

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 957 (Wilson)
Version: June 5, 2023
Hearing Date: June 13, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Family law: gender identity

DIGEST

This bill clarifies that a family court, when determining the best interest of the child in a proceeding to determine custody or visitation for a child, shall consider, as part of the consideration of the health, safety, and welfare of the child, a parent's affirmation of the child's gender identity.

EXECUTIVE SUMMARY

Under California law, the overarching principle in a court's determination in a parental custody or visitation case is the best interest of the child. What constitutes the best interest of the child is an intensely fact-specific determination that requires the court to look at the child's health, safety, and welfare, the child's relationship with each parent, and other factors that may contribute to the overall wellbeing of the child. The Legislature has, over the past few decades, added more specific factors for courts to consider (such as in cases where there have been allegations of domestic violence) and expressly prohibited courts from considering other factors (such as the immigration status of a parent) to ensure that the child's best interest remains paramount.

One factor that is strongly correlated with the health, safety, and wellbeing of a child is the affirmation of their gender identity. As explained further in Part 2 of this analysis, the numbers are staggering: nearly one in five transgender or nonbinary youth in California have attempted suicide, and over half of them have seriously considered suicide. Parental affirmation of a child's gender identity, however, reduces the odds that a transgender or nonbinary youth will attempt suicide by over 50 percent. In recognition of the clear connection between gender affirmance and a child's mental health, this bill clarifies that, as part of a court's holistic consideration of the child's health, safety, and welfare, the court must consider whether each parent affirms the child's gender identity. The consideration of a parent's affirmance, or lack thereof, will

not be determinative in the court's custody or visitation order; the bill simply makes clear that gender-affirmance should be considered as part of the comprehensive determination of the child's best interest.

This bill is sponsored by the California State PTA, the California TGI Policy Alliance, the EmpowerTHEM Collective, Equality California, Gender Justice Los Angeles, the Los Angeles LGBT Center, TransFamily Support Services, TransYouth Liberation, and the Women's Foundation of California, and is supported by the California Faculty Association, the California Youth Empowerment Network. This bill is opposed by Bridge Network, the California Parents Union, California's Legislative Voice, Carlsbad C2O, the Silicon Valley Association of American Women, Stand Up Sacramento County, and 14 individuals.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) States that it is the public policy of this state to ensure that:
 - a) The health, safety, and welfare of children is the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children;
 - b) Children have the right to be safe and free from abuse, because the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child; and
 - c) Children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and parents are encouraged to share the rights and responsibilities of child rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided. (Fam. Code, § 3020(a), (b).)

- 2) Requires a court, when determining the best interest of the child in a proceeding to determine child custody and visitation rights, to consider all of the following and any other factors it find relevant:
 - a) The health, safety, and welfare of the child.
 - b) A history of abuse by one parent or any other person seeking custody against a child to whom the parent is related or with whom the parent has a caretaking relationship, as specified; the other parent; a parent, current spouse, of the parent, or a person with whom the parent has a dating or engagement relationship.
 - c) The nature and amount of contact with both parents.
 - d) The habitual or continual illegal use of controlled substances and the habitual or continual abuse of alcohol or prescribed controlled substances, as specified. (Fam. Code, §§ 3011, 3021.)

- 3) Establishes an order of preference for custody of a child, starting with jointly to both parents or to either parent, which is subject to the best interest of the child as set forth in 1) and 2). (Fam. Code, § 3040.)

This bill:

- 1) Clarifies that the court's obligation to consider a child's health, safety and welfare, as part of the determination of the best interest of the child for purposes of custody or visitation, includes the consideration of whether a parent affirms the child's gender identity.
- 2) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

AB 957 would clarify that affirming a child's gender identity is in the best interest of the child for purposes of child custody and visitation decisions, increasing the likelihood that a gender affirming parent is given legal custody and authority to make important decisions about the child's medical care and education.

