



Arkansas | RANKING: 1

Arkansas has been a leader in implementing the Mother-Child strategy, enacting laws that protect both mother and unborn child against the harms inherent in abortion. It maintains strong informed consent and parental involvement requirements, comprehensive health and safety requirements for abortion facilities, and effective limits on state taxpayer funding for abortion and abortion providers. Arkansas has also begun to regulate biotechnology.

ABORTION

- Arkansas' policy, as explained in an amendment to the state constitution, is to "protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution."
- Arkansas maintains an enforceable abortion prohibition should the U.S. Constitution be amended or certain U.S. Supreme Court decisions be reversed or modified.
- In 2019, Arkansas passed legislation that would prohibit abortion should the U.S. Constitution be amended or certain U.S. Supreme Court decisions be reversed or modified, except in cases where necessary to protect the life of the mother as defined by the statute.
- Arkansas prohibits an abortion if an unborn child's heartbeat is detected and the unborn child is at 12 weeks of development or greater. The law is permanently enjoined.
- Arkansas limits abortion after 18 weeks' gestation. Arkansas also limits abortion at or after 5 months of development (i.e., 20 weeks) on the basis of the pain felt by unborn children.
- Arkansas prohibits sex-selective abortion and abortion based on the diagnosis or potential diagnosis of Down syndrome. The law is in ongoing litigation.
- If the unborn child is diagnosed with a lethal fetal anomaly, the woman must be informed about the option of perinatal palliative care and given a list of available services prior to the abortion.
- Arkansas prohibits partial-birth abortion.
- It also prohibits the dismemberment abortion procedure. The law is in ongoing litigation.
- Arkansas requires that, 72 hours prior to an abortion, a woman must sign a form provided by the physician that contains information about the proposed abortion method, the immediate and long-term risks associated with the proposed method, alternatives to abortion, the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed, and the medical risks associated with carrying the unborn child to term.
- Further, state-prepared materials must be made available to her. These materials include color photographs of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments and a list of private and public agencies providing counseling and alternatives to abortion.
- Arkansas law requires that, before administering an abortion-inducing drug, a physician must first

examine a woman to ensure she does not have an ectopic pregnancy. She must be informed of the possibility of reversing the effects of the chemical abortion.

- After administering an abortion-inducing drug, a physician must schedule a follow-up visit to ensure that the abortion is completed. The physician must also have a contract with a physician who has active admitting privileges and gynecological/surgical privileges at a hospital and who agrees to handle any complications. The contracted physician requirement is enjoined and in ongoing litigation.
- An abortion provider must check for the unborn child's heartbeat prior to abortion and must inform the woman if a heartbeat is detected. Arkansas also requires that women considering abortion receive information about fetal pain.
- Arkansas requires that an abortion provider offer a woman the opportunity to see the ultrasound image if an ultrasound is used in preparation for the abortion.
- A woman must also be informed that a spouse, boyfriend, parent, friend, or other person cannot force her to have an abortion.
- Arkansas' informed consent requirements include a provision requiring that women be given information on the potential ability to reverse the effects of chemical abortions.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without notarized written consent or in-person consent (with photo identification) from a parent or legal guardian, unless the minor states by affidavit that she is the victim of physical or sexual abuse and her only living parent or guardian is the perpetrator, a medical emergency exists, or the minor obtains a court order. Arkansas requires a detailed consent form prior to a minor's abortion.
- Arkansas prohibits intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent and requires the collection of forensic samples when an abortion is performed on a minor under the age of 14. The requirement forensic samples be retained is in ongoing litigation.
- Arkansas's comprehensive abortion facility regulations apply to "any facility in which the primary function is the willful termination of pregnancy." The regulations prescribe minimum health and safety standards for the facility, staffing, and clinic administration. Arkansas strengthened these regulations in 2019.
- All abortion facilities performing ten or more abortions per month must be licensed by the state Department of Health.
- Only a person licensed to practice medicine in the State of Arkansas may perform an abortion.
- Arkansas has an enforceable abortion reporting law but does not require the reporting of information to the Centers for Disease Control (CDC). The measure pertains to both surgical and nonsurgical abortions and requires abortion providers to report complications.
- When an abortion is performed, an abortion provider must report information related to the post-fertilization age of the unborn child.
- Arkansas passed legislation in 2019 that prohibits a state agency from consenting to or approving an abortion procedure for women in the custody of the state unless necessary to save the life of the woman. It does not allow state funding to be authorized to cover the cost of such a procedure.
- Employees and volunteers at "reproductive health facilities" are included in the list of mandatory reporters of suspected sexual abuse of minors.

