

MODEL LEGISLATION

The Women's Safety and Protection Act

Section 1: Purpose.

The purpose of this Part is to provide protections and privacy for women and girls, including in correctional facilities, juvenile detention facilities, domestic violence shelters, locker rooms, and school field trips.

Section 2: Legislative Findings.

The legislature finds and declares that:

- A. 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].
- B. 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).
- C. These physical differences include differences in reproductive anatomy, the basis for separate-sex facilities designed to protect personal privacy. Personal 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.

For purposes of this part:

- A. "**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.
- B. "**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.
- C. "**Public school**" means a school which is created pursuant to [state statute].
- D. "**Multiple Occupancy Restroom or Changing Room**" means an area designed or designated to be used by more than one individuals 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
- D. "**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 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:
 - 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 domestic violence shelter from adopting policies necessary to accommodate persons protected under the Americans with Disabilities Act.

Section 6: 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 7: 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.

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