

Bathroom Bills Are Back—Broader and Stricter—in Several States

The latest round of proposals expand on earlier bills that sought to restrict transgender people's access to public restrooms and locker rooms.

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Republican lawmakers in several states have resurrected and expanded the fight over whether transgender people may use bathrooms and other facilities that do not match their sex assigned at birth.

At least one bill goes so far as making it a crime for a transgender person to enter a facility that doesn't match the sex listed on their birth certificate.

The debate has been popping up in statehouses across the nation in recent months, predominantly in conservative, rural states, including at a hearing of the Arizona Senate's Health and Human Services Committee in February. Proponents of that state's [SB 1628](#), which defines "male," "female," and other terms through rigid definitions of biological sex, argued that women's rights are at stake. Opponents disagreed and said the language would erase transgender people from state statute and remove legal protections.

The bill states that Arizona may provide "separate single-sex" environments for males and females, including within athletics, living facilities, locker rooms, bathrooms, domestic violence shelters, and sexual assault crisis centers, meaning that transgender women could be prohibited from entering such spaces meant for women. Researchers have [found that](#) transgender women experience assault at a rate nearly four times as high as cisgender women.

The latest round of proposals, like the one in Arizona, expand on an earlier spate of "bathroom bills," which sought to restrict transgender people's access to public restrooms and locker rooms. In some instances, the proposed laws would extend far beyond access to facilities by excluding trans people from state anti-discrimination laws and dictating makeup of athletic teams. Legal experts say the new bills put states at risk of violating federal anti-discrimination laws, which could throw billions of dollars in federal funding into jeopardy for states and crisis centers that receive federal grants.

At least one state — Utah — removed lines that specifically mention shelters and similar facilities because of concerns about losing federal funding.

In addition to the bill passed in Utah, lawmakers introduced similar bills in Idaho, Georgia, Arizona, New Mexico, Iowa, and West Virginia. The measures mirror a model bill created by the Independent Women's Law Center, a conservative nonprofit that seeks to rewrite state laws to rely on sex assigned at birth. Versions of the policy were approved through legislation or executive orders last year in Kansas, Nebraska, Oklahoma, and Montana. A similar bill was also [introduced in Congress last year](#) by Sen. Cindy Hyde-Smith (R-Miss.) and Rep. Debbie Lesko (R-Ariz.)

Jennifer Braceras, vice president for legal affairs and founder of the Independent Women's Law Center, testified in support of the proposal in Arizona.

"Everyday Americans know that a woman is an adult human female," Braceras said, referring to the definition in the bill that a female is "an individual who has, had, will have or would have, but for a developmental anomaly or accident, the reproductive system that at some point produces ova."

She told state lawmakers that activists seek to convince judges and others that men who identify as women have an unfettered right to enter women's spaces and said the policy is a tool to restrict that access.

Braceras added that just because the model legislation does not include gender in its definitions, that doesn't prohibit state lawmakers from choosing to include it in their policies. Conservative proponents of the legislation emphasize the difference between sex and gender, saying the former is an immutable biological fact and the latter a set of cultural norms.

The narrow definition of sex and provisions that declare certain spaces be protected as "single-sex environments," including domestic violence shelters and rape crisis centers in some states' versions of the policy, raise questions about compliance with federal laws that prohibit discrimination based on sex or gender.

Anya Marino, director of LGBTQI equality at the National Women's Law Center, said that if a court found these state statutes at odds with federal laws, the federal law that ensures protection on the basis of gender would supersede the state laws.

Beyond how the laws could be interpreted or implemented, Marino expressed concern about other consequences these debates can have, including violence against people who "fail to conform against an extremist idealistic view of how sexes should appear," she said.

"It's part of a larger objective to control people through body policing to determine how they love and how they navigate their daily lives."

Yet the legal ramifications are unclear.

In Montana, where one of these proposals [became law](#) after SB 458 was approved during last year's session, [lawmakers weighed the risks](#) of potentially violating federal law and losing billions in funding.

The state's legislative fiscal analysts determined that \$7.5 billion in federal funds were on the line in the first year, depending on how state agencies implemented the law and whether those actions were deemed violations of anti-discrimination laws. The bill passed regardless and was signed by Republican Gov. Greg Gianforte.

A [legal challenge of the statute](#) is pending. Regardless, the Montana Department of Public Health and Human Services cited the law's passage as justification to revive a ban on transgender people changing the sex designation on their birth certificate. The ban was originally instituted in 2022 and struck down by a judge before the new law passed.

"DPHHS must follow the law, and our agency will consequently process requests to amend sex markers on birth certificates under our 2022 final rule," department director Charlie Brereton said in a February 20 statement announcing the change.

Lawmakers in Utah removed language specifically identifying domestic violence shelters and rape crisis centers as "sex-designated" spaces that could exclude transgender people [after hearing concerns](#) from local and state leaders about losing federal funding. Though lawmakers removed mention of those specific venues from the bill, they kept provisions that prohibit transgender people from entering sex-designated restrooms, public showers, or locker rooms that don't correspond with their sex assigned at birth unless their birth certificate has been amended or they've undergone gender-affirming surgery accordingly. The bill was fast-tracked, approved, and signed by Republican Gov. Spencer Cox two weeks after the legislative session began.

More recently, West Virginia lawmakers removed language from [HB 5243](#) that named domestic violence shelters and rape crisis centers as places where the state could distinguish between the sexes.

Republican Delegate Kathie Hess Crouse, lead sponsor of the bill, said the language was removed because it was unnecessary.

"By removing the specific examples, we're making it extremely clear that this list is not the full list of single-sex environments that West Virginia may have," she said.

The West Virginia House [approved the bill](#) in February and it is pending approval from the Senate.

Asked about constituents who testified in opposition to the bill with concerns that it would negatively affect transgender people, Hess Crouse said they were misinformed. She asserted the bill doesn't create new rights or take any away.

"The bill is a definitional bill for our courts to have guidance when interpreting laws that already exist in West Virginia," she said. "If anyone in the state is not happy with the laws we already have on the books, they can work with their legislator to bring a bill that changes the law."

Hugo Polanco, a trial attorney for the Maricopa County public defender's office, testified in opposition to the bill in Arizona on behalf of the state's American Civil Liberties Union chapter.

“Let’s be clear,” he said. “Trans rights are women’s rights. Advances in trans rights tear down barriers based on gender stereotypes, creating the opportunity for each of us to determine our own life story.”

Alex del Rosario, a national organizer with the National Center for Transgender Equality, said this slate of bills harms transgender people by attempting to eliminate protections for them.

“Policing people’s bodies while excluding transgender and intersex people from using the restroom does not protect anyone’s privacy,” they said. “Extremist politicians have been taking advantage of the American public, projecting a false image of transgender people, especially transgender women, to stoke fear and distrust of a community that many people don’t understand.”

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