

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

As Engrossed: H1/26/05 H1/31/05 S2/8/05

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*

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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.

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17

## Subtitle

18

AN ACT TO REQUIRE PARENTAL CONSENT

19

BEFORE PERFORMING AN ABORTION ON A

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MINOR.

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

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

26 *20-16-801. Notification 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;*

30 *(1) ~~until~~ Until at least forty-eight (48) hours after written*

31 *notice of the pending operation has been delivered in the manner, and subject*

32 *to the exceptions, provided in this subchapter; and*

33 *(2) Unless the person or the person's agent first obtains the*

34 *written consent of either parent or the legal guardian or custodian, except*

35 *as otherwise provided in §§ 20-16-804 and 20-16-805.*

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

(3) "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) "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 and consent.

(a)(1) 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)(2)~~ (2) In lieu of the delivery required by ~~subsection (a)~~ subdivision (a)(1) 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.

(b)(1) 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.

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

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

(B) Name of the parent or legal guardian;

(C) 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

1 consent to the abortion;

2 (D) The date; and

3 (E) Notarized signature of the parent or legal guardian.

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

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

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

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

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

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

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

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

1 her request, provide her with such counsel.

2 (3) Proceedings in the court under this subchapter shall be  
3 confidential and shall be given such precedence over other pending matters so  
4 that the court may reach a decision promptly and without delay so as to serve  
5 the best interests of the pregnant minor or incompetent woman. The judge  
6 shall make in writing specific factual findings and legal conclusions  
7 supporting the decision and shall order a record of the evidence to be  
8 maintained, including the judge's own findings and conclusions.

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

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

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

18 20-16-805. Limitations on requirement.

19 Notification and consent shall not be required under this subchapter  
20 if:

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

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

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

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

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

33 20-16-806. Penalty.

34 (a) The performance of an abortion in violation of this subchapter  
35 shall be a Class A misdemeanor and shall be grounds for a civil action by a  
36 person wrongfully denied notification or 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 and consent of parent not required.

Notification and consent under this subchapter shall not be required to be given to or 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 not required.

A guardian or custodian 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.

