

HOUSE BILL NO. 113

INTRODUCED BY J. FULLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR YOUTH HEALTH PROTECTION; PROVIDING DEFINITIONS; PROHIBITING CERTAIN MEDICATIONS AND MEDICAL PROCEDURES FOR THE TREATMENT OF GENDER DYSPHORIA IN MINORS; AND ~~ESTABLISHING A CIVIL PENALTY FOR HEALTH CARE PROVIDERS PROVIDING PROHIBITED TREATMENT~~ PROVIDING FOR ENFORCEMENT."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Youth Health Protection Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 5] is to enhance the protection of minors, pursuant to Article II, section 15, of the Montana constitution, ~~from any form of pressure to undergo irreversible medical procedures to change sex prior to attaining the age of majority~~ WHO EXPERIENCE DISTRESS AT IDENTIFYING WITH THEIR BIOLOGICAL SEX FROM BEING SUBJECTS OF IRREVERSIBLE AND DRASTIC NONGENITAL GENDER REASSIGNMENT SURGERY AND IRREVERSIBLE, PERMANENTLY STERILIZING GENITAL GENDER REASSIGNMENT SURGERY DESPITE THE LACK OF STUDIES SHOWING THAT THE BENEFITS OF THESE EXTREME INTERVENTIONS OUTWEIGH THE RISKS.

NEW SECTION. Section 3. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Cross-sex hormones" ~~include antiandrogen, estrogen, and testosterone~~ MEANS TESTOSTERONE OR OTHER ANDROGENS GIVEN TO BIOLOGICAL FEMALES AT DOSES THAT ARE PROFOUNDLY LARGER OR MORE POTENT THAN WOULD NORMALLY OCCUR NATURALLY IN HEALTHY BIOLOGICAL FEMALES OR ESTROGEN GIVEN TO BIOLOGICAL MALES AT DOSES THAT ARE PROFOUNDLY LARGER OR MORE POTENT THAN WOULD NORMALLY OCCUR NATURALLY IN HEALTHY BIOLOGICAL MALES.

1 (2) "GENDER" MEANS THE PSYCHOLOGICAL, BEHAVIORAL, SOCIAL, AND CULTURAL ASPECTS OF BEING MALE
 2 OR FEMALE.

3 ~~(2)~~(3) "Gender dysphoria" means a medical diagnosis based on a persistent, marked difference
 4 between a patient's expressed or experienced gender and the gender others would assign the patient causing
 5 clinically significant distress or impairment, as defined in the fifth edition of the Diagnostic and Statistical Manual
 6 of Mental Disorders.

7 ~~(3)~~(4) "Gender reassignment surgery" ~~includes but is not limited to orchiectomy, vaginoplasty,~~
 8 ~~mastectomy, hysterectomy, metoidioplasty, oophorectomy, penectomy, and phalloplasty~~ MEANS ANY MEDICAL OR
 9 SURGICAL SERVICE THAT SEEKS TO SURGICALLY ALTER OR REMOVE HEALTHY PHYSICAL OR ANATOMICAL
 10 CHARACTERISTICS OR FEATURES THAT ARE TYPICAL FOR THE INDIVIDUAL'S BIOLOGICAL SEX IN ORDER TO INSTILL OR
 11 CREATE PHYSIOLOGICAL OR ANATOMICAL CHARACTERISTICS THAT RESEMBLE A SEX DIFFERENT FROM THE INDIVIDUAL'S
 12 BIRTH SEX, INCLUDING BUT NOT LIMITED TO GENITAL OR NONGENITAL GENDER REASSIGNMENT SURGERY PERFORMED
 13 FOR THE PURPOSE OF ASSISTING AN INDIVIDUAL WITH A GENDER TRANSITION.

