

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S2/16/23

A Bill

SENATE BILL 199

5 By: Senator G. Stubblefield
6 By: Representative Bentley
7

For An Act To Be Entitled

9 AN ACT CONCERNING MEDICAL MALPRACTICE AND GENDER
10 TRANSITION IN MINORS; TO CREATE THE PROTECTING MINORS
11 FROM MEDICAL MALPRACTICE ACT OF 2023; AND FOR OTHER
12 PURPOSES.
13
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Subtitle

15 CONCERNING MEDICAL MALPRACTICE AND GENDER
16 TRANSITION IN MINORS; AND TO CREATE THE
17 PROTECTING MINORS FROM MEDICAL
18 MALPRACTICE ACT OF 2023.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 16, Chapter 114, is amended to add an
26 additional subchapter to read as follows:

27 Subchapter 4 – Protecting Minors from Medical Malpractice Act of 2023
28

29 16-114-401. Definitions.

30 As used in this subchapter:

31 (1)(A) “Gender transition procedure” means any medical or
32 surgical service, including without limitation physician’s services,
33 inpatient and outpatient hospital services, or prescribed drugs related to
34 gender transition that seeks to:

35 (i) Alter or remove physical or anatomical
36 characteristics or features that are typical for the individual’s biological



1 sex; or

2 (ii) Instill or create physiological or anatomical
3 characteristics that resemble a sex different from the individual's
4 biological sex, including without limitation medical services that provide
5 puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote
6 the development of feminizing or masculinizing features in the opposite
7 biological sex, or genital or nongenital gender reassignment surgery
8 performed for the purpose of assisting an individual with a gender
9 transition.

10 (B) "Gender transition procedure" does not include:

11 (i) Services to persons born with a medically
12 verifiable disorder of sex development, including a person with external
13 biological sex characteristics that are irresolvably ambiguous, such as those
14 born with 46 XX chromosomes with virilization, 46 XY chromosomes with
15 undervirilization, or having both ovarian and testicular tissue;

16 (ii) Services provided when a physician has
17 otherwise diagnosed a disorder of sexual development that the physician has
18 determined through genetic or biochemical testing that the person does not
19 have normal sex chromosome structure, sex steroid hormone production, or sex
20 steroid hormone action;

21 (iii) The treatment of any infection, injury,
22 disease, or disorder that has been caused by or exacerbated by the
23 performance of gender transition procedures, whether or not the gender
24 transition procedure was performed in accordance with state and federal law
25 or whether or not funding for the gender transition procedure is permissible
26 under this subchapter; or

27 (iv) Any procedure undertaken because the individual
28 suffers from a physical disorder, physical injury, or physical illness that
29 would, as certified by a physician, place the individual in imminent danger
30 of death or impairment of major bodily function unless surgery is performed;

31 (2) "Healthcare professional" means the same as defined in § 20-
32 9-1501;

33 (3) "Mental health professional" means a psychiatrist or
34 psychologist licensed, certified, or otherwise authorized by the laws of this
35 state to administer mental health care in the ordinary course of the practice
36 of his or her profession;

1 (4) "Minor" means an individual who is younger than eighteen
2 (18) years of age; and

3 (5) "Public funds" means the same as defined in § 20-9-1501.

4
5 16-114-402. Right of action.

6 (a) A healthcare professional who performs a gender transition
7 procedure on a minor is liable to the minor if the minor is injured,
8 including without limitation any physical, psychological, emotional, or
9 physiological injury, by the gender transition procedure, related treatment,
10 or the after effects of the gender transition procedure or related treatment.

11 (b)(1) A minor injured as provided under subsection (a) of this
12 section, or a representative of a minor injured as provided under subsection
13 (a) of this section who receives a gender transition procedure, including
14 without limitation a parent or legal guardian of a minor injured as provided
15 under subsection (a) of this section who receives a gender transition
16 procedure acting on behalf of the minor, may bring a civil action against the
17 healthcare professional who performed the gender transition procedure on the
18 minor in a court of competent jurisdiction for:

19 (A) Declaratory or injunctive relief;

20 (B) Compensatory damages;

21 (C) Punitive damages; and

22 (D) Attorney's fees and costs.

23 (2) A civil action under subdivision (b)(1) of this section
24 shall be filed not later than fifteen (15) years after the date on which the
25 minor turns eighteen (18) years of age, or would have turned eighteen (18)
26 years of age if the minor died before turning eighteen (18) years of age.

27
28 16-114-403. Safe harbor.

29 (a) It is a defense to a civil action brought under § 16-114-402 that,
30 before performing a gender transition procedure on a minor:

31 (1) The healthcare professional documented the minor's perceived
32 gender or perceived sex for two (2) continuous years, and the minor's
33 perceived gender or perceived sex was invariably inconsistent with the
34 minor's biological sex throughout the two (2) years;

35 (2) To the extent that the minor suffered from a mental health
36 concern, at least two (2) healthcare professionals, including at least one

1 (1) mental health professional, certified in writing that the gender
2 transition procedure was the only way to treat the mental health concern;

3 (3) At least two (2) healthcare professionals, including at
4 least one (1) mental health professional, certified in writing that the minor
5 suffered from no other mental health concerns, including without limitation
6 depression, eating disorders, autism, attention deficit hyperactivity
7 disorder, intellectual disability, or psychotic disorders; and

8 (4) The healthcare professional received the voluntary and
9 informed consent of the parent or legal guardian of the minor and the minor
10 as provided in subsection (b) of this section.

