

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Second Extraordinary Session, 1994**  
4 **By: Representatives M. Wilson, D. Wood, and Beatty**

**Call Item II**  
**ACT 67 OF 1994**  
**HOUSE BILL 1005**

# **A Bill**

## **For An Act To Be Entitled**

8 "AN ACT TO AMEND ARKANSAS CODE § 9-27-317 PERTAINING TO  
9 WAIVER OF RIGHT TO COUNSEL BY JUVENILES; TO DECLARE AN  
10 EMERGENCY; AND FOR OTHER PURPOSES."

### **Subtitle**

13 "PERTAINING TO WAIVER OF RIGHT TO  
14 COUNSEL BY JUVENILES "

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

18 *SECTION 1. Arkansas Code Annotated § 9-27-317 is amended to read as*  
19 *follows:*

20 *"9-27-317. Waiver of right to counsel.*

21 *(a) Waiver of the right to counsel at a delinquency or Family in Need*  
22 *of Services (FINS) hearing shall be accepted only upon a finding by the court*  
23 *from clear and convincing evidence, after questioning the juvenile, that:*

24 *(1) The juvenile understands the full implications of the right*  
25 *to counsel;*

26 *(2) The juvenile freely, voluntarily, and intelligently wishes to*  
27 *waive the right to counsel; and*

28 *(3) The parent, guardian, custodian, or counsel for the juvenile*  
29 *has agreed with the juvenile\_s decision to waive the right to counsel.*

30 *(b) The agreement of the parent, guardian, custodian, or attorney shall*  
31 *be accepted by the court only if the court finds:*

32 *(1) That such person has freely, voluntarily, and intelligently*  
33 *made the decision to agree with the juvenile\_s waiver of the right to counsel;*

34 *(2) That such person has no interest adverse to the juvenile; and*

35 *(3) That such person has consulted with the juvenile in regard to*  
36 *the juvenile\_s waiver of the right to counsel.*

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

5                   (1) The juvenile\_s physical, mental, and emotional maturity;

6                   (2) Whether the juvenile understood the consequences of the  
7 waiver;

8                   (3) In cases in which the parent, guardian, or custodian agreed  
9 with the juvenile\_s waiver of the right to counsel, whether the parent,  
10 guardian, or custodian understood the consequences of the waiver;

11                   (4) Whether the juvenile and his parent, guardian, or custodian  
12 were informed of the alleged delinquent act;

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

15                   (6) Whether the juvenile and his parent, guardian, or custodian  
16 had been advised of the juvenile\_s right to remain silent and to the  
17 appointment of counsel and had waived such rights.

18           (d) No waiver of the right to counsel shall be accepted in any case in  
19 which the parent, guardian, or custodian has filed a petition against the  
20 juvenile, initiated the filing of a petition against the juvenile, or  
21 requested the removal of the juvenile from the home.

22           (e) No waiver of the right to counsel shall be accepted in any case  
23 where counsel was appointed due to the likelihood of the juvenile's commitment  
24 to an institution under § 9-27-316(d).

25           (f) All waivers of the right to counsel, except those made in the  
26 presence of the court pursuant to subsection (a) above, shall be in writing  
27 and signed by the juvenile.

28           (g) (1) Whenever a law enforcement officer has reasonable cause to  
29 believe that any juvenile found at or near the scene of a felony is a witness  
30 to the offense, he may stop that juvenile. After having identified himself,  
31 the officer must advise the juvenile of the purpose of the stopping and may  
32 then demand of him his name, address, and any information he may have  
33 regarding the offense. Such detention shall in all cases be reasonable and  
34 shall not exceed fifteen (15) minutes unless the juvenile shall refuse to give  
35 such information, in which case the juvenile, if detained further, shall

1 immediately be brought before any judicial officer or prosecuting attorney to  
2 be examined with reference to his name, address, or the information he may  
3 have regarding the offense.

4           (2) No law enforcement officer shall question a juvenile who has  
5 been taken into custody for a delinquent act or criminal offense if the  
6 juvenile has indicated in any manner that he does not wish to be questioned,  
7 that he wishes to speak with a parent or guardian or to have a parent or  
8 guardain present, or that he wishes to consult counsel before submitting to  
9 any questioning. Any waiver of the right to counsel by a juvenile shall  
10 conform to subsection (f) above."

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12           SECTION 2. All provisions of this act of a general and permanent nature  
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
14 Revision Commission shall incorporate the same in the Code.

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16           SECTION 3. If any provision of this act or the application thereof to  
17 any person or circumstance is held invalid, such invalidity shall not affect  
18 other provisions or applications of the act which can be given effect without  
19 the invalid provision or application, and to this end the provisions of this  
20 act are declared to be severable.

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22           SECTION 4. All laws and parts of laws in conflict with this act are  
23 hereby repealed.

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25           SECTION 5. EMERGENCY. It is hereby found and determined by the  
26 Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second  
27 Extraordinary Session of 1994 that the present law requiring the written  
28 agreement of a parent, guardian, or custodian before a juvenile taken into  
29 custody on an allegation of delinquency may waive counsel and make a statement  
30 severely hampers the ability of law enforcement officers to question detained  
31 juveniles. It is further found that confusion exists as to the authority of  
32 law enforcement officers to question juvenile witnesses without the prior  
33 approval of a parent, guardian, or custodian. Therefore, in order to  
34 immediately allow juveniles taken into custody to waive counsel and make a  
35 statement under the same standard as adult arrestees, and to clarify the

1 authority of law enforcement officers to take statements of juvenile  
2 witnesses, an emergency is hereby declared to exist and this act being  
3 necessary for the immediate preservation of the public peace, health, and  
4 safety, shall be in full force and effect from and after its passage and  
5 approval.

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/s/Rep. Mike Wilson, et al

APPROVED: 8-26-94

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