

SENATE BILL REPORT

SB 5489

As Reported by Senate Committee On:
Law & Justice, January 26, 2023

Title: An act relating to protecting access to reproductive health care services and gender-affirming treatment in Washington State.

Brief Description: Concerning access to reproductive health care services and gender-affirming treatment in Washington State.

Sponsors: Senators Trudeau, Wellman, Dhingra, Hasegawa, Hunt, Keiser, Liias, Lovelett, Nguyen, Pedersen, Randall, Saldaña, Stanford, Valdez and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/24/23, 1/26/23 [DP, DNP, w/oRec].

Brief Summary of Bill

- Provides legal protections for individuals who provide or receive protected health care service from lawsuits and criminal cases commenced in other states.
- Prohibits extradition to another state based on individuals providing or receiving protected health care services.
- Creates a civil cause of action for interference with protected health care services.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Padden, Ranking Member; McCune, Wagoner and Wilson, L.

Minority Report: That it be referred without recommendation.

Signed by Senator Torres.

Staff: Joe McKittrick (786-7287)

Background: In 2022, the United States Supreme Court rendered its decision in *Dobbs v. Jackson Women's Health Organization* holding that the United States Constitution does not confer a right to receive an abortion. The *Dobbs* decision overturned the court's previous rulings in *Roe v. Wade* and *Planned Parenthood of Southeast Pennsylvania v. Casey* which originally asserted the fundamental right to an abortion. After the *Dobbs* decision, each state may now regulate abortion services as it sees fit.

At least 16 states currently have abortion bans in statute. Some of these states have also sought to enact laws aimed at preventing citizens of the state from traveling to other states to receive abortion services, or attaching civil or criminal liability to health care providers who provide abortion services in other states. These states have sought the extraterritorial enforcement of their laws under the legal concept of the effects doctrine which asserts that activities outside a state's boundaries may be regulated if they impact interests of the state within its borders.

Many states, including Washington, have adopted uniform laws aimed at aiding parties to a lawsuit or criminal case in obtaining documents, information, and witnesses that may be outside the states' borders and aimed at securing the return of fugitives.

In 1943, Washington adopted the Uniform Act to Secure the Attendance of Witnesses (UASAW) from without a state in criminal proceedings. A court of another state may summons a witness in Washington to testify in a criminal prosecution or grand jury investigation in that state by presenting the demand to any judge in the county in which the person is currently residing. After a hearing on the matter, if the judge finds that the witness is material and necessary, that it will not cause undue hardship to the witness, and that the laws of the other state will give the person protection from arrest and the service of civil and criminal process, the judge must issue a summons directing the witness to attend and testify in that other state's court.

In 1971, Washington adopted the Uniform Criminal Extradition Act (UCEA). The UCEA sets out procedures for the governor of any other state to request the Governor of Washington to surrender a person who is accused or convicted of a crime in the requesting state. Under UCEA if the person is found in Washington, the Governor must deliver the person to the state where the crime was committed.

If the governor of any other state demands the extradition of a person in Washington who is charged in that other state with committing an act in Washington, or in any third state,

intentionally resulting in a crime in the state whose governor is making the demand, the Governor of Washington may, but is not required to, surrender that person to the demanding state.

In 2021, Washington adopted the Uniform Interstate Depositions and Discovery Act (UIDDA). UIDDA allows parties in a lawsuit to serve a subpoena on a non-party in another state, requiring them to produce documents or give a deposition. It also provides a process for quashing or modifying a subpoena if it is overly burdensome or if it seeks privileged information. Under UIDDA, a party to a lawsuit outside Washington may present a subpoena issued by the trial state to the clerk of the court in the Washington county in which discovery is sought. The clerk of the Washington court must then issue a Washington subpoena for service upon the person to be deposed or from whom discovery materials are sought. In issuing the subpoena, the Washington court acts in accordance with its own procedure. Service of the subpoena and discovery procedures must follow the Washington Superior Court civil rules. All applications to the court for a protective order or to enforce, quash, or modify a subpoena issued through UIDDA procedures must comply with Washington court rules and applicable statutes.

