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States' push to define sex decried as erasing trans people

By JOHN HANNA February 15, 2023



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TOPEKA, Kan. (AP) — Adam Kellogg was a self-described nerdy 16-year-old preparing to board a flight from Kansas City to Florida for a space and science camp trip to Cape Canaveral when security held him up for 30 minutes because his driver's license identified him as female.

Three years later, the University of Kansas student's driver's license identifies him as male, but legislative proposals in at least eight states could prevent transgender people like him from changing their driver's licenses and birth certificates. The Republican-controlled Kansas Legislature is considering a bill that would define male and female in state law and base people's legal gender identities on their anatomy at birth.

Nationally, conservatives are pushing dozens of proposals in statehouses to restrict transgender athletes, [gender-affirming care](#) and [drag shows](#). But in measures like Kansas', LGBTQ-rights advocates see a new, sweeping effort to erase trans people's legal existence, deny recognition to nonbinary or gender-fluid people and ignore those who are intersex — people born with genitalia, reproductive organs, chromosomes and/or hormone levels that don't fit typical definitions for male or female.

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"Something that's really important for me is being able to just simply exist as a man, not even think about it," Kellogg said this week while visiting the Statehouse with other transgender people and LGBTQ advocates.

Kellogg laughs now about his experience at the airport, but it was no laughing matter at the time. Back then, he bound the breasts that he'd later have surgically removed and, "They thought I had a bomb strapped to me."

Doctors say reproductive anatomy at birth doesn't always align with strict definitions of sex and that binary views of sexual identity can miss biological nuances.

LGBTQ-rights advocates say having a driver's license or birth certificate confirm a transgender person's identity is important by itself but also can prevent daily hassles or harassment. They believe Kansas' bill also would prevent transgender people from using restrooms and other facilities aligned with their gender identities.

Republicans have put transgender issues at the center of their agenda, a tactic that many observers see as an effort to keep conservative voters energized and to push voters sympathetic to Democrats on other issues into the GOP camp. In the Republican response to President Joe Biden's State of the Union address, Arkansas Gov. Sarah Huckabee Sanders derided the Democratic president as "the first man to surrender his presidency to a woke mob that can't even tell you what a woman is."

The Kansas bill had a hearing Wednesday before the state Senate's health committee and is similar to a Republican measure [introduced in the U.S. House](#) last year. Oklahoma's Legislature is weighing a similar proposal, while [North Dakota lawmakers](#) are considering a resolution that would urge public schools and other "public entities" to distinguish "between the sexes according to biological sex at birth." Mississippi lawmakers had three proposals like Kansas', but none advanced this year.

New Hampshire, Tennessee and Texas also have proposals to define male and female in state law, and a Republican lawmaker in South Carolina has proposed [an amendment to the state's constitution](#) to declare that legally, a person's gender would be based on anatomy at birth, not a "psychological, chosen, or subjective experience of gender."

"They're afraid of what they don't understand," said Luc Bensimon, a transgender man who serves on Topeka's anti-discrimination commission and is an activist for the Black Trans Advocacy Coalition. "Anything or any lifestyle that is different or outside the norm, they're not OK."

The Kansas measure would declare that legally, "sex" means "biological" sex, "either male or female, at birth." It says females have a reproductive system "developed to produce ova," while males have one "developed to fertilize the ova."

It's not clear how far the measure will go, though the state Senate committee could vote on it next week. Democratic Gov. Laura Kelly [twice vetoed bills](#) to ban transgender athletes from girls' and women's club, K-12 and college sports, and [she opposes restricting](#) gender affirming care.

Supporters of the Kansas bill contend that they're responding to parents and others who are uncomfortable with "biological men" or "biological boys" sharing spaces meant for women and girls — especially bathrooms and locker rooms but also prisons and domestic violence shelters.

They also are trying to frame the debate as protecting the rights of "biological" women, and the Kansas bill is called, "The Women's Bill of Rights."

In Kansas, Republican state Sen. Renee Erickson, the Senate health committee's vice chair, asked it to sponsor the measure. A former college basketball player, she has also led the push to restrict transgender athletes. She said defining male and female in state law would not prevent anyone from "living how they choose to live."

In North Dakota, Republican state Rep. SuAnn Olson decried what she called "radical gender ideologues" and said they want to redefine womanhood as a subjective state. In Kansas, conservative activist and Statehouse lobbyist Phillip Cosby called young people's increased identity as transgender or nonbinary "a social contagion."

Dr. Kristyn Brandi, a fellow with the American College of Obstetricians and Gynecologists, said she doesn't automatically assume female reproductive anatomy means female gender.

"It's helpful to know what anatomical structures are present when I'm doing an exam, when I'm recommending tests," she said. "I often ask my patient, how do they like to be identified? And I go with that."

Brandi also said proclaiming that sex is binary ignores that intersex conditions and differences in gender identity exist.

At birth, external genital anatomy can be ambiguous, sometimes because of differences in sex development, or intersex conditions, which affect about 1% of the population.

Intersex conditions can involve external genitals that don't match a person's sex chromosomes. In one condition, testes develop internally but external genitals and breasts appear female. These babies are usually assigned female at birth, but their bodies will never produce eggs.

"There's variation," Brandi said. "Not everyone fits into this exact box."

Jae Moyer, a Kansas City-area activist, has a driver's license and birth certificate identifying them as male, although they identify as nonbinary. The Kansas measure feels designed to force them into "molds that I personally don't fit into."

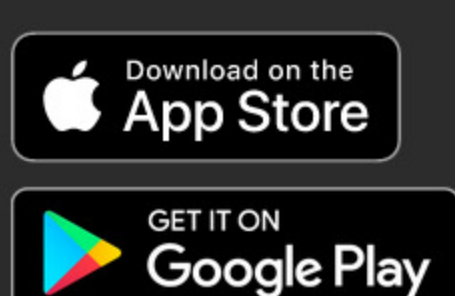
"They want to make sure that they're taking every avenue possible to just erase who I am as a person," Moyer said.

AP Medical Writer Lindsey Tanner in Chicago and AP reporter Margaret Stafford in Liberty, Missouri, contributed to this report.

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