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4

A Bill

DRAFT BPG/BPG
HOUSE BILL

5 By: Representative Leding
6 By: Senator Bond
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.
15

Subtitle

16
17
18 TO BE KNOWN AS THE "ARKANSAS RED FLAG
19 LAW"; AND TO CREATE AN EXTREME RISK
20 PROTECTION 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 either false or flagrantly mischaracterized.

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; or

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.

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

18 SECTION 2. Arkansas Code § 5-73-103 is amended to read as follows:
19 5-73-103. Possession of firearms by certain persons.

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

26 (1) Convicted of a felony;

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

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

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

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

36 (2) Subdivision (b)(1) of this section does not apply to a

1 person whose case was dismissed and expunged or sealed under § 16-93-301 et
 2 seq. or § 16-98-303(g).

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

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

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

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

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

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

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

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

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

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

27
 28 SECTION 3. Arkansas Code Title 12, Chapter 15, is amended to add an
 29 additional subchapter to read as follows:

30
 31 Subchapter 4 – The Arkansas Red Flag Law

32
 33 12-15-401. Title.

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

1 12-15-402. Legislative intent.

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

12
13 12-15-403. Sworn affidavit required.

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

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

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

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

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

28
29 12-15-404. Issuance of emergency risk protection order and warrant by
30 judge – Grounds and findings.

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

35 (b) In determining whether grounds for the emergency risk protection
36 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) An act of cruelty by the person to an animal;

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

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

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

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

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

36 An emergency risk protection order and warrant issued under this

1 subchapter shall:

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

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

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

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

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

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

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

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

30
31 12-15-407. Copy of emergency risk protection order and warrant to be
32 given to named person.

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

1 be represented by an attorney at the hearing.

2
3 12-15-408. Hearing required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28
29 12-15-409. Transfer of firearm permitted.

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

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

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

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

1 (4) May lawfully possess the firearm.

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

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

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

17
18 12-15-410. Early return of firearm taken into custody.

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

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

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

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

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

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

36 (d)(1) A person may not file a petition under this section if at the

1 time of filing he or she:

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

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

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

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

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

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

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

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

27
28 12-15-411. Third-party civil liability.

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

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

1 of his or her lawfully possessed firearm.

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

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