



Bathroom Bills and the Policing of Gender: Challenging the Discourse of Exclusion

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Abstract

Since 2021, numerous states in the United States (U.S.) have enacted legislation restricting public bathroom and facilities access based on an individual's sex assigned at birth. On November 20, 2024, the Transgender Day of Remembrance, U.S. House Speaker Mike Johnson implemented a rule restricting the use of bathrooms, changing facilities, and locker rooms in the Capitol and House Office Buildings to an individual's "biological sex." This federal-level action occurred shortly after the nation's first openly transgender person, Delaware state Senator Sarah McBride, was elected to the U.S. House of Representatives on November 5, 2024. This is the first federal-level action to restrict transgender people from using bathrooms, changing facilities, and locker rooms aligned with their gender identity. Given the recent shift in the political climate in the U.S., with Republicans obtaining a Senate majority and maintaining their House majority, a 6-3 conservative majority in the Supreme Court, and the return of Republican President-elect Donald Trump, whose campaign employed anti-trans rhetoric, it is reasonable to anticipate additional restrictive legislation targeting transgender individuals in the upcoming legislative session. This paper aims to analyze "bathroom bills" and underscores their potential to exacerbate the mental health disparities in the transgender population. In light of these concerns, we urge health professionals to fulfill their ethical obligation to advocate with and behalf of this marginalized community.

Keywords: Transgender, Nonbinary, Legislation, Bathroom, Disparities

Introduction

Transgender and nonbinary (TNB) individuals are under attack in the United States (U.S.). Since 2021, 13 states have enacted legal restrictions requiring TNB people to use bathrooms aligned with their sex assigned at birth (SAAB) rather than their gender identity [1]. We refer to this legislation as "bans." We present "Commonly Used Terms" in the next section. Seven of the 13 states that have implemented bathroom bans have limited their restrictions to kindergarten through grade 12. MAP data indicates an acceleration in the passage of such legislation, with one bill passed in 2021 (Tennessee), two in 2022 (Alabama and Oklahoma), six in 2023

(Arkansas, Florida, Idaho, Iowa, Kentucky, and North Dakota), and five as of December 13, 2024 (Alabama [expanded], Louisiana, Mississippi, South Carolina, and Utah). Texas has pre-filed legislation for the 2025 session, while Virginia's proposed legislation will carry over to the 2025 session. This rapid increase in bathroom bans targeting TNB individuals highlights the urgent need for advocacy and awareness in this area.

Commonly Used Terms

- **Transgender or trans:** A term referring to individuals whose gender identity is different than their sex assigned at birth.
- **Nonbinary:** A term referring to individuals whose gender identity does not conform to the male/female gender binary
- **Intersex:** A term referring to "congenital conditions within which the development of chromosomal, gonadal, and anatomic sex is atypical" [2].
- **Cisgender:** A term referring to individuals whose gender identities and sex assigned at birth are congruent.
- **Gender diverse:** A term referring to individuals whose gender identity or gender expression does not conform to societal norms or expectations associated with their sex assigned at birth.
- **Sex assigned at birth (SAAB):** A term referring to the sex that individuals are assigned at birth

Public Opinion Trends

Between 2016 and 2022, public opinion on bathroom access for TNB individuals shifted substantially. This shift resulted in a significant inversion in opinions about TNB people using bathrooms aligned with their gender identity vis-a-vis requirements to use facilities based on their SAAB. In 2016, the Pew Research Center [3] surveyed participants on their stance regarding TNB people's use of public restrooms: "And if you had to choose, which comes closest to your view?" They offered a binary response category: (1) "Required to use the public restrooms of the gender they were born into" versus (2) "Allowed to use the public restroom of the gender with which they currently identify." At that time, a significantly greater proportion of respondents supported the "currently identify" ($n = 2,384, 0.54$) than the "born into" option ($n = 2,033, 0.46$), $z = 5.30, p < .001$.

