

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SJK
ROS

1

2

Date 6/20/23

Report "A"

L D 535

(Filing No H-596)

3

JUDICIARY

4

Reproduced and distributed under the direction of the Clerk of the House

5

STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

131ST LEGISLATURE

8

FIRST SPECIAL SESSION

9

COMMITTEE AMENDMENT "A" to HP 340, L D 535, "An Act to Increase
10 Access to Necessary Medical Care for Certain Minors"

11

Amend the bill by striking out the title and substituting the following

12

**'An Act Regarding Consent for Gender-affirming Hormone Therapy for Certain
13 Minors'**

14

Amend the bill by striking out everything after the enacting clause and inserting the
15 following

16

'Sec. 1. 22 MRSA §1508 is enacted to read

17

§1508. Consent for gender-affirming hormone therapy

18

1. Definitions. As used in this section, unless the context otherwise indicates, the
19 following terms have the following meanings

20

A "Gender-affirming hormone therapy" means nonsurgical, medically necessary
21 health care that respects the gender identity of the patient, as experienced and defined
22 by the patient, that includes, but is not limited to, the following health care

23

(1) Interventions to suppress the development of endogenous secondary sex
24 characteristics,

25

(2) Interventions to align the patient's appearance or physical body with the
26 patient's gender identity, or

27

(3) Interventions to alleviate symptoms of clinically significant distress resulting
28 from gender dysphoria.

29

B "Gender dysphoria" means a clinical diagnosis of gender dysphoria as defined either
30 in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders
31 published by the American Psychiatric Association or in the Standards of Care for the
32 Health of Transgender and Gender Diverse People, Version 8 or subsequent version,
33 published by the World Professional Association for Transgender Health

COMMITTEE AMENDMENT

- 1 C "Health care professional" means a person qualified by training and experience to
- 2 provide and monitor the provision of gender-affirming hormone therapy who is
- 3 authorized by law to prescribe medication and who is
- 4 (1) Licensed by the Board of Licensure in Medicine under Title 32, chapter 48,
- 5 (2) Licensed by the Board of Osteopathic Licensure under Title 32, chapter 36, or
- 6 (3) Licensed by the State Board of Nursing as an advanced practice registered nurse
- 7 under Title 32, chapter 31
- 8 **2. Authority of minor to consent** A health care professional may provide gender-
- 9 affirming hormone therapy and follow-up care to a minor without obtaining the consent of
- 10 the parent or guardian of the minor only if
- 11 A The minor is at least 16 years of age,
- 12 B The minor has been diagnosed with gender dysphoria by a health care professional,
- 13 C In the judgment of the health care professional, the minor is experiencing harm
- 14 from or is expected to experience harm from not receiving gender-affirming hormone
- 15 therapy,
- 16 D The minor informs the health care professional that the minor has discussed the
- 17 minor's gender dysphoria with a parent or guardian of the minor and that parent or
- 18 guardian refused to support treatment of the minor's gender dysphoria, and
- 19 E The minor provides informed written consent to the receipt of gender-affirming
- 20 hormone therapy in accordance with the requirements of subsection 3, the health care
- 21 professional makes the written consent that is set forth in a writing containing the
- 22 information and statements required by subsection 3, paragraph B and that is signed by
- 23 the minor a part of the minor's health record, and the minor, under all the surrounding
- 24 circumstances, is mentally and physically competent to give consent
- 25 **3. Informed consent.** A minor who meets the requirements of subsection 2,
- 26 paragraphs A to D may provide informed written consent to gender-affirming hormone
- 27 therapy and follow-up care only in accordance with the requirements of this subsection
- 28 A A health care professional shall, in a manner that the health care professional
- 29 believes is not misleading and will be understood by the minor
- 30 (1) Explain that the information being given to the minor is not intended to coerce,
- 31 persuade or induce the minor to consent to gender-affirming hormone therapy,
- 32 (2) Explain that the minor may withdraw the decision to commence or to continue
- 33 to receive gender-affirming hormone therapy at any time either before the therapy
- 34 begins or during the course of the therapy,
- 35 (3) Clearly and fully explore with the minor the alternative choices available for
- 36 managing and treating gender dysphoria,
- 37 (4) Explain the physiological effects, benefits and possible consequences of
- 38 gender-affirming hormone therapy and follow-up care, including the physiological
- 39 effects, benefits and possible consequences of discontinuing the therapy,
- 40 (5) Discuss the possibility of involving the minor's parents or guardians in the
- 41 minor's decision making about gender-affirming hormone therapy and follow-up

1 care and explore whether the minor believes that parent or guardian involvement
 2 would be in the minor's best interests, and

