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TRANS ADULTS DESERVE A RIGHT TO SUE FOR GENDER-AFFIRMING CARE DENIED AT YOUTH

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INTRODUCTION

Will you ever preserve?
Will you ever exhume?
Will you watch petals
Shed from flowers in bloom?
Nothing can live up to promise.
Nothing can stop its narrative.
Nothing in place of catalysts.
And you'll never be pure again.

- Crystal Castles, "Transgender"[1]

Autumn[2] was a 19-year-old transgender woman who had just completed her first year of college. Like many college students, she still relied on her parents for support. She had just come out to her parents as transgender, but they refused to accept her because they were uninformed and biased under the pressure of overwhelming societal prejudice.[3] Despite Autumn's parents' refusal to affirm her identity, they allowed her to continue living with them.

When Autumn outgrew her pediatrician and went to her family's doctor for the first time, the receptionist asked her to complete an intake form. To her surprise, she saw that the form included "transgender" as one of the options for "sex." As a result, she believed that the doctor was transgender-friendly and, most importantly, embraced the medical consensus about transgender healthcare.[4] Without much experience or edu-

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[1] CRYSTAL CASTLES, *Transgender*, *on* III (Polydor Ltd. 2012). In this author's experience, some transgender people interpret the song to depict the perceived inevitability and permanence of a misaligned puberty.

[2] This account is based on true events, but details have been altered to preserve anonymity.

[3] *See, e.g.*, DISCLOSURE: TRANS LIVES ON SCREEN (Netflix 2020) (discussing the history of transgender people's portrayal in film and television, highlighting how they are presented as predatory, repulsive, or tragic figures, and as the punchlines of jokes); *see also* Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 SOC. SCI. & MED. 222, 222 (2015) ("This review demonstrates that transgender stigma limits opportunities and access to resources in a number of critical domains (e.g., employment, healthcare), persistently affecting the physical and mental health of transgender people.").

[4] *See Analysis Finds Strong Consensus on Effectiveness of Gender Transition Treatment*, CORNELL CHRON. (Apr. 9, 2018) [hereinafter *Gender Transition Treatment*], https://perma.cc/2ERQ-RA35 ("93 percent of the studies found positive effects from gender transition, indicating 'a robust international consensus in the peer-reviewed literature that gender transition, including medical treatments such as hormone therapy and surgeries, improves the overall well-being of transgender individuals.'"); *see also* "What We Know" Project, *What Does the Scholarly Research Say About the Effect of Gender Transition on*

cation, Autumn felt like she had been validated by an official institution for the very first time—they recognized that transgender people exist and should be accommodated.

Autumn thought the doctor might be an ally, and that she could trust the doctor enough to tell him about her gender dysphoria[5] and her need to transition.[6] The doctor assured her that she was lucky to live in the 21st century in which LGBTQ+ people are accepted.[7] He then asked her if he could speak with her mother privately. Assured and hopeful, Autumn agreed, believing that he would advocate for her and educate her mother on the medical consensus of being transgender—that being transgender is "real," and that transgender people should receive gender-affirming care.[8]

Transgender Well-Being?, CORNELL U. [hereinafter "What We Know" Project], https://perma.cc/GSR5-FPGB (last visited Apr. 4, 2021).

[5] Yarbrough et al. state as follows:

> Gender dysphoria in adolescents and adults [is] a marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two or more of the following: [1] A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics . . . [2] A strong desire to be rid of one's primary and/or secondary sex characteristics . . . [3] A strong desire for the primary and/or secondary sex characteristics of the other gender [4] A strong desire to be of the other gender . . . [5] A strong desire to be treated as the other gender . . . [6] A strong conviction that one has the typical feelings and reactions of the other gender . . . .

Eric Yarbrough et al., *Gender Dysphoria Diagnosis*, AM. PSYCHIATRIC ASS'N (citing *Diagnostic and Statistical Manual of Mental Disorders*, AM. PSYCHIATRIC ASS'N (5th ed. 2013)), https://perma.cc/UJK3-SJGM (last visited Apr. 17, 2021) (recognizing separate criteria for diagnosing children, adolescents, and adults).

[6] In the context of transgender issues, the term "transition" can be used to refer to different and possibly simultaneous processes, including social transition and medical transition. In a social transition, a person transitions from one social role to another for the purpose of aligning their role with their gender identity. Medical transition involves realigning the body with one's gender identity through medical means, e.g., through hormone therapy and/or surgery. The author uses the term "transition" as shorthand for "medical transition."

[7] *But see* MOVEMENT ADVANCEMENT PROJECT, *Snapshot: LGBTQ Equality by State*, https://perma.cc/8VK5-ZGPA (last updated May 1, 2021), for ratings that show how transgender people are far from accepted in huge swaths of the country: 27 U.S. states and territories have a low or negative overall policy tally and either lack essential transgender recognition in areas like anti-discrimination law and identity documents or include policies harmful to transgender people, such as religious exemptions to transgender protections, or both.

[8] *See generally Transgender Health,* CALLEN-LORDE, https://perma.cc/XZR5-DT6M (last visited June 20, 2021) (discussing examples of gender-affirming care including primary care, chest/breast health, hormone therapy, voice and communication therapy, HIV/AIDS treatment, and harm reduction counseling); *see also* Gender & Sexuality Service, NYU LANGONE HEALTH, https://perma.cc/3D6H-GJ92 (last visited June 20, 2021) (describing gender-affirming care for transgender, gender-nonconforming, and questioning children in-

To Autumn's dismay, she later discovered that the doctor told her mother it was just a phase. This encouraged her mother to deny Autumn's gender and push her daughter "back into the closet," where she remained an "egg"[9] for seven years until she could rediscover and educate herself on transgender healthcare. When Autumn turned 25, she finally began hormone replacement therapy ("HRT") after already having completed her male puberty.[10]

For many transgender people, especially transgender youth, transitioning is a race against time to halt the unwanted bodily changes that result from being subjected to a misaligned puberty.[11] These changes are likely to make transitioning more difficult and possibly more expensive in the future.[12] When medical professionals fail to support transgender youth, whether due to discriminatory animus[13] or a wanton disregard for science that supports gender transition as a valid medical treatment,[14] transgender youth are forced to delay their transitions. This complicates

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cluding family support, comprehensive evaluations, mental health support, puberty suppression, hormone therapy, and gender-affirming surgery).

[9] "Egg" is an internet meme term that refers to people who are in denial about being transgender or have not realized that they are transgender. Once they realize that they are trans, they are said to be "cracked." This term is often considered analogous to "being in the closet." The term can be harmful when it is applied to gender non-conforming people who are not transgender, or to transgender people who are not ready to be "out."

[10] *Puberty Blockers for Youth*, TRANS CARE BC, https://perma.cc/NM2T-89KM (last visited Apr. 17, 2021) (explaining that puberty blockers stop the development of secondary sex characteristics: For those assigned male at birth, such development includes the growth of facial and body hair, growth of an Adam's apple, deepening of the voice, broadening of the shoulders, and growth of gonads, while for those assigned female at birth, they include the broadening of the hips and breast tissue development).

[11] *See id.*

[12] *See id.*; Smith describes witnessing transitions:

> I love seeing before and after transition photos of the young. Seeing an unhappy teen transform into a radiant man or woman is truly inspirational. I recently saw a video of a man going out topless for the first time at the park, after top surgery. He was so happy I almost cried for him. Sadly, reality for the older body is somewhat different.

Sammi Smith, *Transitioning in Older Age*, GENDERGP (Mar. 5, 2020), https://perma.cc/P3XV-XZKU; Caroline Miller, *Transgender Kids and Gender Dysphoria*, CHILD MIND INST. (internal quotation marks omitted), https://perma.cc/4ZB4-FZKW (last visited May 15, 2021) ("Once you start going through puberty, the complications from any medical or surgical transitions down the road may be higher . . . and the time living with that dysphoria or that distress is longer, so the risks are higher.").

[13] *New Report Reveals Rampant Discrimination Against Transgender People by Health Providers, High HIV Rates and Widespread Lack of Access to Necessary Care*, NAT'L LGBTQ TASK FORCE, https://perma.cc/A6M6-SV72 (last visited Apr. 17, 2021); *see also* LAMBDA LEGAL, TRANSGENDER RIGHTS TOOLKIT 27 (2016), https://perma.cc/NNP9-VVYT (explaining how medial workers expressed discrimination and refused to treat Tyra Hunter and Robert Eads).

[14] *See Gender Transition Treatment*, *supra* note 4.

their transitions, causes transitioning to be more expensive in the future, and risks psychological trauma in adulthood.[15] This comment offers a unique take on the physician's responsibility toward transgender youth.[16]

New York State must extend or remove the statute of limitations for transgender adults to sue for negligent malpractice stemming from the denial of transition related health care (e.g., HRT) in their youth.[17] In this comment, "minors" and "youth" will be defined as people under the age of 21. Current law on child abuse will be used as a model to frame how we approach the issue of restructuring the statute of limitations scheme. This comment explores different civil causes of action for plaintiffs/complainants to collect from medical care providers.

