

# Senate Judiciary Committee

*Sophie Walsh 271-3469*

**HB 619-FN**, to require a person to attain the age of majority for genital gender reassignment surgery.

**Hearing Date:** April 25, 2024

**Time Opened:** 12:17 p.m.

**Time Closed:** 1:36 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, Abbas, Whitley and Chandley

**Members of the Committee Absent:** None

**Bill Analysis:** The bill prohibits gender reassignment surgery for minors under 18 years of age.

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**Sponsors:**

Rep. Roy

Rep. Spillane

Rep. McCarter

Rep. Verville

Rep. Notter

Rep. Seidel

Rep. A. Lekas

Rep. Love

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**Who supports the bill:** In total, 60 individuals signed-in in support of HB 619-FN. Full sign in sheets are available upon request by contacting the Legislative Aide, Matthew Schelzi ([matthew.schelzi@leg.state.nh.us](mailto:matthew.schelzi@leg.state.nh.us)).

**Who opposes the bill:** In total, 322 individuals signed-in in opposition of HB 619-FN. Full sign in sheets are available upon request by contacting the Legislative Aide, Matthew Schelzi ([matthew.schelzi@leg.state.nh.us](mailto:matthew.schelzi@leg.state.nh.us)).

**Who is neutral on the bill:** No one.

**Summary of testimony presented:**

Representative Erica Layon, Rockingham – District 13

- Representative Layon introduced the bill and stated that she is the Vice Chair of the Health, Human Services and Elderly Affairs Committee in the House. She explained that the committee amended the bill drastically because it initially addressed too many topics.
- She explained the bill was amended to only address genital gender reassignment surgeries on individuals under the age of eighteen.

- She stated that there is more data available on phalloplasties compared to vaginoplasties. She explained these are complex and invasive procedures that are historically performed on sexually mature people.
- She acknowledged that while there is a lack of data on these procedures now, that may not necessarily always be the case. She said the bill acknowledges that there is currently no data to support these procedures' safety and efficacy.
- She explained that informed consent requires known benefits and risks, and that is not possible if there is no data. Essentially, she said, one cannot give informed consent to this procedure unless they acknowledge that it is experimental.
- She said this bill has a large definitions section because there are a lot of reasons as to why someone may need genital surgery under the age of eighteen. She stated that physicians are not prohibited from performing reconstructive surgeries for malformation, malignancy, injury, or physical disease.
- She recognized that some argue the emotional aspect of this surgery is also a medical reason, but emphasized that this surgery is a serious procedure.
- She emphasized that this bill will not ban these procedures, but rather just require that individuals wait until they are eighteen years old.
- She said she supports people being their authentic selves, but allowing minors to have this surgery is a disservice to them and their parents.
- Senator Whitley acknowledged that medical professionals have expressed that it is dangerous to regulate the practice of medicine in statute. She asked why the practice of medicine should be legislated in this particular case. Representative Layon explained that medical societies generally adopt guidelines based upon various data sources, but the transgender medical field has not followed this same path. She said this is largely due to suicide risk and the need to offer necessary care, causing practice to move quicker than data. She emphasized this poses a risk towards minors.
- Senator Whitley inquired about why medical professionals in this area of medicine are not being trusted, and asked why politicians' interpretation of medical data is being legislated instead. Representative Layon acknowledged the prohibition on conversion therapy in NH, explaining that the law is more focused on homosexuality compared to the spectrum of gender identity. She emphasized that there are areas of medicine being legislated.
- Senator Whitley acknowledged that there is ample evidence that conversion therapy is detrimental and ineffective, but noted that there is no such evidence for the procedures being considered in this bill. She asked how these two are being conflated. Representative Layon said that if we trust medical societies to keep medical professionals in check, then all the data saying that conversion therapy is harmful would mean that it would not be happening in the state. Thus, the law would not be needed.

Representative Heath Howard, Strafford – District 4

- Representative Howard stated that he is opposed to this bill because it would create a contradictory system in dictating who could receive genital reassignment surgery.
- He noted this bill exempts intersex people and cited that nearly 100% of intersex people receive genital reassignment surgery when they are born. He said this bill allows for this to happen, and emphasized that this population cannot consent to that surgery.
- He explained he sees this as wrong because the bill would not allow the individuals who want to consent to this procedure to receive it, but would allow it for the individuals who cannot consent and must live with the consequences.

