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SB-107 Gender-affirming health care. (2021-2022)

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Date Published: 06/01/2022 09:00 PM

REVISED JUNE 08, 2022

AMENDED IN ASSEMBLY JUNE 01, 2022

AMENDED IN ASSEMBLY APRIL 28, 2022

AMENDED IN SENATE FEBRUARY 18, 2021

CALIFORNIA LEGISLATURE— 2021-2022 REGULAR SESSION

SENATE BILL

NO. 107

Introduced by Senator Wiener

(Principal coauthor: Senator Atkins)

(Principal coauthor: Assembly Member Wilson)

(Coauthors: Senators Eggman and Laird)

(Coauthors: Assembly Members Bauer-Kahan, Mia Bonta, Cervantes, Haney, Kalra, Lee, Low, and Ward)

January 05, 2021

An act to add Section 56.109 to the Civil Code, to amend Sections 2029.300 and 2029.350 of the Code of Civil Procedure, ~~to add Section 150905 to the Health and Safety Code, to amend Sections 3421, 3424, 3427, and 3428 of, and to add Section 3453.5 to, the Family Code,~~ and to amend Section 1326 of, and to add ~~Section~~ Sections 819 and 1548.5 to, the Penal Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 107, as amended, Wiener. Gender-affirming health care.

~~The~~

(1) The United States Constitution generally requires a state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. *Existing law, the Uniform Criminal Extradition Act, requires the extradition of a person charged with a crime in another state, as specified.* Existing law sets forth procedures by which a person may enforce a judgment for the payment of money *and child custody orders* issued by the court of a state other than California. Existing law authorizes a California court or attorney to issue a subpoena if a foreign subpoena has been sought in this state. Existing law generally prohibits a provider of health care, a health care service plan, or a contractor from disclosing medical information regarding a patient,

enrollee, or subscriber without first obtaining an authorization, unless a specified exception applies, including that the disclosure is in response to a subpoena.

This bill would ~~declare another state's law authorizing a civil or criminal action against a person or entity that allows a child to receive gender-affirming health care to be contrary to the public policy of this state. The bill would prohibit the application of that law to a controversy in state court, and would prohibit the enforcement or satisfaction of a civil judgment received under that law. The bill would~~ prohibit a provider of health care, a health care service plan, or a contractor from releasing medical information *related to sensitive services or* related to a person or entity allowing a child to receive gender-affirming *health* care in response to a criminal or civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil or criminal action against a person or entity that allows a child to receive gender-affirming health care. The bill additionally would prohibit law enforcement agencies from making, or intentionally participating in, the arrest of an individual pursuant to an out-of-state arrest warrant based on another state's law against receiving or allowing a child to receive gender-affirming health ~~care. The bill would declare its provisions to be severable: care. The bill would prohibit the extradition of an individual charged with violating another state's law that criminalizes allowing a person to receive or provide gender-affirming health care.~~

(2) Existing law, known as the Uniform Child Custody Jurisdiction and Enforcement Act, provides the state exclusive jurisdictional basis for making an initial child custody determination, and permits a California court to assume temporary emergency jurisdiction in specified circumstances. Existing law permits a court to decline to exercise its jurisdiction if it determines that it is an inconvenient forum and a court in another state is a more appropriate forum.

Existing law permits a California court to decline to exercise its jurisdiction if the petitioner has wrongfully taken the child from another state or engaged in similar reprehensible conduct, except as specified. Existing law prohibits a court from considering the taking or retention of a child from a person who has legal custody of the child if there is evidence that the taking or retention was a result of domestic violence.

The bill would prohibit the enforcement of an order based on another state's law authorizing a child to be removed from their parent or guardian based on that parent or guardian allowing their child to receive gender-affirming health care. The bill would prohibit a court from finding that it is an inconvenient forum where the law or policy of another state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care, as defined, and the provision of such care is at issue in the case before the court. The bill would authorize a court to take temporary jurisdiction because a child has been unable to obtain gender-affirming health care. The bill would additionally prohibit a court from considering the taking or retention of a child from a person who has legal custody of the child, if the taking or retention was for obtaining gender-affirming health care or mental health care. The bill would declare its provisions to be severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 56.109 is added to the Civil Code, to read:

56.109. (a) Notwithstanding subdivision (b) of Section 56.10, a provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming *health* care in response to any civil action, including a foreign subpoena, 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.

