



# IMPACT OF THE EXECUTIVE ORDER REDEFINING SEX

## on Transgender, Nonbinary, and Intersex People

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Elana Redfield, Ishani Chokshi

On January 20, 2025, President Trump signed an executive order titled, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”<sup>1</sup> Although the executive order sweeps broadly across many areas affecting transgender, nonbinary and intersex people, a central tenet of the directive is the redefinition of the word “sex” as applied across federal programs and services to refer only to biological characteristics “at conception,” and as unchangeable.<sup>2</sup> Redefining “sex” is something the president attempted to do in his previous term,<sup>3</sup> particularly in the context of sex discrimination in education under Title IX,<sup>4</sup> and had committed to doing in his second term.<sup>5</sup> As part of his “Agenda 47” for the next four years, President Trump has also committed to working with Congress to enact a sex definition statute.<sup>6</sup> This policy brief explores the meaning of the executive order and the potential impact for transgender, nonbinary, and intersex people.

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<sup>1</sup> Donald J. Trump, Exec. Order (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

<sup>2</sup> “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.” *Id.* at Sec. 2(a).

<sup>3</sup> Erica L. Green, Katie Benner & Robert Pear, ‘Transgender’ Could Be Defined Out of Existence Under Trump Administration, *NEW YORK TIMES* (Oct. 21, 2018), <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html>.

<sup>4</sup> L.F. Carver, *Trump’s Efforts to Redefine Gender and Sex*, *THE CONVERSATION* (Nov. 5, 2018), <https://theconversation.com/trumps-efforts-to-redefine-gender-and-sex-106320>; See also Nondiscrimination on the Basis of Sex in Educational Programs and Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020).

<sup>5</sup> Ryan Gaydos, *Trump Vows to Keep Trans Athletes Out of Women’s Sports, End ‘Transgender Lunacy,’* *FOX NEWS* (Dec. 23, 2024), <https://www.foxnews.com/sports/trump-vows-keep-trans-athletes-out-womens-sports-end-transgender-lunacy>.

<sup>6</sup> Ryan Adamczeski, *If You Think Project 2025 is Scary, Take a Look at Donald Trump’s Agenda 47*, *THE ADVOCATE* (July 9, 2024), <https://www.advocate.com/politics/agenda47-donald-trump-project-2025> (Trump “will ask Congress to pass a bill establishing that the only genders recognized by the United States government are male and female — and they are assigned at birth.”); See also *Agenda 47*, *DonaldJTrump.com*, <https://www.donaldjtrump.com/agenda47>.

## UNDERSTANDING THE SCOPE OF THE EXECUTIVE ORDER

A key function of executive orders is political messaging.<sup>7</sup> Executive orders can have practical impacts, but there are limits on what a president can do through this medium.<sup>8</sup> Most importantly, an executive order must be supported by an authority the president derives from the Constitution, or through an express delegation from Congress.<sup>9</sup> Additionally, their implementation is often not immediate. This is because an executive order, much like President Biden's 2021 order regarding the meaning of "sex" for federal nondiscrimination laws,<sup>10</sup> often takes the form of a directive to federal agencies, each of which would have to conduct internal assessments and consider actions such as rulemaking.<sup>11</sup> This is how President Trump's order approaches the definition of "sex" for federal agency programs and agencies.<sup>12</sup> Notably, however, agencies under the Trump administration may also take early steps by rescinding practices or interpretations in instances where formal rulemaking is not required<sup>13</sup> or taking actions that may encounter fewer procedural constraints.<sup>14</sup> The president cites his authority to "regulate the conduct of employees in the executive branch" to support the order.<sup>15</sup>

## DEFINING "SEX"

There is no universal definition of the word "sex." The term generally refers to a collection of reproductive, hormonal, anatomical, and genetic characteristics that are commonly grouped into categories of "male" and "female" based on reproductive function.<sup>16</sup> However, social scientists and medical professionals have long understood sex and gender as complex and intertwined concepts.<sup>17</sup> Moreover, there is substantial variation among sex characteristics themselves, such that even for non-transgender people, categorization in a strict male/female binary based on sex characteristics at birth does not accurately describe many Americans, such as intersex

<sup>7</sup> Josh Boak, *What is an Executive Order? Here's What the Tool Can and Can't Do*, PBS NEWS (Jan. 20, 2025), <https://www.pbs.org/newshour/politics/what-is-an-executive-order-a-look-at-trumps-tool-for-quickly-reshaping-government>.

