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REVIEW

Relevant mental health issues in the Spanish Law 4/2023 about people with sexual diversity



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Abstract This contribution will address the shown inconsistency with regard to the mental health field of the Spanish Ministry for Equality's Law 4/2023, which affects people with sexual diversity. In order to provide a context for it, an extensive, non-systematic search of related scientific articles was undertaken, mainly in the MEDLINE and INDIGES-CSIC bibliographic databases. It will consider, in particular: (a) gender discordance as a sexual health diagnosis; (b) sexology, minority, and Spanish law; and (c) counter-conditional health interventions. The aforementioned law modifies the registration of the sex of children between the ages of 12 and 14, contrary to the criteria of the General Council of the Judiciary Eliminate (CGPJ), and classifies as a very serious offence the application of conversion treatment to those concerned. This law contradicts current global nosologies, nosographies, and nosotaxies that certain mental disorders can seriously distort the will of some people.

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PALABRAS CLAVE

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namiento;
Disforia de género;
Diversidad de género;
Identidad de género;
Minoría de edad;
Sexualidad

Cuestiones de salud mental relevantes de la Ley española 4/2023 sobre personas con diversidad sexual

Resumen En esta aportación se abordará la incoherencia manifestada respecto al ámbito de la salud mental de la Ley 4/2023, del Ministerio de Igualdad de España, que afecta a las personas con diversidad sexual. Para contextualizar la ley se ha realizado una búsqueda amplia, no sistemática, de artículos científicos relacionados, principalmente en las bases de datos bibliográficas MEDLINE e INDICES-CSIC. Se considerarán, en particular: a) la discordancia de género como diagnóstico relativo a la salud sexual; b) la sexología, minoría de edad y legislación española, y c) las intervenciones de salud contracondicionantes. La citada ley modifica la mención registral del sexo en sujetos de entre doce y catorce años, en contra del criterio del Consejo General del Poder Judicial, y califica de infracción muy grave aplicar tratamientos conversivos a los interesados. Dicha ley contradice las nosologías, nosografías y nosotaxias mundiales vigentes acerca de que determinados trastornos mentales pueden distorsionar gravemente la voluntad de algunas personas.

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Introduction

Sexually diverse people are defined as those who self-identify or are socially regarded as lesbian, gay, bisexual, transgender/transsexual (trans), or intergender/intersex, as well as those who claim to be genderfluid and a range of other possibilities. Gender and sexual orientation are more of a social science concept and a multidimensional construct. Whatever the case, mental, behavioural, and neurodevelopmental disorders tend to be more prevalent in these groups than in the rest of the population.¹ Identifying oneself as lesbian, gay, transsexual, bisexual, intersexual, or queer (LGBTIQ+) has also been associated with an increased risk of frequent use of psychoactive substances.² In relation to sexuality, in the general population, neurodevelopmental disorders occur more often in boys than in girls and often differ in their presentation according to biological and physiological sex characteristics.³

As there is no fully agreed definition of mental health, despite the World Health Organisation's (WHO) 2021 *Comprehensive Mental Health Action Plan 2013–2030*,⁴ cultural differences, opinions, and disputes are inevitable, particularly from the vast field of popular mentality and generic psychology. Among the common or lay public, fashions, currents, or related political doctrines that claim to be more avant-garde, reformist, or modern, pushing the established boundaries of what is acceptable, are common. They also idealistically promote the ceiling of freedom of expression, which is enshrined, *inter alia*, in Article 19 of the 1948 WHO Universal Declaration of Human Rights⁵ and Article 11 of the 2012 Charter of Fundamental Rights of the European Union Agency for Fundamental Rights.⁶

Medicine focusing on sexuality is a rapidly changing field and the appropriate scientific literature is quite limited. Decreasing stigma remains fundamental to improving quality of life and sexual health. Restrictions on anyone's access to medical, social, or even legal care can be considered human rights violations,^{7,8} including in particular people with sexual diversity.⁹ Having said that, in contrast to what is noted above, this contribution will mainly address the lack of coherence or real connection regarding the specific field of mental health in the very recent Spanish Organic Law 4/2023, of the Spanish Ministry for Equality (EU).¹⁰

Material and method

In relation to the existing Spanish Law 4/2023 "For the real and effective equality of trans persons...",^{10,11} currently under appeal before the Constitutional Court, a broad non-systematic contextual search of articles appearing in relevant periodical scientific publications has been carried out for this contribution, mainly with the PubMed search

engine of the National Library of Medicine (USA), in the MEDLINE bibliographic database. InDICES-CSIC, Spain, was also used as a complement using those descriptors translated into Spanish. After scrutinising national legislation, a careful bibliographic selection has been made based on the thematic proximity and clinical specialisation of the research sources, as well as their quality.

