

# HOUSE BILL 359

F1, D5  
HB 757/22 – W&M

3lr1211

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By: **Delegates Szeliga, Adams, Arentz, Arikan, Baker, Bouchat, Buckel, Chisholm, Ciliberti, Fisher, Ghrist, Grammer, Griffith, Hartman, Hinebaugh, Hornberger, Jacobs, Kipke, R. Long, Mangione, McComas, Metzgar, Miller, M. Morgan, T. Morgan, Nawrocki, Otto, Reilly, Rose, Schmidt, Tomlinson, Valentine, and Wivell**

Introduced and read first time: January 26, 2023

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Education – Interscholastic and Intramural Junior Varsity and Varsity Teams**  
3 **and Sports – Designation Based on Sex**  
4 **(Save Women’s Sports Act)**

5 FOR the purpose of requiring certain interscholastic and intramural junior varsity and  
6 varsity athletic teams or sports sponsored by certain schools to be expressly  
7 designated based on biological sex; prohibiting certain entities from taking certain  
8 adverse actions against a school or county board of education for maintaining  
9 separate interscholastic and intramural junior varsity and varsity athletic teams  
10 and sports for students of the female sex; providing that certain individuals have the  
11 right to bring a civil action under certain circumstances; and generally relating to  
12 interscholastic and intramural junior varsity and varsity teams and sports of public  
13 and nonpublic schools.

14 BY adding to  
15 Article – Education  
16 Section 7–118  
17 Annotated Code of Maryland  
18 (2022 Replacement Volume)

19 Preamble

20 WHEREAS, The General Assembly finds that there are two biological sexes, female  
21 and male, and that a person’s sex is objectively determined by genetics and anatomy  
22 existing at the time of birth; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, There are “[i]nherent differences between men and women,” and that  
2 these differences “remain cause for celebration, but not for denigration of the members of  
3 either sex or for artificial constraints on an individual’s opportunity.” *United States v.*  
4 *Virginia*, 518 U.S. 515, 533 (1996); and

5 WHEREAS, The “inherent differences” between men and women range from  
6 chromosomal and hormonal differences to physiological differences; and

7 WHEREAS, Men generally have “denser, stronger bones, tendons, and ligaments”  
8 and “larger hearts, greater lung volume per body mass, a higher red blood cell count, and  
9 higher hemoglobin.” Neel Burton, *The Battle of the Sexes*, *PSYCHOL. TODAY* (July 2,  
10 2012), <https://www.psychologytoday.com/blog/hidden-andseek/201207/the-battle-the-sexes>;  
11 and

12 WHEREAS, Men also have higher natural levels of testosterone, which affects traits  
13 such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the  
14 development of Type 2 muscle fibers, all of which result in men being able to generate  
15 higher speed and power during physical activity. Doriane Lambelet Coleman, *Sex in Sport*,  
16 80 *LAW AND CONTEMPORARY PROBLEMS* 63, 74 (2017) (quoting Gina Kolata, *Men,*  
17 *Women and Speed. 2 Words: Got Testosterone?*, *N.Y. TIMES* (Aug. 21, 2008)); and

18 WHEREAS, The biological differences between females and males, especially as they  
19 relate to natural levels of testosterone, “explain the male and female secondary sex  
20 characteristics which develop during puberty and have lifelong effects, including those most  
21 important for success in sport: categorically different strength, speed, and endurance.”  
22 Doriane Lambelet Coleman and Wickliffe Shreve, “Comparing Athletic Performances: The  
23 Best Elite Women to Boys and Men,” *Duke Law Center for Sports Law and Policy*,  
24 <https://web.law.duke.edu/sports/sex-sport/comparative-athletic-performance/>; and

25 WHEREAS, While classifications based on sex are generally disfavored, the Supreme  
26 Court has recognized that “sex classifications may be used to compensate women for  
27 particular economic disabilities [they have] suffered, to promote equal employment  
28 opportunity, [and] to advance full development of the talent and capacities of our Nation’s  
29 people.” *United States v. Virginia*, 518 U.S. 515, 533 (1996) (internal citations and  
30 quotation marks omitted); and

31 WHEREAS, One place where sex classifications allow for the “full development of  
32 the talent and capacities of our Nation’s people” is in the context of sports and athletics;  
33 and

