

HOUSE BILL NO. 121

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PRIVACY IN CERTAIN RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS; REQUIRING THAT COVERED ENTITIES DESIGNATE MULTI-OCCUPANCY RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS FOR THE EXCLUSIVE USE OF MALES OR FEMALES; REQUIRING THAT INDIVIDUALS USE RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS DESIGNATED FOR THEIR SEX; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING REMEDIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The purposes of [sections 1 through 4] are to:

- (1) reaffirm the longstanding meanings of the terms "sex", "male", and "female" in law; and
- (2) preserve women's restrooms, changing rooms, and sleeping quarters for women in facilities where women have traditionally been afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men.

NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

- (1) "Changing room" means a room or area in which an individual may be in a state of undress in the presence of others, including a locker room or shower room.
- (2) "Correctional center" means a facility that houses individuals charged with or convicted of a criminal offense and that is designed, constructed, or operated by the department of corrections.

(3) "Covered entity" means a correctional center, a juvenile detention facility, a local domestic violence program, a public building, or a public school.

(4) "Female" means a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female.

(5) "Juvenile detention facility" means a short-term detention center, a youth detention facility, including a regional detention facility, or a secure detention facility that is under contract with the state or a subdivision of the state.

(6) "Local domestic violence program" means a shelter or safe home for victims of domestic violence that is funded by the Family Violence Prevention and Services Act grant program established in 44-7-401.

(7) "Male" means a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male.

(8) "Multi-occupancy" means a space that is designed for use by multiple individuals simultaneously.

(9) "Public building" means a building that is owned or leased by a public agency as defined in 18-1-101 and that is open to the public, including but not limited to:

(a) a building that is used for educational, office, or institutional purposes; or

(b) a library, museum, school, hospital, auditorium, dormitory, or university building.

(10) "Public school" means a noncharter public school or a public charter school as those terms are defined in 20-6-803.

(11) "Restroom" means a room that includes one or more toilets or urinals.

(12) "Sex" means the organization of the body parts and gametes for reproduction in human beings and other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types of gametes. The sexes are determined by the biological and genetic indication of male or female,

1 including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and
2 external genitalia present at birth, without regard to an individual's psychological, behavioral, social, chosen, or
3 subjective experience of gender.

4 (13) "Sleeping quarters" means a room with one or more beds and in which more than one
5 individual is housed overnight.

6
7 **NEW SECTION. Section 3. Safety and privacy in covered entities.** (1) A covered entity shall
8 designate each multi-occupancy restroom, changing room, or sleeping quarters for the exclusive use of females
9 or males.

10 (2) A restroom, changing room, or sleeping quarters within a covered entity that is designated for
11 females or males may be used only by members of that sex. Except as provided in subsection (4), an individual
12 may not enter a restroom, changing room, or sleeping quarters that is designated for females or males unless
13 the individual is a member of the designated sex.

14 (3) A covered entity shall take reasonable steps to provide individuals with privacy from members
15 of the opposite sex in designated restrooms, changing rooms, and sleeping quarters.

16 (4) This section does not apply to an individual who enters a restroom, changing room, or sleeping
17 quarters designated for the opposite sex:

- 18 (a) to perform custodial services or maintenance;
19 (b) to render medical assistance;
20 (c) to render law enforcement assistance; or
21 (d) to provide services or render aid during a natural disaster or declared emergency or if
22 necessary to prevent a serious threat to good order and safety.

23 (5) (a) For any activity or event authorized by a public school during which students share sleeping
24 quarters, a student may not be required to share sleeping quarters with a member of the opposite sex unless
25 the other individual is a member of the student's family, such as a parent, guardian, sibling, or grandparent.

26 (b) In any other facility or setting in a public school where an individual may be in a state of
27 undress in the presence of others, school personnel shall provide separate, private areas designated for use by
28 individuals based on their sex. Except as provided in subsection (4), an individual may not enter a private area

1 unless the individual is a member of the designated sex.

2 (6) This section may not be construed to prohibit a covered entity from:

3 (a) adopting policies necessary to accommodate individuals protected under the Americans with
4 Disabilities Act of 1990 or young children or elderly persons in need of assistance;

5 (b) establishing single-occupancy restrooms, changing rooms, or sleeping quarters or family
6 restrooms, changing rooms, or sleeping quarters; or

7 (c) redesignating a multi-occupancy restroom, changing room, or sleeping quarters designated for
8 exclusive use by one sex to a designation for exclusive use by the opposite sex.

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10 NEW SECTION. Section 4. Remedies. (1) An individual who, while accessing a restroom or
11 changing room designated for use by the individual's sex, encounters another individual of the opposite sex in
12 the restroom or changing room has a private cause of action for declaratory and injunctive relief, nominal
13 damages, and any other appropriate relief against the covered entity that:

14 (a) provided the other individual permission to use a restroom or changing room designated for the
15 opposite sex; or

16 (b) failed to take reasonable steps to prohibit the other individual from using the restroom or
17 changing room designated for the opposite sex.

18 (2) An individual who is required by a covered entity to share sleeping quarters with an individual
19 of the opposite sex has a private cause of action for declaratory and injunctive relief, nominal damages, and
20 any other appropriate relief against the covered entity.

21 (3) (a) All civil actions brought pursuant to this section must be initiated within 2 years after the
22 violation occurred.

23 (b) An individual aggrieved under this section who prevails in court may recover reasonable
24 attorney fees and costs from the offending covered entity.

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26 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be
27 codified as a new part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1
28 through 4].

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2 NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are

3 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

4 the part remains in effect in all valid applications that are severable from the invalid applications.

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6 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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