

Fleeing Families



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Introduction

- The ability to access to gender-affirming medical care for trans youth is impacting where families want to live or feel safe living, working and raising children.
- While this has long been an issue, it ramped up exponentially in 2021/2022 as conservative states have explosively engaged in state-sponsored discrimination intentionally targeting these children and their families by:
 - Restricting access to gender affirming care for youth
 - Going after providers who offer this care
 - Requiring professionals who work with children (i.e. teachers, school nurses, counselors) to report the parents of these children to child welfare authorities—or face possible criminal charges.
 - Empowered child welfare officials and law enforcement to enforce and prosecute parents and providers
 - Introducing many other laws that make school and communities more toxic

Trevor Project's Research on the Benefits of Gender Affirming Care for Youth

- Medical, Psycho-social supports (can include medical, social, or legal transition):
 - Reduce depression, behavioral problems, trauma, other harmful mental health outcomes
 - Improve feelings of self-worth
 - Reduce suicidal ideation and attempts
 - Improve family acceptance and community support
 - Better outcomes with experience in schools
 - Reduce instances of discrimination
 - More contexts chosen name consistently used (home, friends, school) significant decrease in suicidal ideation and behavior
- Discriminatory social policies directly contribute to adverse mental health outcomes

Why Is This This Conversation Critical To Get a Handle On Now?

- As DV/family law/LGBTQ advocates, we will see families who are already seeking or planning to seek refuge here:
 - Need to appreciate the social, political, legal contexts
 - May be court intervention—you'll need to help courts, opposing counsel, AFCs provide appropriate relief
- (Areas of) NY may be more welcoming than other jurisdictions making our state a more attractive place to make a new home or seek access to health care
- Policies, laws and case law are *fast evolving* in NY and throughout the country. We may have a refuge law in 2023.
- Add domestic violence dynamics into the mix:
 - Abusive parties can and do exploit legal quagmires as a tool of DV and coercive control.
 - Abusive parties more likely to police gender identity and expression of both children and current or former partners
 - Abusive parties may rely upon and capitalize on systemic homo/biphobia, transphobia, and unhelpful law to avoid accountability, engage in retaliatory litigation, or punish the survivor or child

Implications of a Changing Legal Landscape

- **No uniform legal framework for analysis**
 - Cross-border issues may cause novel legal questions--create extra barriers, confusion, and trauma
 - Different cases, different results—especially if AFC or judiciary not affirming or educated
 - May have new laws, little caselaw for stare decisis—asking courts to apply law to novel facts and circumstances
 - Use of experts, battle of “experts”
 - May warrant more seasoned counsel, more appeals—harder on poor & marginalized people

- **Allows abusive party to potentially “game the system” by:**
 - Forum shopping for unfriendly jurisdictions
 - Exploit unfavorable or evolving case law, laws, and policies
 - Place the desires and opinions of the parent over the needs and best interests of the child.
 - Leveraging UCCJEA or relocation restrictions from unfriendly state to harm child

- **These cases are very different than the usual high conflict custody cases—outcomes for impacted youth forced to delay gender-affirming care, live with non-affirming parent or caregiver (who may also be abusive and controlling), live in unfriendly state, endure bullying/silencing or other harms in former state, impact on mental and physical health**

Examples of Recent Forms of State-Sponsored Discrimination

- Prohibiting or criminalizing consenting to gender-affirming medical care
- Prohibiting or criminalizing providing gender-affirming medical care
- Reporting to child welfare authorities, removing children from affirming parents
- Book bans in schools and public libraries
- ID restrictions
- Religious exemptions
- Speech-curriculum restrictions in schools
- Restricted access to school facilities (bathrooms, locker rooms)
- Outing kids to their parents
- School sports bans
- Restrictions on/criminalizing performances where people perform in a gender different than that assigned at birth (i.e. drag shows and potentially more)

Climate in Other States

- <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/> (Kaiser Family Foundation report)
- <https://www.washingtonpost.com/lifestyle/2022/10/14/anti-trans-bills/> (Washington Post article)
- Some organizations nationally tracking anti-transgender youth legislation and more:
 - <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>
 - <https://transequality.org/state-action-center>
 - <https://www.hrc.org/campaigns/the-state-legislative-attack-on-lgbtq-people>
 - <https://erininthemorn.substack.com/>

Some Recent Media (12/4/22)