<sup>8</sup> Abigail A. Graber, *Executive Orders: An Introduction*, CONG. RES. SERV. (March 29, 2021), <https://crsreports.congress.gov/product/pdf/R/R46738>.

<sup>9</sup> *Id.* at 8-12.

<sup>10</sup> Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Exec. Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 20, 2021).

<sup>11</sup> See e.g. Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?* REUTERS (Jan. 14, 2025), <https://www.reuters.com/world/us/what-can-trump-do-through-executive-orders-2025-01-14/>.

<sup>12</sup> Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(b).

<sup>13</sup> See e.g. Phil Mattingly, *Trump's Team Outlines Suite of Executive Orders to Top Lawmakers Ahead of his First Day as President*, CNN.com (Jan. 19, 2025), <https://www.cnn.com/2025/01/19/politics/trump-executive-orders-lawmakers-day-1/index.html>; See also Ben Wilhelm, *Executive Orders and Presidential Transitions*, CONG. RES. SERV. (July 30, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF12724>; Kate R. Bowers & Daniel J. Sheffner, *Agency Recissions of Legislative Rules*, CONG. RES. SERV. (Feb. 8, 2021), <https://crsreports.congress.gov/product/pdf/R/R46673#:~:text=For%20example%2C%20an%20agency%20is,published%20in%20the%20Federal%20Register>.

<sup>14</sup> Candace Norwood, *The 19th Explains: What to Know About Executive Orders as Trump Prepares to Take Office*, THE 19TH (Jan. 15, 2025), <https://19thnews.org/2025/01/what-are-executive-orders-trump-second-term/>; See also, Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?*, *supra* note 11.

<sup>15</sup> 5 U.S.C. § 7301 (2024).

<sup>16</sup> Carolyn M. Mazure, *What Do We Mean By Sex and Gender?* YALE SCHOOL OF MEDICINE (Sept. 19, 2021), <https://medicine.yale.edu/news-article/what-do-we-mean-by-sex-and-gender/>.

<sup>17</sup> *Id.*

people.<sup>18</sup> For decades, courts have recognized that given the complicated ways that “sex” manifests in society, statutes protecting against “sex” discrimination should be understood to apply to sex stereotyping,<sup>19</sup> sexual orientation, and gender identity.<sup>20</sup> This understanding was formally adopted into many areas of law under the Biden administration,<sup>21</sup> which President Trump now seeks to undo. In response to what he describes as “gender ideology,” President Trump’s order lays out a sweeping redefinition of the term “sex” across many parameters of federal government that is based on a narrow subset of reproductive characteristics:

(d) “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell.

(e) “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.<sup>22</sup>

The definition explicitly excludes gender, gender identity, and any other characteristics.<sup>23</sup> The order also includes a directive to the Department of Health and Human Services to produce a standard, government-wide definition within 30 days.<sup>24</sup>

## THE IMPACT ON TRANSGENDER, NONBINARY AND INTERSEX PEOPLE

President Trump’s executive order has the potential to affect a broad range of people, including:

- **Transgender people.** Approximately 1.6 million individuals, or 0.6% of the U.S. population aged 13 and older, identify as transgender.<sup>25</sup> This includes 300,100 youth aged 13 to 17 who identify as transgender.
- **Nonbinary people.** Approximately 1.2 million LGBTQ adults identify as nonbinary in the U.S.—11% of all LGBTQ adults.<sup>26</sup>

<sup>18</sup> ADVANCING HEALTH EQUITY FOR INTERSEX INDIVIDUALS, OFF. OF THE ASS. SEC’Y FOR HEALTH, U.S. DEP’T. OF HEALTH AND HUM. SERV. 3 (Jan. 2025).

<sup>19</sup> See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that discrimination against an employee on the basis of a person’s nonconformity to social or other expectations of that person’s gender constitutes impermissible sex discrimination in violation of Title VII of the Civil Rights Act of 1964).

<sup>20</sup> See e.g., *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 618 (4th Cir. 2020) (Title IX), *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *abrogated on other grounds by Illinois Republican Party v. Pritzker*, 973 F.3d 760 (7th Cir. 2020) (Title IX); *Bostock v. Clayton Cnty*, 140 S. Ct. 1731 (2020) (Title VII); *Smith v. City of Salem* 378 F. 3d 566 (6th Cir. 2004) (Title VII); *Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213 (1st Cir. 2000) (Equal Credit Opportunity Act); See also *Flack v. Wis. Dep’t. of Health Servs.*, 328 F. Supp. 3d 931 (W.D. Wis. 2018) (Section 1557); *Tovar v. Essentia Health*, 342 F. Supp. 3d 947 (D. Minn. 2018) (Section 1557).

