

INTERIM STUDY PROPOSAL 2023-015

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

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1013

By: Representatives V. Flowers, F. Allen, Crawford, Duffield, K. Ferguson, Hudson, Milligan, Nicks, J. Richardson, Scott, Tosh, Vaught, Watson, *L. Johnson*
By: Senators G. Stubblefield, Caldwell, A. Clark, Gilmore, Hester, Irvin, G. Leding, M. McKee, R. Murdock

Filed with: Arkansas Legislative Council

pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH A PATH TO RESTORATION OF THE
RIGHT TO POSSESS A FIREARM.

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

SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.

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

(2) Approximately twenty four percent (24%) of them, or approximately nineteen million (19,000,000), have been convicted of a felony, and ten percent (10%) of them, or approximately seven million seven hundred 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (C) The prosecuting attorney shall file a response to a
2 uniform petition filed under this section notifying the court when a uniform
3 petition is filed by a person who used a firearm during the commission of the
4 felony that led to the felony conviction if the felony conviction was:

5 (i) A conviction for a nonviolent offense; and

6 (ii) The result of a plea bargain.

7 (3)(A) The uniform petition may be granted if the court finds by
8 clear and convincing evidence that doing so would further the interests of
9 justice, considering, without limitation, the following factors:

10 (i) Whether the person appears likely to reoffend;

11 (ii) The person's other criminal history;

12 (iii) The existence of any pending charges or
13 criminal investigations involving the person;

14 (iv) Input from the victim of the offense for which
15 the person was convicted, if applicable; and

16 (v) Any other information provided by the state that
17 would cause a reasonable person to consider the person a further threat to
18 society.

19 (B) If the circuit court finds under subdivision (c)(3)(A)
20 of this section that the uniform petition should be granted, the person's
21 felony conviction shall be sealed and the right to lawfully possess a firearm
22 shall be fully restored.

23 (C)(i) An appeal of the grant or denial of the uniform
24 petition may be taken by either party.

25 (ii) An appeal from the circuit court shall be taken
26 as provided by Supreme Court rule, and the appellate court shall review the
27 case using an abuse of discretion standard.

28 (d) Unless otherwise provided in this section, the remaining
29 provisions of this subchapter apply to a uniform petition filed under this
30 section and a uniform order entered under this section.

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32 /s/V. Flowers

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35 Referred by Representative V. Flowers

36 Prepared by: MBM/MBM

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