

By: Hernandez

H.B. No. 726

A BILL TO BE ENTITLED

AN ACT

relating to prohibited nonconsensual medical procedures and treatment on certain minors with intersex traits.

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

SECTION 1. Chapter 266, Family Code, is amended by designating Sections 266.001 through 266.013 as Subchapter A and adding a subchapter heading 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 trait" means an inborn chromosomal, gonadal, genital, or endocrine characteristic, or a combination of those characteristics, that is not suited to the typical definition of male or female or is atypical for the sex assigned to an individual.

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

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

(B) genital surgery, including:

1 (i) clitorectomy, clitoroplasty, clitoral
2 reduction, and clitoral recession, including corporal-sparing
3 procedures;

4 (ii) vaginoplasty, introitoplasty, vaginal
5 exteriorization, and partial or total urogenital sinus
6 mobilization;

7 (iii) labiaplasty and labial reduction;

8 (iv) hypospadias surgery, relocation of the
9 urethral meatus, and chordee release;

10 (v) phalloplasty; and

11 (vi) gonadectomy, including of testes,
12 ovaries, ovotestes, or streak gonads.

13 (3) "Medically necessary" means a medical procedure or
14 treatment immediately necessary to treat an injury, illness,
15 disease, or condition affecting a child's health that if delayed
16 would adversely affect the child's physical health.

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

20 (1) the procedure or treatment is medically necessary
21 and the child consents to the procedure or treatment; or

22 (2) for a procedure or treatment that is not medically
23 necessary, the child consents to the procedure or treatment and a
24 court authorizes the procedure or treatment as provided under this
25 subchapter.

26 Sec. 266.053. INFORMED CONSENT. (a) Consent to a medical
27 procedure or treatment related to an intersex trait is voluntary

1 and informed only if:

2 (1) the physician provides to the child and the child's
3 caregivers the information necessary for the child to provide
4 voluntary and informed consent to the procedure or treatment,
5 including:

6 (A) the nature of the proposed procedure or
7 treatment, including whether and the extent to which the procedure
8 is irreversible;

9 (B) the goals of the procedure or treatment,
10 including whether the benefits of the proposed procedure or
11 treatment are medical, psychological, or social, and the strength
12 of the evidence supporting claims that the procedure provides each
13 of those benefits;

14 (C) the possible risks associated with the
15 procedure or treatment, including, if applicable, risk from
16 anesthesia, loss of reproductive capacity, and loss of sexual
17 function or sensation; and

18 (D) the alternatives to the proposed procedure or
19 treatment, including delay of the procedure or treatment;

20 (2) on at least two separate occasions a mental health
21 professional with previous experience treating individuals with
22 intersex traits evaluates the child and the child's caregivers to
23 ensure the child:

24 (A) does not have an undiagnosed mental health
25 condition; and

26 (B) has capacity to understand the procedure or
27 treatment and is providing voluntary and informed consent absent

1 coercion from family members or medical staff; and

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

4 (A) "I (name of child) certify that I understand
5 (reprint of Subdivisions (1)(A)-(D)) and consent to (description of
6 medical procedure or treatment) to be performed or provided by
7 (name of physician) on (date the medical procedure or treatment is
8 scheduled to be performed or provided on the child).";

9 (B) "I (name of physician performing the
10 procedure or providing the treatment) certify that I have discussed
11 with (name of child and names of child's caregivers) (reprint of
12 Subdivisions (1)(A)-(D)) on (date the information was provided).";
13 and

14 (C) "I (name of mental health professional)
15 certify that I have discussed with (name of child and names of
16 child's caregivers) (reprint of Subdivisions (1)(A)-(D)) on (date
17 the information was provided). It is my professional opinion that
18 (name of child) actively desires (name of procedure or treatment)
19 and is capable of providing informed consent."

20 (b) The child's physician shall retain the original consent
21 in the child's medical record and provide a copy of the consent to
22 the child and the child's caregivers.

23 Sec. 266.054. COURT APPROVAL OF CERTAIN MEDICAL PROCEDURES
24 OR TREATMENTS. (a) If the department determines a foster child
25 should undergo a medical procedure or treatment related to an
26 intersex trait that is not medically necessary or the child wants to
27 undergo the procedure or treatment, the department or child may

1 file a petition with the court having continuing jurisdiction over
2 the child seeking court approval for the procedure or treatment.

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

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

8 (1) possess adequate knowledge of intersex traits, the
9 intersex population, and the range of medical procedures or
10 treatments available to treat the child's intersex trait, including
11 the option to delay any procedure or treatment;

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

14 (A) the nature of the proposed medical procedure
15 or treatment;

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

18 (C) the projected outcome of, the possible risks
19 associated with, and the alternatives, including delay, to the
20 proposed medical procedure or treatment;

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

24 (4) assist the child, to the extent possible given the
25 child's age, in assessing the child's desires related to the child's
26 medical care and in communicating the child's desires to the court;

27 and

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

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

6 (1) intersex traits and the intersex population in
7 general;

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

9 (3) the range of medical procedures and treatments
10 available to treat the child's intersex traits, including delay;

11 (4) the specific medical procedure or treatment
12 proposed for the child, including the risks and anticipated
13 benefits associated with the procedure or treatment and the
14 possibility that the child's ultimate gender identity may differ
15 from the sex assigned;

16 (5) whether and the extent to which the medical
17 procedure or treatment:

18 (A) is irreversible; and

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

21 (6) the physician's duty to obtain informed consent
22 from the child and whether the duty has been adequately discharged;
23 and

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

26 (e) Following the hearing, the court shall determine
27 whether the proposed medical procedure or treatment related to an

1 intersex trait is in the child's best interest and render an order
2 with specific findings on:

3 (1) whether clear and convincing evidence establishes
4 that the short-term or long-term physical benefits of the proposed
5 medical procedure or treatment outweigh the short-term or long-term
6 physical risks;

7 (2) whether clear and convincing evidence establishes
8 that the short-term and long-term psychological benefits of the
9 proposed medical procedure or treatment outweigh the short-term or
10 long-term psychological risks;

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

13 (A) fertility;

14 (B) development or construction of
15 female-typical characteristics;

16 (C) development or construction of male-typical
17 characteristics; and

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

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

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

1 Sec. 266.055. FOSTER CHILD'S CONSENT TO MEDICAL PROCEDURE
2 OR TREATMENT. Notwithstanding Section 32.003 or 266.004 or other
3 law, a foster child may consent to a medical procedure or treatment
4 related to an intersex trait if the child provides voluntary and
5 informed consent to the proposed medical procedure or treatment in
6 accordance with Section 266.053.

7 SECTION 3. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2021.