

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 616

CONCERNING THE INTERROGATION OF A JUVENILE BY LAW ENFORCEMENT; AND CONCERNING
JUVENILE CONFESSIONS.

Amendment No. 1 to Senate Bill No. 616

Amend Senate Bill No. 616 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 9-27-317(a)(3), concerning the agreement of a parent, guardian, custodian, or counsel to a juvenile's waiver of the right to counsel, is amended to read as follows:

(3) The parent, guardian, custodian, Department of Human Services caseworker, or counsel for the juvenile has agreed with the juvenile's decision to waive the right to counsel.

SECTION 2. The introductory language of Arkansas Code § 9-27-317(b), concerning the court's acceptance of the agreement of a parent, guardian, custodian, or counsel to a juvenile's waiver of the right to counsel, is amended to read as follows:

(b) The agreement of the parent, guardian, custodian, Department of Human Services caseworker, or attorney counsel for the juvenile shall be accepted by the court only if the court finds:

SECTION 3. Arkansas Code § 9-27-317(c), concerning factors considered by the court in determining whether a juvenile's waiver of the right to counsel was made freely, voluntarily, and intelligently, is amended to read as follows:

(c) In determining whether a juvenile's waiver of the right to counsel at any stage of the proceeding was made freely, voluntarily, and intelligently, the court shall consider all the circumstances of the waiver, including:

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the

waiver;

(3) In cases in which the custodial parent, guardian, ~~or~~ Department of Human Services caseworker agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, ~~or~~ Department of Human Services caseworker understood the consequences of the waiver;



(4) Whether the juvenile and his or her custodial parent, guardian, ~~or~~ custodian, or Department of Human Services caseworker were informed of the alleged delinquent act;

(5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;

(6) Whether the juvenile and his or her custodial parent, guardian, ~~or custodian had been or~~ custodian, or Department of Human Services caseworker were advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights; and

(7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver.

SECTION 4. Arkansas Code § 9-27-317(g), concerning nonacceptance of a waiver of the right to counsel when a juvenile is in the custody of the Department of Human Services, is amended to read as follows:

(g) No waiver of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services of the Department of Human Services, regardless of whether the juvenile's case is transferred to the criminal division of circuit court.

SECTION 5. Arkansas Code § 9-27-317(h)(2)(A), concerning the appointment of counsel for a juvenile when a custodial parent, guardian, or custodian of the juvenile cannot be located or refuses to go to the place where the juvenile is held, is amended to read as follows:

(2)(A) When a custodial parent, guardian, ~~or~~ custodian, or Department of Human Services caseworker cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile.

SECTION 6. Arkansas Code § 9-27-318, concerning the filing of a motion to transfer a juvenile delinquency case to the criminal division of circuit court, is amended to add an additional subsection to read as follows:

(n)(1) If the parent, guardian, custodian, Department of Human Services caseworker, or counsel for a juvenile is not present and has not agreed with the juvenile's decision to waive the right to counsel, the juvenile's waiver of the right to counsel shall be valid only in the criminal division of circuit court if the waiver occurs after the juvenile is charged as an adult and is informed by the state that he or she is being charged as an adult.

(2) A juvenile's waiver of the right to counsel before the juvenile is charged as an adult is invalid if the juvenile's case is transferred to the criminal division of circuit court."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Bond
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Secretary