OLR Bill Analysis

sHB 5414 (as amended by House "A")*

AN ACT CONCERNING PROTECTIONS FOR PERSONS RECEIVING AND PROVIDING REPRODUCTIVE HEALTH CARE SERVICES IN THE STATE.

SUMMARY

This bill principally (1) limits the governor's discretionary extradition authority, (2) establishes a cause of action for persons against whom there is an out of state judgement based on reproductive health care services, and (3) authorizes additional types of health care providers to perform certain abortion services.

It limits the governor's discretion to extradite individuals accused of performing acts in Connecticut that result in crimes in another state. Specifically, he may only do so if the acts would also be punishable under Connecticut's laws if their consequences, as claimed by the demanding state, had taken effect in this state.

The bill also establishes a cause of action that allows persons who were sued in another state for allegedly providing, or receiving support for, reproductive health services that are legal in Connecticut to recover certain costs they incurred defending the original action and bringing an action under the bill. Under the bill, "reproductive health care services" include all medical, surgical, counseling, or referral services related to the human reproductive system, such as pregnancy, contraception, or pregnancy termination.

The bill limits the assistance officers of Connecticut courts, public agencies, and certain health care providers may provide in out-of-state judicial actions related to reproductive health care services that are legal in this state. With exceptions, the bill generally prohibits the following with respect to these actions:

1. court officers from issuing summons for criminal cases or subpoenas for civil actions or proceedings;

2. public agencies, or individuals acting on their behalf, from providing information or expending resources to support an investigation seeking to impose criminal or civil liability; and

3. certain health care providers, payors, or information processors from disclosing protected information without written consent from a patient or an authorized legal representative.

Additionally, the bill allows advanced practice registered nurses (APRNs), nurse-midwives, and physician assistants (PAs) to perform aspiration abortions (the most common type of abortion during the first trimester). The bill also explicitly authorizes these providers to perform medication abortions, which conforms to existing practice resulting from a 2001 attorney general opinion. It specifies that these providers may perform either type of abortion in accordance with their respective licensing statutes (see BACKGROUND).

The bill correspondingly specifies that the decision to terminate a pregnancy before the viability of the fetus must be made solely by that patient in consultation with the patient's physician, APRN, nurse-midwife, or PA, not just the patient and physician as under current law.

Under the bill, as under existing law, physicians may perform any type of abortion. Existing law, unchanged by the bill, prohibits an abortion from being performed after the viability of the fetus except when needed to preserve the pregnant patient's life or health.

The bill also makes technical changes to terminology.

*House Amendment "A" (1) adds the provisions authorizing APRNs, nurse-midwives, and PAs to perform certain types of abortions; (2) modifies the provision limiting the governor's extradition authority to require that a person's act, rather than crime, be one that is punishable in this state; (3) limits the cause of action created under the bill to cases where the underlying liability arose from an act, or part of an act, that occurred in this state; (4) specifies the medical record disclosure provision does not, with exceptions, impede disclosures that are allowable by state or federal laws or court rules; and (5) expands the ban

on agencies assisting in certain out-of-state actions to all public agencies, rather than only state agencies, but adds an exemption for assistance in actions based on conduct that could result in liability here.

EFFECTIVE DATE: July 1, 2022

§ 5 — LIMITS ON NON-FUGITIVE EXTRADITIONS

The bill limits the governor's discretion to extradite someone accused of performing an act in this state that results in a crime in another state (i.e., the person did not flee the other state as a fugitive for which federal law and the U.S. Constitution would require extradition; see BACKGROUND).

Under existing law, the executive authority (i.e., governor) of another state may demand that Connecticut's governor surrender an individual located in Connecticut who is accused of committing an act here, or in a third state, that intentionally resulted in a crime in the demanding state. And under current law, in that situation, the governor may surrender the accused. Under the bill, he may only do so if the acts for which extradition is sought would be punishable under Connecticut law if their consequences, as claimed by the demanding state, had taken effect in this state.

