

The court may order the respondent to reimburse a shelter providing temporary housing and counseling services to the petitioner for the costs of the services, as certified by the shelter and deemed reasonable by the court.

BOX 17: ORDER FOR INJUNCTIVE RELIEF

Order for other injunctive relief necessary or appropriate to prevent further abuse or to effectuate one of the granted remedies if supported by the balance of the hardships.

RESPONDENT'S RIGHT TO ACCESS

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

HOW ARE ORDERS OF PROTECTION ENFORCED?

An order of protection is enforceable when issued, but a respondent cannot be held in contempt for violating an order or charged with Violation of Order of Protection or Child Abduction for a violation of certain remedies until he or she has gained *actual knowledge* of the order and/or remedy. Formal service is not required.

Orders of protection are orders of the court, not of the victim. A petitioner or protected person cannot give effective consent to violate an order of protection. A respondent who violates an order can be charged with violation of order of protection, even if the respondent had the consent of the victim. If a petitioner no longer feels the need for a remedy, he or she should return to the issuing court and seek a modification of the order.

An order of protection can be enforced in several ways. All remedies can be enforced through a contempt proceeding before the judge who issued the order. Civil contempt is used to coerce the respondent into complying with the order of protection. Criminal contempt is used to punish the respondent for a violation of the order. Whether contempt is civil or criminal has nothing to do with the courtroom in which the proceeding is held. Violations of certain remedies can result in criminal charges of "violation of order of protection" or "child abduction."

Violation of Order of Protection (VOOP)

A respondent commits the crime of "violation of order of protection" when she or he knowingly violates the following remedies:

- Prohibition against further abuse;
- Exclusive possession of the residence;
- Stay away from the petitioner or away from specific locations;

- Stay out of the residence when under the influence and constituting a threat to the safety and well-being of the petitioner;
- Prohibition against firearm possession; or
- Any other remedy that would also constitute a crime (such as theft or criminal damage to property).

VOOP is a Class A misdemeanor for the first offense, carrying a penalty of up to 364 days in jail. VOOP can be charged as a Class 4 felony, carrying a penalty of 1 to 3 years, if the person has a prior conviction for any of the following offenses and the victim of that offense was a family or household member:

- domestic battery,
- violation of order of protection,
- aggravated battery, aggravated domestic battery, heinous battery, and aggravated battery with a firearm,
- unlawful restraint and aggravated unlawful restraint,
- stalking and aggravated stalking,
- aggravated battery of a child, aggravated battery of a unborn child, aggravated battery of a senior citizen,
- criminal sexual assault, aggravated criminal sexual assault, and predatory criminal sexual assault of a child,
- kidnapping and aggravated kidnapping,
- aggravated arson,
- aggravated discharge of a firearm,
- attempted first degree murder, and
- first degree murder.

Child Abduction

A respondent may be charged with child abduction for violating an order of protection in the following ways:

- intentionally concealing or detaining a child or removing a child from the state in violation of the remedy granting the petitioner or another person physical care and/or possession of the child;
- intentionally concealing or detaining a child or removing a child from the state in violation of the remedy granting temporary legal custody to the petitioner; or

- intentionally concealing or detaining a child within the state or removing a child from the state in violation of the remedy prohibiting such conduct.

Child abduction is a Class 4 felony, carrying a penalty of 1-3 years. 720 ILCS 5/10-5

Full-faith and credit

Any protective order entered consistent with the provisions below is entitled to full faith and credit by a court of any other state and must be enforced as if it were an order of the enforcing court. A protective order is entitled to enforcement if:

- the issuing court had jurisdiction over the parties and the matter under the law of that state, and
- reasonable notice and opportunity to be heard were given to the respondent sufficient to protect his due process right. If an order is entered ex parte, notice and opportunity must be provided within the time required by state law. *18 USC 2265*

The law of the issuing state determines the issuing of the order of protection, including who is protected, what the remedies are, and how long the order is in effect. The state where the violation occurs must honor the order, even if the laws of that state are inconsistent. For example, Illinois law protects persons in same-sex relationships. If the Illinois order of protection granted to a lesbian is violated in another state that does not protect persons in same-sex relationships, the state must still enforce the order of protection.