<sup>21</sup> Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, *supra* note 10.

<sup>22</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1, at Sec. 2(d-e).

<sup>23</sup> *Id.* at Sec. 1-2.

<sup>24</sup> *Id.* at 3(a).

<sup>25</sup> JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (June 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>.

<sup>26</sup> Press Release, Williams Institute, 1.2 Million Adults in the U.S. Identify as Nonbinary (June 21, 2021), <https://williamsinstitute.law.ucla.edu/press/lgbtq-nonbinary-press-release/>; See also BIANCA D.M. WILSON AND ILAN MEYER, WILLIAMS INST. (JUNE 2021), NONBINARY LGBTQ ADULTS IN THE U.S., <https://williamsinstitute.law.ucla.edu/publications/nonbinary-lgbtq-adults-us/>. This study used data sources from both cisgender and transgender LGBTQ community members.

- **Intersex people.** Intersex refers to people whose sex characteristics do not fall into the typical binary categories of male and female.<sup>27</sup> Although data are limited and further research is needed to better understand the size of the intersex population in the U.S., the best estimate to date is that intersex people comprise approximately 1.7% of the population.<sup>28</sup> Using this estimate, the Department of Health and Human Services under President Biden estimated that as many as 5 million people in the U.S. may be intersex.<sup>29</sup>

Although the full impact of an order defining sex—or a statute to the same effect—is difficult to determine, there are a few areas of federal policy where President Trump’s executive order is clearly directed. These include nondiscrimination statutes, federally issued identity documents, prisons, and other sex-separated spaces.

- **Nondiscrimination laws.** The President has instructed agencies to review “laws governing sex-based rights, protections, opportunities, and accommodations” to ensure they “protect men and women as biologically distinct sexes.”<sup>30</sup> This includes a directive to the Attorney General to “immediately issue guidance to correct” what is described as a “misapplication of the Supreme Court’s decision in *Bostock v. Clayton County* (2020)” to allow transgender people to participate in sex-separated spaces based on gender identity.<sup>31</sup>
  - Many statutes enforced by federal agencies protect against sex discrimination—this includes Title VII,<sup>32</sup> Title IX,<sup>33</sup> Section 1557 of the Affordable Care Act,<sup>34</sup> the Fair Housing Act,<sup>35</sup> and even laws such as the Food and Nutrition Act of 2008 (as amended).<sup>36</sup>
  - Early in his presidency, President Biden ordered federal agencies to evaluate whether these statutes should be interpreted to apply to sexual orientation and gender identity in light of the Supreme Court’s decision in *Bostock v. Clayton County*.<sup>37</sup> Many agencies complied by issuing memoranda,<sup>38</sup>

<sup>27</sup> See interACT, *What is intersex?* [interACTAdvocates.org](https://interactadvocates.org/faq/) (last updated Jan. 26, 2021), <https://interactadvocates.org/faq/>; See also Human Rights Campaign, *Understanding the Intersex Community*, HRC.org (last viewed Jan. 17, 2025), <https://www.hrc.org/resources/understanding-the-intersex-community>.

<sup>28</sup> Melanie Blackless, Anthony Charuvastra, Amanda Derryk, Anne Fausto-Sterling, Karl Lauzanne & Ellen Lee, *How Sexually Dimorphic Are We? Review and Synthesis*, 12 AM. J. OF HUM. BIOLOGY 151-66 (2000).

<sup>29</sup> ADVANCING HEALTH EQUITY FOR INTERSEX INDIVIDUALS, *supra* note 18.

<sup>30</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(b).

<sup>31</sup> *Id.* at 3(f).

<sup>32</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e17 (as amended); *Bostock v. Clayton Cnty*, 140 S. Ct. 1731 (2020) (holding that Title VII’s sex discrimination prohibition applies to claims based on sexual orientation and gender identity discrimination).

<sup>33</sup> Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (2024).

<sup>34</sup> 42 U.S.C. § 18116(a) (2024).

<sup>35</sup> 42 U.S.C. § 3604 (2024).

<sup>36</sup> 7 U.S.C. § 2020 (c)(1) (2024).

<sup>37</sup> Exec. Order No. 13,988, *supra* note 10.

