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:

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

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

7. (a) Any incarcerated person in a correctional facility 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 shall:

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

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

(iii) 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

(iv) have the right to medical and mental health care as needed and as appropriate for their gender identity and to items that are used by individuals to affirm their gender identity, including those associated 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-

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

5. A violation of this section 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 section 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.

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

14. (a) Notwithstanding the provisions of this section, any incarcerated person determined to have a gender identity different from their assigned sex at birth or who has a diagnosis of gender dysphoria or who is self-identified 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 facility housing unit with incarcerated individuals of the gender most closely aligned 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 unit 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 housing unit 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 chief administrative officer or their 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 (1) the anatomy or genitalia of the person whose housing placement is at issue, (2) the sexual orientation of the person whose housing placement is at issue, (3) 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 (4) 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 decision by the chief administrative officer or his designee. A person may grieve the denial.

(b) A transgender, gender nonconforming, or nonbinary incarcerated individual 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.

(c) 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 correc-

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

(d) 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 people 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 thirty 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.

(e) 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.

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

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 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.

§ 6. 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; provided, further, that section five of this act shall take effect on the same date and in the same manner as chapter 93 of the laws of 2021, takes effect.