

AMENDED IN SENATE MAY 9, 2018
AMENDED IN SENATE APRIL 23, 2018

Senate Concurrent Resolution

No. 110

Introduced by Senator Wiener
(Coauthor: Senator Glazer)
(Coauthor: Assembly Member Limón)

February 27, 2018

Senate Concurrent Resolution No. 110—Relative to sex characteristics.

LEGISLATIVE COUNSEL'S DIGEST

SCR 110, as amended, Wiener. Sex characteristics.

This measure would, among other things, call upon stakeholders in the health professions to protect children born with variations of sex characteristics from nonconsensual, medically unnecessary surgeries.

Fiscal committee: no.

- 1 WHEREAS, Between 1 and 2 percent of individuals are born
2 with variations in their physical sex characteristics, which may
3 include differences in genital anatomy, internal reproductive
4 structures, chromosomes, or hormonal variations; and
5 WHEREAS, “Intersex” refers to the variety of different physical
6 indicators that create these differences, which occur with about
7 the same frequency as green eyes; and
8 WHEREAS, The majority of babies born with these variations
9 are healthy or do not require medical intervention related to their
10 sex characteristics until puberty, if at all; and
11 WHEREAS, Beginning in the 1950s, physicians in the United
12 States began performing irreversible surgeries on intersex infants

1 without medical justification in an attempt to surgically and
2 hormonally force them to conform to what these physicians
3 perceived as typical male and female bodies; and

4 WHEREAS, These surgeries, which include nonconsensual
5 infant vaginoplasties, clitoral reductions, and removal of gonadal
6 tissues, continue to this day; and

7 WHEREAS, These surgeries are often performed before a child
8 can even speak or stand, meaning the intersex individual is
9 excluded from the decision whether to undergo these irreversible
10 procedures; and

11 WHEREAS, There is evidence that these surgeries cause severe
12 psychological and physiological harm when performed without
13 the informed consent of the individual; and

14 WHEREAS, These harms may include scarring, chronic pain,
15 urinary incontinence, loss of sexual sensation and function,
16 depression, post-traumatic stress disorder, suicidality, and incorrect
17 gender assignment; and

18 WHEREAS, Despite that being born intersex is not a flaw or
19 shortcoming, intersex people and their families across California
20 report difficulties accessing competent medical care that does not
21 emphasize surgery, such as one mother, a resident of California
22 interviewed by Human Rights Watch, who explained: “I just wish
23 someone had said: ‘she’s OK, she’s perfectly healthy, there’s
24 nothing wrong with her, surgery can happen later and here are
25 some people who have been through your situation.’”; and

26 WHEREAS, The United Nations Special Rapporteur on Torture
27 explained in 2013, “Children who are born with atypical sex
28 characteristics are often subject to irreversible sex assignment,
29 involuntary sterilization, involuntary genital normalizing surgery,
30 performed without their informed consent, or that of their parents,
31 ‘in an attempt to fix their sex,’ leaving them with permanent,
32 irreversible infertility and causing severe mental suffering.”; and

33 WHEREAS, The United Nations High Commissioner for Human
34 Rights explained in 2015, “medically unnecessary surgeries and
35 other invasive treatment of intersex babies and children... are
36 rarely discussed and even more rarely investigated or prosecuted...
37 The result is impunity for the perpetrators; lack of remedy for
38 victims; and a perpetuating cycle of ignorance and abuse... We
39 need to bridge the gap between legislation and the lived realities
40 of intersex people.”; and

1 WHEREAS, The World Health Organization explained, also in
2 2015, that intersex children have been “subjected to medically
3 unnecessary, often irreversible, interventions that may have lifelong
4 consequences for their physical and mental health, including
5 irreversible termination of all or some of their reproductive and
6 sexual capacity... Human rights bodies and ethical and health
7 professional organizations have recommended that free and
8 informed consent should be ensured in medical interventions for
9 people with intersex conditions, including full information, orally
10 and in writing, on the suggested treatment, its justification and
11 alternatives.”; and

12 WHEREAS, Physicians for Human Rights has “call[ed] for an
13 end to all medically unnecessary surgical procedures on intersex
14 children before they are able to give meaningful consent to such
15 surgeries.”; and

16 WHEREAS, Human Rights Watch concluded that these
17 surgeries are “often catastrophic, the supposed benefits are largely
18 unproven, and there are generally no urgent health considerations
19 at stake. Procedures that could be delayed until intersex children
20 are old enough to decide whether they want them are instead
21 performed on infants who then have to live with the consequences
22 for a lifetime.”; and

23 WHEREAS, The Intersex and Genderqueer Recognition Project,
24 the preeminent organization in the United States to address the
25 rights of people to self-identify as nonbinary on government-issued
26 documents, was founded by intersex individuals and “envisions a
27 world that recognizes that sex, gender identity, and sexual
28 orientation have endless variations, with all possibilities valued
29 and respected,” and consequently calls for a delay of all medically
30 ~~necessary~~ *unnecessary* procedures on intersex children until the
31 individual can participate in the decision; and