Primary care physicians and pediatricians should have a duty to support transgender youth by educating unsupportive parents on the medical consensus of gender dysphoria and its only effective treatment: transitioning.[18] Medical care providers' efforts to prevent transgender youths' coming out—such as dismissing their attempts to obtain medical care by reinforcing their parents' apprehensions over being transgender—should be actionable under the proposal above.[19] This proposal should be supplemented by an educational campaign to inform children, parents, and medical professionals about trans rights and issues.[20]

Part II briefly outlines what being transgender and medically transitioning entails; the relationship between medical professionals and transgender rights activists in advancing transgender interests; and nomenclature of terms related to transgender issues.[21] Part III discusses the dangers of withholding gender-affirming care from transgender youth and argues for creating a cause of action for adults to sue doctors who withheld care to them as children.[22] It also discusses the relationship between transitioning, puberty, and age.[23] Part IV discusses current New

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[15] TRANS CARE BC, *supra* note 10 ("Health care providers refusing to provide puberty blockers to youth can cause additional distress, and may lead to anxiety and depression. Withholding puberty blockers and hormone therapy is not a neutral option and can result in an increased risk of mental health issues.").

[16] *See* discussion *infra* Section IV.

[17] N.Y. C.P.L.R. § 214-a (MCKINNEY 2021) ("An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the act . . . ").

[18] *See Gender Transition Treatment*, *supra* note 4; *see also* "What We Know" Project, *supra* note 4.

[19] *See* discussion *infra* Section IV.

[20] *See* discussion *infra* Section II.

[21] *See* discussion *infra* Section I.

[22] *See* discussion *infra* Section II.

[23] *Id.*

York law on child abuse, recent reforms to its statute of limitations, and how similar justifications apply to creating a cause of action against medical care providers available to transgender adults who were denied gender-affirming care as minors.[24] Part V explores a potential cause of action—medical malpractice—which can serve as an avenue for plaintiffs to obtain relief.[25]

I. BACKGROUND

The number of people in the United States who identify as transgender is rising.[26] Because youth gender clinics in the United States are so new and few in number, it is difficult to extract reliable data on any variance over time in the transgender youth population; nevertheless, clinicians have reported a large uptick in referrals related to gender transition over the past few years.[27] A major youth gender clinic in the United Kingdom, the Gender Identity Development Service, has reported a great increase in new referrals between 2015 and 2018.[28]

The most widely accepted explanation for the increase in the population of self-identifying transgender youth is that there has been "significant progress towards the acceptance and recognition of transgender and gender diverse people in our society. There is also greater knowledge about specialist gender clinics and the pathways into them,

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[24] *See* discussion *infra* Section III.

[25] *See* discussion *infra* Section IV.

[26] *See, e.g.*, Jan Hoffman, *Estimate of U.S. Transgender Population Doubles to 1.4 Million Adults*, N.Y. TIMES, (June 30, 2016), https://perma.cc/MY7J-EGRQ ("About 1.4 million adults in the United States identify as transgender, double a widely used previous estimate, according to an analysis based on new federal and state data."); ANDREW R. FLORES ET AL., THE WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (2016), https://perma.cc/QVW9-2FML; Jan Hoffman, *As Attention Grows, Transgender Children's Numbers Are Elusive*, N.Y. TIMES (May 17, 2016), https://perma.cc/X9KP-FT2C ("How many [transgender] students are we talking about? No one knows for sure. Researchers have not figured out how to obtain consistent, reliable answers from teenagers, much less younger children.").

[27] *See, e.g.*, Ted Handler et al., *Trends in Referrals to a Pediatric Transgender Clinic*, 144 PEDIATRICS 1, 3 fig.1 (2019), https://perma.cc/ZX7N-9DWL ("[The] number of pediatric patients referred to a specialty transgender clinic in Northern California . . . increased significantly, from 56 in 2015 to 154 in year-to-date 2018 . . . ."); *see also* Ian T. Nolan et al., *Demographic and Temporal Trends in Transgender Identities and Gender Confirming Surgery*, 8 TRANSLATIONAL ANDROLOGY & UROLOGY 184 (2019), https://perma.cc/J848-Q48J (suggesting if the trends in the number of transgender pediatric patients in Northern California are indicative of trends in the U.S., then there is a significant increase of youth referrals for gender-affirming medical care across the country).

[28] *See* GENDER IDENTITY DEV. SERV., *Referrals to GIDS, Financial Years 2015-16 to 2019-20*, https://gids.nhs.uk/number-referrals (last visited July 1, 2021) (indicating the number of referrals increased from 1,409 in 2015-16 to 2,743 in 2018-19, before plateauing at 2,748 in 2019-20).

and an increased awareness of the possibilities around physical treatments for younger adolescents."[29]

However, despite significant progress towards the acceptance of transgender identity, doctors and medical care providers continue denying gender-affirming care to trans-identified people. Before we can discuss policies regarding the denial of gender-affirming care, it is important to understand what such care entails.

The word "transgender"[30] is an umbrella term used to describe a person whose gender identity[31] does not match the sex they were assigned at birth.[32] "Transgender people may identify as straight, gay, bisexual or some other sexual orientation."[33] Gender dysphoria is a common, but far from universal experience among transgender people—not all transgender people experience gender dysphoria.[34]

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[29] *GIDS Referrals Increase Slows in 2016/17*, TAVISTOCK & PORTMAN NHS FOUND. TR. (Apr. 27, 2017), https://tavistockandportman.nhs.uk/about-us/news/stories/gids-referrals-increase-slows-201617/.

[30] Although some transgender advocates disagree on the use of the word "transgender"—because it implies that a trans person's gender is not innate or immutable, but rather changes or transforms—this comment uses the word "transgender" because the transgender community generally accepts and uses the term; *cf.* Van Levy, *Why the Terms Transgender and Identify as Is Transphobic*, THERAPY ROUTE (Apr. 8, 2020), https://www.therapyroute.com/article/why-the-terms-transgender-and-identify-as-is-transphobic-by-v-levy ("The term transgender is transphobic is because it stems from the idea that we were one gender and are transitioning to another gender. Someone who is trans, unless otherwise identified, was not one gender and becoming another gender."); *but see Frequently Asked Questions About Transgender People*, NAT'L CTR. FOR TRANSGENDER EQUAL. (July 9, 2016), https://perma.cc/792F-NHJY ("[S]ome people's gender identity—their innate knowledge of who they are—is different from what was initially expected when they were born. Most of these people describe themselves as *transgender*.").

[31] *See Redefining Gender*, NAT'L GEOGRAPHIC, Jan. 2017, at 14 ("[Gender identity is a] person's deep-seated, internal sense of who they are as a gendered being; the gender with which they identify themselves.").

[32] N.Y. PUB. HEALTH § 4100-a(3) (MCKINNEY 2021) (requiring "sex" to be included on certifications of birth); *see also Sex and Gender Identity*, PLANNED PARENTHOOD, https://perma.cc/8T5K-P5GE (last visited Apr. 28, 2021); *but see* Press Release, N.Y. State Attorney Gen., Attorney General James Announces Change to NYS Health Policy Allowing Transgender Minors to Correct Sex Designation on Birth Certificates (Mar. 10, 2020), https://perma.cc/GVY8-KDEF.

[33] Linell Smith, *Glossary of Transgender Terms*, JOHN HOPKINS MED.: NEWS & PUBL'NS (Nov. 20, 2018), https://perma.cc/T973-5TWM.

[34] Earl describes changes in awareness over time:

> [F]or years, the common understanding of being transgender has been inexorably linked with gender dysphoria . . . . However, as awareness about the trans community has grown, so too has the number of people who identify as transgender. Yet, as the community grows, more and more people who identity with the label of transgender have also found they haven't ever felt any dysphoria at all. Instead they learned they were trans for a variety of political to social to emotional reasons.

Historically, the term "gender identity disorder" was used to diagnose transgender people, describing their dysphoria as a "disorder."[35] With the publication of the *Diagnostic and Statistical Manual of Mental Disorders* ("*DSM-5*") in 2013, the American Psychiatric Association ("APA") revised and replaced the term "gender identity disorder" with "gender dysphoria."[36] Some transgender activists approve of these changes and consider them to be a sign of increased respect for trans- and gender-variant identities; however, other transgender advocates are concerned the mental health evaluation and gender dysphoria diagnosis requirements may serve as a barrier and make it more difficult for transgender people to obtain gender-affirming medical care.[37]

Through the DSM-5, the APA provides certain criteria used to diagnose children, adolescents, and adults with gender dysphoria.[38] De-

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See Jessie Earl, *Do You Need Gender Dysphoria to Be Trans?*, ADVOC. (Jan. 18, 2019, 5:28 AM), https://www.advocate.com/commentary/2019/1/18/do-you-need-gender-dysphoria-be-trans; *see also* Yarbrough et al., *supra* note 5.

[35] *See* Kayley Whalen, *(In)validating Transgender Identities: Progress and Trouble in the DSM-5*, NAT'L LGBTQ TASK FORCE, https://perma.cc/C5KY-E4N4 (last visited Mar. 30, 2020) (discussing the replacement of "gender identity disorder" with "gender dysphoria" in the *Diagnostic and Statistical Manual of Mental Disorders* designation of mental health disorder).

[36] *Diagnostic and Statistical Manual of Mental Disorders* 451, AM. PSYCHIATRIC ASS'N (5th ed. 2013) ("The [gender dysphoria] term is more descriptive than the previous DSM-IV term gender identity disorder and focuses on dysphoria as the clinical problem, not identity per se.").

[37] Dani Heffernan, *The APA Removes "Gender Identity Disorder" from Updated Mental Health Guide*, GLAAD (Dec. 3, 2012), https://perma.cc/KB46-HN88; *see also* Sarah L. Schulz, *The Informed Consent Model of Transgender Care: An Alternative to the Diagnosis of Gender Dysphoria*, 58 J. HUMANISTIC PSYCHOL. 72 (2017), https://perma.cc/LH4E-TAD3 ("Currently, under the mainstream treatment paradigm, in order to be deemed eligible for gender transition services, transgender clients must meet criteria for a diagnosis of 'gender dysphoria' as described in the *DSM-5*.").