- The Arkansas Constitution provides that no public funds will be used to pay for any abortion, except to save the mother's life. However, Arkansas follows the federal standard for Medicaid funding for abortions, permitting the use of federal or state matching Medicaid funds for abortions necessary to preserve the life of the woman or when the pregnancy is the result of rape or incest.
- Arkansas enacted a measure prohibiting the disbursement of federal and state funds to entities that perform abortions or provide abortion referrals.
- It prohibits the use of public funds for abortions, abortion referrals, or the purchase or dispensing of abortion-inducing drugs in public schools.
- Arkansas prohibits abortion coverage in the state health insurance Exchanges (required under the federal healthcare law), except in cases of rape, incest, or when the mother's life is in danger.
- Arkansas offers "Choose Life" license plates, the proceeds of which benefit organizations providing abortion alternatives.

LEGAL RECOGNITION AND PROTECTION OF UNBORN CHILDREN AND NEWLY BORN INFANTS

- In 2017, Arkansas enacted the Born-Alive Infant Protection Act, which strengthened existing protections for infants born alive after an attempted abortion.
- Under Arkansas law, the killing of an unborn child at any stage of gestation is defined as a form of homicide.
- It also criminalizes nonfatal assaults on an unborn child.
- Arkansas permits women to use force to defend their unborn children from criminal violence.
- Arkansas allows a parent or other relative to bring a wrongful death (civil) lawsuit when an unborn child is killed through a negligent or criminal act.
- It prohibits wrongful birth and wrongful life lawsuits.
- Arkansas requires the proper burial or cremation of remains resulting from an abortion. The law is in ongoing litigation
- Under the Child Maltreatment Act, "neglect" includes prenatal drug use that causes the child to be born with an illegal substance in his or her system or a drug-related health problem. Moreover, test results may be used as evidence of neglect in subsequent proceedings.
- Arkansas requires healthcare providers to report the birth of an infant who suffers from fetal alcohol syndrome.
- Arkansas allows a woman who loses a child after 5 months (i.e., 20 weeks) gestation to seek a Certificate of Birth Resulting in Stillbirth which is filed with the state registrar.

BIOETHICS LAWS

- Arkansas prohibits both cloning to produce children and cloning for biomedical research.
- However, it maintains no laws pertaining to destructive embryo research.
- Arkansas' fetal experimentation statute prohibits research on a born-alive child as well as research on a child born dead (e.g., aborted).

- It is prohibited to buy, sell, give, exchange, or barter, or offer to buy sell, give, exchange or barter, any aborted fetus or fetal material resulting from an abortion.
- Arkansas prohibits public funds from financing human cloning or destructive embryo research and from buying, receiving, or transferring human embryos or gametes with knowledge it will be used in destructive research. The state and its affiliates cannot use funds, facilities, or employees to knowingly destroy human embryos for research and cannot knowingly participate in human cloning.
- The Newborn Umbilical Cord Initiative Act has established a network to collect and store postnatal tissue and fluid.
- Arkansas excludes an “unborn child” from the definition of “person” in the context of assisted reproductive technologies.
- Arkansas mandates that only physicians may perform artificial insemination procedures.
- Arkansas maintains no regulations related to human egg harvesting.

PATIENT PROTECTION LAWS

- Under Arkansas law, suicide by physician is a felony.

HEALTHCARE FREEDOM OF CONSCIENCE

PARTICIPATION IN ABORTION

- No person may be required to perform or participate in a medical procedure that results in abortion and cannot be subject to civil liability or other recriminatory action for their refusal to participate in abortions. In addition, no hospital is required to permit an abortion within its facility and cannot be subject to civil liability or other recriminatory action for its refusal.
- Arkansas provides some protection for the conscience rights of pharmacists and pharmacies.

PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE

- Arkansas currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, or other forms of medical research that violate a provider’s moral or religious beliefs.

WHAT HAPPENS AFTER *ROE* IS OVERTURNED?

- Arkansas has a law, conditioned on *Roe* being overturned, that makes abortion illegal, which may be enforceable.

RECOMMENDATIONS FOR ARKANSAS

PATIENT PROTECTION ACT PRIORITIES

- Charlie Gard Act (formerly the Life Sustaining Care Act)
 - Pain Management Education Act
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ADDITIONAL PRIORITIES

HEALTHCARE FREEDOM OF CONSCIENCE

- Healthcare Freedom of Conscience Act