

04-19-2019 13:43;

INTERIM STUDY PROPOSAL 2019-058

State of Arkansas

92nd General Assembly

Regular Session, 2019

A Bill

SENATE BILL 621

By: Senators G. Leding, Bond

Filed with: Senate Committee on City, County, and Local Affairs

pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

TO BE KNOWN AS THE "ARKANSAS RED FLAG
LAW"; AND TO CREATE AN EXTREME RISK
PROTECTION ORDER AND WARRANT.

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

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

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

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

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

(2) Conduct by another person that the reporting person alleges
should be investigated under the Arkansas Red Flag Law, § 12-15-401 et seq.,

1 knowing that the report to the law enforcement agency or prosecuting
 2 attorney's office is either false or flagrantly mischaracterized.

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

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

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

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

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

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

17 (2) Otherwise, filing a false report is a Class A misdemeanor.
 18

19 SECTION 2. Arkansas Code § 5-73-103 is amended to read as follows:

20 5-73-103. Possession of firearms by certain persons.

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

27 (1) Convicted of a felony;

28 (2) Adjudicated mentally ill; ~~or~~

29 (3) Committed involuntarily to any mental institution; or

30 (4) Restricted from possessing a firearm under the Arkansas Red
 31 Flag Law, § 12-15-401 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

28
29 SECTION 3. Arkansas Code Title 12, Chapter 15, is amended to add an
30 additional subchapter to read as follows:

31
32 Subchapter 4 – The Arkansas Red Flag Law

33
34 12-15-401. Title.

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

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12-15-402. Legislative intent.

The intent of this subchapter is to provide for a restriction of access to a firearm for a person who has demonstrated that he or she poses a risk of imminent personal injury to himself, herself, or to another person while providing the person with due process to contest the restriction if the person can show that he or she does not pose a risk of imminent personal injury to himself, herself, or to another person. Further, the General Assembly intends to provide for the return of any firearm taken into custody to the person from whom the firearm was taken either after a definite period of time or after the person has shown that he or she no longer poses a risk of imminent personal injury to himself, herself, or to another person.

12-15-403. Sworn affidavit required.

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

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

(2) The person possesses one (1) or more firearms; and

(3) The firearm or firearms are in or at any place or thing, or are possessed by the person.

(b) The certified law enforcement officers shall not swear under oath by affidavit unless the certified law enforcement officers have conducted an independent investigation and have determined that probable cause exists as described in subsection (a) of this section and that there is no reasonable alternative available to prevent the person from causing imminent personal injury with a firearm to himself, herself, or to another person.

12-15-404. Issuance of emergency risk protection order and warrant by judge – Grounds and findings.

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

(b) In determining whether grounds for the emergency risk protection order and warrant exist or whether there is probable cause to believe the

1 grounds exist, the district court judge or circuit court judge shall consider
2 any recent:

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

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

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

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

14 (2) A history of the use, attempted use, or threatened use of
15 physical force by the person against another person;

16 (3) Prior involuntary confinement of the person in a mental
17 health facility, crisis intervention unit, or medical facility where the
18 person received treatment for a mental health condition; and

19 (4) The illegal use of a controlled substance or abuse of
20 alcohol by the person.

21 (d)(1) If the district court judge or circuit court judge is satisfied
22 that grounds for the emergency risk protection order and warrant exist or
23 that there is probable cause to believe that the grounds exist, the district
24 court judge or circuit court judge shall issue an emergency risk protection
25 order and warrant naming or describing the person, place, or thing to be
26 searched, and what thing or things shall be seized or otherwise taken into
27 custody.

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

32
33 12-15-405. Orders contained in emergency risk protection order and
34 warrant.

35 An emergency risk protection order and warrant issued under this
36 subchapter shall:

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

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

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

7 (4) Order the certified law enforcement officer to take any
8 firearm located or discovered into the certified law enforcement officer's
9 custody.

10
11 12-15-406. Filing application and supporting documents.

12 (a) An applicant for an emergency risk protection order and warrant
13 issued under this subchapter shall file a copy of the application for the
14 emergency risk protection order and warrant and all affidavits upon which the
15 emergency risk protection order and warrant are based with the clerk of the
16 district court or circuit court, as applicable, no later than the next
17 business day following the execution of the emergency risk protection order
18 and warrant.