(b) Notwithstanding subdivision (c) of Section 56.10, a provider of health care, health care service plan, or contractor shall not release medical information to persons or entities who have requested that information and who are authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the information is related to a person or entity allowing a child to receive gender-affirming *health* care, and the information is being requested pursuant to another state's law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care.

(c) For the purposes of this section, "person" means an individual or governmental subdivision, agency, or instrumentality.

(d) For the purpose of this section "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

SEC. 2. Section 2029.300 of the Code of Civil Procedure is amended to read:

2029.300. (a) To request issuance of a subpoena under this section, a party shall submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute making an appearance in the courts of this state.

(b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:

(1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390. No civil case cover sheet is required.

(2) Pay the fee specified in Section 70626 of the Government Code.

(c) When a party submits a foreign subpoena to the clerk of the superior court in accordance with subdivision (a), and satisfies the requirements of subdivision (b), the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(d) A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall incorporate the terms used in the foreign subpoena.

(2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) It shall bear the caption and case number of the out-of-state case to which it relates.

(4) It shall state the name of the court that issues it.

(5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

(e) Notwithstanding subdivision (a), no subpoena shall be issued pursuant to this section if the foreign subpoena would require disclosure of medical information related to sensitive services ~~and~~ *or* is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

~~For~~

(1) For purposes of this subdivision, "sensitive services" has the same meaning as defined in Section 791.02 of the Insurance Code.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

SEC. 3. Section 2029.350 of the Code of Civil Procedure is amended to read:

2029.350. (a) Notwithstanding Sections 1986 and 2029.300, if a party to a proceeding pending in a foreign jurisdiction retains an attorney licensed to practice in this state, who is an active member of the State Bar, and that attorney receives the original or a true and correct copy of a foreign subpoena, the attorney may issue a subpoena under this article.

(b) Notwithstanding subdivision (a), an authorized attorney shall not issue a subpoena pursuant to subdivision (a) if the foreign subpoena would require disclosure of medical information related to sensitive services ~~and~~ *or* is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care. ~~For~~

(1) For purposes of this subdivision, "sensitive services" has the same meaning as defined in Section 791.02 of the Insurance Code.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

(c) A subpoena issued under this section shall satisfy all of the following conditions:

- (1) It shall incorporate the terms used in the foreign subpoena.
- (2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.
- (3) It shall bear the caption and case number of the out-of-state case to which it relates.
- (4) It shall state the name of the superior court of the county in which the discovery is to be conducted.
- (5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

SEC. 4. Section 3421 of the Family Code is amended to read:

3421. (a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

- (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.
- (2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:
 - (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
 - (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
- (3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.
- (4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

(d) The presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) subdivision (b) of Section 16010.2 of the Welfare and Institutions Code, is sufficient to meet the requirements of paragraph (2) of subdivision (a).

SEC. 5. Section 3424 of the Family Code is amended to read:

3424. (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or ~~abuse~~ *abuse, or because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.*

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423, inclusive, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.

SEC. 6. Section 3427 of the Family Code is amended to read:

3427. (a) A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
- (2) The length of time the child has resided outside this state.
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction.
- (4) The degree of financial hardship to the parties in litigating in one forum over the other.
- (5) Any agreement of the parties as to which state should assume jurisdiction.
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this part if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

(e) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceeding to pay, in addition to the costs of the proceeding in this state, necessary travel and other expenses, including attorney's fees, incurred by the other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(f) (1) In a case where the provision of gender-affirming health care or gender-affirming mental health care to the child is at issue, a court of this state shall not 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.

(2) For the purposes of this section, "gender-affirming health care" and "gender-affirming mental health care" have the same meaning as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

SEC. 7. Section 3428 of the Family Code is amended to read:

3428. (a) Except as otherwise provided in Section 3424 or by any other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless one of the following are true:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

(2) A court of the state otherwise having jurisdiction under Sections 3421 to 3423, inclusive, determines that this state is a more appropriate forum under Section 3427.