14 (5) "GENDER TRANSITION" MEANS THE PROCESS IN WHICH AN INDIVIDUAL GOES FROM IDENTIFYING WITH AND
 15 LIVING AS A GENDER THAT CORRESPONDS WITH THE INDIVIDUAL'S BIOLOGICAL SEX TO IDENTIFYING WITH AND LIVING AS A
 16 GENDER DIFFERENT THAN THE INDIVIDUAL'S BIOLOGICAL SEX AND MAY INVOLVE SOCIAL, LEGAL, OR PHYSICAL CHANGES.

17 (6) (A) "GENDER TRANSITION PROCEDURES" MEANS ANY MEDICAL OR SURGICAL SERVICE, INCLUDING BUT
 18 NOT LIMITED TO PHYSICIANS' SERVICES, INPATIENT AND OUTPATIENT HOSPITAL SERVICES, OR PRESCRIBED DRUGS
 19 RELATED TO GENDER TRANSITION, THAT SEEKS TO ALTER OR REMOVE PHYSICAL OR ANATOMICAL CHARACTERISTICS OR
 20 FEATURES THAT ARE TYPICAL FOR THE INDIVIDUAL'S BIOLOGICAL SEX AND TO INSTILL OR CREATE PHYSIOLOGICAL OR
 21 ANATOMICAL CHARACTERISTICS THAT RESEMBLE A SEX DIFFERENT FROM THE INDIVIDUAL'S BIRTH SEX.

22 (B) GENDER TRANSITION PROCEDURES INCLUDE BUT ARE NOT LIMITED TO SERVICES THAT PROVIDE PUBERTY-
 23 BLOCKING DRUGS, CROSS-SEX HORMONES, OR OTHER MECHANISMS TO PROMOTE THE DEVELOPMENT OF FEMINIZING OR
 24 MASCULINIZING FEATURES IN THE OPPOSITE SEX, OR GENITAL OR NONGENITAL GENDER REASSIGNMENT SURGERY
 25 PERFORMED FOR THE PURPOSE OF ASSISTING AN INDIVIDUAL WITH A GENDER TRANSITION.

26 (C) GENDER TRANSITION PROCEDURES DO NOT INCLUDE:

27 (i) SERVICES TO THOSE BORN WITH A MEDICALLY VERIFIABLE DISORDER OF SEX DEVELOPMENT, INCLUDING AN
 28 INDIVIDUAL WITH EXTERNAL BIOLOGICAL SEX CHARACTERISTICS THAT ARE IRRESOLVABLY AMBIGUOUS SUCH AS THOSE

1 BORN WITH 46, XX CHROMOSOMES WITH VIRILIZATION, 46, XY CHROMOSOMES WITH UNDERVIRILIZATION, OR HAVING
 2 BOTH OVARIAN AND TESTICULAR TISSUES;

3 (II) SERVICES PROVIDED WHEN A PHYSICIAN HAS DIAGNOSED A DISORDER OF SEXUAL DEVELOPMENT IN WHICH
 4 THE PHYSICIAN HAS DETERMINED THROUGH GENETIC OR BIOCHEMICAL TESTING THAT THE INDIVIDUAL DOES NOT HAVE
 5 NORMAL SEX CHROMOSOME STRUCTURE, SEX STEROID HORMONE PRODUCTION, OR SEX STEROID HORMONE ACTION FOR
 6 A BIOLOGICAL MALE OR A BIOLOGICAL FEMALE;

7 (III) THE TREATMENT OF AN INFECTION, INJURY, DISEASE, OR DISORDER THAT HAS BEEN CAUSED BY OR
 8 EXACERBATED BY THE PERFORMANCE OF GENDER TRANSITION PROCEDURES, WHETHER OR NOT THE GENDER
 9 TRANSITION PROCEDURE WAS PERFORMED IN ACCORDANCE WITH STATE OR FEDERAL LAW; OR

10 (IV) A PROCEDURE UNDERTAKEN BECAUSE THE INDIVIDUAL SUFFERS FROM A PHYSICAL DISORDER, PHYSICAL
 11 INJURY, OR PHYSICAL ILLNESS THAT WOULD, AS CERTIFIED BY A PHYSICIAN, PLACE THE INDIVIDUAL IN IMMINENT DANGER
 12 OF DEATH OR IMPAIRMENT OF MAJOR BODILY FUNCTION UNLESS SURGERY IS PERFORMED.

