

By: Hernandez

H.B. No. 2462

A BILL TO BE ENTITLED

AN ACT

relating to prohibited nonconsensual genital surgery on certain minors with intersex traits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 266.001 through 266.013, Family Code, are designated as Subchapter A, Chapter 266, Family Code, and a heading is added to Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; EDUCATIONAL SERVICES; MEDICAL CARE

SECTION 2. Chapter 266, Family Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. MEDICAL PROCEDURES AND TREATMENTS RELATED TO INTERSEX TRAITS

Sec. 266.051. DEFINITIONS. In this subchapter:

(1) "Intersex child" means an individual who is younger than 18 years of age and either:

(A) has inborn chromosomal, gonadal, genital, or endocrine characteristics, or a combination of those characteristics, that are not suited to the typical definition of male or female or are atypical for the sex assigned; or

(B) is considered by a medical professional to have inborn chromosomal, gonadal, genital, or endocrine characteristics that are ambiguous or atypical for the sex assigned.

1           (2) "Medical procedure or treatment related to an  
2 intersex trait" includes:

3                   (A) hormonal treatment to treat or modify an  
4 intersex trait; or

5                   (B) genital surgery, including:

6                           (i) clitorectomy, clitoroplasty, clitoral  
7 reduction, and clitoral recession, including corporal-sparing  
8 procedures;

9                           (ii) vaginoplasty, introitoplasty, vaginal  
10 exteriorization, and partial or total urogenital sinus  
11 mobilization;

12                           (iii) labiaplasty and labial reduction;

13                           (iv) hypospadias surgery, relocation of the  
14 urethral meatus, and chordee release;

15                           (v) phalloplasty; and

16                           (vi) gonadectomy, including of testes,  
17 ovaries, ovotestes, or streak gonads.

18           (3) "Medically necessary" means a medical procedure or  
19 treatment immediately necessary to treat an injury, illness,  
20 disease, or condition affecting the intersex child's health that if  
21 delayed would adversely affect the intersex child's physical  
22 health.

23           Sec. 266.052. REQUIREMENTS FOR CERTAIN MEDICAL PROCEDURES  
24 OR TREATMENTS. A physician may not perform a medical procedure or  
25 treatment related to an intersex trait on a foster child unless:

26                   (1) the procedure or treatment is medically necessary  
27 for the physical health of the child and the child consents to the

1 procedure or treatment; or

2 (2) the procedure or treatment is not medically  
3 necessary for the physical health of the child, the child consents  
4 to the procedure or treatment, and a court authorizes the procedure  
5 or treatment as provided under this subchapter.

6 Sec. 266.053. INFORMED CONSENT. (a) Consent to a medical  
7 procedure or treatment related to an intersex trait is voluntary  
8 and informed only if:

9 (1) the child and the child's caregivers are provided  
10 with the information necessary for the child to provide voluntary  
11 and informed consent to the procedure or treatment, including:

12 (A) the nature of the proposed procedure or  
13 treatment, including whether and the extent to which the procedure  
14 is irreversible;

15 (B) the goals of the procedure or treatment,  
16 including whether the benefits of the proposed procedure or  
17 treatment are medical, psychological, or social, and the strength  
18 of the evidence supporting claims that the procedure provides each  
19 of those benefits;

20 (C) the possible risks associated with the  
21 procedure or treatment, including, if applicable, risk from  
22 anesthesia, loss of reproductive capacity, and loss of sexual  
23 function or sensation; and

24 (D) the alternatives to the proposed procedure or  
25 treatment, including delay of the procedure or treatment;

26 (2) the child and the child's caregivers are evaluated  
27 on at least two separate occasions by a mental health professional

1 with previous experience treating individuals with intersex traits  
2 to ensure the child:

3 (A) does not have an undiagnosed mental health  
4 condition; and

5 (B) has capacity to understand the procedure or  
6 treatment and is providing voluntary and informed consent absent  
7 coercion from family members or medical staff; and

8 (3) the consent is in writing and includes the  
9 following statements:

10 (A) "I (name of child) certify that I understand  
11 (reprint of Subdivisions (1)(A)-(D)) and consent to (description of  
12 medical procedure or treatment) to be performed or provided by  
13 (name of physician) on (date the medical procedure or treatment is  
14 to be performed or provided on the child).";

15 (B) "I (name of physician performing the  
16 procedure or providing the treatment) certify that I have discussed  
17 with (name of child and names of child's caregivers) (reprint of  
18 Subdivisions (1)(A)-(D)) on (date the information was provided).";  
19 and

20 (C) "I (name of mental health professional)  
21 certify that I have discussed with (name of child and names of  
22 child's caregivers) (reprint of Subdivisions (1)(A)-(D)) on (date  
23 the information was provided). It is my professional opinion that  
24 (name of child) actively desires (name of procedure or treatment)  
25 and is capable of providing informed consent."

