

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 2136

By: Representative Hammer

For An Act To Be Entitled

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

Subtitle

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

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

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

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

(a) If a mental health professional duly licensed by the state diagnoses a person as having a mental illness, the mental health professional shall notify the prosecuting attorney for the county where the person resides of the diagnosis if the mental health professional reasonably believes that the person:

(1) Is an immediate danger to himself or herself or to other



persons; and

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

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

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

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

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

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

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

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

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

(A) Has a mental illness;

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

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

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

(2) If the circuit court makes the requisite findings under

subdivision (e)(1) of this section, the circuit court may:

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

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

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

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

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

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

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

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

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

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

(2) The destruction of the firearm or ammunition.

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

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

(j) To the extent applicable, the Arkansas Rules of Civil Procedure

govern a petition filed under this section.