

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 PUBLIC FUNDS, PROGRAMS, PROPERTY, AND EMPLOYEES FROM BEING  
7 USED FOR THESE TREATMENTS; PROVIDING THAT A HEALTH CARE PROFESSIONAL WHO VIOLATES  
8 THIS LAW COMMITS PROFESSIONAL MISCONDUCT; PROVIDING A PRIVATE CAUSE OF ACTION;  
9 PROHIBITING DISCHARGE OF PROFESSIONAL LIABILITY VIA INSURANCE; AND PROVIDING  
10 DEFINITIONS."

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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, has XX chromosomes and PRODUCES or would produce A  
27 RELATIVELY LARGE, RELATIVELY IMMOBILE GAMETE-gametes, or eggs, DURING HER LIFE CYCLE AND HAS A  
28 REPRODUCTIVE AND ENDOCRINE SYSTEM ORIENTED AROUND THE PRODUCTION OF ~~THAT GAMETE~~ those gametes. An

1 individual who would otherwise fall within this definition, but for a biological or genetic condition, is female for  
2 the purposes of [sections 1 through 6].

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

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

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

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

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

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

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

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

20 ~~(10)~~(8) "Physician" means a person who is licensed to practice medicine in this state.

21 ~~(11)~~(9) "Sex" means ~~the biological indication of male and female in the context of reproductive~~  
22 ~~potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and unambiguous~~  
23 ~~internal and external genitalia present at birth, including secondary sex characteristics, without regard to an~~  
24 ~~individual's psychological, chosen, or subjective experience of gender.~~ THE ORGANIZATION OF BODY PLANS parts  
25 AND GAMETES FOR REPRODUCTION IN HUMAN BEINGS AND OTHER ORGANISMS. IN HUMAN BEINGS, THERE ARE EXACTLY  
26 TWO SEXES, MALE AND FEMALE, WITH TWO CORRESPONDING types of GAMETES. THE SEXES ARE DETERMINED BY THE  
27 BIOLOGICAL and genetic INDICATION OF MALE OR FEMALE, INCLUDING SEX CHROMOSOMES, NATURALLY OCCURRING SEX  
28 CHROMOSOMES, GONADS, AND NONAMBIGUOUS INTERNAL AND EXTERNAL GENITALIA PRESENT AT BIRTH, WITHOUT

1 REGARD TO AN INDIVIDUAL'S PSYCHOLOGICAL, BEHAVIORAL, SOCIAL, CULTURAL, CHOSEN, OR SUBJECTIVE EXPERIENCE  
2 OF GENDER

3 (12)(10)"Social transitioning" means acts other than pharmaceutical or surgical interventions that are  
4 offered as treatment to a minor for the purpose of the minor presenting as the opposite sex or an identity other  
5 than the minor's sex, including the changing of a minor's preferred pronouns or dress and the recommendation  
6 to wear clothing or devices, such as binders, for the purpose of concealing a minor's secondary sex  
7 characteristics.

8  
9 NEW SECTION. Section 4. Prohibitions. (1) (A) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A PERSON  
10 MAY NOT KNOWINGLY PROVIDE THE FOLLOWING medical treatments TO A FEMALE MINOR TO ADDRESS THE MINOR'S  
11 PERCEPTION THAT HER GENDER OR SEX IS NOT FEMALE:

12 (i) SURGICAL PROCEDURES, INCLUDING A VAGINECTOMY, HYSTERECTOMY, OOPHORECTOMY,  
13 OVARIECTOMY, RECONSTRUCTION OF THE URETHRA, METOIDIOPLASTY, PHALLOPLASTY, SCROTOPLASTY, IMPLANTATION  
14 OF ERECTION OR TESTICULAR PROTHESES, SUBCUTANEOUS MASTECTOMY, VOICE SURGERY, OR PECTORAL IMPLANTS;

15 (ii) SUPRAPHYSIOLOGIC DOSES OF TESTOSTERONE OR OTHER ANDROGENS; OR

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

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

21 (i) SURGICAL PROCEDURES, INCLUDING A PENECTOMY, ORCHIECTOMY, VAGINOPLASTY, CLITOROPLASTY,  
22 VULVOPLASTY, AUGMENTATION MAMMOPLASTY, FACIAL FEMINIZATION SURGERY, VOICE SURGERY, THYROID CARTILAGE  
23 REDUCTION, OR GLUTEAL AUGMENTATION;

24 (ii) SUPRAPHYSIOLOGIC DOSES OF ESTROGEN; OR

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

27 (C) THE PROCEDURES-medical treatments LISTED IN SUBSECTIONS (1)(A) AND (1)(B) ARE PROHIBITED  
28 ONLY WHEN KNOWINGLY PROVIDED TO ADDRESS A FEMALE MINOR'S PERCEPTION THAT HER GENDER OR SEX IS NOT

1 FEMALE OR A MALE MINOR'S PERCEPTION THAT HIS GENDER OR SEX IS NOT MALE. SUBSECTIONS (1)(A) AND (1)(B) DO  
2 NOT APPLY FOR OTHER PURPOSES, INCLUDING:

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

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

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

12 (II) TREATMENT OF ANY INFECTION, INJURY, DISEASE, OR DISORDER THAT HAS BEEN CAUSED OR  
13 EXACERBATED BY ~~THE PERFORMANCE OF A PROCEDURE-a medical treatment~~ LISTED IN SUBSECTION (1)(A) OR (1)(B),  
14 WHETHER OR NOT THE ~~PROCEDURE-medical treatment~~ WAS PERFORMED IN ACCORDANCE WITH STATE AND FEDERAL  
15 LAW AND WHETHER OR NOT FUNDING FOR THE ~~PROCEDURE-medical treatment~~ IS PERMISSIBLE UNDER STATE AND  
16 FEDERAL LAW.

