

AMENDED IN ASSEMBLY AUGUST 16, 2018

AMENDED IN ASSEMBLY JUNE 27, 2018

AMENDED IN SENATE MAY 9, 2018

AMENDED IN SENATE APRIL 23, 2018

Senate Concurrent Resolution

No. 110

Introduced by Senator Wiener

(~~Coauthor: Senator Glazer~~)

(Principal coauthor: Assembly Member Thurmond)

(~~Coauthor: Assembly Member Limón~~)

(Coauthors: Senators Glazer and Lara)

(Coauthors: Assembly Members Gloria, Limón, Low, Aguiar-Curry, Arambula, Berman, Bloom, Bonta, Burke, Caballero, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gonzalez Fletcher, Gray, Holden, Jones-Sawyer, Kalra, Levine, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Rendon, Reyes, Rivas, Rodriguez, Rubio, Santiago, Ting, Weber, and Wood)

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 foster the well-being of children born with variations of sex characteristics through the enactment of policies and procedures that ensure individualized, multidisciplinary care, as provided.

Fiscal committee: no.

1 WHEREAS, ~~Between 1 and 2 percent of individuals are~~
2 *Individuals* born with variations in their physical sex
3 characteristics, ~~which may include~~ *may present with* differences
4 in genital anatomy, internal reproductive structures, chromosomes,
5 or hormonal variations; and

6 WHEREAS, “Intersex” refers to the variety of different physical
7 indicators that create these ~~differences, which occur with about~~
8 ~~the same frequency as green eyes;~~ *differences;* and

9 WHEREAS, The majority of babies born with these variations
10 are healthy or ~~do~~ *may* not require medical intervention related to
11 their *physical* sex characteristics ~~until puberty, immediately,~~ if at
12 all; and

13 WHEREAS, Beginning in the 1950s, physicians in the United
14 States began performing irreversible surgeries on intersex infants
15 without medical justification in an attempt to surgically and
16 hormonally force them to conform to what these physicians
17 perceived as typical male and female bodies; and

18 WHEREAS, These surgeries, which include ~~noneconsensual~~
19 *unnecessary* infant vaginoplasties, clitoral ~~reductions;~~ *reductions*
20 *and recessions*, and removal of gonadal tissues, continue to this
21 day; and

22 WHEREAS, These surgeries are often performed before a child
23 can even speak or stand, meaning the intersex individual is
24 excluded from the decision whether to undergo these irreversible
25 procedures; and

26 WHEREAS, There is evidence that these surgeries cause severe
27 psychological and physiological harm when performed without
28 the informed consent of the individual; and

29 WHEREAS, These harms may include scarring, chronic pain,
30 urinary incontinence, loss of sexual sensation and function,
31 depression, post-traumatic stress disorder, suicidality, and incorrect
32 gender assignment; and

33 WHEREAS, Despite that being born intersex is not a flaw or
34 shortcoming, intersex people and their families across California
35 report difficulties accessing competent medical care that does not
36 emphasize surgery, such as one mother, a resident of California
37 interviewed by Human Rights Watch, who explained: “I just wish
38 someone had said: ‘she’s OK, she’s perfectly healthy, there’s

1 nothing wrong with her, surgery can happen later and here are
2 some people who have been through your situation.”; and

3 WHEREAS, The United Nations Special Rapporteur on Torture
4 *and Other Cruel, Inhuman or Degrading Treatment or Punishment*
5 explained in 2013, “Children who are born with atypical sex
6 characteristics are often subject to irreversible sex assignment,
7 involuntary sterilization, involuntary genital normalizing surgery,
8 performed without their informed consent, or that of their parents,
9 ‘in an attempt to fix their sex,’ leaving them with permanent,
10 irreversible infertility and causing severe mental suffering.”; and

11 WHEREAS, The United Nations High Commissioner for Human
12 Rights explained in 2015, “medically unnecessary surgeries and
13 other invasive treatment of intersex babies and children... are
14 rarely discussed and even more rarely investigated or prosecuted...
15 *prosecuted...* . The result is impunity for the perpetrators; lack of
16 remedy for victims; and a perpetuating cycle of ignorance and
17 ~~abuse...~~ *abuse...* . We need to bridge the gap between legislation
18 and the lived realities of intersex people.”; and

19 WHEREAS, The World Health Organization explained, also in
20 2015, that intersex children have been “subjected to medically
21 unnecessary, often irreversible, interventions that may have lifelong
22 consequences for their physical and mental health, including
23 irreversible termination of all or some of their reproductive and
24 sexual capacity... Human rights bodies and ethical and health
25 professional organizations have recommended that free and
26 informed consent should be ensured in medical interventions for
27 people with intersex conditions, including full information, orally
28 and in writing, on the suggested treatment, its justification and
29 alternatives.”; and

