

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 456**

By Senator Smith (Mr. President) and Woelfel

[By Request of the Executive]

[Introduced February 13, 2025; referred  
to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §5-32-1, §5-32-2, §5-32-3, §5-32-4, §5-32-5, §5-32-6, §5-32-7, and §5-32-8, relating to clarifying definitions of sex, male, and female in state law; and providing for related protections for single-sex spaces.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 32. SEX DEFINITIONS AND PRESERVATION OF SINGLE-SEX SPACES.**

**§5-32-1. Purpose and General Application.**

(a) The purpose of this article is to:

(1) Reaffirm the longstanding meaning of sex, male, and female in state law.

(2) Preserve women's restrooms, multiple occupancy restrooms or changing rooms, and sleeping quarters for women in facilities where women have been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men.

(3) 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 article 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.

(c) This article shall not be enforced in any manner inconsistent with or in violation of the ruling in *Grimm v. Gloucester School Board*, 92 F.3d. 586 (4th Cir. 2020). If a decision by the Supreme Court of the United States or by the United States Court of Appeals for the Fourth Circuit overrule or otherwise render the *Grimm* decision ineffective, then the limitations on enforcement imposed by this subsection shall be considered repealed.

**§5-32-2. 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

3 prior to birth and increase as they age and experience puberty;

4 (c) These unique and immutable biological differences mean that females and males are  
5 not similarly situated in all circumstances and are not interchangeable;

6 (d) Inconsistencies in court rulings and policy initiatives regarding sex discrimination and  
7 common sex-based words have endangered women's rights and resources and have put the  
8 existence of private, single-sex spaces in jeopardy, thereby necessitating clarification of certain  
9 terms used in this code.

10 (e) The hard-earned legal equality between men and women is enshrined in the  
11 Fourteenth Amendment to the U.S. Constitution, federal laws including Title IX of the Education  
12 Amendments of 1972, and Sections 1, 10, and 21 of the West Virginia Constitution.

13 (f) In describing equality for women under the Fourteenth Amendment, the U.S. Supreme  
14 Court has explained that laws and governmental policies may account for the "enduring" physical  
15 differences between the sexes. *United States v. Virginia*, 518 U.S. 515, 533 (1996).

16 (g) These physical differences include differences in reproductive anatomy, the basis for  
17 separate-sex facilities designed to protect the safety and personal privacy of women and girls.  
18 Personal privacy is a natural instinct rooted in biological realities, including the facts that males  
19 alone have the biological capability to impregnate women and that males are, on average,  
20 physically larger and stronger than women. The state should protect spaces where women have  
21 been traditionally afforded privacy and safety from acts of abuse, harassment, sexual assault, and  
22 violence committed by men, just as the state should protect women and girls' natural desire to  
23 avoid exposing their bodies to males with whom they have limited, if any, relationships.

**§5-32-3. Definitions of Terms Used in the Code and Code of State Rules.**

1 (a) As used in this code and/or any administrative rules, regulations, or public policies  
2 adopted by the state or its instrumentalities:

3 (1) A "woman" is an adult human of the female sex, and a "man" is an adult human of the  
4 male sex.

5           (2) A "girl" is a human female who is a legal minor, and a "boy" is a human male who is a  
6 legal minor: *Provided*, That the use of the term "girl" or "boy" in reference to the participation of a  
7 high-school-aged individual in a school or extracurricular program in accordance with the laws of  
8 the state shall not be understood to exclude the participation of a student who is legally an adult.

9           (3) A "mother" is a female parent of a child or children.

10          (4) A "father" is a male parent of a child or children.

11          (5) A "female", when this term is used in reference to a natural person, is an individual who  
12 naturally has, had, will have through the course of normal development, or would have but for a  
13 developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point  
14 produces, transports, and utilizes ova for fertilization.

15          (6) A "male", when this term is used in reference to a natural person, is an individual who  
16 naturally has, had, will have through the course of normal development, or would have but for a  
17 developmental anomaly, genetic anomaly, or accident, the reproductive system that at some point  
18 produces transports, and utilizes sperm for fertilization.

19          (7) "Sex", when this term is used to classify or describe a natural person, means the state  
20 of being either male or female as observed or clinically verified at birth. There are only two sexes,  
21 and every individual is either male or female: *Provided*, That individuals with congenital and  
22 medically verifiable "DSD conditions" (sometimes referred to as "differences in sex development",  
23 "disorders in sex development", or "intersex conditions") are not members of a third sex and must  
24 be accommodated consistent with state and federal law.

25          (8) "Gender" shall have the same meaning as "sex" provided in this section.

26          (9) "Domestic violence shelter" means a residential service offered by a licensed domestic  
27 violence program on a temporary basis, to persons who are victims of domestic violence, dating  
28 violence, sexual assault, stalking or human trafficking, and their children, as established by §48-  
29 26-214 of this code, and that receives funding from the West Virginia Department of Human  
30 Services.

(10) "Public school" means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XIII of the Constitution of West Virginia.

