

Medical transgender procedure ban initiative draft language:

Be it enacted by the People of the State of Colorado:

SECTION 1. Declaration of the People of Colorado. (1) The People find, declare, and determine that:

(a) They must take action to protect the health and welfare of minors;

(b) Medical procedures that alter a minor's hormonal balance, remove a minor's sex organs, or otherwise change a minor's physical appearance are harmful to a minor when these medical procedures are performed for the purpose of enabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex or treating purported discomfort or disease and illness, or suffering from adverse and sometimes fatal psychological consequences. Moreover, the People of Colorado find it likely that not all harmful effects associated with these types of medical procedures when performed on a minor are yet fully known, as many of these procedures, when performed on a minor for such purposes, are experimental in nature and not supported by high-quality, long-term medical studies;

(c) Medical procedures that alter a minor's hormonal balance, remove a minor's sex organs, or otherwise change a minor's physical appearance are not consistent with professional medical standards when the medical procedures are performed for the purpose of enabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex or treating purported discomfort or distress from a discordance between the minor's sex and asserted identity because a minor's discordance can be resolved by less invasive approaches that are likely to result in better outcomes for the minor; Puberty blockers and cross-sex hormones result in the sterilization of minors and have shown to have other harmful medical side effects including osteoporosis. Leuprolide (brand name Lupron) is a popular puberty blocker used off-label in gender transformation therapy to restrict androgen production in minors. Lupron is defined as a chemical castration drug and used to perform chemical castration of violent sex offenders.

(d) Medical procedures are being performed on and administered to minors in this state for such purposes, notwithstanding the risks and harms to the minors;

(e) The health authorities in Sweden, Finland, and the United Kingdom have recognized similar trends and, after conducting systematic reviews of the evidence, have found no evidence that the benefits of these procedures outweigh the risks and thus have placed severe restrictions on their use;

(f) Dr. John Money, one of the earliest advocates for performing or administering such medical procedures on minors and a founder of the Johns Hopkins Gender Identity Clinic, abused minors entrusted to his care, resulting in the suicides of David and Brian Reimer; Dr. Money's research has since been determined to be fraudulent and discredited.

(g) Such medical procedures are being performed on and administered to minors in this state with rapidly increasing frequency and supposed guidelines advocating for such treatment have changed substantially in recent years;

(h) Minors lack the maturity to fully understand and consent to the life-altering consequences of such procedures and many individuals have expressed regret for medical procedures that were

performed on or administered to them for such purposes when they were minors;

(i) Many of the same pharmaceutical companies that contributed to the opioid epidemic have sought to profit from the administration of drugs to or use of devices on minors for such purposes and have paid consulting fees to physicians who then advocate for the administration of drugs or use of devices for such purposes;

(j) Healthcare providers in this state have sought to perform such surgeries on minors because of the financial incentive associated with the surgeries, not necessarily because the surgeries are in a minor's best interest;

(k) Healthcare providers in this state have threatened employees for conscientiously objecting, for religious, moral, or ethical reasons, to performing or administering such medical procedures;

(l) Healthcare providers in this state have posted pictures of naked minors online to advertise such surgeries; and

(m) The integrity and public respect of the medical profession are significantly harmed by healthcare providers performing or administering such medical procedures on minors. This state has a legitimate, substantial, and compelling interest in protecting minors from physical and emotional harm. This state has a legitimate, substantial, and compelling interest in protecting the ability of minors to develop into adults who can create children of their own. This state has a legitimate, substantial, and compelling interest in promoting the dignity of minors. This state has a legitimate, substantial, and compelling interest in encouraging minors to appreciate their sex, particularly as they undergo puberty. This state has a legitimate, substantial, and compelling interest in protecting the integrity of the medical profession, including by prohibiting medical procedures that are harmful, unethical, immoral, experimental, or unsupported by high-quality or long-term studies, or that might encourage minors to become disdainful of their sex.

(2) Therefore, it is the purpose of this section to prohibit medical procedures from being administered to or performed on minors when the purpose of the medical procedure is to:

(a) Enable a minor to identify with, or live as, a purported identity inconsistent with the minor's sex; or

(b) Treat purported discomfort or distress from a discordance between the minor's sex and asserted identity.

