

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1521 Facility Requirements Based on Sex

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Plakon and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1674

FINAL HOUSE FLOOR ACTION: 80 Y's

36 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 1521 passed the House on April 19, 2023. The bill was amended in the Senate on May 2, 2023, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 3, 2023.

Currently, Florida law does not address whether businesses, schools, government building or prisons are required to provide separate restrooms or changing rooms for people based on their sex. However, the Florida Building Code does require that certain businesses that are open to the public, like public lodging establishments and restaurants, have at least one restroom open to the public. In addition, Florida does not currently make it a crime for a person of one sex to enter a restroom or changing room intended for use by the opposite sex.

The bill:

- Creates the "Safety in Private Spaces Act."
- Specifies the "covered entities" under the bill include state and local public buildings, educational institutions, correctional institutions, juvenile institutions, and detention facilities.
- Requires all covered entities that maintain a restroom or changing facility (facility) to have such facilities separately designated for males and females or have a unisex facility.
- Requires all covered entities to submit documentation regarding compliance with the facility requirements.
- Limits instances when a person may enter a facility designated for the opposite sex to the following circumstances:
 - To assist a child under 12 years of age, an elderly person 60 years of age or older, or persons with certain disabilities.
 - In certain cases of emergency where the health or safety of another person is at risk.
 - For custodial, maintenance, or inspection purposes, provided that the facility is not in use.
 - If the appropriate designated facility is out of order or under repair and the facility designated for the opposite sex contains no person of the opposite sex.
- Provides that the failure to depart a facility designated for the opposite sex by persons other than the covered entity's employees constitutes the offense of trespass.
- Allows an employee of a covered entity to request a person to depart a facility designated for the opposite sex on a covered entity's premises, when the entry is not for an authorized purpose.
- Requires each type of covered entity to establish disciplinary procedures for its employees, certain persons under its control, and other personnel described in the bill for failing to follow these requirements.
- Does not apply to persons born with a medically verifiable genetic disorder of sexual development under treatment by a physician, with certain specified conditions.
- Gives the Attorney General enforcement authority, including the authority to seek injunctive relief and impose fines of up to \$10,000.

The bill may have an indeterminate fiscal impact on state and local government and the private sector.

The bill was approved by the Governor on May 17, 2023, ch. 2023-106, L.O.F., and will become effective on July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1521z1.DOCX

DATE: 5/18/2023

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Restrooms and Building Codes

Until roughly 1850, there were no indoor toilet facilities in America. Everyone used outdoor restrooms to meet basic human needs, which were mostly single-user and not sex-designated. The first regulation requiring separate restroom facilities for men and women was passed in 1887 by Massachusetts, which required the establishment of separate restrooms in businesses. “Wherever male and female persons are employed in the same factory or workshop, a significant number of separate and distinct water-closets, earth-closets, or privies shall be provided for the use of each sex and should be plainly designated.” Mixed use of such facilities was also specifically prohibited in some states. Over the course of the next thirty years, almost every state passed its own provision for separate restrooms for men and women.¹ Historians indicate that these laws were based on the social norms of the times and the intention to protect women.²

These requirements were carried over in building codes throughout the U.S.³ Building codes in the U.S. provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of uniform building standards. Typically, restroom requirements are based on a public building’s capacity to determine how many restrooms should be built. Most codes mandate a minimum number of toilets and urinals per sex. Previously, these requirements resulted in more facilities being made available for men than for women, resulting in famously long lines for ladies’ rooms, which lead to “Potty Parity” laws.⁴ Florida’s law required three women’s toilets for every two for men in certain facilities.⁵ After various changes over the years, Florida has settled on incorporating the International Plumbing Code into the state building code which sets the number of toilets for the expected public use and size of a facility -- usually two female toilets for every one male depending on occupancy.⁶

The Florida Building Code provides that where plumbing fixtures are required, usually based on being open to the public, separate facilities must be provided for each sex⁷ with correct signage⁸, with certain exceptions.⁹ For example, family or assisted-use toilet facilities are permitted to serve as the required separate facilities and are not required to be identified for exclusive use by either sex.¹⁰ Single-user toilet facilities and bathing rooms, and family or assisted-use toilet and bathing rooms, must be identified for use by either sex.¹¹

Requirements for restrooms may differ depending on the type of building or business. For example: The Florida Building Code requires swimming pools with a bathing load of 20 persons or less to utilize a

¹ TIME, Maya Rhodan, Why Do We Have Men's and Women's Bathrooms Anyway?, May 16, 2016, <https://time.com/4337761/history-sex-segregated-bathrooms/> (last visited Mar. 22, 2023).

² *Id.* During this same period, separate facilities were required in almost every area of society for women’s safety. For example: women’s reading rooms, and women’s train cars.

³ Suellen Hoy, *Chasing Dirt, The American Pursuit of Cleanliness*, Oxford University Press, Oct. 10, 1996.

⁴ New York Times, John Brach, New Ballpark Statistic: Stadium’s Toilet Ratio, April 12, 2009, <https://www.nytimes.com/2009/04/13/sports/baseball/13potty.html?auth=login-google1tap&login=google1tap> (last visited on Mar. 22, 2023).

⁵ S. 553.141 (1997).

⁶ American Restroom Association, *Potty Parity, Overview*, <https://americanrestroom.org/potty-parity/> (last visited Mar. 22, 2023). *See also*, s. 553.86, F.S.

⁷ S. 553.86, F.S.

⁸ S. 403.4, F.B.C.