(11) "State institution of higher education" means any university, college, or community and technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this code.

(12) "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:

(A) Restrooms;

(B) Locker rooms; and

(C) Shower rooms.

(13) "Changing area" means an area designed or designated to be used by one or more individuals at the same time and in which one or more individuals may be in various stages of undress. Such term includes, but shall not be limited to, restrooms.

(14) "Sleeping quarters" means a room with more than one bed and in which more than one individual is housed overnight.

**§5-32-4. Sex-based protections permitted and standard of review.**

(a) Notwithstanding any other provision of law to the contrary, no state or local governmental agency may prohibit distinctions between the sexes with respect to 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.

**§5-32-5. Safety and Privacy in Domestic Violence Shelters.**

(a) To ensure the privacy and safety of women in domestic violence shelters, each such shelter shall:

(1) Designate sleeping quarters and multiple occupancy restrooms or changing rooms:

4 (A) For the exclusive use of females or

5 (B) For the exclusive use of males, and

6 (2) Provide a reasonable accommodation to an individual who is unwilling or unable to use  
7 sleeping quarters or a multiple occupancy restroom or changing room designated for such  
8 individual's sex.

9 (A) A reasonable accommodation under this paragraph may include, but shall not  
10 necessarily be limited to, allowing such individual to access a single-occupancy sleeping area,  
11 restroom, or changing area.

12 (B) A reasonable accommodation under this paragraph shall not include allowing such  
13 individual to access a single-occupancy sleeping area or sleeping quarters, restroom, or changing  
14 area that is designated for use by members of the opposite sex while members of the opposite sex  
15 of the individual are present or may be present in the single-occupancy sleeping area or sleeping  
16 quarters, restroom, or changing area.

17 (b) This section shall not be construed or applied to prohibit an individual from entering a  
18 multiple occupancy restroom or changing room or sleeping quarters designated for the opposite  
19 sex when he or she enters such area for one of the following reasons:

20 (1) For authorized custodial, maintenance, or inspection purposes;

21 (2) To render medical assistance;

22 (3) To render assistance by law enforcement;

23 (4) To provide services or render aid during a natural disaster, a declared emergency, or  
24 when necessary to prevent a serious threat to good order or safety; or

25 (5) For young children, to accompany an adult caretaker.

26 (c) Nothing in this section shall be construed to prohibit a domestic violence shelter from  
27 adopting policies necessary to accommodate persons protected under the Americans with  
28 Disabilities Act of 1990, 42 U.S.C. §12101 et seq., as amended.

**§5-32-6. Safety and Privacy in Restrooms of Public Schools and State Institutions of Higher**

**Education.**

1        (a) To ensure the privacy and safety of students, each public school system in this state  
2 and each state institution of higher education shall:

3        (1) Designate multiple occupancy restrooms or changing rooms:

4        (A) For the exclusive use of females;

5        (B) For the exclusive use of males; and

6        (2) Provide a reasonable accommodation to an individual who is unwilling or unable to use  
7 a multiple occupancy restroom or changing area designated for such individual's sex.

8        (A) A reasonable accommodation under this paragraph may include, but shall not  
9 necessarily be limited to, allowing such individual to access a single-occupancy restroom or  
10 changing area.

11       (B) A reasonable accommodation under this paragraph shall not include allowing such  
12 individual to access a restroom or changing area that is designated for use by members of the  
13 opposite sex while members of the opposite sex of the individual are present or may be present in  
14 the restroom or changing area.

15       (b) A public school that sponsors or supervises an overnight trip involving public school  
16 students or state institution of higher education that sponsors or supervises an overnight trip  
17 involving students shall ensure that any student attending the overnight trip either:

18       (1) Shares sleeping quarters with a member or, if necessary, multiple members, of the  
19 same sex; or

20       (2) Is provided single-occupancy sleeping quarters.

21       Notwithstanding the foregoing, a public school student attending an overnight trip may  
22 share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a  
23 member of such student's immediate family. Additionally, a state institution of higher education  
24 student may share sleeping quarters with a member of the opposite sex if the state institution of  
25 higher education student and the person of opposite sex both agree to shared sleeping quarters in

advance of the sponsored or supervised overnight trip.

(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:

(1) For authorized custodial, maintenance, or inspection purposes;

(2) To render medical assistance;

(3) To render assistance by law enforcement;

(4) 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

(5) For young children, to accompany an adult caretaker.

(d) Nothing in this section shall be construed to prohibit a public system or a state institution of higher education from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, or the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*

**§5-32-7. 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) 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 institution of higher education, 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



12 article.

13 (d) Compliance with this section shall not require the collection of data related to sex  
14 unless otherwise required by law, nor shall it prevent the collection of additional data points other  
15 than sex.

**§5-32-8.**

**Severability.**

1 If any provision of this article or the application of such provision to any person or  
2 circumstance is held to be unconstitutional, the remainder of this article are severable and their  
3 application to any person or circumstance shall not be affected thereby.

NOTE: The purpose of this bill is to define and preserve single-sex spaces in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.