<sup>38</sup> See e.g. Memorandum from Pamela S. Karlan, Principal Deputy Assistant Att’y Gen., C.R. Div., U.S. Dep’t of Justice, to Federal Agency Civil Rights Directors and General Counsels (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>; Memorandum from Damon Y. Smith, Principal Deputy Gen. Counsel C to Jeanine Worden, Acting Assistant Secretary for Fair Housing and Equal Opportunity: Application to the Fair Housing Act of the Supreme Court’s Decision in *Bostock v. Clayton County*, U.S. DEP’T. OF HOUSING & URBAN DEV. (Feb. 9, 2021), <https://www.hud.gov/sites/dfiles/ENF/documents/Bostock%20Legal%20Memorandum%2002-09-2021.pdf>

interpretations,<sup>39</sup> guidance,<sup>40</sup> and new regulations.<sup>41</sup>

- The new administration seeks to reverse these interpretive documents and formally redefine these laws to exclude coverage for gender identity (and likely sexual orientation). The executive order also consistently emphasizes the administration's assertion that nondiscrimination laws do not permit transgender people to access sex-separated spaces based on gender identity.
- However, there are barriers that may slow down or block the implementation of these changes. For example, formal rulemaking procedures would be required to make longstanding changes to the definition of sex under these statutes, and the way that definition is enforced.<sup>42</sup> It is also important to note that many nondiscrimination laws have been interpreted by courts to protect LGBT people,<sup>43</sup> including access to gender-affirming bathrooms,<sup>44</sup> and the administration's actions cannot automatically undo those protections. Additionally, many states offer protections against discrimination in areas such as housing,<sup>45</sup> employment,<sup>46</sup> and public accommodations.<sup>47</sup>
- **Identity documents.** President Trump's executive order addresses sex designations on federal identification documents, including passports and Global Entry cards.<sup>48</sup>
  - **Passports.** The federal government issues several forms of identity documents, including passports through the Department of State.<sup>49</sup> Under President Biden, Department of State policy permitted

<sup>39</sup> See e.g. Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021) (enjoined by the 6th Circuit in *Tennessee v. Department of Education*, No. 22-5807 (6th Cir. 2024)).

<sup>40</sup> See e.g. U.S. EQUAL EMP. OPPORTUNITY COMM'N, NVTA-2021-1, PROTECTIONS AGAINST EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY (2021); U.S. Dep't of Housing and Urban Development, *Housing Discrimination and Persons Identifying as Lesbian, Gay, Bisexual, Transgender, and/or Queer/Questioning (LGBTQ)*, [Hud.gov](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq) (last updated Feb. 1, 2022; last visited Jan. 17, 2025), [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/housing\\_discrimination\\_and\\_persons\\_identifying\\_lgbtq](https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq); CRD 01-2022, *Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update*, U.S. DEP'T. OF AGRICULTURE (May 5, 2022), <https://fns-prod.azureedge.us/sites/default/files/resource-files/crd-01-2022.pdf>.

<sup>41</sup> See e.g. Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (April 29, 2024); Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity, 86 Fed. Reg. 143,632 (May 16, 2021).

<sup>42</sup> See generally Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, CONG. RES. SERV. (March 27, 2017), <https://crsreports.congress.gov/product/pdf/R/R41546>.

<sup>43</sup> See note 20, *supra*.

<sup>44</sup> See e.g., *Grimm v. Gloucester Cnty. Sch. Bd.*, *supra* note 20.

<sup>45</sup> *Nondiscrimination Laws: Housing*, MOVEMENT ADVANCEMENT PROJ., [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws/housing](https://www.lgbtmap.org/equality-maps/non_discrimination_laws/housing) (last visited Jan. 17, 2025).

<sup>46</sup> *Employment Nondiscrimination*, MOVEMENT ADVANCEMENT PROJ., [https://www.lgbtmap.org/equality-maps/employment\\_non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws) (last visited Jan. 17, 2025).

<sup>47</sup> *Nondiscrimination Laws: Public Accommodations*, MOVEMENT ADVANCEMENT PROJ., [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws/public-accommodations](https://www.lgbtmap.org/equality-maps/non_discrimination_laws/public-accommodations) (last visited Jan. 17, 2025).

<sup>48</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(d).

<sup>49</sup> 22 U.S.C. § 211(a) (2024).

passports to be changed upon request, allowing M, F, and X designations.<sup>50</sup> President Trump's executive order requires that passports "accurately reflect the holder's sex," as defined in the order. However, implementation of this policy would need to be determined by the Department of State, and it is yet to be seen how the agency would address the needs of transgender, nonbinary, and intersex people in light of this order. For example, the Department of State could seek to recategorize passports with X designations, revoke such passports, or honor currently existing passports for transgender, nonbinary, and intersex people while imposing new requirements for gender markers on passports in future applications or renewals.

