WEST VIRGINIA CODE CHAPTER 5 ARTICLE 32

WV Legislature

§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, 972 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the Grimm decision ineffective, then the limitations on enforcement imposed by this subsection shall be considered repealed.

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§5-32-2. Findings.

(a) Males and females are legally equal, but they are not biologically the same.

(b) Males and females possess unique and immutable biological differences that manifest prior to birth and increase as they age and experience puberty.

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

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

(e) 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 Article III, Section 10 of the West Virginia Constitution.

(f) 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 as set forth in United States v. Virginia, 518 U.S. 515, 533 (1996).

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

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§5-32-3. Definitions of terms used in the code and Code of State Rules.

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

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

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

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

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

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

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

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

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

(9) "Public school" means any school under the general supervision of the West Virginia Board of Education pursuant to Article XII, Section 2 of the Constitution of West Virginia.

(10) "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

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code.

(11) "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.

(12) "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.

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

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

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: *Provided*, That nothing in this article shall be construed as authorizing an examination of a minor for purposes of determining the minor's biological sex. The biological sex of a minor is determined by reference to the minor's biological sex recorded at the minor's time of birth.

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§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:

(A) For the exclusive use of females; or

(B) For the exclusive use of males; and

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

(A) 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.

(B) A reasonable accommodation under this paragraph shall not include allowing such individual to access a single-occupancy sleeping area or sleeping quarters, 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 single-occupancy sleeping area or sleeping quarters, 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:

(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.

(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 of 1990, 42 U.S.C. §12101 *et seq.*, as amended.

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§5-32-6. Safety and privacy in restrooms of public schools and state institutions of higher education.

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

(1) Designate multiple occupancy restrooms or changing rooms:

(A) For the exclusive use of females;

(B) For the exclusive use of males; and

(2) 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.

(A) 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.

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

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

(2) Is provided single-occupancy sleeping quarters.

Notwithstanding the foregoing, 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. Additionally, a state institution of higher education student may share sleeping quarters with a member of the opposite sex if the state institution of 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;

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(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 §16B-17-1 *et seq*.

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§5-32-7. Safety and privacy in correctional institutions.

(a) To ensure the privacy and safety of women in the custody of the Commissioner of the Division of Corrections and Rehabilitation, each institution managed by the Commissioner of Corrections and Rehabilitation shall designate sleeping quarters, multiple occupancy restrooms, and shower facilities:

(1) For the exclusive use of females; or

(2) For the exclusive use of males.

(b) This section shall not be construed or applied to prohibit an individual who is not an inmate from entering sleeping quarters, multiple occupancy restrooms, or shower facilities 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 the operational needs of the institution.

(c) Nothing in this section shall be construed to prohibit the Division of Corrections and Rehabilitation from adopting policies necessary to comply with the Prison Rape Elimination Act of 2003, 42 U.S.C §15602, as amended, to accommodate persons protected under the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq*., as amended, or to comply with any other applicable state or federal law.

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§5-32-8. 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 article.

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

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§5-32-9. Severability.

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

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