§ 1 — RECOUPERATION OF OUT-OF-STATE JUDGMENTS RELATED TO REPRODUCTIVE HEALTH SERVICES

Cause of Action

The bill creates a cause of action for persons against whom a judgment was entered in another state based on allegedly providing or receiving, or helping another person to provide or receive, or providing material support for reproductive health care services that are legal in Connecticut. For this purpose, a "person" is an individual, partnership, association, limited liability company, or corporation.

The bill applies to judgments where the person's liability in the original action was entirely or partially based on these alleged actions or any theory of vicarious, joint, several, or conspiracy liability arising from them. It allows the person to recover damages from any party that (1) brought the original action that resulted in the judgment or (2) tried to enforce it.

Under the bill, this cause of action is unavailable if no part of the acts that formed the basis for liability occurred in Connecticut. It is also unavailable when the judgment entered in the other state is based on a claim similar to one that exists under Connecticut law and is a:

1. tort-, contract-, or statutory-based claim brought by a patient, or their authorized legal representative, who received the reproductive health care services, for damages the patient suffered or from another individual's loss of consortium with the patient; or

2. contract-based claim brought or enforced by someone with a contractual relationship with the person who is subject to the judgment.

Recoverable Damages

Under the bill, the court must award a person who successfully brings an action:

1. just damages resulting from the original action (e.g., the amount of the judgment entered in the other state and costs, expenses, and reasonable attorney's fees spent defending the action) and

2. costs, expenses, and reasonable attorney's fees spent bringing the action under the bill, as the court allows.

§§ 3 & 4 — LIMITS ON COMPELLING WITNESS PARTICIPATION IN CERTAIN OUT-OF-STATE ACTIONS

Depositions

Under current law, judges, justices of the peace, notaries public, and Superior Court commissioners (Connecticut licensed attorneys) may subpoena and compel material witnesses to appear before (i.e., be deposed by) attorneys licensed in other jurisdictions, including for lawsuits in other states (CGS § 52-155). The bill, with two exceptions, prohibits them from issuing a subpoena that relates to reproductive health care services that are legal in Connecticut.

Under the bill's two exceptions, these court officers may issue a subpoena if it is for an out-of-state action for which a similar claim

would exist under Connecticut law and it is a:

1. tort-, contract-, or statutory-based claim brought by a patient, or their authorized legal representative, who received the reproductive health care services upon which the original lawsuit was based, for damages the patient suffered or from another individual's loss of consortium with the patient or

2. contract-based claim brought or enforced by someone with a contractual relationship with the person who is subject to the judgment.

Testimony in Criminal Cases

Current law allows a Connecticut judge to issue a summons ordering a person located in this state to attend and testify in a criminal prosecution or grand jury investigation in another state, at that other state's request, if the person is a material witness and certain other requirements are met.

The bill prohibits Connecticut judges from issuing a summons when the other state's prosecution or investigation is for a violation of its law on providing, receiving, or assisting with reproductive health services that are legal in Connecticut. However, it allows a judge to issue a subpoena if the acts being prosecuted or investigated would also constitute an offense in this state.

§ 6 — LIMITS ON USE OF AGENCY RESOURCES

The bill generally prohibits Connecticut public agencies, or people acting on their behalf (e.g., employees, appointees, officers, and officials), from providing information or using state resources to help another state's investigation or proceeding to impose civil or criminal liability on a person or entity for (1) providing, seeking, receiving, or inquiring about reproductive health care services that are legal in this state or (2) assisting another person or entity to do so. Specifically, state agencies, and those acting on their behalf, may not expend or use time, money, facilities, property, equipment, personnel, or other resources for these purposes. These prohibitions do not apply to investigations or proceedings if the conduct at issue would be subject to liability under Connecticut's laws if committed here.

Under the bill, a "public agency" is any (1) state or local governmental agency, department, institution, bureau, board, or commission, including any executive, administrative, or legislative office, and the administrative functions of any judicial office, including the Division of Public Defender Services or (2) entity that is the functional equivalent of these agencies.

§ 2 — PROHIBITED PATIENT INFORMATION DISCLOSURES

The bill prohibits, with exceptions, certain covered entities that provide health care, payments, or billing services from disclosing specified information in a civil action, or a preliminary proceeding before a civil action, or a probate, legislative, or administrative proceeding. "Covered entities" are health care plans or payors; health care clearinghouses; and health care providers that electronically transmit health information pursuant to Health Insurance Portability and Accountability Act (HIPAA) regulations (45 C.F.R. § 160.103).

