

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
4

As Engrossed: S2/8/05
A Bill

SENATE BILL 114

5 By: Senator Wooldridge
6
7

8 **For An Act To Be Entitled**

9 *AN ACT TO INCLUDE IN THE DEFINITION OF NEGLECT IN*
10 *THE ARKANSAS CHILD MALTREATMENT ACT AND THE*
11 *ARKANSAS JUVENILE CODE THE CAUSING OF A NEWBORN*
12 *CHILD TO BE BORN WITH AN ILLEGAL SUBSTANCE IN HIS*
13 *OR HER BLOOD OR BORN WITH A HEALTH PROBLEM AS A*
14 *RESULT OF THE PREGNANT MOTHER'S USE BEFORE BIRTH*
15 *OF AN ILLEGAL SUBSTANCE; AND FOR OTHER PURPOSES.*

16
17 **Subtitle**

18 *GARRETT'S LAW: TO PROVIDE SERVICES TO A*
19 *NEWBORN CHILD BORN WITH AN ILLEGAL*
20 *SUBSTANCE PRESENT IN THE CHILD'S BLOOD.*

21
22
23 *WHEREAS, the Arkansas Child Maltreatment Act, Arkansas Code § 12-12-501*
24 *et seq., is the law that allows doctors and hospital staff to report child*
25 *abuse and neglect to the Arkansas State Police Child Abuse Hotline; and*
26

27 *WHEREAS, the Arkansas State Police Child Abuse Hotline is a twenty-*
28 *four-hour toll-free service that triggers the initiation of an investigation*
29 *of child maltreatment; and*
30

31 *WHEREAS, currently, the Arkansas State Police Child Abuse Hotline will*
32 *not accept reports related to newborn children being born with an illegal*
33 *substance present in their blood as a result of the pregnant mother's use*
34 *before birth of an illegal substance or with a health problem as a result of*
35 *the pregnant mother's use before birth of an illegal substance; and*
36



1 WHEREAS, in order for the newborn child to be protected by the Arkansas
2 Child Maltreatment Act and receive services, the Arkansas State Police Child
3 Abuse Hotline must accept reports of this nature; and

4
5 WHEREAS, this act is necessary to clarify the law so that the Arkansas
6 State Police Child Abuse Hotline can accept reports of this nature and so
7 that the newborn children can be provided services to protect their health
8 and safety.

9
10 NOW THEREFORE,

11
12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13
14 SECTION 1. This act shall be known and may be cited as "Garrett's Law:
15 To Provide Services to a Newborn Child Born with an Illegal Substance Present
16 in the Child's Blood".

17
18 SECTION 2. Arkansas Code § 12-12-503(12), regarding the definition of
19 "neglect" under the Arkansas Child Maltreatment Act, is amended to read as
20 follows:

21 (12)(A) "Neglect" means those acts or omissions of a parent,
22 guardian, custodian, foster parent, or any person who is entrusted with the
23 juvenile's care by a parent, custodian, guardian, or foster parent,
24 including, but not limited to, an agent or employee of a public or private
25 residential home, child care facility, public or private school, or any
26 person legally responsible under state law for the juvenile's welfare, but
27 excluding the spouse of a minor and the parents of the married minor, which
28 constitute:

29 ~~(A)~~(i) Failure or refusal to prevent the abuse of
30 the juvenile when the person knows or has reasonable cause to know the
31 juvenile is or has been abused;

32 ~~(B)~~(ii) Failure or refusal to provide necessary
33 food, clothing, shelter, and education required by law, excluding the failure
34 to follow an individualized educational program, or medical treatment
35 necessary for the juvenile's well-being, except when the failure or refusal
36 is caused primarily by the financial inability of the person legally

1 responsible and no services for relief have been offered or rejected;

2 ~~(C)(iii)~~ Failure to take reasonable action to
3 protect the juvenile from abandonment, abuse, sexual abuse, sexual
4 exploitation, neglect, or parental unfitness when the existence of the
5 condition was known or should have been known;

6 ~~(D)(iv)~~ Failure or irremediable inability to provide
7 for the essential and necessary physical, mental, or emotional needs of the
8 juvenile;

9 ~~(E)(v)~~ Failure to provide for the juvenile's care
10 and maintenance, proper or necessary support, or medical, surgical, or other
11 necessary care;

12 ~~(F)(vi)~~ Failure, although able, to assume
13 responsibility for the care and custody of the juvenile or to participate in
14 a plan to assume such responsibility; or

15 ~~(G)(vii)~~ Failure to appropriately supervise the
16 juvenile that results in the juvenile's being left alone at an inappropriate
17 age or in inappropriate circumstances that put the juvenile in danger.

18 (B)(i) "Neglect" means the causing of a newborn child to
19 be born with:

20 (a) An illegal substance present in his or her
21 blood as a result of the pregnant mother's use before birth of an illegal
22 substance; or

23 (b) A health problem as a result of the
24 pregnant mother's use before birth of an illegal substance.

25 (ii) For the purposes of this subdivision (12)(B),
26 "illegal substance" means a drug that is prohibited to be used or possessed
27 without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

28 (iii) A blood test of the child may be used as
29 evidence to establish neglect under this subdivision (12)(B)(i)(a).