- **Federal prisons.** The executive order directly addresses the placement of transgender women in prison, ordering that they be placed based on biological characteristics at birth rather than gender identity and denying gender-affirming health care.<sup>51</sup>
  - The Federal Bureau of Prisons estimates that in January 2025, there were 1,538 transgender women and 750 transgender men in federal prisons.<sup>52</sup>
  - Under President Biden, policy guidelines permitted consideration of requests made by incarcerated transgender people to be placed based on gender identity and receive appropriate health care.<sup>53</sup> This practice was also consistent with longstanding guidelines to prevent prison sexual abuse.<sup>54</sup> President Trump's order seeks to prohibit transgender prisoners from being held in facilities based on gender identity and prevent federal funding from being used for the provision of gender-affirming care in prisons.<sup>55</sup>
  - Notably, the Supreme Court has established that federal prison officials have an obligation not to act with "deliberate indifference" to the health and safety of transgender prisoners,<sup>56</sup> which could be a barrier to the success of President Trump's policy goal. Additionally, state laws and court decisions regarding access to health care in prisons may also serve as a barrier.<sup>57</sup>

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<sup>50</sup> *Gender Designation*, FOREIGN AFFAIRS MANUAL, 8 FAM § 403.3 (2023); See also *Selecting Your Gender Marker*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html> (last visited Jan. 17, 2025); *Know Your Rights: Passports*, ADVOCATES FOR TRANS EQUALITY, <https://transequality.org/documents/know-your-rights-passports#:~:text=No.,No%20additional%20documentation%20is%20necessary> (last visited Jan. 19, 2025).

<sup>51</sup> *Id.*

<sup>52</sup> *Inmate Gender*, FED. BUR. OF PRISONS (Jan. 18, 2025), [https://www.bop.gov/about/statistics/statistics\\_inmate\\_gender.jsp](https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp) (last visited Jan 21, 2025).

<sup>53</sup> See Transgender Offender Manual, No. 5200.08, FED. BUR. OF PRISONS (Jan. 13, 2022), <https://www.bop.gov/policy/progstat/5200-08-cn-1.pdf> (last visited Jan 20, 2025).

<sup>54</sup> See e.g. Prison Rape Elimination Act Standards, § 115.42 Use of screening information and Placement of residents, National PREA Resource Center, <https://www.prearesourcecenter.org/standard/115-42>.

<sup>55</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(d).

<sup>56</sup> See *Farmer v. Brennan*, 511 U.S. 825 (1994).

<sup>57</sup> See e.g. *Edmo v. Corizon*, 935 F.3d 757 (9th Cir. 2019); Moe K. Clark, *Colorado Legal Settlement Would Raise Care and Housing Standards for Trans Women Inmates*, CBS NEWS (Feb. 1, 2024), <https://www.cbsnews.com/news/colorado-lawsuit-settlement-trans-women-inmates/>.

- **Sex-separated spaces.** The order requires that sex-separated spaces, such as homeless shelters and intimate partner violence shelters,<sup>58</sup> or “intimate spaces designated for women, girls or females (or for men, boys or males)” funded or operated by the federal government “are designated by sex and not identity.”<sup>59</sup>
  - Transgender people are disproportionately likely to experience homelessness. For example, a 2020 study found that 8% of transgender adults reported experiencing homelessness in the past year, compared to 3% of non-transgender LGB people and 1% of cisgender, heterosexual adults.<sup>60</sup> Research also shows that transgender people already face substantial barriers to accessing emergency shelters, including denial of shelter access or mistreatment inside of a shelter.<sup>61</sup>
  - Studies have also found that transgender people face higher rates of intimate partner violence, compared to cisgender individuals.<sup>62</sup>
  - President Trump previously attempted to enact a rule that would bar transgender women from women’s shelters; however, that rule was quickly rolled back by the Biden administration before implementation.<sup>63</sup> The Biden administration has maintained that transgender people should be able to access federally funded emergency shelters based on gender identity.<sup>64</sup> President Trump’s directive would reverse that yet again.
  - The broad language of the executive order could extend to any space that received federal funding and is sex-separated, particularly where individuals must change clothes or shower.

In addition to the specific areas targeted above, President Trump’s executive order broadly demands that the term “sex” be redefined across the federal government, including in forms, policies, and for the purposes of federal funding.<sup>65</sup> This could impact several additional areas, such as bathrooms, sports participation, health care, data collection, and research.

<sup>58</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 4(b) and 4(d).

<sup>59</sup> *Id.* at 4d.