In 2022, the Pew Research Center [4] surveyed participants on their level of support for laws or policies requiring trans individuals to use public bathrooms based on their SAAB rather than their identified gender. Participants responded using a five-point Likert scale ranging from “Strongly Favor” (1) to “Strongly Oppose” (5). To approximate the related question the Pew Research Center (2017) had asked in 2016, we combined “Favor” and “Strongly Favor” into “Favor” and “Oppose” and “Strongly Oppose” into “Oppose,” creating dichotomous response categories. The results indicated that the proportion of participants who favored the restrictions ($n = 4,133$, 0.57) was significantly greater than the proportion of those who opposed them ($n = 3,117$, 0.43), $z = 11.80$, $p < .001$, Cohen’s $h = 0.28$, reflecting a small effect size. This finding suggests a statistically significant shift in public attitudes toward bathroom access for TNB use of public restrooms between 2016 and 2022. Despite the small effect size, this change coincides with the increasing number of state legislatures passing bathroom bans.

Mental Health Impacts of Anti-TNB Legislation

The bathroom bans affect 117,000 trans adolescents aged 13-17 in 30 states, including the 13 states outlined above and another 17 states that considered them in the 2024 legislative session [5]. Although many current bans are limited to school-age children and adolescents, the number of adults affected is unknown. Lee et al. [6] found that anti-trans legislation is associated with increased risks of past-year suicide attempts in TNB adolescents and youth. They reported a marked increase in suicide attempts among TNB adolescents aged 13-17 in the year following the enactment of legislation, as well as a significant surge in suicide attempts among all TNB adolescents and youth aged 13-24 in the second year. These findings suggest that anti-TNB legislation has a direct impact on their mental health and well-being. Additionally, Dhanani and Trotton [7] conducted a mixed methods study that found TNB people who consumed anti-TNB news experienced elevated levels of rumination as well as depressive and physical health symptoms. Thus, there is clear evidence that anti-TNB legislation also compounds the physical and mental health symptoms TNB people experience.

Anti-TNB legislation has a symbolic influence on shaping societal values and creating and maintaining discriminatory social norms [8]. From the perspective of symbolic legislation theory, empirical research suggests that anti-TNB legislation is heightened by formal and interpersonal discrimination against members of this marginalized population [9]. A recent study found that nearly two-thirds (63%) of trans adults reported experiencing discrimination based on their gender identity or expression [10]. These findings align with gender minority stress theory [11,12], which posits that the distress and impairment experienced by TNB individuals can be attributed to social structural issues such as discrimination and oppression as well as coping mechanisms such as identity concealment. Given these significant implications, it is crucial to consider the potential consequences of anti-TNB legislation and advocate for policies supporting this vulnerable population's well-being. These advocacy efforts are aligned with fulfilling social workers' ethical duties under Section Six in the National Association of Social Workers (NASW) Code of Ethics [13].

Gender minority stress theory [11,12] posits that TNB individuals may internalize negative social messages about their gender minority identities, leading to self-stigma, further exacerbating adverse effects on their mental health and well-being. The discrimination and prejudice experienced by TNB people contributes to chronic stress that is uncommon for cisgender people due to their privileged gender identity. Moreover, research indicates that discrimination experienced by TNB adults and youth increases their likelihood of suicidality and nonsuicidal self-injury [14,15]. It is important to note that the distress experienced by TNB individuals stems from persistent discrimination, stigma, and violence rather than their gender identity or behavior [16].

A systematic review with 165 peer-reviewed articles meeting *a priori* inclusion criteria [17] found that the prevalence of mental health disorders among the TNB population is significantly higher compared to the cisgender population. Specifically, TNB people have a 150% higher prevalence of mood disorders and nearly 400% higher prevalence of anxiety and psychotic disorders compared to the cisgender population [18]. Kirzinger et al. [10] reported that TNB Black, Indigenous, and People of Color (BIPOC) experienced intersectional discrimination based on (a) gender identity (63%), (b) race or ethnicity (59%), (c) income level or education (58%), and (d) sexual orientation (53%). Another systematic review by Vigny-Pau et al. [19] found a disproportionately high prevalence of suicidality and non-suicidal self-injury among TNB individuals. Hanna et al. [18] reported that death by suicide occurs 17 times more often in TNB populations compared to cisgender populations. This suggests a need for social workers and policymakers to consider the adverse effects of anti-TNB bathroom bans on the mental health and welfare of TNB people.

