

HB 257 FAQs

What people need to know
about Utah's new bathroom law

As part of the continued wave of legislation targeting transgender people across the country, on January 30, 2024, Governor Spencer Cox signed House Bill 257 (“HB 257”) into law. Parts of the the law took effect immediately, while parts relating to public school and governmental compliance will take effect on May 1, 2024.

The ACLU of Utah and **Equality Utah** are committed to ensuring that transgender people in Utah enjoy equal protection under the law. Everyone in Utah and the United States enjoys the right to life, liberty and happiness. We recognize that the enactment of HB 257, “Sex-Based Designations for Privacy, Anti-Bullying, and Women’s Opportunities” has been exceptionally difficult for transgender Utahns. And many are wondering how their lives will be changed by the new law related to access to bathrooms and changing facilities.

Our organizations have partnered to craft the following FAQ to interpret the new law for members of our community, and for city, county, and other government officials.

Misleadingly titled “Sex-Based Designations for Privacy, Anti-Bullying, and Women’s Opportunities,” HB 257 bars transgender, non-binary, and gender non-conforming people from accessing privacy spaces and other facilities in public schools and government owned or controlled spaces. Despite the heated rhetoric around this legislation, **our legal analysis of HB 257 has determined that the scope of the new law is, in fact, more limited than the news coverage of this bill would suggest.**

The primary impact for transgender and non-binary youth will be in public school bathrooms, changing rooms and locker rooms. Outside of K-12 public schools, the bill’s impact will only be in changing facilities in government owned buildings, most often found in recreation centers owned and operated by cities and counties. There is no legal consequence in the new law for transgender or non-binary people in Utah using restrooms in government owned buildings that match their gender-identity, there are only penalties for people who use the bathroom for improper purposes or who engage in prurient behavior.

Further, the new law does not apply to bathrooms and changing facilities in places like restaurants, hotels, theaters, malls, etc. that are privately owned.

People in Utah should not be forced to live in fear of discrimination or surveillance when using facilities that match who they are. While HB 257 challenges the dignity of transgender, non-binary, and gender non-conforming Utahns, there are still many state and federal laws that provide protection for LGBTQ people.



Frequently Asked Questions

What spaces does HB 257 regulate?

HB 257 applies only to public schools and government owned or controlled facilities, such as state capitol buildings or city and county buildings. In a public school, HB 257 restricts access to bathrooms, changing rooms and locker rooms. Only changing rooms and locker rooms are restricted in a government-owned building.

HB 257 restricts access to ***sex-designated privacy spaces*** in public schools and ***sex-designated changing rooms*** in other publicly owned or controlled facilities.

A sex-designated space is a space designated specifically for males or females and not the “opposite sex”. 63G-31-101(10). The law defines a ***privacy space*** as a restroom or changing room where an individual has a reasonable expectation of privacy. 63G-31-301(1). The law defines a ***restroom*** as any space that includes a toilet. 63G-31-101(9)(a). The law defines a ***changing room*** as a space designated for multiple individuals to dress or undress within the same space. 63G-31-101(1)(a). ***Changing rooms*** include dressing rooms, fitting rooms, locker rooms, shower rooms, and restrooms contained in or attached to changing rooms. 63G-31-101(1)(b)(i),(ii). Changing rooms do not include stand-alone restrooms.

In public schools for grades K-12, HB 257 regulates access to sex-designated restrooms and changing rooms. In other publicly owned or controlled buildings accessible to the general public, such as

county recreation centers and public universities, HB 257 only regulates access to sex-designated changing rooms.

What does HB 257 mean for access to restrooms and changing rooms in public schools?

HB 257’s sex-based distinctions apply to “privacy spaces” in public schools. The law disallows students from accessing sex-designated privacy spaces that do not correspond with a person’s sex as defined in the bill. 63G-31-301(1). This prohibition includes sex-specific restrooms, locker rooms, shower rooms, and changing rooms.

Under HB 257, for students to access sex-based privacy spaces other than those that correspond with their “biological sex”, the student and their parent or guardian may work with a school administrator to develop a privacy plan. If approved, the privacy plan will allow reasonable access to a unisex or single-occupant facility or faculty restroom. If those facilities are unavailable, the privacy plan may allow reasonable access to private use of a sex-designated privacy space through staggered scheduling or another policy that provides temporary private access. 63G-31-301(2). Students may also work with a school to access school sex-designated privacy spaces that align with their gender identity if the students have “documentation of a medical treatment or procedure that is consistent only with the sex designation of the privacy space.”

