

By: Swanson

H.B. No. 3147

A BILL TO BE ENTITLED

AN ACT

relating to the detainment and housing of juveniles and inmates based on biological sex.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the Female Prisoner Protection Act.

SECTION 2. The legislature finds that:

(1) courts have repeatedly affirmed that the separation of inmates by sex is unquestionably constitutional so long as it serves a government interest. *Women Prisoners v. District of Columbia*, 93 F.3d 910, 926 (D.C. Cir. 1996);

(2) courts have affirmed that the government cannot lawfully act in a manner that evinces the belief that women are second-class citizens or unworthy of the consideration provided male offenders. *Pitts v. Thornburgh*, 866 F.2d 1450, 1459 (D.C. Cir. 1989); and

(3) courts have repeatedly recognized that a correctional system has a right to ensure women are protected from sexual abuse and physical violence, as well as have equal access to all inmate rights, correctional programs, and opportunities for rehabilitation.

SECTION 3. The purpose of the Act is to further the governmental interest of ensuring that females detained in adult or juvenile correctional facilities are protected throughout their

1 sentence and have equal, safe access to basic facilities afforded
2 to prisoners.

3 SECTION 4. Subchapter D, Chapter 501, Government Code, is
4 amended by adding Section 501.115 to read as follows:

5 Sec. 501.115. HOUSING OF INMATES ACCORDING TO BIOLOGICAL
6 SEX. (a) The department, or institutional division under the
7 jurisdiction of the department, may not allow an inmate to be housed
8 in a cell block, dormitory, temporary housing, or correctional
9 facility that is designed for the biological sex opposite to the
10 inmate's biological sex as correctly determined by:

11 (1) the inmate's sex organs, determined at the initial
12 intake screening required under the Prison Rape Elimination Act
13 National Standards(28 C.F.R. Section 115.41); or

14 (2) the inmate's official birth certificate, as
15 described by Subsection (b).

16 (b) For purposes of this section, a statement of an inmate's
17 biological sex on the inmate's official birth certificate is
18 considered to have correctly stated the inmate's biological sex
19 only if the statement was:

20 (1) entered at or near the time of the inmate's birth;
21 or

22 (2) modified to correct any type of scrivener or
23 clerical error in the inmate's biological sex.

24 (c) If there is a conflict or discrepancy between
25 Subsections (a)(1) and (a)(2), the department, or institutional
26 division under the jurisdiction of the department shall defer to
27 the inmate's official birth certificate, as described by Subsection

1 (b), for the purposes of determining an inmate's biological sex.

2 (d) The Department of Vital Statistics, or other applicable
3 state agency, may not impose a cost to the department, or
4 institutional division under the jurisdiction of the department for
5 a request to obtain an inmate's birth certificate for the purposes
6 of determining an inmate's correct biological sex under this
7 section.

8 (e) Pursuant to the Prison Rape Elimination Act National
9 Standards (28 C.F.R., Part 115), the department, or institutional
10 division under the jurisdiction of the department shall consider
11 the unique safety needs of each inmate on a case by case basis, and
12 shall take appropriate action to ensure an inmate's health and
13 safety, so long as such action does not conflict with the
14 requirements of Subsection (a).

15 (f) The Texas Department of Criminal Justice shall adopt any
16 additional rules necessary to implement this section, provided that
17 those rules ensure compliance with state and federal law.

18 SECTION 5. Title 3, Chapter 51, Family Code, is amended by
19 adding Section 51.127 to read as follows:

20 Sec. 51.127. PLACEMENT OF JUVENILES BASED ON BIOLOGICAL
21 SEX. (a) A juvenile may not be detained or housed in an applicable
22 detention or correctional facility provided by 51.12(a) that is
23 designed for the biological sex opposite to the juvenile's
24 biological sex as correctly determined by:

25 (1) the juvenile's official birth certificate, as
26 described by Subsection (b); or

27 (2) if the juvenile's official birth certificate

1 described by Subdivision (1) is unobtainable, another government
2 record that accurately states the juvenile's biological sex.

3 (b) For purposes of this section, a statement of an
4 juvenile's biological sex on the juvenile's official birth
5 certificate is considered to have correctly stated the juvenile's
6 biological sex only if the statement was:

7 (1) entered at or near the time of the juvenile's
8 birth; or

9 (2) modified to correct any type of scrivener or
10 clerical error in the juvenile's biological sex.

11 (c) The Department of Vital Statistics, or other applicable
12 state agency, may not impose a cost to the Texas Juvenile Justice
13 Department or an applicable detention or correctional facility
14 under this chapter for a request to obtain a juvenile's birth
15 certificate for the purposes of determining an juvenile's correct
16 biological sex under this section.

17 (e) Pursuant to the Prison Rape Elimination Act National
18 Standards for Juvenile Facilities (28 C.F.R., Part 115, Subpart D),
19 the Texas Juvenile Justice Department, or applicable detention
20 facility under this chapter, shall consider the unique safety needs
21 of each juvenile on a case by case basis, and shall take appropriate
22 action to ensure a juvenile's health and safety, so long as such
23 action does not conflict with the requirements of Subsection (a).

24 (f) The Texas Juvenile Justice Department shall adopt any
25 additional rules necessary to implement this section, provided that
26 those rules ensure compliance with state and federal law.

27 SECTION 6: Section 51.12(m), Family Code, is amended to

1 read as follows:

2 (m) The Texas Juvenile Justice Department may deny,
3 suspend, or revoke the registration of any facility required to
4 register under Subsection (i) if the facility fails to:

5 (1) adhere to all applicable minimum standards for the
6 facility; or

7 (2) timely correct any notice of noncompliance with
8 minimum standards.

9 (3) strictly comply with the requirements of Section
10 51.127.

11 SECTION 7. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2023.