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H.B. 68
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Bill Analysis

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SUMMARY

SAFE Act

- Prohibits a physician from knowingly performing gender reassignment surgery on a minor.
- Prohibits a physician from knowingly prescribing a cross-sex hormone or puberty-blocking drug to a minor for the purpose of assisting with gender transition.
- Prohibits a physician from aiding or abetting those prohibited practices.
- Prohibits a mental health professional from diagnosing or treating a minor for a gender-related condition without first obtaining consent from each custodial parent or the minor's guardian.
- Prohibits a mental health professional from diagnosing or treating a minor for a gender-related condition without screening the minor for other comorbidities, abuse, and traumas during the course of treatment.
- Establishes penalties for physicians and mental health professionals who engage in conduct the bill prohibits.
- Prohibits Medicaid coverage of gender transition services for minors.
- Prohibits a court from considering certain parental decisions regarding their child's gender identity and gender transition when allocating parental rights and responsibilities or parenting time.
- Expresses the General Assembly's findings regarding gender transition services, particularly for minors.
- Entitles these provisions of the bill the Ohio Saving Adolescents from Experimentation (SAFE) Act.

Save Women’s Sports Act

- Requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate separate single-sex athletic teams based on the sex of the participants.
- Requires each state institution of higher education or private, nonprofit college or university that is a member of the NCAA, NAIA, or NJCAA to designate separate single-sex athletic teams and sports based on the sex of the participants.
- Prohibits a state institution, private college, school, interscholastic conference, or organization that regulates interscholastic athletics from knowingly permitting a male athlete to participate in a female athletic competition.
- Authorizes an athletic participant to file a civil action if the participant is deprived of an athletic opportunity or suffers harm as a result of a violation of the bill’s single-sex participation requirements or if the participant is subject to retaliation for reporting such a violation.
- Prohibits a state agency or political subdivision, accrediting organization, or athletic association that operates or has business activities in Ohio from taking adverse action against a school, school district, or college or university that complies with the bill’s single-sex participation requirements.
- Entitles these provisions of the bill the “Save Women’s Sports Act.”

DETAILED ANALYSIS

SAFE Act

Prohibition on certain gender transition services for minors

The bill regulates the provision of gender transition services to minors by addressing several facets of gender transition – defined by the bill as the process in which an individual 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, including social, legal, or physical changes.

The bill prohibits physicians from knowingly doing any of the following:¹

- Performing genital or nongenital gender reassignment surgery on a minor;
- Prescribing a cross-sex hormone or puberty-blocking drug for a minor for the purpose of assisting the minor with gender transition; and

¹ R.C. 3129.02.

- Engaging in conduct that aids or abets the performance of gender reassignment surgery on a minor or the prescription of a cross-sex hormone or puberty-blocking drug for a minor for the purpose of gender transition, provided that this prohibition may not be construed to impose liability on any protected speech.

Permissible medical treatment

The bill specifies that it does not prohibit a physician from treating, including by performing surgery on or prescribing drugs or hormones for, a minor in the following circumstances:²

- The minor was born with a medically verifiable disorder of sex development, including ambiguous external biological sex characteristics;
- The minor was diagnosed with a chromosomal or hormonal disorder of sexual development, which a physician has determined through genetic or biochemical testing; or
- The minor needs treatment for a complication of a previous gender transition service.

Mental health care

The bill prohibits mental health professionals from diagnosing or treating a minor for a gender-related condition without first obtaining the consent of each of the minor's residential parents and legal custodians or the minor's guardian.³ A gender-related condition is any condition where an individual feels an incongruence between the individual's gender identity and biological sex, including gender dysmorphia.⁴

Additionally, during the course of diagnosis or treatment, the mental health professional must screen the minor for comorbidities that may be influencing the minor's gender-related condition (including depression, anxiety, attention deficit hyperactivity disorder, autism spectrum disorder, and other mental health conditions) and for physical, sexual, mental, and emotional abuse and other traumas.⁵ Mental health professionals include psychiatric-mental health clinical nurse specialists, psychiatric-mental health nurse practitioners, psychiatrists, psychologists, school psychologists, social workers, professional counselors, and marriage and family therapists.⁶

Enforcement

Any physician who engages in the conduct the bill prohibits is subject to discipline by the State Medical Board for unprofessional conduct. Similarly, any mental health professional who

² R.C. 3129.04.

³ R.C. 3129.03(A).

⁴ R.C. 3129.01(E).

⁵ R.C. 3129.03(B).

