

SUBJECT: Requiring certain single-sex multiple-occupancy spaces in public facilities

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — King, Darby, Geren, Guillen, Hull, McQueeney, Metcalf,
Raymond, Smithee

3 nays — Hernandez, Anchía, Turner

3 absent — Y. Davis, Phelan, Thompson

SENATE VOTE: On final passage (August 19) — 19 - 11

WITNESSES: For — Jack Finger, San Antonio Family Association; Cindy Asmussen, Southern Baptists of Texas Convention; Cindi Castilla, Texas Eagle Forum; Teresa Thomas, Moms for America; Mary Elizabeth Castle, Mariana Kadirvel, Texas Values; Megan Benton, Texas Values Action; Jennifer Fleck, Travis County GOP; Lauren Pena, Travis County Republican Party; Dan Chandler; CJ Grisham; Daniel Hunt; Denise Seibert; Jake Wilson (*Registered, but did not testify*: Chelsey Youman, Alliance Defending Freedom; Jonathan Covey, Texas Values; Michelle Evans, Williamson County Republican Party; Ashley Fordinal; Perla Hopkins; Thomas Parkinson)

Against — Andrew Hendrickson, ACLU of Texas; Raquel Willis, Gender Liberation Movement; Michael Wilmore Crumrine, Lesbian and Gay Peace Officers Association; Anna Nguyen, PFLAG Austin; Keats Miles-Wallace, Texas Impact; Emmett Schelling, Transgender Education Network of Texas; Stacy Suits, Travis County Constable Pct 3; Celia Israel, Travis County Tax Assessor; and 11 individuals (*Registered, but did not testify*: Ash Hall, Blair Wallace, ACLU of Texas; Angela Hale, Austin LGBT Chamber of Commerce; Raven e. Freeborn, Avow; Yaneth Flores, Avow Texas; Carlos Crumley, Timothy Crumley, CommonSense Wellness Network, IPA, LLC; Cole Weaver, CWA Local 6154; Angela Hale, Dallas LGBT Chamber of Commerce; Elisa M. Tamayo, El Paso County; Miriam Laeky, Brad Pritchett, Equality Texas; Ana O'Quin, Girls

Empowerment Network; Maude Shepherd, HK Gray, Jane's Due Process; Morgan Walker, Lambda Legal; Erika Galindo, Lilith Fund; Grace Brooks, Darcy Caballero, Shellie Hayes-McMahon, Maria Lumbreras, Planned Parenthood Texas Votes; James Jackson, PRIDENTON; Kamyon Conner, TEA Fund; Oluchi Omeoga, TENT; Amber Jones, Texas AFL-CIO; David Sanchez, Veronikah Warms, Texas Civil Rights Project; Angela Hale, Texas Competes Action; Levi Fiedler, Texas Freedom Network; Rocio Fierro-Perez, Texas Freedom Network; Kyle Riley, Texas Impact; James Hallamek, Texas State Teachers Association; Michelle Venegas-Matula, Texas Unitarian Universalist Justice Ministry; Chloe Wilkinson, Texas Young Democrats; Melodia Gutierrez, The Human Rights Campaign; Landon Richie, Asher Thye, Transgender Education Network of Texas; Heron Greenesmith, Transgender Law Center; Julie Wheeler, Travis County Commissioners Court; Anita Knight, TX IMPACT, AAUW; Candice Holloway, Vada Counseling; and 442 individuals)

On — Molly Voyles, Texas Council on Family Violence; Nicole Lusardi, Texas Hospital Association (*Registered, but did not testify*: Maureen Milligan, Teaching Hospitals of Texas)

DIGEST:

SB 8 would establish requirements for multiple-occupancy private spaces to be designated for use only by individuals of one biological sex, for inmates to be housed in correctional facilities according to their sex, and for family violence shelters designated for female victims to provide services only to individuals of the female sex and their children under age 17. The bill would also establish provisions related to civil penalties, enforcement procedures, civil actions brought under the bill.

Multiple-occupancy private spaces. SB 8 would require political subdivisions and state agencies to designate each multiple-occupancy private space in the entity's buildings for use only by individuals of one biological sex, either male or female.

Under the bill, a "multiple-occupancy private space" would mean a facility designed or designated for simultaneous use by multiple

individuals, in which an individual could be in a state of undress in the presence of another, regardless of curtains or partial walls for privacy, including a restroom, locker room, changing room, or shower room.

For purposes of the bill, “female” would mean an individual who naturally had or would have, or had or would have had but for a congenital anomaly or a disruption, a reproductive system designed to produce, transport, and provide eggs for fertilization. “Male” would mean an individual who naturally had or would have, or had or would have had but for a congenital anomaly or a disruption, a reproductive system designed to produce, transport, and utilize sperm for fertilization.

