
UNFINISHED BUSINESS

Bill No: SB 107
Author: Wiener (D), et al.
Amended: 8/25/22
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SENATE JUDICIARY COMMITTEE: 8-2, 8/30/22 (Pursuant to Senate Rule 29.10)

AYES: Umberg, Caballero, Durazo, Gonzalez, Laird, Stern, Wieckowski, Wiener

NOES: Borgeas, Jones

NO VOTE RECORDED: Hertzberg

ASSEMBLY FLOOR: 60-19, 8/29/22 - See last page for vote

SUBJECT: Gender-affirming health care

SOURCE: Lieutenant Governor Eleni Kounalakis
Equality California
Planned Parenthood Affiliates of California

DIGEST: This bill enacts various safeguards against the enforcement of other states' laws that purport to penalize individuals from obtaining gender-affirming care that is legal in California.

Assembly Amendments delete the contents of the bill previously passed by the Senate and amend in the current version of the bill

ANALYSIS:

Existing law:

- 1) Provides that each state shall give full faith and credit to the public acts, records, and judicial proceedings of every other state, and that Congress may prescribe the manner in which such acts, records, and proceedings shall be

- proved and the effect thereof. (U.S. Const., art. IV, § 1; see also 28 U.S.C. § 1738.)
- 2) Provides that a person charged in any state with treason, felony, or other crime who fled from that state and is found in another state shall, on demand from the executive authority of the state from which the person fled, be delivered to the state having jurisdiction of the crime. (U.S. Const., art. IV, § 2; 18 U.S.C. § 3182.)
 - 3) Establishes, under the federal Health Insurance Portability and Accountability Act (HIPAA), privacy protections for patients' protected health information and generally provides that a covered entity, as defined (including a health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. §§ 164.500 *et seq.*)
 - 4) Provides that all people have inalienable rights, including the right to pursue and obtain safety, happiness, and privacy. (Cal. Const., art. I, §1.)
 - 5) Prohibits, under the California Medical Information Act (CMIA), providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code, div. 1, pt. 2.6, §§ 56 *et seq.*)
 - 6) Requires, under the CMIA, a provider of health care, health care service plan, or contractor to disclose medical information if the disclosure is compelled under specified circumstances, including by a court pursuant to an order of that court. (Civ. Code, § 56.10(b).)
 - 7) Permits, under the CMIA, a provider of health care, health care service plan, or contractor to disclose medical information in specified circumstances to specified recipients, including to medical practitioners for diagnostic and health care purposes, insurers or other payors, and public agencies. (Civ. Code, § 56.10(c).)
 - 8) Provides that a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. (Code Civ. Proc., § 410.10.)
 - 9) Provides that when a court, upon motion of a party or its own motion, finds that in the interest of substantial justice a civil action should be heard in a forum outside this state, the court must stay or dismiss the action in whole or in part on any conditions that may be just. (Code Civ. Proc., § 410.30.)

- 10) Enumerates, under the Interstate and International Depositions and Discovery Act, the procedure for obtaining discovery in California for a civil case pending in a jurisdiction outside of California. (Code Civ. Proc., pt. 4, tit. 4, ch. 12, art. 1, §§ 2029.100 *et seq.*)
- 11) Establishes the Uniform Child Custody Jurisdiction and Enforcement Act, which sets forth guidelines for California courts regarding the jurisdiction and disposition of family law and child custody matters involving parties in multiple states. (Fam. Code, div. 8, pt. 3, §§ 3400 *et. seq.*)
- 12) Enumerates, under the Insurance Information and Privacy Protection Act, requirements and steps insurers must take to protect the confidentiality of an insured's medical information. (Ins. Code, div. 1, pt. 2, art. 6.6, §§ 791 *et seq.*)
- 13) Sets forth a subpoena process by which the attendance of a witness may be required to appear before a court or magistrate in a criminal action, which may include a subpoena compelling the production of records or other documents. (Pen. Code, § 1326.)
- 14) Requires, subject to the Constitution and laws of the United States, the Governor of this state to have arrested and delivered up to the executive authority of any other state any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state, provided specified requirements related to the request are met. (Pen. Code, §§ 1548.1, 1548.2.)
- 15) Defines "gender affirming health care" to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, which may include, but is not limited to, interventions to suppress the development of endogenous secondary sex characteristics or to align the patient's appearance or physical body with the patient's gender identity. (Welf. & Inst. Code, § 16010.2(b)(3)(A).)
- 16) Defines "gender affirming mental health care" to mean mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance. (Welf. & Inst. Code, § 16010.2(b)(3)(B).)