The primary objective of this contribution is to consider the Organic Law 4/2023 in relation with mental health. Strictly speaking, this is not a review of the published literature as this is not its main purpose, although it is necessary. By using the key words "sexuality", "minority of age", "gender identity", and "gender diversity", the number of references found in PubMed until September 2023 varies, from the first to the last descriptor, from 387.966 to 30.456. By using "gender identity", 31.175 are obtained and 2.474 for "gender dysphoria". As the findings were unmanageable, different combinations of those descriptors were used in order to reduce them. Other references, including books, and *url* or websites which were considered important in secondary literature and were not included in the examined indexes, were added.

The final result of the selected varied types of articles shapes an approach to mental health around the Law 4/2023 that is respectful, clinically competent, and culturally adapted to people with sexual and gender diversity. The results exposition will be divided into 3 sections: on gender discordance, minors, and counterconditioning interventions.

The main limitations of the present study are the inevitable subjectivity of the final selection of the obtained bibliography, its impossible exhaustiveness and the limitation of the total references allowed amount. Those articles that were of poor quality, opinion only, clearly ideological or corporate, and those by professionals outside the mental health field, even if they were published in health journals, have been excluded. Reviews, minutes, abstracts, brief surveys, letters, books, and chapters have also been rejected.

Results and discussion

Gender discordance as a sexual health diagnosis

In Spain, the General Directorate for Sexual Diversity and LGBTI Rights has existed since 2020 as part of the Ministry for Equality. The very recent Law 4/2023 is cross-cutting through several fields, and aims to develop and guarantee the rights of LGBTI people. The law recalls that the WHO's International Classification of Diseases, ICD-11, in force since 2022, has removed "transsexuality" from the chapter on mental and behavioural disorders, which existed up to and including the previous ICD-10, published in 1992. ICD-11 represents the worldwide standardisation of diagnostic

information in the field of health and incorporates current clinical descriptions and requirements in mental health.

Indeed, in the current ICD-11, the term transsexuality has been changed to gender incongruence or “gender discordance” and so-called “transgender” disorders have been moved to a new chapter called “Conditions related to sexual health”. Sexual health should be understood as physical, emotional, and social well-being with regard to one's sexuality. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) of the American Psychiatric Association, likewise in effect since 2022, maintains the diagnosis of gender dysphoria as a disorder. This disorder refers to clinically significant discomfort or distress experienced when there are negatively experienced personal differences between expressed and socially assigned gender. However, it is well understood that with regard to DSM-5-TR, atypical sexual interest does not necessarily mean that there is a mental disorder.

The Spanish legislator adds in prevailing Law 4/2023 that the change in ICD-11 is an endorsement of depathologising transpeople.^{11–14} In reality, this change in the description, explanation, differentiation, and classification of diseases in ICD-11 still maintains the old concept of transsexuality, now subsumed within current gender discordance, as a condition or disorder that can occur in childhood, adolescence, and adulthood.¹⁵ For ICD-11, variations in gender behaviour and preferences are not in themselves a sufficient basis for diagnosis. With the new ICD-11 global classification, transgender people, as long as they continue to have a clinical diagnosis currently related to sexual health, will also continue to have access to appropriate health treatment of any kind. Some authors find it contradictory that such a civil, legal, and administrative matter requires an official medical diagnosis.¹²

The real difference now recognised by intercultural and guiding consensus from the international scientific community is that gender discordance, which also subsumes homosexuality (considered a non-pathological condition since 1990), is no longer specifically considered a mental pathology. Being homosexual does not seem to be a personal choice for most of those involved, but a biophysiological condition, as recognised by, among others, the American Psychological Association and the American Psychiatric Association.¹⁶

Psychological therapies for so-called conversion cannot and do not aim to change this reality. Gender discordance is currently typified in ICD-11 as a condition related to sexual health, excluded from paraphilic disorders, which certainly are part of mental, behavioural, and neurodevelopmental disorders. Variations in gender behaviour and preferences in themselves are not enough either to establish any diagnosis related to sexual health. It is a different matter that sexual dysfunctions, which also are sexual health-related conditions, often coexist mainly with various depressive and anxiety disorders.¹⁷

If personal subjectivity raises doubts about one's gender and sexuality, an optimised “sex reassignment” protocol can be followed, where appropriate. However, nonconformity with the sex registered at birth is not sufficient to modify one's biological sex, which, as recognised by the *Diccionario de la Lengua Española* (Spanish Language Dictionary) updated in 2022, is an organic, masculine, or feminine

condition of animals and plants. It should be noted, on the other hand, that there is little doubt that seductive behaviours linked to neurophysiology tend to differ depending on sex and gender.¹⁸ Nor need I add that diagnoses of any disorder should only be properly made by qualified, competent health practitioners, not by any other citizen, although venturing a diagnosis is a widespread custom for almost everyone everywhere.

