

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 26**

As Agreed to April 6, 2023

**Brief\***

SB 26 would create the Kansas Child Mutilation Prevention Act (Act). The bill would allow an individual who had gender reassignment service performed as a child to bring a civil cause of action under the Act against the physician who performed such service. The bill would establish the statute of limitations for such cause of action, the medically verifiable disorders of sex development to which the Act would not apply, the relief that could be sought, and the time frame to which the Act would apply. The provisions of the Act would not apply if the child was born with a medically verifiable disorder of sex development, as defined in the bill.

The bill also would require the Kansas State Board of Healing Arts (Board) to revoke the license of a physician who performed a childhood gender reassignment service.

**Definitions**

The bill would define the following terms:

- “Childhood gender reassignment service” would mean performing, or causing to be performed, acts including, but not limited to, any of the following performed on a child under 18 years of age for the purpose of attempting to affirm the child’s perception of the child’s sex or gender, if that perception is inconsistent with the child’s sex:
  - A surgery that sterilizes or is intended to result in sterilization, including, but not limited to, castration, vasectomy, hysterectomy, oophorectomy, orchiectomy and penectomy;
  - A surgery that artificially constructs tissue with the appearance of genitalia, including, but not limited to, metoidioplasty, phalloplasty, and vaginoplasty;
  - A mastectomy;
  - Prescribing, dispensing, administering or otherwise supplying the following medications:
    - Puberty-blocking medication to delay, hinder, stop, or reverse normal puberty;
    - Supraphysiologic doses of testosterone to females; or

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- Supraphysiologic doses of estrogen to males; or
  - Removing any body part or tissue;
- “Physician” would mean a person licensed by the Board to practice medicine and surgery;
- “Sex” would mean the biological state of being female or male based on the individual’s sex organs, chromosomes, and endogenous hormone profiles; and
- “Supraphysiologic doses” would mean a pharmacologic dosage regimen that produces blood concentrations greater than the accepted range for a child’s age and sex.

***Medically Verifiable Disorder of Sex Development***

The Act would not apply if a child was born with a medically verifiable disorder of sex development, including, but not limited to:

- A child with external biological sex characteristics that are irresolvably ambiguous, such as a child born having 46,XX chromosomes with virilization, 46,XY chromosomes with undervirilization, or both ovarian and testicular tissue; or
- When a physician has otherwise diagnosed a disorder of sexual development, determined through genetic or biochemical testing, that the child does not have the normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female of the child’s age.

***Civil Cause of Action***

***Statute of Limitations***

The bill would allow a civil cause of action under the Act to be commenced no more than 3 years after the date the individual attains 18 years of age.

***Time Frame for Application of Act***

The Act would apply to:

- Any action commenced on or after July 1, 2023, including any action that would be barred by the period of limitation applicable prior to such date; and
- Any action commenced prior to July 1, 2023, and pending on such date.

***Available Relief***

The bill would provide that an individual who brings a civil cause of action under the Act could seek actual damages, exemplary or punitive damages, injunctive relief, and other

appropriate relief. The bill would require the court to award the prevailing plaintiff the cost of the suit including reasonable attorney fees.

### ***Physician License Revocation***

The bill would require the Board to revoke a physician's license upon a finding that the physician had performed a childhood gender reassignment service, as defined by the Act.

### **Conference Committee Action**

The second Conference Committee agreed to remove the contents of SB 26 pertaining to health maintenance organizations and Medicaid care organizations and insert the contents of SB 233, as passed by the Senate, pertaining to the Child Mutilation Prevention Act.

### **Background**

#### ***SB 233 (Child Mutilation Prevention Act)***

SB 233 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Thompson.

#### *Senate Committee on Public Health and Welfare*

In the Senate Committee hearing, **proponent** testimony was provided by Senator Thompson, two private citizens, two physicians, a member of the clergy, and a representative of MassResistance. The proponents generally stated the bill would protect minors from medical and chemical procedures used to change a child's gender. The proponents stated the decision to accede to gender reassignment services should be made only by the individuals on whom the services would be performed and who are at an age when they can take responsibility for and fully understand the risks and impact of such choices. Two proponents testified as to their negative experiences with gender reassignment services.

Written-only proponent testimony was provided by an endocrinologist, a representative of American Family Action of Kansas and Missouri, two attorneys, and 28 additional proponents.

**Opponent** testimony was provided by an advanced practice registered nurse, a physician, and representatives of the American Civil Liberties Union of Kansas, Kansas Chapter of the American Academy of Pediatrics, and Kansas Interfaith Action. The opponents generally stated the bill would negatively affect the lives of transgender youth and young adults, including directly causing an increase in suicide-related deaths; would prevent parents from protecting and caring for the health of their minor children and making decisions in partnership with medical providers without government infringement; and would cause physicians practicing within their scope of practice with informed consent from a patient, guardian, or both, to be fearful of losing their licenses. One proponent spoke about a positive experience with gender reassignment services.

Written-only opponent testimony was provided by Representative Woodard, a licensed clinical professional counselor, a representative of the University of Kansas School of Social Welfare, and more than 130 additional opponents.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on SB 233, the Board states the enactment of the bill could result in actionable complaints, which would increase the staff workload of the Board. The total fiscal effect cannot be estimated.

The Office of Judicial Administration (Office) states enactment of the bill could increase the number of cases filed in district court because it allows for a civil suit to be filed against a physician who performed a childhood gender reassignment service, which could result in more time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing these cases. The Office estimates enactment of the bill could result in the collection of docket fees assessed in those cases filed under the bill's provisions. According to the Office, a fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Kansas Child Mutilation Prevention Act; gender reassignment services; civil cause of action; statute of limitations; State Board of Healing Arts; physician licensure revocation

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