SECTION 2. In Colorado Revised Statutes, **add** 12-30-123 as follows:

12-30-123 Definitions.

(1) AS USED IN THIS SECTION:

(a) "CONGENITAL DEFECT" MEANS A PHYSICAL OR CHEMICAL ABNORMALITY PRESENT IN A MINOR THAT IS INCONSISTENT WITH THE NORMAL DEVELOPMENT OF A HUMAN BEING OF THE MINOR'S SEX, INCLUDING ABNORMALITIES CAUSED BY A MEDICALLY VERIFIABLE DISORDER OF SEX DEVELOPMENT, BUT DOES NOT INCLUDE GENDER DYSPHORIA, GENDER IDENTITY DISORDER, GENDER INCONGRUENCE, OR ANY MENTAL CONDITION, DISORDER, DISABILITY, OR ABNORMALITY;

(b) "HEALTHCARE PROVIDER" MEANS A HEALTHCARE PROFESSIONAL, ESTABLISHMENT, OR FACILITY LICENSED, REGISTERED, CERTIFIED, OR PERMITTED PURSUANT TO THIS TITLE;

(c) "HORMONE" MEANS AN ANDROGEN OR ESTROGEN;

(e) "MEDICAL PROCEDURE" MEANS:

(I) SURGICALLY REMOVING, MODIFYING, ALTERING, OR ENTERING INTO TISSUES, CAVITIES, OR ORGANS OF A HUMAN BEING; OR

(II) PRESCRIBING, ADMINISTERING, OR DISPENSING ANY DRUG OR SUBSTANCE, INCLUDING BUT NOT LIMITED TO A PUBERTY BLOCKER OR HORMONE, TO A HUMAN BEING;

(f) "MINOR" MEANS AN INDIVIDUAL UNDER EIGHTEEN (18) YEARS OF AGE;

(g) "PARENT" MEANS ANY BIOLOGICAL, LEGAL, OR ADOPTIVE PARENT OR PARENTS OF THE MINOR OR ANY LEGAL GUARDIAN OF THE MINOR;

(h) "PUBERTY BLOCKER" MEANS A DRUG OR DEVICE THAT SUPPRESSES THE PRODUCTION OF HORMONES IN A MINOR'S BODY TO STOP, DELAY, OR SUPPRESS PUBERTAL DEVELOPMENT; AND

(i) "SEX" MEANS A PERSON'S IMMUTABLE CHARACTERISTICS OF THE REPRODUCTIVE SYSTEM THAT DEFINE THE INDIVIDUAL AS MALE OR FEMALE, AS DETERMINED BY ANATOMY AND GENETICS EXISTING AT THE TIME OF BIRTH.

(2) (a) A HEALTHCARE PROVIDER SHALL NOT PERFORM OR OFFER TO PERFORM ON A MINOR, OR ADMINISTER OR OFFER TO ADMINISTER TO A MINOR, A MEDICAL PROCEDURE IF THE PERFORMANCE OR ADMINISTRATION OF THE PROCEDURE IS FOR THE PURPOSE OF:

(I) ENABLING A MINOR TO IDENTIFY WITH, OR LIVE AS, A PURPORTED IDENTITY INCONSISTENT WITH THE MINOR'S SEX; OR

(II) TREATING PURPORTED DISCOMFORT OR DISTRESS FROM A DISCORDANCE BETWEEN THE MINOR'S SEX AND ASSERTED IDENTITY.

(b) SUBDIVISION (a)(1) APPLIES TO MEDICAL PROCEDURES THAT ARE:

(I) PERFORMED OR ADMINISTERED IN THIS STATE; OR

(II) PERFORMED OR ADMINISTERED ON A MINOR LOCATED IN THIS STATE, INCLUDING VIA TELEHEALTH, AS DEFINED IN SECTION 10-16-123.

(3) (a) IT IS NOT A VIOLATION OF THIS SECTION IF A HEALTHCARE PROVIDER PERFORMS, OR OFFERS TO PERFORM, A MEDICAL PROCEDURE ON OR ADMINISTERS, OR OFFERS TO ADMINISTER, A MEDICAL PROCEDURE TO A MINOR IF:

(I) THE PERFORMANCE OR ADMINISTRATION OF THE MEDICAL PROCEDURE IS TO TREAT A MINOR'S CONGENITAL DEFECT, PRECOCIOUS PUBERTY, DISEASE, OR PHYSICAL INJURY; OR

(II) THE PERFORMANCE OR ADMINISTRATION OF THE MEDICAL PROCEDURE ON THE MINOR BEGAN PRIOR TO AND CONCLUDED BY THE EFFECTIVE DATE OF THIS SECTION.

