

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S2/13/17

A Bill

SENATE BILL 148

5 By: Senators G. Stubblefield, Hester, B. Johnson
6 By: Representatives C. Fite, Gates, Cozart, Gonzales, D. Meeks, Miller
7

For An Act To Be Entitled

8
9 AN ACT TO CREATE BORN-ALIVE INFANT PROTECTION; AND
10 FOR OTHER PURPOSES.
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Subtitle

12
13 TO CREATE BORN-ALIVE INFANT PROTECTION.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

20 (a) The General Assembly finds that:

21 (1) The State of Arkansas has a paramount interest in protecting
22 all human life;

23 (2) If an abortion results in the live birth of an infant, the
24 infant is a person for all purposes under the laws of this state;

25 (3) It is not an infringement on a woman's right to terminate
26 her pregnancy for this state to assert its interest in protecting an infant
27 whose live birth occurred as a result of an abortion; and

28 (4) Without proper legal protection, infants who are born alive
29 and have survived abortions have been denied appropriate life-saving or life-
30 sustaining medical care and treatment and have been left to die.

31 (b) It is the purpose of this act to:

32 (1) Ensure the protection and promotion of the health and well-
33 being of all infants born alive in this state; and

34 (2) Mandate that healthcare professionals give medically
35 appropriate and reasonable life-saving and life-sustaining medical care and
36 treatment to all infants who are born alive.



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SECTION 2. Arkansas Code Title 20, Chapter 16, Subchapter 6, is amended to add an additional section to read as follows:

20-16-604. Born-alive infant protection – Cause of action.

(a) As used in this section:

(1)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) A use, prescription, or means under this subdivision (a)(1) is not an abortion if the use, prescription, or means is performed with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(2) "Infant who is born alive" means the complete expulsion or extraction of an infant from a mother, regardless of the state of gestational development, who shows any evidence of life, including without limitation:

(A) Breathing;

(B) Heartbeat;

(C) Umbilical cord pulsation; or

(D) Definite movement of voluntary muscles; and

(3) "Infant" means a child who has been completely expelled or extracted from the mother, regardless of the stage of gestational development, until thirty (30) days after the birth.

(b) A physician, other healthcare professional, or other person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason, including without limitation:

(1) The infant was born with a physical, intellectual, or developmental disability;

(2) The infant was not wanted by the parent or guardian; or

(3) The infant was born alive by natural or artificial means.

(c) A physician, other healthcare professional, or other person shall

1 not deprive an infant of medically appropriate and reasonable medical care
2 and treatment or surgical care.

3 (d) This section does not prevent an infant's parent or legal guardian
4 from refusing to give consent to medical treatment or surgical care that is
5 not medically necessary or reasonable, including without limitation, care or
6 treatment that:

7 (1) Is not necessary to save the life of the infant;

8 (2) Has a potential risk to the life or health of the infant
9 that outweighs the potential benefit to the infant; or

10 (3) Is treatment that will do no more than temporarily prolong
11 the act of dying when death is imminent.

12 (e)(1) A physician performing an abortion shall take all medically
13 appropriate and reasonable steps to preserve the life and health of a infant
14 who is born alive.

15 (2) If an abortion performed in a hospital results in a live
16 birth, the attending physician shall:

17 (A) Provide immediate medical care to the infant;

18 (B) Inform the mother of the live birth; and

19 (C) Request transfer of the infant to an on-duty resident
20 or emergency care physician who shall provide medically appropriate and
21 reasonable medical care and treatment to the infant.

22 (3) If an abortion performed in a healthcare facility other than
23 a hospital results in a live birth, the attending physician shall:

24 (A) Provide immediate medical care to the infant; and

25 (B) Call 911 for an emergency transfer of the infant to
26 the hospital for medically appropriate and reasonable care and treatment for
27 the infant.

28 (f) If a physician described in subsection (e) of this section is
29 unable to perform the duties described in subsection (e) of this section
30 because the physician is assisting the woman who received an abortion, the
31 attending physician's assistant, nurse, or other healthcare professional
32 shall assume the duties outlined in subsection (e) of this section.

33 (g) A infant who is born alive shall be treated as an individual under
34 the laws of this state with the same rights to medically appropriate
35 reasonable care and treatment that an infant born prematurely would have.

36 (h) The infant who is born alive upon birth immediately shall become a

1 ward of the state if:

2 (1) Before the abortion, the pregnant woman, or if married, the
3 pregnant woman and her spouse, have stated in writing that they do not wish
4 to keep the infant if the abortion results in a live birth; and

5 (2) The writing described in subdivision (h)(1) of this section
6 is not retracted before the abortion.

