

AMENDED IN SENATE JANUARY 6, 2020

AMENDED IN SENATE MARCH 25, 2019

SENATE BILL

No. 201

Introduced by Senator Wiener

(Coauthors: Senators Beall and Galgiani)

(Coauthors: Assembly Members Carrillo, Chiu, Gloria, McCarty, Quirk,
and Ting)

January 31, 2019

An act to add Section 2295 to the Business and Professions Code,
relating to sex characteristics.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as amended, Wiener. Medical procedures: treatment or
intervention: sex characteristics of a minor.

Under existing law, the Medical Practice Act, it is unprofessional
conduct for a physician and surgeon to fail to comply with prescribed
informed consent requirements relating to various medical procedures,
including sterilization procedures, the removal of sperm or ova from a
patient under specified circumstances, and the treatment of breast cancer.
Any violation of the law relating to enforcement of the Medical Practice
Act is a misdemeanor, as specified.

~~This bill would, absent a medical necessity, would prohibit a physician
and surgeon from performing any treatment or intervention on the sex
characteristics of an intersex minor without the informed consent of the
intersex minor, as described. The bill would, among other things, require
a physician and surgeon, prior to performing the treatment or
intervention, to provide a written and oral disclosure and to obtain the
informed consent of the intersex minor to the treatment or intervention,
as specified. The bill would authorize a physician and surgeon to~~

perform the medical procedure without the minor's consent if it is medically necessary and the physician and surgeon provides the written and oral disclosure to the parent or guardian and obtains their informed consent, as specified. The bill would authorize the Medical Board of California to develop and adopt medical guidelines to implement these requirements: *a person born with variations in their physical sex characteristics who is under 6 years of age unless the treatment or intervention is medically necessary. The bill, on or before December 1, 2021, would require the Medical Board of California, in consultation with specified persons and entities, to adopt regulations to determine which treatments and interventions on the sex characteristics of a person born with variations in their physical sex characteristics who is under 6 years of age are medically necessary, as specified.* Any violation of these provisions would be subject to disciplinary action by the board, but not criminal prosecution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2295 is added to the Business and
- 2 Professions Code, to read:
- 3 2295. (a) Consistent with Senate Concurrent Resolution 110
- 4 of the 2017–18 Regular Session (Resolution Chapter 225 of the
- 5 Statutes of 2018), the Legislature hereby finds and declares all of
- 6 the following:
- 7 (1) The Legislature opposes all forms of prejudice, bias, or
- 8 discrimination and affirms its commitment to the dignity and
- 9 autonomy of all people, including those born with variations in
- 10 their physical sex characteristics.
- 11 (2) ~~Intersex people~~ *People born with variations in their physical*
- 12 *sex characteristics, many of whom identify with the term*
- 13 *“intersex,”* are a part of the fabric of our state’s ~~diversity to be~~
- 14 ~~celebrated;~~ *diversity*, rather than an aberration to be corrected.
- 15 (3) ~~Intersex people~~ *People born with variations in their physical*
- 16 *sex characteristics* should be free to choose whether to undergo
- 17 life-altering surgeries and other treatments or interventions on their
- 18 physical sexual characteristics that irreversibly, and sometimes
- 19 irreparably, cause harm.

1 (4) The enactment of legislation is necessary to ensure the ability
2 right of intersex people born with variations in their physical sex
3 characteristics to participate in decisions about surgery and other
4 medical treatments or interventions on their physical sex
5 characteristics.

6 (5) ~~Intersex~~ “Variations in physical sex characteristics” is an
7 umbrella term used to describe a wide range of natural bodily
8 variations. In some cases, ~~intersex traits~~ variations in physical sex
9 characteristics are visible at birth, while in others, they are not
10 apparent until puberty. Some chromosomal ~~intersex~~ variations
11 may not be physically apparent at all.

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

13 (1) ~~“Intersex”~~ “Person born with variations in their physical
14 sex characteristics” means an individual born with sex
15 characteristics, including genitals, gonads, and chromosome
16 patterns, that do not fit typical binary notions of male or female
17 bodies, including differences in of sex development resulting from
18 androgen insensitivity syndrome, congenital adrenal hyperplasia,
19 and proximal hypospadias.

