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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 513  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Hood and Dean

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### SUMMARY

- Prohibits a mental health professional from purposely attempting to change, reinforce, or affirm a minor's gender identity or perception of sexual attraction or behaviors by performing or engaging in certain procedures or activities.
- Requires anyone who knows or has reason to suspect that a minor has been subjected to a prohibited procedure or activity to report that knowledge or reasonable cause to a public children services agency or peace officer.
- Establishes criminal penalties for a mental health professional who violates the bill's provisions as well as a civil cause of action against the professional.
- Prohibits a government entity from prohibiting a mental health professional from providing sexuality or identity counseling.
- Names the act the "Vulnerable Child Protection Act."

### DETAILED ANALYSIS

#### Vulnerable Child Protection Act

H.B. 513 prohibits a mental health professional from purposely attempting to change, reinforce, or affirm (1) a minor's perception of the minor's own sexual attraction or behaviors or (2) a minor's gender identity when that identity is inconsistent with the minor's biological sex by performing or engaging in certain procedures or activities (see "**Prohibited procedures and activities**" below).<sup>1</sup>

<sup>1</sup> R.C. 5128.03(A) and (B).

## **Mental health professional defined**

For purposes of the bill, a mental health professional means any of the following individuals licensed to practice in Ohio: a certified nurse practitioner, clinical nurse specialist, physician assistant, physician, psychologist, licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, social work assistant, independent marriage and family therapist, or marriage and family therapist.<sup>2</sup>

## **Prohibited procedures and activities**

The procedures the bill generally prohibits a mental health professional from performing on a minor include any of the following:

- Castration (the surgical excision of the testes);
- Vasectomy (a medical sterilization procedure for a biological male);
- Hysterectomy (the surgical removal of the uterus);
- Oophorectomy (the surgical removal of one or both ovaries);
- Metoidioplasty (the surgical creation of a penis using existing genital tissue);
- Orchiectomy (the surgical removal of one or both testes);
- Penectomy (the surgical removal of all or part of the penis);
- Phalloplasty (a surgical procedure where a penis is created, which may include a variety of procedures, including removal of the vagina, creation of the penis, lengthening the urethra, creation of the scrotum, and placing erectile and testicular implants);
- Urethroplasty (the surgical reconstruction or replacement of the urethra);
- Vaginoplasty (a surgery to repair the vagina or create a vagina);
- Mastectomy (the surgical removal of one or both breasts);
- Lobotomy (a surgery to sever nerve fibers connecting the brain's frontal lobes to the thalamus);
- A surgery to remove a healthy organ or body part.<sup>3</sup>

The activities the bill generally prohibits a mental health professional from engaging in for a minor include any of the following:

- Prescribing, administering, or personally furnishing a drug to stop or delay puberty;

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<sup>2</sup> R.C. 5128.01(C).

<sup>3</sup> R.C. 5128.03(A).

- Prescribing, administering, or personally furnishing testosterone or estrogen-suppressing drugs to a minor female;
- Prescribing, administering, or personally furnishing estrogen or testosterone-suppressing drugs to a minor male;
- Subjecting genitals to an electric current;
- Penetrating the minor's fingers with needles;
- Restraining and placing ice on the minor's hands;
- Wrapping the minor's hands in heat coils;
- Subjecting the minor to an ice bath;
- Injecting drugs in the minor to induce vomiting;
- Restraining the minor with ties or harnesses;
- Inflicting physical pain or suffering.<sup>4</sup>

## **Exceptions**

The bill specifies that its prohibitions do not apply to a mental health professional when the minor has (1) a medically verifiable genetic disorder of sex development or (2) abnormal sex chromosome structure diagnosed by a physician after genetic testing.<sup>5</sup>

## **Enforcement**

### **Child abuse reporting**

The bill requires anyone who knows, or has reasonable cause to suspect, that a minor has been subjected to a prohibited procedure or activity to make a report of that knowledge or reasonable cause to suspect to a public children services agency or peace officer.<sup>6</sup> It also requires the report to be made in the same manner as child abuse reporting required under current law and for the receiving agency or officer to treat the report in the same manner as under existing law.<sup>7</sup>

### **Criminal penalties**

The bill establishes criminal penalties for a mental health professional who violates the bill's provisions. In the case of a professional who purposely attempts to change, reinforce, or affirm a minor's perception of the minor's own sexual attraction or behaviors or gender identity

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<sup>4</sup> R.C. 5128.03(B).

