

# POLICY FOCUS

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## Current State of Laws Governing Gender Transitions

By Madeleine Kearns, Senior Fellow with research contributed by Claudia Tozzi

### HIGHLIGHT

Once a fringe issue, transgender ideology is now firmly entrenched in American law and life. Children who think they're transgender are being irreparably harmed as healthcare practitioners recklessly alter their sexual characteristics with drugs and surgeries. The transgender culture war rages on, and the polarized nature of the issue has resulted in a patchwork of conflicting legislation governing so-called "gender transitions" for minors.

### INTRODUCTION

Persistent discomfort with one's sex, clinically diagnosed as "gender dysphoria," was once rare in adults and rarer still in children. But now droves of children are identifying as the opposite sex, and a fierce debate rages over the best clinical approach to help them.

Typically, in medicine, the best clinical approach—or "standard of care"—is developed in response to evidence and established by consensus. But in the field of childhood gender dysphoria, ideology and arguments from authority have played an outsized role.

In the U.S., many medical associations' governing bodies relevant to the field have been captured by activists. Yet the official positions of these organizations do not necessarily represent the views of their members, and—across the world—medical professionals are **pushing back**.

**“Gender affirmation,” popularized in the last ten years, means treating patients as though they really are the sex with which they identify. In childhood, this begins as a psychological treatment (“social transition”) which, in turn, increases the likelihood of medical and surgical interventions in the form of puberty blockers, cross-sex hormones, and surgery on the patient’s reproductive anatomy.**

For years, the preferred clinical approach to the treatment of childhood gender dysphoria was a range of talk therapies and psychotherapies designed to address underlying causes. These were effectively combined with “watchful waiting,” allowing gender-distressed children to complete puberty, after which **the majority no longer desired to be the opposite sex**. This was a happy outcome for those children since (a) it is impossible to change sex, and (b) attempts to resemble the opposite sex more closely through drugs and surgeries risk irreversible complications and side effects.

In the 1990s, the Dutch began experimenting with “puberty blockers,” which activists later used to baselessly disparage “watchful waiting” as **outdated** or even imply that it was equivalent to not treating patients. Such activists also conflate exploratory talk therapies aiming to resolve gender dysphoria with **“conversion therapy.”** Under their influence, cities and states across the country have passed “conversion therapy” bans so broad as to prohibit any talk therapy for gender dysphoria that isn’t geared toward “gender affirmation.”

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form of puberty blockers, cross-sex hormones, and surgery on the patient’s reproductive anatomy. In recent years, Republicans in red states have passed laws banning these medical and surgical interventions.

Polarization can obscure the bigger issues at play.

In the **United Kingdom, Norway, France, Sweden, and Finland**, increased public scrutiny of “gender affirmation” has resulted in independent inquiries concluding that there is insufficient evidence to justify this approach. In June 2023, the UK’s National Health Service clarified, “Outside of a research setting, puberty-suppressing hormones should not be routinely commissioned for children and adolescents.”

In the words of one surgeon specializing in transgender surgeries, the U.S. has become the **“Wild West”** of the medicalized transition of minors. There are at least **100**, though likely many more, pediatric gender clinics in the United States. Girls as young as 13 have had double mastectomies and boys as young as 15 have undergone “vaginoplasty.”

One issue is that in the U.S., difficulties in establishing standards of care combined with a narrow statute of limitations make it difficult for detransitioners—those who have stopped identifying as transgender after medical and/or surgical alterations—to successfully sue for medical malpractice. These individuals nevertheless have been influential in [providing testimony](#) to lawmakers.

Generally, we trust the medical profession to self-regulate. But sometimes it fails. And when it fails in the form of mass medical malpractice against minors, government regulation is warranted.

## CULTURE WARS

Transgenderism, which touches on everything from free speech to [women's sports](#), has become a major culture war issue on which both Democrats and Republicans are expected to toe the party line. And transgenderism in pediatric health care is no different.

President Joe Biden has signaled his support of trans activists by describing state bans on medical alterations to minors' secondary sex characteristics as being "[close to sinful](#)." Former president and 2024 Republican frontrunner, Donald Trump, has [signaled his support](#) of bans on "child mutilation."

As one would expect, the states where medical alterations to minors' reproductive anatomy have been outlawed and the states where they are encouraged generally correspond with Republican and Democratic majorities.

At this writing, the following states permit puberty blockers, cross-sex hormones, and surgeries for minors: Alaska, California, Colorado, Connecticut, Delaware, Illinois, Kansas,

Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Wisconsin, and Wyoming.

