

Senate Judiciary Committee

Brendan Bunnell 271-4063

HB 1442-FN, limiting the use of certain facilities on the basis of sex and redefining the term "gender identity."

Hearing Date: April 2, 2026

Time Opened: 4:47 p.m.

Time Closed: 6:03 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Altschiller and Reardon

Members of the Committee Absent: Senator Carson

Bill Analysis: This bill:

I. Modifies statutory construction of the term "gender identity".

II. Requires bathrooms and locker rooms in public schools and municipally owned buildings to be used on the basis of sex.

III. Permits owners and operators of places of public accommodation to restrict the use of bathrooms and locker rooms on the basis of sex.

IV. Requires that inmates in New Hampshire correctional facilities be housed separately on the basis of their sex.

V. Modifies the enforcement of civil rights to provide protections on the basis of gender identity only for certain purposes.

Sponsors:

Rep. Layon

Rep. Barbour

Rep. Reinfurt

Rep. Peternel

Rep. McGrath

Rep. Popovici-Muller

Rep. Sabourin dit

Rep. Mazur

Rep. DeVito

Choiniere

Rep. Love

Sen. Birdsell

Sen. Avard

Sen. Gannon

Who supports the bill: 25 Individuals signed in support of the bill. For a complete list of those who signed in support please contact the Senate Judiciary Committee Aide.

Who opposes the bill: 398 Individuals signed in opposition to the bill. For a complete list of those who signed in opposition please contact the Senate Judiciary Committee Aide.

Who is neutral on the bill: Philip Sherman.

Summary of the testimony presented:

Representative Erica Layon introduced the bill. She stated the bill limits the use of certain facilities based on biological sex and creates a statutory definition of gender identity aligned with what she described as biological reality.

- She said the bill answers the question of what a woman is using genetics, specifically referencing the SRY gene, which she said can be tested through a cheek swab or blood test.
- She explained the bill attempts to handle disorders of sexual development more comprehensively than other frameworks, including accounting for 46XX and 46XY karyotypes and the presence of ovarian tissue in edge cases. She stated that if someone does not have a functional SRY gene, they are not male. She referenced a federal Title IX investigation into the ConVal School District involving locker room access and said the bill was motivated by concerns about privacy for female students.
- She argued current New Hampshire law allows ambiguity where terms like man and woman are interchangeable, which she said undermines protections for women, including in programs for pregnant or nursing women.
- She emphasized that the bill ensures that spaces labeled for women or girls are limited accordingly, while also allowing for all gender restroom options.
- She described the bill as addressing fairness, privacy, and safety, not exclusion.
- Senator Gannon asked what level of judicial scrutiny would apply and whether the bill would be evaluated under strict scrutiny and a compelling state interest standard.
 - o Representative Layon responded that the bill works at the level of statutory construction and definitions, not by layering restrictions, and said that by clearly defining male and female in statute it addresses the root issue rather than relying on courts to interpret ambiguous language. She explained that currently the interchangeable use of terms like man and woman means protections intended for women can be applied to anyone, and she stated this bill corrects that at the definitional level.
- Senator Altschiller asked about her reference to fourth grade girls sharing restrooms with transgender representatives.