13 (7) "GENITAL GENDER REASSIGNMENT SURGERY" INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING
 14 SURGICAL PROCEDURES WHEN PERFORMED FOR THE PURPOSE OF ASSISTING AN INDIVIDUAL WITH A GENDER
 15 TRANSITION:

16 (A) PENECTOMY, ORCHIECTOMY, VAGINOPLASTY, CLITOROPLASTY, OR VULVOPLASTY FOR BIOLOGICAL MALE
 17 PATIENTS; OR

18 (B) HYSTERECTOMY/OOPHORECTOMY, RECONSTRUCTION OF THE FIXED PART OF THE URETHRA WITH OR
 19 WITHOUT A METOIDIOPLASTY OR A PHALLOPLASTY, VAGINECTOMY, SCROTOPLASTY, OR IMPLANTATION OF ERECTION OR
 20 TESTICULAR PROSTHESES FOR BIOLOGICALLY FEMALE PATIENTS.

21 ~~(4)~~(8) "Health care provider" means a physician licensed under Title 37, chapter 3, an advanced
 22 practice registered nurse licensed under Title 37, chapter 8, or a physician assistant licensed under Title 37.

23 (9) "NONGENITAL GENDER REASSIGNMENT SURGERY" INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING
 24 SURGICAL PROCEDURES WHEN PERFORMED FOR THE PURPOSES OF ASSISTING AN INDIVIDUAL WITH A GENDER
 25 TRANSITION:

26 (A) AUGMENTATION MAMMOPLASTY, FACIAL FEMINIZATION SURGERY, LIPOSUCTION, LIPOFILLING, VOICE
 27 SURGERY, THYROID CARTILAGE REDUCTION, GLUTEAL AUGMENTATION (IMPLANTS), HAIR RECONSTRUCTION, OR
 28 AESTHETIC PROCEDURES FOR BIOLOGICALLY MALE PATIENTS; OR

1 (B) SUBCUTANEOUS MASTECTOMY, VOICE SURGERY, LIPOSUCTION, LIPOFILLING, PECTORAL IMPLANTS, OR
 2 AESTHETIC PROCEDURES FOR BIOLOGICALLY FEMALE PATIENTS.

3 (10) "PUBERTY-BLOCKING DRUGS" MEANS THE FOLLOWING DRUGS WHEN USED TO DELAY OR SUPPRESS
 4 PUBERTAL DEVELOPMENT IN CHILDREN FOR THE PURPOSE OF ASSISTING AN INDIVIDUAL WITH A GENDER TRANSITION:

5 (A) GONADOTROPIN-RELEASING HORMONE (GNRH) ANALOGUES OR OTHER SYNTHETIC DRUGS USED IN
 6 BIOLOGICAL MALES TO STOP LUTEINIZING HORMONE SECRETION AND TESTOSTERONE SECRETION; OR

7 (B) SYNTHETIC DRUGS USED IN BIOLOGICAL FEMALES TO STOP THE PRODUCTION OF ESTROGENS AND
 8 PROGESTERONE.

9 (11) "SEX", "BIRTH SEX", OR "BIOLOGICAL SEX" REFER TO THE BIOLOGICAL INDICATION OF MALE OR FEMALE AS
 10 UNDERSTOOD IN THE CONTEXT OF REPRODUCTIVE POTENTIAL OR CAPACITY, INCLUDING SEX CHROMOSOMES,
 11 NATURALLY OCCURRING SEX HORMONES, GONADS, AND NONAMBIGUOUS INTERNAL AND EXTERNAL GENITALIA PRESENT
 12 AT BIRTH, WITHOUT REGARD TO AN INDIVIDUAL'S PSYCHOLOGICAL, CHOSEN, OR SUBJECTIVE EXPERIENCE OF GENDER.