32 WHEREAS, The United States Department of State has
33 commemorated Intersex Awareness Day in both 2016 and 2017
34 by recognizing the harm of these surgeries, stating “at a young
35 age, intersex persons routinely face forced medical surgeries
36 without free or informed consent. These interventions jeopardize
37 their physical integrity and ability to live freely.”; and

38 WHEREAS, The largest intersex patient support group in the
39 United States, The AIS-DSD Support Group, has called for a delay

1 of all medically unnecessary procedures on intersex children until
2 the individual can participate in the decision; and

3 WHEREAS, The largest advocacy organization in the United
4 States dedicated exclusively to intersex advocacy, interACT:
5 Advocates for Intersex Youth, was founded in Cotati, California
6 and has called for a delay of all medically unnecessary procedures
7 on intersex children until the individual can participate in the
8 decision; and

9 WHEREAS, In light of ongoing advocacy by the intersex
10 community, in 2005 the San Francisco Human Rights Commission
11 performed an investigation into this topic and issued an in-depth
12 report, recommending that “‘normalizing’ interventions should
13 not occur in infancy or childhood. Any procedures that are not
14 medically necessary should not be performed unless the patient
15 gives their legal consent.”; and

16 WHEREAS, Those subjected to medically unnecessary surgery
17 at a young age express despair over the fact that they were unable
18 to make these decisions for themselves, publishing about their
19 experiences in major news outlets: “I know firsthand the
20 devastating impact [these surgeries] can have, not just on our
21 bodies but on our souls. We are erased before we can even tell our
22 doctors who we are. Every human rights organization that has
23 considered this practice has condemned it, some even to the point
24 of recognizing it as akin to torture.”; and

25 WHEREAS, Physicians who have participated in these surgeries
26 have also expressed remorse that their training did not properly
27 prepare them to respect the bodily autonomy of intersex people,
28 as a Stanford-educated urologist explains: “I know intersex women
29 who have never experienced orgasm because clitoral surgery
30 destroyed their sensation; men who underwent a dozen penile
31 surgeries before they even hit puberty; people who had false
32 vaginas created that scarred and led to a lifetime of pain during
33 intercourse...the psychological damage caused by intervention is
34 just as staggering, as evidenced by generations of intersex adults
35 dealing with post-traumatic stress disorder, problems with intimacy
36 and severe depression. Some were even surgically assigned a
37 gender at birth, only to grow up identifying with the opposite
38 gender.”; and

39 WHEREAS, Intersex young people who have been able to
40 participate in these life-altering decisions are thriving, such as a

1 young intersex San Francisco resident who was not forced to
2 undergo surgery in infancy and instead participated in the decision
3 at the age of 16, who told reporters that for them, surgery “was
4 the right choice, but that’s very much an anomaly for intersex
5 people...The important thing was that I was old enough to make
6 that decision for myself.”; and

7 *WHEREAS, When the physical health of an infant with atypical*
8 *sex characteristics is threatened and medical attention cannot be*
9 *safely deferred, all therapeutic treatment options should remain*
10 *available to children, families, and medical professionals to ensure*
11 *that the imminent physical danger is addressed; and*

12 *WHEREAS, Medically unnecessary procedures, including all*
13 *surgical procedures that seek to alter the gonads, genitals, or*
14 *internal sex organs of children with atypical sex characteristics*
15 *too young to participate in the decision, when those procedures*
16 *carry both a meaningful risk of harm and can be safely deferred,*
17 *unfortunately remain common practice; and*

18 *WHEREAS, Despite attention from international human rights*
19 *bodies, the patient community, and their allies, there is evidence*
20 *of these surgeries occurring across California, yet no hospital in*
21 *the state has committed publicly to deferring medically unnecessary*
22 *interventions performed without the consent of intersex children*
23 *until they are old enough to participate in decisionmaking; and*

24 *WHEREAS, California should serve as a model of competent*
25 *and ethical medical care and has a compelling interest in protecting*
26 *the physical and psychological well-being of minors, including*
27 *intersex youth; now, therefore, be it*

28 *Resolved by the Senate of the State of California, the Assembly*
29 *thereof concurring, That the Legislature opposes all forms of*
30 *prejudice, bias, or discrimination and affirms its commitment to*
31 *the safety and security of all children, including those born with*
32 *variations in their physical sex characteristics; and be it further*

33 *Resolved, That the Legislature considers intersex children a part*
34 *of the fabric of our state’s diversity to be celebrated rather than an*
35 *aberration to be corrected; and be it further*

36 *Resolved, That the Legislature recognizes that intersex children*
37 *should be free to choose whether to undergo life-altering surgeries*
38 *that irreversibly—and sometimes irreparably—cause harm; and*
39 *be it further*

1 *Resolved*, That the Legislature calls upon stakeholders in the
2 health professions to protect children born with variations of sex
3 characteristics from nonconsensual medically unnecessary
4 surgeries, including via the enactment of policies and procedures
5 that delay these interventions until a time at which an individual
6 can participate in the decision; and be it further

7 *Resolved*, That the Secretary of the Senate transmit copies of
8 this resolution to the author for appropriate distribution.

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