April 17, 2023

The Honorable Jason Ellsworth  
President of the Senate  
State Capitol  
Helena, MT 59601

The Honorable Matt Regier  
Speaker of the House  
State Capitol  
Helena, MT 59601

Dear President Ellsworth and Speaker Regier:

I share your profound commitment to protect Montana children from invasive medical treatments that can permanently alter their healthy, developing bodies, and I appreciate the Legislature’s effort to that end with Senate Bill 99, the Youth Health Protection Act.

I’ve sat down and met with transgender youth and adults. I understand their struggles are real, and my heart goes out to them. I firmly believe that, as with all of God’s children, Montanans who struggle with their gender identity deserve love, compassion, and respect.

As you know, Senate Bill 99 does not prohibit thoughtful, noninvasive care as a response to those who struggle with gender identity. Senate Bill 99 does not prohibit social affirmation. And Senate Bill 99 does not prohibit providing or accessing psychotherapy to treat young Montanans struggling with their gender identity.

Instead, Senate Bill 99 focuses on so-called gender affirming medical care for children. “Gender affirming care” for children is Orwellian Newspeak, a seemingly innocuous, even solicitous phrase that masks its true nature of permanent, invasive, life-altering medical and surgical procedures, performed on children whose young minds and bodies are still developing.

The science around puberty blockers, hormonal treatments, and sex-reassignment surgeries is unsettled and continues to evolve. Western and northern European countries, as well as many states, recognize this reality. Sex-reassignment surgery is not performed on individuals under the age of 18 in the United Kingdom, Belgium, Denmark, Finland, Luxembourg, and Sweden.
And yet, children as young as 12 years of age have received sex-reassignment surgery in the United States, and children as young as 8 years of age have been prescribed puberty blockers in the United States.

Given the unsettled, evolving science around invasive medical treatments for children struggling with gender identity, it is right and appropriate to protect young Montanans from these permanent, life-altering procedures.

I appreciate the Legislature’s work to protect Montana children with Senate Bill 99, and I support the sponsor’s efforts and intent. As currently written, I believe the legislation is incomplete and can be strengthened.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 99: “AN ACT PROVIDING FOR A YOUTH HEALTH PROTECTION ACT; PROHIBITING CERTAIN MEDICAL AND SURGICAL TREATMENTS TO TREAT MINORS WITH GENDER DYSPHORIA; PROHIBITING PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES FROM BEING USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL WHO VIOLATES THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE OF ACTION; PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND PROVIDING DEFINITIONS.”

As currently written, Senate Bill 99 provides an imprecise definition of “male” and “female.” As currently written, the bill does not contemplate treatment for a child requiring a necessary medical procedure because he or she was born with a medically verifiable disorder of sex development. Finally, as currently written, the bill is unclear about public funding restrictions.

The amendments I offer ensure that the necessarily binary definitions of “male” and “female” encompass all members of the human race. For example, the addition of “would produce” makes clear that young children, who are still undergoing biological development, nevertheless fall within the definition of “male” or “female.”

The amendments I offer recognize that biological or genetic conditions, including but not limited to the circumstances of menopause, being intersex, or a cancer diagnosis requiring surgical removal of reproductive organs, do not preclude an individual from still meeting the definition of “male” or “female.”

Finally, the amendments I offer also ensure that the scope of public funding restrictions matches the prohibitions on not just “procedures,” but on all medical treatments identified in Senate Bill 99. This ensures that the exceptions to the prohibitions apply with equal force to public funding and removes vagueness from the law as to its meaning and scope.

I thank the sponsor for his work on Senate Bill 99 and support of the amendments I offer.
For these reasons, I respectfully ask for your support of these amendments.

Senate Bill 99 protects Montana children from permanent, life-altering medical procedures until they are adults, mature enough to make such serious health decisions.

Sincerely,

Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State
SENATE BILL NO. 99
INTRODUCED BY J. FULLER

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

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

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

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

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

(1) "Female" means an individual who is a member of the female sex, A MEMBER OF THE HUMAN SPECIES WHO, UNDER NORMAL DEVELOPMENT, has XX chromosomes and PRODUCES or would produce A RELATIVELY LARGE, RELATIVELY IMMOBILE GAMETE gametes, or eggs, DURING HER LIFE CYCLE AND HAS A REPRODUCTIVE AND ENDOCRINE SYSTEM ORIENTED AROUND THE PRODUCTION OF THAT GAMETE those gametes, An
individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for
the purposes of [sections 1 through 6].

(2) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or
female. An individual's gender may or may not align with the individual's sex.

(3) "Gender dysphoria" is the diagnosis of gender dysphoria under condition defined in the
Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.