[38] Turban explains the *DSM-5* definition of gender dysphoria:

> The DSM-5 defines gender dysphoria in children as a marked incongruence between one's experienced/expressed gender and assigned gender, lasting at least 6 months, as manifested by at least six of the following (one of which must be the first criterion): [1] A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender), [2] In boys (assigned gender), a strong preference for cross-dressing or simulating female attire; or in girls (assigned gender), a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing, [3] A strong preference for cross-gender roles in make-believe play or fantasy play, [4] A strong preference for the toys, games or activities stereotypically used or engaged in by the other gender, [5] A strong preference for playmates of the other gender, [6] In boys (assigned gender), a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; or in girls (assigned gender), a strong rejection of typically feminine toys, games, and activities, [7] A strong dislike of one's sexual anatomy, [and

spite some transgender activists approving the change from "gender identity disorder" to "gender dysphoria," others believe that the term "gender dysphoria" should eventually be phased out of the *DSM*.[39] Proponents of including "gender dysphoria" in the *DSM-5* find that the gender dysphoria diagnosis allows them to access treatment for dysphoria and secure assistance from insurance companies to finance their transitions.[40] In addition, the status of gender dysphoria as a medical condition also allows transgender and gender nonconforming people to obtain reasonable accommodations through a disability framework such as the ability to use sick leave for transition-related appointments and recovery from gender-affirming procedures.[41]

Minors under 16 years of age can start HRT at around 12 years old or at the onset of puberty with puberty blockers, formally called gonadotropin-releasing hormone ("GnRH") analogs.[42] These medications "stimulate gonadotropin [e.g., testosterone or estrogen] release and the overproduction makes the gonadotropin receptors less sensitive," acting as a dam to prevent the sex hormones from triggering puberty in the child's body.[43] Ultimately, this buys time for the trans youth, parents,

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> 8] A strong desire for the physical sex characteristics that match one's experienced gender.

Jack Turban*, What Is Gender Dysphoria?*, AM. PSYCHIATRIC ASS'N, https://perma.cc/GL68-78K3 (last visited May 16, 2021).

[39] *See, e.g.*, Whalen, *supra* note 35 ("But ultimately, as science and our movement advances, we fully expect both 'Gender Dysphoria' and 'Transvestic Disorder' to be removed from the *DSM-6* and will continue to work for that future.").

[40] Whalen elaborates on gender variance:

> Gender variance is not a psychiatric disease; it is a human variation that in some cases requires medical attention. For this edition of the *DSM*, because there is no other medical diagnosis available for transgender people to seek reimbursement of medical expenses under, we recommended that some version of gender dysphoria appear in *DSM-5* as a stop-gap measure. There is a continuing need for the medical and insurance industries to update their procedures for reimbursement so that gender dysphoria can be removed entirely in the future.

See id.; *see also* Schulz, *supra* note 37.

[41] N.Y. COMP. CODES R. & REGS. tit. 9, § 466.13 (2021) (recognizing gender dysphoria as a medical condition and a disability); N.Y.C. ADMIN. CODE § 8-107(15) (recognizing that some transgender, gender nonconforming, and nonbinary people have gender dysphoria and may be entitled to reasonable accommodations under its provisions on disability as a protected class); *see also* NYC COMM'N ON HUM. RTS. LEGAL ENF'T GUIDANCE ON DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR EXPRESSION: LOC. L. NO. 3 (2002); N.Y.C. ADMIN. CODE § 8-102, https://perma.cc/T5X5-ZX2Q (last updated Feb. 15, 2019).

[42] *See* Shauna M. Lawlis, *All About Puberty Blockers!* PEDIATRIC NEWS (Sept. 18, 2020), https://perma.cc/4NWB-UUN9.

[43] *Id.*; *see also* Federica Vergani, *Why Transgender Children Should Have the Right to Block Their Own Puberty with Court Authorization,* 13 FIU L. REV. 903, 906-24 (2019) (explaining the term "gender identity disorder," and stating that "gender dysphoria is classified as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (*DSM*)").

therapists, and medical professionals to explore, consider, and discuss whether the teenager wishes to transition.[44] At 16 years old, if the teen wishes to transition or continue their transition, they can begin taking either estrogen and an androgen blocker, such as spironolactone or cyproterone acetate (for transgender women or transfeminine[45] people), or testosterone (for transgender men or transmasculine[46] people) to transition to their correct gender.[47] If the teen decides not to transition, they can cease taking GnRH analogs and proceed with the puberty process of their birth-assigned gender as is typical for cisgender people.[48]

The effects of GnRH analogs are completely reversible if the child was misdiagnosed with gender dysphoria.[49] While evidence regarding bottom surgery for transfeminine patients under age 18 is scarce, research suggests that it may improve the quality of life for some adolescent individuals.[50] Surgical interventions such as top and bottom surgery

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The author contends these ideas are outdated as of the publication of her article and are not backed by the *DSM-5*.

[44] Vergani, *supra* note 43, at 908.

[45] Transfeminine has been defined as:

> A self-identification term for gender identity or gender expression in which a person who is born male does not feel connected to a sense of being a man. Rather, someone identifying as transfeminine would likely feel much closer to the culturally identified woman, female and feminine identified expressions, and yet, not identify as "woman". [sic]

Trans Identities and Lives Glossary*, U.R.I. GENDER & SEXUALITY CTR., https://perma.cc/95BJ-2E4L (last visited Mar. 27, 2021).

[46] Transmasculine has been defined as:

> A self-identification term for gender identity or gender expression in which a person who is born female does not feel connected to a sense of being a woman. Rather, someone identifying as transmasculine would likely feel much closer to the culturally identified man, male and masculine identified expressions and yet, not identify as "man". [sic]

Id.

[47] *See* Vergani, *supra* note 43, at 907-08.

[48] *See id.* at 908.

[49] *Id.*

[50] Mahfouda et al. write:

> The small amount of available data suggest that when clearly indicated in accordance with international guidelines, gender-affirming CSHs [cross-sex hormones] and chest wall masculinization in transgender males are associated with improvements in mental health and quality of life. Evidence regarding surgical vaginoplasty in transgender females younger than age 18 years remains extremely scarce and conclusions cannot yet be drawn regarding its risks and benefits in this age group. Further research on an international scale is urgently warranted to clarify long-term outcomes on psychological functioning and safety.

Simone Mahfouda et al., *Gender-Affirming Hormones and Surgery in Transgender Children and Adolescents*, 7 LANCET DIABETES & ENDOCRINOLOGY 484 (2019); *see also* Chloe Reichel, *What the Research Says About Hormones and Surgery for Transgender Youth*, JOURNALIST'S RESOURCE (Aug. 7, 2019), https://perma.cc/H2FT-KCYN.

are done to provide the physiologically affirming changes transgender patients seek that HRT cannot necessarily achieve.[51] For many transgender people who are unable to obtain gender-affirming medical care in their youth or young adulthood, it is possibly more difficult and expensive to transition later in their lives.[52]

Some may criticize this comment for "medicalizing" transgender identity. The medical model of transgender discourse "relies upon medical evidence—both in the form of psychological diagnoses and physical treatments such as hormone therapy and gender-related surgeries—in order to establish gender transgressions as legitimate and therefore worthy of recognition and protection under the law."[53] Under the medical model, cisgender professionals often play the role of gatekeepers to transgender healthcare and both legal and social recognition.[54]

Admittedly, the criticisms of the medical model of transgender discourse are valid. It is unfortunate that mainstream society does not readily accept the validity of transgender identity without some scientific, medical, or legal justification.[55] Notwithstanding criticisms of the medical model, transgender rights activists work within it because it is the "prevalent discourse for providing transgender people with access to medical interventions."[56] So long as the medical model of transgender identity is the prevalent mode of discourse, transgender people should be afforded protections to prevent them from falling through the cracks;

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[51] Deutsch provides recommendations for top surgery:

> Your chest will not change much in response to testosterone therapy. That said, surgeons often recommend waiting at least 6-12 months after the start of testosterone therapy before having masculinizing chest surgery, otherwise known as top surgery, in order to first allow the contours of the muscles and soft tissues of your chest wall to settle in to their new pattern.

Maddie Deutsch, *Information on Estrogen Hormone Therapy*, UCSF TRANSGENDER CARE (July 2020), https://perma.cc/7RPX-3UFA; *see also* Maddie Deutsch, *Information on Testosterone Hormone Therapy*, UCSF TRANSGENDER CARE (July 2020), https://perma.cc/C29S-WK6P.

[52] *See generally Puberty Blockers for Youth*, *supra* note 10.

[53] *See* Lindsey Dennis, *"I Do Not Suffer from Gender Dysphoria. I Suffer from Bureaucratic Dysphoria": An Analysis of the Tax Treatment of Gender Affirmation Procedures Under the Medical Expense Deduction*, 34 BERKELEY J. GENDER, L. & JUST. 215, 220-21 (2019), https://perma.cc/Z36Y-5H3E (quoting Franklin H. Romeo, *Beyond a Medical Model: Advocating for a New Conception of Gender Identity in the Law*, 36 COLUM. HUM. RTS. L. REV. 713, 724 (2005)).

[54] *Id.* at 221-22.