Some of these states have enshrined legal recognition of so-called "gender-affirming health care." For instance, New Jersey executive [policy](#) defines "gender-affirming health care" as that which "addresses a transgender or non-binary person's physical, mental, and/or social health needs." California law [defines](#) "gender-affirming health care," for purposes of foster care placement, as:

Medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following: Interventions to suppress the development of endogenous secondary sex characteristics; interventions to align the patient's appearance or physical body with the patient's gender identity; interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria.

Meanwhile, the states with laws prohibiting medical alterations of the sex characteristics of minors are as follows: [Alabama](#), [Arizona](#), [Arkansas](#), [Florida](#), [Georgia](#), [Idaho](#), [Indiana](#), [Iowa](#), [Kentucky](#), [Louisiana](#), [Mississippi](#), [Missouri](#), [Montana](#), [Nebraska](#), [North Carolina](#), [North Dakota](#), [Ohio](#), [Oklahoma](#), [South Dakota](#), [Tennessee](#), [Texas](#), [Utah](#), and [West Virginia](#).

Each of these states has a Republican-majority legislature, though some (Arizona, Louisiana, and North Carolina) have

Democratic governors. Some governors have attempted to obstruct state lawmakers passing these bans, though they have not had much success.

In March 2023, the Kentucky legislature's Republican supermajority overturned democratic governor Andy Beshear's veto of Senate Bill 150. A few months later, in July, the Louisiana legislature **overturned** democratic governor John Bel Edwards's veto of their bill. In August, the Republican legislature in North Carolina overturned their governor's veto of a bill banning medical alterations of minors' secondary sex characteristics.

**The polarized nature of the issue results in a patchwork of conflicting legislation, causing the rise of “trans tourism.” This is when pro-“affirmation” states give non-resident minors access to “transition” drugs and surgeries that are illegal in their home state, sometimes in the absence of parental consent.**

Asa Hutchinson, the GOP governor of Arkansas, drew fierce criticism from fellow Republicans after he **vetoed** a bill banning medical alterations to minors' secondary sex characteristics. As with the others, Hutchinson's veto was overturned by the legislature. In his 2024 presidential campaign, Hutchinson said he'd support a federal ban on surgical changes to the sex characteristics of minors (but not drugs).

States currently considering new or additional bans on puberty blockers, cross-sex hormones, and/or surgeries for minors are as follows: **Arizona** (which already bans surgeries); **Georgia**; **Hawaii**; **Kansas**; **Michigan**; **New Hampshire**; and **South Carolina**.

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are illegal in their home state, sometimes in the absence of parental consent.

For instance, in Washington state, **Senate Bill 5599** promises shelter to runaway youth, allowing “host homes to house youth without parental permission if youth is seeking or receiving protected health care services,” and sets aside \$7.5 million for “gender-affirming treatment and reproductive health care services that are lawful in the state of Washington.” California Governor Gavin Newsom similarly signed a law, **SB 107**, encouraging children from out of state to travel to California for transition drugs and surgeries illegal in their home state.

## **PENDING LITIGATION**

Some parents of trans-identifying minors who are supportive of the “affirmation” approach are suing their states, where those states prohibit minor access to permanent chemical and surgical body modifications, asserting that parents have a fundamental right to demand unlawful medical procedures. For instance, in *Paul A. Eknes-Tucker et. al. v. Governor of the State of Alabama et. al.*, plaintiff parents, community members, and healthcare providers sought to prohibit Alabama's law which limits medically altering minors. They initially succeeded in achieving a preliminary injunction by a federal court in May 2022, which was then **vacated** by the 11<sup>th</sup> Circuit Court of Appeals in August 2023.

Suits with legal theories rooted either in parental rights or nondiscrimination have been filed in Florida, *Doe v. Ladapo*, where

the plaintiffs were [granted a preliminary injunction](#) in June 2023; in Georgia, *Emma Koe, et al. v. Caylee Noggle, et al.*, where a federal district judge found the state’s ban on puberty blockers and cross-sex hormones unlawful in August 2023 (though the law remains in effect on appeal); in Kentucky, *Doe v. Thornbury*; in Oklahoma, *Poe v. Drummond*; in Tennessee, *L.W. v. Skrmetti*; and in Texas, *Loe v. Texas*, in Indiana in *K.C. v. Medical Licensing Board of Indiana*; in Missouri, *Noe, et al. v. Parson, et al*; and in Montana, in *Van Garderen et al v. State of Montana*, to name some.