Summary of Bill: Definitions. Definitions are provided, including a definition of reproductive health care services which means all services, care or products of a medical, surgical, psychiatric, therapeutic, mental health, behavioral health, diagnostic, preventative, rehabilitative, supportive, counseling, referral, prescribing, or dispensing nature relating to the human reproductive system, including, but not limited to, all services, care, and products related to pregnancy, assisted reproduction, contraception, miscarriage management, or the termination of a pregnancy, including self-managed termination.

Interstate Depositions and Discovery. Any request for the issuance of a subpoena under the UIDDA must include an attestation, made under penalty of perjury, stating whether the subpoena seeks documents, information, or testimony related to the provision or receipt of protected health care services.

The clerk of the court is prohibited from issuing a subpoena under UIDDA if the party is seeking information, documents, or testimony related to protected health care services that are legal in Washington, and the clerk must present the subpoena to the court for action. After reviewing the subpoena, the court may not issue the subpoena and must quash any existing subpoena issued by the court if the subpoena is related to such protected health care services unless the subpoena is related to:

- an out-of-state tort, statute, or contract action, for which a similar claim would exist under Washington law, that is brought by a person seeking damages suffered by the person or derived from an individual's loss of consortium; or
- an out-of-state contract action, for which a similar claim would exist under Washington law, that is brought or sought to be enforced by a party with a contractual relationship with the person that is subject to the subpoena.

Criminal Procedure. Any ex parte order for the interception of any private communication or conversation must state if the application seeks communications or conversations related to a criminal investigation for the provision, or receipt of protected health care services that are legal in Washington. Courts are prohibited from issuing such an order if this type of information is sought.

Courts are prohibited from issuing orders for the installation and use of a pen register, trap and trace device, or cell site simulator device related to the provision or receipt of protected health services. All applications for the installation of such devices must include an attestation, made under penalty of perjury, stating whether the application seeks information related to the provision or receipt of protected health care services.

Attendance of Witnesses from Outside a State in Criminal Proceedings. Under the UASAW, the summons of a witness in Washington to testify in a prosecution or grand jury investigation in another state is prohibited if the prosecution or investigation is based on the provision or receipt of protected health care services.

A valid summons for a witness in Washington to testify in another state related to a criminal prosecution or grand jury investigation must include an attestation, made under penalty of perjury, stating that such prosecution or investigation does not seek documents, information, or testimony related to the provision or receipt of protected health care services.

Criminal Extradition. Under UCEA, no person may be extradited to another state if the demand for extradition states the person is charged with a crime in the demanding state related to the provision or receipt of protected health care services in Washington or any third state.

An extradition demand claiming a person committed a crime in another state must include an attestation made under penalty of perjury stating whether the charge of the crime in the other state is related to the provision or receipt of protected health care services. No warrant may issue, and no arrest may be effected, related to an extradition demand claiming criminal liability related to the provision or receipt of protected health care services.

Criminal Orders. No criminal warrant, subpoena, or order seeking records in the possession of a person who receives service outside Washington may be issued if such criminal process is related to the provision or receipt of protected health care services.

A Washington recipient of a criminal warrant, subpoena, or order issued by or in another state does not need to comply if the process is related to criminal liability based on the provision or receipt of protected health care services.

False Attestations. Any false attestation submitted as required by UIDDA, UASAW, or UCEA, or related to the interception of private communications, is subject to a \$10,000 penalty per violation and subjects the attester to the jurisdiction of the courts of Washington

for any suit, penalty, or damages arising out of the false attestation.

Limits on Use of Agency Resources. Employees of state courts and public employees or officials may not issue or effectuate a subpoena, warrant, court order, or other civil or criminal legal process related to proceedings in another state in connection with the provision or receipt of protected health care services.

State or local agencies or departments are prohibited from cooperating with or providing information to any individual, agency, or department from another state, or to the extent permitted by federal law, to a federal law enforcement agency, for the purpose of enforcing another state's law that asserts criminal or civil liability related to the provision or receipt of protected health services.

