

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."

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 (2) "Gender" means the psychological, behavioral, social, and cultural aspects of being male or
2 female.

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

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

8 (5) "Male" means ~~an individual who is a member of the male sex~~ A MEMBER OF THE HUMAN SPECIES
9 WHO, UNDER NORMAL DEVELOPMENT, PRODUCES SMALL, MOBILE GAMETES DURING HIS LIFE CYCLE, AND HAS A
10 REPRODUCTIVE AND ENDOCRINE SYSTEM ORIENTED AROUND THE PRODUCTION OF THOSE GAMETES.

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

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

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

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

16 ~~(40)(8)~~ "Physician" means a person who is licensed to practice medicine in this state.

17 ~~(11)(9) "Sex" means the biological indication of male and female in the context of reproductive~~
18 ~~potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and unambiguous~~
19 ~~internal and external genitalia present at birth, including secondary sex characteristics, without regard to an~~
20 ~~individual's psychological, chosen, or subjective experience of gender.~~ THE ORGANIZATION OF BODY PLANS AND
21 GAMETES FOR REPRODUCTION IN HUMAN BEINGS AND OTHER ORGANISMS. IN HUMAN BEINGS, THERE ARE EXACTLY TWO
22 SEXES, MALE AND FEMALE, WITH TWO CORRESPONDING GAMETES. THE SEXES ARE DETERMINED BY THE BIOLOGICAL
23 INDICATION OF MALE OR FEMALE, INCLUDING SEX CHROMOSOMES, NATURALLY OCCURRING SEX CHROMOSOMES,
24 GONADS, AND NONAMBIGUOUS INTERNAL AND EXTERNAL GENITALIA PRESENT AT BIRTH, WITHOUT REGARD TO AN
25 INDIVIDUAL'S PSYCHOLOGICAL, BEHAVIORAL, SOCIAL, CULTURAL, CHOSEN, OR SUBJECTIVE EXPERIENCE OF GENDER

26 ~~(12)(10)~~ "Social transitioning" means acts other than pharmaceutical or surgical interventions that are
27 offered as treatment to a minor for the minor presenting as the opposite sex or an identity other than the minor's
28 sex, including the changing of a minor's preferred pronouns or dress and the recommendation to wear clothing

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 ~~(4)(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)~~ Any individual or entity that receives state funds to pay FOR or subsidize the treatment of
22 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)~~ 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)~~ The Montana medicaid program may not reimburse or provide coverage for medication or
2 surgery as a treatment to address an inconsistency between a minor's sex and the minor's perceived gender or
3 ~~perceived sex~~ THE PROCEDURES DESCRIBED IN SUBSECTION (1)(A) OR (1)(B).

4 ~~(5)(7)~~ Except to the extent required by the first amendment to the United States constitution, state
5 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)~~ A health care professional or physician employed by the state or a county or local government
11 may not KNOWINGLY provide medication or surgery as a treatment to address an inconsistency between a
12 minor's sex and the minor's perceived gender or perceived sex THE PROCEDURES DESCRIBED IN SUBSECTION
13 (1)(A) OR (1)(B).

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

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

21 (11) 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 (4) ~~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.

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

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

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

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

11
12 NEW SECTION. Section 6. Prohibited insurance coverage. A professional liability insurance policy
13 issued to a health care professional or physician may not include coverage for damages assessed against the
14 health care professional or physician who provides any medication or surgical procedure described in [section
15 4(1)(A) OR (1)(B)] ~~as a treatment to address an inconsistency between a minor's sex and the minor's perceived~~
16 ~~gender or perceived sex.~~

17
18 NEW SECTION. Section 7. Medical or surgical transition for minors. Failure of a health care
19 professional, mental health professional, or physician to adhere to [section 4] constitutes unprofessional
20 conduct, with a mandatory minimum suspension of the ability to practice the person's profession for 1 year.

21
22 NEW SECTION. Section 8. Prohibited reimbursement or coverage. Pursuant to [section 4], the
23 Montana medicaid program may not reimburse or provide coverage for ~~medication or surgery as a treatment to~~
24 ~~address an inconsistency between a minor's sex and the minor's perceived gender or perceived sex~~ ANY
25 MEDICATION OR SURGICAL PROCEDURE DESCRIBED IN [SECTION 4(1)(A) OR (1)(B)].

26
27 NEW SECTION. Section 9. Codification instruction. (1) [Sections 1 through 6] are intended to be
28 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 6].

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

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

5
6 **NEW SECTION.** **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9 - END -