The bill would define a “political subdivision” as a governmental entity, including a county, municipality, special purpose district or authority, public school district or open-enrollment charter school, or junior college district. A “state agency” would include a department, commission, board, office, council, authority, or other agency within state government, including an institution of higher education.

The bill would require political subdivisions and state agencies to take every reasonable step to ensure that an individual did not enter such private spaces that were designated for the opposite sex. The bill would specify that these requirements did not prohibit a political subdivision or state agency from:

- adopting a policy necessary to accommodate a disabled individual, young child, or elderly individual who required assistance when using a multiple-occupancy private space;
- establishing a single-occupancy private space, family restroom, or changing room; or
- changing the designation of a multiple-occupancy private space to exclusive use by individuals of the sex opposite to the sex previously designated.

A designation of a multiple-occupancy private space under the bill would not apply to an individual entering the space for a custodial, maintenance,

or inspection purpose, to render medical or other emergency assistance, to accompany and provide assistance for an individual who needed assistance in using the facility, for law enforcement purposes, or to render necessary assistance in preventing a serious threat to proper order or safety. A designation also would not apply to a child nine years old or younger who was accompanied by an individual caring for the child.

Correctional facilities. SB 8 would require the Texas Department of Criminal Justice (TDCJ) to ensure inmates were housed in a correctional facility, including a dormitory or cellblock, according to the inmate's sex. TDCJ would have to adopt rules to implement this requirement, including rules to ensure that implementation complied with state and federal law.

Family violence shelters. Under SB 8, a family violence shelter that has contracted with the Health and Human Services Commission and is designed specifically for female victims could only provide services to an individual of the female sex and an individual 17 years old or younger who was the child of a female individual receiving services at the shelter.

Civil penalties. SB 8 would establish that a political subdivision or state agency that violated the bill was liable for a civil penalty of \$5000 for the first violation and \$25,000 for a subsequent violation. Each day of a continuing violation would constitute a separate violation.

Attorney general enforcement. Under SB 8, a Texas resident could file a complaint with the attorney general against a political subdivision or state agency for a violation under the bill only if the resident provided written notice describing the violation to the political subdivision or state agency and the violation was not cured within three business days of the notice being received. The complaint would have to include a copy of the written notice and the resident's sworn statement or affidavit describing the violation and indicating the resident had provided the required notice.

The bill would require the attorney general to investigate the complaint to determine whether legal action was warranted before bringing such an action against a political subdivision or state agency. The entity subject to

the complaint would have to provide any information requested by the attorney general related to the complaint, including supporting documents and a statement on whether the entity had complied or intended to comply with SB 8's requirements. Upon determining that legal action was warranted, the attorney general would be required to provide to the appropriate officer of the political subdivision or state agency charged with the violation a written notice:

- describing the violation and location of the multiple-occupancy space found to be in violation;
- stating the amount of the proposed penalty for the violation; and
- requiring the political subdivision or state agency to cure the violation within 15 days of receiving notice to avoid the penalty, unless a court had previously found the entity liable for a violation.

If a political subdivision or state agency had not cured the violation within 15 days of receiving notice from the attorney general or was previously found liable by a court for a violation, the attorney general could bring an action to collect the civil penalty authorized under the bill. The attorney general also could file a petition for a writ of mandamus or apply for other appropriate equitable relief. The action could be brought or filed in a district court in the county in which the principal office of the political subdivision or state agency was located. The attorney general could recover reasonable expenses incurred in obtaining relief. A civil penalty collected by the attorney general under the bill would be deposited in the Compensation to Victims of Crime Fund.

Private cause of action. Under SB 8, a person affected by a violation of the bill could bring a civil action and would be entitled to declaratory relief, injunctive relief, and court costs.

Appellate jurisdiction. The Fifteenth Court of Appeals would have exclusive jurisdiction over any appeal arising out of a civil action brought under the bill.

Immunity. SB 8 would provide for the immunity of the state, political

subdivisions, and government officers and employees in any type of legal action that challenged the validity of any provision of the bill or sought to prevent or enjoin the enforcement of the bill or hearing, adjudicating, or docketing an action brought for a violation of the bill. Such immunity would not apply if it had been abrogated or preempted by federal law or if immunity had been waived in accordance with the bill. The bill would prohibit an attorney representing the state, a political subdivision, or an officer, employee, or agent of the state or a political subdivision from waiving such immunity or taking an action that would result in a waiver.

