

GIRLS DESERVE PRIVACY

Dr. Kristine Severyn, Director

**Testimony before the Ohio House Civil Justice Committee
in opposition to House Bill 369
Ohio Statehouse, Room 116
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Chairman Hambley and Committee members: Thank you for the opportunity to present my concerns about House Bill 369, the Ohio Fairness Act. While this title seems innocuous, a close examination of the bill reveals there is not much fairness about it for women and girls. If HB 369 becomes law, girls and women would be left vulnerable to potential physical and psychological harm in spaces where they now have a legal expectation of privacy.

I am Dr. Kristine Severyn, director of Girls Deserve Privacy, which was organized in Ohio to protect the privacy rights of girls and women in spaces where they have an expectation of privacy, e.g., bathrooms, locker rooms, lodging on overnight school field trips, and homeless- and domestic abuse shelters; and to disseminate research on safety concerns and the resultant adverse physical, psychological and emotional health effects on girls and women compelled to share such spaces with biological males.

HB 369 redefines “public accommodations” to permit unfettered access by biological men who identify as women into private women and girls’ spaces, such as bathrooms, locker rooms, showers, women’s domestic abuse shelters, and shared women’s nursing home bedrooms.

As a lifelong swimmer and regular user of women’s locker rooms, I am troubled by the efforts of transgender advocates to open women’s locker rooms to biological men who identify as women. HB 369 will permit a biological male, if he “identifies” as a female on any particular day, to legally invade the private spaces of female locker changing rooms and shower stalls.

Would the men on this committee want their wives or daughters subjected to such shame, embarrassment and possible danger? How would women on the committee feel if they or their daughters were forced to share private changing and shower spaces with their daughters’ male school classmates? I for one would feel very uncomfortable and vulnerable changing into and out of my swimsuit and showering in front of an unknown biological man.

Due to biological differences between men and women, federal courts have specifically and repeatedly protected the right of bodily privacy so that one’s naked or partially naked body, genitalia, and other “private parts” are not involuntarily exposed to the opposite sex. Even the progressive U.S. Court of Appeals Ninth Circuit stated, “We cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one’s unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity” (*York v. Story*, 1963). Separate locker rooms based on biological differences or separate unisex changing rooms help preserve this privacy interest.

In Ohio all locker room patrons, male or female, have a legal “reasonable expectation of privacy,” as confirmed in the 2012 Williams County, Ohio, Sixth Appellate District case, *State v. Dennison*, 2012-Ohio-1988.

Though most men are not sexual predators, most sexual predators are men. Granting access to female private spaces by biological males based on their gender identity choice that day is a license for voyeurism (R.C. 2907.08) and public indecency (R.C. 2907.09) by males with nefarious intentions, both violations of the Ohio Revised Code. A small sample of my research validates these concerns:

- Colleen Francis, a mid-40s biological man identifying as a woman preferred to use the women’s locker room and sauna at Evergreen State College in Olympia, Washington. When members of two high-school girls swim teams, who practiced at the college’s pool, expressed discomfort about this middle-age man (with intact genitalia) in the female locker room, the girls were forced to use a smaller locker room. Washington Administrative Code 162-32-060 mandates “the use of...restrooms, locker rooms, dressing rooms, and homeless or emergency shelters...consistent with [an] individual’s gender expression or gender identity.” If a person “expresses concern or discomfort” with a person of the opposite biological sex using the facility, the person expressing “discomfort” is directed to a “separate or gender-neutral facility, if available.” So, this biological middle-aged man legally remained in the girls’ locker room. News outlets reported similar issues at a Seattle Parks and Recreation pool.
- A high school sophomore girl in Los Angeles was required to share a school locker room with, and change into her PE clothes in front of, a male student who identifies as a girl, and is in her PE class. Watching her change clothes, he commented on her physical appearance and touched her hair. The young man also reportedly hung out in the girls’ restroom and stood over a bathroom stall to view this girl using the toilet. California Assembly Bill 1266, passed in 2013, permits a boy identifying as a girl on any particular day to share a locker room with girls. This law continued the work of SB 777, signed in 2007, redefining “gender” to be one’s self-perception, regardless of birth gender.
- Highland Local Schools in Ohio is currently fighting in federal court to maintain separate-sex sleeping facilities, locker rooms, shower facilities, and restrooms, to ensure the privacy and dignity of all students.
- Preparing to change her clothes in a Midland, Michigan Planet Fitness women’s locker room, member Yvette Cormier encountered a man wearing a wig. Feeling threatened and intimidated by this man in an area where women undressed and showered, Cormier spoke to a front desk employee who informed her that a man could use the women’s locker room if he believes he is a woman. Cormier verified with Planet Fitness’s corporate office that the company has a “no-judgment” policy, allowing use of changing rooms based on self-reported gender identity. When Cormier warned other women of this policy, Planet Fitness revoked her membership. Cormier filed suit based on invasion of privacy and violations under Michigan’s Elliott-Larsen Civil Rights Act. The Michigan Supreme Court ruled that her case could go to trial.

