

2021-K432

Assembly Resolution No. 432

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MEMORIALIZING Governor Andrew M. Cuomo to proclaim October 26, 2021, as Intersex Awareness Day in the State of New York

WHEREAS, The State of New York takes great pride in recognizing official days established to increase awareness of serious issues that affect the lives of all New Yorkers; and

WHEREAS, This Legislative Body is justly proud to memorialize Governor Andrew M. Cuomo to proclaim October 26, 2021, as Intersex Awareness Day in the State of New York, in conjunction with the observance of National Intersex Awareness Day; and

WHEREAS, Variations in physical sex characteristics, and intersex traits, are umbrella terms used to describe a wide range of natural bodily variations in traits including genitals, gonads, internal reproductive organs, hormone function, and chromosomal patterns; and

WHEREAS, Beginning in the 1950s, physicians in the United States began performing normalizing surgeries on infants with variations in their sex characteristics, often referred to as intersex, in an attempt to force them to conform to what these physicians perceived as typical male and female bodies; and

WHEREAS, These irreversible interventions include infant vaginoplasties, clitoral reductions and recessions, procedures to relocate a functioning urethra, and removal of gonadal tissues, which continue to this day in New York State even though such surgeries may result in lasting harm and have been deemed human rights violations by multiple international agencies; and

WHEREAS, These surgeries are most often performed before a child reaches the age of two, despite no urgent medical considerations that would require immediacy in the majority of cases, meaning the individual is needlessly deprived of the opportunity to decide whether these procedures are right for them; and

WHEREAS, There is evidence these surgeries can cause severe psychological and physiological harm when performed without the informed consent of the individual; and

WHEREAS, These harms, which often last a lifetime, may include scarring, chronic pain, urinary incontinence, sterilization, loss of future sexual sensation and function, recurring complications requiring repeated follow-up surgeries, depression, post-traumatic stress disorder, suicidality, and incorrect gender assignment; and

WHEREAS, These interventions are often justified by cultural assumptions about appropriate appearance and function of another person's body, and adults' fears that children with variations in physical sex characteristics will be ostracized by peers and/or will grow up to be LGBTQ; and

WHEREAS, Parallels exist between these nonemergency surgeries on children with variations in their sex characteristics and the practice of conversion therapy suffered by LGBTQ youth, as well as the

performance of medically unnecessary interventions on disabled populations not based on individual health and well-being; and

WHEREAS, Being born with variations in one's sex characteristics is not a flaw or shortcoming, yet intersex people and their families report difficulties accessing competent medical care that centers the child's well-being and self-determination and does not emphasize surgery or a regimen of hormones before the individual is able to participate in these decisions; and

WHEREAS, This difficulty is echoed by the Fenway Institute's recent guidance on intersex-affirming care, which acknowledges that "[o]ften, families feel pressured to consent to surgeries on their child without being given sufficient mental health counseling, peer support, or information on alternatives to surgery."; and

WHEREAS, Experiences of pathologization and stigma in medical settings were reported by many individuals and their families in interviews conducted by Human Rights Watch, including one mother who explained: "I just wish someone had said: 'she's OK, she's perfectly healthy, there's nothing wrong with her, surgery can happen later and here are some people who have been through your situation.'"; and

WHEREAS, The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explained in 2013, "Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, 'in an attempt to fix their sex,' leaving them with permanent, irreversible infertility and causing severe mental suffering."; and

WHEREAS, The World Health Organization explained in 2015 that children born with variations in their sex characteristics have been "subjected to medically unnecessary, often irreversible, interventions that may have lifelong consequences for their physical and mental health, including irreversible termination of all or some of their reproductive and sexual capacity ... Human rights bodies and ethical and health professional organizations have recommended that free and informed consent should be ensured in medical interventions for people with intersex conditions, including full information, orally and in writing, on the suggested treatment, its justification and alternatives."; and

WHEREAS, Physicians for Human Rights has "call[ed] for an end to all medically unnecessary surgical procedures on intersex children before they are able to give meaningful consent to such surgeries."; and

WHEREAS, Human Rights Watch concluded in its in-depth 2017 report that these surgeries are "often catastrophic, the supposed benefits are largely unproven, and there are generally no urgent health considerations at stake. Procedures that could be delayed until intersex children are old enough to decide whether they want them are instead performed on infants who then have to live with the consequences for a lifetime."; and

WHEREAS, Three former Surgeons General of the United States agreed that these surgeries can cause "severe and irreversible physical harm and emotional distress" and "violate an individual's right to personal autonomy over their own future," "clearly infring[ing] on the child's right to physical integrity, preservation of sexual and gender identity, and procreative freedom."; and