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

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

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

25 (4)(3) Public funds may not be directly or indirectly used, granted, paid, or distributed to any  
26 individual, entity, or organization that provides or subsidizes medication or surgery as a treatment to address an  
27 inconsistency between a minor's sex and the minor's perceived gender or perceived sex FOR THE PURPOSES OF  
28 PROVIDING THE ~~PROCEDURES DESCRIBED-medical treatments prohibited~~ IN SUBSECTION (1)(A) OR (1)(B).

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

6           ~~(3)~~(5) Any amount paid by an individual or entity during a tax year for the provision of ~~either~~  
 7 ~~medication or surgery as a treatment to address an inconsistency between a minor's sex and the minor's~~  
 8 ~~perceived gender or perceived sex is not tax deductible~~ THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR  
 9 (1)(B) IS NOT TAX DEDUCTIBLE under state law.

10           ~~(4)~~(6) The Montana medicaid ~~program and children's health insurance programs~~ may not reimburse  
 11 or provide coverage for ~~medication or surgery as a treatment to address an inconsistency between a minor's~~  
 12 ~~sex and the minor's perceived gender or perceived sex~~ THE PROCEDURES DESCRIBED medical treatments  
 13 prohibited IN SUBSECTION (1)(A) OR (1)(B).

14           ~~(5)~~(7) Except to the extent required by the first amendment to the United States constitution, state  
 15 property, facilities, or buildings may not be KNOWINGLY used to promote or advocate the use of social  
 16 ~~transitioning, medication, or surgery as a treatment to address an inconsistency between a minor's sex and the~~  
 17 ~~minor's perceived gender or perceived sex~~ OR THE PROCEDURES DESCRIBED medical treatments prohibited IN  
 18 SUBSECTION (1)(A) OR (1)(B) TO ADDRESS A FEMALE MINOR'S PERCEPTION THAT HER GENDER OR SEX IS NOT FEMALE  
 19 OR A MALE MINOR'S PERCEPTION THAT HIS GENDER OR SEX IS NOT MALE.

20           ~~(6)~~(8) A health care professional or physician employed by the state or a county or local government  
 21 may not, while engaged in the official duties of employment, KNOWINGLY provide ~~medication or surgery as a~~  
 22 ~~treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived~~  
 23 ~~sex~~ THE PROCEDURES DESCRIBED medical treatments prohibited IN SUBSECTION (1)(A) OR (1)(B).

24           ~~(7)~~(9) State property, facilities, or buildings may not KNOWINGLY be used to provide ~~medication or~~  
 25 ~~surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or~~  
 26 ~~perceived sex~~ THE PROCEDURES DESCRIBED medical treatments prohibited IN SUBSECTION (1)(A) OR (1)(B).

27           ~~(8)~~(10) A state employee whose official duties include the care of minors may not, while engaged in  
 28 those official duties, KNOWINGLY provide or promote the use of ~~social transitioning, medication, or surgery as a~~

1 treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived  
2 sex ~~PROCEDURES DESCRIBED~~ medical treatments prohibited IN SUBSECTION (1)(A) OR (1)(B).

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

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

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

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

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

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

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

19 (ii) — supraphysiologic doses of estrogen; or

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

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

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

27 (A) — a person born with external biological sex characteristics that are irresolvably ambiguous,  
28 including an individual born with 46-XX chromosomes with virilization, 46-XY chromosomes with

1 undervirilization, or having both ovarian and testicular tissue; and

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

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

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

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

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

18  
19 **NEW SECTION. Section 5. Private cause of action for subsequent harm.** (1) Any health care  
20 professional or physician who provides ~~puberty blockers, cross-sex hormones, or surgical procedures as a~~  
21 ~~treatment to address an inconsistency between a minor's sex and the minor's perceived gender or perceived~~  
22 ~~sex~~ THE PROCEDURES DESCRIBED medical treatments prohibited IN [SECTION 4(1)(A) OR (1)(B)] is strictly liable to  
23 that ~~minor person~~ if the medical treatment or the after-effects of the medical treatment result in any injury,  
24 including physical, psychological, emotional, or physiological harms, within the next 25 years.

25 (2) Except as provided in subsection (3), a person who suffers an injury described in subsection  
26 (1) OR FOR ANY VIOLATION OF [SECTION 4], or the person's legal guardian or estate, or the person's legal guardian  
27 or estate may bring a civil action with respect to the injury or for any violation of [section 4] ~~either within 25~~  
28 ~~years from the day the person reaches 18 years of age or within 4 years from the time of discovery by the~~

1 injured party of both the injury and the causal relationship between the medical treatment and the injury,  
2 ~~whichever date is later~~, against the offending health care professional or physician in a court of competent  
3 jurisdiction for:

4 (a) declaratory or injunctive relief;

5 (b) compensatory damages, including but not limited to pain and suffering, loss of reputation, loss  
6 of income, and loss of consortium, including the loss of expectation of sharing parenthood;

7 (c) punitive damages;

8 (d) any other appropriate relief; and

9 (e) attorney fees and costs.

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

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

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

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

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

24  
25 NEW SECTION. Section 6. Prohibited insurance coverage. A professional liability insurance policy  
26 issued to a health care professional or physician may not include coverage for damages assessed against the  
27 health care professional or physician who provides any ~~medication or surgical procedure described~~ medical  
28 treatment prohibited in [section 4(1)(A) OR (1)(B)] ~~as a treatment to address an inconsistency between a minor's~~



1 sex and the minor's perceived gender or perceived sex.

2

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

6

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

11

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

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

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

18

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

22

- END -