

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.

Act 537 of the Regular Session

1 State of Arkansas As Enrolled: H1/26/05 H1/31/05 S2/8/05 S2/10/05

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1033

4

5 By: Representatives J. Hutchinson, Lamoureux, Rosenbaum, T. Hutchinson, Anderson, Borhauer, Boyd,

6 Bright, Cooper, D. Creekmore, Dickinson, Fite, Hardwick, Harris, Kenney, Key, Mack, Maloch, M.

7 Martin, Matayo, Medley, Norton, Pace, Ragland, Sample, Walters, Willis, *Petrus*

8 By: Senators Critcher, Womack, Altes, Baker, Bisbee, J. Bookout, Bryles, Capps, Faris, Glover,

9 Hendren, Holt, Horn, J. Jeffress, G. Jeffress, Lavery, J. Taylor, Trusty, Whitaker, Wooldridge

10

11

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For An Act To Be Entitled

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AN ACT TO REQUIRE PARENTAL CONSENT BEFORE

14

PERFORMING AN ABORTION ON A MINOR; AND FOR OTHER

15

PURPOSES.

16

17

Subtitle

18

AN ACT TO REQUIRE PARENTAL CONSENT

19

BEFORE PERFORMING AN ABORTION ON A

20

MINOR.

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22

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

24

25 SECTION 1. Arkansas Code § 20-16-801 is amended to read as follows:

26 20-16-801. Notification Consent required.

27 ~~No abortion operation shall be performed upon an unemancipated minor,~~

28 ~~or upon a woman for whom a guardian or custodian has been appointed because~~

29 ~~of a finding of incompetency, until at least forty eight (48) hours after~~

30 ~~written notice of the pending operation has been delivered in the manner, and~~

31 ~~subject to the exceptions, provided in this subchapter.~~

32 Except as otherwise provided in §§ 20-16-804 and 20-16-805, no person

33 may perform an abortion upon an unemancipated minor, or upon a woman for whom

34 a guardian or custodian has been appointed because of a finding of

35 incompetency, unless the person or the person's agent first obtains the



1 written consent of either parent or the legal guardian or custodian.

2  
3 SECTION 2 Arkansas Code § 20-16-802 is amended to read as follows:  
4 20-16-802. Definitions.

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

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

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

14 ~~(2)(3)~~ "Minor" means an individual under the age of eighteen  
15 (18) years;

16 ~~(3)(4)~~ "Parent" shall mean ~~both parents~~ either parent of the  
17 pregnant woman if they are both living; one (1) parent of the pregnant woman  
18 if only one (1) is living or if the second one (1) cannot be located through  
19 reasonably diligent effort; or the court-appointed guardian or custodian if  
20 the pregnant woman has one; and

21 ~~(4)(5)~~ "Unemancipated minor" means a minor who is under the  
22 care, custody, and control of her parent or parents.

23  
24 SECTION 3. Arkansas Code § 20-16-803 is amended to read as follows:  
25 20-16-803. Manner of ~~notice~~ consent.

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

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

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

1 guardian.

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

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

5 (2) Name of the parent or legal guardian;

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

9 (4) The date; and

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

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

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

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

21  
22 SECTION 4. Arkansas Code § 20-16-804 is amended to read as follows:

23 20-16-804. Judicial relief from requirement.

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

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

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

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

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

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

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

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

30  
31 SECTION 5. Arkansas Code § 20-16-805 is amended to read as follows:

32 20-16-805. Limitations on requirement.

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

34 (1) The attending physician certifies in the pregnant minor or  
35 incompetent woman's medical record that ~~the abortion is necessary to prevent~~  
36 ~~the woman's death~~ there is a medical emergency and there is insufficient time

1 to ~~provide the required notice~~ obtain the required consent; or

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

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

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

8  
9 SECTION 6. Arkansas Code § 20-16-806 is amended to read as follows:  
10 20-16-806. Penalty.

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

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

15 ~~(1) The person establishes by written evidence that the person~~  
16 ~~relied upon evidence sufficient to convince a careful and prudent person that~~  
17 ~~the representations of the pregnant minor or incompetent woman regarding~~  
18 ~~information necessary to comply with this subchapter were bona fide and true;~~  
19 ~~or~~

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

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

25  
26 SECTION 7. Arkansas Code § 20-16-808 is amended to read as follows:  
27 20-16-808. When ~~notification~~ consent of parent not required.

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

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

31 or

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

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

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

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

9                    20-16-809. When consent is not required.

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

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

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

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

20                   (1) Whether parental consent was required;

21                   (2) Whether parental consent was obtained; and

22                   (3) Whether a judicial bypass was obtained.

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

26  
27                   SECTION 10. If any one (1) or more provision, section, subsection,  
28 subdivision, sentence, clause, phrase, or word in this act is temporarily or  
29 permanently restrained or enjoined by judicial order, the original provisions  
30 shall remain in force as though the law was never amended. However, if the  
31 temporary or permanent restraining order or injunction is stayed or  
32 dissolved, or otherwise ceases to have effect, this entire act shall have  
33 full force and effect.

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35                   /s/ J. Hutchinson

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*APPROVED: 3/03/2005*