

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: S2/8/05 S2/9/05 S2/15/05 H3/4/05

2 85th General Assembly

A Bill

3 Regular Session, 2005

SENATE BILL 114

4

5 By: Senator Wooldridge

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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 SYSTEM 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

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

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

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

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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
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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.
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10 NOW THEREFORE,

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12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 System".
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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" shall also include the causing of a
19 newborn child to be born with:

20 (a) An illegal substance present in the
21 newborn's bodily fluids or bodily substances as a result of the pregnant
22 mother knowingly using an illegal substance before the birth of the newborn;
23 or

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

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

29 (iii) A test of the child's bodily fluids or bodily
30 substances may be used as evidence to establish neglect under subdivision
31 (12)(B)(i)(a) of this section.

32 (iv) A test of the mother's or child's bodily fluids
33 or bodily substances may be used as evidence to establish neglect under this
34 subdivision (12)(B)(i)(b);

35
36 SECTION 3. Arkansas Code § 9-27-303(35), regarding the definition of

1 "neglect" in the Arkansas Juvenile Code of 1989, is amended to read as
2 follows:

3 (35)~~(A)~~ "Neglect" means those acts or omissions of a parent,
4 guardian, custodian, foster parent, or any person who is entrusted with the
5 juvenile's care by a parent, custodian, guardian, or foster parent,
6 including, but not limited to, an agent or employee of a public or private
7 residential home, child care facility, public or private school, or any
8 person legally responsible under state law for the juvenile's welfare, which
9 constitute:

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

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

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

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

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

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

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

35 (B)(i) "Neglect" shall also include the causing of a
36 newborn child to be born with:

1 (a) An illegal substance present in the
2 newborn's bodily fluids or bodily substances as a result of the pregnant
3 mother knowingly using an illegal substance before the birth of the newborn;
4 or

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

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

10 (iii) A test of the child's bodily fluids or bodily
11 substances may be used as evidence to establish neglect under subdivision
12 (35)(B)(i)(a) of this section;

13 (iv) A test of the mother's or child's bodily fluids
14 or bodily substances may be used as evidence to establish neglect under
15 subdivision (35)(B)(i)(b) of this section;

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

19 12-8-509. Additional reporting required.

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

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

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

26 (i) The Senate Interim Committee on Children and
27 Youth;

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

30 (iii) The Senate Interim Committee on Public Health,
31 Welfare, and Labor; and

32 (iv) The House Interim Committee on Public Health,
33 Welfare, and Labor.

34 (B) The annual report under this section shall include all
35 findings and statistics regarding incidents of neglect reported or
36 investigated under § 12-12-503(12)(B), including, but not limited to, the

1 following information:

2 (i) The age of the mother;

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

5 (iii) The estimated gestational age of the newborn
6 child at the time of birth; and

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

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

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

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

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

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

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36 /s/ Wooldridge