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

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

1 WHEREAS, The Intersex and Genderqueer Recognition Project,
2 the preeminent organization in the United States to address the
3 rights of people to self-identify as nonbinary on government-issued
4 documents, was founded by intersex individuals and “envisions a
5 world that recognizes that sex, gender identity, and sexual
6 orientation have endless variations, with all possibilities valued
7 and respected,” and consequently calls for a delay of all medically
8 unnecessary procedures on intersex children until the individual
9 can participate in the decision; and

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

16 WHEREAS, The largest intersex patient support group in the
17 United States, ~~The~~ *the* AIS-DSD Support Group, has called for a
18 delay of all medically unnecessary procedures on intersex children
19 until the individual can participate in the decision; and

20 WHEREAS, The largest advocacy organization in the United
21 States dedicated exclusively to intersex advocacy, interACT:
22 Advocates for Intersex Youth, was founded in Cotati, California
23 and has called for a delay of all medically unnecessary procedures
24 on intersex children until the individual can participate in the
25 decision; and

26 WHEREAS, In light of ongoing advocacy by the intersex
27 community, in 2005 the San Francisco Human Rights Commission
28 performed an investigation into this topic and issued an ~~in-depth~~
29 *indepth* report, recommending that “‘normalizing’ interventions
30 should not occur in infancy or childhood. Any procedures that are
31 not medically necessary should not be performed unless the patient
32 gives their legal consent.”; and

33 WHEREAS, Those subjected to medically unnecessary surgery
34 at a young age express despair over the fact that they were unable
35 to make these decisions for themselves, publishing about their
36 experiences in major news outlets: “I know firsthand the
37 devastating impact [these surgeries] can have, not just on our
38 bodies but on our souls. We are erased before we can even tell our
39 doctors who we are. Every human rights organization that has

1 considered this practice has condemned it, some even to the point
2 of recognizing it as akin to torture.”; and

3 WHEREAS, Physicians who have participated in these surgeries
4 have also expressed remorse that their training did not properly
5 prepare them to respect the bodily autonomy of intersex people,
6 as a Stanford-educated urologist explains: “I know intersex women
7 who have never experienced orgasm because clitoral surgery
8 destroyed their sensation; men who underwent a dozen penile
9 surgeries before they even hit puberty; people who had false
10 vaginas created that scarred and led to a lifetime of pain during
11 intercourse...the psychological damage caused by intervention is
12 just as staggering, as evidenced by generations of intersex adults
13 dealing with post-traumatic stress disorder, problems with intimacy
14 and severe depression. Some were even surgically assigned a
15 gender at birth, only to grow up identifying with the opposite
16 gender.”; and

17 WHEREAS, Intersex young people who have been able to
18 participate in these life-altering decisions are thriving, such as a
19 young intersex San Francisco resident who was not forced to
20 undergo surgery in infancy and instead participated in the decision
21 at the age of 16, who told reporters that for them, surgery “was
22 the right choice, but that’s very much an anomaly for intersex
23 ~~people...~~*The people...* . *The* important thing was that I was old
24 enough to make that decision for myself.”; and

25 WHEREAS, When the physical health of an infant with atypical
26 sex characteristics is threatened and medical attention cannot be
27 safely deferred, all therapeutic treatment options should remain
28 available to children, families, and medical professionals to ensure
29 that the imminent physical danger is addressed; and

30 WHEREAS, Medically unnecessary procedures, including all
31 surgical procedures that seek to alter the gonads, genitals, or
32 internal sex organs of children with atypical sex characteristics
33 too young to participate in the decision, when those procedures
34 carry both a meaningful risk of harm and can be safely deferred,
35 are the sole subject of this resolution; and

36 WHEREAS, California should serve as a model of competent
37 and ethical medical care and has a compelling interest in protecting
38 the physical and psychological well-being of minors, including
39 intersex youth; now, therefore, be it

1 *Resolved by the Senate of the State of California, the Assembly*
2 *thereof concurring,* That the Legislature opposes all forms of
3 prejudice, bias, or discrimination and affirms its commitment to
4 the safety and security of all children, including those born with
5 variations in their physical sex characteristics; and be it further
6 *Resolved,* That the Legislature considers intersex children a part
7 of the fabric of our state’s diversity to be celebrated rather than an
8 aberration to be corrected; and be it further
9 *Resolved,* That the Legislature recognizes that intersex children
10 should be free to choose whether to undergo life-altering surgeries
11 that irreversibly—and sometimes irreparably—cause harm; and
12 be it further
13 *Resolved,* That the Legislature calls upon stakeholders in the
14 health professions to foster the well-being of children born with
15 variations of sex characteristics, and the adults they will become,
16 through the enactment of policies and procedures that ensure
17 individualized, multidisciplinary care that respects the rights of
18 the patient to participate in decisions, defers medical or surgical
19 intervention, as warranted, until the child is able to participate in
20 ~~decision-making,~~ *decisionmaking,* and provides support to promote
21 patient and family well-being; and be it further
22 *Resolved,* That the Secretary of the Senate transmit copies of
23 this resolution to the author for appropriate distribution.
24

25
26 **CORRECTIONS:** _____
27 **Text—Page 1.**
28 **REVISIONS:**
29 **Heading—Line 6.**
30 _____