



Anti-Transgender Bills Being Introduced & Enacted by State Legislatures

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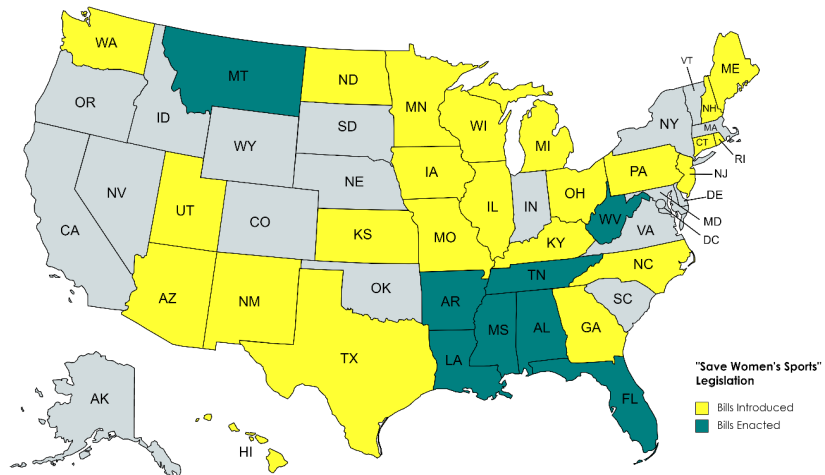
Bills have been introduced in nearly two-thirds of states seeking to limit transgender people’s participation in team sports, use of bathrooms, and access to healthcare. While anti-transgender legislation is not a new phenomenon in the U.S., the rate and intensity at which such proposals are being introduced is increasing.

This paper provides a survey of anti-transgender bills introduced so far in 2021, focusing on the most common forms of anti-transgender legislation.

Participation in Sports

Bills have been introduced in over thirty states to prohibit transgender women from participating on school-sponsored female athletic teams. This form of legislation, often referred to as the “Save Women’s Sports Act,” requires schools to designate each of its athletic teams as female, male, or co-ed. The proposed bills would require that designations be based on the sex of the athletic participants assigned at the time of their birth. The Save Women’s Sports Acts generally include a provision that explicitly prohibits individuals assigned male at birth from participating on athletic teams which have been designated female.

In the event there is a dispute over a participant’s sex, the laws generally require a physician to confirm the athletic participant’s sex based strictly on their reproductive anatomy, genetic makeup, and testosterone levels. Proposals in some states, including legislation introduced in Missouri, provide for the suspension of state revenues to any school, school district, or higher education institute found to be in noncompliance with the law.



Access to Healthcare

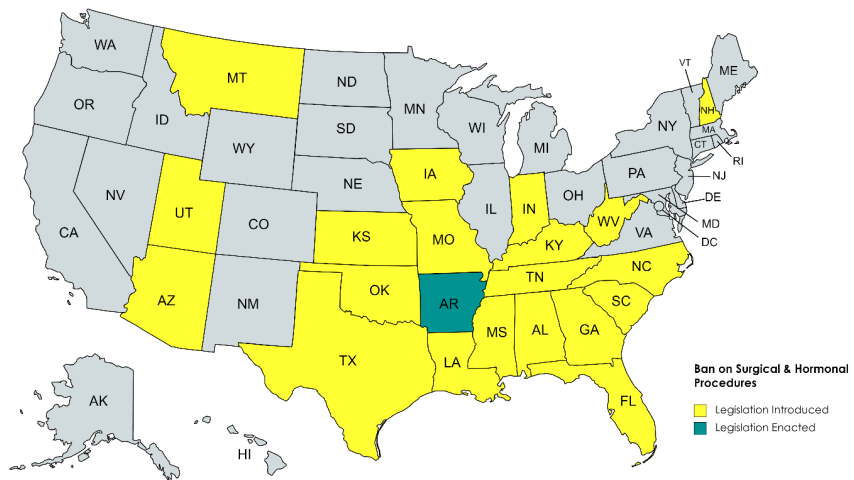
Bills have been introduced in more than twenty states to prohibit, with some exceptions, gender-affirming medical procedures for minors. Such legislation prohibits healthcare providers from performing certain medical procedures requiring surgery. In addition, the laws prohibit healthcare providers from administering, prescribing, or supplying puberty-blocking and cross-gender hormone medications to minors. While most states consider minors to be children under the age of 18, legislators in Mississippi and Oklahoma have proposed defining minors for purposes of the prohibited gender-affirming medical procedures as those who are 21 and younger. Legislators in some states, including



Kentucky and Louisiana, have proposed more lenient legislation regarding transgender medical treatment, permitting healthcare professionals to perform gender-affirming procedures if written parental consent is obtained.

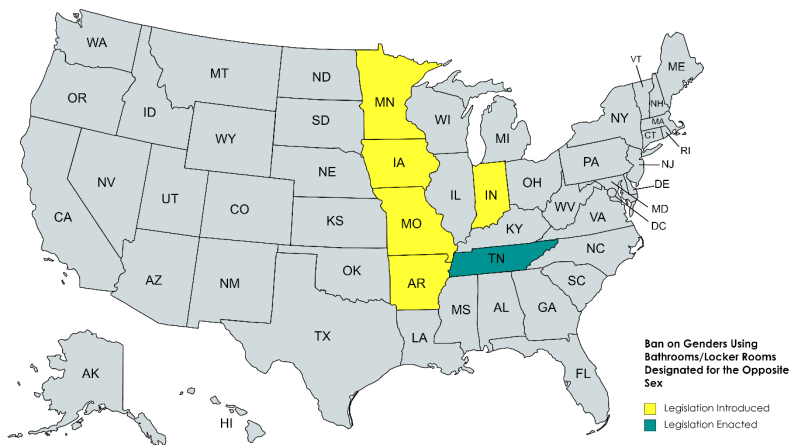
Depending on the state, the proposed legislation could subject healthcare professionals providing gender-affirming healthcare services to minors to a variety of sanctions including disciplinary action, license suspension, civil or criminal penalties, and imprisonment. For example, under a proposal in Tennessee, providing gender reassignment medical services to minors is considered both child abuse and professional misconduct. Under a proposed Oklahoma bill, healthcare professionals who intentionally perform gender reassignment treatment for minors, even with parental consent, can be found guilty of a felony that carries a prison sentence ranging from three years to life and a fine up to \$20,000. Proposed civil penalties range from \$1,000 in North Carolina to \$10,000 in Iowa.