- o Representative Layon responded that she believes the issue is less prevalent now than in prior terms but referenced a former transgender representative who is now serving a prison sentence for crimes involving children. She stated that some of her colleagues had direct experiences where they felt uncomfortable when that individual entered their personal space and described it as a repeated pattern that made people uneasy, adding that those who have not had that experience may not understand the concern.
 - Senator Altschiller asked why that same concern is not applied to other individuals accused or convicted of crimes and whether that logic should extend broadly to restrict access across the board.
 - o Representative Layon responded that the concern she is raising is based on direct experiences relayed by colleagues and not a generalized accusation against all individuals. She then described how she would approach the issue if the law applied to the State House, stating she would designate some bathrooms, such as those on the first floor, as all gender while maintaining other spaces that are restricted by sex. She explained that some people are comfortable with shared spaces while others are not and said there should be options to accommodate both.
 - o She referenced her college experience living in a coed dorm where some floors chose coed bathrooms while others chose single sex arrangements, stating that flexibility allowed people to choose what made them comfortable. She added that some individuals may need to walk farther to access a space that meets their needs but that this approach respects different preferences and experiences, including those who may have trauma and want single sex spaces.
- Senator Altschiller asked why women and girls would be subject to cheek swab testing.
 - o Representative Layon responded that there would be no routine testing and that she would not intend for anyone to be tested unless there was a dispute over access. She explained that testing would only come into play if someone was denied access and wanted to demonstrate eligibility.
 - o She then went into detail on the statutory definitions, stating that a female is defined as an individual with a reproductive system that in normal function produces ova and specifically one who lacks a functional Y chromosome, including XX and related karyotypes.

- o She stated that male is defined as an individual with a reproductive system that in normal function produces sperm and that anyone who does not meet the definition of female is classified as male under the bill. She explained that this approach allows the law to address edge cases while still drawing a clear line. She added that if someone does not want to undergo testing or does not meet the definition, they could choose to use all gender facilities instead of accessing sex specific spaces.
- Senator Gannon asked whether the bill is intended to protect women’s privacy as a compelling state interest.
 - o Representative Layon responded yes.
- Senator Gannon asked whether cheek swabs would be used broadly, such as for all students, noting that schools already have records of biological sex.
 - o Representative Layon responded that she would have no intention of testing everyone and reiterated that the cheek swab concept is only for situations where someone needs to prove eligibility after being denied access. She explained that in most cases there would be no question and no need for testing.
- Senator Gannon asked again about the compelling state interest and whether protecting privacy in bathrooms and locker rooms is the goal of the bill.
 - o Representative Layon responded yes and reaffirmed that privacy is a central purpose.
- Senator Altschiller asked why all gender restroom solutions, which she referenced multiple times, were not fully built into the bill as a requirement.
 - o Representative Layon responded that the bill already includes all gender options in multiple places, referencing specific lines where all gender facilities are permitted as an option. She added that she has an amendment prepared that would direct the building code review board to update the state building code to align with the bill so that facilities can include all gender options without delay. She explained that the bill allows for multi user spaces that are either designated by sex or designated as all gender, giving flexibility while still maintaining protected spaces.

Steven Scaran testified in support. He argued that women and girls deserve their own private spaces, including bathrooms, locker rooms, and prisons.

- He stated that sex is determined at conception rather than assigned at birth and said lawmakers should require clear definitions of what constitutes a woman.

He argued that transgender women are men and that allowing them access to women's spaces is not necessary for equality because they already have access to men's facilities.

- He dismissed concerns about enforcement, stating that the possibility of people violating a law is not a reason to avoid passing it. He also addressed suicide arguments, stating there is no reliable evidence that access to facilities reduces suicide rates and that such claims are often based on advocacy group surveys rather than objective data.
- He argued suicide is complex and cannot be attributed to a single cause.
- He concluded that transgender individuals will continue to exist regardless of policy but that the law should still define and enforce boundaries, and he urged support for the bill.

Representative Timothy Horrigan testified in opposition. He stated he is a member of the House Judiciary Committee, which unanimously rejected the bill.

- He explained that some members believed the bill was redundant because other legislation addressed similar issues, while others, including himself, believed it was substantively flawed.
- He acknowledged that defining biological sex is difficult and gave the sponsor some credit for attempting it, but argued the definition in the bill is inadequate. He specifically pointed out that the requirement involving functional ovarian tissue would exclude women who have had hysterectomies, meaning individuals widely recognized as female would not meet the definition.
- He shared an anecdote about a colleague joking she would have to use the men's room under the bill. He also noted broader issues with the bill and criticized the legislative process that allowed it to advance, suggesting leadership pushed multiple bills forward along party lines. He recommended the Senate find the bill inexpedient to legislate.
- Senator Altschiller asked whether the committee recommendation was interim study.
 - o Representative Horrigan responded yes, clarifying the bill was referred for interim study, initially placed on the consent calendar, and later removed.

