

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 722 (Delegate Arikan, *et al.*)
Health and Government Operations

Health – Minors – Gender and Sex Transition Procedures

This bill prohibits a health care provider, with limited exception, from knowingly and without the consent of the parent/guardian/custodian of the minor, engaging in or causing any specified practices for the purpose of attempting to alter the appearance of, or affirm the minor’s perception of, the minor’s “gender” or “sex” when the appearance or perception is inconsistent with the minor’s “sex.” A person that violates this prohibition is guilty of a misdemeanor and on conviction is subject to imprisonment for at least one year and up to three years. A court may not impose less than the mandatory minimum sentence of one year or suspend any part of the mandatory minimum sentence. The Secretary of Health may adopt regulations to implement the bill.

Fiscal Summary

State Effect: The Maryland Department of Health can implement the bill with existing budgeted resources. The criminal penalty provision of the bill does not have a material impact on State finances or operations.

Local Effect: The criminal penalty provision of the bill does not have a material impact on local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A health care provider is prohibited from, knowingly and without consent of a parent/guardian/custodian of a minor, engaging in or causing any of the following practices to be performed on the minor, as specified:

- prescribing or administering gonadotropin-releasing hormone analogues or other synthetic drugs used to stop luteinizing hormone and follicle-stimulating hormone secretion, synthetic antiandrogen drugs used to block the androgen receptor, or any drug to suppress or delay normal puberty;
- prescribing or administering testosterone, estrogen, or progesterone in an amount greater than would normally be produced endogenously in a healthy individual, as specified;
- performing surgeries that sterilize, as specified;
- performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, as specified; or
- removing any healthy or nondiseased body part or tissue.

The bill's prohibitions do not apply to a health care provider engaging in or causing any of the following practices to be performed on a minor based on a good faith medical decision of the health care provider and a parent/guardian/custodian that the minor has a medically verifiable genetic disorder of sex development:

- services provided to a minor born with a medically verifiable disorder of sex development, as specified;
- services provided to a minor who has otherwise been diagnosed with a disorder of sexual development by a physician, as specified;
- the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of gender transition procedures, whether or not the procedures were performed in accordance with federal or State law; and
- any procedures undertaken because a minor suffers from a physical disorder, injury, or illness that is certified by a physician and that would place the minor in imminent danger of death or impairment of a major bodily function unless surgery is performed.

Under the bill, "gender" means the psychological, behavioral, social, and cultural aspects of being male or female. "Sex" means the biological indication of male and female, including 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.

Current Law:

Minor's Capacity to Consent to Medical Treatment

A minor has the same capacity as an adult to consent to medical or dental treatment if the minor is (1) married; (2) the parent of a child; or (3) living separate and apart from the minor's parent(s) or guardian and self-supporting.

A minor has the same capacity as an adult to consent to (1) treatment for or advice about venereal disease, pregnancy, contraception other than sterilization, drug abuse, and alcoholism; (2) physical examination and treatment of injuries from, or to obtain evidence of, an alleged rape or sexual offense; (3) initial medical screening and physical examination on and after admission of the minor into a detention center; and (4) treatment for the prevention of HIV.

A minor also has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by a delay of treatment to obtain another individual's consent.

Minor's Capacity to Consent to Mental Health Treatment

Chapter 743 of 2021 lowered the age for a minor to give informed consent in certain situations. Specifically, a minor who is at least age 12 and is determined by a health care provider to be mature and capable of giving informed consent has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by the health care provider or a clinic. However, except as otherwise provided, a minor younger than age 16 may not consent to the use of prescription medications to treat a mental or emotional disorder. A health care provider may decide to provide specified information to a parent, guardian, or custodian of a minor unless the health care provider believes that the disclosure will lead to harm to the minor or deter the minor from seeking care.

Except under certain circumstances, without the consent of or over the express objection of a minor, the health care provider or, on advice or direction of the health care provider, a member of the medical staff of a hospital or public clinic may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor.

Additional Comments: The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition recognizes gender dysphoria as a mental disorder. The criteria for a diagnosis of gender dysphoria are described as a marked incongruence between one's experienced/expressed gender and natal gender lasting for at least six months, as manifested by at least two of the following:

- a marked incongruence between one’s experienced or expressed gender and primary and/or secondary sex characteristics – or in young adults, the anticipated secondary sex characteristics;
- a strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced or expressed gender – or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics;
- a strong desire for the primary and/or secondary sex characteristics of the other gender;
- a strong desire to be of the other gender or alternative gender from one’s designated gender;
- a strong desire to be treated as the other gender or alternative gender from one’s designated gender; or
- a strong conviction that one has the typical feelings and reaction of the other gender or alternative gender from one’s designated gender.

The International Classification of Diseases, Eleventh Revision recognizes gender incongruence of adolescence or adulthood and of childhood. Gender incongruence of adolescence and adulthood is characterized by a marked and persistent incongruence between an individual’s experienced gender and the assigned sex, which often leads to a desire to transition in order to live and be accepted as a person of the experienced gender, through hormonal treatment, surgery, or other health care services to make the individual’s body align, as much as desired and to the extent possible, with the experienced gender. The diagnosis cannot be assigned prior to the onset of puberty. Gender variant behavior and preferences alone are not a basis for assigning the diagnosis.

Gender incongruence of childhood is characterized by a marked incongruence between an individual’s experienced/expressed gender and the assigned sex in pre-pubertal children. It includes a strong desire to be a different gender than the assigned sex; a strong dislike on the child’s part of his or her sexual anatomy or anticipated secondary sex characteristics and/or a strong desire for the primary and/or anticipated secondary sex characteristics that match the experienced gender rather than the assigned sex. The incongruence must have persisted for about two years. Gender variant behavior and preferences alone are not a basis for assigning the diagnosis.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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