[55] *See* Marta R. Bizic et al., *Gender Dysphoria: Bioethical Aspects of Medical Treatment*, BIOMED RES. INT'L (June 13, 2018), https://perma.cc/Q58X-T686; *see also* Millicent Odunze, *Preparation and Procedures Involved in Gender Affirmation Surgeries*, VERYWELL HEALTH (Dec. 13, 2020), https://perma.cc/FU44-AGDZ ("Transgender individuals do not need to undergo medical intervention to have valid identities.").

[56] Dennis, *supra* note 53, at 222.

thus, allowing them to sue for the very type of damage caused by the sort of gatekeeping that critics of the medical model describe mitigates and reduces this harm.

II. PUBERTY AS A RACE AGAINST TIME: THE MENTAL, EMOTIONAL, AND PHYSICAL DANGERS OF FORCING TRANSGENDER PEOPLE TO DELAY THEIR TRANSITIONS

It is important for there to be a cause of action for adult transgender people to sue medical care professionals for withholding care—whether a doctor failed to properly diagnose a transgender minor with gender dysphoria or failed to inform their parents or guardians about the medical consensus regarding transgender issues. The law should recognize being cheated out of a childhood and ending up with what some of us characterize as a "disfigured" body that was forced to undergo an incongruent puberty as a harm warranting recovery of damages.[57] In addition, being denied gender-affirming care causes emotional distress and contributes to the transgender community's high suicide rate and higher-than-average feelings of anxiety and depression.[58] Children and young adults are impressionable and might be temporarily "convinced" to suppress feelings about their true selves.[59] They often rediscover the truth about themselves and are at a relative disadvantage compared to when they were younger because puberty has taken its toll.

Transgender people who transition later in life, including those who were unable to use puberty blockers but transitioned in their late teens or

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[57] Winters explains the importance of puberty suppressing medication:

> The 60 Minutes report neglected to mention internationally respected Standards of Care for trans individuals, published by the World Professional Association for Transgender Health (WPATH). The current 7th Version of the standards clarify that puberty suppressing medications give "adolescents more time to explore their gender nonconformity and other developmental issues," for those facing trauma and possible disfigurement of incongruent natal puberty. Such treatment prevents "the development of sex characteristics that are difficult or impossible to reverse if adolescents continue on to pursue sex reassignment."

See, e.g., Kelley Winters, *Australian '60 Minutes' Report Misrepresents Trans Youth Medical Care*, GID REFORM WEBLOG (Sept. 14, 2017), https://perma.cc/ZU6H-NKFS (alterations in original). This author has also reviewed a number of posts from transgender people on Reddit and across the web describing the physical developments of their misaligned puberty as "disfiguring."

[58] *See* Vergani, *supra* note 43, at 918.

[59] SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 108-11 (2016), https://perma.cc/MSP8-U9A8. Although not a perfect comparison to children whose parents "convinced" them that they are not transgender, the 2015 U.S. Transgender Survey suggests that a majority (62%) of respondents who de-transitioned only did so temporarily and that 36% of those who de-transitioned did so after a parent pressured them to do so.

later, sometimes report mourning a missing childhood.[60] The intersection between age and being transgender involves avoiding both permanent physical changes and mental trauma.

Transitioning as soon as a person is ready, without being hindered by institutional barriers, allows them to avoid the mental trauma, undesirable physical development, and higher financial costs associated with transitioning later in life.[61] Medical transitions are typically not necessary, at least early in a transgender child's life. When a transgender child is too young for HRT, non-medical gender-affirming therapy (e.g., allowing a transgender child to express their gender, using their correct name and pronouns, advocating for them against transphobic voices) is sufficient to facilitate their social gender transition.[62]

Transgender women and transfeminine people typically begin HRT by taking two milligrams of a daily oral dose of 17-beta estradiol, which may incrementally increase to eight milligrams after a few months.[63] These hormones, in addition to androgen blockers, bring about developments including: mental changes, fat redistribution, thinning and drying of the skin, skin sensitivity, decreased libido, breast development, and decreased muscle mass.[64] Transgender men and transmasculine people typically take 50-to-100 milligrams of testosterone cypionate per week, parenterally.[65] Regular monitoring by a doctor accompanies properly administered HRT in all transgender people.[66] Transitioning is an individual and personal experience, and no two transitions are the

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[60] Burns explains the difficulties of childhood for trans people:

> The more hostile our society is to the concept of a child who transitions, the less likely it will be that such children will ever even attempt to rectify their gender identities, much less do so at a young-enough age that they will have the proper childhood I was denied. While many Americans look back on their adolescence with nostalgia, for trans people who knew when we were young, ours represent overwhelming regret.

Katelyn Burns, *I Was Robbed of my Transgender Childhood*, VICE (Feb. 16, 2017, 5:38 PM), https://perma.cc/8D2C-QZ9L.

[61] *See* Vergani, *supra* note 43, at 924-26.

[62] *See generally Transgender Children & Youth: Understanding the Basics*, HUM. RTS. CAMPAIGN, https://perma.cc/MM3Z-P4TK (last visited Apr. 24, 2021).

[63] Madeline B. Deutsch, *Overview of Feminizing Hormone Therapy*, UCSF TRANSGENDER CARE tbl.1 (June 17, 2016), https://perma.cc/R4WR-QX6Q.

[64] *Id.*; *see, e.g.*, Julia Brucculieri, *Here's How Hormone Replacement Therapy Affects Your Skin While You're Transitioning*, HUFFPOST (June 29, 2018, 12:14 PM), https://perma.cc/2SK7-AA4A; Raj Singh, *Transgender Male to Female Hormone Therapy. What to Expect*, HEALOR (Sept. 18, 2019), https://perma.cc/WRK3-C9SC.

[65] Madeline B. Deutsch, *Overview of Masculinizing Hormone Therapy*, UCSF TRANSGENDER CARE tbl.1 (June 17, 2016), https://perma.cc/LL2Z-LUKE.

[66] *See generally* Ivy H. Gardner & Joshua D. Safer, *Progress on the Road to Better Medical Care for Transgender Patients*, 20 CURRENT OPINION ENDOCRINOLOGY, DIABETES & OBESITY 553, 555, 557 (2013).

same.[67] HRT should be individualized: some transgender people may choose to microdose on hormones, while others may take more or less than their peers.[68]

People assigned male at birth who wait to transition until they are either farther along in puberty or after puberty has completed will likely already have developed secondary sex characteristics, including those in the vocal tract (e.g., vocal cord widening, development of an Adam's apple, thickening of vocal folds).[69] These developments in the vocal tract contribute to a person having a stereotypically masculine pitch and deep vocal resonance.[70] Post-natal bone development typically completes its epiphyseal fusion process[71] in late puberty. As a result, HRT taken after that point is less likely to develop skeletal characteristics that are stereotypically attributed to cisgender women.[72] Trans women who transition later in life often feel dysphoric about their perceived stereotypically masculine broad shoulders, height, jaw and brows, and narrow hip bones.[73] These skeletal characteristics are permanent and possibly require expensive surgeries to correct.[74] Facial feminization surgery, a common procedure for transgender women, can range between $30,000

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[67] *See, e.g.*, The Wendy Williams Show, *"Orange Is the New Black" Star Laverne Cox*, YOUTUBE, at 03:00 (June 9, 2014), https://perma.cc/JW4W-PA3C.

[68] *See, e.g.*, Alyza Enriquez, *How Microdosing Testosterone Changed My Life*, VICE (Apr. 25, 2019, 4:07 PM), https://perma.cc/5TJF-D6LJ.

[69] *See* Kristeen Cherney, *Everything You Should Know About the Adam's Apple*, HEALTHLINE (Sept. 18, 2018), https://perma.cc/H8SK-G47R.

[70] *See* Stephanie Watson, *The Unheard Female Voice*, ASHA LEADER (Feb 1, 2019) (citations omitted), https://perma.cc/3YBG-ZGM2 ("In general, women speak at a higher pitch—about an octave higher than men. An adult woman's average range is from 165 to 255 Hz, while a man's is 85 to 155 Hz. Men's voices are generally deeper because the surge of testosterone released during puberty causes their vocal cords to elongate and thicken.").

[71] *See* Joyce Emons et al., *Mechanisms of Growth Plate Maturation and Epiphyseal Fusion*, 75 HORMONE RES. PEDIATRICS 383, 384 (2011), https://perma.cc/6XTW-HJUA ("Postnatally bone development continues, with maturation of the growth plate influenced by multiple growth factors and hormones until late puberty when the growth plate fuses.").

[72] *See generally* sources cited*, supra* note 53.

[73] Wilkinson describes the feeling of gender dysphoria in terms of body awareness:

> Your mind has an innate sense of your body—what it feels like, and also what it *should* feel like. Your mind also knows your organs, your height, how big your feet are, and how wide your shoulders are. For most people, your mind is aware of every bend in your body. Not only would be you be aware if something were wrong, you would be uncomfortable or even in pain. Many people feel this way if they lose or gain weight, or if an accident leaves a scar. Many transgender people feel this sense of gender dysphoria.

Jovie Wilkinson, *What Gender Dysphoria Is Really Like*, MEDIUM (Mar. 2, 2018), https://perma.cc/74XF-PAUU.