Representative Nancy Brennan testified in opposition. She discussed scientific uncertainty around gender identity and referenced studies suggesting biological and developmental influences.

- She described the case of the Reimer twins to illustrate that gender identity cannot be reassigned purely through upbringing. She also cited research showing higher rates of transgender identity among identical twins compared to fraternal twins, suggesting possible biological factors.
- She referenced studies examining brain structure differences in transgender individuals prior to medical intervention.
- She emphasized that these findings are not conclusive but demonstrate complexity and uncertainty.
- She urged lawmakers to pursue interim study and hold listening sessions involving diverse perspectives, including transgender individuals and supporters of the bill, emphasizing the importance of mutual understanding rather than immediate legislative action.

Pasha Roberts of 603 Equality testified in opposition. Identified as intersex and stated that sex determination involves many genes and biological processes, not just the SRY gene.

- Explained that there are over 80 genes involved in sexual differentiation and argued the bill oversimplifies biology.
- Gave examples of individuals who are XY but develop as female and presented a case of a model with XY chromosomes to illustrate this point.
- Stated the Olympics previously used SRY testing but abandoned it decades ago due to inaccuracies and unintended consequences, including identifying intersex individuals unintentionally.
- Cited Andrew Sinclair, the scientist who discovered the SRY gene, as opposing its use for sex classification. She also raised concerns about aging, stating many men lose the Y chromosome over time, which could create contradictions under the bill.
- Questioned the cost of testing, noting genetic tests can cost around \$1,000 and asking who would pay for them.
- Argued the bill would create enforcement problems, inaccuracies, and legal challenges.

- Senator Altschiller asked whether the state should follow the recommendation of the scientist who discovered the SRY gene and avoid using it for classification.
 - Pasha Roberts responded yes and reiterated the scientific limitations and risks.
- Senator Altschiller asked whether the SRY test is unreliable in older individuals and could produce false results.
 - Pasha Roberts responded yes, explaining the Y chromosome is fragile and often degrades with age.
- Senator Altschiller asked whether the science used in the bill is inconclusive and discouraged by experts.
 - Pasha Roberts responded yes and stated expert testimony supports that conclusion.

Aimee Terravechia testified in opposition as executive director of 603 Equality.

- She summarized repeated testimony from prior sessions, stating that experts, scientists, business leaders, and residents have consistently opposed similar bills.
- She argued such legislation is overly simplistic, difficult to enforce, harmful to New Hampshire's economy, and part of broader national political strategies rather than local needs.
- She emphasized concerns from caregivers, business owners, and residents about safety, enforcement, and privacy.
- She stated constituents view these bills as divisive and unnecessary and urged the committee to reject the bill.
- Senator Gannon asked whether she could propose an alternative definition of biological sex.
 - Amy Tebbets responded that biological sex is too complex to define legislatively and noted there are many variations that make a single definition impractical.

Claire Abernathy testified in support. She described her experience as a detransitioner who underwent medical interventions as a minor, including hormone treatment and surgery.

- She explained that when she later attended a new school and was placed in male spaces, she was quickly identified as female and experienced physical and sexual assault.
- She stated she was not protected in those environments and argued that sex based distinctions are important for safety.
- She said the bill would have protected her by preventing her placement in male spaces and emphasized that biological differences in strength and vulnerability matter.

Simon Amaya Price testified in support. He described his personal experience of previously identifying as transgender and later changing course.

- He stated he was not paid to testify and is motivated by concern for future generations.
- He said he wants to ensure children are not misled and that women's spaces remain protected.
- He framed the issue as choosing truth over comfort and urged lawmakers to pass the bill for the safety of future families.

Rebecca Hoskins testified in opposition. She described herself as gender nonconforming and biologically female and explained that her appearance varies.