- <https://www.nbcnews.com/nbc-out/out-politics-and-policy/teen-mom-are-starting-colorado-attacks-trans-care-rcna57869>
- <https://www.politico.com/news/2022/11/27/trans-medical-care-red-states-families-00064394>
- <https://www.buzzfeednews.com/article/hallielieberman/dont-say-gay-lgbtq-students-schools-florida>
- <https://www.nbcnews.com/think/opinion/texas-transphobic-politics-forced-family-to-flee-and-save-son-rcna57179>
- <https://www.usatoday.com/story/news/nation/2022/10/29/transgender-children-families-flee-states-restricting-rights/10547110002/>
- <https://www.openlynews.com/i/?id=fbc5d700-8c4e-4d70-9c32-52ca82aab109>

When Families Seek Refuge in NY



Where Parents Disagree

- May not agree about social/legal/medical transition--or anything at all; one parent may advocate conversion therapy or delay
- Court intervention may be necessary to resolve disputes. Attys representing affirming parents should be prepared to:
 - Find support or help with this case
 - Demonstrate that they acted in a manner consistent with the advice of the child's treating providers
 - Explain how the non-affirming parent's plan will cause direct harm to the child
 - Show DV history
 - Explain need for flight and relocation is in the child's best interests—home state's inability and unwillingness to protect the child (via state-sponsored discrimination)
 - Utilize actual experts to support the parent's position
 - Educate the court, AFC on standards of care for trans youth & harms of parental rejection, treatment delay, non-affirming community and school, conversion therapy
 - Explain any child welfare involvement--if due to gender affirming care
 - Familiarize self with UCCJEA, status of NY's safe harbor law

Safe Harbor Legislation as a New Tool

- Numerous states are looking to these—“rainbow wall”—so they can be on the offensive, rather than defensive
 - Hand in hand with reproductive rights legislation
 - Address people that come to NY to avail selves of gender-affirming care that is prohibited in their home state
- Offer protections from the out-of-state prosecutions, as well as from non-affirming family members
- Provide protections affirming youth, parents and caregivers
- Protections for health care providers
- Address subpoenas, extradition, evidence, confidentiality, police enforcement of court orders from hostile jurisdictions
- May address interstate custody issues

New York's Safe Harbor Bill (Assembly)

- https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10138&term=2021&Summary=Y&Actions=Y&Memo=Y&Text=Y
- **A.10138—Introduced 5/2/22 and is currently a one house bill. Amends Family Court Act, CPLR, Exec Law, and CPL**
- Prohibits in custody cases consideration of the laws of a different state that authorizes a child to be removed from their parent/guardian based on that parent/guardian allowing their child to receive gender-affirming care. Such laws shall not be enforced or admissible here where child present in NY. (*Creates new FCA 659*);
- Prohibits law enforcement from cooperating with/providing information to any individual or out-of-state agency or department regarding the provision of lawful gender-affirming care performed in NY. (*Creates new Exec L 837-w*);
- Prohibits a NY court/county clerk from issuing a subpoena in connection with certain out-of-state proceedings relating to seeking health or related information about people who come to New York to receive gender-affirming care if the subpoena involves proceedings that criminalize individuals or remove children based on this care. (*CPLR 3119 new [g]*);
- Prohibits law enforcement from arresting any person for performing or aiding in the lawful performance of gender-affirming care within this state. (*Creates new CPL 140.10 [3-a]*);
- Prohibits recognition of demands for the extradition of gender-affirming care providers under certain circumstances (*Creates new CPL 570.17*)

New York's Safe Harbor Bill (Senate)

- https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S08842&term=2021&Summary=Y&Actions=Y&Memo=Y&Text=Y
- **S.8842—Introduced 4/22/22 and is currently a one house bill. Amends Family Court Act, CPLR, Exec Law, Education Law, Public Health Law, Insurance Law, and CPL**
- FCA amendments same as Assembly's and adds that no court shall admit or consider a finding of abuse based on gender-affirming care as evidence (unless it would be considered abuse in this state and occurred in this state)(*Creates new FCA 659*);
- Exec Law has similar amendments to Assembly's that creates a new Exec Law 837-w. This bill specifically includes the provision, seeking or assistance (in provision or seeking) of gender affirming care in protecting against law enforcement cooperation. (*Creates new Exec L 837-x*);
- CPLR 3119 amendment similar to Assembly's, but allows a subpoena to issue in an out-of-state action where: action is in tort, contract, or based on statute; is similarly actionable in NY; or was brought by the patient who received gender affirming care or their legal representative (*CPLR 3119 new [h]*); also amends CPLR 3102(e) as it relates to compelling a witness to appear in an out-of-state proceeding to also to include matters related to gender-affirming care.
- Substantially similar to Assembly's (*Creates new CPL 140.10 [3-b]*);

