

2021 DRAFTING REQUEST**Bill**

For: **Scott Allen (608) 266-8580** Drafter: **tdodge**
 By: **Dan H** Secondary Drafters:
 Date: **11/4/2020** May Contact:
 Same as LRB: **-5657**

Submit via email: **YES**
 Requester's email: **Rep.Allen@legis.wisconsin.gov**
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Prohibit sex reassignment surgery of minors

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 12/22/2020				
/P1	tdodge 10/13/2021	swinder 12/22/2020	swinder 12/22/2020		
/P2	tdodge 12/6/2021	csicilia 10/14/2021	csicilia 10/14/2021		
/P3	tdodge 1/14/2022	csicilia 12/6/2021	csicilia 12/6/2021		
/1			dwalker 1/14/2022	dwalker 1/14/2022	

FE Sent For:

<END>

From: Dodge, Tamara
Sent: Wednesday, November 04, 2020 11:30 AM
To: Hubert, Dan
Subject: RE: Draft request

Hi Dan,

Certainly. I can handle this draft for you.

Tami

Tamara J. Dodge

Senior Coordinating Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 504 - 5808
tamara.dodge@legis.wisconsin.gov

From: Hubert, Dan <Dan.Hubert@legis.wisconsin.gov>
Sent: Wednesday, November 04, 2020 8:38 AM
To: Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>
Subject: Draft request

Tamara,

Please draft a bill that prohibits sex reassignment surgery/gender reassignment surgery on persons under the age of 18.

Thanks,
Dan

From: Dodge, Tamara
Sent: Thursday, September 02, 2021 2:41 PM
To: Hubert, Dan
Subject: RE: Draft review: LRB -0396/P1

Hi Dan,

Certainly, I will update the draft.

Tami

Tamara J Dodge

Senior Coordinating Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
608.504.5808

From: Hubert, Dan <Dan.Hubert@legis.wisconsin.gov>
Sent: Thursday, September 2, 2021 2:20 PM
To: Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>
Subject: RE: Draft review: LRB -0396/P1

Tamara,

Rep. Allen would like LRB-0396/P1 modified heavily to reflect the attached model legislation. We realize that there are some drafting conventions that you'll have to follow rather than the model legislation.

Let me know if you have any questions.

Thanks,
Dan

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Tuesday, December 22, 2020 3:12 PM
To: Rep.Allen <Rep.Allen@legis.wisconsin.gov>
Subject: Draft review: LRB -0396/P1

Following is the PDF version of draft LRB -0396/P1.

From: Hubert, Dan
Sent: Thursday, September 02, 2021 2:20 PM
To: Dodge, Tamara
Subject: RE: Draft review: LRB -0396/P1
Attachments: Help Not Harm.pdf

Tamara,

Rep. Allen would like LRB-0396/P1 modified heavily to reflect the attached model legislation. We realize that there are some drafting conventions that you'll have to follow rather than the model legislation.

Let me know if you have any questions.

Thanks,
Dan

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Tuesday, December 22, 2020 3:12 PM
To: Rep.Allen <Rep.Allen@legis.wisconsin.gov>
Subject: Draft review: LRB -0396/P1

Following is the PDF version of draft LRB -0396/P1.



INTRODUCTION

Gender transition services are permanent, life-changing choices. A person under the age of 18 does not have the sufficient maturity or capacity to choose the harmful, permanently sterilizing and irreversible consequences of changing their biological bodies through gender transition services. Furthermore, puberty-blocking hormones are being used on children off-label in an entirely experimental way.

States already take action to protect children from making potentially harmful decisions that they do not have the maturity or capacity to make in other areas of law and of life. For example, no child is legally permitted to consume alcohol in any state. They cannot get tattoos, smoke cigarettes, or, in some states, even buy cough syrup over the counter.

How much more then do the states have a compelling interest in protecting children from life-altering decisions about “transitioning their gender” before they even reach the age of 18?

Our children are not experiments. When they are struggling, they need compassionate care—not experimental hormones and surgery.

MODEL LANGUAGE

Key

Text [in brackets] needs to be modified for each state.

Text in blue is a drafter’s note and not actual bill language.

[State Code [insert relevant portion of your state’s code governing health services and facilities](#) is amended to add an additional section to read as follows:]

SECTION 1. Title

This act shall be known as the “[State]’s Children Deserve Help Not Harm Act.”

SECTION 2. Legislative Findings & Purpose

The Legislature finds that:

1. [State] has a compelling government interest protecting the health and safety of its citizens, especially vulnerable children;¹
2. Only a small percentage of the American population experiences distress identifying with their biological sex;²
3. For the small percentage of children who are gender nonconforming or experience distress identifying with their biological sex, studies consistently demonstrate that the majority come to embrace their biological sex in adolescence or adulthood, thereby rendering most medical physiological interventions unnecessary;³
4. Scientific studies show that individuals experiencing distress identifying with their biological sex have often experienced severe psychopathology preceding their gender dysphoria, which indicates these individuals could benefit greatly from access to mental healthcare services;⁴
5. Even among individuals who have undergone inpatient gender reassignment procedures, suicide rates, psychiatric morbidities, and mortality rates remain markedly elevated above the background population;⁵

¹ *Jones v. Nev. Comm'n on Jud. Discipline*, 318 P.3d 1078, 1085 n.3 (Nev. 2014).

² See, e.g., Gary J. Gates, Williams Distinguished Scholar, *How Many People are Lesbian, Gay, Bisexual, & Transgender?* 1 THE WILLIAMS INSTITUTE (April 2011)

³ Thomas D. Steensma, et al., “*Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-Up Study*,” 16 CLINICAL CHILD PSYCH. AND PSYCHIATRY (2010) 499-516; Annelou L. C. de Vries and Peggy T. Cohen-Kettenis, “*Clinical Management of Gender Dysphoria in Children and Adolescents: The Dutch Approach*” in *Treating Transgender Children and Adolescents: An Interdisciplinary Discussion 11-12*, Jack Drescher and William Byne, ed’s., (2014).; See World Prof'l Ass'n for Trans. Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, v. 7 at 11, available at [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf).

⁴ *Id.*

⁵ Ryan T. Anderson, Ph.D., “*Transitioning*” Procedures Don’t Help Mental Health, Largest Dataset Shows, THE HERITAGE FOUNDATION (August 2020) (commenting on the letter of correction issued by the American Journal of Psychiatry to their paper titled “Reduction in Mental Health Treatment Utilization Among Transgender Individuals After Gender-Affirming Surgeries: A Total Population Study”); ⁵ Dhejne C. et al., *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in*

6. Some healthcare providers are prescribing puberty-blocking drugs, such as gonadotropin-releasing hormone analogues, in order to delay the natural onset or progression of puberty in children who experience distress identifying with their biological sex.
 - a. Puberty-blocking drugs are being prescribed, despite the lack of any long-term longitudinal studies evaluating the risks and benefits of using these drugs for the treatment of such distress or gender transition gender dysphoria;⁶
 - b. Puberty-blocking drugs are being described in an off-label and experimental manner on children.
7. Some healthcare providers are also prescribing cross-sex hormones for children who are experiencing distress identifying with their biological sex, despite the fact no randomized clinical trials have been conducted on the efficacy or safety of the use of cross-sex hormones in adults or children for the purpose of gender transition;⁷
8. The use of cross-sex hormones comes with serious known risks:
 - a. For biological females, some risks may include:⁸
 - i. Irreversible infertility;
 - ii. Severe liver dysfunction;
 - iii. Coronary artery disease, including heart attacks;
 - iv. Increased risk of breast, cervical, and uterine cancers;
 - v. Cerebrovascular disease, including strokes;
 - vi. Hypertension;
 - vii. Erythrocytosis, which is an increase in red blood cells;
 - viii. Sleep apnea;
 - ix. Type 2 diabetes;

Sweden, 6 PLOS ONE. 2 (2011); Cecilia Dhejne, et. al, *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 4 SEX MED. 1, e60-e68, (2011) <https://doi.org/10.1371/journal.pone.0016885>.