<sup>60</sup> BIANCA D.M. WILSON, ET AL., WILLIAMS INST., HOMELESSNESS AMONG LGBT ADULTS IN THE U.S. (May 2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>.

<sup>61</sup> KATHRYN K. O’NEILL, BIANCA D.M. WILSON, & JODY L. HERMAN, WILLIAMS INST., HOMELESS SHELTER ACCESS AMONG TRANSGENDER ADULTS (Nov. 2020), <https://williamsinstitute.law.ucla.edu/publications/trans-homeless-shelter-access/>.

<sup>62</sup> See e.g. Sara M. Peitzmeier, et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 AM. J. PUB. HEALTH e1 (2020); Sara M. Peitzmeier et al., *The Transgender-Specific Intimate Partner Violence Scale for Research and Practice: Validation in a Sample of Transgender Women*, 291 Soc. Sci. Med. 114495 (2021); Rachel C. Garthe, *Prevalence and Correlates of Intimate Partner Violence Among a Multisite Cohort of Young Transgender Women*, 5 LGBT HEALTH 333 (2018); TAYLOR N.T. BROWN & JODY L. HERMAN, WILLIAMS INST., INTIMATE PARTNER VIOLENCE AND SEXUAL ABUSE AMONG LGBT PEOPLE (Nov. 2015), <https://williamsinstitute.law.ucla.edu/publications/ipv-sex-abuse-lgbt-people/>; See also Andrew R. Flores, et al., *Violent Victimization At the Intersections of Sexual Orientation, Gender Identity, and Race: National Crime Victimization Survey, 2017–2019*, 18 PLOS ONE e0281641 (2023).

<sup>63</sup> Katy O’Donnell, *HUD Scraps Trump Proposal on Transgender Access to Single-sex Homeless Shelters*, POLITICO, (April 22, 2021), <https://www.politico.com/news/2021/04/22/hud-trump-proposal-transgender-access-484313>.

<sup>64</sup> See *Housing Discrimination and Persons Identifying as Lesbian, Gay, Bisexual, Transgender, and/or Queer/Questioning (LGBTQ)*, *supra* note 41; See also Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs, 81 Fed. Reg. 64763 (Sept. 21, 2016).

<sup>65</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(e).

- **Bathrooms.** Although bathrooms are not specifically named in the executive order, they appear to be a primary focus. The order’s purpose statement focuses on countering policies that “permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women.”<sup>66</sup> The order consistently reiterates a commitment to restricting single-sex spaces based on biological distinctions, which suggests that bathrooms will be a fixture of policies enacted under the order. Most directly, the order may result in restriction of bathroom access in federal government properties based on sex assigned at birth, something that President Trump has said he intends to do.<sup>67</sup> Congress has already enacted such a restriction in Congressional buildings.<sup>68</sup> This could also extend to other sex-separated spaces that are bathroom-adjacent, such as showers, which are addressed in the executive order,<sup>69</sup> and locker rooms. In light of the order’s reference to use of federal funding, it is possible that the executive order could have impacts beyond federal buildings and workplaces, but that is yet to be determined.<sup>70</sup> However, bathrooms and other government facilities are largely governed by state and local laws rather than federal laws,<sup>71</sup> although it is possible that the federal government could attach funding restrictions regarding bathrooms to entities such as schools that receive federal funding.
- **Sports participation.** The executive order does not directly address participation in sports. However, the President’s order addresses the federal statutes and interpretations that apply to sports participation, such as Title IX, as well as “intimate spaces” which would likely include changing rooms. Nonetheless, changing the regulations themselves will require formal rulemaking, because existing regulations are in place which define sex in a transgender-inclusive manner for educational programs and services (although they are subject to injunctions).<sup>72</sup> Furthermore, it is possible that a federal sports ban may come from Congress in coordination with federal executive efforts.<sup>73</sup>

<sup>66</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 Sec. 1.

<sup>67</sup> See e.g. Sara Dorn, *Trump Promises Rollback On Trans Rights: Here’s What He’s Said*, *Forbes.com* (May 10, 2024), <https://www.forbes.com/sites/saradorn/2024/05/10/trump-promises-rollback-on-trans-rights-heres-what-hes-said/>.

<sup>68</sup> 171 Cong. Rec. H26 (Daily Ed. Jan. 3, 2025).

<sup>69</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 Sec. 1.