Parents or guardians seeking approval for a child to use the correct restroom should contact their school and provide documentation or request a privacy plan be implemented on their child's behalf. Schools "retain discretion" in relation to making determinations about these issues. 53G-8-211(9).

HB 257's sex-based distinctions in public schools do not apply to intersex individuals or unisex and single occupancy facilities. 63G-31-301(5).

What does HB 257 mean for private K-12 schools?

HB 257 only impacts Local Education Agencies, including K-12 public and charter schools. The law does not apply to privacy spaces within private schools.

If a private school student is visiting a public school, HB 257 would apply to privacy spaces within the public school.

What does HB 257 mean for publicly owned or controlled spaces other than K-12 Schools?

Generally speaking, only changing rooms and locker rooms are restricted in government-owned buildings.

HB 257's sex-based distinctions apply to **changing rooms** in publicly owned or controlled facilities accessible to the general public. The law makes it a crime for a person to enter a sex-designated **changing rooms** that does not correspond with that person's "biological sex" and increases criminal penalties for other crimes committed in that

situation. The term **changing room** does not include stand-alone restrooms, and only includes spaces designated for multiple people to dress or undress, such as fitting rooms, locker rooms, communal shower rooms, and restrooms that are contained in or attached to changing rooms.

There are no express prohibition or criminal penalties in HB 257 relating to using stand-alone restrooms in publicly owned or controlled facilities.

"Publicly owned or controlled" means that a government entity has at least a partial ownership interest in or has control of a facility, program, or event. 63G-31-101(8). "Open to the general public" means privacy spaces that are freely accessible to a member of the general public, accessible to general public by fee or ticket purchase, 63G-31-101(6)(a). Open to the general public does not include a privacy space that is only accessible to employees of a government entity or any area that is not normally accessible to the public. 63G-31-101(6)(b)

Under HB 257, a person may only access a sex-designated changing room if the person's "biological sex" corresponds with the sex-designation of the changing room, or the person has legally amended their birth certificate to correspond with the sex-designation of the changing room and undergone a primary sex characteristic surgical procedure to correspond with the sex designation of the changing room.

The law carves out exceptions for (i) minor children who access a changing room that corresponds with the sex-designation of a parent, guardian, or relative; (ii) dependent minors or adults who require assistance to

access a changing room that corresponds with the sex-designation of their caretaker; (iii) an individual providing public safety services; (iv) an employee of a health care facility providing services to a patient; or (v) an employee whose duties include the maintenance or cleaning of the changing room. HB-257's "sex-based distinctions" provisions in publicly owned or controlled spaces do not apply to intersex individuals, unisex or single occupant facilities, or changing rooms that are not open to the general public.

If you are an employee working in a publicly owned or controlled facility, HB 257 does not apply to changing rooms not accessible to the general public.

HB 257 does not apply to privately owned spaces like malls, restaurants, or movie theaters.

HB 257 does not create or impose any documentation or paperwork requirements for an individual to access a covered restroom or privacy space. That said, HB 257 requires government entities to contact law enforcement if they receive complaints or allegations about criminal behavior in a privacy space, which includes entering a sex-designated changing room that does not correspond to one's "biological sex." Accordingly, people that others suspect "do not belong" in a particular "privacy space" might be subjected to interactions with law enforcement even when those spaces are not covered by the law. Please see [these resources](#) for information about your rights when interacting with law enforcement.

The law makes no provision for individuals other than law enforcement officers to investigate or otherwise confront anyone for any

purpose in relation to the bill's prohibitions. If you are confronted by someone other than law enforcement about your use of a restroom or changing room, we advise you to use your best judgment about how to react and stay safe given all of the circumstances in that situation.

If you are taken to jail, will your housing be aligned with your gender identity?

Jail and prison housing are largely governed by a separate piece of legislation, HB 316, Inmate Assignment Amendments, which also passed the legislature. Under that section of code, inmates are presumptively assigned housing consistent with their "biological sex at birth"; however, an inmate may be housed consistent with their gender identity at the direction of the prison or jail staff or based on a request by the inmate, so long as a variety of factors are met.

Are trans women still permitted to seek assistance from women's shelters?