New York's Bill (Senate) Cont'd

- Similar to Assembly's, but further prohibits demands for the extradition of gender-affirming care providers, seekers, parents, guardians and helpers subject to criminal liability, including vicarious/joint/several/conspiracy liability and only under certain circumstances (*Creates new CPL 570.19*);
- Defines “gender affirming care” (*amends Edu Law 6531-b[1][c]*); and also states that the performance of this type of care for a patient who lives in a place where this care is illegal shall not of itself constitute professional misconduct or impact their license to practice (*amends Edu Law 6531-b[2]*);
- Prohibits applicants seeking licensure or certification in NY under Education Law and who were subject to professional discipline in another jurisdiction solely on the basis that they provided gender affirming care shall not on this basis alone be denied licensure or certification unless these actions would have been illegal in NY (*amends Edu Law 6505-d*);
- Prohibits the medical conduct board implications where report is made because practitioner provided services to patient who came to this state from a state where such care is deemed illegal (*amends Pub Health Law 230[9][c]*);
- Prohibits medical malpractice insurers licensed in NY from taking adverse action against a health care provider solely on the basis that they provided gender-affirming care legal in NY for someone from another state (*amends Ins Law 3436-a*);

NY's UCCJEA

- Contained in DRL Article 5-A
- Among other things, addresses:
 - Initial child custody jurisdiction
 - Exclusive continuing jurisdiction
 - Jurisdiction to modify prior determinations
 - Temporary emergency jurisdiction
 - Simultaneous proceedings
 - Inconvenient forum
 - Jurisdiction declined by reason of unjustifiable conduct
 - Appearances of parties and child
- For technical assistance with UCCJEA/DV cases:
<http://www.lrcvaw.org/>

Chester HH v. Angela GG

- 208 A.D.3d 945, 173 N.Y.S.3d 362 (3rd Dept 2022)
- <https://decisions.courts.state.ny.us/ad3/Decisions/2022/535014.pdf>
- Prior joint custody order from MI with mother having sole legal and father periods of visitation
- Father retained MI-based child in NY after one visitation because child disclosed severe abuse and neglect at the hands of mother and her relatives
 - Some of the abuse involved the child's sexual orientation and gender identity
- Father commenced proceeding under UCCJEA seeking temporary emergency jurisdiction. Mother sought to dismiss claiming MI home state, no abuse. AFC and father disagreed and sought imminent harm hearing which was denied. After lower court sided with mother, AFC and father appealed.
- Appeals court remitted for imminent harm hearing and held:
 - To survive the motion to dismiss, father was required to establish that the child would be at risk of imminent harm if returned to the mother in Michigan and must be protected. His petition did this.
 - Family Court erred in relying on the unsigned and redacted MI CPS report containing vague and contradictory hearsay statements made by a caseworker, as support for its decision not to conduct a hearing

California's Refuge Law

- https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB107 (effective January 2023)
- Clear declarations in law that prosecuting a parent or caregiver for allowing a child to receive gender-affirming care violates the state's public policy.
- Prohibits various health care providers from releasing medical information related to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to a criminal or civil action, including a foreign subpoena
- Prohibits law enforcement agencies from knowingly making or participating in the arrest or extradition of an individual pursuant to an out-of-state arrest warrant

California Law cont'd

- Numerous UCCJEA provisions relating to:
 - Initial child custody determinations and jurisdiction
 - Temporary emergency jurisdiction and procedures if child is unable to access gender affirming care in their home state
 - Prohibits a CA court from finding its an inconvenient forum if hostile state that limits jurisdiction also restricts access to gender affirming care and that issue is central to the custody case
 - Prohibits a CA court from considering taking/retention of a child from a person who has legal custody of the child, if the taking or retention was for obtaining gender-affirming care
- Prohibits the enforcement of a removal order for allowing their child to receive gender-affirming health care or gender-affirming mental health care.
- Severability

“Extraordinary Circumstances”

- Anyone who has an important role in a child's life may ask the court for custody—they don't have to be the child's parent.
- In some cases, courts in other states have granted custody to supportive non-parent relatives
- When a Judge decides custody between a parent and non-parent, they will consider if there are "extraordinary circumstances".
 - If there are extraordinary circumstances, then the Judge will consider what is in the best interest of the child.
- Some examples of extraordinary circumstances are a parent's neglect or abuse of the child, abandonment of the child, a parent who is in prison, or if there are other serious acts which may affect the child's well-being.

