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## BILL

### INTEGRAL PROTECTION OF SEX CHARACTERISTICS

#### Chapter I

ARTICLE 1 – **Purpose.** The purpose of this law is to guarantee the rights to autonomy, to bodily and personal integrity, to non-discrimination and to truth for all persons regardless of their sex characteristics.

#### Chapter II

ARTICLE 2 – **Definitions.** The following definitions are employed in the text of this law:

- a) **Sex characteristics:** bio-anatomical components or aspects of a person's sex including (but not restricted to) primary ones like chromosomes, gonads, hormone-receptive tissues and genitals, as well as their reproductive capacity; and secondary ones like breasts; bone, cartilaginous and muscular structures; and bodily hair.
- b) **Body modification procedure:** any surgical, hormonal or mechanical intervention that alters a person's sex characteristics without duly documented justification of their therapeutic nature and strict medical necessity.
- c) **Therapeutic procedure:** an intervention strictly based on duly documented medical need related to serious present or future harm to a person's physical health or their life.

#### Chapter III

ARTICLE 3 – **Right to bodily and sexual diversity.** All persons have the right to the protection of their autonomy and bodily integrity in regard to

their sex characteristics, and to non-discrimination based on those characteristics.

**ARTICLE 4 – Prohibition.** It is forbidden to undertake any non-therapeutic body modification procedure without the explicit, free and informed consent of the person whose body is involved.

In all cases, it is forbidden to consent to body modification procedures through a representative or a third party, including the parents of a person who has not yet reached legal age.

**ARTICLE 5 – Consent.** When several alternative therapeutic procedures are available, the respective risks, benefits and implications of each are to be duly informed, including to what extent they are invasive and reversible, accordingly with article 59 of the National Civil and Commercial Code. In those cases in which the therapeutic nature and the strict medical need of a procedure can not be duly justified, including with supporting documentation, it will be considered a body modification procedure.

**ARTICLE 6 –Consent by persons below legal age.** All persons between 13 and 18 years will be able to consent to body modification procedures under the terms of Article 26 of the National Civil and Commercial Code.

Persons under 13 who are old and mature enough will be able to personally consent to body modification procedures.

**ARTICLE 7 – Consent deferred.** If the age or maturity of a child or adolescent makes it impossible to obtain their consent as described in the previous article, the non-therapeutic body modification procedure shall be postponed until this requirement can be duly met.

**ARTICLE 8 – Rights violations. Implications.** Undertaking body modification procedures in violation of the dispositions under Article 4 of the present law will constitute cruel, inhuman and degrading treatment.

Such actions will be considered serious bodily harm as described in articles 90 and 91 of the National Penal Code and whoever commits them will be liable to criminal as well as civil, administrative, disciplinary and professional charges.

**ARTICLE 9 –Right to information.** All persons have the right to receive truthful and reliable information on all their sex characteristics and on any

body modification procedure that might have altered them; to have the circumstances of such alteration investigated; and when relevant, to receive the corresponding reparations.

**ARTICLE 10 – Right to sex identification.** Every person has the right to be identified as being of one sex in their medical birth certificate according to the dispositions of Article 6 in Law 24.540 and article 33 in Law 26.413, as long as sex continue existing and being required as a legal category.

In case of doubt, the best expectations based on previous experiences of sex assignment and parental opinion will be taken into account.

Under no circumstances will the recording of a child's sex be dependent on the realization of a body modification procedure or on any therapeutic procedure.

If through clinical studies or any other source, supervening data arose within the HUNDRED AND EIGHTY (180) days of the birth that require a modification of the original sex assignment in the medical certificate, the same will proceed through an administrative procedure.

The medical birth certificate will record the assigned sex and no specification whatsoever about a person's sex characteristics.

**ARTICLE 11- Right to be registered and documented and to the modification of the registered sex.** Any person who, at the time when this law is passed, has an official identity document that has been issued contravening the dispositions of Article 10 of the present law will be able to access free and expedited administrative registration and issuing of new documents at the corresponding Civil Register office.

This procedure will include, if needed, an administrative rectification of birth certificate and other documents.

No legal assistance will be required for this procedure.

## **Chapter IV**

**ARTICLE 12 – Rights in the context of healthcare.** Any person who exhibits a variation in their sex characteristics and those accompanying them in healthcare have the right to:

- a) Complete, precise and adequate information on any procedure or treatment recommended to them;
- b) Personalized advice on the measures recommended by the treating team;
- c) Accompaniment and counselling provided by an interdisciplinary team whose members will not also be part of the treating team. This accompaniment team will include at least one Psychology and one Social Work professional if the individual or their parents so request it.
- d) Be notified, in a reliable manner of the prohibitions established in Article 4 in this Law.

Fulfilment of the dispositions in this Article must be duly recorded and documented in the individual medical records and signed by those involved.

## **Chapter V**

**ARTICLE 13 – Medical information.** Any person who exhibits a variation in their sex characteristics has the right to access all medical information referring to them and stored in public and private institutions as prescribed by Law 26.529.