The law of the state where the violation occurs determines how the order is enforced. The foreign order must be enforced in the same manner as their own protective orders. For example, in Illinois violations of certain remedies can result in the arrest of the respondent for the criminal charge of Violation of Order of Protection. If the Illinois order of protection is violated in a state that only allows for enforcement through contempt, then that is the only way the Illinois order can be enforced. Conversely, however, a violation in Illinois of a protective order entered in a state that enforces through contempt only will result in arrest.

Any person protected by a foreign order of protection may file a certified copy of the order in any judicial circuit in which the person believes enforcement may be necessary. Residency in the state is not required. The Clerk of the Court must:

- treat the foreign order in the same manner as a judgment of that circuit court, except that the Clerk *must not* mail notice of the filing to the respondent named in the order; and

- on the same day filed, the Clerk must file a certified copy of the order with the Sheriff or other law enforcement agency for entry into the LEADS system. The order of protection is entitled to enforcement whether or not the order has been previously filed. 750 ILCS 60/222.5

The Violation of Order of Protection statute now provides for prosecution in Illinois for violations of protective orders issued by another state, tribal or territorial court when the violation occurs within the state when the remedy violated is substantially the same as one covered by the VOOP statute.. 720 ILCS 5/12-30.

Interstate Violation of Order of Protection

A person can be charged with a federal felony for crossing a state line with the intent to violate any portion of a protective order that involves protection against credible threats of violence, repeated harassment, or bodily injury to a protected person. Also prohibited is causing a spouse or intimate partner to cross a state line by force, coercion, duress, or fraud, and in the course of or as a result of that conduct, intentionally committing an act that injures the spouse or intimate partner in violation of a valid protective order. Protected by these acts are:

- spouses and former spouses;
- someone with whom the abuser shares a child in common;
- someone with whom the abuser has cohabitated as a spouse; and
- someone with whom the abuser has a social relationship of a romantic or intimate nature as determined by:
 - the length of the relationship,
 - the type of relationship,
 - the frequency of interaction between the parties.

WHAT ARE LAW ENFORCEMENT RESPONSIBILITIES UNDER THE ILLINOIS DOMESTIC VIOLENCE ACT?

Every law enforcement agency must develop, adopt and implement written policies regarding arrest procedures for domestic violence incidents. The policy must be consistent with the IDVA. Agencies are encouraged to consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents.

Officers must make a written report of any good faith allegation of domestic violence, even when an arrest is not being made. The report must include the disposition of the officer's investigation; the victim's statements as to the frequency and severity of prior incidents of abuse by the same offender; and the number of prior calls for police assistance.

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

- if appropriate, arresting the abusing person;
- 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 weapons;
- accompanying the victim to his or her residence, for a reasonable period of time, to remove necessary personal belongings or possessions;
- offering the victim a written summary of the procedures and relief available to the victim in a language appropriate for the victim;
- giving the victim his or her name and badge number;
- providing the victim one referral to an accessible service agency;
- advising the victim about seeking medical attention and preserving evidence, specifically including: taking photographs of injury or damage and retaining damaged clothing or other property;
- arranging or providing the victim (and at the victim's request, any minors or dependents in the victim's care) accessible transportation to a medical facility for treatment of injuries or to a nearby place of shelter or safety. Note: when a victim chooses to leave the scene of the offense, it is presumed that it is in the best interest of the children or other dependents in the victim's care to remain with the victim or a person designated by the victim, rather than remain with the abusing party.

When an arrest is not made, the officer must inform the victim of his or her right to request that criminal charges be filed and provide specific times and places for meeting with the State's Attorney's Office, a warrant officer, or other official.

Any officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed or is committing any crime, even if the crime was not committed in the presence of the officer.

