

117TH CONGRESS
1ST SESSION

H. R. 5730

To amend part E of title IV of the Social Security Act to require States to prohibit genital surgery on foster children with variations in sex characteristics who are under six years of age as a condition of receiving grants under such part.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2021

Ms. GARCIA of Texas (for herself, Mr. TAKANO, Mr. RASKIN, Ms. PRESSLEY, Mr. QUIGLEY, Ms. JACKSON LEE, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend part E of title IV of the Social Security Act to require States to prohibit genital surgery on foster children with variations in sex characteristics who are under six years of age as a condition of receiving grants under such part.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PREAMBLE.**

4 (a) The Congress opposes all forms of prejudice, bias,
5 and discrimination, and affirms its commitment to the
6 dignity and autonomy of all people, including those born
7 with variations in their physical sex characteristics. The

1 Congress especially notes the importance of protecting
2 children within the guardianship of the foster care system.

3 (b) “Variations in physical sex characteristics” is an
4 umbrella term used to describe a wide range of natural
5 bodily variations in traits including genitals, gonads, hor-
6 mone function, and chromosomal patterns.

7 (c) People born with variations in their physical sex
8 characteristics are a part of the fabric of the Nation’s di-
9 versity and are equally entitled to dignity and bodily au-
10 tonomy.

11 (d) People born with variations in their physical sex
12 characteristics are regularly subjected in infancy to sur-
13 geries to change the appearance or function of those vari-
14 ations, even though such surgeries may result in lasting
15 harm.

16 (e) The Congress recognizes that surgeries on infants
17 with variations in their physical sex characteristics are
18 often justified by generalized assumptions about people’s
19 preferences about their bodies’ appearance and function.
20 These assumptions perpetuate gender stereotypes and
21 may not reflect an individual’s actual preferences when
22 they are capable of articulating their wishes.

23 (f) Not all persons with variations in their physical
24 sex characteristics will need or desire the surgeries that
25 may be recommended or performed on them in infancy.

1 People born with variations in their physical sex character-
2 istics should be free to choose whether to undergo sur-
3 geries that impact not only their bodily autonomy but also
4 their reproductive and sexual futures.

5 (g) The Congress recognizes that leading pediatric
6 hospitals have begun to institute partial bans on these sur-
7 geries on patients who are too young to participate in a
8 meaningful discussion of the implications of these sur-
9 geries.

10 (h) Therefore, the Congress calls upon the States to
11 hold health professionals responsible for safeguarding the
12 bodily autonomy of people born with variations in their
13 physical sex characteristics and ensuring patient-centered
14 care that conforms with best practices in the medical pro-
15 fession by ending the practice of performing specified sur-
16 geries on such children when they are under the age of
17 six and the surgery is not required to address an imme-
18 diate risk of physical harm, as provided.

19 **SEC. 2. FINDINGS.**

20 The Congress finds the following:

21 (1) Individuals with variations in their physical
22 sex characteristics may present with differences in
23 genital anatomy, internal reproductive structures,
24 chromosomes, or hormonal variations. “Intersex” re-
25 fers to the variety of different physical indicators

1 that create those differences. As many as 1.7 per-
2 cent of babies are born with physical sex characteris-
3 tics which do not conform to the expectations for a
4 typical male or female. The vast majority of babies
5 born with these variations do not require surgical
6 intervention related to their physical sex characteris-
7 tics immediately, if at all.

8 (2) Beginning in the 1950s physicians in the
9 United States began performing irreversible sur-
10 geries (often referred to as genital-normalizing sur-
11 geries) on infants with variations in their physical
12 sex characteristics without medical justification.

13 (3) As many as two-thirds of these irreversible
14 surgeries occur on infants under the age of two. A
15 literature review of genital surgery conducted on
16 children with variations in their physical sex charac-
17 teristics published in the *Journal of Steroid Bio-*
18 *chemistry and Molecular Biology* found that between
19 2005 and 2012 the average age of patients was 11.2
20 months old and the median age was 9.9 months at
21 initial surgery.

22 (4) These surgeries, which include unnecessary
23 infant vaginoplasties, clitoral reductions and reces-
24 sions, and removal of gonadal tissues, are often per-
25 formed before a child can even speak or stand,

1 meaning the individual is excluded from the decision
2 whether to undergo these irreversible procedures.

3 (5) There is evidence that these surgeries cause
4 severe psychological and physiological harm when
5 performed without the informed consent of the indi-
6 vidual. These harms may include scarring, chronic
7 pain, urinary incontinence, loss of sexual sensation
8 and function, sterilization, depression, post-trau-
9 matic stress disorder, suicidality, and incorrect gen-
10 der assignment.

11 (6) A number of domestic and international
12 human rights organizations have conducted thorough
13 inquiries into genital surgeries on infants with vari-
14 ations in their physical sex characteristics and have
15 concluded that these procedures are cruel and cata-
16 strophic, as follows:

17 (A) The United Nations Special
18 Rapporteur on Torture and Other Cruel, Inhu-
19 man or Degrading Treatment or Punishment
20 explained in 2013, “children who are born with
21 atypical sex characteristics are often subject to
22 irreversible sex assignment, involuntary steri-
23 lization, involuntary genital normalizing sur-
24 gery, performed without their informed consent,
25 or that of their parents, ‘in an attempt to fix

1 their sex,’ leaving them with permanent, irre-
2 versible infertility and causing severe mental
3 suffering.”.