- Following a four-year prison sentence for sexually assaulting a five-year-old girl and a 27-year-old mentally-challenged woman, Canadian sexual predator Christopher Hambrook (aka Jessica) moved into two Toronto homeless shelters where he sexually victimized two women, the first a deaf and homeless woman, and the second a domestic abuse survivor. Hambrook claimed to be transgender, despite psychiatric reports indicating otherwise. The Ontario Human Rights Code, updated in 2012, facilitated Hambrook's right to reside in women's homeless shelters, sharing bedrooms and bathrooms with homeless women.
- If Ohio HB 369 becomes law, the Ohio Civil Rights Commission could theoretically file complaints against women's domestic abuse shelters for refusing access to biological men who identify as women. Based on an erroneous application of a city public accommodations ordinance, the Equal Rights Commission in Anchorage, Alaska filed such a complaint against a women's domestic abuse shelter. A drunken biological man identifying as a woman was refused admission for an overnight stay, where he would have slept within three feet of women and shared bathroom and shower facilities. Fortunately, the complaint was dismissed due to an exception in the public accommodations ordinance for homeless shelters, including women-only shelters. HB 369 contains no such exceptions for homeless- or domestic abuse shelters.
- In a co-ed dormitory with gender-neutral bathrooms at The University of Toronto, male students were caught on two occasions in September 2015 holding cell phones over female shower stalls to film women showering. "To provide a safe space for ...women...impacted by...voyeurism and other students who may feel more comfortable in a single gender washroom...", the University temporarily converted almost half of the washrooms in the dormitory to single sex.
- Students in Palatine, Illinois sued their school district for opening its schools' restrooms and locker rooms to the opposite sex, a blatant violation of Title IX. Parents were not informed of the policy change. The students claimed that permitting boys into girls' showers, bathrooms, and locker rooms is sexual harassment, which fails to protect all students' privacy and dignity. Title IX's existing regulations specifically state that a school receiving federal funds can "provide separate toilet, locker room, and shower facilities on the basis of sex" without putting the school's funding at risk.
- While it seems to be girls and women who have their safe, private spaces violated more often, boys can also be victims. Without informing students or their parents, the Boyertown Area School District in Pennsylvania changed its policy to allow students who identify with the opposite sex to access opposite-sex private facilities. In October 2016, Joel Doe was changing for gym in the boys' locker room, and noticed a female student (who identifies as a male) also changing in the locker room. Both students were in a state of undress. When the boy reported the incident to his assistant principal, he was told to "tolerate it" and "make it as natural as possible." Similarly, when a female student encountered a boy washing his hands in the girls' bathroom, and reported it to school administration, the student was made to feel that *she* was wrong for feeling uncomfortable, unsafe, and vulnerable with a boy in her bathroom.

- After the City Schools of Decatur, Georgia approved a new transgender restroom policy, a five-year-old kindergarten girl was reportedly sexually assaulted in the girls' bathroom by a boy at her elementary school. The school refused to change or alter its policy, forcing the mother to remove her daughter from the school for the child's emotional and physical safety. The child's family filed a complaint with the U.S. Department of Education based on Title IX violations by the school district. The agency is investigating whether the school district failed to provide a prompt response to a report that the girl was sexually assaulted, whether the implementation of this policy contributed to creating a hostile environment for the student and other girls in noncompliance with Title IX, and whether the district retaliated against the student's parent for reporting the sexual harassment.

While I sympathize with the needs of a person to use a bathroom, reasonableness dictates that dressing rooms, locker rooms, and showers are a different matter. Beliefs about gender should not be a license to violate privacy inside boys' or girls' locker rooms and restrooms. Gender identity rights of transgenders, who represent a small fraction of one percent of the population, should not trample the privacy rights of the 99-plus percent of the population who are not transgender. Safety and privacy concerns require that biological males, be they transgender or pretend-transgender, should not have free access to women and children at their most vulnerable time, changing and showering in a locker room.