Limits on Providing Electronic Communication Services. Washington businesses that provide the ability of users to send or receive wire or electronic communications are prohibited from knowingly providing records, information, facilities, or assistance in response to a civil or criminal process that relates to an investigation into, or the enforcement of, another state's laws asserting criminal or civil liability for the provision or receipt of protected health care services. Such businesses are prohibited from complying with any civil or criminal process unless it is accompanied by an attestation stating that the civil or criminal process does not seek documents, information, or testimony relating to an investigation into, or the enforcement of, another states law asserting criminal or civil liability for the provision or receipt of protected health care services.

Interference with Protected Health Care Services. A claim for interference with protected health care services arises when an underlying action is commenced against an injured party in any court in the United States where liability in the underlying action is based in whole or in part on the injured party's provision or receipt of protected health care services, conduct occurring in Washington, and a cause of action or criminal liability not available under Washington law or the law of another state that is substantially similar to Washington law.

A claim for interference with protected health care services also arises when any person in Washington receives a subpoena from any court in the United States where the information sought concerns the provision or receipt of protected health care services, and where liability in the underlying action is based in whole or in part on a cause of action or criminal liability that is not available under Washington law or the law of another state that is substantially similar to Washington law.

A person may maintain a claim for interference with protected health care services if the underlying action is objectively baseless and brought for an improper purpose. If a court finds for the injured party, the party may recover damages from any party that brought the underlying action including actual damages, costs and attorneys' fees, and statutory damages up to \$10,000.

These provisions do not apply to a judgement entered in another state based on an action:

- founded in tort, contract, or statute where a similar claim would exist under Washington law, brought by a person who received protected health care services, for damages suffered by the person or damages derived from an individual's loss of consortium;
- regarding a contract dispute where a similar claim would exist under Washington law brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of a judgment entered in another state; or
- where no part of the acts that formed the basis for liability occurred in Washington.

Miscellaneous. Any protected health care services provider, employee, or affiliate, and any family members residing with the person, who attests they are the target of threats or harassment related to the provision of protected health care services may apply to the secretary of state's address confidentiality program.

Appropriation: None.

Fiscal Note: Requested on January 21, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This bill is to ensure those seeking or providing care for reproductive or gender affirming services in Washington are shielded from liability. This bill prohibits issuance of out of state subpoenas seeking information, out of state criminal investigations and arrests, Governor extraditing any person for out of state charges regarding reproductive health service. This bill provides a cause of action to recoup damages and protects providers and people seeking access to care. People who are coming to our state should be protected under our laws. This is an issue of freedom for people facing huge barriers or criminal liability for making these difficult personal decisions. This bill protects providers and allows them to provide the services people need. This is an opportunity to stand in support of our transgender residents. There is increased suicidality for transgender people who live in states where gender affirming care is not available. Since the *Dobbs* decision we are witnessing many states ban access to reproductive care. Our state needs to show we will not stand for this type of bullying. This bill supports the state's trans community. This bill will protect the trans community from over criminalization.

CON: Law enforcement officers of Washington do not enforce the laws of other states, except in the context of extradition requests. This bill would create unnecessary challenges for law enforcement when serving an extradition warrant because officers will not know if a murder warrant from another state is based on a mass shooting or an abortion, and that officer will not have the right information to make the appropriate decision. This bill appears to be creating an environment of fear in a state that is very pro-abortion and would

be expensive for the citizens of Washington. We do not have enough data on the long-term effects of gender-affirming treatment on minors and should not be passing legislation that could have long-term effects for those individuals. This bill is irresponsible.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Lisa Keating; Jody Disney, LWVWA; Jill Kong; Dr. Erin Berry, Planned Parenthood; Dr. Anuj Khattar, Cedar River Clinics; Jaelynn Scott, Lavender Rights Project; Dr. Sarah Prager, American College of Obstetricians and Gynecologists; Dr. Suzanne Poppema; Danni Askini, Gender Justice League; Emily Stone, Washington State Coalition Against Domestic Violence; Alex Wehinger, Washington State Medical Association; Hillary Whitmore; Alizeh Bhojani, Legal Voice.

CON: Diana Amirehteshami, Conservative Ladies of WA; James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.