New Federal Policies

As mentioned, TNB individuals may be adversely impacted by anti-TNB events that enter public discourse without experiencing it personally. A notable example occurred on November 21, 2024, the Transgender Day of Remembrance, when U.S. House Speaker Mike Johnson implemented a new rule for the use of bathrooms, changing facilities, and locker rooms in the Capitol and House Office Buildings that restricts use to an individuals' “biological sex” [20]. Representative Nancy Mace (R-S.C.) had introduced the rule earlier in the week, publicly acknowledging that the rule is “absolutely” in response to the first openly transgender person, Sarah McBride, being elected on November 5, 2024, to represent Delaware in the House of Representatives [21].

The implementation of Speaker Johnson's rule represents the first instance of the legislative branch of the U.S. government passing an action directly hostile to TNB people. About a month later, on December 11, 2024, the U.S. House of Representatives passed a ban on service members' children under 18 from receiving gender-affirming medical care under the 2024 U.S. National Defense Authorization Act [22]. This bill passed with a vote of 281 to 140, including 81 Democrats joining House Republicans to pass the legislation and 16 House Republicans opposing the bill [22]. Additionally, Representative Marjorie Taylor Greene (R-GA) and 47 Republican co-sponsors introduced H.R. 1399, the Protect Children's Innocent Act, on March 7, 2023, banning gender-affirming care for minors and restricting access to publicly funded gender-affirming care for all [23]. House of Representatives Bill 1399 is being considered in four House committees: Judiciary, Ways and Means, Energy and Commerce, and Education and the Workforce.

Notably, on February 15, 2023, Senator Marco Rubio (R-FL) introduced the Ensuring Military Readiness Act of 2023 (S. 435), and Representative Jim Banks (R-IN-3) introduced the Ensuring Military Readiness Act of 2023 (H.R. 1112), with language identical to S. 435. If passed, the legislation would require the Department of Defense (DOD) to disqualify transgender people from military service if they “identify as transgender with a history or diagnosis of gender dysphoria” (Ensuring Military Readiness Act of 2023, para. 2). Notably, in the executive branch, President Trump had issued Memoranda in 2017 and 2018 banning trans people from serving openly in the U.S. Armed Forces [24, 25].

The 2024 U.S. election resulted in a Republican majority in both the House of Representatives and the Senate and the election of a Republican President-elect (and former President). The U.S. Supreme Court maintained a 6-3 conservative majority in the Judicial branch. During his campaign for President in the 2024 election, President-elect Trump “made his opposition to transgender rights central to his closing argument before Election Day, using demeaning language and misrepresentations to depict an exceedingly small percentage of

the U.S. population as a threat to national identity” [26]. Federal action and public discourse regarding the opposition to the inclusion TNB people further marginalizes this underrepresented community.

Exploring the Argument of TNB Bathroom Bans

Contrary to the assertion made by some writers, such as Joyce [27], that “very few trans people ‘pass’ as their desired sex,” it is essential to recognize the significant changes that many TNB people undergo during their transition (p. 14). These changes enable them to align their physical appearance more closely with their gender identity, thus challenging the notion that their “desired sex” is difficult to achieve. González-Álvarez and Sos-Peña [28] found that more than any other physical characteristic, the human face provides the most reliable indication of a person’s sex or gender. Studies using 3D scanning found that gender-affirming hormone treatment induces facial changes in the direction of TNB people’s gender identity [29]. This underscores the importance of recognizing the validity of TNB people’s gender identity and the efficacy of medical interventions in facilitating their transition.

Trans men undergoing gender-affirming hormone treatment experience changes that align with societal perceptions of male gender identity. According to Leal (2016), these treatments led to the development of male-pattern facial and body hair, an increase in lean body mass, and an alteration in the upper body shape, creating a more masculine appearance. Over time, muscle definition increases, and the hip-to-waist ratio decreases, further contributing to a masculine body shape. The development of body hair and coarsening of facial skin texture is typically complete within 56 months, accompanied by a change in genital hair distribution, resulting in hair growth on the face, chest, abdomen, sacrum, and inner thighs, resembling a “masculine pattern”.

