

HOUSE BILL 757

F1, D5

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By: **Delegates Szeliga, Arian, Boteler, Chisholm, M. Fisher, Grammer, Kittleman, Krebs, Mangione, McComas, Morgan, Parrott, Reilly, Rose, Shoemaker, Thiam, and Wivell**

Introduced and read first time: February 3, 2022

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

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

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

13 BY adding to
14 Article – Education
15 Section 7–129
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2021 Supplement)

18 Preamble

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 WHEREAS, Men generally have “denser, stronger bones, tendons, and ligaments”
4 and “larger hearts, greater lung volume per body mass, a higher red blood cell count, and
5 higher hemoglobin.” Neel Burton, The Battle of the Sexes, PSYCHOL. TODAY (July 2,
6 2012), <https://www.psychologytoday.com/blog/hide-andseek/201207/the-battle-the-sexes>;
7 and

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

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

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

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

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

38 WHEREAS, A recent study of female and male Olympic performances since 1983
39 found that, although athletes from both sexes improved over the time span, the “gender

gap” between female and male performances remained stable. “These suggest that women’s performances at the high level will never match those of men.” Valerie Thibault, et al., Women and men in sport performance: The gender gap has not evolved since 1983, 9 Journal of Sports Science and Medicine 214, 219 (2010); and

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

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

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

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

Article – Education

7–129.

(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 SCHOOLS; AND

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

(C) (1) AN INTERSCHOLASTIC OR INTRAMURAL ATHLETIC TEAM OR SPORT THAT IS SPONSORED BY A PUBLIC OR NONPUBLIC 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 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 ATHLETIC TEAMS OR SPORTS FOR STUDENTS OF THE FEMALE SEX.

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

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

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

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

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

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

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

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

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
2 1, 2022.