**In contrast to these suits, we also see legal action challenging state laws and policies that promote gender ideology. Parents have filed suits arguing that their parental rights have been violated when schools “transition” children socially without parental knowledge or consent. Some states have subsequently moved to pass legislation requiring parental notification of changes in a student’s well-being, for example, in the Parental Rights in Education Act in Florida.**

In Nebraska, *Planned Parenthood of the Heartland v. Hilgers*, plaintiffs filed a different type of complaint, arguing Nebraska’s law, which addressed both abortion and procedures on minors, violated Article III, §14 of the Nebraska Constitution which requires that “[n]o bill shall contain more than one subject, and the subject shall be clearly expressed in the title.” This was rejected by a district court judge in August 2023, as the single-subject rule has long been applied to accept multiple topics within broad areas.

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Some elected Democrats have pushed back against schools seeking to adopt parental notification policies. For example, in August, California Attorney General Rob Bonta [sued](#) the Chino Valley Unified School District over its parental notification policy.

Social transition, while it does not include drugs or surgery to medically alter the sex

characteristics of minors, is still life-altering and constitutes a clinical intervention. This psychological approach to gender discomfort makes future medical alteration [more likely](#).

## **CONVERSION THERAPY**

A common claim from the Left is that government should keep out of medicine and let physicians continue with practices even if the legislature may disapprove. Yet elected Democrats continue to prohibit therapies, including simple speech, that they disapprove of for ideological reasons.

In June 2022, the Biden administration issued an [executive order](#) directing his health and education departments to “promote expanded access... to gender-affirming care,” and “reduce the risk of youth exposure to

so-called conversion therapy.” It defines conversion therapy as efforts to “suppress or change” an individual’s “gender identity, or gender expression.” In other words, the federal government is working to eliminate therapy that affirms a child’s biology and helps the child grow comfortable with his or her biology.

This is a significant change. Traditionally, the aim of therapy for childhood gender distress was to help the patient accept his sexed body, not affirm his “gender identity.” (After all, up to **94 percent** of young people expressing gender discomfort will grow out of this post-puberty.) Talk therapy rooted in biological reality limits irreversible damage during this difficult time. But, according to transgender ideology, what matters most is identity.

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The campaign to ban “conversion therapy” deliberately misuses language to conflate the historic abuse of homosexuals in clinical settings with humane and medically appropriate “watchful waiting” talk therapy for childhood gender dysphoria. Capitalizing on this conflation, states that ban “sexual orientation change efforts” and have included “gender identity” as well include: **Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington**, as well as the **District of Columbia**. Some states equate “sexual orientation change efforts” with therapies addressing an individual’s ambiguous “gender expression”: **California,**

**Colorado, Illinois, and New Jersey, Arizona, North Carolina, and Wisconsin** ban the use of federal funds to promote, support, or enable this mislabeled conversion therapy. Pennsylvania has an **executive order** directing government agencies to “protect Pennsylvanians, particularly children, youth, and vulnerable adults, from conversion therapy to the fullest extent of their authority.”

The North Dakota Legislative Assembly Administrative Rules Committee made an **amendment** to “Section 75.5-02-06.1. Ethical responsibilities to clients” which states that “it is an ethical violation for a social worker licensed by the board to engage in any practices or treatments that attempt to change or repair the sexual orientation or gender identity of lesbian, gay, bisexual, transgender, and questioning individuals.”

## CONSENT

In the British case, *Bell v. Tavistock*, a young detransitioner, Keira Bell, sued the National Health Service’s gender youth clinic where she had first been prescribed puberty blockers as a minor. In 2020, the High Court **sided** with Bell, finding that it would be “highly unlikely” that a child aged 13 or under would be competent to give consent to the administration of puberty blockers, “doubtful” that a child aged 14 or 15 would be competent, and that for those aged 16, court authorization ought to be obtained. However, in 2021, the UK Court of Appeal overturned the decision, **finding** that it “was for clinicians rather than the court to decide on competence.”

In most states, the age of majority is 18. In Alabama, Colorado, Maryland, and Nebraska, the age of majority is 19. In the District of Columbia (DC), Indiana, Mississippi, and New York, it is 21. It is well understood that there are some decisions to which a minor cannot consent, nor can an adult consent on their behalf.

For instance, in 2022 [The New York Times](#) reported on a ten-year-old boy in New York who had requested Vaseline from the school nurse to soothe his new tattoo. The nurse called the police, who arrested both his mother and the tattoo artist. The Times interviewed Dr. Cora Bruener, who suggested states with younger (or no) minimum age should be revisited since a tattoo is “a permanent mark” and children under 18 lack “that kind of agency to make a decision.” And yet Dr. Bruener supports [surgically altering](#) the sex characteristics of minors.