Yun et al. [30] examined the effect of gender-affirming hormone treatment (GAHT) on body composition in trans women. They observed a general increase in fat mass, leading to a more feminine body distribution. After six months of GAHT, trans women experienced increased regional body fat in the hips and thighs. This demonstrates that GAHT can significantly alter body composition and fat distribution in trans women, thus enabling a more harmonious presentation of their physical body with their gender identity.

These changes are substantial enough that many trans women reach the epitome of meeting women’s beauty standards, as evidenced by their participation and success in beauty competitions and the fashion industry. For instance, Jenna Talackova won a regional beauty contest for the 2012 Miss Universe Canada pageant [31]. She was barred from the Miss Universe Canada competition because she was not a ‘naturally born woman.’ However, Duke notes that the decision created a backlash that led to the Miss Universe Organization and its owner and future U.S. President, Donald Trump, opening the pageant to trans women beginning in 2013. However, Trump later demeaned TNB people during his 2024 presidential campaign, contradicting the earlier inclusive policy [32]. For example, in a June 2023 speech, Donald Trump can be heard expressing his view of trans athletes: “These people are sick. They’re deranged” [33].

Jenna Talackova is only one of many TNB women who have won beauty pageants. In 2018, 27-year-old Miss Spain, Angela Ponce, became the first trans beauty contestant to compete in the Miss Universe international competition [34]. She had won her first beauty pageant in 2015, only a few years after Talackova was excluded from the Miss Universe Canada competition. The 2023 Miss Universe competition included two trans contestants [35]. Trans women Rikie Kolle and Marina Machete won their nation’s Miss Universe pageants (Netherlands and Portugal, respectively), representing their countries on the world stage at the 72nd Miss Universe competition in El Salvador in November 2023.

Trans models have also achieved considerable success in the fashion

industry, exemplifying beauty standards for women. In 2024, Alex Cansani became the first trans woman to win Model of the Year at the age of 21 and has a history of representing premier fashion labels such as Chanel and Victoria’s Secret on the fashion runway [36]. Brazilian model Valentina Sampaio made history in 2017 when she became the first trans model to represent Victoria’s Secret in an ad campaign, and in 2019, she joined Alex Cansani at Victoria’s Secret Fashion Show as the first two trans models in the prestigious fashion venue [37]. Notably, as trans model and actress Hari Nef stated, “There are plenty of folks in the modeling industry who identify as trans but are not ‘out’ to the public as trans individuals” [38].

Findings from the 2015 U.S. Transgender Survey ($N = 27,715$) challenges assumptions about the discernibility of trans identity. James et al. [39] found that 47% of trans women reported that others could only rarely or never identify them as transgender without disclosure, with 35% stating that this occurred only occasionally. Similarly, 61% of trans men and 62% of nonbinary people indicated that their trans identity was only rarely or never discerned. In comparison, 30% of trans men and 32% of nonbinary people reported occasional instances of this. The process of inferring an individual’s sex based on their gender expression relies on subjective interpretation rather than objective biological information [40]. This practice reinforces the policing of gender, which refers to the societal enforcement of strict gender norms and penalizing those who deviate from these norms [41].

Fausto-Sterling [42] argued that an individual’s genitalia or reproductive organs are critical components of human reproductive biology that are not generally known to others, although they often rely on external cues such as hairstyle, clothing, voice, and mannerisms, all of which are aspects of gender expression rather than indicators of sex [43]. By policing these cues, society perpetuates rigid gender norms and stereotypes, which negatively impact both trans and cisgender individuals who do not conform to traditional gender expectations [44]. For example, a cisgender woman with short hair and masculine clothing may be incorrectly perceived as male, and a cisgender man with long hair and a feminine presentation may be misperceived as female. These misperceptions can lead to discrimination, harassment, and violence against individuals who challenge society’s binary understanding of sex and gender [41].