[74] TRANS CARE BC, *supra* note 10; Smith, *supra* note 12; Miller, *supra* note 12.

and $50,000.[75] Other expensive treatments for transgender women and transfeminine people, made necessary by beginning HRT post-puberty, include voice training, hair implants (to correct male-pattern hair maturation or baldness), and multiple rounds of painful laser hair removal and/or electrolysis (to remove facial and body hair that is common in testosterone-dominant bodies).[76]

People who were assigned female at birth and transition in the later stages of puberty or after puberty will typically already have "female" breast development, wider hip bones, and a relatively shorter height, as compared to testosterone-dominant bodies: HRT cannot completely reverse this development.[77] Similar to transfeminine people, the skeletal changes in transgender men and transmasculine people that result in stereotypically feminine narrow shoulders and jaws, shorter height, and wider hip bones are common sources of dysphoria.[78] "Top surgery," or subcutaneous mastectomy, is a major surgery for transgender men and transmasculine people to help them express their true gender by removing unwanted breast tissue.[79] This surgery can cost anywhere between $3,000 and $10,000.[80]

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[75] Serena Daniari, *The Complicated Process of Undergoing Facial-Feminization Surgery, and Why I Did It*, ALLURE (Mar. 25, 2019), https://perma.cc/REV7-8Q2S ("Depending on the needs of each patient, the cost of FFS can range from $30,000 to $50,000."); *see also* Alex Dubov & Liana Fraenkel, *Facial Feminization Surgery: The Ethics of Gatekeeping in Transgender Health*, AM. J. BIOETHICS, Dec. 2018, at 6, https://perma.cc/2CNM-3UXD ("FFS is generally considered 'cosmetic' and not a medical necessity and, therefore, excluded from insurance coverage. The average cost of FFS is $60,000 while the average cost of GRS is $20,000.").

[76] James provides a range of costs associated with these treatments:

> Electrolysis costs $25 to $150 per hour. Costs are similar to any private one-on-one service like massage, hair care, or therapy. Some say to expect about a dollar a minute, but I suspect most transgender women find rates between around $50 to $70 an hour. I have personally paid prices between $31 and $60 an hour at different electrologists. Laser costs are usually determined by area to be treated. A full face treatment will probably be anywhere from $200 to $1000.

Andrea James, *How Much Does Transgender Hair Removal Cost?*, TRANSGENDER MAP, https://perma.cc/3ALH-4K25 (last visited Apr. 16, 2021).

[77] *See generally* Deutsch, *Information on Testosterone Hormone Therapy*, *supra* note 51.

[78] *See, e.g.*, Holden Madagame, *Height Dysphoria*, HOLDEN MADAGAME: BLOG (May 16, 2016), https://perma.cc/AS4H-SKTD; americantransman, *What Does Body Dysphoria Feel Like?*, AM. TRANS MAN (Aug. 26, 2012), https://perma.cc/BA4G-G2SN; Drew Lor, *The Battle of Dysphoria and the Right Clothes*, MEDIUM (May 26, 2020), https://perma.cc/68R5-CA9R.

[79] *Top Surgery for Transgender Men*, MAYO CLINIC, https://perma.cc/Y47D-SQ4W (last visited Apr. 16, 2021).

[80] Mere Abrams & Janet Brito, *Top Surgery*, HEALTHLINE (Sept. 18, 2018), https://perma.cc/DJN5-EYGQ.

In addition to the physical changes that result from being forced to undergo an unwanted puberty, not having the correct hormonal configuration[81] can negatively affect dysphoria and mental health. According to the UCLA School of Law Williams Institute's interpretation of the 2015 U.S. Transgender Survey, 97.7% of respondents who experienced "being fired or forced to resign from a job, eviction, experiencing homelessness, and physical attack" in the past year because of their transgender status had thought about suicide, with 51.2% having attempted suicide.[82] All respondents with health insurance who sought gender-affirming care were refused such by their doctors; 14.4% attempted suicide, compared to 6.5% of those whose doctors did provide such care.[83] These statistics show that transgender people who wanted gender-affirming care but were unable to obtain it have an increased rate of attempted suicide and that the ability to receive gender-affirming health care makes a difference.

Without professional and medical supervision, a transgender person experiencing a misaligned puberty may accidentally injure themselves through misinformed efforts to minimize their dysphoria or increase their comfort.[84] For example, people assigned female at birth and who have chest dysphoria risk harming themselves by binding too tightly, for extended periods of time (eight or more hours), or with ACE bandages.[85] This may cause serious health complications and reduce positive outcomes from future top surgery.[86] Transgender youth who are unable to obtain gender-affirming medical care may "take matters into their own

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[81] *See* Yas Necati, '*All That Was Wrong with Me Was a Bit of Chemistry and a Boring Wardrobe': Trans People and the Powerful Importance of Hormone Replacement Therapy*, INDEPENDENT (Aug. 23, 2018, 3:58 PM) (citation omitted), https://perma.cc/RFH2-YBQP ("It's like moving from black and white into technicolour . . . . The main benefit for me is I no longer need anti-depressants after years of severe depression. Turns out all that was wrong with me was a bit of chemistry and a boring wardrobe.").

[82] JODY L. HERMAN ET AL., SUICIDE THOUGHTS AND ATTEMPTS AMONG TRANSGENDER ADULTS: FINDINGS FROM THE 2015 U.S. TRANSGENDER SURVEY 27, 28 fig.4 (2019), https://perma.cc/4A5E-MRFR.

[83] *Id.* at 24 tbl.13.

[84] *See, e.g.*, Vergani, *supra* note 43, at 926 ("The child will sometimes 'obtain medication [from] the illegal market' and expose themselves to life-threatening conditions through unsupervised use of these drugs.").

[85] *See* Mitch Kellaway, *Watch: Australian Model Ruby Rose Comes Out as Gender Fluid*, ADVOCATE (July 31, 2014, 6:30 AM), https://perma.cc/Z659-2V65 ("As a little kid, I was convinced that I was a guy. I used to bind with ACE bandages, which is really, really bad for you . . . I used to pray to God I wouldn't get breasts . . . ."); *see also Binding 101: Tips to Bind Your Chest Safely*, POINT 5CC: TRANSGENDER LIVING, https://perma.cc/E8H3-PH7J (last visited April 24, 2021).

[86] Jen Bell & Nicole Telfer, *Chest Binding: Tips and Tricks for Trans Men, Nonbinary, and Genderfluid People*, CLUE: LGBTQIA+ (Mar. 4, 2019), https://perma.cc/4RDV-MY3X.

hands."[87] They risk exposing themselves to life threatening conditions, including HIV infection through the use of infected needles and criminal liability for illegally procuring controlled substances.[88] Additionally, improper use of medications (e.g., incorrect dosages) used in HRT may cause lifelong health complications, suboptimal development, or even death.[89]

The lack of access to gender-affirming medical care often goes hand in hand with the lack of mental health support for transgender patients.[90] This lack of mental health care may manifest in having no therapy at all or having a therapist who lacks expertise with trans issues and ultimately does not know how to support a trans patient.[91] The transgender patient may also risk being pressured into conversion therapy.[92] The effects of delaying care or impeding transgender youths' com-

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[87] Vergani, *supra* note 43, at 926.

[88] *Id.* (citation omitted) ("A study conducted by the San Francisco Department of Public Health found that about thirty percent of male-to-female individuals surveyed who had taken hormones in the last six months had acquired them illegally.").

[89] *Id.*

[90] Sawani discusses the significant barries transgender people face when it comes to acessing healthcare:

> It is widely recognized that social support and gender-affirming medical care are associated with improved well-being and reduced gender dysphoria. But because of prevalent transphobia and the pathologization of transgender identity, barriers to care were enacted, including protocols requiring that patients have the support of a mental health provider prior to initiating gender-affirming hormones.

Jina Sawani, *Lifting Barriers to Care for Transgender and Non-Binary Patients,* MICH. HEALTH: HEALTH MGMT. (May 27, 2020, 3:45 PM) (citation omitted), https://perma.cc/FE8A-AMFB.

[91] Nolan discusses the challenges transgender people face when accessing therapy:

> Before the end of her first hour, he was suggesting that her eating disorder was connected to being transgender . . . . "I went in with the feeling that he was in the right and had the authority and I should listen." That was the beginning of six months of therapy that left Natalie infinitely more vulnerable and distressed than when she began it . . . . For transgender people, though, finding a therapist can be a minefield . . . . "My experience is that the understanding around gender identity is surprisingly poor . . . ."

Megan Nolan, *The Unique Problems Trans People Face When Finding a Therapist*, VICE (Mar. 19, 2018, 11:30 AM), https://perma.cc/AHK2-7SMF.

[92] For an overview of conversion therapy see:

> Conversion therapy refers to any of several dangerous and discredited practices aimed at changing an individual's sexual orientation or gender identity . . . . "Conversion therapy" can come in many forms and is sometimes known by other names, including: "gender critical therapy," "reparative therapy," "ex-gay ministries," [and] "sexual orientation and gender identity change efforts" . . . . While some conversion therapists continue to use physical methods, including painful aversive conditioning, the most common techniques in the United States today include "talk therapies" that licensed or unlicensed practitioners use in attempt to "treat" a person's sexual orientation or gender identity . . . . Conversion therapy is

ing out might not be immediately apparent. Lacking support from doctors may exacerbate parental abuse, and any suicidal ideation and depression in transgender youth is likely to go unnoticed.[93] The Williams Institute noted in its report on the 2015 U.S. Transgender Survey that respondents who experienced rejection from their families due to being transgender have an attempted suicide rate that is more than twice the rate for respondents who have not experienced such rejection—10.5% compared to 5.1%.[94] Therefore, it is a best practice to have a qualified, medical professional supporting transgender children.

