

118TH CONGRESS
1ST SESSION

S. RES. 144

Recognizing that it is the duty of the Federal Government to develop and implement a Transgender Bill of Rights to protect and codify the rights of transgender and nonbinary people under the law and ensure their access to medical care, shelter, safety, and economic security.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. MARKEY (for himself, Mr. SANDERS, Mr. MERKLEY, Ms. WARREN, Ms. HIRONO, and Ms. SMITH) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Recognizing that it is the duty of the Federal Government to develop and implement a Transgender Bill of Rights to protect and codify the rights of transgender and nonbinary people under the law and ensure their access to medical care, shelter, safety, and economic security.

Whereas an estimated 1,600,000 transgender adults live in the United States;

Whereas title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) requires equal treatment under the law regardless of sex;

Whereas the Supreme Court of the United States affirmed in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020), that Federal protection against discrimination on

the basis of sex includes protection from discrimination on the basis of sexual orientation and gender identity;

Whereas, despite these protections, transgender people still experience discrimination in—

- (1) medical care;
- (2) employment;
- (3) housing;
- (4) education;
- (5) lending; and
- (6) other basic necessities;

Whereas State lawmakers introduced more than 300 bills attacking the rights of LGBTQI+ people, and transgender people in particular, in the first 6 weeks of 2023;

Whereas the right of transgender and nonbinary people to seek lifesaving gender-affirming care is under threat across the United States;

Whereas the provision of best-practice, age-appropriate, gender-affirming health care is endorsed by the American Academy of Child and Adolescent Psychiatry, the American Academy of Family Physicians, the American Academy of Nursing, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American College of Physicians, the American Counseling Association, the American Heart Association, the American Medical Association, the American Nurses Association, the American Osteopathic Association, the American Psychiatric Association, the American Psychological Association, the American Public Health Association, the American Society of Plastic Surgeons, the Endocrine Society, the National Association of Nurse Practitioners in Women's Health, the Pediatric Endocrine Society, the Society for Adolescent Health and Medicine, the World

Medical Association, and the World Professional Association for Transgender Health;

Whereas transgender and nonbinary people—

(1) face significant barriers to legal recognition of their truest selves on government documentation and identification;

(2) experience disproportionately high rates of poverty, homelessness, violence, and suicide; and

(3) detained in jails, prisons, and immigration detention centers are especially vulnerable to violence and abuse and are often deprived of gender-affirming resources and health care;

Whereas transgender and nonbinary people—

(1) make unique, valuable contributions to American society and culture worth honoring and celebrating;

(2) have existed throughout history across the globe, demonstrating resilience, bravery, and authenticity; and

(3) are parents, siblings, children, chosen family, and friends deserving of human dignity and support: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) the Federal Government has a duty to pro-
3 tect the rights of transgender and nonbinary people
4 by implementing a “Transgender Bill of Rights”
5 that includes—

6 (A) ensuring transgender and nonbinary
7 people have equal access to services and public
8 accommodations that align with their gender
9 identity by—

1 (i) amending the Civil Rights Act of
2 1964 (42 U.S.C. 2000a et seq.) to prohibit
3 discrimination on the basis of sex, includ-
4 ing gender identity and sex characteristics,
5 in public accommodations and federally
6 funded programs and activities;

7 (ii) expanding the definition of public
8 accommodation to address the full range of
9 places and services that members of the
10 general public utilize;

11 (iii) explicitly clarifying that it is ille-
12 gal to discriminate on the basis of sex, in-
13 cluding gender identity or sex characteris-
14 ties, in public accommodations and services
15 on religious grounds; and

16 (iv) amending Federal education laws
17 to ensure that those laws protect students
18 from discrimination based on sex, includ-
19 ing gender identity and sex characteristics,
20 and guarantee the rights of students to—

21 (I) participate in sports on teams
22 and in programs that best align with
23 their gender identity;

24 (II) use school facilities that best
25 align with their gender identity;

1 (III) have their authentic identity
2 respected in the classroom; and

3 (IV) have access to curriculum
4 and books that accurately portray the
5 substantive history and identity of
6 LGBTQI+ people and Black, Indige-
7 nous, and people of color;

8 (B) recognizing the right to bodily auton-
9 omy and ethical health care for transgender and
10 nonbinary people by—

11 (i) strengthening, implementing, and
12 enforcing prohibitions on discrimination in
13 the provision of health care on the basis of
14 sex, including on the basis of actual or per-
15 ceived gender identity or sex characteris-
16 tics;

17 (ii) eliminating unnecessary govern-
18 mental restrictions on the provision of, and
19 access to, gender-affirming medical care
20 and counseling for transgender and non-
21 binary adults and youth;

22 (iii) ensuring that health care pro-
23 viders following standards of care for
24 transgender and nonbinary people are not

1 targeted for criminal or civil penalties, or
2 for professional discipline;

3 (iv) protecting children from forceful
4 removal from supportive homes;

5 (v) protecting providers of gender-af-
6 firming care, reproductive health care, and
7 abortion health care from threats and acts
8 of violence related to their work;