7 (i)(1) A infant who is born alive shall not be used for any type of
8 scientific research or other kind of experimentation except as necessary to
9 protect or preserve the life and health of the infant who is born alive.

10 (2) A violation of subdivision (i)(1) of this section is a Class
11 D felony.

12 (j) Failure to comply with this section shall provide a basis for:

13 (1) A civil action for compensatory and punitive damages;

14 (2) Professional disciplinary action by the appropriate
15 healthcare licensing board for the suspension or revocation of a license for
16 a healthcare professional for at least one (1) year; and

17 (3) Recovery for the parent of the infant or the parent or legal
18 guardian of the pregnant woman, if the pregnant woman is a minor, for the
19 wrongful death of the infant under § 16-62-102.

20 (k) This section does not:

21 (1) Create or recognize a right to abortion;

22 (2) Affect existing federal or state law regarding abortion; or

23 (3) Alter generally accepted medical standards.

24
25 SECTION 3. DO NOT CODIFY. Right of intervention.

26 The General Assembly by joint resolution may appoint one (1) or more of
27 its members who sponsored or cosponsored this act in his or her official
28 capacity to intervene as a matter of right in any case in which the
29 constitutionality of this act is challenged.

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31 SECTION 4. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on
32 and after January 1, 2018.

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34 /s/G. Stubblefield

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36 APPROVED: 03/06/2017

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1372

5 By: Representative C. Fite
6 By: Senator D. Wallace
7

For An Act To Be Entitled

8 AN ACT TO PROVIDE NOTICE OF CHILD MALTREATMENT
9 REPORTS TO MILITARY ORGANIZATIONS; AND FOR OTHER
10 PURPOSES.
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Subtitle

14 TO PROVIDE NOTICE OF CHILD MALTREATMENT
15 REPORTS TO MILITARY ORGANIZATIONS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 12, Chapter 18, Subchapter 5, is
22 amended to add an additional section to read as follows:

23 12-18-508. Notice to United States military organizations of alleged
24 child maltreatment – Definitions.

25 (a) As used in this section:

26 (1) "Active duty service member" means a military member on
27 full-time duty in the United States Army, United States Marine Corps, United
28 States Navy, or United States Air Force;

29 (2) "Child" means a biological child, adopted child, stepchild,
30 foster child, or ward of an active duty service member; and

31 (3) "Family advocacy program" means a congressionally mandated
32 United States Department of Defense activity implemented through branches of
33 the United States Armed Forces to address domestic abuse and child abuse
34 through prevention, response, clinical assessment, treatment, and related
35 services for active duty service members and their families.

36 (b) When the Child Abuse Hotline accepts a report involving as an



1 alleged victim a child of an active duty service member, the Department of
2 Human Services or the Department of Arkansas State Police shall immediately
3 notify the applicable family advocacy program or other person or entity
4 designated by the military authority for the military installation associated
5 with the service member.

6 (c) When the Child Abuse Hotline accepts a report involving as an
7 alleged offender a person who is an active duty service member, the
8 Department of Human Services or the Department of Arkansas State Police shall
9 immediately notify the applicable family advocacy program or other person or
10 entity designated by the military authority for the military installation
11 associated with the service member.

12 (d)(1) When the Child Abuse Hotline accepts a report alleging child
13 maltreatment that occurred during an activity conducted or sanctioned by the
14 United States Department of Defense or its subdivisions, or occurred at a
15 facility operated by the United States Department of Defense or its
16 subdivisions, the Department of Human Services or the Department of Arkansas
17 State Police shall immediately notify the applicable family advocacy program
18 or other person or entity designated by the military authority for the
19 military installation associated with the activity or facility.

20 (2) Facilities covered under the notification requirement in
21 subdivision (d)(1) of this section include without limitation all military
22 installations and recruiting locations, as well as schools, daycares, and
23 youth programs operated by the United States Department of Defense or its
24 subdivisions, and schools, daycares, and youth programs that are allowed to
25 operate on military installations, recruiting locations, or other military
26 facilities.

27 (e) The notice required under this section shall include notice of the
28 Child Abuse Hotline's receipt of a report of suspected child maltreatment.

29 (f) The Department of Human Services and the Department of Arkansas
30 State Police may promulgate rules and enter into memoranda of understanding
31 with the United States Department of Defense and its subdivisions to ensure
32 that the notification required under this section is provided.