It is also important for transgender youth to have support from medical institutions, if not their parents, because they should not be responsible for doing research into their own medical care. Instead, transgender people and supportive parents of transgender youth often must conduct their own research about transitioning and inform their doctors about how to do their jobs.[95] When parents of transgender youth are not supportive, children may need to take on that responsibility. This is a heavy responsibility to put on anyone, especially transgender youth living with parents who reject them.[96]

III. AGE, THE CHILD VICTIMS ACT, AND GENDER-AFFIRMING CARE

A. The Connection Between Age and Trauma: The Statute of Limitations Should Be Stayed Until Transgender Plaintiffs Are Ready to Sue

There is a layer of complexity in this situation: In New York, a child's right to sue flows from their parents or court-appointed guardians ad litem until the child reaches the age of majority or is emancipated.[97] A potential issue that may arise when transgender children experience discrimination based on gender identity is that they are unable to sue unless their parents or guardians sue on their behalf. It is plausible for par-

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> strongly associated with negative mental health outcomes and greater rates of attempting suicide . . . . Parents who attempt to change their child's sexual orientation or gender identity instill feelings of family rejection and risk, which can seriously fracture their relationship with their child.

About Conversion Therapy, TREVOR PROJECT, https://perma.cc/6MWZ-T5JA (alterations in original) (last visited July 10, 2021).

[93] This is the author's opinion based on her observations.

[94] HERMAN ET AL., *supra* note 82, at 2.

[95] *See Talking to Doctors and Medical Providers*, HUM. RTS. CAMPAIGN, https://perma.cc/YH2P-3DHN (last visited July 10, 2021).

[96] This is the author's opinion based on her observations.

[97] N.Y. DOM. REL. LAW § 2 (MCKINNEY 2021) ("A 'minor' or 'infant', as used in this chapter, is a person under the age of eighteen years."); N.Y. C.P.L.R. § 1201 (MCKINNEY 2021).

ents or guardians who do not support their children in obtaining gender-affirming care to also refuse to support their attempts to sue pediatricians and other medical care providers for discrimination on the basis of transgender identity.

Transgender children who experience discrimination in healthcare might not have the chance to sue their medical care providers until they are adults; and by that time, the statute of limitations have already run.[98]

This delay can occur because transgender and queer people are often emotionally stunted due to the trauma of being closeted, and it is common for them to grieve a lost childhood and experience a "second adolescence" in their 20s, where they compensate for the experiences they missed during their teens.[99] For some transgender people, pre-transition birthdays even feel traumatic because they serve as a reminder that they are slowly losing a youth they haven't had the chance to enjoy.[100] Past trauma and trauma experienced during childhood, including child abuse, are "particularly likely to affect your adult life because it occurs at a time when your brain is vulnerable—and it often occurs at the hands of people who are supposed to be your protectors . . . ."[101] The prefrontal cortex—the "rational" region of the brain—does not finish

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[98] N.Y. C.P.L.R. § 214-a (MCKINNEY 2021) ("An action for medical, dental or podiatric malpractice must be commenced within two years and six months . . . .").

[99] Johnson shares his own experience with a second adolescence:

> I was in the mindset of living fast and dying young because I was operating like a sixteen-year-old in a twenty-five-year-old body. It happened because I lost so many years. So many years of not having sex, not having friends, not dating, basically not doing much of anything but just trying to fit in as best I could. So, when I got the opportunity, I relived all the years that I felt I had missed. I was responsible, yes, and I paid my bills as best I could and went to college and did all the right things, but I was still operating from the space of a child. A child that so longed to be who he wanted to be but didn't have the courage to do so.

George M. Johnson, *The Second Adolescence*, A&U MAG. (June 20, 2018), https://perma.cc/URM9-JTMZ. McBee writes on the grief and trauma associated with growing up queer and/or trans:

> Some of us, especially those who transition in adulthood, must face the complex loss articulated so beautifully by our letter writer: The realization, in our happiness, that we were denied the joy of a fully embodied childhood. Trans people mourn the truth of growing up in a tilted reality, where our first kisses and best friends and passions and dreams were all imbued with a daily unreality; a terror borne of knowing our bodies aren't being received, can't be received, as we perceive them.

Thomas Page McBee, *Amateur: On Being Trans and Grieving the Childhood I Never Had*, THEM (Dec. 24, 2018), https://perma.cc/W53M-VHM5.

[100] This is based on the personal account of the author, who is transgender, and on those from friends who are also transgender, shared over casual conversations.

[101] *Past Trauma May Haunt Your Future Health*, HARV. HEALTH PUB. (Feb. 12, 2021), https://perma.cc/3UQ7-7J6N.

developing until a person is around 25 years old.[102] Adverse childhood experiences often includes physical abuse, sexual abuse, emotional abuse, and physical or emotional neglect.[103] It can be argued that parents neglecting their children's gender-affirming care needs and refusing to accept their children for being transgender is emotionally and physical neglect.[104]

Those who experience emotional and physical neglect are at risk for developing complex post-traumatic stress disorder ("C-PTSD").[105] C-PTSD is thought to be more severe in patients who experienced parent- or caregiver-caused traumatic events early in life; those who experienced the trauma alone (which is likely if the transgender child did not have allies in the medical community); and those who experienced the trauma for a long time (e.g., during the years when the child lived with their parents).[106] This is because "it may take years for the symptoms of complex PTSD to be recognized, [and] a child's development, including

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[102] *Understanding the Teen Brain*, U. ROCHESTER MED. CTR.: HEALTH ENCYCLOPEDIA, https://perma.cc/QG7A-TM8X (last visited Apr. 11, 2021); *see also* Lucy Wallis, *Is 25 the New Cut-Off Point for Adulthood?*, BBC NEWS (Sept. 23, 2013), https://perma.cc/4ADW-TCX6.

[103] *See generally* Vergani, *supra* note 43.

[104] *See* Samuel Dubin et al., *Medically Assisted Gender Affirmation: When Children and Parents Disagree*, 46 J. MED. ETHICS, 295, 295-99 (2020) (explaining that research supports invoking parental neglect when youth who experience extreme gender dysphoria are prevented from accessing medically recommended gender-affirming interventions).

[105] Susanne Babbel, *Child Neglect and Adult PTSD*, PSYCHOL. TODAY (Feb. 9, 2011), https://perma.cc/7TWU-TG67; Tull discusses complex post-traumatic stress disorder:

> Both PTSD and C-PTSD result from the experience of something deeply traumatic and can cause flashbacks, nightmares, and insomnia. Both conditions can also make you feel intensely afraid and unsafe even though the danger has passed. However, despite these similarities, there are characteristics that differentiate C-PTSD from PTSD according to some experts. The main difference between the two disorders is the frequency of the trauma. While PTSD is caused by a single traumatic event, C-PTSD is caused by long-lasting trauma that continues or repeats for months, even years (commonly referred to as "complex trauma").

Matthew Tull, *What Is Complex PTSD?,* VERYWELL MIND (May 4, 2021), https://perma.cc/4XSC-97AT; Matthew Tull, *Recognizing Hyperarousal Symptoms in PTSD: A Heightened State of Anxiety After Extreme Trauma*, VERYWELL MIND (May 12, 2020), https://perma.cc/85J8-L7RD; *How Does PTSD Develop and How Long Does It Last?*, NAT'L CTR. PTSD, https://perma.cc/L4NC-BR9K (last visited Apr. 4, 2021) ("PTSD symptoms usually appear soon after trauma. For most people, these symptoms go away on their own within the first few weeks and months after the trauma. For some, the symptoms can last for many years, especially if they go untreated."); *but see* Richard A. Bryant & Allison G. Harvey, *Delayed-Onset Posttraumatic Stress Disorder: A Prospective Evaluation*, 36 AUSTL. & N.Z. J. PSYCHIATRY 205 (2002) ("Delayed onset posttraumatic stress disorder (PTSD) refers to PTSD that develops at least 6 months after the traumatic event.").

[106] *Complex PTSD - Post-Traumatic Stress Disorder*, NAT'L HEALTH SERV., https://perma.cc/6MB3-KQ7M (last updated Sept. 27, 2018).

their behavior and self-confidence, can be altered as they get older."[107] Some symptoms of C-PTSD include feelings of shame or guilt, difficulty controlling emotions, periods of losing attention or dissociating,[108] relationship difficulties, destructive or risky behavior (e.g., self-harm, drug abuse), suicidal thoughts, and isolation.[109]

This author argues that transgender people who were not embraced as children as their true selves are more likely than the general population to be emotionally stunted, as they have experienced the trauma of being closeted.[110] For many, getting to a place where they are ready to publicly tell their story and request adjudication takes time because the healing process is a slow one. This comment analogizes the argument that transgender adults coming to terms with their childhood medical neglect should have additional time to sue; victims of child sex abuse should be granted additional time to sue their abusers for damages long after the abuse occurred.[111]

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[107] *Id.*

[108] Jones discusses depersonalization among transgender individuals:

> Chronic depersonalization is a distressing dissociative condition characterized by feelings of "unreality" or "no self", [sic] and it occurs at an elevated rate among trans people. Also known as depersonalization disorder or depersonalization-derealization syndrome, sufferers of this condition perceive themselves as emotionally distanced and separated from their experience of self and their perception of the world. While their grasp of reality is intact, they perceive themselves as not truly feeling their own emotions, and have a sense that the world is flat, lifeless, or lacking in meaning or depth. Depersonalization disorder is chronic and unremitting; most individuals experience its onset in adolescence, while others report it being present since their childhood. Studies have found that trans people are anywhere from 3 to 18 times more likely to experience this chronic syndrome compared to the general population, and depersonalization has been a theme of numerous personal accounts and memoirs of trans people for decades.

Zinnia Jones, *5 Things to Know About Transgender Depersonalization*, MEDIUM (Mar. 5, 2018), https://perma.cc/K8CC-6DEB (citations omitted).

