

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4
5 By: Senator H. Wilkins
6
7

A Bill

SENATE BILL 788

For An Act To Be Entitled

9 AN ACT TO AMEND THE JUVENILE CODE TO REQUIRE
10 AUDIO AND VIDEO RECORDINGS OF CUSTODIAL
11 INTERROGATIONS OF JUVENILES; AND FOR OTHER
12 PURPOSES.

Subtitle

15 TO AMEND THE JUVENILE CODE TO REQUIRE
16 AUDIO AND VIDEO RECORDINGS OF CUSTODIAL
17 INTERROGATIONS OF JUVENILES.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. 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 parent, guardian, or custodian agreed
32 with the juvenile's waiver of the right to counsel, whether the parent,
33 guardian, or custodian understood the consequences of the waiver;

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

5 (7)(A) An oral, written, or sign language statement of a
6 juvenile made during a custodial interrogation shall be presumed to be
7 inadmissible as evidence against a juvenile unless:

8 (i) The interrogation is electronically recorded in
9 its entirety, including audio or video recording when available;

10 (ii) The entire interrogation and the video or audio
11 recording are used when available; and

12 (iii) All voices on the recording are identified and
13 the names of all present during the interrogation are identified;

14 (B) The state may rebut the presumption of inadmissibility
15 by clear and convincing evidence that:

16 (i) The statement was spontaneous; or

17 (ii) The recording was not possible because of a
18 malfunctioning recording device.

19 (C) The requirements of subdivisions (c)(1)-(6) of this
20 section shall be satisfied even when the Miranda statement, the
21 interrogation, or other statements are recorded.

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23 SECTION 2. Arkansas Code § 9-27-317(i)(2)(A), regarding reasonable
24 cause for a law enforcement officer to take a juvenile into custody, is
25 amended to add an additional subdivision to read as follows:

26 (2)(A) A law enforcement officer who takes a juvenile into
27 custody for a delinquent or criminal offense shall advise the juvenile of his
28 or her Miranda rights in the juvenile's own language and the advice shall be
29 recorded as provided under subdivision (c)(7) of this section.