2. The correlation between affirming a child's gender identity and the child's safety and welfare

According to data published at the end of 2022, 54 percent of California transgender and nonbinary youth seriously considered suicide, and 19 percent of California transgender and nonbinary youth attempted suicide in the past year.¹ These rates of considering suicide and attempting suicide are dramatically higher for transgender youth than for cisgender youth.²

One proven factor that reduces the likelihood that a transgender or nonbinary youth will attempt suicide is the acceptance of the youth's gender identity by the adults and peers in their life.³ Parents, in particular, make a difference: having at least one parent accept a transgender youth's gender identity has shown to be the number one factor

¹ The Trevor Project, 2022 U.S. National Survey on LGBTQ Youth Mental Health by State: California (Dec. 15, 2022), p. 2.

² E.g., Price & Green, Association of Identity Acceptance with Fewer Suicide Attempts Among Transgender and Nonbinary Youth, *Transgender Health*, Vol. 1, No. 1 (Feb. 2023), p. 56.

³ E.g., *id.* at p. 59; Jin, et al., Maternal Support Is Protective Against Suicidal Ideation Among a Diverse Cohort of Young Transgender Women, *LGBT Health*, 7(7): 349-357 (Oct. 2020).

that reduces suicide risk, even more than acceptance by peers.⁴ Even small measures of acceptance can make a difference; for example, one study showed that allowing transgender youths who were allowed to use their chosen names at school, home, work, and with friends “experienced 71 percent fewer symptoms of severe depression, a 34 percent decrease in reported thoughts of suicide and a 65 percent decrease in suicide attempts.”⁵

3. This bill clarifies that a child’s health, safety, and welfare, within a custody or visitation proceeding, includes a parent’s affirmation of the child’s gender identity

“Under California’s statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child.”⁶ That scheme “allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.”⁷ When determining the best interest of a child, a court may consider any relevant factors, and must consider the following: the health, safety, and welfare of the child; any history of abuse or neglect by the party seeking custody; the nature and amount of contact with the parents; and substance abuse by a parent.⁸ The analysis is always informed by the fact that the right to participate in the raising of one’s child is a protected constitutional right that cannot be cast aside without good cause.⁹

While the correlation between gender acceptance and the mental health and safety of transgender youth is clear, the Family Code does not currently explicitly require a court to consider gender affirmation when determining the best interest of a child for purposes of custody or visitation. This bill simply clarifies that family courts, when making determinations about a child’s best interest in a custody or visitation proceeding, must consider a parent’s acceptance of a child’s gender identity as a component of the child’s overall health, safety, and welfare. The bill does not compel the court to come to a particular outcome based on this factor or override the court’s discretion to reach a determination about the child’s best interest in light of all of the facts;¹⁰ it merely makes explicit the fact that affirmance of a child’s gender identity is an

⁴ Price & Green, *supra*, at p. 59.

⁵ University of Texas at Austin, UT News, Using Chosen Names Reduces Odds of Depression and Suicide in Transgender Youths (Mar. 30, 2018), <https://news.utexas.edu/2018/03/30/name-use-matters-for-transgender-youths-mental-health/>. All links in this analysis are current as of June 8, 2023.

⁶ *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255; see §§ 3011, 3020, 3040 & 3041.

⁷ Fam. Code, § 3040.

⁸ *Id.*, §§ 3011, 3020.

⁹ *E.g., Troxel v. Granville* (2000) 530 U.S. 57, 65-66.

¹⁰ For example, certain opponents of the bill argue that this bill will compel judges to overlook evidence that a child is being harmed in the form of overly accelerated surgical gender-affirming care. This is incorrect: the judge retains the discretion to look at all of the factors contributing to the child’s health, safety, and welfare, including whether gender-affirming treatments are being provided consistent with the recommendations of medical professionals (which correlates with positive mental health outcomes for transgender youth). (*See, e.g.,* Tordoff, et al., Mental Health Outcomes in Transgender and Nonbinary

integral component of a child's overall health, safety, and welfare which should be considered by the family court. As explained by TransFamily Support Services and TransYouth Liberation, two of the bill's sponsors:

The Family Code is intended to center the child's best interest in decisions about visitation and custody. California Family Code section 3011 lists several factors to consider when determining the child's best interest. Still, it fails to consider this vulnerable population of children at increased risk of harm. [This bill] will provide gender-affirming parents with the support needed to continue to love and affirm their diverse [transgender, gender-diverse, and intersex] children.