30 (iv) A blood test of the mother or child may be used
31 as evidence to establish neglect under this subdivision (12)(B)(i)(b);

32
33 SECTION 3. Arkansas Code § 9-27-303(35), regarding the definition of
34 "neglect" in the Arkansas Juvenile Code of 1989, is amended to read as
35 follows:

36 (35)(A) "Neglect" means those acts or omissions of a parent,

1 guardian, custodian, foster parent, or any person who is entrusted with the
 2 juvenile's care by a parent, custodian, guardian, or foster parent,
 3 including, but not limited to, an agent or employee of a public or private
 4 residential home, child care facility, public or private school, or any
 5 person legally responsible under state law for the juvenile's welfare, which
 6 constitute:

7 ~~(A)(i)~~ Failure or refusal to prevent the abuse of
 8 the juvenile when the person knows or has reasonable cause to know the
 9 juvenile is or has been abused;

10 ~~(B)(ii)~~ Failure or refusal to provide the necessary
 11 food, clothing, shelter, and education required by law, excluding failure to
 12 follow an individualized education program, or medical treatment necessary
 13 for the juvenile's well-being, except when the failure or refusal is caused
 14 primarily by the financial inability of the person legally responsible and no
 15 services for relief have been offered or rejected;

16 ~~(C)(iii)~~ Failure to take reasonable action to
 17 protect the juvenile from abandonment, abuse, sexual abuse, sexual
 18 exploitation, neglect, or parental unfitness where the existence of this
 19 condition was known or should have been known;

20 ~~(D)(iv)~~ Failure or irremediable inability to provide
 21 for the essential and necessary physical, mental, or emotional needs of the
 22 juvenile;

23 ~~(E)(v)~~ Failure to provide for the juvenile's care
 24 and maintenance, proper or necessary support, or medical, surgical, or other
 25 necessary care;

26 ~~(F)(vi)~~ Failure, although able, to assume
 27 responsibility for the care and custody of the juvenile or to participate in
 28 a plan to assume the responsibility; or

29 ~~(G)(vii)~~ Failure to appropriately supervise the
 30 juvenile which results in the juvenile's being left alone at an inappropriate
 31 age or in inappropriate circumstances which put the juvenile in danger.

32 (B)(i) "Neglect" means the causing of a newborn child to
 33 be born with:

34 (a) An illegal substance present in his or her
 35 blood as a result of the pregnant mother's use before birth of an illegal
 36 substance; or

1 (b) A health problem as a result of the
 2 pregnant mother's use before birth of an illegal substance.

3 (ii) For the purposes of this subdivision (35)(B),
 4 "illegal substance" means a drug that is prohibited to be used or possessed
 5 without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

6 (iii) A blood test of the child may be used as
 7 evidence to establish neglect under this subdivision (35)(B)(i)(a);

8 (iv) A blood test of the mother or child may be used
 9 as evidence to establish neglect under subdivision (35)(B)(i)(b) of this
 10 section;

11
 12 SECTION 4. Arkansas Code Title 12, Chapter 8, Subchapter 5 is amended
 13 to add an additional section to read as follows:

14 12-8-509. Additional reporting required.

15 (a) The state agency or entity responsible for administering the
 16 twenty-four-hour toll-free child abuse hotline or investigating incidents of
 17 neglect under § 12-12-503(12)(B) shall:

18 (1) Develop and maintain statewide statistics of the incidents
 19 of neglect reported or investigated under § 12-12-503(12)(B); and

20 (2)(A) Annually report no later than October 1 to the following:

21 (i) The Senate Interim Committee on Children and
 22 Youth;

23 (ii) The House Interim Committee on Aging, Children
 24 and Youth, Legislative and Military Affairs;

25 (iii) The Senate Interim Committee on Public Health,
 26 Welfare, and Labor; and

27 (iv) The House Interim Committee on Public Health,
 28 Welfare, and Labor.

29 (B) The annual report under this section shall include all
 30 findings and statistics regarding incidents of neglect reported or
 31 investigated under § 12-12-503(12)(B), including, but not limited to, the
 32 following information:

33 (i) The age of the mother;

34 (ii) The type of illegal substance to which the
 35 newborn child was exposed prenatally;

36 (iii) The estimated gestational age of the newborn

1 child at the time of birth; and

2 (iv) The newborn child's health problems.

3 (b) If more than one (1) state agency or entity is responsible for
4 administering the twenty-four-hour toll-free child abuse hotline or
5 investigating incidents of neglect under § 12-12-503(12)(B), then the
6 reporting under this section shall be a collaborative effort for all state
7 agencies or entities involved.

8
9 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
10 General Assembly of the State of Arkansas that, currently, the Arkansas State
11 Police Child Abuse Hotline will not accept reports related to newborn
12 children being born with an illegal substance present in their blood as a
13 result of the pregnant mother's use before birth of an illegal substance or
14 with a health problem as a result of the pregnant mother's use before birth
15 of an illegal substance; that in order for the newborn child to be protected
16 by the Arkansas Child Maltreatment Act and receive services, the Arkansas
17 State Police Child Abuse Hotline must accept reports of this nature; and that
18 this act is immediately necessary to clarify the law so that the Arkansas
19 State Police Child Abuse Hotline can accept reports of this nature and so
20 that the newborn children can be provided services to protect their health
21 and safety. Therefore, an emergency is declared to exist and this act being
22 immediately necessary for the preservation of the public peace, health, and
23 safety shall become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

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31 /s/ Wooldridge
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