



2023 SENATE BILL 479

September 29, 2023 - Introduced by Senators HUTTON, TOMCZYK, NASS, KAPENGA and BRADLEY, cosponsored by Representatives ROZAR, GOEBEN, MAXEY, GUSTAFSON, O'CONNOR, GUNDRUM, DITTRICH, SCHRAA, BEHNKE, BRANDTJEN, DUCHOW, NEDWESKI, RETTINGER, GREEN and WICHGERS. Referred to Committee on Health.

1 **AN ACT** *to create* 895.039 of the statutes; **relating to:** a civil cause of action for
2 a minor injured by a gender transition procedure.

Analysis by the Legislative Reference Bureau

This bill establishes a civil cause of action against a health care provider who performs a gender transition procedure, as defined in the bill, on an individual who is under 18 years of age and who is injured, including any physical, psychological, emotional, or physiological injury, by the gender transition procedure or related treatment or the aftereffects of the gender transition procedure or related treatment. Under the bill, such an action must be commenced before the individual attains the age of 33 years.

The bill provides that it is a defense to an action under the bill if all of the following occur before a health care provider performs a gender transition procedure on an individual who is under 18 years of age:

1. The health care provider documents the individual's perceived gender or perceived sex for at least two continuous years, and the individual's perceived gender or perceived sex is invariably inconsistent with the individual's biological sex throughout the two-year period.

2. To the extent that the individual suffers from a mental health concern, at least one mental health professional and one other health care provider certifies in writing that the gender transition procedure is the only way to treat the mental health concern.

3. At least one mental health professional and one other health care provider certifies in writing that the individual suffers from no other mental health concerns.

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4. The health care provider receives the voluntary and informed consent of the individual and the individual's parent or legal guardian by providing them, both orally and in writing, with a notice, the contents of which are prescribed in the bill, at least 30 days before the first treatment of the gender transition procedure and during every subsequent medical visit for treatment during the following six months.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.039 of the statutes is created to read:

2 **895.039 Performing gender transition procedures on minors; liability.**

3 **(1) DEFINITIONS.** In this section:

4 (a) 1. "Gender transition procedure" means a medical or surgical service,
5 including a physician's service, inpatient or outpatient hospital service, or prescribed
6 drug, related to gender transition that seeks to do any of the following:

7 a. Alter or remove an individual's physical or anatomical characteristics or
8 features that are typical for the individual's biological sex.

9 b. Instill or create for an individual physiological or anatomical characteristics
10 that resemble a sex different from the individual's biological sex, including a medical
11 service that provides puberty-blocking drugs, cross-sex hormones, or another
12 mechanism to promote the development of feminizing or masculinizing features in
13 a sex different from the individual's biological sex, or genital or nongenital gender
14 reassignment surgery performed for the purpose of assisting an individual with a
15 gender transition.

16 2. Notwithstanding subd. 1., "gender transition procedure" does not include
17 any of the following:

18 a. A service provided to an individual born with a medically verifiable disorder
19 of sexual development, including an individual with external biological sex

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1 characteristics that are irresolvably ambiguous, such as an individual born with
2 46,XX chromosomes with virilization, with 46,XY chromosomes with
3 undervirilization, or having both ovarian and testicular tissue.

4 b. A service provided to an individual when a physician has diagnosed a sexual
5 development disorder and the physician has determined through genetic or
6 biochemical testing that the individual does not have the normal sex chromosome
7 structure, sex steroid hormone production, or sex steroid hormone action for a
8 biological male or biological female.

9 c. The treatment of an infection, injury, disease, or disorder that is caused or
10 exacerbated by the performance of a gender transition procedure, regardless of
11 whether the gender transition procedure was performed in accordance with state or
12 federal law.

13 d. A procedure undertaken because an individual suffers from a physical
14 disorder, physical injury, or physical illness that would, as certified by a physician,
15 place the individual in imminent danger of death or impairment of major bodily
16 function unless surgery is performed.

17 (b) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (hp).

18 (c) "Mental health professional" means any of the following:

- 19 1. A physician licensed under subch. II of ch. 448 who specializes in psychiatry.
- 20 2. A psychologist licensed under ch. 455.
- 21 3. A professional counselor licensed under ch. 457.
- 22 4. A marriage and family therapist licensed under ch. 457.
- 23 5. A social worker certified or licensed under ch. 457.

24 (d) "Minor" means an individual who is under 18 years of age.

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1 **(2) CIVIL CAUSES OF ACTION.** A health care provider who performs a gender
2 transition procedure on a minor is liable to the minor if the minor is injured,
3 including any physical, psychological, emotional, or physiological injury, by the
4 gender transition procedure or related treatment or the aftereffects of the gender
5 transition procedure or related treatment. The minor, or the minor's parent, legal
6 guardian, or legal representative, may bring a civil action against the health care
7 provider for any of the following damages:

8 (a) Declaratory or injunctive relief.

9 (b) Compensatory damages.

10 (c) Punitive damages.

11 (d) If the prevailing party, reasonable attorney fees and costs.

