

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 745

By: Senator Flippo  
By: Representatives Pilkington, Dotson

## For An Act To Be Entitled

AN ACT TO PROHIBIT THE STATE OF ARKANSAS AND STATE  
EMPLOYEES FROM FACILITATING OR PAYING FOR ABORTIONS  
ON WOMEN WHO ARE IN STATE CUSTODY; AND FOR OTHER  
PURPOSES.

## Subtitle

TO PROHIBIT THE STATE OF ARKANSAS AND  
STATE EMPLOYEES FROM FACILITATING OR  
PAYING FOR ABORTIONS ON WOMEN WHO ARE IN  
STATE CUSTODY.

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

SECTION 1. Arkansas Code § 9-27-353(b)(1), concerning the duties and responsibilities of a custodian, is amended to read as follows:

(b)(1) ~~The~~ Except as provided in § 20-16-604, the person or agency appointed as the custodian of a juvenile in a proceeding under this subchapter has the right to obtain medical care for the juvenile, including giving consent to specific medical, dental, or mental health treatments and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency, inpatient, or outpatient basis.

SECTION 2. Arkansas Code § 9-34-202(b)(1), concerning the delivery of a child to a medical provider or law enforcement agency, is amended to read as follows:



(b)(1) A Except as provided in § 20-16-604, a medical provider or law enforcement agency that takes possession of a child under subsection (a) of this section shall perform any act necessary to protect the physical health and safety of the child.

SECTION 3. Arkansas Code § 12-18-617(a), concerning the authority of the Department of Human Services to pursue other remedies, is amended to read as follows:

(a) Notwithstanding an investigative determination finding of true but exempted, the Department of Human Services may pursue:

(1) Any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction; and

(2) ~~Medical~~ Except as provided in § 20-16-604, medical care or treatment for a child when such medical care or treatment is necessary to prevent or remedy serious harm to the child or to prevent the withholding of medically indicated treatment from a child with life-threatening conditions.

SECTION 4. Arkansas Code § 12-18-1003, concerning consent for health care and services of a child in custody, is amended to read as follows:

~~A~~ Except as provided in § 20-16-604, an individual taking a child into custody may give effective consent for medical, dental, health, and hospital services during protective custody

SECTION 5. Arkansas Code Title 20, Chapter 16, Subchapter 6, is amended to add an additional section to read as follows:

20-16-604. Prohibition of abortion while in state custody.

(a) As used in this section:

(1) "Abortion" means the use or prescription of an instrument, medicine, drug, or another substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and that causes the premature termination of the pregnancy;

(2) "Attempt to perform or induce an abortion" means an act or

an omission of a statutorily required act, that under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this section;

(3)(A) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that the condition necessitates the immediate termination of the pregnancy to avert the death of the pregnant woman or to avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman.

(B) "Medical emergency" does not include a condition based on a claim or diagnosis that a pregnant woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

(5) "State custody" means a state agency or instrumentality of the State of Arkansas has care and control over an individual because the individual is:

(A) A ward of the state, including without limitation a foster child;

(B) Incompetent and has the state or an employee of the state named as a guardian;

(C) Incarcerated; or

(D) Institutionalized with no legal guardian.

(b)(1) Except as provided in subdivision (b)(2) of this section, a person shall not perform or induce or attempt to perform or induce an abortion upon a pregnant woman who is in state custody.

(2) A person may perform or induce or attempt to perform or induce an abortion upon a pregnant woman who is in state custody if, in reasonable medical judgment, the pregnant woman has a medical emergency.

(c) While in state custody, a pregnant woman shall not petition a circuit court for a waiver of the consent requirements or receive judicial relief as described in § 20-16-804.

(d) Except as provided in subdivision (b)(2) of this section, a

pregnant woman who is in state custody shall not receive transportation related to an abortion or any services recommending an abortion by a state agency or an employee or agent of the state.

(e)(1) A pregnant woman who is in state custody and wishes to obtain an abortion may petition the court to:

(A) Remove the pregnant woman from state custody for a limited time period; and

(B) Authorize an abortion as described in § 20-16-804.

(2)(A) Except as provided in subdivision (e)(2)(B) of this section, if a court rules to remove a pregnant woman from state custody, the pregnant woman may reside in a facility under state control or in a foster home and receive medical services unrelated to a pregnancy.

(B) A pregnant woman who is removed from state custody under this section shall not receive transportation related to an abortion by a state agency or an employee or agent of the state.