9 (vi) expanding access to competent
10 health care providers serving transgender
11 and nonbinary patients, including by re-
12 cruiting and training more health care pro-
13 viders to provide appropriate care;

14 (vii) expanding telehealth access to
15 provide patients in rural and other under-
16 served locations better access to health
17 care services;

18 (viii) codifying *Roe v. Wade*, 410 U.S.
19 113 (1973), guaranteeing the right to
20 abortion, and codifying the right to repro-
21 ductive health care such as contraceptives
22 and assistive reproductive technology for
23 everyone, including transgender and non-
24 binary people; and

1 (ix) banning the use of forced surgery
2 that violates medical ethics and human
3 rights on intersex children and infants;

4 (C) ensuring transgender and nonbinary
5 people can care for themselves and their fami-
6 lies by fully codifying the judgment of the Su-
7 preme Court of the United States in *Bostock v.*
8 *Clayton County, Georgia*, 140 S. Ct. 1731
9 (2020) by—

10 (i) eliminating hiring and employment
11 discrimination and workforce exclusion by
12 amending title VII of the Civil Rights Act
13 of 1964 (42 U.S.C. 2000e et seq.) to ex-
14 plicitly clarify that employers may not dis-
15 criminate on the basis of actual or per-
16 ceived gender identity or sex characteris-
17 ties;

18 (ii) amending the Fair Housing Act
19 (42 U.S.C. 3601 et seq.) to explicitly clar-
20 ify that it prohibits all forms of sex dis-
21 crimination, including on the basis of gen-
22 der identity or sex characteristics; and

23 (iii) amending the Equal Credit Op-
24 portunity Act (15 U.S.C. 1691 et seq.) to
25 explicitly clarify that it prohibits all forms

1 of sex discrimination, including on the
2 basis of gender identity or sex characteris-
3 tics;

4 (D) providing accessible avenues for legal
5 recognition of transgender and nonbinary iden-
6 tities and guaranteeing full participation in civil
7 life by—

8 (i) eliminating Federal gender identi-
9 fication requirements on government docu-
10 ments that are unnecessary to determine
11 the identity of the holder or are otherwise
12 irrelevant to the purpose of the document;

13 (ii) eliminating burdensome barriers
14 to updating sex and names on passports,
15 Social Security cards, and other forms of
16 Federal Government identification and
17 records, permitting, where possible,
18 changes on self-attestation alone;

19 (iii) requiring that an “X” marker be
20 available on Federal Government identi-
21 fication and records that still require gen-
22 der;

23 (iv) requiring States to permit voters
24 to update their name and gender on their

1 voter registration and vote on the same
2 day of Federal elections; and

3 (v) making explicit that existing Fed-
4 eral statutes prohibiting sex discrimination
5 in jury service also prohibit discrimination
6 based on gender identity and sex charac-
7 teristics;

8 (E) strengthening the safety of
9 transgender and nonbinary people by—

10 (i) investing in community services to
11 prevent intimate partner, family, and com-
12 munity violence against transgender and
13 nonbinary people and expand services for
14 transgender and nonbinary survivors;

15 (ii) investing in mental health services
16 and suicide prevention programs designed
17 for transgender and nonbinary people;

18 (iii) banning fraudulent and harmful
19 so-called “conversion therapy” practices;

20 (iv) ensuring robust regulations and
21 procedures that affirm that claims for im-
22 migration relief or asylum based on perse-
23 cution related to gender, sexual orienta-
24 tion, gender identity, and sex characteris-

1 ties are protected grounds in the context of
2 asylum adjudications; and

3 (v) exploring policies and practices
4 that would improve the safety of
5 transgender and nonbinary individuals in-
6 carcerated in jails, prisons, and immigra-
7 tion detention facilities, and ensure that
8 those populations of transgender and non-
9 binary individuals have access to gender-
10 affirming care, appropriate services, and
11 commissary items; and

12 (F) actively enforcing the civil rights of
13 transgender and nonbinary people by all gov-
14 ernment agencies including by—

15 (i) requiring the Attorney General to
16 designate a liaison within the Civil Rights
17 Division of the Department of Justice
18 whose job is dedicated to advising on and
19 overseeing enforcement of the civil rights
20 of transgender and nonbinary people; and

21 (ii) appropriating the funds necessary
22 to fully staff and support the enforcement
23 of these rights across agencies;

24 (2) the actions listed in this resolution are only
25 the first steps toward transgender equality;

1 (3) to carry out the goals in this resolution,
2 Federal agencies must collect gender identity and
3 sex characteristics information on a voluntary, con-
4 fidential basis solely for equity and public health
5 purposes in key Federal surveys;

6 (4) the Federal Government must make an on-
7 going commitment to the rights of transgender and
8 nonbinary people; and

9 (5) policies concerning transgender rights must
10 be led and informed by transgender communities, in
11 particular Black and Indigenous women who face
12 heightened risk of violence, poverty, discrimination,
13 and other harm due to their intersecting identities.

○