34 WHEREAS, Courts have recognized that the inherent, physiological differences  
35 between males and females result in different athletic capabilities. See, e.g., *Kleczek v.*  
36 *Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (“Because of innate  
37 physiological differences, boys and girls are not similarly situated as they enter athletic  
38 competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting  
39 that “high school boys [generally possess physiological advantages over] their girl

1 counterparts” and that those advantages give them an unfair lead over girls in some sports  
2 like “high school track”); and

3 WHEREAS, A recent study of female and male Olympic performances since 1983  
4 found that, although athletes from both sexes improved over the time span, the “gender  
5 gap” between female and male performances remained stable. “These suggest that women’s  
6 performances at the high level will never match those of men.” Valerie Thibault, et al.,  
7 Women and men in sport performance: The gender gap has not evolved since 1983, 9  
8 Journal of Sports Science and Medicine 214, 219 (2010); and

9 WHEREAS, As Duke Law professor and All–American track athlete Doriane  
10 Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya  
11 Richards–Ross recently wrote: “The evidence is unequivocal that starting in puberty, in  
12 every sport except sailing, shooting and riding, there will always be significant numbers of  
13 boys and men who would beat the best girls and women in head–to–head competition.  
14 Claims to the contrary are simply a denial of science.” Doriane Coleman, Martina  
15 Navratilova, et al., Pass the Equality Act, But Don’t Abandon Title IX, WASHINGTON  
16 POST (Apr. 29, 2019), <https://wapo.st/2VKINN1>; and

17 WHEREAS, The benefits that natural testosterone provides to male athletes are not  
18 diminished through the use of puberty blockers and cross–sex hormones. A recent study on  
19 the impact of such treatments found that policies like those of the International Olympic  
20 Committee that require biological males to undergo at least one year of testosterone  
21 suppression before competing in women’s sports do not create a level playing field. “[T]he  
22 reduction in testosterone levels required by many sports federation transgender policies is  
23 insufficient to remove or reduce the male advantage by any meaningful degree.” For  
24 example, “the muscle mass advantage males possess over females, and potentially the  
25 performance implications thereof, are not removed by 12 months of testosterone  
26 suppression.” Instead, the study concluded that “The data presented here demonstrates  
27 that the male physical performance advantage over females, attributed to superior  
28 anthropometric and muscle mass/strength parameters achieved at puberty, is not removed  
29 by the current regimen of testosterone suppression permitting participation of transgender  
30 women in female sports categories. Rather, it appears that the male performance  
31 advantage is largely retained by transgender women and thus remains substantial.”  
32 Hilton, E.N.; Lundberg, T.R. Transgender Women in The Female Category of Sport: Is the  
33 Male Performance Advantage Removed by Testosterone Suppression?. Preprints 2020,  
34 2020050226 (doi: 10.20944/preprints202005.0226.v1); and

35 WHEREAS, Having separate sex–specific teams furthers efforts to promote sex  
36 equality. Sex–specific teams accomplish this by providing opportunities for female athletes  
37 to demonstrate their skill, strength, and athletic abilities while also providing them with  
38 opportunities to obtain recognition and accolades, college scholarships, and the numerous  
39 other long–term benefits that flow from success in athletic endeavors; now, therefore,

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
41 That the Laws of Maryland read as follows:

## Article – Education

7-118.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “STUDENT OF THE FEMALE SEX” MEANS A STUDENT WHOSE BIOLOGICAL SEX IS FEMALE.

(3) “STUDENT OF THE MALE SEX” MEANS A STUDENT WHOSE BIOLOGICAL SEX IS MALE.

(B) THIS SECTION APPLIES TO:

(1) PUBLIC HIGH SCHOOLS; AND

(2) NONPUBLIC HIGH SCHOOLS WHOSE STUDENT ATHLETES OR ATHLETIC TEAMS COMPETE AGAINST STUDENT ATHLETES OR ATHLETIC TEAMS FROM PUBLIC HIGH SCHOOLS IN THE STATE.

(C) (1) AN INTERSCHOLASTIC OR INTRAMURAL JUNIOR VARSITY OR VARSITY ATHLETIC TEAM OR SPORT THAT IS SPONSORED BY A PUBLIC OR NONPUBLIC HIGH SCHOOL SHALL BE EXPRESSLY DESIGNATED AS ONE OF THE FOLLOWING BASED ON BIOLOGICAL SEX:

(I) A BOYS, MALE, OR MEN’S TEAM OR SPORT;

(II) A GIRLS, FEMALE, OR WOMEN’S TEAM OR SPORT; OR

(III) A COEDUCATIONAL OR MIXED TEAM OR SPORT.