⁶ R.C. 3129.01(I).

diagnoses or treats a minor for a gender-related condition in violation of the bill is engaging in unprofessional conduct and is subject to discipline by the appropriate licensing board.⁷

Ohio's Attorney General may bring an action to enforce compliance with the bill's prohibitions concerning physicians and mental health professionals. The Attorney General, the state, and any state agency, officer, or employee may act as currently authorized to file or intervene in any proceeding.⁸

The bill specifies that it is not to be construed to preempt any other private cause of action arising under Ohio common law.⁹

Medicaid

The bill prohibits Medicaid from covering gender transition services for minors; however, the exclusion does not include mental health services provided for a minor's gender-related condition, any services that are not gender transition services, or any services described in "**Permissible medical treatment**" above.¹⁰

The bill defines "gender transition services" to mean:¹¹

- Any medical or surgical service (including physician services, inpatient and outpatient hospital services, or prescription drugs or hormones);
- Provided for the purpose of assisting an individual with gender transition; and
- That seeks to alter or remove physical or anatomical characteristics or features that are typical for the individual's biological sex, or to instill or create physiological or anatomical characteristics that resemble a sex different from the individual's birth sex, including medical services that provide puberty-blocking drugs, cross-sex hormones, or other mechanisms to promote the development of feminizing or masculinizing features in the opposite sex, or genital or nongenital gender reassignment surgery.

Parental rights and responsibilities

The bill prohibits a judge, when allocating parental rights and responsibilities or parenting time, from considering a parent's decision to refer to and raise their child in a manner consistent with the child's biological sex, to decline to consent to their child receiving gender transition services, or to decline to consent to their child receiving mental health services that affirm the child's self-perception as transgender.¹²

⁷ R.C. 3129.05(A).

⁸ R.C. 3129.05(C).

⁹ R.C. 3129.05(B).

¹⁰ R.C. 3129.06.

¹¹ R.C. 3129.01(G).

¹² R.C. 3109.054.

Designation

The preceding provisions are designated as the “Ohio Saving Adolescents from Experimentation (SAFE) Act.”¹³

Legislative findings

The General Assembly makes the following findings:¹⁴

- This state has a compelling interest in protecting the health and safety of its citizens, especially vulnerable children.
- Only a tiny percentage of the American population experiences distress at identifying with their biological sex. According to the American Psychiatric Association, prevalence ranges from 0.005% to 0.014% for natal adult males and from 0.002% to 0.003% for natal females.
- Studies consistently demonstrate that the vast majority of children who are gender nonconforming or experience distress at identifying with their biological sex come to identify with their biological sex in adolescence or adulthood, thereby rendering most medical health care interventions unnecessary.
- Scientific studies show that individuals struggling with distress at identifying with their biological sex often have already experienced psychopathology, which indicates these individuals should be encouraged to seek mental health care services before undertaking any hormonal or surgical intervention.
- Suicide rates, psychiatric morbidities, and mortality rates remain markedly elevated above the background population after inpatient gender reassignment procedures have been performed.
- Some health care providers are prescribing puberty-blocking drugs in order to delay the onset or progression of puberty in children who experience distress at identifying with their biological sex. This is being done 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.
- Health care providers are also prescribing cross-sex hormones for children who experience distress at identifying with their biological sex, despite the fact that 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 treating such distress or gender transition.
- The use of cross-sex hormones comes with the following serious known risks:

¹³ Section 4.

¹⁴ Section 2.

- For biological females, erythrocytosis (a condition where the body makes too many red blood cells), severe liver dysfunction, coronary artery disease, cerebrovascular disease (a group of conditions that affect blood flow in the brain), hypertension (high blood pressure), increased risk of breast and uterine cancers, and irreversible infertility;
- For biological males, thromboembolic disease (a group of conditions where blood clots form in a vein, and then dislodge and travel in the blood), cholelithiasis (gallstones), coronary artery disease, macroprolactinoma (pituitary gland tumor), cerebrovascular disease, hypertriglyceridemia (an abnormal concentration of triglycerides in the blood), breast cancer, and irreversible infertility.
- Genital and nongenital reassignment surgeries are generally not recommended for children, although evidence indicates referrals for children to have such surgeries are becoming more frequent.
- Genital gender reassignment surgery includes several irreversible invasive procedures for males and females and involves the following alterations of biologically normal and functional body parts:
 - For biological females, surgery may involve a hysterectomy (removal of the uterus) or oophorectomy (removal of one or both ovaries), reconstruction of the urethra, genital reconstruction including metoidioplasty (surgical creation of a penis using existing genital tissue) or phalloplasty (construction of a penis), vaginectomy (removal of a vagina), scrotoplasty (construction of a scrotum), and implantation of erection or testicular prostheses;
 - For biological males, surgery may involve genital reconstruction including penectomy (removal of the penis), orchiectomy (removal of one or both testicles), vaginoplasty (construction of a vagina), clitoroplasty (construction of a clitoris), and vulvoplasty (creation of a vulva).
- The complications, risks, and long-term care concerns associated with genital gender reassignment surgery for both males and females are numerous and complex.
- Nongenital gender reassignment surgery includes various invasive procedures for males and females and also involves the alteration or removal of biologically normal and functional body parts:
 - For biological females, procedures may include subcutaneous mastectomy (removal of the entire breast except for nipple and areola), voice surgery, liposuction, lipofilling (transfer or grafting of fat), pectoral implants, and other aesthetic procedures;
 - For biological males, procedures may include augmentation mammoplasty (breast implants or fat transfer), facial feminization surgery (including various bony and soft tissue procedures), liposuction, lipofilling, voice surgery, thyroid cartilage reduction (reduction of Adam's apple), gluteal augmentation (buttock implants or fat transfer), hair reconstruction, and other aesthetic procedures.

