

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 1033

"AN ACT TO REQUIRE PARENTAL CONSENT BEFORE PERFORMING AN ABORTION
ON A MINOR."

Amendment No. 2 to House Bill No. 1033.

Amend House Bill No. 1033 as engrossed, S2/8/05 (version: 02-08-2005 15:17):

Delete everything after the enacting clause and substitute the following:

“SECTION 1. Arkansas Code § 20-16-801 is amended to read as follows:
20-16-801. Notification Consent required.

~~No abortion operation shall be performed upon an unemancipated minor, or upon a woman for whom a guardian or custodian has been appointed because of a finding of incompetency, until at least forty eight (48) hours after written notice of the pending operation has been delivered in the manner, and subject to the exceptions, provided in this subchapter.~~

Except as otherwise provided in §§ 20-16-804 and 20-16-805, no person may perform an abortion upon an unemancipated minor, or upon a woman for whom a guardian or custodian has been appointed because of a finding of incompetency, unless the person or the person’s agent first obtains the written consent of either parent or the legal guardian or custodian.

SECTION 2 Arkansas Code § 20-16-802 is amended to read as follows:
20-16-802. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Abortion" shall mean the intentional termination of the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth or to remove a dead or dying fetus;

(2) “Medical emergency” means a condition that, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

~~(2)(3)~~ (3) "Minor" means an individual under the age of eighteen (18) years;

~~(3)(4)~~ (4) "Parent" shall mean ~~both parents~~ either parent of the pregnant woman if they are both living; one (1) parent of the pregnant woman if only one (1) is living or if the second one (1) cannot be located through reasonably diligent effort; or the court-appointed guardian or custodian if the pregnant woman has one; and



~~(4)~~(5) "Unemancipated minor" means a minor who is under the care, custody, and control of her parent or parents.

SECTION 3. Arkansas Code § 20-16-803 is amended to read as follows:
20-16-803. Manner of ~~notice~~ consent.

~~(a) Notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.~~

~~(b) In lieu of the delivery required by subsection (a) of this section, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent, with return receipt requested and delivery restricted to the addressee. Delivery shall be deemed to occur at twelve noon on the next day, subsequent to mailing, on which regular mail delivery takes place.~~

(a) The person who performs the abortion or his or her agent shall obtain or be provided with the written consent from either parent or legal guardian.

(b) The written consent shall include, but not be limited to, the following information:

(1) Name and birthdate of the minor or incompetent woman;

(2) Name of the parent or legal guardian;

(3) Statement from the parent or legal guardian that he or she is aware that the minor desires an abortion and that he or she does consent to the abortion;

(4) The date; and

(5) Notarized signature of the parent or legal guardian.

(c) A notarized signature is not required if the person who performs the abortion or his or her agent witnesses the signature of the parent or legal guardian and signs the written consent as a witness.

(d) Prior to signing the written consent as a witness, the person who performs the abortion or his or her agent shall obtain from the parent or legal guardian positive proof of identification in the form of a valid photo identification card.

(e) A photocopy of the proof of identification and the written consent statement shall be maintained in the minor's or incompetent woman's medical records for a period of five (5) years from the date of the abortion.

SECTION 4. Arkansas Code § 20-16-804 is amended to read as follows:
20-16-804. Judicial relief from requirement.

Notwithstanding the provisions of §§ 20-16-801 and 20-16-803, if a pregnant minor or incompetent woman elects not to ~~allow~~ obtain the ~~notification~~ consent of one (1) or both parents or guardian or custodian, then, in that event:

(1)(A) Any judge of a ~~probate~~ circuit court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if ~~said~~ the judge determines that the pregnant minor or incompetent woman is mature and capable of giving informed consent to the proposed abortion.

(B) If ~~said~~ the judge determines that the pregnant minor or incompetent woman is not mature, or if the pregnant woman does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without ~~notification~~ consent of her parents, guardian, or

custodian would be in her best interests and shall authorize a physician to perform the abortion without such ~~notification~~ consent if ~~said~~ the judge concludes that the pregnant minor or incompetent woman's best interests would be served thereby.

(2) Such a pregnant minor or incompetent woman may participate in proceedings in the court on her own behalf. However, the court shall advise her that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel.

