



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR

Jan 17, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf, Councilmember Harrison,
Councilmember Humbert, and Councilmember Hahn

Subject: Resolution in Support of SB-36 (Skinner)

RECOMMENDATION

Adopt a Resolution in support of SB-36: Out-of-state criminal charges: prosecution related to abortion and gender-affirming care (Skinner) and send copies to Senator Skinner, Assembly Member Wicks and Governor Newsom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense. Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so. California, on the other hand, has passed a package of bills that establish it as a safe haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.

SB-36 seeks to provide protections and supports in California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care, and to anyone assisting them with getting that care.

The bill would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting abortion or gender-affirming care. Bounty hunters and bail agents who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California.

SB-36 author Senator Nancy Skinner stated, "My 'Safe Haven' law will send a message to any bounty hunter who tries to enforce another states' reactionary law: Do so and you'll face jail time and lose your license."

ENVIRONMENTAL SUSTAINABILITY

No direct impact.

Resolution in Support of SB-36

CONSENT CALENDAR

Jan 17, 2023

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [SB-36](#)

RESOLUTION NO. ##,###-N.S.

SUPPORT FOR SB-36 (SKINNER)

WHEREAS, Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense; and

WHEREAS, four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so; and

WHEREAS, SB-36 seeks to provide protections and supports in the state of California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care and to anyone assisting them with getting that care; and

WHEREAS, SB-36 would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting an abortion or gender-affirming care; and

WHEREAS, those who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California, sending a strong message to anyone trying to enforce another states' reactionary law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council supports SB-36.

BE IT FURTHER RESOLVED that the Berkeley City Council thanks Senator Skinner for her leadership in crafting this legislation.

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL

NO. 36

Introduced by Senator Skinner

December 05, 2022

An act to amend Sections 847.5 and 1299.02 of the Penal Code, and to amend Section 11486.5 of, and to add Section 18901.33 to, the Welfare and Institutions Code, relating to out-of-state criminal charges.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, as introduced, Skinner. Out-of-state criminal charges: prosecution related to abortion and gender-affirming care.

Existing law authorizes a magistrate to issue a warrant, upon application by a bail bondsman, as described, for an individual fleeing bail in another state and found in this state upon a finding of probable cause for believing that the person is a fugitive. Existing law makes it a misdemeanor to take a person who is a fugitive admitted to bail in another state into custody, except pursuant to a magistrate's order.

This bill would prohibit a magistrate from issuing a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a bail bondsman who takes such an individual into custody without a warrant guilty of a misdemeanor and ineligible for and subject to

forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken into custody in violation of this provision. By creating a new crime, this bill would create a state-mandated local program.

Existing law, the Bail Fugitive Recovery Persons Act, prohibits a person, other than a certified law enforcement officer, to apprehend, detain, or arrest a bail fugitive unless the person is a licensed a bail fugitive recovery agent, or both a bail licensee and private investigator who are also bail fugitive recovery agents. Existing law makes a violation of the Bail Fugitive Recovery Persons Act a misdemeanor.

This bill would prohibit a person authorized under the act from apprehending, detaining, or arresting a bail fugitive who has been admitted to bail in another state and whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a violation of this provision a misdemeanor and make the authorized individual ineligible for and subject to forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken into custody in violation of this provision. By expanding the application of a crime, this bill would create a state-mandated local program.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing federal law establishes the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Existing federal regulations disqualify a fleeing felon, as defined, from receiving benefits under the CalFresh program.

This bill would require that the determination of whether a person is fleeing to avoid prosecution for purposes of eligibility in the Calworks program be made pursuant to a specified federal regulation. The bill would also make a person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the location of the patient, eligible for benefits under these programs. Because this would expand the eligibility requirements for these programs, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

BILL TEXT**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT
AS FOLLOWS:****SECTION 1.**

The Legislature finds and declares all of the following:

- (a) In 2022, following the United States Supreme Court decision overturning Roe v. Wade, California's legislature passed and Governor Gavin Newsom signed a package of bills, led by members of the Legislative Women's Caucus, and complimentary budget actions that established the state as a haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.
- (b) At least 13 states have passed laws that make seeking or providing an abortion a felony offense.
- (c) Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so.
- (d) It is the intent of the legislature to pass legislation to provide protections and supports to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or seeking gender-affirming care and to any person assisting the person seeking that care.

SEC. 2.

Section 847.5 of the Penal Code is amended to read:

847.5.