- It is an accepted principle of economics and public policy that when a service or product is subsidized or paid for, demand for that service or product increases. Just between 2015 and 2016, gender reassignment surgeries increased by 20%.
- It is of grave concern to the General Assembly that the medical community is allowing individuals who experience distress at identifying with their biological sex to be subjects of irreversible and drastic nongenital gender reassignment surgery and irreversible, permanently sterilizing genital gender reassignment surgery, despite the lack of studies showing that the benefits of such extreme interventions outweigh the risks.
- The risks of gender transition procedures far outweigh any benefit at this stage of clinical study on these procedures.

Save Women’s Sports Act

Interscholastic and intercollegiate single-sex athletic teams

The bill requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate athletic teams based on the sex of participants. Each school must have separate teams for participants of the female sex within female sports divisions, separate teams for participants of the male sex within male sports divisions, and if applicable, co-ed teams for participants of both sexes within co-ed sports divisions.¹⁵

The bill also requires each state institution of higher education or private, nonprofit college or university that is a member of the National Collegiate Athletics Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), or the National Junior College Athletic Association (NJCAA) to designate intercollegiate athletic teams and sports based on the sex of the participants. Like schools, each state institution and private college must have separate teams for participants of the female sex within female sports divisions, separate teams for participants of the male sex within male sports divisions, and if applicable, co-ed teams for participants of both sexes.¹⁶

The bill further prohibits a school, interscholastic conference, organization that regulates interscholastic athletics, state institutions of higher education, and private colleges from *knowingly* permitting males from participating on athletic teams or in athletic competitions designated only for female participants.¹⁷ However, the bill clarifies that it does not restrict the eligibility of any student to participate on any athletic team or in competitions designated as male or co-ed.¹⁸

¹⁵ R.C. 3313.5319(A).

¹⁶ R.C. 3345.562(B).

¹⁷ R.C. 3313.5319(B) and 3345.562(C).

¹⁸ R.C. 3313.5319(C) and 3345.562(D).

Civil action authorized

An athletic participant may file a civil action for injunctive relief, damages, and any other relief available, if the participant is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of the bill's single-sex participation requirements. Similarly, a participant may file a civil action for retaliatory or other adverse action for reporting such a violation. A suit may be filed against a school, school district, interscholastic conference, organization that regulates interscholastic athletics, or college or university.¹⁹

Furthermore, state agencies and political subdivisions, accrediting organizations, and athletic associations that operate or have business activities in Ohio are prohibited from processing a complaint, beginning an investigation, or taking any other adverse action against a school, school district, or college or university for complying with the bill's single-sex participation requirements.²⁰ Therefore, a school, school district, or college or university that suffers any direct or indirect harm as a result of a violation of this prohibition also may file a civil action against the entity that takes the retaliatory or other adverse action.²¹

The bill specifies that plaintiffs who prevail on such claims are entitled to monetary damages, including for any psychological, emotional, or physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.²²

Statute of limitations

The bill requires that any civil action brought as a result of a violation of the bill's single-sex participation requirements must be initiated within two years after the date on which the violation occurs.²³

Background

OHSAA – generally

Ohio law authorizes school districts to implement athletic programs and addresses some aspects of interscholastic athletics, such as the participation of nonenrolled students in district athletic programs and protocols and safeguards for sports-related head injuries. Nevertheless, interscholastic athletics are regulated largely by schools and school districts and the private Ohio High School Athletics Association (OHSAA). The OHSAA regulates and administers interscholastic athletics through its constitution and bylaws, which by their own terms must be in compliance with Ohio law.

