

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 759 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: S3/19/09

A Bill

SENATE BILL 788

5 By: Senators H. Wilkins, Elliott, Steele  
6 By: Representatives Harrelson, L. Smith, Williams  
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9 **For An Act To Be Entitled**

10 *AN ACT TO AMEND THE JUVENILE CODE TO ALLOW A*  
11 *COURT TO CONSIDER WHETHER A CONFESSION OR WAIVER*  
12 *OF COUNSEL WAS RECORDED WHEN DETERMINING WHETHER*  
13 *THE CONFESSION OR WAIVER OF COUNSEL WAS MADE*  
14 *FREELY, VOLUNTARILY, AND INTELLIGENTLY; TO CODIFY*  
15 *THE CASE LAW REGARDING THE CIRCUMSTANCES A COURT*  
16 *MAY CONSIDER IN EVALUATING A CONFESSION OF A*  
17 *JUVENILE; AND FOR OTHER PURPOSES.*

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19 **Subtitle**

20 *TO AMEND THE JUVENILE CODE REGARDING*  
21 *JUDICIAL DETERMINATIONS OF WHETHER A*  
22 *CONFESSION OR WAIVER OF COUNSEL WAS MADE*  
23 *FREELY, VOLUNTARILY, AND INTELLIGENTLY.*  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 *SECTION 1. Arkansas Code Title 9, Chapter 27, Subchapter 3 is amended*  
29 *to add an additional section to read as follows:*

30 *9-27-363. Confessions.*

31 *In determining whether a juvenile's confession was voluntarily,*  
32 *knowingly, and intelligently made, the court shall consider all circumstances*  
33 *surrounding the confession, including without limitation the following:*

34 *(1) The juvenile's physical, mental, and emotional maturity;*

35 *(2) Whether the juvenile understood the consequences of the*



1 confession;

2 (3) In cases in which the custodial parent, guardian, or  
3 custodian agreed to the interrogation that led to the confession, whether the  
4 custodial parent, guardian, or custodian understood the consequences of the  
5 confession or has an interest in the matter that is adverse to the juvenile;

6 (4) Whether the juvenile and his or her custodial parent,  
7 guardian, or custodian were informed of the alleged delinquent act;

8 (5) Whether the confession was the result of any coercion,  
9 force, or inducement;

10 (6) Whether the juvenile and his or her custodial parent,  
11 guardian, or custodian had waived the right to counsel or been provided  
12 counsel; and

13 (7) Whether any of the following occurred:

14 (A) The oral, written, or sign language confession was  
15 electronically recorded in its entirety;

16 (B) The entire interrogation was electronically recorded;

17 (C) The audio or video recordings of the interrogation, if  
18 available, were used; and

19 (D) All of the voices on the recording are identified and  
20 the names of all persons present during the interrogation are identified.

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22 SECTION 2. Arkansas Code § 9-27-317(c), regarding a juvenile's waiver  
23 of counsel, is amended to add an additional subdivision to read as follows:

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

28 (1) The juvenile's physical, mental, and emotional maturity;

29 (2) Whether the juvenile understood the consequences of the  
30 waiver;

31 (3) In cases in which the custodial parent, guardian, or  
32 custodian agreed with the juvenile's waiver of the right to counsel, whether  
33 the parent, guardian, or custodian understood the consequences of the waiver;

34 (4) Whether the juvenile and his or her custodial parent,  
35 guardian, or custodian were informed of the alleged delinquent act;

36 (5) Whether the waiver of the right to counsel was the result of

1 any coercion, force, or inducement;

2 (6) Whether the juvenile and his or her custodial parent,  
3 guardian, or custodian had been advised of the juvenile's right to remain  
4 silent and to the appointment of counsel and had waived such rights; and

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

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/s/ H. Wilkins

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**APPROVED: 4/1/2009**

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