<sup>5</sup> R.C. 5128.03(C).

<sup>6</sup> R.C. 2151.63.

<sup>7</sup> R.C. 2151.421, not in the bill.

by performing a prohibited procedure, the professional is guilty of a third degree felony<sup>8</sup> and subject to a prison term of 9, 12, 18, 24, 30, or 36 months or a fine of not more than \$10,000.<sup>9</sup>

With respect to a mental health professional who engages in prohibited activities with the purpose of attempting to change, reinforce, or affirm a minor's perception of the minor's own sexual attraction or behaviors or gender identity, the professional is guilty of a misdemeanor and subject to a jail term not to exceed one year.<sup>10</sup>

Law unchanged by the bill provides that a person acts purposely when it is the person's specific intention to cause a certain result or, when the offense prohibits conduct of a certain nature, regardless of what the person intends to accomplish, it is the person's specific intention to engage in that conduct.<sup>11</sup>

### **Notice to licensing board or agency**

In the event a mental health professional is indicted or charged, the prosecuting attorney must send written notice to the professional's regulatory or licensing board or agency.<sup>12</sup> The bill specifies that the failure of the prosecuting attorney to give notice as required by the bill does not give rise to a claim for damages against the prosecuting attorney or county or constitute grounds for declaring a mistrial or new trial, setting aside a conviction, or granting post-conviction relief.<sup>13</sup> And if a mental health professional is convicted of or pleads guilty to a violation, the court must transmit a certified copy of the judgment entry to the professional's regulatory or licensing board or agency.<sup>14</sup>

### **Civil liability**

Under the bill, a mental health client or patient harmed by a mental health professional who performed a prohibited procedure or engaged in a prohibited activity with the purpose of attempting to change, reinforce, or affirm a minor's gender identity or perception of sexual attraction or behaviors may file a civil action against the professional. (The client's or patient's representative may also bring suit.) Such an action must be brought not later than 20 years after the date of discovery of the violation.<sup>15</sup>

An individual who prevails in an action must receive both of the following from the mental health professional:

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<sup>8</sup> R.C. 5128.99(A).

<sup>9</sup> R.C. 2929.14 and 2929.18, not in the bill.

<sup>10</sup> R.C. 5128.99(B).

<sup>11</sup> R.C. 2901.22(A), not in the bill.

<sup>12</sup> R.C. 5128.04.

<sup>13</sup> R.C. 5128.05.

<sup>14</sup> R.C. 5128.06.

<sup>15</sup> R.C. 5128.03(D)(1).

- Compensatory and exemplary damages in an amount determined by the trier of fact;
- Court costs and reasonable attorney's fees.<sup>16</sup>

## Sexuality or identity counseling

Under H.B. 513, a government entity, including the Ohio Department of Mental Health and Addiction Services or a professional or occupational licensing board, must not prohibit either of the following:

- A mental health professional from providing sexuality or identity counseling;
- A parent, guardian, or custodian from consenting to or withholding consent to sexuality or identity counseling for a minor.<sup>17</sup>

The bill defines sexuality or identity counseling to mean any type of counseling or therapy provided by a mental health professional to a mental health client or patient that is intended to aid the client or patient in objectives related to sexuality or identity, including attractions, behaviors, self-concept, and emotional issues.<sup>18</sup>

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## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 02-19-20 |

H0513-I-133/ec

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<sup>16</sup> R.C. 5128.03(D)(2).

<sup>17</sup> R.C. 5128.02.

<sup>18</sup> R.C. 5128.01(E).