⁶ World Prof'l Ass'n for Trans. Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, v. 7 at 20, available at [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf)); Sarah Reardon, *Transgender Youth Study Kicks Off*, 531 NATURE 560, March 2016 (“But some scientists worry that putting off puberty in older children may disrupt bone and brain development, reducing bone density and leading to cognitive problems”).

⁷ *Supra* note 6, World Prof'l Ass'n for Transgender Health at 47 (“To date, no controlled clinical trials of any feminizing/masculinizing hormone regimen have been conducted to evaluate safety or efficacy in producing physical transition. As a result, wide variation in doses and types of hormones have been published in the medical literature. . .”).

⁸ World Prof'l Ass'n for Transgender Health at 37-40, 50, 97-104 (includes a more comprehensive list of side effects and risks than what is included here).

- x. Loss of bone density;
- xi. Destabilization of psychiatric disorders; and
- b. For biological males, some risks may include:⁹
 - i. Irreversible infertility
 - ii. Thromboembolic disease, including blood clots;
 - iii. Cholelithiasis, including gallstones;
 - iv. Coronary artery disease, including heart attacks;
 - v. Type 2 diabetes;
 - vi. Breast cancer;
 - vii. Macroprolactinoma, which is a tumor of the pituitary gland;
 - viii. Cerebrovascular disease, including strokes;
 - ix. Hypertriglyceridemia, which is an elevated level of triglycerides in the blood;
- 9. Genital and nongenital gender reassignment surgeries are generally not recommended for children, although evidence indicates referrals for children to have such surgeries are becoming more frequent;¹⁰
- 10. Genital gender reassignment surgery includes several irreversible invasive procedures for males and females and involves the alteration of biologically healthy and functional body parts; These procedures are generally irreversible;
 - i. For biological males, surgery may involve:
 - i. Genital reconstruction, including a penectomy, which is the removal of the penis;
 - ii. Orchiectomy, which is the removal of the testicles;
 - iii. Vaginoplasty, which is the construction of a vagina-like structure, typically through a penile inversion procedure;
 - iv. Clitoroplasty, which is the construction of a clitoris-like structure;
 - v. Vulvoplasty, which is the construction of a vulva-like structure; and

⁹ Id.

¹⁰Olson-Kennedy, et al., *Health Considerations for Gender Non-Conforming Children and Transgender Adolescents*, CENTER OF EXCELLENCE FOR TRANSGENDER HEALTH, <http://transhealth.ucsf.edu/trans?page=guidelines-youth>. (discussing the need for mental health care providers and support for transgender youth) (last visited Sept. 19, 2017)(“As youth are transitioning at increasingly younger ages, genital surgery is being performed on a case-by-case basis more frequently in minors....”).

- ii. For biological females, surgery may involve:
 - i. Hysterectomy or oophorectomy;
 - ii. Reconstruction of the urethra;
 - iii. Genital reconstruction including metoidioplasty or phalloplasty, which is the construction of a penis-like structure;
 - iv. Vaginectomy, which is the removal of the vagina;
 - v. Scrotoplasty, which is the construction of a penis-like and scrotum-like structure;
 - vi. Implantation of erection and/or testicular prostheses;
- f. The complications, risks, and long-term care concerns associated with genital sex reassignment surgery for both males and females are numerous and complex;
- g. Non-genital sex reassignment surgery includes various invasive procedures for males and females and also involves the alteration or removal of biologically healthy and functional body parts:
 - i. For biological males, this surgery may involve:
 - a. Augmentation mammoplasty;
 - b. Facial feminization surgery;
 - c. Liposuction;
 - d. Lipofilling;
 - e. Voice feminization surgery;
 - f. Thyroid cartilage reduction;
 - g. Gluteal augmentation;
 - h. Hair reconstruction;
 - i. Other aesthetic procedures;
 - ii. For biological females, this surgery may involve:
 - a. Subcutaneous mastectomy;
 - b. Voice masculinization surgery;
 - c. Liposuction;
 - d. Lipofilling;
 - e. Pectoral implants;
 - f. Other aesthetic procedures;¹¹
- h. It is an accepted principle of economics and public policy that when a service or product is subsidized or reimbursed, demand for that

¹¹ Cecilia Dhejne, et. al, *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 4 *SEX MED.* 57-58, 62-64.

service or product increases. Between 2015-2016, gender reassignment surgeries increased by nearly twenty percent in the United States;

- i. It is of grave concern to this Legislature that the medical community is allowing individuals who experience distress identifying with their biological sex to be subjects of irreversible and drastic non-genital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment surgeries, despite the lack of studies showing such extreme intervention outweighs the risks of cure and may actually increase the risk of suicide.

SECTION 3. Definitions

1. **“Biological sex”** means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual’s psychological, chosen, or subjective experience of gender;
2. **“Cross-sex hormones”** means:
 - a. Testosterone or other androgens given to biological females in amounts that are larger or more potent than would normally occur naturally in healthy biological females; and
 - b. Estrogen given to biological males in amounts that are larger or more potent than would normally occur naturally in healthy biological males;
3. **“Gender”** means the psychological, behavioral, social, and cultural aspects of being male or female;
4. **“Gender reassignment surgery”** means any medical or surgical service that seeks to surgically alter or remove healthy physical or anatomical characteristics or features that are typical for the individual’s biological sex in order to instill or create physiological or anatomical characteristics that resemble a sex different from the individual’s biological sex, including without limitation, genital or nongenital gender reassignment surgery performed for the purpose of assisting an individual with a gender transition;

5. **“Gender transition”** means the process in which a person goes from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, and may involve social, legal, or physical changes;
6. **“Gender transition procedures”** means any medical or surgical service provided or performed for the purpose of assisting an individual with a physical gender transition:
 - a. Gender transition procedures include without limitation physician’s services, inpatient and outpatient hospital services, puberty-blocking drugs, cross-sex hormones, or genital or nongenital gender reassignment surgery;
 - b. Gender transition procedures do not include:
 - i. Services to persons born with a medically verifiable disorder of sex development, including a person with external biological sex characteristics that are irresolvably ambiguous, such as those born with 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or having both ovarian and testicular tissue;
 - ii. Services provided when a physician has otherwise diagnosed a disorder of sexual development that the physician has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid production, or sex steroid hormone action;
 - iii. The acute and chronic treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not the gender transition procedure was performed in accordance with state and federal law or whether or not funding for the gender transition procedure is permissible under this subchapter; or
 - iv. Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of major bodily function unless surgery is performed;

