

*As Engrossed: 8/16/94 8/17/94 8/24/94*

1 State of Arkansas

Call Item No.4

2 79th General Assembly

# A Bill

3 Second Extraordinary Session, 1994

HOUSE BILL 1004

4 By: Representatives M. Wilson, Steele, Blair, Young, Fairchild and Pryor

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7

## For An Act To Be Entitled

8 "AN ACT TO ADD ARKANSAS CODE 5-73-129 TO PROVIDE FOR THE  
9 SEIZURE AND FORFEITURE OF FIREARMS UNLAWFULLY POSSESSED BY  
10 MINORS; TO AMEND ARKANSAS CODE 9-27-313 TO SPECIFY THE  
11 DISPOSITION OF ALLEGED JUVENILE DELINQUENTS TAKEN INTO  
12 CUSTODY BY POLICE; TO AMEND ARKANSAS CODE 9-27-336 TO  
13 PROVIDE THAT IN CERTAIN INSTANCES JUVENILES ALLEGED TO  
14 HAVE COMMITTED A DELINQUENT ACT AND WHO ARE AWAITING  
15 INITIAL APPEARANCE BEFORE A JUDGE MAY BE HELD IN AN ADULT  
16 JAIL OR LOCKUP FOR UP TO 48 HOURS; TO DECLARE AN  
17 EMERGENCY; AND FOR OTHER PURPOSES."

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## Subtitle

20 "TO PROVIDE FOR SEIZURE AND FORFEITURE  
21 OF FIREARMS UNLAWFULLY POSSESSED BY  
22 MINORS; TO SPECIFY DISPOSITION OF  
23 ALLEGED JUVENILE DELINQUENTS TAKEN INTO  
24 CUSTODY BY POLICE."

25

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

27

28 SECTION 1. Subchapter 1 of Chapter 73 of Title 5 of the Arkansas Code  
29 is amended by inserting an additional section at the end to read as follows:

30 "5-73-129. (a) Whenever a person under eighteen (18) years of age is  
31 unlawfully in possession of a firearm, the firearm shall be seized and, after  
32 an adjudication of delinquency or conviction, shall be subject to forfeiture.

33 (b) Whenever a felon or person under eighteen (18) years of age is  
34 unlawfully in possession of a firearm in a motor vehicle, the motor vehicle  
35 shall be subject to seizure and, after an adjudication of delinquency or

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1 conviction, be subject to forfeiture.

2           (c) As used herein, the term "unlawfully in possession of a firearm"  
3 shall not include any act of possession of a firearm which is prohibited only  
4 by: A.C.A. 15-43-214 [Unlawful to possess firearms while hunting deer or  
5 turkey by bow and arrow], 15-43-225 [Unlawful for guide for persons hunting  
6 migratory birds to carry gun], 15-43-317 [Unlawful to shoot fish with a gun],  
7 5-73-127 [Unlawful to possess loaded center-fire weapons in certain areas],  
8 or; by a regulation of the Arkansas Game and Fish Commission.

9           (d) The procedures for forfeiture and disposition of the seized  
10 property shall be as follows:

11                   (1) The prosecuting attorney of the judicial district within  
12 whose jurisdiction the property is seized which is sought to be forfeited  
13 shall promptly proceed against the property by filing in the circuit or the  
14 juvenile division of chancery court having jurisdiction of such person a  
15 petition for an order to show cause why the circuit or juvenile division of  
16 chancery court should not order forfeiture of such property.

17                   (2) The petition shall be verified and shall set forth:

18                           (A) A statement that the action is brought pursuant to this  
19 section;

20                           (B) The law enforcement agency bringing the action;

21                           (C) A description of the property sought to be forfeited;

22                           (D) A statement that on or about a date certain there was  
23 an adjudication of delinquency or conviction and a finding that the property  
24 seized is subject to forfeiture;

25                           (E) A statement detailing the facts in support of  
26 subsection (c) of this section; and

27                           (F) A list of all persons known to the law enforcement  
28 agency, after diligent search and inquiry, who may claim an ownership interest  
29 in the property by title or registration or by virtue of a lien allegedly  
30 perfected in the manner prescribed by law.

