

FACT SHEET

KNOW YOUR RIGHTS: S.B. 12 (DRAG BAN)



Current status: Declared unconstitutional and blocked.

In August 2026, a federal court entered a final order declaring S.B. 12 (2023) to be unconstitutional and issued a permanent injunction blocking the Texas Attorney General from enforcing it.

WHAT IS THE STATUS OF S.B. 12 AND DRAG IN TEXAS?

- S.B. 12 is once again blocked across Texas.
- Texas Attorney General Ken Paxton has indicated that he plans to appeal, so our lawsuit challenging it will likely remain ongoing.
- As discussed below, the U.S. Court of Appeals for the Fifth Circuit found that all-ages and family-friendly drag shows are not even “arguably” prohibited by S.B. 12 and thus have always remained fully legal.
- But some shows were impacted by this law, as outlined below, and with the district court ruling, these performances can now continue across Texas, subject to pre-existing laws.
- If you or anyone you know has S.B. 12 enforced or threatened to be enforced against them by a government official, please contact us right away at aclutx.org/intake.

WHAT IS S.B. 12?

- S.B. 12 is a law that was passed during the 2023 Texas legislative session.
- Governor Greg Abbott and Texas lawmakers stated that it was intended to ban drag shows in public, but it is not limited to drag and targets all performances that are “sexually oriented.”
- S.B. 12 defines a show that is “sexually oriented” as a “visual performance that features a performer who is (1) nude or (2) engages in sexual conduct” and that “appeals to the prurient interest in sex.”
- This applies on most public property and in front of minors (see below).

WHAT TYPES OF PERFORMANCES DID S.B. 12 PROHIBIT?

- “Nude” is defined as “entirely unclothed” or “clothed in a manner that leaves uncovered . . . any portion of the breasts below the top of the areola . . . or any portion of the genitals or buttocks.”
- “Sexual conduct” includes:
 - “The exhibition or representation, actual or simulated, of sexual acts”;
 - “The exhibition or representation, actual or simulated, of male or female genitals in a lewd state”;
 - “The exhibition of a device designed and marked as useful primarily for the sexual stimulation of male or female genitals”;

- “Actual contact or simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person;” or
 - “The exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.”
- “Prurient interest in sex” is not defined by the law, and the Fifth Circuit noted that it must only apply to performances that are “in some sense erotic.” The district court found this term unconstitutionally vague and noted that it could prohibit performances like those by Elvis, Dolly Parton, and Miley Cyrus that are “in some sense erotic.”

WHAT WERE S.B. 12’S ENFORCEMENT MECHANISMS?

- Because S.B. 12 has been declared unconstitutional, no official may enforce it without violating the U.S. Constitution. But the law created three potential enforcement mechanisms by the Texas attorney general, local governments, and criminal prosecutors:
 - The attorney general could fine any person up to \$10,000 who controls the premises of a commercial enterprise and “allow[s] a sexually oriented performance to be present on the premises in the presence of an individual younger than 18 years of age.”
 - Municipalities and counties could not “authorize a sexually oriented performance on public property or in the presence of an individual younger than 18 years of age.”
 - S.B. 12 also had criminal penalties of up to a year in jail and/or \$2,000 fine for any person who “engages in a sexually oriented performance on public property at a time, in a place, and in a manner that could reasonably be expected to be viewed by a child; or in the presence of an individual younger than 18 years of age.”

WHERE DID S.B. 12 APPLY?

- On public property and anywhere that someone under 18 is present.
- It did not apply in bars and nightclubs where no one under 18 is “present on the premises.”
- The criminal penalties also did not apply on public property if the performance is “at a time, in a place, and in a manner that could [not] reasonably be expected to be viewed by a child.”

HOW DID S.B. 12 TARGET DRAG SHOWS?