12 **(3) LIMITATION OF ACTIONS.** An action under this section shall be commenced
13 before the minor has attained the age of 33 years or, if the minor dies before attaining
14 the age of 33 years, the date on which the minor would have attained the age of 33
15 years.

16 **(4) SAFE HARBOR.** (a) It is a defense to an action brought under this section if,
17 before a health care provider performs a gender transition procedure on a minor, all
18 of the following occur:

19 1. The health care provider documents the minor's perceived gender or
20 perceived sex for at least 2 continuous years, and the minor's perceived gender or
21 perceived sex is invariably inconsistent with the minor's biological sex throughout
22 the 2-year period.

23 2. To the extent that the minor suffers from a mental health concern, at least
24 2 health care providers, including at least one mental health professional, certifies

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1 in writing that the gender transition procedure is the only way to treat the mental
2 health concern.

3 3. At least 2 health care providers, including at least one mental health
4 professional, certifies in writing that the minor suffers from no mental health
5 concerns other than the concern described under subd. 2., including depression, an
6 eating disorder, autism, attention deficit hyperactivity disorder, intellectual
7 disability, or a psychotic disorder.

8 4. The health care provider receives the voluntary and informed consent of the
9 minor and the minor's parent or legal guardian as provided in par. (b).

10 (b) Consent to a gender transition procedure is voluntary and informed under
11 par. (a) 4. only if, at least 30 days before the first treatment of the gender transition
12 procedure and during every subsequent medical visit for treatment during the
13 following 6 months, the minor and the minor's parent or legal guardian is provided
14 with the following notice, both orally and in writing in at least 14-point type in a
15 proportional font:

16 **NOTICE**

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

24 Sweden, Finland, and the United Kingdom have conducted systematic reviews
25 of evidence and concluded that there is no evidence that the potential benefits of

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1 puberty blockers and cross-sex hormones for this purpose outweigh the known or
2 assumed risks.

3 Medical authorities in Sweden, Finland, and the United Kingdom have since
4 recommended psychotherapy as the first line of treatment for youth gender
5 dysphoria, with drugs and surgeries reserved as a measure of last resort. Medical
6 authorities in France have advised “great caution” when prescribing hormones for
7 gender dysphoria.

8 There are people who underwent gender transition treatments as minors and
9 later regretted that decision and the physical harm that these treatments caused,
10 and the total percentage of people who experience this regret is unknown. Some
11 estimate that the rate is below 2 percent, but that estimate is based on studies done
12 on adults who transitioned as adults or on minors who transitioned under highly
13 restrictive and controlled conditions.

14 Sometimes gender transition treatments have been proposed as a way to reduce
15 the chances of a minor committing suicide due to discordance between the minor’s
16 sex and his or her perception, but the rates of actual suicide from this discordance
17 remain extremely low. Furthermore, as recognized by health authorities in Europe,
18 there is no evidence that suicidality is caused by “unaffirmed” gender or that gender
19 transition treatments are causally linked to a reduction in serious suicidal attempts
20 or ideations.

21 For puberty blockers:

22 Puberty blockers are not approved for this purpose by the U.S. food and drug
23 administration, which is the federal agency that determines which drugs are safe
24 and effective for humans to use. Claims about puberty blockers’ safety and efficacy
25 are based on their use for precocious puberty, a different condition in which normal

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1 puberty is allowed to resume once the patient reaches the appropriate age. Studies
2 on the benefits of using puberty blockers for gender dysphoria are notoriously weak.
3 Puberty blockers are not fully reversible because, among other risks, puberty
4 blockers may intensify a minor's discordance and cause it to persist. Puberty
5 blockers increase the risk of your child being sterilized, meaning that he or she will
6 never be able to have children. Puberty blockers may also cause diminished bone
7 density for your child, increasing the risk of fracture and early osteoporosis. Puberty
8 blockers may also prevent your child from ever being able to engage in sexual activity
9 or achieve orgasm for the rest of your child's life. There is no research on the
10 long-term risks to minors of persistent exposure to puberty blockers. The full effects
11 of puberty blockers on brain development and cognition are unknown.

12 For cross-sex hormones:

13 The use of cross-sex hormones in males is associated with numerous health
14 risks, such as thromboembolic disease, including blood clots; cholelithiasis,
15 including gallstones; coronary artery disease, including heart attacks;
16 macroprolactinoma, which is a tumor of the pituitary gland; cerebrovascular disease,
17 including stroke; hypertriglyceridemia, which is an elevated level of triglycerides in
18 the blood; breast cancer; and irreversible infertility. The use of cross-sex hormones
19 in females is associated with risks of erythrocytosis, which is an increase in red blood
20 cells; severe liver dysfunction; coronary artery disease, including heart attack;
21 hypertension; and increased risk of breast and uterine cancer. Once a minor begins
22 cross-sex hormones, the minor may need to continue taking those hormones for
23 many years and possibly for the remainder of the minor's life. The cost of these
24 hormones may be tens of thousands of dollars. If the use of cross-sex hormones leads
25 to surgery, the total cost of transitioning may exceed \$100,000.

