

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

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1447

4  
5 By: Representative Fite

6 By: Senator Hester

## For An Act To Be Entitled

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

### Subtitle

14 TO AMEND THE CHILD MALTREATMENT ACT.

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

19 SECTION 1. DO NOT CODIFY. Findings and purposes.

20 (a) The General Assembly finds that:

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

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

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

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

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

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



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

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

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

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

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

14 (1) Protecting children from sexually predatory adults;

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

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

21 (B) Mandatory reporters must simply report allegations,  
22 suspicious, and pertinent facts.

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

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

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

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

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

36

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

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

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

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

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

17 (iii) Remove an ectopic pregnancy.

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

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

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

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

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

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

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

1 amended to add an additional section to read as follows:

2 12-18-108. Maintenance of forensic samples from abortions performed on  
3 a child.

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

8 (2) Before submitting the tissue under subdivision (a)(2) of  
9 this section, the physician shall redact protected health information as  
10 required under the *Health Insurance Portability and Accountability Act of*  
11 1996, Pub. L. No. 104-191.

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

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

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

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

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

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

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

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

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

34

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

1 12-18-210. Prohibition on intentionally causing, aiding, abetting, or  
2 assisting a child to obtain an abortion without parental consent.

3 (a)(1) A person shall not intentionally cause, aid, or assist a child  
4 to obtain an abortion without the consent or notification regarding judicial  
5 bypass of the requirement for consent under §§ 20-16-801, 20-16-804, and 20-  
6 16-805.

7 (2) Subdivision (a)(1) of this section does not affect § 20-16-  
8 808.

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

12 (2) A court may award:

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

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

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

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

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

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

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

33  
34 SECTION 7. Arkansas Code § 12-18-402(b), concerning mandated reporters  
35 for the Child Maltreatment Act, is amended to add two additional subdivisions  
36 to read as follows:

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

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