Specifically, for all diagnoses affecting mental health, the appropriate practitioners will be psychiatrists and clinical psychologists.¹⁹ Some people, from a rather more utopian than well-founded perspective, suggest that psychiatrists should be specifically trained to assist transgender people.²⁰ The reality is that even doctors or other psychologists who are not mental health specialists will generally not have impartial, sufficiently, and officially recognised expertise in this area.^{1,21}

Sexology, legal minors, and legislation

With regard to sexuality in minors, it is a fact that we are witnessing the early eroticisation of girls' bodies in what is known as the “latency period”. This is understood as the stage of growth that allows the individual to develop a more complex personality structure. It manifests itself in the hypersexualised modes that children's fashion sometimes assumes.²² In general, for many authors, hypersexualised behaviour below the age of 15 is often considered early or premature. As a counterbalance, the family and school settings have so far tended to behave as generally erotophobic environments.^{23,24}

Following the 2015 reform of the Spanish Criminal Code, a presumption *iuris tantum* (Latin for presumption of fact, but which allows for proof to the contrary, as opposed to *iuris et de iure*) of lack of capacity of minors under the age of 16 to consent to sexual relations was established. This is the same age set by other EU Member States. An exception is made in the case of accepted relations with a person of an age, degree of physical development, and mental maturity close to that of the minor.²⁴

Recent Spanish Law 4/2023 modifies, among others, Spanish Law 15/2015, dated 2 July 2015, on Voluntary Jurisdiction in relation to the registration of the sex of persons over the age of 12 and under the age of 14, which may now be promoted directly by said minors, necessarily assisted by their legal representatives. Yet the Spanish General Council of the Judiciary (CGPJ, by its acronym in Spanish), in its mandatory non-binding report of April 2022, unanimously and devastatingly concluded that gender self-determination is constitutionally legitimate only after the age of majority.²⁵ In the field of health, informed consent is required for any kind of intervention, more so in the case of complex acts, as well as receiving all available information on the care to be provided and its consequences.

It is a scientifically unquestionable fact that emotions, both primary and secondary, will be capable of inducing all kinds of feelings, which will most likely influence the human interactions involved.²⁶ Since ancient times, we have known that emotion influences and transforms a person's subjectivity in such a way that one's own judgement will be affected.²⁷ In each individual, emotions and to a certain

extent personality and its character component are supported by interpersonal relationships, *i.e.* their family and social environments.

Interaction with others is an essential part of personal experiences. Anatomically and physiologically, the hippocampus appears to control signals from the outside, while the amygdala and hypothalamus control responses to social stimuli.^{28,29} Furthermore, the neural circuits that mediate sexual motivation and behaviour in men and women overlap, but are distinct.³⁰ Logically, all of this will be of critical importance for minors with respect to sexual diversity, from children to emerging adults. There is sufficient evidence that peer group affiliations are related to sexual development in adolescence.³¹

Continuing on the topic of minors in Spain, see also, among numerous other documents, Spanish Organic Law 4/2023, dated 27 April 2023, which modifies crimes against sexual freedom typified in Spanish Organic Law 10/1995, dated 23 November 1995, on the Spanish Criminal Code; modifies Section 3, Article 14 of Spanish Criminal Procedure Law, which was approved by Royal Decree of 14 September 1882; and modifies Section 2, Article 10 in Spanish Organic Law 5/2000, dated 12 January 2000, which regulates the criminal responsibility of minors.^{11,24,32,33}

Elsewhere in the EU, there are numerous positions of different scientific societies on the treatment of gender affirmation in minors and adults.^{8,34} In general, no formal recommendations can be made about the use of hormones to improve quality of life, or depressive and anxiety disorders in these individuals.³⁵ Yet the clinical practice guidelines of the Endocrine Society, Washington, USA, recommend the use of cross-gender-affirming hormone interventions in transgender children and adolescents who request this treatment and meet certain conditions.³⁶

In particular, gender-affirming hormone treatment with antiandrogens plus oestrogens has shown opposite dermatological changes in transgender people who were considered male at birth.³⁷ The importance of evaluating the unique health care needs of each individual has been specifically emphasised.^{38,39} The established principles of evidence-based medicine require a high degree of caution in accepting gender-affirming medical–biological interventions as a preferred therapeutic approach.⁴⁰

For whatever reason, adolescents with marked gender discordance, with or without an organic disorder of sexual development, who sought treatment in gender identity units or services, showed considerable overlapping psychopathological comorbidity.⁴¹ The Gender Identity Disorders Unit of the Community of Madrid (Spain), which started operating in May 2007 following the model of Vrije University's Abraham Kuyper Centre (Amsterdam, The Netherlands), is a valid operational example.

Competent specialist practitioners can intervene in individual cases in a number of ways.²⁴ Associations such as the international World Professional Association for Transgender Health already exist, developing their own clinical guidelines for medical interventions in cases of diverse gender affirmation.⁴² However, the field of sexology and sexual behaviour is largely but not entirely scientific, nor is it the exclusive competence of any one health speciality. As a logical consequence, it is prone to frequent “para-scientific” ideological intrusiveness,

which may be of importance in the related legal environment.²⁴

Spanish Law 4/2023 establishes that persons over the age of 12 and under the age of 14 may request judicial authorisation for the modification of their registration of sex under the terms of Chapter I bis of Title II of Spanish Law 15/2015, on Voluntary Jurisdiction. Article 44.3, Law 4/2023 expressly states that: “the exercise of the right to rectification of the registration of the mention of sex *may in no case be conditioned to the prior presentation of a medical or psychological report on the non-conformity with the sex mentioned in the birth registration*, nor to the prior modification of the appearance or bodily function of the person through medical, surgical or other procedures” (the italics in this quotation and following are those of the undersigned author).

