

STATE OF NEW YORK

6677--A

2021-2022 Regular Sessions

IN SENATE

May 11, 2021

Introduced by Sens. SALAZAR, BIAGGI, BRISPORT, HOYLMAN, JACKSON, MYRIE, RIVERA, SEPULVEDA -- 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 Crime Victims, Crime and Correction 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 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.

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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-

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

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

15 (c) A transgender, gender nonconforming, or nonbinary incarcerated
16 individual experiencing harassment, violence or threats of violence due
17 to their gender identity or sex characteristics shall not be placed in
18 involuntary protective custody for more than fourteen days as a result
19 of such harassment, violence or threats of violence, and shall be housed
20 in a least-restrictive setting where they will be safe from such behav-
21 ior.

22 (d) All people shall receive notice in writing in a language and
23 manner understandable to them about the requirements of this subdivision
24 upon their admission to a local correctional facility. The sheriff shall
25 provide annual training on provisions of this subdivision to all correc-
26 tional personnel who are involved in the supervision or placement of
27 incarcerated individual's.

28 (e) The sheriff of each county shall report, in a form and manner
29 prescribed by the commission, the number of transgender, gender noncon-
30 forming, or nonbinary incarcerated individual's who (1) were denied
31 presumptive placement in accordance with paragraph (a) of this subdivi-
32 sion; and (2) voluntarily opted out of presumptive placement in accord-
33 ance with paragraph (a) of this subdivision; and (3) were kept in invol-
34 untary protective custody for longer than fourteen days. The commission
35 shall include such information in its annual report pursuant to section
36 forty-five of this chapter, but shall exclude identifying information
37 from such report. Reports required by this provision shall be posted on
38 the website maintained by the commission.

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

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

47 § 500-k. Treatment of incarcerated individuals. 1. Subdivisions five
48 [~~and~~], six and seven of section one hundred thirty-seven of this chap-
49 ter, except paragraphs (d) and (e) of subdivision six of such section,
50 relating to the treatment of incarcerated individuals in state correc-
51 tional facilities are applicable to incarcerated individuals confined in
52 county jails; except that the report required by paragraph (f) of subdivi-
53 sion six of such section shall be made to a person designated to
54 receive such report in the rules and regulations of the state commission
55 of correction, or in any county or city where there is a department of
56 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.