⁹ S. 403.2, F.B.C.

¹⁰ S. 403.2.1, F.B.C.

¹¹ S. 403.1.2, F.B.C.

unisex restroom. Pools with bathing loads of 40 persons or less may utilize two unisex restrooms or meet the requirements based on square footage. Each such restroom must include a water closet, a diaper change table, a urinal, and a lavatory. Pools with a bathing load larger than 40 persons must provide separate sanitary facilities labeled for each sex.¹²

Some states have specifically adopted laws related to restrooms and who is permitted to use them. For example: In 2016, North Carolina enacted the Public Facilities Privacy & Security Act (Act). The Act preempted any anti-discrimination ordinances passed by local communities and compelled schools and state and local government facilities containing single-gender restrooms to only allow people of the corresponding sex as listed on their birth certificate to use them.¹³ In 2017, the portion of the Act regarding restroom use was repealed and, in 2020, the portion that prohibited local governments from passing anti-discrimination ordinances was sunset.¹⁴

Family Restrooms

According to the American Restroom Association, single-stall restrooms that are compliant with the Americans With Disabilities Act (ADA), known as “ADA accessible,” are important for people living with “special needs.” These restrooms allow people with special needs to visit museums, parks, theaters, libraries and other public places.¹⁵ Family style, unisex, or single-user restrooms (often called handicapped restrooms) offer flexibility. Males or females, and one or more individuals (i.e. family members), of the same or opposite sex, can use them. They can also provide such amenities as two toilets, one for adults and one for children, and a changing table.¹⁶

People with visible physical disabilities are not the only users of single-stall handicapped restrooms. The single-stall washroom (whether it is called family style or handicapped washroom) provides a higher level of privacy than the multi-stall public restrooms. In addition, people using an ostomy pouch often prefer the additional access space and increased privacy of a unisex restroom.¹⁷

Pay Toilets

Currently, there is a shortage of public restrooms in U.S. cities. However, this wasn’t always the case. Publicly-available for-pay restrooms used to be common in the U.S. In the early 1900s, they were available at railroad stations, airports, bus stations, and highway rest stops. They were also common in busy urban commercial districts. For the most part, people had to pay for the stalls, which opened with coins, while urinals were free. By 1970, America had over 50,000 for-pay toilets.¹⁸

In the 1970s, several separate interests began dismantling this business model. One was the feminist movement, which pointed out differences in charges - some companies charged for using commodes or toilets, which were more expensive to operate than urinals, but did not charge for urinals. Another was the Committee to End Pay Toilets in America (CEPTIA), a group of teenagers who got tired of paying to use restrooms. As a result, states began passing legislation to ban for-pay restrooms.¹⁹

¹² S. 403.6, F.B.C.

¹³ North Carolina General Assembly, *House Bill 2/SL2016-3*, <https://www.ncleg.gov/BillLookup/2015E2/H2> (last visited Mar. 20, 2023).

¹⁴ North Carolina General Assembly, *House Bill 142/SL2017-4*, <https://www.ncleg.gov/BillLookup/2017/h142> (last visited Mar. 20, 2023).

¹⁵ American Restroom Association, *Family and Unisex Restrooms*, <https://americanrestroom.org/family-unisex-restrooms/> (last visited Mar. 20, 2023).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Catalyst, *U.S. Cities Should Bring Back For-pay Toilets*, <https://catalyst.independent.org/2020/02/13/u-s-cities-should-bring-back-for-pay-toilets/> (last visited Mar. 20, 2023).

¹⁹ *Id.*

Instead of free public toilets available for all, public toilets pretty much disappeared from American cities, since cities found it expensive and difficult to keep them safe and clean. By 1980, almost none existed in the United States. In Europe, where there was no such movement, pay public toilets continue to operate today. Today, in the United States, many complain that restrooms are unsafe, unclean, and in disrepair, and have a reputation for attracting illegal activity.²⁰ The resulting restroom shortage has resulted in real inconvenience in cities, and sometimes public health problems.²¹

Federal Regulations Related to Restrooms

Enacted in 1970, the Occupational Safety and Health Act (OSHA) guarantees that employers will provide all employees with safe work conditions. It includes accessibility to restrooms and sanitary conditions.²² It provides that restroom facilities for employees must be made available based on the knowledge that restroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

OSHA covers the number of water closets required depending on the number of employees. At work sites with up to 15 employees, one water closet is expected to be provided; Otherwise, the standard is one for every 40 employees. If employee restrooms are made available to the public, they must comply with local building code requirements, and OSHA and ADA requirements.

Florida law requires all restrooms to be compliant with the ADA, which, among other things, directs the provision of as-needed restroom breaks as a reasonable accommodation for an employee who needs to use the facilities due to an injury, disability, or illness.

Requirements include that different facilities have to be provided for each sex unless the restrooms themselves can be occupied by no more than one person and can be locked from the inside. Each restroom is required to be a separate compartment, with a door, that is separated from the next by partitions. Public restrooms must be completely closed and have tight-fitting doors that close properly to ensure privacy. In addition, entrances and exits must be designed to promote an occupants' privacy.²³

Federal Law and Recent Cases Related to the Use of Restrooms

Public debate, legal questions, and concerns exist regarding whether discrimination against a transgender²⁴ student or transgender employee constitutes discrimination “**on the basis of sex.**” Such issues have multiple contexts, including debate over transgender restroom policies. Interpretations of the protections are varied.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that protects employees against discrimination in the workplace based on certain specified characteristics, including race, color, national origin, sex, and religion. Title VII provides:

²⁰ Marketplace, Chelsea Wald, *ShelfLife, What happened to America's public toilets?*, April 13, 2021, <https://www.marketplace.org/2021/04/13/what-happened-to-americas-public-toilets/> (last visited Mar. 22, 2023).