Without explicit written consent from the patient or patient's legal representative (e.g., conservator or guardian), the bill prohibits disclosing the following about reproductive health care services that are legal under Connecticut law:

1. communications made to a covered entity or obtained by it from a patient or the patient's legal representative or

2. information obtained by a physical examination of the patient.

It requires covered entities to inform patients or their legal representatives of the patient's right to withhold consent for these disclosures.

Exceptions

Under the bill, a covered entity does not have to obtain written consent to disclose communications or information:

1. pursuant to state law or judicial branch court rules;

2. to their attorney or professional liability insurer or agent to defend against a claim, or one that is reasonably believed to occur, against the covered entity;

3. to the public health commissioner if the disclosure is for a patient's records that are related to a complaint investigation; or

4. about the abuse of a child, elderly person, incompetent person, or person with a mental or physical disability if it is known or suspected in good faith.

The bill does not impede sharing medicals records if state or federal law or the judicial branch's court rules allows them to be shared, but it may impede subpoenas to produce, copy, or inspect records relating to reproductive health services. Additionally, it does not replace existing law's disclosure requirements for communications or records, as applicable:

1. between an individual and psychologist, psychiatric mental health provider, domestic violence or sexual assault counselor, marital and family therapist, or professional counselor;

2. disclosed by a mental health facility for approved research purposes;

3. to the Department Mental Health and Addiction Services (DMHAS) commissioner by facilities or individuals under contract with DMHAS;

4. relating to a social worker's evaluation or treatment; or

5. by a physician, surgeon, or other licensed health care provider in a civil action (including a related preliminary proceeding), or a probate, legislative, or administrative proceeding.

BACKGROUND

Extraditions Required by Federal Law and the Constitution

By law, the governor may, but is not required to, extradite a person who commits an act in this state that results in a crime in another state. But he generally does not have discretion and must extradite individuals who were present in the demanding state at the time of the alleged crime, and then fled the demanding state (i.e., "fugitives"). The U.S. Constitution's Privileges and Immunities Clause, as well as federal and state law, require that a person charged with treason or a felony or

other crime who flees to another state be extradited to the demanding state (see CGS § 54-159, 18 U.S.C. § 3182, and U.S. Const., art IV, § 2, cl. 2).

Attorney General Opinion on Medical Abortions

Existing state regulations only expressly allow physicians to perform abortions (Conn. Agencies Regs., § 19-13-D54(a)). However, a 2001 Connecticut's attorney general opinion (2001-15) concluded that this restriction only applied to surgical abortions, and that state statutes allowing APRNs, nurse-midwives, and PAs to prescribe drugs authorized them, under certain conditions, to dispense or administer a drug that would medically terminate a pregnancy.

APRNs, Nurse-Midwives, and PAs

For each of these professions, the existing licensing statutes establish, among other things, certain required relationships with other providers.

APRNs must practice in collaboration with a physician for the first three years after becoming licensed in the state. They may practice without this collaboration if they have been licensed and practicing in collaboration with a physician for at least three years with at least 2,000 hours of practice (CGS § 20-87a).

Nurse-midwives must practice within a health care system. They must have clinical relationships with obstetricians-gynecologists that provide for consultation, collaborative management, or referral, as indicated by the patient's health status (CGS § 20-86b).

Each PA must have a clearly identified supervising physician who has final responsibility for patient care and the PA's performance. The functions a physician delegates to a PA must be implemented in accordance with a written delegation agreement between them (CGS §§ 20-12c & -12d).

Related Bill and Resolution

sHB 5261 (File 467), reported favorably by the Public Health Committee, contains substantially similar provisions (1) authorizing APRNs, nurse-midwives, and PAs to perform certain types of abortions

and (2) making related changes.

SJ 30 (File 389), reported favorably by the Government Administration and Elections Committee, proposes a constitutional amendment that prohibits any laws infringing the right of personal reproductive autonomy unless justified by a compelling state interest achieved by the least restrictive means.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 24 Nay 14 (03/31/2022)