

Senate Judiciary Committee

Pete Mulvey 271-4063

HB 148, permitting classification of individuals based on biological sex under certain circumstances.

Hearing Date: May 6, 2025

Time Opened: 3:19 p.m.

Time Closed: 5:01 p.m.

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

Members of the Committee Absent : Senator McConkey

Bill Analysis: This bill permits classification of individuals based on biological sex in lavatory facilities and locker rooms, sporting competitions, and detention facilities.

Sponsors:

Rep. Kofalt

Rep. Alexander Jr.

Rep. Osborne

Rep. Sweeney

Rep. Peternel

Rep. Sirois

Rep. Seidel

Rep. Packard

Rep. Bernardy

Sen. Innis

Sen. Murphy

Sen. Avard

Sen. McGough

Sen. Sullivan

Who supports the bill: 40 individuals supported HB 148. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: 603 individuals opposed HB 148. Contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: One individual was neutral toward HB 148. Contact peter.mulvey@gc.nh.gov for further details.

Summary of testimony:

Representative Jim Kofalt

Hillsborough – District 32

- Rep. Kofalt stated that HB 148 was similar to HB 396 from 2024, and SB 268 from 2025.
- HB 148 permitted the recognition of biological sex as a criterion for appearing in bathrooms, participating in athletics, and for matters subject to the department of corrections.
- HB 396 passed both chambers yet was vetoed by Governor Sununu in 2024.

- Rep. Kofalt reported that in the town of Milford, a 17-year-old biological male who identified as female routinely entered the girl's locker room to ridicule the girls changing and would bring their friends along as well.
- The story made national news, as the local school board did not want to restrict the behavior out of fear of a lawsuit. The school board decided to decommission urinals from boys bathrooms to make all bathrooms stalled.
- Rep. Kofalt emphasized that HB 148 does not mandate any policy.
- The intention of the bill is not to assert individuals or groups as predatory.
- There are people who made no effort to present as the gender they identified as, and schools, businesses, and others were powerless to do anything about it according to Rep. Kofalt.
- HB 148 is a common sense, local control compromise.
- There had been bills in both chambers relative to athletics that mandated separation of males and females. HB 148 did not mandate separation but enabled it.
- Sen. Reardon asked if HB 148 would exclude anyone whose birth sex is female from using a particular facility.
 - Rep. Kofalt said no.
- Sen. Reardon asked if a transgender woman would be excluded from certain bathrooms under HB 148.
 - Rep. Kofalt said no, given that HB 148 was not a mandate. Whether or not an individual would be allowed to use the restroom of their choice would be left up to the school, athletic association, or other organization.
 - If a school had three bathrooms, they could designate two as sex specific spaces and maintain the last restroom as a space.
- Sen. Reardon asked how the bill would be enforced.
 - Rep. Kofalt said that gendered spaces have existed, and said if you break the policy, then the administration of the school, or whoever, would get to decide what enforcement looked like.
- Sen. Altschiller asked if it was fair to say that the impact of HB 148 fell directly on transgender granite staters.
 - Rep. Kofalt said it affected many people in the State. The current law adversely impacted those who hoped for privacy.
 - Rep. Kofalt maintained that there is a balance between privacy, respect and security.
- Sen. Altschiller referred to Governor Sununu's veto, and the examples Rep. Kofalt cited, and asked if they had happened after the veto.
 - Rep. Kofalt said at least one of the circumstances he described had occurred prior to the veto and was used in testimony at the time.
- Sen. Altschiller asked if the State had laws to address stalking, harassment, and bullying, and asked why those existing laws were not sufficient in the aforementioned examples.
 - Rep. Kofalt said that such laws did exist and maintained that they must be enforced. In schools, enforcement was not consistent. There may be a particular oversensitivity to the situation, which enabled its persistence, and the school boards may feel powerless doing anything about it.
 - While bullying should have and could be specifically addressed, there was a larger issue of women, girls, and boys not having sufficient privacy particularly as they are developing and maturing.
 - The aforementioned examples were over the line and should have been enforced, and Rep. Kofalt affirmed that the legislature had the authority to draw the line closer to prevent any recurrences.

