

STATE OF NEW YORK

7001

2021-2022 Regular Sessions

IN ASSEMBLY

April 19, 2021

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to enacting the "gender identity respect, dignity and safety act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "gender identity respect, dignity and safety act".

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

5 7. (a) Any incarcerated person in a correctional facility who has a
6 gender identity that differs from their assigned sex at birth or who has
7 a diagnosis of gender dysphoria, or who self-identifies as transgender
8 or gender nonconforming or nonbinary shall:

9 (i) be addressed by correctional officers and staff in a manner that
10 most closely aligns with such person's gender identity. If a person
11 states that, in order to most closely align with their gender identity,
12 they use a name that is different from the name listed on their govern-
13 ment-issued identification, they shall be addressed and referred to by
14 their requested name;

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

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

22 (iv) have the right to medical and mental health care as needed and as
23 appropriate for their gender identity and to items that are used by
24 individuals to affirm their gender identity, including those associated
25 with necessary and appropriate care after gender-affirming surgery.

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

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(b) The department is prohibited from requiring documentation to confirm a person's gender identity. All people shall receive notice in writing in a language and manner understandable to them about the requirements of this subdivision upon their admission to a correctional facility. The department shall provide annual training on provisions of this subdivision to all personnel. A violation of this subdivision is a violation of section forty-c of the civil rights law and section two hundred ninety-six of the executive law. Any individual aggrieved under this subdivision may initiate proceedings in a court of competent jurisdiction or in the New York state division of human rights seeking injunctive relief and damages, including reasonable attorney fees.

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

§ 72-d. Placement of inmates based on gender identity. 1. An incarcerated person who has a gender identity that differs from their assigned sex at birth or who has a diagnosis of gender dysphoria or who self-identifies as transgender or gender nonconforming or nonbinary 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 their 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 their 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. A denial of presumptive placement shall not be based on any discriminatory reasons, including but not limited to (a) the anatomy or genitalia of the person whose housing placement is at issue, (b) the sexual orientation of the person whose housing placement is at issue, (c) the complaints of cisgender people who do not wish to be housed with a non-cisgender person due to that person's gender identity, or (d) a factor present among other people in the presumptive housing unit or facility. A denial of presumptive placement and detailed reasoning for the denial shall be provided in writing to the affected person within two days of the department's decision. A person may grieve the denial.

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

3. All people shall receive notice in writing in a language and manner understandable to them about the requirements of this section upon their admission to a correctional facility. The department shall provide annual training on provisions of this section to all correctional personnel who are involved in the supervision or placement of incarcerated persons.

4. The department shall report annually to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the chairperson of the senate crime victims, crime and correction committee and the chair-

1 person of the assembly correction committee the number of transgender,
2 gender nonconforming, or nonbinary incarcerated people who (a) were
3 denied presumptive placement in accordance with subdivision one of this
4 section; and (b) voluntarily opted out of presumptive placement in
5 accordance with subdivision one of this section; and (c) were kept in
6 involuntary protective custody for longer than thirty days. Reports
7 required by this section shall be posted on the website maintained by
8 the department. Reports may include de-identified individual information
9 in the aggregate, but shall not include personally identifiable informa-
10 tion.

11 5. A violation of this section is a violation of section forty-c of
12 the civil rights law and section two hundred ninety-six of the executive
13 law. Any individual aggrieved under this section may initiate
14 proceedings in a court of competent jurisdiction or in the New York
15 state division of human rights seeking injunctive relief and damages,
16 including reasonable attorney fees.