3 (6) Provide an adequate opportunity for the minor to ask any questions concerning
 4 gender dysphoria, gender-affirming hormone therapy and follow-up care and
 5 provide the information the minor seeks or, if the health care professional cannot
 6 provide the information, explain where the minor can obtain the information

7 B After providing the information and counseling required by paragraph A, the health
 8 care professional shall have the minor sign and date a form stating

9 (1) The business address and telephone number of the health care professional who
 10 provided the information and counseling required by paragraph A,

11 (2) The minor has received information on gender-affirming hormone therapy and
 12 follow-up care, including the benefits and possible consequences of and
 13 alternatives to gender-affirming hormone therapy,

14 (3) The minor has received an explanation that the minor may withdraw consent to
 15 gender-affirming hormone therapy at any time, including after therapy begins,

16 (4) The alternatives for managing gender dysphoria have been clearly and fully
 17 explored with the minor,

18 (5) The minor has discussed with the health care professional the possibility of
 19 involving the minor's parents or guardians in the minor's decision making about
 20 gender-affirming hormone therapy and follow-up care. If the minor has chosen not
 21 to involve the minor's parents or guardians, the reasons for making that choice must
 22 be stated in writing on the form, and

23 (6) The minor has been given an adequate opportunity to ask questions and receive
 24 answers about gender dysphoria, gender-affirming hormone therapy and follow-up
 25 care

26 C The health care professional who provided the information and counseling required
 27 by paragraph A shall also sign and date the form signed by the minor under paragraph
 28 B. The health care professional shall retain a copy of the form in that health care
 29 professional's files and shall give the form to the minor. If the health care professional
 30 who provided the information and counseling required by paragraph A is not the health
 31 care professional who will provide gender-affirming hormone therapy to the minor, at
 32 the minor's request the health care professional shall transmit the form to the health
 33 care professional who will provide gender-affirming hormone therapy to the minor.

34 **4. Rebuttable presumption of validity.** A written consent of a minor who meets the
 35 requirements of subsection 2 that is set forth in a writing containing the information and
 36 statements required by subsection 3, paragraph B and that is signed by the minor is
 37 presumed to be a valid, informed consent to treatment for gender-affirming hormone
 38 therapy and bars an action by a parent or guardian of the minor on the grounds of battery,
 39 malpractice or any other claim for providing gender-affirming hormone therapy without
 40 consent from a parent or guardian. The presumption of validity established in this
 41 subsection may be rebutted only by evidence that the minor's consent was obtained through
 42 fraud, deception or misrepresentation of material fact.

1 5. Disallowance of recovery. Recovery is not allowed against a health care
2 professional upon the grounds that gender-affirming hormone therapy of a minor who
3 meets the requirements of subsection 2 was rendered without the informed consent of the
4 minor when

5 A The health care professional, in obtaining the minor's consent, complied with the
6 terms of this section and the standards of care among members of the same health care
7 profession with similar training and experience situated in the same or similar
8 communities, or

9 B The health care professional received and acted in good faith on the informed written
10 consent to gender-affirming hormone therapy given by the minor to another health care
11 professional that contains the information and statements required by subsection 3,
12 paragraph B

13 6. Nonseverability. In the event that any portion of subsections 1 to 5 is held invalid,
14 it is the intent of the Legislature that this entire section, other than subsection 7, is invalid.

15 7. Authority of parent to consent unaffected. This section does not affect the legal
16 authority of a parent or guardian to consent to gender-affirming hormone therapy for a
17 minor in accordance with established standards of care '

18 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
19 number to read consecutively

20 **SUMMARY**

21 This amendment, which is the majority report of the committee, replaces the bill, which
22 is a concept draft. The amendment establishes the process by which a minor who is
23 mentally and physically competent to give consent may consent to gender-affirming
24 hormone therapy and follow-up care if the minor is at least 16 years of age, has been
25 diagnosed with gender dysphoria, is experiencing or expected to experience harm from not
26 receiving gender-affirming hormone therapy, has discussed the gender dysphoria diagnosis
27 with the minor's parent or guardian but that parent or guardian refuses to support treatment
28 of the gender dysphoria and receives certain detailed information and counseling from a
29 health care professional prior to providing informed written consent. Under the
30 amendment, only a person qualified by training and experience to provide and monitor the
31 provision of gender-affirming hormone therapy who is authorized by law to prescribe
32 medication and who is licensed by the Board of Licensure in Medicine, the Board of
33 Osteopathic Licensure or the State Board of Nursing may obtain the minor's informed
34 written consent to and provide gender-affirming hormone therapy to the minor. The
35 amendment does not restrict the authority of a parent or guardian to consent to gender-
36 affirming hormone therapy for a minor in accordance with established standards of care.

COMMITTEE AMENDMENT