- Sen. Altschiller asked Rep. Kofalt if he would agree that transgender boys and transgender girls deserved privacy and accommodation in private spaces.
 - Rep. Kofalt said absolutely
- Sen. Altschiller asked if transgender boys shouldn't use the restroom correlating with their gender.
 - Rep. Kofalt believed it ultimately came down to allowing flexibility where everyone could feel safe. There could be a bathroom assigned for biological sex, and a restroom which did not have a gendered requisite. The lack of mandates, and the flexibility provided, is what made the bill a compromise.
- Sen. Altschiller asked to elaborate on the comment surrounding multiple bathrooms and asked if that was a repeat of the separate but equal standard.
 - Rep. Kofalt said that bathrooms in the same school could not be so unequal as to constitute discrimination analogous to 'separate but equal'.
- Sen. Altschiller asked if the bill applied to more than schools.
 - Rep. Kofalt said that was correct.
- Sen. Altschiller asked if Rep. Kofalt was asking transgender individuals to self-segregate.
 - Rep. Kofalt reiterated that he was proposing flexibility to allow everyone to be comfortable.
- Sen. Reardon asked if the expectation was that an individual, who identified as a woman, and looked feminine, would now use the men's bathroom without a concern for safety. Sen. Reardon contended the notion that a third bathroom would be built across schools.
 - Rep. Kofalt maintained that the expectation was that there would be enough flexibility so that options existed for everyone.
- Sen. Gannon asked if prisons under the Department of Corrections were subject to the bill due to the compelling interest in safety among the population.
 - Rep. Kofalt said that was one reason to include prisons and referred to a Department of Justice memo which detailed that they handled such matters on a case-by-case basis to weigh and protect everyone's safety.
- Sen. Gannon noted that sporting competitions had definitions for biological sex. Sen. Gannon asked if those were included because of a compelling state interest in safety.
- Sen. Gannon asked Rep. Kofalt if he was okay with non-contact sports and intramural sports being left untouched.
 - Rep. Kofalt reiterated that any decision or policy would be up to the school or organization.
- Sen. Gannon asked if a school found limitations appropriate then they could classify by sex.
 - Rep. Kofalt said that was true
- Sen. Altschiller asked if the flexibility provided by HB 148 was flexible discrimination.
 - Rep. Kofalt reiterated that there must be a balance between all individuals' privacy and safety.

Miya Engelbert

- Miya Engelbert opposed HB 148.
- HB 148 had no objective definition for biological sex.
- There are many chromosomal options aside from XX and XY.
- There needed to be more specific criteria in HB 148.

- Any effort to legislate where people may go to the bathroom, or where they may change would never fall in a clear box.
- There were more pressing issues in the state, namely education funding, and health care, among other things.
- Businesses would be free to draw and enforce their own criteria.
- The true intent of the bill was to reduce the number of spaces where transgender individuals could feel safe or free from discrimination.
- Ms. Engelbert asked that the bill be considered inexpedient to legislate.

Dana Finazzo

- Ms. Finnazo opposed the bill.
- Ms. Finnazo shared that she was sexually assaulted by a man in a bathroom.
- Ms. Finnazo broke the man's nose in response.
- At no point, between the entry, assault, screams, or fight back, did anyone come to Ms. Finnazo's aid.
- Ms. Finnazo identified herself as a staffer for child protective services.
- Ms. Finnazo cut her hair and wore pant suits, for safety, not aesthetics.
- Ms. Finnazo gave a speech at a venue with a biological sex policy for bathrooms. Someone reported that a man used the womens restroom. Ms. Finnazo, with her short hair and pantsuit, was the man in question.
- Ms. Finnazo was requested to prove her sex via by a police officer, which terrified her.
- Limiting spaces on biological sex did not protect anyone. Predators would incur on private spaces no matter what.
- HB 148 would result in more discrimination, and assault against feminine presenting men or masculine presenting women.

Betsy Harrington

Deering, New Hampshire

- Ms. Harrington supported the bill.
- Segregated spaces have existed and must continue to exist.
- Separation made sense in many circumstances.
- Any place which exposed nudity must remain restricted for members of the same biological sex only according to Ms. Harrington.
- Ms. Harrington maintained that safety, fairness, and body parts were always the guidelines for womens spaces.
- Women had to demand fairness and safety all over again according to Ms. Harrington.
- HB 148 was about safety.

Vivian Murphy

- Ms. Murphy opposed the bill.
- Ms. Murphy reiterated that sex and gender should not be used colloquially.
- Transgender individuals did not wish to hurt anyone.
- Someone exposing themselves is a criminal no matter what.
- If someone exposed themselves in a bathroom, there were consequences.