- c. **“Genital gender reassignment surgery”** means a medical procedure performed for the purpose of assisting an individual with a physical gender transition, including without limitation:
 - i. Surgical procedures such as a penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients;
 - ii. Surgical procedures such as hysterectomy, oophorectomy, reconstruction of the urethra, metoidioplasty or phalloplasty, vaginectomy, scrotoplasty, or implantation of erection and/or testicular prostheses for biologically female patients;
- 7. **“Healthcare professional”** means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer healthcare in the ordinary course of the practice of his or her profession; [\(may also define this by referring to your state’s code section where this is defined\)](#)
- 8. **“Nongenital gender reassignment surgery”** means medical procedures performed for the purpose of assisting an individual with a physical gender transition, including without limitation:
 - a. Surgical procedures for biologically male patients, such as augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, or various aesthetic procedures; or
 - b. Surgical procedures for biologically female patients, such as subcutaneous mastectomy, voice masculinization surgery, liposuction, lipofilling, pectoral implants, or various aesthetic procedures;
- 9. **“Physician”** means a person who is licensed to practice medicine in this state; [\(may also define this by referring to your state’s code section where this is defined\)](#)
- 10. **“Puberty-blocking drugs”** means gonadotropin-releasing hormone analogues or other synthetic drugs used in biological males to stop luteinizing hormone secretion and therefore testosterone secretion, or synthetic drugs used in biological females which stop the production of estrogen and progesterone, when used to delay or suppress pubertal development in children for the purpose of assisting an individual with a

gender transition;

11. **“Public funds”** means state, county, or local government monies, in addition to any department, agency, or instrumentality authorized or appropriated under state law or derived from any fund in which monies are deposited.

SECTION 4. Gender Transition Procedures on Minors Banned
(insert in relevant state code sub-section)

1. A physician or other healthcare professional shall not provide gender transition procedures to any individual under eighteen (18) years of age.
2. A physician or other healthcare professional shall not refer any individual under eighteen (18) years of age to any healthcare professional for gender transition procedures.

SECTION 5. Prohibition on Use of Public Funds for Gender Transition Procedures on Minors

1. Public funds shall not be directly or indirectly used, granted, paid, or distributed to any entity, organization, or individual that provides gender transition procedures to an individual under eighteen (18) years of age.
2. Healthcare services furnished in the following situations shall not include gender transition procedures to an individual under eighteen (18) years of age:
 - a. By or in a facility owned by the state or a county or local government; or
 - b. By a physician or other healthcare professional employed by the state or a county or local government.
3. Any amount paid by an individual or an entity during a taxable year for provision of gender transition procedures or as premiums for healthcare coverage that includes coverage for gender transition procedures is not tax-deductible.
4. The [State] Medicaid program shall not reimburse or provide coverage for gender transition procedures to an individual under eighteen (18) years of age.

SECTION 6. Gender Transition Procedures on Minors Constitute Unprofessional and Reckless Conduct

1. Any referral for or provision of gender transition procedures to an individual under eighteen (18) years of age is unprofessional conduct [and is subject to discipline by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state.]

(May cite to corresponding state code that governs licensing of healthcare professionals and disciplinary action to be taken in the event of unprofessional conduct in this section to replace the language in brackets [].)

2. Any referral for or provision of gender transition procedures to an individual under eighteen (18) years of age shall be deemed reckless conduct for purposes of tort claims in [State].

SECTION 7. Enforcement and Actions for Recovery of Damages Suffered as a Result of Gender Transition Procedures on Minors

1. Statute of limitations:
 - a. Notwithstanding any other provision of law, an individual under the age of eighteen (18) years of age may bring an action throughout their minority through a parent or next friend, and may bring an action in their own name upon reaching majority at any time from that point until thirty (30) years after reaching the age of majority;
Drafter's note: This statute of limitations is very long, perhaps one of the longest in existence. This is intentional. A biological woman may not discover infertility (due to gender transition procedures) until into her forties. A biological man may not discover this side effect until much later in life. The long statute of limitations provides more time for aggrieved adults to discover an unknown injury inflicted upon them as a minor.
 - b. Exceptions:
 - i. If at the time the person abused attains the age of eighteen (18) years he or she is under other legal disability, the limitation period under subsection (a) does not begin to run until the removal of the disability;

- ii. The limitation period in subsection (a) does not run during a time period when the individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud perpetrated by the physician or other healthcare professional who prescribed or otherwise provided gender transition procedures or by any person acting in the interest of the physician or other healthcare professional;
 2. A person may assert an actual or threatened violation of this subchapter as a claim or defense in a judicial or administrative proceeding;
 - a. The following damages may be awarded to the claimant:
 - i. Compensatory damages, including but not limited to:
 1. Pain and suffering;
 2. Loss of reputation;
 3. Loss of income; and
 4. Loss of consortium, including but not limited to the loss of expectation of sharing parenthood;
 - ii. Injunctive relief;
 - iii. Declaratory relief;
 - iv. Punitive damages; and
 - v. Any other appropriate relief;
 - b. A prevailing party who establishes a violation of this subchapter shall recover reasonable attorneys' fees;
 - c. (This provision is only applicable in states where tort reform efforts have resulted in damage caps or other maximum limits on tort recovery.) Section [insert state code section governing tort damage caps] does not apply to actions for damages under this subchapter;
3. Notwithstanding any other provision of law, an action under this subchapter may be commenced, and relief may be granted, in a judicial proceeding without regard to whether the person commencing the action has sought or exhausted available administrative remedies;
4. The Attorney General may bring an action to enforce compliance with this subchapter;

5. This subchapter does not deny, impair, or otherwise affect any right or authority of the Attorney General, the state of [State], or any agency, officer, or employee of the state, acting under any law other than this subchapter, to institute or intervene in any proceeding.
6. (UNDER CONSTRUCTION FOR VERSION 3.0 – exploring creating third-party liability for any person/entity funding gender transition procedures on minors, creating a possible nexus of liability for insurance providers.)

SECTION 8. Insurance Coverage for Gender Transition Procedures for Minors Prohibited

(Insert in relevant state code governing insurance.)

7. As used in this section, “gender transition procedures” shall have the same meaning as [insert appropriate state code section as used in Sections 1-6 of this model].
8. A health benefit plan under an insurance policy or other plan providing healthcare coverage in this state shall not include reimbursement for gender transitions procedures for a person under eighteen (18) years of age.
9. A health benefit plan under an insurance policy or other plan providing healthcare coverage in this state is not required to provide coverage for gender transition procedures.

SECTION 9. Right of Intervention

The Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene or defend the Act as a matter of right in any case in which the constitutionality or enforceability of this Act, any portion thereof, or any [rule or regulation] adopted pursuant hereto is challenged.

SECTION 10. Severability

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to

any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated to or to other, dissimilar circumstances.

FUTURE SECTION 11. Applicability

(UNDER CONSTRUCTION FOR VERSION 3.0 – exploring an attempt to create a right to recover damages for minors who have undergone gender transition procedures *before* this Act goes into effect under similar legal theories as those that ultimately allowed plaintiffs to recover in the cases against Big Tobacco.)

SECTION 11. Effective Date

This Act shall take effect six (6) months after becoming law so that minors in this state currently using puberty-blocking drugs or cross-sex hormones have time for appropriate medication tapering and discontinuation under the care of their physician or other healthcare professional.

