

STATE OF NEW YORK

6677

2021-2022 Regular Sessions

IN SENATE

May 11, 2021

Introduced by Sen. SALAZAR -- 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 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.