

The Legal Intelligencer

Changing a Very Young Child's Gender Identity:

What's the Rush?

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By **Daniel Pollack** | September 30, 2020 at 01:37 PM



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In terms of numbers, there is no reliable data regarding the demographic characteristics of very young transgender children. UCLA's Williams Institute issued a 2017 [report](#) in which it estimated that 0.7% of youth age 13-17 identified as transgender. That same report estimated that 0.6% of the adult population identified as transgender.

Psychiatrist Stephen Levine opines on the medical/psychological status of gender dysphoria in a recent [affidavit](#) in a Wisconsin case, *John and Jane Doe v. Madison Metropolitan School District*: "Among psychiatrists and psychotherapists who practice in the area, there are currently widely varying views concerning both the causes of and appropriate therapeutic response to gender dysphoria in children. Existing studies do not provide a basis for a scientific conclusion as to which therapeutic response results in the best long-term outcomes for affected individuals."

Gender confirmation procedures and surgeries are performed to give transgender individuals the physical appearance and, in some cases, the functional abilities of their identified gender. The American Academy of Pediatrics issued a policy statement titled, "[Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents](#)," endorsing a gender affirmation approach. Others have endorsed a "watchful waiting" approach.

On the legal side, an extensive series of cases recognizes that parents are the presumptive and primary decision-makers for their children. One of the more conclusive and striking statements can be found in the U.S. Supreme

Court case, *Parham v. J. R.*, 442 U.S. 584, 603 (1979): “Most children, even in adolescence, simply are not able to make sound judgments concerning ... their need for medical care or treatment. Parents can and must make those judgments.” In other words, can very young children give valid informed consent to a medical intervention for gender reassignment?

Attorney James Marsh, chairman of CHILD USA’s board of directors, comments: “Over the past 50 years the best interest of the child standard has become the fundamental principle guiding children’s rights. When applied to the realm of gender identity, the best interest standard has yet to develop any clear guidance. This rapidly emerging area of medical and psychological care has not achieved a consensus around best practices. Given this uncertain reality, decisions about gender identity must be grounded in a child’s development, maturity, and ability to understand the risks and rewards concerning any course of treatment. Only when a child can be a full participant in decision-making should the child be given the right to make what might be an irreversible life-altering decision.”

Controversy has erupted over the complicated issue of child gender identity, with political agendas from all quarters driving the psychological, medical and legal perspectives.

At birth, a child’s eventual sexual identity is unknown. Of course, time is finite, but there is no reason for a politically imposed rush to judgment. Like many other medical conditions, a watch and wait approach—wisely—may last for months or years. It enables the child and parents to have a better feel for what the future may hold, and this moderate approach preserves the rights of everyone.

Slowing down may help children really get to know about their unknown.

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