- Ms. Murphy said that it took 60 years for her to muster the courage to be herself. The current climate scapegoated people like her because they were easy targets.
- Ms. Murphy asked the committee to protect all citizens of New Hampshire.
- Ms. Murphy asked the committee to find the bill inexpedient to legislate.

Shelly Jo Lamb-Connolly

- Ms. Connolly opposed HB 148.
- HB 148's language was misleading. It was not a law against discrimination. In effect, the law allowed discrimination.
- Ms. Connolly used to live in Kansas, and came to New Hampshire to live free or die. Ms. Connolly fled discrimination.
- Similar efforts were proposed nationwide, and on the federal level.
- Ms. Connolly stated that everything that the bill addressed, had existing solutions in other areas.
- Individuals causing issues in bathrooms could be subject to public decency laws, and sports were already regulated by athletic associations and regulatory committees.
- Giving people the right to discriminate against others was a foot in the door to continue attacking transgender individuals.
- The committee was urged to understand that individuals' rights were under attack. The committee was urged to vote against the bill.

Kamren Munz

Manchester, New Hampshire.

- Kamren Munz opposed HB 148.
- Kamren had met with their State Senator, Senator Keith Murphy. Kamren did not believe that Sen. Murphy provided a straight answer to their questions.
- Existing laws written similarly to HB 148 were being challenged or already struck down.
- Kamren clarified that there was a difference between impact and intent.
- Comments that the bill would provide safety were contended with and the committee was urged to listen to trans individuals.
- Everyone in New Hampshire was endangered by bills like HB 148.
- Sen. Altschiller asked if the bill would be considered personal.
 - Kamren said that it was considered personal.

Stephanie Cawley

Conway, New Hampshire

- Ms. Cawley identified herself as a transgender woman.
- The transgender rights bill had not produced an uptick in inappropriate behavior.
- Anecdotes about teenagers' misbehaving lacked details according to Ms. Cawley.
- There are real world experiences to contend with the notion that transgender individuals have behaved inappropriately in bathrooms.
- HB 148 is unenforceable according to Ms. Cawley.
- HB 148 and other bills did not just affect those at the hearing, but those to come, as well.

Avery Roy

- Ms. Roy opposed the bill
- Ms. Roy may be harassed and questioned for activities she has done safely for years under HB 148.
- The bill's effects strictly targeted the transgender population of New Hampshire.
- The bill did not have an enforcement mechanism according to Ms. Roy.
- Friends, family, and children would be questioned on appearance and legitimacy.
- HB 148 does not provide safety to anyone.
- Young individuals and families will not move to New Hampshire to live and work if policies like those enabled by HB 148 persist.
- The committee was urged to oppose the bill.

Representative Timothy Horrigan

Strafford – District 10

- Rep. Horrigan opposed the bill.
- The former governor had vetoed similar bills in the past.
- There was significant scapegoating thrust upon the trans community.
- Transgender individuals just wanted to exist and live authentically.
- The bill lacked a definition of biological sex. There was a certain percentage of the population that is intersex, and neither definitively male or female biologically.
- Sen. Abbas asked Rep. Horrigan if he sat on the house judiciary committee
- Rep. Horrigan said that he did.
- Sen. Abbas asked if any testimony or materials were provided to the committee to effectively regulate what stage a person ought to be amid transitioning that it may be appropriate for that individual to play on the team of their suggested expression.
- Rep. Horrigan said that the New Hampshire Interscholastic Athletic Association had rules which while not entirely popular were fair and workable.
- Most sporting competitions had rules.
- Trans individuals were not a new phenomenon.

Representative Lori Korzen

Coos – District 7

- Rep. Korzen supported the bill.
- Rep. Korzen maintained that sex referred to biological traits, hormones, and anatomy, which were determined at birth.
- However, gender, a social construct, could evolve overtime.
- Rep. Korzen contemplated separation via sex as opposed to gender, given its unchanging status.
- Separation upon gender was the source of confusion according to Rep. Korzen.

Representative Loren Sellig

Strafford – District 10

- Rep. Sellig's daughters raced on the swim team, and lost frequently to other cisgender girls, who were over a foot taller and genetically predisposed to be amazing athletes.

- Rep. Sellig said that women changed in stalls, because they all wanted privacy. No one looked at each other going to the bathroom. They all just made sure they washed their hands.
- Assault and harassment have always come from heterosexual men in an attempt to assert their power.
- Rep. Sellig maintained that someone posing to enter a bathroom as a trans individual was not a trans individual, but a jerk and a predator.
- Rep. Sellig urged the committee to consider the role of appropriate parenting.