Non-Parent Caregivers Guardianship and Custody

- FCA 657
- With custody or guardianship order non-parent can:
 - Enroll child in public school
 - Secure health insurance
 - “...have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law.”

DV-Related Protections to Remember

- Seeking an Order of Protection in NY: See generally FCA Article 8 or FCA 655
- Registering an out-of-state order here:
<https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/GF-5e.pdf>
- Seeking address confidentiality in family offense, custody, or other civil proceedings, incl. UCCJEA case via DRL 76-h :
<https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/gf-21.pdf>
- Enrolling in the NYS Address Confidentiality Program:
<https://dos.ny.gov/address-confidentiality>

LGBTQIA+ Endorsement Program Overview

New York State is committed to providing a survivor-centered, culturally responsive and trauma-informed response for everyone experiencing domestic and/or sexual violence. The Office for the Prevention of Domestic Violence (OPDV) is currently working across many systems, and in close partnership with local providers throughout the state, to be more responsive to the needs of all survivors, including for those who may identify as lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, agender, and more (LGBTQIA+).

The purpose of this LGBTQIA+ Endorsement Program is to ensure that all survivors of gender-based violence, across the spectrum of gender identity and sexual orientation, have access to inclusive and affirming safety, space, support, and services in New York State. The voluntary initiative will give domestic violence programs the opportunity to be Endorsed as LGBTQ affirming and inclusive in their services, policies and practices, and will establish a new commitment to the LGBTQ community statewide. The standards and guidance provided for Endorsement will support domestic violence programs by enhancing service delivery, centering inclusivity for diverse LGBTQIA+ people; acknowledging that Black, Indigenous, and People of Color (BIPOC) LGBTQIA+ people and transgender, gender non-conforming, and non-binary people face disproportionate rates of GBV and heightened barriers to safety, support, spaces, and services, due to structural racism as it intersects with anti-LGBTQIA+ bias.

These standards were created in an inter-disciplinary working group of experts that was convened by the New York City Anti-Violence Project (AVP) and OPDV and included representation from the New York State Coalition Against Domestic Violence, the New York State LGBTQ Intimate Partner Violence Network, and the New York State Office of Children and Family Services. The Working Group drew from existing tools and strategies, as well as member organizations' experience and knowledge, to create these standards and guidelines.

LGBTQIA+ Endorsement Standards and Guidance

- 1. Demonstrate an organizational commitment to LGBTQIA+ inclusive and affirming programming by ensuring that:**
 - a. Organization and/or program names are inclusive and not exclusive, e.g. Survivor Service Center vs. Women and Children’s Center.
 - b. Mission, vision, and values statements explicitly include and affirm LGBTQIA+ people.
 - c. Website, program materials and marketing are inclusive.
 - d. Staff and board include openly LGBTQIA+ people.
 - e. Training is required at all levels of board and staff in issues related to LGBTQIA+ experiences and identities, to build cultural humility, inclusion, and affirmation.
 - f. Data on who is—and who is not—being served, specifically around sexual orientation and gender identity, is being collected and analyzed, and then utilized to inform programmatic shifts, including outreach strategies and collaboration with LGBTQIA+ service providers.

- 2. Employ LGBTQIA+-affirming strategies with every program participant and colleague by ensuring that:**
 - a. Every stage of program engagement, from outreach and intervention to prevention and communications, should be LGBTQIA+ inclusive and affirming.
 - b. Ensure that human resources policies and benefits are inclusive of LGBTQIA+ relationships, family structures, as well as health and wellness needs.
 - c. Invite every individual to share their pronouns.
 - d. Cultivate a culture that encourages thoughtful curiosity and learning, without requiring LGBTQIA+ individuals to carry the emotional labor of educating their peers on their identities and experiences.
 - e. Foster an environment that encourages a commitment to honor all identities and experiences in such a way to foster mutual accountability, which includes acknowledging mistakes, recognizing and apologizing for harm, and authentically changing behavior to be more inclusive and affirming, based on learning.