This bill:

- 1) Incorporates, generally, the definitions of “gender-affirming health care” and “gender affirming mental health care” from Welfare and Institutions Code Section 16010.2(b)(3) and the definition of “sensitive services” from Insurance Code Section 791.02(ac).
- 2) Prohibits a provider of health care, health care services, or contractor from releasing medical information relating to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to any civil action based on another state’s law that authorizes a person to bring a civil action against a person or entity that allows a child to receive gender-affirming health care or gender-affirming mental health care (an “anti-gender-affirming care action”). For purposes of this provision, “person” means an individual or government subdivision, agency, or instrumentality.
- 3) Limits the Interstate and International Depositions and Discovery Act to prohibit a clerk of a superior court in the county in which discovery in a foreign action is sought, or an attorney licensed in this state and retained by a party in a foreign action, from issuing a subpoena for discovery in this state based on a foreign subpoena if the foreign subpoena is based on an anti-gender-affirming care action.
- 4) Provides that the presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care is sufficient to grant a court in this state the jurisdiction to make an initial child custody determination for the child.
- 5) Provides that a court of this state has temporary emergency jurisdiction over a child if the child is present in the state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care.
- 6) Provides, notwithstanding general considerations to determine whether a court in this state is an inconvenient forum, a court shall not, in a case where the provision of gender-affirming health care or gender-affirming mental health care to the child is at issue, determine that it is an inconvenient forum where the law or policy of the other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

- 7) Provides that a court, when determining whether to decline jurisdiction because the person seeking its jurisdiction has engaged in unjustifiable conduct, shall not consider as a factor weighing against the person seeking jurisdiction the removal of the child from a person with physical custody if there is evidence that the taking or retention of the child was for the purpose of obtaining gender-affirming health care or gender-affirming mental health care and the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.
- 8) Provides that a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care or gender-affirming mental health care is against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state.
- 9) Declares that it is the public policy of this state that an out-of-state arrest warrant for an individual based on violating another state's law against providing, receiving, or allowing their child to receive gender-affirming health care or gender-affirming mental health care is the lowest law enforcement priority.
- 10) Prohibits California state and local law enforcement agencies from knowingly making or participating in an arrest or participating in any extradition of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against providing, receiving, or allowing a child to receive gender-affirming health care or gender-affirming mental health care if the care is lawful in this state, to the fullest extent permitted by federal law. This does not prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming health care or gender-affirming mental health care provided that no information relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual.
- 11) Prohibits a provider of health care, health care service plan, or contractor from releasing medical information related to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to any foreign subpoena that is based on an anti-gender-affirming-care action.
- 12) Includes a severability clause.

13) Incorporates chaptering-out amendments to avoid chaptering conflicts with AB 2091 (Bonta, 2022).

Comments

According to Human Rights Watch, as of March 2022, legislatures nationwide had introduced over 300 anti-LGBTQ+ bills, over 130 of which specifically targeted transgender people.¹ One particularly pernicious type of anti-transgender legislation that several states have passed or are considering is legislation to prevent gender-affirming medical care. As the Department of Health and Human Services explains, “[f]or transgender and nonbinary children and adolescents, early gender-affirming care is crucial to overall health and well-being.”² Lack of gender-affirming care is a factor in the mental health crisis among transgender youth; according to one study, 56 percent of transgender youth have attempted suicide, and 86 percent of transgender youth have experienced suicidality.³

This bill makes several modifications to California law in order to provide protection for transgender youth and their families who seek medical care in California from regressive out-of-state laws that target gender-affirming care for minors. The bill also gives protections to the providers of such care. Both this bill and the other states’ bills are intended to protect against implicate the Full Faith and Credit Clause⁴ and the constitutional right to interstate travel.⁵ At this time, the interplay between these two constitutional provisions and the constitutionality of the other states’ laws have yet to be determined, so it is unclear whether this bill will run afoul of the constitution. In the event that certain provisions are found to violate the Full Faith and Credit Clause, however, this bill contains a severability clause to ensure the remainder of the bill stays in effect.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, cost pressure (Trial Court Trust Fund (TCTF)) possibly in the mid-to-upper thousands of dollars in increased staff workload for family courts to hear and adjudicate child custody matters based

¹ Human Rights Watch, Press Release, ICYMI: As Lawmakers Escalate Attacks on Transgender Youth Across the Country, Some GOP Leaders Stand Up for Transgender Youth (Mar. 24, 2022), <https://www.hrc.org/press-releases/icymi-as-lawmakers-escalate-attacks-on-transgender-youth-across-the-country-some-gop-leaders-stand-up-for-transgender-youth> (all links current as of August 29, 2022).