Article 79.4d of Spanish Law 4/2023, on offences, classifies as “very serious” treatments aimed at modifying sexual orientation or identity, or gender expression, regardless of the consent that the parties concerned or their legal representatives may have given. Once again, for the Spanish legislator—and furthermore, contrary to what is globally and officially recognised in ICD-11, as well as in other significant nosotaxies—there can be no mental and behavioural disorders that are capable of seriously distorting the will of certain patients, whatever their age and even if the affected persons or others are not aware of it.

In addition to the above, the new law repeals the previous Spanish Law 3/2007, dated 15 March 2007, regulating rectification in the registry of the mention of a person's sex. The resolution of Article 26 *quinquies* of Law 4/2023, which is analysed in this contribution, “*excludes the need for medical or psychological reports to grant or deny judicial approval to modify the registration and to establish that sufficient maturity exists to understand and evaluate in a reasonable and independent manner the consequences of the minor's decision*”. Are the optimised health competencies thus not inappropriately overlapping and being interfered with by other groups, associations, institutions, or authorities?

Article 19 of the same Law 4/2023 “prohibits all genital modification practices on persons under twelve years of age, except in cases where medical indications require otherwise ... In the case of minors between twelve and sixteen years of age, *such practices shall only be permitted at the request of the minor provided that, due to his or her age and maturity, he or she can give informed consent to the performance of such practices*”. However, the question must be asked again: Who is to determine the child's mental maturity appropriately, since this is not specified in the law either?

Law 4/2023 amends Article 49, Law 20/2011 dated 21 July on the Civil Registry regarding the content of birth registration and surname attribution and states in its new Provision 5 that “*a medical report may indicate the intersex status of the person born*”. However, as indicated above with regard to determining the maturity of the child, to which medical report is it referring? Can any doctor of any speciality or clinical psychologists (who are also medical personnel in Spain) establish the intersex status of a neonate? Who can properly decide whether the knowledge supported by science is only claimed, or is true as applied to the sex of a certain newborn?

In accordance with the provisions of Article 2.2d of Spanish Organic Law 1/1996, dated 15 January 1996, on the Legal Protection of Minors, with partial modification of the Civil Code and the Civil Procedure Act, the best interests of the minor to be protected entail the preservation of their sexual identity and orientation (concepts that allude to gender), as well as their non-discrimination on the basis of these or any other conditions, guaranteeing the harmonious development of their personality.

The question therefore arises again: Who guarantees that the minor's personality will be best protected and harmoniously developed by preserving the child's chosen sexual identity and orientation? And lastly: Who is competent to determine that their degree of influenceability, susceptibility, or vulnerability is acceptable? The author of this article is unaware that there is any qualified scientific evidence to prove or even suggest or propose that this can be determined by any citizen other than a duly trained and specialised health professional.

Conversion programmes in Spanish Organic Law 4/2023

In Europe, anxiety, depression, alcohol dependence, and sexual dissatisfaction have been more prevalent in sexual and gender minority men.⁴³ In the US specifically, transgender males have reported more depressive symptoms and lower levels of self-esteem compared to other groups.⁴⁴ There is also a higher risk of substance use among transgender adolescents in that country compared to cisgender adolescents.⁴⁵

Anxiety disorder diagnoses in the general population peak in adolescence, often linked to an ongoing anticipatory attitude. It is part of mainstream education to encourage inhibitory control in adolescents, which will involve certain influential aspects of associative learning. In relation to sexual identity, encouraging inhibitory self-control, which is normal and desirable,⁴⁶ has been illegal in Spain since 2023. In particular, it appears that biological women show more deficits in conditioned inhibition compared to men.⁴⁷

Counterconditioning is considered to be a form of inhibition that interferes with the expression of the original learned response, without erasing it. Classically, it has been used in behavioural psychology as a conversion, aversive, or systematic method to prevent maladaptive behaviour.⁴⁸ But for it to be a genuine therapeutic technique, the new behaviour brought about must also be truly desired, even if it has not been achieved. That is, counterconditioning is based on associating 2 certain, but opposite, motivational stimuli, assuming that the previously motivating stimulus was unduly biased.

Article 17, Spanish Law 4/2023 “prohibits the practice of aversion, conversion or counterconditioning methods, programmes and therapies, in any form, aimed at modifying the sexual orientation or identity or gender expression of persons, *even with the consent of the person concerned or his or her legal representative*”. Gender identity is often a complex collection of thoughts and feelings about one's gender, which may or may not coincide with the sex assigned at birth.⁴⁹ Counterconditioning should be understood technically, although this is not stated in the legal text, as the

process by which behaviour is modified through a new association with a stimulus of opposite valence. The same subject is legislated in various autonomous communities in Spain.