[109] NAT'L HEALTH SERV., *supra* note 106.

[110] Jones discusses emotional avoidance:

> Emotional avoidance is a common reaction to trauma. In fact, emotional avoidance is part of the avoidance cluster of post-traumatic stress disorder (PTSD) symptoms, serving as a way for people with PTSD to escape painful or difficult emotions. Avoidance refers to any action designed to prevent the occurrence of an uncomfortable emotion such as fear, sadness, or shame. For example, a person may try to avoid difficult emotions through the use of substances or dissociation.

Jones, *supra* note 108; s*ee also* Matthew Tull, *Why People with PTSD Use Emotional Avoidance to Cope*, VERYWELL MIND (Mar. 24, 2020), https://perma.cc/AM6W-VARC; Amanda Kelly, *Unhappy Childhood Can Stunt Growth*, INDEPENDENT (Aug. 16, 2013, 6:05 AM), https://perma.cc/HH6Q-NJYF; Alok Jha, *Childhood Abuse May Stunt Growth of Part of Brain Involved in Emotions*, GUARDIAN (Feb. 13, 2012, 3:00 PM), https://perma.cc/BQ45-RHNQ; Patrick Strudwick, *'The Closet Is a Terrible Place . . .' How Coming Out Transformed Five Lives*, GUARDIAN (Dec. 2, 2014, 2:23 PM), https://perma.cc/J6RW-PW6W.

[111] Berland writes about New York's Child Victims Act:

In addition, some queer and transgender people can be dependent on their parents even in adulthood, especially if they are disabled.[112] Under the Affordable Care Act, children can stay on their parents' insurance until they are 26 years old;[113] but parents may choose to cut their children off from their insurance, which gives them a degree of control over their children's medical futures. LGBTQ+ youth should not be forced to make the Hobson's choice of proceeding with their transition, and risk becoming homeless and having their insurance taken away making gender-affirming care much more difficult. "As a result of family rejection, discrimination, criminalization and a host of other factors, LGBTQ youth represent as much as 40% of the homeless youth population."[114] According to Chapin Hall at the University of Chicago, LGBTQ+ youth have a 120% higher risk of reporting homelessness than do youth who identify as cisgender and heterosexual.[115]

> The New York Child Victims Act (CVA), which came into effect on Aug. 14, 2019, extended the statute of limitations for child sexual abuse cases. The limitations period permits civil cases to be brought until victims are 55 years old. Critically, the law includes a one-year window for time-barred survivors to file a civil lawsuit. During this look-back period, survivors can file a civil case against their abusers and any institutions that may have enabled the abuse, no matter how old they now are or how long ago the abuse happened. The CVA provided vital rights to hundreds of adult survivors of abuse whose claims had previously been extinguished five years after their eighteenth birthdays. After years of opposition, principally by religious organizations, the enactment of the CVA reflected the acknowledged reality that many victims require years if not decades to come to terms with their childhood abuse and seek accountability. The CVA also reflected that childhood sexual abuse is not a harm that ends with childhood, but frequently causes grievous harm to victims throughout their lives.

Jason Berland, *The New York Child Victim's Act and the Effect of COVID-19*, N.Y. L. J. (Apr. 14, 2020, 10:00 AM), https://perma.cc/X33X-WEFK.

[112] *See* JONATHAN VESPA, U.S. CENSUS BUREAU, THE CHANGING ECONOMICS AND DEMOGRAPHICS OF YOUNG ADULTHOOD: 1975-2016 (2017), https://perma.cc/YL6N-VD4U (stating that economically insecure, disabled adults are more likely than able adults to reside with their parents).

[113] Patient Protection and Affordable Care Act § 2714(a), 42 U.S.C. § 18014(d)(2)(E) (2021) (effective Dec. 16, 2014).

[114] *Youth Homelessness*, THE TREVOR PROJECT, https://perma.cc/MPX9-RYG7 (last visited May 1, 2021).

[115] Morton et al. provide statistics on youth homelessness:

> Lesbian, gay, bisexual, and transgender (LGBT) youth had a 120% increased risk of experiencing homelessness compared to youth who identified as heterosexual and cisgender. These findings reinforce growing evidence on the heightened risk of experiencing homelessness among LGBT youth. This often stems from a lack of acceptance that young people experience both in and outside of the home.

M.H. MORTON ET AL., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA 13 (2017), https://perma.cc/54LQ-MW5P.

Although parents may discontinue insurance coverage for their children in response to their coming out as trans, New York State recognizes a parental duty to support their children until they are 21 years old.[116] Even if their children no longer reside with them, perhaps due to their refusal to accept their children for being queer, "New York courts have accepted that if the parental home is not open for return, there is no injustice to the parent in continuing to support the child elsewhere."[117]

It is difficult for transgender and gender nonconforming adults to bring a timely suit in court, either because they experience C-PTSD due to the trauma of being closeted or because they risk being cut off from their parents in their formative years.[118] As a result, the law should accommodate them by extending the relevant[119] statute of limitations to allow them to claim damages for the denial of gender-affirming care that likely caused their C-PTSD and other psychological trauma.

B. The Child Victims Act: Applying Its Logic to the Denial of Gender-Affirming Care for Transgender Minors

Before the New York State Legislature passed the Child Victims Act ("CVA") on January 24, 2019, survivors of child sex abuse had one to five years, depending on the type of claim, from the time they turned 18 years old to bring a civil suit for money damages against their abuser.[120] CVA supporters argued that the law was necessary because it is difficult for survivors of child sex abuse to "come forward" with or even "come to terms with" their trauma until many years after they were abused.[121] As a result of their trauma, many survivors of child sex abuse could not pursue damages because the statute of limitations had already run by the time they were ready to report their past abuse.[122]

The CVA extended the statute of limitations so that survivors of child sex abuse can bring civil claims for monetary damages until they are 55 years old.[123] The CVA also extended the statute of limitations for

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[116] N.Y. FAM. CT. ACT § 413(1)(a) (MCKINNEY 2021); *see also* Maria Roumiantseva, *Because Parents Owe It to Them: Unaccompanied LGBTQ Youth Enforcing the Parental Duty of Support*, 16 CUNY L. REV. 363, 373 (2013).

[117] *Id.* at 382 (citation omitted).

[118] *See* MORTON ET AL., *supra* note 115; Roumiantseva, *supra* note 116.

[119] *See* N.Y. C.P.L.R. § 214-a (MCKINNEY 2021) ("An action for medical, dental or podiatric malpractice must be commenced within two years and six months . . . .").

[120] *What Is the Child Victims Act?*, N.Y.C. B. ASS'N, https://perma.cc/KV89-MB2R (last updated Aug. 2020) ("Before [the CVA's passage], survivors of child sexual abuse had from one (1) to five (5) years to bring a civil lawsuit against their abuser(s). The one (1) to five (5) year time period started after the victim turned eighteen (18) years old.").

[121] Berland, s*upra* note 111.

[122] *See generally* N.Y.C. B. ASS'N, *supra* note 120.

[123] N.Y. C.P.L.R. § 208(b) (MCKINNEY 2021).

criminal suits by five years.[124] The New York District Attorney can press charges on behalf of survivors of felony child sex abuse until they turn 28 years old and on behalf of survivors of misdemeanor child sex abuse until they turn 25 years old.[125] Moreover, the CVA created a one-year window in which previously time-barred civil claims may be filed regardless of when the abuse took place, and it eliminated the notice-of-claim requirement for bringing civil suits against public institutions that failed to recognize child sex abuse.[126] This one-year window also allows survivors of child sex abuse to bring both prospective suits and previously time-barred suits against public and private institutions.[127] It also includes a provision for training judges so they are equipped to handle child sex abuse cases.[128]

The reporting rates for child sex abuse are notoriously low.[129] A nonprofit organization, Darkness to Light, compiled statistics on child sex abuse cases in the U.S. in 2017 and determined that only one-third of child sex abuse cases were identified—and even fewer were reported.[130] It also found that adult survivors of child sex abuse were prone to depression, anxiety, suicide attempts, substance abuse, eating disorders, physical health issues, and post-traumatic stress disorder.[131] Fear, shame, and denial all contribute to child sex abuse survivors' diminished ability to come to terms with their abuse and face their abusers in court.[132]

The consequences attributable to survivors of child sex abuse are similar to those of transgender youth who were denied access to gender-affirming care: since denial of access to gender-affirming care is usually accompanied by unsupportive parents, a transgender youth may be forced to endure the trauma of going through an undesired puberty as well as the trauma of being closeted. It can take many years—even dec-

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[124] N.Y. CRIM. PROC. LAW § 30.10(3)(f) (MCKINNEY 2021) (noting that a prosecution for sexual conduct against a child in the second degree may be commenced within five years of the commission of the most recent act of sexual conduct.).

[125] *Id.*; *see also* N.Y.C. B. ASS'N, *supra* note 120.

[126] N.Y. C.P.L.R. § 214-g (MCKINNEY 2021); *see also* Assemb. B. A09036, 2020 Assemb., Reg. Sess. (N.Y. 2020), https://perma.cc/38GL-5ZZA.

[127] *Id.*

[128] N.Y. JUD. LAW § 219(c) (MCKINNEY 2021); *see also* N.Y. C.P.L.R. § 214-g (MCKINNEY 2021).

[129] CATHERINE TOWNSEND, CHILD SEXUAL ABUSE DISCLOSURE: WHAT PRACTITIONERS NEED TO KNOW 1 (2016**),** https://perma.cc/L4XA-VCH9.

