

MODEL LEGISLATION

An Act to Define Sex-Based Terms Used in State Code, Establish the State’s Interest in Protecting Single Sex-Spaces, Ensure the Accuracy of Publicly Collected Data, and Replace Ambiguous Terms.

Section 1: Purpose and General Application.

- A. The purpose of this Act is to bring clarity, certainty, and uniformity to the laws of the State regarding sex discrimination, privacy, equality of the sexes, and benefits or services specifically provided to men and women.
- B. This Act shall apply wherever the State or an instrumentality of the State classifies people on the basis of sex or otherwise defines people as being female or male, women or men, girls or boys.

Section 2: Findings.

- A. Males and females are legally equal, but they are not the same;
- B. Males and females possess unique and immutable biological differences that manifest prior to birth and increase as they age and experience puberty;
- C. These unique and immutable biological differences mean that females and males are not similarly-situated in all circumstances and are not interchangeable;
- D. Inconsistencies in court rulings and policy initiatives regarding sex discrimination and common sex-based words have endangered women’s rights and resources and have put the existence of private, single-sex spaces in jeopardy, thereby necessitating clarification of certain terms used in state code.
- E. The hard-earned legal equality between men and women is enshrined in the Fourteenth Amendment to the U.S. Constitution, federal laws including Title IX of the Education Amendments of 1972, and [state law].
- F. In describing equality for women under the Fourteenth Amendment, the U.S. Supreme Court has explained that laws and governmental policies may account for the “enduring” physical differences between the sexes. *United States v. Virginia*, 518 U.S. 515, 533 (1996).
- G. These physical differences include differences in reproductive anatomy, the basis for separate-sex facilities designed to protect personal privacy. Personal

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privacy is a natural instinct rooted in biological realities, including that males alone have the biological capability to impregnate women and that males are, on average, larger, stronger, and more violent than women. The state should protect women and girls' natural desire to avoid exposing their bodies from males with whom they have limited relationships.

Section 3: Definitions of Terms Used in State Statutes and Administrative Rules.

- A. As used in this code and/or any administrative rules, regulations, or public policies adopted by the State or its instrumentalities:
- a. a “**woman**” is an adult human of the female sex, and a “**man**” is an adult human of the male sex;
 - b. a “**girl**” is a human female who is a legal minor under the laws of {STATE}, and a “**boy**” is a human male who is a legal minor under the laws of {STATE}—provided that the use of the term “girl” or “boy” in reference to the participation of a high-school-aged individual in a school or extracurricular program shall not be understood to exclude the participation of a student who is legally an adult;
 - c. a “**mother**” is a female parent of a child or children as defined in {STATE} law; a “**father**” is a male parent of a child or children as defined in {STATE} law;
 - d. a “**female**,” when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident the reproductive system that at some point produces ova;
 - e. a “**male**,” when this term is used in reference to a natural person, is an individual who naturally has, had, will have through the course of normal development, or would have but for a developmental anomaly, genetic anomaly, or accident the reproductive system that at some point produces sperm;
 - f. “**sex**,” when this term is used to classify or describe a natural person, means the state of being either male or female as observed or clinically verified at birth. There are only two sexes, and every individual is either male or female.
 - i. Individuals with congenital and medically verifiable “DSD conditions” (sometimes referred to as “differences in sex development,” “disorders in sex development,” or “intersex conditions”) are not members of a third sex and must be accommodated consistent with state and federal law.
 - ii. “Sex” does not include “gender identity” or any other term intended to convey a person’s subjective sense of self; “gender identity” and other subjective terms are not synonyms or substitutes for “sex.”

- g. "**Domestic violence shelter**" means a facility [that meets criteria in state law] providing shelter to victims of domestic violence, non-consensual sexual conduct, or stalking.
- h. "**Juvenile Detention facility**" means a facility operated by [agency/political subdivision] for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a state court or who are detained while waiting disposition of charges against them.
- i. "**Public school**" means a school which is created pursuant to [state statute].
- j. "**Multiple Occupancy Restroom or Changing Room**" means an area designed or designated to be used by more than one individual at the same time and in which one or more individuals may be in various stages of undress in the presence of other individuals. Such term includes, but shall not be limited to, the following:
 - i. Restrooms;
 - i. Locker rooms; and
 - ii. Shower rooms.
- b. "**Sleeping quarters**" means a room with more than one bed and in which more than one individual is housed overnight.

Section 4: Sex-based protections permitted and standard of review.

- A. Notwithstanding any other provision of law to the contrary, no governmental agency, [as defined in *statute*], shall prohibit distinctions between the sexes with respect to athletics, correctional facilities, juvenile detention facilities, domestic violence shelters, or other accommodation where biology, safety, or privacy are implicated and that result in separate accommodations that are substantially related to the important government interest of protecting the health, safety, and privacy of individuals in such circumstances.

Section 4A: Safety and Privacy in Domestic Violence Shelters.

