

1 State of Arkansas
2 94th General Assembly
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4

A Bill

HOUSE BILL 1797

5 By: Representative McCullough
6 By: Senator G. Leding
7

For An Act To Be Entitled

9 AN ACT TO BE KNOWN AS THE "ARKANSAS RED FLAG LAW"; TO
10 CREATE AN EXTREME RISK PROTECTION ORDER AND WARRANT;
11 TO PROVIDE A RESTRICTION ON ACCESS TO A FIREARM FOR A
12 PERSON DEEMED TO POSE A RISK OF IMMINENT PERSONAL
13 INJURY TO HIMSELF OR HERSELF OR TO THE PUBLIC; AND
14 FOR OTHER PURPOSES.

Subtitle

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18 TO CREATE THE "ARKANSAS RED FLAG LAW";
19 AND TO CREATE AN EXTREME RISK PROTECTION
20 ORDER AND WARRANT.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 5-54-122 is amended to read as follows:
26 5-54-122. Filing false report with law enforcement agency.

27 (a) As used in this section, "report" means any communication, either
28 written or oral, sworn or unsworn.

29 (b) A person commits the offense of filing a false report if he or she
30 files a report with any law enforcement agency or prosecuting attorney's
31 office of:

32 (1) any alleged Alleged criminal wrongdoing on the part of
33 another person knowing that the report is false; or

34 (2) Conduct by another person that the reporting person alleges
35 should be investigated under the Arkansas Red Flag Law, § 12-15-401 et seq.,
36 knowing that the report to the law enforcement agency or prosecuting



1 attorney's office is false.

2 (c)(1) Filing a false report is a Class D felony if:

3 (A) The alleged criminal wrongdoing is a capital offense,
4 Class Y felony, Class A felony, or Class B felony;

5 (B) The law enforcement agency or prosecuting attorney's
6 office to whom the false report is made has expended in excess of five
7 hundred dollars (\$500) in order to investigate the false report, including
8 the costs of labor;

9 (C) Physical injury results to any person as a result of
10 the false report;

11 (D) The false report is made in an effort by the person
12 filing the false report to conceal his or her own criminal activity;

13 (E) The false report results in another person being
14 arrested or having his or her firearms taken from him or her under the
15 Arkansas Red Flag Law, § 12-15-401 et seq.; or

16 (F) The false report alleges another person purposely
17 selected the victim of a crime because the victim was a member of or was
18 associated with a recognizable and identifiable group or class who share
19 mental, physical, biological, cultural, political, or religious beliefs or
20 characteristics, for the purpose of delayed release under § 5-4-405.

21 (2) Otherwise, filing a false report is a Class A misdemeanor.
22

23 SECTION 2. Arkansas Code § 5-73-103 is amended to read as follows:
24 5-73-103. Possession of firearms by certain persons.

25 (a) Except as provided in subsection (d) of this section or unless
26 authorized by and subject to ~~such~~ conditions ~~as~~ prescribed by the Governor,
27 or his or her designee, or by the United States Bureau of Alcohol, Tobacco,
28 Firearms, and Explosives, or other bureau or office designated by the United
29 States Department of Justice, ~~no~~ a person shall not possess or own ~~any~~ a
30 firearm who ~~has been~~:

31 (1) ~~Convicted~~ Has been convicted of a felony;

32 (2) ~~Adjudicated~~ Has been adjudicated mentally ill; ~~or~~

33 (3) ~~Committed~~ Has been committed involuntarily to any mental
34 institution; or

35 (4) Is currently restricted from possessing a firearm under the
36 Arkansas Red Flag Law, § 12-15-401 et seq.

1 (b)(1) Except as provided in subdivisions (b)(2) and (3) of this
2 section, a determination by a jury or a court that a person committed a
3 felony constitutes a conviction for purposes of subsection (a) of this
4 section even though the court suspended imposition of sentence or placed the
5 defendant on probation.

6 (2) Subdivision (b)(1) of this section does not apply to a
7 person whose case was dismissed and expunged or sealed under § 16-93-301 et
8 seq. or § 16-98-303(g).