31           (e) (1) Upon receipt of a petition complying with the requirements of  
32 subsection (c) of this section, the judge of the circuit or juvenile division  
33 of chancery court having jurisdiction shall issue an order to show cause  
34 setting forth a statement that this subchapter is the controlling law.

35                   (2) In addition, the order shall set a date at least forty-one

1 (41) days from the date of first publication of the order pursuant to  
2 subsection (e) of this section for all persons claiming an interest in the  
3 property to file such pleadings as they desire as to why the circuit or  
4 juvenile division of chancery court should not order the forfeiture of such  
5 property to use, sell, or other disposition by the law enforcement agency  
6 seeking forfeiture of the property.

7 (3) The circuit or juvenile division of chancery court shall  
8 further order that all persons who do not appear on that date are deemed to  
9 have defaulted and waived any claim to the subject property.

10 (f) (1) The prosecuting attorney shall give notice of the forfeiture  
11 proceedings by:

12 (A) Causing to be published a copy of the order to show  
13 cause twice each week for two (2) consecutive weeks in a newspaper having  
14 general circulation in the county where the property is located with the last  
15 publication being not less than five (5) days before the show cause hearing;  
16 and

17 (B) Sending a copy of the petition and order to show cause  
18 by certified mail, return receipt requested, to each person having ownership  
19 of or a security interest in the property or in the manner provided in Rule 4  
20 of the Arkansas Rules of Civil Procedure, if:

21 (i) The property is of a type for which title or  
22 registration is required by law;

23 (ii) The owner of the property is known in fact to  
24 the law enforcement agency at the time of seizure; or

25 (iii) The property is subject to a security interest  
26 perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

27 (2) The law enforcement agency shall be obligated only to make  
28 diligent search and inquiry as to the owner of the property and if, after  
29 diligent search and inquiry, such agency is unable to ascertain the owner, the  
30 requirement of actual notice by mail with respect to persons having perfected  
31 security interests in the property shall not be applicable.

32 (g) At the hearing on the matter, the petitioner shall have the burden  
33 to establish that the property is subject to forfeiture by a preponderance of  
34 the evidence.

35 (1) In determining whether or not the motor vehicle should be

1 ordered forfeited, the circuit or juvenile division of chancery court may take  
2 into consideration the following factors:

3 (A) any prior criminal conviction or delinquency  
4 adjudication of the felon or juvenile;

5 (B) whether or not the firearm was used in connection with  
6 any other criminal acts;

7 (C) whether the vehicle was used in connection with any  
8 other criminal acts;

9 (D) whether the juvenile or felon was the lawful owner of  
10 the vehicle in question;

11 (E) if the juvenile or felon is not the lawful owner of  
12 the vehicle in question whether or not the lawful owner knew of the unlawful  
13 act being committed which gives rise to the forfeiture penalty; and

14 (F) any other factors the circuit or juvenile division of  
15 chancery court deems relevant.

16 (h) The final order of forfeiture by the circuit or juvenile division  
17 of chancery court shall perfect in the law enforcement agency right, title,  
18 and interest in and to such property and shall relate back to the date of the  
19 seizure.

20 (i) Physical seizure of property shall not be necessary in order to  
21 allege in a petition under this section that property is forfeitable.

22 (j) Upon filing the petition, the prosecuting attorney for the judicial  
23 district may also seek such protective orders as necessary to prevent the  
24 transfer, encumbrance, or other disposal of any property named in the  
25 petition.

