

1 INTERIM STUDY PROPOSAL 2025-039

2
3 State of Arkansas
4 95th General Assembly
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A Bill

HOUSE BILL 1033

6
7 Representatives McCullough, A. Collins, D. Garner, Springer

8
9 Filed with: House Committee on Judiciary
10 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

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

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

26
27 SECTION 1. Arkansas Code § 5-54-122 is amended to read as follows:

28 5-54-122. Filing false report with law enforcement agency.

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

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

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

36 (2) Conduct by another person that the reporting person alleges

1 should be investigated under the Arkansas Red Flag Law, § 12-15-401 et seq.,
 2 knowing that the report to the law enforcement agency or prosecuting
 3 attorney's office is false.

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

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

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

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

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

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

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

23 (2) Otherwise, filing a false report is a Class A misdemeanor.
 24

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

26 5-73-103. Possession of firearms by certain persons.

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

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

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

35 (3) ~~Committed~~ Has been committed involuntarily to any mental
 36 institution; or

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (e) As used in this section, "felony" means any state or federal
36 felony, excluding a federal or state felony offense for which the person

1 convicted has completed his or her sentence and pertaining to:

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

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

10
11 Subchapter 4 – Arkansas Red Flag Law

12
13 12-15-401. Title.

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

16
17 12-15-402. Legislative intent.

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

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

29
30 12-15-403. Sworn affidavit required.

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

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

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

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

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

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

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

13
14 12-15-404. Filing application and supporting documents.

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

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

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

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

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

34 (c) Before the execution and return of an emergency risk protection
35 order and warrant issued under this subchapter, the clerk of the district
36 court or circuit court, as applicable, shall not disclose any information

1 pertaining to the application for the emergency risk protection order and
2 warrant or any affidavits upon which the emergency risk protection order and
3 warrant are based.

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

8
9 12-15-405. Issuance of emergency risk protection order and warrant by
10 judge – Grounds and findings.

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

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

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

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

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

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

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

32 (3) Prior involuntary confinement of the person in a mental
33 health facility or other medical facility where the person received treatment
34 for a mental health condition.

35 (d)(1) If the district court judge or circuit court judge is satisfied
36 that grounds for the emergency risk protection order and warrant under this

1 subchapter exist or that there is probable cause to believe that the grounds
2 exist, the district court judge or circuit court judge shall issue an
3 emergency risk protection order and warrant naming or describing the person,
4 place, or thing to be searched, and what thing or things shall be seized or
5 otherwise taken into custody.

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

10
11 12-15-406. Orders contained in emergency risk protection order and
12 warrant.

13 An emergency risk protection order and warrant issued under this
14 subchapter shall:

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

16 (2) State the grounds or circumstances constituting probable
17 cause for issuance of the emergency risk protection order and warrant;

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

21 (4) Order the certified law enforcement officer to take any
22 firearm located or discovered into the certified law enforcement officer's
23 custody.

24
25 12-15-407. Copy of emergency risk protection order and warrant to be
26 given to named person.

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

32
33 12-15-408. Hearing required.

34 (a)(1)(A) No later than three (3) days after the execution of an
35 emergency risk protection order and warrant issued under this subchapter, a
36 court with jurisdiction shall hold a hearing to determine whether any firearm

1 taken into custody should be returned to the person named in the emergency
2 risk protection order and warrant or should continue to be held by the state.

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

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

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

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

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

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

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

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

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

1 exceed one (1) year.

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

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

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

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

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

24
25 12-15-409. Transfer of firearm permitted.

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

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

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

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

33 (4) May lawfully possess the firearm.

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

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

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

13
14 12-15-410. Early return of firearm taken into custody.

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

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

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

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

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

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

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

34 (A) Is in custody or incarcerated for any reason or was
35 arrested since an emergency risk protection order and warrant under this
36 subchapter was issued against him or her for a felony offense or a

1 misdemeanor offense involving the use of or threat of violence;

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

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

6 (2) A pending petition filed under this section shall be
7 immediately dismissed by the court without a hearing if, after the date the
8 petition was filed, the person:

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

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

13 (C) Has been voluntarily or involuntarily committed under
14 § 20-64-801 et seq. or admitted to a crisis intervention unit under the
15 Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et
16 seq.

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

21
22 12-15-411. Third-party civil liability.

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

27 (b)(1) A person who is not a public employee may be civilly liable to
28 a person against whom this subchapter is applied if the person who is not a
29 public employee knowingly makes a false report to a law enforcement agency or
30 other governmental body with the purpose of improperly depriving the person
31 against whom this subchapter is applied of his or her lawfully possessed
32 firearm, including without limitation submitting an application under § 12-
33 15-404 with the purpose of improperly depriving a person of his or her
34 lawfully possessed firearm.

35 (2) Damages in a civil lawsuit under subdivision (b)(1) of this
36 section are limited to attorney's fees, costs of litigation, and compensatory

1 damages that result directly from the deprivation of the person's firearm.

2

3 */s/McCullough*

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5

6 Referred requested by the Arkansas House of Representatives

7 Prepared by: CEB/AMS

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