19 (b) Before the execution and return of an emergency risk protection
20 order and warrant issued under this subchapter, the clerk of the district
21 court or circuit court, as applicable, shall not disclose any information
22 pertaining to the application for the emergency risk protection order and
23 warrant or any affidavits upon which the emergency risk protection order and
24 warrant are based.

25 (c) An emergency risk protection order and warrant issued under this
26 subchapter shall be executed and returned with reasonable promptness
27 consistent with due process of law and shall be accompanied by a written
28 inventory of all firearms taken into custody.

29 12-15-407. Copy of emergency risk protection order and warrant to be
30 given to named person.

31 A copy of an emergency risk protection order and warrant issued under
32 this subchapter shall be given to the person named in the emergency risk
33 protection order and warrant together with a notice informing the person that
34 he or she has the right to a hearing under this subchapter and the right to
35 be represented by an attorney at the hearing.

1 12-15-408. Hearing required.

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

7 (B) The period of three (3) days under subdivision
8 (a)(1)(A) of this section does not include a Saturday, Sunday, or holiday.

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

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

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

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

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

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

33 (b) At a hearing under this section, the state has the burden of
34 proving all material facts by clear and convincing evidence.

35 (c)(1)(A) If, after a hearing under this section, the court finds by
36 clear and convincing evidence that the person from whom a firearm was taken

1 into custody poses a risk of imminent personal injury to himself, herself, or
2 to another person, the court may order that a firearm taken into custody
3 under this subchapter continue to be held by the state for a period not to
4 exceed one (1) year.

5 (B) The person from whom the firearm was taken into
6 custody may petition the court for the return of the firearm before the one-
7 year period of time has elapsed under § 12-15-410.

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

13 (d)(1) If the court finds that the person whose firearm has been taken
14 into custody poses a risk of imminent personal injury to himself, herself, or
15 to another person, the court shall give notice to the prosecuting attorney
16 and local law enforcement agencies with jurisdiction that the person may be
17 in need of mental health services or other medical treatment.

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

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

26
27 12-15-409. Transfer of firearm permitted.

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

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

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

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

35 (4) May lawfully possess the firearm.

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

4 (c) Upon notification in writing to the law enforcement agency, state
5 agency, court, or other entity holding the firearm taken into custody by the
6 person or the person's legal representative and the eligible person to whom
7 ownership of the firearm was transferred, the law enforcement agency, state
8 agency, court, or other entity holding the firearm taken into custody shall
9 deliver within ten (10) days the firearm to the eligible person to whom
10 ownership of the firearm was transferred.

11 (d) Upon conviction an eligible person is guilty of a Class A
12 misdemeanor if he or she knowingly permits the person from whom the firearm
13 was taken under this subchapter to possess or have access to the firearm
14 after the transfer of ownership of the firearm within one (1) year of the
15 transfer of the firearm.

16
17 12-15-410. Early return of firearm taken into custody.

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

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

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

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

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

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

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

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

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

7 (C) Has been voluntarily or involuntarily committed under
8 § 20-64-801 et seq. or admitted to a crisis intervention unit under the
9 Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et
10 seq.

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

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

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

18 (C) Has been voluntarily or involuntarily committed under
19 § 20-64-801 et seq. or admitted to a crisis intervention unit under the
20 Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et
21 seq.

22 (e) The court shall return the firearm taken into custody to the
23 person from whom the firearm was taken if the person can show by clear and
24 convincing evidence that the person no longer poses a risk of imminent
25 personal injury to himself, herself, or to another person.

26
27 12-15-411. Third-party civil liability.

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

32 (b)(1) A person who is not a public employee may be civilly liable to
33 a person against whom this subchapter is applied if the person who is not a
34 public employee knowingly makes a false report to a law enforcement agency or
35 other governmental body with the purpose of improperly depriving the person
36 of his or her lawfully possessed firearm.

1 (2) Damages in a civil lawsuit under subdivision (b)(1) of this
2 section are limited to attorney's fees, costs of litigation, and compensatory
3 damages that result directly from the deprivation of the person's firearm.
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6 Referred requested by the Arkansas Senate

7 Prepared by: BPG/VJF
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