

SENATE, No. 3592

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED FEBRUARY 13, 2023

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Establishes certain protections for persons providing, receiving, or allowing children to receive gender-affirming health care.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning gender-affirming care, amending P.L.2004,
2 c.147 (C.2A:34-53 et seq.), and supplementing Title 2A of the
3 New Jersey Statutes, and Titles 9, 26, and 45 of the Revised
4 Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. Section 13 of P.L.2004, c.147 (C.2A:34-65) is amended to read
10 as follows:

11 13. a. Except as otherwise provided in section 16 of this act, or
12 section 1 of P.L.2013, c.7 (C.9:2-12.1) concerning a service
13 member's absence due to a deployment or service-related treatment
14 as set forth in that section, a court of this State has jurisdiction to
15 make an initial child custody determination only if:

16 (1) this State is the home state of the child on the date of the
17 commencement of the proceeding, or was the home state of the
18 child within six months before the commencement of the
19 proceeding and the child is absent from this State but a parent or
20 person acting as a parent continues to live in this State;

21 (2) a court of another state does not have jurisdiction under
22 paragraph (1) of this subsection, or a court of the home state of the
23 child has declined to exercise jurisdiction on the ground that this
24 State is the more appropriate forum under section 19 or 20 of this
25 act and:

26 (a) the child and the child's parents, or the child and at least one
27 parent or a person acting as a parent have a significant connection
28 with this State other than mere physical presence; and

29 (b) substantial evidence is available in this State concerning the
30 child's care, protection, training and personal relationships;

31 (3) all courts having jurisdiction under paragraph (1) or (2) of
32 this subsection have declined to exercise jurisdiction on the ground
33 that a court of this State is the more appropriate forum to determine
34 the custody of the child under section 19 or 20 of this act; or

35 (4) no state would have jurisdiction under paragraph (1), (2) or
36 (3) of this subsection.

37 b. Subsection a. of this section is the exclusive jurisdictional
38 basis for making a child custody determination by a court of this
39 State.

40 c. Physical presence of, or personal jurisdiction over, a party or
41 a child is neither necessary nor sufficient to make a child custody
42 determination.

43 d. A court of this State may assume temporary emergency
44 jurisdiction in accordance with section 16 of this act.

45 e. The presence of the child in this State for the purpose of
46 receiving gender-affirming health care as defined in section 5 of
47 P.L., c. (C) (pending before the Legislature as this bill) is

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 sufficient to meet the requirements of subparagraph (a) of paragraph
2 (2) of subsection a. of this section.

3 (cf: P.L. 2013, c.7, s.2)

4

5 2. Section 16 of P.L.2004, c.147 (C. 2A:34-68) is amended to
6 read as follows:

7 16. a. A court of this State has temporary emergency
8 jurisdiction if the child is present in this State and the child has
9 been abandoned, or it is necessary in an emergency to protect the
10 child because the child, or a sibling or parent of the child, is
11 subjected to or threatened with mistreatment or abuse, or the child
12 is unable to receive gender-affirming health care as defined in
13 section 5 of P.L. c., (C.) (pending before the Legislature
14 as this bill) in the child's home state.

15 b. If there is no previous child custody determination that is
16 entitled to be enforced under this act, and if no child custody
17 proceeding has been commenced in a court of a state having
18 jurisdiction under sections 13 through 15 of this act, a child custody
19 determination made under this section remains in effect until an
20 order is obtained from a court of a state having jurisdiction under
21 sections 13 through 15 of this act. If a child custody proceeding has
22 not been or is not commenced in a court of a state having
23 jurisdiction under sections 13 through 15 of this act, a child custody
24 determination made under this section becomes a final
25 determination if:

26 (1) it so provides; and

27 (2) this State becomes the home state of the child.

28 c. If there is a previous child custody determination that is
29 entitled to be enforced under this act, or a child custody proceeding
30 has been commenced in a court of a state having jurisdiction under
31 sections 13 through 15 of this act, any order issued by a court of
32 this State under this section must specify in the order a period of
33 time which the court considers adequate to allow the person seeking
34 an order to obtain an order from the state having jurisdiction under
35 sections 13 through 15 of this act. The order issued in this State
36 remains in effect until an order is obtained from the other state
37 within the period specified or the period expires.

