

INTERIM STUDY PROPOSAL 2021-068

State of Arkansas

As Engrossed: S3/17/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 376

By: Senator L. Chesterfield

By: Representatives Scott, Richardson

Filed with: Arkansas Legislative Council
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT PROHIBITING A LAW ENFORCEMENT AGENCY FROM
DENYING MEDICAL CARE TO A PERSON IN CUSTODY; TO
PROVIDE FOR CIVIL AND CRIMINAL ACTIONS FOR DENYING
MEDICAL CARE TO A PERSON IN CUSTODY; REQUIRING
TRAINING BY CORRECTIONAL FACILITY PERSONNEL; AND FOR
OTHER PURPOSES.

Subtitle

PROHIBITING THE DENIAL OF MEDICAL CARE TO
A PERSON IN CUSTODY; TO PROVIDE FOR CIVIL
AND CRIMINAL ACTIONS FOR DENYING MEDICAL
CARE TO A PERSON IN CUSTODY; AND TO
REQUIRE TRAINING.

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

SECTION 1. Arkansas Code Title 5, Chapter 60, Subchapter 1, is amended
to add an additional section to read as follows:

5-60-126. Denial of medical care prohibited – Law enforcement agency
and correctional facility.

(a) As used in this section:

(1) "Correctional facility" includes without limitation a:

(A) Facility of the Division of Correction;

(B) Facility of the Division of Community Correction;

1 (C) Juvenile detention facility;

2 (D) County jail;

3 (E) Regional detention facility;

4 (F) City jail; and

5 (G) Detention facility operated by a local government; and

6 (2) "Medical distress" includes without limitation the following
7 conditions:

8 (A) Breathing difficulty;

9 (B) A migraine headache;

10 (C) An adverse mental health episode;

11 (D) Muscle pain; and

12 (E) A need for immediate medical care.

13 (b)(1) An employee of a law enforcement agency or a correctional
14 facility who negligently fails to make a good faith effort to obtain
15 immediate medical attention for or provide immediate medical attention to a
16 person in custody who displays signs of medical distress in the employee's
17 presence and suffers unnecessary pain, physical injury, or death as a result
18 of the failure upon conviction is guilty of a Class A misdemeanor.

19 (2) An immediate supervisor of an employee who violates
20 subdivision (b)(1) of this section upon conviction is guilty of a Class A
21 misdemeanor.

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23 SECTION 2. Arkansas Code Title 12, Chapter 26, is amended to add an
24 additional section to read as follows:

25 12-26-110. Persons in custody – Medical distress – Training.

26 (a) As used in this section, "medical distress" means the same as
27 defined in § 5-60-126.

28 (b) A state agency, county sheriff, political subdivision, or other
29 entity that is authorized to hold or house a person in custody shall provide
30 training in first aid and in the identification of various signs of medical
31 distress for all employees who have or will have contact with persons in
32 custody.

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34 SECTION 3. Arkansas Code Title 12, Chapter 41, Subchapter 1, is
35 amended to add an additional section to read as follows:

1 12-41-109. Denial of medical care to person in custody – Investigation
2 and prosecution.

3 (a)(1)(A) If a person has reasonable cause to believe that he or she
4 has been unlawfully denied medical care while he or she is being or has been
5 held in custody, the person may bring a civil action in the circuit court
6 with jurisdiction or, subject to the laws governing the federal judiciary, in
7 a United States District Court to obtain appropriate equitable and
8 declaratory relief.

9 (B) If authorized by the Arkansas Constitution, sovereign
10 immunity is not a bar to an action under this section.

11 (2) The Prosecutor Coordinator shall establish a method that
12 permits a person with knowledge about the denial of medical care to a person
13 in custody to submit an anonymous and confidential complaint or report of
14 that knowledge.

15 (b) If a prosecuting attorney with jurisdiction has probable cause to
16 believe that a person who is being or has been held in custody has been
17 unlawfully denied medical care, the prosecuting attorney may bring criminal
18 charges in the circuit court with jurisdiction.

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21 /s/L. Chesterfield
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24 Referred requested by the Arkansas Senate

25 Prepared by: MBM/KFW
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