

# STATE OF NEW YORK

2809

2021-2022 Regular Sessions

## IN SENATE

January 25, 2021

Introduced by Sens. SEPULVEDA, BIAGGI, HOYLMAN, JACKSON, MYRIE, RAMOS --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to the treatment and  
placement of incarcerated people based upon gender identity

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

1 Section 1. Section 137 of the correction law is amended by adding a  
2 new subdivision 7 to read as follows:

3 7. Any incarcerated person in a correctional facility who has a gender  
4 identity that differs from his or her assigned sex at birth or has a  
5 diagnosis of gender dysphoria, as set forth in the most recent edition  
6 of the American Psychiatric Association's "Diagnostic and Statistical  
7 Manual of Mental Disorders", or who self-identifies as transgender or  
8 gender nonconforming shall:

9 (a) be addressed by correctional officers and staff in a manner that  
10 most closely aligns with such person's gender identity;

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

14 (c) have the right to be searched by a correctional officer or staff  
15 member of the gender most closely aligned with such person's gender  
16 identity, unless the incarcerated person requests otherwise or under  
17 exigent circumstances; and

18 (d) have the right to medical and mental health care as needed and as  
19 appropriate for his or her gender identity.

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

22 § 72-c. Placement of inmates based on gender identity. 1. An incarcer-  
23 ated person who has a gender identity that differs from his or her  
24 assigned sex at birth or who has a diagnosis of gender dysphoria or who  
25 self-identifies as transgender or gender nonconforming pursuant to  
26 subdivision seven of section one hundred thirty-seven of this chapter  
27 shall be presumptively placed in a correctional facility with persons of

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

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1 the gender that most closely aligns with such person's gender identity  
2 unless the person opts out of such placement. The incarcerated person  
3 shall be permitted to leave such placement and transfer to a facility  
4 housing individuals of his or her assigned sex at birth at any time. Any  
5 such person who has opted out of such presumptive placement or who  
6 leaves such placement may again request placement in a correctional  
7 facility with persons of the gender that most closely aligns with his or  
8 her gender identity at any time. Such presumptive placement may be  
9 overcome by a determination in writing by the commissioner or the  
10 commissioner's designee that there is clear and convincing evidence that  
11 such person presents a current danger of committing gender-based  
12 violence against others. In making such a determination, the commis-  
13 sioner or his or her designee shall further consider whether such person can  
14 be safely housed in another facility or housing unit that most closely  
15 aligns with the person's gender identity.

16 2. A transgender incarcerated person experiencing harassment, violence  
17 or threats of violence due to his or her gender identity shall not be  
18 placed in protective custody for more than thirty days as a result of  
19 such harassment, violence or threats of violence, and must be housed in  
20 a least-restrictive setting where he or she will be safe from such  
21 behavior.

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

24 14. 1. Notwithstanding the provisions of this section, any incarcerat-  
25 ed person determined to have a gender identity different from his or her  
26 assigned sex at birth or who has a diagnosis of gender dysphoria or who  
27 is self-identified as transgender or gender nonconforming pursuant to  
28 subdivision seven of section one hundred thirty-seven of this chapter  
29 shall be presumptively placed in a facility housing unit with incarcer-  
30 ated individuals of the gender most closely aligned with such person's  
31 gender identity. Such presumptive placement may be overcome by a written  
32 determination by the chief administrative officer, or the chief adminis-  
33 trative officer's designee, that the placement would present significant  
34 safety, management or security problems.

35 2. A transgender incarcerated individual experiencing harassment,  
36 violence or threats of violence due to his or her gender identity shall  
37 not be placed in protective custody for more than thirty days as a  
38 result of such harassment, violence or threats of violence, and must be  
39 housed in a least-restrictive setting where he or she will be safe from  
40 such behavior.

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

43 § 500-k. Treatment of inmates. Subdivisions five ~~and~~, six and seven  
44 of section one hundred thirty-seven of this chapter, except paragraphs  
45 (d) and (e) of subdivision six of such section, relating to the treat-  
46 ment of inmates in state correctional facilities are applicable to  
47 inmates confined in county jails; except that the report required by  
48 paragraph (f) of subdivision six of such section shall be made to a  
49 person designated to receive such report in the rules and regulations of  
50 the state commission of correction, or in any county or city where there  
51 is a department of correction, to the head of such department.

52 § 5. This act shall take effect immediately; provided, however, that  
53 the amendments to section 500-b of the correction law made by section  
54 three of this act shall not affect the repeal of such section and shall  
55 be deemed repealed therewith.