²¹ *Id.*

²² 29 CFR 1910.141(c)(1)(i).

²³ Americans with Disabilities Act, *ADA Title III Technical Assistance Manual, Covering Public Accommodations and Commercial Facilities*, <https://archive.ada.gov/taman3.html>; The ADA-Compliant Restroom, <https://www.buildings.com/ada-compliance/article/10191973/the-ada-compliant-restroom>; ADACP, ADA guidelines for restroom accessibility <https://adacompliancepros.com/ada-guidelines-for-restroom-accessibility/>

²⁴ The term "transgender" is an "umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth." Definition from the GLAAD Media Reference Guide, <http://www.glaad.org/reference/transgender> (last visited Mar. 19, 2023).

“It shall be an unlawful employment practice for an employer... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.²⁵

Title VII applies to employers in both the private and public sectors that have 15 or more employees. It also applies to the federal government, employment agencies, and labor organizations.

Title VII is enforced by the Equal Employment Opportunity Commission (EEOC). The Attorney General, through the Employment Litigation Section (ELS) of the DOJ brings lawsuits under Title VII against state and local government employers after the EEOC refers a complaint to the DOJ and investigates employers when there is reason to believe that an employer’s policy or practice discriminates against a group of job applicants or employees based on their race, color, religion, sex (including sexual orientation and gender identity), or national origin.²⁶

Title IX of the Education Amendments of 1972

The U.S. Department of Education (USDOE) Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972,²⁷ which protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.²⁸

Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the USDOE. These recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories of the United States.²⁹ Title IX is enforced through private causes of action against the federal funding recipient, and by federal agencies that provide funding to the educational programs or activities.³⁰

Guidance by Federal Agencies

Since 2016, the USDOE and DOJ have issued multiple guidance documents addressing whether Title IX and Title VII apply to claims of discrimination in programs or activities based on **gender identity** or sexual orientation.

²⁵ 42 U.S.C. §§ 2000e - 2000e17 (as amended).

²⁶ U.S. Department of Justice Employment Litigation Section, *Laws We Enforce, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964*, <https://www.justice.gov/crt/laws-we-enforce#:~:text=The%20Attorney%20General%2C%20through%20ELS,to%20the%20Department%20of%20Justice>. (last visited Mar. 20, 2023).

²⁷ 20 U.S.C. 1681 through 1688; Pub. L. 100-259, 102 Stat. 28 (Mar. 22, 1988).

²⁸ 20 U.S.C. § 1681(a).

²⁹ U.S. Department of Education Office of Civil Rights, *Title IX and Sex Discrimination*, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (last visited Mar. 20, 2023).

³⁰ Title IX is not the exclusive remedy for victims of sex discrimination in schools. In matters pertaining to public colleges, universities, or school districts, 42 U.S.C. § 1983 provides an avenue for relief against state actors who deprive individuals of a constitutional right. The Supreme Court has held that Title IX does not displace the availability of § 1983 claims based on the Equal Protection Clause for plaintiffs alleging gender discrimination in schools. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 248 (2009).

In 2016, the DOJ and USDOE issued a letter³¹ containing “significant guidance” on how the departments applied sex discrimination protections under Title IX to transgender students, including **access to restrooms**, locker rooms, and similar facilities. Litigation challenging the enforceability of its protections providing access to restrooms and other facilities that match a student’s **gender identity** ensued.³² In 2017, the DOE and the DOJ rescinded the letter.³³ The rescission letter indicated that the original letter caused extensive litigation regarding school restrooms and locker rooms and pointed to regard for the primary role of the States and local school districts in establishing educational policy.³⁴

In 2021, President Biden signed an executive order addressing implementation of non-discrimination³⁵ protections³⁶ on the basis of “sex” related to Title IX and Title VII.³⁷ The executive order cited the 2020 U.S. Supreme Court Bostock decision³⁸ as the basis. However, the Supreme Court did not state that “gender identity” is a protected characteristic. Instead, it held that **discrimination on the basis of “transgender status”** is a form of sex discrimination. The court did not provide a definition for transgender status.³⁹ The USDOE⁴⁰ issued guidance and the EEOC⁴¹ issued Technical Assistance Document indicated that USDOE and EEOC would enforce Title VII and Title IX to require transgender persons to be allowed to use facilities (restrooms, locker rooms, etc.) **consistent with their gender identity**.⁴²

In 2021, 20 states filed suit against the USDOE, the EEOC and the DOJ, alleging that the guidance documents and Technical Assistance Document were unlawful.⁴³ On July 15, 2022, the U.S. District Court for the Eastern District of Tennessee entered a preliminary injunction barring the EEOC and the USDOE from enforcing guidance documents issued to interpret Title VII and Title IX to prohibit discrimination based on sexual orientation and gender identity.⁴⁴ In March of 2022, the State of Texas filed suit, arguing that the EEOC guidance does not coincide with law because it diverges from the stated protections of Title VII as interpreted through Bostock.⁴⁵ In October, 2022, the U.S. District Court for the Northern District of Texas **held that the EEOC guidance addressing sexual orientation and gender identity discrimination in the workplace is unlawful**. The Court granted the state’s request for declaratory judgment, declared the guidance unlawful, and vacated the guidance on a nationwide basis.⁴⁶

³¹ U.S. Department of Education, Dear Educator (June 23, 2021), <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf> (last visited Mar. 20, 2023).

