

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1371

4
5 By: Representatives Young, Kidd, Luker, McJunkin, McKissack, Miller, Willems, Bush, DeLay, Joe Hudson, and Mullenix
6 By: Senators Bradford, Canada, and Scott

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 20-9-602 AND 604 PERTAINING
10 TO INMATES_ CONSENT FOR MEDICAL TREATMENT; AND FOR OTHER
11 PURPOSES."

Subtitle

14 "AN ACT TO AMEND ARKANSAS CODE 20-9-602
15 AND 604 PERTAINING TO INMATES_ CONSENT
16 FOR MEDICAL TREATMENT."

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

20 SECTION 1. Arkansas Code 20-9-602 is amended to read as follows:

21 "§ 20-9-602. Consent generally.

22 It is recognized and established that, in addition to such other persons
23 as may be so authorized and empowered, any one (1) of the following persons is
24 authorized and empowered to consent, either orally or otherwise, to any
25 surgical or medical treatment or procedures not prohibited by law which may be
26 suggested, recommended, prescribed, or directed by a licensed physician:

27 (1) Any adult, for himself;

28 (2) Any parent, whether an adult or a minor, for his minor child or for
29 his adult child of unsound mind whether the child is of the parent's blood, is
30 an adopted child, is a stepchild, or is a foster child; provided, however, the
31 father of an illegitimate child cannot consent for the child solely on the
32 basis of parenthood;

33 (3) Any married person, whether an adult or a minor, for himself;

34 (4) Any female, regardless of age or marital status, for herself when
35 given in connection with pregnancy or childbirth, except the unnatural
36 interruption of a pregnancy;

1 (5) Any person standing in loco parentis, whether formally serving or
 2 not, and any guardian, conservator, or custodian, for his ward or other charge
 3 under disability;

4 (6) Any emancipated minor, for himself;

5 (7) Any unemancipated minor of sufficient intelligence to understand
 6 and appreciate the consequences of the proposed surgical or medical treatment
 7 or procedures, for himself;

8 (8) Any adult, for his minor sibling or his adult sibling of unsound
 9 mind;

10 (9) During the absence of a parent so authorized and empowered, any
 11 maternal grandparent and, if the father is so authorized and empowered, any
 12 paternal grandparent, for his minor grandchild or for his adult grandchild of
 13 unsound mind;

14 (10) Any married person, for a spouse of unsound mind;

15 (11) Any adult child, for his mother or father of unsound mind;

16 (12) Any minor incarcerated in the Department of Correction or the
 17 Department of Community Punishment, for himself."

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19 SECTION 2. Arkansas Code 20-9-604 is amended to read as follows:

20 "§ 20-9-604. Consent given by court in emergency.

21 (a) ~~Consent~~ Except as provided in subsection (e) of this section,
 22 consent may be given by a court where an emergency exists, there has been a
 23 protest or refusal of consent by a person authorized and empowered to do so,
 24 and there is no other person immediately available who is authorized,
 25 empowered, or capable of consent.

26 (1) The consent will be given upon the presentation of a petition
 27 accompanied by the written advice or certificate of one (1) or more licensed
 28 physicians that in their professional opinion there is an immediate or
 29 imminent necessity for medical or surgical treatment or procedures.

30 (2) Any circuit or chancery judge may summarily grant injunctive
 31 and declaratory relief ordering and directing that the necessary surgical or
 32 medical treatment or procedures be rendered, provided that the affected person
 33 is:

34 (A) A pregnant female in the last trimester of pregnancy;

35 (B) A person of insufficient age or mental capacity to
 36 understand and appreciate the nature of the proposed surgical or medical

1 treatment and the probable consequences of refusal of the treatment;

2 (C) A parent of a minor child, provided that the court in
 3 its discretion finds that the life or health of the parent is essential to the
 4 child's financial support or physical or emotional well-being.

5 (b) Any circuit or chancery judge granting the declaratory and
 6 injunctive relief directing the provision of surgical or medical treatment or
 7 procedures pursuant to this section shall be immune from liability based on
 8 any claim that the surgical or medical treatment or procedures for the
 9 affected person should not have been administered.

10 (c) The reasonable expense incurred for emergency surgical or medical
 11 treatment or procedures administered pursuant to this section shall be borne
 12 by the estate of the person affected or by any person liable at law for the
 13 necessities of the person affected, or, if they are unable to pay, by the
 14 county of residence of the person receiving such surgical medical care.

15 (d) Upon request of an attending physician, any other licensed
 16 physician, or a representative of a hospital to which a patient has been
 17 admitted or presented for treatment, it shall be the duty of the prosecuting
 18 attorney, or his designee, of the county in which the surgical or medical care
 19 is proposed to be rendered, to give his assistance in the presentation of the
 20 petition, with medical advice or certificate, and in obtaining an order from
 21 the court of proper jurisdiction.

22 (e) Consent may be given by a court where an emergency exists and there
 23 is no one immediately available who is authorized, empowered to, or capable of
 24 consent, for a person of unsound mind or there has been a subsequent material
 25 and morbid change in the condition of the affected person, in the custody of
 26 the Department of Correction or Department of Community punishment.

27 (1) The consent will be given upon the presentation of a petition
 28 accompanied by the written advice or certificate of one (1) or more licensed
 29 physicians that in their professional opinion there is an immediate or
 30 imminent necessity for medical or surgical treatment or procedures.

31 (2) Any circuit or chancery judge may summarily grant injunctive
 32 and declaratory relief ordering and directing that the necessary surgical or
 33 medical treatment or procedures be rendered."

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 35 SECTION 3. All provisions of this act of a general and permanent nature
 36 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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3 SECTION 4. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

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9 SECTION 5. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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