9 (3) The determination by the jury or court that the person
10 committed a felony does not constitute a conviction for purposes of
11 subsection (a) of this section if the person is subsequently granted a pardon
12 explicitly restoring the ability to possess a firearm.

13 (c)(1) A person who violates subdivisions (a)(1)-(3) of this section
14 commits a Class B felony if:

15 (A) The person has a prior violent felony conviction;

16 (B) The person's current possession of a firearm involves
17 the commission of another crime; or

18 (C) The person has been previously convicted under this
19 section or a similar provision from another jurisdiction.

20 (2) A person who violates subdivisions (a)(1)-(3) of this
21 section commits a Class D felony if he or she has been previously convicted
22 of a felony and his or her present conduct or the prior felony conviction
23 does not fall within subdivision (c)(1) of this section.

24 (3) Otherwise, ~~the person commits~~ a violation of this section is
25 a Class A misdemeanor.

26 (d) The Governor may restore without granting a pardon the right of a
27 convicted felon or an adjudicated delinquent to own and possess a firearm
28 upon the recommendation of the chief law enforcement officer in the
29 jurisdiction in which the person resides, so long as the underlying felony or
30 delinquency adjudication:

31 (1) Did not involve the use of a weapon; and

32 (2) Occurred more than eight (8) years ago.

33 (e) As used in this section, "felony" means any state or federal
34 felony, excluding a federal or state felony offense for which the person
35 convicted has completed his or her sentence and pertaining to:

36 (1) An antitrust violation;

- 1 (2) An unfair trade practice;
- 2 (3) Restraint of trade; or
- 3 (4) Another offense relating to the regulation of business
- 4 practices.

5
 6 SECTION 3. Arkansas Code Title 12, Chapter 15, is amended to add an
 7 additional subchapter to read as follows:

8
 9 Subchapter 4 – Arkansas Red Flag Law

10
 11 12-15-401. Title.

12 This subchapter shall be known and may be cited as the "Arkansas Red
 13 Flag Law".

14
 15 12-15-402. Legislative intent.

16 (a) The intent of this subchapter is to provide for a temporary
 17 restriction of access to a firearm for a person who has demonstrated that he
 18 or she poses a risk of imminent personal injury to himself, herself, or to
 19 another person while providing the person with due process to contest the
 20 restriction if the person can show that he or she does not pose a risk of
 21 imminent personal injury to himself, herself, or to another person.

22 (b) Further, the General Assembly intends to provide for the return of
 23 any firearm taken into custody to the person from whom the firearm was taken
 24 either after a definite period of time or after the person has shown that he
 25 or she no longer poses a risk of imminent personal injury to himself,
 26 herself, or to another person.

27
 28 12-15-403. Sworn affidavit required.

29 (a) Any two (2) certified law enforcement officers may swear under
 30 oath by affidavit to a district court judge or circuit court judge that
 31 probable cause exists to believe that:

32 (1) A person poses a risk of imminent personal injury to
 33 himself, herself, or to another person; and

34 (2) The person possesses one (1) or more firearms.

35 (b) The certified law enforcement officers shall not swear under oath
 36 by affidavit unless the certified law enforcement officers have conducted an

1 independent investigation and have determined that probable cause exists as
2 described in subsection (a) of this section and that there is no reasonable
3 alternative available to prevent the person from causing imminent personal
4 injury with a firearm to himself, herself, or to another person.

5 (c) The independent investigation under this section may be initiated:

6 (1) In response to an application for an emergency risk
7 protection order and warrant under § 12-15-404; or

8 (2) By one (1) or more law enforcement officers if there is a
9 belief the investigation is warranted.

10
11 12-15-404. Filing application and supporting documents.

12 (a) Any person who believes an emergency risk protection order and
13 warrant is warranted under this subchapter may file an application under this
14 section.

15 (b)(1) An applicant for an emergency risk protection order and warrant
16 issued under this subchapter shall file a copy of the application for the
17 emergency risk protection order and warrant and all affidavits upon which the
18 emergency risk protection order and warrant are based with the clerk of the
19 district court or circuit court, as applicable.