#### Representative Gerri Cannon, Strafford – District 12

- Representative Cannon stated that she is concerned about putting medical practice into legislation.
- She referenced a document from the World Professional Association for Transgender Health (WPATH), explaining that they monitor test results around the world and validate what information is useful.
- She explained that the WPATH document addresses many different areas, including adolescents. She said their standards did not recommend surgical procedures for adolescents, but did not block it off completely because there can be exceptions.
- She also noted that WPATH provided recommendations in regards to when therapy and hormone blockers are appropriate.

#### Representative Alicia Lekas, Hillsborough – District 38

- Representative Lekas said she believes it is important that people are totally and honestly informed before surgery is done.
- She explained that she has spoken with individuals who have had this surgery about the harm they experienced as a result of getting the procedure at a young age. She said these individuals were not given information about the harm prior to the procedure.
- She acknowledged the use of puberty blockers and questioned if their harmlessness is true.
- She emphasized that the individuals who she has spoken with were not ready for this procedure as adolescents. She explained one of them told her nobody should undergo the procedure because of the physical harm.

#### Jennifer Black

- Ms. Black stated that she is speaking in support of this bill.
- She described herself as a tomboy growing up. She said transitioning from her childhood into teenage years was difficult, but she learned it is okay to not fit a stereotype and be different.

- She said her heart aches for kids who are being told today that because they do not conform to a stereotype, there is something wrong with the body they were born in. She said this is leading to decisions which cannot be easily reversed, if at all.
- She said that children are immature and lack the capacity to understand what they are doing and how it will affect their future. She questioned why society is assuming that a child has the maturity and perspective to declare they are the opposite sex and have gender reassignment surgery.

#### Serena Varley

- Ms. Varley stated that she is speaking in support of this bill.
- She said children need to be supported as they grow in their understanding of the world as it is, not as they wish it to be. She said they need to learn how to accept both the world around them and who they are.
- She explained that she does not agree with gender reassignment, especially for children.
- She said children need to accept that they don't know everything, which is why they are not allowed to do certain things such as drink, smoke, or get tattoos.
- She stated that a child wishing to be a different gender needs help to accept themselves.

#### Chris Erchull, GLAD

- Mr. Erchull stated that he is speaking in opposition to this bill.
- He explained that the surgeries prohibited by this bill are exceedingly rare and never occur in NH.
- He cited a study published last year that examined the demographics of gender affirming surgeries performed across the country. He was told by the authors of the study that between 2016 and 2021, there were 101 genital surgeries on people under eighteen nationwide. He was also told that anything with a sample size less than ten could not be ethically disclosed, which is why he does not have data to present on individuals under seventeen.
- He said the most alarming provision of this bill prohibits doctors from making referrals and that it is unquestionably a violation of the right to free speech.
- He cited a decision from the U.S. Court of Appeals for the Eleventh Circuit, which reviewed a state law governing the speech of doctors in 2017 and found that "speech is speech and must be analyzed as such."
- He explained that when doctors write referrals, they are both exercising professional judgement and the right to express that judgment.
- Senator Whitley asked if Mr. Erchull could speak to regulating the practice of medicine in law, to which he explained that this law is different than many other medical regulatory laws because it is not based on a specific procedure. He emphasized that this bill targets a class of people and denies them access to

treatment and interferes with the rights of parents to work with medical professionals to make decisions that are best for their families.

- Senator Whitley asked if this law is telling parents what they can and cannot do, and if that is a violation of parental rights. Mr. Erchull confirmed that parental rights are implicated by this bill. He explained that courts have determined that interfering with the rights of parents to make medical decisions on behalf of their children is a violation of their rights as parents. Furthermore, there are strong protections under NH law for parents to access medical care for their children.
- Senator Gannon asked Mr. Erchull what age he believes a child has the capacity to make this decision. Mr. Erchull said that traditionally those decisions have been left to families and medical professionals to make based on the specific circumstances of the individual.

Sam Hawkins, NAMI NH

- Mr. Hawkins stated that NAMI NH has significant concerns regarding the prohibition on referrals, specifically as it relates to insurance coverage.
- He explained that if an individual requires medical care from a specialist or out-of-network provider, a referral is usually required to qualify for insurance coverage.
- He said that if this prohibition were put in place, should a family seek the care of an out-of-state provider, their insurance would likely deny coverage with no referral. This would expose the family to extreme out-of-pocket costs and create a barrier to accessing this care.