Nancy Brennan

Weare, New Hampshire

- Ms. Brennan opposed HB 148.
- When governor Sununu vetoed similar legislation, he said it sought to solve problems which did not occur in New Hampshire.
- The incidents cited by the prime sponsor were ambiguous and there were different views.
- Over the years, there has been a growing willful ignorance, hate, and ostracization.
- Ms. Brennan stated that trans people were fleeing the State of New Hampshire.
- Most who testified on similar bills in the past no longer felt welcome and refused to appear before the committee anymore according to Rep. Brennan.
- The committee was perceived as being uncaring, and unresponsive to public opinion.
- Those who were cisgender had a 1% chance of finding themselves in a bathroom with a trans individual, meanwhile it was inverse for transgender individuals.
- The current law did not harm cisgender individuals but kept transgender individuals safer.
- Policies such as those in HB 148 raised significant risks by 72% between 2018 and 2022, specifically suicide, depression, and other negative outcomes.
- Ms. Brennan stated that in 2025 alone there had been 575 anti-trans bills across the United States.
- The Committee was urged to speak with, and engage with the transgender community. Ms. Brennan maintained that they were neighbors, family, and friends.

Denise Kimball

- Ms. Kimball opposed HB 148.
- HB 148 promoted discrimination according to Ms. Kimball.
- Ms. Kimball believed that the bill may put her own safety as a cisgender woman in jeopardy.
- Ms. Kimball questioned how enforcement of the bill and what it enabled would work.
- The status of intersex individuals was unclear and unenumerated in HB 148.

Patrick McGranaghan

Pembroke, New Hampshire

- Mr. McGranaghan opposed the bill
- Being different from the rest wasn't easy or safe.
- Mr. McGranaghan noted that children certainly beat each other up, sometimes causing permanent brain damage
- You can't turn someone different into someone normal. Mr. McGranaghan believed many of those individuals have already likely tried to no success.

- Difference was not a disease and could not be cured.
- The suicide attempt rate for transgender teens was 10x that for those who were not transgender.
- The committee was urged to consider the stakes of the bill and the state motto.

Emily Nelson

- Ms. Nelson opposed the bill.
- Ms. Nelson referred to a UCLA study from the Williamson institute, which detailed N.H's status in the country concerning the transgender population.
- The transgender community was actively in a battle for their rights.
- Given rights were being contemplated for overturning via HB 148.
- Neighboring states have acted alternatively against these proposals.
- International travel advisories were being issued relative to the rights of transgender individuals in the United States.
- The committee was urged to oppose the bill.

Kelli Twiss

- Ms. Twiss opposed the bill
- Ms. Twiss found HB 148 unenforceable.
- HB 148 was not governance, but abuse
- Ms. Twiss indicated that HB 148 sourced boilerplate language from Florida, Texas, and South Carolina.
- There were zero instances of transgender individuals attacked or harming others in bathroom facilities in New Hampshire according to Ms. Twiss.
- The legal risks of HB 148 were massive.
- Courts had made it clear that you cannot target an entire group and that there was not a compelling state interest for safety in regard to transgender individuals.
- Ms. Twiss maintained that live free or die was more than just a motto.
- Ms. Twiss concluded that HB 148 was harmful, unconstitutional, and opposed by a vast majority of constituents.

Michelle DeFrancesco

- Ms. DeFrancesco opposed the bill.
- HB 148 was cloaked in vague language and was discriminatory.
- In practice the bill invited discrimination under the guise of local control.
- There was no demonstrable need for HB 148.
- There was no wave of incidents in the State which the bill addressed.
- Ms. DeFrancesco contemplated enforcement of the bill and maintained that state sanctioned surveillance was provided in HB 148.
- Studies have shown that transgender youth were more susceptible to anxiety, depression and suicide when policies like those enabled by HB 148 were adopted.
- Ms. DeFrancesco affirmed that New Hampshire should not abandon its principles for posturing and political points.
- Ms. DeFrancesco believed that HB 148 exposed schools and municipalities to legal peril.

Jen Smith, M.D.

Pembroke, New Hampshire

- Dr. Smith opposed the bill.
- HB 148 was unworkable according to Dr. Smith.
- In particular, enforcement was questionable.
- Dr Smith played women's tennis and contemplated the harassment she may be subject to if a fellow team, hosting venue, or organization adopted a policy under HB 148 against her knowledge.
- Dr Smith attested that she did not want transgender men in the women's locker room. Dr. Smith said that if such were mandated, she would have to leave the State.