(4) "Health care professional" means a person who is licensed, certified, or otherwise authorized
by the laws of this state to administer health care in the ordinary course of the practice of the person's
profession.

(5) "Male" means an individual who is a member of the male sex A MEMBER OF THE HUMAN SPECIES
WHO, UNDER NORMAL DEVELOPMENT, has XY chromosomes and PRODUCES or would produce SMALL, MOBILE
GAMETES, or sperm, DURING HIS LIFE CYCLE; AND HAS A REPRODUCTIVE AND ENDOCRINE SYSTEM ORIENTED AROUND
THE PRODUCTION OF THOSE GAMETES, An individual who would otherwise fall within this definition, but for a
biological or genetic condition, is male for purposes of [sections 1 through 6].

(6) "Mental health professional" means a person who is licensed to diagnose and treat mental
health conditions in this state.

(7) "Minor" means an individual under 18 years of age.

(8) "Perceived gender" is a person's internal sense of his or her gender.

(9) "Perceived sex" is a person's internal sense of his or her sex.

(10) "Physician" means a person who is licensed to practice medicine in this state.

(11) "Sex" means the biological indication of male and female in the context of reproductive
potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and unambiguous
internal and external genitalia present at birth, including secondary sex characteristics, without regard to an
individual's psychological, chosen, or subjective experience of gender. THE ORGANIZATION OF BODY PLANS parts
AND GAMETES FOR REPRODUCTION IN HUMAN BEINGS AND OTHER ORGANISMS. IN HUMAN BEINGS, THERE ARE EXACTLY
TWO SEXES, MALE AND FEMALE, WITH TWO CORRESPONDING types of GAMETES. THE SEXES ARE DETERMINED BY THE
BIOLICAL and genetic INDICATION OF MALE OR FEMALE, INCLUDING SEX CHROMOSOMES, NATURALLY OCCURRING SEX
CHROMOSOMES, GONADS, AND NONAMBIGUOUS INTERNAL AND EXTERNAL GENITALIA PRESENT AT BIRTH, WITHOUT

- 2 - Authorized Print Version – SB 99
REGARD TO AN INDIVIDUAL’S PSYCHOLOGICAL, BEHAVIORAL, SOCIAL, CULTURAL, CHOSEN, OR SUBJECTIVE EXPERIENCE OF GENDER

(42)(10) "Social transitioning" means acts other than pharmaceutical or surgical interventions that are offered as treatment to a minor for the purpose of the minor presenting as the opposite sex or an identity other than the minor’s sex, including the changing of a minor’s preferred pronouns or dress and the recommendation to wear clothing or devices, such as binders, for the purpose of concealing a minor’s secondary sex characteristics.

NEW SECTION. Section 4. Prohibitions. (1) (A) Except as provided in subsection (1)(C), a person may not knowingly provide the following medical treatments to a female minor to address the minor’s perception that her gender or sex is not female:

(I) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular protheses, subcutaneous mastectomy, voice surgery, or pectoral implants;

(II) supraphysiologic doses of testosterone or other androgens; or

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

(B) Except as provided in subsection (1)(C), a person may not knowingly provide the following medical treatments to a male minor to address the minor’s perception that his gender or sex is not male:

(I) surgical procedures, including a penectomy, orchietomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction, or gluteal augmentation;

(II) supraphysiologic doses of estrogen; or

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

(C) the procedures—medical treatments listed in subsections (1)(A) and (1)(B) are prohibited only when knowingly provided to address a female minor’s perception that her gender or sex is not
FEMALE OR A MALE MINOR’S PERCEPTION THAT HIS GENDER OR SEX IS NOT MALE. SUBSECTIONS (1)(A) AND (1)(B) DO
NOT APPLY FOR OTHER PURPOSES, INCLUDING:

(i) TREATMENT FOR A PERSON BORN WITH A MEDICALLY VERIFIABLE DISORDER OF SEX DEVELOPMENT,

INCLUDING:

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

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

(ii) TREATMENT OF ANY INFECTION, INJURY, DISEASE, OR DISORDER THAT HAS BEEN CAUSED OR
EXACERBATED BY THE PERFORMANCE OF A PROCEDURE a medical treatment listed in subsection (1)(A) OR (1)(B),
WHETHER OR NOT THE PROCEDURE medical treatment WAS PERFORMED IN ACCORDANCE WITH STATE AND FEDERAL
LAW AND WHETHER OR NOT FUNDING FOR THE PROCEDURE medical treatment IS PERMISSIBLE UNDER STATE AND
FEDERAL LAW.

