

Should the family court have to approve hormone treatment for transgender teens?

Written by Fiona Kelly, Associate Professor, Law School, La Trobe University



Transgender teens need to jump through a lot of stressful and time laborious hoops to get the hormone treatment they need. [Tim Gouw/Unsplash](#) , [CC BY-SA](#)

Today the Family Court will hear the case of a young transgender person known as Kelvin. The ruling will determine whether an adolescent with [gender dysphoria](#) who wants to pursue the second stage of hormone treatment requires the Family Court's authorisation to do so.

For the past four years, [transgender children](#) and their [families](#) , as well as [judges](#) , [academics](#) and [doctors](#) , have spoken out against the mandatory family court process, arguing it's unnecessary and harmful. Today's case will determine whether it continues.

Read more: [Almost half of trans young people try to end their lives. How can we reduce this alarming statistic?](#)

What is Stage 2 treatment?

Stage 2 treatment, which is usually pursued at age 16, involves the administration of either oestrogen or testosterone, which cause the adolescent to develop the pubertal characteristics of the gender with which they identify. This follows Stage 1 treatment, which delays puberty, and which does not require court approval because it has no irreversible consequences.

Before Stage 2 treatment is recommended, a multidisciplinary team consisting of a paediatrician, two mental health professionals, and a fertility expert, must agree treatment is in the child's best interests.

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In a 2013 case called “ [Re Jamie](#) ” (meaning “in the case of Jamie”), the Family Court ruled parents cannot consent to Stage 2 treatment for their child, even when doctors recommend it.

What is the current law?

In the 2013 case, the full court ruled Stage 2 treatment for gender dysphoria is a “special medical procedure” and therefore beyond the bounds of parental authority. This decision was based on principles set down by an [earlier High Court case](#) , which addressed the non-therapeutic sterilisation of an intellectually disabled girl.

This case ruled parents cannot consent to a medical procedure for their child if it is non-therapeutic, there is a significant risk of making the wrong decision, and it has irreversible consequences. In such instances, parents must apply for Family Court authorisation.

Though parents cannot consent to Stage 2 treatment, an adolescent may consent if they are found to have sufficient maturity and understanding to make their own decisions (a legal concept known as “Gillick competency”). However, the decision as to whether a child is Gillick competent can only be made by the court. Thus, all transgender adolescents seeking Stage 2 treatment must bring a case before the Family Court.

Australia is the only country in the world that requires court involvement in Stage 2 decision-making.

What impact does this court process have?

Almost 50 Stage 2 cases have been heard by the Family Court since Jamie’s. In every case treatment was approved, with judges accepting the recommendation of the doctors. In the majority of cases, the young person has also been found to be Gillick competent.

While this shows the court is not standing in the way of Stage 2 treatment, the process takes an enormous toll on transgender youth and their parents. Recent [research](#) has found the often lengthy court process causes significant psychological harm to young people.

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Read more - [Explainer: what treatment do young children receive for gender dysphoria and is it irreversible?](#)

On average, they wait for eight months from the time treatment is recommended to when their case is heard, with most experiencing a significant decrease in their emotional well-being during this time.

For a population that already has [high rates of self harm and suicide](#), this delay can literally be a matter of life and death. The economic burden of bringing a case is also substantial, with many families incurring costs of more than A\$10,000. For low income families, the cost alone may pose a [barrier to treatment](#).

What will today's case determine?

The key question to be decided by the Family Court today is whether the protocol adopted in Jamie's case should be abandoned: should transgender youth be able to access Stage 2 treatment without court involvement?

To answer this question, the court needs to revisit the conclusion in Jamie's case that Stage 2 treatment is a "special medical procedure". Kelvin's lawyers will likely argue the High Court's test in [the case of the intellectually disabled girl](#) limited the definition of special medical procedures to treatment that is non-therapeutic.

But Stage 2 treatment is therapeutic.

Cross-sex hormone treatment is the internationally [recommended](#) medical treatment for adolescents with gender dysphoria, and is thus inherently therapeutic in the same way that chemotherapy is a therapeutic treatment for cancer.

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It will therefore likely be argued that Stage 2 treatment falls outside the earlier ruling from the High Court, and should not be subject to court authorisation. Rather, treatment decisions should be made collectively by doctors, parents and transgender youth in accordance with international protocols.

While it's difficult to predict what the court will decide in this case, there's strong [judicial](#) and [academic](#) support for the arguments Kelvin's lawyers will make.

A judge in an [earlier, similar case](#) stated it is “inhumane” to force young people to get a judge's permission to treat their gender dysphoria. Today's case provides the Family Court with an opportunity to decide it's no longer legally necessary to do so.

Fiona Kelly received funding from the Victoria Law Foundation to produce a legal toolkit for parents who apply to the Family Court for their child's Stage 2 treatment.

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Read more <http://theconversation.com/should-the-family-court-have-to-approve-hormone-treatment-for-transgender-teens-83571>