

1 SENATE BILL NO. 99
2 INTRODUCED BY J. FULLER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A YOUTH HEALTH PROTECTION ACT;
5 PROHIBITING CERTAIN MEDICAL AND SURGICAL TREATMENTS TO TREAT MINORS WITH GENDER
6 DYSPHORIA; PROHIBITING CERTAIN PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES
7 FROM BEING USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL
8 WHO VIOLATES THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE
9 OF ACTION; PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND
10 PROVIDING DEFINITIONS."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Youth Health
15 Protection Act".

16
17 NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 6] is to enhance the
18 protection of minors AND THEIR FAMILIES, pursuant to Article II, section 15, of the Montana constitution, from any
19 form of pressure to RECEIVE HARMFUL, EXPERIMENTAL PUBERTY BLOCKERS AND CROSS-SEX HORMONES AND TO
20 undergo irreversible ~~medical,~~ LIFE-ALTERING SURGICAL procedures to ~~change sex~~ prior to attaining the age of
21 majority.

22
23 NEW SECTION. Section 3. Definitions. As used in this part [SECTIONS 1 THROUGH 6], unless the
24 context clearly indicates otherwise, the following definitions apply:

- 25 (1) "Female" means ~~an individual who is a member of the female sex~~ A MEMBER OF THE HUMAN
26 SPECIES WHO, UNDER NORMAL DEVELOPMENT, PRODUCES A RELATIVELY LARGE, RELATIVELY IMMOBILE GAMETE DURING
27 HER LIFE CYCLE AND HAS A REPRODUCTIVE AND ENDOCRINE SYSTEM ORIENTED AROUND THE PRODUCTION OF THAT
28 GAMETE.

1 or devices, such as binders, for the purpose of concealing a minor's secondary sex characteristics.

2

3 NEW SECTION. Section 4. Prohibitions. (1)(A) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A PERSON
4 MAY NOT KNOWINGLY PROVIDE THE FOLLOWING TO A FEMALE MINOR TO ADDRESS THE MINOR'S PERCEPTION THAT HER
5 GENDER OR SEX IS NOT FEMALE:

6 (I) SURGICAL PROCEDURES, INCLUDING A VAGINECTOMY, HYSTERECTOMY, OOPHORECTOMY,
7 OVARIECTOMY, RECONSTRUCTION OF THE URETHRA, METOIDIOPLASTY, PHALLOPLASTY, SCROTOPLASTY, IMPLANTATION
8 OF ERECTION OR TESTICULAR PROTHESES, SUBCUTANEOUS MASTECTOMY, VOICE SURGERY, OR PECTORAL IMPLANTS;

9 (II) SUPRAPHYSIOLOGIC DOSES OF TESTOSTERONE OR OTHER ANDROGENS; OR

10 (III) PUBERTY BLOCKERS SUCH AS GNRH AGONISTS OR OTHER SYNTHETIC DRUGS THAT SUPPRESS THE
11 PRODUCTION OF ESTROGEN AND PROGESTERONE TO DELAY OR SUPPRESS PUBERTAL DEVELOPMENT IN FEMALE MINORS.

12 (B) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A PERSON MAY NOT KNOWINGLY PROVIDE THE
13 FOLLOWING TO A MALE MINOR TO ADDRESS THE MINOR'S PERCEPTION THAT HIS GENDER OR SEX IS NOT MALE:

14 (I) SURGICAL PROCEDURES, INCLUDING A PENECTOMY, ORCHIECTOMY, VAGINOPLASTY, CLITOROPLASTY,
15 VULVOPLASTY, AUGMENTATION MAMMOPLASTY, FACIAL FEMINIZATION SURGERY, VOICE SURGERY, THYROID CARTILAGE
16 REDUCTION, OR GLUTEAL AUGMENTATION;

17 (II) SUPRAPHYSIOLOGIC DOSES OF ESTROGEN; OR

18 (III) PUBERTY BLOCKERS SUCH AS GNRH AGONISTS OR OTHER SYNTHETIC DRUGS THAT SUPPRESS THE
19 PRODUCTION OF TESTOSTERONE OR DELAY OR SUPPRESS PUBERTAL DEVELOPMENT IN MALE MINORS.