Drafter's note: Pediatric endocrinologists note that six months should be enough time for tapering off and discontinuing the use of cross-sex hormones in order to avoid possible emotional swings. There is no need for a tapering period when discontinuing puberty-blockers.

ACKNOWLEDGEMENTS

This model legislation would not be possible without the heart for protecting the vulnerable—especially children—vision, and legal expertise of attorney and former Family Policy Alliance team member Stephanie Curry. Her expertise and passion for policy that puts children and families first birthed this original legislation during the 2017/2018 legislative cycle.

Family Policy Alliance is also deeply grateful for the quick and expert reviews of this legislation, and original contributions to it, by the medical experts at the Christian Medical & Dental Associations (CMDA). In both their character and

their practice, they demonstrate boldness and leadership in a field whose professional organizations are otherwise lacking in both. While many of their professional colleagues have chosen politics over patients, our friends at CMDA light a different path forward.

Family Policy Alliance is thankful for the compassionate boldness and leadership of Arkansas Representative Robin Lundstrum (District 87) in passing the first law of its kind in 2021, the SAFE Act, and for her warm and articulate advocacy for it that serves as a model for the nation. Arkansas's Family Council led by Jerry Cox also played an instrumental role in shepherding the SAFE Act into law, helping override the gubernatorial veto, and taking a bold stand to protect Arkansas's children from the harm of gender transition efforts. May God bless both of you and Arkansas, and may many states follow your leadership.

Jared Harpt, an outstanding law student at the University of Kansas School of Law, contributed in-depth research, bill language, and keen ideas to increase minor victims' rights to recover damages for, in many cases, the lifelong damage done to them by trusted professionals. Thank you, Jared!

From: Dodge, Tamara
Sent: Friday, December 03, 2021 9:21 AM
To: Hubert, Dan
Subject: RE: Questions on LRB 0396/P2

Hi Dan,

The draft allows parents, guardians, or legal representatives to bring civil claims for enforcement. If you want additional family members to be included, let me know.

Currently, the draft specifically lists the attorney general as bringing actions but I can explicitly list district attorneys also. This change I will make.

If I don't hear from you about additional family members before then, I will make the DA change and get you a new draft on Monday.

Tami

Tamara J Dodge

Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
608.504.5808

From: Hubert, Dan <Dan.Hubert@legis.wisconsin.gov>
Sent: Wednesday, December 1, 2021 3:52 PM
To: Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>
Subject: Questions on LRB 0396/P2
Importance: High

Tamara,
Rep. Allen had a few questions about the draft.

- o Can district attorneys also bring action?
- o Can family members bring forward private action for enforcement?

If not, can we get a /P3 that adds those options?

Thanks,
Dan



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 448.02 (3) (a); and *to create* 146.36 and 632.8983 of the
2 statutes; **relating to:** gender transition procedures.

Analysis by the Legislative Reference Bureau

This bill prohibits physician and health care providers from providing any gender transition procedure to an individual under 18 years of age. The bill also prohibits a physician or health care provider from referring an individual under 18 years of age to any other health care provider for any gender transition procedure. “Gender transition procedure” is defined in the bill as a medical or surgical service provided or performed for the purpose of assisting an individual with a physical gender transition.

Under the bill, no one may use public moneys for any entity, organization, or individual that provides any gender transition procedure to an individual under 18 years of age. Facilities owned by and health care providers employed by the state may not include gender transition procedures for individuals under 18 years of age in their provided health care services. Under the bill, amounts paid by an entity, organization, or individual for a gender transition procedure or for premiums for health care coverage that includes gender transition procedures is not tax deductible.

The bill prohibits the Department of Health Services from reimbursing or providing as a benefit under the Medical Assistance program any gender transition procedure for an individual under 18 years of age. The bill also prohibits a health insurance policy or self-insured governmental health plan from providing coverage of any gender transition procedure for an individual under 18 years of age. Health insurance policies are referred to in the bill as disability insurance policies.

The bill specifies that a violation of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is presumed to be reckless conduct for purposes of civil liability. The bill explicitly allows an individual injured by such a violation or a parent, guardian, or legal representative of an injured individual to bring a claim for any of the damages specified in the bill. The action must be commenced before 30 years after the date the injured individual reached the age of 18. A legal disability of the injured individual when the individual attains the age of 18 tolls the time to bring the action until the disability is resolved. Any time during which the injured individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud by the physician or health care provider involved in the gender transition procedure or a person acting in that physician's or health care provider's interest also tolls the time to bring the action. Under the bill, an allegation that a physician violated either of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is considered an allegation of unprofessional conduct, and the Medical Examining Board is required to investigate allegations of unprofessional conduct. The attorney general is also authorized to bring an action to enforce the bill.

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

1 **SECTION 1.** 146.36 of the statutes is created to read:

2 **146.36 Gender transition procedures. (1) DEFINITIONS.** In this section:

3 (a) "Biological sex" means the biological indication of male or female in the
4 context of reproductive potential or capacity, such as by sex chromosomes, naturally
5 occurring sex hormones, gonads, and unambiguous internal and external genitalia
6 present at birth, without regard to psychological, chosen, or subjective experience of
7 gender.

8 (b) "Cross-sex hormones" means any of the following:

9 1. Testosterone or other androgens given to biological females in amounts that
10 are larger or more potent than would normally occur naturally in healthy biological
11 females.

1 2. Estrogen given to biological males in amounts that are larger or more potent
2 than would normally occur naturally in healthy biological males.

3 (c) “Gender reassignment surgery” means any medical or surgical service that
4 seeks to surgically alter or remove healthy physical or anatomical characteristics or
5 features that are typical for an individual’s biological sex in order to instill or create
6 physiological or anatomical characteristics that resemble a sex different from the
7 individual’s biological sex, including genital gender reassignment surgery or
8 nongenital gender reassignment surgery performed for the purpose of assisting an
9 individual with a gender transition.

10 (d) “Gender transition” means a process, which may involve social, legal, or
11 physical changes, in which an individual goes from identifying with and living as a
12 gender that corresponds with the individual’s biological sex to identifying with and
13 living as a gender different from the individual’s biological sex.

14 (e) 1. “Gender transition procedure” means any medical or surgical service
15 provided or performed for the purpose of assisting an individual with a physical
16 gender transition.

17 2. “Gender transition procedure” includes any physician’s service, inpatient
18 and outpatient hospital service, puberty-blocking drug, cross-sex hormone, genital
19 gender reassignment surgery, or nongenital gender reassignment surgery.

20 3. “Gender transition procedure” does not include any of the following:

21 a. A service provided to individuals who are born with a medically verifiable
22 disorder of sex development, including individuals with external biological sex
23 characteristics that are irresolvably ambiguous, such as those born with 46,XX
24 karyotype with virilization, born with 46,XY karyotype with under virilization, or
25 having both ovarian and testicular tissue.

1 b. A service provided when a physician has diagnosed a disorder of sexual
2 development by determining, through genetic or biochemical testing, that the
3 individual does not have normal sex chromosome structure, sex steroid hormone
4 production, or sex steroid hormone action.

5 c. The acute or chronic treatment of any infection, injury, disease, or disorder
6 that has been caused by or exacerbated by the performance of a gender transition
7 procedure, whether or not the gender transition procedure was performed in
8 accordance with state and federal law and whether or not funding for the gender
9 transition procedure is permissible under this section.