13

14 NEW SECTION. Section 4. Medications and medical procedures prohibited. A health care
 15 provider may not:

16 (1) prescribe, provide, or administer ~~puberty-suppressing drugs or cross-sex hormones~~ GENDER
 17 TRANSITION PROCEDURES to a minor ~~to treat gender dysphoria;~~ OR

18 ~~(2) perform gender reassignment surgery on a minor to treat gender dysphoria; or~~

19 ~~(3) remove any otherwise healthy or nondiseased body part or tissue of a minor to treat gender~~
 20 ~~dysphoria~~

21 (2) REFER A MINOR TO A HEALTH CARE PROVIDER FOR GENDER TRANSITION PROCEDURES.

22

23 ~~NEW SECTION. Section 5. Civil penalties. A health care provider convicted of violating [section 4]~~
 24 ~~shall be fined an amount not less than \$500 or more than \$50,000. Fines collected under this section must be~~
 25 ~~deposited in the state general fund.~~

26

27 NEW SECTION. SECTION 5. ENFORCEMENT -- CAUSE OF ACTION. (1) A REFERRAL FOR OR PROVISION OF
 28 GENDER TRANSITION PROCEDURES TO A MINOR IS CONSIDERED UNPROFESSIONAL CONDUCT AND THE HEALTH CARE

1 PROVIDER IS SUBJECT TO DISCIPLINE BY THE APPROPRIATE LICENSING ENTITY UNDER TITLE 37.

2 (2) A PERSON MAY ASSERT AN ACTUAL OR THREATENED VIOLATION OF [SECTIONS 1 THROUGH 5] AS A CLAIM
3 OR DEFENSE IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING AND OBTAIN COMPENSATORY DAMAGES, INJUNCTIVE
4 RELIEF, DECLARATORY RELIEF, OR ANY OTHER APPROPRIATE RELIEF.

5 (3) (A) EXCEPT AS PROVIDED IN SUBSECTION (3)(B), A PERSON MAY NOT BRING A CLAIM FOR A VIOLATION OF
6 [SECTIONS 1 THROUGH 5] LATER THAN 2 YEARS AFTER THE DAY THE CAUSE OF ACTION ACCRUES.

7 (B) A MINOR MAY BRING A CAUSE OF ACTION THROUGH A PARENT OR NEXT FRIEND AND MAY BRING AN ACTION
8 IN THE MINOR'S OWN NAME UPON REACHING MAJORITY. THE ACTION MUST BE COMMENCED BEFORE THE MINOR REACHES
9 38 YEARS OF AGE.

10 (4) AN ACTION UNDER [SECTIONS 1 THROUGH 5] MAY BE COMMENCED AND RELIEF GRANTED IN A JUDICIAL
11 PROCEEDING REGARDLESS OF WHETHER THE PERSON COMMENCING THE ACTION HAS SOUGHT OR EXHAUSTED
12 AVAILABLE ADMINISTRATIVE REMEDIES.

13 (5) IN AN ACTION OR PROCEEDING TO ENFORCE A PROVISION OF [SECTIONS 1 THROUGH 5], A PREVAILING
14 PARTY WHO ESTABLISHES A VIOLATION OF [SECTIONS 1 THROUGH 5] IS ENTITLED TO RECOVER REASONABLE ATTORNEY
15 FEES.

16 (6) THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE COMPLIANCE WITH [SECTIONS 1 THROUGH
17 5]. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE CONSTRUED TO DENY, IMPAIR, OR OTHERWISE AFFECT A RIGHT OR
18 AUTHORITY OF THE ATTORNEY GENERAL, THE STATE OF MONTANA, OR AN AGENCY, OFFICER, OR EMPLOYEE OF THE
19 STATE TO INSTITUTE OR INTERVENE IN A PROCEEDING.

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21 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be
22 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 5].

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

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