11 (b) Consent to a gender transition procedure is voluntary and informed
12 only if, at least thirty (30) days before the first treatment of the gender
13 transition procedure and during every subsequent medical visit for treatment
14 during the following six (6) months, the minor and the minor's parent or
15 legal guardian receives verbal notice and written notice in at least 14-
16 point, proportionally spaced typeface that state the following facts,
17 verbatim:

18 "If your child begins one (1) of these treatments, it may
19 actually worsen the discordance and thus increase the likelihood that your
20 child will need additional and more serious interventions to address the
21 worsening condition. For example, if your child begins socially
22 transitioning or taking puberty blockers, that treatment may significantly
23 increase the likelihood that your child's discordance will worsen and lead to
24 your child eventually seeking cross-sex hormones or even surgery to remove
25 some of your child's body parts.

26 Sweden, Finland, and the United Kingdom have conducted systematic
27 reviews of evidence and concluded that there is no evidence that the
28 potential benefits of puberty blockers and cross-sex hormones for this
29 purpose outweigh the known or assumed risks.

30 Medical authorities in Sweden, Finland, and the United Kingdom
31 have since recommended psychotherapy as the first line of treatment for youth
32 gender dysphoria, with drugs and surgeries reserved as a measure of last
33 resort. Medical authorities in France have advised "great caution" when
34 prescribing hormones for gender dysphoria.

35 There are people who underwent gender transition treatments as
36 minors and later regretted that decision and the physical harm that these

1 treatments caused, and the total percentage of people who experience this
2 regret is unknown. Some estimate that the rate is below two percent (2%),
3 but that estimate is based on studies done on adults who transitioned as
4 adults or on minors who transitioned under highly restrictive and controlled
5 conditions.

6 Sometimes gender transition treatments have been proposed as a
7 way to reduce the chances of a minor committing suicide due to discordance
8 between the minor's sex and his or her perception, but the rates of actual
9 suicide from this discordance remain extremely low. Furthermore, as
10 recognized by health authorities in Europe, there is no evidence that
11 suicidality is caused by "unaffirmed" gender or that gender transition
12 treatments are causally linked to a reduction in serious suicidal attempts or
13 ideations.

14 For puberty blockers:

15 Puberty blockers are not approved for this purpose by the United
16 States Food and Drug Administration, which is the federal agency that
17 determines which drugs are safe and effective for humans to use. Claims
18 about puberty blockers' safety and efficacy are based on their use for
19 precocious puberty, a different condition in which normal puberty is allowed
20 to resume once the patient reaches the appropriate age. Studies on the
21 benefits of using puberty blockers for gender dysphoria are notoriously weak.
22 Puberty blockers are not fully reversible because, among other risks, puberty
23 blockers may intensify a minor's discordance and cause it to persist.
24 Puberty blockers increase the risk of your child being sterilized, meaning
25 that he or she will never be able to have children. Puberty blockers may
26 also cause diminished bone density for your child, increasing the risk of
27 fracture and early osteoporosis. Puberty blockers may also prevent your
28 child from ever being able to engage in sexual activity or achieve orgasm for
29 the rest of your child's life. There is no research on the long-term risks
30 to minors of persistent exposure to puberty blockers. The full effects of
31 puberty blockers on brain development and cognition are unknown.

32 For cross-sex hormones:

33 The use of cross-sex hormones in males is associated with
34 numerous health risks, such as thromboembolic disease, including without
35 limitation blood clots; cholelithiasis, including gallstones; coronary artery
36 disease, including without limitation heart attacks; macroprolactinoma, which

1 is a tumor of the pituitary gland; cerebrovascular disease, including without
2 limitation strokes; hypertriglyceridemia, which is an elevated level of
3 triglycerides in the blood; breast cancer; and irreversible infertility.
4 The use of cross-sex hormones in females is associated with risks of
5 erythrocytosis, which is an increase in red blood cells; severe liver
6 dysfunction; coronary artery disease, including without limitation heart
7 attacks; hypertension; and increased risk of breast and uterine cancers.
8 Once a minor begins cross-sex hormones, the minor may need to continue taking
9 those hormones for many years and possibly for the remainder of the minor's
10 life. The cost of these hormones may be tens of thousands of dollars. If
11 the use of cross-sex hormones leads to surgery, the total cost of
12 transitioning may exceed one hundred thousand dollars (\$100,000).

13 For surgical procedures:

14 The dangers, risks, complications, and long-term concerns
15 associated with these types of procedures are almost entirely unknown. There
16 are no long-term studies on either the effectiveness or safety of these
17 surgical procedures."

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19 SECTION 2. Arkansas Code Title 17, Chapter 80, Subchapter 1, is
20 amended to add an additional section to read as follows:

21 17-80-122. Preserving freedom of conscience and medical judgment for
22 healthcare professionals.

23 State law shall not require, or be construed to require, a healthcare
24 professional to perform a gender transition procedure.

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28 */s/G. Stubblefield*
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