

Democratic Gov. Katie Hobbs speaks as she gives the State of the State address, Jan. 9, 2023, at the Arizona Capitol in Phoenix.(AP Photo/Ross D. Franklin)

With executive order, Hobbs, Mayes seek to prevent abortion prosecutions in Arizona

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Gov. Katie Hobbs says she's giving Attorney General Kris Mayes authority over any abortion prosecutions in Arizona – and Mayes has made it clear that she doesn't want to see anyone prosecuted over abortions.

In an executive order issued Friday, Hobbs ordered that the AG "shall assume duties with regard to any criminal prosecution of a medical provider or other entity or individual that is pending or brought in the future by the county attorney of any county" in connection to abortion.

A spokesman for Mayes confirmed on Friday that the AG has no intention of bringing any abortion prosecution forward, meaning the order would have the practical effect of blocking – at least while Hobbs and Mayes are in office – any abortion lawsuit in the state.

"I made a promise to Arizonans that I would do everything in my power to protect reproductive freedom, and this Executive Order reflects that promise," Hobbs said in a news release announcing the move.

Mayes said the order is part of the two women's commitment to "ensure access to reproductive healthcare in Arizona."

The executive order amounts to Hobbs' most significant action as governor on abortion – an issue she emphasized during her campaign last year. And it underscores how the two Democrats occupying top offices in Arizona have worked in concert even as Hobbs has clashed – and found her agenda stymied – by the Republican-controlled legislature.

But Republicans criticized the order, and some argued that Hobbs had gone beyond the limits of executive power in issuing it.


Cathi Herrod

"In her zeal for abortion, Gov. Hobbs has exceeded her authority as governor," said Cathi Herrod, president of the conservative Center for Arizona Policy, in an emailed statement.

Senate President Warren Petersen, R-Gilbert, called the move a "PR stunt" that was "attempting to usurp law enforcement."

The order also prohibits state agencies from participating in or assisting an investigation of unlawful abortion procedures and establishes that Arizona won't extradite anyone charged with abortion-related crimes in another state. And it creates a new committee to study abortion access and provide recommendations to the governor. (Hobbs has set up a string of policy commissions this year on a number of different issues; most are expected to deliver recommendations in the coming months.)

Laura Conover, the Democratic county attorney of Pima County, said she's pleased with the move. But Conover and other Democratic prosecutors likely

didn’t want abortion lawsuits to go anywhere, anyway. The bigger question is how Republican county attorneys will respond.

A spokesperson for Republican Maricopa County Attorney Rachel Mitchell said the governor had not been in contact with the office before issuing the executive order and they were still assessing the impact.

Christian Slater, a spokesman for Hobbs, said the governor’s office believes it’s on solid legal footing in stripping away individual county attorneys’ authority over abortion cases.

The order justifies the move citing a section of Arizona statute that states that the state department of law – which is led by the Attorney General – shall “[a]t the direction of the governor or, alternatively, if deemed necessary by the attorney general, prosecute and defend any proceeding in a state court other than the supreme court in which this state or an officer of this state is a party or has an interest.”

A separate clause of the statute indicates the AG shall, “(a)t the direction of the governor, or if deemed necessary, assist the county attorney of any county in the discharge of the county attorney’s duties.”

Speaker of the House Rep. Toma, R-Peoria, said he’s “reviewing the executive order to determine its legality” and added, in a statement provided by a spokesman: “The Governor cannot unilaterally divert statutory authority to prosecute criminal cases from Arizona’s 15 counties to the Attorney General.”

Herrod, whose advocacy group has pushed for abortion restrictions in Arizona, echoed that in her statement.

“Aid does not mean supplant or replace… The law does not allow her [Hobbs] to strip county attorneys of their clear enforcement authority as granted in various Arizona laws,” Herrod said.

The announcement came a day after Hobbs stood next to Rep. Athena Salman, D-Tempe, announcing a plan to push a “right to contraception” bill at the legislature next year – something that’s unlikely to be popular among GOP lawmakers.

Last year, Republican legislators and then-Gov. Doug Ducey approved a 15-week abortion ban along partisan lines. The measure includes an exemption for abortions later than 15 weeks in the case of medical emergencies, but not in cases of rape or incest. This year, a court found that the 2022 law takes precedence over a more restrictive law dating back to Arizona’s territory days.


Brittany Fonteno

The flurry of abortion regulation activity came in the wake of the U.S. Supreme Court’s action last year in *Dobbs v. Jackson Women’s Health Organization*, which overturned the half-century-old precedent in *Roe v. Wade*.

Advocates for abortion access in Arizona are also expected to try to put an initiative measure on the ballot next year that would enshrine abortion rights into state law. On Thursday, Planned Parenthood Arizona President Brittany Fonteno said the group is looking into a ballot measure for next year, as well as other options.

“We are in an exploratory phase right now, really assessing the possibility of a potential ballot initiative that would protect and expand abortion access in Arizona, and we are at the table having those conversations with partners,” Fonteno said.

Camryn Sanchez and Kiera Riley contributed reporting.