- A. To ensure the privacy and safety of women in domestic violence shelters, each such shelter shall:
 - c. Designate sleeping quarters and multiple occupancy restrooms or changing rooms:
 - i. for the exclusive use of females or
 - ii. for the exclusive use of males, and
 - d. Provide a reasonable accommodation to an individual who is unwilling or unable to use sleeping quarters or a multiple occupancy restroom or changing area designated for such individual's sex.
 - i. A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to

- access a single-occupancy sleeping area, restroom, or changing area.
 - ii. A reasonable accommodation under this paragraph shall not include allowing such individual to access a sleeping quarter, restroom, or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the sleeping quarter, restroom, or changing area.
- B. This Section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room or sleeping quarters designated for the opposite sex when he or she enters such area for one of the following reasons:
 - a. For authorized custodial, maintenance, or inspection purposes;
 - b. To render medical assistance;
 - c. To render assistance by law enforcement;
 - d. To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or
 - e. For young children, to accompany an adult caretaker.
- C. Nothing in this Section shall be construed to prohibit a domestic violence shelter from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act.

Section 4B: Safety and Privacy in Restrooms of Public Schools.

- A. To ensure the privacy and safety of students, each public or local school system in this state shall:
 - a. Designate multiple occupancy restrooms or changing rooms:
 - i. for the exclusive use of females, or
 - ii. for the exclusive use of males, and
 - b. Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area designated for such individual's sex.
 - i. A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy restroom or changing area.
 - ii. A reasonable accommodation under this paragraph shall not include allowing such individual to access a restroom or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the restroom or changing area.
- B. A public school or local school system that sponsors or supervises an overnight trip involving public school students shall ensure that a public

school student attending the overnight trip either:

- a. Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex; or
 - b. Is provided single-occupancy sleeping quarters, except that
 - c. A public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a member of such student's immediate family.
- C. This Section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room designated for the opposite sex when he or she enters such area for one of the following reasons:
- a. For authorized custodial, maintenance, or inspection purposes;
 - b. To render medical assistance;
 - c. To render assistance by law enforcement;
 - d. To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or
 - e. For young children, to accompany an adult caretaker.
- D. Nothing in this Section shall be construed to prohibit a public or local school system from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act.

Section 4C: Safety and Privacy in Correctional Facilities and Juvenile Detention Facilities.

- A. To ensure the privacy and safety of incarcerated women and girls, each correctional facility and juvenile detention center shall:
- a. Designate sleeping quarters and multiple occupancy restrooms or changing rooms:
 - i. for the exclusive use of females, or
 - ii. for the exclusive use of males, and
 - b. Provide a reasonable accommodation to an individual who is unwilling or unable to use sleeping quarters or a multiple occupancy restroom or changing area designated for such individual's sex.
 - i. A reasonable accommodation under this paragraph may include, but shall not necessarily be limited to, allowing such individual to access a single-occupancy sleeping area, restroom, or changing area.
 - ii. A reasonable accommodation under this paragraph shall not include allowing such individual to access a sleeping quarter, restroom, or changing area that is designated for use by members of the opposite sex while members of the opposite sex of the individual are present or may be present in the sleeping quarter, restroom, or changing area.

- B. This Section shall not be construed or applied to prohibit an individual from entering a multiple occupancy restroom or changing room or sleeping quarters designated for the opposite sex when he or she enters such area for one of the following reasons:
 - a. For authorized custodial, maintenance, or inspection purposes;
 - b. To render medical assistance;
 - c. To render assistance by law enforcement;
 - d. To provide services or render aid during a natural disaster, a declared emergency, or when necessary to prevent a serious threat to good order or safety; or
 - e. For young children, to accompany an adult caretaker.
- C. Nothing in this Section shall be construed to prohibit a correctional facility or juvenile detention facility from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act.

Section 5: Promoting Accuracy in Sex-Based Data Collection.

- A. Males and females possess unique and immutable biological differences that can manifest in unique risks, harms, or sex-based discrimination, including crime victimhood, access to pregnancy and nursing related resources, and substance abuse;
- B. Where the government seeks to understand and address sex-based differences particularly, data must be accurately collected on the basis of sex. Failure to do so risks improper identification and alleviation of trends and harms affecting citizens of the State.
- C. Any public school, public school district, state agency, or subdivision of the State that directly collects vital statistics related to sex or the categories of male and female for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each natural person who is part of the collected data set as either male or female as defined in this Act.
- D. Compliance with this section shall not require the collection of data related to sex unless otherwise required by law, nor shall it prevent the collection of additional data points other than sex.

Section 6: Replacing Gender with Sex.

*This section requires an individualized replacement of “gender” where it is intended to convey sex. Why? Gender is a term that gained currency among feminist theorists in the 1970s as a way to *distinguish* biology from cultural expectations about sex roles. When statutes use “gender” as a synonym for “sex,” it opens the door to

bureaucrats and judges treating the two terms alike, both as culturally (rather than biologically) determined.

For example: Title XX of the Code of State, relating to motor vehicles and traffic, is amended by revising paragraph (X) of subsection (Y) of Code Section Z, relating to applications, fees, and provisions for voluntary participation in various programs, as follows:

"(2) The department shall make available to procurement organizations information provided for in the Revised Uniform Anatomical Gift Act, including the name, license number, date of birth, ~~gender~~ **sex**, and most recent address of any person who obtains an organ donor driver's license; provided, however, that the ~~gender information~~ **licensee's sex of either male or female** shall be made available only to a procurement organization if such organization or center has sufficient funds to cover the associated costs of providing such information."

Section 7: Severability.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

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