

As Engrossed: 8/17/94 8/24/94

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

Call Item 3
ACT 69 OF 1994
HOUSE BILL 1008

A Bill

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §9-27-309
9 REGARDING THE CONFIDENTIALITY OF JUVENILE RECORDS; TO
10 AMEND ARKANSAS CODE ANNOTATED §9-27-339 TO PROVIDE A LOWER
11 BURDEN OF PROOF BY THE STATE IN A JUVENILE PROBATION
12 REVOCATION PROCEEDING; TO AMEND ARKANSAS CODE ANNOTATED
13 §9-27-320 (a) AND (b) TO PROVIDE UNDER WHAT CIRCUMSTANCES
14 JUVENILES SHOULD BE FINGERPRINTED AND PHOTOGRAPHED AND TO
15 AUTHORIZE THE A.C.I.C. AND PROSECUTING ATTORNEYS TO HAVE
16 ACCESS TO FINGERPRINTS AND PHOTOGRAPHS; TO DECLARE AN
17 EMERGENCY; AND FOR OTHER PURPOSES."

Subtitle

19 "REGARDING THE CONFIDENTIALITY OF
20 JUVENILE RECORDS; TO PROVIDE A LOWER
21 BURDEN OF PROOF IN JUVENILE PROBATION
22 REVOCATION PROCEEDINGS; TO PERMIT
23 FINGERPRINTING AND PHOTOGRAPHS OF
24 JUVENILES UNDER CERTAIN CIRCUMSTANCES."

26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

28
29 *SECTION 1. Arkansas Code Annotated §9-27-309 is amended to read as*
30 *follows:*

31 *"9-27-309. Confidentiality of records.*

32 *(a) All records may be closed and confidential within the discretion of*
33 *the court, except:*

34 *(1) adoption records shall be closed and confidential as provided*
35 *in the Revised Uniform Adoption Act, as amended, §9-9-201 et seq.; and*

36 *(2) records of delinquency adjudications for which a juvenile*

0811941514.jjd097

1 could have been tried as an adult shall be made available to prosecuting
2 attorneys for use at sentencing if the juvenile is subsequently tried as an
3 adult or to determine if the juvenile should be tried as an adult.

4 (b) Records of delinquency adjudications for which a juvenile could
5 have been tried as an adult shall be kept for ten (10) years after the last
6 adjudication of delinquency or the date of a plea of guilty or nolo contendere
7 or finding of guilt as an adult. Thereafter they may be expunged. The court
8 may expunge other juvenile records at any time and shall expunge all the
9 records of a juvenile upon his twenty-first birthday, in other types of
10 delinquency, dependency-neglect, or families in need of services cases. For
11 purposes of this section, expunge means to destroy.

12 (c) Nothing in this section applies to or restricts the use or
13 publication of statistics, data, or other materials which summarize or refer
14 to any records, reports, statements, notes, or other information in the
15 aggregate and which do not refer to or disclose the identity of any juvenile
16 defendant in any proceeding when used only for the purpose of research and
17 study.

18 (d) Nothing in this subchapter shall preclude prosecuting attorneys or
19 the juvenile court from providing information, upon written request,
20 concerning the disposition of juveniles who have been adjudicated delinquent
21 to:

22 (1) the victim or his next of kin; or

23 (2) the school superintendent of the school district in which the
24 juvenile is currently enrolled.

25 (e) When a juvenile is adjudicated delinquent for an offense for which
26 he could have been charged as an adult or for unlawful possession of a
27 handgun, the prosecuting attorney shall notify the school superintendent of
28 the school district in which the juvenile is currently enrolled.

29 (f) Information provided pursuant to subsections (d) and (e) shall not
30 be released in violation of any state or federal law protecting the privacy of
31 the juvenile."

32

33 SECTION 2. Arkansas Code §9-27-339 is amended to read as follows:

34 "9-27-339. Probation - Revocation.

35 (a) After an adjudication of delinquency, the court may place a

1 juvenile on probation. The conditions of probation shall be given to the
2 juvenile in writing and explained to him and to his parent, guardian, or
3 custodian by the probation officer in the initial conference following the
4 disposition hearing.

5 (b) Any violation of a condition of probation may be reported to the
6 prosecuting attorney, who may initiate a petition in the court for revocation
7 of probation. A petition for revocation of probation shall contain specific
8 factual allegations constituting each violation of a condition of probation.