33
34 SECTION 2. Arkansas Code § 12-18-620(e), concerning release of
35 information on a pending investigation, is amended to add an additional
36 subdivision to read as follows:

1 (e) Information on a pending investigation, including protected health
 2 information, shall be released upon request to:

3 (1) The department, excluding pending investigations on an
 4 employee or spouse of the Division of Children and Family Services of the
 5 Department of Human Services;

6 (2) Law enforcement;

7 (3) The prosecuting attorney;

8 (4) The responsible multidisciplinary team;

9 (5) Attorney ad litem of the alleged victim or offender;

10 (6) Court Appointed Special Advocates volunteer for the alleged
 11 victim or offender;

12 (7) Any licensing or registering authority to the extent
 13 necessary to carry out its official responsibilities;

14 (8) Any department division director or facility director
 15 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

16 (9) Any facility director receiving notice of a Child Abuse
 17 Hotline report pursuant to this chapter; and

18 (10) Any family advocacy program or other person designated by
 19 the military authority for the military installation receiving notice of a
 20 Child Abuse Hotline report under § 12-18-508; and

21 ~~(10)(A)(11)(A)~~ Acting in their official capacities, individual
 22 United States and Arkansas senators and representatives and their authorized
 23 staff members but only if they agree not to permit any redisclosure of the
 24 information.

25 (B) However, disclosure shall not be made to any committee
 26 or legislative body.

27
 28 SECTION 3. Arkansas Code § 12-18-709, concerning confidentiality, is
 29 amended to add an additional subsection to read as follows:

30 (g) The Department of Human Services and the Department of Arkansas
 31 State Police shall notify any family advocacy program or other person or
 32 entity designated by the military authority for the military installation to
 33 which notice must be given of child maltreatment investigations under § 12-
 34 18-508 of the investigation determination whether true or unsubstantiated.

35
 36 SECTION 4. Arkansas Code § 12-18-710(e), concerning release of

1 information on a true investigative determination pending due process, is
 2 amended to add an additional subdivision to read as follows:

3 (e) Information on a completed investigation, including protected
 4 health information, pending due process shall be released upon request to:

- 5 (1) The alleged offender;
- 6 (2) The department, excluding pending investigations on an
 7 employee or spouse of the Division of Children and Family Services of the
 8 Department of Human Services;
- 9 (3) Law enforcement;
- 10 (4) The prosecuting attorney;
- 11 (5) The responsible multidisciplinary team;
- 12 (6) Attorney ad litem for the victim or offender;
- 13 (7) Court Appointed Special Advocates volunteer for the victim
 14 or offender;
- 15 (8) Any licensing or registering authority to the extent
 16 necessary to carry out its official responsibilities;
- 17 (9) Any department division director or facility director
 18 receiving notice of a Child Abuse Hotline report under this chapter;
- 19 (10) Any facility director receiving notice of a Child Abuse
 20 Hotline report under this chapter; and

21 (11) Any family advocacy program or other person designated by
 22 the military authority for the military installation receiving notice of a
 23 Child Abuse Hotline report under § 12-18-508; and

24 ~~(11)(A)(12)(A)~~ Acting in their official capacities, individual
 25 United States and Arkansas senators and representatives and their authorized
 26 staff members but only if they agree not to permit any redisclosure of the
 27 information.

28 (B) However, disclosure shall not be made to any committee
 29 or legislative body.

30
 31 SECTION 5. Arkansas Code § 12-18-813(f), concerning notice of an
 32 investigative determination upon satisfaction of due process, is amended to
 33 add an additional subdivision to read as follows:

34 (12) Any family advocacy program or other person designated by
 35 the military authority for the military installation receiving notice of a
 36 Child Abuse Hotline report under § 12-18-508.

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SECTION 6. Arkansas Code § 12-18-909(g), concerning availability of true reports of child maltreatment from the central registry, is amended to add an additional subdivision to read as follows:

(25) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508.

SECTION 7. Arkansas Code § 12-18-910(f), concerning availability of screened-out and unsubstantiated reports, is amended to add an additional subdivision to read as follows:

(15) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508.

APPROVED: 03/20/2017

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1974

5 By: Representative D. Meeks
6 By: Senator Hester
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE LAW CONCERNING CHILDREN TAKEN
10 INTO PROTECTIVE CUSTODY UNDER THE CHILD MALTREATMENT
11 ACT; AND FOR OTHER PURPOSES.
12
13

Subtitle

14
15 TO AMEND THE LAW CONCERNING CHILDREN
16 TAKEN INTO PROTECTIVE CUSTODY UNDER THE
17 CHILD MALTREATMENT ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 12-18-1001(d), concerning the filing of a
23 petition for dependency-neglect after the Department of Human Services
24 assesses the health and safety of a child, is amended to read as follows:

25 (d)(1) If the department assesses the health and safety of a child and
26 determines that the child cannot safely remain in the care, custody, or
27 control of the legal parent, guardian, or custodian without the
28 implementation of a protection plan, the department ~~shall file a petition for~~
29 ~~dependency neglect~~ may implement a protection plan that allows the child to
30 remain in his or her place of residence and includes services to address the
31 safety of the child.

