

Sample Legislation – Regulating Intersex Surgery

[The enforcement mechanism for this provision is disciplinary action by the relevant state board, not criminal prosecution. Thus, this provision should be an amendment to the state’s Business and Professions Code or equivalent regulation of medical professional conduct, not an amendment to a law that contains criminal penalties.]

(a) The Legislature hereby finds and declares all of the following:

- (1) The Legislature opposes all forms of prejudice, bias, or discrimination and affirms its commitment to the dignity and autonomy of all people, including those born with variations in their physical sex characteristics.
- (2) “Variations in physical sex characteristics” is an umbrella term used to describe a wide range of natural bodily variations in traits including genitals, gonads, hormone function, and chromosomal patterns.
- (3) People born with variations in their physical sex characteristics, many of whom identify with the term “intersex,” are a part of the fabric of our state’s diversity and are entitled to dignity and bodily autonomy.
- (4) People born with variations in their physical sex characteristics are regularly subjected in infancy and childhood to nonemergency interventions to change the appearance or function of their sex characteristics without their consent, even though such surgeries may result in lasting harm.
- (5) The Legislature recognizes that nonemergency interventions on infants with variations in their physical sex characteristics are often performed on the basis of generalized assumptions about people’s preferences about their bodies’ appearance and function. These assumptions perpetuate gender stereotypes and may not reflect an individual’s actual preferences when they are capable of articulating their wishes.
- (6) Not all persons with variations in their physical sex characteristics will need or desire the interventions that may be recommended or performed on them without their consent. People born with variations in their physical sex characteristics should be free to choose whether to undergo interventions and in particular surgeries that impact not only their bodily autonomy but also their reproductive and sexual futures.
- (7) The Legislature recognizes that leading pediatric hospitals have begun to institute partial bans on performing these surgeries on patients who are too young to participate in a meaningful discussion of the implications of these surgeries.
- (8) The Legislature has a compelling interest in protecting the physical and psychological wellbeing of children, including those born with variations in their physical sex characteristics. The enactment of legislation is necessary to safeguard the bodily autonomy of people born with variations in their physical sex characteristics and to ensure patient-centered care that conforms with best practices in the medical profession.

(b) The following definitions apply for purposes of this section:

- (1) “Individual born with variations in their physical sex characteristics” means an individual born with physical traits, including genitals, gonads, hormone function, or chromosomal patterns, that vary from stereotypical notions regarding the development, appearance, or function of those sex characteristics, and includes but is not limited to variations resulting from Androgen Insensitivity Syndrome, Congenital Adrenal Hyperplasia, Gonadal Dysgenesis, Mayer-Rokitansky-Kuster-Hauser Syndrome, Turner Syndrome, and Klinefelter Syndrome.
- (2) “Surgery required to address an immediate risk of physical harm” means any of the following:

- (A) Surgery to remove tissue that poses a significantly heightened clinical risk of malignancy relative to that of the general population.
 - (B) Surgery to allow urine to exit the body, to treat urinary incontinence, or to make a minimally invasive adjustment to urinary function in order to decrease a risk of infection or renal complication in a patient whose current urinary function puts them at a demonstrated clinical risk of infection or renal complication.
 - (C) Surgery that is required to treat complications of a previous surgery and cannot be delayed without increasing physical health risks to the patient.
 - (D) Any other surgery necessary to preserve life in the event of a medical emergency.
- (c) A physician and surgeon shall not perform the following procedures on an individual born with variations in their physical sex characteristics who is under * years of age unless the procedure is a surgery required to address an immediate risk of physical harm:
- (1) Clitoroplasty, clitoral reduction, and clitoral recession, including corporal-sparing procedures.
 - (2) Gonadectomy.
 - (3) Any procedure that lengthens or reroutes a urethra from its native orifice.
 - (4) Vaginoplasty, urogenital sinus mobilization, and vaginal exteriorization.
- (d) A violation of this section constitutes unprofessional conduct.

**Note: consult with your legislative sponsor and advocacy partners regarding the ideal age to include in your bill. For example, a bill that contains a higher age, such as eighteen years, would protect a greater number of youth born with variations in their sex characteristics, but may also encounter stronger opposition and therefore be more difficult to pass.*