

More states are pushing to stop legally recognizing trans people in public life

January 26, 2024



A pride flag waves from a demonstrator's pole during a queer & transgender youth rally near the U.S. Capitol in Washington, D.C. on March 31, 2023, calling for autonomy following recent legislation and threats of violence directed towards transgender people. (Photo by Bryan Olin Dozier/NurPhoto via AP)

By Orion Rummler, originally published by [The 19th](#) with funding from A-Mark Foundation

States across the country are taking new steps to stop transgender adults and minors from being legally recognized in public life. Proposed legislation would prevent trans people from being able to update driver's licenses, hold public office, use public restrooms, or take shelter from domestic violence unless they do so according to their sex assigned at birth.

If passed, these laws would require trans people to be misgendered in order to participate in day-to-day life — which increases the risk that they face violence and harassment, or are simply excluded from basic services, advocates say. Such laws are likely to be challenged in court; a route that has repeatedly halted anti-trans laws from going into effect.

Lawmakers in at least 10 states want to implement laws that redefine sex to exclude transgender and nonbinary people from accessing public services and to deny them equal legal protection. Arizona, Illinois, Missouri, Oklahoma, South Carolina, Utah, Virginia, Wyoming are all considering these bills, alongside Indiana and Florida, which have brought forth uniquely far-reaching legislation.

The core premise of these bills is not new. Many anti-trans laws create restrictions based on separating people — like students, athletes, or other groups — by their sex assigned at birth, and impose penalties if they are not kept separate in public or private spaces. These laws exclude people who live as a gender that is different from the one that they were documented as at birth.

However, the bills filed this month go beyond similar laws enacted last year by redefining sex based on reproductive capacity or "role," and by attaching that definition to explicit restrictions on identity documents and civil rights that have not been proposed on this scale before.

LGBTQ+ advocates see sex redefinition bills as a clear indication of the ultimate goal of anti-trans legislation: to make it near-impossible for transgender people to safely participate in public life. These bills would also enable further restrictions on transgender rights in ways that could also harm LGBTQ+ and cisgender people, advocates say.

"These are a new and rapidly evolving area of policy," said Logan Casey, director of policy research at the Movement Advancement Project, which tracks LGBTQ+ legislation. These kinds of laws only began to emerge last year, and have only continued to grow broader in reach.

Last year, states including [Montana](#), [Tennessee](#) and [Nebraska](#) either passed legislation to narrowly define sex, or had Republican governors sign executive orders to do so. In Kansas, a [campaign](#) by the Republican attorney general led to Kansans being unable to [update](#) their birth certificates to reflect their gender identities; his campaign was to get the state to enforce a new law that narrowly defines men and women based on their sex assigned at birth.

Cathryn Oakley, senior director of legal policy at the Human Rights Campaign, the country's largest LGBTQ+ advocacy organization, expects to see more bills that attempt to redefine sex in the coming year. Such legislation, she said, runs afoul of *Bostock v. Clayton County*, the 2020 case in which the Supreme Court found gender identity to be a protected class of sex.

"By defining sex to be, in their view, consistent with 'biological sex,' they are trying to undo the *Bostock* decision," Oakley told reporters during a January 18 press call.

So far this year, one of the more extreme examples of a sex redefinition bill is in Florida — which has become an increasingly hostile state for LGBTQ+ people to live in. A bill currently being discussed in Florida's health and human services committee would drastically change life for the thousands of trans adults and minors who live in the state, on top of restrictions that have [kept trans Floridians](#) from accessing gender-affirming care.

The bill under discussion would ban original or replacement driver's licenses from being issued with gender markers that match one's gender identity, instead of sex assigned at birth. This is a major departure from state law across the country.

Currently, [only one state](#), Kansas, does not allow driver's licenses to be updated after someone transitions to another gender. That happened because of the state's sex definition law.

Harper Seldin, staff attorney for the ACLU's LGBTQ & HIV Project, said that sex definition bills are the foundational framework for other anti-trans bills.

"I think it's meant to be the beachhead for those later restrictions," he said. "These kinds of bills are interrelated, whether they come in a single package or not."

Florida's bill would enable the state's department of motor vehicles to revoke driver's licenses or identification cards if applicants don't follow the rules. Updating identification documents to reflect one's current gender identity is a routine, and crucial, part of transition for many trans people. Without it, trans people face higher risks of violence and harassment, and have more trouble accessing public spaces, according to the Movement Advancement Project.

Florida's bill would also require that committee members in political parties serve in accordance with the sex listed on their birth certificate, rather than their current gender. It would mandate that anyone applying for a disabled parking permit provide their sex assigned at birth rather than gender identity.

Nikole Parker, a trans woman and chief operating officer of the LGBT+ Center Orlando, said that such laws would negatively affect a lot of trans and nonbinary people — and put them in danger. These bills also attempt to make it sound far-fetched that transgender people have been living in the state with correct identification for years, she said.

"I have had 'female' on my documents for 11 years. Am I supposed to revert back now, because we're seeing politics play out? Because it wasn't a problem when I changed it the first time," she said.

The simple act of walking into a bar could become dangerous for her, without the correct gender marker showing female on her driver's license.