38 d. A court of this State which has been asked to make a child
39 custody determination under this section, upon being informed that
40 a child custody proceeding has been commenced in, or a child
41 custody determination has been made, by a court of a state having
42 jurisdiction under sections 13 through 15 of this act, shall
43 immediately communicate with the other court. A court of this
44 State which is exercising jurisdiction pursuant to sections 13
45 through 15 of this act, upon being informed that a child custody
46 proceeding has been commenced in, or a child custody
47 determination has been made by, a court of another state under a
48 statute similar to this section shall immediately communicate with

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1 the court of that state to resolve the emergency, protect the safety of
2 the parties and the child, and determine a period for the duration of
3 the temporary order.

4 (cf: P.L.2004, c.147, s.16)

5

6 3. Section 19 of P.L.2004, c.147 (C.2A:34-71) is amended to
7 read as follows:

8 19. a. Inconvenient Forum.

9 A court of this State that has jurisdiction under this act to make a
10 child custody determination may decline to exercise its jurisdiction
11 at any time if it determines that it is an inconvenient forum under
12 the circumstances and that a court of another state is a more
13 appropriate forum. The issue of inconvenient forum may be raised
14 upon the court's own motion, request of another court or motion of
15 a party.

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

21 (1) whether domestic violence has occurred and is likely to
22 continue in the future and which state could best protect the parties
23 and the child;

24 (2) the length of time the child has resided outside this State;

25 (3) the distance between the court in this State and the court in
26 the state that would assume jurisdiction;

27 (4) the relative financial circumstances of the parties;

28 (5) any agreement of the parties as to which state should assume
29 jurisdiction;

30 (6) the nature and location of the evidence required to resolve
31 the pending litigation, including the testimony of the child;

32 (7) the ability of the court of each state to decide the issue
33 expeditiously and the procedures necessary to present the evidence;
34 and

35 (8) the familiarity of the court of each state with the facts and
36 issues of the pending litigation.

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

42 d. A court of this State may decline to exercise its jurisdiction
43 under this act if a child custody determination is incidental to an
44 action for divorce or another proceeding while still retaining
45 jurisdiction over the divorce or other proceeding.

46 e. A court of this State shall be the appropriate forum to exercise
47 jurisdiction in a case when the law or policy of the other state that
48 may take jurisdiction limits the ability of a parent to obtain gender-

1 affirming health care, as defined in section 5 of P.L. _____,
2 c. (C. _____) (pending before the Legislature as this bill), for their
3 child.

4 (cf: P.L.2004, c.147, s.19)

5

6 4. Section 20 of P.L.2004, c.147 (C.2A:34-72) is amended to
7 read as follows:

8 20. Jurisdiction Declined by Reason of Conduct.

9 a. Except as otherwise provided in section 16 of this act or by
10 other law of this State, if a court of this State has jurisdiction under
11 this act because a person invoking the jurisdiction has engaged in
12 unjustifiable conduct, the court shall decline to exercise its
13 jurisdiction unless:

14 (1) the parents and all persons acting as parents have acquiesced
15 in the exercise of jurisdiction;

16 (2) a court of the state otherwise having jurisdiction under
17 sections 13 through 15 of this act determines that this State is a
18 more appropriate forum under section 19 of this act; or

19 (3) no other State would have jurisdiction under sections 13
20 through 15 of this act.

21 b. If a court of this State declines to exercise its jurisdiction
22 pursuant to subsection a. of this section, it may fashion an
23 appropriate remedy to ensure the safety of the child and prevent a
24 repetition of the wrongful conduct, including staying the proceeding
25 until a child custody proceeding is commenced in a court having
26 jurisdiction under sections 13 through 15 of this act.

