

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 788

"TO AMEND THE JUVENILE CODE TO REQUIRE AUDIO AND VIDEO RECORDINGS OF
CUSTODIAL INTERROGATIONS OF JUVENILES."

Amendment No. 1 to Senate Bill No. 788.

Amend Senate Bill No. 788 as originally introduced:

Add the following members of the Senate as cosponsors to the bill:

Senators Elliott, Steele

AND

Add the following members of the House of Representatives as cosponsors to the bill:

Representatives Harrelson, L. Smith, Williams

AND

Delete the title in its entirety and substitute:

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

AND

Delete the subtitle in its entirety and substitute:

"TO AMEND THE JUVENILE CODE REGARDING JUDICIAL DETERMINATIONS OF WHETHER A CONFESSION OR WAIVER OF COUNSEL WAS MADE FREELY, VOLUNTARILY, AND INTELLIGENTLY."

AND

Delete all language after the enacting clause and substitute:



"SECTION 1. Arkansas Code Title 9, Chapter 27, Subchapter 3 is amended to add an additional section to read as follows:

9-27-363. Confessions.

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

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the confession;
- (3) In cases in which the custodial parent, guardian, or custodian agreed to the interrogation that led to the confession, whether the custodial parent, guardian, or custodian understood the consequences of the confession or has an interest in the matter that is adverse to the juvenile;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the confession was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian had waived the right to counsel or been provided counsel; and
- (7) Whether any of the following occurred:
 - (A) The oral, written, or sign language confession was electronically recorded in its entirety;
 - (B) The entire interrogation was electronically recorded;
 - (C) The audio or video recordings of the interrogation, if available, were used; and
 - (D) All of the voices on the recording are identified and the names of all persons present during the interrogation are identified.

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

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

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the waiver;
- (3) In cases in which the custodial parent, guardian, or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, or custodian understood the consequences of the waiver;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights; and
- (7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator H. Wilkins

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Secretary