

STATE OF NEW YORK

4702

2019-2020 Regular Sessions

IN SENATE

March 21, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to the treatment and placement of inmates based upon gender identity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 137 of the correction law is amended by adding a
2 new subdivision 7 to read as follows:

3 7. Any inmate of a correctional facility who has a gender identity
4 that differs from the inmate's assigned sex at birth and has a diagnosis
5 of gender dysphoria, as set forth in the most recent edition of the
6 American Psychiatric Association's "Diagnostic and Statistical Manual of
7 Mental Disorders", shall:

8 (a) be addressed by correctional officers and staff in a manner that
9 is consistent with the inmate's gender identity;

10 (b) have access to commissary items, clothing, personal property,
11 programming and educational materials that are consistent with the
12 inmate's gender identity; and

13 (c) have the right to be searched by a correctional officer or staff
14 member of the same gender identity, unless the inmate requests otherwise
15 or under exigent circumstances.

16 § 2. The correction law is amended by adding a new section 72-c to
17 read as follows:

18 § 72-c. Placement of inmates based on gender identity. In determining
19 placement of a person in custody of the department, an inmate who has a
20 birth certificate, passport or driver's license that reflects his or her
21 gender identity or who can meet established standards for obtaining such
22 a document to confirm the inmate's gender identity shall presumptively
23 be placed in a correctional facility with inmates of the gender consist-
24 ent with the inmate's gender identity. Such presumptive placement may

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 be overcome by a demonstration by the commissioner, or the commission-
2 er's designee, that the placement would present significant safety,
3 management or security problems. In making determinations pursuant to
4 this section, the inmate's views with respect to his or her safety shall
5 be given serious consideration by the commissioner, or the commission-
6 er's designee.

7 § 3. Section 500-b of the correction law is amended by adding a new
8 subdivision 14 to read as follows:

9 14. Notwithstanding the provisions of this section, in determining
10 placement in a facility housing unit, an inmate who has a birth certifi-
11 cate, passport or driver's license that reflects his or her gender
12 identity or who can meet established standards for obtaining such a
13 document to confirm the inmate's gender identity shall presumptively be
14 placed in a facility housing unit with inmates of the gender consistent
15 with the inmate's gender identity. Such presumptive placement may be
16 overcome by a demonstration by the chief administrative officer, or the
17 chief administrative officer's designee, that the placement would pres-
18 ent significant safety, management or security problems. In making
19 determinations pursuant to this section, the inmate's views with respect
20 to his or her safety shall be given serious consideration by the chief
21 administrative officer, or the chief administrative officer's designee.

22 § 4. Section 500-k of the correction law, as amended by chapter 2 of
23 the laws of 2008, is amended to read as follows:

24 § 500-k. Treatment of inmates. Subdivisions five ~~[and]~~, six and seven
25 of section one hundred thirty-seven of this chapter, except paragraphs
26 (d) and (e) of subdivision six of such section, relating to the treat-
27 ment of inmates in state correctional facilities are applicable to
28 inmates confined in county jails; except that the report required by
29 paragraph (f) of subdivision six of such section shall be made to a
30 person designated to receive such report in the rules and regulations of
31 the state commission of correction, or in any county or city where there
32 is a department of correction, to the head of such department.

33 § 5. This act shall take effect immediately; provided, however, that
34 the amendments to section 500-b of the correction law made by section
35 three of this act shall not affect the repeal of such section and shall
36 be deemed repealed therewith.