Under some proposals, parents who allow their minor children to undergo gender therapy and surgery may also face severe legal consequences. Legislators in New Hampshire and Texas have gone as far as proposing amendments to their criminal codes to add sexual reassignment to the definition of "child abuse."



Bathroom and Locker Room Use

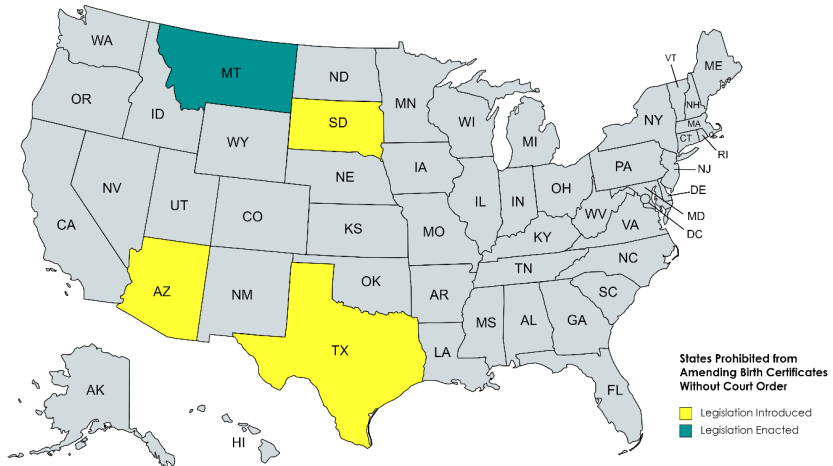
Legislators in Arkansas, Indiana, Iowa, Minnesota, Missouri, and Tennessee have introduced legislation that would restrict use of restrooms and changing facilities (i.e., a locker room) based on an individual's sex assigned at birth. Legislators in Minnesota and Indiana introduced legislation that would make it a misdemeanor to enter a restroom or changing facility that does not correspond with the person's sex assigned at birth.





Birth Certificates

Legislators in Arizona, Montana, and South Dakota have introduced bills to require a court order to allow the responsible state entity to amend an individual's sex designation listed on their birth certificate. Legislators in Texas have introduced similar legislation which, if enacted, would require birth certificates to have a space for recording biological sex. According to the proposed bill, biological sex is determined by sex organs, chromosomes, and the individual's endogenous profiles and would not allow amendments to the sex designation on a minor's birth certificate except for clerical error.



Legal Posture of Anti-Transgender Legislation

Although anti-transgender bills have been introduced in a number of state legislatures in 2021, in many cases those proposals have not yet been enacted. Where passed, it is likely that such new laws will face legal challenges.

Challenges are expected to rely heavily on the U.S. Supreme Court's 2020 landmark ruling in *Bostock v. Clayton County, GA*. In *Bostock*, the Court held that firing or refusing to hire gay and transgender individuals violates Title VII of the Civil Rights Act of 1964. In the months after *Bostock*, the Fourth, Eleventh, and D.C. Circuit Courts of Appeals found that the Supreme Court's holding applied equally to Title IX, and relied on *Bostock* when striking down discriminatory bathroom and athletics bans targeting transgender individuals, similar to the laws and legislative proposals reviewed above.

VNF Pride

This report was authored by members of VNF Pride, an affinity group formed by attorneys, policy professionals, and staff within Van Ness Feldman that supports the LGBTQ+ community inside and outside the firm. This paper was prepared in recognition of the severe toll anti-transgender legislation has on the transgender community. Anti-transgender bills seek to deny transgender persons support structures necessary to lead an open, healthy life. A 2018 report by the American Academy of Pediatrics found that approximately 30% of transgender female youths and more than 50% of transgender male youths had attempted suicide* at some point in their lives. Moreover, by advancing a false narrative that the non-transgender public needs to be protected from transgender people, such bills contribute to an increasing cycle of violence against members of the transgender community. According to the non-profit Human Rights Campaign, 2020 marked the deadliest year on record for violent incidents against transgender and gender non-conforming people, with 2021 currently on pace to be even deadlier.

Van Ness Feldman is actively involved in pro bono efforts which serve Washington, D.C.'s LGBTQ+ community. Van Ness Feldman is proud to represent Casa Ruby, Inc., which provides shelter and support services to D.C.'s homeless LGBTQ+ youth with a special focus on serving transgender people of color.



For More Information

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**If you or someone you know may be at risk of suicide, call the National Suicide Prevention Lifeline at 1-800-273-8255. If you are a young LGBTQ+ person and need to talk to someone, call The Trevor Project's 24-hour crisis hotline for youth at 1-866-488-7386. If you are or know a transgender person of any age who is struggling with mental health, please call the Trans Lifeline at 877-565-8860.*

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