Louise Spencer

Concord, New Hampshire

- Ms. Spencer identified herself as a member of the Kent Street Coalition.
- Ms. Spencer spoke on her own behalf in opposition to the bill.
- Ms. Spencer was assaulted in the bathroom in middle school by two other girls.
- Bathrooms should be safe for everyone, all the time, which had nothing to do with transgender individuals, but rather those who wanted to commit violence.
- Ms. Spencer's school had no privacy; students were forced to change, which she found awful not because of boys, but because she just wanted to be comfortable in her own body.
- Bills like HB 148 would require individuals to undergo significantly uncomfortable experiences to justify who they were.

Sara Tirrell

Plymouth, New Hampshire

- Ms. Tirrell described her daughter, Parker, for the committee, her athletic history, and her prom dress.
- Under HB 148, if Parker attended prom, Parker would have to use the mens bathroom, in her prom gown and makeup.
- Teens had enough concerns on their mind according to Ms. Tirrell.
- There were real human challenges with bills like HB 148.
- Transgender individuals had medical diagnoses to match their needs.
- Sen. Altschiller asked if HB 148 lay squarely on the shoulders on the transgender community.
 - Ms. Tirrell said that she believed so given that no one else was governed by the bill quite like transgender individuals.
- Sen. Altschiller asked if HB 148 would make Ms. Tirrell feel more comfortable with bullying and harassment in schools, or if it would make things worse and if she would rather use the existing laws and policies.
 - Mr. Tirrell said she would use the existing measures as opposed to what was provided in HB 148.
- Sen. Abbas asked how bathrooms should be separated, if at all.
 - Ms. Tirrell speculated that the bathroom in Sen. Abbas' home was likely gender neutral. All bathrooms at Parker's school were single use and gender neutral. Any school could do that according to Ms. Tirrell.

- If individuals simply accepted the premise that transgender women were women, and men were men, then there would be no issue.
- Sen. Abbas agreed that individuals were not intrinsically dangerous from their identity. Sen. Abbas asked if when using the bathroom commensurate with their identity, if a trans individual would still be put in the position of validating their identity.
 - Ms. Tirrell said that trans individuals had to validate their identity every step of the way as it currently is.

Billie Strong

Northfield, New Hampshire

- Ms. Strong opposed HB 148.
- There was no definition for biological sex attached in the text of the bill.
- Ms. Strong did not believe it was possible to ascertain the physical sex, or attributes of another individual in a civil interaction.
- People typically just guess when interacting with others in public. HB 148 would enable some to confront transgender, and cisgendered individuals with their guesses.
- HB 148 posed a threat to all women's ability to live comfortably in public.
- HB 148 had no clear mitigations for the privacy and safety risks faced by the gender nonconforming on a daily basis.
- Legally the bill was too broad according to Ms. Strong.
- Sen. Altschiller asked if language on the first line of the second page could open the door for the gay panic defense to be mounted in court again
 - Ms. Strong said it could.

Courtney Reed

Policy Advocate, ACLU N.H

- Ms. Reed and the ACLU NH opposed HB 148.
- The committee was urged to vote ITL on the bill.
- Ms. Reed maintained that the ACLUs previous testimony remained relevant for HB 148.
- Ms. Reed cited federal statutory protections which conflicted with HB 148, namely title VII and Title IX.
- Title IX's provisions on bathrooms and sex discrimination had been upheld by numerous courts regarding gender identity or sexual orientation.
- The Supreme Court of the United States had twice rejected the matter of bathroom bans.
- The New Hampshire District court has granted a preliminary injunction relative to 2024's HB 1205 and the plaintiff's title IX claims.
- Ms. Reed stated that the committee ought to see the legal landscape as a signal to rerefer the bill until litigation is concluded.
- There was ongoing litigation relative to prisons as well.
- Sen. Abbas asked if any criteria had been accepted by courts relative to transition, and an individual's status, where it may be acceptable for them to play on the team separate from their biological sex
 - Ms. Reed urged Senator Abbas to review the New Hampshire Interscholastic Athletics Associations Policies.

- Sen. Altschiller asked Ms. Reed if the ACLU believed that the effect of the legislation fell primarily on the transgender population of the State. Sen. Altschiller asked how many people that group comprised.
 - Ms. Reed did not have an exact number and estimated that the figure was quite small.

PM

Date Hearing Report completed: May 12, 2025