³² U.S. Department of Education, *Dear Colleague Letter on Title IX Coordinators*, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf> (last visited Mar. 20, 2023).

³³ Jackson Lewis, *Trump Administration Rescinds Guidance on Transgender Rights under Title IX*, <https://www.jacksonlewis.com/publication/trump-administration-rescinds-guidance-transgender-rights-under-title-ix> (last visited Mar. 20, 2023).

³⁴ U.S. Department of Justice and U.S. Department of Education, *Dear Colleague Letter* (Feb. 22, 2017), <http://i2.cdn.turner.com/cnn/2017/images/02/23/1atransletterpdf022317.pdf> (Last visited Mar. 2023).

³⁵ U.S. Department of Justice, Civil Rights Division, *MEMORANDUM TO: Federal Agency Civil Rights Directors and General Counsels*, <https://www.justice.gov/crt/page/file/1383026/download> (last visited Mar. 19, 2023).

³⁶ 34 C.F.R. ch. I.

³⁷ Executive Order 13988.

³⁸ *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).

³⁹ *Id.*

⁴⁰ U.S. Department of Education and U.S. Department of Justice, *Confronting Anti-LGBTQI+ Harassment in Schools*, <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf> (last visited Mar. 20, 2023).

⁴¹ U.S. Equal Employment Opportunity Commission, *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, <https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender> (last visited Mar. 20, 2023); *See also*, JD Supra, *District Court Enjoins EEOC and Department of Education Guidance Protecting LGBTQ Rights*, <https://www.jdsupra.com/legalnews/district-court-enjoins-eeoc-and-7385661/> (last visited Mar. 20, 2023).

⁴² *Id.*

⁴³ *Tennessee. et al. v. U.S. Dep’t of Educ. et al.*, Case No. 3:21-cv-308 (E.D. Tenn.).

⁴⁴ *Id.*

⁴⁵ *State of Texas v. EEOC*, Case No. 2:21-cv-00194-Z.

⁴⁶ *Id.*

In June 2022, the USDOE released proposed changes to Title IX regulations for public comment extending Title IX's prohibition on discrimination based on sex to sexual orientation and gender identity, giving such protections to transgender students.⁴⁷

Cases Related to State and Local Policies

In June 2020, the U.S. Supreme Court issued its opinion in *Bostock v. Clayton County*, holding that under Title VII, prohibited "sex" discrimination includes prohibiting employers from discriminating against employees because of an individual's sexual orientation or gender identity. The Court reached its conclusion by interpreting the Title VII's statutory language, particularly the phrase "**based on sex.**" The Court noted that it was only addressing the question of whether employees could be fired under Title VII for their LGBTQ status and was not addressing issues such as "restrooms, locker rooms... or anything else of the kind."⁴⁸

In 2020, the U.S. Fourth Circuit Court of Appeals determined that a Maryland local school board's policy refusing to allow a transgender student to use the school restroom that **corresponds with their gender identity** violated both the Fourteenth Amendment Equal Protection Clause⁴⁹ and Title IX. The court further held that the school's refusal to amend the student's school records⁵⁰ to accurately reflect gender, in accordance with driver's license and birth certificate information, also violated the Equal Protection Clause and Title IX.⁵¹ In 2021, the U.S. Supreme Court declined to hear the case, leaving the appellate court decision in place, which says the school district discriminated against a transgender student by not permitting the student to use a certain restroom at school.⁵²

In 2022, the U.S. Eleventh Circuit Court of Appeals determined that a Florida local school board's policy requiring students to use the restroom **corresponding to their biological sex** was proper based on both the U.S. Constitution and Title IX.⁵³ The majority opinion provided that Title IX allows schools to provide separate restrooms on the basis of biological sex.⁵⁴ However, the dissenting opinions indicated that the restroom policy was discriminatory because "[u]nderlying this sex-assigned-at-matriculation restroom policy, ... is the presumption that biological sex is accurately determinable at birth and that it is a static or permanent biological determination."⁵⁵

In October, 2022, the Florida State Board of Education adopted a rule requiring that if a school board or charter school governing board has a policy or procedure that allows for separation of restrooms or locker rooms according to some criteria **other than biological sex at birth**, the policy or procedure must be posted on the district's website or charter school's website, and must be sent by mail to student residences to fully inform parents.⁵⁶ The rule went into effect on November 22, 2022.⁵⁷

⁴⁷ U.S. Department of Education, *The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment*, <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment> (last visited Mar. 20, 2023).

⁴⁸ *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 140 S. Ct. 1731, 1737 (2020).

⁴⁹ The Fourteenth Amendment Equal Protection Clause provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

⁵⁰ U.S. Department of State, Bureau of Consular Affairs, *Gender Reassignment Applicants*, <http://travel.state.gov/content/passports/english/passports/information/gender.html> (last visited Mar. 19, 2023).

⁵¹ *Grimm v. Gloucester County School Board*, 972 F.3d 586 (Aug. 20, 2020).

⁵² U.S. Supreme Court, Order List: 594 U.S. (June 28, 2021), 20-1163 GLOUCESTER COUNTY SCHOOL BOARD V. GRIMM, GAVIN The petition for a writ of certiorari is denied, https://www.supremecourt.gov/orders/courtorders/062821zor_6j37.pdf (last visited Mar. 20, 2023).

