

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1756

By: Representative Clowney

By: Senator G. Leding

For An Act To Be Entitled

AN ACT CONCERNING THE WAIVER OF COUNSEL BY MINORS IN
CRIMINAL COURT; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE WAIVER OF COUNSEL BY
MINORS IN CRIMINAL COURT.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly:

(1) That this act address the issue raised in State v. Griffin, 513 S.W.3d 828 (2017) concerning the admission of statements made by a minor during the custodial interrogation of a minor;

(2) That this act address holdings in other cases that permit protections safeguarding a minor to be overlooked during the custodial interrogation of the minor and the prosecution of the minor;

(3) For minors to be treated differently from adults in the criminal justice system as minors generally do not have the maturity level, developed decision-making processes, or experience of adults; and

(4) That the protections afforded to minors in the criminal justice system reflect the differences between minors and adults with regard to maturity level, developed decision-making processes, and experience.

SECTION 2. Arkansas Code § 9-27-317, concerning a waiver of right to counsel by a juvenile, the detention of a juvenile, and the questioning of a



juvenile under the Arkansas Juvenile Code of 1989, is amended to add an additional subsection to read as follows:

(j) Subsections (a)-(h) of this section apply to a juvenile who:

(1) Is charged as an adult in the criminal division of circuit court;

(2) Could be charged as an adult because of his age and the type of criminal offense that he or she is alleged to have committed; or

(3) Is an alleged defendant in a case that is transferred to the criminal division of circuit court.

SECTION 3. Arkansas Code Title 16, Chapter 80, is amended to add an additional section to read as follows:

16-80-105. Waiver of right to counsel – Minors.

(a) As used in this section, "minor" means a person who is under eighteen (18) years of age.

(b) A waiver of the right to counsel by a minor against whom proceedings have been commenced in a court shall be accepted only upon a finding by the court from clear and convincing evidence, after questioning the minor, that:

(1) The minor understands the full implications of the right to counsel;

(2) The minor freely, voluntarily, and intelligently wishes to waive the right to counsel;

(3) Counsel for the minor has agreed with the minor's decision to waive the right to counsel; and

(4) The parent, guardian, or custodian of the minor has agreed with the minor's decision to waive the right to counsel.

(c)(1) The agreement of counsel under subdivision (b)(3) of this section and the agreement of the parent, guardian, custodian, of the minor under subdivision (b)(4) of this section shall be accepted by the court only if the court finds that counsel for the minor and the parent, guardian, custodian of the minor:

(A) Freely, voluntarily, and intelligently made the decision to agree with the minor's waiver of the right to counsel;

(B) Have no interest adverse to the minor; and

(C) Have consulted with the minor regarding the minor's

waiver of the right to counsel.

(2) If a minor waives the right to counsel, the court shall require counsel for the minor to remain as standby counsel if the minor changes his or her mind during any proceeding.

(d) In determining whether a minor's waiver of the right to counsel was made freely, voluntarily, and intelligently before the filing of a criminal charge or at any stage of the criminal proceeding, the court shall consider all the circumstances of the waiver, including:

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

(2) Whether the minor understood the consequences of the waiver;

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

(4) Whether the minor and his or her parent, guardian, or custodian were informed of the alleged criminal offense;

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

(6) Whether the minor and his or her parent, guardian, or custodian:

(A) Were advised of the minor's right to remain silent and to the appointment of counsel; and

(B) Waived the minor's right to remain silent and to the appointment of counsel; and

(7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver.

(e) A waiver of the right to counsel shall not be accepted if:

(1) The parent, guardian, or custodian has filed a criminal complaint against the minor, initiated the filing of a criminal complaint against the minor, or requested the removal of the minor from the home;

(2) Counsel was appointed due to the likelihood of the minor's commitment to an institution under § 9-27-316;

(3) The minor has been designated an extended juvenile jurisdiction offender; or

(4)(A) The minor is in the custody of the Department of Human Services, including the Division of Youth Services of the Department of Human

Services.

(B) If the minor is in the custody of the Department of Human Services in a dependency-neglect case:

(i) Before the minor is questioned by law enforcement, the prosecuting attorney shall notify the public defender who is appointed to the minor in the dependency-neglect case that the minor will be questioned by law enforcement; and

(ii) The public defender appointed to the minor in the dependency-neglect case shall be present if law enforcement questions the minor.

(f)(1) A waiver of the right to counsel, except those made in the presence of the court pursuant to subsection (b) of this section, shall be in writing and signed by the minor.

(2)(A) When a parent, guardian, or custodian of the minor cannot be located or is located and refuses to go to the place where the minor is being held, counsel shall be appointed for the minor.

(B) If a parent, guardian, or custodian of the minor cannot be located or is located and refuses to go to the place where the minor is being held as set out in subdivision (f)(2)(A) of this section, the procedures shall then be the same as if the minor had invoked his or her right to counsel.

(g)(1) A statement made by a minor to a law enforcement agency or a person acting on behalf of a law enforcement agency is presumed to be involuntary and inadmissible subject to the provisions of this section and any other factors to be considered under the United States Constitution and the Arkansas Constitution.

(2) The presumption of the statement of a minor as involuntary and inadmissible may be overcome by clear and convincing evidence.