

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, 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
2 FEMALE FOR 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
14 A 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
28 SEX 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
5 other than the minor's sex, including the changing of a minor's preferred pronouns or dress and the
6 recommendation to wear clothing or devices, such as binders, for the purpose of concealing a minor's
7 secondary sex 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, METOIDIPLASTY, 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
20 IS 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
11 reimburse or provide coverage for ~~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-MEDICAL
13 TREATMENTS 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 ~~protheses, 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~~
27 GUARDIAN OR ESTATE may bring a civil action WITH RESPECT TO THE INJURY OR FOR ANY VIOLATION OF [SECTION 4]
28 either within 25 years from the day the person reaches 18 years of age or within 4 years from the time of

1 discovery by the injured party of both the injury and the causal relationship between the MEDICAL treatment and
2 the injury, ~~whichever date is later~~, against the offending health care professional or physician in a court of
3 competent 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 ~~either~~ 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~~

1 ~~minor's 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 -