

# ACT No. 436

HOUSE BILL NO. 608

BY REPRESENTATIVES WILDER, AMEDEE, BACALA, BAMBURG, BAYHAM, BEAULLIEU, BERAULT, BILLINGS, BOURRIAQUE, BOYER, BUTLER, CARLSON, CARRIER, CARVER, CHENEVERT, COATES, COX, CREWS, DESHOTEL, DEWITT, DICKERSON, DOMANGUE, ECHOLS, EDMONSTON, EGAN, EMERSON, FARNUM, FIRMENT, FONTENOT, GADBERRY, GALLE, GEYMANN, GLORIOSO, HEBERT, HORTON, ILLG, MIKE JOHNSON, TRAVIS JOHNSON, KERNER, JACOB LANDRY, MACK, MCCORMICK, MCFARLAND, ORGERON, OWEN, RISER, ROMERO, SCHAMERHORN, SCHLEGEL, ST. BLANC, TARVER, THOMAS, THOMPSON, TURNER, VENTRELLA, VILLIO, WILEY, AND WYBLE AND SENATORS BASS, CATHEY, CLOUD, CONNICK, EDMONDS, FESI, FOIL, HENRY, HENSGENS, HODGES, JACKSON-ANDREWS, KLEINPETER, LAMBERT, MIGUEZ, MIZELL, OWEN, REESE, SEABAUGH, STINE, TALBOT, AND WOMACK

1 AN ACT

2 To enact Part I-A of Chapter 1 of Code Title I of Code Book I of Title 9 of the Louisiana  
3 Revised Statutes of 1950, to be comprised of R.S. 9:55 through 65, relative to  
4 women; to provide for the safety and protection of women; to provide relative to  
5 distinctions between sexes; to provide for legislative intent; to provide for purposes;  
6 to provide for definitions; to provide for a standard of review; to provide for causes  
7 of action; to provide for application; to provide for remedies; and to provide for  
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part I-A of Chapter 1 of Code Title I of Code Book I of Title 9 of the  
11 Louisiana Revised Statutes of 1950, comprised of R.S. 9:55 through 65 is hereby enacted  
12 to read as follows:

1                    PART I-A. WOMEN'S SAFETY AND PROTECTION ACT2                    §55. Short title

3                    This Part shall be known as and may be cited as the "Women's Safety and  
4                    Protection Act".

5                    §56. Purpose

6                    The purpose of this Part is all of the following:

7                    (1) To clarify and reconcile the meaning of sex, male, female, and related  
8                    terms in state law.

9                    (2) To provide protections for women and girls against sexual assault,  
10                    harassment, and violence in correctional facilities, juvenile detention facilities,  
11                    domestic violence shelters, dormitories, and restrooms, or where women have been  
12                    traditionally afforded safety and protection from acts of abuse committed by  
13                    biological men.

14                    §57. Legislative findings

15                    The legislature finds and declares that:

16                    (1) "Physical differences between men and women, however, are enduring:  
17                    '[T]he two sexes are not fungible; a community made up exclusively of one [sex] is  
18                    different from a community composed of both.'" *United States v. Virginia, et al.*,  
19                    518 U.S. 515, 533 (1996), citing *Ballard v. United States*, 329 U.S. 187, 193 (1946).

20                    (2) The United States Supreme Court has recognized that there are  
21                    "[i]nherent differences' between men and women", and that these differences  
22                    "remain cause for celebration, but not for denigration of the members of either sex  
23                    or for artificial constraints on an individual's opportunity" in *United States v.*  
24                    *Virginia, et al.*, 518 U.S. 515, 533 (1996).

25                    (3) The equal protection clause of the Fourteenth Amendment of the  
26                    Constitution of the United States of America allows for legislatures to enact facially  
27                    neutral laws of general applicability, such as biologically based definitions of sex.

28                    (4) Biologically based definitions of sex have been consistently applied since  
29                    our nation's founding.

1                   (5) Decades of opinions from the Supreme Court of the United States have  
 2                   upheld the argument that biological distinctions between male and female are a  
 3                   matter of scientific fact, and biological sex is an objectively defined category that has  
 4                   obvious, immutable, and distinguishable characteristics.

5                   §58. Definitions

6                   For purposes of this Part:

7                   (1) "Boy" means a human male who is a minor.

8                   (2) "Changing room" means a room or area in which a person may be in a  
 9                   state of undress in the presence of others, including a locker room or shower room.

10                  (3) "Correctional facilities" means a correctional facility owned and operated  
 11                  by the state or the Correctional Facilities Corporation housing prisoners committed  
 12                  to the custody of the Department of Public Safety and Corrections.

13                  (4) "Domestic violence shelter" means a community-based shelter for  
 14                  victims of domestic violence that is managed by the Department of Children and  
 15                  Family Services.

16                  (5) "Father" means a parent who is of the male sex.

