

By: Swanson

H.B. No. 403

A BILL TO BE ENTITLED

AN ACT

1
2 relating to housing and placement of inmates and children according
3 to biological sex.

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

5 SECTION 1. This Act may be cited as the Female Prisoner
6 Protection Act.

7 SECTION 2. (a) The legislature finds that:

8 (1) courts have repeatedly affirmed that the
9 separation of inmates by sex is unquestionably constitutional so
10 long as it serves a government interest, see *Women Prisoners of the*
11 *D.C. Dep't of Corr. v. District of Columbia*, 93 F.3d 910, 926 (D.C.
12 Cir. 1996);

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

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

23 (b) The purpose of this Act is to further the governmental
24 interest of ensuring that females confined or placed in facilities

1 operated by the Texas Department of Criminal Justice and Texas
2 Juvenile Justice Department are protected throughout their
3 sentence and have equal, safe access to basic facilities afforded
4 to all confined persons.

5 SECTION 3. Section 51.12(m), Family Code, is amended to
6 read as follows:

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

10 (1) adhere to all applicable minimum standards for the
11 facility; ~~or~~

12 (2) timely correct any notice of noncompliance with
13 minimum standards; or

14 (3) strictly comply with the requirements of Section
15 51.127.

16 SECTION 4. Section 51.125(e), Family Code, is amended to
17 read as follows:

18 (e) The Texas Juvenile Justice Department may deny,
19 suspend, or revoke the registration of any facility required to
20 register under Subsection (d) if the facility fails to:

21 (1) adhere to all applicable minimum standards for the
22 facility; ~~or~~

23 (2) timely correct any notice of noncompliance with
24 minimum standards; or

25 (3) strictly comply with the requirements of Section
26 51.127.

27 SECTION 5. Chapter 51, Family Code, is amended by adding

1 Section 51.127 to read as follows:

2 Sec. 51.127. PLACEMENT OF JUVENILES BASED ON BIOLOGICAL
3 SEX. (a) In this section, "department" means the Texas Juvenile
4 Justice Department.

5 (b) A juvenile board created under Chapter 152, Human
6 Resources Code, or the department, as applicable, shall place a
7 child in a detention or correctional facility according to the
8 child's biological sex, as determined by:

9 (1) the child's official birth certificate, if the
10 child's biological sex is correctly stated on the certificate as
11 described by Subsection (c); or

12 (2) if the child's official birth certificate
13 described by Subdivision (1) is unobtainable, another government
14 record that states the child's biological sex.

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

19 (1) entered at or near the time of the child's birth;
20 and

21 (2) not modified except as necessary to correct any
22 type of scrivener or clerical error in the child's biological sex.

23 (d) The vital statistics unit of the Department of State
24 Health Services may not charge a juvenile board or the department a
25 fee to issue a birth certificate for use under this section.

26 (e) Except as provided by Subsection (b), a juvenile board
27 or the department, as applicable, shall, in accordance with the

1 Prison Rape Elimination Act National Standards (28 C.F.R. Part 115,
2 Subpart D), consider the unique safety needs of each child and take
3 appropriate action to ensure a child's health and safety.

4 (f) A juvenile board and the Texas Juvenile Justice Board
5 shall adopt any rules necessary to implement this section. The
6 rules must ensure compliance with state and federal law.

7 SECTION 6. Subchapter D, Chapter 501, Government Code, is
8 amended by adding Section 501.115 to read as follows:

9 Sec. 501.115. HOUSING OF INMATES ACCORDING TO BIOLOGICAL
10 SEX. (a) The department shall house inmates in facilities,
11 dormitories, and cellblocks according to the inmate's biological
12 sex, as determined by:

13 (1) the inmate's sex organs as determined during the
14 intake screening required under the Prison Rape Elimination Act
15 National Standards (28 C.F.R. Section 115.41); and

16 (2) a statement of the inmate's biological sex on the
17 inmate's official birth certificate if the statement was:

18 (A) entered at or near the time of the inmate's
19 birth; and

20 (B) not modified except as necessary to correct
21 any type of scrivener or clerical error in the inmate's biological
22 sex.

23 (b) If there is a conflict between the determinations made
24 under Subsections (a)(1) and (2), the department shall defer to
25 Subsection (a)(2) for the purpose of determining an inmate's
26 biological sex.

27 (c) The vital statistics unit of the Department of State

1 Health Services may not charge the department a fee to issue a birth
2 certificate for use under this section.

3 (d) Except as provided by Subsection (a), the department
4 shall, in accordance with the Prison Rape Elimination Act National
5 Standards (28 C.F.R. Part 115), consider the unique safety needs of
6 each inmate and take appropriate action to ensure an inmate's
7 health and safety.

8 (e) The board shall adopt any rules necessary to implement
9 this section. The rules must ensure compliance with state and
10 federal law.

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, 2025.