

State Bans on Gender-Affirming Care: Current Legal Landscape and Recommendations for Clinicians and Researchers

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State Senator Megan Hunt addressed the Nebraska legislature regarding the state's proposed ban on gender-affirming care following another senator's three-week filibuster (Wendling, 2023). For Senator Hunt, the proposed ban was personal: her son had recently come out as transgender. "This is my life and this is my reality, and all of you know me . . . When my son came out to me, the challenges that I felt emotionally around that were private . . . but I was so happy to learn that I had a son."

Though Senator Hunt and her family will be intimately affected if Nebraska passes the proposed legislation, state policies and bans on gender-affirming care for transgender and gender diverse youth will have broader impacts. This Legal Update will describe current state policies addressing gender-affirming care for youth and the legal challenges to these policies. The Legal Update will also briefly summarize research and professional organizations' position statements regarding these policies, before exploring how these policies will affect psychologists.

State Legislation on Gender-Affirming Care for Youth

Nebraska joins a growing cohort of states who have passed or are attempting to pass state legislation regulating or banning gender-affirming care. According to the Human Rights Campaign (HRC), 18 states have current laws or policies that ban gender-affirming care for transgender and gender diverse youth, and an additional 12 are considering such state action (HRC, 2023). The individual laws vary in how they define gender-affirming care and the penalties they create; for example, Florida's SB 254 created a felony punishable by up to five years in prison for physicians who provides "sex-reassignment prescriptions and procedures" to a patient younger than 18 years of age and allows the state to take temporary emergency custody over a youth who receives this type of care (Florida Statutes § 456.52).

Other states focused on civil sanctions for medical practitioners. Nebraska's pending "Let Them Grow Act" prohibits health care practitioners from performing gender altering procedures on youth under the age of 19 or referring youth for such procedures and subjects practitioners to disciplinary proceedings and potential civil penalties. The law also prohibits using state funds to pay for such procedures and requires special informed consent when practitioners provide this care to adults. Texas Senate Bill 14 similarly requires the state to revoke doctors' medical licenses if they provide hormone therapy, puberty blockers, or surgery to transgender youth and prohibits the use of state funds for such care.

Almost as quickly as states pass this legislation, groups such as Lambda Legal and the American Civil Liberties Union raise legal challenges. These

challenges frequently claim the legislation infringes on rights guaranteed by the state and federal constitutions. For example, a law suit is pending challenging Montana's SB 99, which requires a one-year suspension of a practitioner's medical license if the practitioner provides gender-affirming care to a minor and subjects parents to civil penalties, claiming the law violates the Montana state constitution's rights to equal protection, to direct upbringing of children, to privacy, to seek health care, and to dignity (*van Garderen v. Montana*, 2023).

Legislation has resulted in several judges blocking states from enforcing their policies. A federal judge issued a preliminary injunction to stop Alabama from enforcing part of its Vulnerable Child Protection Act that created a felony punishable by up to 10 years in prison for prescribing or administering gender-affirming medication to minors (*Boe v. Marshall*, 2022). The case is currently on appeal before the Eleventh Circuit. The Eighth Circuit upheld an Arkansas judge's preliminary injunction of a state law prohibiting health care professionals from providing or referring individuals under eighteen years of age for gender transition procedures (*Brandt v. Rutledge*, 2022). The district court had found the plaintiffs were likely to prevail on their claim that the law violated their rights to equal protection. And a Texas court blocked the state from enforcing part of Governor Abbott's directive to the state's Department of Family and Protective Services ordering the agency to investigate parents who authorize gender-affirming care of their minor children for child abuse (*PFLAG v. Abbott*, 2022).

Psychological Effects of Gender-Affirming Care

Proponents of state bans on gender-affirming care point to concerns about youth being easily manipulated in their decisions and the long-term effects of receiving this care at a young age (Burga, 2023). But psychological research generally supports that gender-affirming care provides a mental health benefit to youth. Transgender youth are at higher risk for mood disorders and suicidal ideation, but treatment of transgender youth with puberty blocking medication decreased depression and improved general mental health function (de Vries, Steensma, Doreeleijers, & Cohen-Kettenis, 2011). Transgender young adults who were treated with puberty blockers as adolescents report lower odds of suicidal ideation than do young adults who did not receive such treatment (Turban, King, Carsewell, & Keuroghlian, 2020), and gender-affirming hormone treatment is associated with lower odds of depression (Green, DeChants, Price, & Davis, 2022).

Professional organizations for psychologists, including the American Psychological Association's Division 54 Society for Pediatric Psychology and the American Psychiatric Association, have released position statements supporting access to gender affirming treatment for trans and gender diverse youth and opposing state attempts to prevent practitioners from providing this care (APA, 2020). The APA's Guidelines for Psychological Practice with Transgender and Gender Nonconforming People (which a taskforce is currently working on revising) suggest that psychologists should "recognize that [transgender and gender

nonconforming] people are more likely to experience positive life outcomes when they receive social support or trans-affirmative care” (APA, 2015, p. 846).

Recommendations for Psychologists

The changing legal landscape and differences among the states can create uncertainty for psychologists. Clinicians are perhaps the most directly affected, as individuals providing mental health treatment may be included in statute’s definition of “health care provider.” The World Professional Association for Transgender Health recommends transgender and gender diverse youth undergo a comprehensive psychological evaluation before receiving hormone therapy or puberty blockers, so clinicians do play an active role in this treatment (Coleman et al., 2022).

Some states such as Nebraska and Arkansas seek to prohibit even referring youth to a provider for gender-affirming care, so clinicians must be aware of state laws that could expose them to liability for discussing potential treatments with their clients and referring them to other providers. At the same time, clinicians must be aware of the mental distress that state laws prohibiting access to gender-affirming care could cause their clients.

Researchers are also impacted by these state laws. Transgender and gender diverse youth in states with these laws may be especially uncomfortable disclosing their gender identity in surveys even where anonymity is guaranteed, due to the fear of stigma or repercussions. But this area is in need of further research on the effects of such bans on gender-affirming care. While there is some research showing the mental health benefits of gender-affirming care, more is needed to provide a comprehensive view of how youth respond to this treatment. And research showing how state bans themselves impact youth’s mental health and self-image could help guide state legislatures in drafting and voting on these laws. Legislation and policies in this area are often controversial in a community, garnering significant media attention and public debate. Research can provide valuable insight to how the public nature of this debate and the associated stigma affect the mental health of transgender and gender diverse youth.

Psychologists can play a role in the passing of this legislation as well. Many states welcome public comments on proposed legislation. Psychologists with expertise in this area can testify before state legislatures on their understanding of the research on effects of gender-affirming care. The APA’s website has a list of resources on LGBTQ+ policy issues (<https://www.apa.org/topics/lgbtq/policy-issues>), including criminalizing gender-affirming care, that can be of use to psychologists interested in advocacy.

The legal landscape of gender-affirming care is changing almost constantly. While some proposed legislation and policies may receive significant media attention, the current status of legal challenges to individual state bans are difficult to keep track of. Psychologists can provide valuable insight to states considering these policies and must be aware of how the policies will affect their work.

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