¹⁹ R.C. 3313.5319(E) and 3345.562(F).

²⁰ R.C. 3313.5319(D) and 3345.562(E).

²¹ R.C. 3313.5319(E) and 3345.562(F).

²² R.C. 3313.5319(F) and 3345.562(G).

²³ R.C. 3313.5319(F) and 3345.562(G).

For more on the regulation of interscholastic athletics in Ohio, see the LSC Members Brief on Interscholastic Athletics under “General Reference” and then “Publications” at <https://www.lsc.ohio.gov/>.²⁴

OHSAA transgender athlete policy

In December 2018, the OHSAA released a policy statement regarding transgender student-athlete participation in interscholastic athletics, establishing the process by which transgender students may participate in events or competition regulated by OHSAA.

First, a transgender student or the parent of a transgender student must contact the student’s school administrator or athletic director indicating that the student has a consistent gender identity different than the gender assigned at birth, listed on the student’s school registration records or as listed on the state birth record, and that the student desires to participate in activities in a manner consistent with the student’s gender identity.

Upon receipt of the notice from the student or the parent, the administrator or director must notify the OHSAA Executive Director’s Office in writing of the student’s interest in participating in interscholastic athletics. The Executive Director’s Office then must take one of the following actions:

1. A transgender female, whose sex at birth was male but who self-identifies and lives as a female, who is taking medically prescribed hormone treatment related to gender transition may participate on a boys’ team at any time. Before a transgender female can participate in a girls’ sport or on a girls’ team, however, the student must either (a) have completed at least one year of hormone treatment related to gender transition or (b) demonstrate to the Executive Director’s Office with sound medical evidence that the student does not possess physical or physiological advantages over genetic females of the same age group.
2. A transgender male, whose sex at birth was female but who self-identifies and lives as a male, who has not yet begun medically prescribed testosterone treatment for purposes of gender transition may participate on a boys’ team. Before a transgender male can participate in a boys’ sport or on a boys’ team, however, the student must submit medical evidence to the Executive Director’s Office that (a) the muscle mass developed as a result of testosterone treatment does not exceed the muscle mass that is typical of an adolescent genetic male, (b) the student has not started any hormone treatment (or that the treatment does not cause hormone levels to exceed normal levels), and (c) the student’s hormone levels are monitored by a licensed physician every three-to-six months.

If a transgender student-athlete is undergoing hormone treatment for gender transition, the treatment must be monitored by a physician, and the Executive Director’s Office must receive regular reports about the student-athlete’s eligibility according to OHSAA guidelines.

²⁴ LSC Interscholastic Athletics Members Brief available at: www.lsc.state.oh.us.

Should any questions arise about whether a transgender student-athlete's request to participate in a sports activity consistent with the student-athlete's gender identity is "bona fide," the student-athlete may seek review of eligibility for participation through an appeals procedure. The first level of review is before the Gender Identity Eligibility Committee. The student-athlete must provide the Committee with current transcripts and school registration information, documentation of the student's consistent gender identification, and any other pertinent documentation or information. The Committee must apply the same standard of review as utilized in all other eligibility appeals and must notify the parties in writing within 48 hours after reaching a decision.²⁵

Intercollegiate athletics transgender policies

On January 19, 2023, the NCAA updated their policy for athletic participation by transgender student-athletes. Per the NCAA Transgender Student-Athlete Participation Policy, the policy aligns with policies for the Olympics and

calls for transgender student-athlete participation for each sport to be determined by the policy for the national governing body of that sport. If there is no NGB policy for a sport, it would then be determined by the policy for that sport's international federation. If there is no international federation policy, it would be determined by policy criteria previously established by the International Olympic Committee. Sport-specific policies are subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors.²⁶

The policy began its three-year phase-in on August 1, 2022, and will be fully implemented on August 1, 2024.

Designation

The provisions of the bill regarding athletic competitions are designated as the "Save Women's Sports Act."²⁷

Delayed effective date

The bill's provisions take effect six months after it becomes effective.²⁸

²⁵ OHSAA Transgender Student Policy available at: www.ohsaa.org.

²⁶ [NCAA Transgender Student-Athlete Participation Policy](https://www.ncaa.org), available at: www.ncaa.org.

²⁷ Section 5.

²⁸ Section 3.

HISTORY

Action	Date
Introduced	02-27-23
Reported, H. Public Health Policy	06-14-23
Passed House (64-28)	06-21-23