Michelle Cilley Foisy

- Ms. Foisy stated that she is speaking in opposition of this bill.
- She explained that last year she became aware of the severity of her seventeen year-old child's depression, and she later discovered they were experiencing gender dysphoria.
- She shared that last summer her child attempted to commit suicide, and while she is grateful that they are still here, she knows they would not be if it were not for the essential medical care they are receiving.
- She stated that this bill establishes governmental overreach by not allowing NH doctors to provide out-of-state referrals and blocking insurance from covering that care.
- She explained that gender affirming care is medically necessary and lifesaving at every age. She said the private decisions that are made for how it is given should be between patients and their families in consultation with their medical provider.

Alice Wade, 603 Equality

- Ms. Wade said she believes this bill, as introduced, was one of the worst anti-trans bills in the country. She said while the amended version has removed

some of the most problematic sections, the purpose remains to limit access to gender affirming care.

- She explained that she had a vaginoplasty last summer, and while she has had some complications, she is still incredibly happy that she has gotten to a place where she is comfortable in her own body.
- She said there are almost no vaginoplasty surgeons for transgender women in NH, and that she had to travel to D.C. for her procedure. She recognized that this bill bars out-of-state referrals and explained that it depletes all options for families.
- She said this bill goes against recent recommendations from WPATH and creates logistical issues. She explained that her local hospital did not understand the care she needed when recovering from surgery.
- She said NH needs to improve transgender healthcare and bills like this make things more challenging.
- She stated that if this bill passes, she predicts there will be bills in the near future to further restrict gender affirming care.

#### Linds Jakows, 603 Equality

- Mx. Jakows said they are speaking in opposition to this bill because it bans healthcare that is both life changing and saving for some transgender teenagers.
- They stated that transgender teenagers and their families should be able to seek the care they need out of state and expressed concern about the out-of-state referral prohibition in the bill.
- They stated that they know of only one instance of a seventeen year-old NH transgender teen receiving this surgery out of state. This individual had been on puberty blockers since the beginning of puberty and subsequently used hormones. All these steps were made after much discussion between her, her parents, and doctors.
- They acknowledged Medicaid and assumed that this bill would ban Medicaid recipients from accessing this surgery out-of-state. They cited that in 2017, the exclusion on Medicaid covering gender affirming care was removed to align with the non-discrimination provisions of the Affordable Care Act. They urged the committee to not reverse this progress.

#### Bethany Murabito

- Ms. Murabito spoke about her experience helping families make decisions about gender affirming care.
- She said that decisions about an individual's healthcare are the business of that individual; if they are under eighteen, then it is also the decision of their guardians in consultation with medical professionals.
- She emphasized that no individuals lacking professional medical experience should be making those decisions for others.

- She explained that she has helped families enroll in plans on the federal marketplace with under the Affordable Care Act, which has protections in place to prevent discrimination. She referred to section 1557 of the Affordable Care Act, which makes it unlawful to refuse access to healthcare for individuals based on discriminatory markers.
- She acknowledged that not everyone is seeking healthcare through public options, but emphasized that a lot of people do, and they would be negatively affected by this legislation.
- Senator Carson asked Ms. Murabito to submit her written testimony to the committee because she thinks it is important that they understand the Affordable Care Act in relation to this bill.

#### Beth Scaer

- Ms. Scaer stated that she is speaking in support of this bill.
- She explained that she has met and heard the stories of many people who have de-transitioned and regret the irreversible damage done to their bodies.
- Ms. Scaer quoted an individual named Sam's story from written testimony she submitted to the committee. This individual regrets their gender reassignment surgery and has still not recovered years later. They say the complications, maintenance, and risk of sepsis makes removal necessary. They specify that they had minimal complications during and after the procedure compared to others.
- Ms. Scaer cited a quote from Representative Cannon who wondered if this legislation on medical procedures would stand the test of time. Ms. Scaer asked if this procedure would stand the test of time.