<sup>70</sup> See e.g. Joe Berkowitz, *Congress’s Transgender Bathroom Ban is A Grim Preview of What’s Coming to American Workforces Under Trump*, *FAST COMPANY* (Nov. 11, 2024), <https://www.fastcompany.com/91232676/sarah-mcbride-banned-bathrooms-transgender-congress-preview-workplaces-under-trump>

<sup>71</sup> See e.g. Madison Czopek, *Which States Have Laws About Transgender People’s Bathroom Use, and How Are They Enforced?* *THE STATESMAN* (Dec, 6, 2024), <https://www.statesman.com/story/news/politics/politifact/2024/12/06/which-states-have-laws-about-transgender-peoples-bathroom-use/76770497007/>; ELANA REDFIELD, KERITH J. CONRON, AND CHRISTY MALLORY, WILLIAMS INST., *THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH* (April 2024), <https://williamsinstitute.law.ucla.edu/publications/2024-anti-trans-legislation/>; *Bans on Transgender People Using Public Bathrooms and Facilities According to their Gender Identity*, MOVEMENT ADVANCEMENT PROJ., [https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom\\_bans](https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans) (last visited Jan. 19, 2025).

<sup>72</sup> See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, *supra* note 42; *Tennessee v. Cardona*, No. 2:24-cv-00072 (E.D. Ky. Jan 09, 2025) (injunction against Dep’t. of Educ. Title IX regulations).

<sup>73</sup> See e.g. H.R. 28, 119th Cong. (2025); Annie Karni, *House Passes Bill to Bar Trans Athletes from Female School Sports Teams*, *N.Y. TIMES* (Jan. 14, 2025), <https://www.nytimes.com/2025/01/14/us/politics/house-trans-athletes.html>; S.9, 119th Cong. (2025); Alexander Bolton, *Thune Tees Up Tuberville’s Bill to Block Transgender Athletes from Women’s Sports*, *THE HILL* (Jan. 7, 2025), <https://thehill.com/homenews/senate/5072488-senate-vote-transgender-athletes-bill/>.



- **Health care.** Outside of the context of federal prisons, the executive order does not address health care specifically, though it does so indirectly through its requirement that agencies rescind LGBTQ-inclusive interpretations of sex discrimination statutes and federal funding requirements.<sup>74</sup> The Biden administration had consistently understood health nondiscrimination requirements to apply to gender identity and gender-affirming care, and that these interpretations applied to grantees.<sup>75</sup> Although the full consequences of the executive order's directives will be subject to procedural requirements and litigation, it is possible that funding for some health care could be disrupted or otherwise affected by policies outlined in the executive order.
- **Data collection and research.** President Trump's order mandates that "agency forms that require an individual's sex shall list male or female, and shall not request gender identity."<sup>76</sup> If implemented, this could make it difficult for transgender people to self-report on government forms and nearly impossible for researchers to make observations about transgender experiences using those data. The order also prohibits funds from being used to "promote gender ideology."<sup>77</sup> "Gender ideology" is defined broadly in the order in such a manner as to prohibit the recording of "sex" based on any factor other than reproductive biology at birth.<sup>78</sup> Currently, federal data allow insights into transgender populations,<sup>79</sup> and the federal government also funds research into transgender experiences.<sup>80</sup> While the full consequences of this policy for research using gender identity data remains to be seen, this aspect of the order could result in severe restrictions on the ability of researchers to study and understand disparities, service utilization, and other experiences of transgender people.

Regardless of what actions are taken, the implementation of this order is likely to come unevenly—for example, a bathroom ban for federal buildings or employees may be possible to implement quicker if it is found to be feasible to implement without rulemaking, whereas many of the changes described above would require agencies to take actions such as formal rulemaking.<sup>81</sup> Many of the provisions of this order, or the corresponding agency actions, will likely also face substantial litigation.<sup>82</sup>

<sup>74</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(e).

<sup>75</sup> See e.g. Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024); Health and Human Services Grants Regulation, 89 Fed. Reg. 36,684 (May 3, 2024).

<sup>76</sup> See Donald J. Trump, Exec. Order (Jan. 20, 2025), *supra* note 1 at Sec. 3(e).

<sup>77</sup> *Id.* at Sec. 3(e), 3(g).

<sup>78</sup> *Id.* at Sec. 2(f).

<sup>79</sup> See e.g. NAT'L ACADEMIES OF SCIENCE, ENGINEERING AND MEDICINE, MEASURING SEX, GENDER IDENTITY, AND SEXUAL ORIENTATION 173-178 (2022), <https://nap.nationalacademies.org/read/26424/chapter/13#177> (Measures Evaluated By The Committee).

