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HOUSE BILL 559

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

John Block and Rebecca Dow

AN ACT

RELATING TO CHILD CUSTODY; AMENDING THE NMSA 1978 TO PROHIBIT A COURT FROM CONSIDERING A PARENT'S AFFIRMATION OF THE PARENT'S CHILD'S GENDER IDENTITY FOR PURPOSES OF CUSTODY; PROHIBITING A COURT FROM DETERMINING CUSTODY OF A CHILD BASED ON CERTAIN PARENTAL DECISIONS RELATED TO THE CHILD'S GENDER IDENTITY OR GENDER AFFIRMATION; PROVIDING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-4-9 NMSA 1978 (being Laws 1977, Chapter 172, Section 1) is amended to read:

"40-4-9. STANDARDS FOR THE DETERMINATION OF CHILD CUSTODY--PROHIBITED CONSIDERATIONS--GENDER AFFIRMATION--GENDER IDENTITY--PROHIBITED DETERMINATIONS--DEFINITIONS--HEARING.--

A. In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court

1 shall, if the minor is under the age of fourteen, determine
2 custody in accordance with the best interests of the child.
3 The court shall consider all relevant factors, including but
4 not limited to:

- 5 (1) the wishes of the child's parent or
6 parents as to [~~his~~] the child's custody;
- 7 (2) the wishes of the child as to [~~his~~] the
8 child's custodian;
- 9 (3) the interaction and interrelationship of
10 the child with [~~his~~] the child's parents [~~his~~] and siblings and
11 any other person who may significantly affect the child's best
12 interest;
- 13 (4) the child's adjustment to [~~his~~] the
14 child's home, school and community; and
- 15 (5) the mental and physical health of all
16 individuals involved.

17 B. In awarding custody of a minor pursuant to
18 Subsection A of this section, the court shall not:

- 19 (1) consider a parent's gender affirmation of
20 the parent's child's gender identity when the child's gender
21 identity is incongruent with the child's sex;
- 22 (2) consider a parent's decision to not affirm
23 a child's gender identity or a parent's decision to not provide
24 gender-affirming health care or gender-affirming mental health
25 care for the parent's child; and

underscored material = new
[bracketed material] = delete

1 (3) determine that a parent's decision not to
2 provide gender-affirming health care or gender-affirming mental
3 health care for the parent's child is:

4 (a) detrimental to the child's health,
5 safety and welfare;

6 (b) an inadequate provision for the
7 child's needs, care or nurturance consistent with the child's
8 physical and psychological development;

9 (c) abuse, as defined in the Abuse and
10 Neglect Act;

11 (d) a lack of a safe environment;

12 (e) inadequate provision of health care;

13 (f) inadequate guidance;

14 (g) a lack of moral fitness;

15 (h) a detrimental attitude toward the
16 child;

17 (i) an inability for the parent to
18 foster a positive, loving relationship with the child; or

19 (j) an inability for the parent to bond
20 with the child.

21 ~~[B.]~~ C. If the minor is fourteen years of age or
22 older, the court shall consider the desires of the minor as to
23 with whom ~~[he]~~ the minor wishes to live before awarding custody
24 of ~~[such]~~ the minor.

25 ~~[C.]~~ D. Whenever testimony is taken from the minor

underscored material = new
[bracketed material] = delete

1 concerning [~~his~~] the minor's choice of custodian, the [~~court~~]
2 judge shall hold a private hearing in [~~his~~] the judge's
3 chambers. The judge shall have a court reporter in [~~his~~] the
4 judge's chambers who shall transcribe the hearing; however, the
5 court reporter shall not file a transcript unless an appeal is
6 taken.

7 E. As used in this section:

8 (1) "gender affirmation" means acknowledgment,
9 acceptance or support, whether verbal, emotional, financial,
10 physical or otherwise, of a person's self-defined gender
11 identity. "Gender affirmation" includes:

12 (a) referring to a person by any
13 pronouns other than those congruent with the person's sex; or

14 (b) facilitating access for a person to
15 gender-affirming health care or gender-affirming mental health
16 care;

17 (2) "gender-affirming health care" means
18 medical care that is prescribed in support of and based on a
19 patient's gender identity as defined by the patient and may
20 include one or more of the following:

21 (a) guidance or treatment to foster
22 social transitioning;

23 (b) interventions to suppress the
24 development of endogenous secondary sex characteristics; or

25 (c) interventions to align the patient's

1 appearance or physical body with the patient's self-defined
2 gender identity;

3 (3) "gender-affirming mental health care"
4 means a mental health care or behavioral health care approach
5 or treatment based on the gender identity of a patient, as
6 defined by the patient, and may include developmental
7 exploration and integration of identity or adaptive coping and
8 strategies to induce family or social acceptance of the
9 patient's gender identity;

10 (4) "gender identity" means a person's
11 self-defined, internal sense of that person's gender,
12 self-image, appearance, behavior or expression, which may be
13 different from the person's sex and which may be male, female,
14 neither or a combination; and

15 (5) "sex" means the biological indication of
16 male or female in the context of reproductive capacity,
17 including sex chromosomes, naturally occurring sex hormones,
18 gonads and unambiguous internal and external genitalia present
19 at birth and including secondary sex characteristics without
20 regard to a person's psychological, chosen or subjective
21 experience of gender."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2025.