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

14 (f) “Genital gender reassignment surgery” means a medical procedure,
15 including any of the following surgical procedures, that is performed for the purpose
16 of assisting an individual with a physical gender transition:

17 1. For individuals of male biological sex, a penectomy, an orchiectomy, a
18 vaginoplasty, a clitoroplasty, or a vulvoplasty.

19 2. For individuals of female biological sex, a hysterectomy, an oophorectomy,
20 a reconstruction of the urethra, a metoidioplasty or phalloplasty, a vaginectomy, a
21 scrotoplasty, or an implantation of erectile or testicular prostheses.

22 (g) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (hp).

23 (h) “Nongenital gender reassignment surgery” means a medical procedure,
24 including any of the following surgical procedures, that is performed for the purpose
25 of assisting an individual with a physical gender transition:

1 1. For individuals of male biological sex, augmentation mammoplasty, facial
2 feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid
3 cartilage reduction, gluteal augmentation, hair reconstruction, or any of various
4 aesthetic procedures.

5 2. For individuals of female biological sex, subcutaneous mastectomy, voice
6 masculinization surgery, liposuction, lipofilling, pectoral implants, or various
7 aesthetic procedures.

8 (i) “Puberty-blocking drug” means any of the following when used to delay or
9 suppress pubertal development in children for the purpose of assisting an individual
10 with a gender transition:

11 1. A gonadotropin-releasing hormone analogue or other synthetic drug used
12 in biological males to stop luteinizing hormone secretion and, therefore, testosterone
13 secretion.

14 2. A synthetic drug used in biological females to stop the production of estrogen
15 and progesterone.

16 (j) “Public funds” means any moneys of the state, a county or local government,
17 or any department, agency, or instrumentality authorized or appropriated under
18 state law or derived from any fund in which moneys are deposited.

19 **(2) PROHIBITING GENDER TRANSITION ON MINORS.** (a) No physician or health care
20 provider may provide any gender transition procedure to any individual under 18
21 years of age.

22 (b) No physician or health care provider may refer any individual who is under
23 18 years of age to any other physician or health care provider for any gender
24 transition procedure.

1 **(3) PROHIBITING USE OF PUBLIC FUNDS FOR GENDER TRANSITION OF MINORS.** (a) No
2 person may use public funds directly or indirectly for or grant, pay, or distribute
3 public funds to any entity, organization, or individual that provides any gender
4 transition procedure to an individual under 18 years of age.

5 (b) None of the following may include any gender transition procedure provided
6 to an individual under 18 years of age in the health care services it provides:

7 1. A facility owned by the state or a county or local government.

8 2. A physician or health care provider who is employed by the state or a county
9 or local government.

10 (c) The department may not reimburse or include as a benefit under the
11 Medical Assistance program under subch. IV of ch. 49 any gender transition
12 procedure for an individual under 18 years of age.

13 **(4) TAX DEDUCTION PROHIBITED.** Any amount paid during a taxable year by an
14 entity, organization, or individual to provide a gender transition procedure or as
15 premiums for health care coverage that includes coverage for a gender transition
16 procedure is not tax deductible.

17 **(5) CIVIL LIABILITY.** (a) Any violation of sub. (2) is presumed to be reckless
18 conduct for purposes of civil liability. The party injured by a violation of sub. (2) or
19 a parent, guardian, or legal representative of the injured party may bring a claim for
20 any of the following damages:

21 1. Any compensatory damages, including damages for pain and suffering, loss
22 of reputation, loss of income, and loss of consortium, including loss of expectation of
23 sharing parenthood.

24 2. Injunctive relief.

25 3. Declaratory relief.

1 4. Punitive damages.

2 5. Any other appropriate relief.

3 6. If the prevailing party, reasonable attorney's fees notwithstanding s. 814.04
4 (1).

5 (b) A party may commence an action under par. (a) regardless of whether or not
6 available administrative remedies have been sought or exhausted.

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

9 (d) Nothing in this section shall be construed to deny, impair, or otherwise affect
10 any right or authority of the attorney general, the state, or any agency, officer, or
11 employee of the state to institute or intervene in any proceeding.

12 **(6) LIMITATION OF ACTIONS.** Notwithstanding any limitation under ch. 893, an
13 action to recover damages caused by an act that would constitute a violation of sub.
14 (2) shall be commenced before the date that is 30 years after the date the injured
15 party attains the age of 18 or be barred. If the injured party has a legal disability on
16 the date the injured person attains the age of 18, the statute of limitations under this
17 subsection is tolled until the disability is resolved. The statute of limitations under
18 this subsection is tolled during any time the injured party is subject to threats,
19 intimidation, manipulation, fraudulent concealment, or fraud by the physician,
20 health care provider, or person acting in the interest of the physician or health care
21 provider that provided any gender transition procedure.

22 **SECTION 2.** 448.02 (3) (a) of the statutes, as affected by 2021 Wisconsin Act 23,
23 is amended to read:

24 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
25 and negligence in treatment by persons holding a license or certificate granted by the

1 board. An allegation that a physician has violated s. 146.36 (2), 253.10 (3), 448.30
2 or 450.13 (2) or has failed to mail or present a medical certification required under
3 s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the
4 subject of the required certificate or that a physician has failed at least 6 times within
5 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
6 within 6 days after the pronouncement of death of the person who is the subject of
7 the required certificate is an allegation of unprofessional conduct. Information
8 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
9 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
10 Information contained in a report filed with the board under s. 655.045 (1), as created
11 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
12 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
13 basis of an investigation of a person named in the report. The board may require a
14 person holding a license or certificate to undergo and may consider the results of one
15 or more physical, mental or professional competency examinations if the board
16 believes that the results of any such examinations may be useful to the board in
17 conducting its investigation.

18 **SECTION 3.** 632.8983 of the statutes is created to read:

19 **632.8983 Prohibiting gender transition procedure coverage for**
20 **minors. (1)** In this section:

21 (a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

22 (b) "Gender transition procedure" has the meaning given in s. 146.36 (1) (e).

23 **(2)** No disability insurance policy and no self-insured health plan of the state
24 or of a county, city, town, village, or school district may provide coverage of any gender
25 transition procedure for an individual under 18 years of age.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 448.02 (3) (a); and *to create* 146.36 and 632.8983 of the
2 statutes; **relating to:** gender transition procedures.

Analysis by the Legislative Reference Bureau

This bill prohibits physician and health care providers from providing any gender transition procedure to an individual under 18 years of age. The bill also prohibits a physician or health care provider from referring an individual under 18 years of age to any other health care provider for any gender transition procedure. “Gender transition procedure” is defined in the bill as a medical or surgical service provided or performed for the purpose of assisting an individual with a physical gender transition.

Under the bill, no one may use public moneys for any entity, organization, or individual that provides any gender transition procedure to an individual under 18 years of age. Facilities owned by and health care providers employed by the state may not include gender transition procedures for individuals under 18 years of age in their provided health care services. Under the bill, amounts paid by an entity, organization, or individual for a gender transition procedure or for premiums for health care coverage that includes gender transition procedures is not tax deductible.

The bill prohibits the Department of Health Services from reimbursing or providing as a benefit under the Medical Assistance program any gender transition procedure for an individual under 18 years of age. The bill also prohibits a health insurance policy or self-insured governmental health plan from providing coverage of any gender transition procedure for an individual under 18 years of age. Health insurance policies are referred to in the bill as disability insurance policies.