4 (B) The United Nations High Commis-
5 sioner for Human Rights explained in 2015,
6 “medically unnecessary surgeries and other
7 invasive treatment of intersex babies and chil-
8 dren . . . are rarely discussed and even more
9 rarely investigated or prosecuted. . . . The re-
10 sult is impunity for the perpetrators; lack of
11 remedy for victims; and a gap between legisla-
12 tion and the lived realities of intersex people.”.

13 (C) The World Health Organization ex-
14 plained in 2015, that children with variations in
15 their physical sex characteristics have been
16 “subjected to medically unnecessary, often irre-
17 versible, interventions that may have lifelong
18 consequences for their physical and mental
19 health, including irreversible termination of all
20 or some of their reproductive and sexual capac-
21 ity. . . . Human rights bodies and ethical and
22 health professional organizations have rec-
23 ommended that free and informed consent
24 should be ensured in medical interventions for
25 people with intersex conditions, including full

1 information, orally and in writing, on the sug-
2 gested treatment, its justification and alter-
3 natives.”.

4 (D) Physicians for Human Rights has
5 “call[ed] for an end to all medically unneces-
6 sary surgical procedures on intersex children
7 before they are able to give meaningful consent
8 to such surgeries.”.

9 (E) Human Rights Watch concluded that
10 these surgeries are “often catastrophic, the sup-
11 posed benefits are largely unproven, and there
12 are generally no urgent health considerations at
13 stake. Procedures that could be delayed until
14 intersex children are old enough to decide
15 whether they want them are instead performed
16 on infants who then have to live with the con-
17 sequences for a lifetime.”.

18 (7) Intersex advocacy groups led by individuals
19 with variations in their physical sex characteristics
20 themselves advocate for the postponing or banning
21 of these surgeries, as follows:

22 (A) Those subjected to surgery to alter
23 their variations in sex characteristics at a
24 young age express despair over the fact that
25 they were unable to make these decisions for

1 themselves, publishing about their experiences
2 in major news outlets: “I know firsthand the
3 devastating impact [these surgeries] can have,
4 not just on our bodies but on our souls. We are
5 erased before we can even tell our doctors who
6 we are. Every human rights organization that
7 has considered the practice has condemned it,
8 some even to the point of recognizing it as akin
9 to torture.”.

10 (B) Young people born with variations in
11 their physical sex characteristics who have been
12 able to participate in these life-altering deci-
13 sions are thriving, such as a young California
14 resident with variation of sex characteristics
15 who was not forced to undergo surgery in in-
16 fancy and instead participated in the decision at
17 the age of 16. They told reporters that for
18 them, surgery “was the right choice, but that’s
19 very much an anomaly for intersex people. . . .
20 The important thing was that I was old enough
21 to make that decision for myself.”.

22 (8) The United States Department of State has
23 acknowledged Intersex Awareness Day in both 2016
24 and 2017 by recognizing the harm of these sur-
25 geries. In both years the Department released state-

1 ments recognizing that “at a young age, intersex
2 persons routinely face forced medical surgeries with-
3 out free or informed consent. These interventions
4 jeopardize their physical integrity and ability to live
5 freely.”.

6 (9) In light of ongoing advocacy by the intersex
7 community, in 2005 the San Francisco Human
8 Rights Commission performed an investigation into
9 this topic and issued an in-depth report, recom-
10 mending that “‘normalizing’ interventions should
11 not occur in infancy or childhood. Any procedures
12 that are not medically necessary should not be per-
13 formed unless the patient gives their legal consent.”.

14 (10) Physicians who have participated in these
15 surgeries have also expressed remorse that their
16 training did not properly prepare them to respect
17 the bodily autonomy of people born with variations
18 in their physical sex characteristics. As a Stanford-
19 educated urologist explains: “I know intersex women
20 who have never experienced orgasm because clitoral
21 surgery destroyed their sensation; men who under-
22 went a dozen penile surgeries before they even hit
23 puberty; people who had false vaginas created that
24 scarred and led to a lifetime of pain during inter-
25 course . . . the psychological damage caused by

1 intervention is just as staggering, as evidenced by
2 generations of intersex adults dealing with post-trau-
3 matic stress disorder, problems with intimacy and
4 severe depression. Some were even surgically as-
5 signed a gender at birth, only to grow up identifying
6 with the opposite gender.”.

7 (11) When the physical health of an infant born
8 with variations in their physical sex characteristics is
9 threatened and medical attention cannot be safely
10 deferred, all therapeutic treatment options should re-
11 main available to children, families, and medical pro-
12 fessionals to ensure that the imminent physical dan-
13 ger is addressed.

14 (12) The United States should serve as a model
15 of competent and ethical medical care and has a
16 compelling interest in protecting the physical and
17 psychological well-being of children, including those
18 born with variations in their physical sex character-
19 istics.