In relation to the previous paragraph, it is necessary to ask once again whether the Spanish legislator always assumes the necessary and adequate mental health of the petitioner to have “capacity to act” or capacity to make crucial decisions, whether the petitioner is a minor or an adult. Regarding any individual's “capacity to self-government” for solving any complex sexual problem, Article 200, Spanish Civil Code was modified by Article 2.21, Spanish Law 8/2021 of June 2, in which civil and procedural legislation were reformed to support persons with disabilities when exercising their legal capacity. Consequently, the implied people's will and preferences necessarily must be respected at present. However, Article 12 of the Spanish Constitution establishes the age of majority at 18 years of age. Naturally, the right to choose is clearly based on ideological freedom (Article 16 of the same Constitution).

If one's capacity to act is always assumed, what happens when there are episodic, periodic, or recurrent serious mental disorders that affect the affectivity and judgement of the individual at any age and which may lead to relevant, irreversible pathological decisions in a multitude of areas, including the sexual one, and, even more, when they occur in minors? This is the case, for example, of recurrent or seasonal depressive disorder in which, indeed, certain more or less precocious personality traits may increase the risk of depressive relapses.^{1,50} Depressive episodes usually affect cognitive activity and major decision-making. Furthermore, as outlined above, emotions, personality, and character necessarily share links with sexuality and interpersonal relationships.

On the other hand, it is also pertinent to point out here that Article 7.2 of the Spanish Civil Code, included in Chapter III of the general effectiveness of legal rules, disallows the abuse of law and its antisocial exercise with damage to third parties. In this country, there can be no fraud of law in cases of gender-based violence, as some feared, because people will be judged on the basis of the sex under which they were registered at the time of allegedly committing the crime. But other issues remain to be clarified, given the positive discrimination against transgender people in Law 4/2023 of the Ministry for Equality. The same happens with the paradoxical and controversial inequality that is generated in the field of sport. World Athletics, the world governing body of athletics based in the Principality of Monaco (Europe), has just pronounced in March 2023 and ruled trans women will no longer be allowed to compete in women's athletic events, regardless of their testosterone levels.

Conclusions

Physical, affective, sentimental, sexual, or emotional attraction to other individuals usually occurs in a normal, unavoidable way. In the current ICD-11, so-called “gender discordance” as a condition related to sexual health has replaced what used to be known as “transsexuality”. DSM-5-TR maintains the diagnosis of gender dysphoria as a clinical problem outside the stereotypical binary identity, and may

be associated with certain sexual development disorders. For ICD-11, despite the change in the description, explanation, differentiation, and classification of diseases, the concept of gender discordance seems to officially persist with the implicit aim that those affected continue to have access to health treatment.

With regard to minors, the recent Spanish Organic Law 4/2023 of the Government of Spain's Ministry for Equality modifies the registration of sex for persons over 12 and under 14 years of age. However, the General Council of the Judiciary considers that gender self-determination is constitutionally legitimate only after the age of majority. Such a non-binding decision is entirely in keeping with the reality that interaction with others is an essential part of personal experiences, which is of critical importance for minors insofar as it may affect subjectively intended or biologically certain sexual diversities. Therefore, if there is a substantial risk to the individual's well-being without proven benefits, the patient's autonomy and preferences should be respected, but also limited.

From a clinical perspective, it is a fact that adolescents with marked gender discordance show considerable psychopathological comorbidity. However, Law 4/2023 establishes that persons over the age of 12 and under the age of 14 may directly request judicial authorisation to modify their registration entry, which in no case may be conditional on a prior favourable medical report. The law classifies all so-called conversion psychological treatments as very serious offences. This ignores the reality of current nosologies, nosographies, and nosotaxies worldwide that certain mental, behavioural, and neurodevelopmental disorders can seriously distort the will of certain patients, especially if they are minors.

Law 4/2023 specifies that genital modification between the ages of 12 and 16 may be requested by the minor, provided that they can also give informed consent. But, of course, only mental health specialised practitioners can reliably determine the true mental maturity of the child, although this is not specified in the law. This contribution comments on the amendment of the Civil Registry Act by Spanish Law 4/2023. With this legislative change, any physician of any speciality will be able to recognise the intersex status of a newborn. However, according to the provisions of Spanish Organic Law 1/1996, the minor's best interests must be guaranteed by preserving their sexual identity and orientation. Nevertheless, the law is likewise unclear as to who is competent to determine what is acceptable and appropriate at any certain time given the child's degree of influenceability, susceptibility, and vulnerability.

Lastly, conversion or counterconditioning means any form of behavioural inhibition that interferes with the learned response, which in Spain is radically forbidden to apply to people with sexual diversity by the current Law 4/2023. The law, which widens the normative dispersion, does not establish how and who is to determine the subject's capacity to make crucial decisions and to specify their capacity for self-governance. It therefore seems that the Spanish legislator assumes, contrary to conclusive scientific clinical evidence, that episodic, periodic, or recurrent mental disorders that seriously affect the affectivity and judgement of the petitioner with alleged sexual diversity may not be present in any case.