The bill specifies that a violation of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is presumed to be reckless conduct for purposes of civil liability. The bill explicitly allows an individual injured by such a violation or a parent, guardian, or legal representative of an injured individual to bring a claim for any of the damages specified in the bill. The action must be commenced before 30 years after the date the injured individual reached the age of 18. A legal disability of the injured individual when the individual attains the age of 18 tolls the time to bring the action until the disability is resolved. Any time during which the injured individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud by the physician or health care provider involved in the gender transition procedure or a person acting in that physician's or health care provider's interest also tolls the time to bring the action. Under the bill, an allegation that a physician violated either of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is considered an allegation of unprofessional conduct, and the Medical Examining Board is required to investigate allegations of unprofessional conduct. The attorney general and any district attorney is also authorized to bring an action to enforce the bill.

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

1 **SECTION 1.** 146.36 of the statutes is created to read:

2 **146.36 Gender transition procedures. (1) DEFINITIONS.** In this section:

3 (a) "Biological sex" means the biological indication of male or female in the
4 context of reproductive potential or capacity, such as by sex chromosomes, naturally
5 occurring sex hormones, gonads, and unambiguous internal and external genitalia
6 present at birth, without regard to psychological, chosen, or subjective experience of
7 gender.

8 (b) "Cross-sex hormones" means any of the following:

9 1. Testosterone or other androgens given to biological females in amounts that
10 are larger or more potent than would normally occur naturally in healthy biological
11 females.

1 2. Estrogen given to biological males in amounts that are larger or more potent
2 than would normally occur naturally in healthy biological males.

3 (c) “Gender reassignment surgery” means any medical or surgical service that
4 seeks to surgically alter or remove healthy physical or anatomical characteristics or
5 features that are typical for an individual’s biological sex in order to instill or create
6 physiological or anatomical characteristics that resemble a sex different from the
7 individual’s biological sex, including genital gender reassignment surgery or
8 nongenital gender reassignment surgery performed for the purpose of assisting an
9 individual with a gender transition.

10 (d) “Gender transition” means a process, which may involve social, legal, or
11 physical changes, in which an individual goes from identifying with and living as a
12 gender that corresponds with the individual’s biological sex to identifying with and
13 living as a gender different from the individual’s biological sex.

14 (e) 1. “Gender transition procedure” means any medical or surgical service
15 provided or performed for the purpose of assisting an individual with a physical
16 gender transition.

17 2. “Gender transition procedure” includes any physician’s service, inpatient
18 and outpatient hospital service, puberty-blocking drug, cross-sex hormone, genital
19 gender reassignment surgery, or nongenital gender reassignment surgery.

20 3. “Gender transition procedure” does not include any of the following:

21 a. A service provided to individuals who are born with a medically verifiable
22 disorder of sex development, including individuals with external biological sex
23 characteristics that are irresolvably ambiguous, such as those born with 46,XX
24 karyotype with virilization, born with 46,XY karyotype with under virilization, or
25 having both ovarian and testicular tissue.

1 b. A service provided when a physician has diagnosed a disorder of sexual
2 development by determining, through genetic or biochemical testing, that the
3 individual does not have normal sex chromosome structure, sex steroid hormone
4 production, or sex steroid hormone action.

5 c. The acute or chronic treatment of any infection, injury, disease, or disorder
6 that has been caused by or exacerbated by the performance of a gender transition
7 procedure, whether or not the gender transition procedure was performed in
8 accordance with state and federal law and whether or not funding for the gender
9 transition procedure is permissible under this section.

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

14 (f) “Genital gender reassignment surgery” means a medical procedure,
15 including any of the following surgical procedures, that is performed for the purpose
16 of assisting an individual with a physical gender transition:

17 1. For individuals of male biological sex, a penectomy, an orchiectomy, a
18 vaginoplasty, a clitoroplasty, or a vulvoplasty.

19 2. For individuals of female biological sex, a hysterectomy, an oophorectomy,
20 a reconstruction of the urethra, a metoidioplasty or phalloplasty, a vaginectomy, a
21 scrotoplasty, or an implantation of erectile or testicular prostheses.

22 (g) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (hp).

23 (h) “Nongenital gender reassignment surgery” means a medical procedure,
24 including any of the following surgical procedures, that is performed for the purpose
25 of assisting an individual with a physical gender transition:

1 1. For individuals of male biological sex, augmentation mammoplasty, facial
2 feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid
3 cartilage reduction, gluteal augmentation, hair reconstruction, or any of various
4 aesthetic procedures.

5 2. For individuals of female biological sex, subcutaneous mastectomy, voice
6 masculinization surgery, liposuction, lipofilling, pectoral implants, or various
7 aesthetic procedures.

8 (i) “Puberty-blocking drug” means any of the following when used to delay or
9 suppress pubertal development in children for the purpose of assisting an individual
10 with a gender transition:

11 1. A gonadotropin-releasing hormone analogue or other synthetic drug used
12 in biological males to stop luteinizing hormone secretion and, therefore, testosterone
13 secretion.

14 2. A synthetic drug used in biological females to stop the production of estrogen
15 and progesterone.

16 (j) “Public funds” means any moneys of the state, a county or local government,
17 or any department, agency, or instrumentality authorized or appropriated under
18 state law or derived from any fund in which moneys are deposited.

19 **(2) PROHIBITING GENDER TRANSITION ON MINORS.** (a) No physician or health care
20 provider may provide any gender transition procedure to any individual under 18
21 years of age.

22 (b) No physician or health care provider may refer any individual who is under
23 18 years of age to any other physician or health care provider for any gender
24 transition procedure.

1 **(3) PROHIBITING USE OF PUBLIC FUNDS FOR GENDER TRANSITION OF MINORS.** (a) No
2 person may use public funds directly or indirectly for or grant, pay, or distribute
3 public funds to any entity, organization, or individual that provides any gender
4 transition procedure to an individual under 18 years of age.

5 (b) None of the following may include any gender transition procedure provided
6 to an individual under 18 years of age in the health care services it provides:

7 1. A facility owned by the state or a county or local government.

8 2. A physician or health care provider who is employed by the state or a county
9 or local government.

10 (c) The department may not reimburse or include as a benefit under the
11 Medical Assistance program under subch. IV of ch. 49 any gender transition
12 procedure for an individual under 18 years of age.

13 **(4) TAX DEDUCTION PROHIBITED.** Any amount paid during a taxable year by an
14 entity, organization, or individual to provide a gender transition procedure or as
15 premiums for health care coverage that includes coverage for a gender transition
16 procedure is not tax deductible.

17 **(5) CIVIL LIABILITY.** (a) Any violation of sub. (2) is presumed to be reckless
18 conduct for purposes of civil liability. The party injured by a violation of sub. (2) or
19 a parent, guardian, or legal representative of the injured party may bring a claim for
20 any of the following damages:

21 1. Any compensatory damages, including damages for pain and suffering, loss
22 of reputation, loss of income, and loss of consortium, including loss of expectation of
23 sharing parenthood.

24 2. Injunctive relief.

25 3. Declaratory relief.

1 4. Punitive damages.

2 5. Any other appropriate relief.

3 6. If the prevailing party, reasonable attorney's fees notwithstanding s. 814.04
4 (1).