20 (2) (A) ~~A treatment or intervention on the sex characteristics~~
21 ~~of an intersex minor is “medically necessary” or a “medical~~
22 ~~necessity” when it is reasonable and necessary to protect life, to~~
23 ~~prevent significant illness or significant disability, or to alleviate~~
24 ~~severe pain.~~

25 (B) ~~A medically necessary treatment or intervention on the sex~~
26 ~~characteristics of an intersex minor includes, but is not limited to,~~
27 ~~a procedure to repair the bladder or cloacal exstrophy, a~~
28 ~~gonadectomy to address a risk of cancer that is significantly~~
29 ~~elevated above the risk to the general population, a hypospadias~~
30 ~~repair, including chordee release, intended to alleviate severe pain,~~
31 ~~or a procedure intended to allow urine to exit the body absent a~~
32 ~~urethral opening.~~

33 (C) ~~A treatment or intervention is not medically necessary if~~
34 ~~the treatment or intervention may be safely deferred until the~~
35 ~~intersex minor can provide informed consent. Psychological factors~~
36 ~~do not constitute medical necessity for a treatment or intervention~~
37 ~~on the sex characteristics of an intersex minor.~~

38 (3)

39 (2) “Parent or guardian” has the same meaning as used in
40 Section 6903 of the Family Code.

1 ~~(4)~~

2 (3) “Psychosocial” means an individual’s psychological status
3 in relation to their social and physical environment.

4 ~~(5) For purposes of this section, “informed consent” means that~~
5 ~~a person knowingly and intelligently, without duress or coercion,~~
6 ~~and clearly and explicitly manifests their consent to the proposed~~
7 ~~treatment or intervention to the attending physician and surgeon,~~
8 ~~following receipt of the written and oral disclosures described in~~
9 ~~subdivision (e).~~

10 ~~(e) (1) Absent a medical necessity, a physician and surgeon~~
11 ~~shall not perform any treatment or intervention on the sex~~
12 ~~characteristics of an intersex minor without the informed consent~~
13 ~~of the intersex minor, as described in subdivision (f).~~

14 ~~(2) A~~

15 (c) *For purposes of this section, a treatment or intervention*
16 *subject to the requirements of this section on the physical sex*
17 *characteristics of a person includes, but is not limited to, the*
18 *following procedures:*

19 ~~(A)~~

20 (1) Clitorectomy, clitoroplasty, clitoral reduction, and clitoral
21 recession, including corporal-sparing procedures.

22 ~~(B)~~

23 (2) Gonadectomy, including of testes, ovaries, ovotestes, and
24 streak gonads.

25 ~~(C) Hypospadias~~

26 (3) *Proximal hypospadias* surgery, relocation of the urethral
27 meatus, and chordee release.

28 ~~(D)~~

29 (4) Labiaplasty and labial reduction.

30 ~~(E)~~

31 (5) Phalloplasty.

32 ~~(F)~~

33 (6) Vaginoplasty, introitoplasty, vaginal exteriorization, and
34 partial or total urogenital sinus mobilization.

35 (7) *Any other treatment or intervention on the physical sex*
36 *characteristics of a person born with variations in their physical*
37 *sex characteristics intended to assign sex or conform physical sex*
38 *characteristics to typical binary notions of male or female bodies.*

39 ~~(d) Prior to performing a treatment or intervention on the sex~~
40 ~~characteristics of an intersex minor, a physician and surgeon shall~~

1 ~~provide to the intersex minor written and oral disclosure, as~~
2 ~~described in subdivision (e), and shall obtain the informed consent~~
3 ~~of the intersex minor, as described in subdivision (f).~~

4 ~~(e) The written and oral disclosure required by subdivision (d)~~
5 ~~shall include, in nontechnical terms, all of the following:~~

6 ~~(1) A description of the treatment or intervention to be~~
7 ~~performed, including any necessary health care management or~~
8 ~~long-term follow-up care to be expected following the treatment~~
9 ~~or intervention.~~

10 ~~(2) A description of any attendant discomfort and risks to the~~
11 ~~patient in the short term and long term, which may reasonably be~~
12 ~~expected following the treatment or intervention.~~

13 ~~(3) An explanation of any benefits that the patient can reasonably~~
14 ~~expect following the treatment or intervention.~~

15 ~~(4) An explanation of any appropriate alternative procedures,~~
16 ~~drugs, or devices, including delay of the procedure, that might be~~
17 ~~advantageous to the patient, and their relative risks and benefits.~~