17                  (6) "Female" means an individual whose biological reproductive system is  
 18                  developed to produce ova; who has, had, will have or would have, but for a  
 19                  developmental or genetic anomaly or historical accident, the reproductive system  
 20                  that at some point produces, transports, and utilizes eggs for fertilization.

21                  (7) "Girl" means a human female who is a minor.

22                  (8) "Juvenile detention facilities" means a correctional facility that houses  
 23                  minor prisoners including the Louisiana Training Institute for Juveniles and its  
 24                  extension locations.

25                  (9) "Male" means an individual whose biological reproductive system is  
 26                  developed to fertilize the ova of a female who has, had, will have or would have, but  
 27                  for a developmental or genetic anomaly or historical accident, the reproductive  
 28                  system that at some point produces, transports, and utilizes sperm for fertilization.

29                  (10) "Man" means a human male that has reached the age of majority.

30                  (11) "Mother" means a parent who is a member of the female sex.

1                   (12) "Public school" means a school which is created pursuant to R.S.  
2                   17:1371 and R.S. 17:3971, et seq.

3                   (13) "Restroom" means a room that includes one or more toilets or urinals.

4                   (14) "Sex" means an individual's biological sex, either male or female, as  
5                   observed or clinically verified at birth. Gender identity and other subjective terms  
6                   shall not apply to this Part and shall not be used as synonyms or substitutes for sex.

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

9                   (16) "Woman" means a human female who has reached the age of majority.

10                   §59. Application of definitions; distinctions between the sexes

11                   Notwithstanding any other provision of law to the contrary, any provision of  
12                   law enacted by the legislature or any rule adopted by a state agency or other entity  
13                   subject to the Administrative Procedure Act when applicable to an individual's sex  
14                   shall apply those definitions provided in R.S. 9:58.

15                   §60. Safety and privacy of women and girls in facilities designated for biological  
16                   females

17                   Notwithstanding any other provision of law to the contrary, no governmental  
18                   agency, as defined in R.S. 42:1102(2), shall prohibit distinctions between the sexes  
19                   with respect to athletics, correctional facilities, juvenile detention facilities, domestic  
20                   violence shelters, or other accommodation where biology, safety, or privacy are  
21                   implicated and that result in separate accommodations that are substantially related  
22                   to the important government interest of protecting the health, safety, and privacy of  
23                   individuals in such circumstances. Nothing in this Part shall prohibit a domestic  
24                   violence shelter, public school, correctional facility, or juvenile detention facility  
25                   from:

26                   (1) Establishing single-occupancy restrooms, changing rooms, or sleeping  
27                   quarters that are not designated by sex.

28                   (2) Redesignating a multi-occupancy restroom or sleeping quarters for the  
29                   exclusive use of another group authorized under this Part as needed.

1           §61. Safety and privacy in domestic violence shelters

2                   A. A domestic violence shelter shall designate each multi-occupancy  
3 restroom, changing room, and sleeping quarters for the exclusive use of any one of  
4 the following:

5                           (1) Females.

6                           (2) Males.

7                           (3) Members of the same family.

8                   B. A restroom, changing room, or sleeping quarters within a domestic  
9 violence shelter that is designated for females or males shall be used only by  
10 members of that sex. No individual shall enter a restroom, changing room, or  
11 sleeping quarters that is designated for females or males unless he or she is a member  
12 of that sex.

13                   C. The domestic violence shelter shall take reasonable steps to provide  
14 individuals with privacy in restrooms, changing rooms, and sleeping quarters from  
15 members of the opposite sex.

16                   D. This Section shall not apply to an individual who enters a restroom,  
17 changing room, or sleeping quarters designated for the opposite sex in any of the  
18 following circumstances:

19                           (1) To perform custodial services or maintenance of a restroom, changing  
20 room, or sleeping quarters that is normally used by the opposite sex.

21                           (2) To render medical assistance.

22                           (3) To render assistance by law enforcement.

23                           (4) To provide services or render aid during a natural disaster, a declared  
24 emergency, or when necessary to prevent a serious threat to good order or safety.

25                   E. Nothing in this Section shall be construed to prohibit a domestic violence  
26 shelter from adopting policies necessary to accommodate persons protected under  
27 the Americans with Disabilities Act or young children in need of physical assistance  
28 when using restrooms, changing facilities, or sleeping quarters.

1           §62. Safety and privacy in restrooms of public schools

2                   A. A public school shall designate each multi-occupancy restroom or  
 3 changing room for the exclusive use of either females, males, or members of the  
 4 same family.

5                   B.(1) A restroom or changing room within a public school that is designated  
 6 for males or females shall be used only by members of that same sex. No individual  
 7 shall enter a restroom or changing room that is designated for one sex unless he or  
 8 she is a member of that sex.

9                   (2) The public school shall take reasonable steps to provide individuals with  
 10 privacy in restrooms and changing rooms from members of the opposite sex.

11                  C. During any public school authorized activity or event where students  
 12 share sleeping quarters, no student shall share sleeping quarters with a member of  
 13 the opposite sex, unless such persons are members of the same family, such as a  
 14 parent, legal guardian, sibling, or grandparent and the student has received approval  
 15 from the parent or legal guardian to do so.