20 (2) If an application for an emergency risk protection order and
21 warrant is filed before obtaining all affidavits upon which the emergency
22 risk protection order and warrant are based:

23 (A) The application shall be forwarded to the appropriate
24 law enforcement officers as determined by the clerk of the district court or
25 circuit court, as applicable; and

26 (B) If an independent investigation occurs and results in
27 the execution of affidavits under § 12-15-403 of this section, the affidavits
28 shall be filed with the clerk of the district court or circuit clerk, as
29 appropriate, and attached to the application for an emergency risk protection
30 order and warrant.

31 (c) Before the execution and return of an emergency risk protection
32 order and warrant issued under this subchapter, the clerk of the district
33 court or circuit court, as applicable, shall not disclose any information
34 pertaining to the application for the emergency risk protection order and
35 warrant or any affidavits upon which the emergency risk protection order and
36 warrant are based.

1 (d) An emergency risk protection order and warrant issued under this
2 subchapter shall be executed and returned with reasonable promptness
3 consistent with due process of law and shall be accompanied by a written
4 inventory of all firearms taken into custody.

5
6 12-15-405. Issuance of emergency risk protection order and warrant by
7 judge – Grounds and findings.

8 (a) A district court judge or circuit court judge may only issue an
9 emergency risk protection order and warrant under this subchapter if the
10 sworn affidavit under § 12-15-403 establishes the required grounds for
11 issuing the emergency risk protection order and warrant.

12 (b) In determining whether grounds for the emergency risk protection
13 order and warrant exist or whether there is probable cause to believe the
14 grounds exist, the district court judge or circuit court judge shall consider
15 any recent:

16 (1) Threat or act of violence by the person directed toward
17 another person; and

18 (2) Threat or act of violence by the person directed toward
19 himself or herself.

20 (c) When evaluating under this section whether the recent threat or
21 act of violence constitutes probable cause to believe that the person poses a
22 risk of imminent personal injury to himself, herself, or to another person,
23 the district court judge or circuit court judge may consider other factors,
24 including without limitation:

25 (1) The reckless use, display, or brandishing of a firearm by
26 the person;

27 (2) A history of the use, attempted use, or threatened use of
28 physical force by the person against another person; and

29 (3) Prior involuntary confinement of the person in a mental
30 health facility or other medical facility where the person received treatment
31 for a mental health condition.

32 (d)(1) If the district court judge or circuit court judge is satisfied
33 that grounds for the emergency risk protection order and warrant under this
34 subchapter exist or that there is probable cause to believe that the grounds
35 exist, the district court judge or circuit court judge shall issue an
36 emergency risk protection order and warrant naming or describing the person,

1 place, or thing to be searched, and what thing or things shall be seized or
 2 otherwise taken into custody.

3 (2) If the search results in the discovery of a firearm
 4 possessed by the person who has been shown to pose a risk of imminent
 5 personal injury to himself, herself, or to another person, the law
 6 enforcement agency conducting the search shall take the firearm into custody.

7
 8 12-15-406. Orders contained in emergency risk protection order and
 9 warrant.

10 An emergency risk protection order and warrant issued under this
 11 subchapter shall:

12 (1) Be directed to any certified law enforcement officer;

13 (2) State the grounds or probable cause for issuance of the
 14 emergency risk protection order and warrant;

15 (3) Command the certified law enforcement officer to immediately
 16 search the person, place, or thing named in the emergency risk protection
 17 order and warrant for any firearm; and

18 (4) Order the certified law enforcement officer to take any
 19 firearm located or discovered into the certified law enforcement officer's
 20 custody.

21
 22 12-15-407. Copy of emergency risk protection order and warrant to be
 23 given to named person.

24 A copy of an emergency risk protection order and warrant issued under
 25 this subchapter shall be given to the person named in the emergency risk
 26 protection order and warrant together with a notice informing the person that
 27 he or she has the right to a hearing under this subchapter and the right to
 28 be represented by an attorney at the hearing.

