

## BILL 23-07 AND LOCKERROOMS

This Bill DEFAULTS THE ISSUE TO THE MONTGOMERY COUNTY OFFICE OF HUMAN RIGHTS (WHICH HAS ALREADY STATED IT WILL NOT SEGREGATE BY BIOLOGICAL SEX)

Our Montgomery County Bill (after a public outcry) is now "silent" on the issue of bathroom access. The bill adds gender identity to the anti-discrimination policy and covers public accommodations. This was confirmed by Montgomery Council Member Leventhal on November the 9<sup>th</sup>: "*In an effort to clarify, I think we caused greater confusion and uncertainty,*" he said. "*If there is an issue of alleged discrimination occurring in a public facility, it will be up to the Office of Human Rights to rule on the case. We will not provide guidance, and I don't think people need guidance on how to use the bathroom.*" [The Human Rights office of the District of Columbia, left with a similar ambiguity, ruled against bathrooms segregated by biological sex.]

DC's Human Rights OFFICE Current Ruling states :

*"Gender specific facilities where nudity in the presence of others is customary: Covered entities shall make reasonable accommodations to allow an individual access to that facility that is consistent with that individual's gender identity or expression regardless of whether the individual has provided identification or other documentation of their gender identity or expression."*

Montgomery County Human Rights Office has already said :

This law will be interpreted and enforced by the HRC, as recognized in the Montgomery County Council's Health and Human Services Committees memorandum dated November 13, 2007 which states:

*"At the Committee workstation, HRC staff indicated that if Bill 23-07 were silent on the issue of public facilities, they would interpret the bill as allowing a person to use facilities based on that person's gender identity."*

*The Montgomery County Council is well aware, as stated by its own memos, that this bill will allow biological males into the ladies locker-rooms.*

## THE MC COUNCIL KNOWS THE BILL WILL ALLOW MEN INTO LADIES LOCKERROOMS

The county council explicitly recognized HRC would interpret Bill 23-07 as requiring every public accommodations operator (Sears, Target, Germantown Indoor Pool, and Wooten High School, John Poole Middle School) to permit biologic males entry into female restrooms and locker rooms provided they were dressed as women and considered themselves as having, however temporarily, a female identity. That is clear in the quote from the November 13, 2007 memo of the Health and Human Services Committee written by Amanda Mihill which states that if the Bill does not define public facility, then the Montgomery Human Right Commission would interpret Bill 23-07 as allowing biologic male transgender entry into female locker rooms. Welcome to the Montgomery County Council SPIN ZONE !

Want the full legal analysis? Read our attorney's letter and the AFF Legal Challenge ....

## THE FEDERAL ENDA BILL

Showing more prudence than our Montgomery County Council, the Federal ENDA Bill was amended to deny access to "shared shower or dressing facilities in which being seen fully unclothed is unavoidable...."

## HISTORY OF BILL 23-07 AND DELETED LANGUAGE

Montgomery County Council [October 15, 2007] Memorandum containing BILL 23-07 [page 8] and documents of Public Council meeting, including amendments discussed.

Note: The Committee recommended drafting an amendment to implement Option 5 (top of page 5). The bill with that language was not released to the public until Sunday night, November 11th. The removed language in the paragraph was incredibly broad, requiring not only public accommodations but also private employers to specifically allow transgender persons of a biologically different sex into showers and locker-rooms. That paragraph containing this language has been removed. Essentially this defaults the bill back to Option 1 of the county's memorandum, which leaves the decision up to the Office of Human Rights. Unfortunately, this will probably end up with a more liberal interpretation of the bill than if the county had not removed the amendment. *Public accommodations as defined by county code include showers and locker-rooms - thus women and children are not protected.*