

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 H3/8/05

2 85th General Assembly

A Bill

3 Regular Session, 2005

SENATE BILL 114

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5 By: Senator Wooldridge

6 By: Representative Thompson

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For An Act To Be Entitled

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

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Subtitle

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

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

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

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



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

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

NOW THEREFORE,

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

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

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

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

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

~~(B)(ii)~~ Failure or refusal to provide necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal

1 is caused primarily by the financial inability of the person legally
2 responsible and no services for relief have been offered or rejected;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 newborn child to be born with:

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3 newborn's bodily fluids or bodily substances as a result of the pregnant
4 mother knowingly using an illegal substance before the birth of the newborn;
5 or

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

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9 "illegal substance" means a drug that is prohibited to be used or possessed
10 without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

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

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

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

20 12-8-509. Additional reporting required.

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

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

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

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

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

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

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

35 (B) The annual report under this section shall include all
36 findings and statistics regarding incidents of neglect reported or

1 investigated under § 12-12-503(12)(B), including, but not limited to, the
2 following information:

3 (i) The age of the mother;

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

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

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

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

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15 SECTION 5. Arkansas Code § 12-12-507(f), concerning reports of
16 suspected abuse or neglect, is amended to add an additional subdivision to
17 read as follows:

18 (5) The child abuse hotline shall only accept a report of
19 neglect as defined under § 12-12-503(12)(B) if the reporter is one of the
20 following mandatory reporters and the reporter has reasonable cause to
21 suspect that a child has been subjected to neglect as defined under § 12-12-
22 503(12)(B):

23 (A) A licensed nurse;

24 (B) Any medical personnel who may be engaged in the
25 admission, examination, care, or treatment of persons;

26 (C) An osteopath;

27 (D) A physician;

28 (E) A resident intern; or

29 (F) A surgeon.

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31 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that, currently, the Arkansas State
33 Police Child Abuse Hotline will not accept reports related to newborn
34 children being born with an illegal substance present in their blood or urine
35 as a result of the pregnant mother's use before birth of an illegal substance
36 or with a health problem as a result of the pregnant mother's use before

1 birth of an illegal substance; that in order for the newborn child to be
2 protected by the Arkansas Child Maltreatment Act and receive services, the
3 Arkansas State Police Child Abuse Hotline must accept reports of this nature;
4 and that this act is immediately necessary to clarify the law so that the
5 Arkansas State Police Child Abuse Hotline can accept reports of this nature
6 and so that the newborn children can be provided services to protect their
7 health and safety. Therefore, an emergency is declared to exist and this act
8 being immediately necessary for the preservation of the public peace, health,
9 and safety shall become effective on:

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

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

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

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17 /s/ Wooldridge
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