[130] *See generally Child Sexual Abuse Statistics*, DARKNESS TO LIGHT (2015), https://perma.cc/SA7C-ZYN3 (distinguishing between identifying instances of child sex abuse and reporting those instances to authorities).

[131] *Id.* at 4, 6.

[132] *See, e.g.*, Beverly Engel, *Why Adult Victims of Childhood Sexual Abuse Don't Disclose*, PSYCHOL. TODAY (Mar. 6, 2019), https://perma.cc/K2FZ-7MVE.

ades—for transgender adults to come to terms with their trauma and gender identity (again) before they can begin considering any legal action against medical care providers.[133] Applying the justifications behind enacting the CVA to the instant issue facing transgender adults, the statute of limitations should be extended so transgender adults can sue for monetary damages for the gender-affirming care they were denied in their youth.

IV. A POSSIBLE CAUSE OF ACTION: NEGLIGENT MALPRACTICE

Laura A. Gans, an early proponent of banning conversion therapy for LGBTQ+ individuals, argued that conversion therapy is the "consummate embodiment of anti-gay sentiment because its implicit primary goal is to eradicate homosexuality."[134] She contends that until conversion therapy is eradicated, there should be a way to hold conversion therapists liable for their actions.[135] One method Gans proposed was for plaintiffs to sue conversion therapists for negligent malpractice.[136]

Conversion therapy is distinct from denial of gender-affirming care in that the former is an active endeavor, whereas the latter is a failure to act. Still, they are similar because each involves a failure to perform a duty of care[137] owed to a potential plaintiff. If permitted to do so by ex-

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[133] The author is assuming that if someone is in denial about being transgender, they are unlikely to sue for the denial of gender-affirming care.

[134] Laura A. Gans, *Inverts, Perverts, and Converts: Sexual Orientation Conversion Therapy and Liability*, 8 B.U. PUB. INT. L.J. 219, 220 (1999) (citation omitted).

[135] Gans writes:

> The need to hold conversion therapists liable for their actions arises out of the need to protect gays and lesbians from one more type of homophobic attack. Until organizations such as the American Psychiatric and Psychological Associations issue an unconditional ban on the practice of conversion therapy, the cause of action proposed herein serves as a possible mechanism by which to both thwart and redress such attacks.

Id. at 249.

[136] *Id.* at 220-21 ("This Article . . . evaluates possible causes of action under which a patient with a homosexual orientation might sue a psychotherapist who has tried to convert her to heterosexuality, such as negligent malpractice and intentional infliction of emotional distress."); *see also id.* at 232, 240-45.

[137] Kreindler provides an overview of physicians' duty of care to their patient:

> The physician owes the patient the following duties: (1) a duty to possess the requisite knowledge and skill that is possessed by the average member of the medical profession; (2) a duty to exercise reasonable care and diligence in the exercise of such professional knowledge and skill; and (3) the duty to use his or her best judgment in the application of this knowledge and skill. It is essential for the plaintiff to prove a breach of one of these duties in order to establish a claim of malpractice against a physician. Thus, medical malpractice can arise from a lack of knowledge, lack of ability, failure to exercise reasonable care or failure to use one's best judgment. Frequently, the knowledge, ability and judgment of

tending or staying the statute of limitations of a negligent malpractice claim, adult transgender people who were denied gender-affirming care when they were children might pursue this route to collect from offending medical care providers.

In New York State, the action must be commenced within two and a half years of the date of malpractice or the end of continuous treatment.[138] To establish a claim for ordinary negligence under tort law, the plaintiff must demonstrate the following by a preponderance of the evidence:

> 1. A duty or obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
> 2. A failure on the person's part to conform to the standard required: a breach of duty . . .
> 3. A reasonably close causal relationship between the conduct and the resulting injury. This is . . . commonly known as "legal cause," or "proximate cause" . . . .
> 4. Actual loss or damage resulting to the interests of another [i.e., harm].[139]

Although the elements of an ordinary negligence claim are identical to that of a negligent malpractice claim, courts have held professionals (e.g., medical providers) to a higher standard than ordinary people, to which courts apply a "reasonable man" standard.[140] In the medical provider context, courts require the defendant-physician to not only demonstrate they exercised reasonable care under the circumstances but also that they behaved the way other doctors of the same specialty would have behaved:

> In the absence of a special contract, a physician or surgeon is not required to exercise extraordinary skill and care or the highest degree of skill and care possible; but as a general rule he is only required to possess and exercise the degree of skill and learning ordinarily possessed and exercised, under similar circumstances, by the members of his profession in good standing, and to use

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the doctor are inextricably interwoven in an assessment of whether there is a deviation from accepted standards of medical care.

LEE S. KREINDLER ET AL., NEW YORK LAW OF TORTS § 13:5 (2020) (citations omitted).

[138] N.Y. C.P.L.R. § 214-a (MCKINNEY 2021).

[139] Gans, *supra* note 134, at 232 (citation omitted).

[140] *Id.*

> ordinary and reasonable care and diligence, and his best judgment, in the application of his skill to the case.[141]

One challenge that a now-adult transgender plaintiff who sues for denial of gender-affirming care could face under a negligent malpractice framework is that the defendant-physician can argue that transgender healthcare requires that a physician exercise extraordinary skill,[142] and that there is no medical consensus on whether to treat teenage transgender plaintiffs with HRT.[143] The plaintiff could argue there is generally a medical consensus that gender dysphoria exists and should be treated.[144] After all, the *DSM-5* recognizes the condition.[145] In addition, the Endocrine Society's Clinical Practice Guidelines—which advocates for treatment of transgender patients with medical intervention, including with GnRH analogs for minors—is backed by doctors from reputable health institutions, including New York Presbyterian Hospital and Columbia University Medical Center.[146] Thus, medical interventions are well within the degree of skill and standard of care that courts expect

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[141] *Id.* at 233 (citation omitted).

[142] *Id.*

[143] See the Christian Medical & Dental Associations'("CMDA") statement:

> [A]ttempts to alter gender surgically or hormonally for psychological indications, however, are medically inappropriate, as they repudiate nature, are unsupported by the witness of Scripture, and are inconsistent with Christian thinking on gender in every prior age. Accordingly, CMDA opposes medical assistance with gender transition on the following grounds.

CMDA Position Statement on Transgender Identification, CHRISTIAN MED. & DENTAL ASSOCIATIONS, https://perma.cc/9Q4C-EP8K (last visited May 1, 2021).

[144] *See Gender Transition Treatment*, *supra* note 4; "What We Know" Project, *supra* note 4.

[145] Yarbrough et al., *supra* note 5.

[146] *See* Cécile A. Unger, *Hormone Therapy for Transgender Patients*, 5 TRANSLATIONAL ANDROLOGY & UROLOGY 877, 882 (2016), https://perma.cc/R3WZ-JSU7 ("Hormone therapy has been shown to be associated with positive outcomes for patients, but there are important metabolic implications of therapy that must be carefully considered when treating patients."); *see also* Press Release, Endocrine Soc'y, *Endocrine Society Urges Policymakers to Follow Science on Transgender Health* (Oct. 28, 2019), https://perma.cc/5YZ7-JNFG; Hembree et al. write:

> We recommend treating gender-dysphoric/gender-incongruent adolescents who have entered puberty at Tanner Stage G2/B2 by suppression with gonadotropin-releasing hormone agonists. Clinicians may add gender-affirming hormones after a multidisciplinary team has confirmed the persistence of gender dysphoria/gender incongruence and sufficient mental capacity to give informed consent to this partially irreversible treatment. Most adolescents have this capacity by age 16 years old.

Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3870 (2017).

medical professionals to possess (e.g., satisfying the duty of care element of negligent malpractice).[147]

Subsequently, the plaintiff could argue the physician failed to follow the guidelines as the Endocrine Society set forth,[148] breaching their duty of care. The plaintiff could then establish that, due to the lack of gender-affirming medical care, they suffered the harm of going through an unwanted puberty, which includes physical "damage," mental harm (including C-PTSD), and economic harm, because the plaintiff's transition and medical interventions are now more complicated and riskier, and therefore possibly more expensive.[149]

As it currently stands, the two-and-a-half-year statute of limitations for negligent malpractice claims bar transgender adults who were denied gender-affirming care as youth the chance to vindicate their harms.[150] Extending the statute of limitations for this class would allow them to finally bring such claims.

VI. CONCLUSION

It requires a degree of self-awareness and bravery for someone, especially in their youth, to "come out" as transgender so they may enjoy their life as their true self. When parents do not accept their children—due to their gender identities—and when medical care providers deny them gender-affirming care—due to discriminatory animus or a negligent disregard of the medical consensus regarding transgender issues—it is akin to nipping a flower in the bud. This puts the youth in danger of either returning to the closet—where they face trauma, expose themselves to unregulated black-market medications, and risk serious medical harm—or re-realizing they are transgender at a point in their life when transitioning may be too expensive or otherwise less feasible.[151]

When Autumn went to see her doctor, the doctor was supposed to protect her health and well-being. Instead, the doctor failed to do so and caused her to suffer continuous harm, which stems from his initial denial of gender-affirming care. People like Autumn deserve to be able to sue those medical care providers for monetary damages regardless of the current statutes of limitations that prevent them from doing so.

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147 N.Y. C.P.L.R. § 214-a (MCKINNEY 2021).

148 *See* Press Release, Endocrine Soc'y, *supra* note 146.

149 *See Puberty Blockers for Youth*, *supra* note 10.

150 N.Y. C.P.L.R. § 214-a (MCKINNEY 2018).

151 Author's note: It is never too late to transition and embrace your true selves.