*If (a) Except as provided in subdivision (b), if a person has been admitted to bail in another state, escapes bail, and is present in this State, the bail bondsman or other person who is bail for such fugitive, may file with a magistrate in the county where the fugitive is present an affidavit stating the name and whereabouts of the fugitive, the offense with which the alleged fugitive was charged or of which ~~he was~~ *they were* convicted, the time and place of same, and the particulars in which the fugitive has violated the terms of ~~his~~ *their* bail, and may request the issuance of a warrant for arrest of the fugitive, and the issuance, after hearing, of an order authorizing the affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail. The magistrate may require such additional evidence under oath as ~~he deems~~ *they deem* necessary to decide the issue. If ~~he~~ *the magistrate* concludes that there is probable cause for believing that the person alleged to be a fugitive is such, ~~he~~ *the magistrate* may issue a warrant for ~~his~~ *the person's* arrest. The magistrate shall notify the district attorney of such action and shall direct ~~him~~ *the district attorney* to investigate the case and determine the facts of the matter. When the fugitive is brought before ~~him~~ *the magistrate* pursuant to the warrant, the magistrate shall set a time and place for hearing, and shall advise the fugitive of ~~his~~ *their* right to counsel and to produce evidence at the hearing. ~~He~~ *The magistrate* may admit the fugitive to bail pending the hearing. The district attorney shall appear at the hearing. If, after hearing, the magistrate is satisfied from the evidence that the person is a fugitive ~~he~~ *the magistrate* may issue an order authorizing affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail.*

(b) A magistrate shall not issue a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

(c) A bondsman or person authorized, pursuant to subdivision (a) of Section 1299.02, to apprehend, detain, or arrest a fugitive admitted to bail in another state who takes into custody a fugitive admitted to bail in another state whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws.

(d) A person who is taken into custody by a bail agent in violation of subdivision (b) may institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bondsman and bond company within three years after the cause of action accrues.

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(e) A bondsman or other person who is bail for a fugitive admitted to bail in another state who takes the fugitive into custody, except pursuant to an order issued under this section, is guilty of a misdemeanor.

SEC. 3.

Section 1299.02 of the Penal Code, as added by Section 21 of Chapter 768 of the Statutes of 2022, is amended to read:

1299.02.

(a) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:

(1) Is a bail as defined in paragraph (2) of subdivision (a) of Section 1299.01 who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(2) Is a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(3) Is a licensed private investigator as provided in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(b) This article shall not prohibit an arrest pursuant to Sections 837, 838, and 839, provided that no consideration is paid or allowed, directly or indirectly, to any person effecting an arrest pursuant to Sections 837, 838, and 839.

(c) Individuals who hold a bail license, bail fugitive recovery license, bail enforcer license, bail runner license, or private investigator license issued by another state shall not apprehend, detain, or arrest bail fugitives in California, unless that individual obtains a bail fugitive recovery agent license issued in this state and complies with California law.

(d) A person authorized, pursuant to subdivision (a), to apprehend, detain, or arrest a bail fugitive shall not apprehend, detain, or arrest a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. A person who violates this subdivision is guilty of a misdemeanor punishable by a fine of five thousand dollars (\$5,000) or by imprisonment in a county jail not to exceed one year, or by both that imprisonment and fine, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws. A person who is taken into custody by a bail agent in violation of this subdivision may institute and

prosecute a civil action for injunctive, monetary, or other appropriate relief against the bail fugitive recovery agent within three years after the cause of action accrues.

~~(d)~~

(e) This section shall become operative on July 1, 2023.

SEC. 4.

Section 11486.5 of the Welfare and Institutions Code is amended to read:

11486.5.

(a) An individual shall not be eligible for aid under this chapter if ~~he or she is~~ *the individual is* either:

(1) Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state. *For the purposes of this section, except as provided in subdivision (c), an individual shall be determined to be fleeing to avoid prosecution, or custody and confinement after conviction, pursuant to Sections 273.11(n)(1)(ii) and 273.11(n)(2) of Title 7 of the Code of Federal Regulations.*

(2) Violating a condition of probation or parole imposed under federal law or the law of any state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(c) For the purposes of this section, an individual is not considered fleeing to avoid prosecution if the felony offense with which the person is charged or convicted is as a result of performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

SEC. 5.

Section 18901.33 is added to the Welfare and Institutions Code, to read:

18901.33.

A person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care is eligible for benefits pursuant to this chapter, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

SEC. 6.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.