

AMENDED IN SENATE APRIL 10, 2023

AMENDED IN SENATE FEBRUARY 14, 2023

**SENATE BILL**

**No. 36**

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**Introduced by Senator Skinner**

December 5, 2022

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An act to amend Sections ~~847.5 and 1299.02~~ 847.5, 1299.02, and 1334.2 of, and to add Title 5.8 (commencing with Section 13790) to Part 4 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 amended, Skinner. Out-of-state criminal charges: prosecution related to abortion, contraception, reproductive care, 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, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming 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 abortion, contraception, reproductive care, or gender-affirming care, if the abortion, contraception, reproductive care, or gender-affirming 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.

This bill would additionally prohibit an officer or employee of a state or local law enforcement agency from providing information or assistance to specified entities regarding services constituting legally protected health care activity, ~~including~~ *including*, but not limited to, abortion, contraception, reproductive care, and gender-affirming care, if those services would be lawful if they were provided entirely within this state.

*Existing law establishes a process by which a material witness in this state may be ordered to attend and testify in a pending prosecution or grand jury in another state.*

*This bill would prohibit a judge from ordering a witness to appear pursuant to these provisions if the criminal prosecution is based on the 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, contraception, reproductive care, or*

*gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state.*

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~~ *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, contraception, reproductive care, or gender-affirming care, if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the location of the patient, eligible for benefits under these programs. Because this *bill* 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) In 2022, following the United States Supreme Court decision  
4 overturning *Roe v. Wade*, California's legislature passed and  
5 Governor Gavin Newsom signed a package of bills, led by  
6 members of the Legislative Women's Caucus, and complimentary  
7 budget actions that established the state as a haven for those fleeing  
8 prosecution for seeking abortion and gender-affirming care in other  
9 states.

10    (b) Many states have now passed laws that make seeking or  
11 providing an abortion a felony offense.

12    (c) Many states have also enacted laws or regulations banning  
13 gender-affirming care and 15 additional states are considering  
14 legislation to do so.

15    (d) It is the intent of the ~~legislature~~ *Legislature* to pass legislation  
16 to provide protections and supports to any person fleeing a  
17 prosecution, conviction, or sentence in another state for seeking  
18 an abortion, contraception, reproductive care, or seeking  
19 gender-affirming care and to any person assisting the person  
20 seeking that care.

21    SEC. 2. Section 847.5 of the Penal Code is amended to read:

22    847.5. (a) Except as provided in subdivision (b), if a person  
23 has been admitted to bail in another state, escapes bail, and is  
24 present in this ~~State~~, *state*, the bail bondsman or other person who  
25 is bail for such fugitive, may file with a magistrate in the county  
26 where the fugitive is present an affidavit stating the name and  
27 whereabouts of the fugitive, the offense with which the alleged  
28 fugitive was charged or of which they were convicted, the time  
29 and place of same, and the particulars in which the fugitive has  
30 violated the terms of their bail, and may request the issuance of a  
31 warrant for arrest of the fugitive, and the issuance, after hearing,  
32 of an order authorizing the affiant to return the fugitive to the  
33 jurisdiction from which they escaped bail. The magistrate may  
34 require such additional evidence under oath as they deem necessary  
35 to decide the issue. If the magistrate concludes that there is  
36 probable cause for believing that the person alleged to be a fugitive  
37 is such, the magistrate may issue a warrant for the person's arrest.  
38 The magistrate shall notify the district attorney of such action and

1 shall direct the district attorney to investigate the case and  
2 determine the facts of the matter. When the fugitive is brought  
3 before the magistrate pursuant to the warrant, the magistrate shall  
4 set a time and place for hearing, and shall advise the fugitive of  
5 their right to counsel and to produce evidence at the hearing. The  
6 magistrate may admit the fugitive to bail pending the hearing. The  
7 district attorney shall appear at the hearing. If, after hearing, the  
8 magistrate is satisfied from the evidence that the person is a fugitive  
9 the magistrate may issue an order authorizing affiant to return the  
10 fugitive to the jurisdiction from which they escaped bail.

