



Transgender Law Center

Heron Greenesmith
Deputy Director of Policy
Transgender Law Center

March 3, 2024

RE: HB 1259, a bill to “prohibit unauthorized access to certain multi occupancy rooms and to provide a penalty therefor.”

Chair Mehlhaff, Vice-Chair Perry, and Members of the Senate State Affairs Committee:

Today we write in great concern about HB 1259, a bill to “prohibit unauthorized access to certain multi occupancy rooms and to provide a penalty therefor.”

Transgender Law Center is the largest national, trans-led organization working to set all people free. We champion the right of all transgender and gender-nonconforming people to make their own choices and live freely, safely, and authentically. Prioritizing BIPOC, disabled, and HIV+ communities, we advance community-driven strategies that harness trans knowledge, power, and joy to ensure that we all not only survive but thrive at all ages and phases of life.

We would like to raise several areas of concern around HB 1259:

- 1) Trans and nonbinary people already face heightened criminalization;
- 2) Bathroom segregation laws do nothing to protect public safety, while harming the health, safety, and autonomy of transgender and nonbinary people;
- 3) Enforcement of this bill will harm cisgender women as well as transgender and nonbinary people.

Trans and nonbinary people already face heightened criminalization

Transgender and nonbinary people face the dual threat of heightened scrutiny and criminalization. Scrutiny leads to criminalization, which leads to worsened health outcomes.¹ Transgender and nonbinary people of color, particularly Black and Indigenous trans people, face intense level of criminalization: 16% of respondents to the 2008–09 National Transgender Discrimination Survey had been incarcerated at any point during their lives, including 47% of Black transgender respondents.²

¹ Pamplin JR 2nd, Kelsall NC, Keyes KM, Bates LM, Prins SJ. Race, criminalization and urban mental health in the United States. *Curr Opin Psychiatry*. 2023 May 1;36(3):219-236. doi: 10.1097/YCO.0000000000000857. Epub 2023 Jan 25. PMID: 36762668; PMCID: PMC10079600.

² National Center for Transgender Equality. (2018). *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights*. Available at: <https://transequality.org/transpeoplebehindbars>.

Bills like HB 1259 contribute to criminalization by directing public scrutiny towards transgender people (and visibly gender nonconforming people, regardless of whether they are transgender or not) and incentivizing vigilante enforcement. And, in the case of HB 1259, literally making it a crime to enter a bathroom that corresponds with one's gender identity. We applaud the House State Affairs Committee for removing this clause in the engrossed version. We demand investment in communities, not criminalization.

Bathroom segregation laws do nothing to protect public safety, while harming the health, safety, and autonomy of transgender and nonbinary people

There is no evidence that restricting bathroom use promotes safety.³ In fact, the opposite is true.⁴ Restricting bathroom use creates material harms for transgender people. According to the US Transgender Survey, “59% of respondents reported that in the past year they had either sometimes (48%) or always (11%) avoided using a restroom, such as in public, at work, or at school, because they were afraid of confrontations or other problems.”⁵ One-third of respondents said they avoided eating or drinking so they would not need to use the restroom, and 8% reported experiencing medical issues such as urinary tract infections as a result of not using the restroom.⁶

Enforcement of this bill will harm cisgender women as well as transgender and nonbinary people

Enforcement of this bill would be dependent on nothing but one's perception of another – a factor that is as subjective as it is unreliable. There have been many cases in which a cisgender woman who does not look “conventionally feminine” has been accused of unrightfully using the women's restroom or of otherwise occupying women spaces.⁷ The rates of which instances like this happen are greater for Black women, due to racist ideologies surrounding what women should look like.⁸ Everyone should feel free to use the restroom without having to defend their presence to strangers who are unhappy with their appearance.

Enforcement of this bill will be an untenable invasion of privacy.

³ Carlos Maza and Luke Brinker, “15 Experts Debunk Right-Wing Transgender Bathroom Myth,” Media Matters for America, March 20, 2014, <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>.

⁴ Hasenbush, A., Flores, A.R. & Herman, J.L. Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms. *Sex Res Soc Policy* 16, 70–83 (2019). <https://doi.org/10.1007/s13178-018-0335-z>.

⁵ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

⁶ *Id.*

⁷ Orion Rummler, “Anti-trans violence is coming for cisgender women of color, advocates say,” *The 19th*, August 28, 2024, <https://19thnews.org/2024/08/cisgender-women-of-color-anti-trans-violence/>.

⁸ *Id.*

The Transgender Law Center strongly encourages you to oppose the passage of HB 1259 and welcomes your questions and comments about our testimony herein.

Sincerely,

Heron Greenesmith
Deputy Director of Policy
Transgender Law Center