

****Model Legislation****

Defining SEX Act – A Bill to Establish a Clear and Consistent Biological Definition of Male and Female

For purposes of state law:

- (1) There are two—and only two—sexes: male and female.
- (2) Every individual is either male or female.
- (3) An individual's sex is defined as his or her biological sex, either male or female, as observed or clinically verified at birth.¹
- (4) A *female* is an individual who **has, had, will have**—or would have, but for a developmental or genetic anomaly or historical accident²—the reproductive system that at some point produces, transports, and utilizes eggs for fertilization.³
- (5) A *male* is an individual who **has, had, will have**—or would have, but for a developmental or genetic anomaly or historical accident—the reproductive system that at some point produces, transports, and utilizes sperm for fertilization.
- (6) Unless specified otherwise, *woman* refers to an adult human female, *girl* refers to a minor human female, *man* refers to an adult human male, and *boy* refers to a minor human male.
- (7) With respect to the two sexes—male and female—legal equality does not imply sameness or identity. Physical differences between males and females are enduring, and the two sexes are not fungible.
- (8) With respect to the two sexes—male and female—separate facilities or sports leagues established because of or organized according to physical differences between the sexes do not constitute unequal treatment under the law.
- (9) Unless specified otherwise, *gender*, when used in state law, shall be treated as a synonym for sex.⁴
- (10) *Gender identity* shall not be considered a synonym or substitute for sex or *gender*.⁵

An individual born with a medically verifiable diagnosis of a “disorder” or “difference in sex development” shall enjoy the relevant legal protections and accommodations afforded under the federal Americans with Disabilities Act.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.⁶

¹ This language makes clear that sex is observed or (when necessary) clinically verified at birth. It is not “assigned at birth,” which implies that sex is a mere social convention.

² This definition defines sex phenotypically in terms of developmental pathways for the purpose of reproduction, the end point of which is one or the other gamete. This construction is intentional and avoids the phrase *except for*, which might imply to the incautious reader that differences in sex development are exceptions to the male and female developmental pathways. These are *not* exceptions to the sexual binary. They are, rather, cases where normal development is disrupted, at least in part. But these never give rise to different developmental pathways. We know that these are disorders only by comparing them with normal development. The best way to capture this complexity is with this counterfactual language (*would, but for*). These individuals are still either male or female. It's just that in 0.018 percent of cases, *determining* sex requires more than simple visual inspection.

³ This defines sex phenotypically and in terms of the developmental pathway for reproduction. It avoids the common mistake of defining sex in terms of chromosomes. The way in which sex is determined differs among organisms, and in humans, there are rare chromosomal variations other than XX and XY—though these are the normal “male” and “female” chromosomal arrangements. But these normal chromosomal arrangements do not *define* what sex is.

The phrase *at some point* is important because sperm and ova, along with the corresponding phenotypical characteristics, emerge within the life cycles of organisms but are not present at every stage of the life cycle.

Sperm are the relatively small, mobile gametes. Eggs (ova) are the relatively large, relatively immobile gametes. There is no third gamete, or transition gamete. Hence, sex in humans is binary.

⁴ This sentence is needed in any state that already has laws and regulations using the word *gender*.

⁵ This sentence prevents *objective biological sex* from being redefined to include or be equivalent to a subjective, “internal sense of gender.”

⁶ Severability clause, so that a legal challenge to one part of the bill does not prevent the other parts from taking effect.