20 (C) THE PROCEDURES LISTED IN SUBSECTIONS (1)(A) AND (1)(B) ARE PROHIBITED ONLY WHEN KNOWINGLY
21 PROVIDED TO ADDRESS A FEMALE MINOR'S PERCEPTION THAT HER GENDER OR SEX IS NOT FEMALE OR A MALE MINOR'S
22 PERCEPTION THAT HIS GENDER OR SEX IS NOT MALE. SUBSECTIONS (1)(A) AND (1)(B) DO NOT APPLY FOR OTHER
23 PURPOSES, INCLUDING:

24 (I) TREATMENT FOR A PERSON BORN WITH A MEDICALLY VERIFIABLE DISORDER OF SEX DEVELOPMENT,
25 INCLUDING:

26 (A) A PERSON BORN WITH EXTERNAL BIOLOGICAL SEX CHARACTERISTICS THAT ARE IRRESOLVABLY
27 AMBIGUOUS, INCLUDING AN INDIVIDUAL BORN WITH 46 XX CHROMOSOMES WITH VIRILIZATION, 46 XY CHROMOSOMES
28 WITH UNDERVIRILIZATION, OR HAVING BOTH OVARIAN AND TESTICULAR TISSUE; AND

1 (B) A PERSON WHOM A PHYSICIAN HAS OTHERWISE DIAGNOSED WITH A DISORDER OF SEXUAL
2 DEVELOPMENT IN WHICH THE PHYSICIAN HAS DETERMINED THROUGH GENETIC OR BIOCHEMICAL TESTING THAT THE
3 PERSON DOES NOT HAVE NORMAL SEX CHROMOSOME STRUCTURE, SEX STEROID HORMONE PRODUCTION, OR SEX
4 STEROID HORMONE ACTION FOR A MALE OR FEMALE; AND

5 (II) TREATMENT OF ANY INFECTION, INJURY, DISEASE, OR DISORDER THAT HAS BEEN CAUSED OR
6 EXACERBATED BY THE PERFORMANCE OF A PROCEDURE LISTED IN SUBSECTION (1)(A) OR (1)(B), WHETHER OR NOT THE
7 PROCEDURE WAS PERFORMED IN ACCORDANCE WITH STATE AND FEDERAL LAW AND WHETHER OR NOT FUNDING FOR THE
8 PROCEDURE IS PERMISSIBLE UNDER STATE AND FEDERAL LAW.

9 (2) IF A HEALTH CARE PROFESSIONAL OR PHYSICIAN VIOLATES SUBSECTION (1)(A) OR (1)(B):

10 (A) THE HEALTH CARE PROFESSIONAL OR PHYSICIAN HAS ENGAGED IN UNPROFESSIONAL CONDUCT AND IS
11 SUBJECT TO DISCIPLINE BY THE APPROPRIATE LICENSING ENTITY OR DISCIPLINARY REVIEW BOARD WITH COMPETENT
12 JURISDICTION IN THIS STATE. THAT DISCIPLINE MUST INCLUDE SUSPENSION OF THE ABILITY TO ADMINISTER HEALTH CARE
13 OR PRACTICE MEDICINE FOR AT LEAST 1 YEAR.

14 (B) PARENTS OR GUARDIANS OF THE MINOR SUBJECT TO THE VIOLATION HAVE A PRIVATE CAUSE OF ACTION
15 FOR DAMAGES AND EQUITABLE RELIEF AS THE COURT MAY DETERMINE IS JUSTIFIED. THE COURT MAY ALSO AWARD
16 REASONABLE ATTORNEY FEES AND COURT COSTS TO A PREVAILING PARTY.

17 ~~(1)(3) Public funds may not be directly or indirectly used, granted, paid, or distributed to any~~
18 ~~individual, entity, or organization that provides or subsidizes medication or surgery as a treatment to address an~~
19 ~~inconsistency between a minor's sex and the minor's perceived gender or perceived sex THE PROCEDURES~~
20 ~~DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).~~

21 ~~(2)(4)(3)~~ Any individual or entity that receives state funds to pay FOR or subsidize the treatment
22 of minors for psychological conditions, including gender dysphoria, may not use state funds to promote or
23 advocate medication or surgery as a treatment to address an inconsistency between a minor's sex and the
24 minor's perceived gender or perceived sex THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).

25 ~~(3)(5)(4)~~ Any amount paid by an individual or entity during a tax year for the provision of ~~either~~
26 medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's
27 perceived gender or perceived sex is not tax deductible THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR
28 (1)(B) IS NOT TAX DEDUCTIBLE.

1 ~~(4)(6)(5)~~ The Montana medicaid program may not reimburse or provide coverage for medication
2 or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender
3 or perceived sex THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).

4 ~~(5)(7)(6)~~ Except to the extent required by the first amendment to the United States constitution,
5 state property, facilities, or buildings may not be KNOWINGLY used to promote or advocate the use of social
6 transitioning, medication, or surgery as a treatment to address an inconsistency between a minor's sex and the
7 minor's perceived gender or perceived sex OR THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B) TO
8 ADDRESS A FEMALE MINOR'S PERCEPTION THAT HER GENDER OR SEX IS NOT FEMALE OR A MALE MINOR'S PERCEPTION
9 THAT HIS GENDER OR SEX IS NOT MALE.

10 ~~(6)(8)(7)~~ A health care professional or physician employed by the state or a county or local
11 government may not KNOWINGLY provide medication or surgery as a treatment to address an inconsistency
12 between a minor's sex and the minor's perceived gender or perceived sex THE PROCEDURES DESCRIBED IN
13 SUBSECTION (1)(A) OR (1)(B).