27 c. If a court dismisses a petition or stays a proceeding because it
28 declines to exercise its jurisdiction pursuant to subsection a. of this
29 section, it shall charge the party invoking the jurisdiction of the
30 court with necessary and reasonable expenses including costs,
31 communication expenses, attorney's fees, investigative fees,
32 expenses for witnesses, travel expenses, and child care during the
33 course of the proceedings, unless the party from whom fees are
34 sought establishes that the award would be inappropriate. The court
35 may not assess fees, costs, or expenses against this State except as
36 otherwise provided by law other than this act. No fees, costs or
37 expenses shall be assessed against a party who is fleeing an incident
38 or pattern of domestic violence or mistreatment or abuse of a child
39 or sibling, unless the court is convinced by a preponderance of
40 evidence that such assessment would be clearly appropriate.

41 d. In making a determination under this section, a court shall not
42 consider as a factor weighing against the petitioner any taking of
43 the child or retention of the child from the person who has rights of
44 legal custody, physical custody or visitation, if there is evidence
45 that the taking or retention of the child was to protect the petitioner
46 from domestic violence, or to protect the child or sibling from
47 mistreatment or abuse, or for the purposes of receiving gender-

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1 affirming health care, as defined in section 5 of P.L. , c. (C.)
2 (pending before the Legislature as this bill), for the child.

3 (cf: P.L.2004, c.147, s.20)

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5 5. As used in P.L. c, (C.) (pending before the
6 Legislature as this bill):

7 “Gender-affirming health care” means care that focuses on a
8 transgender person’s physical, mental, and social health needs and
9 well-being while confirming the person’s gender identity, including
10 but not limited to, psychological or psychiatric care, surgery,
11 hormone replacement therapy, and other nonsurgical treatments
12 intended to align certain physical aspects of a person’s gender
13 identity.

14 “Person” means a person, any State, county, or local
15 governmental entity or instrumentality, a partnership, an
16 association, a limited liability company, or a corporation.

17

18 6. (New section) Notwithstanding the provisions of
19 N.J.S.2A:160-14, the Governor shall not surrender, on demand of
20 the executive authority of any other state, any person who:

21 a. is found in this State;

22 b. was not in the state whose executive authority is making the
23 demand at the time of the commission of the alleged crime and has
24 not fled therefrom; and

25 c. is charged in the state whose executive authority is making
26 the demand with providing, receiving, or allowing a child to receive
27 gender-affirming health care that is permitted under the laws of this
28 State, including on any theory of vicarious, joint, several, or
29 conspiracy liability.

30

31 7. (New section) a. Notwithstanding the provisions of any law,
32 rule, regulation, or order to the contrary, an attorney or counselor at
33 law who engages in this State in the practice of law shall not
34 respond to any subpoena issued by another state or jurisdiction if
35 the subpoena relates to a violation of that state’s or jurisdiction’s
36 law against a person providing, receiving, or allowing a child to
37 receive gender-affirming health care that is permitted under the
38 laws of this State.

39 b. Notwithstanding the provisions of any law, rule, regulation,
40 or order to the contrary, a State, county, or local law enforcement
41 agency shall not:

42 (1) knowingly make an, or participate in the, arrest of a person
43 pursuant to an outstanding arrest warrant issued by another state or
44 jurisdiction for a violation of that state’s or jurisdiction’s law
45 against a person providing, receiving, or allowing a child to receive
46 gender-affirming health care that is permitted under the laws of this
47 State; and

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1 (2) cooperate with, or respond to, an inquiry from a state or
2 jurisdiction about a person providing, receiving, or allowing a child
3 to receive gender-affirming health care that is permitted under the
4 laws of this State;

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6 8. (New section) Any law or judicial ruling of another state or
7 jurisdiction authorizing a state agency to remove a child from the
8 care and custody of the child's parent or guardian as a result of the
9 parent or guardian allowing the child to receive gender-affirming
10 health care, as defined in section 5 of P.L. ,c. (C.)
11 (pending before the Legislature as this bill), shall not be enforced
12 by a court of this State in a case pending therein.

