

STATE OF NEW YORK

8704

IN SENATE

March 1, 2024

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, in relation to consideration of gender-affirming health care or gender-affirming mental health care in child custody cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 76 of the domestic relations law is amended by
2 adding a new subdivision 4 to read as follows:

3 4. The presence of a child in this state for the purpose of obtaining
4 gender-affirming health care or gender-affirming mental health care, is
5 sufficient to meet the requirements of this section and to enable the
6 court to obtain initial child custody jurisdiction.

7 § 2. Subdivision 1 of section 76-c of the domestic relations law, as
8 added by chapter 386 of the laws of 2001, is amended to read as follows:

9 1. A court of this state has temporary emergency jurisdiction if the
10 child is present in this state and the child has been abandoned or it is
11 necessary in an emergency to protect the child because the child, or a
12 sibling or parent of the child, is subjected to, or threatened with,
13 mistreatment or abuse, or because the child has been prevented from
14 obtaining gender-affirming health care or gender-affirming mental health
15 care.

16 § 3. Section 76-f of the domestic relations law is amended by adding a
17 new subdivision 5 to read as follows:

18 5. In a case where the provision of gender-affirming health care or
19 gender-affirming mental health care to the child is at issue, a court of
20 this state shall not determine that it is an inconvenient forum where
21 the law or policy of the other state that may take jurisdiction limits
22 the ability of a parent to obtain gender-affirming health care or
23 gender-affirming mental health care for their child.

24 § 4. Subdivision 4 of section 76-g of the domestic relations law, as
25 added by chapter 386 of the laws of 2001, is amended to read as follows:

26 4. In making a determination under this section, a court shall not
27 consider as a factor weighing against the petitioner any taking of the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD11061-01-3

1 child, or retention of the child after a visit or other temporary relin-
2 quishment of physical custody, from the person who has legal custody, if
3 there is evidence that the taking or retention of the child was to
4 protect the petitioner from domestic violence or [~~the child or sibling~~
5 ~~from mistreatment or abuse~~] for the purposes of obtaining gender-affirm-
6 ing health care or gender-affirming mental health care for the child and
7 the law or policy of the other state limits the ability of a parent to
8 obtain gender-affirming health care or gender-affirming mental health
9 care for their child.

10 § 5. Section 77-b of the domestic relations law is amended by adding
11 two new subdivisions 3 and 4 to read as follows:

12 3. Notwithstanding the provisions of subdivision one of this section,
13 a law of another state that authorizes a child to be removed from their
14 parent or guardian based on the parent or guardian allowing their child
15 to receive gender-affirming health care or gender-affirming mental
16 health care is against the public policy of this state and shall not be
17 enforced or applied in a case pending in a court in this state.

18 4. A court of this state has jurisdiction to vacate, stay or modify a
19 child custody determination of a court of another state which failed to
20 recognize a child's right to receive gender-affirming health care or
21 gender-affirming mental health care.

22 § 6. Subdivision 1 of section 77-j of the domestic relations law, as
23 added by chapter 386 of the laws of 2001, is amended to read as follows:

24 1. Upon the filing of a petition seeking enforcement of a child custo-
25 dy determination, the petitioner may file a verified application for the
26 issuance of a warrant to take physical custody of the child if the child
27 is at imminent risk of suffering serious physical harm or of removal
28 from this state. As used in this section, "serious physical harm" does
29 not include the provision of gender-affirming health care and/or
30 gender-affirming mental health care.

31 § 7. Section 77-1 of the domestic relations law, as added by chapter
32 386 of the laws of 2001, is amended to read as follows:

33 § 77-1. Recognition and enforcement. 1. A court of this state shall
34 accord full faith and credit to an order issued by another state and
35 consistent with this article which enforces a child custody determi-
36 nation by a court of another state unless the order has been vacated,
37 stayed, or modified by a court having jurisdiction to do so under title
38 two of this article, unless recognition and enforcement would violate
39 subdivision one-c of section two hundred forty of this chapter or
40 section one thousand eighty-five of the family court act.

41 2. Notwithstanding the provisions of subdivision one of this section,
42 a law of another state that authorizes a child to be removed from their
43 parent or guardian based on the parent or guardian allowing their child
44 to receive gender-affirming health care or gender-affirming mental
45 health care is against the public policy of this state and shall not be
46 enforced or applied in a case pending in a court in this state.

47 3. A court of this state has jurisdiction to vacate, stay or modify a
48 child custody determination of a court of another state which failed to
49 recognize a child's right to receive gender-affirming health care or
50 gender-affirming mental health care.

51 § 8. This act shall take effect immediately.