

# A BREAKDOWN OF GOVERNOR PILLEN'S ANTI-TRANS IDENTIFICATION EXECUTIVE ORDER

## What does this Executive Order (EO) mean?

The Governor wants all state agencies to define sex based on sex assigned at birth.

## What does the EO do?

The potential impact will depend on the specific agency as there is no enforcement mechanism in the executive order.

## Does this EO create any crimes or civil offenses?

The language of the EO does not, on its own, make anything a crime or a civil offense. Nor does the EO bar anyone from acting in accordance with their true gender. For example, the EO does not, on its own, ban trans Nebraskans from accessing the restroom that corresponds with their gender identity nor does it make it a crime or civil offense for a trans person to be in gendered spaces that correspond with their gender identity.

## What agencies are impacted?

This could apply to all state-run entities unless preempted by federal law.

## What if I have already changed my legal sex?

We do not have a clear answer yet. The Department of Motor Vehicles and the Office of Vital Records may have to establish protocols that comply with the order, but it is currently unclear what these protocols could look like and if they will apply to individuals who have already changed their legal sex.

## What should someone do if they are harmed by this EO?

Individuals who are harmed by the EO are encouraged to contact us at [gethelp@aclunbraska.org](mailto:gethelp@aclunbraska.org).

## What are your organizations doing about this EO?

At this stage, we are exploring all options, including litigation challenging this EO. The ACLU of Nebraska and Nebraska Appleseed, along with local and national partners, are closely monitoring the situation and considering every possible avenue for advocacy to limit the harm caused by this EO.

## Does the EO take away rights from Trans Nebraskans?

We know for certain that the EO cannot take away trans Nebraskans' federal protections from discrimination. It is unclear at this time how the EO may impact existing Nebraska laws and policies, including our state anti-discrimination laws. Trans Nebraskans have federal protections from discrimination in the workplace [1], in domestic violence shelters [2], in housing [3] and states cannot discriminate based on gender identity and sexual orientation in the administration of food and nutrition programs, like SNAP and SNAP-Ed. [4] This EO also does not take away trans Nebraskans' constitutional rights (equal protection, due process, free speech, etc.).



**ACLU** Nebraska

[1] See *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

[2] Dep't of Just., VAWA 2013 NONDISCRIMINATION PROVISION: MAKING PROGRAMS ACCESSIBLE TO ALL VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING (April 9, 2014) <https://www.justice.gov/archives/ovw/blog/vawa-2013-nondiscrimination-provision-making-programs-accessible-all-victims-domestic-violence>.

[3] Memorandum from the Assistant Secretary for Fair Housing and Equal Opportunity on Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act to the Office of Fair Housing & Equal Opportunity, Fair Housing Assistance Program Agencies, and Fair Housing Initiatives Program Grantees (Feb. 11, 2021) available at [https://www.hud.gov/sites/dfiles/PA/documents/HUD\\_Memo\\_EO13988.pdf](https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf) (last visited Sept. 6, 2023).

[4] U.S. Dep't of Agriculture Food and Nutrition Service, Nondiscrimination Statement, <https://www.fns.usda.gov/civil-rights/usda-nondiscrimination-statementsnap-fdpir> (last visited Sept. 6, 2023).