STATE OF NEW YORK

4702--A

2019-2020 Regular Sessions

IN SENATE

March 21, 2019

Introduced by Sens. SEPULVEDA, CARLUCCI, HOYLMAN, MYRIE, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Ethics and Guidance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

7. Any incarcerated person in a correctional facility who has a gender identity that differs from his or her assigned sex at birth or has a diagnosis of gender dysphoria, as set forth in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or who self-identifies as transgender or gender nonconforming shall:

(a) be addressed by correctional officers and staff in a manner that most closely aligns with such person's gender identity;

(b) have access to commissary items, clothing, personal property, programming and educational materials that most closely align with such person's gender identity;

(c) have the right to be searched by a correctional officer or staff member of the gender most closely aligned with such person's gender identity, unless the incarcerated person requests otherwise or under exigent circumstances; and

(d) have the right to medical and mental health care as needed and as appropriate for his or her gender identity.

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

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

LBD01372-02-0

§ 72-c. Placement of inmates based on gender identity. 1. An incarcerated person who has a gender identity that differs from his or her assigned sex at birth or who has a diagnosis of gender dysphoria or who self-identifies as transgender or gender nonconforming pursuant to subdivision seven of section one hundred thirty-seven of this chapter shall be presumptively placed in a correctional facility with persons of the gender that most closely aligns with such person's gender identity unless the person opts out of such placement. The incarcerated person shall be permitted to leave such placement and transfer to a facility housing individuals of his or her assigned sex at birth at any time. Any such person who has opted out of such presumptive placement or who leaves such placement may again request placement in a correctional facility with persons of the gender that most closely aligns with his or her gender identity at any time. Such presumptive placement may be overcome by a determination in writing by the commissioner or the commissioner's designee that there is clear and convincing evidence that such person presents a current danger of committing gender-based violence against others. In making such a determination, the commissioner or his or her designee shall further consider whether such person can be safely housed in another facility or housing unit that most closely aligns with the person's gender identity.

2. A transgender incarcerated person experiencing harassment, violence or threats of violence due to his or her gender identity shall not be placed in protective custody for more than thirty days as a result of such harassment, violence or threats of violence, and must be housed in a least-restrictive setting where he or she will be safe from such behavior.

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

14. 1. Notwithstanding the provisions of this section, any incarcerated person determined to have a gender identity different from his or her assigned sex at birth or who has a diagnosis of gender dysphoria or who is self-identified as transgender or gender nonconforming pursuant to subdivision seven of section one hundred thirty-seven of this chapter shall be presumptively placed in a facility housing unit with incarcerated individuals of the gender most closely aligned with such person's gender identity. Such presumptive placement may be overcome by a written determination by the chief administrative officer, or the chief administrative officer's designee, that the placement would present significant safety, management or security problems.

2. A transgender incarcerated individual experiencing harassment, violence or threats of violence due to his or her gender identity shall not be placed in protective custody for more than thirty days as a result of such harassment, violence or threats of violence, and must be housed in a least-restrictive setting where he or she will be safe from such behavior.

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

§ 500-k. Treatment of inmates. Subdivisions five [~~and~~], six and seven of section one hundred thirty-seven of this chapter, except paragraphs (d) and (e) of subdivision six of such section, relating to the treatment of inmates in state correctional facilities are applicable to inmates confined in county jails; except that the report required by paragraph (f) of subdivision six of such section shall be made to a person designated to receive such report in the rules and regulations of

the state commission of correction, or in any county or city where there is a department of correction, to the head of such department.

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