#### Courtney Reed, ACLU NH

- Ms. Reed stated that she is speaking in opposition to this bill because it is an active state overreach in private medical decisions between patients, their providers, and their families.
- She said this bill is discriminatory because it singles out restrictions on, although rare, medically necessary care for transgender individuals
- She explained that gender affirming care is the only evidenced-based treatment for gender dysphoria, and it has support from every medical association in the country.
- She said restricting access to gender affirming care can produce tragic effects on transgender people, who are disproportionately at risk for anxiety, stress, substance abuse disorder, and suicide.
- She explained this legislation is specifically targeted at transgender individuals because it restricts this type of care, but carves out exceptions to access those same procedures for individuals with development disorders or cisgender individuals.

- She explained that there have been rulings from the circuit courts against similar bills. She cited a decision from the Eighth Circuit that deemed legislation banning gender affirming care as unconstitutional because it violates Fourteenth Amendment rights.
- She also cited another Eighth Circuit decision on referral bans, noting that they violate First Amendment rights by limiting what physicians can say and what minors and their parents could hear.
- She noted there are numerous other court decisions regarding similar pieces of legislation violating parental rights.

#### Emma Sevigny, New Futures

- Ms. Sevigny stated that she is speaking in opposition to this bill because it bans medically necessary healthcare for transgender individuals, specifically minors.
- She explained that when healthcare is restricted, minors who are unable to get that healthcare have higher rates of depression, self-harm, and suicidality. She said it is clear from data that rejecting a child's gender identity leaves them at an increased risk for such mental health outcomes because of the feelings of discrimination they have from that denial.
- She explained that transgender youth are not inherently at risk for higher levels of depression, suicidality, and self-harm; it is because they face increasing levels of discrimination. Thus, this bill contributes to that by denying the healthcare they need.
- Senator Abbas asked when gender reassignment surgery is medically necessary for a minor. Ms. Sevigny noted that she is not a medical provider, but said that is a good question for an individual patient to explore and discuss with their families and medical providers.

#### Ezra Brown

- Ms. Brown said this bill provides three reasons why minors should not have access to gender affirming surgeries, and she described them as nonsense.
- She acknowledged prior testimony concerning the lack of high-quality studies on this care. She said that if medicine was banned on the basis of there not being enough high-quality studies, then advancements in the field of medicine would never be made.
- She explained that someone she knew was able to have their life extended by a year because they utilized experimental medical care.
- She explained that the authors of the bill make a reference to a particular study claiming that gender affirming surgeries do not decrease suicidality. She acknowledged that while this study is not cited, she believed they are referring to *Suicide-Related Outcomes Following Gender-Affirming Treatments: A Review*. She said this study supports gender affirming surgeries, and said that if lawmakers cannot accurately read studies, that is evidence that they should not be writing these laws.



- She said the bill claims, with no evidence, that parents feel coerced into consenting to these surgeries because of the possibility it can prevent suicide. She asserted that weighing the risks of treatment and non-treatment is a practice of informed consent.

#### Fynn Stauber

- Mr. Stauber stated that he is speaking in opposition to the bill.
- He explained that he struggled to find basic gender affirming care throughout his transition. He advocated to be put on hormone blockers at thirteen, but was denied that care because one parent did not consent. He experienced negative mental health impacts as a result and attempted suicide before he began taking testosterone two years ago.
- He said that putting more limits on transgender youth trying to access care makes no sense to him as someone who has lived through the medical transition process.
- He said this bill makes exceptions for intersex newborns, infants, and youth to continue receiving genital surgery when it is often performed without informed consent, causes complications, and is not medically necessary.
- He asked the committee to speak to constituents about this issue and take feedback from people whose lives would be changed by this policy.

#### Laura Brigada

- Ms. Brigada said that parents should not be allowed to have their children's body parts removed if there is no medical, healing, or cultural reference.
- She stated that if an individual is under the age of eighteen, they should not be able to consent.

#### Dr. Keith Loud & Courtney Tanner, Dartmouth Health

- Ms. Tanner stated that as a healthcare institution, Dartmouth Health opposes this bill.
- She said they have grave concerns about this bill in totality, as they are opposed to legislating medicine.
- She explained that medicine is innovating and constantly evolving. She acknowledged that there are general rules and exceptions, but it is important to recognize that exceptions change. She acknowledged the exceptions listed in the bill and said that itself illustrates that it is dangerous to legislate medicine.
- She acknowledged the provision concerning referrals and explained that it explicitly prohibits license providers from providing referrals. She said this bill infringes on a provider's First Amendment right to free speech and emphasized that providers should have the protected ability to care for their patients and make referrals as part of that care.
- She acknowledged that this bill dictates access to care for individuals under eighteen, and said this would directly infringe on parental rights and

responsibilities. She expressed concern about the precedent this legislation would set.

