

1 **State of Arkansas**

Call Item 3

2 **79th General Assembly**

A Bill

3 **Second Extraordinary Session, 1994**

HOUSE BILL 1008

4 **By: Representatives M. Wilson, Shaver, Molinaro, and Blair**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §9-27-309
9 REGARDING THE CONFIDENTIALITY OF JUVENILE RECORDS; TO
10 AMEND ARKANSAS CODE ANNOTATED §9-27-339 TO PROVIDE A LOWER
11 BURDEN OF PROOF BY THE STATE IN A JUVENILE PROBATION
12 REVOCATION PROCEEDING; TO AMEND ARKANSAS CODE ANNOTATED
13 §9-27-320 (a) AND (b) TO PROVIDE UNDER WHAT CIRCUMSTANCES
14 JUVENILES SHOULD BE FINGERPRINTED AND PHOTOGRAPHED AND TO
15 AUTHORIZE THE A.C.I.C. AND PROSECUTING ATTORNEYS TO HAVE
16 ACCESS TO FINGERPRINTS AND PHOTOGRAPHS; TO DECLARE AN
17 EMERGENCY; AND FOR OTHER PURPOSES."

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Subtitle

20 "REGARDING THE CONFIDENTIALITY OF
21 JUVENILE RECORDS; TO PROVIDE A LOWER
22 BURDEN OF PROOF IN JUVENILE PROBATION
23 REVOCATION PROCEEDINGS; TO PERMIT
24 FINGERPRINTING AND PHOTOGRAPHS OF
25 JUVENILES UNDER CERTAIN CIRCUMSTANCES."

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

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29 *SECTION 1. Arkansas Code Annotated §9-27-309 is amended to read as*
30 *follows:*

31 *"9-27-309. Confidentiality of records.*

32 *(a) All records may be closed and confidential within the discretion of*
33 *the court, except:*

34 *(1) adoption records shall be closed and confidential as provided*
35 *in the Revised Uniform Adoption Act, as amended, §9-9-201 et seq.; and*

1 (2) records of delinquency adjudications for which a juvenile
2 could have been tried as an adult shall be made available to prosecuting
3 attorneys for use at sentencing if the juvenile is subsequently tried as an
4 adult or to determine if the juvenile should be tried as an adult.

5 (b) Records of delinquency adjudications for which a juvenile could
6 have been tried as an adult shall be kept for ten (10) years after the last
7 adjudication of delinquency or the date of a plea of guilty or nolo contendere
8 or finding of guilt as an adult. Thereafter they may be expunged. The court
9 may expunge other juvenile records at any time and shall expunge all the
10 records of a juvenile upon his twenty-first birthday, in other types of
11 delinquency, dependency-neglect, or families in need of services cases. For
12 purposes of this section, expunge means to destroy.

13 (c) Nothing in this section applies to or restricts the use or
14 publication of statistics, data, or other materials which summarize or refer
15 to any records, reports, statements, notes, or other information in the
16 aggregate and which do not refer to or disclose the identity of any juvenile
17 defendant in any proceeding when used only for the purpose of research and
18 study.

19 (d) Nothing in this subchapter shall preclude prosecuting attorneys or
20 the juvenile court from providing information, upon written request,
21 concerning the disposition of juveniles who have been adjudicated delinquent
22 to:

23 (1) the victim or his next of kin; or

24 (2) the school superintendent of the school district in which the
25 juvenile is currently enrolled.

26 (e) When a juvenile is adjudicated delinquent for an offense for which
27 he could have been charged as an adult or for unlawful possession of a
28 handgun, the prosecuting attorney shall notify the school superintendent of
29 the school district in which the juvenile is currently enrolled.

30 (f) Information provided pursuant to subsections (d) and (e) shall not
31 be released in violation of any state or federal law protecting the privacy of
32 the juvenile."

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34 SECTION 2. Arkansas Code §9-27-339 is amended to read as follows:

35 "9-27-339. Probation - Revocation.

1 (a) After an adjudication of delinquency, the court may place a
2 juvenile on probation. The conditions of probation shall be given to the
3 juvenile in writing and explained to him and to his parent, guardian, or
4 custodian by the probation officer in the initial conference following the
5 disposition hearing.