13
14 9. a. (New section) A health care facility licensed pursuant to
15 P.L.1971, c.136 (C.26:2H-1 et seq.) shall not provide the medical
16 records of any child seeking or receiving gender-affirming health
17 care, as defined in section 5 of P.L. ,c. (C.) (pending
18 before the Legislature as this bill), in furtherance of any interstate
19 investigation or proceeding, based on another state's law, seeking to
20 impose civil or criminal liability upon a person:

21 (1) for the provision, receipt, or seeking of, or inquiring or
22 responding to an inquiry about, the person providing gender-
23 affirming health care to a child that is permitted under the laws of
24 this State;

25 (2) in response to a subpoena issued by another state relating to
26 the person providing gender-affirming care to a child that is
27 permitted under the laws of this State; or

28 (3) for assisting, advising, aiding, abetting, facilitating,
29 soliciting, or conspiring with any person or entity providing,
30 receiving, seeking, or inquiring or responding to an inquiry about,
31 the person providing gender-affirming health care to a child that is
32 permitted under the laws of this State.

33 b. This section shall not apply to any investigation or proceeding
34 when the conduct subject to potential liability under the
35 investigation or proceeding would be subject to liability under the
36 laws of this State if committed in this State. This section shall not
37 apply if it is necessary for the agency or person to engage in
38 conduct otherwise prohibited by this section in order to comply
39 with a valid order issued by a court with jurisdiction over the
40 agency or person, or to comply with applicable provisions of State
41 or federal law.

42
43 10. a. (New section) A health care professional licensed
44 pursuant to Title 45 or Title 52 of the Revised Statutes shall not
45 provide the medical records of any child seeking or receiving
46 gender affirming health care, as defined in section 5 of P.L. , c.
47 (C.) (pending before the Legislature as this bill), in
48 furtherance of any interstate investigation or proceeding, based on

1 another state’s law, seeking to impose civil or criminal liability
2 upon a person:

3 (1) for the provision, receipt, or seeking of, or inquiring or
4 responding to an inquiry about, the person providing gender-
5 affirming health care to a child that is permitted under the laws of
6 this State;

7 (2) in response to a subpoena issued by another state relating to
8 the person providing gender-affirming care to a child that is
9 permitted under the laws of this State; or

10 (3) for assisting, advising, aiding, abetting, facilitating,
11 soliciting, or conspiring with any person or entity providing,
12 receiving, seeking, or inquiring or responding to an inquiry about,
13 the person providing gender-affirming health care to a child that is
14 permitted under the laws of this State.

15 b. This section shall not apply to any investigation or proceeding
16 when the conduct subject to potential liability under the
17 investigation or proceeding would be subject to liability under the
18 laws of this State if committed in this State. This section shall not
19 apply if it is necessary for a person to engage in conduct otherwise
20 prohibited by this section in order to comply with a valid order
21 issued by a court with jurisdiction over the person or entity, or to
22 comply with applicable provisions of State or federal law.

23

24 11. This act shall take effect immediately.

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26

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STATEMENT

28

29 This bill establishes certain protections for persons who provide,
30 receive, or allow a child to receive gender-affirming health care.
31 As defined in the bill, “gender-affirming care” means care that
32 focuses on a transgender person’s physical, mental, and social
33 health needs and well-being while confirming the person’s gender
34 identity, including but not limited to, psychological or psychiatric
35 care, surgery, hormone replacement therapy, and other nonsurgical
36 treatments intended to align certain physical aspects of a person’s
37 gender identity.

38 Specifically, the bill amends P.L.2004, c.187 (C.2A:34-53 et
39 seq.), the “Uniform Child Custody Jurisdiction and Enforcement
40 Act” to stipulate that: 1) the presence of the child in this State for
41 the purpose of receiving gender-affirming health care is sufficient
42 for a State court to have jurisdiction to make an initial child custody
43 determination for a child, if the child and the child's parents, or the
44 child and at least one parent or a person acting as a parent, have a
45 significant connection with this State other than mere physical
46 presence (section 13 of P.L.2004, c.147 (C.2A:34-65)); 2) a court of
47 this State has temporary emergency jurisdiction if the child is
48 present in this State and the child is unable to receive gender-