(2) AN INTERSCHOLASTIC OR INTRAMURAL JUNIOR VARSITY OR VARSITY ATHLETIC TEAM OR SPORT DESIGNATED FOR GIRLS, FEMALES, OR WOMEN MAY NOT INCLUDE STUDENTS OF THE MALE SEX.

(D) A GOVERNMENTAL ENTITY, A LICENSING OR ACCREDITING ORGANIZATION, OR AN ATHLETIC ASSOCIATION OR ORGANIZATION MAY NOT ACCEPT A COMPLAINT, CONDUCT AN INVESTIGATION, OR TAKE ANY OTHER ADVERSE ACTION AGAINST A SCHOOL OR COUNTY BOARD FOR MAINTAINING SEPARATE INTERSCHOLASTIC OR INTRAMURAL JUNIOR VARSITY OR VARSITY ATHLETIC TEAMS OR SPORTS FOR STUDENTS OF THE FEMALE SEX.

1           **(E) (1) (I) A STUDENT WHO IS DEPRIVED OF AN ATHLETIC**  
2 **OPPORTUNITY OR SUFFERS ANY DIRECT OR INDIRECT HARM AS A RESULT OF A**  
3 **VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE SCHOOL THE**  
4 **STUDENT ATTENDS.**

5                           **(II) A STUDENT WHO IS SUBJECT TO RETALIATION OR OTHER**  
6 **ADVERSE ACTION BY A SCHOOL OR AN ATHLETIC ASSOCIATION OR ORGANIZATION**  
7 **AS A RESULT OF REPORTING A VIOLATION OF THIS SECTION TO AN EMPLOYEE OR**  
8 **REPRESENTATIVE OF THE SCHOOL, ATHLETIC ASSOCIATION OR ORGANIZATION, OR**  
9 **ANY STATE OR FEDERAL AGENCY WITH OVERSIGHT OF SCHOOLS IN THE STATE MAY**  
10 **BRING A CIVIL ACTION AGAINST THE SCHOOL OR ATHLETIC ASSOCIATION OR**  
11 **ORGANIZATION.**

12                           **(III) A SCHOOL THAT SUFFERS ANY DIRECT OR INDIRECT HARM**  
13 **FROM A GOVERNMENTAL ENTITY, A LICENSING OR ACCREDITING ORGANIZATION,**  
14 **OR AN ATHLETIC ASSOCIATION OR ORGANIZATION AS A RESULT OF A VIOLATION OF**  
15 **THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE GOVERNMENTAL ENTITY,**  
16 **LICENSING OR ACCREDITING ORGANIZATION, OR ATHLETIC ASSOCIATION OR**  
17 **ORGANIZATION.**

18                   **(2) A CIVIL ACTION INITIATED UNDER THIS SECTION MUST BE**  
19 **INITIATED WITHIN 2 YEARS AFTER THE HARM OCCURRED.**

20                   **(3) AN INDIVIDUAL WHO PREVAILS IN A CIVIL ACTION UNDER THIS**  
21 **SECTION MAY RECOVER:**

22                           **(I) MONETARY DAMAGES, INCLUDING DAMAGES FOR ANY**  
23 **PSYCHOLOGICAL, EMOTIONAL, AND PHYSICAL HARM SUFFERED;**

24                           **(II) REASONABLE ATTORNEY'S FEES AND COSTS; AND**

25                           **(III) ANY OTHER RELIEF, INCLUDING AN INJUNCTION, AS THE**  
26 **COURT MAY DETERMINE APPROPRIATE.**

27           **(F) THIS SECTION MAY BE KNOWN AND CITED AS THE SAVE WOMEN'S**  
28 **SPORTS ACT OR SELINA'S LAW.**

29           SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or  
30 the application thereof to any person or circumstance is held invalid for any reason in a  
31 court of competent jurisdiction, the provision shall be construed to give the provision the  
32 maximum effect permitted by law unless the provision is held to be absolutely invalid.

33           SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or  
34 the application thereof to any person or circumstance is held invalid for any reason in a

1 court of competent jurisdiction, the invalidity does not affect other provisions or any other  
2 application of this Act that can be given effect without the invalid provision or application,  
3 and for this purpose the provisions of this Act are declared severable.

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
5 1, 2023.