**ARTICLE 14 – Medical records.** Medical records related to persons who exhibit a variation in their sex characteristics will be kept for a period of FIFTY (50) years.

**ARTICLE 15 – Violation of the duty to inform.** Silence, refusal or any other violation of the duty to provide information as described in the present law will be considered as malpractice and lead to administrative or legal actions stipulated by the corresponding jurisdiction.

## **Chapter VI**

**ARTICLE 16- Protection against discrimination.** Article 1 of Law 23.592 shall be modified to read as follows:

***ARTICLE 1°- Whoever arbitrarily impedes, obstructs, restricts or otherwise undermines the full and equal exercise of those fundamental rights and guarantees recognized in the National Constitution, will be forced, upon the affected person's request, to annul the discriminatory act or cease to perform it and also to***

*make reparations for any financial or non-financial damages caused.*

*To the effect of the present Article, discriminatory acts or omissions on the grounds of race, religion, nationality, ideology, political or union-related opinions, sex, sexual orientation, gender identity and expression, economic status, social background and physical features including any variation of sexual characteristics, will be particularly taken into account.*

## **Chapter VII**

**ARTICLE 17- Integral Sex Education.** Add to Art. 3 of Law 26.150 the following subsection: “g) Promote content including all kinds of bodily diversity, explicitly contemplating the existence of different sex characteristics and intersex people’s human rights.

## **Chapter VIII**

**ARTICLE 18 – Truth Commission. Creation.** A National Commission on Non-Consented Modification of Sex Characteristics is created under the Ministry of Justice and Human Rights. Its purpose it will be to clarify what has happened in the country in relation to body modifications to which persons whose sex characteristics vary from male or female standards have been subjected.

**ARTICLE 19 – Functions.** The Commission's functions will be the following:

- a) to receive complaints and their supporting evidence on facts that occurred in the country and related to body modification procedures to which persons exhibiting a variation in sexual characteristics were subjected;
- b) to find out the current situation of the persons involved;
- c) to report to the Courts any attempt to hide, remove or destroy evidence related to the facts to be elucidated;
- d) to issue a final report with a detailed explanation of investigated facts and recommendations, in a period that is not beyond ONE (1) year after being established.

The Commission shall not issue judgements on facts and circumstances that are the exclusive pursuit of the Judicial Power.

**ARTICLE 20 – Request for reports.** The Commission may request any public authority, health professional and public or private health service provider to supply and submit reports, data and documents. Public officers, institutions and individuals involved are obliged to provide those reports, data and documents and to facilitate the Commission's access to them.

**ARTICLE 21 – Composition.** The Commission will be made up of nine (9) members, as follows. The following persons are appointed:

- a) 3 (THREE) representatives of organizations advocating for the rights of intersex persons.
- b) 2 (TWO) representatives of human rights organizations with a recognized background in this issue.
- c) 1 (ONE) representative of the Health Governance Secretariat from the National Ministry of Health and Social Development.
- d) 1 (ONE) representative of the Human Rights Secretariat under the National Ministry of Justice and Human Rights.
- e) 1 (ONE) representative of the National Children, Adolescents and Family Secretariat.
- f) 1 (ONE) representative of medical professional associations.

**ARTICLE 22 – Internal statutes.** The Commission will dictate its own internal statutes, appoint a Chairperson to represent it and the Secretariats that it considers necessary. It might also form those technical teams that it deems convenient.

The Commission will make decisions by a simple majority.

The Commission will be dissolved after submitting the report mentioned in Article 17 in this Law.

## **Chapter IX**

**ARTICLE 23 – Cooperation agreements with the provinces.** The national State must promote agreements with the different provincial jurisdictions and with the Autonomous City of Buenos Aires to ensure the development of joint actions aimed at implementing the rights presented in the current law. These agreements shall include:

- a) Technical, economic and financial cooperation by the National administration in order to implement the current law;
- b) Cooperation to undertake permanent ongoing training programs for health practitioners, with the involvement of Universities;
- c) Advice to create, in each of the jurisdictions, controlling bodies and mechanisms that will act in coordination with the national Implementing authority for the current law.

## **Chapter X**

**ARTICLE 24- Implementing authority.** The Implementing Authority for the current law will be determined by the Executive Power.

**ARTICLE 25 – Promotion of training.** The Implementing Authority must develop recommendations aimed at public and private universities so professionals in the different fields involved are trained in a manner that is consistent with the rights, prohibitions and mechanisms established in the present law.

It must also promote training and updating opportunities for professionals, particularly for those working in public pediatric urology, endocrinology and general surgery facilities across the country.

**ARTICLE 26 – Regulations.** The Executive Power will regulate the current law within NINETY (90) days of its passing, on the basis of a proposal submitted by the Implementing Authority.

**ARTICLE 27– Formal.** The Executive Power shall be informed about this Law.

Translation: Alejandra Sardá-Chandiramani.