1 **SEC. 3. STATES REQUIRED TO PROHIBIT SPECIFIED SUR-**
2 **GERIES ON FOSTER CHILDREN WITH VARI-**
3 **ATIONS IN SEX CHARACTERISTICS WHO ARE**
4 **UNDER 6 YEARS OF AGE, AS A CONDITION OF**
5 **PARTICIPATION IN THE FEDERAL FOSTER**
6 **CARE AND ADOPTION ASSISTANCE PROGRAM.**

7 (a) STATE PLAN REQUIREMENT.—Section 471 of the
8 Social Security Act (42 U.S.C. 671) is amended—

9 (1) in subsection (a)—

10 (A) by striking “and” at the end of para-
11 graph (36);

12 (B) by striking the period at the end of
13 paragraph (37) and inserting “; and”; and

14 (C) by adding at the end, the following:

15 “(38) provides that the State shall have in ef-
16 fect the laws and procedures described in subsection
17 (f), which shall specify appropriate penalties and en-
18 forcement mechanisms described in subsection (f)(3)
19 to ensure compliance with the laws and proce-
20 dures.”; and

21 (2) by adding at the end the following:

22 “(f) STATE LAWS AND PROCEDURES TO PROHIBIT
23 GENITAL SURGERY ON FOSTER CHILDREN BORN WITH
24 VARIATIONS IN THEIR PHYSICAL SEX CHARACTERISTICS
25 WHO ARE UNDER 6 YEARS OF AGE.—

1 “(1) IN GENERAL.—The laws and procedures
2 described in this subsection are laws and procedures
3 which prohibit a physician who is licensed to provide
4 medical care under State law from performing any
5 of the following surgeries on a foster child who has
6 not attained 6 years of age and who is an individual
7 born with variations in their physical sex character-
8 istics:

9 “(A) Clitoroplasty, clitoral reduction, or
10 clitoral recession, including corporal-sparing
11 procedures.

12 “(B) Gonadectomy.

13 “(C) Vaginoplasty, urogenital sinus mobili-
14 zation, or vaginal exteriorization.

15 “(2) DEFINITIONS.—In paragraph (1):

16 “(A) INDIVIDUAL BORN WITH VARIATIONS
17 IN THEIR PHYSICAL SEX CHARACTERISTICS.—
18 The term ‘individual born with variations in
19 their physical sex characteristics’ means an in-
20 dividual born with physical traits, including
21 genitals, gonads, hormone function, or chromo-
22 somal patterns, that vary from stereotypical no-
23 tions regarding the development, appearance, or
24 function of sex characteristics.

1 “(B) SURGERY REQUIRED TO ADDRESS AN
2 IMMEDIATE RISK OF PHYSICAL HARM.—The
3 term ‘surgery required to address an immediate
4 risk of physical harm’ means—

5 “(i) surgery to remove tissue that is
6 malignant;

7 “(ii) surgery to create an opening to
8 allow urine or feces to exit the body where
9 an opening is underdeveloped or not
10 present;

11 “(iii) surgery to reposition internal or-
12 gans that formed outside of the body;

13 “(iv) surgery that is required to treat
14 complications of a previous surgery and
15 cannot be delayed without increasing phys-
16 ical health risks to the patient; and

17 “(v) any other surgery necessary to
18 preserve life in the event of a medical
19 emergency.

20 “(3) ENFORCEMENT.—

21 “(A) IN GENERAL.—The relevant licensing
22 entity of the State shall consider a violation of
23 a State law or procedure described in para-
24 graph (1) to be unprofessional conduct, and

1 shall discipline any violator of such a law or
2 procedure accordingly.

3 “(B) CONCURRENT AUTHORITY.—The rel-
4 evant department of health or regulatory body
5 of a State shall have concurrent authority to
6 initiate proceedings to address violations of a
7 State law or procedure described in paragraph
8 (1).

9 “(4) RULE OF INTERPRETATION.—This sub-
10 section shall not be interpreted to require a State to
11 impose liability on a hospital at which a violation of
12 a State law or procedure described in paragraph (1)
13 occurs.”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 subsection (a) shall take effect on the 1st day of the
17 1st calendar quarter that begins 1 year or more
18 after the date of the enactment of this Act, and shall
19 apply to payments under part E of title IV of the
20 Social Security Act for calendar quarters beginning
21 on or after such date.

22 (2) DELAY PERMITTED IF STATE LEGISLATION
23 REQUIRED.—If the Secretary of Health and Human
24 Services determines that State legislation (other
25 than legislation appropriating funds) is required in

1 order for a State plan developed pursuant to part E
2 of title IV of the Social Security Act to meet the ad-
3 ditional requirements imposed by the amendments
4 made by subsection (a), the plan shall not be re-
5 garded as failing to meet any of the additional re-
6 quirements before the 1st day of the 1st calendar
7 quarter beginning after the 1st regular session of
8 the State legislature that begins 1 year or more
9 after the date of the enactment of this Act. For pur-
10 poses of the preceding sentence, if the State has a
11 2-year legislative session, each year of the session is
12 deemed to be a separate regular session of the State
13 legislature.

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