14 ~~(7)(9)(8)~~ State property, facilities, or buildings may not KNOWINGLY be used to provide
15 medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's
16 perceived gender or perceived sex THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).

17 ~~(8)(10)(9)~~ A state employee whose official duties include the care of minors may not, while
18 engaged in those official duties, KNOWINGLY provide or promote the use of social transitioning, medication, or
19 surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or
20 perceived sex PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).

21 ~~(11)(10)~~ THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE COMPLIANCE WITH THIS SECTION.

22 (9) — (a) Except as provided in subsection (9)(c), a person may not knowingly provide the following
23 treatment, either as a necessary or elective treatment, to a female minor to address the minor's perception that
24 her gender or sex is not female:

25 (i) — surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy,
26 reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular
27 prostheses, subcutaneous mastectomy, voice surgery, or pectoral implants;

28 (ii) — supraphysiologic doses of testosterone or other androgens; or

1 (iii) ~~puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production~~
2 ~~of estrogen and progesterone to delay or suppress pubertal development in female minors.~~

3 (b) ~~Except as provided in subsection (9)(c), a person may not knowingly provide the following~~
4 ~~treatment, either as a necessary or elective treatment, to a male minor to address the minor's perception that~~
5 ~~his gender or sex is not male:~~

6 (i) ~~surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty,~~
7 ~~vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction,~~
8 ~~or gluteal augmentation;~~

9 (ii) ~~supraphysiologic doses of estrogen; or~~

10 (iii) ~~puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production~~
11 ~~of testosterone or delay or suppress pubertal development in male minors.~~

12 (c) ~~The procedures listed in subsections (9)(a) and (9)(b) are prohibited only when knowingly~~
13 ~~provided as treatment to address a female minor's perception that her gender or sex is not female or a male~~
14 ~~minor's perception that his gender or sex is not male. Subsections (9)(a) and (9)(b) do not apply to treatment for~~
15 ~~other purposes, including:~~

16 (i) ~~treatment for a person born with a medically verifiable disorder of sex development, including:~~

17 (A) ~~a person born with external biological sex characteristics that are irresolvably ambiguous,~~
18 ~~including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with~~
19 ~~undervirilization, or having both ovarian and testicular tissue; and~~

20 (B) ~~a person whom a physician has otherwise diagnosed with a disorder of sexual development in~~
21 ~~which the physician has determined through genetic or biochemical testing that the person does not have~~
22 ~~normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or~~
23 ~~female; and~~

24 (ii) ~~treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by~~
25 ~~the performance of a procedure listed in subsection (9)(a) or (9)(b), whether or not the procedure was~~
26 ~~performed in accordance with state and federal law and whether or not funding for the procedure is permissible~~
27 ~~under state and federal law.~~

28 (10) ~~If a health care professional or physician violates subsection (9)(a) or (9)(b):~~

1 (a) — the health care professional or physician has engaged in unprofessional conduct and is subject
2 to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this
3 state. That discipline must include suspension of the ability to administer health care or practice medicine for at
4 least 1 year.

5 (b) — parents or guardians of the minor subject to the violation have a private cause of action for
6 damages and equitable relief as the court may determine is justified. The court may also award reasonable
7 attorney fees and court costs to a prevailing party.

8
9 **NEW SECTION. Section 5. Private cause of action for subsequent harm.** (1) Any health care
10 professional or physician who provides ~~puberty blockers, cross-sex hormones, or surgical procedures as a~~
11 ~~treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived~~
12 ~~sex~~ THE PROCEDURES DESCRIBED IN [SECTION 4(1)(A) OR (1)(B)] is strictly liable to that minor if the treatment or the
13 after-effects of the treatment result in any injury, including physical, psychological, emotional, or physiological
14 harms, within the next 25 years.

15 (2) Except as provided in subsection (3), a person who suffers an injury described in subsection
16 (1) OR FOR ANY VIOLATION OF [SECTION 4], or the person's legal guardian or estate, may bring a civil action either
17 within 25 years from the day the person reaches 18 years of age or within 4 years from the time of discovery by
18 the injured party of both the injury and the causal relationship between the treatment and the injury, whichever
19 date is later, against the offending health care professional or physician in a court of competent jurisdiction for:

- 20 (a) declaratory or injunctive relief;
- 21 (b) compensatory damages, including but not limited to pain and suffering, loss of reputation, loss
22 of income, and loss of consortium, including the loss of expectation of sharing parenthood;
- 23 (c) punitive damages;
- 24 (d) any other appropriate relief; and
- 25 (e) attorney fees and costs.

26 (3) (a) If, at the time the person subjected to treatment attains 18 years of age, the person is under
27 other legal disability, the limitation period in subsection (2) does not begin to run until the removal of the
28 disability.