

Stricken language would be deleted from and underlined language would be added to present law.

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

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.

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



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

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

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

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

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

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

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

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

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

(b)(1) Except as provided in subdivisions (b)(2) and (3) of this 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 ~~carry~~ 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.;

(N) Computer crimes against minors, § 5-27-601 et seq.;

(O) Abuse of adults, § 5-28-101 et seq.;

(P) Damage or destruction of property, § 5-38-101 et seq.;

(Q) Causing a catastrophe, § 5-38-202;

- (R) Arson, § 5-38-301;
- (S) Residential burglary, § 5-39-201;
- (T) Aggravated residential burglary, § 5-39-204;
- (U) Treason, § 5-51-201;
- (V) First degree escape, § 5-54-110, second degree escape, § 5-54-111, third degree escape, § 5-54-112, and permitting escape in the first degree, § 5-54-113;
- (W) Fleeing, § 5-54-125;
- (X) Killing or injuring animals used by law enforcement or search and rescue dogs, § 5-54-126;
- (Y) Terrorism, § 5-54-201 et seq.;
- (Z) Animals, § 5-62-101 et seq.;
- (AA) Trafficking a controlled substance, § 5-64-440;
- (BB) Aggravated riot, § 5-71-202;
- (CC) Stalking, § 5-71-229;
- (DD) Weapons, § 5-73-101 et seq.;
- (EE) The Arkansas Criminal Gang, Organization, or Enterprise Act, § 5-74-101 et seq.;
- (FF) A felony that requires a person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;
- (GG) A serious felony involving violence as defined in § 5-4-501(c)(2) or a felony involving violence as defined in § 5-4-501(d)(2);
- (HH) An attempt, solicitation, or conspiracy to commit any of the felonies listed in subdivisions (a)(1)-(33) of this section, if the attempt, solicitation, or conspiracy itself is a felony; or
- (II) A felony traffic offense committed in any type of motor vehicle if the person was a holder of a commercial learner's permit or commercial driver's license at the time the felony traffic offense was committed."
- (2) If an order of protection was entered in a proceeding against the person filing a uniform petition under this section and the order of protection remains in effect at the time of the uniform petition, the person is not eligible to file a uniform petition under this section.
- (b) A uniform petition under this section shall include a statement verified under oath indicating whether the person has felony charges pending

in any state or federal court and the status of the pending felony charges, whether the person is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and whether the person is currently subject to an order of protection in this state or a similar order in any other state.

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

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

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

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

(a) Address or phone number; or

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

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

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

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

(i) A conviction for a nonviolent offense; and

(ii) The result of a plea bargain.

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

(i) Whether the person appears likely to reoffend;

(ii) The person's other criminal history;

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

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

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

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

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

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

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

/s/V. Flowers