- She argued the bill would make public spaces less safe and be difficult or impossible to enforce.
- She cited an incident where a cisgender woman was wrongly removed from a restroom due to misidentification, highlighting risks of subjective enforcement.
- She questioned how the law would be applied in practice and whether individuals would be subjected to invasive verification.
- She stated the bill could lead to harassment and discrimination and urged rejection.

Rachel Stajduhar testified in opposition.

- She focused on economic impacts, stating the bill could worsen declining enrollment at UNH and drive away out of state students who pay higher tuition. She said many students choose colleges based on state policies and that restrictive laws could deter them.

- She also cited broader workforce challenges and “brain drain” in New Hampshire.
- She referenced North Carolina’s experience losing billions in economic activity due to similar legislation, including canceled business expansions and events. She warned of legal costs to defend the bill and argued the state cannot afford those consequences.

Todd Ayer of HRC testified in opposition.

- He criticized the bill as misplaced compared to other safety concerns, particularly firearm policies.
- He argued that focusing on bathroom access while expanding gun access is inconsistent.
- He warned that advocacy groups would strongly oppose such legislation and stated that LGBTQ communities have the resources to challenge it politically and legally.

Eli Orne testified in opposition on behalf of a transgender individual.

- He described how the bill would force transgender men into female spaces where they would not be perceived as belonging, creating discomfort and safety risks for everyone involved.
- He explained that enforcement would require intrusive verification and could force individuals to disclose private medical information.
- He argued the bill would make it difficult or impossible for transgender individuals to safely access public facilities.

Sam Hawkins testified in opposition on behalf of NAMI New Hampshire.

- He highlighted the mental health impact of stigma and discrimination, stating that both legislation and ongoing public debate negatively affect transgender and nonbinary individuals.
- He emphasized data showing increased mental health challenges in these populations and urged lawmakers to focus on policies that improve mental health outcomes rather than exacerbate harm.

Hazel Kane testified in opposition. She described personal experiences with harassment and violence and stated that laws like this would not change behavior but would increase harm.

- She expressed that she would continue to use facilities consistent with her identity regardless of penalties and described her identity as rooted in brain and lived experience rather than chromosomes or anatomy.
- She stated the bill would lead to more confrontation and violence rather than resolution.
- Senator Altschiller asked about her background and residency.
 - Hazel Kane responded that she is a lifelong New Hampshire resident, a law student, and indicated concern that policies like this could drive people like her out of the state.

Shelly Jo Lamb stated for the record that they were speaking in a personal capacity as a citizen and not on behalf of any official role. They explained that they work for DCYF in Nashua and have been there for four years, and that they live in Manchester.

- Described a longer career prior to that, including fourteen years working for the state of Kansas, where they had intended to spend their entire career. They explained that after coming out as transgender, they experienced severe mistreatment in Kansas due to a lack of legal protections, which ultimately forced them to leave.
- Said they researched where to relocate and chose New Hampshire specifically because of its “Live Free or Die” motto, which they described not just as a slogan but as a promise that had been fulfilled for them.
- Explained that they have built a life in New Hampshire, including a spouse and child, and expressed gratitude for being able to serve the public in their role.
- Stated that the bill would negatively impact them because they have consistently used the women’s restroom at their workplace for the past four years and are treated as one of the women in the office.
- Described how being forced to use the men’s room would be uncomfortable for both them and their coworkers and would create an unreasonable situation.
- Explained that the alternatives available would be either uprooting their life again and leaving the state or ignoring the law and risking legal or employment consequences, which would affect their family.
- Strongly opposed the bill, stating that similar proposals have been rejected by governors of both parties, and argued that the bill is inexpedient to legislate.

- Concluded by saying they would continue to live according to the “Live Free or Die” principle regardless of government action. There were no questions.

Tonia Kregger of Brookline testified in opposition and explained that she had compiled a list of individuals charged or convicted of crimes such as indecent exposure or harassment in bathrooms or locker rooms.