~~(3) Proceedings in the court under this subchapter shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly~~ Court proceedings under this section shall be confidential and shall ensure the anonymity of the minor or incompetent person. All court proceedings under this section shall be sealed. The minor or incompetent person shall have the right to file her petition in the circuit court using a pseudonym or using solely her initials. All documents related to this petition shall be confidential and shall not be available to the public. These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly and without delay so as to serve the best interests of the pregnant minor or incompetent woman. The judge shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained, including the judge's own findings and conclusions.

(4) An expedited confidential appeal shall be available to any such pregnant minor or incompetent woman for whom the court denies an order authorizing an abortion without ~~notification~~ consent. An order authorizing an abortion without ~~notification~~ consent shall not be subject to appeal.

(5) No filing fees shall be required of any such pregnant minor or incompetent woman at either the trial or the appellate level.

SECTION 5. Arkansas Code § 20-16-805 is amended to read as follows:
20-16-805. Limitations on requirement.

~~Notification~~ Consent shall not be required under this subchapter if:

(1) The attending physician certifies in the pregnant minor or incompetent woman's medical record that ~~the abortion is necessary to prevent the woman's death~~ there is a medical emergency and there is insufficient time to ~~provide the required notice~~ obtain the required consent; or

~~(2) The abortion is authorized in writing by the person or persons who are entitled to notice; or~~

~~(3) A pregnant minor or incompetent woman declares that she is a victim of child abuse or neglect as defined in § 12-12-503, provided that a report of such abuse or neglect shall be made as provided in § 12-12-507.~~

(2) A judicial bypass is obtained under § 20-16-804.

SECTION 6. Arkansas Code § 20-16-806 is amended to read as follows:
20-16-806. Penalty.

(a) The performance of an abortion in violation of this subchapter shall be a Class A misdemeanor and shall be grounds for a civil action by a person ~~wrongfully denied notification~~ whose consent is required.

~~(b) A person shall not be held liable under this subchapter if:~~

~~(1) The person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that~~

~~the representations of the pregnant minor or incompetent woman regarding information necessary to comply with this subchapter were bona fide and true; or~~

~~(2) If the person attempted with reasonable diligence to deliver notice, but was unable to do so.~~

~~(e)(b) Nothing in this subchapter shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.~~

SECTION 7. Arkansas Code § 20-16-808 is amended to read as follows:
20-16-808. When ~~notification~~ consent of parent not required.

~~Notification Consent~~ under this subchapter shall not be required to be given to a parent obtained from a parent if:

(1) ~~The parent's~~ Both of the parents' whereabouts are unknown;
or

(2)(A) ~~The parent has not been in contact with the minor's custodial parent or the minor for at least one (1) year; or If the minor has only one (1) living parent and the minor states by affidavit that the parent has committed incest with the minor, has raped the minor, or has otherwise sexually abused the minor.~~

(B) The attending physician shall report the abuse as provided under § 12-12-504 and § 12-12-507.

~~(3) If the minor states by affidavit that the parent has committed incest with the minor or raped the minor or otherwise physically or sexually abused the minor.~~

SECTION 8. Arkansas Code Title 20, Chapter 16, Subchapter 8 is amended to add as a new section to read as follows:

20-16-809. When consent is not required.

A minor shall not be required to obtain consent under this subchapter if the guardianship or custody order has expired or is otherwise no longer in effect.

SECTION 9. Arkansas Code Title 20, Chapter 16, Subchapter 8 is amended to add an additional section to read as follows:

20-16-811. Additional information reported by abortion providers.

(a) In addition to other information reported by an abortion provider to the Department of Health, the following information shall be reported for each induced termination of pregnancy:

- (1) Whether parental consent was required;
- (2) Whether parental consent was obtained; and
- (3) Whether a judicial bypass was obtained.

(b) The Department of Health shall revise its forms utilized by abortion providers to report an induced termination of pregnancy by including the reporting of information required by this section.

SECTION 10. If any one (1) or more provision, section, subsection, subdivision, sentence, clause, phrase, or word in this act is temporarily or permanently restrained or enjoined by judicial order, the original provisions shall remain in force as though the law was never amended. However, if the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, this entire act shall have

full force and effect.”

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Critcher

JDF/CDS - 02-09-2005 10:02

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Secretary