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

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

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

39 (e) A bondsman or other person who is bail for a fugitive  
40 admitted to bail in another state who takes the fugitive into custody,

1 except pursuant to an order issued under this section, is guilty of  
2 a misdemeanor.

3 SEC. 3. Section 1299.02 of the Penal Code, as added by Section  
4 21 of Chapter 768 of the Statutes of 2022, is amended to read:

5 1299.02. (a) No person, other than a certified law enforcement  
6 officer, shall be authorized to apprehend, detain, or arrest a bail  
7 fugitive unless that person meets one of the following conditions:

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

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

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

17 (b) This article shall not prohibit an arrest pursuant to Sections  
18 837, 838, and 839, provided that no consideration is paid or  
19 allowed, directly or indirectly, to any person effecting an arrest  
20 pursuant to Sections 837, 838, and 839.

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

27 (d) A person authorized, pursuant to subdivision (a), to  
28 apprehend, detain, or arrest a bail fugitive shall not apprehend,  
29 detain, or arrest a bail fugitive admitted to bail in another state  
30 whose alleged offense or conviction was for the violation of laws  
31 of another state that authorizes a criminal penalty to an individual  
32 performing, receiving, supporting, or aiding in the performance  
33 or receipt of an abortion, contraception, reproductive care, or  
34 gender-affirming care if the abortion, contraception, reproductive  
35 care, or gender-affirming care is lawful under the laws of this state,  
36 regardless of the recipient's location. A person who violates this  
37 subdivision is guilty of a misdemeanor punishable by a fine of five  
38 thousand dollars (\$5,000) or by imprisonment in a county jail not  
39 to exceed one year, or by both that imprisonment and fine, is  
40 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.

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

*SEC. 4. Section 1334.2 of the Penal Code is amended to read:*

1334.2. ~~If~~(a) *Except as provided in subdivision (f), if a judge of a court of record in any state, which by its laws provides for commanding persons within that state to attend and testify in this state, issues a certificate under the seal of the court that there is a criminal prosecution pending in the court, or that there is a grand jury investigation, that a person within this state is a material witness in that prosecution or grand jury investigation, and that ~~his or her~~ their presence will be required for a specified number of days, then, upon presentation of the certificate to a judge of a court of record in the county in which the person is, a time and place for a hearing shall be fixed by the judge and ~~he or she~~ the judge shall make an order directing the witness to appear at the hearing.*

~~If,~~

(b) *If at the hearing, the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or in which there is a grand jury investigation will give to the witness protection from arrest and service of civil and criminal process and will furnish in advance to the witness the sum of ten cents (\$0.10) for each mile necessarily traveled if the witness elects surface travel or the minimum round trip scheduled airline fare plus twenty cents (\$0.20) a mile for necessary surface travel at either end of the flight if the witness elects air travel, and, except as provided in subdivision (b) of Section 1334.3, a per diem of twenty dollars (\$20) for each day that ~~he or she~~ is they are required to travel and attend as a witness and that the judge of the court in which the witness is ordered to appear will order the payment of witness fees*

1 authorized by law for each day the witness is required to attend  
2 the court plus reimbursement for any additional expenses of the  
3 witness which the judge of the court in which the witness is ordered  
4 to appear shall find reasonable and necessary, ~~he or she~~ *the judge*  
5 shall issue a subpoena, with a copy of the certificate attached,  
6 directing the witness to attend and testify in the court where the  
7 prosecution is pending, or where the grand jury investigation is,  
8 at a time and place specified in the subpoena. In any of these  
9 hearings the certificate shall be prima facie evidence of all the  
10 facts stated therein.