- She read multiple names and stated that none of those individuals were transgender women.
- She argued that she had not found any cases of transgender women being charged with such offenses, aside from a single ConVal-related situation which she described as being elevated by advocacy organizations.
- She argued that the bill is a solution in search of a problem and compared the current moment to past moral panics such as the “satanic panic.”
- She stated that both science and social norms do not support the premise of the bill. She identified herself as a transgender feminine person and explained that although her identification documents reflect her gender, she currently does not feel she would be accepted in a women’s restroom based on her appearance, but that after further transition that would change.
- She explained that forcing individuals into spaces that do not align with how they present could create safety risks. She expressed support for gender inclusive restrooms but questioned how they could be implemented when the bill claims no fiscal impact.
- She also emphasized her contributions to New Hampshire as a long-term resident, homeowner, and taxpayer, and warned that legislation like this could make the state less welcoming and drive people away.

Scott Phyles of Somersworth testified in opposition and thanked the committee for allowing extended testimony.

- He explained that there have been multiple similar bills and ongoing debate over various edge cases such as intersex individuals and caretaking situations, but argued that the root issue stems from fear about men in women’s bathrooms.
- He identified himself as a transgender man and explained that although he was assigned female at birth, he lives as a man and uses men’s restrooms. He stated that under the bill he would be required to use women’s restrooms, which he said would be both illogical and unsafe.

- He explained that his gender identity is not defined by genetics and that requiring him to use women’s spaces would put him in situations where others might react negatively or aggressively. He emphasized that transgender women are the primary targets of such legislation and are at higher risk of violence and discrimination.
- He acknowledged that as a transgender man he experiences a different level of risk and privilege compared to transgender women and stated that his testimony was intended to highlight that broader impact.
- Senator Abbas asked whether he would object to private businesses being allowed to set their own restroom policies and enforce them, including limiting liability for discrimination claims.
 - Scott Phyles responded by questioning how such policies would be enforced in practice, noting that he has never been questioned when using a men’s room but that being forced into a women’s room could lead to suspicion or confrontation, especially if others perceived him as a man entering that space. He explained that complying with such rules could put him at personal risk despite not posing any threat to others.
- Senator Altschiller asked whether the bill primarily targets women and whether transgender men are affected only indirectly.
 - Scott Phyles responded that he believes the bill is primarily aimed at transgender women and that he is affected as a secondary consequence. He emphasized that transgender women face significantly higher levels of violence and discrimination and that much of the rhetoric surrounding these bills is based on misunderstanding of transgender identity.

Representative Kelly Potenza testified and stated that the bill is intended to address bad actors rather than target transgender individuals generally.

- She said she works with transgender colleagues whom she respects and would have no issue with them using appropriate facilities. She argued that the concern is individuals who falsely claim an identity in order to engage in inappropriate or criminal behavior such as exposing themselves.
- She emphasized that the bill is broader than just bathrooms and includes situations such as locker rooms and prisons.
- She stated that there would not be widespread enforcement measures like testing, but rather accountability in situations where misconduct occurs.

- She referenced reports from other states, including Maine, involving placement of biological males in female prisons and resulting violence, arguing that guardrails are necessary to prevent such outcomes.
- She stated that definitions are necessary in law to maintain order and that the bill is not intended to create hostility but to address real safety concerns.
- Senator Reardon asked whether existing criminal laws already address the type of behavior she described.
 - Rep. Potenza responded that while criminal laws exist, they are not always being enforced effectively in these contexts and gave an example of a Planet Fitness location where a person allegedly exposed himself in a women’s locker room but management said they could not act because of gender identity protections.
 - She also described a situation involving a retail store where a similar complaint was made but no action was taken. She argued that current law creates a loophole that allows bad actors to avoid consequences by claiming a gender identity.
 - Senator Reardon followed up by stating that individuals can call law enforcement if they are victims of a crime and that criminal behavior should be addressed through existing criminal statutes rather than new legislation that affects others.
 - Rep. Potenza responded that she agreed criminal behavior should be addressed but maintained that current protections are preventing appropriate enforcement in some situations and that the bill is intended to close that gap.