

118TH CONGRESS
1ST SESSION

S. 457

To establish a Federal tort against pediatric gender clinics and other entities pushing gender-transition procedures that cause bodily injury to children or harm the mental health of children.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a Federal tort against pediatric gender clinics and other entities pushing gender-transition procedures that cause bodily injury to children or harm the mental health of children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Our Kids
5 from Child Abuse Act”.

6 **SEC. 2. FEDERAL TORT FOR HARM TO CHILDREN CAUSED**
7 **BY GENDER-TRANSITION PROCEDURES.**

8 (a) **DEFINITIONS.**—In this section:

1 (1) GENDER TRANSITION PROCEDURE.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term “gender-transition
4 procedure” means—

5 (i) the prescription or administration
6 of gonadotropin-releasing hormone agonists
7 or any other puberty-blocking drugs for
8 the purpose of changing the body of an in-
9 dividual so that it conforms to the subjec-
10 tive sense of identity of the individual, in
11 the case such identity is at odds with the
12 individual’s biological sex of male or fe-
13 male;

14 (ii) the prescription or administration
15 of testosterone (when prescribed to a fe-
16 male) or estrogen (when prescribed to a
17 male) for the purpose of changing the body
18 of an individual so that it conforms to the
19 subjective sense of identity of the indi-
20 vidual, in the case such identity is at odds
21 with the individual’s biological sex of male
22 or female; or

23 (iii) a surgery to change the body of
24 an individual so that it conforms to the
25 subjective sense of identity of the indi-

1 vidual, in the case such identity is at odds
2 with the individual’s biological sex of male
3 or female.

4 (B) EXCEPTION.—The term “gender-tran-
5 sition procedure” does not include—

6 (i) an intervention described in sub-
7 paragraph (A) that is performed on—

8 (I) an individual with biological
9 sex characteristics that are inherently
10 ambiguous, such as those born with
11 46 XX chromosomes with virilization,
12 46 XY chromosomes with
13 undervirilization, or having both ovar-
14 ian and testicular tissue; or

15 (II) an individual with respect to
16 whom a physician has determined
17 through genetic or biochemical testing
18 that the individual does not have nor-
19 mal sex chromosome structure, sex
20 steroid hormone production, or sex
21 steroid hormone action, for a biologi-
22 cal male or biological female;

23 (ii) the treatment of any infection, in-
24 jury, disease, or disorder that has been
25 caused or exacerbated by the performance

1 of an intervention described in subpara-
2 graph (A) without regard to whether the
3 intervention was performed in accordance
4 with State or Federal law or whether the
5 intervention is covered by the private right
6 of action under subsection (c); or

7 (iii) any procedure undertaken be-
8 cause the individual suffers from a physical
9 disorder, physical injury, or physical illness
10 that would, as certified by a physician,
11 place the individual in imminent danger of
12 death or impairment of major bodily func-
13 tion unless the procedure is performed.

14 (2) HOSPITAL.—The term “hospital” has the
15 meaning given such term in section 1861(e) of the
16 Social Security Act (42 U.S.C. 1395x(e)).

17 (3) INSTITUTION OF HIGHER EDUCATION.—The
18 term “institution of higher education” has the
19 meaning given such term in section 101 of the High-
20 er Education Act of 1965 (20 U.S.C. 1001).

21 (4) MEDICAL PRACTITIONER.—The term “med-
22 ical practitioner” means a person who is licensed,
23 certified, or otherwise authorized by the laws of a
24 State to administer health care in the ordinary
25 course of the practice of the person’s profession.

1 (5) MINOR.—The term “minor” means an indi-
2 vidual who has not yet reached 18 years of age.

3 (6) PEDIATRIC GENDER CLINIC.—The term
4 “pediatric gender clinic” means a medical facility
5 that specializes in the diagnosis or treatment of gen-
6 der discordance and gender dysphoria in minors, in-
7 cluding medical interventions such as therapeutic di-
8 agnosis of gender dysphoria and performance of (or
9 referral for) gender-transition procedures on minors.

10 (b) LIABILITY.—The following individuals and enti-
11 ties shall be liable in accordance with this section to any
12 individual who suffers bodily injury or harm to mental
13 health (including any physical, psychological, emotional, or
14 physiological harm) that is attributable, in whole or in
15 part, to a gender-transition procedure performed on the
16 individual when the individual was a minor:

17 (1) A pediatric gender clinic where the gender-
18 transition procedure was provided.

19 (2) Any medical practitioner who administered
20 health care, at the time of the particular procedure,
21 at the pediatric gender clinic where the gender-tran-
22 sition procedure was provided.

23 (3) An institution of higher education that
24 hosts, operates, partners with, provides funding to,
25 or is otherwise affiliated with the pediatric gender

1 clinic where the gender-transition procedure was
2 provided.

3 (4) A hospital that hosts, operates, partners
4 with, provides funding to, or is otherwise affiliated
5 with the pediatric gender clinic where the gender-
6 transition procedure was provided.

7 (5) Any medical practitioner who performed the
8 gender-transition procedure on the individual.

9 (c) PRIVATE RIGHT OF ACTION.—An individual who
10 suffers bodily injury or harm to mental health that is at-
11 tributable, in whole or in part, to a gender-transition pro-
12 cedure provided to the individual when the individual was
13 a minor may, not later than 30 years after the date on
14 which the individual turns 18 years of age, bring a civil
15 action against an individual or entity described in sub-
16 section (b), in an appropriate district court of the United
17 States or a State court of competent jurisdiction for—

18 (1) compensatory damages;

19 (2) punitive damages; and

20 (3) attorney's fees and costs.

21 (d) AFFIRMATIVE DEFENSE.—It shall be an affirma-
22 tive defense to an action brought by or on behalf of an
23 individual upon whom a gender-transition procedure was
24 performed under subsection (c) that the pediatric gender
25 clinic or medical practitioner who performed the gender-

1 transition procedure on the individual, at all relevant
2 times, did not know and had no reason to know that the
3 individual in question was a minor.

4 **SEC. 3. PROHIBITION ON FUNDING.**

5 No Federal funds may be made available—

6 (1) to a pediatric gender clinic;

7 (2) to an institution of higher education or hos-
8 pital that hosts, operates, partners with, provides
9 funding to, or is otherwise affiliated with, a pediatric
10 gender clinic; or

11 (3) for any gender-transition procedure per-
12 formed on a minor.

13 **SEC. 4. EFFECTIVE DATE AND RETROACTIVE APPLICATION.**

14 This Act shall—

15 (1) take effect on the date of enactment of this
16 Act; and

17 (2) apply to any gender-transition procedure
18 that took place before, on, or after the effective date
19 under paragraph (1).

20 **SEC. 5. SEVERABILITY.**

21 If any provision of this Act, or the application of such
22 provision to any person or circumstance, is held to be un-
23 constitutional, the remainder of this Act, and the applica-

1 tion of the remaining provisions of this Act, to any person
2 or circumstance, shall not be affected.

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