5 (b) A party may commence an action under par. (a) regardless of whether or not
6 available administrative remedies have been sought or exhausted.

7 (c) The attorney general and any district attorney may bring an action to
8 enforce compliance with this section.

9 (d) Nothing in this section shall be construed to deny, impair, or otherwise affect
10 any right or authority of the attorney general, the state, or any agency, officer, or
11 employee of the state to institute or intervene in any proceeding.

12 **(6) LIMITATION OF ACTIONS.** Notwithstanding any limitation under ch. 893, an
13 action to recover damages caused by an act that would constitute a violation of sub.
14 (2) shall be commenced before the date that is 30 years after the date the injured
15 party attains the age of 18 or be barred. If the injured party has a legal disability on
16 the date the injured person attains the age of 18, the statute of limitations under this
17 subsection is tolled until the disability is resolved. The statute of limitations under
18 this subsection is tolled during any time the injured party is subject to threats,
19 intimidation, manipulation, fraudulent concealment, or fraud by the physician,
20 health care provider, or person acting in the interest of the physician or health care
21 provider that provided any gender transition procedure.

22 **SECTION 2.** 448.02 (3) (a) of the statutes, as affected by 2021 Wisconsin Act 23,
23 is amended to read:

24 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
25 and negligence in treatment by persons holding a license or certificate granted by the

1 board. An allegation that a physician has violated s. 146.36 (2), 253.10 (3), 448.30
2 or 450.13 (2) or has failed to mail or present a medical certification required under
3 s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the
4 subject of the required certificate or that a physician has failed at least 6 times within
5 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
6 within 6 days after the pronouncement of death of the person who is the subject of
7 the required certificate is an allegation of unprofessional conduct. Information
8 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
9 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
10 Information contained in a report filed with the board under s. 655.045 (1), as created
11 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
12 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
13 basis of an investigation of a person named in the report. The board may require a
14 person holding a license or certificate to undergo and may consider the results of one
15 or more physical, mental or professional competency examinations if the board
16 believes that the results of any such examinations may be useful to the board in
17 conducting its investigation.

18 **SECTION 3.** 632.8983 of the statutes is created to read:

19 **632.8983 Prohibiting gender transition procedure coverage for**
20 **minors. (1)** In this section:

21 (a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

22 (b) "Gender transition procedure" has the meaning given in s. 146.36 (1) (e).

23 **(2)** No disability insurance policy and no self-insured health plan of the state
24 or of a county, city, town, village, or school district may provide coverage of any gender
25 transition procedure for an individual under 18 years of age.



2021 ASSEMBLY BILL 977

February 15, 2022 - Introduced by Representatives ALLEN, WICHGERS, KNODL, GUNDRUM, SKOWRONSKI, BEHNKE, BRANDTJEN, DITTRICH, MURPHY, PENTERMAN, SCHRAA and STEFFEN, cosponsored by Senators JACQUE, BERNIER and STROEBEL. Referred to Committee on Health.

1 **AN ACT** *to amend* 448.02 (3) (a); and *to create* 146.36 and 632.8983 of the
2 statutes; **relating to:** gender transition procedures.

Analysis by the Legislative Reference Bureau

This bill prohibits physician and health care providers from providing any gender transition procedure to an individual under 18 years of age. The bill also prohibits a physician or health care provider from referring an individual under 18 years of age to any other health care provider for any gender transition procedure. "Gender transition procedure" is defined in the bill as a medical or surgical service provided or performed for the purpose of assisting an individual with a physical gender transition.

Under the bill, no one may use public moneys for any entity, organization, or individual that provides any gender transition procedure to an individual under 18 years of age. Facilities owned by and health care providers employed by the state may not include gender transition procedures for individuals under 18 years of age in their provided health care services. Under the bill, amounts paid by an entity, organization, or individual for a gender transition procedure or for premiums for health care coverage that includes gender transition procedures is not tax deductible.

The bill prohibits the Department of Health Services from reimbursing or providing as a benefit under the Medical Assistance program any gender transition procedure for an individual under 18 years of age. The bill also prohibits a health insurance policy or self-insured governmental health plan from providing coverage of any gender transition procedure for an individual under 18 years of age. Health insurance policies are referred to in the bill as disability insurance policies.

ASSEMBLY BILL 977

The bill specifies that a violation of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is presumed to be reckless conduct for purposes of civil liability. The bill explicitly allows an individual injured by such a violation or a parent, guardian, or legal representative of an injured individual to bring a claim for any of the damages specified in the bill. The action must be commenced before 30 years after the date the injured individual reached the age of 18. A legal disability of the injured individual when the individual attains the age of 18 tolls the time to bring the action until the disability is resolved. Any time during which the injured individual is subject to threats, intimidation, manipulation, fraudulent concealment, or fraud by the physician or health care provider involved in the gender transition procedure or a person acting in that physician's or health care provider's interest also tolls the time to bring the action. Under the bill, an allegation that a physician violated either of the prohibitions on providing to an individual under 18 years of age, or referring an individual under 18 years of age for, a gender transition procedure is considered an allegation of unprofessional conduct, and the Medical Examining Board is required to investigate allegations of unprofessional conduct. The attorney general and any district attorney is also authorized to bring an action to enforce the bill.

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

1 **SECTION 1.** 146.36 of the statutes is created to read:

2 **146.36 Gender transition procedures. (1) DEFINITIONS.** In this section:

3 (a) "Biological sex" means the biological indication of male or female in the
4 context of reproductive potential or capacity, such as by sex chromosomes, naturally
5 occurring sex hormones, gonads, and unambiguous internal and external genitalia
6 present at birth, without regard to psychological, chosen, or subjective experience of
7 gender.

8 (b) "Cross-sex hormones" means any of the following:

9 1. Testosterone or other androgens given to biological females in amounts that
10 are larger or more potent than would normally occur naturally in healthy biological
11 females.

ASSEMBLY BILL 977

1 2. Estrogen given to biological males in amounts that are larger or more potent
2 than would normally occur naturally in healthy biological males.

3 (c) “Gender reassignment surgery” means any medical or surgical service that
4 seeks to surgically alter or remove healthy physical or anatomical characteristics or
5 features that are typical for an individual’s biological sex in order to instill or create
6 physiological or anatomical characteristics that resemble a sex different from the
7 individual’s biological sex, including genital gender reassignment surgery or
8 nongenital gender reassignment surgery performed for the purpose of assisting an
9 individual with a gender transition.

10 (d) “Gender transition” means a process, which may involve social, legal, or
11 physical changes, in which an individual goes from identifying with and living as a
12 gender that corresponds with the individual’s biological sex to identifying with and
13 living as a gender different from the individual’s biological sex.

14 (e) 1. “Gender transition procedure” means any medical or surgical service
15 provided or performed for the purpose of assisting an individual with a physical
16 gender transition.

17 2. “Gender transition procedure” includes any physician’s service, inpatient
18 and outpatient hospital service, puberty-blocking drug, cross-sex hormone, genital
19 gender reassignment surgery, or nongenital gender reassignment surgery.

20 3. “Gender transition procedure” does not include any of the following:

21 a. A service provided to individuals who are born with a medically verifiable
22 disorder of sex development, including individuals with external biological sex
23 characteristics that are irresolvably ambiguous, such as those born with 46,XX
24 karyotype with virilization, born with 46,XY karyotype with under virilization, or
25 having both ovarian and testicular tissue.