(3) No court of any other state would have jurisdiction under the criteria specified in Sections 3421 to 3423, inclusive.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subdivision (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 3421 to 3423, inclusive.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subdivision (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this part.

(d) In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section ~~6211~~. *6211, or for the purposes of obtaining gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code, for the child 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.*

SEC. 8. Section 3453.5 is added to the Family Code, to read:

3453.5. (a) *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 shall not be enforced or applied in a case pending in a court in this state.*

(b) *For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.*

~~SEC. 4. Section 150905 is added to the Health and Safety Code, to read:~~

~~150905. (a) A law of another state that authorizes a person or government entity to bring a civil or criminal action against a person or entity that allows a child to receive gender-affirming health care is contrary to the public policy of this state.~~

~~(b) The state shall not do any of the following:~~

~~(1) Apply a law described in subdivision (a) to a case or controversy heard in state court.~~

~~(2) Notwithstanding Chapter 1 (commencing with Section 1710.10) of Title 1 of Part 3 of the Code of Civil Procedure, enforce or satisfy a civil judgment received through an adjudication under a law described in subdivision (a):~~

~~(3) Make or intentionally participate in the arrest of an individual pursuant to a criminal action described in subdivision (a):~~

~~SEC. 5.~~ **SEC. 9.** Section 819 is added to the Penal Code, to read:

819. (a) It is the public policy of the state that an out-of-state arrest warrant for an individual based on violating another state's law against receiving or allowing their child to receive gender-affirming health care is the lowest law enforcement priority.

(b) California law enforcement agencies shall not make or intentionally participate in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against receiving or allowing a child to receive gender-affirming health care.

(c) No state or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department regarding the provision of lawful gender-affirming health care performed in this state.

(d) Nothing in this section shall prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming 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.

(e) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

~~SEC. 6.~~ **SEC. 10.** Section 1326 of the Penal Code is amended to read:

1326. (a) The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

(1) A magistrate before whom a complaint is laid or their clerk, the district attorney or their investigator, or the public defender or their investigator, for witnesses in the state.

(2) The district attorney, their investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

(3) The district attorney or their investigator, the public defender or their investigator, or the clerk of the court in which a criminal action is to be tried. The clerk shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by them, for witnesses in the state, as the defendant may require.

(4) The attorney of record for the defendant.

(b) A subpoena issued in a criminal action that commands the custodian of records or other qualified witness of a business to produce books, papers, documents, or records shall direct that those items be delivered by the custodian or qualified witness in the manner specified in subdivision (b) of Section 1560 of the Evidence Code. Subdivision (e) of Section 1560 of the Evidence Code shall not apply to criminal cases.

(c) *(1)* Notwithstanding subdivision (b), a provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming *health* care in response to any foreign subpoena that is based on a violation of another state's laws authorizing a criminal action against a person or entity that allows a child to receive gender-affirming health care.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

(d) In a criminal action, no party, or attorney or representative of a party, may issue a subpoena commanding the custodian of records or other qualified witness of a business to provide books, papers, documents, or records, or copies thereof, relating to a person or entity other than the subpoenaed person or entity in any

manner other than that specified in subdivision (b) of Section 1560 of the Evidence Code. When a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in camera hearing to determine whether or not the defense is entitled to receive the documents. The court may not order the documents disclosed to the prosecution except as required by Section 1054.3.

(e) This section shall not be construed to prohibit obtaining books, papers, documents, or records with the consent of the person to whom the books, papers, documents, or records relate.

SEC. 11. *Section 1548.5 is added to the Penal Code, to read:*

1548.5. *(a) Notwithstanding any other provision of state law, no state or local law enforcement shall make or intentionally participate in the arrest or recognize any demand for extradition of an individual pursuant to a criminal action related to the law of another state that criminalizes allowing a person to receive or provide gender-affirming health care where that conduct would not be unlawful under the laws of this state to the fullest extent permitted by federal law.*

(b) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

~~SEC. 7.~~ **SEC. 12.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

REVISIONS:

Heading—Line 6.