26 (b) The child's physician shall retain the original consent  
27 in the child's medical record and provide a copy of the consent to

1 the child and the child's caregivers.

2 Sec. 266.054. COURT APPROVAL OF CERTAIN MEDICAL PROCEDURES  
3 OR TREATMENTS. (a) If the department wants an intersex child to  
4 undergo a medical procedure or treatment related to an intersex  
5 trait that is not medically necessary or the child wants to undergo  
6 the procedure or treatment, the department or child may file a  
7 petition with the court having continuing jurisdiction over the  
8 intersex child seeking court approval of the procedure or  
9 treatment.

10 (b) The court shall hold a hearing to determine whether the  
11 proposed medical procedure or treatment related to an intersex  
12 trait is in the child's best interest.

13 (c) The child must be represented by an attorney at the  
14 hearing. The attorney for the child must:

15 (1) possess adequate knowledge of intersex traits, the  
16 intersex population, and the range of medical procedures or  
17 treatments that may be pursued in connection with the child's  
18 intersex trait, including the option to delay any procedure or  
19 treatment;

20 (2) communicate with the child, to the extent possible  
21 given the child's age, regarding:

22 (A) the nature of the proposed medical procedure  
23 or treatment;

24 (B) whether and the extent to which the proposed  
25 medical procedure or treatment is irreversible; and

26 (C) the projected outcome of, the possible risks  
27 associated with, and the alternatives, including delay, to the

1 proposed medical procedure or treatment;

2 (3) interview the child, to the extent possible given  
3 the child's age, to determine the child's wishes regarding the  
4 pursuit or delay of any proposed medical procedure or treatment;

5 (4) assist the child, to the extent possible given the  
6 child's age, in assessing the child's desires related to the child's  
7 medical care and in communicating the child's desires to the court;  
8 and

9 (5) for a child younger than 12 years of age, argue  
10 against a proposed medical procedure or treatment that is not  
11 medically necessary.

12 (d) Any party to the suit may submit to the court a report or  
13 introduce evidence from a qualified expert on:

14 (1) intersex traits and the intersex population in  
15 general;

16 (2) the child's specific intersex traits;

17 (3) the range of medical procedures and treatments  
18 that may be pursued in connection with the child's intersex traits,  
19 including delay;

20 (4) the specific medical procedure or treatment  
21 proposed for the child, including the risks and anticipated  
22 benefits associated with the procedure or treatment and the  
23 possibility that the child's ultimate gender identity may differ  
24 from the sex assigned;

25 (5) whether and the extent to which the medical  
26 procedure or treatment:

27 (A) is irreversible; and

1                   (B) may safely be delayed until the child is of an  
2 age to participate in the decision-making process;

3                   (6) the physician's responsibilities to obtain  
4 informed consent from the child and the child's parent or guardian  
5 and whether those responsibilities have been adequately  
6 discharged; and

7                   (7) the public statements of intersex individuals or  
8 patient advocates regarding Subdivisions (1)-(6).

9                   (e) Following the hearing, the court shall determine  
10 whether the proposed medical procedure or treatment related to an  
11 intersex trait is in the child's best interest and render an order  
12 with specific findings on:

13                   (1) whether clear and convincing evidence establishes  
14 that the short-term or long-term physical benefits of the proposed  
15 medical procedure or treatment outweigh the short-term or long-term  
16 physical risks;

17                   (2) whether clear and convincing evidence establishes  
18 that the short-term and long-term psychological benefits of the  
19 proposed medical procedure or treatment outweigh the short-term or  
20 long-term psychological risks;

21                   (3) the extent to which the proposed medical procedure  
22 or treatment would limit the child's future options for:

23                           (A) fertility;

24                           (B) development or construction of  
25 female-typical characteristics;

26                           (C) development or construction of male-typical  
27 characteristics; and

1                   (D) preservation of body characteristics  
2 unaltered by decisions the child did not initiate; and

3                   (4) whether clear and convincing evidence establishes  
4 that any limitation identified under Subdivision (3) is justified  
5 by an urgent need for the proposed medical procedure or treatment.

6                   (f) If the requirements of Section 266.053 are satisfied,  
7 the court may consider the child's consent to the proposed medical  
8 procedure or treatment related to an intersex trait as clear and  
9 convincing evidence for purposes of the court's best-interest  
10 determination under Subsection (e).

11                   Sec. 266.055. FOSTER CHILD'S CONSENT TO MEDICAL PROCEDURE  
12 OR TREATMENT. Notwithstanding Section 32.003 or 266.004 or other  
13 law, a foster child may consent to a medical procedure or treatment  
14 related to an intersex trait if the child provides voluntary and  
15 informed consent to the proposed medical procedure or treatment in  
16 accordance with Section 266.053.

17                   SECTION 3. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2019.