⁵³ *Drew Adams v. School Board of St. John's County, Florida*, No. 18-13592 (December 30, 2022).

⁵⁴ Florida Department of Highway Safety and Motor Vehicles, *Gender Reassignment*, <http://fdhsmv.rapidinsites.com/answer/gender-reassignment> (last visited Mar. 19, 2023).

⁵⁵ *Id.*

⁵⁶ R. 64V-1.002, F.A.C.

⁵⁷ R. 6A-10.086, F.A.C.

Correctional Institutions

Florida's correctional system, under the jurisdiction of the Florida Department of Corrections (DOC),⁵⁸ is the third largest state corrections system in the U.S. and the largest state agency in Florida.⁵⁹ The purpose of the DOC is to:

- Protect the public through the incarceration and supervision of offenders;
- Rehabilitate offenders;
- Provide a safe and humane environment for offenders and staff; and
- Protect offenders from victimization within the institution.⁶⁰

According to the DOC, inmates are transported from a county jail or enter the system through one of five reception centers located throughout the state. Upon arrival at a reception center, an inmate is processed, tested, evaluated by health services, assessed for rehabilitative program needs, at which point custody and housing is determined.⁶¹

As of March 2022, the DOC housed 80,917 inmates in its facilities and was responsible for an additional 86,391 offenders on active community supervision. Prior to the COVID-19 pandemic, the DOC incarcerated approximately 94,000 inmates.⁶²

The state pays for the vast majority of prison beds in the Florida. However, it receives some funding from the federal government in the form of grants. One grant comes from the state's compliance with the federal Prison Rape Elimination Act (PREA),⁶³ which was created to eliminate sexual abuse in confinement facilities. Florida receives a PREA allocation as part of the Edward Byrne Memorial Justice Assistance Grant (JAG) program. The grant has varied over the years between \$150,000 to \$180,000.

Under PREA program, all funds must be used to implement initiatives to reduce, eliminate, and/or mitigate the risk of prison rape.⁶⁴ PREA includes forty-three standards that define three clear goals: to prevent, detect and respond to sexual abuse.

PREA provides that if a state that does not certify full compliance with the PREA standards it is subject to the loss of certain U.S. Department of Justice (DOJ) grant funds that it would otherwise receive for prison purposes.⁶⁵ Failure to follow PREA would make Florida subject to the loss of 5 percent of any DOJ grant funds that it would otherwise receive for prison purposes. As of the Fiscal Year 2022 reporting cycle, Florida has certified that it is in full compliance.⁶⁶

Juvenile Correctional Facilities

Chapter 985, F.S., provides the framework for the juvenile justice system in Florida and authorizes the Department of Juvenile Justice (DJJ) to administer services and provide care to the state's delinquent

⁵⁸ See ch. 944, F.S.

⁵⁹ Florida Department of Corrections, *Strategic Plan & Annual Report (2021-2024)*, <http://www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf> (last visited Mar. 29, 2023).

⁶⁰ S. 20.315(1), F.S.

⁶¹ Florida Department of Corrections, *Strategic Plan & Annual Report (2021-2024)*, <http://www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf> (last visited Mar. 29, 2023).

⁶² Office of Program Policy Analysis and Government Accountability (OPPAGA), *Department of Corrections*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1074> (last visited Mar. 29, 2023).

⁶³ 34 U.S.C. 30301(1).

⁶⁴ Florida Department of Law Enforcement, Office of Criminal Justice Grants, *Prison Rape Elimination Act (PREA)* <https://www.fdle.state.fl.us/Grants/Programs/PREA.aspx#:~:text=Florida%20receives%20a%20PREA%20allocation,the%20risk%20of%20prison%20rape>. (last visited April 5, 2023).

⁶⁵ 34 U.S.C. 30307(e).

⁶⁶ US Department of Justice, Bureau of Justice Assistance, Prison Rape Elimination Act (PREA), Overview, <https://bja.ojp.gov/doc/fy22-prea-certification-assurance-submissions.pdf>

children. The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, commit the child to a child-caring agency or to the Department of Juvenile Justice for placement in certain types of facilities.⁶⁷

A juvenile correctional facility or juvenile prison is a physically secure residential commitment program with a designated length of stay from 18 months to 36 months, primarily serving children 13 years of age to 19 years of age or until the jurisdiction of the court expires.⁶⁸

“Detention care” means the temporary care of a child in secure or supervised release detention, pending a court adjudication or disposition or execution of a court order. There are two types of detention care, as follows:⁶⁹

- “Secure detention” means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters. Supervised release detention may include other requirements imposed by the court.

“Restrictiveness level” means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children. The restrictiveness levels of commitment are as follows:⁷⁰

- Minimum-risk nonresidential.
- Nonsecure residential.
- High-risk residential.
- Maximum-risk residential.

County and Municipal Detention Facilities

A county detention facility is any county jail, stockade, work camp, residential probation center, or any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.⁷¹ Sheriffs operate the majority of county detention facilities, with counties operating the remainder.⁷² County detention facilities house inmates who have been arrested and are awaiting trial, as well as inmates who have been convicted and sentenced to less than one year of incarceration or awaiting transfer to the DOC.

The DOC reports that approximately 53,013 inmates were incarcerated in the state’s county detention facilities during the month of December 2022.⁷³

⁶⁷ S. 985.441, F.S.

⁶⁸ S. 985.465, F.S.