6 (b) Any violation of a condition of probation may be reported to the
7 prosecuting attorney, who may initiate a petition in the court for revocation
8 of probation. A petition for revocation of probation shall contain specific
9 factual allegations constituting each violation of a condition of probation.

10 (c) The petition alleging violation of a condition of probation and
11 seeking revocation of probation shall be served upon the juvenile, his
12 attorney, and his parent, guardian, or custodian.

13 (d) A revocation hearing shall be set within a reasonable time after
14 the filing of the petition, or within fourteen (14) days if the juvenile has
15 been detained as a result of the filing of the petition for revocation.

16 (e) If the court finds by a preponderance of the evidence that the
17 juvenile violated the terms and conditions of probation, the court may:

18 (1) Extend probation;

19 (2) Impose additional conditions of probation;

20 (3) Make any disposition that could have been made at the time
21 probation was imposed; or

22 (4) Commit the juvenile to a juvenile detention facility for an
23 indeterminate period not to exceed ninety (90) days. The court may further
24 order that the juvenile be eligible for work release or to attend school or
25 other educational or vocational training.

26 (f) (1) Nonpayment of restitution, fines, or court costs may constitute
27 a violation of probation unless the juvenile shows that his default was not
28 attributable to a purposeful refusal to obey the sentence of the court or was
29 not due to a failure on his part to make a good faith effort to obtain the
30 funds required for payment.

31 (2) In determining whether to revoke probation, the court shall
32 consider the juvenile's employment status, earning ability, financial
33 resources, the willfulness of the juvenile's failure to pay, and any other
34 special circumstances that may have a bearing on the juvenile's ability to
35 pay.

1 (3) If the court determines that the default in payment of a fine,
2 costs or restitution is excusable under subsection (f)(1) of this section, the
3 court may enter an order allowing the juvenile additional time for payment,
4 reducing the amount of each installment, or revoking the fine, costs, or
5 restitution or unpaid portion thereof in whole or in part."
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7 SECTION 3. Arkansas Code Annotated §9-27-320(a) and (b) are amended to
8 read as follows:

9 "(a) (1) When a juvenile is arrested for any offense which, if
10 committed by an adult, would constitute a felony, or a Class A misdemeanor
11 wherein violence or the use of a weapon was involved, the juvenile shall be
12 photographed and fingerprinted by the law enforcement agency.

13 (2) In the case of an allegation of delinquency, a juvenile shall
14 not be photographed or fingerprinted under this subchapter by any law
15 enforcement agency unless he has been taken into custody for the commission of
16 an offense which, if committed by an adult, would constitute a felony or a
17 Class A misdemeanor wherein violence or the use of a weapon was involved."

18 (b)(1) Copies of a juvenile's fingerprints and photograph shall be made
19 available only to other law enforcement agencies, the Arkansas Crime
20 Information Center, prosecuting attorneys, and the juvenile court.

21 (2) Photographs and fingerprints of juveniles adjudicated
22 delinquent for offenses for which they could have been tried as adults shall
23 be made available to prosecuting attorneys and circuit courts for use at
24 sentencing in subsequent adult criminal proceedings against those same
25 individuals."
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27 SECTION 4. All provisions of this act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.
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31 SECTION 5. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

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

SECTION 7. EMERGENCY. It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that serious criminal offenses committed by juveniles have increased to an alarming level and that to deal effectively with serious juvenile crime prosecuting attorneys have any urgent need to learn of previous juvenile adjudications for which a juvenile could have been charged as an adult, that records of serious juvenile offenses need to be retained for an increased period of time, that school officials and victims need to be allowed to have information concerning the disposition of juvenile offenders, that the burden of proof necessary to revoke a juvenile delinquent_s probation should be lessened and the court_s dispositional alternatives upon revocation of parole broadened, and that the Arkansas Crime Information Center needs immediate authority to maintain fingerprints and other records of juvenile delinquency adjudications. Therefore, in order to immediately accomplish the above-listed objectives, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

/s/Rep. M. Wilson, et al

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

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