This challenges the notion that policing gender enables people to visually discern an individual’s SAAB accurately. These results are consistent with other peer-reviewed research concluding that gender congruence, or the alignment of one’s external appearance with their gender identity, is associated with improved mental health in TNB adolescents [45]. While these studies address visual aspects, gender affirming surgeries involving genitals further emphasize the connection between physical affirmation and mental well-being. A cohort study of transgender individuals found that relative to a no-treatment group, the treatment group that had undergone “bottom surgery” (i.e., genital surgeries) had significantly lower levels of anxiety and depression [46]. Additionally, van den Brink et al. [47] found that transgender participants with higher levels of gender congruence had higher self-esteem, with greater congruence associated with less rumination about their appearance. In essence, facial changes related to gender-affirming hormone treatment decrease the discernibility of TNB peoples’ SAAB, and the related increase in gender congruence leads to higher self-esteem and mitigates mental health symptoms. Therefore, requiring TNB people to use restrooms incongruent with their gender identity could harm their mental health and wellbeing.

In a *New York Times* guest essay, philosopher Alex Byrne and evolutionary biologist Carole K. Hooven [48] eschewed the use of “sex assigned at birth” because “assigned” connotes sex as a matter of guesswork and, “Despite confusion by some scholars, we can be

confident that the sex binary is not a human invention” (para. 12). However, interpreting gender expressions involves conjecture or assumptions precisely because one generally does not have access to others’ biological or reproductive characteristics. Our interpretations of others’ gender presentation and expression—to which one does not have access—trump biological considerations of reproductive anatomy and physiology—knowledge that is not generally accessible to others. Discerning an individual’s sex based on gender expression is inherently limited, as it relies on subjective interpretation rather than objective biological information [49].

In addition, the existence of intersex individuals who possess congenital conditions involving atypical chromosomal, gonadal, and anatomic sex development, demonstrates that sex is not solely determined by binary categorization [2]. Many intersex advocacy organizations, authors, and professionals prefer the term ‘differences of sexual development’ to ‘disorders of sexual development’ because it does not have the stigmatizing connotations of “disorders” [50]. By using the term ‘differences of sexual development,’ we avoid imposing anthropomorphic judgments on intersex conditions, acknowledging that these variations may represent natural evolutionary mutations and serve as a reminder that humans cannot fully comprehend the complexities of biological diversity through binary views.

Perceptions of gender are deeply rooted in cultural assumptions and shared conceptions of how individuals, particularly women and men, should appear. These expectations have varied throughout history and across different geographical regions. A recent Pew Research Center [4] study found a statistically significant difference between those who endorsed the belief that gender is determined by SAAB and those who stated someone’s gender need not align with their SAAB ($N = 10,077$, 0.604), $z = 21.453$, $p < .001$. A significantly greater percentage of participants who favored bathroom bans (90.7%) agreed that someone’s gender is “determined by the sex they were assigned at birth” than those who opposed the bans (23.5%), $X^2 = 3379.5(1)$, $p < .001$. The takeaway from this finding is that bathroom bans are based on the insistence that SAAB and gender identity must align. However, others’ gender identity is unknown and is only assumed based on perceptions of gender expressions. These perceptions and expressions vary considerably, making it impossible to interpret others’ SAAB accurately. Thus, laws that ban TNB people from using bathrooms aligned with their gender identity mistakenly assume that the difference between transgender and cisgender people is generally discernable. This creates a scenario in which beautiful TNB women, not merely beauty pageant contestants and models, will be expected to use men’s restrooms. This also holds for TNB men whose appearance has been masculinized, including facial hair and muscular development. This legislation creates confusion. We have demonstrated that gender expression congruent with gender identity cannot be reliably discerned from those whose gender expression is congruent with their SAAB.

The Social Construction of Reality, a seminal work by Peter Berger and Thomas Luckmann [51] posits that individuals shape and are shaped by the realities they create through social interaction. This concept has profound implications for understanding the experiences of TNB people, particularly the phenomenon of ‘passing’ as cisgender [52]. These authors suggest that ‘passing’ can be conceptualized as presenting as a member of a social group that varies from one to which they were socially ascribed. It is crucial for policymakers and society to recognize the importance of creating a more inclusive and accepting environment for individuals of all gender identities. This is consistent with the preamble of the NASW [13] Code of Ethics which states that “Social workers promote social justice and social change with and on behalf of clients.”