An officer may verify the existence of an order of protection by telephone or radio communication with his or her agency or by referring to a copy of the order provided by the petitioner or respondent.

ARE THERE ANY OTHER LAWS THAT ARE HELPFUL TO DOMESTIC VIOLENCE VICTIMS?

Special conditions of bond

Most people arrested on misdemeanor offenses are allowed to bond out at the station. As of April, 1997, Supreme Court Rule 528 requires that bond for violation of order of protection and domestic battery be set by a judge. For all other offenses against family or household members, defendants can be released from the station after posting a preset bond.

At the time of release for any person charged with a crime against family or household members, whether released on bond at the station or where bond is set by a judge, the person is placed on special conditions of bond to protect the domestic violence victim. If released from the station, the following conditions must be set:

- refrain from contact or communication with the victim for a minimum period of 72 hours following release; and
- refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following release.

If bond is set by a judge, the amount of time that these conditions will be in effect is discretionary and thus can be more or less than 72 hours.

A violation of either of these provisions is a Class A misdemeanor. A person arrested for violation of bail bond cannot be released from the station. Bond must be set by a judge.

PROHIBITIONS AGAINST FIREARM POSSESSION AS A RESULT OF DOMESTIC VIOLENCE³

Gun control legislation has been popular with lawmakers at both the state and federal level for the last five years or so. Many changes in law have specifically targeted firearm possession by persons with a history of domestic violence. This article reviews numerous statutes, both Illinois and federal, to provide a coherent look at the restrictions on firearm possession resulting from domestic violence.

I. PROHIBITION AS A RESULT OF AN ORDER OF PROTECTION

1) As a Remedy on the Order of Protection

The Illinois Domestic Violence Act includes an order of protection remedy requiring a respondent to turn over any firearms in his or her possession to the respondent's local law enforcement agency. This remedy must be ordered by the court if:

- the petitioner has alleged in the petition that the respondent has threatened or is likely to use firearms illegally against the petitioner, and
- the court finds that there is any danger of illegal use of firearms. 750 ILCS 60/214 (b) (14.5)

This remedy cannot be granted unless the respondent has appeared in court or failed to appear after receiving actual notice. The period of time that the firearms are to be kept by the law enforcement agency must be specified in the order and cannot exceed two years. Firearms are released to the respondent at the expiration of the order or after the date specified in the order, whichever is sooner. Id.

If the respondent fails to appear in court or refuses or fails to surrender his or her firearms, the court must issue a warrant for the seizure of any firearms in the possession of the respondent. Id. As of August 1998, a respondent who violates this remedy can be charged with the criminal offense of Violation of Order of Protection. 720 ILCS 5/12-30 (a) (1)

Affect on Firearm Owners Identification (FOID) Card. In order to legally acquire or possess any firearm or ammunition within Illinois, a person must have a valid Firearm Owner's Identification (FOID) card. 430 ILCS 65/2 Applications for FOID cards will be denied where the applicant is a respondent on an order of protection and the order prohibits the respondent from possessing a firearm. 430 ILCS 65/4 (viii) The

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Department of State Police has the authority to revoke and seize any FOID card already issued to a respondent who becomes subject to this remedy. 430 ILCS 65/8 (j) Police officers do not need a FOID card for the acquisition or possession of weapons or ammunition used “while engaged in the operation of their official duties.” 430 ILCS 65/2 (c)

2) Federal Prohibition of Firearm Possession After Issuance of Protective Order

It is a federal felony for respondents to certain protective orders to possess or receive a firearm or ammunition which has been shipped or transported in interstate or foreign commerce after the issuance of a protective order. To qualify under this provision, the protective order must:

- have been issued following an evidentiary hearing for which the respondent received actual notice and at which the respondent had an opportunity to participate;
- must restrain the respondent from harassing, stalking, or threatening an intimate partner or child of the person or intimate partner or engaging in other conduct that would place the petitioner or protected person in reasonable fear of bodily injury; and
- includes a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. 18 USC 922(g) (8)