Jurisdiction. SB 8 would establish that a state court did not have jurisdiction to consider and could not award relief or any type of writ that would pronounce any provision of the bill invalid or unconstitutional or restrain the enforcement of the bill or hearing, adjudicating, docketing, or filing a civil action brought under the bill. A court could not certify a claimant class or a defendant class in a civil action that sought such relief.

Fee shifting. A person who sought relief to prevent any other person from bringing an action to enforce a statute, ordinance, rule, regulation, or other law that regulated access to certain spaces based on an individual's sex, or who represented a litigant seeking such relief, would be liable to pay the costs and attorney's fees of the prevailing party.

Construction and severability. The bill would specify that it could not be construed to prevent a litigant from asserting the invalidity or unconstitutionality of its provisions or application as a defense to liability in an action, claim, or counterclaim brought under the bill. The bill also would provide for the severability of its provisions and applications.

SB 8 would apply only to a cause of action that accrued on or after the bill's effective date. The bill would take effect 91 days after the end of the legislative session.

SUPPORTERS
SAY:

SB 8 would protect the safety, privacy, and dignity of women and children in private spaces at public facilities. A growing number of Texans are concerned that they are losing the basic expectation of privacy in spaces

traditionally separated by sex, as there have been many instances of women having to share private spaces such as bathrooms and locker rooms with biological males, which can be dangerous and traumatizing. SB 8 would protect privacy in spaces in which women are particularly vulnerable, including prisons and shelters, by restoring sex-based boundaries rooted in longstanding, commonsense societal norms and biology.

The bill would not be intended to exclude transgender people from public spaces but to provide fairness in access to multi-use private spaces. Because gender identity is based on inner experience, it is subjective and thus can be easily exploited, and should not be prioritized over objective biological reality and the right to sex-separated private spaces. The bill's approach is balanced and flexible, allowing for several exceptions and accommodations for people with disabilities, young children, or older adults who need assistance, while establishing a clear statewide standard for public facilities and providing for strong enforcement.

SB 8 would not prohibit anyone from using public facilities but would simply require them to use spaces corresponding to a person's biological sex, or single-occupancy spaces, which also could accommodate intersex individuals. The bill would not lead to intrusive or invasive enforcement efforts, such as inspection, because these would not be considered "reasonable steps" for compliance under the bill.

**CRITICS
SAY:**

SB 8 is unnecessary because there is no outstanding problem of transgender men, or men posing as transgender, assaulting or accosting women in bathrooms or other facilities. Transgender people are more likely to be victims of assault than perpetrators, and the bill would increase this vulnerability. Enforcement of the bill would be difficult, since complaints could be based simply on appearance, which could encourage invasive attempts to determine a person's sex, violating privacy and dignity. Similarly, the bill's exceptions for children ages 9 and under could cause confusion based on how old a child appeared to be. Additionally, the bill's definitions of sex make no provision for intersex people, further complicating enforcement.

Under SB 8, not only transgender people but also others who do not fit gender stereotypes for appearance could face increased harassment in bathrooms and other spaces addressed in the bill. The bill would require visibly masculine transgender men to use women's restrooms, which would not make women feel more comfortable. The requirements under the bill would be discriminatory and would not make women safer, but would endanger transgender Texans by exposing them to harassment and potential violence in vulnerable spaces. The bill also could cause transgender people to avoid using restrooms in public spaces, leading to potential health problems such as urinary tract infections.

SB 8 would make already marginalized transgender Texans and visitors feel unwelcome in public spaces. The passage of the bill would likely negatively affect the mental health of transgender people in the state, who are already at greater risk of suicidal ideation and suicide. SB 8 also could have negative economic effects on the state by making it harder for companies to hire transgender individuals and discouraging sporting events, conventions, and other gatherings from coming to Texas.

The bill's definitions of sex could conflict with federal anti-discrimination laws, and housing prison inmates solely according to biological sex could violate the Prison Rape Elimination Act, which allows facilities discretion about where to place transgender individuals based on specific situations. Such conflicts also could place federal funding for programs in Texas at risk. SB 8's private right of action does not provide a cure period or allow for a defendant to recover costs, which could promote frivolous lawsuits and strain judicial resources. The penalties for agencies and political subdivisions that violated the bill could deplete much-needed local government financial resources.

OTHER
CRITICS
SAY:

SB 8 should clearly exempt family violence shelters on public property from the bill's provisions on multi-occupancy private spaces. The bill also should be amended to ensure that it would not prevent women fleeing violence with male children who may be older than 17 and have special needs from going to a family violence shelter. Additionally, SB 8 should

provide an exception from its multi-occupancy restrictions for patient care areas in public hospitals. Creating fully sex-segregated environments in hospitals would be difficult and expensive.

Concerns about privacy could be better addressed by providing more single-occupancy bathrooms and other facilities in public buildings.