9 (c) The petition alleging violation of a condition of probation and
10 seeking revocation of probation shall be served upon the juvenile, his
11 attorney, and his parent, guardian, or custodian.

12 (d) A revocation hearing shall be set within a reasonable time after
13 the filing of the petition, or within fourteen (14) days if the juvenile has
14 been detained as a result of the filing of the petition for revocation.

15 (e) If the court finds by a preponderance of the evidence that the
16 juvenile violated the terms and conditions of probation, the court may:

17 (1) Extend probation;

18 (2) Impose additional conditions of probation;

19 (3) Make any disposition that could have been made at the time
20 probation was imposed; or

21 (4) Commit the juvenile to a juvenile detention facility for an
22 indeterminate period not to exceed ninety (90) days. The court may further
23 order that the juvenile be eligible for work release or to attend school or
24 other educational or vocational training.

25 (f) (1) Nonpayment of restitution, fines, or court costs may constitute
26 a violation of probation unless the juvenile shows that his default was not
27 attributable to a purposeful refusal to obey the sentence of the court or was
28 not due to a failure on his part to make a good faith effort to obtain the
29 funds required for payment.

30 (2) In determining whether to revoke probation, the court shall
31 consider the juvenile's employment status, earning ability, financial
32 resources, the willfulness of the juvenile's failure to pay, and any other
33 special circumstances that may have a bearing on the juvenile's ability to
34 pay.

35 (3) If the court determines that the default in payment of a fine,

1 costs or restitution is excusable under subsection (f) (1) of this section, the
2 court may enter an order allowing the juvenile additional time for payment,
3 reducing the amount of each installment, or revoking the fine, costs, or
4 restitution or unpaid portion thereof in whole or in part."

5

6 SECTION 3. Arkansas Code Annotated §9-27-320(a) and (b) are amended to
7 read as follows:

8 "(a) (1) When a juvenile is arrested for any offense which, if
9 committed by an adult, would constitute a felony, or a Class A misdemeanor
10 wherein violence or the use of a weapon was involved, the juvenile shall be
11 photographed and fingerprinted by the law enforcement agency.

12 (2) In the case of an allegation of delinquency, a juvenile shall
13 not be photographed or fingerprinted under this subchapter by any law
14 enforcement agency unless he has been taken into custody for the commission of
15 an offense which, if committed by an adult, would constitute a felony or a
16 Class A misdemeanor wherein violence or the use of a weapon was involved."

17 (b) (1) Copies of a juvenile's fingerprints and photograph shall be made
18 available only to other law enforcement agencies, the Arkansas Crime
19 Information Center, prosecuting attorneys, and the juvenile court.

20 (2) Photographs and fingerprints of juveniles adjudicated
21 delinquent for offenses for which they could have been tried as adults shall
22 be made available to prosecuting attorneys and circuit courts for use at
23 sentencing in subsequent adult criminal proceedings against those same
24 individuals."

25

26 SECTION 4. All provisions of this act of a general and permanent nature
27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
28 Revision Commission shall incorporate the same in the Code.

29

30 SECTION 5. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

35

1 SECTION 6. All laws and parts of laws in conflict with this act are
2 hereby repealed.

3

4 SECTION 7. EMERGENCY. It is hereby found and determined by the
5 Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second
6 Extraordinary Session of 1994 that serious criminal offenses committed by
7 juveniles have increased to an alarming level and that to deal effectively
8 with serious juvenile crime prosecuting attorneys have any urgent need to
9 learn of previous juvenile adjudications for which a juvenile could have been
10 charged as an adult, that records of serious juvenile offenses need to be
11 retained for an increased period of time, that school officials and victims
12 need to be allowed to have information concerning the disposition of juvenile
13 offenders, that the burden of proof necessary to revoke a juvenile
14 delinquent_s probation should be lessened and the court_s dispositional
15 alternatives upon revocation of parole broadened, and that the Arkansas Crime
16 Information Center needs immediate authority to maintain fingerprints and
17 other records of juvenile delinquency adjudications. Therefore, in order to
18 immediately accomplish the above-listed objectives, an emergency is hereby
19 declared to exist and this act being necessary for the immediate preservation
20 of the public peace, health, and safety, shall be in full force and effect
21 from and after its passage and approval.

22

/s/Rep. M. Wilson, et al

23

24

APPROVED: 8-26-94

25

26

27

28

29

30

31

32

33

34

35

As Engrossed: 8/17/94 8/24/94

HB 1008

1
2
3

0811941514.jjd097