- 3. Maintain policies and procedures that are in compliance with federal and state law,¹ to ensure LGBTQIA+ inclusion and affirmation by explicitly:**
 - a. Addressing LGBTQIA+ specific experiences of gender-based violence, including intimate partner violence, sexual violence, dating violence, stalking, and gender-based hate violence.
 - b. Providing accessible programming for and with LGBTQIA+ individuals, including mixed gender support groups, and other LGBTQIA+ specific programming.
 - c. Using inclusive, person-centered language.
 - d. Setting clear expectations that are measurable and flexible including boundaries regarding what is acceptable and what will not be tolerated.

¹ [15-OCFS-ADM-23 Non-discrimination on the Basis of Sex, Sexual Orientation, and Gender Identity or Expression in Residential and Non-residential Domestic Violence Programs \(ny.gov\)](#)

- e. Prohibiting expressions of bias and discrimination, providing clarity around what this means and looks like for all involved in the process.
- f. Identifying ways in which conflict resolution around microaggressions and tokenizing, which can occur as part of the process, is handled.
- g. Preserving confidentiality around LGBTQIA+ identities and experiences, clearly stating if or when that confidentiality is waived, including mandated reporting cases²
- h. Outlining clear accountability mechanisms for participants and staff
 - i. including courses of action that staff and program participants can take to report and address experiences of bias and discrimination.
- i. Valuing and welcoming complaints and constructive criticism from LGBTQIA+ staff and participants, identifying areas for change based on their suggestions for improvement

4. Create data collection processes and forms for staff and program participants that ensure LGBTQIA+ inclusion and affirmation by:

- a. Using inclusive, person-centered language.
- b. Explicitly gathering information around LGBTQIA+ identities and experiences,
 - i. including clear options for those reporting to decline to answer and/or to self-identify.
- c. Facilitating an ongoing analysis of gaps and needs and reporting on LGBTQIA+ participant and staff experiences to improve LGBTQIA+ inclusivity and affirmation in programs and workplace environment.

5. Create a welcoming space for LGBTQIA+ program participants and staff by ensuring that:

- a. Art and décor are specifically inclusive and affirm the range of sexual orientation and gender identity, as well as race, class, immigration status, ability, and more, communicating that all are welcome here.
- b. Restrooms, changing rooms, and other traditionally gendered spaces are inclusive and accessible across gender identity and sexual orientation,
 - i. minimally including that staff and participants can use whatever restroom they choose without challenge
 - ii. best practice is making all restrooms accessible across gender identity and expression.
- c. Shelter space for survivors of domestic and family violence can accommodate individuals across sexual orientation and gender identity, including single adults without children and partners who may both be experiencing domestic violence from a current or former partner.
- d. Supplies provided to participants are specific to LGBTQIA+ health and wellness needs, e.g. gender expansive clothing in multiple sizes, binders, receptive condoms, dental dams, etc.

² Per state & federal law and regulations, individual's identities are considered personally identifying information and cannot be redisclosed or shared without the individual's informed, written, specific and time-limited consent.

- 6. Establish relationships with local LGBTQIA+ organizations and resources, including:**
- a. Formalizing partnerships with memoranda of understanding or other agreement explicitly outlining:
 - i. expedited referral processes,
 - ii. mutual training and technical assistance; domestic violence organizations support LGBTQIA+ culturally specific organizations to improve and enhance their responses to gender-based and LGBTQIA+ culturally specific organizations support domestic violence organizations to improve and enhance their response to LGBTQIA+ survivors and co-workers, building a community first approach.
 - b. Drawing on these relationships to build outreach strategies that will raise awareness among LGBTQIA+ domestic violence survivors of inclusive and affirming services available at your organization.
 - c. Ensuring that referral networks include LGBTQIA+ specific resources, including trans affirming healthcare.
- 7. Increase and ensure diverse LGBTQIA+ inclusion and representation among staff and board, by:**
- a. Building on community relationships to establish a pipeline of LGBTQIA+ community members to join the organization as volunteers, paid staff, and Board members.
 - b. Develop and implement recruiting strategies to attract diverse LGBTQIA+ candidates for staff positions.
- 8. Ensure staff and program participants receive training and technical assistance to support LGBTQIA+ inclusion, including:**
- a. Requiring ongoing training for all staff around LGBTQIA+ identities, experiences, history, and in best practices to build LGBTQIA+ inclusion and affirmation in programs and in the workplace, prioritizing all staff who work directly with survivors and the community, including security staff, and overnight staff at shelters.
 - b. Offering (and strongly encouraging participation in) training for program participants around the organization's commitment to LGBTQIA+ inclusion and affirmation.