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

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

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

(4)(3) Public funds may not be directly or indirectly used, granted, paid, or distributed to any
individual, entity, or organization that provides or subsidizes medication or surgery as a treatment to address an
inconsistency between a minor’s sex and the minor’s perceived gender or perceived sex FOR THE PURPOSES OF
PROVIDING THE PROCEDURES DESCRIBED-medical treatments prohibited IN SUBSECTION (1)(A) OR (1)(B).
Any individual or entity that receives state funds to pay for or subsidize the treatment of minors for psychological conditions, including gender dysphoria, may not use state funds to promote or advocate medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex. The procedures described in subsection (1)(a) or (1)(b).

Any amount paid by an individual or entity during a tax year for the provision of either medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex is not tax deductible under state law.

The Montana Medicaid program and children's health insurance programs may not reimburse or provide coverage for medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex. The procedures described in subsection (1)(a) or (1)(b).

Except to the extent required by the first amendment to the United States constitution, state property, facilities, or buildings may not be knowingly used to promote or advocate the use of social transitioning, medication, or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex. The procedures described in subsection (1)(a) or (1)(b).

A health care professional or physician employed by the state or a county or local government may not, while engaged in the official duties of employment, knowingly provide medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex. The procedures described in subsection (1)(a) or (1)(b).

State property, facilities, or buildings may not knowingly be used to provide medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex. The procedures described in subsection (1)(a) or (1)(b).

A state employee whose official duties include the care of minors may not, while engaged in those official duties, knowingly provide or promote the use of social transitioning, medication, or surgery as a
treatment to address an inconsistency between a minor’s sex and the minor’s perceived gender or perceived
sex. **PROCEDURES DESCRIBED: MEDICAL TREATMENTS PROHIBITED IN SUBSECTION (1)(A) OR (1)(B).**

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

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

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

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

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

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

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

(ii) supraphysiologic doses of estrogen; or

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

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

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

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

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

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

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

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

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

NEW SECTION. Section 5. Private cause of action for subsequent harm. (1) Any health care
professional or physician who provides puberty blockers, cross-sex hormones, or surgical procedures as a
treatment to address an inconsistency between a minor’s sex and the minor’s perceived gender or perceived
sex—the procedures described medical treatments prohibited in [section 4(1)(A) OR (1)(B)] is strictly liable to
that minor person if the medical treatment or the after-effects of the medical treatment result in any injury,
including physical, psychological, emotional, or physiological harms, within the next 25 years.

(2) Except as provided in subsection (3), a person who suffers an injury described in subsection

(1) OR FOR ANY VIOLATION OF [SECTION 4], or the person’s legal guardian or estate, or the person’s legal guardian
or estate may bring a civil action with respect to the injury or for any violation of [section 4] either within 25
years from the day the person reaches 18 years of age or within 4 years from the time of discovery by the
injured party of both the injury and the causal relationship between the medical treatment and the injury, whichever date is later, against the offending health care professional or physician in a court of competent jurisdiction for:

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

(3) (a) If, at the time the person subjected to medical treatment attains 18 years of age DISCOVERS THE INJURY AND THE CAUSAL RELATIONSHIP BETWEEN THE medical TREATMENT AND THE INJURY, the person is under other legal disability, the limitation period in subsection (2) does not begin to run until the removal of the disability.

(b) The limitation period in subsection (2) does not run during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the health care professional or physician who provided the medical treatment described in subsection (1) or by any person acting in the interest of the health care professional or physician.

(4) A health care professional or physician may not be indemnified for potential liability under this section.

(5) The attorney general may bring an action to enforce compliance with this section.

(6) This section does not deny, impair, or otherwise affect any right or authority of the attorney general, the state, or any agency, officer, or employee of the state, acting under any law other than this section, to institute or intervene in any proceeding.

NEW SECTION. Section 6. Prohibited insurance coverage. A professional liability insurance policy issued to a health care professional or physician may not include coverage for damages assessed against the health care professional or physician who provides any medication or surgical procedure described medical treatment prohibited in [section 4(1)(A) OR (1)(B)] as a treatment to address an inconsistency between a minor's
sex and the minor's perceived gender or perceived sex.

NEW SECTION. Section 7. Medical or surgical transition for minors. Failure of a health care professional, mental health professional, or physician to adhere to [section 4] constitutes unprofessional conduct, with a mandatory minimum suspension of the ability to practice the person's profession for 1 year.

NEW SECTION. Section 8. Prohibited reimbursement or coverage. Pursuant to [section 4], the Montana medicaid program may not reimburse or provide coverage for medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex ANY MEDICATION OR SURGICAL PROCEDURE DESCRIBED MEDICAL TREATMENT PROHIBITED IN [SECTION 4(1)(A) OR (1)(B)].

NEW SECTION. Section 9. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 7].

(3) [Section 8] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 8].

NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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