26 (k) The law enforcement agency to which the property is forfeited shall:

27 (1) Destroy all forfeited firearms;

28 (2) Sell the motor vehicle in accordance with subsection (k) of  
29 this section; or

30 (3) If the motor vehicle is not subject to a lien which has been  
31 preserved by the circuit or juvenile division of chancery court, retain the  
32 motor vehicle for official use.

33 (l)(1) If a law enforcement agency desires to sell the forfeited motor  
34 vehicle, the law enforcement agency shall first cause notice of the sale to be  
35 made by publication at least twice a week for two (2) consecutive weeks in a

1 newspaper having general circulation in the county and sending a copy of the  
2 notice of the sale by certified mail, return receipt requested, to each person  
3 having ownership of or a security interest in the property or in the manner  
4 provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:

5 (A) The property is of a type for which title or  
6 registration is required by law;

7 (B) The owner of the property is known in fact to the law  
8 enforcement agency at the time of seizure; or

9 (C) The property is subject to a security interest  
10 perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

11 (2) The notice of the sale shall include the time, place, and  
12 conditions of the sale and a description of the property to be sold.

13 (3) The property shall then be disposed of at public auction to  
14 the highest bidder for cash without appraisal.

15 (m) The proceeds of any sale and any moneys forfeited shall be applied:

16 (1) To payment of the balance due on any lien preserved by the  
17 circuit or juvenile division of chancery court in the forfeiture proceedings;

18 (2) To payment of the cost incurred by the seizing agency in  
19 connection with the storage, maintenance, security, and forfeiture of the  
20 property;

21 (3) To payment of the costs incurred by the prosecuting attorney  
22 or attorney for the law enforcement agency approved by the prosecuting  
23 attorney to which the property is forfeited; and

24 (4) To payment of costs incurred by the circuit or juvenile  
25 division of chancery court.

26 (n) The remaining proceeds or moneys shall be deposited into a special  
27 county fund to be titled The Juvenile Crime Prevention Fund and the moneys  
28 in that fund shall be used solely for making grants to community-based  
29 non-profit organizations which work with juvenile crime prevention and  
30 rehabilitation.

31

32 SECTION 2. Subsection (d) of Arkansas Code 9-27-313 is amended to read  
33 as follows:

34 "(d) (1) If a juvenile is taken into custody for unlawful possession of  
35 a handgun (ACA 5-73-119), possession of a handgun on school property (ACA 5-

1 73-119), unlawful discharge of a firearm from a vehicle (ACA 5-74-107), or any  
2 felony committed while armed with a firearm, or criminal use of a prohibited  
3 weapon (ACA 5-73-104), the law enforcement officer shall take the juvenile to  
4 detention and shall notify the juvenile court intake officer and prosecuting  
5 attorney within twenty-four (24) hours so that a petition may be filed. The  
6 authority of a juvenile intake officer to make a detention decision pursuant  
7 to § 9-27-322 shall not apply when a juvenile is detained pursuant to this  
8 subdivision (d)(1). A detention hearing shall be held by the court pursuant  
9 to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into  
10 custody or, if the seventy-two (72) hours ends on a Saturday, Sunday or  
11 holiday, on the next business day.

12 (2) If a juvenile is taken into custody for an act that would be  
13 a felony if committed by an adult, other than a felony listed in (d)(1) above,  
14 the law enforcement officer may:

15 (i) take the juvenile to detention. The intake officer  
16 shall be notified immediately to make a detention decision pursuant to § 9-27-  
17 322 within twenty-four (24) hours of the time the juvenile was first taken  
18 into custody, and the prosecuting attorney shall be notified within twenty-  
19 four (24) hours. If the juvenile remains in detention, a detention hearing  
20 shall be held no later than seventy-two (72) hours after the juvenile is taken  
21 into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or  
22 holiday, on the next business day;

23 (ii) pursuant to the Arkansas Rules of Criminal Procedure  
24 issue a citation for the juvenile and his parents to appear for a first  
25 appearance before the juvenile court and release the juvenile, and within  
26 twenty-four (24) hours, notify the juvenile intake officer and prosecuting  
27 attorney so that a petition may be filed under this subchapter; or

28 (iii) return the juvenile to his home.