(b) FOR PURPOSES OF THIS SECTION, "DISEASE" DOES NOT INCLUDE GENDER DYSPHORIA, GENDER IDENTITY DISORDER, GENDER INCONGRUENCE, OR ANY MENTAL CONDITION, DISORDER, DISABILITY, OR ABNORMALITY.

(4) (a) IT IS NOT A DEFENSE TO ANY LEGAL LIABILITY INCURRED AS THE RESULT OF A VIOLATION OF THIS SECTION THAT THE MINOR, OR A PARENT OF THE MINOR, CONSENTED TO THE CONDUCT THAT CONSTITUTED THE VIOLATION.

(5) THIS SECTION SUPERSEDES ANY COMMON LAW RULE REGARDING A MINOR'S ABILITY TO CONSENT TO A MEDICAL PROCEDURE THAT IS PERFORMED OR ADMINISTERED FOR THE PURPOSE OF:

(a) ENABLING THE MINOR TO IDENTIFY WITH, OR LIVE AS, A PURPORTED IDENTITY INCONSISTENT WITH THE MINOR'S SEX; OR

(b) TREATING PURPORTED DISCOMFORT OR DISTRESS FROM A DISCORDANCE BETWEEN THE MINOR'S SEX AND ASSERTED IDENTITY.

(6) A PERSON SHALL NOT KNOWINGLY PROVIDE A HORMONE OR PUBERTY BLOCKER BY ANY MEANS TO A MINOR IF THE PROVISION OF THE HORMONE OR PUBERTY BLOCKER IS NOT IN COMPLIANCE WITH THIS SECTION.

(7) (a) A MINOR, OR THE PARENT OF A MINOR, INJURED AS A RESULT OF A VIOLATION OF THIS SECTION, MAY BRING A CIVIL CAUSE OF ACTION TO RECOVER COMPENSATORY DAMAGES, PUNITIVE DAMAGES, AND REASONABLE ATTORNEY'S FEES, COURT COSTS, AND EXPENSES, AND ANY OTHER RELIEF AVAILABLE UNDER LAW AGAINST ANY HEALTHCARE PROVIDER, PERSON, OR OTHER ENTITY ALLEGED TO HAVE VIOLATED THIS SECTION OR ANY HEALTHCARE PROVIDER, PERSON, OR OTHER ENTITY THAT SUPPORTED THE ALLEGED VIOLATION OF THIS SECTION. THE PARENT OF A MINOR INJURED AS A RESULT OF A VIOLATION OF THIS SECTION MAY BRING A CIVIL CAUSE OF ACTION AGAINST A HEALTHCARE PROVIDER OR ANOTHER PERSON EVEN IF THE PARENT CONSENTED TO THE CONDUCT THAT CONSTITUTED THE VIOLATION ON BEHALF OF THE MINOR.

(b) THE PARENT OR NEXT OF KIN OF A MINOR MAY BRING A WRONGFUL DEATH ACTION AGAINST A HEALTHCARE PROVIDER ALLEGED TO HAVE VIOLATED THIS SECTION IF THE INJURED MINOR IS DECEASED AND THE MINOR'S DEATH IS THE RESULT OF THE PHYSICAL OR EMOTIONAL HARM INFLICTED UPON THE MINOR BY THE VIOLATION.

(c) IF A COURT IN ANY CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION FINDS THAT A HEALTHCARE PROVIDER VIOLATED THIS SECTION, THEN THE COURT SHALL NOTIFY THE APPROPRIATE REGULATORY AUTHORITY AND THE ATTORNEY GENERAL. NOTIFICATION PURSUANT TO THIS SUBSECTION (C) SHALL BE MADE UPON THE JUDGMENT OF THE COURT BEING MADE FINAL.