- The district court found that the prohibition on “sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics” was intended to target drag shows, since drag performers often use accessories or prosthetics that exaggerate gender expression.
- While the law was aimed at drag shows, it reaches much more broadly and the district court found that it could potentially stifle “countless exhibitions and events with an audience, including sports matches, cheerleading, dance contests, karaoke, musicals, art exhibitions,” and more.

WHAT HAPPENED IN THE LAWSUIT CHALLENGING S.B. 12?

- In September 2023, a federal court blocked S.B. 12 from going into effect after the ACLU of Texas and Baker Botts LLP sued to challenge it on behalf of The Woodlands Pride, Abilene Pride Alliance, Extragrams, 360 Queen Entertainment, and Brigitte Bandit. After a two-day trial, the plaintiffs obtained an injunction blocking the law for two and a half years.
- On February 25, 2026, the U.S. Court of Appeals for the Fifth Circuit issued an order allowing the law to take effect while sending the case back to the district court for more analysis. The court found that two Plaintiffs' performances — The Woodlands Pride and Abilene Pride Alliance — were not even "arguably proscribed" by the law because their performances are not "sexual" or "erotic," and it ordered that they be dismissed from the case.
- Back at the district court, on August 25, 2026, the district court held that S.B. 12 violates the U.S. Constitution because it discriminates based on content and viewpoint without meeting strict scrutiny and is unconstitutionally vague, and overbroad.
 - The court noted that "for those who find such activities... offensive, the solution is relatively simple . . . just don't go."

WHAT KIND OF DRAG SHOWS WERE IMPACTED BY S.B. 12?

- The Fifth Circuit interpreted S.B. 12 to not apply to family-friendly and all-ages drag shows organized by The Woodlands Pride and Abilene Pride Alliance because these shows were not "sexual" nor did they "appeal" to the "prurient interest in sex."
 - This meant that most all-ages and family-friendly drag shows have always been fully legal and were never prohibited by S.B. 12.
- The Fifth Circuit found that shows that are "in some sense erotic" and involve things like twerking, pulsing someone's chest, or a patron slapping a performer's butt could arguably be prohibited by S.B. 12.
 - As long as these performances are not obscene — and do not violate other Texas laws, like indecent exposure — they remain fully legal now that S.B. 12 is blocked.

WHAT HAPPENED WHILE S.B. 12 WAS IN EFFECT?

- The law spread fear, anger, and misinformation that harmed drag performers and the LGBTQIA+ community. Texas already led the nation in threats against drag performers and venues that host them, and S.B. 12 worsened anti-drag animosity.
- Black and brown Texans already face over-policing, lack of economic opportunity, and hypersexualization by law enforcement and society, so S.B. 12 disproportionately harmed these communities, especially Black trans women.
- Because the law is so vague, there was tremendous confusion about what was prohibited, and some performances were either canceled or age-limited only to adults.

WHAT CAN YOU DO IF YOU ARE IMPACTED BY S.B. 12?

- If you or someone you know has S.B. 12 enforced or threatened against them by a government official, please contact us right away at aclutx.org/intake.
- If someone besides a government official tries to enforce this law against you, share this fact sheet and let them know that the law has been declared unconstitutional.
- If you are a drag performer, check out the [Drag Defense Handbook](#).
- Keep up with ACLU of Texas updates for information regarding our [court case](#). Consider consulting with an attorney about how to navigate performances that you might want to host, especially regarding other Texas laws.

HOW CAN YOU SUPPORT DRAG IN TEXAS?

- Learn about the history of drag in Texas through our [partners at Equality Texas](#) or this [ACLU of Texas blog post](#).
- Support drag artists and those who support them. Even for performances completely unaffected by S.B. 12, performers, venues, and nonprofits need your support.
- Keep an eye out for funds and mutual aid groups for drag performers and consider donating to help artists protect themselves in Texas, including The Mahogany Project's [Drag Rapid Relief Fund](#).
- Pay attention to state-level elections in 2026 and note the candidates who will support drag and drag performers.

Last updated: September 1, 2026