For the purposes of this section, an intimate partner is the respondent’s spouse; a former spouse; a person with whom the respondent shares a child in common; or a person with whom the respondent is living or has lived. 18 USC (a) (32)

Violation of this law can result in incarceration of up to ten years in prison, a \$250,000 fine or both. Law enforcement officers are exempt from this provision. 18 USC 925 (a) (1)

II. PROHIBITION AS A RESULT OF CONVICTION OF MISDEMEANOR OFFENSE

1) Conditions of Conditional Discharge or Probation

All defendants placed on conditional discharge or probation in Illinois are prohibited by statute from possessing firearms 730 ILCS 5/5-6-3 (3). This is a mandatory provision that cannot be waived by the court. When placed on supervision,

the firearm restriction is discretionary. 730 ILCS 5/5-6-3 (c) (1) Note that supervision is not an available disposition for domestic battery. 730 ILCS 5/5-6-1 (c)

2) Conviction of Domestic Battery and Violation of Order of Protection

A conviction for domestic battery permanently bars the defendant from possessing a Firearm Owner's Identification (FOID) Card. A conviction for Violation of Order or Protection in which a firearm was used or possessed disqualifies the defendant from possessing a FOID card for 5 years. This is also true for convictions for battery, assault, or aggravated assault where a weapon was used or possessed. 430 ILCS 65/4 See above for additional information on FOID cards.

3) Federal Firearm Disability Law

The federal Gun Control Act prohibits the acquisition or possess of a firearm or ammunition which has been shipped in interstate or foreign commerce after a conviction for certain misdemeanor domestic violence offenses against certain victims. 18 USC 922 (a) (9) The conviction must be for a misdemeanor offense involving the use or attempted use of physical force or the threatened use of a deadly weapon. 18 USC 921 (33) (a)

In addition, the person must have been represented by counsel, or knowingly and intelligently waived this right, and if the offense was one for which the person was entitled to a jury trial, the case was tried before a jury or the person knowingly and intelligently waived the right to a jury. 18 USC 921 (a) 33 (B) If a person is sentenced to supervision, the statute is not triggered as supervision in Illinois is not a conviction.

For the purposes of this statute, the victim must be the defendant's current or former spouse, the defendant's child or person for whom the defendant is or has acted as guardian; a person with whom the defendant has a child in common; or a person with whom the defendant lives or used to live. 18 USC 921 (a) (32)

III. POLICE OFFICER ABUSERS

The issuance of an order of protection against a respondent-officer, without the prohibition against possession of firearm remedy, does not have a legal impact on the officer's ability to work in law enforcement. Law enforcement officers are exempt from the federal law prohibiting firearm possession after the issuance of certain protective orders for those weapons they use while on duty. 18 USC 925(a)(1) In some cases, the federal statute may prohibit off-duty possession of firearms. However, if the employing department certifies that it requires all officers to possess their duty weapon at all times as a condition of their employment, they are technically on duty at all times and the officer would not be subject to the Act.

If the prohibition against firearm possession remedy is granted on an Illinois order of protection against a law enforcement officer, he or she obviously cannot work the street unarmed. It will be up to the individual employer to determine whether or not to transfer the officer to an inside position that does not require the use of a weapon.

If this firearm prohibition remedy is granted against a law enforcement officer, the court must order that any firearms used by the respondent in the performance of his or her duties be surrendered to the chief law enforcement executive of the agency-employer. 750 ILCS 60/214 (b) (14.5)

All Illinois orders of protection are listed in the Law Enforcement Automated Data System (LEADS) the same day they are issued. This information is reviewed by the Illinois State Police (ISP). Letters are sent to respondents who are holders of FOID cards telling them that they have lost the right to possess weapons pursuant to the federal gun control act. The letter does not, at this time, mention that law enforcement officers are exempt from this provision. It is up to the individual officer to contact the ISP and provide proof of their employment status to avoid the revocation of their FOID card.

Law enforcement officers are not exempt from the federal law regarding firearm possession after a misdemeanor domestic violence conviction.