- Senator Whitley asked if there are currently no other prohibitions on referrals in NH law, which Ms. Tanner confirmed. She explained that some patients have rare diseases and would be better treated out-of-state. She said that making the informed decision to seek specialty care, perhaps out-of-state, may give individuals access to opportunities like clinical trials.
- Dr. Loud acknowledged previous testimony concerned with the idea of legislating medicine and said this bill does not allow for the nuance needed in clinical practice.
- He acknowledged the issue of informed consent and explained that the notion of risks and benefits involved in informed consent is based on prior experience with the procedure. He said this is going to continue for the very rare cases of intersex children and other categories of indications, but also from adults who have the procedure.
- He explained that the knowledge base of the risks and benefits of these procedures can be addressed in the process of informed consent. He said this legislation is overreaching because it attempts to legislate which population and indications can seek care, not whether providers can perform informed consent.
- He acknowledged prior testimony regarding concerns about quality of gender affirming care in the state and said bills like this have a chilling effect on the ability to recruit and retain medical professionals.
- Senator Whitley asked if it is correct that being so specific in legislation is problematic because it interferes with providers' ability to treat patients considering constant medical advancements, which Dr. Loud confirmed. He said there is no way that legislation can keep up with the pace of medical knowledge and the changes in clinical practice.
- Senator Abbas asked if there are any circumstances that would create exceptions in which legislation should regulate medical practice. Dr. Loud explained that as a physician, he feels as though the practice of medicine is extremely regulated. He expressed concern about having medical practice legislated in statute because it is not as flexible as science.
- Senator Abbas asked if there are any circumstances that would be appropriate for the legislature specifically to regulate the practice of medicine. Dr. Loud said he believes the legislature does regulate the practice of medicine via the bodies that are statutorily governed, such as the Board of Medicine. He said he could not otherwise think of any circumstances at the moment where it would be appropriate.
- Senator Chandley asked Ms. Tanner if there are examples of how this legislation may impact people on a practical level, to which Ms. Tanner explained that while these practices are not being performed in NH, there are concerns about the chilling effect this bill may have and the message it will send to providers, patients, and families.

- Senator Gannon acknowledged current bills referring to medical assistance in dying, and asked if that would not be considered regulating medical care. Dr. Loud said he believes that it is better if the legislature is less involved in what transpires between patients, providers, and families.

#### Ava Hawkes, NH Medical Society

- Ms. Hawkes stated that the NH Medical Society has fundamental concerns with this legislation.
- She explained it is precedent-setting, as it attacks physician's freedom of speech by banning referrals for this type of healthcare. She explained that the physicians who provide gender affirming care know that it is well researched, medically necessary, and safe.
- She emphasized this would allow the legislature to determine medical necessity, and explained it is a slippery slope for the legislature to be determining medical necessity while also taking responsibility of parental choice.
- She said this legislation would fly in the face of parental rights and choice because parents of transgender children would have less choice than parents of non-transgender children.
- Senator Whitley asked if Ms. Hawkes was aware of any other places that define medical necessity in statute, to which Ms. Hawkes confirmed she was not.

#### Kathy Bizarro-Thunberg, NH Hospital Association

- Ms. Bizarro-Thunberg stated that she is speaking in opposition of the bill.
- She explained that the NH Hospital Association supports policies that advance health equity and inclusion for all individuals, but noted that this bill is contrary to those principles. She said it would be discriminatory towards often marginalized groups in society.
- She explained that this bill is an overreach by attempting to legislate the practice of medicine and expressed concern with the provisions of the bill prohibiting providers from giving referrals. She said this is a precedent that should be avoided.

#### Marcia Garber

- Ms. Garber explained that her son is transgender and had chest reconstructive surgery at seventeen years old. She said that the transition process was long for her son, and they trusted their healthcare professionals.
- She stated that this kind of healthcare should not be legislated.