

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

As Engrossed: S3/19/09

A Bill

SENATE BILL 788

4
5 By: Senators H. Wilkins, Elliott, Steele
6 By: Representatives Harrelson, L. Smith, Williams

For An Act To Be Entitled

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9
10 AN ACT TO AMEND THE JUVENILE CODE TO ALLOW A
11 COURT TO CONSIDER WHETHER A CONFESSION OR WAIVER
12 OF COUNSEL WAS RECORDED WHEN DETERMINING WHETHER
13 THE CONFESSION OR WAIVER OF COUNSEL WAS MADE
14 FREELY, VOLUNTARILY, AND INTELLIGENTLY; TO CODIFY
15 THE CASE LAW REGARDING THE CIRCUMSTANCES A COURT
16 MAY CONSIDER IN EVALUATING A CONFESSION OF A
17 JUVENILE; AND FOR OTHER PURPOSES.

Subtitle

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

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25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

30 9-27-363. Confessions.

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

34 (1) The juvenile's physical, mental, and emotional maturity;

35 (2) Whether the juvenile understood the consequences of the
36 confession;



1 (3) In cases in which the custodial parent, guardian, or
2 custodian agreed to the interrogation that led to the confession, whether the
3 custodial parent, guardian, or custodian understood the consequences of the
4 confession or has an interest in the matter that is adverse to the juvenile;

5 (4) Whether the juvenile and his or her custodial parent,
6 guardian, or custodian were informed of the alleged delinquent act;

7 (5) Whether the confession was the result of any coercion,
8 force, or inducement;

9 (6) Whether the juvenile and his or her custodial parent,
10 guardian, or custodian had waived the right to counsel or been provided
11 counsel; and

12 (7) Whether any of the following occurred:

13 (A) The oral, written, or sign language confession was
14 electronically recorded in its entirety;

15 (B) The entire interrogation was electronically recorded;

16 (C) The audio or video recordings of the interrogation, if
17 available, were used; and

18 (D) All of the voices on the recording are identified and
19 the names of all persons present during the interrogation are identified.

20
21 SECTION 2. Arkansas Code § 9-27-317(c), regarding a juvenile's waiver
22 of counsel, is amended to add an additional subdivision to read as follows:

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

27 (1) The juvenile's physical, mental, and emotional maturity;

28 (2) Whether the juvenile understood the consequences of the
29 waiver;

30 (3) In cases in which the custodial parent, guardian, or
31 custodian agreed with the juvenile's waiver of the right to counsel, whether
32 the parent, guardian, or custodian understood the consequences of the waiver;

33 (4) Whether the juvenile and his or her custodial parent,
34 guardian, or custodian were informed of the alleged delinquent act;

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

