

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

# A Bill

HOUSE BILL 2136

5 By: Representative Hammer  
6

## For An Act To Be Entitled

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

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17 TO CREATE A CIVIL ACTION FOR A SEARCH AND  
18 SEIZURE OF A FIREARM OR AMMUNITION OWNED  
19 OR POSSESSED BY A PERSON WHO HAS BEEN  
20 DIAGNOSED WITH A MENTAL ILLNESS AND WHO  
21 IS CONSIDERED AN IMMEDIATE DANGER TO  
22 HIMSELF OR HERSELF OR TO OTHERS.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 SECTION 1. Arkansas Code Title 16, Chapter 118, is amended to add a  
28 new section to read as follows:

29 16-118-109. Civil action for search and seizure of a firearm or  
30 ammunition owned by a person with a mental illness.

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

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



1 persons; and

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

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

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

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

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

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

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

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

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

31 (A) Has a mental illness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 govern a petition filed under this section.

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