11 If

12 (c) *If the certificate recommends that the witness be taken into*  
13 *immediate custody and delivered to an officer of the requesting*  
14 *state to assure ~~his or her~~ the witness' attendance therein, the judge*  
15 *may, in lieu of notification of the hearing, direct that the witness*  
16 *be forthwith brought before ~~him or her~~ the judge for the hearing.*

17 If

18 (d) *If the judge at the hearing is satisfied of the desirability of*  
19 *the custody and delivery, for which determination the certificate*  
20 *shall be prima facie proof of this desirability, ~~he or she~~ the judge*  
21 *may, in lieu of issuing a subpoena, order that the witness be*  
22 *forthwith taken into custody and delivered to an officer of the*  
23 *requesting state.*

24 If

25 (e) *If the witness, who is subpoenaed as provided in this section,*  
26 *after being paid or tendered by some properly authorized person*  
27 *the sum or fare, and per diem set forth in this section, fails without*  
28 *good cause to attend and testify as directed in the subpoena, ~~he or~~*  
29 *~~she~~ the witness shall be punished in the manner provided for the*  
30 *punishment of any witness who disobeys a subpoena issued from*  
31 *a court of record in this state.*

32 (f) *A judge shall not issue an order directing a witness to appear*  
33 *pursuant to this section if the criminal prosecution is based on the*  
34 *laws of another state that authorizes a criminal penalty to an*  
35 *individual performing, receiving, supporting, or aiding in the*  
36 *performance or receipt of an abortion, contraception, reproductive*  
37 *care, or gender-affirming care if the abortion, contraception,*  
38 *reproductive care, or gender-affirming care is lawful under the*  
39 *laws of this state.*



1     ~~SEC. 4.~~

2     SEC. 5. Title 5.8 (commencing with Section 13790) is added  
3 to Part 4 of the Penal Code, to read:

4  
5           TITLE 5.8. LEGALLY PROTECTED HEALTH CARE  
6                           ACTIVITY  
7

8     13790. Notwithstanding any other law and except as required  
9 by federal law, an officer or employee of a law enforcement agency  
10 of a state or local law enforcement agency, shall not, while acting  
11 in their official capacity, provide information or assistance relating  
12 to an investigation or inquiry into services constituting legally  
13 protected health care activity, ~~including~~ *including*, but not limited  
14 to, abortion, contraception, reproductive care, and gender-affirming  
15 care, if such services would be lawful if they were provided entirely  
16 in this state to any of the following:

- 17     (a) A federal law enforcement agency.  
18     (b) A state law enforcement agency.  
19     (c) A private citizen.  
20     (d) A bondsman or person authorized, pursuant to subdivision  
21 (a) of Section 1299.02, to apprehend, detain, or arrest a fugitive  
22 admitted to bail in another state.

23     ~~SEC. 5.~~

24     SEC. 6. Section 11486.5 of the Welfare and Institutions Code  
25 is amended to read:

26     11486.5. (a) An individual shall not be eligible for aid under  
27 this chapter if the individual is either:

28     (1) Fleeing to avoid prosecution, or custody and confinement  
29 after conviction, under the laws of the place from which the  
30 individual is fleeing, for a crime or an attempt to commit a crime  
31 that is a felony under the laws of the place from which the  
32 individual is fleeing, or which, in the case of the State of New  
33 Jersey, is a high misdemeanor under the laws of that state. For the  
34 purposes of this section, except as provided in subdivision (c), an  
35 individual shall be determined to be fleeing to avoid prosecution,  
36 or custody and confinement after conviction, pursuant to Sections  
37 273.11(n)(1)(ii) and 273.11(n)(2) of Title 7 of the Code of Federal  
38 Regulations.

39     (2) Violating a condition of probation or parole imposed under  
40 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, contraception, reproductive care, or gender-affirming care if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location.

~~SEC. 6.~~

SEC. 7. 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, contraception, reproductive care, or gender-affirming care is eligible for benefits pursuant to this chapter, if the abortion, contraception, reproductive care, or gender-affirming care is lawful under the laws of this state, regardless of the recipient's location.

~~SEC. 7.~~

SEC. 8. 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.

O