29 (3) If a juvenile is taken into custody for an act that would be  
30 a misdemeanor if committed by an adult, the law enforcement officer may:

31 (i) notify the juvenile intake officer who shall make a  
32 detention decision pursuant to § 9-27-322; or

33 (ii) pursuant to the Arkansas Rules of Criminal Procedure  
34 issue a citation for the juvenile and his parents to appear for a first  
35 appearance before the juvenile court and release the juvenile, and within

1 twenty-four (24) hours, notify the juvenile intake officer and prosecuting  
2 attorney so that a petition may be filed under this subchapter; or

3 (iii) return the juvenile to his home.

4 (4) In all instances when a juvenile may be detained, the  
5 juvenile may be held in a juvenile detention facility or a seventy-two (72)  
6 hour holdover, if a bed is available therein. If not, an adult jail or lockup  
7 may be used as provided by Arkansas Code Annotated 9-27-336.

8 (5) In all instances when a juvenile may be detained, the intake  
9 officer shall make reasonable efforts to notify the juvenile\_s parents,  
10 guardians, or custodians within twenty-four (24) hours."

11

12 SECTION 3. Arkansas Code 9-27-336 is amended to read as follows:

13 "9-27-336. Limitations on detention.

14 (a) A juvenile who is alleged to be or adjudicated either  
15 dependent-neglected or a member of a family in need of services shall not be  
16 placed or detained in a secure detention facility, in a facility utilized for  
17 the detention of alleged or adjudicated delinquent juveniles, or in a facility  
18 utilized for the detention of adults held for, charged with, or convicted of a  
19 crime.

20 (b) Except pursuant to subsection (d), a juvenile shall not be placed  
21 or confined in a jail or lock-up used for the detention of adults except under  
22 the following circumstances:

23 (1) A juvenile who has been formally transferred from juvenile  
24 court to circuit court and against whom felony charges have been filed or a  
25 juvenile for whom the prosecuting attorney has the discretion to charge in  
26 circuit court and to prosecute as an adult and the circuit court's  
27 jurisdiction has been invoked by the filing of felony charges may be held in  
28 an adult jail or lock-up;

29 (2) A juvenile alleged to have committed a delinquent act may be  
30 held in an adult jail or lock-up for up to six (6) hours for purposes of  
31 identification, processing, or arranging for release or transfer to an  
32 alternative facility, provided he is separated by sight and sound from adults  
33 who are pretrial detainees or convicted persons. A holding for those purposes  
34 shall be limited to the minimum time necessary and shall not include travel  
35 time for transporting the juvenile to the alternative facility; or

1           (3) A juvenile alleged to have committed a delinquent act who is  
2 awaiting an initial appearance before a judge may be held in an adult jail or  
3 lock-up for up to twenty-four (24) hours, excluding weekends and holidays,  
4 provided the following conditions exist:

5                   (A) The alleged act would be a misdemeanor or a felony if  
6 committed by an adult or a violation of Arkansas Code 5-73-119; and

7                   (B) The geographic area having jurisdiction over the  
8 juvenile is outside a metropolitan statistical area pursuant to the Bureau of  
9 Census' current designation; and

10                   (C) No acceptable alternative placement for the juvenile  
11 exists; and

12                   (D) The juvenile is separated by sight and sound from  
13 adults who are pretrial detainees or convicted persons.

14           (4) A juvenile awaiting an initial appearance and being held in  
15 an adult jail or lockup pursuant to the twenty-four (24) hour exception, as  
16 provided in (b)(3) above, may be held for an additional period, not to exceed  
17 twenty-four (24) hours, provided the following conditions exist:

18                   (A) Conditions of distance to be traveled or the lack of  
19 highway, road, or other ground transportation do not allow for court  
20 appearances within twenty-four (24) hours;

21                   (B) All conditions in (b)(3) exist; and

22                   (C) Criteria will be adopted by the Governor or his  
23 designee to establish what distance, highway or road conditions, or ground  
24 transportation limitations will provide a basis for holding a juvenile in an  
25 adult jail or lockup under this exception.

