

1 INTERIM STUDY PROPOSAL 2023-015

2 State of Arkansas *As Engrossed: H2/6/23 H3/16/23 H3/27/23 H4/3/23*

3 94th General Assembly

A Bill

4 Regular Session, 2023

HOUSE BILL 1013

5
6 By: Representatives V. Flowers, F. Allen, Crawford, Duffield, K. Ferguson, Hudson, Milligan, Nicks, J.

7 Richardson, Scott, Tosh, Vaught, Watson, *L. Johnson*

8 *By: Senators G. Stubblefield, Caldwell, A. Clark, Gilmore, Hester, Irvin, G. Leding, M. McKee, R.*

9 *Murdock*

10 Filed with: Arkansas Legislative Council

11 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

12
13 AN ACT TO ESTABLISH A PATH TO RESTORATION OF THE
14 RIGHT TO POSSESS A FIREARM UNDER STATE LAW AFTER A
15 *FIVE (5) YEAR PERIOD HAS PASSED SINCE A PERSON*
16 *CONVICTED OF CERTAIN NONVIOLENT FELONIES HAS*
17 *COMPLETED HIS OR HER SENTENCE; AND FOR OTHER*
18 *PURPOSES.*

Subtitle

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21 *TO ESTABLISH A PATH TO RESTORATION OF THE*
22 *RIGHT TO POSSESS A FIREARM.*

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

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30 *SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.*

31 *(a)(1) One (1) in three (3) United States adults, or seventy nine*
32 *million (79,000,000) adults holds a criminal record.*

33 *(2) Approximately twenty four percent (24%) of them, or*
34 *approximately nineteen million (19,000,000), have been convicted of a felony,*
35 *and ten percent (10%) of them, or approximately seven million seven hundred*
36 *thousand (7,700,000), have been imprisoned at least once in their lifetimes.*

1 (b) Both federal and Arkansas law prohibit the purchase or possession
 2 of a firearm by a person who has been convicted of a felony.

3 (c)(1) Tens of thousands of Arkansans who have committed nonviolent
 4 felonies have not only paid their debts to society but have since lived law-
 5 abiding lives for over a decade.

6 (2) Yet, those Arkansans are prohibited from purchasing and
 7 possessing a firearm to hunt, to protect their businesses, and to protect
 8 their families.

9 (d) Criminologists studying recidivism have found that felons usually
 10 have to stay out of trouble for about a decade before their risk of
 11 committing a crime equals that of other people with no criminal record.

12 (e)(1) Twenty-four (24) states provide nonviolent felons a pathway to
 13 restore their right to purchase and possess a firearm.

14 (2) In five (5) states, some nonviolent felons never lose their
 15 rights, while other states establish time frames for automatic restoration,
 16 and still others provide processes through the courts, boards, commissions,
 17 and other administrative avenues.

18 (f) With sparse research data available, an April 2008 report by the
 19 Washington State Sentencing Guidelines Commission suggests that offenders
 20 with restored gun rights in Washington state are roughly five (5) times less
 21 likely to recidivate than other offenders.

22
 23 SECTION 2. Arkansas Code § 5-73-103(a) and (b), concerning the offense
 24 of possession of a firearm by certain persons, are amended to read as
 25 follows:

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

- 32 (1) Convicted of a felony;
 33 (2) Adjudicated mentally ill; or
 34 (3) Committed involuntarily to ~~any~~ a mental institution.

35 (b)(1) Except as provided in subdivisions (b)(2) and (3) of this
 36 section, a determination by a jury or a court that a person committed a

1 felony constitutes a conviction for purposes of subsection (a) of this
2 section even though the court suspended imposition of sentence or placed the
3 defendant on probation.

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

7 (3) The determination by the jury or court that the person
8 committed a felony does not constitute a conviction for purposes of
9 subsection (a) of this section if the person is subsequently granted a pardon
10 explicitly restoring the ability to possess a firearm or if the conviction is
11 sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-
12 1401 et seq.

13
14 SECTION 2. Arkansas Code § 5-73-309(5), concerning licensing
15 requirements for a license to carry a concealed handgun, is amended to read
16 as follows:

17 (5) Has not been convicted of a felony in a court of this state,
18 of any other state, or of the United States unless:

19 (A) The applicant is subsequently granted a pardon by the
20 Governor or the President of the United States explicitly restoring his or
21 her ability to possess a firearm;

22 (B) The applicant was sentenced prior to March 13, 1995,
23 and the record of conviction has been sealed or expunged under Arkansas law;
24 or

25 (C) The applicant's offense was dismissed and sealed or
26 expunged under the Comprehensive Criminal Record Sealing Act of 2013, § 16-
27 90-1401 et seq., § 16-93-301 et seq., or § 16-98-303(g);

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29 SECTION 3. Arkansas Code § 16-90-1414, concerning the uniform petition
30 and uniform order to seal records, is amended to read as follows:

31 (a)(1) The Arkansas Crime Information Center shall adopt and provide
32 the following to be used by a petitioner and any circuit court or district
33 court in this state:

34 (A) A uniform petition to seal records that includes an
35 option to petition for the restoration of the right to possess a firearm; and

1 (B) A uniform order to seal records that includes an
2 option for the court to restore the right to possess a firearm.

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5 SECTION 4. Arkansas Code § 16-90-1417(a)(3), concerning effect of
6 sealing, is amended to read as follows:

7 (3) The effect of this subchapter does not reconfer the right to
8 ~~carry~~ possess a firearm if that right was removed as the result of a felony
9 conviction, unless:

- 10 (A) A uniform petition is filed under § 16-90-1420; and
11 (B) The uniform order specifically restores the right to
12 possess a firearm.