32 (2)(A) If a protection plan is implemented under subdivision
33 (d)(1) of this section, then the department shall reassess the health and
34 safety of the child within thirty (30) days of the date on which the
35 protection plan was implemented.

36 (B) If the department determines that a substantial risk



1 of harm to the health and safety of the child remains after a reassessment
2 under subdivision (d)(2)(A) of this section is performed, then the department
3 shall file a petition for dependency-neglect.

4 (3) This subsection does not apply if the parent, guardian, or
5 custodian is not the alleged offender and the parent, guardian, or custodian
6 is not alleged to have failed to protect the child.

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APPROVED: 04/05/2017

1 State of Arkansas *As Engrossed: H3/14/17 H3/21/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 2104

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5 By: Representative V. Flowers
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE RIGHTS OF
9 INCARCERATED PARENTS AND THE TERMINATION OF PARENTAL
10 RIGHTS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND THE LAW CONCERNING THE RIGHTS OF
14 INCARCERATED PARENTS AND THE TERMINATION
15 OF PARENTAL RIGHTS.
16
17

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 *SECTION 1. Arkansas Code § 9-27-303(16), concerning the definition of*
22 *"Department" under the Arkansas Juvenile Code, is repealed.*

23 ~~*(16)(A) "Department" means the Department of Human Services and*~~
24 ~~*its divisions and programs.*~~

25 ~~*(B) Unless otherwise stated in this subchapter, any*~~
26 ~~*reference to the department shall include all of its divisions and programs;*~~
27

28 *SECTION 2. Arkansas Code § 9-27-303(48), concerning the definition of*
29 *"Reasonable efforts" under the Arkansas Juvenile Code, is amended to read as*
30 *follows:*

31 *(48)(A)(i) "Reasonable efforts" means efforts to preserve the family*
32 *before the placement of a child in foster care to prevent the need for*
33 *removing the child from his or her home and efforts to reunify a family made*
34 *after a child is placed out of his or her home to make it possible for him or*
35 *her to safely return home.*

36 *(ii) Reasonable efforts shall also be made to obtain*



1 permanency for a child who has been in an out-of-home placement for more than
2 twelve (12) months or for fifteen (15) of the previous twenty-two (22)
3 months.

4 (iii) In determining whether or not to remove a
5 child from a home or return a child back to a home, the child's health and
6 safety shall be the paramount concern.

7 (iv) The ~~department~~ Department of Human Services or
8 other appropriate agency shall exercise reasonable diligence and care to
9 utilize all available services related to meeting the needs of the juvenile
10 and the family.

11 (v)(a) "Reasonable efforts" include efforts to
12 involve an incarcerated parent.

13 (b) The Department of Human Services shall:

14 (1) Involve an incarcerated parent in
15 case planning;

16 (2) Monitor compliance with services
17 offered by the Department of Correction to the extent permitted by federal
18 law; and

19 (3) Offer visitation in accordance with
20 the policies of the Department of Correction if visitation is appropriate and
21 in the best interest of the child.

22 (B) The juvenile division of circuit court may deem that
23 reasonable efforts have been made when the court has found that the first
24 contact by the ~~department~~ Department of Human Services occurred during an
25 emergency in which the child could not safely remain at home, even with
26 reasonable services being provided.

27 (C) Reasonable efforts to reunite a child with his or her
28 parent or parents shall not be required in all cases. Specifically,
29 reunification shall not be required if a court of competent jurisdiction,
30 including the juvenile division of circuit court, has determined by clear and
31 convincing evidence that the parent has:

32 (i) Subjected the child to aggravated circumstances;

33 (ii) Committed murder of any child;

34 (iii) Committed manslaughter of any child;

35 (iv) Aided or abetted, attempted, conspired, or
36 solicited to commit the murder or the manslaughter;

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(v) Committed a felony battery that results in serious bodily injury to any child;

(vi) Had the parental rights involuntarily terminated as to a sibling of the child;

(vii) Abandoned an infant as defined in subdivision (1) of this section; or

(viii) Registered with a sex offender registry under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 10-9-248.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

/s/V. Flowers

APPROVED: 04/06/2017