Discussion

Our paper has implications for policy and practice related to TNB

people and communities. To challenge the policing of gender and cultivate a more inclusive and understanding society, it is crucial to acknowledge the complexity of gender expression and the potential for misperception [53]. By promoting an awareness of the spectrum of gender presentations and respecting individuals’ self-identification, we can contribute to dismantling harmful gender norms and creating a safer, more accepting environment for all individuals, regardless of their sex or gender expression [54]. The NASW [13] Code of Ethics requires social workers to “respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals” (Section 1.02). Therefore, advocating for TNB people’s inclusion is essential to supporting their self-determination. Mental health professionals need to be prepared to serve more TNB clients as more anti-TNB legislation is introduced, debated, passed, and implemented.

Mental health professionals have an ethical responsibility to advocate with and on behalf of their TNB clients [13, 55, 56]. Although not part of their ethical codes per se, the American Association of Marriage and Family Therapists issued a statement opposing anti-TNB legislation [57]. It proudly supports the Queer & Trans Advocacy Network (QTAN) to increase the influence of TNB as well as lesbian, gay and bisexual advocacy. The American Psychiatric Association Board of Trustees issued a policy statement acknowledging the harm done to TNB people’s mental health due to discrimination and civil rights inequalities, proclaiming the organization is positioned to take a critical advocacy role [58].

While these organizations have made statements of support for TNB people, the actions of individual clinicians and practitioners as well as policymakers and advocates are critical in managing the mental and physical health disparities exacerbated by these bans. In partnership with TNB people, professionals must use their expertise and roles to advocate in legislative spaces. Many professions aim to advocate for underrepresented groups, and amplifying the voices of TNB people aligns with their code of ethics, particularly respecting individual differences [59]. The visibility of anti-TNB legislation increases when professionals and allies actively engage in advocacy efforts, ensuring continued support for TNB communities. As noted in this article, anti-TNB legislation has harmed TNB adolescents, youth, and adults. Mental health professionals are well positioned to keep advocates and policymakers aware of the effects these laws are having on their clients. Advocates and policymakers have an ethical responsibility to marshal this information to oppose anti-TNB legislation [60].

If the status quo persists, fear and hatred of gender minorities may become further entrenched in legislation. Individuals, professionals, and society must contribute to gathering accurate data concerning the TNB population. We suggest that all professionals actively participate in nonpartisan data collection. Accurate data gathering contributes to the foundation for data-driven, equity-focused policymaking, ensuring that decisions made by those in power are based on scientific evidence. Bills aimed at protecting women in vulnerable spaces may inadvertently increase the opportunities for deviant cisgender men to gain access to a typically private space by misrepresenting themselves as trans women. Some supporters of bathroom bans claim that there is a right to privacy and believe that allowing people to choose their restroom based on their gender identity could increase the risk of predatory behavior [61, 62]. Accurate data collection regarding safety is needed to dispel myths about bathroom bans. There is no evidence that providing trans women access to private women’s spaces poses a threat.

Public support for sexual and gender minorities is strong in the United States. In the Pew Research Center [4] survey conducted in 2020, only 38.1% of participants indicated that “Our society has GONE TOO FAR in accepting people who are transgender,” and about the same percentage (36.3%) reported that “Our society has

NOT GONE FAR ENOUGH in accepting people who are transgender.” The diversity within the TNB population is overlooked when examining the support for or opposition to TNB legislation. Interdisciplinary collaboration among organizations in healthcare, law, education, and human services can significantly counter anti-TNB messaging and legislation [63]. By bringing TNB advocacy to the forefront and challenging harmful narratives, these organizations can foster more inclusive and supportive policies. Amplifying the voices and experiences of the TNB community further bolsters equity-driven legislation and advocacy efforts.

The wavering in policies criminalizing and decriminalizing the status of TNB people exacerbates the mental and physical toll on TNB people. This vulnerable population is directly impacted by the policing of their gender, which leads to the internalization of fear, vigilance, and out casting, resulting in negative emotions, including stress and anxiety [64]. Careful decision-making by health care professionals improves affirmative visibility for TNB people, thus combating negative stigma and discrimination [59]. In sum, the policing of gender targets individuals who do not fall within the social conception of appropriate gender expression and erroneously assumes that gender incongruence with SAAB is visually discernable.

Conflicts of Interest: The authors declare no conflict of interest.

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