⁶⁹ S. 985.03(18), F.S.

⁷⁰ S. 985.03(44), F.S.

⁷¹ S. 951.23(1)(a), F.S.

⁷² For example, the county commissions operate the county detention facilities in Escambia, Gulf, Jackson, Miami-Dade, Okaloosa, Orange, Osceola, and Volusia counties (see <https://myescambia.com/our-services/corrections/community-detention>; http://www.gulfcounty-fl.gov/county_government/detention_facility; <https://jacksoncountyfl.gov/services/correctional-facility/>; <https://www.miamidade.gov/global/corrections/home.page>; <https://myokaloosa.com/corrections/history>; http://www.ocfl.net/tabid/367/default.aspx#.X_MzJthKiUl; <https://www.osceola.org/agencies-departments/corrections/about/>; and <https://www.volusia.org/services/public-protection/corrections/>); (Last visited May. 4, 2023).

⁷³ Department of Corrections, *Florida County Detention Facilities Average Inmate Population*, December 2022, p. 2, <http://www.dc.state.fl.us/pub/jails/2022/jails-2022-12.pdf> (last visited May 4, 2023).

A municipal detention facility is a city jail, stockade, prison camp, or any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of a violation of municipal laws or ordinances.⁷⁴

Education Institutions

As provided in Article IX, Section 1, of the State Constitution, adequate provision must be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education. The state is responsible for establishing standards and regulations to ensure the efficient operation of all schools and adequate educational opportunities for all Florida children. Each of the state's 67 counties represents a single school district. Each local school district is governed by a school board in conjunction with a superintendent. A school principal is responsible for the day-to-day operations at individual schools.⁷⁵

District school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts. The district school boards must establish, organize, and operate their public K-12 schools and educational programs, employees, and facilities. Their responsibilities include staff development, public K-12 school student education including education for exceptional students and students in juvenile justice programs, special programs, adult education programs, and career education programs.⁷⁶

Schools

A “school” is defined as an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

Florida School for the Deaf and the Blind

The Florida School for the Deaf and the Blind, located in St. Johns County, is a state-supported residential public school for hearing-impaired and visually impaired students in preschool through 12th grade. The school is a component of the delivery of public education within Florida’s Early Learning-20 education system and is funded through the Department of Education. The school provides educational programs and support services appropriate to meet the education and related evaluation and counseling needs of hearing-impaired and visually impaired students in the state who meet enrollment criteria. Generally, the school must comply with all laws and rules applicable to state agencies. Education services may be provided on an outreach basis for sensory-impaired children up to 5 years of age and to district school boards upon request. Graduates of the Florida School for the Deaf and the Blind are eligible for the William L. Boyd, IV, Effective Access to Student Education Grant Program as provided in s. 1009.89, F.S.⁷⁷

Developmental Research (laboratory) Schools

Current law establishes a category of public schools known as developmental research (laboratory) schools (lab schools). Each lab school provides sequential instruction and is affiliated with the college of education within the state university of closest geographic proximity. A lab school to which a charter has been issued under s. 1002.33(5)(a)2, F.S., must be affiliated with the college of education within the state university that issued the charter, but is not subject to the requirement that the state university be of closest geographic proximity. For the purpose of state funding, Florida Agricultural and

⁷⁴ S. 951.23(1)(d), F.S.

⁷⁵ Office of Program Policy and Government Accountability (OPPAGA), *Education System Public Schools (K-12 Education)*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2002> (last visited May 4, 2023).

⁷⁶ S. 1003.02, F.S.

⁷⁷ S. 1002.36(1), F.S.

Mechanical University, Florida Atlantic University, Florida State University, the University of Florida, and other universities approved by the State Board of Education and the Legislature are authorized to sponsor a lab school.⁷⁸

Charter Schools

Charter schools in Florida are public schools and are part of the state's program of public education. A charter school may be formed by creating a new school or converting an existing public school to charter status. A charter school may operate a virtual charter school pursuant to s. 1002.45(1)(d), F.S., to provide online instruction to students, pursuant to s. 1002.455, F.S., in kindergarten through grade 12. The school district in which the student enrolls in the virtual charter school must report the student for funding pursuant to s. 1011.61(1)(c)1.b.(VI), F.S., and the home school district may not report the student for funding.

Private Schools

A private school is "an individual, association, co-partnership, or corporation or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade" and is below the college level.⁷⁹ Private elementary and secondary schools in Florida are not licensed, approved, accredited, or regulated by the Florida Department of Education. Private schools are required by statute to complete an annual online survey to gather information for inclusion in a statewide Directory of Private Schools. The Directory of Private Schools is maintained as a service to the public, to governmental agencies, and to other parties that are interested in obtaining information about Florida private schools.⁸⁰

Postsecondary Educational Institutions

State Universities

As required by Article IX, Section 7(d), of the State Constitution, the State University System is governed by the Board of Governors (BOG). Each State University System institution has a 13-member Board of Trustees dedicated to the purposes of the state university system. Each state university's Board of Trustees has the fiduciary responsibility for overseeing university operations, establishing cost-effective policies or regulations consistent with Board of Governors' regulations or guidelines, and implementing and maintaining high-quality education programs in accordance with the university's mission.⁸¹

Florida's public university system includes 12 universities⁸² with an enrollment of more than 400,000 students.⁸³

Florida Colleges

The Florida College System is governed by the State Board of Education. Each institution within the Florida College System is governed by a local board of trustees.⁸⁴ Boards of trustees are responsible for cost-effective policies, the implementation and maintenance of high-quality education programs, performance measurement, and adherence to state policy, budgeting, and education standards. Each

⁷⁸ S. 1001.32, F.S.

