

Issues and Examples with HB 26-1309

Topline Message: This is a dangerous bill that violates parental rights and U.S. Supreme Court precedent. HB 1309 is so expansive that it will target fit parents engaged in normal parenting behaviors, exposing them to the possibility of losing custody without the traditional safeguards that have long protected parental rights.

This bill would effectively upend the longstanding legal framework governing custody determinations. The law has consistently recognized parental rights as fundamental—particularly in Supreme Court precedent such as *Troxel*, *Parham*, *Meyer*, and *Pierce*. Indeed, even Colorado law affirms that “[p]arents have a fundamental right and responsibility to make decisions concerning the care, custody, and control of their children. The law has long presumed that parents act in the best interest of their children.”

Under binding legal precedent, the government may not override a parent’s authority absent a finding of unfitness. Only after such a finding may a court proceed to evaluate the “best interests of the child.” Until then, parents are presumed to act in their best interests. This bill departs sharply from that principle. Its language introduces ambiguity and potential pitfalls at nearly every stage of the process, creating multiple avenues for a parent to be labeled “abusive” or “coercive,” and therefore, by effect, unfit.

1. Section II - Coercive Control

Under this bill, the following would be considered “domestic violence” because it is “coercive control” under the bill’s broad definition:

- a. 14-10-103(a)
 - A parent who does not affirm their child’s trans-identity because they do not think it is in their child’s best interest to deny or reject the child’s biological sex (“a pattern of behavior that takes away the individual’s liberty or freedom and strips away the individual's sense of self . . .”). Indeed, given the lack of reliable scientific evidence that the medicalized transition of a child is either safe or effective in treating a child who experiences distress over his or her identity, many parents choose watchful waiting and continue to affirm their child’s biological sex. Yet under this bill, such caring actions by loving parents could be deemed domestic violence.

- b. 14-10-103(a)(I)
 - A parent who grounds their child to prevent him or her from hanging out with certain friends who are bad influences on the child (“isolating the individual from friends and family”).

- c. 14-10-103(a)(II)
 - Controlling a child’s bank account to ensure the child doesn’t withdraw more funds than he or she has available in their account to help the child develop good financial habits could be considered “monitoring, surveilling, regulating, or controlling” a child’s “finances” or “economic resources.”
- d. 14-10-103(a)(III)
 - Using the “Find My Phone” feature to see where your children are and whether they are at a place they are not supposed to be, such as sneaking out to a friend’s house, could be considered “monitoring” or “surveilling” the child’s “activities” or “movements.”
 - Using the “Screen Time” feature to limit what apps a child can access, which websites they can visit on their phone, and how long they can use their phone could also be considered “monitoring, surveilling, regulating, or controlling” the child’s “activities” and “communications.”
- e. 14-10-103(a)(IX)
 - Throwing away a child’s Xbox or PlayStation because they kept using it against a parent’s rules, or even throwing away old toys your child doesn’t play with anymore, could be viewed as “damaging the individual’s property or household goods” and categorized as domestic violence.

2. Section II – Health-Related Abuse

The possibilities for defining activity as abuse are nearly endless under these provisions. In fact, because of how broadly these clauses are worded, including both “interference” and “control” and “prevent[],” it could be labeled abusive simply for a parent to question proposed medical care, slow down the process, or taking a “watchful waiting” approach, so that they had more time to think about a medical decision.

- a. 14-10-103(c.2)(I)
 - Refusing to allow your child to take cross-sex hormones or receive sex-change surgeries could be seen as “preventing access to medical care, medicine, medical devices, health-related services . . .”
 - Choosing to pursue behavioral therapy or dietary changes to treat a child with ADHD as opposed to administering Adderall or Ritalin, or even declining a particular type of acne medication to instead guide your child toward more natural hygienic solutions.
- b. 14-10-103(c.2)(II)
 - Choosing not to take your child to a mental health professional that will push the child towards harmful gender transition drugs and surgeries, and opting instead for

one that would help your child gain comfort with their sex, could likely be viewed as “preventing access to mental or behavioral healthcare.”

c. 14-10-103(c.2)(III)

- A male partner attempting to save the life of his unborn child. If a man were accused of health-related abuse for attempting to save his unborn child’s life from abortion, he could lose custody of his child because it could be considered “controlling or attempting to control pregnancy outcomes.”

3. Section III – Determining Whether Domestic Violence Occurred

Under this bill, a court cannot refuse to make a finding of domestic violence even when:

a. 14-10-124(1.4)(a)(I)(C) and (E)

- Any charge has been dismissed (“a dismissal of the underlying charge”)
- An investigation returns a resolution of “inconclusive” or “unfounded” (“a finding of inconclusive or unfounded . . . by the state department of human services”)
- A situation like this just occurred in South Carolina. There, a school was socially transitioning a child without parental consent. Rather than tell the mother, the school reported her for abuse because the child stated that his mother would not be supportive of a social transition. After an investigation, child services concluded that the allegations were unfounded and closed the matter. If this exact situation were to arise in Colorado, under this law, if this mother were to get divorced, she could lose custody of her child for “abuse” even though a formal investigation already determined that the claims were unfounded.

4. Section IV - Repercussions

This bill would require parents to jump through many hoops and face serious repercussions for engaging in normal parenting behaviors.

a. 14-10-127.5(3)(c)

- In all of the above-described situations, a parent would risk losing custody of their child for acting in ways that no reasonable person would conclude were abusive because they are the actions of caring, responsible parents.
- Yet, under this bill, if a court determined that a parent engaged in one of these behaviors, which the bill labels “domestic violence,” they would be required to participate in a 52-week domestic violence abuser intervention program for the parent to gain access to their child again.