

State of Arkansas *As Engrossed: H3/4/13 H3/6/13 H3/11/13 H3/15/13 S3/21/13*

89th General Assembly

# A Bill

Regular Session, 2013

HOUSE BILL 1447

By: Representative Fite

By: Senator Hester

## For An Act To Be Entitled

AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND FOR  
OTHER PURPOSES.

### Subtitle

TO AMEND THE CHILD MALTREATMENT ACT.

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

SECTION 1. DO NOT CODIFY. Findings and purposes.

(a) The General Assembly finds that:

(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

(4) The societal costs of these crimes are also significant and affect the entire populace;

(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas's interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and



no one has the right to knowingly or willfully impede or circumvent this right;

(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement.

(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas's parental involvement requirements for abortion; and

(8) Such actions violate both the sanctity of the familial relationship and Arkansas's parental involvement law concerning abortion.

(b) The General Assembly's purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

(1) Protecting children from sexually predatory adults;

(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights.

SECTION 2. Arkansas Code § 12-18-103, concerning definitions for the Child Maltreatment Act, is amended to add an additional subdivision to read as follows:

(2)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) "Abortion" does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy.

SECTION 3. Arkansas Code § 12-18-103, concerning definitions for the Child Maltreatment Act, is amended to add an additional subdivision to read as follows:

(17) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services;

SECTION 4. Arkansas Code § 12-18-103(18), concerning definitions for the Child Maltreatment Act, is amended to read as follows:

(E) By a person younger than ~~thirteen (13)~~ fourteen (14) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

SECTION 5. Arkansas Code Title 12, Chapter 18, Subchapter 1, is

amended to add an additional section to read as follows:

12-18-108. Maintenance of forensic samples from abortions performed on a child.

(a)(1) A physician who performs an abortion on a child who is less than fourteen (14) years of age at the time of the abortion shall preserve under this subchapter fetal tissue extracted during the abortion in accordance with rules adopted by the office of the *State Crime Laboratory*.

(2) Before submitting the tissue under subdivision (a)(2) of this section, the physician shall redact protected health information as required under the *Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191*.

(4) The physician or the reporting medical facility shall contact the law enforcement agency in the jurisdiction where the child resides.

(b) The *State Crime Laboratory* shall adopt rules prescribing:

(1) The amount and type of fetal tissue to be preserved under this section;

(2) Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;

(3) Procedures for documenting the chain of custody of the tissue for use as evidence;

(4) Procedures for proper disposal of fetal tissue preserved under this section;

(5) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and

(6) Procedures for communication with law enforcement agencies regarding evidence and information obtained under this section.

(c) Failure of a physician to comply with this section or any rule adopted under this section shall constitute unprofessional conduct under the *Arkansas Medical Practices Act, § 17-95-201 et seq.*

SECTION 6. Arkansas Code Title 12, Chapter 18, Subchapter 2, is amended to add an additional section to read as follows:

12-18-210. Prohibition on intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent.

(a)(1) A person shall not intentionally cause, aid, or assist a child to obtain an abortion without the consent or notification regarding judicial bypass of the requirement for consent under §§ 20-16-801, 20-16-804, and 20-16-805.

(2) Subdivision (a)(1) of this section does not affect § 20-16-808.

(b)(1) A person who violates subsection (a) of this section shall be civilly liable to the child and to the person or persons required to give the consent under § 20-16-801.

(2) A court may award:

(A) Damages to the person or persons adversely affected by a violation of subsection (a) of this section, including compensation for emotional injury without the need for personal presence at the act or event; and

(B) Attorneys' fees, litigation costs, and punitive damages.

(3) An adult who engages in or consents to another person engaging in a sexual act with a child in violation of the Arkansas Criminal Code § 5-1-101, that results in the child's pregnancy, shall not be awarded damages under this section.

(c) An unemancipated child does not have capacity to consent to any action in violation of this section.

(d) Upon a petition by any person adversely affected or who reasonably may be adversely affected by the conduct, a court of competent jurisdiction may enjoin conduct that would violate this section upon a showing that the conduct:

(1) Is reasonably anticipated to occur in the future; or

(2) Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that the conduct will be repeated.

SECTION 7. Arkansas Code § 12-18-402(b), concerning mandated reporters for the Child Maltreatment Act, is amended to add two additional subdivisions to read as follows:

- (38) An employee of a reproductive healthcare facility; and
- (39) A volunteer at a reproductive healthcare facility.

*/s/Fite*

**APPROVED: 04/04/2013**