

INTERIM STUDY PROPOSAL 2013-022

1
2 State of Arkansas
3 89th General Assembly
4 Regular Session, 2013

A Bill

HOUSE BILL 2136

5
6 By: Representative Hammer

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

9 **For An Act To Be Entitled**

10 AN ACT TO CREATE A CIVIL ACTION FOR A SEARCH AND
11 SEIZURE OF A FIREARM OR AMMUNITION OWNED OR POSSESSED
12 BY A PERSON WHO HAS BEEN DIAGNOSED WITH A MENTAL
13 ILLNESS AND WHO IS CONSIDERED AN IMMEDIATE DANGER TO
14 HIMSELF OR HERSELF OR TO OTHERS; AND FOR OTHER
15 PURPOSES.

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18 **Subtitle**

19 TO CREATE A CIVIL ACTION FOR A SEARCH AND
20 SEIZURE OF A FIREARM OR AMMUNITION OWNED
21 OR POSSESSED BY A PERSON WHO HAS BEEN
22 DIAGNOSED WITH A MENTAL ILLNESS AND WHO
23 IS CONSIDERED AN IMMEDIATE DANGER TO
24 HIMSELF OR HERSELF OR TO OTHERS.

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

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29 SECTION 1. Arkansas Code Title 16, Chapter 118, is amended to add a
30 new section to read as follows:

31 16-118-109. Civil action for search and seizure of a firearm or
32 ammunition owned by a person with a mental illness.

33 (a) If a mental health professional duly licensed by the state
34 diagnoses a person as having a mental illness, the mental health professional
35 shall notify the prosecuting attorney for the county where the person resides

1 of the diagnosis if the mental health professional reasonably believes that
2 the person:

3 (1) Is an immediate danger to himself or herself or to other
4 persons; and

5 (2) Should not possess a firearm or ammunition while he or she
6 has the mental illness.

7 (b) Upon receiving a notice under subsection (a) of this section, the
8 prosecuting attorney shall file a petition in the circuit court requesting
9 that the circuit court order:

10 (1) A search of places described in the petition that are owned
11 or possessed by the person diagnosed as having a mental illness for firearms
12 and ammunition; and

13 (2) Seizure of any firearms or ammunition resulting from the
14 search.

15 (c)(1) The circuit court shall appoint a public defender to represent
16 the person diagnosed with a mental illness for the purpose of an action
17 brought under this section.

18 (2) The public defender may be relieved as attorney of record by
19 the circuit court if the person diagnosed with a mental illness retains
20 private counsel or has private counsel retained on his or her behalf.

21 (d)(1) Upon a finding of good cause shown, the circuit court shall
22 hold a hearing on a petition filed under this section at the earliest
23 practicable time after consulting with the prosecuting attorney and the
24 attorney for the person diagnosed with a mental illness but not more than ten
25 (10) days after the filing of the petition.

26 (2) The circuit court may order the search and seizure as
27 provided in this section before the scheduled hearing date if the circuit
28 court finds on the basis of the petition alone or with other evidence that
29 may be available that an immediate danger to any person exists if the person
30 diagnosed with a mental illness possesses or owns a firearm or ammunition.

31 (e)(1) At a hearing under this section, the circuit court shall hear
32 from witnesses, receive evidence, and make findings concerning whether the
33 person diagnosed with having a mental illness:

34 (A) Has a mental illness;

35 (B) Is an immediate danger to himself or herself or to
36 other persons;

1 (C) Owns or possesses a firearm or ammunition; and

2 (D) Should be allowed to possess a firearm or ammunition.

3 (2) If the circuit court makes the requisite findings under
4 subdivision (e)(1) of this section, the circuit court may:

5 (A) Order a search and seizure by a local law enforcement
6 agency for firearms and ammunition owned or possessed by the person diagnosed
7 as having a mental illness;

8 (B) Make a determination as to ownership of a firearm or
9 ammunition seized by the local law enforcement agency;

10 (C) Order the permanent seizure of any firearm or
11 ammunition seized by the local law enforcement agency;

12 (D) Order the immediate seizure of any firearm or
13 ammunition not already seized by law enforcement that is owned or possessed
14 by the person diagnosed as having a mental illness; and

15 (E) Make a judicial finding that the person diagnosed as
16 having a mental illness is adjudicated mentally ill to the extent that the
17 person is prohibited from possessing a firearm under § 5-73-103.

18 (f)(1) A person who has been adjudicated mentally ill under subsection
19 (e) of this section may file a petition in circuit court one (1) year after
20 the adjudication for the return of a firearm or ammunition confiscated under
21 this section.

22 (2) A circuit court shall return the firearm or ammunition if
23 the circuit court finds that the person is not mentally ill to the extent
24 that the person is prohibited from possessing a firearm under § 5-73-103.

25 (3) A subsequent petition for the return of the person's firearm
26 or ammunition may be filed one (1) year after the date of the final order
27 from the denial of a previous petition.

28 (g) A firearm or ammunition seized under this section shall be held by
29 the local law enforcement agency that seized the firearm or ammunition until
30 a circuit court orders:

31 (1) The release of the firearm or ammunition to the person from
32 whom it was seized or to the owner of the firearm or ammunition; or

33 (2) The destruction of the firearm or ammunition.

34 (h) A petition filed under this section is a distinct action not
35 related to an involuntary commitment under § 20-47-207 or § 20-64-815.

1 (i) A mental health professional making a good faith notification to
2 the prosecuting attorney under this section is immune from civil liability
3 for making the notification required by this section.

4 (j) To the extent applicable, the Arkansas Rules of Civil Procedure
5 govern a petition filed under this section.

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8 Referred by the Arkansas House of Representatives

9 Prepared by: BPG/VJF

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