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

19 14. (a) Notwithstanding the provisions of this section, any incarcer-
20 ated person determined to have a gender identity different from their
21 assigned sex at birth or who has a diagnosis of gender dysphoria or who
22 is self-identified as transgender or gender nonconforming or nonbinary
23 pursuant to subdivision seven of section one hundred thirty-seven of
24 this chapter shall be presumptively placed in a facility housing unit
25 with incarcerated individuals of the gender most closely aligned with
26 such person's gender identity unless the person opts out of such place-
27 ment. The incarcerated person shall be permitted to leave such placement
28 and transfer to a unit housing individuals of their assigned sex at
29 birth at any time. Any such person who has opted out of such presumptive
30 placement or who leaves such placement may again request placement in a
31 housing unit with persons of the gender that most closely aligns with
32 their gender identity at any time. Such presumptive placement may be
33 overcome by a determination in writing by the chief administrative offi-
34 cer or their designee that there is clear and convincing evidence that
35 such person presents a current danger of committing gender-based
36 violence against others. A denial of presumptive placement shall not be
37 based on any discriminatory reasons, including but not limited to (1)
38 the anatomy or genitalia of the person whose housing placement is at
39 issue, (2) the sexual orientation of the person whose housing placement
40 is at issue, (3) the complaints of cisgender people who do not wish to
41 be housed with a non-cisgender person due to that person's gender iden-
42 tity, or (4) a factor present among other people in the presumptive
43 housing unit or facility. A denial of presumptive placement and detailed
44 reasoning for the denial shall be provided in writing to the affected
45 person within two days of the decision by the chief administrative offi-
46 cer or his designee. A person may grieve the denial.

47 (b) A transgender, gender nonconforming, or nonbinary incarcerated
48 individual experiencing harassment, violence or threats of violence due
49 to their gender identity shall not be placed in involuntary protective
50 custody for more than thirty days as a result of such harassment,
51 violence or threats of violence, and shall be housed in a least-restric-
52 tive setting where they will be safe from such behavior.

53 (c) All people shall receive notice in writing in a language and
54 manner understandable to them about the requirements of this subdivision
55 upon their admission to a local correctional facility. The sheriff shall
56 provide annual training on provisions of this subdivision to all correc-

1 tional personnel who are involved in the supervision or placement of
2 incarcerated persons.

3 (d) The sheriff of each county shall report, in a form and manner
4 prescribed by the commission, the number of transgender, gender noncon-
5 forming, or nonbinary incarcerated people who (1) were denied presump-
6 tive placement in accordance with paragraph (a) of this subdivision; and
7 (2) voluntarily opted out of presumptive placement in accordance with
8 paragraph (a) of this subdivision; and (3) were kept in involuntary
9 protective custody for longer than thirty days. The commission shall
10 include such information in its annual report pursuant to section
11 forty-five of this chapter, but shall exclude identifying information
12 from such report. Reports required by this provision shall be posted on
13 the website maintained by the commission.

14 (e) A violation of this subdivision is a violation of section forty-c
15 of the civil rights law and section two hundred ninety-six of the execu-
16 tive law. Any individual aggrieved under this subdivision may initiate
17 proceedings in a court of competent jurisdiction or in the New York
18 state division of human rights seeking injunctive relief and damages,
19 including reasonable attorney fees.

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

22 § 500-k. Treatment of inmates. Subdivisions five [~~and~~], six and seven
23 of section one hundred thirty-seven of this chapter, except paragraphs
24 (d) and (e) of subdivision six of such section, relating to the treat-
25 ment of inmates in state correctional facilities are applicable to
26 inmates confined in county jails; except that the report required by
27 paragraph (f) of subdivision six of such section shall be made to a
28 person designated to receive such report in the rules and regulations of
29 the state commission of correction, or in any county or city where there
30 is a department of correction, to the head of such department.

31 § 5. Subdivision 1 of section 500-k of the correction law, as amended
32 by chapter 93 of the laws of 2021, is amended to read as follows:

33 1. Subdivisions five [~~and~~], six and seven of section one hundred thir-
34 ty-seven of this chapter, except paragraphs (d) and (e) of subdivision
35 six of such section, relating to the treatment of inmates in state
36 correctional facilities are applicable to inmates confined in county
37 jails; except that the report required by paragraph (f) of subdivision
38 six of such section shall be made to a person designated to receive such
39 report in the rules and regulations of the state commission of
40 correction, or in any county or city where there is a department of
41 correction, to the head of such department.

42 § 6. This act shall take effect immediately; provided, however, that
43 the amendments to section 500-b of the correction law made by section
44 three of this act shall not affect the repeal of such section and shall
45 be deemed repealed therewith; provided, further, that section five of
46 this act shall take effect on the same date and in the same manner as
47 chapter 93 of the laws of 2021, takes effect.