

# STATE OF NEW YORK

7001--B

2021-2022 Regular Sessions

## IN ASSEMBLY

April 19, 2021

Introduced by M. of A. ROZIC, GALLAGHER, GONZALEZ-ROJAS, LAVINE, GOTTFRIED, SIMON, EPSTEIN, BRONSON -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- 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 individual in a correctional facility who has  
6 a gender identity that differs from their assigned sex at birth, who has  
7 a diagnosis of gender dysphoria, who has a variation in their sex char-  
8 acteristics, or who self-identifies as transgender, gender nonconform-  
9 ing, nonbinary, or intersex shall:

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

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

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

LBD03291-09-2

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

5 (iv) have the right to access all necessary and appropriate medical  
6 and mental health care, including routine and preventive medical care  
7 related to their sex characteristics, and affirming medical and mental  
8 health care as related to gender dysphoria or gender affirmation, which  
9 includes access to items that are used by individuals to affirm their  
10 gender identity, including those items associated with necessary and  
11 appropriate care after gender-affirming surgery;

12 (v) have the right not to be subjected to medical or mental health  
13 treatments or interventions which they do not want or to which they do  
14 not provide informed consent, including but not limited to surgical  
15 interventions to change their sex characteristics such as genital  
16 surgeries and sterilizations, and counseling that pathologizes or  
17 attempts to change their sexual orientation or gender identity; and

18 (vi) have the right to maintain the confidentiality of records or  
19 portions of records related to their incarceration that would reveal  
20 their sex characteristics or their transgender, gender nonconforming,  
21 nonbinary, or intersex status, or that would otherwise reveal that their  
22 gender identity differs from their assigned sex at birth, that they have  
23 a diagnosis of gender dysphoria, or that they have an intersex trait or  
24 variation in their sex characteristics. This provision does not prevent  
25 an incarcerated individual from consenting to the release of such mate-  
26 rial nor does it prevent the release of aggregate data, reports created  
27 pursuant to subdivision seven of section seventy-two-d and paragraph (e)  
28 of subdivision fourteen of section five hundred-b of this chapter, or  
29 records that have otherwise been de-identified and would not reveal the  
30 identity of a transgender, gender nonconforming, nonbinary, or intersex  
31 person without their consent.

32 (b) The department is prohibited from requiring documentation to  
33 confirm a person's gender identity, sex characteristics, or intersex  
34 status.

35 (c) All people shall receive notice in writing in a language and  
36 manner understandable to them about the requirements of this subdivision  
37 upon their admission to a correctional facility.

38 (d) The department shall provide annual training on provisions of this  
39 subdivision to all personnel.

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

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

48 § 72-d. Placement of incarcerated individual's based on gender iden-  
49 tity. 1. An incarcerated individual who has a gender identity that  
50 differs from their assigned sex at birth, who has a diagnosis of gender  
51 dysphoria, who has a variation in their sex characteristics, or who  
52 self-identifies as transgender, gender nonconforming, nonbinary, or  
53 intersex pursuant to subdivision seven of section one hundred thirty-  
54 seven of this chapter shall be presumptively placed in a correctional  
55 facility with persons of the gender that most closely aligns with such  
56 person's self-attested gender identity unless the person opts out of

1 such placement. Placement shall not be conditioned upon the incarcerated  
2 individual's history of, consent to, intention to seek, or refusal to  
3 undergo any treatment or intervention regarding their sex character-  
4 istics or gender identity, including those interventions described in  
5 subparagraph (v) of paragraph (a) of subdivision seven of section one  
6 hundred thirty-seven of this chapter.

7 2. The incarcerated individual shall be permitted to leave such  
8 presumptive placement and transfer to a facility housing individuals of  
9 their assigned sex at birth at any time. Any such person who has opted  
10 out of such presumptive placement or who leaves such placement may again  
11 request placement in a correctional facility with persons of the gender  
12 that most closely aligns with their self-attested gender identity at any  
13 time.

14 3. Such presumptive placement may be overcome by a determination in  
15 writing by the commissioner or the commissioner's designee that there is  
16 clear and convincing evidence that such person presents a current danger  
17 of committing gender-based violence against others. A denial of presump-  
18 tive placement shall not be based on any discriminatory reasons, includ-  
19 ing but not limited to (a) the past or current sex characteristics,  
20 including chromosomes, genitals, gonads, other internal or external  
21 reproductive anatomy, secondary sex characteristics, or hormone function  
22 of the person whose housing placement is at issue, (b) the sexual orien-  
23 tation of the person whose housing placement is at issue, (c) the  
24 complaints of other incarcerated individual's who do not wish to be  
25 housed with a non-cisgender or intersex person due to that person's  
26 gender identity identity or sex characteristics, or (d) a factor present  
27 among other people in the presumptive housing unit or facility. A denial  
28 of presumptive placement shall be provided in writing to the affected  
29 person within two days of the department's decision. The department  
30 shall include in its written decision a description of all evidence  
31 supporting the department's decision and an explanation of why the  
32 evidence supports a determination that the person presents a current  
33 danger of committing gender-based violence against others. The depart-  
34 ment shall attach all supporting documentation to the written decision.  
35 The supporting documentation may be redacted as necessary to protect any  
36 person's privacy or safety. Unsubstantiated allegations are not clear  
37 and convincing evidence justifying a denial of presumptive placement or  
38 transfer out of presumptive placement. A person may grieve the denial.

39 4. The department is prohibited from denying a presumptive placement  
40 or transferring a person out of a presumptive placement as a form of  
41 discipline.

