

118TH CONGRESS
1ST SESSION

S. 435

To provide requirements related to the eligibility of individuals who identify as transgender from serving in the Armed Forces.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. RUBIO (for himself, Mrs. BLACKBURN, Mr. BUDD, Mr. TUBERVILLE, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide requirements related to the eligibility of individuals who identify as transgender from serving in the Armed Forces.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Military
5 Readiness Act of 2023”.

6 **SEC. 2. LIMITATIONS ON MILITARY SERVICE BY INDIVID-**
7 **UALS WHO IDENTIFY AS TRANSGENDER.**

8 Not later than 90 days after the date of the enact-
9 ment of this Act, the Secretary of Defense shall prescribe

1 regulations regarding service of individuals who identify
2 as transgender as follows:

3 (1) Persons who identify as transgender with a
4 history of diagnosis of gender dysphoria are disquali-
5 fied from military service except under the following
6 limited circumstances:

7 (A) Individuals may serve in the Armed
8 Forces if they have been stable for 36 consecu-
9 tive months in their biological sex prior to ac-
10 cession.

11 (B) Members of the Armed Forces diag-
12 nosed with gender dysphoria after entering into
13 service may be retained if they do not undergo
14 gender transition procedures and remain
15 deployable within applicable retention standards
16 for their biological sex.

17 (C) Members of the Armed Forces serving
18 as of the date of the enactment of this Act who
19 have been diagnosed with gender dysphoria may
20 continue to serve only in their biological sex, ir-
21 respective of any changes previously made to
22 their gender marker in the Defense Enrollment
23 Eligibility Reporting System (DEERS), and re-
24 ceive medically necessary treatment for gender

1 males, or estrogen given to biological males at doses
2 that are profoundly larger or more potent than
3 would normally occur naturally in healthy biological
4 males.

5 (2) GENDER.—The term “gender” means the
6 psychological, behavioral, social, and cultural aspects
7 of being male or female.

8 (3) GENDER DYSPHORIA.—The term “gender
9 dysphoria” means a marked incongruence between
10 one’s experienced or expressed gender and biological
11 sex.

12 (4) GENDER TRANSITION.—The term “gender
13 transition” means the process by which a person
14 goes from identifying with and living as a gender
15 that corresponds to his or her biological sex to iden-
16 tifying with and living as a gender different from his
17 or her biological sex, and may involve social, legal,
18 or physical changes.

19 (5) GENDER TRANSITION PROCEDURES.—The
20 term “gender transition procedures”—

21 (A) means—

22 (i) any medical or surgical interven-
23 tion, including physician’s services, inpa-
24 tient and outpatient hospital services, or
25 prescribed drugs related to gender transi-

1 tion, that seeks to alter or remove physical
2 or anatomical characteristics or features
3 that are typical for the individual's biological
4 sex or to instill or create physiological
5 or anatomical characteristics that resemble
6 a sex different from the individual's birth
7 sex, including medical services that provide
8 puberty-blocking drugs, cross-sex hor-
9 mones, or other mechanisms to promote
10 the development of feminizing or
11 masculinizing features (in the opposite
12 sex); and

13 (ii) genital or non-genital gender tran-
14 sition surgery performed for the purpose of
15 assisting an individual with a gender tran-
16 sition; and

17 (B) does not include—

18 (i) services to those born with a medi-
19 cally verifiable disorder of sex development,
20 including a person with external biological
21 sex characteristics that are irresolvably
22 ambiguous, such as those born with 46 XX
23 chromosomes with virilization, 46 XY chro-
24 mosomes with undervirilization, or having
25 both ovarian and testicular tissue;

1 (ii) services provided when a physician
2 has otherwise diagnosed a disorder of sex-
3 ual development, in which the physician
4 has determined through genetic or bio-
5 chemical testing that the person does not
6 have normal sex chromosome structure, sex
7 steroid hormone production, or sex steroid
8 hormone action for a biological male or bi-
9 ological female; or

10 (iii) the treatment of any infection, in-
11 jury, disease, or disorder that has been
12 caused by or exacerbated by the perform-
13 ance of gender transition procedures,
14 whether or not the gender transition proce-
15 dure was performed in accordance with
16 State and Federal law or whether or not
17 funding for the gender transition proce-
18 dure is permissible.

19 (6) GENDER TRANSITION SURGERY.—The term
20 “gender transition surgery” means any medical or
21 surgical service that seeks to surgically alter or re-
22 move healthy physical or anatomical characteristics
23 or features that are typical for the individual’s bio-
24 logical sex in order to instill or create physiological
25 or anatomical characteristics that resemble a sex dif-

1 ferent from the individual’s birth sex, including gen-
2 ital or non-genital gender reassignment surgery per-
3 formed for the purpose of assisting an individual
4 with a gender transition.

5 (7) GENITAL GENDER TRANSITION SURGERY.—

6 The term “genital gender transition surgery” in-
7 cludes surgical procedures such as penectomy,
8 orchiectomy, vaginoplasty, clitoroplasty, or
9 vulvoplasty for biologically male patients or
10 hysterectomy, ovariectomy, reconstruction of the
11 fixed part of the urethra with or without a
12 metoidioplasty or a phalloplasty, vaginectomy,
13 scrotoplasty, or implantation of erection or testicular
14 prostheses for biologically female patients, when per-
15 formed for the purpose of assisting an individual
16 with a gender transition.

17 (8) NON-GENITAL GENDER TRANSITION SUR-

18 GERY.—The term “non-genital gender transition
19 surgery”—

20 (A) includes, when performed for the pur-
21 pose of assisting an individual with a gender
22 transition—

23 (i) surgical procedures such as aug-
24 mentation mammoplasty, facial feminiza-
25 tion surgery, liposuction, lipofilling, voice

1 surgery, thyroid cartilage reduction, gluteal
2 augmentation (implants or lipofilling), hair
3 reconstruction, or various aesthetic proce-
4 dures for biologically male patients; or

5 (ii) subcutaneous mastectomy, voice
6 surgery, liposuction, lipofilling, pectoral
7 implants or various aesthetic procedures
8 for biologically female patients; and

9 (B) does not include any procedure under-
10 taken because the individual suffers from a
11 physical disorder, physical injury, or physical
12 illness that would, as certified by a physician,
13 place the individual in imminent danger of
14 death or impairment of major bodily function
15 unless surgery is performed, unless the proce-
16 dure is for the purpose of a gender transition.

17 (9) PUBERTY-BLOCKING DRUGS.—The term
18 “puberty-blocking drugs” means, when used to delay
19 or suppress pubertal development in children for the
20 purpose of assisting an individual with a gender
21 transition—

22 (A) Gonadotropin-releasing hormone
23 (GnRH) analogues or other synthetic drugs
24 used in biological males to stop luteinizing hor-

1 mone secretion and therefore testosterone secre-
2 tion; and

3 (B) synthetic drugs used in biological fe-
4 males that stop the production of estrogen and
5 progesterone.

6 (10) SEX; BIRTH SEX; BIOLOGICAL SEX.—The
7 terms “sex”, “birth sex,” and “biological sex” refer
8 to the biological indication of male and female in the
9 context of reproductive potential or capacity, such as
10 sex chromosomes, naturally occurring sex hormones,
11 gonads, and non-ambiguous internal and external
12 genitalia present at birth, without regard to an indi-
13 vidual’s psychological, chosen, or subjective experi-
14 ence of gender.

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