Ethical considerations

All ethical standards have been respected.

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Conflicts of interest

None.

References

- Bertolín-Guillén JM. Sexualidad, género y patologías mentales. [Sexuality, gender and mental pathologies]. *Rev Desexol.* 2022;11(1):31–7. https://www.desexologia.com/wp-content/uploads/2022/07/Desexologia.com-NA%CC%82%C2%BA1-JUNIO-2022_compressed.pdf.
- Krueger EA, Repati ML, Harlow AF, Unger JB, Lee JO, Pedersen ER, et al. Changes in sexual identity and substance use during young adulthood. *Drug Alcohol Depend.* 2022;241:109674. <https://doi.org/10.1016/j.drugalcdep.2022.109674>.
- Nowak S, Jacquemont S. The effects of sex on prevalence and mechanisms underlying neurodevelopmental disorders. *Handb Clin Neurol.* 2020;173:327–39. <https://doi.org/10.1016/B978-0-444-64150-2.00025-3>.
- World Health Organization. Comprehensive Mental Health Action Plan 2013–2030. Genève (Switzerland). 2021. <https://iris.who.int/bitstream/handle/10665/345301/9789240031029-eng.pdf?sequence=1>. [accessed 24 September 2023].
- United Nations General Assembly. The Universal Declaration of Human Rights. New York: United Nations General Assembly; 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. [accessed 24 September 2023].
- Council of the European Union. Charter of Fundamental Rights of the European Union 2012. Off J Eur Union. Document C2012/326/02. <https://www.refworld.org/docid/3ae6b3b70.html>. [accessed 24 September 2023].
- Luk JW, Gilman SE, Haynie DL, Simons-Morton BG. Sexual orientation differences in adolescent health care access and health-promoting physician advice. *J Adolesc Health.* 2017;61(5):555–61. <https://doi.org/10.1016/j.jadohealth.2017.05.032>.
- T'Sjoen G, Arcelus J, De-Vries ALC, Fisher AD, Nieder TO, Özer M, et al. European Society for Sexual Medicine position statement. "Assessment and hormonal management in adolescent and adult trans people, with attention for sexual function and satisfaction". *J Sex Med.* 2020;17(4):570–84. <https://doi.org/10.1016/j.jsxm.2020.01.012>.
- Sherriff N, Zeeman L, McGlynn N, Pinto N, Hugendubel K, Mirandola M, et al. Co-producing knowledge of lesbian, gay, bisexual, trans and intersex (LGBTI) health-care inequalities via rapid reviews of grey literature in 27 EU Member States. *Health Expect.* 2019;22(4):688–700. <https://doi.org/10.1111/hex.12934>.
- Head of State (Spain, EU). Ley 4/2023, de 28 de febrero, "Para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI". [For the real and effective equality of trans people and for the guarantee of the rights of LGBTI people.] *Boletín Oficial del Estado (BOE)-A-2023-5366*. <https://www.boe.es/eli/es/l/2023/02/28/4/con>.

