

# STATE OF NEW YORK

7001--A

2021-2022 Regular Sessions

## IN ASSEMBLY

April 19, 2021

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 individuals to affirm their gender identity, including those associated  
2 with necessary and appropriate care after gender-affirming surgery.

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

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

16 § 72-d. Placement of inmates based on gender identity. 1. An incarcer-  
17 ated person who has a gender identity that differs from their assigned  
18 sex at birth or who has a diagnosis of gender dysphoria or who self-i-  
19 dentifies as transgender or gender nonconforming or nonbinary pursuant  
20 to subdivision seven of section one hundred thirty-seven of this chapter  
21 shall be presumptively placed in a correctional facility with persons of  
22 the gender that most closely aligns with such person's gender identity  
23 unless the person opts out of such placement. The incarcerated person  
24 shall be permitted to leave such placement and transfer to a facility  
25 housing individuals of their assigned sex at birth at any time. Any such  
26 person who has opted out of such presumptive placement or who leaves  
27 such placement may again request placement in a correctional facility  
28 with persons of the gender that most closely aligns with their gender  
29 identity at any time. Such presumptive placement may be overcome by a  
30 determination in writing by the commissioner or the commissioner's  
31 designee that there is clear and convincing evidence that such person  
32 presents a current danger of committing gender-based violence against  
33 others. A denial of presumptive placement shall not be based on any  
34 discriminatory reasons, including but not limited to (a) the anatomy or  
35 genitalia of the person whose housing placement is at issue, (b) the  
36 sexual orientation of the person whose housing placement is at issue,  
37 (c) the complaints of cisgender people who do not wish to be housed with  
38 a non-cisgender person due to that person's gender identity, or (d) a  
39 factor present among other people in the presumptive housing unit or  
40 facility. A denial of presumptive placement and detailed reasoning for  
41 the denial shall be provided in writing to the affected person within  
42 two days of the department's decision. A person may grieve the denial.

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

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

55 4. The department shall report annually to the governor, the temporary  
56 president of the senate, the minority leader of the senate, the speaker

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

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

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

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

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

55 (c) All people shall receive notice in writing in a language and  
56 manner understandable to them about the requirements of this subdivision

1 upon their admission to a local correctional facility. The sheriff shall  
2 provide annual training on provisions of this subdivision to all correc-  
3 tional personnel who are involved in the supervision or placement of  
4 incarcerated persons.

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

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

22 § 5. 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 § 6. Subdivision 1 of section 500-k of the correction law, as amended  
34 by chapter 93 of the laws of 2021, is amended to read as follows:

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

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