² Department of Health and Human Services, Office of Population Affairs, Gender-Affirming Care and Young People, available at <https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf>.

³ Austin, et al., *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, Journal of Interpersonal Violence (Apr. 29, 2020).

⁴ U.S. Const., art. IV, § 1.

⁵ See, e.g., *Edwards v. People of State of California* (1941) 314 U.S. 160, 173.

on emergency or other jurisdictional bases to ensure a child of another state is able to obtain gender-affirming care. One eight-hour court day costs \$8,000 in workload. If five cases are filed statewide annually requiring family courts to adjudicate specified child custody proceedings requiring 16 hours of court time, the cost to the courts would be \$80,000. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties.

SUPPORT: (Verified 8/29/22)

Lieutenant Governor Eleni Kounalakis (co-source)
Equality California (co-source)
Planned Parenthood Affiliates of California (co-source)
Attorney General Rob Bonta
California Insurance Commissioner Ricardo Lara
ACLU California Action
American Urological Association
California Coalition for Youth
California Medical Association
California Nurse Midwives Association
City of Encinitas
City of Long Beach
City of West Hollywood
County of Los Angeles District Attorney's Office
County of San Mateo
NARAL Pro-Choice California
National Association of Social Workers – California Chapter
Society for Pediatric Urology

OPPOSITION: (Verified 8/29/22)

Alliance Defending Freedom
American College of Pediatricians
California Capitol Connection
California Family Council
Changed Movement
Concerned Women for America
International Federation for Therapeutic & Counselling Choice
Our Duty

ARGUMENTS IN SUPPORT: According to Equality California, one of the co-sponsors of this bill:

Despite longstanding evidence demonstrating how anti-LGBTQ+ legislation inflicts measurable harm on the health and well-being of the LGBTQ+ community, hundreds of anti-LGBTQ+ bills have been proposed nationally in 2022, and roughly half of those bills target the transgender community. One proposal alleged that gender-affirming care for transgender youth constitutes child abuse and should be grounds to remove children from the parents who support and affirm them. Other states are attempting to classify the provision of gender-affirming health care as a crime warranting prison time and are threatening parents with criminal penalties if they attempt to travel to another state in order to secure life-saving gender-affirming care for their child. While attacks on the transgender community are not new, we are experiencing alarmingly blatant attempts to use legislation, policy, and political rhetoric to restrict or eliminate the autonomy, freedom, and existence of transgender people across the country.

While anti-LGBTQ+ legislation inflicts measurable harm on our communities, it is important to remember that the reverse is also true—pro-equality policies are a boon to LGBTQ+ youth, who attempt less often when they have access to LGBTQ+ and gender-affirming spaces at home, at school, with friends and family, and in their broader communities. SB 107 will move the needle toward a California that is healthy, just, and fully equal for all LGBTQ+ people and for transgender youth in particular.

ARGUMENTS IN OPPOSITION: This bill is opposed by several out-of-state anti-transgender organizations as well as the California Family Council. As the only wholly California-based opponent to this bill, the California Family Council writes:

Despite what the bill author says, there is no universal agreement within the medical community regarding the best way to provide healthcare to transgender-identified individuals. The governments and medical institutions of the United Kingdom, Sweden, and Finland have rejected prioritizing “gender-affirming” treatment in favor of an emphasis on mental health.

The vast majority of minors with gender dysphoria desist by adulthood if they are not transitioned and given puberty blockers and cross-sex hormones. Because of this, many doctors and medical professionals refuse to provide transitioning drugs and surgeries, especially on minors, knowing the long-term

side effects and the lack of hard scientific evidence regarding the efficacy of “gender-affirming” treatments.

ASSEMBLY FLOOR: 60-19, 8/29/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Irwin

Prepared by: Allison Meredith / JUD. / (916) 651-4113

8/30/22 19:57:09

**** END ****