

1 **State of Arkansas**

Call Item 11

2 **79th General Assembly**

A Bill

3 **Second Extraordinary Session, 1994**

HOUSE BILL 1005

4 **By: Representatives M. Wilson, D. Wood, and Beatty**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 9-27-317 PERTAINING TO
9 WAIVER OF RIGHT TO COUNSEL BY JUVENILES; TO DECLARE AN
10 EMERGENCY; AND FOR OTHER PURPOSES."

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Subtitle

13 "PERTAINING TO WAIVER OF RIGHT TO
14 COUNSEL BY JUVENILES "

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

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18 *SECTION 1. Arkansas Code Annotated § 9-27-317 is amended to read as*
19 *follows:*

20 *"9-27-317. Waiver of right to counsel.*

21 *(a) Waiver of the right to counsel at a delinquency or Family in Need*
22 *of Services (FINS) hearing shall be accepted only upon a finding by the court*
23 *from clear and convincing evidence, after questioning the juvenile, that:*

24 *(1) The juvenile understands the full implications of the right*
25 *to counsel;*

26 *(2) The juvenile freely, voluntarily, and intelligently wishes to*
27 *waive the right to counsel; and*

28 *(3) The parent, guardian, custodian, or counsel for the juvenile*
29 *has agreed with the juvenile_s decision to waive the right to counsel.*

30 *(b) The agreement of the parent, guardian, custodian, or attorney shall*
31 *be accepted by the court only if the court finds:*

32 *(1) That such person has freely, voluntarily, and intelligently*
33 *made the decision to agree with the juvenile_s waiver of the right to counsel;*

34 *(2) That such person has no interest adverse to the juvenile; and*

35 *(3) That such person has consulted with the juvenile in regard to*

1 the juvenile_s waiver of the right to counsel.

2 (c) In determining whether a juvenile_s waiver of the right to counsel
3 at any stage of the proceeding was made freely, voluntarily, and
4 intelligently, the court shall consider all the circumstances of the waiver,
5 including:

6 (1) The juvenile_s physical, mental, and emotional maturity;

7 (2) Whether the juvenile understood the consequences of the
8 waiver;

9 (3) In cases in which the parent, guardian, or custodian agreed
10 with the juvenile_s waiver of the right to counsel, whether the parent,
11 guardian, or custodian understood the consequences of the waiver;

12 (4) Whether the juvenile and his parent, guardian, or custodian
13 were informed of the alleged delinquent act;

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

16 (6) Whether the juvenile and his parent, guardian, or custodian
17 had been advised of the juvenile_s right to remain silent and to the
18 appointment of counsel and had waived such rights.

19 (d) No waiver of the right to counsel shall be accepted in any case in
20 which the parent, guardian, or custodian has filed a petition against the
21 juvenile, initiated the filing of a petition against the juvenile, or
22 requested the removal of the juvenile from the home.

23 (e) No waiver of the right to counsel shall be accepted in any case
24 where counsel was appointed due to the likelihood of the juvenile's commitment
25 to an institution under § 9-27-316(d).

26 (f) All waivers of the right to counsel, except those made in the
27 presence of the court pursuant to subsection (a) above, shall be in writing
28 and signed by the juvenile.

29 (g) (1) Whenever a law enforcement officer has reasonable cause to
30 believe that any juvenile found at or near the scene of a felony is a witness
31 to the offense, he may stop that juvenile. After having identified himself,
32 the officer must advise the juvenile of the purpose of the stopping and may
33 then demand of him his name, address, and any information he may have
34 regarding the offense. Such detention shall in all cases be reasonable and
35 shall not exceed fifteen (15) minutes unless the juvenile shall refuse to give

1 such information, in which case the juvenile, if detained further, shall
2 immediately be brought before any judicial officer or prosecuting attorney to
3 be examined with reference to his name, address, or the information he may
4 have regarding the offense.

5 (2) No law enforcement officer shall question a juvenile who has
6 been taken into custody for a delinquent act or criminal offense if the
7 juvenile has indicated in any manner that he does not wish to be questioned,
8 that he wishes to speak with a parent or guardian or to have a parent or
9 guardain present, or that he wishes to consult counsel before submitting to
10 any questioning. Any waiver of the right to counsel by a juvenile shall
11 conform to subsection (f) above."
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13 SECTION 2. All provisions of this act of a general and permanent nature
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
15 Revision Commission shall incorporate the same in the Code.
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17 SECTION 3. If any provision of this act or the application thereof to
18 any person or circumstance is held invalid, such invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provision or application, and to this end the provisions of this
21 act are declared to be severable.
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23 SECTION 4. All laws and parts of laws in conflict with this act are
24 hereby repealed.
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26 SECTION 5. EMERGENCY. It is hereby found and determined by the
27 Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second
28 Extraordinary Session of 1994 that the present law requiring the written
29 agreement of a parent, guardian, or custodian before a juvenile taken into
30 custody on an allegation of delinquency may waive counsel and make a statement
31 severely hampers the ability of law enforcement officers to question detained
32 juveniles. It is further found that confusion exists as to the authority of
33 law enforcement officers to question juvenile witnesses without the prior
34 approval of a parent, guardian, or custodian. Therefore, in order to
35 immediately allow juveniles taken into custody to waive counsel and make a

1 statement under the same standard as adult arrestees, and to clarify the
2 authority of law enforcement officers to take statements of juvenile
3 witnesses, an emergency is hereby declared to exist and this act being
4 necessary for the immediate preservation of the public peace, health, and
5 safety, shall be in full force and effect from and after its passage and
6 approval.

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/s/Rep. Mike Wilson, et al

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