29
 30 12-15-408. Hearing required.

31 (a)(1)(A) No later than three (3) days after the execution of an
 32 emergency risk protection order and warrant issued under this subchapter, a
 33 court with jurisdiction shall hold a hearing to determine whether any firearm
 34 taken into custody should be returned to the person named in the emergency
 35 risk protection order and warrant or should continue to be held by the state.

36 (B) The period of three (3) days under subdivision

1 (a)(1)(A) of this section does not include a Saturday, Sunday, or holiday.

2 (2)(A) A hearing is not required under this section if the
3 person from whom the firearm was taken into custody voluntarily forfeits
4 possession and ownership of the firearm.

5 (B)(i) A firearm voluntarily forfeited under this
6 subsection shall be held for thirty (30) days pending a claim of ownership of
7 the firearm by another person, during which time the person claiming
8 ownership may file a petition in a court with jurisdiction to determine
9 whether or not the person claiming ownership is the true owner of the
10 firearm.

11 (ii) In a hearing to determine the true ownership of
12 a firearm under this subdivision (a)(2)(B), the prosecuting attorney shall
13 represent the law enforcement agency that has custody of the firearm.

14 (iii) There is no filing fee required to file a
15 petition under this subdivision (a)(2)(B).

16 (iv) The court in which a petition is filed under
17 this subdivision (a)(2)(B) shall return the firearm to the petitioner if the
18 petitioner can show he or she is the true owner of the firearm by a
19 preponderance of the evidence.

20 (C) If after thirty (30) days a petition claiming
21 ownership of the firearm has not been filed in a court with jurisdiction or
22 if after a hearing on a petition the court with jurisdiction has determined
23 that the petitioner has not proven true ownership of the firearm, the law
24 enforcement agency that took the firearm into custody shall within forty-
25 eight (48) hours destroy the firearm.

26 (b) At a hearing under this section, the state shall be represented by
27 the prosecuting attorney and has the burden of proving all material facts by
28 clear and convincing evidence.

29 (c)(1)(A) If, after a hearing under this section, the court finds by
30 clear and convincing evidence that the person from whom a firearm was taken
31 into custody poses a risk of imminent personal injury to himself, herself, or
32 to another person, the court may order that a firearm taken into custody
33 under this subchapter continue to be held by the state for a period not to
34 exceed one (1) year.

35 (B) The person from whom the firearm was taken into
36 custody may petition the court for the return of the firearm before the one-

1 year period of time has elapsed under § 12-15-410.

2 (2) If the court does not find by clear and convincing evidence
3 that the person poses a risk of imminent personal injury to himself, herself,
4 or to another person, the court shall order the firearm taken into custody to
5 be returned to the person named in the emergency risk protection order and
6 warrant.

7 (d)(1) If the court finds by clear and convincing evidence that the
8 person whose firearm has been taken into custody poses a risk of imminent
9 personal injury to himself, herself, or to another person, the court shall
10 give notice to the prosecuting attorney and local law enforcement agencies
11 with jurisdiction that the person may be in need of mental health services or
12 other medical treatment.

13 (2)(A) Upon receiving notice under this subsection, the
14 prosecuting attorney may institute commitment proceedings under § 20-47-201
15 et seq. or § 20-64-801 et seq. if the prosecuting attorney has not done so
16 already.

17 (B) The findings of the court conducting a hearing under
18 this section may form the required basis and factual predicate for any
19 subsequent commitment proceeding under § 20-47-201 et seq. or § 20-64-801 et
20 seq.

21
22 12-15-409. Transfer of firearm permitted.

23 (a) As used in this section, "eligible person" means a person who:

24 (1) Does not reside with the person whose firearm has been taken
25 into custody under this subchapter;

26 (2) Agrees that the firearm shall not be returned to the person
27 whose firearm has been taken into custody under this subchapter;

28 (3) Swears under oath that the person whose firearm has been
29 taken into custody shall not have access to the firearm; and

30 (4) May lawfully possess the firearm.

