

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 745

5 By: Senator Flippo
6 By: Representatives Pilkington, Dotson
7

For An Act To Be Entitled

9 AN ACT TO PROHIBIT THE STATE OF ARKANSAS AND STATE
10 EMPLOYEES FROM FACILITATING OR PAYING FOR ABORTIONS
11 ON WOMEN WHO ARE IN STATE CUSTODY; AND FOR OTHER
12 PURPOSES.
13
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Subtitle

16 TO PROHIBIT THE STATE OF ARKANSAS AND
17 STATE EMPLOYEES FROM FACILITATING OR
18 PAYING FOR ABORTIONS ON WOMEN WHO ARE IN
19 STATE CUSTODY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 9-27-353(b)(1), concerning the duties and
25 responsibilities of a custodian, is amended to read as follows:

26 (b)(1) ~~The~~ Except as provided in § 20-16-604, the person or agency
27 appointed as the custodian of a juvenile in a proceeding under this
28 subchapter has the right to obtain medical care for the juvenile, including
29 giving consent to specific medical, dental, or mental health treatments and
30 procedures as required in the opinion of a duly authorized or licensed
31 physician, dentist, surgeon, or psychologist, whether or not such care is
32 rendered on an emergency, inpatient, or outpatient basis.
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34 SECTION 2. Arkansas Code § 9-34-202(b)(1), concerning the delivery of
35 a child to a medical provider or law enforcement agency, is amended to read
36 as follows:



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

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

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

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

13 (2) ~~Medical~~ Except as provided in § 20-16-604, medical care or
 14 treatment for a child when such medical care or treatment is necessary to
 15 prevent or remedy serious harm to the child or to prevent the withholding of
 16 medically indicated treatment from a child with life-threatening conditions.
 17

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

20 ~~A~~ Except as provided in § 20-16-604, an individual taking a child into
 21 custody may give effective consent for medical, dental, health, and hospital
 22 services during protective custody
 23

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

26 20-16-604. Prohibition of abortion while in state custody.

27 (a) As used in this section:

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

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

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

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

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

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

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

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

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

25 (C) Incarcerated; or

26 (D) Institutionalized with no legal guardian.

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

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

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

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

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

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

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

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

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

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

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