42 5. A transgender, gender nonconforming, nonbinary, or intersex incar-  
43 cerated individual experiencing harassment, violence or threats of  
44 violence due to their gender identity or sex characteristics shall not  
45 be placed in involuntary protective custody for more than fourteen days  
46 as a result of such harassment, violence or threats of violence, and  
47 shall be housed in a least-restrictive setting where they will be safe  
48 from such behavior.

49 6. 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 indi-  
54 vidual's.

55 7. 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, or intersex incarcerated individ-  
5 ual's who (a) were denied presumptive placement in accordance with  
6 subdivision three of this section; and (b) voluntarily opted out of  
7 presumptive placement in accordance with subdivision one of this  
8 section; and (c) were kept in involuntary protective custody for longer  
9 than fourteen days. Reports required by this section shall be posted on  
10 the website maintained by the department. Reports may include de-identi-  
11 fied individual information in the aggregate, but shall not include  
12 personally identifiable information.

13 8. 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 individual determined to have a gender identity different from  
23 their assigned sex at birth, who has a diagnosis of gender dysphoria,  
24 who has a variation in their sex characteristics, or who is self-identi-  
25 fied as transgender, gender nonconforming, nonbinary, or intersex pursu-  
26 ant to subdivision seven of section one hundred thirty-seven of this  
27 chapter shall be presumptively placed in a facility housing unit with  
28 incarcerated individuals of the gender most closely aligned with such  
29 person's self-attested gender identity unless the person opts out of  
30 such placement. Placement shall not be conditioned upon the incarcerat-  
31 ed individual's history of, consent to, intention to seek, or refusal to  
32 undergo any treatment or intervention regarding their sex character-  
33 istics or gender identity, including those interventions described in  
34 subparagraph (v) of paragraph (a) of subdivision seven of section one  
35 hundred thirty-seven of this chapter. The incarcerated individual shall  
36 be permitted to leave such placement and transfer to a unit housing  
37 individuals of their assigned sex at birth at any time. Any such person  
38 who has opted out of such presumptive placement or who leaves such  
39 placement may again request placement in a housing unit with persons of  
40 the gender that most closely aligns with their self-attested gender  
41 identity at any time. Such presumptive placement may be overcome by a  
42 determination in writing by the chief administrative officer or their  
43 designee that there is clear and convincing evidence that such person  
44 presents a current danger of committing gender-based violence against  
45 others. A denial of presumptive placement shall not be based on any  
46 discriminatory reasons, including but not limited to (1) the past or  
47 current sex characteristics, including chromosomes, genitals, gonads,  
48 other internal or external reproductive anatomy, secondary sex charac-  
49 teristics, or hormone function of the person whose housing placement is  
50 at issue, (2) the sexual orientation of the person whose housing place-  
51 ment is at issue, (3) the complaints of other incarcerated individual's  
52 who do not wish to be housed with a non-cisgender person due to that  
53 person's gender identity, or sex characteristics or (4) a factor present  
54 among other people in the presumptive housing unit or facility. A denial  
55 of presumptive placement shall be provided in writing to the affected  
56 person within two days of the decision by the chief administrative offi-

cer or their designee. The chief administrative officer or their designee shall include in their written decision a description of all evidence supporting the decision and an explanation of why the evidence supports a determination that the person presents a current danger of committing gender-based violence against others. The chief administrative officer or their designee shall attach all supporting documentation to the written decision. The supporting documentation may be redacted as necessary to protect any person's privacy or safety. Unsubstantiated allegations are not clear and convincing evidence justifying a denial of presumptive placement or a transfer out of presumptive placement. A person may grieve the denial.

(b) The chief administrative officer or their designee is prohibited from denying a presumptive placement or transferring a person out of a presumptive placement as a form of discipline.

(c) A transgender, gender nonconforming, or nonbinary incarcerated individual experiencing harassment, violence or threats of violence due to their gender identity or sex characteristics shall not be placed in involuntary protective custody for more than fourteen 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.

(d) 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 local correctional facility. The sheriff shall provide annual training on provisions of this subdivision to all correctional personnel who are involved in the supervision or placement of incarcerated individual's.

(e) The sheriff of each county shall report, in a form and manner prescribed by the commission, the number of transgender, gender nonconforming, or nonbinary incarcerated individual's who (1) were denied presumptive placement in accordance with paragraph (a) of this subdivision; and (2) voluntarily opted out of presumptive placement in accordance with paragraph (a) of this subdivision; and (3) were kept in involuntary protective custody for longer than fourteen days. The commission shall include such information in its annual report pursuant to section forty-five of this chapter, but shall exclude identifying information from such report. Reports required by this provision shall be posted on the website maintained by the commission.

(f) 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.

§ 5. Section 500-k of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, is amended to read as follows:

§ 500-k. Treatment of incarcerated individuals. 1. 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 incarcerated individuals in state correctional facilities are applicable to incarcerated individuals 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.

1 2. Notwithstanding any other section of law to the contrary, subdivi-  
2 sion thirty-four of section two of this chapter, and subparagraphs (i),  
3 (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of  
4 subdivision six of section one hundred thirty-seven of this chapter  
5 shall not apply to local correctional facilities with a total combined  
6 capacity of five hundred [~~inmates~~] incarcerated individual's or fewer.

7 § 6. This act shall take effect immediately; provided, however, that  
8 the amendments to section 500-b of the correction law made by section  
9 four of this act shall not affect the repeal of such section and shall  
10 be deemed repealed therewith; provided, further, that if chapter 93 of  
11 the laws of 2021 shall not have taken effect on or before such date then  
12 section five of this act shall take effect on the same date and in the  
13 same manner as such chapter of the laws of 2021 takes effect.