13
14 SECTION 5. Arkansas Code Title 16, Chapter 90, Subchapter 14, is
15 amended to add a new section as follows:

16 16-90-1420. Restoration of the right to possess a firearm.

17 (a)(1) Unless otherwise prohibited under this subchapter, a person may
18 file a uniform petition under this section five (5) years or more after the
19 completion of the person's sentence for any felony that is not listed below
20 or contained in the following chapters or subchapters:

- 21 (A) Homicide, § 5-10-101 et seq.;
22 (B) Kidnapping and related offenses, § 5-11-101 et seq.;
23 (C) Robbery, § 5-12-101 et seq.;
24 (D) Assault and battery, § 5-13-101 et seq.;
25 (E) Sexual offenses, § 5-14-101 et seq.;
26 (F) Voyeurism offenses, § 5-16-101 et seq.;
27 (G) Death threats, § 5-17-101 et seq.;
28 (H) The Human Trafficking Act of 2013, § 5-18-101 et seq.;
29 (I) Domestic battering and assault, § 5-26-301 et seq.;
30 (J) Custody and visitation, § 5-26-501 et seq.;
31 (K) The Arkansas Protection of Children Against
32 Exploitation Act of 1979, § 5-27-301 et seq.;
33 (L) Exposing a child to a chemical substance or
34 methamphetamine, § 5-27-230;
35 (M) Use of children in sexual performances, § 5-27-401 et
36 seq.;

- 1 (N) Computer crimes against minors, § 5-27-601 et seq.;
2 (O) Abuse of adults, § 5-28-101 et seq.;
3 (P) Damage or destruction of property, § 5-38-101 et seq.;
4 (Q) Causing a catastrophe, § 5-38-202;
5 (R) Arson, § 5-38-301;
6 (S) Residential burglary, § 5-39-201;
7 (T) Aggravated residential burglary, § 5-39-204;
8 (U) Treason, § 5-51-201;
9 (V) First degree escape, § 5-54-110, second degree escape,
10 § 5-54-111, third degree escape, § 5-54-112, and permitting escape in the
11 first degree, § 5-54-113;
12 (W) Fleeing, § 5-54-125;
13 (X) Killing or injuring animals used by law enforcement or
14 search and rescue dogs, § 5-54-126;
15 (Y) Terrorism, § 5-54-201 et seq.;
16 (Z) Animals, § 5-62-101 et seq.;
17 (AA) Trafficking a controlled substance, § 5-64-440;
18 (BB) Aggravated riot, § 5-71-202;
19 (CC) Stalking, § 5-71-229;
20 (DD) Weapons, § 5-73-101 et seq.;
21 (EE) The Arkansas Criminal Gang, Organization, or
22 Enterprise Act, § 5-74-101 et seq.;
23 (FF) A felony that requires a person to register as a sex
24 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et
25 seq.;
26 (GG) A serious felony involving violence as defined in §
27 5-4-501(c)(2) or a felony involving violence as defined in § 5-4-501(d)(2);
28 (HH) An attempt, solicitation, or conspiracy to commit any
29 of the felonies listed in subdivisions (a)(1)-(33) of this section, if the
30 attempt, solicitation, or conspiracy itself is a felony; or
31 (II) A felony traffic offense committed in any type of
32 motor vehicle if the person was a holder of a commercial learner's permit or
33 commercial driver's license at the time the felony traffic offense was
34 committed."
35 (2) If an order of protection was entered in a proceeding
36 against the person filing a uniform petition under this section and the order

1 of protection remains in effect at the time of the uniform petition, the
2 person is not eligible to file a uniform petition under this section.

3 (b) A uniform petition under this section shall include a statement
4 verified under oath indicating whether the person has felony charges pending
5 in any state or federal court and the status of the pending felony charges,
6 whether the person is required to register as a sex offender under the Sex
7 Offender
8 Registration Act of 1997, § 12-12-901 et seq., and whether the person is
9 currently subject to an order of protection in this state or a similar order
10 in any other state.

11 (c)(1)(A) A copy of a uniform petition filed under this section shall
12 be served upon the prosecuting attorney for the county in which the uniform
13 petition is filed and the arresting agency, if the arresting agency is a
14 named party, within three (3) days of the filing of the uniform petition.

15 (B) It is not necessary to make the arresting agency a
16 party to the action under this section.

17 (C)(i) If the felony conviction the petitioner is seeking
18 to have sealed is for a violent offense or a sex offense, the prosecuting
19 attorney shall notify the victim of the violent offense or sex offense or his
20 or her next of kin at the last known address and telephone number of the
21 victim or his or her next of kin if the victim requested notification of a
22 proceeding under this subchapter.

23 (ii) It is the responsibility of the victim or his
24 or her next of kin to notify the prosecuting attorney of any change in his or
25 her:

26 (a) Address or phone number; or

27 (b) Desire to be notified of any proceeding
28 under this section in the future.

29 (2)(A) The prosecuting attorney may file a notice opposing a
30 uniform petition filed under this section with the court, stating the
31 reasons, without limitation, for the opposition of the uniform petition.

32 (B) A court may not sign a uniform order granting relief
33 without a hearing and may not grant the uniform petition filed under this
34 section until thirty (30) days have passed since the uniform petition was
35 served on the prosecuting attorney.

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