

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1797

By: Representative McCullough

By: Senator G. Leding

For An Act To Be Entitled

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

Subtitle

TO CREATE THE "ARKANSAS RED FLAG LAW";
AND TO CREATE AN EXTREME RISK PROTECTION
ORDER AND WARRANT.

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

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

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

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

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

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

(2) Conduct by another person that the reporting person alleges should be investigated under the Arkansas Red Flag Law, § 12-15-401 et seq., knowing that the report to the law enforcement agency or prosecuting



attorney's office is false.

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

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

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

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

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

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

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

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

SECTION 2. Arkansas Code § 5-73-103 is amended to read as follows:
5-73-103. Possession of firearms by certain persons.

(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 by 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 ~~has been~~:

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

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

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

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

(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 or sealed 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.

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

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

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

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

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

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

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

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

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

(e) As used in this section, "felony" means any state or federal felony, excluding a federal or state felony offense for which the person convicted has completed his or her sentence and pertaining to:

(1) An antitrust violation;

(2) An unfair trade practice;
(3) Restraint of trade; or
(4) Another offense relating to the regulation of business practices.

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

Subchapter 4 – Arkansas Red Flag Law

12-15-401. Title.

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

12-15-402. Legislative intent.

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

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

12-15-403. Sworn affidavit required.

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

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

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

(b) The certified law enforcement officers shall not swear under oath by affidavit unless the certified law enforcement officers have conducted an

independent investigation and have determined that probable cause exists as described in subsection (a) of this section and that there is no reasonable alternative available to prevent the person from causing imminent personal injury with a firearm to himself, herself, or to another person.

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

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

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

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

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

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

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

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

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

(c) Before the execution and return of an emergency risk protection order and warrant issued under this subchapter, the clerk of the district court or circuit court, as applicable, shall not disclose any information pertaining to the application for the emergency risk protection order and warrant or any affidavits upon which the emergency risk protection order and warrant are based.

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

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

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

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

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

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

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

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

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

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

(d)(1) If the district court judge or circuit court judge is satisfied that grounds for the emergency risk protection order and warrant under this subchapter exist or that there is probable cause to believe that the grounds exist, the district court judge or circuit court judge shall issue an emergency risk protection order and warrant naming or describing the person,

place, or thing to be searched, and what thing or things shall be seized or otherwise taken into custody.

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

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

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

- (1) Be directed to any certified law enforcement officer;
- (2) State the grounds or probable cause for issuance of the emergency risk protection order and warrant;
- (3) Command the certified law enforcement officer to immediately search the person, place, or thing named in the emergency risk protection order and warrant for any firearm; and
- (4) Order the certified law enforcement officer to take any firearm located or discovered into the certified law enforcement officer's custody.

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

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

12-15-408. Hearing required.

(a)(1)(A) No later than three (3) days after the execution of an emergency risk protection order and warrant issued under this subchapter, a court with jurisdiction shall hold a hearing to determine whether any firearm taken into custody should be returned to the person named in the emergency risk protection order and warrant or should continue to be held by the state.

(B) The period of three (3) days under subdivision

(a)(1)(A) of this section does not include a Saturday, Sunday, or holiday.

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

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

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

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

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

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

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

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

(B) The person from whom the firearm was taken into custody may petition the court for the return of the firearm before the one-

year period of time has elapsed under § 12-15-410.

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

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

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

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

12-15-409. Transfer of firearm permitted.

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

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

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

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

(4) May lawfully possess the firearm.

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

(c) Upon notification in writing to the law enforcement agency, state agency, court, or other entity holding the firearm taken into custody by the person or the person's legal representative and the eligible person to whom

ownership of the firearm was transferred, the law enforcement agency, state agency, court, or other entity holding the firearm taken into custody shall deliver within ten (10) days the firearm to the eligible person to whom ownership of the firearm was transferred.

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

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

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

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

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

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

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

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

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

(A) Is in custody or incarcerated for any reason or was arrested since an emergency risk protection order and warrant under this subchapter was issued against him or her for a felony offense or a misdemeanor offense involving the use of or threat of violence;

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

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

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

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

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

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

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

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

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

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

(2) Damages in a civil lawsuit under subdivision (b)(1) of this section are limited to attorney's fees, costs of litigation, and compensatory damages that result directly from the deprivation of the person's firearm.