The bill's opponents appear to generally take issue with the concept that youths can identify as transgender and, on that basis, argue that gender affirmation should not be considered as a factor in determining the best interest of a child. Supporters of the bill disagree; for example, according to the California Youth Empowerment Network:

Our transgender youth go a long way towards self-discovery. It can be extremely difficult to be one's authentic self under scrutiny of classmates, friends, and family members. A step someone would take towards reaffirming one's gender identity is by changing their name. However, sometimes the parent or guardian will actively oppose all attempts of gender-reaffirming care, causing undue harm to our transgender youth such as, but not limited to, anxiety, depression, and thoughts of suicide. Assembly Bill 957 would require the courts to consider reaffirming a youth's gender identity as it is in the youth's best interest when one parent does not consent to a child's name and gender marker change. This, in turn, will help to protect and improve the mental health of these transgender youth.

SUPPORT

California Transgender, Gender Non-Confirming and Intersex Policy Alliance (co-sponsor)

California State PTA

EmpowerTHEM Collective (co-sponsor)

Equality California (co-sponsor)

Gender Justice LA (co-sponsor)

Los Angeles LGBT Center (co-sponsor)

TransFamily Support Services (co-sponsor)

TransYouth Liberation (co-sponsor)

Women's Foundation of California (co-sponsor)
ACLU California Action
Arming Minorities Against Addiction & Disease Institute
California Faculty Association
California LGBTQ Health and Human Services Network
California Youth Empowerment Network
Children's Legal Services
Citizens for Choice
Coachman Moore & Associates
Desert AIDS Project
Ella Baker Center for Human Rights
Face to Face
Harm Reduction Institute
National Association of Social Workers - California Chapter
National Harm Reduction Coalition
National Health Law Program
Radiant Health Centers
Sacramento LGBT Community Center
San Gabriel Valley LGBTQ+ Center
Somos Familia Valle
Source LGBT+ Center
TEACH
The San Diego LGBT Community Center
ValorUS

OPPOSITION

Bridge Network
California Capitol Connection
California Catholic Conference
California Family Council
California Parents Union
California's Legislative Voice
Carlsbad C2O
Eagle Forum California
International Federation for Therapeutic and Counselling Choice
Moms for Liberty Placer County
Our Duty
Pacific Justice Institute
Silicon Valley Association of Republican Women
Stand Up Sacramento County
Traditional Values for the Next Generation
15 individuals

RELATED LEGISLATION

Pending Legislation:

SB 407 (Wiener, 2023) requires the Department of Social Services (DSS) to include, in its standards for assessing potential resource families, a requirement that the potential resource family demonstrate the capacity and willingness to care for a child regardless of the child’s sexual orientation or gender identity. SB 407 is pending before the Assembly Human Services Committee.

AB 1522 (Cervantes, 2023) requires DSS to convene a workgroup to create a report with recommendations to prevent housing instability among LGBTQ youth in foster care. AB 1522 is pending before the Assembly Appropriations Committee.

Prior Legislation:

AB 421 (Ward, Ch. 40, Stats. 2022) updated procedures for changing gender and sex identifiers on official documents and resolved internal inconsistencies introduced as a result of chaptering amendments taken to AB 218 (see below).

AB 218 (Ward, Ch. 577, Stats. 2021) established a process for a petitioner seeking a change of gender to also request that their marriage license and certificate and their children’s birth certificates be reissued with updated information about the petitioner.

AB 2119 (Gloria, Ch. 385, Stats. 2018) clarified the right of foster youth to gender affirming health care and gender affirming mental health care and required the Department of Social Services (DSS), in consultation with stakeholders, to develop and issue written guidance regarding foster youth access to gender affirming health care and gender affirming mental health care by January 1,2020.

PRIOR VOTES:

Assembly Floor (Ayes 51, Noes 13)
Assembly Judiciary Committee (Ayes 8, Noes 3)
