

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 107 (Wiener) – As Amended June 29, 2022

Policy Committee:	Judiciary	Vote:	7 - 1
	Public Safety		5 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill prohibits any California law enforcement agency (LEA) from making or intentionally participating in the arrest 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.

Specifically, this bill:

- 1) Prohibits any LEA from cooperating with, or providing information to, any individual or out-of-state agency or department regarding lawful gender-affirming health care performed in this state.
- 2) Prohibits a health care provider, health care service plan, or contractor from releasing medical information related to a child that receives gender-affirming health care if the release of information is in response to a criminal or civil action, including a foreign (out-of-state) 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.
- 3) Prohibits 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.
- 4) Prohibits the enforcement of an out-of-state 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.
- 5) Prohibits 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.
- 6) Prohibits an authorized attorney, as specified, from issuing a subpoena if a request is based on an out-of-state subpoena requires disclosure of medical information related to sensitive services 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.

- 7) Declares it the public policy of this state that a law in 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 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.
- 8) Grants a family court with jurisdiction to make an initial child custody determination if the presence of a child in this state is for the purpose of obtaining gender-affirming health care or mental health care.
- 9) Expands existing circumstances in which a family court may exercise emergency jurisdiction if a child is present in this state and the child has been unable to obtain gender-affirming health care or mental health care.

FISCAL EFFECT:

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 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.

COMMENTS:

- 1) **Purpose.** According to the author:

SB 107 reduces the harm done to transgender youth and their families by making it clear that other state's laws that punish people for providing or receiving gender-affirming health care is contrary to the public policy of California.

- 2) **Actions in other States.** Other states, like Texas and Alabama, have recently enacted orders or statutes that criminalize providing gender-affirming health care to transgender youth. Texas ordered its child welfare departments to consider removing children from parents attempting to provide gender-affirming health care to their transgender children. Alabama passed a law that punishes any doctor who provides gender-affirming health care with up to ten years in prison. As a result of these draconian, unconstitutional laws, many parents in other states may bring their children to California to seek treatment.
- 3) **Possible Constitutional Issue.** As a judicial action, enforcement of a subpoena is generally entitled to comity between states pursuant to the Full Faith and Credit Clause (FFCC) of the U.S. Constitution. Article IV, section 1 states:

Full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state, and that the

United States Congress may by general laws prescribe the manner in which such acts, records and proceedings must be proved, and the effect thereof.

If California refuses to honor out-of-state subpoenas, this may result in litigation if it is considered a violation of the FFCC. Cases between states are immediately referred to the U.S. Supreme Court. Additionally, other states may retaliate against this state and refuse to enforce this state's subpoenas.

- 4) **Extradition.** Extradition refers to the legal process of returning fugitives from justice back to the state in which they allegedly committed a crime or violated the terms of their bail, probation, or parole. Extradition between states is guaranteed by the Extradition Clause of the United States Constitution, which provides:

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

The Extradition Clause was codified in 18 USC § 3182. The Extradition Clause in the Constitution is limited, as it refers only to persons “who shall flee from justice” and requires surrender to the state from which they “fled.” So, it covers only persons who committed a crime in one state and then flee from there.

The extradition provision in the Constitution and corresponding federal statute applies to a person who violated a law in a state like Texas or Alabama and then fled to California. Because the extradition provision of this bill prohibits a law enforcement agency from cooperating with an extradition request only to “the fullest extent permitted by federal law,” it appears that a California law enforcement agency may be required to extradite an individual if federal law required it. However, existing case law also allows a court to deny extradition to another state if the demanding state is requesting extradition based on a statute or law that is void on its face. (*In re Cooper* (1960) 53 Cal.2d 772, 775.)

- 5) **Related Legislation.** AB 2091 (Bonta) prohibits a health care provider, health care service plan, or contractor from releasing medical information related to an individual seeking or obtaining an abortion in response to a subpoena or request if that subpoena or request is based on either another state's laws that interfere with a person's rights set forth in the Reproductive Privacy Act, or a foreign penal civil action. AB 2091 is pending in the Senate Appropriations Committee.

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