⁷⁹ S. 1002.01, F.S.

⁸⁰ Florida Department of Education, *K-12 Private Schools*, <https://www.fldoe.org/schools/school-choice/private-schools/> (last visited May 4, 2023).

⁸¹ Office of Program Policy and Government Accountability (OPPAGA), *Education System, State University System*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2101> (last visited May 4, 2023).

⁸² S. 1000.21(6), F.S.

⁸³ *Id.*

⁸⁴ S. 1001.64, F.S.

board of trustees is authorized to adopt rules, procedures, and policies, consistent with law and rules of the State Board of Education.

The Florida College System includes 28 institutions and 72 campuses throughout the state. The system comprises public postsecondary educational institutions that grant two- and four-year academic degrees as provided by law.⁸⁵

School District Career Centers

Any district school board, after first obtaining the approval of the Department of Education, may, as a part of the district school system, organize, establish and operate a career center, or acquire and operate a career center previously established. The district school boards of any two or more contiguous districts may, upon first obtaining the approval of the department, enter into an agreement to organize, establish and operate, or acquire and operate, a career center under this section.⁸⁶

A career center established or acquired under provisions of law and minimum standards prescribed by the commissioner:⁸⁷

- Comprises a part of the district school system.
- Is an educational institution offering terminal courses of a technical nature, and courses for out-of-school youth and adults.
- Is subject to all applicable provisions of this code.
- Is under the control of the district school board of the school district in which it is located.
- Is directed by a director responsible through the district school superintendent to the district school board of the school district in which the center is located.

Private Colleges and Universities

There are a variety of private postsecondary institutions in Florida that award different types of education credentials, including bachelor's degrees, associate degrees, and workforce certificates and diplomas. Most private colleges and universities are part of the Independent Colleges and Universities of Florida (ICUF) or licensed by the Commission for Independent Education (CIE).⁸⁸ There are also institutions that are not under the jurisdiction of the commission and not required to obtain licensure.⁸⁹

The Independent Colleges and Universities of Florida includes 30 private, non-profit, Florida-based educational institutions accredited by the Southern Association of Colleges and Schools (SACS). Other private institutions in Florida are licensed by the Commission for Independent Education. These include more than 900 independent postsecondary educational institutions that may be accredited by a variety of entities.⁹⁰

Proposed Changes

The bill creates the "Safety in Private Spaces Act."

The bill provides the intent that "females and males should be provided restrooms and changing facilities for their exclusive use, respective to their sex, in order to maintain public safety, decency, decorum, and privacy."

⁸⁵ S. 1000.21(3), F.S.

⁸⁶ S. 1004.44, F.S.

⁸⁷ S. 1004.44(3), F.S.

⁸⁸ S. 1005.31, F.S.

⁸⁹ S. 1005.06, F.S.

⁹⁰ Office of Program Policy and Government Accountability (OPPAGA), *Education System, Private Colleges and Universities*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2103> (last visited May 4, 2023).

Definitions

The bill defines the following terms:

- "Changing facility" means a room in which two or more persons may be in a state of undress in the presence of others, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room.
- "Correctional institution" means any state correctional institution as defined in s. 944.02, F.S., or private correctional facility as defined in s. 944.710, F.S.
- "Covered entity" means any:
 - Correctional institution;
 - Detention facility;
 - Educational institution;
 - Juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., any detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., and any facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S.; or
 - Public building.
- "Detention facility" means a county detention facility or municipal detention facility as those terms are defined in s. 951.23, F.S.
- "Educational institution" means a K-12 educational institution or facility or a postsecondary educational institution or facility.
- "K-12 educational institution or facility" means:
 - A school as defined in s. 1003.01(2), F.S., operated under the control of a district school board as defined in s. 1003.01(1), F.S.;
 - The Florida School for the Deaf and the Blind as described in ss. 1000.04(4), F.S., and 1002.36, F.S.;
 - A developmental research (laboratory) school established pursuant to s. 1002.32(2), F.S.;
 - A charter school authorized under s. 1002.33, F.S.; or
 - A private school as defined in s. 1002.01(2), F.S.
- "Postsecondary educational institution or facility" means:
 - A state university as defined in s. 1000.21(6), F.S.;
 - A Florida College System institution as defined in s. 1000.21(3), F.S.;
 - A school district career center as described in s. 1001.44(3), F.S.;
 - A college or university licensed by the Commission for Independent Education pursuant to s. 1005.31(1)(a), F.S.; or
 - An institution not under the jurisdiction or purview of the commission as identified in s. 1005.06(1)(b)-(f), F.S.
- "Public building" means a building comfort-conditioned for occupancy which is owned or leased by the state, a state agency, or a political subdivision.
 - The term does not include:
 - Correctional institution, detention facility, educational institution, juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., or any facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S.
- "Female" means a person belonging, **at birth**, to the **biological sex** which has the specific reproductive role of producing eggs.
- "Male" means a person belonging, **at birth**, to the **biological sex** which has the specific reproductive role of producing sperm.
- "Restroom" means a room that includes one or more water closets. This term does not include a unisex restroom.
- "Sex" means the classification of a person as **either female or male** based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex

chromosomes, naturally occurring sex hormones, and internal and external genitalia **present at birth.**

- "Unisex changing facility" means a room intended for a single-occupant or a family in which one or more persons may be in a state of undress, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room that is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the changing facility is in use.
- "Unisex restroom" means a room that includes one or more water closets that is intended for a single-occupant, or a family, and the room is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the room is in use.
- "Water closet" means a toilet or urinal.