WHEREAS, The United States Department of State has commemorated Intersex Awareness Day by recognizing the harm of these surgeries, stating that "at a young age, intersex persons routinely face forced medical surgeries without free or informed consent. These interventions jeopardize their physical integrity and ability to live freely."; and

WHEREAS, The largest intersex patient support group in the United States, InterConnect, has called for a delay of all decisions regarding non-urgent procedures on children with variations in their sex characteristics until the individual can participate in the decision; and

WHEREAS, The largest advocacy organization in the United States dedicated exclusively to advancing the rights of people born with variations in their sex characteristics, interACT: Advocates for Intersex Youth, has likewise called for laws and policies that ensure decisions about surgeries to "normalize" sex characteristics that are not medically urgent in early childhood are delayed until the individual can lead the decision; and

WHEREAS, The New York City Bar Association has explained in a 2019 report, "We advocate for the end of these unnecessary, nonconsensual, and irreversible surgeries inflicted upon intersex people and support the right of parents to receive accurate and timely information about medical interventions that they currently may feel pressured into consenting to without a full understanding of the life-long ramifications and known risks of these surgeries."; and

WHEREAS, Those subjected to non-consensual interventions at a young age frequently express despair over the fact that they were unable to make these decisions for themselves and hope that future generations will not be subjected to these procedures, such as an individual who was

forced to undergo "normalization" surgery in New York City: "I think our advocacy is informed by not wanting young people to go through this unnecessarily. I think we have a duty to prevent unnecessary trauma"; and

WHEREAS, Physicians who have treated intersex patients have expressed remorse at the legacy of non-consensual surgery and revealed that gaps in their training left them unprepared in the case of intersex people, with a former NYC Health Commissioner explaining: "Twenty-five years ago, while doing an emergency room shift as a third-year pediatrics resident ... I met a patient who has been seared into my memory. " [T]hey had gone through genital reassignment surgery as a young child without their consent. After completing the medical history, I tried to start the physical examination but didn't get very far. The patient said, 'No offense, Doc, but I am not going to let you touch me. I am tired of having residents parade through my room and my body to see what it looks like to be the aftermath of intersex surgery done during the '70s.' à What I learned that day was that decisions made by adults

out of ignorance and fear can leave lifelong physical and mental scars."; and

WHEREAS, Intersex people who have had the opportunity to make their own choices about pursuing or avoiding surgery are thriving, such as one young person who was able to weigh the risks and benefits of surgery when they were older instead of being forced to undergo the procedure in infancy, who told reporters that for them, surgery "was the right choice, but that's very much an anomaly for intersex people ... The important thing was that I was old enough to make that decision for myself."; and

WHEREAS, Individuals and their caregivers report not having been

told of significant risks relating to these interventions, including the likelihood of follow up interventions based on high complication rates, lifelong hormone replacement therapy, uncertain functionality, tissue loss, loss of sensation, inflexibility of scars, and infertility, among others; and

WHEREAS, Individuals born with variations in sex characteristics must be afforded the same informed consent provided any other individual prior to undergoing an irreversible medical procedure, including a description of the treatment or intervention to be performed, any necessary health care management or long-term follow-up care, a description of any attendant discomfort and risks in the short term and long term, an explanation of any benefits, an explanation of any appropriate alternatives including delay or forgoing treatment, as well as an offer to answer any inquiries concerning the treatment or intervention involved; and

WHEREAS, In the rare cases when the physical health of a child with variations in their sex characteristics is threatened such that intervention is immediately necessary to address a risk of harm and cannot be safely deferred, all medically necessary treatment options should remain available to ensure that the imminent physical danger is addressed; and

WHEREAS, Interventions that alter the genitals, gonads, or other internal sex organs of children with variations in their sex characteristics too young to participate in the decision, when those procedures both carry a meaningful risk of harm and can be safely deferred, are the sole subject of this resolution; and

WHEREAS, New York must: serve as a model of competent and ethical medical care and has a compelling interest in protecting the physical

and psychological well-being of minors, including intersex youth; oppose all forms of prejudice, bias, or discrimination and affirms its commitment to the safety and security of all children, including those born with variations in their physical sex characteristics; consider intersex children a part of the fabric of our state's diversity to be celebrated rather than an aberration to be corrected; recognize intersex children should be free to choose whether to undergo life-altering, irreversible surgeries that carry high risks of harm when performed without individual consent; and call upon health professionals to foster the well-being of children born with variations in their sex characteristics, and the adults they will become, through the enactment of policies and procedures that respect their right to self-determination and bodily autonomy by deferring medical or surgical

intervention until the individual is able to participate in decision-making and providing affirming support to promote patient and family well-being; now, therefore, be it

RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor Andrew M. Cuomo to proclaim October 26, 2021, as Intersex Awareness Day in the State of New York; and be it further

RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to The Honorable Andrew M. Cuomo, Governor of the State of New York.