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As with other medical interventions, the alteration of the sex characteristics of minors through drugs or surgeries generally requires parental consent. However, [Washington state](#) allows minors aged 13 and above to “request and receive outpatient treatment without the consent of the adolescent’s parents.” [Oregon](#) allows a minor “15 years of age or older [to] give consent, without the consent of a parent or guardian of the minor” to “hospital care, medical or surgical diagnosis or treatment.” Whether this includes drugs and surgeries altering the sex characteristics of gender-confused minors is open to interpretation. However, in one case presented to the UK House of Lords by the U.S.-based group of

parents of gender-confused children, The Kelsey Coalition, a mother [reported](#) that her depressed teenage daughter had “ran away to Oregon” from their home state: “In Oregon, at the age of 17, without my consent or even knowledge, she was able to change her name and gender in court, obtain testosterone treatment, a double mastectomy, and a radical hysterectomy.”

[Maine](#) allows healthcare professionals to provide “gender-affirming hormone therapy”—which it defines as “nonsurgical, medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient”—without the consent of parents from age 16 years. [California](#) law stipulates that “a minor may consent to the minor’s medical care” if that minor is at least 15, living separately from his or her parents or guardian (either with or without consent), and managing his or her own finances (regardless of the source of income).

## CUSTODY

In 2019, the case of James Younger, a seven-year-old boy in Texas whose divorced parents couldn’t agree on whether he should be raised a boy or a girl, made [national headlines](#). Children like Younger have become pawns in the culture war, as transgender activists have captured much of the legal and medical establishment. [More tragic stories](#) have since come to light about parents penalized for their skepticism toward “transition” during custody disputes. A recent California bill, [AB 957](#), requires family courts to interpret a child’s “health, safety, and welfare” to “include a parent’s

affirmation of the child’s gender identity” for the purpose of custody disputes. This goes further than favoring one parent over another, the implication being that non-affirmation is equivalent to harming a child’s “health, safety, and welfare”—and therefore is equivalent to neglect or abuse.

**In one case**, a minor in California was removed from her mother’s custody by a judge after the daughter, whom the mother believes was under the influence of activists, accused her mother of “emotional abuse.” Strangely, the mother’s three other children who did not identify as transgender were permitted to remain in her custody. Later, the charges against the mother were dropped, but only after the daughter, who by then had spent three years living in state custody and undergoing cross-sex hormones, had rapidly deteriorated in her mental health. Tragically, the daughter took her own life.

### **Some conservatives have tried to fight fire with fire, investigating parents who consent to “transitioning” medical alterations for their children for abuse.**

Some conservatives have tried to fight fire with fire, investigating parents who consent to “transitioning” medical alterations for their children for abuse. In February 2022, Texas governor Greg Abbott **directed** the Department of Family and Protective Services to investigate “any reported instances of Texas children being subjected to abusive gender-transitioning procedures.” This included doctors, nurses, and teachers as well as parents who, under existing Texas law regarding child abuse, could face “criminal penalties for failure to report such child abuse.”

## **MEDICAID AND FEDERAL INTERVENTION**

The Biden administration has **proposed** a regulation under Section 1557 of the Affordable Care Act that, when finalized, will interpret discrimination on the basis of “sex” to incorporate discrimination on the basis of “gender identity,” and thus demand regulated healthcare entities like insurers, doctors, and hospitals, to pay for and provide medical interventions requested by individuals who claim a gender-identity-based need.

Some states are already there. Vermont has issued a **bulletin** interpreting its law to mandate that insurers and health plans “shall not exclude coverage for medically necessary treatment including gender affirmation surgery for gender dysphoria and related health conditions. In addition, insurers may not deny coverage of gender affirmation

surgery as not medically necessary *on the basis of age* without other clinical factors or circumstances supporting the decision.” [emphasis added]

In March 2023, **House** and **Senate** Democrats introduced a resolution proposing “eliminating unnecessary governmental restrictions on the provision of, and access to, gender-affirming medical care and counseling for transgender and nonbinary adults and youth.”

## WHAT YOU CAN DO

### Get Informed

Learn more about the current state of laws governing gender transitions. Check out:

- [The Tragedy of the Transgender Child, National Review](#)
- [The ‘conversion therapy’ canard, The Spectator](#)
- [Children’s Lives Depend on Parents’ Rights, The Spectator](#)

### Talk to Your Friends

Help your friends and family understand these important issues. Share this information, tell them about what’s going on, and encourage them to join you in getting involved.

### Become a Leader in the Community

Start an Independent Women’s Network chapter group so you can get together with friends each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

### Remain Engaged Politically

Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

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