

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 1033

4
5 By: Representatives J. Hutchinson, Lamoureux, Rosenbaum, T. Hutchinson

For An Act To Be Entitled

9 AN ACT TO REQUIRE PARENTAL CONSENT BEFORE
10 PERFORMING AN ABORTION ON A MINOR; AND FOR OTHER
11 PURPOSES.

Subtitle

14 AN ACT TO REQUIRE PARENTAL CONSENT
15 BEFORE PERFORMING AN ABORTION ON A
16 MINOR.

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

21 SECTION 1. Arkansas Code § 20-16-801 is amended to read as follows:
22 20-16-801. Notification required.

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

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

34 SECTION 2 Arkansas Code § 20-16-802 is amended to read as follows:
35 20-16-802. Definitions.

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



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

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

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

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

13
 14 SECTION 3. Arkansas Code § 20-16-803 is amended to read as follows:

15 20-16-803. Manner of ~~notice~~ consent.

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

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

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

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

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

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

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

35 (4) The date; and

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

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

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

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

11
 12 SECTION 4. Arkansas Code § 20-16-804 is amended to read as follows:
 13 20-16-804. Judicial relief from requirement.

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

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

23 (B) If ~~said the~~ judge determines that the pregnant minor
 24 or incompetent woman is not mature, or if the pregnant woman does not claim
 25 to be mature, the judge shall determine whether the performance of an
 26 abortion upon her without ~~notification~~ consent of her parents, guardian, or
 27 custodian would be in her best interests and shall authorize a physician to
 28 perform the abortion without such ~~notification~~ consent if ~~said the~~ judge
 29 concludes that the pregnant minor or incompetent woman's best interests would
 30 be served thereby.

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

35 (3) Proceedings in the court under this subchapter shall be
 36 confidential and shall be given such precedence over other pending matters so

1 that the court may reach a decision promptly and without delay so as to serve
 2 the best interests of the pregnant minor or incompetent woman. The judge
 3 shall make in writing specific factual findings and legal conclusions
 4 supporting the decision and shall order a record of the evidence to be
 5 maintained, including the judge's own findings and conclusions.

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

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

12
 13 SECTION 5. Arkansas Code § 20-16-805 is amended to read as follows:

14 20-16-805. Limitations on requirement.

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

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

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

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

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

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

28 20-16-806. Penalty.

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

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

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

1 ~~or~~

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

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

7

8 SECTION 7. Arkansas Code § 20-16-808 is amended to read as follows:

9 20-16-808. When notification consent of parent not required.

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

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

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

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

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

24

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

27 20-16-809. When consent is not required.

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

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