26           (c) Except as provided in subsection (d), nothing in this subchapter is  
27 intended to prohibit the use of juvenile detention facilities which are  
28 attached to or adjacent to adult jails or lock-ups, provided the facilities  
29 are designed and used in accordance with federal and state guidelines and  
30 restrictions.

31           (d) Provided, however, upon petition by the quorum court of any county,  
32 the governor may waive the requirements of subsections (b) and (c) above and  
33 any other provision of state law, state jailing standards and state  
34 regulations limiting the detention of juveniles in adult facilities subject to  
35 the following restrictions:



1 (i) the authority to grant such waiver will expire on March 31,  
2 1997; and

3 (ii) such waivers may be granted only for periods of up to six  
4 (6) months, but may be renewed for successive six (6) month periods, provided  
5 all such waivers shall expire on March 31, 1997; and

6 (iii) such waivers shall be available only if a county:

7 (A) is making a good faith effort to provide a juvenile  
8 detention facility that otherwise complies with state law and regulations for  
9 detaining juveniles in a juvenile detention facility and has entered into a  
10 written agreement with another county or counties for that specific purpose;  
11 or

12 (B) has a juvenile detention facility located in that  
13 county, but certifies that no further bed capacity is available or will be  
14 available within a reasonable period of time and certifies that the county  
15 will increase the bed capacity of its facility by March 31, 1997; and

16 (iv) such waivers shall not permit detaining juveniles in the  
17 same cell or within physical reach of adults who are pretrial detainees or  
18 convicted persons."

19

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

23

24 SECTION 5. If any provision of this act or the application thereof to  
25 any person or circumstance is held invalid, such invalidity shall not affect  
26 other provisions or applications of the act which can be given effect without  
27 the invalid provision or application, and to this end the provisions of this  
28 act are declared to be severable.

29

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

32

33 SECTION 7. EMERGENCY. It is hereby found and determined by the  
34 Seventy-Ninth General Assembly of the State of Arkansas, meeting in the Second  
35 Extraordinary Session of 1994, that a serious shortage of juvenile detention

1 facilities exists and that there is an urgent need to provide for a longer  
2 permissible period during which a juvenile may be held in an adult jail; that  
3 in order to enable counties to detain larger numbers of juveniles during the  
4 time necessary for such counties to construct additional juvenile detention  
5 facilities, the Governor needs authority to grant temporary waivers of certain  
6 restrictions on the manner of detaining juveniles; that possession of handguns  
7 and other unlawful weapons by juveniles is widespread and such possession  
8 contributes greatly to the incidence of violent crimes committed by juveniles;  
9 that serious measures are needed to remove handguns and other unlawful weapons  
10 from the hands of juveniles and to stop such possession; and that the  
11 authority of law enforcement officers to take juveniles into custody needs to  
12 be clarified. Therefore, in order to extend the time juveniles may be held in  
13 an adult jail; to invest the Governor with authority to grant temporary  
14 waivers of certain restrictions on the detention of juveniles; to immediately  
15 authorize the seizure, forfeiture, and destruction of unlawful weapons  
16 possessed by juveniles; to authorize the seizure and forfeiture of any vehicle  
17 in which a minor unlawfully possesses a weapon; to require detention of any  
18 juvenile who possesses a handgun or machine gun; and to clarify the authority  
19 of law enforcement officers to take juveniles into custody, an emergency is  
20 hereby declared to exist, and this act being immediately necessary for the  
21 preservation of the public peace, health, and safety shall be in full force  
22 and effect from and after its passage and approval.

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/s/Rep. M. Wilson, et al

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