11. Head of State (Spain, EU). Ley Orgánica 4/2023, de 27 de abril, "Para la modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en los delitos contra la libertad sexual, la Ley de Enjuiciamiento Criminal y la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores". [For the modification of Organic Law 10/1995, of November 23, of the Penal Code, on crimes against sexual freedom, the Criminal Procedure Law and Organic Law 5/2000, of January 12, regulating liability juvenile criminal.] BOE-A-2023-10213. <https://www.boe.es/eli/es/lo/2023/04/27/4/con>.
12. Castro-Peraza ME, García-Acosta JM, Delgado N, Perdomo-Hernández AM, Sosa-Alvarez MI, Llabrés-Solé R, et al. Gender identity: the human right of depathologization. *Int J Environ Res Public Health*. 2019;16(6):978. <https://doi.org/10.3390/ijerph16060978>.
13. Robles-García R, Ayuso-Mateos JL. ICD-11 and the depathologisation of the transgender condition. *Rev Psiquiatr Salud Ment* (eng ed). 2019;12(2):65–7. <https://doi.org/10.1016/j.rpsm.2019.01.002>.
14. Suess-Schwend A. La perspectiva de despatologización trans: ¿una aportación para enfoques de salud pública y prácticas clínicas en salud mental? Informe SESPAS 2020. [The trans depathologization perspective: A contribution to public health approaches and clinical practices in mental health? SESPAS Report 2020.]. *Gac Sanit*. 2020;34(Suppl 1):54–60. <https://doi.org/10.1016/j.gaceta.2020.07.002>.
15. Chen D, Edwards-Leeper L, Stancin T, Tishelman A. Advancing the practice of pediatric psychology with transgender youth: state of the science, ongoing controversies, and future directions. *Clin Pract Pediatr Psychol*. 2018;6(1):73–83. <https://doi.org/10.1037/cpp0000229>.
16. American Psychiatric Association (APA). Position statement on issues related to sexual orientation and gender minority status. APA Official Actions. Washington, DC, US: APA; 2020. <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-Sexual-Orientation-Gender-Minority-Status.pdf>.
17. Forbes MK, Baillie AJ, Eaton NR, Krueger RF. A place for sexual dysfunctions in an empirical taxonomy of psychopathology. *J Sex Res*. 2017;54(4–5):465–85. <https://doi.org/10.1080/00224499.2016.1269306>.
18. Bertolín-Guillén JM. Seduction: Psychology and Psychopathology. 2023 [In press].
19. Bertolín-Guillén JM. Las especialidades facultativas del ámbito de la salud mental ante los tribunales de justicia [Medical specialties in the field of mental health before the courts of justice]. *Gac Int Cienc Foren*. 2021;11(40):33–42. https://www.uv.es/gicf/4A2_Bertolin_GICF_40.pdf.
20. Byne W, Karasic DH, Coleman E, Eyler AE, Kidd JD, Meyer-Bahlburg HFL, et al. Gender dysphoria in adults: an overview and primer for psychiatrists. *Transgend Health*. 2018;3(1):57–70. <https://doi.org/10.1089/trgh.2017.0053>.
21. Bertolín-Guillén JM. Intersexuality, transsexuality and mental health. *Ann Psychiatr Ment Health*. 2020;8(3):1156. <https://www.jscimedcentral.com/public/assets/articles/psychiatry-8-1156.pdf>.
22. Díaz-Bustamante-Ventisca M, Llovet-Rodríguez CY, Narros-González MJ. Sexualización percibida en los estilos de moda de niñas: un análisis transcultural en España-China. [Perceived sexualization in girls' fashion stylings: a Spain-China cross-cultural analysis.]. *Comunicar*. 2020;28(65):77–87. <https://doi.org/10.3916/C65-2020-07>.
23. Rodríguez-Molinero L. La adolescencia y los riesgos sexuales. [Adolescence and sexual risks]. *Adolescencia*. 2019;7(1):3–4. <https://www.adolescencia.es/la-adolescencia-y-los-riesgos-sexuales/>.
24. Bertolín-Guillén JM. El consentimiento sexual de los menores de edad en España: consideraciones clínicas y jurisprudenciales. [The sexual consent of minors in Spain: Clinical and jurisprudential considerations.]. *Rev Int Doctr Jurispr*. 2021;24:1–14. <https://doi.org/10.25115/ridj.v0i24.5372>.
25. Consejo General del Poder Judicial (CGPJ). Certificación... Informe al anteproyecto de ley para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI. [Certification... Report to the draft law for the real and effective equality of trans persons and for the guarantee of the rights of LGTBI persons.]. Madrid, ES, UE: CGPJ; 2022. <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Informes/Informe-sobre-el-Anteproyecto-de-Ley-para-la-igualdad-real-y-efectiva-de-las-personas-trans-y-para-la-garantia-de-los-derechos-de-las-personas-LGTBI->
26. Bertolín-Guillén JM. The subjective need for social interaction. *Br J Healthc Med Res*. 2023;10(2):519–30. <https://doi.org/10.14738/bjhm.102.14560>.
27. Trueba-Atienza C. La teoría aristotélica de las emociones. [Aristotle's theory of emotions]. *Sig Filos*. 2009;11(22):147–70. <https://www.scielo.org.mx/pdf/signosf/v11n22/v11n22a7.pdf>.
28. Iovino M, Messana T, Iovino E, De-Pergola G, Guastamacchia E, Giagulli VA, et al. Neuroendocrine mechanisms involved in male sexual and emotional behavior. *Endocr Metab Immune Disord Drug Targets*. 2019;19(4):472–80. <https://doi.org/10.2174/1871530319666190131155310>.
29. Votinov M, Goerlich KS, Puiu AA, Smith E, Nickl-Jockschat T, Derntl B, et al. Brain structure changes associated with sexual orientation. *Sci Rep*. 2021;11(1):5078. <https://doi.org/10.1038/s41598-021-84496-z>.
30. Jennings KJ, de-Lecea L. Neural and hormonal control of sexual behavior. *Endocrinology*. 2020;161(10):bqaa150. <https://doi.org/10.1210/endo/bqaa150>.
31. Clark DA, Durbin CE, Heitzeg MM, Iacono WG, McGue M, Hicks BM. Adolescent sexual development and peer groups: Reciprocal associations and shared genetic and environmental influences. *Arch Sex Behav*. 2021;50(1):141–60. <https://doi.org/10.1007/s10508-020-01697-9>.
32. Fiscalía General del Estado (España, UE) [State Attorney General's Office (Spain, UE)]. https://www.boe.es/buscar/abrir_fiscalia.php?id=FIS-C-2017-00001.pdf; 2017.
33. Delegación del Gobierno (España, UE) [Government Delegation (Spain, UE)]. <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/investigaciones/2020/pdfs/respuestajudicial.pdf>; 2020.
34. Fisher AD, Senofonte G, Cocchetti C, Guercio G, Lingardi V, Meriggiola MC, et al. SIGIS-SIAMS-SIE position statement of gender affirming hormonal treatment in transgender and non-binary people. *J Endocrinol Invest*. 2022;45(3):657–73. <https://doi.org/10.1007/s40618-021-01694-2>.
35. Rowniak S, Bolt L, Sharifi C. Effect of cross-sex hormones on the quality of life, depression and anxiety of transgender individuals: a quantitative systematic review. *JBIS Database System Rev Implement Rep*. 2019;17(9):1826–54. <https://doi.org/10.11124/JBISRIR-2017-003869>.
36. Mahfouda S, Moore JK, Siafarikas A, Hewitt T, Ganti U, Lin A, et al. Gender-affirming hormones and surgery in transgender children and adolescents. *Lancet Diabetes Endocrinol*. 2019;7(6):484–98. [https://doi.org/10.1016/S2213-8587\(18\)30305-X](https://doi.org/10.1016/S2213-8587(18)30305-X).
37. Cocchetti C, Castellini G, Maggi M, Romani A, Vignozzi L, Greenman Y, et al. Effects of hormonal treatment on dermatological outcome in transgender people: a multicentric prospective study (ENIGI). *J Endocrinol Invest*. 2023;46(4):779–86. <https://doi.org/10.1007/s40618-022-01944-x>.
38. Romani A, Mazzoli F, Ristori J, Cocchetti C, Cassioli E, Castellini G, et al. Psychological wellbeing and perceived social acceptance in gender diverse individuals. *J Sex Med*. 2021;18(11):1933–44. <https://doi.org/10.1016/j.jsxm.2021.08.012>.