18 ~~(5) An offer to answer any inquiries concerning the treatment~~
19 ~~or intervention involved.~~

20 ~~(f) (1) The informed consent to the treatment or intervention~~
21 ~~required by subdivision (d) shall be obtained from the intersex~~
22 ~~minor after providing the disclosure described in subdivision (e)~~
23 ~~and shall meet all of the following requirements:~~

24 ~~(A) The consent shall be in writing and shall contain the~~
25 ~~following statement: I (name of minor) do hereby consent to~~
26 ~~(description of medical procedure) to be performed by (name of~~
27 ~~physician and surgeon) on (date that the medical procedure is~~
28 ~~performed on the minor).~~

29 ~~(B) The consent shall be signed by the minor and by the~~
30 ~~physician and surgeon who performs the medical procedure.~~

31 ~~(C) The consent shall contain a notification to the minor that~~
32 ~~the written consent is an important document that should be~~
33 ~~retained with other vital records.~~

34 ~~(2) The physician and surgeon shall retain the original consent~~
35 ~~in the medical record of the minor and give a copy of the consent~~
36 ~~to the minor.~~

37 ~~(3) If the treatment or intervention is performed in a hospital,~~
38 ~~the physician and surgeon shall provide a copy of the consent to~~
39 ~~the hospital.~~

1 ~~(g) If it is medically necessary to perform a treatment or~~
2 ~~intervention on the sex characteristics of an intersex minor without~~
3 ~~the consent of the intersex minor, a physician and surgeon may~~
4 ~~perform the medical procedure only if the physician and surgeon~~
5 ~~provides the written and oral disclosure, as described in subdivision~~
6 ~~(e), to the parent or guardian, and the parent or guardian provides~~
7 ~~informed consent, as described in subdivision (f).~~

8 *(d) A treatment or intervention on the sex characteristics of a*
9 *person born with variations in their physical sex characteristics*
10 *who is under six years of age shall not be performed unless the*
11 *treatment or intervention is medically necessary.*

12 *(e) (1) On or before December 1, 2021, the board shall adopt*
13 *regulations to determine which treatments and interventions on*
14 *the sex characteristics of a person born with variations in their*
15 *physical sex characteristics who is under six years of age are*
16 *medically necessary, in consultation with the following:*

17 *(A) The State Department of Public Health.*

18 *(B) The Office of the Surgeon General.*

19 *(C) At least two urologists with professional experience treating*
20 *people born with variations in their physical sex characteristics.*

21 *(D) At least one pediatrician or family physician and surgeon*
22 *with professional experience treating people born with variations*
23 *in their physical sex characteristics.*

24 *(E) At least one mental health professional with professional*
25 *experience treating people born with variations in their physical*
26 *sex characteristics.*

27 *(F) At least one medical ethicist with published work on*
28 *variations in physical sex characteristics.*

29 *(G) At least one legal expert with published work on variations*
30 *in physical sex characteristics.*

31 *(H) At least one self-identified intersex-led community or*
32 *advocacy group with a focus on public policy regarding people*
33 *born with variations in their physical sex characteristics.*

34 *(I) At least one representative from a lesbian, gay, bisexual,*
35 *transgender, queer, and intersex (LGBTQI) medical association.*

36 *(2) The regulations adopted pursuant to paragraph (1) shall be*
37 *subject to the following:*

38 *(A) Psychological, psychosocial, and social factors do not*
39 *constitute a medical necessity for a treatment or intervention on*

1 *the sex characteristics of a person born with variations in their*
2 *physical sex characteristics who is under six years of age.*

3 *(B) A procedure that carries a meaningful risk of harm and that*
4 *can be deferred safely until the individual can participate in the*
5 *decision is not a treatment or intervention that is medically*
6 *necessary.*

7 *(C) The following treatments or interventions are medically*
8 *necessary:*

9 *(i) A procedure to repair the bladder or cloacal exstrophy.*

10 *(ii) A gonadectomy to address a risk of cancer that is*
11 *significantly elevated above the risk to the general population.*

12 *(iii) A procedure intended to allow urine to exit the body absent*
13 *a urethral opening.*

14 ~~*(h) The board may develop and adopt medical guidelines to*~~
15 ~~*implement this subdivision.*~~

16 ~~*(i)*~~

17 *(f) A violation of this section constitutes unprofessional conduct.*

18 *Section 2314 shall not apply to a violation of this section.*