<sup>80</sup> See e.g. *Transgender Research Portfolio: A Snapshot of the NIH FY 2019 SGM Portfolio Analysis*, NAT'L INST. OF HEALTH, [https://dpcpsi.nih.gov/sites/default/files/SGMRO-Snapshot-Transgender\\_2019-508.pdf](https://dpcpsi.nih.gov/sites/default/files/SGMRO-Snapshot-Transgender_2019-508.pdf) (last visited Jan. 21, 2025).

<sup>81</sup> See generally Abigail A. Graber, *Executive Orders: An Introduction*, *supra* note 8; Kate R. Bowers & Daniel J. Sheffner, *Agency Recissions of Legislative Rules*, *supra* note 13.

<sup>82</sup> See e.g. Ed Pilkington, 'We Are Ready': The ACLU is Prepared to Fight Trump's Attacks on Civil Liberties, THE GUARDIAN (Jan. 17, 2025), <https://www.theguardian.com/us-news/2025/jan/17/trump-aclu-civil-rights>; Democracy Forward (@DemocracyFwd), X (Jan. 20, 2025, 10:01am), [https://x.com/DemocracyFwd/status/1881356385520337267?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet&mx=2](https://x.com/DemocracyFwd/status/1881356385520337267?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet&mx=2) ("Today, as the Trump-Vance administration takes office and promises "shock and awe," we're ready to defend people's rights. The threats are real, but so is our resolve.").

## HEALTH IMPACTS OF SEX DEFINITION LAWS

In addition to the direct impacts of discrimination that may be treated as lawful under the Trump administration, a “sex” definition order could also have other downstream effects. For example, regardless of other outcomes, it is likely that there will be effects on mental health and well-being of LGBTQ people, especially transgender, nonbinary, and intersex people most directly impacted by these policies. Research shows that anti-LGBTQ policies increase negative mental health outcomes for transgender people<sup>83</sup> and that affirming policies, such as the ability to obtain affirming identity documents, positively influence the well-being of transgender people.<sup>84</sup>

## CONCLUSION

President Trump’s attempt to redefine the word “sex” for the purposes of federal law to narrowly refer to certain reproductive characteristics could have a range of consequences. While the actual details and realities of implementation will take some time to understand, research shows that efforts such as these can negatively impact the mental health of transgender people. However, it is likely that the process of implementing the directives will be subject to federal procedural constraints, which means that most efforts will not be effective immediately. Furthermore, these actions will almost certainly be subject to extensive litigation, which means that the ultimate outcome is difficult to predict.

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<sup>83</sup> See e.g. Amaya Perez-Brumer et al., *Individual and Structural Level Risk Factors for Suicide Attempts among Transgender Adults*, 42 BEHAV. MED. 3, 164-171 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707041/>; John R. Blosnich et al., *Mental Health of Transgender Veterans in US States With and Without Discrimination and Hate Crime Legal Protection*, 106 AM. J. PUB. HEALTH 534 (2016); See also Mark L. Hatzenbuehler, *Structural Stigma and the Health of Lesbian, Gay, and Bisexual Populations*, 23 CURRENT DIRECTIONS PSYCH. SCI. 127 (2014); See e.g., Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. HEALTH & SOC. BEHAV. 38, 38 (1995), <https://www.jstor.org/stable/2137286>; cf. Ilan H. Meyer, Sharon Schwartz & David M. Frost, *Social Patterning of Stress and Coping: Does Disadvantaged Social Statuses Confer More Stress and Fewer Coping Resources?* 67 SOC. SCI. & MED. 368, 371 (2008), <https://pubmed.ncbi.nlm.nih.gov/18433961/> (examining “social stress theory”).

<sup>84</sup> Research has shown that having identification documents that match one’s gender identity may improve mental health among transgender people. A 2020 cross-sectional observational study using data from the 2015 US Transgender Survey found that respondents for whom all identification documents matched their gender identity had lower prevalence of serious psychological distress, suicidal ideation, and suicidal planning, adjusting for potential complicating factors. Ayden I. Scheim, et al., *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, 5 THE LANCET PUB. HEALTH e196 - e203 (2020). Similarly, in a 2020 study using a sample of transgender Massachusetts and Rhode Island residents, researchers found that legal gender affirmation was “significantly associated with lower reports of depression, anxiety, somatization [the physical expression of stress and emotions], global psychiatric distress, and upsetting responses to gender-based mistreatment.” Arjee Restar et al., *Legal Gender Marker and Name Change is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Populations*, 11 SSM POP. HEALTH 100595 (2020).