16                  D. In any other public school facility or setting where a person may be in a  
 17 state of undress in the presence of others, school personnel shall provide separate,  
 18 private areas designated for use by persons based on their sex, and no person shall  
 19 enter these private areas unless he or she is a member of the designated sex.

20                  E. This Section shall not apply to an individual who enters a restroom,  
 21 changing room, or sleeping quarters designated for the opposite sex in any of the  
 22 following circumstances:

23                   (1) To perform custodial services or maintenance of a restroom, changing  
 24 room, or sleeping quarters that is normally used by the opposite sex.

25                   (2) To render medical assistance.

26                   (3) To render assistance by law enforcement.

27                   (4) To provide services or render aid during a natural disaster, a declared  
 28 emergency, or when necessary to prevent a serious threat to good order or safety.

29                  F. Nothing in this Section shall be construed to prohibit a public school from  
 30 adopting policies necessary to accommodate persons protected under the Americans

1 with Disabilities Act or young children in need of physical assistance when using  
2 restrooms, changing facilities, or sleeping quarters.

3 §63. Safety and privacy in correctional facilities and juvenile detention facilities

4 A. A correctional facility or juvenile detention facility shall designate each  
5 multi-occupancy restroom, changing room, and sleeping quarters for the exclusive  
6 use of either females, males, or members of the same family.

7 B.(1) A restroom, changing room, or sleeping quarters within a correctional  
8 facility or juvenile detention facility that is designated for females or males shall be  
9 used only by members of that sex. No individual shall enter a restroom, changing  
10 room, or sleeping quarter that is designated for females or males unless he or she is  
11 a member of that sex.

12 (2) A correctional facility or juvenile detention facility shall take reasonable  
13 steps to provide individuals with privacy in restrooms, changing rooms, and sleeping  
14 quarters from members of the opposite sex.

15 C. This Section shall not apply to an individual who enters a restroom,  
16 changing room, or sleeping quarters designated for the opposite sex in any of the  
17 following circumstances:

18 (1) To perform custodial services or maintenance of a restroom, changing  
19 room, or sleeping quarters that is normally used by the opposite sex.

20 (2) To render medical assistance.

21 (3) To render assistance by law enforcement.

22 (4) To provide services or render aid during a natural disaster, a declared  
23 emergency, or when necessary to prevent a serious threat to good order or safety.

24 D. Nothing in this Section shall be construed to prohibit a correctional  
25 facility or juvenile detention facility from adopting policies necessary to  
26 accommodate persons protected under the Americans with Disabilities Act or young  
27 children in need of physical assistance when using restrooms, changing facilities, or  
28 sleeping quarters.

1           §64. Standard of review

2                   Any law that distinguishes between the sexes in furtherance of the provisions  
3           of this Part is subject to intermediate scrutiny which forbids discrimination against  
4           similarly situated individuals, but allows the law to distinguish between the sexes  
5           when there is an important governmental interest.

6           §65. Remedies; rebuttable presumption; cause of action

7                   A. An individual who suffers, or is likely to suffer, from any direct or  
8           indirect harm as a result of a violation of this Part may assert that violation as a cause  
9           of action for remedies provided for in Subsection E of this Section.

10                  B. Any person who contracts with an agency, as defined in R.S. 42:1102(2),  
11           of government to provide services for biological females at a domestic violence  
12           shelter, juvenile detention center, corrections facility, or public school that is  
13           operated at the direction of, and receives funding from, the state, a local  
14           governmental subdivision, or a political subdivision shall have a cause of action  
15           against the agency of the public servant who directed the contractor to violate the  
16           provisions of this Part.

17                  C. A person who is subjected to retaliation or other adverse action by  
18           asserting rights that are affirmed by this Part shall have a cause of action for  
19           remedies provided for in Subsection E of this Section.

20                  D. It is a rebuttable presumption that requiring an individual to be housed  
21           with members of the opposite sex at a domestic violence shelter, juvenile detention  
22           center, corrections facility, or public school that is subject to the provisions of this  
23           Part is inherently discriminatory and is a cognizable harm to biological women under  
24           this Part.

25                  E. Any person who brings a cause of action pursuant to this Part may obtain  
26           appropriate relief, including but not limited to:

27                   (1)(a) Injunctive relief, protective order, writ of mandamus or a prohibition,  
28           or declaratory relief to prevent any violation of this Part.

29                   (b) The court may waive the requirement that the petitioner post bond for  
30           good cause shown.

1                   (2) Actual damages, reasonable attorney fees, and costs.

2                   F. All civil actions under this Part shall be initiated within two years from  
3                   the date that the harm occurred.

4                   Section 2. If any provision or item of this Act, or the application thereof, is held  
5                   invalid, such invalidity shall not affect other provisions, items, or applications of the Act  
6                   which can be given effect without the invalid provision, item, or application and to this end  
7                   the provisions of this Act are hereby declared severable.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_