31 (b) A person whose firearm has been taken into custody under this
32 subchapter, or the person's legal representative, may transfer ownership of
33 the firearm as provided by law to an eligible person.

34 (c) Upon notification in writing to the law enforcement agency, state
35 agency, court, or other entity holding the firearm taken into custody by the
36 person or the person's legal representative and the eligible person to whom

1 ownership of the firearm was transferred, the law enforcement agency, state
2 agency, court, or other entity holding the firearm taken into custody shall
3 deliver within ten (10) days the firearm to the eligible person to whom
4 ownership of the firearm was transferred.

5 (d) Upon conviction, an eligible person is guilty of a Class A
6 misdemeanor if he or she knowingly permits the person from whom the firearm
7 was taken under this subchapter to possess or have access to the firearm
8 after the transfer of ownership of the firearm within one (1) year of the
9 transfer of the firearm.

10
11 12-15-410. Early return of firearm taken into custody.

12 (a) A person who has had his or her firearm taken into custody under
13 this subchapter may petition the court with jurisdiction for the early return
14 of his or her firearm.

15 (b) A person who has had his or her firearm taken into custody under
16 this subchapter may not:

17 (1) File a petition under this section more than two (2) times
18 within any twelve-month period; or

19 (2) File a petition under this section until at least four (4)
20 months have passed since the court found that at that time the person posed a
21 risk of imminent personal injury to himself, herself, or to another person
22 and ordered the firearm taken into custody.

23 (c)(1) There is no filing fee required for the first petition filed by
24 a person under this section as to a specific emergency risk protection order
25 and warrant taking the person's firearm into custody.

26 (2) For a second petition filed under this section as to a
27 specific emergency risk protection order and warrant taking the person's
28 firearm into custody, the filing fee shall be as otherwise provided by law.

29 (d)(1) A person may not file a petition under this section if at the
30 time of filing he or she:

31 (A) Is in custody or incarcerated for any reason or was
32 arrested since an emergency risk protection order and warrant under this
33 subchapter was issued against him or her for a felony offense or a
34 misdemeanor offense involving the use of or threat of violence;

35 (B) Is subject to a protective order under the Domestic
36 Abuse Act of 1991, § 9-15-101 et seq.; or

1 (C) Has been involuntarily committed under § 20-64-801 et
2 seq.

3 (2) A pending petition filed under this section shall be
4 immediately dismissed by the court without a hearing if the petition was
5 filed by a person who, after the date the petition was filed:

6 (A) Was arrested for a felony offense or a misdemeanor
7 offense involving the use of or threat of violence;

8 (B) Is subject to a protective order under the Domestic
9 Abuse Act of 1991, § 9-15-101 et seq.; or

10 (C) Has been voluntarily or involuntarily committed under
11 § 20-64-801 et seq. or admitted to a crisis intervention unit under the
12 Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et
13 seq.

14 (e) The court shall return the firearm taken into custody to the
15 person from whom the firearm was taken if the person can show by a
16 preponderance of the evidence that the person no longer poses a risk of
17 imminent personal injury to himself, herself, or to another person.

18
19 12-15-411. Third-party civil liability.

20 (a) As used in this section, "public employee" means a public employee
21 employed in a law enforcement, judicial, social work, mental health, or
22 medical capacity who is trained to identify, diagnose, investigate, or to
23 intervene in threats to the public.

24 (b)(1) A person who is not a public employee may be civilly liable to
25 a person against whom this subchapter is applied if the person who is not a
26 public employee knowingly makes a false report to a law enforcement agency or
27 other governmental body with the purpose of improperly depriving the person
28 of his or her lawfully possessed firearm, including without limitation
29 submitting an application under § 12-15-404 with the purpose of improperly
30 depriving a person of his or her lawfully possessed firearm.

31 (2) Damages in a civil lawsuit under subdivision (b)(1) of this
32 section are limited to attorney's fees, costs of litigation, and compensatory
33 damages that result directly from the deprivation of the person's firearm.