



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 658

132nd General Assembly
(As Introduced)

Reps. Brinkman and Zeltwanger

BILL SUMMARY

- Permits parents, a guardian, or a custodian to exercise the fundamental right to care for their child by withholding consent for gender dysphoria treatment or activities.
- Prohibits the state, its agents, or political subdivisions from infringing on or impeding that right.
- Provides that it is the state's policy that the parents, guardian, or custodian of a child retains the right to determine what is in the best interest of the child as it relates to gender dysphoria.
- Requires a government agent or entity with knowledge that a child under their supervision is exhibiting symptoms of gender dysphoria to immediately notify each of the child's parents and the child's guardian or custodian in writing.
- Requires a government agent or entity to obtain written, informed consent prior to authorizing or providing gender dysphoria treatment.
- Requires certain disclosures be made by a government agent or entity to obtain written, informed consent.
- Makes it a 4th degree felony for a government agent or entity to purposely or knowingly provide or authorize gender dysphoria treatment without written, informed consent from each of the child's parents and the child's guardian or custodian.
- Allows a person injured by the failure to comply with the bill's requirements to bring an action for damages and equitable relief against a government agent or entity.

- Prohibits the parents, guardian, or custodian from being subject to adverse action for refusing treatment or consent to treatment for gender dysphoria.
- Provides a rebuttable presumption of negligence when gender dysphoria medication is administered off-label and the child has an adverse reaction or is injured as a result.
- Provides that the bill's requirements cannot be construed to require a person to engage in affirmative acts or speech or to affirm any particular viewpoint.

CONTENT AND OPERATION

Child's gender dysphoria treatment

Parental right to withhold treatment

The bill permits the parents, guardian, or custodian, in exercising the fundamental right to care for their child, to withhold consent for gender dysphoria treatment or activities that are designed and intended to form a child's conception of sex and gender. The bill further states that the state, its agents, and political subdivisions cannot infringe upon or impede the exercise of this right.¹

Under the bill, "gender dysphoria" means the condition of feeling one's emotional and psychological identity as male or female to be opposite of one's biological sex. "Gender dysphoria treatment" includes any of the following used to treat gender dysphoria: (1) educational materials, classes, or programs, and (2) medical, psychological, social, or other professional treatment, therapy, counseling, or other services.²

State policy on parental rights

Under the bill, it is the state of Ohio's policy that the parents, guardian, or custodian of a child retain the right to determine what is in the best interest of the child regarding the following:³

- The child's diagnosis of gender dysphoria;
- The child's exhibition of gender dysphoria symptoms;

¹ R.C. 2131.141.

² R.C. 2131.14(A) and (B).

³ R.C. 2131.142(A).



- Whether the child should participate in classes or programs, with or without accompanying educational materials, related to sex and gender;⁴
- Any counseling, therapy, or treatment provided to the child regarding the child's gender dysphoria.

The bill requires that the bill's provisions regarding parental rights and consent requirements of a child's gender dysphoria treatment be liberally construed to effectuate the state's policy.⁵

Parental notification

The bill requires a government agency or entity that has knowledge that a child under its care or supervision has exhibited symptoms of gender dysphoria or otherwise demonstrates a desire to be treated in a manner opposite the child's biological sex, to immediately notify, in writing, each of the child's parents and the child's guardian or custodian. The notice must describe the total circumstances with reasonable specificity.⁶

Under the bill, "government agent or entity" means either of the following: (1) a person who has supervisory authority or care over children as an agent, employee, contractor, or volunteer for a public children services agency (PCSA), private child placing agency (PCPA), court, or school district, or (2) a PCSA, PCPA, court, or school district.⁷

Parental consent

Consent and disclosure requirements

The bill requires that a government agency or entity must obtain written, informed consent from each of the child's parents and the child's guardian or custodian prior to authorizing or providing gender dysphoria treatment. Valid consent must include a statement that each of the parents and the guardian or custodian received full

⁴ The bill may need a corrective amendment depending on what is intended by R.C. 2131.142(A)(3). The bill provides for a parent to determine whether the child "should participate in classes or programs, with or without accompanying educational materials, *classes, or programs* related to sex and gender." It is not clear if the bill intends to address classes or programs that accompany classes or programs or whether that was an error.

⁵ R.C. 2131.142(B).

⁶ R.C. 2131.143.

⁷ R.C. 2131.14(C).

and complete disclosure of all of the following regarding the proposed gender dysphoria treatment:⁸

- Short- and long-term effects of the treatment;
- A comprehensive review of the safety and efficacy of the treatment, supported by controlled, randomized research;
- A review of whether relevant agencies have approved the treatment for the purpose for which it is to be administered.

Criminal offense of treatment without consent

Under the bill, a government agent or entity that purposely or knowingly authorizes or provides gender dysphoria treatment for a child without the written, informed consent of each of the child's parents and the child's guardian or custodian, as required by the bill, commits the offense of gender dysphoria treatment without parental consent, a fourth degree felony.⁹

Civil action for failure to comply

The bill permits a person injured for failure to comply with the bill's provisions to bring an action for damages and equitable relief against the government agent or entity.¹⁰

Protection from adverse action

Under the bill, the parents, guardian, or custodian of a child cannot be subject to adverse action for refusing treatment or consent for treatment for gender dysphoria for the child, including adverse action under any of the following:¹¹

- Allocation of parental rights and responsibilities regarding the child in a domestic relations proceeding;
- A determination of custody by a juvenile court under the Juvenile Code;
- A complaint, adjudication, or disposition that the child is an abused, neglected, or dependent child under the Juvenile Code.

⁸ R.C. 2131.144 and 2131.145.

⁹ R.C. 2919.30.

¹⁰ R.C. 2131.148.

¹¹ R.C. 2131.146 and R.C. 3109.04, 2151.23, and Chapter 2151., not in the bill.



Rebuttable presumption of negligence

The bill provides that, notwithstanding written, informed consent provided by the child's parents, guardian, or custodian, there is a rebuttable presumption of negligence when a medication is administered off-label to a child to treat gender dysphoria or its symptoms and an adverse physical or psychological reaction or injury to the child results.¹²

Under the bill, "off-label" means using a medication for a purpose or in a manner that is contrary to any provision of federal law or regulation that governs the use of that medication.¹³

Affirmative acts or speech

The bill states that nothing in the bill's provisions can be construed to require any person or entity to engage in affirmative acts or speech or to affirm any particular viewpoint.¹⁴

HISTORY

ACTION	DATE
Introduced	05-15-18

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¹² R.C. 2131.147(B).

¹³ R.C. 2131.147(A).

¹⁴ R.C. 2131.149.