1 affirming health care in the child's home state (section 16 of
2 P.L.2004, c.147 (C. 2A:34-68)); 3) a court of this State is the
3 appropriate forum to exercise jurisdiction in a child custody case
4 when the law or policy of the other state that may take jurisdiction
5 limits the ability of a parent to obtain gender-affirming health care
6 for a child (section 19 of P.L.2004, c.147 (C.2A:34-71)); and 4) in
7 making a determination about whether a court in this State can
8 decline to exercise its jurisdiction over a child custody case, the
9 court cannot consider the taking or keeping of the child from the
10 person who has legal or physical custody or visitation rights as a
11 factor weighing against a petitioner in the case, if there is evidence
12 that taking or keeping the child was so that the child could receive
13 gender-affirming health care (section 20 of P.L.2004, c.147
14 (C.2A:34-72)).

15 The bill also prohibits the Governor from extraditing a person
16 who: is found in this State; was not in the state making the demand
17 for extradition at the time of the commission of the alleged crime
18 and did not flee; and is charged in the state making the demand for
19 extradition with providing, receiving, or allowing a child to receive
20 gender-affirming health care that is permitted under the laws of this
21 State.

22 Under the bill's provisions, an attorney or counselor at law who
23 practices law in the State is prohibited from responding to any
24 subpoena issued by another state or jurisdiction if the subpoena
25 relates to a violation of that state's or jurisdiction's law against a
26 person providing, receiving, or allowing a child to receive gender-
27 affirming health care that is permitted under the laws of this State.

28 The bill also prohibits a State, county, or local law enforcement
29 agency from: 1) knowingly making an, or participating in the, arrest
30 of a person pursuant to an outstanding arrest warrant issued by
31 another state or jurisdiction for a violation of that state's or
32 jurisdiction's law against a person providing, receiving, or allowing
33 a child to receive gender-affirming health care that is permitted
34 under the laws of this State; and 2) cooperating with, or responding
35 to, an inquiry from another state or jurisdiction about a person
36 providing, receiving, or allowing a child to receive gender-
37 affirming health care that is permitted under the laws of this State.

38 Under the bill, any law or judicial ruling of another state or
39 jurisdiction authorizing a state agency to remove a child from the
40 care and custody of the child's parent or guardian as a result of the
41 parent or guardian allowing the child to receive gender-affirming
42 health care cannot be enforced by a court of this State.

43 The bill's provisions bar a health care facility licensed pursuant
44 to pursuant to P.L.1971, c.136 (C.26:3H-2 et seq.) and a health care
45 professional licensed pursuant to Title 45 or Title 52 of the Revised
46 Statutes from providing the medical records of any child seeking or
47 receiving gender-affirming health care in furtherance of any
48 interstate investigation or proceeding, based on another state's law,

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1 seeking to impose civil or criminal liability upon a person or entity
2 for: 1) the provision, receipt, or seeking of, or inquiring or
3 responding to an inquiry about, the person providing gender-
4 affirming health care to a child that is permitted under the laws of
5 this State; or 2) assisting, advising, aiding, abetting, facilitating,
6 soliciting, or conspiring with any person or entity providing,
7 receiving, seeking, or inquiring or responding to an inquiry about,
8 the person providing gender-affirming health care to a child that is
9 permitted under the laws of this State.

10 A health care facility or health care professional would be
11 required to provide the medical records of any child seeking or
12 receiving gender-affirming health care in the furtherance of an
13 investigation or proceeding if the conduct subject to potential
14 liability under the investigation or proceeding would be subject to
15 liability under New Jersey law if committed in New Jersey, or if the
16 provision of such medical records is necessary for a person to
17 engage in conduct otherwise prohibited by the bill in order to
18 comply with a valid order issued by a court with jurisdiction over
19 the person, or to comply with applicable provisions of State or
20 federal law.

21 As defined in the bill: “person” means an individual, any State,
22 county, or local governmental entity or instrumentality, a,
23 partnership, an association, a limited liability company, or a
24 corporation.