Restrooms and Changing Facilities

The bill requires a covered entity that maintains a water closet to, at a minimum, have:

- A restroom designated for exclusive use by females and a restroom designated for exclusive use by males; or
- A unisex restroom.

The bill requires a covered entity that maintains a changing facility to, at a minimum, have:

- A changing facility designated for exclusive use by females and a changing facility designated for exclusive use by males; or
- A unisex changing facility.

Exceptions and Authorized Users

The bill authorizes a person to enter a restroom or changing facility designated for the opposite sex under the following circumstances:

- To accompany another person of the opposite sex for the purpose of assisting or chaperoning a child under the age of 12, an elderly person as defined in s. 825.101, F.S., or a person with a disability as defined in s. 760.22, F.S., or a developmental disability as defined in s. 393.063, F.S.
- For law enforcement or governmental regulatory purposes.
- To render emergency medical assistance or to intervene in any other emergency situation where the health or safety of another person is at risk.
- For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use.
- If the appropriate designated restroom or changing facility is out of order or under repair and the opposite designated restroom or changing facility contains no person of the opposite sex.

The **provisions of the bill do not apply to an individual** who is or has been under treatment by a physician who, in his or her good faith clinical judgment, performs procedures upon or provides therapies to a minor born with a medically verifiable genetic disorder of sexual development, including any of the following:

- External biological sex characteristics that are unresolvably ambiguous.
- A disorder of sexual development in which the physician has determined through genetic or biochemical testing that the patient does not have a normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female, as applicable.

Penalties for Improper Access to Opposite-Sex Restrooms or Changing Facilities

Trespass

The bill provides that any person who willfully enters a restroom or changing facility designated for the opposite sex on the premises of a covered entity, for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by an employee of such covered facility, commits the criminal offense of trespass.

Certain employees, staff, and others on the premises of a covered entity are not subject to this provision but are subject to employee disciplinary procedures established by the covered entity.

Disciplinary Procedures for Employees

The bill requires each type of covered entity to establish disciplinary procedures or policies, as applicable, for employees, certain persons under its control, and other personnel described in the bill who willfully enter a restroom or changing facility designated for the opposite sex on the premises of the covered entity, for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by another employee of such covered entity. The bill specifies the types of employees that are authorized to request another person to depart from restrooms or changing facilities designated for the opposite sex on the premises of a covered entity, as follows:

- *Correctional Institutions* - An employee of the Department of Corrections or an employee of the correctional institution.
- *Detention Facilities* - An employee of the detention facility.
- *Educational Institutions* - For a K-12 educational institution or facility, any instructional personnel as described in s. 1012.01(2), F.S., administrative personnel as described in s. 1012.01(3), F.S., or a safe-school officer as described in s. 1006.12(1)-(4), F.S., or, if the institution is a private school, any equivalent of such personnel or officer.
- *Postsecondary Educational Institutions or Facilities*, - Any administrative personnel, faculty member, security personnel, or law enforcement personnel.
- *Juvenile Facilities* - Delinquency program staff, detention staff, or residential program staff.
- *Public buildings* - Any other employee of the applicable governmental entity for the public building within its jurisdiction.

Required Documentation of Compliance

The bill requires covered entities to submit documentation regarding compliance with the minimum requirements for restrooms and changing facilities, if applicable, within one year after being established or, if the institution or facility was established before July 1, 2023, no later than April 1, 2024, as follows.

- A correctional institution must submit documentation to the Department of Corrections.
- A detention facility must submit documentation to the applicable governing body of the county or municipality.
- A K-12 educational institution or facility, Florida College System institution as defined in s. 1000.21(3), F.S., or a school district career center as described in s. 1001.44(3), F.S., must submit documentation to the State Board of Education.
- A state university as defined in s. 1000.21(6), F.S., must submit documentation to the Board of Governors.
- A postsecondary educational institution or facility as defined in subparagraph (3)(h)4. or subparagraph (3)(h)5., F.S., must submit documentation to the Department of Education.
- A juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., a detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., or a facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S., must submit documentation to the Department of Juvenile Justice.

By January 1, 2024, certain covered entities must adopt rules establishing procedures for compliance to carry out the provisions of the bill, including, but not limited to, the type, format, and method of delivery of the documentation required to be submitted by covered entities.

Enforcement by Attorney General

The bill provides that beginning July 1, 2024, a person may submit a complaint to the Attorney General alleging that a covered entity failed to meet the minimum requirements for restrooms and changing facilities required by the bill, and that a covered entity that fails to comply with the minimum requirements is subject to penalties sought by the Attorney General and to licensure or regulatory disciplinary action, as applicable.

The bill authorizes the Attorney General to take enforcement action against covered entities through the judicial system beginning July 1, 2024, by seeking injunctive relief, and by seeking a fine of up to \$10,000 for any covered entity found to have willfully violated the requirements in the bill. Collected fines must be deposited in the General Revenue Fund.

Severability

The bill provides severability as follows:

- If any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application.
- To this end the provisions of this act are severable.

The bill includes technical drafting changes.

The bill is effective July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The Attorney General is authorized to impose a fine of up to \$10,000 for violations. Fines collected must be deposited in the General Revenue Fund.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.