ASSEMBLY BILL 977**SECTION 1**

1 b. A service provided when a physician has diagnosed a disorder of sexual
2 development by determining, through genetic or biochemical testing, that the
3 individual does not have normal sex chromosome structure, sex steroid hormone
4 production, or sex steroid hormone action.

5 c. The acute or chronic treatment of any infection, injury, disease, or disorder
6 that has been caused by or exacerbated by the performance of a gender transition
7 procedure, whether or not the gender transition procedure was performed in
8 accordance with state and federal law and whether or not funding for the gender
9 transition procedure is permissible under this section.

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

14 (f) “Genital gender reassignment surgery” means a medical procedure,
15 including any of the following surgical procedures, that is performed for the purpose
16 of assisting an individual with a physical gender transition:

17 1. For individuals of male biological sex, a penectomy, an orchiectomy, a
18 vaginoplasty, a clitoroplasty, or a vulvoplasty.

19 2. For individuals of female biological sex, a hysterectomy, an oophorectomy,
20 a reconstruction of the urethra, a metoidioplasty or phalloplasty, a vaginectomy, a
21 scrotoplasty, or an implantation of erectile or testicular prostheses.

22 (g) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (hp).

23 (h) “Nongenital gender reassignment surgery” means a medical procedure,
24 including any of the following surgical procedures, that is performed for the purpose
25 of assisting an individual with a physical gender transition:

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1 1. For individuals of male biological sex, augmentation mammoplasty, facial
2 feminization surgery, liposuction, lipofilling, voice feminization surgery, thyroid
3 cartilage reduction, gluteal augmentation, hair reconstruction, or any of various
4 aesthetic procedures.

5 2. For individuals of female biological sex, subcutaneous mastectomy, voice
6 masculinization surgery, liposuction, lipofilling, pectoral implants, or various
7 aesthetic procedures.

8 (i) “Puberty-blocking drug” means any of the following when used to delay or
9 suppress pubertal development in children for the purpose of assisting an individual
10 with a gender transition:

11 1. A gonadotropin-releasing hormone analogue or other synthetic drug used
12 in biological males to stop luteinizing hormone secretion and, therefore, testosterone
13 secretion.

14 2. A synthetic drug used in biological females to stop the production of estrogen
15 and progesterone.

16 (j) “Public funds” means any moneys of the state, a county or local government,
17 or any department, agency, or instrumentality authorized or appropriated under
18 state law or derived from any fund in which moneys are deposited.

19 **(2) PROHIBITING GENDER TRANSITION ON MINORS.** (a) No physician or health care
20 provider may provide any gender transition procedure to any individual under 18
21 years of age.

22 (b) No physician or health care provider may refer any individual who is under
23 18 years of age to any other physician or health care provider for any gender
24 transition procedure.

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1 **(3) PROHIBITING USE OF PUBLIC FUNDS FOR GENDER TRANSITION OF MINORS.** (a) No
2 person may use public funds directly or indirectly for or grant, pay, or distribute
3 public funds to any entity, organization, or individual that provides any gender
4 transition procedure to an individual under 18 years of age.

5 (b) None of the following may include any gender transition procedure provided
6 to an individual under 18 years of age in the health care services it provides:

7 1. A facility owned by the state or a county or local government.

8 2. A physician or health care provider who is employed by the state or a county
9 or local government.

10 (c) The department may not reimburse or include as a benefit under the
11 Medical Assistance program under subch. IV of ch. 49 any gender transition
12 procedure for an individual under 18 years of age.

13 **(4) TAX DEDUCTION PROHIBITED.** Any amount paid during a taxable year by an
14 entity, organization, or individual to provide a gender transition procedure or as
15 premiums for health care coverage that includes coverage for a gender transition
16 procedure is not tax deductible.

17 **(5) CIVIL LIABILITY.** (a) Any violation of sub. (2) is presumed to be reckless
18 conduct for purposes of civil liability. The party injured by a violation of sub. (2) or
19 a parent, guardian, or legal representative of the injured party may bring a claim for
20 any of the following damages:

21 1. Any compensatory damages, including damages for pain and suffering, loss
22 of reputation, loss of income, and loss of consortium, including loss of expectation of
23 sharing parenthood.

24 2. Injunctive relief.

25 3. Declaratory relief.

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1 4. Punitive damages.

2 5. Any other appropriate relief.

3 6. If the prevailing party, reasonable attorney's fees notwithstanding s. 814.04
4 (1).

5 (b) A party may commence an action under par. (a) regardless of whether or not
6 available administrative remedies have been sought or exhausted.

7 (c) The attorney general and any district attorney may bring an action to
8 enforce compliance with this section.

9 (d) Nothing in this section shall be construed to deny, impair, or otherwise affect
10 any right or authority of the attorney general, the state, or any agency, officer, or
11 employee of the state to institute or intervene in any proceeding.

12 **(6) LIMITATION OF ACTIONS.** Notwithstanding any limitation under ch. 893, an
13 action to recover damages caused by an act that would constitute a violation of sub.
14 (2) shall be commenced before the date that is 30 years after the date the injured
15 party attains the age of 18 or be barred. If the injured party has a legal disability on
16 the date the injured person attains the age of 18, the statute of limitations under this
17 subsection is tolled until the disability is resolved. The statute of limitations under
18 this subsection is tolled during any time the injured party is subject to threats,
19 intimidation, manipulation, fraudulent concealment, or fraud by the physician,
20 health care provider, or person acting in the interest of the physician or health care
21 provider that provided any gender transition procedure.

22 **SECTION 2.** 448.02 (3) (a) of the statutes, as affected by 2021 Wisconsin Act 23,
23 is amended to read:

24 448.02 **(3)** (a) The board shall investigate allegations of unprofessional conduct
25 and negligence in treatment by persons holding a license or certificate granted by the

ASSEMBLY BILL 977**SECTION 2**

1 board. An allegation that a physician has violated s. 146.36 (2), 253.10 (3), 448.30
2 or 450.13 (2) or has failed to mail or present a medical certification required under
3 s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the
4 subject of the required certificate or that a physician has failed at least 6 times within
5 a 6-month period to mail or present a medical certificate required under s. 69.18 (2)
6 within 6 days after the pronouncement of death of the person who is the subject of
7 the required certificate is an allegation of unprofessional conduct. Information
8 contained in reports filed with the board under s. 49.45 (2) (a) 12r., 50.36 (3) (b),
9 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board.
10 Information contained in a report filed with the board under s. 655.045 (1), as created
11 by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with
12 the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the
13 basis of an investigation of a person named in the report. The board may require a
14 person holding a license or certificate to undergo and may consider the results of one
15 or more physical, mental or professional competency examinations if the board
16 believes that the results of any such examinations may be useful to the board in
17 conducting its investigation.

18 **SECTION 3.** 632.8983 of the statutes is created to read:

19 **632.8983 Prohibiting gender transition procedure coverage for**
20 **minors. (1)** In this section:

21 (a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

22 (b) "Gender transition procedure" has the meaning given in s. 146.36 (1) (e).

23 **(2)** No disability insurance policy and no self-insured health plan of the state
24 or of a county, city, town, village, or school district may provide coverage of any gender
25 transition procedure for an individual under 18 years of age.