(d) FOR PURPOSES OF THIS SECTION, COMPENSATORY DAMAGES MAY INCLUDE:

(I) REASONABLE ECONOMIC LOSSES CAUSED BY THE EMOTIONAL, MENTAL, OR PHYSICAL EFFECTS OF THE VIOLATION, INCLUDING, BUT NOT LIMITED TO:

(A) THE COST OF COUNSELING, HOSPITALIZATION, AND ANY OTHER MEDICAL EXPENSES CONNECTED WITH TREATING THE HARM CAUSED BY THE VIOLATION;

(B) ANY OUT-OF-POCKET COSTS THE MINOR OR PARENT PAID TO THE HEALTHCARE PROVIDER FOR THE PROHIBITED MEDICAL PROCEDURE; AND

(C) LOSS OF INCOME CAUSED BY THE VIOLATION; AND

(II) NONECONOMIC DAMAGES CAUSED BY THE VIOLATION, INCLUDING, BUT NOT LIMITED

TO, PSYCHOLOGICAL AND EMOTIONAL ANGUISH.

(e) NOTWITHSTANDING ANY LAW TO THE CONTRARY, AN ACTION COMMENCED UNDER THIS SECTION MUST BE BROUGHT:

(I) WITHIN THIRTY (30) YEARS FROM THE DATE THE MINOR REACHES EIGHTEEN (18) YEARS OF AGE; OR

(II) WITHIN TEN (10) YEARS OF THE MINOR'S DEATH IF THE MINOR DIES.

(f) THIS SUBSECTION IS DECLARED TO BE REMEDIAL IN NATURE, AND THIS SUBSECTION MUST BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSES.

(8) (a) THE ATTORNEY GENERAL SHALL ESTABLISH A PROCESS BY WHICH ANY INDIVIDUAL MAY CONFIDENTIALLY REPORT AN ALLEGED VIOLATION OF THIS SECTION.

(b) THE ATTORNEY GENERAL SHALL BRING AN ACTION AGAINST A HEALTHCARE PROVIDER OR ANY PERSON THAT VIOLATES THIS SECTION, WITHIN TWENTY (20) YEARS OF THE VIOLATION, TO ENJOIN FURTHER VIOLATIONS, TO DISGORGE ANY PROFITS RECEIVED DUE TO THE MEDICAL PROCEDURE, AND TO RECOVER A CIVIL PENALTY OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000) PER VIOLATION. EACH TIME A HEALTHCARE PROVIDER PERFORMS OR ADMINISTERS A MEDICAL PROCEDURE IN VIOLATION OF THIS SECTION IT CONSTITUTES A SEPARATE VIOLATION.

(c) A CIVIL PENALTY COLLECTED PURSUANT TO THIS SECTION MUST BE PAID INTO THE GENERAL FUND OF THIS STATE.

(d) THE ATTORNEY GENERAL IS ENTITLED TO REASONABLE ATTORNEY'S FEES, COURT COSTS, AND EXPENSES IF THE ATTORNEY GENERAL PREVAILS IN AN ACTION BROUGHT PURSUANT TO THIS SECTION.

(e) JURISDICTION FOR AN ACTION BROUGHT PURSUANT TO THIS SECTION IS IN THE COUNTY OR DISTRICT COURT IN THE COUNTY WHERE THE VIOLATION OCCURRED.

(9) A VIOLATION OF THIS SECTION CONSTITUTES A POTENTIAL THREAT TO PUBLIC HEALTH, SAFETY, AND WELFARE AND REQUIRES EMERGENCY ACTION BY AN ALLEGED VIOLATOR'S APPROPRIATE REGULATORY AUTHORITY. UPON RECEIVING NOTIFICATION PURSUANT TO THIS SECTION, OR UPON OTHERWISE BECOMING AWARE OF AN ALLEGED VIOLATION OF THIS SECTION, THE APPROPRIATE REGULATORY AUTHORITY SHALL PROCEED PURSUANT TO THIS TITLE, AS APPLICABLE.

(10) A MINOR UPON WHOM A MEDICAL PROCEDURE IS PERFORMED OR ADMINISTERED SHALL NOT BE HELD LIABLE FOR VIOLATING THIS SECTION.

(11) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THAT INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE DECLARED SEVERABLE.

SECTION 3. Effective date. This initiative takes effect if it is approved by the people at the next general election and becomes law, and, in such case, this takes effect on the date of the original declaration of the vote thereon by the governor.