

ASSEMBLY, No. 5441

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 8, 2021

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Prohibits certain surgical procedures on children born with variations in their sex characteristics.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning certain surgical procedures and supplementing
2 Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Person born with variations in their sex characteristics” means a
9 person born with one or more physical traits, including genitals or
10 gonads, or hormonal function or chromosomal patterns that vary
11 from stereotypical notions regarding the development, appearance,
12 or function of those sex characteristics including, but not limited to,
13 variations of sex development resulting from androgen insensitivity
14 syndrome or congenital adrenal hyperplasia.

15 “Prohibited surgical procedure” means clitoroplasty; clitoral
16 reduction; clitoral recession, including corporal-sparing procedures;
17 gonadectomy; any procedure that lengthens or reroutes the urethra
18 from its native orifice; vaginoplasty; urogenital sinus mobilization;
19 and vaginal exteriorization.

20 “Surgery required to address an immediate risk of physical harm”
21 means: a surgery to remove tissue that poses a significantly
22 heightened clinical risk of malignancy relative to that of the general
23 population; a surgery to allow urine to exit the body, to treat urinary
24 incontinence, or to make a minimally invasive adjustment to urinary
25 function in order to decrease a risk of infection or renal complication
26 in a patient whose current urinary function puts them at a
27 demonstrated clinical risk of infection or renal complication; a
28 surgery that is required to treat complications of a previous surgery
29 and cannot be delayed without increasing physical health risks to the
30 patient; or a surgery that is necessary to preserve life in the event of
31 a medical emergency, except that psychological, psychosocial, or
32 social factors shall not be the basis for determining whether the
33 surgery is necessary to preserve an individual’s life. when the surgery
34 is not at the behest of the individual.

35
36 2. a. A prohibited surgical procedure shall not be performed by a
37 health care professional in a health care facility licensed pursuant to
38 P.L.1971, c.136 (C.26:2H-1 et al.) on a person born with variations
39 in their physical sex characteristics, who is 12 years of age or under,
40 unless the surgery is required to address an immediate risk of
41 physical harm.

42 b. If a hospital allows a surgical procedure prohibited under
43 subsection b. of this act to be performed by a health care professional
44 in violation of the provisions of this act, the State Board of Medical
45 Examiners shall invoke penalties or take administrative action
46 against the health care professional. Any penalties imposed or
47 administrative actions taken by the State Board of Medical

1 Examiners pursuant to this subsection may be imposed in a summary
2 proceeding.

3

4 3. a. A health care professional who performs a prohibited
5 surgical procedure in violation of the provisions of section 2 of this
6 act shall be liable to the person upon whom the prohibited surgical
7 procedure was performed. Such a person may file an appropriate
8 civil action against the health care professional in the Superior Court,
9 and the court may order the health care professional to pay:

10 (1) actual, compensatory, and punitive damages, and other
11 injunctive and equitable relief as the court determines to be
12 appropriate;

13 (2) treble damages upon proof of willful, malicious, or reckless
14 disregard of the law; and

15 (3) reasonable attorney's fees and other litigation costs reasonably
16 incurred.

17 b. A civil action shall be filed under this section within 10 years
18 of the date the prohibited surgical procedure was performed, except
19 that, if the person filing the action is 12 years of age or under, the
20 action shall not be commenced until the person reaches the age of 18.

21

22 4. This act shall take effect immediately.

23

24

25 STATEMENT

26

27 This bill prohibits a health care professional in a health care
28 facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et al.) from
29 performing certain prohibited surgical procedures on a person born
30 with variations in their sex characteristics, who is 12 years of age
31 or under, unless the surgery is required to address an immediate risk
32 of physical harm.. The surgical procedures prohibited under the bill
33 include: clitoroplasty; clitoral reduction; clitoral recession, including
34 corporal-sparing procedures; gonadectomy; any procedure that
35 lengthens or reroutes the urethra from its native orifice; vaginoplasty;
36 urogenital sinus mobilization; and vaginal exteriorization.

37 A person born with variations in their sex characteristics is
38 defined in the bill as a person who born with one or more physical
39 traits, including genitals or gonads, or hormonal function or
40 chromosomal patterns that vary from stereotypical notions regarding
41 the development, appearance, or function of those sex characteristics
42 including, but not limited to, variations of sex development resulting
43 from androgen insensitivity syndrome and congenital adrenal
44 hyperplasia.

45 The bill further defines a “surgery required to address an
46 immediate risk of physical harm” to means a surgery: to remove
47 tissue that poses a heightened clinical risk of malignancy relative to
48 that of the general population; to allow urine to exit the body, to treat

1 urinary incontinence, or to make a minimally invasive adjustment to
2 urinary function in order to decrease a risk of infection or renal
3 complication in a patient whose current urinary function puts them at
4 a demonstrated clinical risk of infection or renal complication; that
5 is required to treat complications of a previous surgery and cannot be
6 delayed without increasing physical health risks to the patient; or that
7 is necessary to preserve life in the event of a medical emergency,
8 except that psychological, psychosocial, or social factors shall not be
9 the basis for determining whether the surgery is necessary to preserve
10 an individual's life.

11 The bill also stipulates that if a hospital allows a prohibited
12 surgical procedure to be performed by a health care professional in
13 violation of the bill's provisions, the State Board of Medical
14 Examiners is to invoke penalties or take administrative action against
15 the health care professional. Any penalties imposed or
16 administrative actions taken by the State Board may be imposed in a
17 summary proceeding.

18 Under the bill's provisions, a health care professional who
19 performs a prohibited surgical procedure on a person born with
20 variations in their sex characteristics 12 years of age or under, in
21 violation of the provisions of the bill, will be civilly liable to that
22 person. The person upon whom the surgery is performed may bring
23 a civil action in the Superior Court. The court may then order: actual,
24 compensatory, and punitive damages, and other injunctive and
25 equitable relief as the court determines to be appropriate; treble
26 damages upon proof of willful, malicious, or reckless disregard of the
27 law; and reasonable attorney's fees and other litigation costs
28 reasonably incurred.

29 A civil action brought under provisions of the bill is to be filed
30 within 10 years of the date the surgical procedure was performed,
31 except that, if a person 12 years of age or under files the action, the
32 action may not commence until the person reaches the age of 18.