

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1756

5 By: Representative Clowney
6 By: Senator G. Leding
7

For An Act To Be Entitled

8
9 AN ACT CONCERNING THE WAIVER OF COUNSEL BY MINORS IN
10 CRIMINAL COURT; AND FOR OTHER PURPOSES.
11

Subtitle

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14 CONCERNING THE WAIVER OF COUNSEL BY
15 MINORS IN CRIMINAL COURT.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. DO NOT CODIFY. Legislative intent.

21 It is the intent of the General Assembly:

22 (1) That this act address the issue raised in State v. Griffin,
23 513 S.W.3d 828 (2017) concerning the admission of statements made by a minor
24 during the custodial interrogation of a minor;

25 (2) That this act address holdings in other cases that permit
26 protections safeguarding a minor to be overlooked during the custodial
27 interrogation of the minor and the prosecution of the minor;

28 (3) For minors to be treated differently from adults in the
29 criminal justice system as minors generally do not have the maturity level,
30 developed decision-making processes, or experience of adults; and

31 (4) That the protections afforded to minors in the criminal
32 justice system reflect the differences between minors and adults with regard
33 to maturity level, developed decision-making processes, and experience.
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35 SECTION 2. Arkansas Code § 9-27-317, concerning a waiver of right to
36 counsel by a juvenile, the detention of a juvenile, and the questioning of a



1 juvenile under the Arkansas Juvenile Code of 1989, is amended to add an
 2 additional subsection to read as follows:

3 (j) Subsections (a)-(h) of this section apply to a juvenile who:

4 (1) Is charged as an adult in the criminal division of circuit
 5 court;

6 (2) Could be charged as an adult because of his age and the type
 7 of criminal offense that he or she is alleged to have committed; or

8 (3) Is an alleged defendant in a case that is transferred to the
 9 criminal division of circuit court.

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 11 SECTION 3. Arkansas Code Title 16, Chapter 80, is amended to add an
 12 additional section to read as follows:

13 16-80-105. Waiver of right to counsel – Minors.

14 (a) As used in this section, "minor" means a person who is under
 15 eighteen (18) years of age.

16 (b) A waiver of the right to counsel by a minor against whom
 17 proceedings have been commenced in a court shall be accepted only upon a
 18 finding by the court from clear and convincing evidence, after questioning
 19 the minor, that:

20 (1) The minor understands the full implications of the right to
 21 counsel;

22 (2) The minor freely, voluntarily, and intelligently wishes to
 23 waive the right to counsel;

24 (3) Counsel for the minor has agreed with the minor's decision
 25 to waive the right to counsel; and

26 (4) The parent, guardian, or custodian of the minor has agreed
 27 with the minor's decision to waive the right to counsel.

28 (c)(1) The agreement of counsel under subdivision (b)(3) of this
 29 section and the agreement of the parent, guardian, custodian, of the minor
 30 under subdivision (b)(4) of this section shall be accepted by the court only
 31 if the court finds that counsel for the minor and the parent, guardian,
 32 custodian of the minor:

33 (A) Freely, voluntarily, and intelligently made the
 34 decision to agree with the minor's waiver of the right to counsel;

35 (B) Have no interest adverse to the minor; and

36 (C) Have consulted with the minor regarding the minor's

1 waiver of the right to counsel.

2 (2) If a minor waives the right to counsel, the court shall
 3 require counsel for the minor to remain as standby counsel if the minor
 4 changes his or her mind during any proceeding.

5 (d) In determining whether a minor's waiver of the right to counsel
 6 was made freely, voluntarily, and intelligently before the filing of a
 7 criminal charge or at any stage of the criminal proceeding, the court shall
 8 consider all the circumstances of the waiver, including:

9 (1) The minor's physical, mental, and emotional maturity;

10 (2) Whether the minor understood the consequences of the waiver;

11 (3) In cases in which the parent, guardian, or custodian of the
 12 minor agreed with the minor's waiver of the right to counsel, whether the
 13 parent, guardian, or custodian understood the consequences of the waiver;

14 (4) Whether the minor and his or her parent, guardian, or
 15 custodian were informed of the alleged criminal offense;

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

18 (6) Whether the minor and his or her parent, guardian, or
 19 custodian:

20 (A) Were advised of the minor's right to remain silent and
 21 to the appointment of counsel; and

22 (B) Waived the minor's right to remain silent and to the
 23 appointment of counsel; and

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

27 (e) A waiver of the right to counsel shall not be accepted if:

28 (1) The parent, guardian, or custodian has filed a criminal
 29 complaint against the minor, initiated the filing of a criminal complaint
 30 against the minor, or requested the removal of the minor from the home;

31 (2) Counsel was appointed due to the likelihood of the minor's
 32 commitment to an institution under § 9-27-316;

33 (3) The minor has been designated an extended juvenile
 34 jurisdiction offender; or

35 (4)(A) The minor is in the custody of the Department of Human
 36 Services, including the Division of Youth Services of the Department of Human

1 Services.

2 (B) If the minor is in the custody of the Department of
3 Human Services in a dependency-neglect case:

4 (i) Before the minor is questioned by law
5 enforcement, the prosecuting attorney shall notify the public defender who is
6 appointed to the minor in the dependency-neglect case that the minor will be
7 questioned by law enforcement; and

8 (ii) The public defender appointed to the minor in
9 the dependency-neglect case shall be present if law enforcement questions the
10 minor.

11 (f)(1) A waiver of the right to counsel, except those made in the
12 presence of the court pursuant to subsection (b) of this section, shall be in
13 writing and signed by the minor.

14 (2)(A) When a parent, guardian, or custodian of the minor cannot
15 be located or is located and refuses to go to the place where the minor is
16 being held, counsel shall be appointed for the minor.

17 (B) If a parent, guardian, or custodian of the minor
18 cannot be located or is located and refuses to go to the place where the
19 minor is being held as set out in subdivision (f)(2)(A) of this section, the
20 procedures shall then be the same as if the minor had invoked his or her
21 right to counsel.

22 (g)(1) A statement made by a minor to a law enforcement agency or a
23 person acting on behalf of a law enforcement agency is presumed to be
24 involuntary and inadmissible subject to the provisions of this section and
25 any other factors to be considered under the United States Constitution and
26 the Arkansas Constitution.

27 (2) The presumption of the statement of a minor as involuntary
28 and inadmissible may be overcome by clear and convincing evidence.

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