The initial version of this bill prevented transgender individuals from using women's shelters or rape crisis centers. Those provisions have been removed from the enacted legislation and trans women will still be able to access women's shelters and rape crisis centers. To the extent that a center is a publicly owned or controlled facility, however, the criminal provisions regarding changing rooms would still apply.

Do I need to have paperwork to use a public restroom?

No, not as a matter of law. We do not read HB 257 as criminalizing or otherwise prohibiting people from entering and using a stand-alone sex-designated restroom that conforms with their gender identity in a publicly owned or controlled building. Accordingly, you should not be subjected to any encounters with law enforcement for entering the correct restroom and there is no need to have paperwork regarding your sex or gender identity. *If you do encounter law enforcement officers in that situation, however, please document as much about the situation as you are able to and contact the ACLU of Utah immediately.*

I am passing through the airport to catch a connection. Do I have to use the restroom different from my gender identity?

No. We interpret HB 257 as allowing people to use a sex-designated restroom that aligns with their gender identity at the airport. That reading is based on our understanding that restrooms at the airport do not have changing rooms. We do not see any provision in the bill that prohibits or makes criminal using a restroom.

Do I have to leave a restroom if I am challenged?

As mentioned, other than in the K-12 setting, we do not see any language in HB 257 that prohibits people from using sex-designated restrooms that align with their gender iden-

tity. Moreover, as explained above, HB 257 anticipates that only law enforcement officers are authorized to interact with people with regard to the bill's prohibitions.

Will I be able to use public restrooms where I am employed?

Yes, you can continue using the public restroom where you are employed.

If you work in a privately owned building, HB 257 does not apply. If you work in a publicly owned or controlled building, you are allowed to use a stand-alone sex-designated restroom that is open to the public regardless of your sex as defined by the bill. Moreover, if your restroom is not accessible to the general public, HB 257 also does not apply.

We have a changing room for gym usage at work. Can I use the room aligned with my gender identity?

It depends. If the gym is private, HB 257 does not apply. If the gym is in a publicly owned or controlled building, it depends. If the changing room is open to the general public, HB 257 makes it a crime to enter a sex-designated changing room that does not align with your "biological sex", with the exceptions described above. If the changing room is not open to the general public, HB 257 does not apply.

When does HB 257 take effect?

Governor Cox signed HB 257 on January 30, 2024, and most of the bill went into effect on that date. However, the requirement that schools and government facilities comply with the law was delayed until May 1, 2024.

How does HB 257 define a person's sex?

Until recently, the law did not define sex. Increasingly, efforts to define sex under the law have been used to exclude transgender people from legal protections and ultimately, narrow legal rights for everyone. HB 257 codifies an outdated and inaccurate definition of a person's sex for purposes of Utah law. The law assigns sex-based designations to a person based on HB 257's definitions of the terms "male," "female," and "intersex." Below is a listing of all of the new definitions HB 257 has added to the to the Utah Code.

HB 257 defines **male** as "the characteristic of an individual whose biological reproductive system is of the general type that functions to fertilize the ova of a female." Moreover, **man** means "an adult human male," and **father** means "a parent who is of the male sex."

Under HB 257, **female** "means the characteristic of an individual whose biological reproductive system is of the general type that functions in a way that could produce ova." Further, **woman** means "an adult human female" and **mother** means "a parent who is of the female sex."

HB 257 also adopts into the Utah State Code the definition of **intersex** from Utah Code

Section 28B-8-101 (15), which is: being born with external biological sex characteristics that are irresolvably ambiguous; being born with 46, XX chromosomes with virilization; being born with 46, XY chromosomes with undervirilization; having both ovarian and testicular tissue; or having been diagnosed by a physician, based on genetic or biochemical testing, with abnormal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female.

HB 257 defines sex, "in relation to an individual, [as] the individual's biological sex, either male or female, at birth, according to distinct reproductive roles as manifested by: (a) sex and reproductive organ anatomy; (b) chromosomal makeup; and (c) endogenous hormone profiles."

Finally, HB 257 states that "**Equal**" means, with respect to biological sex, of the same value. 'Equal' does not mean, with respect to biological sex: (i) a characteristic of being the same or identical; or (ii) a requirement that biological sexes be ignored or co-mingled in every circumstance."

These definitions have been adopted into the definition section for the entire Utah State Code.