"If that thing says 'male,' and somebody looks at me and looks at that, that just puts a giant target on my back," Parker said. "And I think that's the intentionality behind it, is to be able to easily identify who the trans and nonbinary people are in the state."

Another state has incorporated identity document restrictions into its sex definition bill: Indiana. A recently proposed bill there would require men and women to be identified by their "biological sex" across different areas of the state code — like student housing, voter registration information, opioid treatment programs, hospital discharge notices, and how missing persons are documented. The bill would also require that residents applying for driver's licenses and other forms of official identification mark their sex assigned at birth instead of their current gender.

Several of these bills include a section that appears to be part of the state's legal justification. They provide a basic definition of intermediate scrutiny, the standard that courts use to review laws that make classifications based on gender or sex. The proposed bills acknowledge that that standard "forbids unfair discrimination against similarly situated male and female individuals," but allows the law to make such distinctions when they are "substantially related to important state interests." The bills argue that it is an important point of state interest to enforce distinctions between the sexes in "areas where biology, safety, or privacy are implicated."

The purpose of including this legal standard in the law is to bake in a justification for the state to distinguish between sexes in a way that excludes transgender people, Seldin said. It may seem neutral to just reiterate existing law, he said, but it comes alongside a definition of sex that completely excludes transgender people — since these statutes are attempting to redefine sex based on reproductive capacity at birth.

"What it's meant to do is to lay the framework for ... anytime the states want to distinguish between sexes and have sex-segregated spaces, that they can force trans people to either be with their birth-assigned sex, which for most trans people is not really an option, or they can not be there at all," he said.

That's not an option for many trans people simply due to gender presentation, Seldin said, including himself.

"I live my whole life as a man. Everyone knows me as a man. The idea that I, 17 years into my transition, in my 30s, can go into a women's bathroom, I think would be alarming to me and all the women I found there," he said.

The language of the current sex definition bills has evolved over time, said Andrew Bales, founder of the Trans Legislation Tracker. For years, Republican lawmakers have attempted to put into law a so-called "biological" definition of what it means to be a woman to pass anti-trans sports bills and bans on gender-affirming care. But more and more frequently, lawmakers are trying to accomplish the same goals by defining sex based on reproductive capacity.

"I often feel like these bills are grasping to find a way to create a definition that can hold solid with what they want to implement," Bales said. "It does feel like the purpose of the definition is to define trans people out of law, but ... it starts to degrade and not hold up."

Most of the newly proposed sex definition laws would mandate that the legal definition of a woman is someone with a reproductive system that can produce eggs. Such a limited definition ignores the existence of intersex people, many of whom are women, as well as women with conditions like primary ovarian insufficiency. Last year, bills that aimed to redefine sex in various states did not always define men and women based on their reproductive capacity; now, that has apparently become the defining feature of such legislation.

As Rashanna Lee, state policy analyst for the Equality Federation, has been tracking anti-trans bills — including bills that aim to redefine sex — she sees parallels to the bills that she monitored before *Roe v. Wade* was overturned, during her work in abortion rights.

"Particularly on gender-affirming care, they're starting to get really tricky and sneaky, similarly to what they were doing with medication abortion," she said.

Proposing new onerous requirements for health care providers and insurers on gender-affirming care, as Florida's sex redefinition bill does, is a direct example of lawmakers using the same tactics they did to restrict abortion access, Lee said.

Florida's proposed sex definition bill would require any health insurance policy issued after July 2024 that covers gender-affirming care to also cover any treatments to help someone detransition. This is an effort to dissuade insurers from covering gender-affirming care at all, Lee and other advocates said, by making it more complicated.

"Some states are trying to push requirements that providers disclose that you can reverse this and that there are certain risks associated with elements of gender-affirming care, and this is straight out of the playbook with what they did with medication abortion access," Lee said.

More states are including restrictions styled after abortion bans in anti-trans bills, including in sex redefinition bills, Casey said. This is part of a broader trend that started to grow last year, he said: creating obstacles to gender-affirming care by simply making it harder for insurance companies and doctors to afford, instead of banning it outright.

Other kinds of anti-trans legislation that aim to keep trans people from living safely in public are also gaining traction this year, Bales said. In West Virginia, a bill introduced this year would make it a misdemeanor to commit "transgender exposure" to a minor, equating

being transgender with exposing a minor to explicit content.

The ACLU and other civil rights groups are [tracking a lot of anti-LGBTQ+ legislation](#) this year, and expect another [record-shattering year](#). However, advocates want the community to remember that although a record number of anti-trans bills were introduced last year, the majority of anti-trans bills — hundreds of them — never passed into law.

"The vast majority of these bills have been defeated. And that's been true for many years in a row," Casey said. "And when they do go into law, we continue to fight them."

In Florida, the fight against the state's sex definition bill, alongside other anti-LGBTQ+ legislation, is well under way. Last week, LGBTQ+ Floridians and their families went to the state capitol in Tallahassee to speak with lawmakers as part of an annual lobby day.

"We had 300-something people walking the halls, looking for the legislators who are supposed to represent them," said Nadine Smith, executive director of Equality Florida, an LGBTQ+ organization. There were plenty of Republicans willing to meet, she said — and in some of them, a recognition that the state is spending another legislative session on spreading hate, instead of addressing everyday issues that matter.

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