39. Tijerina AN, Srivastava AV, Patel VR, Osterberg EC. Current use of testosterone therapy in LGBTQ populations. *Int J Impot Res*. 2022;34(7):642–8. <https://doi.org/10.1038/s41443-021-00490-z>.
40. Hruz PW. Deficiencies in scientific evidence for medical management of gender dysphoria. *Linacre Q*. 2020;87(1):34–42. <https://doi.org/10.1177/0024363919873762>.
41. Kaltiala-Heino R, Bergman H, Työläjärvä M, Frisén L. Gender dysphoria in adolescence: current perspectives. *Adolesc Health Med Ther*. 2018;9:31–41. <https://doi.org/10.2147/AHMT.S135432>.
42. Coleman E, Radix AE, Bouman WP, Brown GR, de-Vries ALC, Deutsch MB, et al. Standards of care for the health of transgender and gender diverse people, version 8. *Int J Transgend Health*. 2022;23(Suppl 1):S1–259. <https://doi.org/10.1080/26895269.2022.2100644>.
43. Hickson F, Appenroth M, Koppe U, Schmidt AJ, Reid D, Weatherburn P. Sexual and mental health inequalities across gender identity and sex-assigned-at-birth among men-who-have-sex-with-men in Europe: findings from EMIS-2017. *Int J Environ Res Public Health*. 2020;17(20):7379. <https://doi.org/10.3390/ijerph17207379>.
44. McKay T, Watson RJ. Gender expansive youth disclosure and mental health: clinical implications of gender identity disclosure. *Psychol Sex Orientat Gend Divers*. 2020;7(1):66–75. <https://doi.org/10.1037/sgd0000354>.
45. Watson RJ, Fish JN, McKay T, Allen SH, Eaton L, Puhl RM. Substance use among a national sample of sexual and gender minority adolescents: intersections of sex assigned at birth and gender identity. *LGBT Health*. 2020;7(1):37–46. <https://doi.org/10.1089/lgbt.2019.0066>.
46. Meyer HC, Bucci DJ. Setting the occasion for adolescent inhibitory control. *Neurobiol Learn Mem*. 2017;143:8–17. <https://doi.org/10.1016/j.nlm.2016.11.01>.
47. Krueger JN, Sangha S. On the basis of sex: differences in safety discrimination vs. conditioned inhibition. *Behav Brain Res*. 2021;400:113024. <https://doi.org/10.1016/j.bbr.2020.113024>.
48. Keller NE, Hennings AC, Dunsmoor JE. Behavioral and neural processes in counterconditioning: past and future directions. *Behav Res Ther*. 2020;125, 103532. <https://doi.org/10.1016/j.brat.2019.103532>.
49. Tacikowski P, Fust J, Ehrsson HH. Fluidity of gender identity induced by illusory body-sex change. *Sci Rep*. 2020;10(1):14385. <https://doi.org/10.1038/s41598-020-71467-z>.
50. Altaweel N, Upthegrove R, Surtees A, Durdurak B, Marwaha S. Personality traits as risk factors for relapse or recurrence in major depression: a systematic review. *Front Psych*. 2023;14: 1176355. <https://doi.org/10.3389/fpsy.2023.1176355>.